CR 09-112

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., 151.21 (1), 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) (c), (47) (note) and (49) (note), 151.004, 151.015 (7) and (18) (c) and (d), 151.02, 151.05 (title), (2) (a), (4) (title) and (4), 151.06 (title), 151.07 (2), 151.09 (1), (3) (b) (note), (4) (b) 2. and 3. b.(note), (c) 3., and (d) 2. a., and c., (5) (b) 2. b., (6) (b) 1. b. and (7) (b), 151.095 (1) (intro.), (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), (1), (2), (4), (5), (6) (title) and (7), 151.15 (1) and (2), 151.20, 151.21 (5) and (8), 151.22 (1) (a), 151.23 (title), (1), (3) (a), (4) (title) and (5), 151.26 (1), 151.31 (1) (intro.) and (f) 1.a. and 2., ch. NR 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) (intro.) and 4. and (g), (2) (b), (d) (intro.), (e) and (y), (3) (b) 1., (4) (a) 3. and (6) (b), 153.18 (title), (intro.), (1), (2) and (3), 153.22 (1) (a), (3) (d), (f), (j), (m) and (n), (6) (b) 1. (intro.) and 2. (note), (7), (8) (a), (9) and (11), 153.23 (1) (c) and (e) (title), 153.26 (1), (5) and (7), 153.27 (3) (b) and (4) (a), 153.28 (1) (b) 1., 2. b., 3. and 5., 155.12 (7), 155.13 (1) (intro.), 155.14 (3), 155.15 (1) (a), and (e) (note), 155.16 (1) (b), (c) (intro.) and 1. a. and 2. c. and (e), 155.17 (2) (b) 2. and 4. b., 155.18 (2), 155.19 (3) (a) and (b) (intro.), 155.21 (2) (a) and (b) (intro.) and (4) (d) 3., 155.22 (3) (i), (4), (10) (a) and (11), 155.23 (1) (c) (note), 155.26 (1) and (6), 155.27 (3) (b) and 155.28 (1) (b) 3.; to repeal and recreate NR 151.003, 151.015 (1), (8) and (16), 151.13, 151.14, 151.25, 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), (16m), (42m), (46m), and (49m), 151.005, 151.006, 151.015 (13g), (15e), (15m), (15s) and (25), 151.03, 151.04, 151.05 (2) (am), 151.055, 151.07 (2) (note), 151.095 (4) (b) (note), 151.105, 151.11 (3) (c) (note), (6m) and (8), 151.12 (2) (bm), 151.121 to 151.128, 151.21 (1m), 151.225, 151.23 (2) (cm), (4m) and (6), 151.24 (1) (bm), 151.241 to 151.249, 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., 155.14 (3) (b), 155.17 (2) (b) 13. and 14., 155.21 (2) (b) 3., 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 provides 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 runoff pollution from both agricultural and non-agricultural sources, including transportation facilities. The new performance standards include:

- a setback from waterbodies in agricultural fields within which no tillage would be allowed for the purpose of maintaining stream bank integrity and avoiding soil deposits into state waters;
- 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 crop and livestock producers to reduce discharges if necessary to meet a load allocation specified in an approved Total Maximum Daily Load (TMDL) by implementing targeted performance standards specified for the TMDL area using best management practices, conservation practices and performance standards specified in ch. ATCP 50.

Modifications are made to the agricultural performance standards addressing cropland soil erosion control, nutrient management and manure storage.

- The rule modifies the sheet, rill and wind erosion standard by extending it to pastures starting July 1, 2012.
- The rule clarifies that the nutrient management standard does not apply to applications of industrial waste, municipal sludge or septage regulated under other DNR programs provided the material in not commingled with manure prior to application. The rule also

includes a note to explain how the application of these materials will affect farm nutrient management planning.

- Manure storage standards for existing and new facilities are modified to include margin of safety requirements.

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 rule modifies the construction site performance standard to apply prescriptive standards to construction sites of less than one acre to accommodate the transfer of ch. COMM 60 to the department effective January 1, 2010; to incorporate non-numeric effluent limits promulgated by US EPA effective February 1, 2010; and to revise the sediment reduction standard from an 80% reduction to a maximum discharge of 5 tons/acre/year. The revised sediment reduction standard has a two year delayed implementation to allow for development of a model to measure compliance.
- The rule revises the post-construction performance standards by removing the exemption from the total suspended solids performance standards of redevelopment sites with no increase in exposed parking or roads; adding the 1-year, 24-hour design storm for the peak flow control performance standard and a mid-level infiltration performance standard for sites with moderate impervious area to pervious area development; and revising the definition of a highly susceptible wetland that requires a 75 feet protective area standard.
- The principle change made by the rule to the developed urban area performance standard is the description of a process that permitted municipalities can use if they cannot meet the total suspended solids reduction of 40% by 2013. The process identifies the storm water management plan submittal, the department review process and allowance for up to 10 more years to comply with the standard as long as the plan is followed.

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 so that projects do not

negatively impact historic sites, cultural resources, endangered resources or create problem interactions with hazardous sites.

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 the amount of money a grantee may receive in a given grant year to 20% of the available funds. This limit is enough to allow a single grantee to win 2 or 3 grant awards while preventing a handful of successful applicants to garner all of the available funding. The amended rule will require DNR approval of all professional services contracts instead of just those over $10,000. The reason for this is that even small planning contracts can lead to recommendations for expensive best management practices that the department may end up funding. It also will expose early on in the grants process any differences of opinion between the department and grantees over the eligibility of project costs. The amended rule provides the department greater flexibility in awarding funds. This includes granting of a partial award to a project that is too low on the ranking list to be offered full funding. This option allows the grantee to accept a partial award while remaining obligated to fulfill the project as described in the application. This will result in a greater chance that the project will proceed and water quality benefits to be realized as opposed to denying the partial grant award to an otherwise willing community. In addition, the revised rule allows the department to deny a new grant award if the applicant is delinquent in completing a previously issued grant award. This discretion is needed as communities sign grant awards in successive years and sometimes get behind in completing projects. This provision will serve as an incentive for communities to not over-commit themselves and will help maximize the portion of funds awarded that are getting practices installed instead of waiting in the queue. The revised rule requires the applicant to address potentially negative environmental impacts of projects in the application process. This helps facilitate the process of making grant awards as soon as scoring is completed and results in fewer projects that must be discontinued due to unforeseen circumstances.

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 TMDLs.

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 requiring agricultural operations to reduce discharges to surface waters to meet the load requirements of approved TMDLs and targeted performance standards set for the TMDL area 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.

<u>Illinois</u>

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 Best Management Practice (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-year, 24-hour 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_5 (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_5.

For non-agricultural practices, Minnesota recently reissued construction permits that require infiltration and the need for additional BMPs when sites are located near Clean Water Act s. 303 (d) impaired waters or outstanding resource waters (ORWs). 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 outstanding resource waters or exceptional resource waters (ERWs) 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 meterological 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 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 or significant increases in record-keeping 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 TMDL has been approved, a higher level of pollution control may be required as specified in a targeted performance standard developed for the TMDL area. An owner or operator in this situation would be required to reduce discharges further 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. For all but less than one acre construction sites, 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. The changes to the total suspended solids standard will affect redevelopment sites but it is difficult to estimate how many construction sites are redevelopment sites and how many of the developers of these sites 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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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, an impervious flow path or a minimally pervious flow path.

Note: An example of minimally pervious 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/muni.htm

SECTION 2. NR 151.002 (11m), (14g), (14r) 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 to apply for a storm water permit in accordance with subch. III of ch. NR 216 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 for the site.

(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.

Note: The impaired waters list can be viewed on the department website at http://dnr.wi.gov/org/water/wm/wqs/303d/303d.html.

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"~~ "In-fill" means an undeveloped area of land located within an existing urban sewer service ~~areas~~ area surrounded by ~~already existing~~ development or ~~existing~~ development and natural or man-made features where development cannot occur. "In-fill" does not include any undeveloped area that was part of a larger new development for which a notice of

intent to apply for a storm water permit in accordance with subch. III of ch. NR 216 was required to be submitted after October 1, 2004 to the department or the department of commerce.

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~~ the highest 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~~ performance that is achievable but is not equivalent to a performance standard identified in subch. III or IV, as determined in accordance with s. NR 151.006.

SECTION 6. NR 151.002 (42) (c) is amended to read:

NR 151.002 (42) (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.

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

NR 151.002 (42m) "Silviculture activity" means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.

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) is 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, NRCS, the Secretary of State and the Legislative Reference Bureau~~ 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 10. 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, NRCS, the Secretary of State and the Legislative Reference Bureau~~ 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 11. NR 151.002 (49m) is created to read:

NR 151.002 (49m) "US EPA" means the United States environmental protection agency.

SECTION 12. NR 151.003 repealed and recreated to read:

NR 151.003 BMP Location. (1) NON-NAVIGABLE WATERS. For purposes of determining compliance with the performance standards of subchs. III and IV, the department may give credit for BMPs that function to provide treatment for runoff from existing development and post-construction runoff from new development, redevelopment and in-fill development and that are located within non-navigable waters.

(2) NAVIGABLE WATERS. (a) *New development runoff*. Except as allowed under par. (b), BMPs designed to treat post-construction runoff from new development may not be located in navigable waters and, for purposes of determining compliance with the performance standards of subchs. III and IV, the department may not give credit for such BMPs.

(b) *New development runoff exemption.* BMPs to treat post-construction runoff from new development may be located within navigable waters and may be creditable by the department under subchs. III and IV, if all the following are met:

1. The BMP was constructed prior to October 1, 2002, and received all applicable permits.

2. The BMP functions or will function to provide runoff treatment for the new development.

(c) *Existing development and post-construction runoff from redevelopment and in-fill development.* Except as provided in par. (d), BMPs that function to provide runoff treatment for existing development and post-construction runoff from redevelopment and in-fill development may not be located in navigable waters and, for purposes of determining compliance with the performance standards of subchs. III and IV, the department may not give credit for such BMPs.

(d) *Existing development and post-construction runoff from redevelopment and in-fill development exemption*. BMPs that function to provide treatment of runoff from existing development and post-construction runoff from redevelopment and in-fill development may be located within navigable waters and may be creditable by the department under subchs. III and IV, if any of the following are met:

1. The BMP was constructed, contracts were signed or bids advertised and all applicable permits were received prior to the effective date of the rule . . . [legislative reference bureau inserts date].

2. The BMP is on an intermittent waterway and all applicable permits are received.

Note: An intermittent waterway may be identified on a United States geological survey 7.5-minute series topographic map, a county soil survey map, the Surface Water Data Viewer Map, 24K hydro layer on the department's website, or determined by the department through a site evaluation, whichever is more current. The Surface Water Data Viewer Map, 24 K hydro layer is available at http://dnr.wi.gov/org/water/data_viewer.htm

(3) CREDIT. The amount of credit that the department may give a BMP for purposes of determining compliance with the performance standards of subchs. III and IV is limited to the treatment capability of the BMP.

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

be required to excavate, dredge, fill or construct BMPs in or near wetlands, non-navigable or navigable waters. Other permits and approvals may not be authorized where the BMP construction will result in adverse environmental impacts to the waterway or wetland.

SECTION 13. NR 151.004 is amended to read:

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 or groundwater standards under ch. NR 140. In those cases, using modeling or monitoring, the department shall determine if a specific waterbody or area will not attain water quality standards or groundwater 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 or groundwater standards will not be attained using statewide performance standards and prohibitions but the implementation of targeted performance standards would attain water quality standards or groundwater standards, the department shall promulgate the targeted performance standards by rule.

Note: Pursuant to s. 281.16 (3), Stats., the department of agriculture, trade and consumer protection shall develop or specify the best management practices, conservation practices or technical standards used to demonstrate compliance with a performance standard developed under s. NR 151.004.

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

NR 151.005 Performance standard for total maximum daily loads. A crop producer or livestock producer subject to this chapter shall reduce discharges of pollutants from a livestock facility or cropland to surface waters if necessary to meet a load allocation in a US EPA and state approved TMDL.

(1) A crop producer or livestock producer subject to this chapter shall use the best management practices, conservation practices or technical standards established under ch. ATCP 50 to meet a load allocation in a US EPA and state approved TMDL.

(2) If compliance with a more stringent or additional performance standard, other than the performance standards contained in this chapter, is required for crop producers or livestock producers to meet a load allocation in a US EPA and state approved TMDL, the department shall use the procedure in s. NR 151.004 to promulgate the more stringent or additional performance standard before compliance is required.

NR 151.006 Applicability of maximum extent practicable. Maximum extent practicable applies when a person who is subject to a performance standard of subch. III and IV demonstrates to the department's satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, an applicant shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources and preservation of historic properties.

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~~ <u>includes any of the following</u>:

(a) ~~Runoff from a manure storage facility~~ <u>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</u>.

(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~~ <u>Runoff of stored manure,</u>

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 winter grazing area or a bare soil area such as a cattle lane or a supplemental feeding area located within a pasture, provided that the bare soil area is not a significant source of pollution to waters of the state.

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 it 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 the grazing area. Pasture may include limited areas of bare soil such as cattle lanes and supplemental feeding areas provided the bare soil areas are not significant sources of pollution to waters of the state.

(15s) "Phosphorus index" or "P-index" means Wisconsin's agricultural land management planning tool for assessing the potential of a cropped or grazed field to contribute phosphorus to the surface water.

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~~ a direct conduit to groundwater.

(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 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 is amended to read:

NR 151.02 (title) Sheet, rill and wind erosion performance standard. **(1)** 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.

(2) This standard first applies to pastures beginning July 1, 2012.

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

NR 151.03 Tillage setback performance standard. The purpose of this standard is to prevent tillage operations from destroying stream banks and depositing soil directly in surface waters. In this section, "surface water" has the meaning given in s. NR 102.03 (6).

(1) No crop producer may conduct a tillage operation that negatively impacts stream bank integrity or deposits soil directly in surface waters.

(2) No tillage operations may be conducted within 5 feet of the top of the channel of surface waters. Tillage setbacks greater than 5 feet but no more than 20 feet may be required to meet this standard.

(3) Crop producers shall maintain the area within the tillage setback required under sub. (2) in adequate sod or self-sustaining vegetative cover that provides a minimum of 70% coverage.

(4) This section does not apply to grassed waterways installed as conservation practices.

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

(2) (a) Croplands, pastures and winter grazing areas shall average a phosphorus index of 6 or less over the accounting period and may not exceed a phosphorus index of 12 in any individual year within the accounting period.

(b) Except as provided under sub. (3), for purposes of compliance with this section the phosphorus index shall be calculated using the version of the Wisconsin Phosphorus Index available as of the effective date of this rule . . . [legislative reference bureau inserts date].

Note: The Wisconsin Phosphorus Index is maintained by the University of Wisconsin department of soil science and can be found at http://wpindex.soils.wisc.edu/.

Note: Soil test phosphorus concentration may be used to help identify fields that are high priority for evaluation with the Wisconsin Phosphorus Index. For example, croplands with soil test phosphorus concentrations of 35 parts per million or greater should be given higher priority for evaluation.

Note: Best management practices developed by the department of agriculture, trade and consumer protection may be used alone or in combination to meet the requirements of this section.

(c) The accounting period required under par. (a) shall meet the following conditions:

1. The accounting period shall begin once a nutrient management plan meeting the requirements of ss. NR 151.07 and ATCP 50.04 (3) is completed.

2. During the first 8 years of implementation of this standard by a producer, computation of the phosphorus index may be based on a combination of planned crop management and

historic data. Planned crop management data is based on projected management and crop rotations. Historic data is based on management and crop rotations that have actually occurred.

3. Once the nutrient management plan under ss. NR 151.07 and ATCP 50.04 (3) is developed, historic data shall be used for each year as it becomes available.

(3) If the phosphorus index is not applicable to a particular crop or situation, an equivalent calculation approved by the department shall be used to meet the requirements of this section.

Note: The requirement provides for alternative methods to calculate a phosphorus index. Some strategies for assessing and reducing phosphorus index values, algorithms, and software can be found at http://wpindex.soils.wisc.edu/ .

(4) Producers may not apply nutrients or manure directly, through mechanical means, to surface waters as defined in s. NR 102.03 (6).

(5) The phosphorus index requirement under sub. (2) (a) first takes effect for pastures beginning July 1, 2012.

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 are sometimes used to store non-agricultural wastes, such as septage or organic food wastes. These facilities 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.

(3) The department shall consider all of the following factors when determining whether a discharge of process wastewater is a significant discharge to waters of the state:

(a) Volume and frequency of the discharge.

(b) Location of the source relative to receiving waters.

(c) Means of process wastewater conveyance to waters of the state.

(d) Slope, vegetation, rainfall and other factors affecting the likelihood or frequency of process wastewater discharge to waters of the state.

(e) Available evidence of discharge to a surface water of the state or to a direct conduit to ground water as defined under s. NR 151.002 (11m).

(f) Whether the process wastewater discharge is to a site that is defined as a site susceptible to groundwater contamination under s. NR 151.015 (18).

(g) Other factors relevant to the impact of the discharge on water quality standards of the receiving water or to groundwater standards.

Note: Existing technical standards contained in the U.S. department of agriculture natural resources conservation service field office technical guide may be used for managing

process wastewater. When such standards are not applicable, the landowner or operator is expected to take reasonable steps to reduce the significance of the discharge in accordance with the agricultural performance standard and prohibition compliance requirements of this chapter. The Wisconsin department of agriculture trade and consumer protection is responsible under s. 281.16 (3) (c), Stats., for developing additional management practices if needed.

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

NR 151.06 (title) Clean water diversions performance standard.

SECTION 31. NR 151.07 (2) is amended to read:

NR 151.07 (2) This performance standard does not apply to the application of industrial waste and byproducts regulated under ch. NR 214, municipal sludge regulated under ch. NR 204, or septage regulated under ch. NR 113. ~~or manure deposited by pasturing or grazing animals on fields dedicated to pasturing or grazing~~, provided the material in not commingled with manure prior to application.

SECTION 32. NR 151.07 (2) (note) is created to read:

NR 151.07 (2) Note: If an application of material to cropland is regulated under ch. NR 113, 204 or 214, Wis. Adm. Code, the management practices, loading limitations and other restrictions specified in the applicable regulation apply to that application. However, nutrient management plans developed in accordance with this performance standard must account for all nutrient sources including industrial waste and byproducts, municipal sludge and septage. This means that the future application of manure and commercial fertilizer may be restricted by this performance standard due to other applications of industrial waste and byproducts, municipal sludge and septage. In addition, it means that if industrial waste and byproducts, municipal sludge or septage are placed in a manure storage structure and mixed with manure, the commingled material is also covered by this standard and must be accounted for by the producer when preparing and implementing a nutrient management plan.

SECTION 33. NR 151.09 (1), (3) (b) (note), (4) (b) 2. and 3. b. (note), (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) **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. b. **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.

(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. (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 34. NR 151.09 (5) (a) 3. h. is repealed.

SECTION 35. 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 36. NR 151.09 (6) (a) 3. e. is repealed.

SECTION 37. 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 subsection.

(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 any subsequent offenses.

SECTION 38. NR 151.095 (1) (intro.) is 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.

SECTION 39. NR 151.095 (4) (b) (note) is created to read:

NR 151.095 (4) (b) **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.

SECTION 40. NR 151.095 (5) (b) 2. c. and 5., (c) 3. and (d) 2. a. and c. are amended to read:

NR 151.095 (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 41. NR 151.095 (6) (a) 3. h. is repealed.

SECTION 42. 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 43. NR 151.095 (7) (a) 3. e. is repealed.

SECTION 44. 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~~ subsection.

(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.

SECTION 45. NR 151.105 is created to read:

NR 151.105 Construction site performance standard for non-permitted sites. (1) APPLICABILITY. Except as provided under sub. (2), this section applies to all of the following:

(a) A construction site that consists of land disturbing construction activity of less than one acre.

Note: Land disturbing construction sites of less than one acre are not regulated under subch. III of ch. NR 216 unless designated by the department under s. NR 216.51 (3).

(b) 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.

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

(a) One- and two- family dwellings regulated by the department of commerce pursuant to s.101.653, Stats.

(b) Agricultural facilities and practices.

(c) Silviculture activities.

(3) RESPONSIBLE PARTY. The landowner of the construction site or other person contracted or obligated by other agreement with the landowner to implement and maintain construction site BMPs is the responsible party and shall comply with this section.

(4) REQUIREMENTS. Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all of the following:

(a) The deposition of soil from being tracked onto streets by vehicles.

(b) The discharge of sediment from disturbed areas into on-site storm water inlets.

(c) The discharge of sediment from disturbed areas into adjacent waters of the state.

(d) The discharge of sediment from drainage ways that flow off the site.

(e) The discharge of sediment by dewatering activities.

(f) The discharge of sediment eroding from soil stockpiles existing for more than 7 days.

(g) The transport by runoff into waters of the state of chemicals, cement and other building compounds and materials on the construction site during the construction period. 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.

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.

(5) LOCATION. BMPs shall be located so that treatment occurs before runoff enters waters of the state.

(6) IMPLEMENTATION. The BMPs used to comply with this section shall be implemented as follows:

(a) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin.

(b) Erosion and sediment control practices shall be maintained until final stabilization.

(c) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.

(d) Temporary stabilization activity shall commence when land disturbing construction activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.

(e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

SECTION 46. NR 151.11 (title), (1) and (2) are amended to read:

NR 151.11 (title) Construction site performance standard for ~~new development and redevelopment~~ sites of one acre or more. (1) DETERMINATION OF ~~AVERAGE ANNUAL BASIS~~ SOIL LOSS. In this section, ~~average annual basis~~ soil loss 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 ~~USLE~~ universal soil loss equation and its successors ~~RUSLE~~ revised universal soil loss equation and ~~RUSLE2~~ 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~~ 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~~ consists of one acre or more of land disturbing construction activity~~, except where bids are advertised, or construction contracts signed where no bids are advertised, before October 1, 2002~~.

~~**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.~~

(a) Subsections (3), (4), (5), (6) and (7) apply to all of the following:

1. Construction sites for which the department 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].

2. Construction sites for which the department of commerce received a notice of intent in accordance with ch. Comm 60 before the effective date of this rule . . . [legislative reference bureau inserts date].

3. Construction sites for which a bid has been advertised or construction contract signed for which no bid was advertised, before the effective date of the rule … [legislative reference bureau inserts date].

(b) Subsections (3) (a) to (d), (4), (5), (6m), (7) and (8) apply to all of the following:

1. Construction sites for which the department received a notice of intent in accordance with subch. III of ch. NR 216 on or after the effective date of this rule . . . [legislative reference bureau inserts date].

2. Construction sites for which a bid has been advertised or construction contract signed for which no bid was advertised, on or after the effective date of the rule … [legislative reference bureau inserts date].

SECTION 47. NR 151.11 (3) (c) (note) is created to read:

NR 151.11 (3) (c) **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), such construction sites are subject to the construction performance standards of this section.

SECTION 48. NR 151.11 (4) and (5) are amended to read:

NR 151.11 (4) RESPONSIBLE PARTY. The landowner or other person performing services to meet the performance standards of this subchapter, through a contract or other agreement~~,~~ with the landowner is the responsible party and shall comply with this section.

~~**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~~ The responsible party under sub.(4) shall develop and implement a written plan for each construction site. ~~and~~ The plan shall incorporate the applicable requirements of this section.

SECTION 49. NR 151.11 (6) (title) is amended to read:

NR 151.11 (6) PRE-EFFECTIVE DATE [legislative reference bureau inserts date] REQUIREMENTS.

SECTION 50. NR 151.11 (6m) is created to read:

NR 151.11 (6m) POST-EFFECTIVE DATE [legislative reference bureau inserts date] REQUIREMENTS. The plan required under sub. (5) shall meet all of the following:

(a) *Erosion and Sediment Control Practices.* Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all of the following:

1. The deposition of soil from being tracked onto streets by vehicles.

2. The discharge of sediment from disturbed areas into on-site storm water inlets.

3. The discharge of sediment from disturbed areas into adjacent waters of the state.

4. The discharge of sediment from drainage ways that flow off the site.

5. The discharge of sediment by dewatering activities.

6. The discharge of sediment eroding from soil stockpiles existing for more than 7 days.

7. The discharge of sediment from erosive flows at outlets and in downstream channels.

8. The transport by runoff into waters of the state of chemicals, cement and other building compounds and materials on the construction site during the construction period. 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 subdivision.

9. The transport by runoff into waters of the state of untreated wash water from vehicle and wheel washing.

Note: Wastewaters, such as from concrete truck washout, needs to be properly managed to limit the discharge of pollutants to waters of the state. A separate permit may be needed from the department where a wastewater discharge has the potential to adversely impact waters of the state. The appropriate department wastewater specialist should be contacted to determine if wastewater permit coverage is needed where wastewater will be discharged to waters of the state.

(b) *Sediment performance standards*. In addition to the erosion and sediment control practices under par. (a), the following erosion and sediment control practices shall be employed:

1. For construction sites for which the department received a notice of intent for the construction project in accordance with subch. III of ch. NR 216, within 2 years after the effective date of the rule … [legislative reference bureau inserts date], BMPs that, by design, achieve a reduction of 80 percent, or to the maximum extent practicable, 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

2. For construction sites for which the department received a notice of intent for the construction project in accordance with subch. III of ch. NR 216, 2 years or more after the effective date of the rule … [legislative reference bureau inserts date], BMPs that, by design, discharge no more than 5 tons per acre per year, or to the maximum extent practicable, of the sediment load carried in runoff from initial grading to final stabilization.

3. The department may not require any person to employ more BMPs than are needed to meet a performance standard in order to comply with maximum extent practicable. Erosion and sediment control BMPs may be combined to meet the requirements of this paragraph. The department may give credit toward meeting the sediment performance standard of this paragraph for limiting the duration or area, or both, of land disturbing construction activity, or for other appropriate mechanisms.

4. Notwithstanding subd. 1. or 2. , if BMPs cannot be designed and implemented to meet the sediment performance standard, the plan shall include a written, site-specific explanation of

why the sediment performance standard cannot be met and how the sediment load will be reduced to the maximum extent practicable.

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.

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.

(c) *Preventive measures*. The plan shall incorporate all of the following:

1. Maintenance of existing vegetation, especially adjacent to surface waters whenever possible.

2. Minimization of soil compaction and preservation of topsoil.

3. Minimization of land disturbing construction activity on slopes of 20% or more.

4. Development of spill prevention and response procedures.

SECTION 51. NR 151.11 (7) is amended to read:

NR 151.11 (7) LOCATION. ~~The~~ BMPs ~~used to comply with this section~~ shall be located ~~prior to~~ so that treatment occurs before runoff ~~entering~~ enters waters of the state.

SECTION 52. NR 151.11 (8) is created to read:

NR 151.11 (8) IMPLEMENTATION. The BMPs used to comply with this section shall be implemented as follows:

(a) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin in accordance with the plan developed under sub. (5).

(b) Erosion and sediment control practices shall be maintained until final stabilization.

(c) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.

(d) Temporary stabilization activity shall commence when land disturbing construction activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.

(e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

SECTION 53. NR 151.12 (2) (bm) is created to read:

NR 151.12 (2) (bm) A post-construction site for which the department received a notice of intent for the construction project, in accordance with subch. III of ch. NR 216, on or after the effective date of the rule … [legislative reference bureau inserts date]. Post-construction sites for which the department received a notice of intent for the construction project, in accordance with subch. III of ch. NR 216, on or after the effective date of the rule … [legislative reference bureau inserts date] shall meet the performance standards of ss. NR 151.122 to 151.128.

SECTION 54. NR 151.121 to 151.128 are created to read:

NR 151.121 Post-construction performance standards. **(1)** GENERAL. In ss. NR 151.121 to 151.128, "post-construction site" means a construction site subject to regulation under this subchapter, after construction is completed and final stabilization has occurred.

(2) APPLICABILITY. Sections NR 151.121 to 151.128 apply to a post-construction site that is or was subject to the construction performance standards of s. NR 151.11, except any of the following:

(a) A post-construction site 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, the exemption of this paragraph does not include exemption from the protective area standard of s. NR 151.125.

(b) 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 are subject to subch. II and are not subject, under s. NR 216.47 (1), to the post-construction performance standards of this subchapter.

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

(3) RESPONSIBLE PARTY. The landowner of the post-construction site or other person contracted or obligated by other agreement with the landowner to implement and maintain post-construction storm water BMPs is the responsible party and shall comply with ss. NR 151.121 to 151.128.

(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 151.128.

Note: Examples of storm water management plans that may be used to comply with ss. NR 151.122 to 151.128 may include those specified in s. NR 216.47 or the municipal storm water management program specified in s. NR 216.07 (5).

(5) MAINTENANCE OF EFFORT. For redevelopment sites where the redevelopment will be replacing older development that was subject to post-construction performance standards of this chapter in effect on or after October 1, 2004, the responsible party shall meet the total suspended solids reduction, peak flow control, infiltration and protective areas standards applicable to the older development or meet the redevelopment standards of ss. NR 151.122 to 151.125, whichever are more stringent.

NR 151.122 Total suspended solids performance standard. (1) REQUIREMENT. BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site. BMPs shall be designed in accordance with Table 1., or to the maximum extent practicable as provided in sub. (3). The design shall be based on an average annual rainfall, as compared to no runoff management controls.

Table 1. TSS Reduction Standards

Development Type	**TSS Reduction**
New Development	80 percent
In-fill $\geq$ 5 acres	80 percent
In-fill < 5 acres on or after October 1, 2012	80 percent
Redevelopment	40 percent of load from parking areas and roads

In-fill < 5 acres and before October 1, 2012	40 percent

(2) REDEVELOPMENT. Except as provided in s. NR 151.121 (5), the redevelopment total suspended solids reduction standard of Table 1., applies to redevelopment.

(3) MAXIMUM EXTENT PRACTICABLE. If the design cannot meet a total suspended solids reduction performance standard of sub. (1), Table 1., the storm water management plan shall include a written, site-specific explanation of why the total suspended solids reduction performance standard cannot be met and why the total suspended solids load will be reduced only to the maximum extent practicable. The department may not require any person to exceed the applicable total suspended solids reduction performance standard 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.

(4) OFF-SITE DRAINAGE. When designing BMPs, runoff draining to the BMP from off-site shall be taken into account in determining the treatment efficiency of the practice. Any impact on the efficiency shall be compensated for by increasing the size of the BMP 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. The runoff curve numbers in Table 2. shall be used to represent the actual pre-development condition.

Table 2. Maximum Pre-Development Runoff Curve Numbers				
Runoff Curve Number	**Hydrologic Soil Group**			
	A	**B**	**C**	**D**
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 section does not apply to the following:

(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) Except as provided under s. NR 151.121 (5), a redevelopment post-construction site.

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

Note: The intent of s. NR 151.123 is to minimize streambank and shoreline 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 one 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/muni.htm

(2) PRE-DEVELOPMENT. Pre-development condition shall be the same as specified in s. NR 151.123 (1), Table 2.

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. Fueling and vehicle maintenance areas. 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. Except as provided under s. NR 151.121 (5), 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.

(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:

Table 3. Separation Distances and Soil Characteristics

Source Area	Separation Distance	Soil Characteristics
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 located in the following areas 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 United States department of agriculture 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 not subject to pars. (e) or (f) , 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. Additional information on wetland types including ephemeral ponds is given under wetland community at: http://dnr.wi.gov/org/land/er/communities/

(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. Where there is a legally authorized wetland fill, the protective area standard need not be met in that location.

(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 sub. (4)

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

(a) Impervious surfaces 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) 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. Some invasive plants are listed in ch. NR 40. 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".

(c) 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) Except as provided under s. NR 151.121 (5), 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 151.122 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.

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 ss. NR 151.122 to 151.124, 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.

SECTION 55. NR 151.13 is repealed and recreated to read:

NR 151.13 Developed urban area performance standard for municipalities. (1) INCORPORATED MUNICIPALITIES.

(a) *Applicability.* This 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 subsection. However, the public 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:

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 turf and garden fertilizers and pesticides, proper management of pet wastes and prevention of dumping oil and other chemicals in storm sewers.

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

3. The application of turf and garden fertilizers on five acres or more of municipally controlled properties 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 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 subsection applies to municipalities that are subject to the municipal storm water permit requirements of subch. I of ch. NR 216.

(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:

1. 'Stage 1 requirements.' The municipalities identified under par. (a) shall implement all of the following 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. A 20 percent reduction in total suspended solids, or to the maximum extent practicable, as compared to no controls, for runoff from existing development that enters waters of the state.

2. 'Stage 2 requirements.' The municipalities identified 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. A 40 percent reduction in total suspended solids, by March 31, 2013, if permit coverage was received under subch. I of ch. NR 216 on or before January 1, 2010.

b. A 40 percent reduction in total suspended solids within 7 years of the date of receiving permit coverage for municipalities identified under par. (a), if permit coverage was received under subch. I of ch. NR 216 after January 1, 2010.

c. If a municipality identified under par. (a) 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 the applicable date of subd 2. a. or b., then 6 months before the applicable date the municipality shall submit a report to the department describing the control measures that it has implemented 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 all of 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 the applicable date in subd. 2. to meet the requirements in subd. 2. Modeling shall conform to that described in subd. 5.

b. Any agreements with an adjacent municipality, or with municipalities within a 10 digit hydrologic unit code level, to implement the 40 percent total suspended solids reduction on a regional basis per s. NR 216.07 (6).

c. Any long-term maintenance agreements with non-publicly owned control measures where credit for the total suspended solids reduction is included in the analysis.

d. An implementation plan and its associated timetable for control measures identified in a cost-effectiveness analysis consistent with subd. 3. f., that would result in achieving a 40 percent total suspended solids reduction within a period not to exceed 10 years from the applicable compliance date in subd. 2 unless documentation in subd. 3. e. is provided. The plan shall include modeling data consistent with subd. 5.

e. If a municipality has determined that it cannot achieve 40 percent total suspended solids reduction within 10 years from the applicable compliance date in subd. 2, including the use of agreements with other municipalities and long term maintenance agreements for non-public control measures, the plan shall demonstrate why 40 percent reduction cannot be achieved. A long term storm water management plan under this subdivision shall describe the control measures identified in a cost-effectiveness analysis consistent with subd. 3. f. that the municipality will implement within 10 years and document the amount of reduction that will be achieved. The plan shall also include an implementation plan and associated timetable for control measures identified in a cost-effectiveness analysis consistent with subd. 3. f. that would result in achieving a 40 percent total suspended solids reduction. The plan shall include modeling data consistent with subd. 5.

f. A cost-effectiveness analysis shall include a systematic comparison of alternatives to meet the 40 percent total suspended solids reduction based on the cost per pound of pollutant removed. This analysis shall take into account anticipated redevelopment or reconstruction projects and the cost to retrofit the site versus the cost to install practices during redevelopment or reconstruction. The analysis shall consider the cost to ensure long term maintenance of non-publicly owned control practices for which the municipality is taking credit as well as publicly owned control practices, the source of funding for installation and maintenance of control measures and competing interests for that funding source. The municipality may include an analysis of affordability in the cost-effectiveness analysis. The analysis shall consider the feasibility and commensurate increase in cost of installing a control measure where there are competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features.

4. 'Long term plan review.'

a. The department shall review the plan required under subd. 3. and provide comments within 6 months of receipt. The municipality shall modify the plan to correct any deficiencies 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 the applicable compliance date of subd. 2.

c. The department shall review plans where the 40 percent reduction can be made within the schedule proposed by the municipality under subd. 3. d. 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 department shall include in the acceptance of the plan the provision in subd. 4. e.

d. The department shall review 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 department shall include in the acceptance of the plan the provision in subd. 4. 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 performance standard of subd. 2. 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 be based on 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 when 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 a municipality will be able to achieve the 40 percent reduction with a combination of practices including the use of high efficiency street cleaning, structural BMP retrofit practices, structural BMP redevelopment or reconstruction practices, and entering into maintenance agreements for BMPs on privately owned lands, such as shopping centers, to receive credit.

(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) *Exemption*. The requirements of par. (b) 1. and 2. do not apply to areas subject to a permit issued under subch. II of ch. NR 216.

(e) *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 scientifically supported reductions of total suspended solids and are developed as a technical standard under s. NR 151.31.

SECTION 56. NR 151.14 is repealed and recreated to read:

NR 151.14 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 subject to s. NR 151.13 (1) (b) 3.

(b) 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 does not conduct silviculture activity.

(2) RESPONSIBLE PARTY. The landowner is the responsible party and shall comply with this section.

(3) REQUIREMENTS. The application of 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 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

SECTION 57. NR 151.15 (1) and (2) are amended to read:

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, and 151.121 to 151.128 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 may develop and revise available model ordinances to reflect the applicability and performance standards in ss. NR 151.11, 151.12 and 151.121 to 151.128. These

model ordinances are in ch. NR 152. Municipalities are encouraged to adopt the requirements of ss. NR 151.11, ~~and~~ 151.12, and 151.121 to 151.128, 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., except for those requirements that are implemented through ch. NR 216, which shall be enforced under ss. 283.89 and 283.91, Stats.

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

SECTION 58. NR 151.20 is amended to read:

NR 151.20 Purpose and applicability. **(1)**~~(a)~~ This subchapter establishes performance standards, as authorized by s. 281.16 (2) (a), Stats., for transportation facilities that cause or may cause runoff pollution~~, except as provided in sub. (2)~~. These performance standards are intended to limit runoff pollution in order to achieve water quality standards. Design guidance and the process for developing technical standards to implement this subchapter are set forth in subch. V.

~~(b)~~ **(2)** Transportation facilities that are directed and supervised by the department of transportation and that are regulated by an administrative rule administered by the department of transportation, where the department determines in writing that the rule meets or exceeds the performance standards of this subchapter and is implemented in accordance with the administrative rule provisions, shall be deemed to meet the requirements of the portions of this subchapter determined by the department.

~~(2)(a) This subchapter does not apply to any of the following:~~

~~1. Actions for which a final environmental impact statement is approved before October 1, 2002.~~

~~2. Actions for which a finding of no significant impact is made under ch. Trans 400 before October 1, 2002.~~

~~3. Actions that are documented in an environmental report, as defined in s. Trans 400.04 (10), completed before October 1, 2002, that fit the criteria or conditions for approval as a categorical exclusion in 23 CFR 771.117, April 1, 2000, or has met the review criteria of paragraph 23.a. of chapter 3 of federal aviation administration order 5050.4A issued on October 8, 1985.~~

~~(b) Notwithstanding par. (a), the construction site performance standards under s. NR 151.23 and the protective area requirements under s. NR 151.24 (6) apply to transportation facilities subject to this subchapter.~~

(3) In s. NR 151.23, ~~average annual basis~~ soil loss 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 ~~USLE~~ universal soil loss equation and its successors ~~RUSLE~~ revised universal soil loss equation and ~~RUSLE2~~, 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.~~

~~(4) In s. NR 151.24, average annual rainfall is determined by the following years and locations: Madison, 1981 (Mar. 12-Dec. 2); Green Bay, 1969 (Mar. 29-Nov. 25); Milwaukee, 1969 (Mar. 28-Dec. 6); Minneapolis, 1959 (Mar. 13-Nov. 4); Duluth, 1975 (Mar. 24 - Nov. 19). Of the 5 locations listed, the location closest to a project site best represents the average annual rainfall for that site.~~

SECTION 59. NR 151.21 (1) is repealed.

SECTION 60. NR 151.21 (1m) is created to read:

NR 151.21 (1m) "Average annual rainfall" means a typical calendar year of precipitation 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.

SECTION 61. NR 151.21 (5) is amended to read:

NR 151.21 (5) "Minor reconstruction" means either of the following:

(a) For transportation facility construction sites where, before the effective date of this rule … [legislative reference bureau inserts date], a bid was advertised, a construction contract was signed and no bid was advertised, or a notice of intent was received by the department in accordance with subch. III of ch. NR 216, reconstruction that is limited to 1.5 miles in continuous or aggregate total length of realignment and that does not exceed 100 feet in width of roadbed widening.

(b) For transportation facility construction sites where, on or after the effective date of this rule … [legislative reference bureau inserts date], a bid is advertised, a construction contract signed where no bid is advertised or a notice of intent was received by the department in accordance with subch. III of ch. NR 216, reconstruction that is limited to 1.5 miles in continuous or aggregate total length of realignment and 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.

SECTION 62. NR 151.21 (8) is amended to read:

NR 151.21 (8) "Public-use airport" ~~means either of the following as described~~ has the meaning given it in 49 USC ~~47102(17):~~ 47102 (21).

~~(a) A public airport.~~

~~(b) A privately-owned airport used or intended to be used for public purposes that is either:~~

~~1. A reliever airport as designated by the secretary of the United States department of transportation to relieve congestion at a commercial service airport and to provide more general aviation access to the overall community.~~

~~2. Determined by the secretary of the United States department of transportation to have at least 2,500 passenger boardings each year and to receive scheduled passenger aircraft service.~~

SECTION 63. NR 151.22 (1) (a) is amended to read:

NR 151.22 Responsible party. (1) TRANSPORTATION FACILITY AUTHORITY. (a) The transportation facility authority shall develop a design plan to meet the performance standards of ~~ss. NR 151.23 and 151.24~~ this subchapter for land disturbing construction activity at transportation facility construction sites.

SECTION 64. NR 151.225 is created to read:

NR 151.225 Construction site performance standard for non-permitted sites and routine maintenance. (1) APPLICABILITY. This section applies to any transportation facility construction site that consists of land disturbing construction activity for any of the following:

(a) Transportation facility construction sites of less than one acre.

(b) Routine maintenance if performed for storm water conveyance system cleaning for sites that consist of less than 5 acres.

Note: Land disturbing construction sites of less than one acre and routine maintenance if performed for storm water conveyance system cleaning for sites that consists of less than 5 acres of land disturbance are not regulated under subch. III of ch. NR 216 unless designated by the department under s. NR 216.51 (3).

(c) Transportation facility 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.

(2) RESPONSIBLE PARTY. The transportation facility authority or other person contracted or obligated by other agreement with the transportation facility authority to implement and maintain construction site BMPs is the responsible party and shall comply with this section.

(3) REQUIREMENTS. Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all of the following:

a. The deposition of soil from being tracked onto streets by vehicles.

b. The discharge of sediment from disturbed areas into on-site storm water inlets.

c. The discharge of sediment from disturbed areas into adjacent waters of the state.

d. The discharge of sediment from drainage ways that flow off the site.

e. The discharge of sediment by dewatering activities.

f. The discharge of sediment eroding from soil stockpiles existing for more than 7 days.

g. The transport by runoff into waters of the state of chemicals, cement and other building compounds and materials on the construction site during the construction period. 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.

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.

(4) LOCATION. BMPs shall be located so that treatment occurs before runoff enters waters of the state.

(5) IMPLEMENTATION. The BMPs used to comply with this section shall be implemented as follows:

(a) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin.

(b) Erosion and sediment control practices shall be maintained until final stabilization.

(c) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.

(d) Temporary stabilization activity shall commence when land disturbing construction activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.

(e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

SECTION 65. NR 151.23 (title) and (1) are amended to read:

NR 151.23 Construction site performance standard for sites of one acre or more. (1) APPLICABILITY. ~~Except as provided under sub. (2), this~~ This section applies to ~~all of the following:~~

~~(a) A transportation facility 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 transportation 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 shall be developed.~~

~~2. A bid is advertised or construction contract signed where no bid is advertised, October 1, 2002.~~

~~(b) After March 10, 2003,~~ any transportation facility construction site that ~~has at least~~ consists of one acre or more of land disturbing construction activity~~, except where bids are advertised, or construction contracts signed where no bids are advertised, before October 1, 2002~~.

(a) Subsections (2), (3), (4) and (5) apply to all of the following:

1. Transportation facility construction sites for which the department 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].

2. Transportation facility construction sites for which a bid has been advertised or construction contract signed for which no bid was advertised, before the effective date of the rule … [legislative reference bureau inserts date].

(b) Subsections (2) (a), (b) and (cm), (3), (4m), (5) and (6) apply to all of the following:

1. Transportation facility construction sites for which the department received a notice of intent in accordance with subch. III of ch. NR 216 on or after the effective date of this rule . . . [legislative reference bureau inserts date].

2. Transportation facility construction sites for which a bid has been advertised or construction contract signed for which no bid was advertised, on or after the effective date of the rule … [legislative reference bureau inserts date].

SECTION 66. NR 151.23 (2) (cm) is created to read:

NR 151.23 (2) (cm) Routine maintenance if performed for storm water conveyance system cleaning for sites that consist of less than 5 acres of land disturbance.

SECTION 67. NR 151.23 (3) (a) is amended to read:

NR 151.23 (3) PLAN. (a) ~~A written plan shall be developed~~ The responsible party under s. NR 151.22 shall develop and implement a written design plan for each construction site ~~and~~. The plan shall incorporate the applicable requirements of this section.

SECTION 68. NR 151.23 (4) (title) is amended to read:

NR 151.23 (4) PRE-EFFECTIVE DATE [legislative reference bureau inserts date] REQUIREMENTS.:

SECTION 69. NR 151.23 (4m) is created to read:

NR 151.23 (4m) POST-EFFECTIVE DATE . . . [legislative reference bureau inserts date] REQUIREMENTS. The design plan required under sub. (3) shall meet all of the following:

(a) *Erosion and Sediment Control Practices.* Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all of the following:

1. The deposition of soil from being tracked onto streets by vehicles.

2. The discharge of sediment from disturbed areas into on-site storm water inlets.

3. The discharge of sediment from disturbed areas into adjacent waters of the state.

4. The discharge of sediment from drainage ways that flow off the site.

5. The discharge of sediment by dewatering activities.

6. The discharge of sediment eroding from soil stockpiles existing for more than 7 days.

7. The discharge of sediment from erosive flows at outlets and in downstream channels.

8. The transport by runoff into waters of the state of chemicals, cement and other building compounds and materials on the construction site during the construction period. 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 subdivision.

9. The transport by runoff into waters of the state of untreated wash water from vehicle and wheel washing.

Note: Wastewaters, such as from concrete truck washout, need to be properly managed to limit the discharge of pollutants to waters of the state. A separate permit may be needed from the department where a wastewater discharge has the potential to adversely impact waters of the state. The appropriate department regional wastewater specialist should be contacted to determine if wastewater permit coverage is needed where wastewater will be discharged to waters of the state.

(b) *Sediment performance standards*. In addition to the erosion and sediment control practices under par. (a), the following erosion and sediment control practices shall be employed:

1. For transportation facility construction sites for which the department received a notice of intent for the construction project in accordance with subch. III of ch. NR 216 within 2 years after the effective date of the rule … [legislative reference bureau inserts date], BMPs that, by design, achieve a reduction of 80 percent, or to the maximum extent practicable, 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.

2. For transportation facility construction sites for which the department received a notice of intent for the construction project in accordance with subch. III of ch. NR 216, 2 years or more after the effective date of the rule … [legislative reference bureau inserts date], BMPs that, by design, discharge no more than 5 tons per acre per year, or to the maximum extent practicable, of the sediment load carried in runoff from initial grading to final stabilization.

3. The department may not require any person to employ more BMPs than are needed to meet a performance standard in order to comply with maximum extent practicable. Erosion and sediment control BMPs may be combined to meet the requirements of this paragraph. The department shall give credit toward meeting the sediment performance standard of this paragraph for limiting the duration or area, or both, of land disturbing construction activity, or for other appropriate mechanisms.

4. Notwithstanding subd. 1. or 2. , if BMPs cannot be designed and implemented to meet the sediment performance standard, the plan shall include a written, site-specific explanation of why the sediment performance standard cannot be met and how the sediment load will be reduced to the maximum extent practicable.

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.

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.

(c) *Preventive measures*. The plan shall incorporate all of the following:

1. Maintenance of existing vegetation, especially adjacent to surface waters, whenever possible.

2. Minimization of soil compaction and preservation of topsoil.

3. Minimization of land disturbing construction activity on slopes of 20% or more.

4. Development of spill prevention and response procedures.

SECTION 70. NR 151.23 (5) is amended to read:

NR 151.23 (5) LOCATION. ~~The~~ BMPs ~~used to comply with this section~~ shall be located ~~prior to~~ so that treatment occurs before runoff ~~entering~~ enters waters of the state.

SECTION 71. NR 151.23 (6) is created to read:

NR 151.23 (6) IMPLEMENTATION. The BMPs used to comply with this section shall be implemented as follows:

(a) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin and in accordance with the plan developed under sub. (3).

(b) Erosion and sediment control practices shall be maintained until final stabilization.

(c) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.

(d) Temporary stabilization activity shall commence when land disturbing construction activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.

(e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

SECTION 72. NR 151.24 (1) (bm) is created to read:

NR 151.24 (1) (bm) A transportation post-construction site for which the department received a notice of intent for the construction project in accordance with subch. III of ch. NR 216 on or after the effective date of the rule … [legislative reference bureau inserts date]. Transportation post-construction sites for which the department received a notice of intent for the construction project, in accordance with subch. III of ch. NR 216, on or after the effective date of this rule … [legislative reference bureau inserts date] shall meet the performance standards of ss. NR 151.242 to 151.249.

SECTION 73. NR 151.241 to NR 151.249 are created to read:

NR 151.241 Post-construction performance standards. **(1)** GENERAL. In ss. NR 151.241 to 151.249, "post-construction site" means a construction site subject to regulation under this subchapter, after construction is completed and final stabilization has occurred.

(2) APPLICABILITY. Sections NR 151.241 to 151.249 apply to a transportation facility post-construction site that is or was subject to the construction performance standards of s. NR 151.23, except any of the following:

(a) A transportation facility post-construction site 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, the exemption of this paragraph does not include exemption from the protective area standard of s. NR 151.245.

(b) Reconditioning or resurfacing of a highway.

(c) Minor reconstruction of a highway. Notwithstanding the exemption under this paragraph, the protective area performance standard in s. NR 151.245 applies to minor reconstruction of a highway.

(d) Transportation facility construction projects that are part of a larger common plan of development, such as a residential or industrial development, that are in compliance with the performance standards of subch. III.

(e) Routine maintenance if performed for storm water conveyance system cleaning.

(3) STORM WATER MANAGEMENT PLAN. The responsible party under s. 151.22 shall develop and implement a written storm water management plan for each transportation facility post-construction site and shall incorporate the requirements of ss. NR 151.242 to 151.249.

Note: Examples of storm water management plans that may be used to comply with ss. NR 151.242 to 151.249 may include those specified in s. NR 216.47 or s. TRANS 401.106 (2).

(4) MAINTENANCE OF EFFORT. For non-highway transportation facility redevelopment sites and highway reconstruction where the redevelopment or reconstruction will be replacing older development or highway that was subject to post-construction performance standards of this chapter in effect on or after October 1, 2004, the responsible party shall meet the total suspended solids reduction, peak flow control, infiltration and protective areas standards applicable to the older development or highway, or meet the redevelopment or highway reconstruction standards of ss. NR 151.242 to 151.249, whichever are more stringent.

NR 151.242 Total suspended solids performance standard. (1) REQUIREMENT. Except as provided in sub. (3), BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the transportation facility post-construction site. BMPs shall be designed in accordance with Table 1., or to the maximum extent practicable as provided in sub. (4). The design shall be based on an average annual rainfall, as compared to no runoff management controls.

Table 1. TSS Reduction Standards	
Development Type	**TSS Reduction**
New Transportation Facilities	80 percent
Highway Reconstruction	40 percent
Non-highway transportation facility redevelopment	40 percent of load from parking areas and

	roads

(2) NON-HIGHWAY TRANSPORTATION REDEVELOPMENT AND HIGHWAY RECONSTRUCTION. Except as provided in s. NR 151.241 (4), the non-highway transportation facility redevelopment and highway reconstruction total suspended solids reduction standard of Table 1. applies to non-highway transportation facility redevelopment and highway reconstruction.

(3) DELAYED IMPLEMENTATION. For municipalities that are regulated under subch. I of ch. NR 216 and for transportation facilities under the jurisdiction of the department of transportation for maintenance purposes that are located within municipalities regulated under subch. I of ch. NR 216, the highway reconstruction total suspended solids performance standard first applies January 1, 2017.

(4) MAXIMUM EXTENT PRACTICABLE. If the design cannot meet a total suspended solids reduction performance standard of sub. (1), Table 1., the storm water management plan shall include a written, site-specific explanation of why the total suspended solids reduction performance standard cannot be met and why the total suspended solids load will be reduced only to the maximum extent practicable. The department may not require any person to exceed the applicable total suspended solids reduction performance standard 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.

(5) OFF-SITE DRAINAGE**.** When designing BMPs, runoff draining to the BMP from off-site shall be taken into account in determining the treatment efficiency of the practice. Any impact on the efficiency shall be compensated for by increasing the size of the BMP accordingly.

NR 151.243 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. The runoff curve numbers in Table 2. shall be used to represent the actual pre-development condition.

Table 2. Maximum Pre-Development Runoff Curve Numbers				
Runoff Curve Number	**Hydrologic Soil Group**			
	A	**B**	**C**	**D**
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 section does not apply to the following:

(a) A transportation facility 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) Except as provided under s. NR 151.241 (4), a transportation facility that is part of a redevelopment project.

(c) Except as provided under s. NR 151.241 (4), a highway reconstruction site.

Note: The intent of s. NR 151.243 is to minimize streambank and shoreline erosion under bank-full conditions.

NR 151.244 Infiltration performance standard. (1) REQUIREMENT. (a) Except as provided in par. (b) the requirements are the same as those given in s. NR 151.124.

(b) EXEMPTIONS. Except as provided under s. NR 151.241 (4), transportation facility highway reconstruction and new highways are not required to meet the performance standards of this section.

NR 151.245 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 not subject to pars. (e) or (f) , 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. Additional information on wetland types including ephemeral ponds is given under wetland community at: http://dnr.wi.gov/org/land/er/communities/

(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. Where there is a legally authorized wetland fill, the protective area standard need not be met in that location.

(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 transportation facility post-construction sites located within a protective area, except those areas exempted pursuant to sub. (4).

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

(a) 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 151.241 (3), why it is necessary to construct the transportation facility within a protective area.

(b) 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. Some invasive plants are listed in ch. NR 40. 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”.

(c) 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) Except as provided under s. NR 151.241 (4), non-highway transportation redevelopment post-construction sites.

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

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

(d) Transportation facilities 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 151.242 to 151.243, except to the extent that vegetative ground cover is necessary to maintain bank stability.

Note: A vegetated protective area to filter runoff pollutants from transportation facilities described in par. (d) 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.

NR 151.246 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 151.247 Location. To comply with the standards required under ss. NR 151.242 to 151.244, 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 151.248 Timing. The BMPs that are required under ss. NR 151.242 to 151.246 and NR 151.249 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 151.249 Swale treatment performance standard. (1) REQUIREMENT. Except as provided in sub. (2), transportation facilities that use swales for runoff conveyance and pollutant removal are exempt from the requirements of ss. NR 151.242 to 151.244, 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 the department technical standard 1005, "Vegetated Infiltration Swale", dated May, 2007, except as otherwise authorized in writing by the department.

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 74. NR 151.25 is repealed and recreated to read:

NR 151.25 Developed urban area performance standard for transportation facilities. (1) APPLICABILITY. This section applies to transportation facilities under the jurisdiction of the department of transportation for maintenance purposes that are located within a municipality regulated under subch. I of ch. NR 216.

Note: Transportation facilities that are not under the jurisdiction of the department of transportation for maintenance purposes are subject to the performance standards in s. NR 151.13.

(2) REQUIREMENTS. (a) Except as provided in par. (c) 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 or to the maximum extent practicable, beginning not later than a date consistent with the municipality regulated under subch. I of ch. NR 216.

2. A 40 percent reduction in total suspended solids in runoff by March 31, 2013, for transportation facilities within a municipality that received permit coverage under subch. I of ch. NR 216 on or before January 1, 2010.

3. A 40 percent reduction in total suspended solids in runoff within 7 years, for transportation facilities within a municipality receiving permit coverage under subch. I of ch. NR 216 after January 1, 2010.

4. 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.

(c) If the department of transportation 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 the applicable date of par. (a) 2. or 3., then 6 months before the applicable date, the department of transportation shall submit a report to the department describing the control measures that it has implemented and shall submit a long term storm water management plan in accordance with s. NR 151.13 (2) (b) 3. The department shall review the plan in accordance with s. NR 151.13 (2) (b) 4.

(d) 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.

SECTION 75. NR 151.26 (1) is amended to read:

NR 151.26 (1) If a transportation facility that is ~~exempted~~ exempt from prohibitions, permit or approval requirements by s. ~~30.12(4),~~ 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. ~~30.12(4)(b),~~ 30.2022 (2), Stats.

SECTION 76. NR 151.31 (1) (intro.) is amended to read:

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, 151.13, 151.23, 151.24 and 151.25~~ subchs. III and IV through a process outlined as follows:

SECTION 77. NR 151.31 (1) (f) 1.a. and 2. are amended to read:

NR 151.31 (1) (f) 1. a. Develop a technical standard that by design, meets the performance standard established in s. NR 151.23 ~~(3)~~ (4) and (4m).

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)~~ (4) and (4m).

SECTION 78. 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 all 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 all targeted runoff management project applications, score applications and select projects, under s. 281.65 (4c), Stats., for funding under s. 281.65, Stats.

SECTION 79. 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 80. 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 81. 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 82. 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 83. 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 84. 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 85. 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 86. 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 87. NR 153.12 (22) is repealed.

SECTION 88. NR 153.12 (23) to (27) are amended to read:

NR 153.12 (23) “Project" means any 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 (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 89. NR 153.12 (28) is repealed.

SECTION 90. 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 or federally

recognized tribal governing body 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 91. 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 into a water quality limited surface water segment and still ensure attainment of the applicable water quality standard.

(32g) "US EPA" means the United States environmental protection agency.

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

SECTION 92. 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 153.205.

(2) A state agency, including the department, may apply for a targeted runoff management project 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 project 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 93. 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. The following four categories of targeted runoff management projects are 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 area 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, a US 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, a US 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: TMDL implementation projects 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.

Non-TMDL control projects 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 implement state performance standards and prohibitions wherever they may occur, leading to a general reduction in nonpoint source pollution.

SECTION 94. NR 153.145 is created to read:

NR 153.145 Eligible notice of discharge projects. **(1)** This section applies only 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 95. NR 153.15 (1) (a), (c) (intro.) and 4., 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~~ <u>any project selected for funding under the chapter</u>. The department may attribute design and construction services costs to the cost of construction or implementation of the best management practice. <u>State and local administrative permit fees are not reimbursable as part of the construction cost.</u>

<u>**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).</u>

(c) If the purpose of the best management practice is to comply with a <u>non-agricultural</u> 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:

4. Be identified <u>by the department</u> 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 96. 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 97. 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 98. 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 99. NR 153.15 (2) (c) is repealed.

SECTION 100. NR 153.15 (2) (d) (intro.) 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 it in ch. NR 243.

(e) Best management practice installation activities 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 101. 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:

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 subch. III of ch. NR 151.

3. The department may consider redevelopment of an existing development and in-fill 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.

4. In this paragraph, "existing development" has the meaning given it in s. NR 151.002 (14g), "in-fill" has the meaning given it in s. NR 151.002 (18) and "new development" means development resulting from the conversion of previously undeveloped land or agricultural land uses 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.

SECTION 102. 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.~~ ch. 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 103. 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.

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

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

14. 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 that are not directly related to the output of a product or service or cannot be identified specifically with a single cost objective in an economically feasible manner.

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 any small-scale project on an annual basis provided there is adequate funding available.

b. The department may solicit applications for any large-scale project 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 and application instructions.

Note: The department maintains grant applications and instructions at: http://dnr.wi.gov/runoff/grants/applications/

(b) All applicants for funding shall submit project applications on forms provided by the department. A governmental unit or federally recognized tribal governing body 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 following information 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 a targeted runoff management project shall submit the screening information required by this subsection to be considered for funding.

1. Certification that the project meets applicable eligibility requirements of s. NR 153.14. To demonstrate consistency with a county's land and water resource management plan as required under s. NR 153.14 (3) (c) a county shall substantiate that the land and water resource management plan, plan amendment or work plan prepared under s. ATCP 50.12 identifies goals, objectives or activities related to the resource concerns being addressed by the project.

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, a certification statement that the applicant will obtain control of the property upon which the practice will be constructed prior to commencement of the grant period.

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. An applicant for any large-scale TMDL project or large-scale non-TMDL project shall submit the following information to be considered for funding under this chapter:

(a) 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.

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

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

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

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

(f) 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.

(g) 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.

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

(i) Project budget and cost-effectiveness

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

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

(L) 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).

(m) For the City of Racine, an explanation of how the proposed project will contribute to meeting storm water requirements under ch. NR 216.

(6) REQUIRED SCORING INFORMATION FOR SMALL SCALE PROJECTS. An applicant for any small-scale TMDL project or small scale non-TMDL project shall submit the following information to be considered for funding:

(a) 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.

(b) Expected reduction in pollutant loading or pollution potential attributed to the project.

(c) Extent to which performance standards and prohibitions will be implemented.

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

(e) 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.

(f) Consistency between the project and other state and local resource management plans

(g) Project budget and cost effectiveness

(h) Use of other funding sources to supplement or reduce the state cost share provided under this chapter

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

(j) 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).

(k) For the City of Racine, an explanation of how the proposed project will contribute to meeting storm water requirements under ch. NR 216.

SECTION 104. NR 153.18 (title), (intro), (1), (2) and (3) are amended to read:

NR 153.18 ~~Project~~ 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 shall inform the applicant of this decision.

~~**(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 105. 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.

Note: The department maintains scoring guidance at: http://dnr.wi.gov/runoff/grants/applications/

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

(a) The department shall develop an initial project score using the information submitted by the applicant under s. NR 153.17 (6).

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 any large scale project that passes the eligibility screening under s. NR 153.18.

(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 initial 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 initial 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 department 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 may 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 subds. 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 for the project, the higher scoring project is ineligible to receive the federal funds, and the lower scoring project is eligible to receive the federal funds.

Note: There are geographic restrictions on the use of certain federal funds being used to support grant awards, such as those allocated to the state under section 319 of the Clean Water Act. In order to use the available federal funds, it may be necessary to leap-frog down the ranked list to match a project with 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. 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. 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. 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 any 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. 92.14 (14) and 281.65 (4) (pm), 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 result in removing a cost-share offer included in a notice that has been issued or is expected to be issued under s. NR 151.09 or NR 151.095.

SECTION 106. 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 under s. NR 153.145.

(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 all of the following:

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 154.03 (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: Under ch. NR 243, the department has authority to 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 may 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 107. 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 any 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 TMDL or large-scale non-TMDL 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. The start of the grant period shall be that specified on the signed grant award.

(c) For a 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 a targeted runoff management project, 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 108. 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 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. The cost-share provider may limit this requirement to significant pollution sources with prior approval from the department.

(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 for a parcel where continuing compliance with a state standard or prohibition is required under s. NR 151.09 (3) (b) or s. NR 151.095 (4) (b). 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 109. NR 153.22 (3) (k) is repealed.

SECTION 110. 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 111. 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 an inventory of the entire farm for compliance with state performance standards and prohibitions as a condition of cost-share eligibility.

SECTION 112. NR 153.22 (6) (b) 1. (intro.) and 2. (note) and (7), (8) (a), (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:

2. **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 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.~~

(9) CHANGE IN OWNERSHIP. If a change in ownership occurs during the cost-share agreement period or during the operation and maintenance period of a practice, 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 113. 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 114. NR 153.23 (1) (c) and (e) (title) 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 115. NR 153.23 (1) (f) and 153.24 are repealed.

SECTION 116. NR 153.25 is repealed and recreated to read:

NR 153.25 Property acquisition. (1) ELIGIBLE ACTIVITIES. The department may provide funding to a governmental unit holding a runoff management grant agreement under s. NR 153.21 for any of the following:

(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 that any of the following conditions are met:

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 best management practice 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 use grant funds under this chapter to enter into easements or accept a donated conservation easement consistent with the 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 DEPARTMENT 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 117. NR 153.26 (1), (5) and (7) 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 may 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.

SECTION 118. NR 153.27 (3) (b) and (4) (a) are amended to read:

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 119. 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 120. NR 153.27 (5) is repealed.

SECTION 121. 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 contained in subchapter II of ch. NR 151, 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 122. 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 123. NR 155.12 (7) is 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.

SECTION 124. NR 155.13 (1) (intro) is amended to read:

NR 155.13 (1) A governmental unit or 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:

SECTION 125. NR 155.14 (3) is amended to read:

NR 155.14 (3) (a) The department may award a local assistance grant in accordance with s. NR 155.16 (1) or NR 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. 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.

SECTION 126. NR 155.14 (3) (b) is created to read:

NR 155.14 (3) (b) To be eligible for reimbursement, a storm water management planning project funded under this paragraph shall meet the planning requirements of subch. I of ch. NR 216.

Note: Department guidance and planning standards can be found at http://dnr.wi.gov/runoff/stormwater.htm.

SECTION 127. NR 155.15 (1) (a) and (e) (note) are amended to read:

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) **Note**: Standards developed by the department are available for viewing at: http://dnr.wi.gov/runoff/stormwater/techstds.htm

SECTION 128. 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:

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 subch. III of ch. NR 151.

3. The department may consider redevelopment of an existing development and in-fill 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.

4. In this paragraph, "existing development" has the meaning given it in s. NR 151.002 (14g), "in-fill" has the meaning given it in s. NR 151.002 (18) and "new development" means development resulting from the conversion of previously undeveloped land or agricultural land uses 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.

SECTION 129. 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 130. NR 155.16 (1) (c) 2. a. is repealed.

SECTION 131. 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 132. NR 155.16 (1) (c) 2. d., e. and f. and 3. and (d) 3., 6., 7. and 9. are repealed.

SECTION 133. 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 134. NR 155.16 (1) (f) is repealed.

SECTION 135. NR 155.17 (2) (b) 2. and 4. b. are 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 affected by the project.

4.b. Adoption, implementation and enforcement of urban runoff control plans and ordinances to control post-construction runoff from areas of new development and redevelopment consistent with non-agricultural performance standards in ~~s. NR 151.12~~ subch. III of ch. NR 151.

SECTION 136. 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 or periods.

SECTION 137. NR 155.17 (2) (d) is repealed.

SECTION 138. 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 139. NR 155.18 (3) is repealed.

SECTION 140. NR 155.19 (3) (a) and (b) (intro.) are amended to read:

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 141. NR 155.19 (4) (d) is repealed.

SECTION 142. 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 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 (h).

(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. (c) 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.

(d) 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.

(e) 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.

(f) 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 available from 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.

(g) 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.

(h) The department may deny a grant for a project that otherwise scores well enough to be funded if the applicant is or has been 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 143. NR 155.21 (2) (a) and (b) (intro.) 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. The start of the grant period shall be that specified on the signed grant award.

(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:

SECTION 144. NR 155.21 (2) (b) 3. is created to read:

NR 155.21 (2) (b) 3. Specify the reasons which necessitate the grant extension which were beyond the control of the grantee.

SECTION 145. NR 155.21 (4) (d) 3. is amended to read:

NR 155.21 (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~~.

SECTION 146. NR 155.22 (3) (i), (4), (10) (a) and (11) are amended to read:

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~~.

(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.

SECTION 147. NR 155.23 (1) (c) (note) is amended to read:

NR 155.23 (1) (c) **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 148. NR 155.23 (1) (f) is repealed.

SECTION 149. NR 155.23 (3) and (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 applicable 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 150. NR 155.24 is repealed.

SECTION 151. NR 155.25 is repealed and recreated to read:

NR 155.25 Property acquisition. (1) ELIGIBLE ACTIVITIES. The department may provide funding to a governmental unit holding a runoff management grant agreement under s. NR 155.21 to perform any of the following:

(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 AGREEMENTAND 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 use grant funds under this chapter 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 receive funds under this chapter for property acquired 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 152. NR 155.26 (1) and (6) 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. 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.

SECTION 153. NR 155.27 (3) (b) is amended to read:

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 154. 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 155. NR 155.27 (5) is repealed.

SECTION 156. 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. <u>A project final report shall be submitted on forms available from the department and shall accompany the final reimbursement request.</u>

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 157. The cross-references shown in the second column from the left in the table below are corrected to read as shown in the third column:

Location	Current Cite	New Cite	Comment
NR 154.04 (25) (c) 2.	NR 155.24	None	repealed
NR 154.04 (39) (c) 2.	NR 155.24	None	repealed

SECTION 158. 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 159. BOARD ADOPTION. The forgoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 23, 2010.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____.

Matthew J. Frank, Secretary

(SEAL)