

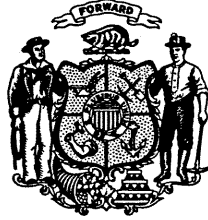
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FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-027

AN ORDER to create chapter NR 151, relating to runoff management.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

02-10-00 RECEIVED BY LEGISLATIVE COUNCIL.

03-07-00 REPORT SENT TO AGENCY.

RS:MM:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

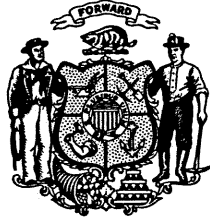
Comment Attached YES NO

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CLEARINGHOUSE RULE 00-027

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

I. Statutory Authority

It appears that the provisions of the rule relating to the applicability of agricultural performance standards and prohibitions to existing agricultural operations conflict with s. 218.16, Stats. Specifically, the statute states that an owner or operator of an agricultural facility or practice that is in existence before October 14, 1997, may not be required by the state or a municipality to comply with the performance standards, prohibitions, conservation practices or technical standards set forth in s. 281.16, Stats., unless cost-sharing is available to the owner or operator. Section NR 151.09 (1) appears to conflict with the statute because it requires the owner or operator of an existing agricultural operation to comply with runoff management standards regardless of the availability of cost-sharing.

In addition, the statute requires the department to promulgate rules that specify criteria for determining whether cost-sharing for implementation of practices is available. The statute provides that the rules may not allow a determination that cost-sharing is available unless the cost-sharing is at least 70% of the cost of compliance or is from 70% to 90% of the cost of compliance in cases of economic hardship, as defined in the rules. However, s. NR 151.09 (3), regarding cost-sharing availability, simply states that cost-sharing is considered to be available when cost-sharing has been offered for at least 70% of the eligible costs. It appears that the section should be modified to set forth the special requirement for cases of economic hardship and a method to determine whether economic hardship exists.

2. Form, Style and Placement in Administrative Code

a. Sections NR 151.001 to 151.004 should constitute subch. I of ch. NR 151. The title of the subchapter could be "GENERAL PROVISIONS" and the remaining subchapters should be renumbered accordingly.

b. Section NR 151.002 (intro.) should be rewritten to read: "In this chapter:".

c. In s. NR 151.002 (14), the word "rule" should be replaced by the word "section." (The entire rule should be reviewed for this change.)

d. Much of the material contained in the note following s. NR 151.002 (15) is substantive in nature and should be placed in the text of the rule. Material contained in notes is not part of the substantive law created by the rule. [See s. 1.09, Manual.] Also, it appears that the first two sentences of the note should read: "If an operation . . . expansion on or after October 14, 1997 . . . an expansion on or after the effective date . . ."

e. For purposes of determining conformance to the rule, how is it to be determined to which hydrologic soil group the soil in an area subject to the chapter belongs? In addition, the listing of the major hydrologic soil group set forth in the note following s. NR 151.002 (17) should be placed in the text of the rule.

f. In s. NR 151.002 (21), while the phrase "but is not limited to" is not preferred, if it is used, a comma should be inserted after the word "to." (The entire rule should be reviewed for this change.)

g. Section NR 151.002 (46) refers to technical standards. The department should ensure that the requirements of s. 227.21, Stats., are met.

h. Section NR 151.002 (49) would be easier to comprehend if the information contained in that subsection were broken down into paragraphs. In addition, how is it to be determined whether a site is "susceptible to groundwater contamination or has the potential to be a direct conduit for contamination to reach groundwater"?

i. The requirements set forth in s. NR 151.08 should be rewritten in the following form: "No person may . . ." [See s. 1.01 (2), Manual.]

j. In s. NR 151.11 (1), the phrase "shall apply" should be replaced by the word "applies." (The entire rule should be reviewed for this change.)

k. It appears that a significant amount of the information contained in the note following s. NR 151.12 (3) (c) 2. b. is substantive in nature and should be placed in the text of the rule.

l. Section NR 151.21 (2) (b) should be rewritten to read: "The prime contractor shall install, apply and maintain BMPs in compliance with this section."

m. The entire rule should be reviewed for the appropriate use of introductory material. An introduction grammatically leads into the following subunits of the rule. All other text, that is, text that does not lead grammatically into following subunits, should be a numbered portion of the rule. For example, see s. NR 151.12 (3) (c); the first sentence should be a numbered subdivision of this paragraph. [See s. 1.03, Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

Several of the statutory sections cited as authority or subject to interpretation have been affected by 1999 Wisconsin Act 9 (the Biennial Budget Bill), and possibly other statutory provisions which have been enacted since the printed volumes of the statutes were prepared. The department should review all statutory references contained in the rule and insert language notifying the reader that the statutory provision has been affected by a recent act of the Legislature, as appropriate. For example, the citation to s. 281.16, Stats., should contain the notation "as affected by 1999 Wisconsin Act 9."

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section NR 151.001 states that if the performance standards and prohibitions set forth in the chapter do not achieve water quality standards, the department may promulgate targeted performance standards. By what process is it to be determined whether the standards and prohibitions set forth in the chapter failed to achieve water quality standards?

b. For purposes of s. NR 151.002 (6), how is it to be determined whether construction activities "affect" land? For example, does construction activity "affect" land if runoff from the construction site crosses the land but that land surface is not otherwise changed? Also, it appears that the word "occur" should be inserted after the first occurrence of the phrase "construction activities."

c. Section NR 151.002 (21) refers to both "topography" and "soil typography." Do these terms refer to different things? If so, the rule should clarify the difference. If not, only one of the terms should be used.

d. What is meant by a "measurable narrative" in s. NR 151.002 (30)?

e. In s. NR 151.002 (34), a comma should be inserted after "subcontractors."

f. In s. NR 151.002 (38), the phrase "an area" should be inserted at the beginning of the sentences in the paragraphs following that introductory material.

g. In s. NR 151.002 (39), "kept" should replace "found."

h. Section NR 151.002 (45) refers to the "allowable" maximum rate of erosion. By whom is this rate of erosion allowed?

i. The phrase "in that water body" should be added to the end of s. NR 151.004.

j. In s. NR 151.02 (2), how is it to be determined what tolerable rate has been established for a certain type of soil? Who establishes that rate?

k. In s. NR 151.05 (1), the use of the word "new" can be vague. The provision should refer to activities taken on or after the effective date of the section. In sub. (3), the use of construct "a and b or c" is inherently confusing and should be rewritten.

l. In s. NR 151.09 (1) (a), "complying" should be replaced with "in compliance." In addition, the rule should specify precisely which performance standards the rule refers to. (This comment also applies to sub. (2).) In sub. (1) (b) 2., the first sentence includes the phrase "corrective measures . . . do not involve eligible costs." Does the inclusion of this phrase make redundant the additional phrase "regardless of the availability of cost-sharing"?

m. In the note following s. NR 151.009 (4), the rule should specify what is meant by a "303 (d) listed watershed" and "an outstanding or exceptional resource water."

n. In s. NR 151.095 (2) (a), "projected" should be inserted before "enactment."

o. Section NR 151.095 (2) (b) should specify a time by which the department must approve or deny a proposed ordinance.

p. Section NR 151.11 (1) refers to a "construction site upon which landed disturbing construction activity affects one or more acres of land." This use of the term "construction site" conflicts with the definition of "construction site" set forth in the rule. Specifically, the definition set forth in s. NR 151.002 (6) specifies that a "construction site" means an area upon which one or more land disturbing construction activities are taking place which will affect five or more acres of land. In addition, the qualifying language following the first use of the term "construction site" is redundant, since that term is defined using that same language. [See also s. NR 151.21 (1).]

q. In s. NR 151.11 (2), it is unclear which person other than a landowner is a person "with control of a construction site." In the situation in which a general contractor has complete control of the construction taking place on a site, is the general contractor or the landowner responsible for compliance with s. NR 151.11? This comment applies to all other provisions of the rule using similar language.

r. Section NR 151.11 (3) refers to a "soil erosion and sediment control plan." In addition, several subsequent sections of the rule refer to different "plans." Who is responsible for developing those plans? Must the plans be submitted to the department for approval before they are implemented? If so, what standards will the department use in reviewing those plans? If the plans are not required to be submitted to the department, must the responsible party maintain copies of the plan and make the plan available for inspection by the department upon request?

s. In s. NR 151.11 (3) (a), how is the "annual average sediment load" to be determined?

t. It is unclear whether the second sentence in the note following s. NR 151.11 (3) (a) is an exemption to the 80% requirement set forth in par. (a). This point should be clarified.

u. In s. NR 151.11 (3) (g), "the standards set forth in" should be inserted after "achieved."

v. Under s. NR 151.11 (5), must the responsible party receive approval from the department to cease to maintain best management practices (BMPs) when final stabilization has been achieved?

w. In s. NR 151.12 (1) (a), does the phrase "or was subject to s. NR 151.11" refer to a construction site which has undergone final stabilization? The rule should be more precise on this point. In addition, "A" should be inserted before the material in the subdivisions following the introductory material in par. (a).

x. In s. NR 151.12 (1) (a) 2., it is unclear how the size of the "portion of the site" is to be determined, for purposes of determining whether that portion has a cumulative area of one or more acres of parking lots and rooftops.

y. In the fifth sentence of the note to s. NR 151.12 (3) (c) 2. b., the word "on" should be inserted after the word "based."

z. Section NR 151.12 (3) (c) 3. c. provides that areas where frozen ground limits infiltration are exempt from the infiltration requirements set forth in par. (c). Should this provision be rewritten to specify that the infiltration requirements need not be met when the ground is frozen, but that the infiltration requirements must be met when the ground is not frozen? This comment applies to other provisions of the rule using similar language.

aa. In s. NR 151.12 (4) (b), it appears that the final sentence should be rewritten to read: "A gas station pump area . . . beneath them and which has the availability . . . meet the requirements of this paragraph."

ab. In s. NR 151.12 (5), the phrase "The standards required under this" should replace the word "This."

ac. In s. NR 151.12 (7), the phrase "at least" should be inserted before "80%." In addition, "suspends" should be changed to "suspended."

ad. Section NR 151.13 (intro.) should specify who must develop and implement the municipal storm water management program referred to in that section.

ae. What is meant by the statement in the note following s. NR 151.13 (1) (d) that the general population "has secondary responsibility" in complying with municipal ordinances and other requests? Are members of the general population subject to enforcement procedures by the Department of Natural Resources for failing to meet this responsibility?

af. The requirements set forth in s. NR 151.13 (3) are vague and should be expanded upon considerably to give municipalities adequate notice of their responsibilities under that section.

ag. The requirement, in s. NR 151.13 (4) (a) that all of the requirements contained in sub. (3) must be implemented by February 28, 2013, is redundant since sub. (3) states that those requirements must be implemented by February 28, 2008.

ah. In s. NR 154.14 (1) (a) 2., the word "their" should be replaced by the word "its." In sub. (2), both occurrences of the phrase "has the authority to" should be replaced by the word "may."

ai. Section NR 151.21 (2) should be rewritten to clarify who has responsibility for complying with requirements set forth in that section. As written, it appears that the prime contractor and the owner of the construction site are jointly responsible. If that is the case, it should be stated explicitly. Also, in sub. (2) (a), the phrase "shall be responsible for complying" should be replaced by the phrase "shall comply."

aj. In s. NR 151.21 (3) (g), the phrase "the goals set forth in" should be inserted after "achieved."

ak. In s. NR 151.22 (4) (a), "riparian area" should be defined. In addition, it is unclear whether the language regarding the "minimum width of the riparian area" is a standard used to determine whether an area is subject to the special requirements set forth in that section. This provision should be clarified.

al. In s. NR 151.22 (5), "The requirements of this" should replace the word "This."

am. In s. NR 151.22 (6), it is unclear whether the BMPs must be appropriately maintained forever. If so, who is responsible for maintenance of the BMPs? Does this responsibility carry forward to a new owner of the land if the land is sold? If so, this requirement should be specifically stated.

an. In s. NR 151.31 (3), the word "appoints" should be replaced by the phrase "shall appoint."

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**ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
CREATING RULES**

The Wisconsin Natural Resources Board proposes an order to create NR 151 relating to runoff management.

WT-8-00

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 92.15, 281.16 and 281.19, Stats.

Statutes interpreted: ss. 92.15, 227.11(2), 281.11, 281.12, 281.16, 281.65, 281.97 and 281.98, Stats.

30.12(4) *act 27* *act 9*

Chapter NR 151, Runoff Management, is a new rule under which the department will administer performance standards and prohibitions in response to two legislative acts, 1997 Wisconsin Act 27 and 1999 Wisconsin Act 9. These acts require significant changes to the department's Nonpoint Source Water Pollution Abatement Program and to the department of agriculture, trade and consumer protection's Soil and Water Resources Management Program. Chapter NR 151 is an integral part of promulgating a series of inter-related administrative rules to implement a re-design of Wisconsin's nonpoint source programs and related water regulations as set forth in these legislative acts. Other related components of this effort that are being conducted concurrently include: repeal and recreation of ch. NR 120, Nonpoint Source Pollution Abatement Program; creation of ch. NR 152, Model Ordinances for Construction Site Erosion Control and Storm Water Management; creation of ch. NR 153, Runoff Management Grant Program; creation of ch. NR 154, Best Management Practices and Technical Standards For Use With DNR Cost Share Programs and Non-Agricultural Performance Standards; amendment of ch. NR 216, Storm Water Discharge Permits; and repeal and recreation of ch. NR 243, Animal Waste Management. The department of agriculture, trade and consumer protection is concurrently revising ch. ATCP 50, Soil and Water Resource Management, to incorporate changes in its programs required under 1997 Wisconsin Act 27 and 1999 Wisconsin Act 9.

Chapter NR 151 establishes runoff pollution performance standards for non-agricultural practices, as well as performance standards, prohibitions and implementation provisions for agricultural practices, and performance standards for transportation facilities. These standards are intended to be minimum standards necessary to achieve water quality standards. In some areas where the performance standards may not achieve the water quality standards, the chapter also cites a process to establish, by rule, targeted performance standards. The code also includes requirements for Department approval of local livestock operation ordinances that exceed state performance standards and prohibitions. In addition, provisions for Department implementation and enforcement of performance standards are established. The chapter also specifies a process for the development and dissemination of department technical standards to implement the non-agricultural performance standards.

1 Section 1: Chapter NR 151 is created to read:

2
3 **Chapter NR 151**

4
5 **RUNOFF MANAGEMENT**

6
7 *GENERAL*

- 7 NR 151.001 Purpose
8 NR 151.002 Definitions
9 NR 151.003 Regional treatment exclusion
10 NR 151.004 State targeted performance standards

11
12 **Subchapter I – Agricultural Performance Standards and Prohibitions**

- 13 NR 151.01 Purpose
14 NR 151.02 Sheet, rill and wind erosion
15 NR 151.03 Concentrated flow channels
16 NR 151.04 Soil loss from riparian fields
17 NR 151.05 Manure storage facilities
18 NR 151.06 Clean water diversions
19 NR 151.07 Nutrient management
20 NR 151.08 Manure management prohibitions
21 NR 151.09 Implementation and enforcement
22 NR 151.095 Department review of local livestock operation ordinances

23
24 **Subchapter II – Non-Agricultural Performance Standards**

- 25 NR 151.10 Purpose
26 NR 151.11 Construction site performance standard for new development and redevelopment
27 NR 151.12 Post-construction performance standard for new development and redevelopment
28 NR 151.13 Developed urban area performance standard
29 NR 151.14 Implementation and enforcement

30
31 **Subchapter III – Transportation Facility Performance Standards**

- 32 NR 151.20 Purpose
33 NR 151.21 Construction site performance standard
34 NR 151.22 Post-construction performance standard
35 NR 151.23 Developed urban area performance standard
36 NR 151.24 Enforcement

37
38 **Subchapter IV – Technical Standards Development Process for Non-Agricultural
39 Performance Standards**

- 40 NR 151.30 Purpose
41 NR 151.31 Technical standards process
42 NR 151.32 Technical standards dissemination
43 NR 151.33 WisDOT and department of commerce technical standards

I GENERAL

1 **NR 151.001 Purpose.** This chapter establishes runoff pollution performance standards
2 for non-agricultural facilities and practices and performance standards and prohibitions for
3 agricultural facilities and practices for the purpose of striving to achieve water quality standards
4 as required by s. 281.16(2), Stats. This chapter also specifies a process for the development and
5 dissemination of department technical standards to implement the non-agricultural performance
6 standards as required by s. 281.16(3), Stats. If these performance standards and prohibitions do
7 not achieve water quality standards, the department may by rule promulgate targeted
8 performance standards in conformance with s. NR 151.004.

9 **NR 151.002 Definitions.** ~~For the purpose of this chapter, the following definitions are~~
10 ~~applicable.~~ *In this chapter:*

11 (1) "Agricultural land use" includes use of land for planting, growing, cultivating and
12 harvesting of crops for human or livestock consumption and pasturing or yarding of livestock,
13 including sod farms and tree nurseries, but does not include the construction of buildings or
14 facilities used for agriculture.

15 (2) "Agricultural practice" has the meaning in s. 281.16(1)(b), Stats.

16 (3) "Best management practice" or "BMP" or "conservation practice" means a practice,
17 technique or measure which is determined to be an effective means of preventing or reducing
18 runoff pollutants to waters of the state, to a level compatible with the performance standards and
19 prohibitions in this chapter.

20 (4) "Combined sewer system" means a system for conveying both sanitary sewage and
21 stormwater runoff.

22 (5) "Connected imperviousness" means an impervious area that discharges storm water
23 directly to a separate storm sewer, directly to waters of the state or indirectly to a separate storm
24 sewer or water of the state via a flow path that consists of adjacent impervious areas.

25 (6) "Construction site" means an area upon which one or more land disturbing ?
26 construction activities that in total will affect 5 or more acres of land, including areas that are
27 part of a larger common plan of development or sale where multiple separate and distinct land
28 disturbing construction activities may be taking place at different times on different schedules
29 but under one plan.

30 (7) "Crop producer" means an owner or operator of an operation engaged in crop related
31 agricultural practices specified in s. 281.16(1)(b), Stats.

1 (8) "DATCP" means the department of agriculture, trade and consumer protection.

2 (9) "Department" means the department of natural resources,

3 (10) "Direct runoff" means a discharge of a significant amount of pollutants to waters of
4 the state resulting from any of the following practices: — (b) (c) (d) animal practice x

5 (a) Runoff from an animal waste storage facility.

6 (b) Runoff from an animal lot that can be predicted to reach surface waters of the state
7 through a defined or channelized flow path or man-made conveyance.

8 (c) Discharge of leachate from a manure pile.

9 (d) Seepage from an animal waste facility.

10 (e) Construction of an animal waste storage facility in permeable soils or over fractured
11 bedrock without a liner designed in accordance with s. NR 154.03(23).

12 (11) "Erosion" means the detachment and movement of soil, sediment or rock fragments
13 by water, wind, ice or gravity.

14 (12) "Erosion and sediment control plan" means a comprehensive plan developed to
15 address pollution caused by soil erosion and sedimentation during construction.

16 (13) "Erosion control plan" means the erosion control plan required under s. Trans
17 401.07.

18 (14) "Existing operation" means any agricultural facility, operation or practice in
19 existence prior to October 14, 1997 and any expansion or modification to a facility, operation or
20 practice that occurred prior to the effective date of this rule... [revisor insert date].

21 Note: Cropping or nutrient application practices that are subject to annual changes are not
22 ordinarily considered to be practices "constructed or begun" prior to October 14, 1997.

23 (15) "Expansion or modification" means ^{to add} adding a significant amount of land, capital or
24 animals after the effective date of this rule... [revisor insert date] to a facility, operation or
25 practice.

26 Note: If an operation in existence prior to October 14, 1997 initiates an expansion ^{or} after
27 October 14, 1997, but ^{or} before the effective date of this rule ... [revisor insert date], the entire
28 operation is considered an existing operation. If an operation in existence prior to October 14,
29 1997 initiates an expansion ^{or} after the effective date of this rule ... [revisor insert date], the
30 expanded or modified portion is considered a "new operation", and an owner or operator must
31 comply with the performance standards or prohibitions for that expanded or modified portion

see p. 6
substantive

1 regardless of whether cost-sharing is made available. Cost-sharing dollars, however, will still be
2 available for the portion of the operation in existence prior to the effective date of this rule ...
3 [revisor insert date].

4 (16) "Final stabilization" means that all land disturbing construction activities at the
5 construction site have been completed and that a uniform perennial vegetative cover has been
6 established with a density of 70% of the cover for the unpaved areas and areas not covered by
7 permanent structures or that employ equivalent permanent stabilization measures. *what are these?*

8 (17) "Hydrologic soil group" means a group of soils having the same runoff potential
9 under similar storm and cover conditions. *has determined?*

10 Note: Major hydrologic soil groups include: group A for sand, loamy sand or sandy loam;
11 group B for silt loam or loam; group C for sandy clay loam; group D for clay loam, silty clay
12 loam, sandy clay, silty clay or clay. *put in rule*

13 (18) "Illicit discharge" means any release to a municipal separate storm sewer that is not
14 composed entirely of storm water except discharges with a WPDES permit or other discharges
15 allowed locally.

16 (19) "Impervious" means land surface that releases as runoff all or a large portion of the
17 precipitation that falls on it. *?*

18 Note: Rooftops, sidewalks, driveways, parking lots and streets are examples of surfaces
19 that typically are impervious.

20 (20) "Infiltration" means the process by which rainfall or surface runoff passes into or
21 through underlying soils.

22 (21) "Land disturbing construction activity" means any man-made change of the land
23 surface resulting in a change in the topography, existing vegetative and non-vegetative soil cover
24 or the existing soil topography which may result in storm water runoff and lead to increased soil
25 erosion and movement of sediment into waters of the state. Land disturbing construction activity
26 includes, but is not limited to, clearing and grubbing, demolition, excavating, pit trench *X*
27 dewatering, filling and grading activities, but does not include agricultural land uses or
28 silviculture activities.

29 (22) "Landowner" means any person holding fee title, an easement or other interest in
30 property, which allows the person to undertake land disturbing construction activity on the
31 property.

1 (23) "Livestock producer" means an owner or operator of a livestock operation as defined
2 in s. 281.16(1)(c), Stats.

3 (24) "Local governmental unit" has the meaning in s. 92.15(1)(b), Stats.

4 (25) "MEP" or "maximum extent practicable" means a level of implementing best
5 management practices in order to achieve a performance standard specified in this chapter which
6 takes into account the best available technology, cost effectiveness and the degree or extent to
7 which best management practices can be implemented, allows flexibility in the ways to meet the
8 performance standards and may vary based on the performance standard and site conditions. *subst.*

9 (26) "Municipality" has the meaning in s. 281.01 (6), Stats.

10 (27) "New development" means residential and other urban or suburban development
11 resulting from the conversion of previously undeveloped land or agricultural land uses.

12 (28) "New operation" means any agricultural facility, operation or practice that did not
13 exist before October 14, 1997 and any expansion or modification to a facility which was initiated
14 on or after the effective date of this rule ... [revisor insert date] and any ^{facility operation or practice,} transfer of ownership of ^{the}
15 an existing operation to a non-family member which occurred on or after October 14, 1997. ^{ownership}
^{of which}
^{is transitory}

16 (29) "NRCS" means the natural resources conservation service. ?

17 (30) "Performance standard" means a measurable number or measurable narrative for a
18 source specifying the minimum acceptable outcome for a facility or practice.

19 (31) "Pollutant" has the meaning in s. 283.02(13), Stats.

20 (32) "Pollution" has the meaning in s. 281.01(10), Stats.

21 (33) "Population" has the meaning in s. 281.66(1)(c), Stats.

22 (34) "Prime contractor" means a person authorized or awarded a contract to perform,
23 either directly or through the use of subcontractors, all the work of a project. X

24 (35) "Redevelopment" means existing urbanized areas where development is replacing
25 older development.

26 (36) "Runoff curve number" means a parameter that combines effects of soils, watershed
27 characteristics and land use to estimate the runoff from land surfaces.

28 (37) "Separate storm sewer" means a conveyance or system of conveyances including
29 roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or
30 storm drains, which meets all of the following criteria:

31 (a) Is designed or used for collecting water or conveying storm water.

1 (b) Is not part of a combined sewer system.

2 (c) ^{Does occur} ~~Is not~~ draining to a storm water treatment device or system. (S)

3 (38) "Site that is susceptible to groundwater contamination" means an area where there is
4 a reasonable probability that pollutants will enter groundwater. This includes, but is not limited
5 to, the following areas:

6 (a) ^{An area} Where the minimum separation to groundwater or bedrock is less than 3 feet. ^{of what?}

7 (b) ^{An area} Within 1,000 feet of sinkholes or rockholes.

8 (39) "Stored manure" means manure that is ^{kept?} found in a manure storage facility or an (S)
9 unconfined manure pile.

10 (40) "Storm water" means storm water runoff, snow or ice melt runoff, and surface runoff ^{of what}
11 and drainage. ^{manure}

12 (41) "Storm water management plan" means a comprehensive plan designed to reduce
13 the discharge of pollutants from runoff after the site has been stabilized from construction ^{xref?}
14 activity, such as that defined in s. NR 216.47.

15 (42) "Substantially altered" means constructed changes to the size, depth or type of liner,
16 overall management or movement of ^a the manure storage facility that does not include routine
17 maintenance or repairs.

18 (43) "Targeted performance standard" means a performance standard that will apply in a ^{has determined?}
19 specific area that will require additional conservation practices in order to meet water quality ^{xref?}
20 standards.

21 (44) "Technical standard" means a document that specifies minimum criteria for
22 planning, performance, design, operation or maintenance for a device, facility, practice or system
23 of practices.

24 (45) "Tolerable soil loss" or "T" means the maximum rate of erosion, in tons per acre per
25 year, allowable ^{by whom?} for a particular soil that will still maintain soil productivity. X

26 (46) "TR-55" means the National Resources Conservation Service, Urban Hydrology for
27 Small Watersheds, Technical Release 55, second edition, dated June 1986. 227.51

28 (47) "Transportation facility" means a highway or roadway including associated
29 structures such as bridges and culverts.

30 (48) "Unconfined manure pile" means a quantity of manure that is at least 175/ft³ in
31 volume and which covers the ground surface to a depth of at least 2 inches and that is not

1 confined within a manure storage facility, livestock housing facility or barnyard runoff control
2 facility.

3 (49) "Water quality management area" or "WQMA" means, ^{any of the following, (a)} the area within 1,000 feet
4 from the ordinary high-water mark of navigable waters that consist of a lake, pond or flowage,
5 except that, for a navigable water that is a glacial pothole lake, the term means the area within
6 1,000 feet from the high-water mark of the lake; the area within 300 feet from the ordinary high-
7 water mark of navigable waters that consist of a river or stream; and a site that is susceptible to
8 groundwater contamination or that has the potential to be a direct conduit for contamination to ^{how}
9 reach groundwater. _{determined}

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

11 (51) "WPDES permit" means a Wisconsin pollutant discharge elimination system permit
12 issued under ch. 283, Stats.

13 (52) "WisDOT" means the department of transportation.

14 **NR 151.003 Regional treatment exclusion.** Runoff draining to a storm water
15 treatment device, practice or system, and within non-navigable drainage ways that flow into
16 them, is not required to meet the performance standards of this chapter. The discharge of storm
17 water from a storm water treatment device or system is subject to this chapter.

18 **NR 151.004 State targeted performance standards.** For some areas, implementation
19 of the statewide performance standards and prohibitions in this chapter may not be sufficient to
20 achieve water quality standards. If a specific waterbody does not attain water quality standards
21 after implementation of the performance standards and prohibitions in this chapter, the
22 department may by rule promulgate targeted performance standards to achieve water quality
23 standards. _{in that water body.}

11
Subchapter I - Agricultural Performance Standards and Prohibitions

NR 151.01 Purpose. The purpose of this subchapter is to prescribe performance standards and prohibitions for agricultural facilities, operations and practices.

NR 151.02 Sheet, rill and wind erosion. (1) All crop producers shall comply with this section.

(2) All land where crops or feed are grown shall be cropped to achieve a soil erosion rate equal to, or less than, the "tolerable" (T) rate established for that soil. *? where?* Soil loss shall be calculated in accordance with locally selected formulas, tools, or models. x

Note: Examples of formulas, tools or models used to calculate soil loss include the Universal Soil Loss Equation, Revised Universal Soil Loss Equation, or the Wind Erosion Prediction System. *more specific ...*

NR 151.03 Concentrated flow channels. (1) All crop producers shall comply with this section where channels of concentrated flow exist, either natural or engineered, that carry water in cropland areas that also have a significant potential for sediment delivery to navigable surface waters. *how determined?* } cause loss

except as provided in (3) ?
(2) Grass vegetation shall be established and maintained in concentrated flow channels within cropland areas where runoff would otherwise cause erosion or sediment delivery to navigable surface waters.

(3) The standard in sub. (2) does not require construction of grassed waterways in accordance with s. NR 154.03(6) unless it is required as a condition of receiving cost-sharing under s. NR 151.09 or ch. ATCP 50. } does this negate (2)?

NR 151.04 Soil loss from riparian fields. (1) All crop producers and all livestock producers shall comply with this section.

(2) Soil loss from any portion of cropped fields, pastures or woodlots located within water quality management areas that drain to navigable surface waters may not exceed 0.33 of tolerable soil loss ("T"), as measured by locally selected formulas, tools or models. For cranberry marshes, properly designed, installed and maintained berms and dikes shall be considered sufficient to meet this performance standard.

Note: Examples of formulas, tools or models used to calculate soil loss include the Universal Soil Loss Equation or the Revised Universal Soil Loss Equation.

1 (3) Adequate sod or self-sustaining vegetative cover ^{passive} shall be maintained such that
2 significant streambank and lakeshore erosion below the ordinary high water mark is prevented
3 and the opportunity for fish habitat is sustained.

4 **NR 151.05 Manure storage facilities.** (1) APPLICABILITY. All livestock producers
5 building new manure storage facilities, substantially altering existing manure storage facilities or
6 choosing to abandon their manure storage facilities shall comply with this section.

7 (2) NEW CONSTRUCTION AND ALTERATIONS. New or substantially altered
8 existing manure storage facilities shall be constructed in accordance with s. NR 154.03(23).

9 (3) ABANDONMENT. Abandonment of manure storage facilities shall be completed in
10 accordance with s. NR 154.03(23). Abandonment of a manure storage facility shall occur when
11 manure has not been added or removed for a period of 24 months, unless the owner or operator
12 of the facility can demonstrate to the department that the following conditions are met:

13 (a) The facility is designed in accordance with s. NR 154.03(23); and

14 (b) The facility is designed to store manure for a period of time longer than 24 months; or

15 (c) Retention of the facility is warranted based on anticipated future use.

16 **NR 151.06 Clean water diversions.** (1) All livestock producers ^{with operations} within a water
17 quality management area shall comply with this section.

18 (2) Runoff from buildings and fields shall be diverted away from contacting feedlot,
19 manure storage areas and barnyard areas within water quality management areas in accordance
20 with s. NR 154.03(20).

21 **NR 151.07 Nutrient management.** (1) All owners of agricultural fields, crop
22 producers, livestock producers, nutrient management planners, commercial nutrient applicators,
23 dealers of commercial fertilizer and certified soil testing laboratories directly dealing with the
24 application of nutrients to agricultural fields shall comply with this section.

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

27 (2) This performance standard does not apply to industrial waste and byproducts
28 regulated under ch. NR 214, municipal sludge regulated under ch. NR 204, and septage regulated
29 under ch. NR 113.

30 Note: In accordance with ss. ATCP 50.48 and 50.50, nutrient management planners,
31 Wisconsin certified soil testing laboratories, and dealers of commercial fertilizer are advised to

date specific

} fix a and b or c

1 make nutrient management recommendations based on the performance standards for nutrient
2 management to ensure that their customers comply with this performance standard.

3 (3) Any application of manure, sludge or commercial nitrogen and phosphorus fertilizer
4 shall be done in conformance with a plan developed in accordance with s. NR 154.03(8).
5 Applicable time frames for implementing this performance standard are outlined in s. ATCP
6 50.06 (7) and (8).

any area only WQMA?

7 **NR 151.08 Manure management prohibitions.** (1) APPLICABILITY. All livestock
8 producers shall comply with this section.

9 (2) ^{No... may} A livestock operation shall have no overflow of manure storage facilities. (2)

10 (3) ^{No... may} A livestock operation shall have no unconfined manure pile in a water quality
11 management area.

12 (4) A livestock operation shall have no direct runoff from a feedlot or stored manure into
13 the waters of the state.

14 (5) A livestock operation may not allow unlimited access by livestock to waters of the
15 state in a location where high concentrations of animals prevent the maintenance of adequate sod
16 or self-sustaining vegetative cover. Adequate sod or self-sustaining vegetative cover refers to the
17 maintenance of sufficient types and density of vegetation such that the physical integrity of the
18 streambank or lakeshore is preserved.

how determine?

19 **NR 151.09 Implementation and enforcement.** (1) EXISTING OPERATIONS. (a)

20 *General.* If an owner or operator of an existing operation is not ^{compliance} complying with the performance
21 standards, ^{to set forth in} the department shall notify the owner or operator in writing of the non-compliance
22 and the owner or operator shall take corrective measures to bring the operation into compliance
23 in accordance with this section.

24 (b) *Corrective measures.* 1. If corrective measures to comply with a performance standard

25 involve eligible costs, the owner or operator shall implement corrective measures when cost-
26 sharing has been made available to the owner or operator from any funding sources for eligible
27 costs. If the department determines that cost-sharing has previously been made available to the
28 owner or operator for eligible costs by any funding sources and the owner or operator does not
29 bring the operation into compliance with the performance standards, the department may take
30 enforcement action pursuant to s. 281.98, Stats., or other appropriate actions, against the owner
31 or operator, regardless of the availability of cost-sharing.

Notice shall set forth time period for. Notice state whether eligible costs? How to get funding?

within a reasonable time?

define

add lang similar to (3) next 1 pg

2. If the corrective measures to comply with a performance standard do not involve eligible costs, the owner or operator shall implement the corrective measures within the time period specified in the notice issued under sub. (1); ~~regardless of the availability of cost-sharing.~~ *redundant*

The department notice shall include a reasonable time period for implementing necessary corrective measures. The time period may not be less than 60 days nor more than 12 months from the date of the notice unless an alternative time period has been mutually agreed upon by the department and the owner or operator, or in cases of imminent threat to public health or fish and aquatic life. If failure to comply with a performance standard represents an imminent threat to public health or fish and aquatic life, the department, as part of its notice, may require implementation of corrective measures in less than 60 days ^{after} of the notice date. In the event the owner or operator does not implement the corrective measures within the specified time period, the department may take enforcement action pursuant to s. 281.98, Stats., or other appropriate actions, against the owner or operator, ~~regardless of the availability of cost-sharing.~~

Note: Also see ss. 92.07(2), 92.105(1), 92.15, 281.20 and 281.91, Stats.

3. The owner or operator ^{who has rec'd a notice} shall contact the county agency or DATCP to determine the appropriate corrective measures. The corrective measures shall be implemented in accordance with the BMPs and technical standards specified in ch. NR-154, ^{regardless of whether} if cost-sharing is provided by the department or ~~if cost-sharing is not required.~~ If cost-sharing is provided by DATCP or any other funding sources, the corrective measures shall be implemented in accordance with the BMPs and technical standards in ch. ATCP 50. *confusing - !*

(2) NEW OPERATIONS. Owners or operators of new operations shall comply with the performance standards, ^{what? req'd} regardless of the availability of cost-sharing. In the event an owner or operator does not comply with the performance standards, the department may take direct enforcement action pursuant to s. 281.98, Stats., or other appropriate actions, against the owner or operator, regardless of the availability of cost-sharing. Corrective measures shall be implemented in accordance with the BMPs and technical standards specified in ch. NR 154 ^{how determined} (or) ATCP 50.

(3) COST-SHARING AVAILABILITY. Cost-sharing is considered to be made available to the owner or operator when cost-sharing has been offered to the owner or operator for at least a 12 month period from any funding sources for at least 70% of the eligible costs needed to implement corrective measures.

*Conflict w/ 281.16(3)(e)
econ handling -*

1 (4) ELIGIBLE COSTS. Eligible costs are those costs associated with a corrective
2 measure which a federal, state or local government cost-share program has determined to be
3 eligible for cost-sharing. The department shall use the respective program's determination of
4 eligible costs to determine if cost-sharing has been made available to an operation to implement
5 a corrective measure. For department related cost-share programs, eligible costs do not include
6 the value or amount of time spent by an owner or operator in making management changes.

7 Note: Examples of costs eligible for cost-sharing under department cost-share programs
8 are included in chs. NR 153 and 154. Under department programs, eligible costs typically
9 involve capital costs or significant out-of-pocket costs incurred by an owner or operator.

10 Note: The department's priorities for implementation ^{of what} include those operations located in
11 high priority areas such as 303(d) listed watersheds and outstanding or exceptional resource
12 waters or those operations which are considered priority operations such as those operations
13 which fall under the purview of the USDA/EPA Unified National Strategy for Animal Feeding
14 Operations. In addition, the department intends to take action under s. NR 151.09 in cases where *Subst.*
15 the county or local unit of government has failed to appropriately address an operation which is
16 not complying with a performance standard in a timely manner. This section describes
17 implementation of the performance standards for crop producers. Implementation of the
18 performance standards and prohibitions for livestock producers is described in ch. NR 243.

19 **NR 151.095 Department review of local livestock operation ordinances. (1)**

20 GENERAL. Pursuant to s. 92.15, Stats., a local governmental unit may not enact a livestock
21 operation ordinance that exceeds the performance standards or prohibitions in this subchapter
22 unless the local governmental unit obtains approval from the department in accordance with this
23 section or receives approval from DATCP pursuant to s. ATCP 50.60.

24 (2) PROCEDURES. If a local governmental unit proposes to enact a livestock ordinance
25 that exceeds the performance standards or prohibitions in this subchapter, the following
26 procedures apply:

27 (a) The local unit of government shall submit the ordinance to the department at least 60
28 days prior to the ^{projected} enactment of the ordinance and shall provide supporting documentation
29 regarding why the ordinance provisions that exceed the performance standards are needed to
30 achieve water quality standards.

*how can
an exceedance
achieve
standards*

1 (b) The department shall review the ordinance in consultation with DATCP and either
2 approve or deny the ordinance. *by a certain time? standard of care*

3 (c) The department shall approve the ordinance if the department determines that the
4 ordinance is needed to achieve water quality standards under s. 281.15, Stats. If the department
5 denies the ordinance, the department shall provide the local governmental unit with reasons, in
6 writing, for the denial.

7 Note: Pursuant to s. 92.05(3)(L), Stats., if a local unit of government enacts an ordinance
8 that establishes a performance standard, either a standard specified in this chapter or a targeted
9 standard, the local unit of government is required to submit the ordinance to DATCP for review
10 (see s. ATCP 50.54). This requirement applies to performance standards that cover livestock
11 production as well as ordinances which cover crop production.

1 **Subchapter II - Non-Agricultural Performance Standards**

2
3 **NR 151.10 Purpose.** This subchapter establishes runoff pollution performance
4 standards for non-agricultural facilities and practices for the purpose of achieving water quality
5 standards as authorized by s. 281.16(2)(a), Stats.

6 **NR 151.11 Construction site performance standard for new development and**
7 **redevelopment.** (1) APPLICABILITY. This section ~~shall apply~~ ^{applies} to a construction site upon redemption

8 which land disturbing construction activity affects 5 or more acres of land. Beginning February ^{X b/c}
9 28, 2003, this section shall also apply to a construction site upon which land disturbing ^{of}
10 construction activity affects one or more acres of land. This section does not apply to a ^{def - 151.00216,}
11 transportation facility. ^{Conflicts w/ def of "const site" (5 acres)}

12 Note: Transportation facility performance standards are given in subch. III. The 5- and 1-
13 acre site thresholds are consistent with subch. III of NR 216 and EPA phase II rules regarding
14 applicability of construction permits.

15 (2) RESPONSIBLE PARTY. The landowner or other person with control of a } ^{? operator?} ^{unclear -}
16 construction site shall be responsible for complying with this section. ^{both? (2)}

17 (3) REQUIREMENTS. Best management practices shall be designed, installed, applied
18 and maintained to the maximum extent practicable in accordance with an erosion and sediment ^{how determine?}
19 control plan designed to limit sediments and other pollutants from runoff entering waters of the state or separate storm sewers connecting to waters of the state including: ^{submit to DNR? Approval required?}

20 (a) Controlling sediment carried in runoff to reduce the annual average sediment load by ^{who prepares?}
21 80% as compared to no sediment controls unless a lower level of control is justified pursuant to ^{how determined?}
22 sub. (6).
23

24 Note: Achieving this standard will have the effect of achieving about a 60% annual ^{required?}
25 average load reduction for phosphorus. The percent of sediment control may be higher on sandy
26 soil sites and lower on clayey soil sites.

27 (b) Minimizing tracking of sediment from the site onto roads and other paved surfaces.

28 (c) Assuring proper use, storage and disposal of chemicals, cement and other compounds
29 used on the construction site.

30 (d) Minimizing the discharge of sediment as part of site de-watering.

31 (e) Sediment cleanup.

1 (f) Storm sewer inlet protection.

2 (g) Other measures necessary to achieve par. (a). X ?

3 (4) LOCATION. The BMPs may be located on or off the construction site but shall be
4 put into effect prior to runoff entering waters of the state or a separate storm sewer connecting to
5 waters of the state.

6 (5) TIME PERIOD. The BMPs shall be maintained throughout the duration of the
7 construction activities until the site has undergone final stabilization. must obtain approval? 5

8 (6) JUSTIFICATION. If 80% of the annual average sediment load will not be controlled
9 from the site by design, the erosion and sediment control plan shall include a reasonable
10 justification for not controlling 80% of the annual average sediment load from the site as
11 compared to no sediment controls. submit? prior approval?

12 (7) DESIGN MANUALS. The erosion and sediment control plan shall be prepared in
13 accordance with good engineering practices and the design criteria, standards and specifications } rules?
14 outlined in the Wisconsin Construction Site Handbook Best Management Practice Handbook,
15 WDNR Pub. WR-222 November 1993 Revision.

16 **NR 151.12 Post-construction performance standard for new development and**
17 **redevelopment.** (1) APPLICABILITY. (a) This section shall apply to a site that is or was
18 subject to s. NR 151.11, except the following: applies

19 1. Redevelopment site with no exposed parking lots or roads.

20 2. Site with less than 10% connected imperviousness based on complete development of
21 the site, except the portion of the site where parking lots and rooftops have a cumulative area of
22 one or more acres. as clear applies

23 (b) This section shall apply to a municipality that initiates a grant or adds new grant
24 activity under ch. NR 153 after the effective date of this rule.. [revisor insert date].

25 (2) RESPONSIBLE PARTY. The landowner or other person with control of the site shall
26 be responsible for complying with this section. ? touched

27 (3) REQUIREMENTS. The BMPs shall be designed, installed or applied and maintained
28 in accordance with a storm water management plan to control total suspended solids and other
29 pollutants carried in runoff from new development and redevelopment to the maximum extent
30 practicable and as specified in this subsection. The storm water management plan may be that
submission? approval?

where is request set forth?

1 specified within s. NR 216.47 or the municipal stormwater management program specified
2 within s. NR 216.07(7). The BMPs required by this section shall:

3 (a) By design, reduce the annual average total suspended solids load in runoff by 80% as
4 compared to no controls for the site unless a lower level of control is justified pursuant to sub.
5 (7).

6 Note: Achieving this standard will have the effect of achieving about a 50% annual
7 average load reduction for phosphorus and about a 50% annual average load reduction for heavy
8 metals.

9 (b) By design, maintain or reduce the peak runoff discharge rates as compared to pre-
10 development conditions for the 2- and 10-year, 24-hour design storms applicable to the site,
11 assuming "good hydrologic conditions" for pre-development land covers as identified in TR-55
12 or an equivalent methodology. When pre-development land cover is cropland, the runoff curve
13 numbers in Table 1 shall be used. This paragraph is not applicable to a site that drains directly to
14 a lake.

how determine?

where then?

Table 1 – Maximum Pre-Development Runoff Curve Numbers for Cropland Areas				
Hydrologic Soil Group	A	B	C	D
Runoff Curve Number	55	68	77	80

water retention
by system

15 Note: The intent of par. (b) is to limit streambank erosion.

16 (c) By design, infiltrate initial runoff from the site in accordance with either subd. 1. or
17 2., except as provided subd. 3.

18 1. The inches of initial runoff to be infiltrated across the site per runoff event shall be
19 equal to or greater than the levels given in Table 2.
20

Table 2 – Inches of Initial Runoff to be Infiltrated across the Site Per Runoff Event		
Hydrologic Soil Group	1 & 2 Family Residential Land Use	Land Uses Other Than 1 & 2 Family Residential
A	0.26	0.40
B	0.23	0.30
C	0.12	0.14

21 soil type D? (2)

1 2. The inches of initial runoff to be infiltrated across the site per runoff event shall be
2 equal to or greater than the levels calculated using the following equation: $I = CI \times F$. "I" is the
3 inches of initial runoff to be infiltrated across the site per runoff event. "CI" is the percent of
4 connected imperviousness across the site. "F" is a factor defined as follows:

5 a. For one and 2 family residential land use, "F" shall have a value of 0.62 for type A,
6 0.55 for type B and 0.28 for type C hydrologic soil groups.

7 b. For land use other than one and 2 family residential, "F" shall have a value of 0.44 for
8 type A, 0.33 for type B and 0.15 for type C hydrologic soil groups.

9 Note: There may be pretreatment necessary prior to infiltrating runoff. That portion of the
10 runoff from industrial manufacturing areas that is not contaminated may be infiltrated. The one
11 and 2 family residential land use infiltration levels given achieve approximately 90% of annual
12 average runoff infiltration when compared to predevelopment conditions. All other land use
13 infiltration levels given achieve approximately 70% runoff infiltration when compared to
14 predevelopment conditions based on annual averages. The levels given in table 2 are based on a site
15 with 42% connected imperviousness for one and 2 family residential and 90% connected

16 imperviousness for all other land uses. Infiltration devices and practices include, but are not
17 limited to: decreasing the amount of impervious surface, directing runoff from rooftops and
18 parking areas to natural pervious areas such as grassed lawns or swales or where space is limited
19 for natural infiltration directing runoff to infiltration devices such as ponds or trenches.

20 Infiltration within wellhead protection areas should be accomplished by directing
21 uncontaminated runoff into natural pervious areas. Infiltration devices such as ponds and
22 trenches may be inappropriate within wellhead protection areas.

23 3. Runoff from the following areas and conditions are exempt from meeting this
24 paragraph.

25 a. Areas associated with industrial manufacturing including storage, loading, rooftop and
26 parking.

27 b. Storage and loading areas of non-manufacturing industries. Parking and rooftop areas
28 are not exempt from this infiltration requirement for non-manufacturing facilities.

29 c. Areas where frozen ground limits infiltration.

30 d. Areas composed of hydrologic soil group D.

Does not meet
std when "re-wrote"

1 Note: Areas described in subds. a. and b. are exempted from infiltration due to the
2 potential of high contamination of runoff from these areas which could lead to ground water
3 contamination if infiltrated.

4 (4) SPECIAL REQUIREMENTS. (a) *Riparian areas*. Sufficient permanent vegetative
5 cover shall be provided in riparian areas to provide for bank stability, maintenance of fish habitat
6 and filtering of pollutants from upslope overland flow areas. The minimum width of the riparian
7 area is the width calculated using the procedures in NRCS standard 393, dated January 1995, or
8 35 feet, whichever is greater. Riparian area widths are measured from the ordinary high water
9 mark of lakes, streams and wetlands. This paragraph is not applicable to redevelopment sites, or
10 structures that cross or access surface waters such as boat landings, bridges and culverts.

11 (b) *Gas stations and vehicle maintenance areas*. Petroleum products in runoff from gas
12 station pump areas and vehicle maintenance areas shall be controlled with a properly designed
13 and maintained oil and grease separator or other equivalent practice, and shall remove all visible
14 sheen from the runoff prior to discharge to waters of the state. A gas station pump area which has
15 a properly designed canopy that catches and directs storm water away from the potential spill
16 areas beneath them, ^{and a fish trap} the availability and use of petroleum absorbent material to immediately
17 clean up spills shall qualify as an equivalent practice to meet this paragraph. ^{the req. of}

18 (5) LOCATION. ^{standards need to be in section} This section may be achieved by locating BMPs either on-site or off-
19 site as part of a regional storm water device, practice or system, but shall be achieved prior to
20 runoff entering waters of the state. (2) x

21 (6) TIME PERIOD. The BMPs required under this section shall be either installed before
22 or as necessary immediately after the site has undergone final stabilization. The BMPs shall be
23 appropriately maintained after installation. (2)

24 (7) JUSTIFICATION. ^{at least} If 80% of the total suspended solids load will not be controlled from
25 the site by design, then the storm water management plan shall include a reasonable justification ^{had}
26 for not controlling 80% of the total suspended solids load from the site as compared to no total ^{determined}
27 suspended solids controls. ^{who}

28 **NR 151.13 Developed urban area performance standard.** (1) A municipal storm water
29 management program shall be developed and implemented to control pollutants to the maximum
30 extent practicable for developed areas, including any necessary ordinance adoption and
31 administration. The municipal storm water management program may be the same program as X

Cross ref
in ch. NR
216?

1 that within s. NR 216.07(7); however, the programs shall also meet the requirements of this
2 section.

3 (1) APPLICABILITY. This section ^{applies} shall apply to all discharges of storm water to waters
4 of the state or a separate storm sewer from the following areas:

5 (a) Areas with an average density of 1000 people per square mile or greater and a
6 population of 2500 or greater within that area.

7 (b) Areas with an average density of 1000 people per square mile or greater and a
8 population less than 2500 within that area, provided cost-sharing for 50% of eligible costs has
9 been made available to the municipality from any funding sources.

10 Note: Examples of costs eligible for cost-sharing under the department cost-share
11 programs are included within chs. NR 120 and 153.

12 (c) Areas that are subject to subch. I of ch. NR 216.

13 (d) Areas within municipalities that initiate grants or add new grant activity under ch. NR
14 153 after the effective date of this rule ... [revisor insert date].

15 Note: The municipality has primary responsibility for complying with this section.
16 However, the general population has secondary responsibility in complying with municipal
17 ordinances and other requests to do activities such as: proper curbside placement of leaves for
18 collection, relocating vehicles for street sweeping and utilizing proper disposal methods for oils
19 and other chemicals.

20 (2) EXCLUSION. This section does not apply to areas subject to subch. II of ch. NR 216.

21 (3) STAGE 1 REQUIREMENTS. All of the following shall be implemented by February
22 28, 2008.
Facilities 2 by when 3 5

23 (a) Public education program and corresponding municipal activities for leaf management
24 and collection. *vague 5*

25 (b) Public education program for proper using lawn and garden fertilizers and pesticides,
26 managing pet wastes and preventing dumping of oil and other chemicals in storm sewers.

27 (c) Municipal street sweeping using either conventional or high efficiency sweepers,
28 annual catch basin clean out and de-icer management. *how often? which streets?*

29 (d) Proper use of fertilizers and pesticides on municipally controlled properties, such as
30 fertilizer applications based on soil test results.

31 (e) Detection and elimination of illicit discharges to storm sewers.

revisions
received?

subject to DNR penalties?

How?

1 Note: Stage 1 is intended to bring municipal programs to a consistent level and will result
2 in about a 20% reduction in total suspended solids and about a 10% reduction in phosphorus and
3 heavy metals.

4 (4) STAGE 2 REQUIREMENTS. All of the following shall be implemented by February
5 28, 2013.

6 (a) All of the requirements contained in sub. (3).

redundant (2) req'd by 2008 under (3)

7 (b) Progressive use of a combination of high-efficiency street sweeping or structural BMP
8 retrofit with the objective of achieving a 40% reduction in total suspended solids and a
9 corresponding 20% reduction of heavy metals and phosphorus as compared to no controls.

10 Note: The stage 2 requirements may include application of BMPs to privately owned
11 lands, such as shopping centers.

12 **NR 151.14 Implementation and enforcement.** (1) IMPLEMENTATION. This
13 subchapter shall be implemented as follows:

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

(5) huh? Does everyone need a discharge permit?

16 1. The provisions of ss. NR 151.11 and 151.12 shall be implemented through ch. NR 216.

17 2. The department of commerce shall require that the provisions of ss. NR 151.11 and
18 151.12 will be implemented through permits and approvals granted under their authority.

can't force agencies

Yuck ↑

19 3. The department shall make available model ordinances that reflect the performance
20 standards in ss. NR 151.11 and 151.12.

21 Note: These model ordinances are in ch. NR 152.

22 (b) *Developed urban areas.* 1. The provisions of s. NR 151.13 shall be implemented
23 through subch. I of ch. NR 216.

(7) X

24 2. The department shall make available municipal model ordinances that reflect ss. NR
25 151.11 and 151.12.

26 Note: These model ordinances are in ch. NR 152.

27 (2) ENFORCEMENT. The department has the authority to enforce performance
28 standards implemented through ch. NR 216 under ss. 283.89 and 283.91, Stats. The department
29 also has the authority to enforce this subchapter under s. 281.98, Stats.

MAY

may

30 Note: A municipality may also be required to implement and enforce the performance
31 standards of this subchapter through a permit issued pursuant to subch. I of ch. NR 216.

1 **Subchapter III – Performance Standards for Transportation Facilities**

2
3 **NR 151.20 Purpose.** This subchapter establishes runoff pollution performance
4 standards for transportation facilities for the purpose of achieving water quality standards as
5 authorized by s. 281.16(2)(a), Stats.

6 **NR 151.21 Construction site performance standard.** (1) **APPLICABILITY.** This
7 section ~~shall apply~~ ^{applies} to any transportation facility construction site upon which land disturbing
8 construction activity affects 5 or more acres of land. Beginning February 28, 2003, this section
9 ~~shall also apply~~ ^{applies} to a transportation facility construction site upon which land disturbing
10 construction activity affects one or more acre of land.

11 (2) **RESPONSIBLE PARTY.** (a) The owner of the construction site ~~shall be responsible~~
12 ~~for complying~~ with this section. *shall... have these joint responsible? (2)*

13 (b) The prime contractor is ~~responsible~~ ^{shall} for installation, application and maintenance of
14 BMPs in compliance with this section.

15 (3) **REQUIREMENTS.** Best management practices shall be designed, installed, applied
16 and maintained to the maximum extent practicable throughout the duration of construction
17 activities in accordance with an erosion control ~~plan~~ ^{submit & approve} designed to reduce pollutants from runoff
18 entering waters of the state or separate storm sewers connecting to waters of the state including:

19 (a) Controlling sediment carried in runoff to reduce the annual average sediment load by
20 80% as compared to no sediment controls unless a lower level of control is justified pursuant to
21 sub. (6).

22 Note: Achieving this standard will have the effect of achieving about a 60% annual
23 average load reduction for phosphorus. The percent of sediment control may be higher on sandy
24 soil sites and lower on clayey soil sites. *? is this? as rougher to (0)?*

25 (b) Minimizing tracking of sediment from the site onto roads and other paved surfaces.

26 (c) Assuring proper use, storage and disposal of chemicals, cement and other compounds
27 used on the construction site.

28 (d) Minimizing the discharge of sediment as part of site de-watering.

29 (e) Sediment cleanup.

30 (f) Storm sewer inlet protection.

31 (g) Other measures necessary to achieve par. (a). *the goal set forth in (5)*

1 (4) LOCATION. The BMPs may be located on or off the construction site but shall be
2 put into effect prior to runoff entering waters of the state or a separate storm sewer connecting to
3 waters of the state. *after commencement of construction?*

4 (5) TIME PERIOD. The BMPs shall be maintained throughout the duration of the
5 construction activities until the site has undergone final stabilization.

6 (6) JUSTIFICATION. If 80% of the annual average sediment load will not be controlled
7 from the site by design, the erosion and sediment control plan shall include a reasonable ?
8 justification for not controlling 80% of the annual average sediment load from the site as
9 compared to no sediment controls.

10 (7) DESIGN GUIDANCE. The BMPs that are applicable under this subchapter shall be
11 prepared in accordance with good engineering practices and the design criteria, standards and
12 specifications in the following WisDOT and department specifications and manuals:

13 (a) Sections 107.18, 107.19, 107.20 and 6285 of the Standard Specifications for Road and
14 Bridge Construction of the Wisconsin Department of Transportation.

15 (b) Sections P-151, P-152, P-158, P-159, Division VII and Division VIII of the Standard
16 Specifications for Airport Construction of the State of Wisconsin, Department of Transportation.

17 (c) Chapter 10 of the Facilities Development Manual of the Wisconsin Department of
18 Transportation, Division of Infrastructure Development.

19 (d) Chapters 2 and 10 of the Highways Construction and Materials Manual of the
20 Wisconsin Department of Transportation, Division of Infrastructure Development.

Add
dates

21 (e) Chapter 47 of the Highways Maintenance Manual of the Wisconsin Department of
22 Transportation, Division of Infrastructure Development.

23 (f) Wisconsin Construction Site Handbook Best Management Practice Handbook,
24 WDNR Pub. WR-222 November 1993 Revision.

25 Note: Copies of the WisDOT specifications and manuals referenced in pars. (a) to (e) can
26 be obtained by writing to, or calling the Wisconsin Department of Transportation, Division of
27 Transportation Infrastructures Development, Bureau of Environment, 4802 Sheboygan Avenue,
28 Room 451, P.O. Box 7965, Madison, WI 53707-7965, (608) 267-3615. The Wisconsin
29 Construction Site Best Management Practice Handbook is available through WI Department of
30 Administration, Document Sales, 202 S. Thornton Ave., Madison, WI 53707-7840.

1 NR 151.22 Post-construction performance standard. (1) APPLICABILITY. This
2 section shall apply to a site covered under s. NR 151.21.

3 (2) RESPONSIBLE PARTY. The owner of the site shall be responsible for complying
4 with this section. *maintenance? After site sold?*

5 (3) REQUIREMENTS. The BMPs shall be designed, installed, applied and maintained in
6 accordance with a storm water management plan to control total suspended solids and other
7 pollutants carried in runoff to the maximum extent practicable. The BMPs required by this
8 section shall:

9 (a) By design, reduce the annual average total suspended solids load in runoff by 80% as
10 compared to no controls for the site unless a lower level of control is justified pursuant to sub.
11 (7).

12 Note: Achieving this standard will have the effect of achieving about a 50% annual
13 average load reduction for phosphorus and about a 50% annual average load reduction for heavy
14 metals.

15 (b) By design, maintain or reduce peak runoff discharge rates as compared to pre-
16 development site conditions for the 2- and 10-year, 24-hour design storms applicable to the site,
17 assuming "good hydrologic conditions" for pre-development land covers as identified in TR-55
18 or an equivalent methodology. When pre-development land cover is cropland, the runoff curve
19 numbers in Table 1 of subch. II shall be used. This paragraph is not applicable to a site that
20 drains directly to a lake. *what then?*

21 Note: The intent of par. (b) is to limit streambank erosion.

22 (c) By design, infiltrate initial runoff from the site in quantities equal to or greater than
23 the levels calculated using the following equation: $I = CI \times F$. "I" is the inches of initial runoff to
24 be infiltrated across the site per runoff event. "CI" is the percent of connected imperviousness
25 across the site. "F" is a factor that shall have a value of 0.62 for type A, 0.55 for type B and 0.28
26 for type C hydrologic soil groups. *delete ①* However, runoff from the following areas and conditions are
27 exempt from meeting ^{the requirements} this paragraph. ; ②

28 *Times?* a. Areas where frozen ground limits infiltration. *must it meet when ground not frozen?*

29 b. Areas composed of hydrologic soil group D.

30 Note: There may be pretreatment necessary prior to infiltrating runoff. The infiltration
31 levels given achieve approximately 90% of annual average runoff infiltration when compared to

*subst
requirement?*

1 predevelopment conditions. Infiltration devices and practices include, but are not limited to:
2 decreasing the amount of impervious surface, directing runoff to natural pervious areas such as
3 grassed swales or where space is limited for natural infiltration directing runoff to infiltration
4 devices such as ponds or trenches. Infiltration within wellhead protection areas should be
5 accomplished by directing uncontaminated runoff into natural pervious areas. Infiltration devices
6 such as ponds and trenches may be inappropriate within wellhead protection areas. In
7 redevelopment areas, infiltrating to the maximum extent practicable may not achieve a level of
8 infiltration equal to that indicated in par. (c). For highways and roadways, it is expected that
9 swales be designed to meet the infiltration standard. *define?*

10 (4) SPECIAL REQUIREMENTS. (a) Riparian areas. Sufficient permanent vegetative
11 cover shall be provided in riparian areas to provide for bank stability, maintenance of fish habitat
12 and filtering of pollutants from upslope overland flow areas. The minimum width of the riparian
13 area is the width calculated using the procedures in NRCS standard 393, dated January 1995, or
14 35 feet, whichever is greater. Riparian area widths are measured from the ordinary high water
15 mark of lakes, streams and wetlands. This paragraph is not applicable to redevelopment sites, or
16 to structures that cross or access surface waters such as boat landings, bridges and culverts. *to qualify as rip area*

17 (b) Gas stations and vehicle maintenance areas. Petroleum products in runoff from gas
18 station pump areas and vehicle maintenance areas shall be controlled with a properly designed ?
19 and maintained oil and grease separator or other equivalent practice, and shall remove all visible
20 sheen from the runoff prior to discharge to waters of the state. A gas station pump area which has
21 a properly designed canopy that catches and directs storm water away from the potential spill
22 areas beneath them and the availability and use of petroleum absorbent material to immediately
23 clean up spills shall qualify as an equivalent practice to meet this paragraph. *Who's?*

24 (5) LOCATION. This section may be achieved by locating BMPs on-site or off-site as
25 part of a regional storm water device, practice or system, but shall be achieved prior to runoff
26 entering waters of the state. *requirements of this*

27 (6) TIME PERIOD. The BMPs required under this section shall be installed before the
28 site has undergone final stabilization. These BMPs shall be appropriately maintained after
29 installation. *ed (5) forever? who is responsible?*

30 (7) JUSTIFICATION. If 80% of the total suspended solids load will not be controlled from
31 the site by design, then the storm water management plan shall include a reasonable justification

1 for not controlling 80% of the total suspended solids load from the site as compared to no total
2 suspended solids controls.

3 **NR 151.23 Developed urban area performance standard. (1) APPLICABILITY.**

4 (a) This section shall apply to WisDOT owned and operated transportation facilities located
5 within municipalities that are regulated under s. NR 216.02.

6 (b) This ~~sub~~section does not apply to:

7 1. Locally owned transportation facilities in municipalities described in s. NR 151.13(1).
8 Transportation facilities identified in this subdivision shall meet the performance standards in s.
9 NR 151.13.

10 2. WisDOT owned transportation facilities not identified in par. (a).

11 (2) REQUIREMENTS. WisDOT shall develop and implement a storm water
12 management plan to control pollutants from transportation facilities subject to this section in
13 accordance with s. NR 216.07(7) or Attachment A4 to the Cooperative Agreement between
14 WisDOT and the department in accordance with s. 30.12(4), Stats.

15 Note: To obtain a copy of Attachment A4 to the Cooperative Agreement, requests may be
16 made to the Department of Natural Resources, Bureau of Integrated Science Services, Box 7921,
17 Madison, WI 53707-7921.

18 **NR 151.24 Enforcement.** This subchapter shall be enforced as follows:

19 (1) If a transportation facility covered under s. 30.12 (4), Stats., is not in compliance with
20 this subchapter, the consultation and conflict resolution process specified in the agreements
21 between WisDOT and the department established under the interdepartmental liaison procedures
22 shall be initiated in accordance with s. 30.12(4)(b), Stats., to define corrective measures to be
23 agreed upon and implemented to bring the facility into compliance.

24 (2) The department shall be responsible for enforcement of this subchapter for
25 transportation facilities not specified in sub. (1).

1 **Subchapter IV – Technical Standards Development Process for Non-Agricultural**
2 **Performance Standards**

3
4 **NR 151.30 Purpose.** This subchapter specifies the process for developing and
5 disseminating department technical standards to implement the non-agricultural performance
6 standards in subch. II, as authorized by s. 281.16(2)(b), Stats.

7 **NR 151.31 Technical standards development process.** Technical standards to
8 implement the non-agricultural performance standards described in ss. NR 151.11, 151.12 and
9 151.13, shall be developed and revised through a process that includes the following:

10 (1) A council established by parties to a memorandum of agreement among participating
11 agencies to oversee the technical standards process. The council shall be comprised of persons
12 involved in the delivery of construction erosion control and stormwater management programs
13 that develop and use technical standards. Council members shall have a background in, or access
14 to, construction erosion control and stormwater management technical issues and provide service
15 to the user of the standards developed under this process.

16 (2) Procedures to rank technical standards needs, initiate work on technical standards,
17 conduct broad-based review of draft technical standards, and publish technical standards.

18 (3) A team leader selected by the person or agency responsible for the technical standard.
19 The team leader ^{shall} appoints/a team comprised of technical experts that will review and develop or
20 revise technical standards.

21 (4) Public review and comment on the proposed technical standards.

22 (5) An evaluation process.

23 Note: Department technical standards developed or revised under this section will be
24 promulgated by rule and included within ch. NR 154. This will mean revising ch. NR 154
25 whenever a new technical standard is promulgated.

26 **NR 151.32 Technical standards dissemination.** Department technical standards
27 developed or revised pursuant to this subchapter may be obtained by mail upon written request to
28 the Department of Natural Resources, Runoff Management Program, Box 7921, Madison, WI
29 53707-7921.

30 **NR 151.33 WisDOT and department of commerce technical standards. (1)**
31 Technical standards to implement the non-agricultural performance standards for transportation

1 facilities described in subch. III shall be developed, revised and disseminated through the
2 WisDOT facilities development process as described in WisDOT's Facilities Development
3 Manual. The department shall review and comment on these standards prior to their
4 dissemination. Differences between WisDOT and the department will be resolved through the
5 consultation and conflict resolution process specified in the agreements between WisDOT and
6 the department established under the interdepartmental liaison procedures in accordance with s.
7 30.12(4)(b), Stats.

8 (2) Department of commerce technical standards will be developed or revised by the
9 department of commerce to achieve performance standards in subch. II through permits or
10 approvals granted under their authority.

11
12
13
14 The foregoing rule was approved and adopted by the State of Wisconsin Natural
15 Resources Board on _____.

16
17 The rule shall take effect on the first day of the month following publication in the
18 Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

19
20 Dated at Madison, Wisconsin _____

21
22
23
24 STATE OF WISCONSIN
25 DEPARTMENT OF NATURAL RESOURCES

26
27
28
29 By _____
30 George E. Meyer, Secretary

31
32 (SEAL)