

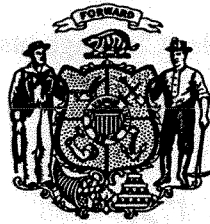
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A

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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 00-025

AN ORDER to create chapter NR 153, relating to the runoff management grant program.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

02-10-00 RECEIVED BY LEGISLATIVE COUNCIL.

03-09-00 REPORT SENT TO AGENCY.

RS:DLL:rv;jal

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)]

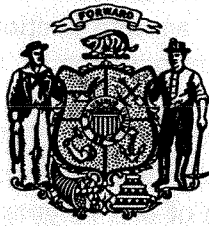
Comment Attached YES NO

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CLEARINGHOUSE RULE 00-025

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.]

1. Statutory Authority

a. The definition of "best management practice" in s. NR 153.002 (5) differs from s. 281.65 (2) (a), Stats., in that the statutory definition is limited to those practices identified in an areawide water quality management plan. The department does not have the authority to modify the statutory definition in this manner. The enumeration of an additional type of practice is a permissible expansion of the statutory definition, as long as it is based on practices identified in areawide water quality management plans.

b. The last sentence of s. NR 153.12 (2) (c) purports to establish duties of the Land and Water Conservation Board. While these duties are imposed on that board by statute, the Department of Natural Resources (DNR) does not have the authority to state this as a requirement of its rules. This sentence should be placed in a note or omitted.

2. Form, Style and Placement in Administrative Code

a. Sections NR 153.001 to 153.017 should constitute subch. I of ch. NR 153. The title of the subchapter could be "GENERAL PROVISIONS" and the remaining subchapters should be renumbered accordingly.

b. In s. NR 153.002 (27), a reference is made to the natural resources conservation service field office technical guide. The department should ensure that the requirements of s.

227.21, Stats., are met. Also, the word "rule" should be replaced by the word "section." (The entire rule should be reviewed for this change.)

c. The rule frequently makes incorrect use of the introduction format. [See s. 1.03 (8), Manual.] If the material that follows an introduction does not flow grammatically as a continuation of a sentence started in the introduction or, in limited circumstances, does not flow conceptually from an idea introduced in introduction, it should be placed in a separately numbered unit of the rule. For example, s. NR 153.004 (intro.) should be numbered s. NR 153.004 (1). As a corollary, each item that follows introductory language should be a grammatical (or conceptual) continuation of that language. For example, s. NR 153.007 (5) (f) does not follow grammatically from the introduction. It should be modified to read as follows: "In cases where the acquisition will prevent further degradation of water quality, the degree to which the acquisition is cost-effective, relative to the threat of further degradation to the site." In addition, when introducing a list of requirements or conditions, the introduction should indicate whether it is referring to *all* or *any* of the requirements or conditions that follow by concluding with a phrase such as "all the following" or "any of the following." For example, s. NR 153.004 (1) (intro.) should end with the phrase: ". . . a participating government unit shall do all of the following:". For another example, s. NR 153.13 (2) (intro.) should read: "An application shall include all of the following:".

d. In s. NR 153.003 (intro.), the phrase "unit of government" should be replaced by the defined term "governmental unit." (The entire rule should be reviewed for the consistent use of defined terms.)

e. In s. NR 153.004 (3) (a) and (c), the commas should be replaced by the word "or."

f. In s. NR 153.005 (3) (c), the phrase "shall apply" should be replaced by the word "applies."

g. Section NR 153.005 (5) should refer to the exception in sub. (4m).

h. Section NR 153.007 (3) (b) 3. refers to an appraisal that may be unacceptable "under department guidelines." These guidelines, if known, should be placed in rule form. [See also ss. NR 153.17, 153.33 (2) (d) and 153.37. Of course, technical standards may be incorporated by reference using the process described in s. 227.21, Stats.]

i. Section NR 153.010 (2) should be rewritten to read: "The governmental unit shall administer and successfully complete . . ."

j. In s. NR 153.013 (3) (a), the phrase "shall be" should be replaced by the word "are." In sub. (4), the word "may" should be replaced by the word "does."

k. In s. NR 153.016, the cross-reference should read "ss. 92.14 (12) and 281.65 (4) (o), Stats."

l. Section NR 153.017 is improperly drafted. First, the subsection titles are not in the correct format. Second, sub. (3) appears to consist of only a title and no text. Third, it makes

incorrect use of the introduction format, as described above. Fourth, and most important, the subsections are not what the introduction says they are. The introduction makes reference to the requirements identified in the subsections, but those subsections do not create requirements--sub. (3) does not even consist of a complete sentence.

m. In s. NR 153.38 (3) (b) 1. a., the second sentence should be rewritten without a slashed alternative.

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

a. This rule is very confusing. At least three pervasive problems obscure the intent of the rule and the roles of the various players in the programs that the rule creates: first, the rule is poorly organized; second, the terminology used is confusing and the definitions are inadequate; and third, the rule makes excessive use of the passive voice. The rule should be reorganized and much of it should be rewritten to address these problems.

(1) First, this report will address the problems of organization. The text of the rule fails to give a complete picture of the programs that it creates -- even the analysis does not completely describe the programs. It appears that, under the rule, DNR will award grants to local units of government to administer nonpoint source water pollution control programs. It further appears that these programs are to function by installing best management practices on specific properties to control or ameliorate existing nonpoint source pollution problems. It further appears that the local units of government that receive grants may implement best management practices by installing the practices themselves, contracting with third parties to install the practices and by awarding grants to third parties to install the practices. Thus, DNR's role includes administering grants to local units of government and exercising some level of oversight to all activities that occur under those grants; local units of government have three roles, as recipients of grants from the DNR, program administrators and providers of grants to landowners. While many of the pieces of this picture are contained in the rule, nowhere does the rule give the entire picture nor does the organization of the rule facilitate piecing the picture together.

The Administrative Rules Procedures Manual offers the following guidance on the organization of a rule:

(3) TEXT OF RULE. In drafting a chapter or section of administrative rules, proper organization of the text of the rule is important to aid the reader in understanding the pattern of regulation or required conduct set forth in the rules. Single-section chapters should be avoided. Combine similar material into a chapter with several sections, rather than arranging each section as a separate chapter. If it enhances clarity and convenience in locating provisions, a long or complex rule could be divided into

appropriate chapters. The recommended sequence of material in a rule chapter or rule section is as follows:

- (a) Scope or purpose of the chapter or section. (A scope or purpose statement is not necessary, but if it is included, it should be the first item.)
- (b) Definitions of words or terms used in the chapter or section.
- (c) Substantive provisions in their order of importance, time sequence or other logical arrangement.
- (d) Exceptions, exemptions or exclusions, if any, to the chapter or section.
- (e) Benefits, sanctions or results of compliance or noncompliance with the chapter or section.

[s. 1.02 (3), Manual.]

Chapter NR 153, as drafted, is in strong contrast to this guidance. It consists of a number of sections of apparently general applicability followed by two subchapters, each addressing a separate grant program. It appears that the department may be attempting to avoid duplication of lengthy rule provisions by combining provisions applicable to both subchapters in the preliminary provisions. This is a laudable goal, but it should never be pursued at the expense of clarity. The result in this case is that provisions are presented in a completely illogical order. Many of the provisions in the first half of the rule are difficult to understand because they are presented out of the context of the grant programs to which they apply. It might be possible to pursue the strategy of combining provisions applicable to both subchapters by placing them in a third subchapter that *follows* the two subchapters describing the individual grant programs. However, the safer approach would be to integrate the various provisions into each subchapter, as appropriate.

The rule appears to rely heavily on statements of purpose and definitions or descriptions of terms such as "runoff management grant agreement" and "cost-share agreements" to provide the general picture of the programs created by the rule. Clearly, however, this is inadequate, as the picture that this provides is incomplete. Greater detail is needed, for example, in provisions specifying what a local unit of government must do under a grant it receives from the DNR. Additional procedural provisions are needed, as well.

While the DNR has promulgated many rules for the administration of grant programs, any one of which could serve as a workable model for this rule, this rule does face certain special challenges. In particular, it needs to distinguish between the dual roles of local units of government as grant recipients and grant

administrators. In addition, it needs to clearly distinguish between the DNR's functions in administering grants that it makes to local units of government and in overseeing grants made by local units of government. However, these challenges are far from insurmountable. In designing a new organization, the drafter should work through the entire process, from the time the local unit of government first considers applying for a grant until the time that the best management practices are installed and all follow-up work has been completed. If the rule contains all the necessary requirements and describes the entire process in a sequence that is logical and easy to follow, the organization of the rule will be sufficient.

(2) With regard to terminology, the rule is inconsistent in which terms it chooses to define. For example, the term "cost-share agreements" is defined. However, other types of agreements, specifically "runoff management grant agreement" and "local assistance grant agreement," are not defined; instead, they are described in general terms in the text of the rule. Such descriptions are not an adequate substitute for definitions. Furthermore, the general description of the term "cost-share agreements" provided in s. NR 153.005 (1) is different from the definition of that term.

In addition, other terms referring to cost-sharing, such as "cost-share grantor," "cost-share grantee" and "cost-share recipient," as well as the term "cost-share," itself, are not defined. The meaning of some of these terms would be clearer if the organization of the rule were clearer, but that will not avoid the need for clear definitions. For example, what is the difference between a "cost-share grantee" and a "cost-share recipient"? Further confusion is added by the fact that "cost-share" is sometimes used as an adjective and other times used as a verb. In another example, the terms "grant period" and "cost-share agreements period" are both used in the rule; the first of these terms is defined and the second is not.

Section NR 153.013 (2) is peculiarly confusing. It suggests that there is a difference between "termination" and "annulment" of a grant, but does not indicate what the difference is. Paragraph (c) deals with *how* a grant may be terminated and par. (d) deals with *when* a grant may be annulled. This suggests that they are talking about the same thing, in which case a single term should be chosen and used consistently. If this is not the intent, then much more explanation is needed. Also, it appears that some of the provisions of par. (b) should be combined with the provisions of par. (d), which should be placed before par. (c).

Numerous other terms are inadequately defined or inconsistently applied. The following list is illustrative, but not exhaustive:

- The definition of "operation and maintenance period" identifies the beginning point of this time period but not the endpoint.
- Section NR 153.004 (3) uses the undefined term "project area."

- Section NR 153.004 (4) uses the term “maintenance periods,” which is not defined, although the term “operation and maintenance period” is defined.
- Section NR 153.005 (4) (h) refers simply to “a nondiscrimination clause”; this term should be replaced by a full description of what is intended. (Since it is used only once, a definition would be inappropriate.)
- Section NR 153.005 (5) uses the undefined term “runoff management grant agreement grantor,” a term which is never again used in the rule.
- The undefined term “least cost practice” is used in s. NR 153.011 (1) (h) without any context or cross-references to explain its meaning; the two other uses of the term in the rule are with sufficient context that its meaning is clearer.
- Section NR 153.017 (intro.) uses the undefined term “urban recommendations.”

(3) As was noted above, the rule makes excessive use of the passive voice. This grammatical construction obscures, rather than clarifies relations. Instead, to the extent possible, the rule should be written in short, clearer declarative sentences of a form such as: “X shall do Y.” Too often, requirements are stated in the form of “Y shall be done by X” or, in the worst case, “Y shall be done.” Examples:

- See s. NR 153.005 (6) (b), which states that: “[t]he operation and maintenance period for both cost-shared and not cost-shared best management practices shall be for a minimum of 10 years.” Rewriting this sentence in the active voice would not only identify who must do something, but what must be done: “X (the local unit of government? the landowner or operator?) shall do Y (maintain a best management practice installed under a cost-share agreement for a minimum of 10 years beginning upon completion of installation of the best management practice).” Note that this also obviates the need for the inadequately defined term “operation and maintenance period.”
- What does it mean, in s. NR 153.007 (3) (b) 1., that “[a]ppraisals are subject to department review and approval”? Does this mean that the governmental unit *shall* submit an appraisal to the department and the department *shall* review the appraisal and the governmental unit *may not* act upon the appraisal until it has received approval from the department? Or does it mean that the department may, on a case-by-case basis, request that certain appraisals, about which it is concerned, be submitted to it for review and approval?
- Section NR 153.010 (4) (b) is vague. Instead, this provision should state that the department shall approve the use of force account work if the governmental unit demonstrates to the department’s satisfaction that the governmental unit has the necessary competence to accomplish the work and that the work can be accomplished more economically by the use of the force account method. If this is not what the department intends, then this provision needs further clarification.

- Section NR 153.014 (2) (a) to (e) should be written in the active voice. Interestingly, the last paragraph of that subsection *is* written in the active voice.
- b. In s. NR 153.002 (4), it appears that the word “a” should be inserted after the word “means.”
- c. Section NR 153.002 (11) contains references to ch. 66, Stats. If Assembly Bill 710 is enacted, the references to ch. 66, Stats., throughout the rule will require amendment.
- d. In s. NR 153.002 (23), each occurrence of the word “project” should be replaced by the word “project’s.”
- e. In s. NR 153.005 (6) (a), the word “on” should be replaced by the word “in.”
- f. Section NR 153.005 (9) provides that if a change of ownership occurs during a cost-share agreement, a new landowner must fulfill all conditions of the cost-share agreement. How will this be enforced?
- g. In s. NR 153.005 (11) (b), the phrase “on the agreement” should be replaced by the phrase “in the agreement.”
- h. In s. NR 153.007 (3) (g), what is meant by “the interest of the state of Wisconsin”? This provision should more precisely indicate what should be recorded with the deed to protect the state’s interest in the property.
- i. In s. NR 153.011 (1) (e) 3. c., does the governmental unit official conduct the verification or the installation? Presumably, this should be rewritten as follows: “Verification, by the governmental unit official, of proper installation.”
- j. In s. NR 153.013 (1) (a), is the suspension of state liability prospective only? In par. (b) (3), the word “sent” should be replaced by the word “send.”
- k. The discussion of the key, but undefined term “target area” is buried deep within the discussion of the application process, in s. NR 153.13. The only explanation provided of how target areas are identified is found in s. NR 153.13 (2) (b) 12. a. to e. Given the importance of this concept, it would seem appropriate to devote an entire section to this explanation. Section NR 153.13 would then refer simply to certification that the project will implement nonpoint source pollution control in a target area identified under that new section.
- l. In s. NR 153.15 (4) (b), and elsewhere, what does “activities covered by the WPDES permit program” mean? Does this refer to compliance with discharge limits?
- m. Section NR 153.16 (2) (e) and (f) are very unclear. These paragraphs seem to say that the least cost practice must be used unless the department decides otherwise. Of what benefit are these provisions? [See also s. NR 153.36 (2) (e) and (f).] In par. (g), it appears that the word “up” should be deleted. In sub. (3) (intro.), the notation “, Stats.” should conclude the statutory cross-reference.

n. In s. NR 153.16 (4) (b) 1. and 2., are "the landowner or operator" and "the grant recipient" different individuals?

o. Section NR 153.34 (1) (c) provides in part that DNR may establish a minimum of points that must be earned in any given category in order to receive funding. The minimum point totals should be included in the text of the rule.

p. Section NR 153.35 (4) (g) should be rewritten to read: "Areas surrounded by areas or land uses described in pars. (c) to (f)."

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. WT-10-00

Legislative Council Rules Clearinghouse Number 00-025

Subject of Rules Urban nonpoint source and
storm water management grant program

Date of Transmittal to Presiding Officers January 30, 2002

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LS/5, 101 South Webster

Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

REPORT TO LEGISLATURE

NR 153 and 155, Wis. Adm. Code
Urban nonpoint source and storm water management grant program

Board Order No. WT-10-00
Clearinghouse Rule No. 00-025

Statement of Need

The department is proposing a series of inter-related administrative rules in response to 1997 Wis. Act 27 and 1999 Wis. Act 9 requiring changes to the department's nonpoint source water pollution abatement program. The Environmental Protection Agency identified urban and rural sources of polluted runoff to be a leading cause of surface and groundwater quality problems in Wisconsin. 1997 Wis. Act 27 required the department to:

1. Develop non-agricultural nonpoint source performance standards designed to meet water quality standards.
2. In consultation with the Department of Agriculture, Trade and Consumer Protection (DATCP), develop agricultural nonpoint source performance standards and prohibitions designed to meet water quality standards, including, at a minimum, the four manure management prohibitions specified in the statutes.
3. Specify a process for development and dissemination of technical standards to implement the non-agricultural performance standards.
4. Administer cost-sharing funds provided for compliance.
5. Specify criteria to determine availability of cost-sharing for compliance by an agricultural facility.
6. Jointly, with DATCP, specify procedures for review and approval of proposed local livestock regulations that exceed the performance standards and prohibitions.

1999 Wis. Act 9 provided funding and other provisions that facilitate the redesign of the nonpoint source programs. The legislation:

1. Created a new urban nonpoint source grant program.
2. Provided funding for targeted, competitive nonpoint source projects.
3. Provided base level funding to counties for staff and cost-sharing.
4. Transferred funding to DATCP for local assistance grants to priority watershed and priority lake projects.
5. Created a unified grant submission and interagency clearinghouse between the DNR and DATCP.
6. Further clarified the content and role of county Land and Water Resource Management Plans.

Chapter NR 153 contains policy and procedures for administering the targeted runoff management grant program authorized under s. 281.65(4c), Stats. The department may make grants under this program to governmental units and state agencies, including itself, for the purpose of reducing both agricultural and urban nonpoint source pollution. Grants to a governmental unit may be used to cost share the installation of best management practices as well as to support a variety of local administrative and planning functions. A governmental unit may use grant funding to control pollution sources on land it owns or operates, but most frequently the grant funds will be forwarded to private landowners and operators in accordance with a cost-share agreement. If a state agency's

project is located within a priority watershed or priority lake area, the department can award a targeted runoff management grant directly to the agency. If the agency's project is located outside of a priority watershed or priority lake area, the agency cannot apply directly to the department for a grant, but can receive cost-share funds through a local governmental unit that would submit an application on its behalf.

As required by statute, the department will select projects for funding by using the competitive scoring system set forth in the rule. The DNR will score and select projects annually with advice from the Wisconsin Land and Water Conservation Board. The scoring system considers fiscal accountability, cost effectiveness, water quality, extent of pollutant control, project evaluation and monitoring, likelihood of success and regulatory storm water management requirements for the City of Racine. Projects can be up to 3 years in duration unless the department grants an extension, limited to one year. Projects will be consistent with county land and water resources management plans prepared under ch. ATCP 50 and department priorities established on a geographic basis. Projects are not limited to implementation of state nonpoint source performance standards contained in ch. NR 151, but it is expected that many projects will focus on compliance with these standards. Projects may be located anywhere in the state, including areas within and outside of existing priority watershed and priority lake projects.

The department may not use funding from this program to make grants for managing point source discharges of storm water regulated under ch. 283, Stats. This includes point source discharges of storm water regulated under ch. NR 216. A statutory exception is made for the City of Racine, which can apply for grants under either ch. NR 153 or 155 to meet regulatory requirements imposed under ch. NR 216. Other local governments that seek funding to conduct activities required under ch. NR 216 may apply for funding under proposed ch. NR 155.

The department currently administers priority watershed and priority lake projects under ch. NR 120. These projects will be gradually phased out and the funding sources re-directed to projects selected under ch. NR 153. After this transition occurs, ch. NR 153 will be the primary vehicle by which the department focuses limited financial and technical resources into areas where control of urban and rural nonpoint pollution sources is a high priority. Projects conducted under ch. NR 153 will be shorter in duration, smaller in cost and scope and distributed more widely across the state than priority watershed or priority lake projects.

Chapter NR 155 contains policy and procedures for administering the urban nonpoint source and storm water management grant program authorized under s. 281.66, Stats. Provisions of this rule were previously included in proposed ch. NR 153. The department may make grants under this program to governmental units for practices to control both point and nonpoint sources of storm water runoff from existing urban areas, and to fund storm water management plans for developing urban areas and areas of urban redevelopment. Urban areas include commercial land use, industrial land use (excluding non-municipal industrial areas regulated under ch. NR 216) or areas with a population density of at least 1,000 persons per square mile. In order to receive a grant, the governmental unit with jurisdiction over the project area must assure adequate implementation of a comprehensive storm water management program.

The goal of the 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.

Modifications as a Result of Public Hearing

Changes to NR 153 affecting cost share and grant eligibility, application process and grant administration have been made to the rule based on public comments. Cost sharing and grant eligibility changes include a provision that the department and DATCP can jointly fund the state share of a management practice provided that full funding is not allocated for the practice in the joint allocation plan. The cost of design work is eligible for reimbursement even if initiated prior to signing a runoff management grant, as long as the best management practice is structural and as long as the practice is actually installed. Design work may not be covered by a local assistance grant, however. It may only be covered if included as part of the construction grants. Interim practices may be used to address urban as well as rural pollution sources. Local market wage will be used as a cost control criterion for in-kind services. The maximum cost-share rate for easements is set at 70%. Applicability of easements is expanded to include urban best management practices.

Changes to the application process include making the grant application due April 15, adding provisions to assure that navigable waters, wetlands, cultural resources, endangered resources and threatened resources are adequately protected and assigning an appropriate multiplier to projects that are not clearly urban or rural in nature. Grants administration changes include the department providing DATCP with grants information for incorporation into the joint allocation plan, DNR review of cost-share agreements if any best management practice exceeds \$50,000 in cost or the entire agreement exceeds \$100,000, an open records law provisions for local grants and a section on project evaluation.

Changes to NR 155 affecting cost share and grant eligibility, application process and grant administration have been made to the rule based on public comment. Cost sharing and grant eligibility changes include a provision making the cost of design work eligible for reimbursement even if initiated prior to signing a runoff management grant for structural best management practices that are actually installed. Interim practices may be used to address urban as well as rural pollution sources. Local market wage will be used as a cost control criterion for in-kind services. The maximum cost-share rate for easements is set at 50%. Applicability of easements is expanded to include urban best management practices. The grant application and grant writing processes include provisions to assure that navigable waters, wetlands, cultural resources, endangered resources and threatened resources are adequately protected. The same grant administration changes as outlined in the summary of ch. NR 153 apply to ch. NR 155.

The Department's response to comments on the nonpoint rules in general and specific comments on chs. NR 153 and 155 are enclosed.

Appearances at the Public Hearing and Their Position

The Department held a series of 22 hearings across the state in March, 2000. In response to comments received at those hearings, the rules were substantially revised. An additional 12 hearings were held across the state in March, 2001. Approximately 650 people attended the second set of hearings. A list of all appearances at all 34 hearings is included in the rule jacket.

Response to Legislative Council Rules Clearinghouse Report

The comments included in the Clearinghouse Report have either been incorporated into the proposed rule or are no longer applicable because subsequent revisions removed or significantly altered the rule. The specific recommendations that were not accepted include:

5.f. – Creating an obligation with the current landowner via a signed cost-share agreement, and then recording the agreement with the register of deeds will enforce this. Provisions requiring the cost-share agreement to be signed and recorded are included in the rule.

5.h. – This section of the administrative code deals solely with property acquisitions. The recording requirement in (3)(g) specifically calls for the deed covering the property acquisition to be recorded. Any property interest of the state of Wisconsin will be reflected in the recorded deed.

5.j. – Yes, the liability is prospective only according to the process set forth in the rule. The word “sent” will be retained because it would be grammatically incorrect to use the word “send”.

5.o. – Detailed point assignments have not been included in any part of the scoring system. Consequently, it would not make sense to include point values for this portion of the scoring process.

Final Regulatory Flexibility Analysis

The proposed revisions to ch. NR 153 and 155 will not have a significant economic impact on a substantial number of small businesses. A copy of the complete Final Regulatory Flexibility Analysis on the entire series of administrative rules is included in the rule jacket.

Comments and Responses on Proposed Nonpoint Source Redesign Rules

Most comments from all interests, written and oral, acknowledged that DNR listened to them, made revisions based on their comments and that this version was much improved. Several comments regarding editorial corrections are not cited, but all changes were made. A list of acronyms used in the comments is attached.

A General Comments on All Rules or More Than One Rule

A1 Comment: (Clean Water Coalition, TU, WAL, Grey Panthers, 4 individuals) We support strong/strongest/stricter rules for the control of nonpoint source pollution.

A2 Comment: (Clean Water Coalition) We would vigorously oppose any attempts to weaken the standards in the current draft.

A3 Comment: Several environmental groups, a friends group, many individuals, and a TU petition signed by 29 people support vegetated buffers (some specified 20 to 35 feet) along all navigable waterways, additional conservation farming 30 feet beyond the buffer, the four manure management prohibitions, infiltration standards for storm water runoff, buffer vegetation for development projects of 50-100 feet (some added new transportation construction), 80% reduction in construction site erosion, increased funding (some support additional funding for county LCDs), a requirement to cost-share agricultural improvements on impaired waterways, and streamlining the process to target impaired waters. They oppose delays in implementing nutrient management plans and exempting WisDOT from the rules. They stated that polluted runoff is costing the state billions of dollars. There is no reason why some people should be entitled to degrade everyone's water because of profit or ignorance of the consequences of their pollution. It is quick and easy to pollute, it is difficult or impossible to clean up.

(**Note:** see Background Memo for similar comments received from postcards, letters and petition).

Response: We appreciate these comments of support. Please see response to comment E149 regarding water quality corridors (vegetated buffers) and the response to the first comment under NR 151.004 regarding the process to target impaired waters.

A4 Comment: (individual) As a homeowner along a small river, I'm very much encouraged by these rules; they are positive. But they could also be strengthened in the incentives part.

Response: The cost-share rates are the maximum allowable under the law. The economic hardship provision (which allows for a higher cost-share rate) was modified to be more responsive to economic situations. Federal and county incentive programs are applicable for many control measures.

A5 Comment: (CWAC) These rules are long overdue. Ten years ago, a legislative study committee of agricultural and other interests worked hard for a year and reached consensus on ways to address these same problems. We have serious water quality problems from extreme levels of over-enrichment from too much sediment and fertilizer. We've spent billions on sewage treatment and industries. We need to address runoff sources.

A6 Comment: (individual) These are tough issues and there is probably some refining to do, but if we wait too long, it's only going to get worse.

A7 Comment: (individual) The degradation of Wisconsin's lakes from polluted runoff is getting worse and will not go away by itself. Sacrifices and commitments must be made if we wish to restore the lakes to what they were 40 years ago. Runoff must be controlled at whatever cost or inconvenience it may cause. Clean lakes are important to tourism and the Wisconsin economy.

A8 Comment: (individual) We need to act now. Wisconsin taking the lead shows that we're progressive, and we should keep the progressive tradition going in Wisconsin.

A9 Comment: (individual) As a former Milwaukeean who suffered through the cryptosporidium outbreak, I urge the DNR to go forward.

Response: We feel we are moving forward with the rules while at the same time being deliberative and inclusive about the decisions we make, recognizing the many agencies, local governments and other stakeholders that will be affected.

A10 Comment: (3 farmers) A lot of young DNR and other staff who could interpret and implement the law differently are coming onto farms. Farmers don't plan year to year any more—they plan 5 years down the road. If they don't know how the rules are going to be implemented or who's going to be applying them, it will be hard to plan their operations. The law should be specific and well defined.

Response: Grant funds can be used for a period of up to four years. LCD staff can use this time to help plan changes according to the farmer's schedule.

A11 Comment (farmer) Many farms, ag-related businesses and small towns will be affected by these proposed rules with a loss of tax revenue. Is this your final goal?

Response: The detailed fiscal analysis that is part of this rules package did not find a significant impact from potential loss of tax revenue. The department believes there may be increased revenue generated in some instances and does not agree that there are situations where tax revenues are expected to decline as a result of these rules.

A12 Comment: (Milw. Co.) The proposed rules language does not recognize the unique fact that Milwaukee County is the only one of 72 counties in Wisconsin that is wholly incorporated. This engenders double jeopardy for our citizens and causes undo grief between the county and its cities and villages. There is no need for both the county and the cities and villages to pass ordinances, do enforcement and charge fees to accomplish the objective of cleaner storm water runoff. This is exactly the type of bureaucratic duplication that the Kettl Commission was so critical of.

Response: Neither NR 151 nor changes to NR 216 would require duplicate regulation of a site by the county and its cities and villages. This is evident in looking at the various requirements. Performance standards for developed urban areas (151.13) must be met by municipalities, but management actions taken by one or more jurisdictions could be combined to meet the standard for any specific area. Performance standards for construction runoff (NR 151.11), post-construction runoff (NR 151.12) and non-municipal landscaped areas (NR 151.14) must be met by landowners and operators. A municipality may choose to develop a local ordinance, but it is not required under NR 151. Duplication of effort under local ordinances will only occur if local governments do not coordinate their local programs. Ordinances may be required under chapter NR 216 to establish an adequate local management program, but this is not a new code provision; it has been in NR 216 since its inception. NR 216 does not require duplicative regulations either and nothing in NR 151 requires counties to enact ordinances to administer the performance standards if all municipalities do so.

A13 Comment: (WLWCA/WALCE, several counties) We are opposed to the package of rules. While we generally support the nonpoint performance standards and many other rule provisions, we believe the rule package as a whole falls short of the original intent of the program redesign in several critical areas. Without an effective implementation strategy, we believe future nonpoint program efforts are subject to many of the same problems of the past, making the past four years of program redesign efforts of questionable value.

A14 Comment: (LCD) We support the concept of performance standards. Getting the rules into a format that is workable and understandable for the counties and landowners is critical.

Response: These comments have been addressed in the responses to detailed comments on NR 151.

A15 Comment: (LCD) The rules often are too prescriptive and either have too much detail or lack detail that should be included. For instance, performance standards should state the desired end result not the means to achieve it. Local administrators and landowners are best suited to prescribe methods of obtaining the results.

Response: Most standards are expressed as desired end results, but this was not practical in every instance. The result is a mix. Also note that the department convened several work groups to assist in revising the rules, and the set of performance standards is a result of that process.

A16 Comment: (lawn care co., 6 individuals) Wisconsin doesn't need to be in the forefront to implement federal clean water standards. Let's allow other states to take the lead and learn from their mistakes.

Also, consider that the Bush administration is considering either a repeal of the Clean Water Act or major modifications to it. It makes no sense to spend hundreds of millions of dollars when there exists a possibility that such rules may not even be necessary.

Response: This code is in response to a state mandate, not the federal Clean Water Act. Even if the CWA is modified, it will not change the outcome of the rules.

A17 Comment: (individual) The proposed rules should have an amendment giving DNR authority to regulate all dams that are previously unregulated, all previous exemptions notwithstanding. Some dams, such as cranberry marsh dams, are currently unregulated due to the cranberry law.

Response: These proposed rules do not have authority to regulate dams. Ch. 30, Stats., regulates dams.

A18 Comment: (RPC) The emphasis of the proposed rules represents a fundamental departure from the past nonpoint source pollution abatement programs that were water quality planning-based, geographically directed at individual watersheds, and designed to achieve specific in-stream water quality conditions for individual stream reaches. The proposed site-based approach will require practices to be carried out that are not directly based on demonstrated water quality improvement needs and thus may be either inadequate to achieve water quality objectives or more stringent than is needed. Without a demonstrated relationship between the site-based performance standard implementation and the water quality in any given receiving watercourse, it will be difficult to justify the significant costs that have been estimated. The rules and the model storm water management ordinance should be revised to allow for the application of storm water management system plans that call for control measures needed to meet the water use objectives of receiving streams, independent of the arbitrary, uniform controls as currently prescribed in draft NR 151.

Response: The rules do not preclude a county, city, etc. from developing a stormwater management plan to address the watershed as a whole. The performance standards set statewide minimums. If the uniform measures are in place and the resource is not achieving water quality standards, the code provides for the development of targeted performance standards. If a governmental entity believes a greater effort is needed to control urban development, it can develop an ordinance with stricter standards than proposed in these rules and enforce them through its own authority. Uniform statewide standards will level the playing field, identify state agency expectations and go a long way toward achieving water quality standards. It is not likely that the performance standards are more stringent than needed and if that should be shown to be true for a particular site, the developer can provide justification for meeting the standard to the maximum extent practicable.

A19 Comment: (chemical co.) The issue of soluble phosphorus and soluble phosphorus in runoff is not mentioned (NR 243 indicates or suggests total phosphorus). Technology is in use to bind the soluble bioavailable phosphorus into a form not readily available to support eutrophication as recognized in NR 154.04(18)(b) and NR 120.14(17). These products, especially alum, are used in manure management for two express purposes: reduction of the environmental stressors, atmospheric ammonia and soluble phosphorus, and grade improvement/agronomic benefit.

Response: DNR does not generally support the use of amendments carried into surface waters with runoff rather than captured and removed as part of a treatment system. These amendments merely mask the presence of a pollutant and do not address its addition water resources. Department efforts are generally designed to address total phosphorus loading to surface waters given that even insoluble phosphorus present in a surface water may become bioavailable under certain conditions (e.g., changes in pH, byproduct of decay). Phosphorus binding agents may be approved or supported as a means of addressing phosphorus levels already present in a surface water. Approval of such amendments would have to be considered as part of the technical standard for nutrient management or runoff control systems.

A20 Comment: (WLWCA/WALCE, several counties) "Smart Growth" laws are not mentioned anywhere in the rules package, even though nonpoint programs have long recognized the link between land use and water quality. Incentives should be incorporated into urban grants to coordinate watershed protection planning with other local land use planning efforts, and vice versa.

Response: Although the law is not specifically mentioned, there are provisions in the grant scoring system to recognize and award additional points for "consistency with resource management plans." This includes many plans, including those developed to comply with the "Smart Growth" legislation. The exact influence that this will have on point scores will be determined when the detailed scoring system is developed in accordance with the rule.

A21 Comment: (MEG) We continue to support the state's initiative to develop standards to control nonpoint sources of pollution. It is neither cost-effective nor fair to expect point sources to continually upgrade their facilities while nonpoint sources go unaddressed.

Response: We are glad you agree.

A22 Comment: (city) These proposed rules are not helping communities meet the objective of the Clean Water Act by tying them down in bureaucratic mandates. Let the local communities decide the level of clean water its residents want, the costs, and the best way to implement the requirements with general guidelines from the state. Communities are very aware of the importance of storm water management as can be evidenced by the multitude of storm water BMPs going in all over the state.

Response: It is true that communities are more aware of the importance of stormwater management than they once were, but for many, the emphasis is still on flood control. This nonpoint redesign effort is a state mandate to identify performance standards to achieve state water quality standards and is not a federal mandate of the Clean Water Act. If the rules are to achieve water quality standards the decision must be based on the needs of the water resource and not on a local perception of what they are willing to tolerate. Local communities can still be more stringent than these minimums if they believe it is warranted. The performance standards will be implemented through existing programs (NR 216) that have been modified to incorporate the standards.

A23 Comment: (WSPE) Tell the people of Wisconsin and the professionals what you want, then let the professionals design the improvements to meet the best local practice. Specifically, 80% removal of solids is different for mud than it is for drinking water. Government and consulting engineers have dealt with this issue on many specific project studies. Set a quantity number such as you have for wastewater (suspended solids, 20 ppm; BOD, 20 ppm) which will be something everyone can monitor and understand.

Response: In developing the rules, DNR used advisory committees and workgroups to identify the issues and concerns and worked with those affected by the rules to fashion reasonable rule language. The use of a percent reduction does tell the people of the state what we want and leaves it up to the professionals to design the practices to meet it. We chose not to use any one number, because it would not be appropriate in every part of the state. The percent figure, while not perfect, allows flexibility and modification if site conditions warrant it. The standard has to be met to the maximum extent practicable for every site. Unlike at wastewater treatment plants, we will not be asking that a community monitor the discharge from an outfall or a construction site.

A24 Comment: (several LCDs) The rule disregards the intent of the Legislature to redesign the nonpoint program by recreating a virtually identical priority watershed program.

Response: The legislature directed the department to develop a competitive grant program that selects the highest priority (based on score) projects. These projects are smaller in scale and shorter in duration than priority watershed projects. Statewide base grants to counties for maintenance-level resource conservation work is funded by DATCP under ATCP 50.

A25 Comment: (city public works dept.) The proposed redesign of the nonpoint source program will place an additional burden on the state's already financially challenged communities. While nonpoint source runoff management in theory appears attainable, we question whether the actual implementation of the revised requirements is practical. The various rules appear to set the stage for a potential windfall of projects for the consulting industry. Simply reading and understanding what the requirements are from the hundreds of pages involved is a project in itself. Care must be taken in developing programs, rules,

and regulations that result in creation of additional governmental bureaucracy with limited or questionable environmental improvement.

Response: Development, if left unchecked, will continue to degrade the water resources of the state. This has been clearly shown from monitoring around the state. Construction site erosion is recognized at the state and federal level as a serious problem that causes tons of sediment and its associated pollutants to enter lakes and streams. The cost to the municipalities will be the implementation of public education and pollution prevention efforts in the existing developed areas, and development of ordinances to control construction sites and new development. The cost without these controls will be a reduction in tourism and quality of life, not to mention dredging and aquatic weed control costs and nuisance suits between communities and surrounding farmland. The specific rule that sets the performance standards for municipalities only amounts to 13 pages. The remaining pages in the rule package include programs, guidance, and funding opportunities to assist municipalities in this effort. There will be a learning curve associated with a new body of rules, but experience will make this package easier to follow.

A26 Comment: (wastewater utility) The city recently built a new wastewater treatment plant that cost \$22 million, with an annual operation and maintenance budget of \$3.2 million. The plant is the primary flow source to Mill Creek, a man-made channel to the Wisconsin River and a 303(d) listed impaired water (low oxygen conditions). Initial findings of a DNR modeling study indicate the main causes of the low dissolved oxygen levels are the natural characteristics of the channel and nonpoint source discharges. We would not want to be singled out as a point source discharger affecting the water quality of Mill Creek without consideration of the nonpoint sources.

Response: These rules provide regulation of nonpoint sources and together with your control of the point source discharges, will help to clean up Mill Creek.

A27 Comment: (golf course supervisor) The words "voluntary" and "exempt" are being used when it comes to WisDOT and cities—that's just not right. These rules need to apply to every branch.

Response: We agree that the WisDOT, other state agencies and municipalities need to meet the same performance standards that private owners are required to meet. Subchapter IV or NR 151 is specifically developed to address transportation facilities such as WisDOT and other locally owned or operated roads.

A28 Comment: (farmer) Something must be done with the farm economy in order to get these things implemented. You would certainly see a different attitude with a different farm economy.

Response: We are sensitive to the status of the farm economy and have included generous cost-share provisions in the rules.

A29 Comment: (farmer) If these rules go into effect as soon as they are approved, some people will immediately have to comply, and there will be a rush to force others by excluding cost sharing or forcing people into permits. There will be lawsuits to force compliance as soon as someone is identified as a polluter.

Response: These statements are not supported by the rule or the state statutes. Existing sources must be offered cost sharing before compliance can be required, and each grant can be implemented over a period that lasts up to four years. The only sources that must comply immediately are new sources, or those essentially created after the effective date of the rule.

A30 Comment: (OAC member) The OAC did not get to finish their task. A number of members felt we should have met in 2000 after the first set of public hearings prior to submission of these rules to the NRB. That did not happen.

Response: The department felt that the OAC had reached an impasse on many issues and that to go out to public hearing was the best way to encourage stakeholders to get to their "bottom lines". After the first round of hearings, we did establish work groups on specific issues that included many OAC members.

A31 Comment: (OAC member). The rules are very complex. This is the reason we asked for a matrix to simplify things.

Response: The department chose to develop fact sheets on the rules as an alternative to a matrix, which we felt was too limiting in its format for the amount of information that was necessary to be presented.

A32 Comment: (WAL) We should preserve habitat for all aquatic life, not just fish habitat.

Response: The intent of these rules is to achieve water quality standards, which includes meeting beneficial uses and their supporting water quality criteria. The department agrees that beneficial uses are not limited to healthy fish communities, but to healthy aquatic life communities, including fish. The performance standards and other rules are designed to protect all aquatic life.

A33 Comment: (farmer) I've seen nothing in the rules on cut-off dates for variances -- I think that is very important.

Response: A provision has been added to the rule that requires the department to make a determination within 60 days.

A34 Comment: (co. sanitary dist.) The Walworth LCD tested wells in 1998 and found 24% had unsafe bacteria results, with 10% having unsafe nitrate levels. When a home goes up for sale, the septic system needs to be updated or replaced because the area has unsuitable soil for conventional septic systems. There are also large amounts of farm runoff in this area contributing to bacteria problems. There are citizen complaints about sewage running into ditches. We have approached DNR and the county, but nothing has been done. If these situations remain, it's only matter of time before someone becomes seriously ill from bacteria. It is imperative action be given to these areas of potential health threats.

Response: We agree with your concerns, however, these rules do not have authority to regulate septic systems.

A35 Comment: (farmer) A lot of the soil maps are extremely inaccurate. According to the maps, there are 1.25 miles of streams on my property that are supposed to be impassible to farm equipment, but I make hay on just about all of that area. I have several miles of intermittent streams that the map shows are on top of the hill. There's no water up there. The county conservationist says if the soil maps are inaccurate, we have topographical maps. The topographical maps show streams coming right up to my buildings when in actuality, the stream is more than a 1/3 of a mile down the valley.

Response: This comment does not apply to the rule package, it is a local implementation issue.

A36 Comment: (individual) It is hypocritical to closely regulate septic systems and business while allowing thousands of tons of animal waste to be spread on fields to pollute both air and water. I also question allowing cities to dump truckloads of snow, also containing salt, sand, gravel and whatever else was on the street into rivers.

Response: There are many sources of pollution in a watershed and this comment recognizes several of them. These rules are intended to control the nonpoint sources from both agricultural and urban settings. All sources need to be controlled if a stream or lake is to improve.

A37 Comment: (farmer) Keep standards uniform statewide. Develop some kind of appeals for non-uniform implementation. Some areas may be stricter than others -- owners should have recourse.

A38 Comment: (individual) We need standard statewide rules. There should be no county options and no voluntary compliance.

A39 Comment: (farmer) How can you make these rules uniform for everyone when each farm is different with different situations?

A40 Comment: (WI Cattleman's Assn) These rules need to be more flexible to deal with the uncertainty of our income due to weather, economy and other factors outside our control. The average size herd for the Wisconsin cattleman is 19 cows (1997 census). We are at the bottom of the cattle cycle as far as income goes. For cattle feeders, the profits from cattle finishing are continuing to narrow: the 29-year average profit/head is \$19.97, the 15-year average profit/head is \$13.14 and the 10-year average profit/head is \$5.56. Most of us do not have the financial means to hire legal or technical expertise to help us implement the rules.

Response: We believe we have achieved a balance between uniformity and flexibility in the rules. The performance standards set statewide minimums but the means to achieve them are flexible and recognize the variation in farm crops, crop management, farm site conditions, and water resource conditions. In cases where the commonly used standards are not adequate to meet the water quality goals in an economically feasible manner, there is a variance procedure that the farmer may utilize.

A41 Comment: (farmer) One of the weaknesses of the priority watershed program was that it didn't recognize the individuality of farms and the decision-making process.

Response: Under the proposed rules the land conservation department will be working with each farmer to determine how the farmer can best comply with the performance standards.

A42 Comment: Several farmers commented on the contributions of wildlife to nonpoint source pollution. One farmer stated that higher rates of nitrogen and phosphorus will be on farmland due to wildlife. Another asked, if you're going after us about all the manure from our cattle, what about your geese in Horicon Marsh – how many millions pounds per year is going into that water? A third stated that populations of wildlife, such as ducks and geese, are out of control. It's not just a matter of them passing through---they are living year round in the cities. Their mess doesn't go away; it goes into stormwater, and unless it's properly managed, it's pollution. Another stated that farmers are being asked to follow rules the state and others do not. In the Killsnake Wildlife Area with its 4,000 acres of township, it seems like the governments have exempted themselves from the manure problems that farmers have to deal with. There are no manure rules or requirements concerning geese and other wildlife. Under NR 243, anyone that has animal units in excess of 1,000 for more than 45 days is required to have a permit for discharge. If you look under animal units, you see ducks and turkeys, but there are no geese. Yet the area sees 300,000-400,000 geese.

Response: DNR conducted a detailed study of phosphorus loading of geese in Horicon Marsh, as compared to total phosphorus load. Horicon has the greatest concentration of waterfowl in the state. We calculated that the geese population contributes approximately 8% of the total phosphorus load in the marsh. We need to do further studies to look at this issue, but from that study of the greatest impact, we still have 92% without dealing with wildlife. This is a much greater phosphorus contribution than deer.

A43 Comment: (individual) Dane County spends about \$300,000 a year mowing our lakes, with the biggest problem being polluted runoff. Virtually all the pollution in Lake Mendota comes from polluted runoff. A little more than 20% of the sediment and phosphorus runoff comes from 1% of the land — land that's under development. Wisconsin spent about \$120 million on the priority watershed program, and the Legislative Audit Bureau said it didn't work because we haven't had everyone in the program, and it hasn't been uniform. Unsound practices upstream can undo all the conservation practices downstream. This effort is making the playing field even for everyone. If we would have spent that \$120 million on buffer strips, we could have bought about 120,000 acres that would have protected 10,000 stream miles with 30-foot buffers.

Response: The performance standards will ensure an adequate level of conservation for everyone.

A44 Comment: (2 farmers) The program redesign is very complicated. It would be nice to simplify things so regular people can understand what is in the proposal.

A45 Comment: (farmer) These rules are very complex and refer to other rules. You need to find a simple way to administer the rules so everyone can understand what their requirements are.

A46 Comment: (several counties) The current rules are laced with inconsistencies and have language that cannot be understood so they are useful to counties and landowners.

Response: Administrative rules are meant to handle legal and implementation issues. Inconsistencies have been addressed. We are planning information and education programs that will help citizens understand the new rules.

A47 Comment: (LCC) The rules cover too many items and are difficult for LCD staff to understand. Even if there was adequate funding, there is too much being proposed at one time.

Response: The department believes that a comprehensive set of rules is preferable to a piece-meal approach. Although there is a lot being proposed, these rules have been developed over a 4-year period. During this period there has been extensive public education and the opportunity for input. Overall, the department believes adequate time and information has been provided.

A48 Comment: (consultant) I am not against these rules, but I am against trying to comply with regulations that you can argue one way or another. There's no good answer because it's too confusing.

Response: Revisions to the rules have corrected the inconsistencies. Guidance documents and training will be developed outside the rule-making process.

A49 Comment: (DATCP) Under the statutory provision directing the redesign of the nonpoint source programs, DATCP is responsible for promulgating the technical standards necessary to comply with the agricultural performance standards. DNR should not promulgate a duplicate set of technical standards (NR 154). The technical standards will be set in ATCP 50 and NR 154 should reference ATCP 50 regarding technical standards for agricultural conservation practices.

A50 Comment: (farmer) I thought DATCP was supposed to be doing the technical part.

Response: DNR and DATCP have developed a system of cross-references for agricultural performance standards. DNR listed each BMP and made a cross-reference to ATCP 50 for relevant components of the BMP, including technical standards. If there are exceptions to any of the BMP components in ATCP 50, they are noted in the rule.

A51 Comment: (Co. Ext., LCD) There needs to be consistency between these rules and ATCP 50 for technical standards. They need to include prevention-based practices and need to address all nonpoint source pollution, not just from agriculture. The rules need to address the diversity of nonpoint pollution concerns in the state, including forestry and lake development.

A52 Comment: (LCD) The technical standards still need to do a better job of addressing all nonpoint source pollution concerns, not just agricultural practices. The rules especially need to recognize that nonpoint pollution can come from a wide variety of rural and urban sources.

Response: The DNR and DATCP have met extensively and revised the rules to make them as consistent as possible regarding the technical standards. Cost-share policies have differences because of the differences in the agencies' missions. The department's BMPs address urban as well as agricultural nonpoint pollution sources. DNR has a BMP to help lakeshore owners restore riparian lands to a more natural condition. Urban BMPs can also be used to control urban runoff from lakeshore areas and the department also can cost-share development of storm water management plans to help protect these areas. Forestry concerns have not been included in this version of the rules because the scope of the rules is already extensive and because there is already a program in the state to implement forestry BMPs.

A53 Comment: (farmer) People need access to the technical standards referenced in the codes. Not all of us are familiar with what is in those standards, like 590.

Response: Technical standards are available on NRCS's website, or at LCD, DNR or DATCP offices.

A54 Comment: (farmer) If you make a blanket ruling that these rules begin on x date, Wisconsin agriculture will be severely crippled if not gone. Is it your overall plan to get rid of Wisconsin agriculture? If it is, be honest. If it isn't, help us.

A55 Comment: (farmer) A phase-in period would be better. As farmers retire and operations change ownership, the nonpoint regulations would kick in and cost sharing would become available. The time frame for total compliance could be 20-30 years.

A56 Comment: (WPVGA) It's important that the economics of agriculture are weighed heavily as these rules are considered further. It is important to remember that producers in Wisconsin have to compete in a world market, and most of our competitors will not have the same requirements as Wisconsin producers. This puts us at a competitive disadvantage with producers in neighboring states.

A57 Comment: (farmer) If these rules cost us too much, this may be the last straw for our operation. Does the DNR want to help the farmer and the wildlife we feed for free, or do they want this place to be a farm of houses? The most profitable crop right now is houses.

A58 Comment: (WPVGA) We caution state officials from overburdening producers with too many regulations. The term "save the family farm" is becoming a household phrase. These are the types of regulations that make farming impractical on a small scale and push producers toward larger and larger operations. The economics associated with compliance begin to dictate operation size.

A59 Comment: (farmer) I oppose a whole new layer of regulations on agriculture at a time when we in agriculture cannot afford to implement expensive new rules. Agriculture has not enjoyed the same economic prosperity that almost all of the other segments of the economy have enjoyed over the past 10 years. Other states have taken a more common sense approach and have not gone as far as Wisconsin has in implementing nonpoint source laws. Increased regulation put my neighbors and I at an economic disadvantage to our counterparts in neighboring states and other countries.

Response: There is a delayed start date for the nutrient management performance standard. Because existing facilities and practices impacted by these rules must be provided 70% cost sharing (90% cost-sharing for economic hardship cases) before they are required to comply with the performance standards and prohibitions, and because funding is limited, it will take many years for sufficient cost sharing to become available. Also, technical assistance will be available to operations at the federal, state and local levels to promote compliance. These assistance efforts are intended to avoid or mitigate any negative economic impacts from these rules on agricultural operations and allow them to remain competitive.

A60 Comment: (farmer, shoreland, and golf course owner) People are concerned about more and more restrictions. I'm not anti-DNR, but I am opposed to the things that are being proposed.

Response: The law mandating performance standards was passed because the legislature did not believe that 20 years of the voluntary approach was achieving the desired water quality improvements.

A61 Comment: (farmer) My concerns are for the individual's liberty and property rights. If you're not affecting the rights of your neighbor, you have a right to use your property as you want. If you do cross over that line, then there should be some accountability. The rules could be simplified where it applies to people who cross over that line to see that such concerns are addressed.

Response: No one has the right to degrade waters of the state, which are held in trust for all citizens. If your land use practices impair waters of the state, you are crossing the line you refer to and the rules do hold people accountable for compliance with performance standards. The reason the rule provisions concerning implementation and enforcement are lengthy is because the rule needs to be very clear about expectations, consequences and procedures. The first version of the rules was criticized because this detail was not included.

A62 Comment: (farmer) The Legislature passed COMM 83 to free up 9 million acres in Wisconsin for development with substandard septic systems, and we farmers who have less influence and less money to fight back will face discriminatory regulation.

Response: No farmer with an existing facility or practice will have to meet the performance standards unless 70% cost sharing is provided. The same is not true for urban nonpoint sources. Although cost sharing may be made available, it is not required for compliance.

A63 Comment: (farmer) I've only got a few years left to farm. If I was required to put in a manure pit, it would be a waste of taxpayers' and my money because no one in my family is going to continue to farm.

Response: Your county LCD will work with you to find a reasonable solution. No one wants a manure pit that will be abandoned shortly after construction, wasting your and the state's money.

A64 Comment: (WI Agri-Service Assn., WI Pork Producers, WPVGA, WI State Cranberry Growers; WI Cattlemen's Assn.) The proposed rules would require compliance by all farmers but substantially limit compliance by urban communities with a population density of less than 1,000 persons per square mile. Even the standards imposed on NR 216 communities are limited and their implementation substantially delayed (20% control of suspended solids by 2008 and 40% by 2013). This approach is unfair to large urban centers and to farmers. The limits on small urban center compliance are in stark contrast to the requirements of the enabling statute and results in unequal protection of the laws.

Response: It is true that the agricultural performance standards apply to all farmers, but existing non-permitted operations are not required to comply unless 70% cost-sharing is provided (90% for hardship cases). There is also a delayed start date for the nutrient management performance standard. With these restrictions on implementation, DNR's intent is to direct funding toward the worst cases or the most impaired waterbodies first. Even with this focus, the funding limitation will create an implementation timeline spanning several years. The effect is the same for the rural as for the urban areas, but funding will set the schedule and compliance in the rural setting and the code will set the schedule and compliance in the urban setting. The goal is the same--identify the worst cases first and require change in a timely manner.

A65 Comment: (MMSD) The revised program must address agricultural and urban nonpoint pollution with equal diligence. DATCP needs to proceed in a timely fashion with the development of technical standards so that the state can enforce NR 151 provisions applicable to agriculture. The absence of timely application of NR 151 to agriculture will result in an unbalanced enforcement effort and hinder progress towards improved water quality.

Response: DNR has applied equal diligence to the to the development of rules that address both agricultural and urban runoff. Comments about DATCP should be directed to that agency.

A66 Comment: (WI Livestock Breeders, farmer) We understand that a number of communities may be forgiven any nonpoint obligations under these rules. If all of agriculture needs to comply with the rules, then why not all of the urban communities? This is a fairness issue — don't single out just agriculture.
Response: Agriculture is clearly not singled out since there are urban performance standards which must be met without any cost sharing being required. See the response to the comment A64.

A67 Comment: (nursery) The biggest source of nonpoint pollution is fertilizer (the 4-step program with some getting on the sidewalk is the worst), washing cars, oil changes, etc. done by urban homeowners. The rules must apply to all landowners. Don't single out farmers and homeowners of more than 5 acres. Start where the problem is the worst — the incorporated areas of the state.

Response: In any given watershed, the major source of pollutants could be urban or rural depending on the land use. The amount of land in urban use is much less than any other category in the state (farmland, forests, etc.). We agree that a landowner on a ¼ acre lot may be putting on fertilizers in quantities that may exceed what the farmer is using. However, the lawn is only 50% of the area the landowner owns and it contributes less than 10% of the runoff from the site. All incorporated municipalities with a population density of 1,000 people per square mile will be required to conduct an educational and pollution prevention effort in their existing developed areas. The state is committed to an educational program to inform the landowners of their responsibility to clean water and to the increased involvement of local government to enforce pet waste pickup, disposal of lawn clippings and leaves, etc. for the hundreds of thousands of homes in these areas. Where a municipality has control over its own property, it will be expected to control pollutants from that property in a manner similar to what a farmer will be asked to do on land he/she owns for production.

A68 Comment: (Milw. Co.) The requirement that cost sharing must be made available to install buffers in agricultural areas but not be required for non-agricultural performance standards amounts to an unfunded mandate for urban areas. It is totally unacceptable to treat urban riparian landowners, private or public in this fashion. How can you not offer the same cost-sharing (70-90%) to those who own property along a lake or waterway, regardless of where they live? Milwaukee County has spent many years and dollars to purchase and preserve riparian areas throughout the county, and the DNR proposes an unfunded mandate as a reward for our stewardship.

Response: The statutory language that governs development of the performance standards clearly states that performance standards cannot be imposed on existing agricultural facilities and practices without cost-sharing. This same provision was not included for urban development in the final statutory language. DNR has no authority to change this situation.

A69 Comment: (WCA) There is a lack of parity between the agricultural and non-agricultural standards. Agricultural standards are defined in more general terms, yet non-agricultural standards continue to be defined in very exact numerical requirements. Although 70% cost sharing is a prerequisite for enforcement of agricultural standards, there is limited financial assistance to meet non-agricultural requirements for local units of government. Given increasing financial constraints on local governments, additional unfunded mandates will be directly passed on to the property taxpayers of the state. We request that local units of government be granted significant flexibility in applying BMPs so as to achieve the most efficient use of taxpayer dollars.

Response: By defining the performance standards as percent controls we are maximizing the flexibility in applying BMPs to achieve the goal. It is unclear why the agricultural performance standards are perceived as non-numeric standards since many of them are. Whether a standard is numeric or prescriptive doesn't diminish its ability to control runoff pollution to equivalent levels. See the response to the previous comment.

A70 Comment: (CWAC) The rules seem weighted toward rural problems, leaving homeowners free to spread fertilizer on their lands with minimum control and education. You see dark green lawns for frivolous purposes--those lawns do not support a family; or provide food. They are simply creating an image they want to project. There should be much tougher standards on lawns.

Response: The rule currently provides for control on residential lawns under 5 acres through an information and education approach. For lawns over 5 acres, nutrient application must be done in accordance with a plan. For existing development, there are performance standards to control pollutants from greater sources of toxicants such as the streets and parking lots. Future development will also have tighter controls.

A71 Comment: (farmer) We have a subdivision near our farm where less than 50% of the land is permeable, and a lot more water comes off them. You will see more flooding. Even if there is grass, it's compacted and the water doesn't soak in. Those of us at the bottom of those hills have that much water coming down, more erosion and more problems with our ditches. And we are going to have more and more houses and they cause significant problems.

Response: The problems this comment identifies are issues related to water quantity and not water quality, which these rules were directed to address.

A72 Comment: (farmer) There's a big building going up 40 feet away from water and cattails. I will be told that I'll need a buffer strip within so many feet of water, but what about this building? The discrepancy doesn't sit well with me or other farmers.

Response: The buffer requirement was removed from the rules.

A73 Comment: (farmer) It seems cities just call the DNR and dump wastes without any repercussions. In our county, a farmer accidentally ran over a storage system near an old waterway. Nothing went into the creek, but he was fined heavily. Within two weeks of his overflow problem, a newspaper story reported that millions of gallons of raw sewage were dumped into the Rock River because the city didn't have enough storage to handle that kind of rainwater.

Response: The proposed performance standards in NR 151 regulate non-point sources and the dumping of raw sewage is classified as a point source discharge and cannot be regulated by the proposed performance standards. However, the discharge of point sources including sewage is already regulated.

A74 Comment: (LCD) It is good to see urban and rural nonpoint pollution concerns addressed together. Often farmers point at urban, urban points at farmers; it's good to see some consistency with these rules. We wish lawn care was made a bigger part of the rule.

Response: We agree that urban and rural nonpoint source pollution need to be addressed together. Larger lawns (five acres or more) will have controls placed upon them. Smaller lawns, of which there are too many for DNR to control, will receive information and education at the local level to encourage responsible application of nutrients.

A75 Comment: (farmer) I looked at several counties by total stream miles listed in the 303(d) list, and concluded that the problems with the water supply seem to be originating at the municipal and urban level, not so much with agriculture. An EPA representative said impairments are being removed, with streams getting better in the long-term. Since we are seeing an improvement, let's leave well enough alone. Why spend more time and money when we are already improving? A lot of money will need to be spent because of these rules, but the money will not be there to work with agriculture. Agricultural sources of nonpoint source pollution should be secondary to urban and municipal causes, since that seems to be where the real problem is.

Response: Although the state has made progress in protecting its waters, much remains to be done. Although urban storm water runoff is the principal cause of degradation in urban streams, runoff from agriculture still has a profound influence throughout much of the state. Both sources must be further controlled to achieve surface water and groundwater quality standards.

A76 Comment: (farmer) My concern is making sure everyone who contributes to the runoff problem is treated equally, whether it's a municipality, construction, or whatever. If you are polluting more than your neighbor, whether it's construction or municipality or farm, they should be the ones who have to fix it first, not necessarily picking on just one group.

Response: The rules do not pick on one group. They are comprehensive and address both agricultural and urban sources of nonpoint pollution. The performance standards are minimum standards that all must meet. We agree that the worst violations should be addressed first and will attempt to do so through our permitting and cost-share programs. Governmental units will also play a major role in setting priorities through development of county land and water resource management plans, other types of plans and by submitting applications for various grants to help finance the needed controls.

A77 Comment: (farmer) There does not seem to be any concern here about Milwaukee dumping millions and millions of gallons of pollution into Lake Michigan, but you're concerned about the cows in the creek. That is just totally ridiculous. I understand it's statutory. I'd like to get that statute replaced until you make Milwaukee abide by the same rules that you expect each individual farmer to follow. I have no power when I go up to the state capitol. Milwaukee does. But if you're going to make me do it – at least accommodate me.

Response: Nonpoint pollution and the discharge from sewerage facilities must both be controlled. Milwaukee is being required to address any by-passing that is a violation of its WPDES permit.

A78 Comment: (individual) The fairness standards are not yet met. Urban use of fertilizers, pesticide, etc., along with the existence of a large percent of impervious areas in urban areas means more needs to be done and addressed through lakeshore areas, Walmarts, lawn care and landscape companies, golf course managers, etc. -- city by city, village by village.

Response: We believe these rules and ATCP 29 (pesticides) address all of these pollution sources.

A79 Comment: (individual) Do not enact these rules until further adequate research has been done. Do not destroy our state with more questionable regulations.

A80 Comment: (WI Cattlemen's Assn.). There is no documentation that these rules are necessary or justified to protect water quality.

A81 Comment: (farmer) Use scientific reasons for developing the rules. The DNR has targeted certain watersheds for protection. If we happen to have a watershed that has 10 times the phosphorus because of rocks on-site, is it fair to have an unattainable standard for people living in that area? Use common sense.

Response: The department is required by s. 281.16 Wis. Stats. to establish performance standards designed to meet water quality standards by limiting nonpoint source pollution. State law does not give us an option. We have held hundreds of meetings with stakeholders, experts and the public in the development of these rules. We are confident that they can be implemented with a limited amount of adverse impact on agricultural and other operations and will provide a significant positive impact on water quality in Wisconsin.

A82 Comment: (individual) DNR has always based its decisions on current law and sound science. These new/revised rules do just that. The new rules are not overreaching by any means. DNR not only allows time for the rules to be phased in but they also give the communities and citizens substantial grant monies to offset the cost to become compliant.

Response: Thank you.

A83 Comment: (individual) There should be surface water modeling and groundwater modeling so you can understand what's happening and how big of a water problem we have (quantity and quality). There would be a different priority put on this program if you knew that.

Response: DNR performed extensive modeling using SLAMM, P8, RUSLE, T55 and other models in the development of these performance standards. We also consulted and relied on countless scientific studies, experts from numerous universities and state agencies, scores of agricultural producers, municipal and transportation engineers, biologists, hydrogeologists, local government officials, and representatives of trade and other associations. We believe we have a better understanding of the water quality problems facing the state than we have ever had in our history and that these performance standards represent a balance between protection and enhancement of water quality and cost-effective implementation.

A84 Comment: (farmer) A farm magazine reported that applying cow manure to farm fields diminishes sediment and phosphorus losses. Researchers at the University of Minnesota used various methods to apply the equivalent of 25 tons of steer manure per acre. They collected the runoff to monitor sediment and phosphorus losses and found that sediment loss was only half as great where manure was applied compared to soil that did not get manure. Phosphorus losses were also lower in the manure-treated plots. When you read the regulation about what we should do and what we can't do, it clearly conflicts with a lot of the science that is available.

Response: The department recognizes that importance of manure as a nutrient and soil conditioner which can have beneficial environmental impacts. The performance standards and prohibitions and associated technical standards do not eliminate the land application of manure on cropped fields. However, they do place restrictions on how and in what amounts the manure may be landspread in order to avoid direct and indirect water quality impacts associated with improper land application of manure.

A85 Comment: (LCD) State, federal, and local agency cooperation will determine the success or failure of this conservation effort. There must be full support of DATCP, FSA, and NRCS.

A86 Comment: (MEG) Coordination between the DNR and DATCP needs to continue. DNR's rules standing alone do not provide a comprehensive nonpoint program. For example, detailed implementation and enforcement language is contained in NR 151.09 and NR 151.095. But this mechanism only applies to cost-share eligibility associated with targeted runoff management (TRM) grants. The implementation and enforcement language for the bulk of the funding that will constitute cost-share dollars through the DNR and DATCP is not contained in NR 151. By proceeding sequentially with their separate rules, DNR and DATCP should be in a better position to avoid some of the inconsistencies that arose in the first round of hearings. However, proceeding sequentially also carries with it the potential for delay. The protections provided by these rules are long overdue and we would urge the DNR and the NRB to work cooperatively but vigorously with DATCP and its Board to ensure that his rule process as a whole moves forward.

Response: We agree and intend to continue working with our state and federal partners.

A87 Comment: (CWC) There should be a way to monitoring the impact of these standards 5, 10 or 15 years from now. One easy way would be to add a grant category that enables county agencies to receive funds to monitor the water quality impact of various best management practices.

Response: The proposed rules allow the department to fund project evaluation activities, including monitoring. However, the monitoring effort must compete for funding and be an integral component of the project being funded. A comprehensive monitoring approach to overall program evaluation is best accomplished through other means, including the department's baseline monitoring conducted through its other water quality evaluation programs. The intergovernmental agreement identified in NR 151.09 will contain an element that addresses monitoring.

A88 Comment: (MMSD) Meeting the performance standards will require significant expenditures by both the private and public sectors. It is important for the state to evaluate the impact of the performance standards on reducing pollutant loadings, and ultimately, on water quality. We would welcome cooperating with the DNR in such an endeavor by making available our water quality data, which would be very useful in establishing a pre-implementation baseline.

Response: We are aware that we need an evaluation strategy for the programs and the performance standards associated with nonpoint pollution. While the rules are more enforceable than the original priority watershed program, because of cost-sharing requirements for rural landowners, the implementation of practices may again be somewhat scattered. If in a given watershed, not all the practices are implemented, then water quality monitoring may not show a response in the stream. Baseline data will be very useful and appreciated. The DNR already evaluates the water resources according to a 5-year plan. This process will continue to operate, although it is not appropriate to include that process in these rules.

A89 Comment: (WLWCA/WALCE, several counties) Water quality monitoring is not mentioned anywhere in the rules, even though past program audits have criticized the department for not being able to document the success of program efforts over the last 20 years. Neither federal, state nor local units of government will ever be able to do this independently. We strongly believe that interagency partnerships and citizen volunteers are needed to get the job done. Somewhere in the rules, state grants and technical assistance should be offered to support local water quality monitoring efforts.

Response: We understand the concern. See the response to previous comments on monitoring.

A90 Comment: (farmer) I've been involved in a test trial project with barnyards in the Waumandee watershed project that has been going on for 11 years. I have spent a lot of money doing no-till, barnyard projects, manure storage, streambank restoration, etc. There are no results to say whether we have improved the water or not. You should see if it's working before requiring anything else.

Response: What we have learned from our priority watershed projects is that a comprehensive effort must be made before measurable water quality improvement can be made. We would not expect to be able to determine the extent of improvement based on the efforts at one farm. We would need a whole farm effort in at least 60% of the farms in the watershed (preferably 80%) before we would expect to see significant improvement in water quality. These performance standards are designed to provide a base from which such a comprehensive effort can be achieved.

A91 Comment: (farmer) When we do these things, like installing a 10-foot buffer, we would like to see some numbers on what has happened and how it has improved things. It would also let the DNR see what is the most effective practice. We might need to reassess practices that are not working.

Response: DNR, NRCS, DATCP and counties have been tracking BMP installations for years and these rules provide for evaluation of conservation practices.

A92 Comment: (individual) Increase funding education, monitoring, and enforcement. One of the failings of the current nonpoint program is that it's very difficult to enforce against a small percentage of irresponsible people.

Response: We hope to be able to obtain the resources to accomplish this. Effective enforcement will be best achieved through state-local partnerships. We believe our rules promote this.

A93 Comment: (individual) We need to continue working on information and education, possibly a website with information.

Response: We agree. We currently maintain a website with this information.

A94 Comment: (individual) Nothing is said in the regulations about educating the public. Construction folks, farmers, (and) municipal governments are well educated. The common landowner needs to be educated. I don't see that requiring permitted municipalities to perform information and education for the public will be effective.

A95 Comment: (farmer) One of the biggest strengths of the priority watershed program was the education component. We shouldn't lose that.

A96 Comment: (UW CALS) To complement and enhance any regulatory action, effective information and education strategies and delivery mechanisms must be in place. Farmers need information to allow them to judge the impact of management practices on the economics and sustainability of their farming operations. Education programs that deliver practical, research-based information and also compliment the proposed regulations must also be offered to farmers.

A97 Comment: (LCC) Education plays a large role in landowners complying with the standards. Those responsible for meeting these new performance standards need assistance as their operations change to continue to be in compliance.

Response: We agree that education is an important component and we will be working with counties, UWEX, DATCP and other agencies to deliver educational materials and training for both rural and urban residents affected by the rules. County LWRM plans will also have an education component. DATCP will provide support funding for this under ATCP 50.

A98 Comment: (golf course supervisor/former municipal official) Our attitude on the municipal level is that these rules are a great idea, and if this has to happen, it's going to cost us taxpayers money to make it happen. No big deal. It's the right thing to do. We hope they are implemented and handled properly on the state level. Let's just use our head and document things and figure out the right way to handle this.

Response: While the rules don't identify the evaluation effort that will be used, we heartily agree that we need to measure the response to the rules. The water resources are already monitored on a recurring basis to assess their improvement or decline. If the performance standards are implemented such that all nonpoint sources are controlled in a watershed, then we should see significant improvement, particularly in streams dominated by nonpoint sources.

B General Funding and Cost-share Comments

B1 Comment: (farmer) The estimated cost of \$930 million over a 10-year period to implement the rules is staggering. Not only am I outraged by the portion of this price tag that will be placed on me as a producer, but as a taxpayer who will help pay the other 70 percent.

Response: The revised state cost estimates to implement the agricultural performance standards range from \$356-434 million over 10 years. This price tag is a fraction of what it costs to restore water resources once they have been degraded.

B2 Comment: (LCC) There is a need to re-evaluate the way budgeting is done when proposing project resources. Under budgeting is done to get support for the programs. Once projects are underway, they are reduced in scope or additional funds are needed because of other demands for the money. At least use inflationary increases, or strive for a lesser degree of correctness. Under budgeting and delays or cancellations of projects have created a lot of discouragement with our employees and their customers.

Response: This comment is not germane to these rules.

B3 Comment: (individual) We're already bearing costs of nonpoint source pollution in impacts on fisheries, on the tourism industry, and in impaired waterways affecting the health of humans and other species. Certainly, there will be further costs.

B4 Comment: (student) We have a choice: if we're going to have a good environment or pay more taxes so businesses can be well-off. It's a trade-off. Imagine how bad the water will be in 20 years if we do nothing. One way or another, we will end up paying taxes to have clean water.

Response: We agree that these are all good reasons to promulgate this rule.

B5 Comment: (Corn Promotion Bd.) The costs that were presented to the NRB were not the true costs. We commissioned a study by Randy Fortenbery, UW agricultural economist, ("A Study of Costs of Compliance Related to Non-point Pollution Rules for Wisconsin Crop Producers") that shows \$61-80 million annual costs associated with this for about 5 million acres of corn and soybeans grown in Wisconsin. These costs include the farmers' share of compliance with the rules on land rated above acceptable levels of soil loss, including the costs of idling land in strips and contours. It does not address

any costs by livestock producers or the cost of preparing nutrient management plans for all Wisconsin cropland. It also does not address the state share of the costs and these will be larger, as most costs will be shared on a 70/30 basis with the state picking up the 70% share. Any area where a large share of the farmland would be forced to strip crop, contour farm or use no till will pick up a disproportionate share of the cost. (Note: See Background Memo for related comments from postcards.)

Response: The study focuses on lost revenue involved in bringing all Wisconsin cropland to the tolerable soil loss value and ignores the long-term benefit and cost-savings of maintaining soil productivity.

B6 Comment: (RPC) Are there any estimates of the costs involved for the agricultural and non-agricultural standards, including implementation of the rules?

Response: State cost estimates for implementing the rules are described in the Fiscal Estimate for NR 151, part of the rules package. Costs to implement BMPs to meet the agricultural performance standards and prohibitions are estimated to be \$35.6-\$43.4 million annually. Costs to implement the non-agricultural performance standards are estimated to be range from \$28.7-\$31.9 million annually from 2002 to 2007, from \$58.7-\$61.9 million from 2008 to 2012 and from \$90.2-\$96.4 million annually starting in 2013.

B7 Comment: (individual) Increase funding for full implementation. Farmers can't do it on their own, but if we have an effective program in place, it will be easier to get the funding.

Response: We believe the cost-share program provides adequate support to farmers required to comply with the performance standards. We agree that full funding to cover implementation is desirable, but that is a legislative issue.

B8 Comment: (state senator) It's a pipe dream to tell people that anything less than 100% paid construction cost will be a reality. Environmental progress should be paid for with general tax dollars--that is a fair way of reaching our environmental objectives. We need to spend a lot more effort in the future providing incentives for better environmental management and less effort on regulations.

Response: The state law requires that cost sharing under DATCP or DNR programs not exceed 70% except in cases of economic hardship. Governmental units can use other funding sources to increase the cost share rate above this amount if they so choose.

B9 Comment: (farmer) Lack of funding will greatly devalue existing operations and increase the difficulty of selling. Perhaps the only way to sell land under these conditions will be to a developer. The economic impact in rural Wisconsin will be significant.

Response: We do not agree with the comment. The availability of funding to implement performance standards should not have an effect on operations or their market value.

B10 Comment: (MEG) The performance standards will be meaningless in the absence of adequate funding and a commitment of resources from the DNR for education and enforcement. We encourage and support the DNR's effort to receive adequate funding for cost-sharing and program implementation.

Response: We agree with the importance of education and welcome your support for the rule.

B11 Comment: (LCC/LCD) There needs to be ample funds allocated annually to make this rule package succeed.

B12 Comment: (WI Env. Decade) While not within the purview of the DNR rule-making actions, we note that the effectiveness of the proposed rules depends upon sufficient cost-share resources, and we support full funding for all conservation programs called for in the rules.

B13 Comment: (individual) Suggestions can be made to legislators who will be writing the checks.

B14 Comment: (WAL) It is critical to support adequate funding for this program.

Response: We agree.

B15 Comment: (CWC) We support full funding of the nonpoint program in the 2001 biennial budget to ensure full implementation of the agricultural performance standards. The costs of polluted runoff in terms of tourism, water treatment and the degradations of our fisheries have reached billions of dollars.

We support the need for adequate funding for implementation of the non-agricultural performance standards. We oppose the proposal in the Governor's budget to reduce funding for the urban nonpoint program and to combine that program with the urban flood control program. We will be urging the Legislature to split these two programs and to increase the funding from the current \$11 million in the Governor's budget to the \$28 million level proposed by the DNR. We further believe that the primary source of funding for the nonpoint program should be derived from vehicle transfer fees and not from general purpose revenues.

Response: These comments will be passed on to the legislature as part of final rule promulgation. We appreciate the support for this program evident in the comment.

B16 Comment: (WI Agri-Service Assn., WI Pork Producers, WPVGA, WI State Cranberry Growers) The rules create expectations for substantive reduction in nonpoint source pollution but, despite the statutory requirement for cost sharing, provide no significant funding sources to support the hundreds of millions of dollars of required cost sharing. The rules require compliance by every farmer in the state regardless of a farmer's ability to pay a 30% cost share.

Response: The state law limits the amount of funding offered under DNR and DATCP programs to 70% (90% for economic hardship). A governmental unit need only provide 70% cost sharing in order to enforce compliance under local ordinances. Although a governmental unit can use several funding sources to increase the cost-share rate for a farmer, doing so is at its own discretion. The law recognizes that farmers must pay part of this cost.

B17 Comment: (WI Agri-Service Assn., WI Pork Producers, WPVGA, WI State Cranberry Growers) These rules should not be implemented until the cost-sharing funds are available. The great expectations created by these rules cannot be realized until the reality of over a half billion dollars of state cost-sharing support is identified.

B18 Comment: (farmer) The \$20-\$30 million for funding doesn't amount to much when spread over the entire state. When and where does it become available? You can pass rules, but then you say they don't go into effect until I have cost-sharing money to make the required changes. Why pass rules until we have money to put them into effect? There's no money in the state budget now; when will it be there?

Response: The legislature directed DNR to develop these standards regardless of the money to be made available for implementation. The legislature, through its future budget bills, will decide how much funding to dedicate to this program and consequently how long it takes to implement the standards statewide. Funding under s. 281.65 is considered available when a landowner receives a written offer of cost share from either DNR or a governmental unit.

B19 Comment: (farmer) There may be money initially for cost sharing, but how do we finish the work cost-sharing funds have initially started?

Response: Once compliance is achieved, the landowner will be responsible for the cost of long-term maintenance.

B20 Comment: (LCD) The lack of program funding will put an extraordinary strain on the producers and the LCD in our county. Based on our cost-share funding in 2000 and the projected amount available in 2002, the average landowner can expect to receive cost sharing once every 17 years. The LCD was never able to match the need for cost sharing for structural erosion control practices. With the promulgation of these rules, the demand for cost sharing and technical assistance will be even greater and complaints of non-compliance will be higher. Our LWRM plan was approved in 1999. Through 2002, the state will have funded less than 8% of the cost sharing approved in the plan. We request a review of the well-documented historic and ongoing need for cost sharing assistance in the county to determine a reasonable state match to maintain a minimum conservation effort in the county.

Response: The legislature has decided what the state match will be. The proposed rules provide for the highest cost-share rates allowable under the law. DNR's programs are, by law, competitive grant programs and not programs designed to insure a minimum level of funding for on-going, baseline conservation efforts in every county. Cost sharing is available for base-line maintenance through DATCP under ATCP 50.

B21 Comment: (farmer) I'm glad to see the continuing programs you've started. A problem in the past was that the funding stops, and then you're sitting with half of a (nutrient management) plan done.
Response: We regret any circumstances that led to your situation. DNR has worked with county organizations to be fair in our statewide allocation of available budget resources. Once a county has its allocation, it makes specific decisions about which BMPs are provided funding in any given year.

B22 Comment: (farmer) Make sure you have enough money for these programs because the farmer can't bear the costs on their own right now with the prices being what they are. We have many conservation practices that I don't mind keeping up, but don't make it too hard on us — just be reasonable. Before I lay out a large amount of cash to do something, I will quit.

Response: The legislation requires that 70% cost sharing be made available as a condition of requiring compliance at existing sources (90% in cases of economic hardship). The county can combine different programs to provide an even greater cost-share rate if it so chooses. There are also generous federal cost share programs. The rule requires that new agricultural facilities and practices achieve compliance regardless of the availability of cost sharing.

B23 Comment: (individual, River Alliance, Sierra Club, WISPIRG, TU) Additional funding is needed for county LCDs. These agencies will be the ones most responsible for implementing and enforcing these new standards and need adequate funding to do the job.

B24 Comment: (LCD) As a function of total county levy, Buffalo County provides more than the regional average amount of funds to the LCD. If Buffalo County were to lead the region in funding, we still would be unable to meet the need for landowner technical assistance under the state's current funding scenarios. To meet the greater demands these proposed rules will place on landowners, our LCD will need to retain at a minimum, the 3 technicians we currently have. Under the current funding scenarios proposed by the state agencies, this will not be possible. The state must, at a minimum, meet the obligations in Act 9 to fund 100% of the first position, 70% of the second, and 50% of the remaining LCD staff.

B25 Comment: (WCA) Adequate and consistent financial assistance to county LCDs for both cost sharing and staff support is the key to successful implementation. The uncertainty of state funding from one fiscal year to the next severely impedes the ability of counties to adequately plan for and prioritize workloads. The gap between funding and expectation put on counties continues to widen. The DNR and counties must work jointly to secure the level of funding that is necessary to meet state and local water quality goals and to simplify and stabilize county funding sources.

B26 Comment: (LCC) With the Legislature defining the rules of the various state agencies in the area, the DNR is responsible for establishing the agricultural performance standards. It is important that the counties have adequate funding to support staff in assisting and enforcing these rules.

B27 Comment: (LCC) County LCDs are the local team players, each with different capacities and abilities to carry out the performance standards. All this will take staff and money, and without this the performance standards mean nothing.

B28 Comment: (LCC) There is no viable staffing strategy that will provide adequate dollars or a secure funding source to address the workload associated with standards implementation. A staffing strategy should look at where intensive agriculture is taking place, current staff capability and the impact on water quality, not a simplistic 3 staff per county approach. A staffing strategy is important because: 1) it can take years for staff to build confidence and develop a relationship with a farmer before the farmer is willing to spend money on new conservation practices that may be expensive; and 2) cost-share dollars must accompany staffing for technical assistance — one without the other will result in lack of implementation; and state requirements to cost-share agreement forms, program tracking and reporting have gotten progressively more detailed and time consuming.

B29 Comment: (CWC) We strongly support additional funding for county LCDs. The DNR should take the concerns of WLWCA very seriously. We recognize that they are much more involved than any other interest group in the process. The county conservationists will be on the front lines in implementing and enforcing the new standards and to the extent possible their concerns must be addressed if these rules are going to be effective. We don't believe that the WLWCA concerns merit opposition to the rules. If we

had waited for all the enforcement and implementation issues to be resolved in the Clean Water Act, the Clean Air Act, or the Endangered Species Acts, we would likely still not have any of these laws on the books.

B30 Comment: (individual) Often more money is available than staff to help use it. With all the grant programs at the state and federal level, our biggest need is personnel to administer the programs.

Response: We agree that staffing is critical. The DATCP is responsible for the allocation of state funds to support county staff. We have, and will continue, to support DATCP and counties in developing and implementing fair statewide staffing strategies.

B31 Comment: Several producers, crop consultants, a UW professor, and agricultural companies and organizations commented that 70% cost sharing was not enough, and that funding should not be limited to only capital improvements. They cited management considerations, manure transport, nutrient management plan writing, and other costs incurred to implement nutrient management, additional equipment needs, up-keep, loss of production, additional property taxes, future problems that need correcting, other potential impacts and manure storage while the ground is frozen. One LCD estimated it will cost \$80,000 to \$100,000 to build a retaining wall and filter strip and another \$130,000 for a nutrient storage facility. Another noted that farmers cannot pass the cost of environmental protection on to the consumers as industries can, so they should not be expected to shoulder the entire burden. Cost sharing must be significant and permanent.

Response: We do not agree that all of these factors should be fully compensated since some practices simply reflect sound stewardship. The grant provisions cover the reasonable value of farmers' in-kind contributions of donated labor, materials, equipment and supplies (excluding normal operating routines). Economic hardship funding will allow needy farmers to receive cost sharing of 90%. In addition to cost sharing structural practices, the rules provide cost sharing for several lower cost non-structural BMPs such as nutrient and pest management, prescribed grazing and conservation tillage practices.

B32 Comment: (WI Cattlemen's Assn.) Requiring manure storage while the ground is frozen is expensive. Additional equipment will be required to handle stored manure.

Response: Manure storage is not a requirement of these rules, but those farmers that may need to install manure storage will have 70% cost sharing available for the construction of the facility. In cases of economic hardship, the cost share increases to as much as 90%. In addition, storage facilities allow the farmer to spread manure at a time when nutrients can be used more effectively by crops and reduce the need for purchasing commercial fertilizers.

B33 Comment: Several different cost-share rates were suggested. One farmer said that cost-sharing major projects at 75-85% would keep farmers from going out of business, a county LCC recommended 80-85% and elimination of the economic hardship clause, another farmer recommended 85%, five farmers, WI Livestock Breeders, WI Cattlemen's Assn. and DATCP recommended 90%, WI Pork Producers, WI Agri-Service Assn., WPVGA, and WI Cranberry Growers Assn. commented that the 70 % cost-share rate is the statutory minimum and should be raised to 90%, which they consider to be a major compromise. Another farmer suggested 90% cost sharing with 100% in hardship cases while another farmer suggested 90-100% for everything. Two farmers along with PLOW commented that the cost-share rate should be 100%.

Response: The state law governing DNR cost-sharing for the nonpoint source program states that cost sharing shall not exceed 70% except in cases of economic hardship, when it shall not exceed 90%. DATCP has the same restriction on its programs. In addition, both ATCP 50 and NR 153 do not allow state funds under these programs to be combined in such a way as to exceed these limits. So, the state share may not exceed these rates when the source of funding is for either the DNR or DATCP cost-share programs administered under s. 281.65 and/or chapter 92. A county can assemble a cost-share package that exceeds these rates, but would have to use funds from other sources such as federal sources, local sources or state programs other than those administered under s. 281.65 or chapter 92.

B34 Comment: (farmer) The agricultural economy needs all of the help it can get right now. We are losing money on every acre of corn and soybeans we grow (cost to produce a bushel corn is \$2.40, price has been \$1.50-\$2.00/bushel; cost to produce a bushel of soybeans is \$5.80, price has been \$4.00 -

\$4.80/bushel). We need government funding to break even and will need more help with more regulations.

Response: The state law requires that 70% cost share be made available to the landowner (up to 90% in cases of economic hardship) before compliance can be required for existing facilities and practices. The state cost share laws also limit the amount of cost sharing DATCP and the DNR can provide through their respective grant programs. The rules are consistent with the law. There is also an option for the county to combine other funds with the DATCP and DNR funds to pay for more of the compliance costs. This is a local decision.

B35 Comment: (2 farmers, 2 individuals) Many farmers are in debt and can't come up with the 30% match. Even if/when the farm economy recovers, it will take years for us to be a prosperous operation again.

B36 Comment: (DATCP) Either expand the conditions under which a farmer becomes eligible for an economic hardship award or remove the statutory barriers to increasing the cost-share rate to 90%.

Response: State law essentially requires a local match for state cost sharing, unless the county can bring other funding sources into the picture to increase the cost-share rate. The economic hardship criteria were modified to allow for a hardship finding based on debt repayment capability as well as debt to asset ratio.

B37 Comment: (farmer) It makes little sense in poor economic times for agriculture to make it even tougher for agricultural producers to survive. If these rules are for the public good, the public should participate in the cost.

Response: The state tax payers all contribute by providing cost-share funds for implementation and by paying for county government, which provides the staff resources to assist landowners. Those staff resources are paid both through county levy as well as through state tax revenue.

B38 Comment: (farmer) Cost sharing should be provided for conservation tillage equipment such as no-till drills/planters and/or custom labor performing those tasks. So should moving an operation to a new location.

Response: Cost sharing is provided for all of these.

B39 Comment: (tech. col. ag. instructor) Cost sharing of farmer practices to reduce erosion and nutrient loss needs to remain at 70% or be increased. Farmers are receiving 1979 prices for their dairy products while paying 2001 costs. Grain prices are also at very low levels. Generally, small farms have less erosion than larger farms. Small farms normally have smaller fields, which contribute less erosion. Small livestock farms also rotate crops more and have more acres in legume/grass forage so there is less erosion. Small farms need cost sharing to help pay the expenses for these mandates.

Response: At least 70% cost share must be made available (up to 90% for economic hardship cases) to require compliance, and the state cannot offer more than this amount through its grant program. So, the cost-share rates offered through the state are relatively fixed. A local governmental unit, at its option, can increase this amount but other funding sources must be used. Cost sharing is required for farms, regardless of size, unless the farming operation is a point source under Wisconsin law. Point sources are not eligible for state cost share funding under 281.65.

B40 Comment: (2 farmers) Cost sharing 70% really amounts to 50% because of the added costs associated with those practices. Cost sharing does not cover management of those practices, only capital costs — out of pocket expenses. Last year we estimated an average of \$6,000 per farm across the state while an increase of 20% adds \$1,200 more. This won't break the bank.

Response: We have endeavored to reduce the amount of "slippage" on cost-sharing by allowing payments for farmer's labor and equipment expense.

B41 Comment: (farmer) These rules will have an impact on whether we expand or not. If DNR or government is going to say we have to follow the requirements in these rules, the DNR or the government should pay for it. Farmers should not even have to have the 30% (funding match) loaded onto our backs.

Response: The legislature has specifically authorized the department to require compliance with performance standards at existing facilities provided that 70% cost sharing (90% in cases of economic hardship) is made available. This means that compliance can be required even though the landowner must provide a local match of 30% (10% in cases of economic hardship). Although a local governmental unit can combine other funding sources to increase the cost share rate, this is not required.

B42 Comment: (individual, River Alliance, TU) We support adding a requirement to spend cost-share dollars for agricultural improvements on impaired waterways.

Response: The state statute sets forth a variety of water resources problems that the grant programs may address. Improving impaired waters (303(d) listed waters) is only one of the problems identified. Although projects to improve impaired waters are given higher priority in the proposed rule, other projects may receive funding consistent with the state law.

B43 Comment: (UW rural sociology) With a seemingly very limited state budget looming, financial resources are best targeted to high ranking priority areas. Much of the funding will come from bonding limiting the opportunity to invest in changing management practices. Research has demonstrated that investment in capital expenditures without changing the associated management practices provides little gain in environmental protection. Education and compensation for adopting what is perceived to be risky practices needs more attention in the proposed rules. Using bonded dollars to invest in technical fixes does little for changing these inappropriate behaviors.

Response: The legislative budget process has greatly limited the amount of funding available under these rules that can be used for non-structural management practices. These projects will, however, be conducted in the context of broader county land and water resources management programs funded by DATCP under ATCP 50. Counties that receive those funds must have an approved LWRM plan that, by law, must contain an educational component. The department will develop an intergovernmental agreement with key partners (as required under s. NR 151.09) to help coordinate education, structural and non-structural management changes in areas of greatest need.

B44 Comment: (farmer) I hope you don't come after every farm in a watershed, but look each farm over and target the farms with problems first. I hope you watch residential developments very closely. Waterfront development in our northern county could possibly be a larger problem and do more polluting than farmland.

Response: The county will play the most important role in targeting and working first with priority landowners. DNR will work closely with the county, and only intends to approach landowners directly in those cases where the county is unwilling or unable to take the necessary steps. We agree that waterfront development can be a problem and the rules (both DNR's and DATCP's) contain some provisions that can be used to help address this problem.

B45 Comment: (farmer) Concerning spending priorities: do you want to spend money on concrete when 90% of cropland needs a nutrient management plan? My priority watershed spends \$250,000 on cement. Can taxpayers afford to invest in bricks and mortar when farmers probably will not be in business?

Response: Counties will play a major role in setting priorities during implementation. Most of DNR's money is bonding money and cannot be used for nutrient management. There are some funding sources that can be used for these types of management practices, including a small amount of state GPR funding and federal funding under s. 319 of the Clean Water Act. We hope to work with DATCP and other partners to develop additional resources needed for nutrient management and other cropping practices.

B46 Comment: (WISPIRG) In accordance with the proposed Family Farm Protection Act, we must not simply hand out state and federal dollars to whichever operations apply for them: You need to distinguish between small and large farms. You need to provide cost sharing for subsidies for state- and federally required nutrient management plans giving priority to small farms. We want cost sharing to be directed to small farms, not industrial operations.

Response: The department has no authority to deny cost sharing to larger operations, although once an operation is large enough to require a WPDES permit (for animal waste management) it is not eligible for

funding under ch. NR 120 or ch. NR 153. The rules do contain some provisions to cost share limited expansions at smaller operations.

B47 Comment: (UW rural sociology) Sources of agricultural nonpoint source pollution should be identified, measured, then ranked, with resources allocated to addressing the most significant pollution problems first, rather than regulating all farms regardless of their contribution to nonpoint source pollution. There is an increasing amount of research that demonstrates that the majority of pollutant loading comes from a small area (sub-field) during a few episodic events, such as construction site erosion or a severe storm. The scale of policy implementation needs to match, or at least approximate, the scale where the most severe sources originate.

Response: The state law requires that statewide performance standards be developed so that all farmers will have a common understanding of management expectations. Targeting will occur in the grants process. Counties will submit grant applications to compete for funds, and will be submitting those applications to work in high priority areas identified in Land and Water Resource Management Plans.

B48 Comment: (individual) I urge the application of funds and coalitions with organizations that might provide additional resources to make cleanup feasible now and not cause undue problems for those who live and work in the watershed. Given insufficient funds to do the whole state, I suggest selection of several demonstration projects that are cleaned fully with an intensive effort. An example would be the Brill River, about 12 miles long, that flows out of Long Lake and is the most upstream river to feed directly into the Red Cedar River. The river starts out clean and clear, running through forest and grass-buffered banks, and becomes brown as it runs through agricultural land, where cattle are allowed in the river. DNR should have the will, the power, and the clout to take the lead in cleaning up the river. There are a number of concerned citizens, including hunting and fishing associations, that would help.

Response: Contact your county and work to get funding for this through the TRM grant program administered under ch NR 153. DNR can only issue grants for projects that have been applied for by local governments.

B49 Comment: (LCC) The cost estimates make it seem like agriculture is not doing anything. We disagree — much improvement has been made voluntarily by the industry over the years. It appears that only the "bad actors" will receive the funding. This should not be. One alternative would be to offer "green credits," or utilize the use value assessment law to reward those farmers who are meeting the new standards.

Response: We agree that many conservation practices have been implemented voluntarily, but more needs to be done. Landowners that already meet these standards will not have to implement new measures but will be required to maintain the land in such a way as to continue compliance with the standards. Funding must be made available under the law to achieve compliance, and that is the state's funding priority. This will require a substantial amount of financial resources. Once compliance is achieved, the department believes that the landowner must maintain compliance at his/her own expense.

B50 Comment: (LCC) There is no strategy or schedule to fund the redesign package. Only bonding or general funds have been proposed. Creating the standards without funding or a strategy to implement is meaningless. With costs reported at \$16-\$80 million annually, there needs to be another source of stable and adequate funding, like the title transfer fee revenues that used to pay for water quality improvements but were lost to another program. Three (3) suggestions are offered:

1. License fees from snowmobile and boat trailers. These should be dedicated to funding LWRM plans (staffing and cost sharing).
2. Water use fees. a) The City of New York provides dollars for protection of their drinking water supply—a reservoir in upstate New York. The cost-share dollars pay for agricultural nonpoint pollution protection. b) The City of Appleton (1996) charges a quarterly fee of \$13.50 for a single-family home for storm water management. c) Grand Chute established fees in 1997 and charges a quarterly cost of \$10 for a single-family home.
3. Food tax. Missouri has had a one-tenth of one percent sales tax since 1983, half of which is dedicated to soil and water conservation. In 2001, this portion was \$40 million of which \$20 million was provided

for cost sharing for farmers and the rest for program administration and soil and water conservation districts.

4. Manure fee on WPDES permits. Require the DNR to annually charge 0.0005 cents per gallon of manure that is land spread in addition to the current annual WPDES permit fee. The additional fee must be provided to LCDs in counties with WPDES permitted operations for staff costs to annually review and approve 590 nutrient management plans and landowner compliance with new state standards. The fee on a 1,500 cow operation would generate \$5,118 a year compared to \$18,000 a year for consulting costs to the same operation. For a 700-cow operation, the fee would generate \$2,389 a year compared to a consulting fee of \$8,400 a year for the operation. Currently there is no strategy or mechanism to pay for LCD staff to provide technical assistance on WPDES permits or NR 243 NODs or the new state standards.

Response: These are interesting ideas. Please work with your legislator to see how they might be implemented.

B51 Comment: (farmer) The responsibility for funding should be spread around and not just come from the DNR's budget. The UW could do some monitoring.

Response: Funding and support will come from many sources, including DNR, DATCP, NRCS, FSA, EPA and county government to name a few. UW also plays a major role in training and providing educational and evaluation resources.

B52 Comment: (farmer) Concerning equipment, innovative ways of sharing or financing need to be tried. Concerning the loss of income: even though equipment is expensive, it has some resale value.

Response: Some counties have offered equipment-sharing options to farmers. Contact your county LCD with your suggestion.

B53 Comment: (farmer) Reward good practices. Get every acre on nutrient management plan before trying buffer strips. Cost-sharing intervals and rates should be increased for grid sampling. And there should be a money-back guarantee to try practices on a smaller scale, like the Discovery Farm concept.

Response: Many of these concepts are being investigated such as nutrient management insurance. It should be noted that while nutrient management will reduce the potential of excess nutrients entering surface waters, sediment is also a major pollutant of our lakes, rivers and streams.

B54 Comment: (S. Fork Hay Project Manager) Instead of providing 70% cost sharing, our project has provided a sliding-scale funding formula based on the amount of reduction. Instead of paying on a practice, the payment is based on the value of the reduced amount of phosphorus to waters of the state. It is performance-based. We have only a few projects left this spring; when completed, we will have addressed all critical sites for a total cost of about \$25,000 to the state—less than the traditional barnyard projects alone usually cost (\$35,000). A program like this provides funding to the farmers -- it does not fund contractors or consultants. It also acknowledges that the farmers are the resource managers. LCDs help facilitate this.

Response: Each county staff will work with its landowners to achieve performance standards given the amount and type of funds available. We hope that applicable parts of your approach can be used by other counties, consistent with administrative rule requirements.

B55 Comment: (co. public works dept.) These rules could eat up \$250 million because only 1/3 of every dollar goes to brick and mortar. What the DNR is proposing is funded largely through other budgets. Since the gasoline tax has been maxed out and registration fees are low, maybe there needs to be an additional tax on transportation-related items that could include a tax on tires, parts for tires, and on transportation-related services, because we have to find the money somewhere.

Response: The cost to comply with the municipal performance standards includes retrofitting in existing development in addition to information and education and good housekeeping. DNR is able to offer some cost sharing for the activities but it will clearly not meet the need. The statutes are clear that the performance standards are to be met regardless of cost sharing for urban nonpoint sources. This comment will be passed on to the legislature.

B56 Comment: (individual) This measure provides a good way that urban people, farmers, and conservationists can go to the legislature and the people that reauthorize the Farm Bill and say, "fund these programs." Even though this is a bad time for dairy prices, one of the promising opportunities is more money for green payments. There's about 43,000 acres backlogged in the riparian corridor program in Wisconsin, according to NRCS, 8,000 acres backlogged in the wetland reserve program, 97,000 acres of contour strips backlogged — there's a lot of demand for farmers to be involved in these programs.
Response: We agree that conservation payments are important.

B57 Comment: (farmer) I would like to bring up the importance to the environment of the use-value assessment being discussed concerning the state's farmland. Once fragile land is gone, it's gone forever.
Response: These rules do not address use-value.

B58 Comment: (agricultural crop consultant) Federal farm programs for the last 60 years encourage maximum production. They try to tie environmental programs to the entitlement programs that really do not make a lot of sense in the farmer's mind. You really need to separate federal farm programs from environmental compliance. They should eliminate federal farm programs and pay farmers directly for environmental compliance.
Response: The department does not have authority to change federal programs.

B59 Comment: (farmer) If a person is required to install a rain gutter as a cost-share practice, if that happens to be torn off is that replaced? Is there funding to replace those again? What if it is damaged by a weather event?
Response: There is provision for cost-share funds to replace them.

B60 Comment: (farmer) New and existing operations with animal units under 1,000 head should be eligible for cost sharing under any and all conditions.

B61 Comment: (farmer) All farms regardless of whether they are new and existing operations or regardless of how many animal units they have, should be eligible for cost sharing

B62 Comment: (WI Agri-Service Assn., WI Pork Producers, WPVGA, WI State Cranberry Growers) The distinctions drawn between large and small farms must be eliminated, especially those that limit or eliminate cost sharing for large farms. These distinctions are inconsistent with the enabling statute and result in unequal protection of the laws among persons in the same class (all farmers).

Response: New or existing facilities and practices, including those with less than 1,000 animal units, are eligible for cost sharing, unless they are required to obtain a WPDES permit. However, for new facilities and practices, cost sharing is not required in order to enforce compliance with the performance standards and prohibitions. Operations required to obtain a WPDES permit are considered point sources and are not eligible for cost sharing under s. 281.65, Wis. Stats, for activities covered under the WPDES permit.

B63 Comment: (farmer) The requirement that new operations have to be constructed to meet performance standards immediately and without funding really defeats family farming and minimizes the number of young people who would enter into a new farming operation.

B64 Comment: (farmer) These proposed cost-sharing eligibility requirements eliminate financial support for new family farms, thus making it next to impossible for young farmers to get started because of the additional financial burden.

Response: It should be noted that a new farming operation is not defined by a simple change of ownership. It must be an operation where either no agriculture existed before or where there is a substantial change in the type of agriculture practices — for example changing from hogs to dairy. Even there, cropping practices would not be affected. A daughter or son that wishes to continue a farming operation practiced by a parent would not be considered a new operation and will continue to be eligible for cost-sharing. New operations, structures or practices are those that are installed or substantially altered after the date of rule promulgation and can be designed to meet the performance standards and prohibitions immediately upon construction without costly retrofitting. While cost-sharing is not required if enforcement action is needed to make a new operation, practice or structure meet a performance

standard or prohibition, it is still eligible for cost-sharing and may receive cost-sharing if deemed a high enough priority by the department and/or the county.

B65 Comment: (CWAC) We need to provide adequate dollars for these rules. The agricultural community is suffering, and farmers need help. We support the idea of means testing. Some large operations with absentee owners are quite wealthy. Taxpayers should not have to subsidize large operations. Most people would be happy to help small farmers that need more help. If that means most get 90% cost sharing, that is reasonable. Green Bay spent something like \$75 million to upgrade one sewage treatment plant. Our state can certainly muster \$75-\$80 million to help our farmers achieve water quality at their home sites.

Response: The amount of money available for cost-sharing BMPs will be determined by the legislature. With the current budget crises at the state level, it remains to be seen what resources will be allocated to this effort.

B66 Comment: (farmer) Everyone should get help. Small farmers might need more help than big farmers, not necessarily in money. Because small farms are not regulated, they're slightly out of touch.

Response: Small farms may be regulated under these performance standards and prohibitions because they apply to all sizes of operation. As a requirement of regulation however, these operators must be offered cost-sharing and will be offered technical assistance as well.

B67 Comment: (farmer) I'm very concerned on how you write exclusions to cost-share dollars. The way you have them now, you can exclude just about anybody.

Response: Cost-share eligibility is extensive under these rules.

B68 Comment: (farmer) We have only 2 kinds of farms in Wisconsin — permitted and not permitted. Some of us may expand, and some of us will stay the same. We don't need to go down the road of determining new or existing—how are you going to determine that? For about 90% of us, expansion comes because of a change in the family operation. The average age of Wisconsin farmers is 55-plus years — we don't want to be sending a negative signal to the younger generation. Let's be cautious when we look at these expanding operations because there are real reasons why we need to grow.

Response: Determinations of whether agricultural facilities and practices are new or existing will be made by DNR in accordance with the requirements of NR 151. The majority of new facilities and practices are eligible for cost sharing; however, cost sharing is not required for new facilities and practices in order to enforce compliance with the standards. Much of the requirement to provide cost sharing for existing facilities and practices is intended to offset the cost of retrofitting and is not designed to fund farm expansions. New facilities should be constructed to meet the performance standards and shouldn't require the retrofitting expenditures. Given limitations on funding, it would be impossible to cost share all new facilities and practices.

B69 Comment: (farmer) The rules are still confusing for those of us who are not eligible for cost sharing. When I read NR 151, it directed me over to NR 154.03, and I still could not find out exactly what you wanted me to do.

Response: NR 151 and NR 154 are only applicable for BMPs that DNR cost shares. ATCP 50, which specifies conservation practices to be used both with and without cost sharing, is the appropriate rule to refer to.

B70 Comment: (LCD) Regarding cost-sharing someone who failed to maintain a practice that we cost shared before, the language in the rules is unclear, and I hope you don't have to cost-share over and over.

Response: We do not have to cost share BMPs that are not maintained.

B71 Comment: (WAL) Funding for purchase of easements (and) buffer strips should be available to qualified non-profits as well as governments.

Response: Non-profits are authorized to hold title to easements, but only the local sponsor or governmental unit can receive a grant through the nonpoint program for the purchase of an easement.

The local sponsor can transfer ownership of the easement (assign) to the non-profit. Non-profits can apply for grants for the purchase of easements through the Stewardship Streambank Easement program.

B72 Comment: (LCD) The following is an example of the potential problems with the current proposal. An operator has 30 head of cattle located within 30 feet of the stream and is currently violating the manure management prohibitions. The rules say that we cannot force them to take action unless cost sharing is offered. What if the operator says that he/she wants to expand to 200 head? This would require a significant facility, of which we are required to provide 70% cost sharing. If we were given unlimited funds for cost sharing, then there is not problem, but if funding is limited like it has been in previous experience, we will be reluctant to offer cost sharing to this individual because it could deplete our funding for the year. As a result, the operator is not required to fix the problem due to lack of cost sharing, we have not improved the resources, and it makes us all look bad in the eyes of the public.

Response: While this issue may arise, it is unlikely. In this situation, the vast majority of costs will be borne by the operator (e.g., cattle, other housing structures, equipment, etc.). The costs to comply with the performance standards or prohibitions could be relatively small in comparison. The cases where cost sharable expenses are high will be very few and the benefits of allowing most small expansions to occur with cost sharing outweigh the risks.

B73 Comment: (LCD) The largest problem I have with the rule package as proposed is that nothing can be done unless cost sharing is made available. This is a great weakness in this set of rules.

Response: The cost-share requirement is in state law, and the rule must be consistent with the state law.

Environmental Assessment

B74 Comment: (turf co.) While Roger Bannerman (DNR) has conducted good work measuring contributions from streets and hard surfaces of phosphorus in urban runoff, we find the methodology he used to measure phosphorus runoff from lawns less than acceptable from an agronomic standpoint. The sampling devices employed in lawns were scientifically flawed and did not measure actual runoff from turf but simply gave mere indications of a natural phosphorus cycle that occurs within the turf environment. Any conclusions drawn from such techniques must be discounted and should not be used in the development of public environmental policy.

Response: The research conducted by Roger Bannerman was designed to measure runoff from real life situations. Residential lawns vary with homeowner effort. A number of lawns were sampled using widely accepted monitoring equipment and techniques. The testing provided information on the relative importance of lawns in contributing phosphorus to local water resources. While the runoff from these lawns may be low, the number of acres of pervious area can be half the total area in a watershed, so the pollutants from this source area can be the highest load for any given watershed. The research done at the university for agronomic purposes was conducted under ideal conditions, including a significant amount of topsoil under the sod. We do not dispute that the amount of runoff is lower on a per acre basis from pervious areas than from all other source areas. However, when conducting statewide or watershed wide planning efforts, this source is still significant and DNR's data is valid in this context.

B75 Comment: (city public works dept.) The code, especially the infiltration performance standard, encourages sprawl development. The impacts of sprawl on the transportation system should be acknowledged in the environmental assessment. These costs include the cost of improving additional roads from cities to the fringe developments and the incremental energy costs that can be expected to be incurred from increased trip generation from these developments to urban centers. Increased amounts of road surfaces in a contiguous development should be addressed in the environmental assessment (i.e., additional roadway per housing unit is encouraged by this code even in contiguous development).

Response: We disagree that the performance standards encourage sprawl. The infiltration standard was revised to reduce the amount of land needed. With creative planning, the BMPs may not require that any more land be set aside than municipalities already require for flood control. When municipalities required flood control to protect property, land was needed to meet this requirement. No one was pointing to that requirement as the cause of urban sprawl. Sprawl is a product of perceived economic advantage either to the landowner or the developer and occurs when development leapfrogs open space to locate beyond the

existing limits of a municipality. The rules do not encourage this kind of development. The impact to a municipality having to serve sprawl development, with adequate infrastructure, is significant and should be looked at more closely outside these rules. The impact of development, wherever it occurs, must be mitigated if the water resources are to be protected and that is the purpose of these rules.

B76 Comment: (LCD) While the EA states that performance standards are intended to be implemented by counties through local ordinances, very little is provided to recognize, much less encourage this.

Response: While the department encourages implementation through local ordinances, it does not have the authority to require them. We re-wrote the implementation section to simplify it, and we will further encourage local ordinances through the MOU process. We also developed the model ordinances in proposed NR 152 as a service to municipalities who wish to voluntarily adopt one or both of them.

B77 Comment: (WAL) Along with costs to individuals, the economic (recreational, tourism, health, aesthetic) benefits gained by having clean water in our communities should be mentioned.

Response: We have included these economic benefits in the EA.

B78 Comment: (WAL) Important issue: "Phosphorus is a particular problem in Wisconsin because 77 percent of the state's soils have tested high or excessively high in phosphorus concentrations."

Response: We agree that phosphorus is a problem.

- A General Comments
- B General Funding & Cost Sharing
- C NR 120 – Priority Watershed Management
- D NR 151, subch. I – General
- E NR 151, subch. II – Agriculture Performance Standards and Prohibitions
- F NR 151, subch. III – Non-agriculture Performance Standards
- G NR 151, subch. IV – Transportation Performance Standards
- H NR 151, subch. V – Technical Standards Development Process for Non-agriculture Performance Standards
- I NR 152 – Model Ordinance for Stormwater Management
- J NR 153 and General Grants Comments
- K NR 155 – Urban Nonpoint Source Water Pollution Abatement & Storm Water Management Grant Program
- L NR 154 – Best Management Practices & Cost Share Conditions
- M NR 216 – Stormwater Discharge Permits
- N NR 243 - Animal Feeding Operations

J NR 153 and General Grants Comments

General Grants Comments

J1 Comment: (WLWCA/WALCE, several counties) There is no link between this rule package and the river protection or lake management grants that DNR also administers, even though the similarities are obvious. It is possible that DNR would approve duplicative or even conflicting grants under these programs, which would hurt all program efforts. Program administrative rules should contain language to help avoid this problem while encouraging better local coordination of these types of resource management efforts.

Response: We agree that conflict and duplication are undesirable and will generally use internal channels to avoid unwanted duplication and conflicts between grant programs. The proposed rules allow us to provide cost sharing for projects and practices partially funded through other programs. This is not viewed as duplication, and those provisions will be retained. For example, funds from appropriations under 92.14 and 281.65 may be combined to form the state share up to the maximum (70%) allowed. Other sources, including state funding under other appropriations, may be used to cover the non-state share. These policies will be retained.

J2 Comment: (village) Requiring municipalities to meet standards regardless of state funding is another example of mandated programs without adequate funding. I understand there are competitive grant programs to help defray costs, but it takes a lot of time to write such grants. Professional people will do this for a cost and with most grants a cost-share is required.

J3 Comment: (LCD) We have two rules that overlap each other. It's confusing to urban communities, and it continues to pit urban against rural for funding. Set aside a pot of money for urban, another for rural, and use criteria that you score higher if you have a combination of urban and rural.

Response: The state law does not require that cost-share funding be made available as a condition of compliance with non-agricultural performance standards. The absence of this requirement is notable because cost sharing is explicitly required by state law as a condition for compliance with the agricultural performance standards. The department echoes this dichotomy in these rules. There are, in fact, grant and loan programs that can help municipalities defray implementation costs. State statutes limit the portion of the implementation cost that grants and loans can cover, effectively requiring a local share. Agricultural grants also require a local share. The department believes that the cost of preparing a grant application should be borne by the grantee. If the urban grantee chooses to complete design work prior to submitting the application, which is encouraged and will result in a stronger application, that design work is eligible for reimbursement under the grant provided to construct the management practice.

NR 153 Targeted Runoff Management Grant Program

J4 Comment: (LCC) TRM is a continuation of the existing watershed program with a shorter project time frame. The TRM application process is another paperwork blizzard sales program that will keep staff busy submitting and reviewing applications.

J5 Comment: (several LCDs/LCCs) The TRM program was intended to address critical nonpoint problems that could not be met by implementing the performance standards through the LWRM plans. TRM was not intended to be a mini-priority watershed program, which is how it has evolved in the rule process. The TRM was originally intended to be funded at a much more modest amount of approximately \$2 million, with the majority of funding going to implement the performance standards through the LWRM plans. We support increased funding for non-competitive grants to implement LWRM plans, which by statute must ensure compliance with the performance standards and prohibitions,

J6 Comment: (WAL) Consistent and adequate funding must be available to counties to implement their LWRM plans. DATCP, with DNR support, should request this funding.

J7 Comment: (LCC) A stronger commitment of funding to local LWRM plans is very important if we hope to get private resources or local levy money. Several years ago we were encouraged, and sometimes required, to develop local ordinances to qualify for funding. At that time we expressed a need to have

standards and guidelines to complete what was needed. With your top-down approach, we feel that we are not trusted or cannot get the job done.

J8 Comment: (Co. Ext., LCD) County LWRM plans and priorities need to be fully integrated into this rule.

J9 Comment: (LCC) Since the political decision was made to phase out the priority watershed program, there is a need to tie standards and staffing to county LWRM plans, but there are risks associated with these plans becoming the primary cost-share and staffing vehicle. Will there be adequate funding and a long-term commitment from the state to fund LWRM plans? In the past, many programs have come and gone with a life-span of about 5 years, which is not enough time to implement standards. The state must fund standards first through LWRM plans and other county funding requests must be secondary. If there continues to be shortages of funding, then a strategy needs to be developed to prioritize funding which takes us full circle back to a priority watershed program. Small amounts of funding to each county cost-sharing and 2-3 staff will not get the job done.

J10 Comment: (farmer) I don't see how this money gets to the farmer. The cost sharing available from state supposedly goes to the counties and then the counties will distribute it under whatever method we have. Current methods work well, but they are not tied into this program. Most counties have a LWRM plan and most are good plans, but distribution of cost-sharing funds need to be tied to them.

Response: These requirements are statutory, required under s. 281.65 (4c), Wis. Stats., and the statutes establish both the scoring process and the criteria to be followed in scoring the applications. The initial appropriation of \$2 million under 20.866(tf) was made to initiate the TRM grant program for the first grant cycle. The statute does not currently limit the amount of money that DNR can spend on TRM grants. The ongoing source of funding for TRM grants is appropriated under 20.866(te) and DNR is required to disseminate these funds under a competitive grant process according to statute. This appropriation covers priority watershed ACRA's and the remaining funds are being used to fund TRM grant projects. As priority watershed projects close, any unspent ACRA money will be used for TRM grants also. The DATCP administers base-level funding for staff and cost-sharing to implement county LWRM plans. This non-competitive funding program complements the DNR's targeted program.

J11 Comment and response C1 (LCD) regarding requirement for landowners to record cost-share agreements on deeds applies to this section.

J12 Comment: (storm water utility) While money is available to large communities in other sections of the state to handle existing pollution control problems, none seems to be available for the enormous costs of acquisition of land and construction of very expensive detention pond structures that this model storm water utility is undertaking in its efforts to build regional detention facilities. We believe this situation is grossly unfair, and in need of changes. DNR should modify its criteria for eligibility for grants and aids for storm water runoff mitigation projects, to include the costs of site acquisition for detention facilities, and the costs to construct storm water detention facilities regardless of water quality components. We also urge that special consideration be given to joint efforts such as the work being done by this storm water utility which has far reaching regional solutions to mitigating the effects of storm water runoff.

Response: DNR provides several different grant programs (Targeted Runoff Management Grants, Urban Nonpoint Source and Storm Water Management Grants, Municipal Flood Control and Riparian Restoration Grants) and a loan program (Clean Water Fund Loan Program) that collectively provide assistance for all of the activities listed. All programs do not fund all activities because of differences in program focus and statutory restrictions. If regional management practices implemented by regional authorities can show that the practices are highly cost-effective and have a high level of local support and involvement, such approaches to storm water management will have a competitive edge under the scoring criteria contained in the draft rule. In addition, utility districts formed under Wis. Stats. 66.0301 can apply directly for grants, and the individual municipalities that constitute the utility may apply for loans.

J13 Comment: (LCD) Counties should not be made to compete with one another for very limited cost-share dollars. It is very difficult to work with landowners to do the right thing when we are unsure of availability of cost sharing each year.

Response: TRM grants are mandated by the statute to be competitive based grants. Base-level funding to counties is administrated by DATCP through Ch. ATCP 50.

J14 Comment: (CWC) We are concerned about the enforcement provisions. Grants to counties should both encourage local ordinances and require a county receiving a grant to have to refer enforcement actions to the DNR. It makes no sense to give grants to local agencies that do not have a process for referring enforcement actions when appropriate.

Response: The grant process encourages referral of cases to DNR or the local district attorney for enforcement by providing a boost in the competitive project score by a factor of 1.1 and encourages enforcement under local ordinances by providing a boost in the competitive score by a factor of 1.25.

The department does not believe that a requirement for formal referral to DNR is appropriate or necessary as a condition of receiving a grant for several reasons. Proposed ATCP 50 requires that county LWRM plans include enforcement procedures for compliance with performance standards, as well as a mechanism to coordinate its program (including enforcement) with federal, state and local agencies. No one process is required under ATCP 50, recognizing that the county may choose any one option including direct enforcement under local ordinance, referral to the local district attorney, or notifying DNR that prosecution by the state through the attorney general's office should be pursued. We proposed that an intergovernmental agreement be prepared between DNR, DATCP and local governments to implement the performance standards. We believe that the agreement is the appropriate vehicle to set forth how each county will keep us informed of compliance and enforcement issues so that we can best judge when it is appropriate to refer a case to the attorney general. Provisions for such intergovernmental agreements were added to ch. NR 151.

J15 Comment: (WLWCA/WALCE, several counties) This rule effectively limits all DNR funding to an annual, competitively based project selection process, thus recreating a scaled-down version of the existing priority watershed program. Planning for local programs, or even individual landowner projects, would be severely hampered by the uncertainty and inadequacy of state funding each year.

The implementation of agricultural performance standards was intended to primarily occur by county LCDs through their LWRM plans. The provision of annual, non-competitive funding to support county plans (specifically, for cost sharing installation of BMPs) was a fundamental concept to the program redesign, and is an essential component of achieving consistent, effective statewide nonpoint source pollution control. We believe this can be accomplished through a weighted point allocation system in the current grant process outlined under s.s. 281.65(4c) Wis. Stats. The process would allow DNR to provide annual grants to counties BMPs to assist landowners in meeting the performance standards on a site-by-site basis.

Response: See response to comment J5.

(Comment cont'd.) We request the DNR to provide non-competitive annual cost sharing grants to counties conditioned on the county meeting minimum grant accountability criteria relating to implementation of the agricultural performance standards. The minimum grant accountability criteria would include: a) providing some type of local system to inventory, evaluate and track landowner compliance with the performance standards, and b) participating in a back-up mechanism that ensures compliance by landowners who chose not to comply with the performance standards voluntarily, including one of the following:

1. Follow the landowner notification procedures in the draft NR 151 and refer the landowner to the DNR for enforcement, or
2. Carry out local enforcement procedures through a county ordinance.

The county procedures for meeting the grant criteria would be described in their LWRM plan.

Response: See response to comment J5. In addition, the concepts mentioned are already included as components of the competitive scoring system and will also be addressed in the intergovernmental agreement referred to in s. NR 151.09.

(Comment cont'd.) This recommendation can be addressed through revisions to the current grant program described in NR 153. Agricultural provisions are described below:

- Create separate rules for urban and rural nonpoint grant programs and build in incentives to coordinate these efforts within a watershed when appropriate.
- Offer two tiers of grants under each rule.
- Tier 1 agricultural grants would be non-competitive annual cost-sharing grants available to all counties. To receive this grant, the county must meet the minimum grant criteria described above. These funds could only be used for cost sharing conservation practices with landowners as needed to comply with the agricultural performance standards.
- For tier 1 grants, the grant scoring system would be designed to automatically approve these requests up to a certain allocation limit. For counties, the allocation limit would be designed to ensure sufficient cost sharing funds are provided to every county to sustain a program to implement the agricultural performance standards in accordance with a strategy outlined in their LWRM plan.
- Tier 2 grants would be run through the normal DNR grant scoring system for Targeted Resource Management grants for critical small watershed projects as originally intended by the legislature. We recommend the scoring system be designed to encourage the adoption of local ordinances to enforce the performance standards, similar to how the current rule attempts to do. Ultimately, the more standards that are enforced by local ordinance, the better the grant score should be since this helps implement statewide goals while reducing DNR workload. For counties, local ordinances could cover any or all of the agricultural performance standards, with specific scoring points assigned to each.
- Tier 2 county grants could be used for a wide array of activities and conservation practices, beyond those needed to bring landowners into compliance with the agricultural performance standards. Examples include wetland restorations, streambank and grade stabilization practices, information and education efforts, water quality monitoring programs, contracted services and staff time to carry out grant activities. Grant scoring should also encourage watershed-based projects and intergovernmental cooperation.

Response: See answer to J5 above. In addition, the legislature has authorized two separate grant programs under two separate statutes with different objectives and requirements. One of these programs includes urban and rural grants, the other only urban. DNR believes the current organization of these rules (NR 153 and NR 155) is the best. No matter how these rules are organized, it will not affect the fact that urban projects can be funded under the TRM program; municipalities are entitled under the statutes to apply for and receive these grants. The concept of tier 1 grants is actually the basis for allocations under ATCP 50, which provides base-level funding to counties. The concepts for tier 2 grants are already included in the scoring system. Bonus points are earned for local ordinances, with the bonus points increased with the comprehensiveness of the local ordinance coverage. Also, projects under NR 153 can be done for a variety of reasons, including but not limited to achievement of performance standards.

J16 Comment: (LCD) It's important to understand how long it takes to make changes--1-2 years to plan, then design, then get permits, then get cost sharing lined up, then contractors, etc. Two-year grants will not work. We're already running into problems with under-spent funding. We don't know what's coming until the grant is actually approved. Until that happens, we haven't contacted landowners, there are no contractors, and the 2-year clock is ticking. Money is not getting spent and we can't figure out why.

Response: TRM grants by statute cannot exceed 4 years in duration. The proposed rule provides for an initial 2-year grant period with the possibility of extension to the maximum 4 years. The county is expected to do as much upfront work with the landowners as possible prior to applying for the TRM grant. This will help assure that the TRM grant period will be adequate to complete the work.

J17 Comment: (co. lake spec.) NR 153.14(2) Eligible Projects. I support the inclusion of ORW or ERW as a targeted area, and I support the provision that projects need to be consistent with LWRM plans. I also support cost sharing for demonstration projects.

Response: We are pleased you agree with these provisions.

J18 Comment: (CWC) We support the adoption of new provisions to give authority to DNR and the counties to target already polluted waterways to meet water quality goals with a simple designation process.

Response: The department feels that the development of targeted performance standards is best accomplished through the administrative rules process that affords more public scrutiny.

J19 Comment: (LCC) More emphasis should be on protecting waterways, and not just giving priority to degraded waterways. It's a lot less expensive to protect undergraded waterways than to try to fix already polluted ones.

Response: Both water quality protection and water quality improvement projects are eligible for grants, although higher priority is given to improving the quality of degraded waters. The department believes this is the most appropriate way to allocate the funding.

J20 Comment: (DATCP) Analysis. Add to the end of the text for Chapter NR 153: "Normally the department will develop allocations for rural projects in consultation with the DATCP, as part of the annual joint allocation process for soil and water resource management and nonpoint source funds to counties and other project cooperators.

Response: The proposed rule does include a requirement that the department notify DATCP of its grant decisions for inclusion in the joint allocation plan. The department agrees this concept is important and gave it a higher profile in the code by placing it in its own subsection. This same clause will also be added to NR 155 and NR 120, since DNR grant decisions for counties made under these programs must also be submitted to DATCP for inclusion into the joint allocation plan.

J21 Comment: (DATCP) NR 153.12(4) should also be defined in NR 120 and ATCP 50, and share the same definition.

Response: We agree. The same definition was included in NR 153, 155 and 120.

J22 Comment: (DATCP) NR 153.12(14). Clarify if the "least-cost" practice need only be consistent with the current management system. For example, if managed intensive grazing was the "least cost practice" that would abate a manure runoff problem (by reducing the volume of manure) at the production facility or animal feedlot, would that be the practice that DNR would fund, even if it would require a significant change in management? Or would the DNR fund a (more expensive) manure storage system, if that is the "least cost" practice that allows the operator to continue the same management system?

Response: We agree with the intent of the comment, but no change is needed as the code already provides for this. Least cost only applies when comparing 2 or more cost-effective alternatives. Cost-effectiveness includes such factors as economic viability, as set forth in the definition.

J23 Comment: (LCD) NR 153.14. Eligible Projects. This appears to allow funding of NR 243 projects from funds dedicated to the TRM process. This addition to the rules is contrary to the rules in that all funding shall be made through a competitive process to a unit of government, not a grant agreement to an individual landowner by DNR. We recommend either eliminate this or create from the TRM source funds a segregated account for applying practices outside of TRM project areas through counties that address performance standard needs.

Response: The code will have to accommodate NOD-funding because the DNR has no funding sources for NODs other than priority watershed projects (NR 120) and TRM grants. There is no statutory provision that would allow creating a segregated account for NOD projects. In order to get a TRM grant for NOD funding, the project will have to compete against all other TRM grant applicants for funding under NR 153 or get funding under a priority watershed project. NODs that are funded under TRM will be administered by local governments; DNR can not make grants directly to landowners under this program.

J24 Comment: (DATCP) NR 153.14(2). Add a new paragraph: (e) The project is consistent with approved area-wide water quality management plans.

Response: We agree with the comment. No new language is needed. This is already accomplished by sec. 2 (c) of that paragraph.