

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

The Wisconsin Natural Resources Board proposes an order to create NR 151 relating to runoff pollution performance standards.

WT-8-00

Analysis Prepared by Department of Natural Resources

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

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

Chapter NR 151, Runoff Management, is a new rule under which the department will administer performance standards and prohibitions in response to two legislative acts, 1997 Wisconsin Act 27 and 1999 Wisconsin Act 9. These acts require changes to the department's Nonpoint Source Water Pollution Abatement Program and to the department of agriculture, trade and consumer protection's Soil and Water Resources Management Program. Chapter NR 151 is an integral part of promulgating a series of inter-related administrative rules to implement a re-design of Wisconsin's nonpoint source programs and related water regulations as set forth in these legislative acts. Other related components of this effort that are being conducted concurrently include: repeal and recreation of ch. NR 120, Priority Watershed and Priority Lake Program; creation of ch. NR 152, Model Ordinances for Construction Site Erosion Control and Storm Water Management; creation of ch. NR 153, Runoff Management Grant Program; creation of ch. NR 154, Best Management Practices and Cost-share Conditions; creation of ch. NR 155, Urban Nonpoint Source Water Pollution Abatement and Storm Water Management Grant Program; amendment of ch. NR 216, Storm Water Discharge Permits; and repeal and recreation of ch. NR 243, Animal Feeding Operations. The department of agriculture, trade and consumer protection is revising ch. ATCP 50, Soil and Water Resource Management, to incorporate changes in its programs required under 1997 Wisconsin Act 27 and 1999 Wisconsin Act 9.

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

REPORT OF THE COMMISSIONER OF THE GENERAL LAND OFFICE
FOR THE YEAR ENDING 31st MARCH 1964
PART I: GENERAL

(continued)

LAND REVENUE

(continued)

The total land revenue for the year ending 31st March 1964 was £1,234,000,000.

This represents an increase of 1.5% on the total land revenue for the year ending 31st March 1963.

The increase in land revenue is due to a number of factors, including an increase in the number of land transactions, an increase in the number of land parcels, and an increase in the number of land parcels which are subject to land revenue. The increase in land revenue is also due to an increase in the number of land parcels which are subject to land revenue, and an increase in the number of land parcels which are subject to land revenue.

The increase in land revenue is also due to an increase in the number of land parcels which are subject to land revenue, and an increase in the number of land parcels which are subject to land revenue. The increase in land revenue is also due to an increase in the number of land parcels which are subject to land revenue, and an increase in the number of land parcels which are subject to land revenue.

The increase in land revenue is also due to an increase in the number of land parcels which are subject to land revenue, and an increase in the number of land parcels which are subject to land revenue. The increase in land revenue is also due to an increase in the number of land parcels which are subject to land revenue, and an increase in the number of land parcels which are subject to land revenue.

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

2
3 **Chapter NR 151**

4
5 **RUNOFF MANAGEMENT**

6
7 **Subchapter I – General Provisions**

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

12
13 **Subchapter II – Agricultural Performance Standards and Prohibitions**

- 14 NR 151.01 Purpose
15 NR 151.015 Definitions
16 NR 151.02 Sheet, rill and wind erosion
17 NR 151.05 Manure storage facilities
18 NR 151.06 Clean water diversions
19 NR 151.07 Nutrient management
20 NR 151.08 Manure management prohibitions
21 NR 151.09 Implementation and enforcement procedures for cropland performance standards
22 NR 151.095 Implementation and enforcement procedures for livestock performance standards
23 and prohibitions
24 NR 151.096 Local livestock operation ordinances and regulations
25 NR 151.097 Variances

26
27 **Subchapter III – Non-Agricultural Performance Standards**

- 28 NR 151.10 Purpose
29 NR 151.11 Construction site performance standard for new development and redevelopment
30 NR 151.12 Post-construction performance standard for new development and redevelopment
31 NR 151.13 Developed urban area performance standard
32 NR 151.14 Non-municipal property fertilizer performance standard
33 NR 151.15 Implementation and enforcement

34
35 **Subchapter IV –Transportation Facility Performance Standards**

- 36 NR 151.20 Purpose and applicability
37 NR 151.21 Definitions
38 NR 151.22 Responsible party
39 NR 151.23 Construction site performance standard
40 NR 151.24 Post-construction performance standard
41 NR 151.25 Developed urban area performance standard
42 NR 151.26 Enforcement

43
44 **Subchapter V – Technical Standards Development Process for Non-Agricultural**
45 **Performance Standards**

- 46 NR 151.30 Purpose

- 1 NR 151.31 Technical standards process
- 2 NR 151.32 Dissemination of technical standards

1
2 **Subchapter I – General Provisions**
3

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

12 **NR 151.002 Definitions.** In this chapter:

13 (1) “Adequate sod, or self-sustaining vegetative cover” means maintenance of sufficient
14 vegetation types and densities such that the physical integrity of the streambank or lakeshore is
15 preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges and duff layers of
16 fallen leaves and woody debris.

17 (2) “Agricultural facilities and practices” has the meaning given in s. 281.16(1), Stats.

18 (3) “Average annual rainfall” means a calendar year of precipitation, excluding snow,
19 which is considered typical.

20 (4) “Best management practices” or “BMPs” means structural or non-structural measures,
21 practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants
22 carried in runoff to waters of the state.

23 (5) “Combined sewer system” means a system for conveying both sanitary sewage and
24 stormwater runoff.

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

27 (7) “Construction site” means an area upon which one or more land disturbing
28 construction activities occur, including areas that are part of a larger common plan of
29 development or sale where multiple separate and distinct land disturbing construction activities
30 may be taking place at different times on different schedules but under one plan. A long-range

1 planning document that describes separate construction projects, such as a 20-year transportation
2 improvement plan, is not a common plan of development.

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

4 (9) "Department" means the department of natural resources.

5 (10) "Design storm" means a hypothetical discrete rainstorm characterized by a specific
6 duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall.

7 (11) "Development" means residential, commercial, industrial or institutional land uses
8 and associated roads.

9 (12) "Effective infiltration area" means the area of the infiltration system that is used to
10 infiltrate runoff and does not include the area used for site access, berms or pretreatment.

11 (13) "Erosion" means the process by which the land's surface is worn away by the action
12 of wind, water, ice or gravity.

13 (14) "Exceptional resource waters" means waters listed in s. NR 102.11.

14 (15) "Final stabilization" means that all land disturbing construction activities at the
15 construction site have been completed and that a uniform perennial vegetative cover has been
16 established with a density of at least 70% of the cover for the unpaved areas and areas not
17 covered by permanent structures or that employ equivalent permanent stabilization measures.

18 (16) "Illicit discharge" means any discharge to a municipal separate storm sewer that is
19 not composed entirely of runoff, except discharges authorized by a WPDES permit or any other
20 discharge not requiring a WPDES permit such as water line flushing, landscape irrigation,
21 individual residential car washing, fire fighting and similar discharges.

22 (17) "Impervious surface" means an area that releases as runoff all or a large portion of
23 the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, parking
24 lots and streets are examples of surfaces that typically are impervious.

25 (18) "In-fill area" means an undeveloped area of land located within existing urban sewer
26 service areas, surrounded by already existing development or existing development and natural
27 or man-made features where development cannot occur.

28 (19) "Infiltration" means the entry and movement of precipitation or runoff into or
29 through soil.

30 (20) "Infiltration system" means a device or practice such as a basin, trench, rain garden
31 or swale designed specifically to encourage infiltration, but does not include natural infiltration

1 in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal
2 infiltration from practices, such as swales or road side channels designed for conveyance and
3 pollutant removal only.

4 (21) "Karst feature" means an area or surficial geologic feature subject to bedrock
5 dissolution so that it is likely to provide a conduit to groundwater, and may include caves,
6 enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or
7 swallets.

8 (22) "Land disturbing construction activity" means any man-made alteration of the land
9 surface resulting in a change in the topography or existing vegetative or non-vegetative soil
10 cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment
11 into waters of the state. Land disturbing construction activity includes clearing and grubbing,
12 demolition, excavating, pit trench dewatering, filling and grading activities.

13 (23) "Landowner" means any person holding fee title, an easement or other interest in
14 property, which allows the person to undertake cropping, livestock management, land disturbing
15 construction activity or maintenance of storm water BMPs on the property.

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

17 (25) "MEP" or "maximum extent practicable" means a level of implementing best
18 management practices in order to achieve a performance standard specified in this chapter which
19 takes into account the best available technology, cost effectiveness and other competing issues
20 such as human safety and welfare, endangered and threatened resources, historic properties and
21 geographic features. MEP allows flexibility in the way to meet the performance standards and
22 may vary based on the performance standard and site conditions.

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

24 (27) "Navigable waters" and "navigable waterway" has the meaning given in s.
25 30.01(4m), Stats.

26 (28) "New development" means development resulting from the conversion of previously
27 undeveloped land or agricultural land uses.

28 (29) "NRCS" means the natural resources conservation service of the U.S. department of
29 agriculture.

30 (30) "Ordinary highwater mark" has the meaning given in s. NR 115.03(6).

31 (31) "Outstanding resource waters" means waters listed in s. NR 102.10.

1 (32) "Percent fines" means the percentage of a given sample of soil, which passes
2 through a # 200 sieve.

3 Note: Percent fines can be determined using the "American Society for Testing and
4 Materials", volume 04.02, "Test Method C117-95 Standard Test Method for Materials Finer than
5 75- μ m (No. 200) Sieve in Material Aggregates by Washing". Copies can be obtained by
6 contacting the American society for testing and materials, 100 Barr Harbor Drive,
7 Conshohocken, PA 19428-2959, or phone 610-832-9585, or on line at: "<http://www.astm.org/>".

8 (33) "Performance standard" means a narrative or measurable number specifying the
9 minimum acceptable outcome for a facility or practice.

10 (34) "Pervious surface" means an area that releases as runoff a small portion of the
11 precipitation that falls on it. Lawns, gardens, parks, forests or similar vegetated areas are
12 examples of surfaces that typically are pervious.

13 (35) "Pollutant" has the meaning given in s. 283.01(13), Stats.

14 (36) "Pollution" has the meaning given in s. 281.01(10), Stats.

15 (37) "Population" has the meaning given in s. 281.66(1)(c), Stats.

16 (38) "Preventive action limit" has the meaning given in s. NR 140.05(17).

17 (39) "Redevelopment" means areas where development is replacing older development.

18 (40) "Runoff" means storm water or precipitation including rain, snow, ice melt or
19 similar water that moves on the land surface via sheet or channelized flow.

20 (41) "Sediment" means settleable solid material that is transported by runoff, suspended
21 within runoff or deposited by runoff away from its original location.

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

25 (a) Is designed or used for collecting water or conveying runoff.

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

27 (c) Is not draining to a storm water treatment device or system.

28 (d) Discharges directly or indirectly to waters of the state.

29 (43) "Storm water management plan" means a comprehensive plan designed to reduce
30 the discharge of pollutants from storm water, after the site has undergone final stabilization,
31 following completion of the construction activity.

1 (44) "Targeted performance standard" means a performance standard that will apply in a
2 specific area, where additional practices beyond those contained in this chapter, are necessary to
3 meet water quality standards.

4 (45) "Technical standard" means a document that specifies design, predicted performance
5 and operation and maintenance specifications for a material, device or method.

6 (46) "Top of the channel" means an edge, or point on the landscape landward from the
7 ordinary high water mark of a surface water of the state, where the slope of the land begins to be
8 less than 12% continually for at least 50 feet. If the slope of the land is 12% or less continually
9 for the initial 50 feet landward from the ordinary high water mark, the top of the channel is the
10 ordinary high water mark.

11 (47) "TR-55" means the United States department of agriculture, natural resources
12 conservation service (previously soil conservation service), Urban Hydrology for Small
13 Watersheds, Second Edition, Technical Release 55, June 1986.

14 (48) "Transportation facility" means a highway, a railroad, a public mass transit facility, a
15 public-use airport, a public trail or any other public work for transportation purposes such as
16 harbor improvements under s. 85.095(1)(b), Stats. "Transportation facility" does not include
17 building sites for the construction of public buildings and buildings that are places of
18 employment that are regulated by the department of commerce pursuant to s. 101.1205, Stats.

19 (49) "Type II distribution" means a rainfall type curve as established in the "United
20 States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published
21 1973". The Type II curve is applicable to all of Wisconsin and represents the most intense storm
22 pattern.

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

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

26 **NR 151.003 Regional treatment exclusion.** (1) Runoff within a non-navigable
27 drainage way that flows into a BMP, such as a wet detention pond, is not required to meet the
28 performance standards of subchs. III and IV.

29 (2) Runoff within a navigable drainage way that flows into such a BMP is not required to
30 meet the performance standards of subchs. III and IV if:

1 (a) The BMP was constructed prior to the effective date of this rule ...[revisor insert date]
2 and the BMP received a permit issued under ch. 30, Stats., or the BMP did not require a ch. 30,
3 Stats., permit; and

4 (b) The BMP is designed to provide runoff treatment from future upland development.

5 (3) The discharge of runoff from a BMP, such as a wet detention pond, or after a series of
6 such BMPs is subject to this chapter.

7 Note: This regional treatment exclusion does not supersede any other federal, state or
8 local regulation of post-construction runoff, such as ch. NR 103 and ch. 30, Stats.

9 **NR 151.004 State targeted performance standards.** For some areas, implementation
10 of the statewide performance standards and prohibitions in this chapter may not be sufficient to
11 achieve water quality standards. In those cases, the department shall determine if a specific
12 waterbody will not attain water quality standards after substantial implementation of the
13 performance standards and prohibitions in this chapter, using actual or predicted modeling or
14 monitoring. If the department finds that water quality standards will not be attained using
15 statewide performance standards and prohibitions but the implementation of targeted
16 performance standards would attain water quality standards, the department shall promulgate the
17 targeted performance standards by rule.

18 Note: Pursuant to s. 281.16(2)(a) and (3)(a), Stats., the performance standards shall be
19 designed to meet state water quality standards.

1 **Subchapter II - Agricultural Performance Standards and Prohibitions**

2
3 **NR 151.01 Purpose.** The purpose of this subchapter is to prescribe performance
4 standards and prohibitions in accordance with the implementation and enforcement procedures
5 contained in ss. NR 151.09 and 151.095 for agricultural facilities, operations and practices.

6 **NR 151.015 Definitions.** In this subchapter:

7 (1) "Agricultural land use" means the use of land for agricultural practices.

8 (3) "Conservation practice" means a best management practice designed to reduce or
9 prevent soil or sediment loss to the waters of the state.

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

12 (5) "Cropland practice" means the method, activity or management measure used to
13 produce or harvest crops.

14 (6) "County land conservation committee" means the committee created by a county
15 board under s. 92.06, Stats. "County land conservation committee" includes employees or agents
16 of the committee whom, with committee authorization, act on behalf of the committee.

17 (7) "Direct runoff" means a discharge of a significant amount of pollutants to waters of
18 the state resulting from any of the following practices:

19 (a) Runoff from a manure storage facility.

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

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

23 (d) Seepage from a manure storage facility.

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

26 (8) "Freeboard" means a protection elevation requirement designed as a safety factor
27 which is usually expressed in terms of a specific number of feet above a storage level or flood
28 level and compensates for the effects of runoff from unexpected storms and other events that
29 may cause a loss of storage volume.

30 (9) "Livestock facility" means a structure or system constructed or established on a
31 livestock operation.

1 (10) "Livestock producer" means an owner or operator of a livestock operation.

2 (11) "Livestock operation" has the meaning given in s. 281.16(1)(c), Stats.

3 (12) "Manure" means a material that consists primarily of excreta from livestock, poultry
4 or other animals.

5 (13) "Manure storage facility" means an impoundment made by constructing an
6 embankment or excavating a pit or dugout or by fabricating a structure to contain manure and
7 other animal or agricultural wastes.

8 (13m) "Municipality" has the meaning given in s. 281.01(6), Stats.

9 (14) "NOD" means a notice of discharge issued under s. NR 243.24(4).

10 (15) "Operator" means a person responsible for the oversight or management of
11 equipment, facilities or livestock at a livestock operation, or is responsible for land management
12 in the production of crops.

13 (16) "Preventive action limit" has the meaning given in s. NR 140.05(17).

14 (17) "Residual cover" means vegetation, or organic debris that provides soil surface
15 protection from raindrop impact.

16 (18) "Site that is susceptible to groundwater contamination" under s. 281.16(1)(g), Stats.,
17 means any one of the following:

18 (a) An area within 250 feet of a private well.

19 (b) An area within 1000 feet of a municipal well.

20 (c) An area within 300 feet upslope or 100 feet downslope of karst features.

21 (d) A channel with a cross-sectional area equal to or greater than 3 square feet that flows
22 to a karst feature.

23 (e) An area where the soil depth to groundwater or bedrock is less than 2 feet.

24 (f) An area where the soil does not exhibit one of the following soil characteristics:

25 1. At least a 2-foot soil layer with 40 percent fines or greater above groundwater and
26 bedrock.

27 2. At least a 3-foot soil layer with 20 percent fines or greater above groundwater and
28 bedrock.

29 3. At least a 5-foot soil layer with 10 percent fines, or greater above groundwater and
30 bedrock.

31 Note: See s. NR 151.002(32) for definition of percent fines.

1 (19) "Stored manure" means manure that is kept in a manure storage facility or an
2 unconfined manure pile.

3 (20) "Substantially altered" means a change initiated by an owner or operator that results
4 in a relocation of a structure or facility or significant changes to the size, depth or configuration
5 of a structure or facility including:

6 (a) Replacement of a liner in a manure storage structure.

7 (b) An increase in the volumetric capacity or area of a structure or facility by greater than
8 20%.

9 (c) A change in a structure or facility related to a change in livestock management from
10 one species of livestock to another such as cattle to poultry.

11 (21) "Tolerable soil loss" or "T" means the maximum rate of erosion, in tons per acre per
12 year, allowable for particular soils and site conditions that will maintain soil productivity.

13 (22) "Unconfined manure pile" means a quantity of manure that is at least 175 ft³ in
14 volume and which covers the ground surface to a depth of at least 2 inches and is not confined
15 within a manure storage facility, livestock housing facility or barnyard runoff control facility or
16 covered or contained in a manner that prevents storm water access and direct runoff to surface
17 water or leaching of pollutants to groundwater.

18 (24) "Water quality management area" or "WQMA" means the area within 1,000 feet
19 from the ordinary high-water mark of navigable waters that consist of a lake, pond or flowage,
20 except that, for a navigable water that is a glacial pothole lake, the term means the area within
21 1,000 feet from the high-water mark of the lake; the area within 300 feet from the ordinary high-
22 water mark of navigable waters that consist of a river or stream; and a site that is susceptible to
23 groundwater contamination, or that has the potential to be a direct conduit for contamination to
24 reach groundwater.

25 **NR 151.02 Sheet, rill and wind erosion.** All land where crops or feed are grown
26 shall be cropped to achieve a soil erosion rate equal to, or less than, the "tolerable" (T) rate
27 established for that soil.

28 Note: Soil loss will be calculated according to the revised universal soil loss equation II
29 as referenced in ch. ATCP 50 and appropriate wind loss equations as referenced in ch. ATCP 50.

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

4 (2) **NEW CONSTRUCTION AND ALTERATIONS.** (a) New or substantially altered
5 manure storage facilities shall be designed, constructed and maintained to minimize the risk of
6 structural failure of the facility, minimize leakage of the facility in order to comply with
7 groundwater standards, and maintain one foot of freeboard storage or adequate freeboard storage
8 to the equivalent volume of a 25-year, 24-hour storm, whichever is greater.

9 (b) A new manure storage facility means a facility constructed after the effective date of
10 this rule ...[revisor insert date].

11 (c) A substantially altered manure storage facility is a manure storage facility that is
12 substantially altered after the effective date of this rule ...[revisor insert date].

13 (3) **CLOSURE.** (a) Closure of a manure storage facility shall occur when an operation
14 where the facility is located ceases operations, or manure has not been added or removed from
15 the facility for a period of 24 months. Manure facilities shall be closed in a manner that will
16 prevent future contamination of groundwater and surface waters.

17 (b) The owner or operator may retain the facility for a longer period of time by
18 demonstrating to the department that all of the following conditions are met:

- 19 1. The facility is designed, constructed and maintained in accordance with sub. (2).
- 20 2. The facility is designed to store manure for a period of time longer than 24 months.
- 21 3. Retention of the facility is warranted based on anticipated future use.

22 (4) **FAILING AND LEAKING EXISTING FACILITIES.** Manure storage facilities in
23 existence as of the effective date of this rule ...[revisor insert date] that pose an imminent threat
24 to public health or fish and aquatic life or are causing a violation of groundwater standards shall
25 be upgraded, replaced or abandoned in accordance with this section.

26 **NR 151.06 Clean water diversions.** (1) All livestock producers within a water
27 quality management area shall comply with this section.

28 (2) Runoff shall be diverted away from contacting feedlot, manure storage areas and
29 barnyard areas within water quality management areas except that a diversion to protect a private
30 well under s. NR 151.015 (18) (a) is required only when the feedlot, manure storage area or
31 barnyard area is located upslope from the private well.

1 **NR 151.07 Nutrient management.** (1) All crop producers and livestock producers
2 that apply manure or other nutrients directly or through contract to agricultural fields shall
3 comply with this section.

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

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

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

15 (3) Manure, commercial fertilizer and other nutrients shall be applied in conformance
16 with a nutrient management plan.

17 (a) The nutrient management plan shall be designed to limit or reduce the discharge of
18 nutrients to waters of the state for the purpose of complying with state water quality standards
19 and groundwater standards.

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

23 1. Unless otherwise provided in this paragraph, the plan shall be designed to manage soil
24 nutrient concentrations so as to maintain or reduce delivery of nutrients contributing to the
25 impairment of impaired surface waters and to outstanding or exceptional resource waters.

26 2. The plan may allow for an increase in soil nutrient concentrations at a site if necessary
27 to meet crop demands.

28 3. For lands in watersheds containing exceptional or outstanding resource waters, the plan
29 may allow an increase in soil nutrient concentrations if the plan documents that any potential
30 nutrient delivery to the exceptional or outstanding resource waters will not alter the background
31 water quality of the exceptional or outstanding resource waters. For lands in watersheds

1 containing impaired waters, the plan may allow an increase in soil nutrient concentrations if a
2 low risk of delivery of nutrients from the land to the impaired water can be demonstrated.

3 (c) In this standard, impaired surface waters are waters identified as impaired pursuant to
4 33 USC 1313 (d) (1) (A) and 40 CFR 130.7. Outstanding or exceptional resource waters are
5 identified in Ch. NR 102.

6 (4) This section is in effect on January 1, 2005 for existing croplands under s. NR 151.09
7 (4) that are located within any of the following:

8 (a) Watersheds containing outstanding or exceptional resource waters.

9 (b) Watersheds containing impaired waters.

10 (c) Source water protection areas defined in s. NR 243.03 (29).

11 (5) This section is in effect on January 1, 2008 for all other existing croplands under s.
12 NR 151.09(4).

13 (6) This section is in effect for all new croplands under s. NR 151.09(4) one year after the
14 effective date of the rule ...[revisor inserts date].

15 Note: The purpose of the phased implementation of this standard is to allow the
16 department sufficient time to work with the department of agriculture, trade and consumer
17 protection and local governmental units to develop and implement an information, education and
18 training program on nutrient management for affected stakeholders.

19 **NR 151.08 Manure management prohibitions.** (1) All livestock producers shall
20 comply with this section.

21 (2) A livestock operation shall have no overflow of manure storage facilities.

22 (3) A livestock operation shall have no unconfined manure pile in a water quality
23 management area.

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

26 (5) (a) A livestock operation may not allow unlimited access by livestock to waters of the
27 state in a location where high concentrations of animals prevent the maintenance of adequate sod
28 or self-sustaining vegetative cover.

29 (b) This prohibition does not apply to properly designed, installed and maintained
30 livestock or farm equipment crossings.

1 **NR 151.09 Implementation and enforcement procedures for cropland performance**

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

8 (2) **ROLE OF MUNICIPALITIES.** The department may rely on municipalities to
9 implement the procedures and make determinations established in this section.

10 Note: In most cases, the department will rely on municipalities to fully implement the
11 cropland performance standards. The department intends to utilize the procedures in this section
12 in cases where a municipality has requested assistance in implementing and enforcing the
13 cropland performance standards or in cases where a municipality has failed to address an
14 incident of noncompliance with the performance standards in a timely manner. The department
15 recognizes that coordination between local municipalities, the department of agriculture, trade
16 and consumer protection and other state agencies is needed to achieve statewide compliance with
17 the performance standards. Accordingly, the department plans on working with counties, the
18 department of agriculture, trade and consumer protection and other interested partners to develop
19 a detailed intergovernmental strategy for achieving compliance with the performance standards
20 that recognizes the procedures in these rules, state basin plans and the priorities established in
21 land and water conservation plans.

22 Note: The department implementation and enforcement procedures for livestock
23 performance standards relating to manure management are included in s. NR 151.095 and ch.
24 NR 243.

25 (3) **LANDOWNER AND OPERATOR REQUIREMENTS.** (a) *Introduction.* This section
26 identifies compliance requirements for landowners and operators based on whether the cropland
27 is existing or new and whether cost sharing is required and made available to the landowner or
28 operator.

29 (b) *General requirements.* If any cropland is meeting a cropland performance standard on
30 or after the effective date of the standard, the cropland performance standard shall continue to be
31 met by the existing landowner or operator, heirs or subsequent owners or operators of the

1 cropland. If a landowner or operator alters or changes the management of the cropland in a
2 manner that results in noncompliance with the performance standard, the landowner or operator
3 shall bring the cropland back into compliance, regardless of whether cost-sharing is made
4 available. This paragraph does not apply to croplands completing enrollment determined to be
5 existing under sub. (4) (b) 2.

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

9 (c) *Existing cropland requirements.* 1. A landowner or operator of an existing cropland,
10 defined under sub. (4)(b), shall comply with a cropland performance standard if all of the
11 following have been done by the department:

12 a. Except as provided in subd. 2., a determination has been made that cost sharing is
13 available in accordance with sub. (4)(d).

14 b. The landowner or operator has been notified in accordance with sub. (5) or (6).

15 2. A landowner or operator of existing cropland, defined under sub. (4)(b), shall comply
16 with a cropland performance standard, regardless of whether cost sharing is available, in
17 situations where the best management practices and other corrective measures needed to meet
18 the performance standards do not involve eligible costs.

19 (d) *New cropland requirements.* A landowner or operator of a new cropland, defined
20 under sub. (4)(b), shall comply with the cropland performance standards, regardless of whether
21 cost sharing is available.

22 Note: Under s. 281.16 (3)(e), Stats., a landowner or operator may not be required by the
23 state or a municipality through an ordinance to bring existing croplands into compliance with the
24 cropland performance standards, technical standards or conservation practices unless cost-
25 sharing is available in accordance with this section.

26 (4) DEPARTMENT DETERMINATIONS. (a) *Scope of determinations.* If croplands are
27 not in compliance with a cropland performance standard, the department shall make
28 determinations in accordance with the procedures and criteria in this subsection.

29 (b) *Cropland status.* The department shall classify non-complying croplands to be either
30 new or existing for purposes of administering this section and s. 281.16 (3) (e), Stats. In making
31 the determination, the department shall base the decision on the following:

1 1. An existing cropland is one that meets all of the following criteria:

2 a. The cropland was being cropped as of the effective date of the standard.

3 b. The cropland is not in compliance with a cropland performance standard in this
4 subchapter as of the effective date of the standard. The reason for non-compliance of the
5 cropland may not be failure of the landowner or operator to maintain an installed best
6 management practice in accordance with a cost-share agreement or contract.

7 2. An existing cropland also includes land enrolled on the effective date of the rule
8 ...[revisor insert date] in the conservation reserve or conservation reserve enhancement program
9 administered by the United States Department of Agriculture.

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

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

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

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

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

23 (c) *Eligible costs.* 1. If cost sharing is required to be made available under sub. (3) (c), the
24 department shall determine the total cost of best management practices and corrective measures
25 needed to bring a cropland into compliance with performance standards and shall determine
26 which of those costs are eligible for cost-sharing for the purposes of administering this section
27 and s. 281.16 (3) (e), Stats.

28 2. The cost-share eligibility provisions identified in chs. NR 153 and 154 shall be used in
29 identifying eligible costs for installation of best management practices and corrective measures.

1 3. The technical assistance eligibility provisions identified in ss. NR 153.15 (1) and
2 153.16 (1) or ch. ATCP 50 shall be used in identifying eligible costs for planning, design and
3 construction services.

4 4. If cost sharing is provided by DATCP or the department, the corrective measures shall
5 be implemented in accordance with the BMPs and technical standards specified in ch. NR 154 or
6 subch. VIII of ch. ATCP 50.

7 Note: Under chs. NR 153 and 154, eligible costs typically include capital costs and
8 significant other expenses, including design costs, incurred by the landowner or operator.
9 Eligible costs do not include the value or amount of time spent by a landowner or operator in
10 making management changes.

11 (d) *Determination of cost-share availability.* 1. If cost sharing is required to be made
12 available under sub. (3) (c), the department shall make a determination as to whether cost sharing
13 is available or has been made available to cover the eligible costs for a landowner or operator to
14 comply with cropland performance standards for purposes of administering this section and s.
15 281.16 (3) (e), Stats.

16 2. Cost sharing under s. 281.65, Stats., shall be considered available when all of the
17 following have been met:

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

23 b. The grants in subd. 2.a., alone or in combination with other funding determined to be
24 available under subd. 3., provide at least 70% of the eligible costs to implement the best
25 management practices or other corrective measures for croplands needed to meet a cropland
26 performance standard.

27 c. In cases of economic hardship determined in accordance with s. NR 154.03 (4), the
28 grants in subd. 2.a., alone or in combination with other funding determined to be available under
29 subd. 3., cover not less than 70% and not greater than 90% of the eligible costs to implement the
30 best management practices or other corrective measures needed to meet a cropland performance
31 standard.

1 3. For funding sources other than those administered by s. 281.65, Stats., the department
2 may make a determination of cost share availability after consulting with DATCP and ch. ATCP
3 50.

4 Note: Under s. 281.16 (3) (e), DATCP is responsible for promulgating rules that specify
5 criteria for determining whether cost-sharing is available from sources other than s. 281.65,
6 Stats., including s. 92.14, Stats. Pursuant to s. 281.16 (3) (e), Stats., a municipality is required to
7 follow the department's definition of cost-share availability if funds are utilized under s. 281.65,
8 Stats. If funds are utilized from any other source, a municipality must defer to DATCP's
9 definition of cost share availability.

10 (5) NOTIFICATION REQUIREMENTS AND COMPLIANCE PERIODS FOR
11 EXISTING CROPLANDS WHEN COST-SHARING IS REQUIRED. (a) *Landowner*

12 *notification*. 1. The department shall notify a landowner or operator in writing of the
13 determinations made under sub. (4) and implementation requirements for existing croplands
14 where cost sharing is required for compliance.

15 2. The notice shall be sent certified mail, return receipt requested or personal delivery.

16 3. The following information shall be included in the notice:

17 a. A description of the cropland performance standard being violated.

18 b. The cropland status determination made in accordance with sub. (4) (b).

19 c. The determination made in accordance with sub. (4) (c) as to which best management
20 practices or other corrective measures that are needed to comply with cropland performance
21 standards are eligible for cost sharing.

22 Note: Some best management practices required to comply with cropland performance
23 standards involve no eligible cost to the landowner or operator and are not eligible for cost
24 sharing.

25 d. The determination made in accordance with sub. (4)(d) that cost sharing is available
26 for eligible costs to achieve compliance with cropland performance standards, including a
27 written offer of cost sharing.

28 e. An offer to provide or coordinate the provision of technical assistance.

29 f. A compliance period for meeting the cropland performance standard.

30 g. An explanation of the possible consequences if the landowner or operator fails to
31 comply with provisions of the notice, including enforcement or loss of cost sharing, or both.

1 h. An explanation of state or local appeals procedures.

2 (b) *Compliance schedule.* 1. A landowner or operator that receives the notice under par.

3 (a) shall install or implement best management practices and corrective measures to meet the
4 performance standards in the time period specified in the notice, if cost sharing is available in
5 accordance with sub. (4) (d) 2.

6 2. The compliance period identified in the notice in par. (a) shall be determined by the
7 department as follows:

8 a. The compliance period shall begin on the postmark date of the notice or the date of
9 personal delivery.

10 b. The length of the compliance period shall be from 60 days to 3 years unless otherwise
11 provided for in this subdivision.

12 c. The length of the compliance period may be less than 60 days if the site is an imminent
13 threat to public health, fish and aquatic life.

14 d. The department may authorize an extension up to 4 years on a case-by-case basis
15 provided that the reasons for the extension are beyond the control of the landowner or operator.
16 A compliance period may not be extended to exceed 4 years in total.

17 3. Once a landowner or operator achieves compliance with a cropland performance
18 standard, compliance with the standard shall be maintained by the existing landowner or operator
19 and heirs or subsequent owners, regardless of cost sharing.

20 (6) NOTIFICATION REQUIREMENTS AND COMPLIANCE PERIODS FOR
21 EXISTING CROPLANDS IN SITUATIONS WHEN NO ELIGIBLE COSTS ARE

22 INVOLVED. (a) *Landowner notification.* 1. The department shall notify a non-complying
23 landowner or operator of existing croplands of the determinations made under sub. (4).

24 2. The notice shall be sent certified mail, return receipt requested, or via personal
25 delivery.

26 3. The following information shall be included in the notice:

27 a. A description of the cropland performance standard that is being violated and the
28 determination that corrective measures do not involve eligible costs under sub. (4) (c).

29 b. The cropland status determination made in accordance with sub. (4) (b).

30 c. A compliance period for achieving the cropland performance standard. The compliance
31 period may not exceed the time limits in par. (b).

1 d. An explanation of the consequences if the landowner or operator fails to comply with
2 provisions of the notice.

3 e. An explanation of state or local appeals procedures.

4 (b) *Compliance period.* 1. The compliance period for existing croplands where best
5 management practices and other corrective measures do not involve eligible costs shall be in
6 accordance with the following:

7 a. The compliance period shall begin on the postmark date of the notice or the date of
8 personal delivery.

9 b. The length of the compliance period shall be from 60 days to 2 years unless otherwise
10 provided for in this subsection.

11 c. The length of the compliance period may be less than 60 days if the site is an imminent
12 threat to public health, fish and aquatic life.

13 2. Once compliance with a cropland performance standard is attained, compliance with
14 the standard shall be maintained by the existing landowner or operator and heirs or subsequent
15 owners.

16 (c) *Combined notices.* The department may meet multiple notification requirements under
17 par. (a), sub. (5) and s. NR 151.095 within any single notice issued to a landowner or operator.

18 (7) ENFORCEMENT. (a) *Authority to initiate enforcement.* The department may take
19 enforcement action pursuant to s. 281.98, Stats., or other appropriate actions, against the
20 landowner or operator of a cropland for failing to comply with the cropland performance
21 standards in this subchapter or approved variances to the cropland performance standards
22 provided by the department under s. NR 151.097.

23 (b) *Enforcement following notice and direct enforcement.* The department shall provide
24 notice to the landowner or operator of an existing cropland in accordance with subs. (5) and (6)
25 prior to the department initiating enforcement action under s. 281.98, Stats.

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

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

6 (8) NOTIFICATION TO MUNICIPALITIES. The department shall notify the
7 appropriate municipality, including a county land conservation committee, prior to taking any of
8 the following actions under this section:

9 (a) Contacting a landowner or operator to investigate compliance with cropland
10 performance standards.

11 (b) Issuing a notice under sub. (5) or (6) to a landowner or operator.

12 (c) Taking enforcement action under s. 281.98, Stats., against a landowner or operator for
13 failing to comply with cropland performance standards in this subchapter.

14 (d) Notification is not required if the site is an imminent threat to public health or fish and
15 aquatic life.

16 **NR 151.095 Implementation and enforcement procedures for livestock**
17 **performance standards and prohibitions.** (1) PURPOSE. The purpose of this section is to
18 identify the procedures the department will follow in implementing and enforcing the livestock
19 performance standards and prohibitions pursuant to ss. 281.16(3) and 281.98, Stats. If a livestock
20 performance standard is also listed as a cropland performance standard under s. NR 151.09, the
21 department may choose the procedures of either s. NR 151.09 or this section to obtain
22 compliance with the standard. This section will also identify circumstances under which an
23 owner or operator of a livestock facility is required to comply with livestock performance
24 standards and prohibitions. In this section, "livestock performance standards and prohibitions"
25 means the performance standards and prohibitions in ss. NR 151.05, 151.06 and 151.08.

26 (2) ROLE OF MUNICIPALITIES. The department may rely on municipalities to
27 implement the procedures and make determinations outlined in this section.

28 Note: In most cases, the department will rely on municipalities to fully implement the
29 livestock performance standards and prohibitions. The department intends to utilize the
30 procedures in this section in cases where a municipality has requested assistance in
31 implementing and enforcing the performance standards or prohibitions or in cases where a

1 municipality has failed to address an incident of noncompliance with the performance standards
2 or prohibitions in a timely manner. The department recognizes that coordination between local
3 municipalities, the department of agriculture, trade and consumer protection and other state
4 agencies is needed to achieve statewide compliance with the performance standards and
5 prohibitions. Accordingly, the department plans on working with counties, the department of
6 agriculture, trade and consumer protection and other interested partners to develop a detailed
7 intergovernmental strategy for achieving compliance with the performance standards and
8 prohibitions that recognizes the procedures in these rules, state basin plans and the priorities
9 established in land and water conservation plans.

10 Note: Additional implementation and enforcement procedures for livestock performance
11 standards and prohibitions are in ch. NR 243, including the procedures for the issuance of a
12 NOD.

13 (3) EXEMPTIONS. The department may follow the procedures in ch. NR 243 and is not
14 obligated to follow the procedures and requirements of this section in the following situations:

15 (a) If the livestock operation holds a WPDES permit.

16 (b) If the department has determined that the issuance of a NOD to the owner or operator
17 of the livestock operation is warranted. Circumstances in which a NOD may be warranted
18 include:

19 1. The department has determined that a livestock facility has a point source discharge
20 under s. NR 243.24.

21 2. The department has determined that a discharge to waters of the state is occurring and
22 the discharge is not related to noncompliance with the performance standards or prohibitions.

23 3. The department has determined that a municipality is not addressing a facility's
24 noncompliance with the performance standards and prohibitions in a manner consistent with the
25 procedures and timelines established in this section.

26 (4) LIVESTOCK OWNER AND OPERATOR REQUIREMENTS. (a) *Introduction*. This
27 section identifies compliance requirements for a livestock owner or operator based on whether a
28 livestock facility is existing or new and whether cost sharing is required to be made available to a
29 livestock owner or operator.

30 (b) *General requirements*. If any livestock facility is meeting a livestock performance
31 standard or prohibition on or after the effective date of the standard or prohibition, the livestock

1 performance standard or prohibition shall continue to be met by the existing owner or operator,
2 heirs or subsequent owners or operators of the facility. If an owner or operator alters or changes
3 the management of the livestock facility in a manner that results in noncompliance with a
4 livestock performance standard or prohibition, the owner or operator shall bring the livestock
5 facility back into compliance regardless of cost-share availability.

6 (c) *Existing livestock facility requirements.* 1. An owner or operator of an existing
7 livestock facility, defined under sub. (5) (b), shall comply with a livestock performance standard
8 or prohibition if all of the following have been done by the department:

9 a. Except as provided in subd. 2., a determination has been made that cost sharing is
10 available in accordance with sub. (5) (d).

11 b. The owner or operator of the livestock facility has been notified in accordance with
12 sub. (6) or (7).

13 2. An owner or operator of an existing livestock facility, defined under sub. (5) (b), shall
14 comply with the livestock performance standards and prohibitions, regardless of whether cost
15 sharing is available, in situations where best management practices and other corrective
16 measures needed to meet the performance standards do not involve eligible costs.

17 (d) *New livestock facility requirements.* An owner or operator of a new livestock facility,
18 defined under sub. (5) (b), shall comply with the livestock performance standards and
19 prohibitions, regardless of whether cost sharing is available.

20 Note: Under s. 281.16 (3) (e), Stats., an owner or operator may not be required by the
21 state or a municipality through an ordinance or regulation to bring existing livestock facilities
22 into compliance with the livestock performance standards or prohibitions, technical standards or
23 conservation practices unless cost-sharing is available in accordance with this section.

24 (5) DEPARTMENT DETERMINATIONS. (a) *Scope of determinations.* If a livestock
25 facility is not in compliance with a livestock performance standard or prohibition, the department
26 shall make determinations in accordance with the procedures and criteria in this subsection.

27 (b) *Livestock facility status.* The department shall classify a non-complying livestock
28 facility on an operation to be either new or existing for purposes of administering this section and
29 s. 281.16 (3) (e), Stats. In making the determination, the department shall base the decision on
30 the following:

31 1. An existing livestock facility is one that meets all of the following criteria:

1 a. The facility is in existence as of the effective date of the livestock performance
2 standard or prohibition.

3 b. The facility is not in compliance with a livestock performance standard or prohibition
4 in this subchapter as of the effective date of the livestock performance standard or prohibition.
5 The reason for noncompliance of the livestock facility may not be failure of the owner or
6 operator to maintain an installed best management practice in accordance with a cost-share
7 agreement or contract.

8 2. A new livestock operation or facility is one that does not meet the definition under
9 subd. 1., including:

10 a. A livestock operation or facility that is established or installed after the effective date
11 of the livestock performance standard or prohibition, including the placement of livestock
12 structures on a site that did not previously have structures, or placement of animals on lands that
13 did not have animals as of the effective date of the livestock performance standard or prohibition,
14 unless the land is part of an existing rotational grazing or pasturing operation.

15 b. For a livestock operation that is in existence as of the effective date of the livestock
16 performance standard or prohibition that establishes or constructs or substantially alters a facility
17 after the effective date of the livestock performance standard or prohibition, the facilities
18 constructed, established or substantially altered after the effective date of the livestock
19 performance standard or prohibition are considered new, except as specified in subd. 3.

20 c. A livestock facility that is in existence and in compliance with a livestock performance
21 standard or prohibition on or after the effective date of the livestock performance standard or
22 prohibition and that undergoes a change in the livestock facility that results in noncompliance
23 with the livestock performance standard or prohibition.

24 3. Pursuant to the implementation procedures in this section, if the department or a
25 municipality directs an owner or operator of an existing livestock facility to construct a facility
26 as a corrective measure to comply with a performance standard or prohibition on or after the
27 effective date of the livestock performance standard or prohibition, or directs the owner or
28 operator to reconstruct the existing facility as a corrective measure on or after the effective date
29 of the livestock performance standard or prohibition, the constructed facilities are not considered
30 new for purposes of installing or implementing the corrective measure.

1 4. A livestock facility that meets the criteria in subd. 1 and has subsequently been
2 abandoned shall retain its status as an existing livestock facility if livestock of similar species
3 and number of animal units are reintroduced within 5 years of abandonment.

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

6 (c) *Eligible costs.* 1. If cost sharing is required to be made available under sub. (4) (c), the
7 department shall determine the total cost of best management practices and corrective measures
8 needed to bring a livestock facility into compliance with a livestock performance standard or
9 prohibition and shall determine which of those costs are eligible for cost-sharing for the purposes
10 of administering this section and s. 281.16 (3) (e), Stats.

11 2. The cost-share eligibility provisions identified in chs. NR 153 and 154 shall be used in
12 identifying eligible costs for installation of best management practices and corrective measures.

13 3. The technical assistance eligibility provisions identified in ss. NR 153.15 (1) and
14 153.16 (1) or ch. ATCP 50 shall be used in identifying eligible costs for planning, design and
15 construction services.

16 4. If cost sharing is provided by DATCP or the department, the corrective measures shall
17 be implemented in accordance with the best management practices and technical standards
18 specified in ch. NR 154 or subch. VIII of ch. ATCP 50.

19 Note: Under chs. NR 153 and 154, eligible costs typically include capital costs and
20 significant other expenses, including design costs, incurred by the owner or operator of the
21 livestock operation. Eligible costs do not include the value or amount of time spent by an owner
22 or operator in making management changes.

23 (d) *Determination of cost-share availability.* 1. If cost sharing is required to be made
24 available under sub. (4) (c), the department shall make a determination as to whether cost sharing
25 is or has been made available to cover eligible costs for an owner or operator to comply with a
26 livestock performance standard or prohibition for purposes of administering this section and s.
27 281.16 (3) (e), Stats.

28 2. Cost sharing under s. 281.65, Stats., shall be considered available when all of the
29 following have been met:

30 a. Cost share dollars are offered in accordance with either of the following: the
31 department has entered into a runoff management grant agreement under ch. NR 153 or a

1 nonpoint source grant agreement under ch. NR 120, and a notice under sub. (6) or under s. NR
2 243.24 (4) has been issued by the department or a municipality; or the department directly offers
3 cost sharing and issues a notice under sub. (6) or s. NR 243.24(4).

4 b. The grants in subd. 2.a., alone or in combination with other funding determined to be
5 available under subd. 3., provide at least 70% of the eligible costs to implement the best
6 management practices or other corrective measures needed for a livestock facility to meet a
7 livestock performance standard or prohibition.

8 c. In cases of economic hardship determined in accordance with s. NR 154.03 (4), the
9 grants in subd. 2.a., alone or in combination with other funding determined to be available under
10 subd. 3., cover not less than 70% and not greater than 90% of the eligible costs to implement the
11 best management practices or other corrective measures needed for a livestock facility to meet a
12 livestock performance standard or prohibition.

13 d. If an existing livestock operation with less than 250 animal units wants to expand at
14 the time it is upgrading a facility to meet a performance standard or prohibition pursuant to a
15 notice in sub. (6) or under s. NR 243.24(4), the grants in subd. 2.a., alone or in combination with
16 other funding determined to be available under subd. 3., shall also provide at least 70% of
17 eligible costs needed to bring any expansion of facilities of up to 300 animal units into
18 compliance with the performance standard or prohibition. In cases of economic hardship, the
19 grants in subd. 2.a., alone or in combination with other funding determined to be available under
20 subd. 3., shall also provide between 70% and 90% of the eligible costs needed to bring any
21 expansion of facilities of up to 300 animal units into compliance with the performance standards
22 and prohibitions.

23 Note: For livestock operations with less than 250 animal units, that portion of any
24 expansion of facilities to accommodate more than 300 animal units is not eligible for cost
25 sharing under s. NR 153.15(2)(d)1. For an existing livestock operation with greater than 250
26 animal units, but less than the number of animal units requiring a WPDES permit under s. NR
27 243.12(1)(a), (b) or (c), cost sharing may be provided under s. NR 153.15(2)(d)2., for at least 70
28 % of eligible costs to bring up to a 20% increase in livestock population into compliance with the
29 performance standards and prohibitions; however, cost sharing for eligible costs up to a 20%
30 expansion in livestock population is not required to be made available for compliance.

1 3. For funding sources other than those administered by s. 281.65, Stats., the department
2 may make a determination of cost share availability after consulting with DATCP and ch. ATCP
3 50.

4 Note: Under s. 281.16 (3) (e), Stats., DATCP is responsible for promulgating rules that
5 specify criteria for determining whether cost-sharing is available from sources other than s.
6 281.65, Stats., including s. 92.14, Stats. Pursuant to s. 281.16 (3) (e), Stats., a municipality is
7 required to follow the department's definition of cost share availability if funds are utilized under
8 s. 281.65, Stats. If funds are utilized from any other source, a municipality shall defer to
9 DATCP's definition of cost share availability.

10 (6) NOTIFICATION REQUIREMENTS AND COMPLIANCE PERIODS FOR
11 EXISTING LIVESTOCK FACILITIES WHEN COST-SHARING IS REQUIRED. (a) *Owner or*

12 *operator notification.* 1. The department shall notify an owner or operator in writing of the
13 determinations made under sub. (5) and implementation requirements for existing livestock
14 facilities where cost sharing is required for compliance.

15 2. The notice shall be sent certified mail, return receipt requested or personal delivery.

16 3. The following information shall be included in the notice:

17 a. A description of the livestock performance standard or prohibition being violated.

18 b. The livestock facility status determination made in accordance with sub. (5) (b).

19 c. The determination made in accordance with sub. (5)(c) as to which best management
20 practices or other corrective measures needed to comply with a livestock performance standard
21 or prohibition are eligible for cost sharing.

22 Note: Some best management practices required to comply with a livestock performance
23 standard or prohibition involves no eligible costs to the owner or operator.

24 d. The determination made in accordance with sub. (5)(d) that cost sharing is available
25 for eligible costs to achieve compliance with a livestock performance standard or prohibition,
26 including a written offer of cost sharing.

27 e. An offer to provide or coordinate the provision of technical assistance.

28 f. A compliance period for meeting the livestock performance standard or prohibition.

29 g. An explanation of the possible consequences if the owner or operator fails to comply
30 with provisions of the notice, including enforcement or loss of cost sharing, or both.

31 h. An explanation of state or local appeals procedures.

1 (b) *Compliance period.* 1. An owner or operator that receives the notice under par. (a)
2 shall install or implement best management practices and corrective measures to meet a
3 performance standard or prohibition in the time period specified in the notice, if cost-sharing is
4 available in accordance with sub. (5) (d) 2.

5 2. The compliance period identified in the notice in par. (a) shall be determined by the
6 department as follows:

7 a. The compliance period shall begin on the post-mark date of the notice or the date of
8 personal delivery.

9 b. The length of the compliance period shall be from 60 days to 3 years unless otherwise
10 provided for in this subdivision.

11 c. The length of the compliance period may be less than 60 days if the site is an imminent
12 threat to public health or fish and aquatic life.

13 d. The department may authorize an extension up to 4 years on a case-by-case basis
14 provided that the reasons for the extension are beyond the control of the owner or operator of the
15 livestock facility. A compliance period may not be extended to exceed 4 years in total.

16 3. Once an owner or operator achieves compliance with a livestock performance standard
17 or prohibition, compliance with the standard or prohibition shall be maintained by the existing
18 owner or operator and heirs or subsequent owners or operators, regardless of cost-sharing.

19 (7) NOTIFICATION REQUIREMENTS AND COMPLIANCE PERIODS FOR
20 EXISTING LIVESTOCK FACILITIES IN SITUATIONS WHEN NO ELIGIBLE COSTS ARE
21 INVOLVED. (a) *Owner or operator notification.* 1. The department shall notify a non-
22 complying owner or operator of an existing livestock facility of the determinations made under
23 sub. (5).

24 2. The notice shall be sent certified mail, return receipt requested or personal delivery.

25 3. The following information shall be included in the notice:

26 a. A description of the livestock performance standard or prohibition that is being
27 violated and the determination that corrective measures do not involve eligible costs under sub.
28 (5) (c).

29 b. The livestock operation status determination made in accordance with sub. (5) (b).

30 c. A compliance period for meeting the livestock performance standard or prohibition.

31 The compliance period may not exceed the time limits in par. (b).

1 d. An explanation of the consequences if the owner or operator fails to comply with
2 provisions of the notice.

3 e. An explanation of state or local appeals procedures.

4 (b) *Compliance period.* 1. The compliance period for existing livestock facilities where
5 best management practices and other corrective measures do not involve eligible costs shall be in
6 accordance with the following;

7 a. The compliance period shall begin on the postmark date of the notice or the date of
8 personal delivery.

9 b. The length of the compliance period shall be from 60 days to 2 years unless otherwise
10 provided for in this subdivision.

11 c. The length of the compliance period may be less than 60 days if the site is an imminent
12 threat to public health, or fish and aquatic life.

13 2. Once compliance with a livestock performance standard or prohibition is attained,
14 compliance with the performance standard or prohibition shall be maintained by the existing
15 owner or operator and heirs or subsequent owners or operators.

16 (c) *Combined notices.* The department may meet multiple notification requirements under
17 par. (a), sub. (6) and s. NR 151.09 within any single notice issued to the owner or operator.

18 (8) ENFORCEMENT. (a) *Authority to initiate enforcement.* The department may take
19 action pursuant s. 281.98, Stats., or other appropriate actions, against the owner or operator of a
20 livestock operation for failing to comply with the livestock performance standards and
21 prohibitions in this subchapter or approved variances to the livestock performance standards
22 provided by the department under s. NR 151.097.

23 (b) *Enforcement following notice and direct enforcement.* The department shall provide
24 notice to the owner or operator of an existing livestock facility in accordance with sub. (6) or (7)
25 prior to the department initiating enforcement action under s. 281.98, Stats.

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

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

4 (9) NOTIFICATION TO MUNICIPALITIES. The department shall notify the
5 appropriate municipality, including a county land conservation committee, prior to taking any of
6 the following actions under this subsection:

7 (a) Contacting an owner or operator to investigate compliance with livestock
8 performance standards and prohibitions.

9 (b) Issuing a notice under sub. (6) or (7) to an owner or operator.

10 (c) Taking enforcement action under s. 281.98, Stats., against an owner or operator for
11 failing to comply with a livestock performance standard or prohibition in this subchapter.

12 (d) Notification is not required if the site is an imminent threat to public health or fish and
13 aquatic life.

14 **NR 151.096 Local livestock operation ordinances and regulations.** (1) LOCAL
15 REGULATIONS THAT EXCEED STATE STANDARDS; APPROVAL REQUIRED. (a)
16 Except as provided in par. (b), a local governmental unit may not enact a livestock operation
17 ordinance or regulation for water quality protection that exceeds the performance standards or
18 prohibitions in ss. NR 151.05 to 151.08 or the related conservation practices or technical
19 standards in ch. ATCP 50, unless the local governmental unit obtains approval from the
20 department under sub. (2), or receives approval from DATCP pursuant to s. ATCP 50.60.

21 (b) Paragraph (a) does not apply to any of the following:

22 1. Local ordinances or regulations that address cropping practices that are not directly
23 related to the livestock operation.

24 2. Local ordinances or regulations enacted prior to the effective date of this rule *[revisor*
25 *insert date]*.

26 Note: See s. 92.15, Stats. A person adversely affected by a local livestock regulation
27 may oppose its adoption at the local level. The person may also challenge a local regulation in
28 court if the person believes that the local governmental unit has violated sub. (1) or s. 92.15,
29 Stats. A local governmental unit is responsible for analyzing the legal adequacy of its
30 regulations, and may exercise its own judgment in deciding whether to seek state approval under
31 this section.

1 Note: Subsection (1) does not limit or expand the application of s. 92.15, Stats., to
2 ordinances or regulations enacted prior to the effective date of this rule [revisor insert date].

3 (2) DEPARTMENT APPROVAL. (a) To obtain department approval under sub. (1) for
4 an existing or proposed regulation, the head of the local governmental unit or the chair of the
5 local governmental unit's governing board shall do all of the following:

6 1. Submit a copy of the livestock operation ordinance or regulation or portion thereof to
7 the department and to the department of agriculture, trade and consumer protection.

8 2. Identify the provisions of the regulation for which the local governmental unit seeks
9 approval.

10 3. Submit supporting documentation explaining why the specific regulatory provisions
11 that exceed the performance standards, prohibitions, conservation practices or technical
12 standards are needed to achieve water quality standards, and why compliance cannot be achieved
13 with a less restrictive standard.

14 (b) The department shall notify the local governmental unit in writing within 90 calendar
15 days after the department receives the ordinance or regulation as to whether the ordinance or
16 regulation, or portion thereof is approved or denied and shall state the reasons for its decision.
17 Before the department makes its decision, the department shall solicit a recommendation from
18 DATCP. If the department find the regulatory provisions are needed to achieve water quality
19 standards, the department may approve the ordinance or regulation or portion thereof.

20 (3) LOCAL PERMITS. Local permits or permit conditions are not subject to the review
21 and approval procedures in this section unless the permit conditions are codified in a local
22 ordinance or regulation.

23 Note: A local permit requirement does not, in and of itself, violate sub. (1), but permit
24 conditions codified in a local ordinance or regulation must comply with sub. (1). If a local
25 governmental unit routinely requires permit holders to comply with uncodified water quality
26 protection standards that exceed state standards, those uncodified requirements may be subject to
27 court challenge for noncompliance with s. 92.15, Stats. and sub. (1) as *de facto* regulatory
28 enactments. A local governmental unit may forestall a legal challenge by codifying standard
29 permit conditions and obtaining any necessary state approval under this section. The department
30 will review codified regulations, but will not review individual permits or uncodified permit
31 conditions under sub. (2).