I30 Comment: (individual) S.05, P. 24 Line 31 -- Remove the reference to "facilities " at the end of the definition for "Agricultural Land Use". Runoff from facilities should be regulated under the agricultural performance standards, not the storm water ordinance.
Response: Agricultural facilities and practices have been excluded.

I31 Comment I14 (DATCP) regarding exclusion of agriculture applies to S.05(2), P. 24. (Comment cont'd.) There is a range of government programs that support planning and management to reduce agricultural runoff, including efforts sponsored by NRCS and LCDs. These efforts incorporate technical standards for agricultural facilities that include design specifications and management practices to guard against runoff problems such as those triggered by peak rainfall events. In terms of storm water runoff management, these standards address the key concerns from an agricultural perspective. For example, clean water diversion addresses the most important element of management on most livestock operations—ensuring that storm water does not collect biological contamination. Because it is designed primarily for non-agriculture, the model ordinance does not recognize the role of agricultural performance standards such as vegetative covers, clean water diversions and manure management prohibitions.

If local governments need to exercise additional oversight, they have a range of regulatory option to control runoff from agricultural facilities and buildings. Regulation of livestock under s. 92.15 can control runoff from yards and other facilities used to house animals. Use of this authority supports implementation of the agricultural performance standards and avoids potential conflict that might arise from imposing inconsistent standards under the model ordinance. Encouraging local governments to use s. 92.15 creates opportunities for review and approval by DNR and DATCP.

Chapter 92 contains additional authorities for local governments to protect water quality from agricultural activities. Sec. 92.17 enables local governments to protect shoreland areas from agricultural activity through barnyard runoff controls in shoreland corridors. Manure storage ordinances under s. 92.16 commonly contain a variation of the following planning requirement in their permit applications: "Provisions for adequate drainage and control of runoff to prevent pollution of surface water and groundwater."
Response: Agricultural facilities and practices have been excluded.

I32 Comment: (individual) S.05, P. 29 Line 1 -- This definition should be reworded to remove the reference to specific sites. Systems level plans look more broadly at control options.
I33 Comment: (individual) S.06, P. 30 Line 10 -- This option for acceptable technical standards does not appear in the construction ordinance. It should either be put in both ordinances, or removed from both.
I34 Comment: (co. plan dept.) S06(2) -- "Where technical standards have not been identified..." that is not contained in the erosion control model ordinance. Should this not be in both?
Response: We have made these requested changes in both model ordinances.

I35 Comment: (LCD) NR 152, Appendix B, S.07(a)-(b) require that storm water facilities be designed to attenuate the 2-year, 24-hour storm event. A much more widely accepted and technically sound approach is to require that post-developed discharge rates be held at or below pre-developed discharge rates for a series of storm events, including the 2, 10, 25, 50 and 100-year, 24-hour storm events.

I realize that the workgroup drafting these rules probably had difficulty coming to a consensus on selection of storm events. I am also well aware of the connection between smaller storm events and water quality and streambank erosion, and that larger storm events are often associated more with flooding than water quality impacts. However, a model ordinance that does not address both water quality and water quantity aspects of storm water management misses the opportunity to comprehensively address the full environmental, private property and public infrastructure impacts of unabated storm water runoff.

The model ordinance should at least provide the option of requiring control of the 2, 10, 25, 50 and 100-year, 24-hour storm events, and the need for the municipality to consider its options should be explicitly noted in the text. Most municipalities would consider both water quality and water quantity criteria in their ordinance if given the option. Guidance notes could refer to The Wisconsin Storm water Manual, pub. G3691-1, p. 3: "Summary of Design Recommendation" and P. 7: "Table 4. Comparative quantity control benefits provided by water quality control practices."

Response: The purpose of the model ordinance is to address water quality concerns. This is why the 2-yr., 24-hr. storm was selected. We have added a note to suggest to communities that they may want to include the other storm events for flood control since that is certainly appropriate at the local level.

I36 Comment: (RPC) Section 7(1)(c) deals with infiltration and, if required uniformly, can only create a great deal of problems in the development and redevelopment of urban areas, particularly in such areas provided with sanitary sewerage service. Infiltration facilities are, in some cases, an important component of a storm water management program. However, the need is site-specific, such as in cases where stream base flow and temperature are important for cold water or headwater area streams. This should not be prescribed generally, but should be considered in locally-based planning.
Response: The infiltration performance standard has been modified significantly but it will still be applied to development sites regardless of the stream base flow or temperature. Infiltration serves other water quality purposes beyond these two issues. Infiltration through several layers of soil removes pollutants that could not be removed through sedimentation alone. It also reduces the volume and velocity of water reaching surface waters, which alleviates the concern for the erosivity of runoff and the resulting streambank erosion. This is why the performance standard is desired at all locations where development is occurring.

I37 Comment F62 (city eng. dept.) objecting to the exception for development sites that don't increase surface elevation within the downstream receiving water by more than 0.1 inch for the 2-year, 24-hour storm event applies to S.07(3).

I38 Comment: (co. plan dept.) S.07(3). The previous model ordinance required standards based on both the 2-year and 10-year, 24-hour storms. Both this and the current 2-year, 24-hour design are inadequate. The 25-year, 24-hour storm standard should be adopted. The level of protection afforded by BMPs design based on a 2-year storm does too little to protect the lives and property of our citizens.
Response: The purpose of the model ordinance is not to address flooding issues. We have added a note that indicates if the local unit of government is also concerned about water quantity then they should include additional storm events.

I39 Comment F78 and response apply to S.07(4).

I40 Comment: (WAL) P. 32 -- We need public educational material developed for rain gardens.
Response: This material is being developed.

I41 Comment F71 and response applies to S.07(4)(a)3.

I42 Comment F117 and response apply to S.07(5).

I43 Comment F224 (WAL) and response apply to S.07(7)(b).

I44 Comment: (DATCP) S.08, P. 40. The model ordinance requires a permit for any landowner undertaking "land disturbing construction activity" but fails to define this term. This needs to be fixed. As the term is defined in the construction erosion control model ordinance and in NR 216, it would exclude agricultural land uses from permit requirements, except for construction of buildings and facilities used in agriculture.
Response: We have included the definition and excluded agricultural facilities and practices.

I45 Comment: (LCD) S.08(3). Language should be incorporated to require plan review by a qualified engineer or other qualified technical authority rather than merely an administrative check by a non-technical administrative authority. Review of private engineering designs by a qualified technical authority is standard practice. The review process assures quality control and provides public assurance that planning and design standards are met.

Response: We did not feel we could mandate that at the state level. However, the local unit of government can certainly include this requirement when they identify who will conduct the reviews.

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.

J25 Comment: (LCD) For the regulator and regulated the rules lack uniform statewide implementation strategies and incentives necessary to accelerate the program beyond current capabilities. The real impact of the rules will be negligible because:

- Implementation grants from the TRM program continue to be based on voluntary applications and awarded through competitive scoring.
- Selected isolated TRM projects are still "distributed evenly around the state" by political boundary, not priority.
- Within TRM project areas there is no requirement for compliance with the performance standards. (see additional comments under NR 151, general comments on implementation)

Response: See answer to J5 above. In addition, there is nothing in the statutes that require a governmental unit to enforce performance standards or to submit grant applications. Consequently, DNR has no authority to require local participation in these rules. Also, the requirement to fund at least one project in each DNR region is to implement the statutory requirement under s. 281.65 (4c) (c). This states that " To the extent practical, within the requirements of this section, the department shall select projects so that projects are distributed evenly around the state." The department believes that selecting one project per region and then continuing with the selection based on rank score is a responsible method to distribute projects around the state without sacrificing project quality. Finally, the state statute authorizing this grant program lists several water resources needs that the program is to address. Compliance with performance standards is only one of several needs identified. NR 153 will place a high priority on projects designed to meet performance standards but, in keeping with the statute, will allow funding for other types of projects where the water quality need is high and the project is cost-effective.

J26 Comment: (LCD) The rules do not require that performance standards be met in those state funded project areas (voluntary, competitively scored TRM projects).
Response: The state statute lists six types of water quality concerns that TRM projects may address, only one of which is the need to meet performance standards. This is clear statutory direction that compliance with performance standards is only one of several program goals. Projects designed to meet performance standards will have a competitive edge against other projects, all other factors being equal. However, DNR recognizes there may be occasional projects needed to manage problems for which there are no performance standards, including chlorides, thermal impacts, loss of water quality corridors, channelized flow and streambank erosion.

J27 Comment: (LCD) The majority of funds available for the redesigned nonpoint program are only available through TRM grants. These grants, to be awarded on a voluntary competitive scoring system, ignores legislative intent as well as the 1998 WCA "Block Grant" resolution that was approved by counties on a vote of 60 to 9.
Response: See answer to J5 above. Also, the department must draft rules consistent with state law. Block grants are not a legal mechanism for distributing grants under s. 281.65(4c).

J28 Comment: (Co. Ext., LCD) The phased out funding for the priority watershed program needs to be allocated to effective local assistance grants for county LCDs to include opportunities for implementing prevention-based strategies. It is especially important that the local assistance grants provide for a minimum of three full-time staff for LCDs in all counties. Additional priority watershed funds that come available should be allocated to that purpose, not to creating a large new TRM grant program through NR 153. If the partnership with the LCDs is not staffed and funded equitably across the state, the overall nonpoint source management objectives have no hope of being implemented.
Response: See responses to comments J5 and J23 above. Also, the type of funding for TRM grants is primarily bonding revenue, which can only be spent on structural management practices. It cannot be spent on non-structural practices, such as nutrient management or conservation tillage, and it cannot be spent to support staff.

J29 Comment: (WPVGA). We support a 90% cost-share provision to comply with the rules. Because of the poor economic times in agriculture, it makes little sense to make it even tougher for agricultural

producers to survive by requiring producers to comply with expensive new regulation. If these rules are truly for the public good, the public should participate in the cost.
Response: Statutes [s. 281.65 (8) (f)] limit DNR cost-sharing of TRM grants to 70% maximum, except in the case of economic hardship when the cost sharing will be increased up to a rate of 90%.

J30 Comment: (WLWCA/WALCE, several counties) NR 153.15(1) Eligible costs. Clarify if the implication is that counties can be reimbursed for their "design and construction services" costs.
Response: The department can not pay the county to perform design work under a local assistance grant to the county. However, the department can provide, as part of a construction grant, funds to reimburse the farmer if he hires someone, such as a consultant, to do the design work. This arrangement is required by changes in the state law that removed DNR's ability to write local assistance grants to governmental units for several activities formerly covered under the Priority Watershed Program.

J31 Comment: (WLWCA/WALCE, several counties) NR 153.15(2) Ineligible Costs. This whole section is confusing due in part to definitions for "significant expansion," "significant changes" and "significant increases." Subd. (a) and (c) will be particularly difficult to decipher and administer and need clarification. This section's requirements based on livestock numbers ignore location and topography in terms of impact. Large operations aren't always significant as small operations aren't always insignificant. We recommend clarifying these terms and eliminate requirements based on numbers of livestock below NPDES permit levels, and base compliance on meeting a performance standard, as was intended by AWAC and OAC.
Response: We reorganized this subsection to help clarify how expansions of livestock facilities affect eligibility. We agree with the comment that compliance requirements should be based on whether performance standards are being violated, not on the size of the operation. The draft rules require compliance at all sites that do not meet performance standards, regardless of size. The *cost-share policies* for expansions are different, however, for different size operations. NR 151 states that cost sharing of water quality controls needed to meet performance standards is *required* for small expansions if the expansion occurs at the time the base facility is being upgraded to meet performance standards. NR 153 makes these costs *eligible* so that DNR has a mechanism to meet the cost share requirement of NR 151. NR 153 also allows the cost-sharing of water quality controls needed to meet performance standards for expansions up to 20% for operations that are between 250 and the size requiring a WPDES permit, but this cost sharing *is not required* as a condition of compliance. It would be up to the local LCD staff to determine whether water quality controls for such expansions should be cost-shared. This policy was developed as a mechanism to integrate small expansions at smaller operations at the time when management improvement are being made to comply with the performance standards. This policy should help maintain the viability of smaller operations. Cost sharing is not required, or even eligible, for water quality controls needed to comply with a WPDES permit.

J32 Comment: (individual) NR 153.15(2). Make eligible design work that is completed prior to initiation of construction grant.
Response: DNR agrees with this comment and made the appropriate change.

J33 Comment: (WLWCA/WALCE, several counties) NR 153.15(2)(d)2 specifies that base livestock numbers are registered the day that a county or the DNR visits a site and documents the number. This appears to contradict the responsibility of a landowner to meet a performance standard particularly if due to increases in livestock cause non-compliance prior to a site visit. Clarify "when" a landowner becomes out of compliance with a performance standard, based on numbers of livestock or based on direct runoff, and how this impacts cost share requirements.
Response: See response to J31 above. The other questions raised by this comment are dealt with in NR 151.095, which identifies compliance and cost share requirements. A note was added to NR 153.15 that cross-references NR 151.09 and NR 151.095 and explains how these rule provisions are linked.

J34 Comment: (DATCP) NR 153.15(2)(l). Modify "the planting, growing and harvesting of trees associated with silviculture, except as necessary for site stabilization, and for buffer areas." As written, this paragraph seems to prohibit cost-sharing for trees established in riparian buffer areas.
Response: The department agrees, but at the same time does not want to use cost share funds to plant trees intended for commercial harvest. This clause was modified to state that a cost share grant may not be used to reimburse a landowner for the planting of trees intended for commercial harvest.

J35 Comment: (DATCP) NR 153.15(2)(zd). We agree that the DNR should not reimburse costs that another unit of government is also reimbursing. This paragraph should clarify how this will be documented.
Response: The department agrees. This paragraph was supplemented by clarifying language in that portion of the rule that identifies eligible projects. In addition, language was added to the section on reimbursement procedures that will require that information be submitted as part of the reimbursement request indicating if other funding sources are being used and to show that cost-share provisions are not being violated.

J36 Comment: (WLWCA/WALCE, several counties) NR 153.15(2)(zd). Clarify what this implies in terms of cost share funds supplied by local units of government in excess of the state's 70 percent.
Response: See answer to J1 above.

J37 Comment: (individual) NR 153.15(3). Allow the use of interim BMPs and alternative design criteria for urban as well as agricultural BMPs.
Response: DNR agrees that this option should be available in limited circumstances. It will not be available if the BMP is being installed to meet a performance standard contained in NR 151. Any BMP installed to meet a performance standard under NR 151 must meet technical standards developed through the process in NR 151, Subchapter V. The language was modified to incorporate the comment with the restrictions noted.

J38 Comment: (DATCP) NR 153.15(3)(b)2b. Add the underlined words: "That the practice is a cost-effective means..."
Response: This change has been made.

J39 Comment J22 (DATCP) regarding least cost provisions also applies to NR 153.15(6)(b).

J40 Comment: (LCD) NR 153.16(1)(d) We oppose funding being provided through TRM grants to compensate staff for time spent providing technical assistance or administrative services related to the TRM project. These references create a funding source for TRM project management and diminish the single grant concept for funding supported by the counties through LWRM plans. It was not the intention of the legislature to recreate the old non-point source program by shaping the TRM projects to look like priority watersheds. Eliminate these references but ensure that phased out nonpoint source project funding is used to enhance the single grant awards to counties.
Response: See answer to J5 above. In addition, it is important that the rule provide for the administration of staff support for these projects in the event that, in the future, funding for this purpose becomes available. This provision would provide funding opportunities for non-county grantees such as cities, villages, towns or lake districts. It might also provide limited opportunities for a landowner or county to seek reimbursement for selected activities that are not being funded under ATCP 50. Any appropriation for this type of activity would be separate and distinct from appropriations that DATCP uses to support county staff funding under ATCP 50, and would not reduce in any way the amount of funding that DATCP has to support staff through its base level staffing program.

J41 Comment: (DATCP) NR 153.16(2). Modify "Applicants shall submit completed project applications to the department by April 15 of each year...." The current language indicates a due date of July 15 each year, but s. 281.65(4C)5(b) requires the DNR to provide the land and water conservation board with the scores of project applications no later than September 1 of each year. Two (2) weeks does

not allow much time for the review and scoring of applications, including consultation with other agencies. In addition, the DNR and DATCP are required to jointly prepare an annual allocation plan. The timing of the application processes for the targeted runoff management projects should coincide with the application for DATCP's funding. This will facilitate preparation of the joint allocation plan, and assure that targeted runoff management project scoring and selection takes into account the availability of s. 92.14 funding for cost-sharing from DATCP. Conversely, it will facilitate DATCP consideration of staff funding needs for targeted runoff management projects.

J42 Comment: (individual) NR 153.17(1). July 15 is too late in the year to be starting the application review process. The DNR should be allowed to require application submittals earlier in the year, such as May 1.

Response: The due date will be changed to April 15 to be consistent with the deadline for applications under ATCP 50 and to provide a longer review period.

J43 Comment: (Co. lake spec.). NR 153.17(2) Project Scoring. I am glad that the rules include the existence of threatened waters, rather than just impaired waters. It is a lot easier and less expensive for Wisconsin to protect non-degraded waters than to only address already degraded waters.

Response: We are glad you agree.

J44 Comment: (DATCP) NR 153.17(2)(b)8. Modify "Evidence that the proposed project is consistent with the statewide and targeted nonpoint source performance standards in ch. NR 151, areawide water quality plans, and county land and water resource management plans." S. 281 makes it clear that the targeted runoff management plans must be consistent with these two plans.

Response: DNR agrees that grants must be consistent with both of these documents. This requirement appears in a different part of the rule that addresses what projects are eligible. NR 153 requires that eligible project must be consistent with DNR objectives established on a watershed or other geographic basis and with approved county LWRM plans. This requirement is reiterated by cross-reference elsewhere in the rule. No further references or language are needed.

J45 Comment: (co. ext., LCD) NR 153.17, Project Application (2) Required Information. I appreciated the department's efforts in this application section to include criteria for grant selection that recognize and include threats to water quality, not just already impaired waters. On P. 21 Lines 14-16, add the following language to continue recognizing threats: "A project evaluation and monitoring strategy including pre- and post-project information concerning actual or potential changes in land use, changes in pollutant loading or changes in chemical, physical or biological conditions of the water resources affected by the project.

Response: We agree and made the sentence change to include "actual or potential" regarding land use.

J46 Comment: (WLWCA/WALCE, several counties) NR 153.19 Project Scoring. The intent to achieve performance standards should be the highest priority for evaluating TRM scores. The rules do not require that critical sites, much less higher priority sites within TRM projects, be treated. We recommend that, consistent with the critical sites concept in the priority watershed program, landowners with non-complying sites within a TRM project area be required to comply with performance standards as a first use of cost-share funding. Also add this requirement to NR 153.21(3) and to NR 151.

Response: DNR agrees that compliance with performance standards is an important program goal, but it is not the only one. While compliance will be a dominant criterion in determining project priority, other key factors are important and are included in the proposed rule. If the county applies for a TRM grant specifically to bring all sources within an area into compliance with performance standards, this will be reflected in the grant. It is not appropriate to make this requirement in the rule as this will not be the strategy of all projects that are funded. Also, if a grantee can achieve compliance with all sources on all sites within the project period, that is good but is not required by the rule. A grantee will be able to use multiple TRM grants to accomplish this goal. DNR feels that this flexibility is important to efficiently use the funds available in accordance with the capability of landowners.

J47 Comment: (Co. lake spec.) NR 153.19 Project Scoring. I disagree with the highest priority being given to impaired waterbodies. It counteracts the language in NR 153.17 that recognizes the importance of addressing threatened waterbodies.
Response: We disagree. We intended that both types of projects can be funded under this grant program, and a higher priority is given to waterbodies deemed "impaired"; DNR has several other funding sources that address "threatened" waterbodies such as River Protection or Lake Protection grants.

J48 Comment: (Co. lake spec.). NR 153.19. I strongly disagree with giving multipliers to projects that are agricultural or urban in nature. By doing so, it discriminates against rural, non-agricultural nonpoint source pollution. Rural residential development, commercial development outside of urban areas, and forestry practices are all very critical sources of nonpoint source pollution in northern Wisconsin. We need the means to address these concerns. These are nonpoint rules, not urban or rural nonpoint rules.
Response: DNR believes that projects located in areas that have good implementation and enforcement programs should be rewarded with multipliers. We agree that projects that are neither strictly rural nor urban in nature should be able to receive the same multipliers as those projects that are either clearly rural or urban in nature. Consequently, the rule was revised to provide that if a project does not clearly fall under either the agricultural or urban provisions (such as a non-agricultural project in a rural setting), DNR and the grantee will jointly determine which "multiplier" provisions will apply.

J49 Comment: (individual) NR 153.19(2). Some sort of scoring priority should be specifically mentioned for projects affecting surface or groundwater sources of public drinking water.
Response: We agree, but no change is needed. Scoring priorities are based on water quality need. The list of water quality needs is included in the rule and specifically mentions needs related to surface and ground water sources of drinking water.

J50 Comment: (DATCP) NR 153.19(2)(b)1. Modify "Key components to include: "...consistency of project with county land and water resource management plans and other resource management plans..."
Response: DNR recognizes and the statute reflects the importance of county land and water resource management plans and we cannot make a grant unless it is consistent with these plans.

J51 Comment: (DATCP) NR 153.19(3). Add two (2) new paragraphs: "(5) Consistency with county land and water resource management plans" and "(6) Insufficient availability of funds provided under s. 92.14 to conduct the project."
Response: Consistency with county LWRM plans is a basic eligibility requirement and is covered already under NR 153. DNR does not believe that it is appropriate to assign a minimum score requirement to projects that cannot be funded sufficiently under s. 92.14 because it is not always apparent this early in the process exactly how each county will apply funds from different programs. The rule allows funds under s. 92.14 and 281.65 to be combined to form the state share up to 70%. These safeguards are adequate. Attempting to figure all this out at the time of application, which is a full year before implementation, is too restrictive. If DNR and DATCP believe that grant overlap is a problem the agencies can adjust grants under the allocation plan. In addition, reimbursement procedures are being amended to require an accounting of where projects are jointly funded and to show that restrictions on combined cost sharing are not exceeded.

J52 Comment: (DATCP) NR 153.19(4). The proposed rule should not increase the scores for projects as a result of counties having ordinances. This approach places too much emphasis on one type of implementation strategy over another, and does not consider the enforcement provisions under s. 281.98 Wis. Stats. It means that most of the funding would be targeted to counties with ordinances, leaving other counties with effective voluntary strategies unable to secure adequate funding.
J53 Comment: (DATCP) NR 153.19(4)(b)2c. For funding TRM projects, DNR should not give additional scoring points to counties that have adopted local ordinances that regulate sources of nonpoint source pollution in the proposed TRM area.
Response: The creation of a multiplier for counties with ordinances is appropriate. The multiplier is NOT a screening question. This means that counties without local ordinances are still eligible to apply,

although they will not compete as well, everything else being equal. We believe it is more cost-effective to spend money in counties that have ordinances in place because it is more likely that other actions needed to protect water quality will be taken. Projects in areas with ordinances will be recognized in the review process and receive a higher overall score.

J54 Comment: (DATCP) NR 153.20(1)(a). Modify "The department shall also notify the land and water conservation board of the projects that it has identified and proposes to select for funding in the following calendar year, as part of the joint annual allocation plan prepared in consultation with the department of agriculture, trade and consumer protection."
Response: We will use the LWCB notification process that is outlined in the statute and reflected in the rule. DNR agrees that the final allocation plan should reflect the TRM grant information. We added a clause to the rule requiring DNR to submit information about its grant decisions to DATCP for inclusion in the joint allocation plan. It will be up to DATCP to incorporate that information into the plan. Since DATCP is required to submit the plan to the LWCB, the use of the plan as a vehicle to inform the board of DNR grant decisions will occur.

J55 Comment: (WLWCA/WALCE, several counties) NR 153.20(1)(b) Project selection and funding. This paragraph undermines the whole notion of targeting projects based on impairment. We recommend that annual cost-share grants to counties be used to satisfy the even distribution requirements in the statues and allow the competitive TRM grant system be used as a means of truly "targeting" priority resource concerns.
J56 Comment: (LCD) This is no different than the current watershed programs. There are too many strings attached to the DNR. Wasn't the purpose of this effort to improve on the current nonpoint program, which is not very effective? We should not create another grant program in which counties are competing with each other on a biennial basis. We at the county level are constantly applying for grants, which takes time away from other "on-the-ground" duties. Let counties identify needs through their LWRM plans and supply us with a consistent long term base funding.
Response: This is a practical way of implementing the statutory requirements and has been used for the last three years under the direction of the LWCB. By state law all of TRM funding needs to be distributed under a competitive process; base grants suggested by this comment must come from DATCP.

J57 Comment: (WLWCA/WALCE, several counties) NR 153.21(2) Grant period length. The 3-4 year time frame is inconsistent with the requirement to provide cost sharing for certain BMPs for a period of 6 years. These inconsistencies will create a real problem for compliance and administration.
Response: The grant period is a statutory limit. The department has changed funding periods for practices to a 4-year maximum to be consistent with statutory requirements.

J58 Comment: (DATCP) NR 153.21(5)(d). Add a new sentence to the end of this paragraph: "The department shall also require that the grantee certify that funds provided by the department of agriculture, trade and consumer protection under s. 92.14 are insufficient for this purpose."
Response: This department agrees with this concept and reflects the restrictions imposed under s. 281.65(4c)(am)2. in three locations of the rule. First, the statutory clause will be added to the basic project eligibility section along with a statement that the department may consider funding under s. 92.14 to be insufficient until such time as a joint allocation plan is developed and approved that specifically identifies full funding under s. 92.14 for the project. Clauses were added to the cost share eligibility sections and to the reimbursement sections that guard against funds under s. 92.14 and s. 281.65 being combined in such a way as to exceed a total of 70% in state share, or 90% in cases of economic hardship.

J59 Comment: (WLWCA/WALCE, several counties) NR 153.22. Cost-share agreement. Change "comparable" level of pollution control to "equal to or greater" level of pollution control.
Response: The department agrees and made the recommended language change.

J60 Comment: (Co. lake spec.) NR 153.22 Change the threshold for recording cost-share agreements with the register of deeds office to $25,000 to make it consistent with DATCP's cost sharing.

J61 Comment: (WLWCA/WALCE, several counties) NR 153.22 Cost-share agreement -- The $10,000 per BMP threshold for recording a contract with the register of deeds is too low and will create unnecessary paper work for small projects. We recommend increasing this limit to $25,000 to be consistent with the limit already established by DATCP.
Response: See response to comment E321.

J62 Comment: (DATCP) NR 153.22(3)(k). Modify "...including compliance with performance standards under ch. NR 151 to produce a significant increase in on-going pollutant loading to surface water or ground water." The current language would prohibit the landowner from receiving cost sharing for needed conservation practices, or require the landowner to pay back any cost-share funds that had previously been received. This would be the case even if the amount of increased pollutants was relatively insignificant. For example, the landowner might wish to change land use on some part of the operation from agricultural to forestry, which might involve some small increase in erosion or sediment during the period of establishment.
Response: The department agrees, and has added a qualifier.

J63 Comment C68 (WAL) regarding maintenance period apply to this section.

J64 Comment: (DATCP) NR 153.23(2)b. Modify "The maximum value of donated labor may not exceed the local market wage for equivalent work." Landowners who "donate" their labor as part of the matching requirement for cost-share funds should not be forced to do so at a rate equivalent to the federal minimum wage, regardless of the degree of labor involved.
Response: The department agrees. Local market wage will be included as the standard.

J65 Comment: (individual) There should be consistency between NR 153 and NR 155. Consequently, applicable comments under NR 153 should be carried through to NR 155. Specifically, this includes comments to add urban structural practices to the list of BMPs eligible for easements, to add cost-share rates for easements in general, to make eligible the design work that is completed prior to the initiation of a grant, and to allow use of interim BMPs and alternative design criteria for urban practices.
Response: Urban structural practices were added to the list of BMPs for which easements can be funded. Maximum cost share rates for easements and land purchases will be clearly stated in both codes. Design work completed prior to the initiation of a grant will be eligible under both NR 153 and NR 155 to encourage more cost-effective projects. Interim and alternative criteria were added for urban practices except for those cases when the urban BMP is designed specifically to meet a performance standard. In those cases, the standard must follow the development process outlined in sub-chapter V of NR 151.

J66 Comment: (co. Ext., LCD) NR 153.24, Easements. I support the inclusion and use of easements as very valuable strategies along with property acquisition and urge identical language in this section as I recommended for NR 120.185 related to eligible practices and specific wording changes. These include eliminating the riparian buffer dimensional requirement, adding wetland protection, adding shoreline protection and restoration, adding county land and water resource management plans for approval of any other best management practice, and adding easement cost share rates (70 percent for easements and 100 percent for appraisals).
Response: The cost-share rates for easements and property acquisitions was clarified. The maximum cost-share rate will be 70% for rural easements, 50% urban project easements and 50% for all property acquisitions. Appraisals will remain at 70% because of statutory limits. A clause was also added that DNR must review and approve the appraisals, to maintain assurance that the 70% rate is applied to a reasonable appraisal and to maintain consistency with property acquisition procedures, where DNR must also do this. Under ch. NR 155, The maximum cost share rate will be 50% for property acquisitions and easements.

The water quality corridor standard has been deleted. Riparian buffers will be encouraged, but not required. The minimum width of riparian buffers must be 35 feet to be eligible for cost sharing. Urban structural practices were added to the list of BMPs for which easements can be funded. Design work completed prior to the initiation of a grant will be eligible under both NR 153 and NR 155 to encourage

more cost-effective projects. Interim and alternative criteria were added for urban practices except for those cases when the urban BMP is designed specifically to meet a performance standard. In those cases, the standard must follow the development process outlined in sub-chapter V of NR 151.

The use of easements will be restricted to restoration projects and will not be expanded to protection projects as requested. DNR has other programs (e.g. Stewardship) that focus on easements as protective measures. Property acquisition under NR 153 may be used for either restoration or protection. We did not include the reference to LWRM plans because by statute TRM grants must be consistent with county land and water resource management plans. This requirement appears elsewhere in the rule.

J67 Comment: (Co. lake spec.). NR 153.24. I support the use of TRM funds for easements and the provision to authorize non-profit organizations to accept a donated conservation easement. I question the riparian buffer width requirement of 66 feet. It should really be consistent with other buffer standards in these rules. Inconsistencies make these rules harder to implement.
Response: The water quality corridor is no longer required, but eligible as a voluntary practice. Minimum width required for cost-sharing is 35 feet.

J68 Comment: (individual) NR 153.24(2). Add structural urban best management practices to the list of practices eligible for easements.
Response: The department agrees and has made the change.

J69 Comment: (individual) NR 153.24(5). Add cost-share rate for easements.
Response: See response to comment J66 .

J70 Comment: (co. Ext., LCD) NR 153.25. Property acquisition. Eligible activities should include protection-based property acquisition, not just for lands already contributing nonpoint source pollution. Add the following wording: "(b) Acquire land or an interest in land identified in the grant application, which is contributing or will contribute nonpoint source pollution, or provide protection from nonpoint source pollution."
Response: The sentence in question is very clear. The comment's suggestion would be redundant.

J71 Comment: (DATCP) NR 153.29(3). Add a new paragraph: "(d) Financial audits for county grantees will normally be conducted through the annual "single county audit."
Response: DNR no longer uses the single audit, but instead hires outside auditors.

J72 Comment: (DATCP) NR 153.29. Add two new paragraphs and number them NR 153.29(4) Open Records Requirements: "(a) All project-related records are subject to the state's open records law." and "(b) The grantee will keep any confidential information that is not subject to the open records law, such as social security numbers that is required for income tax purposes for the cost-share funding safe from unauthorized access."
Response: We agree and added language as suggested that incorporates open records language.

J73 Comment: (DATCP) NR 153.30. There is no provision for long-term monitoring and evaluation of whether the targeted runoff management project made a lasting change. Add a new paragraph: (4) The department may require the grantee to track the project outcome in the county land and water resource management plan, according to the schedule agreed between the department and the county in which the project is located.
Response: DNR will require that the grantee submit an evaluation report consistent with the evaluation strategy included in the grant application. The proposed rule does not require that each project perform water quality monitoring to evaluate project success because this approach is expensive and technically problematic. However, the reporting of evaluation measures the grantee has identified and upon which the score is based will be explicitly required. The comment suggests how county plans might be used to plan and implement water quality monitoring. DNR has no authority over the content of county LWRM plans and consequently cannot create a requirement like that suggested. However, the DNR , DATCP and governmental units will enter into an intergovernmental agreement that sets forth an implementation

strategy. One of the subjects to be covered in the agreement is program evaluation including, if appropriate, water quality monitoring.

J74 Comment: (WLWCA/WALCE, several counties) NR 153.31 Variances, and NR 153.32 Grant evaluation and enforcement -- Neither one of these sections specifies a procedure or timetable for DNR to respond to appeals from the county over a determination made by the DNR. We recommend adding procedures and timetable for responses from the DNR to both sections.
Response: This language is not appropriate for this rule. Grantees already have normal appeal rights under state law.

K NR 155 Urban Nonpoint Source Water Pollution Abatement and Storm Water Management Grant Program

K1 Comment: (WLWCA/WALCE, several counties) There is too much overlap between NR 155 and NR 153. There should be a split between point/nonpoint or urban/rural. Right now urban nonpoint projects don't know which grant to apply for and have the potential to drain funding for rural projects.
Response: It is true that both of these grant programs have an "urban" component but NR 153 and NR 155 are governed by separate statutes and have well-defined policies, we are obligated to keep them separate and maintain two distinct programs. The department 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.

K2 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: Under this rule, the department may not provide grant funding for management practices unless the governmental unit with jurisdiction over the project area ensures adequate implementation of construction site erosion and storm water management. The assurance requirements are to be met by the adoption, implementation and enforcement of local policies, plans and ordinances. The department does not believe that a requirement for formal referral to DNR is appropriate or necessary as a condition of receiving a grant.

K3 Comment: (WLWCA/WALCE, several counties) Local staff previously funded by state grants should qualify for local assistance funding for urban ordinances (especially if DATCP cuts urban funding).
Response: Ordinance development is already covered, including staff, under ch. 155. Short-term ordinance enforcement might be covered, depending on how competitive the application is, but the program intends this function to be funded primarily, if not completely, with local permit fees.

K4 Comment: (DATCP) Some mention should be made of protecting cultural resources as these urban runoff control projects are built.
Response: DNR agrees and added language in four parts of the rule to cover this and other related issues. The revised language balances the need to select and conduct projects with the need to assure that projects comply with a multitude of other state laws. First, the map submitted with the application is to be accompanied by information the applicant is aware of that concerns endangered, threatened or wetland resources, historic properties or historic places contained in the project area or potentially affected by the project. Second, the DNR may consider an application incomplete, and will not score the project, if issues relating to navigable waters, wetlands, historic places, historic properties, endangered resources or threatened resources are significant and unlikely to be resolved in a timely manner. Third, if DNR proceeds and scores a project it will inform applicants if the location of a selected project indicates measures may be needed to address potential negative impacts of the project on navigable waters or these endangered, threatened or historic resources or sites. Finally, if these issues are not resolved at the time a grant is scheduled to be issued, DNR can decide to not issue the grant or to issue the grant with conditions that the other resource issues be resolved.

K5 Comment: (WLWCA/WALCE, several counties) The rules are missing a 1.25 multiplier, which is needed to encourage local ordinances to implement all the non-agricultural performance standards.
K6 Comment: (LCD)We suggest making the incentive stronger by requiring local erosion control or storm water ordinances as a condition of the grants. This would prevent the public from paying for fixing one urban nonpoint problem while new problems are still being created within the same community due to a lack of regulations.
Response: There is no multiplier for this element because both the statute and the proposed rule require that the municipality assure adequate storm water management for construction, post-construction and existing urban areas as a pre-condition to receiving a grant. The department will use information submitted under the rule to determine if the basic eligibility criteria are met. The department will base its decision on existence of regulations for construction site erosion control, plans and regulations for post-construction storm water management and plans and policies for runoff from existing development. Note that a multiplier is included for municipalities that have an implementation program that improves efficiency and effectiveness of its regulatory program.

K7 Comment: (DATCP) NR 155.12(5). Cost-share amounts should be based on actual bids, not estimates. This amount cannot be exceeded unless the agreement is amended. This should hold true for urban projects as well.
Response: These cost-share agreements are made in advance, before bidding, and are a contract solely between the governmental unit and the individual landowner/operator. Adjustments may be made after bidding, as long as the governmental unit has funds under its grant to cover any increases.

K8 Comment: (DATCP) NR 155.12(8). Include drainage districts under this definition.
Response: Drainage districts are already listed in the definition.

K9 Comment: (DATCP) NR 155.12(12). A land operator does not hold title to the land. Rather, they are the ones using the land and responsible for the day-to-day care of it. See Ch. 92.03(4) and (5) for alternate definitions.
Response: We agree with the distinction. We have included separate definitions for landowner and land operator.

K10 Comment: (DATCP) NR 155.12(20). "Watershed" is used here, but not defined later.
Response: We have added a definition.

K11 Comment: (DATCP) NR 155.12(28). Include buffers, diversions, and rain gardens as eligible structural practices.
Response: This change is not possible because the definition of "structural urban best management practices" is statutory and limited to a selected array of practices. DNR created, by rule, a class of "urban best management practices" that include "structural urban best management practices" as well as a broad array of other management practices including those mentioned in the comment. The effect of the rule and statute will be that a wide array of management practices will be eligible for cost-sharing, but some practice components such as storm sewer re-routing and land acquisition will be restricted to specific practices: detention basins, wetland basins, infiltration basins, infiltration trenches and wetland basins.

K12 Comment: (DATCP) NR 155.14(3). The "20 year rule" seems a bit subjective. A rural area should be considered rural until it is urbanized, especially if its current use is agricultural. This could result in confusion as to which agency has jurisdiction.
Response: This 20 year rule is contained in the statute.

K13 Comment: (DATCP) NR 155.15(1)(f) and (g). These two paragraphs seem to be saying the same thing. Delete one or combine the two into one paragraph.
Response: The two paragraphs relate to different circumstances: the first to the grant between DNR and the municipality (the BMP must be in the grant to be eligible); the second to the cost-share agreement

signed between the municipality and the individual landowner (the BMP must then also be in the cost-share agreement in order to be considered eligible).

K14 Comment: (DATCP) NR 155.15(5) A better definition of cost-effective is needed. It is easy to pick the least cost practice if both are equally effective, but what if the more effective one also costs more? How much is an incremental amount of performance worth? What about life-cycle costs? The least-cost practice may have higher maintenance requirements, and therefore, cost more over the life of the project.
Response: A minor change has been made to delete redundant language in this section. We believe that this section as changed, in association with the definition of cost-effective, is sufficient.

K15 Comment F34 (WAL) regarding exemptions for urban redevelopment sites applies to this section.

L NR 154 Best Management Practices and Cost Share Conditions

L1 Comment: (farmer) NR 154 is redundant and should be eliminated. ATCP 50 already exists and contains performance standards for agricultural practices.
Response: NR 154 contains technical standards for both agricultural and non-agricultural facilities. ATCP 50 contains technical standards for only agricultural facilities. The department has cross-referenced the agricultural technical standards contained in NR 154 to ATCP 50 with a few exceptions. The exceptions relate to cost-share conditions, not technical standards. This has eliminated the redundancy while retaining provisions necessary to the department.

L2 Comment: (DATCP) This chapter does not contain cattle mounds as an eligible practice. It should be added with wording similar to ATCP 50.67.
Response: DATCP is responsible for agricultural technical standards and, as indicated in the previous response, the department has cross-referenced ATCP for agricultural technical standards in NR154. Since ATCP 50 does not contain a standard for cattle mounds, there is nothing for NR 154 to reference.

L3 Comment: (WI Agri-Service Assn., WI Pork Producers, WPVGA, WI State Cranberry Growers) Cost sharing must be extended to provide for payment for cropping practices.
Response: The department provides cost-sharing for a variety of conservation cropping practices such as no-till and strip-cropping. We believe these are the appropriate practices that contribute to water quality.

L4 Comment: (DATCP) This chapter has removed all reference to operation and maintenance of cost-shared practices and included the reference in NR 153. NR 153 indicates that there is a 10-year operation and maintenance period for all practices, but the management practices (residue management, nutrient management, and cover crop) have operation and maintenance for the years of cost sharing. We need to discuss this issue in more detail so ATCP 50 and NR 154 can be drafted in a consistent manner.
Response: Department and DATCP staff conducted extensive meetings to address this and many other issues regarding consistency between the department rule package, including NR 154, and ATCP 50. A great deal of common ground was reached to the extent that the department agreed to cross-reference ATCP technical standards designed to meet performance standards at agricultural facilities. The department chose to include a few exceptions, primarily to cost-share practices, that reflect the varied missions of the departments, however, the vast majority of the technical standards, and related cost-share eligibility is now consistent between the departments. Operation and maintenance periods for DNR funded practices will be ten years except that several cropland management practices must only be maintained in the year for which cost sharing is provided.

L5 Comment: (chemical co.) Livestock operators and farmers that use phosphorus binding (alum) in their animal rearing facilities or as a post-grow out manure treatment should be eligible for cost sharing of facilities or chemicals per NR 154.03 and 154.04.
Response: A technical standard regarding the appropriate use of these chemicals has not yet been developed. It is the responsibility of DATCP to determine when and how a technical standard for this technology is developed and until that process takes place, we have no basis to allow cost-sharing.

L6 Comment: (public works dept.) NR 154 BMPs to control storm water runoff are identified for potential grants and/or cost sharing. Cost sharing is not provided for the maintenance of BMPs, even though the long-term effectiveness of these measures is, in part, dependent on a maintenance program. With state-shared revenues continually being reduced and expenditure restraint programs also in force, funding for additional maintenance expenses will be extremely difficult.
Response: Maintenance is considered a normal operating cost and is not covered in any of the grant programs under ss 281.65 or 281.66, Stats. In addition, the department's funding for this program is almost all in the form of bonding proceeds, which cannot be used for normal; operating costs such as maintenance.

L7 Comment: (LCD) The continued assessment of BMPs seem to be lacking in NR 154. These are supposed to be a long-term BMPs, but the only way to assess that is to have baseline information that we have and follow-up.
Response: Assessment of the effectiveness of a project is a primary requirement in the TRM program. This is evaluated as part of the grant application prioritization process and is addressed in NR153 and NR155.

L8 Comment: (LCC) Eliminate the economic hardship clause and establish one cost-share percentage (80-85%). Adding more provisions to proving economic hardship creates more paperwork and continues to discriminate against some landowners and operators who have been successful.
Response: The state statute governing the cost-share program limits the department to a cost-share rate of 70% unless it finds that economic hardship is present, in which case the cost-share rate must be increased up to 90%. Our cost-share rates are established in keeping with statutory requirements.

L9 Comment: (farmer) Hardship cases should not be allowed at the present time. Every farm is a hardship case. I really object to hardship cases resulting from recent expansion. My neighbor will qualify for hardship because of his expansion but I am discriminated against because I don't carry a large debt.
Response: DNR is required by statute to establish a definition of economic hardship by rule. This is expected to result in some farmers receiving higher cost-share rates than others due to individual financial circumstances.
L10 Comment: (LCC) The hardship requirements for cost-sharing should be looked at. The idea of cash flow being the deciding factor is a good start. To prove this cash flow is another complicated procedure that should be streamlined and understandable. If the landowner can produce a Schedule F or documents from the FSA stating his/her economic situation, that should be proof enough. Requiring a certified public accountant certification only adds additional costs they already cannot afford.
L11 Comment: (farmer) The definition of economic hardship is asset-based. All cost sharing for economic reasons should be based on income.
Response: A certified public accountant or accredited financial institution may use any reasonable criteria to determine that the landowner can not afford the regular local share and is solvent enough to pay for the reduced local share. If the CPA or AFI makes this finding, the governmental unit must increase the cost share rate. This rule language will allow a variety of methods to be used, including those that are asset-based and those that are based on cash flow.

L12 Comment: (farmer) Why are we dickering over 70% versus 90% for economic hardship? I think 90% of farmers in the state are under economic hardship. Why do we have to hire a CPA to determine economic hardship? These rules are supposed to be about water quality; we all want clean water, and that has nothing to do with whether a farmer is in economic hardship or not.
Response: Please refer to the responses to previous comments on economic hardship.

L13 Comment: (DATCP) NR 154.03(1)(g). The DNR should not provide 100% cost sharing to landowners to replace damaged practices. To be consistent with ATCP 50, the amount of cost share paid to repair damaged practices should be the same rate paid to install the practices.
Response: We agree and have changed our rule to reflect this.

L14 Comment: (DATCP) NR 154.03(1)(i)3. The buffer cost-sharing in NR 154 allows for per acre payments of up to $100 per acre per year for up to a total of 4 years. Proposed ATCP 50 cost-shares only shaping and seeding costs. The DNR should consider changing their rule to match ATCP 50.
L15 Comment: (WAL) Why limit riparian buffers to 3-4 years of funding, and then they are not required to keep them if cost sharing is not available? This is too important a practice to make short term.
L16 Comment: (Co. lake spec.) NR 154.03(1)(i) and (j). Remove the cost-share payments for vegetated riparian buffers of $100/acre. This amount is far too low for being able to establish a functional buffer. This would effectively discourage the installation of buffers, one of the key components to reducing nonpoint source pollution. Change the provision to be consistent with critical area stabilization cost-share rates where governmental units may establish flat rates. This would simplify the administration of cost-share funds for both practices. Also, the use of acres is inappropriate for buffer areas. Square feet seems to be a better size measurement.
Response: See the response to comment E149 for an answer to the water quality corridor concern.

L17 Comment: (Co. lake spec.) NR 154.03(1)(i)3c. Clarify the language in this paragraph; the wording is confusing.
Response: The department has reworded this section.

L18 Comment: (DATCP) NR 154.03(1)(i)4. Cost-share payments for high residue management systems may not be made for more than a total of 4 years. Proposed ATCP 50 does not indicate a cost-share limit in years. We need to discuss and agree to an appropriate time period. Then ATCP 50 and NR 154 should be drafted in a consistent manner.
L19 Comment: (DATCP) NR 154.03(1)(i)5. Cost-share payments for cropland protection cover (green manure) may not be made for more than a total of 4 years. Proposed ATCP 50 does not indicate a cost-share limit in years. We need to discuss and agree to an appropriate time period. Then ATCP 50 and NR 154 should be drafted in a consistent manner.
L20 Comment: (DATCP) NR 154.03(1)(i)6. Cost-share payments for nutrient management may not be made for more than a total of 4 years. Proposed ATCP 50 does not indicate a cost-share limit in years. We need to discuss and agree to an appropriate time period. Then ATCP 50 and NR 154 should be drafted in a consistent manner.
Response: The department's grant programs under NR 153 and NR 155 are limited to a maximum of four years by statute. It is important to be able to cover the commitment within one grant cycle.

L21 Comment: (WLWCA/WALCE, several counties) NR 154.03(1)(j) Cost-Share Rates. Delete all references to specific cost-share dollar amounts.
Response: The department believes that dollar amounts for certain cost-share practices such as tillage are necessary to reduce confusion and provide consistency.

L22 Comment: (NRCS) NR 154.03(1)(j) -- The ACP program, which has not existed since 1996, is referenced by 1-Wisconsin(ACP). Current programs do not address the listed cost-share practices. Therefore, is not advised that cost-share references to other agencies be made.
Response: The department has deleted this reference in the rule.

L23 Comment: (DATCP) NR 15.03(1)(j)4. $18.50 per acre is indicated as the flat rate for high residue management systems. This is correct but proposed ATCP 50 on P. 86 should be changed by removing the following: (f) For no-till or ridge-till systems, $15 per acre. (g) For mulch till systems, $10 per acre.
Response: The suggested change is to ATCP 50, not to NR 154.

L24 Comment: (DATCP) NR 15.03(2)(a) Least Cost. Proposed ATCP 50 indicates a maximum combined payment of all governmental units for manure storage, of $35,000 or $45,000 with economic hardship. NR 154 does not include this but has a paragraph on least cost alternatives. The two rules should be consistent.

Response: The department agrees that the two rules should be consistent, but that ATCP 50 should be changed to reflect the more flexible approach of NR 154 rather than rely on artificially determined cost-share limits that may not comply with statutory cost-share requirements.

L25 Comment: (DATCP) NR 15.03(2)(b). NR 154 contains provisions for 70% cost-sharing of leases for manure storage tanks, while ATCP 50 does not. This may not be such a good deal if this is only for length of the watershed project (TRM grants are short term).
Response: Priority watershed projects are funded for up to twelve years while TRM projects are limited to 4 years. This BMP may or may not be appropriate for a particular situation, but the department wants to continue it as an alternative.

L26 Comment: (DATCP) NR 15.03(3). Proposed ATCP 50 indicates that state funding from different sources, shall not exceed 85% of total funding. The two rules should be consistent.
Response: State cost-share provided by the department or DATCP under ss 281.65 and 92.14, Stats., may not be combined as a vehicle to exceed the 70% or 90% maximum cost-share rates. DNR believes there are circumstances that warrant other state funds to be used to increase the normal cost-share rate if those other programs choose to do so.

L27 Comment: (DATCP) NR 154.03(4)(c). This section indicates that the maximum cost-share rate for economic hardship is 20% above the flat rates listed. NR 154 lists barnyard and manure storage at 85% of the first $20,000 of eligible costs and 75% of the remaining eligible costs. This wording is the same as the current ATCP 50 but is not consistent with the proposed ATCP 50. Proposed ATCP 50 indicates that the maximum cost-sharing is 80% for economic hardship. It does not refer to flat rates and barnyard runoff control systems. DNR and DATCP should concur on the language and make it consistent.
Response: The department has removed this provision. Cost-share rates for manure storage are now the same as for other BMPs – i.e., 70% or 90%.

L28 Comment: (DATCP) NR 154.04(3)(a)2e. Well abandonment is not included in ATCP 50 language. The two rules should be consistent.
Response: This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

L29 Comment: (DATCP) NR 154.04(3)(a)3. Manure storage facility means one or more manure storage structures and includes stationary equipment used to load or unload a manure storage structure if the equipment is specifically designed for that purpose and is an integral part of the facility. Manure storage facility includes piping and other stationary equipment necessary for conveying manure to the storage facility required as part of a nutrient management plan but does not include equipment used to apply manure to land. This language adds piping and nutrient management to what is in ATCP 50. This could be added to ATCP 50.
L30 Comment: (DATCP) NR 154.04(3)(b)4. ATCP does not include leases in the wording. (See note concerning leasing storage tanks.)
Response: This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

L31 Comment: (DATCP) NR 154.04(3)(d). ATCP 50 contains the following language: "Any manure storage system costs that are related to changes in livestock numbers, housing or management practices that occurred within 3 years of the grant application date. The department or county land conservation committee may award a cost-share grant for practices or systems based on the costs to correct the discharge occurring prior to the change." ATCP 50 also refers to increased costs related to increase in cattle numbers, etc., ATCP 50 on P. 115 should be changed to reflect the changes in NR 151 and NR 153 related to existing or new definitions and requirements.
L32 Comment: (DATCP) NR 154.04(3)(e)4. Maybe this wording should be added to ATCP 50.
Response: The suggested change is to ATCP 50, not to NR 154.

L33 Comment: (NRCS) NR 154.04(3)(e)5 Manure Storage Systems -- In order to be consistent with (3)(e)7, this should read "...a normal period of 30 to 365 days,..."
L34 Comment: (NRCS) NR 154.04(4)(b) Manure Storage System Abandonment --
1. should read, "Groundwater enters the manure storage system."
4. should read, "...likely to result in structural failure or resource degradation."

L35 Comment: (DATCP) NR 154.04(3)(e)7. This requirement is in both ATCP 50 and NR 154. This is old, outdated language and should not be in either code. The nutrient management plan requirement will dictate if the manure is being surface applied to the phosphorus limit or incorporated and applied to the nitrogen limit. Also, the plan will dictate the areas requiring incorporation (e.g., within 200 feet from a stream).
L36 Comment: (WLWCA/WALCE, several counties) NR 154.04(3)(e)9 and (4)(e) -- Add language stating that requirements of local ordinances be met and that required permits have been secured.
Response: This specific language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

L37 Comment: (WLWCA/WALCE, several counties) NR 154.04(3) through (39) -- Clarify that landowners or land operators must agree to maintain a practice as long as needed to comply with a performance standard. This would be consistent with language in NR 151.
Response: The practice only needs to be maintained for 10 years as a condition of cost sharing. If the maintenance condition is not met, the cost-share funds must be repaid. In addition, if the BMP is not maintained and the agriculture falls out of compliance with NR 151, then as a separate consequence, the department or a local unit of government would be authorized to take enforcement action for failure to comply with a performance standard.

L38 Comment: (individual) NR 154.04(4). The definition of economic hardship needs to incorporate other factors besides debt-to-asses. Consider cash flow, criteria, for example.
Response: Please refer to the response to comment L10.

L39 Comment: (WLWCA/WALCE, several counties) NR 154.04(4)(d)2. Clarify language to be specific as to which governmental unit has the authority to make this determination.
Response: This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

L40 Comment: (DATCP) NR 154.04(4)(c)4. Regarding costs resulting from changes in livestock number, housing, or management practices that are ineligible in accordance with NR 153.15(2), ATCP 50, P. 120, refers to changes in livestock numbers within 3 years. ATCP 50 wording should change to reflect definitions of new and existing operations language in NR 153 and NR 154.
L41 Comment: (DATCP) NR 154.04(8). ATCP 50 should be changed to reflect the wording "Residue Management" rather than the current wording "conservation tillage" to reflect the switch in the standards and terminology to residue management.
L42 Comment: (DATCP) NR 154.04(8)(c)1. The language "Costs for both this practice and cover and green manure crop for the same acreage in the same crop year without prior departmental approval." should be added to ATCP 50.
Response: The suggested change is to ATCP 50, not to NR 154.

L43 Comment: (WLWCA/WALCE, several counties) NR 154.04(8)(c)2. Explain what this paragraph means and clarify it in the rule; it makes no sense.
Response: This provision has been rewritten to make it clearer and consistent with the nutrient management standard. Surface application is allowable if done in accordance with the nutrient management standard.

L44 Comment: (DATCP) NR 154.04(8)(c)2. The following language should be deleted from NR 154: "Costs for continuous no-till unless surface applications of nutrients, including animal manure, are prohibited. Continuous no-till is defined as implementation of the practice for three or more consecutive

years." There is no scientific basis for this. Surface applications of nutrients are necessary in many instances, for example, 28 percent N applications made with herbicide applications. This allows for split applications of nitrogen fertilizer and to be more efficient and environmentally friendly. Most maintenance phosphorus and potassium applications are applied as starter, while large additions will require incorporation sometime in the rotation. Most manure applications on no-till situations will be light to moderate applications, as many times heavy manure applications is less compatible with no-till.
Response: Please refer to the response to the previous comment.

L45 Comment: (DATCP) NR 154.04(8)(d). In this portion of the rule, a. through b. lists technical standards 329A, 329B, 344. ATCP 50 should be updated to include the correct technical standard names.
Response: The suggested change is to ATCP 50, not to NR 154.

L46 Comment: (NRCS) NR 154.04(9)(c)4, (12)(d)(2)I, (23)(d)(1)g, (32)(d)(2)I should read "NRCS FOTG Standard 645 Wildlife Habitat Management (July, 2000).
Response: This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

L47 Comment: (Co. lake spec.) NR 154.04(10)(a) Critical Area Stabilization -- Remove "from agricultural nonpoint sources." If we limit this BMP to only agriculture, we are ignoring all of the non-agricultural areas with specific nonpoint concerns.
Response: The department has added a provision (NR 154.04(2)) under General Conditions to allow the use of agricultural BMPs in non-agricultural situations as appropriate.

L48 Comment: (DATCP) NR 154.04(11). This should be changed to Cropland Cover.
Response: This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

L49 Comment: (DATCP) NR 154.04(11)(c). ATCP 50 should add the following language to P. 128 of ATCP 50.71: "A cost-share grant under ch. NR 153 may not reimburse any of the following costs: 1. Costs for both this practice and residue management systems for the same acreage in the same crop year without prior department approval."
Response: Although this is a suggested change to ATCP 50, it is not appropriate for a DATCP administrative rule to place restrictions on a grant program administered by DNR.

L50 Comment: (DATCP) NR 154.04(15)(c)3. This language should be added to ATCP 50.75 P. 132: "Control of the site is needed to achieve the water quality objectives specified in an approved priority watershed or lake plan, approved county land and water conservation plan or project grant application."
Response: The suggested change is to ATCP 50, not to NR 154.

L51 Comment: (WLWCA/WALCE, several counties) NR 154.04(15)(c)3 -- The reference to county land and water resource management plans is mystifying. If the department has this limited a perception of the value of these county plans, it would be appropriate to remove this reference.
Response: This is only one of many places county plans are referenced in the rule. This reference is appropriate, as are the others.

L52 Comment: (DATCP) NR 154.04(15)(c)4. The following language should be added to ATCP 50.75 P. 132: "Construction of the structure is cost effective."
L53 Comment: (DATCP) NR 154.04(15)(c)5. The following language should be added to ATCP 50.75 P. 132: "Failure of the structure would have minimum potential to endanger life or real or personal property."
L54 Comment: (DATCP) NR 154.04(17). ATCP 50.77 should be changed from "Intensive grazing management" to the "Prescribed Grazing" wording here. This is consistent with the current NRCS technical standards.
Response: The suggested change is to ATCP 50, not to NR 154.

L55 Comment: (DATCP) NR 154.04(17)(b)5. "The costs for practices that would remediate streambank erosion and streambank habitat degradation." -- This is not an allowable cost under ATCP 50.77. The differences could cause confusion in county administration of the two rules. This could be eliminated in NR 154 because the landowner could get cost sharing under "Streambank and Shoreline Protection."
L56 Comment: (DATCP) NR 154.04(17)(c)1. This should be removed from NR 154. This is listed under design, construction and maintenance and is actually a condition for eligibility. The following current NR 154 wording under eligible costs indicate the reasons for eligibility: "replacing animal lots or pastures, or establishing an intensive grazing management system on croplands, that are currently contributing sediments, nutrients or pesticides to a water resource." This wording allows flexibility in selecting the right water quality reason for allowing cost sharing (e.g., replacing dirt feeding areas in pasture, reducing the usage of farmstead feedlot areas, limiting cattle access to streams, and limiting cropland erosion and sediment). This condition holds merit when counties are trying to narrow approvals of limited cost sharing, but this should be a county decision and not put in rule.
L57 Comment: (WLWCA/WALCE, several counties) NR 154.04(17)(c)1. Explain what this paragraph means and clarify it in the rule.
Response: This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

L58 Comment: (chemical company) NR 154.04(18)(b)1 Lakes Sediment Treatment -- Ferric sulfate, aluminum chloride. and polyaluminum chloride are also recognized chemicals for this purpose. Please add to the list of technologies.
Response: This list only provides examples and does not imply that the listed chemicals are the only ones that can be used.

L59 Comment: (WLWCA/WALCE, several counties) NR 154.04(18)(d)4 -- Acknowledges that any permits required by local ordinance must be obtained prior to the removal of lake sediments. This statement should also appear in NR 154.04(3), (4), (5), (21), (22), (23), (25), (26), and (29).
Response: Rather than duplicate the same provision multiple times, this is addressed by a general provision in the rule that requires all permits be obtained.

L60 Comment: (WLWCA/WALCE, several counties) NR 154.04(19)(c)2 -- Remove from the ineligible cost list. Portable equipment is an essential component of livestock fencing, particularly for managed intensive grazing (MIG).
L61 Comment: (NRCS) NR 154.04(21)(e)(1)b -- This standard has been changed to: NRCS FOTG Standard 635 Wastewater Treatment Strip; DATE TO BE ADDED.
Response: This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

L62 Comment: (NRCS) NR 154.04(21)(e)(1)e and NR 154.04(22)(c)1. Before the DNR seeks Wisconsin Natural Resource Board approval to publish NR 154 as a final rule, Wisconsin NRCS strongly encourages the department to incorporate the revised and updated nutrient management standard, NRCS FOTG Standard 590 Nutrient Management; DATE TO BE ADDED, to NR 154.
Response: NRCS 590 is not finalized and the department cannot reference a proposed standard in its rule. However, the department revised its nutrient management performance standard that may require both nitrogen and phosphorus-based nutrient management depending on a given location's impact on water quality. While DATCP has the responsibility to determine a nutrient management standard, both nutrients (N and P) will need to be addressed to meet the performance standard.

L63 Comment: (pest control co.) NR 154.04(22). Sufficient flexibility must be given in the nutrient management plans to allow growers to react to the changing environment that farming presents. For example, if a grower can document a nutrient deficiency using tissue testing, some allowance for nutrient inputs in excess of UWEX recommendations (publication A2809) must be given.

UWEX publication A2809 states that soil sampling should be done on a maximum of 5-acre units to comprise a composite sample for testing. There is no inference that farmers must manage each 5-acre unit separate from all others in the field even though this would be a desirable approach. Our company pulled a total of 1,300 soil samples in 2000. If we adhere to the 5-acres standard, this number would increase to 8,000—a huge increase in cost and labor for farmers and planners. We will be unable to hire the temporary labor required to pull these volumes of samples. Please allow some flexibility for the farmer and/or planner to determine the fields to be tested, based on their past testing history and knowledge of the farm.

The requirement for nutrient management plans to be written for each and every crop field across the state will create a paper chase of enormous proportions. Who will do all that work? Currently only about 25% of the state's farmland gets a soil test on a regular basis. We need to get those not currently soil testing to begin, and have whole farm plans written that reflect some effort towards field by field nutrient management. Layers of management can be added once its determined what environmental benefits these efforts bring in relation to the costs.

L64 Comment: (WI Agri-Service Assn., WI Pork Producers, WPVGA, WI State Cranberry Growers). NR 154.04(22) -- The DNR should delete the technical standard details for nutrient management plans from its proposed rules with special emphasis on deletion of the manure management sections. Authority over the nutrient management program, including manure, was statutorily given to DATCP.
Response: This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

L65 Comments and response to E210 and E211 regarding lab certification apply to this section.

L66 Comment: (ag. co-op/soil-forage lab) NR 149 will increase the cost of analyzing each soil sample in the range of 2 to 3 times their present rate. That additional cost would have to be passed on to our clients.
Response: The department laboratory certification program has not resulted in costs increasing to any great extent for other programs, and we do not believe costs will increase as a result of certification in this case. The current certification provisions in ATCP 50 are inadequate, and would need to be consistent with NR 149 procedures even if DATCP administers the program.

L67 Comment: (ag. lab) Requiring soil testing laboratories to be certified by NR 149 or the Farm Service Agency or both, is redundant and will increase costs because labs will be forced to carry certification by two government agencies.
Response: Please refer to the responses to the 2 previous comments.

L68 Comment: (DATCP) NR 154.04(22)(b)5. ATCP 50 and NR 154 are not consistent. NR 154 allows spill control facilities as eligible and ATCP does not. DNR should change NR 154 to be consistent with ATCP 50.
Response: This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

L69 Comment: (individual) NR 154.04(22)(c)5 should be changed to: "The landowner or land operator agrees in writing to maintain a minimum horizontal separation distance of 250 feet in all directions from any private and non-community well, private non-potable well, reservoir or spring when spreading manure, injecting manure or applying by other means and 1,000 feet from any community well." This language is more consistent with chapters NR 809, NR 811 and NR 812 Wis. Adm. Code.
Response: The department believes that the current section providing restrictions for spreading manure close to wells is protective of the groundwater.

L70 Comment: (DATCP) NR 154.04(23)(c). This contains wording for design and maintenance of practices. ATCP 50 is lacking a design and maintenance section. Consider adding this language to ATCP 50.

L71 Comment: (Co. Ext., LCD) Riparian Buffers. Add the following wording to the description on Line 20: "In this subsection, "riparian buffer" means an area in which vegetation is maintained, enhanced or established…"
Response: This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

L72 Comment: (Co. Ext., LCD). Easement costs should be eligible for riparian buffers for all types of lands, not just previously-cropped lands. Also add land acquisition and other practices as indicated in the following suggested changes: "Costs of easements in accordance with s. NR 153.24, land acquisition, or other practices or programs approved in County Land and Water Resource Management Plans for ~~previously cropped~~ lands that are used as buffers."
Response: NR 153 and NR 154 have been changed to address the issue of previously cropped lands. There is nothing in NR 153 or the portions of ATCP 50 cross-referenced in NR 153 that would limit cost sharing to previously cropped lands. We do not agree that further changes are necessary and the department is not willing to allow as eligible costs a broad sweeping statement such as "programs approved in county land and water resource management plans" since we have no role in approving these plans.

L73 Comment: (Co. lake spec.) NR 154.04(24). Change the definition to be: "an area in which vegetation exists that reduces or eliminates the movement of sediment…" This change would make the definition consistent with other BMP definitions in that it describes physically what a buffer is. By including the words "enhanced" or "established" it does not provide for a landowner to follow the BMP by maintaining an existing buffer.
Response: This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

L74 Comment: (Co. lake spec.) NR 154.04(24)(b)(4). Remove the eligible cost provision for easements for only previously-cropped lands. Nonpoint funds should be used for agricultural and non-agricultural lands. Also, Paragraph (c) is missing.
Response: Easements can be purchased for urban and rural practices as stated in NR 153 and NR 155. In addition, please refer to the responses to comments L4 and L72.

L75 Comment: (WLWCA/WALCE, several counties) NR 154.04(25)(e)5. This should allow for an alternate use in the event that a perpetual livestock and deed restriction is in place on a parcel.
Response: This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

L76 Comment: (DATCP) NR 154.04(27)(b). This language regarding eligible costs should be added to ATCP 50.
Response: The suggested change is to ATCP 50, not to NR 154.

L77 Comment E166 (LCC) regarding NR 151.04 table applies to NR 154.04(24)(d)(4).

L78 Comment: (Co. Ext., LCD)P. 49 Line 13 -- Change the title to : "Shoreline Habitat Protection and Restoration ~~for Developed Areas~~" and on Line 14 to the following: "Shoreline habitat protection and restoration means the maintenance or establishment ~~in developed areas~~ of a shoreline buffer zone…"
Response: This BMP is focused on restoration, not prevention. There are other programs that are designed for prevention including the Stewardship Program, and other BMPs that may be used such as Riparian Buffers.

L79 Comment: (Co. lake spec.) NR 154.04(28) Shoreline Habitat -- The definition should physically describe the area. The eligible costs should dictate that the establishment of a shoreline habitat area is what would be covered under cost-sharing. Eligible costs should include easements and land acquisition for shoreline habitat areas and other practices or incentive programs approved in county LWRM plans.

Response: The definition of shoreline habitat restoration in NR 154.04(29)(a) describes the area. Also please refer to the response to comment L72.

L80 Comment: (Co. Ext., LCD, Co. lake spec.) NR 154.04(28)2(c)3. Shoreline Habitat. Biologs should not be listed as ineligible costs--they are sometimes needed to help establish plants in near-shore areas where wave action would otherwise prevent it.
L81 Comment: (WAL) P. 54, 3 -- Why not fund biologs?
Response: We have changed the ineligible costs section for this BMP in both NR 120 and NR 154 to allow the use of riprap and biologs if approved by the department. The department's experience is that these practices have often been used unnecessarily or in areas where they are ineffective and so wishes to ensure that expenditures for these practices are appropriate.

L82 Comment: (Co. Ext., LCD) Regarding accelerated recovery, add the following wording to address more impacted shoreline areas than those that are completely converted to mowed lawn: "...where grasses have been maintained for several years, or where one or more layers of natural vegetative cover have been removed."
Response: We agree that accelerated recovery may be used in certain cases where one or more layers of natural vegetative cover has been removed; however, a landowner should not be eligible for cost-sharing simply because they decided to remove some trees or shrubs. We have added a qualified statement in the rule that can allow cost-sharing in these cases, but only after review and approval by the department.

L83 Comment: (Co. Ext., LCD) P. 50 -- Add the following statement after Line 3 to include protection strategies for existing shoreline habitats: "3. Protection. Where natural shoreline habitat continues to exist, these habitats need long term protection to prevent nonpoint source pollution from occurring. This practice may be implemented using such practices as cost sharing of permanent conservation easements, land acquisition or other incentives or programs as defined in County Land and Water Resource Management Plans."
Response: Please refer to the responses to comments L76 and L81.

L84 Comment: (Co. Ext., LCD) P. 50. Other eligible practices need to be included in the cost-sharing list including the following: "4. Conservation easements or land acquisition. 5. Other practices or programs approved in County Land and Water Resource Management Plans."
Response: Please refer to the responses to comments L76 and L81.

L85 Comment: (Co. Ext., LCD) I disagree the practice design should be listed as an ineligible cost as indicated in comments for NR 120.
Response: We have added the possibility that practice design may be an eligible cost if approved by the department. In most cases, the landowner is able to develop a simple design that is adequate, but we agree that in some complex projects, a professional design may be necessary.

L86 Comment: (WLWCA/WALCE, several counties) NR 154.04(28). It should not be assumed that the planting of trees and shrubs along streambanks is a good or necessarily beneficial practice for streambank protection/stabilization or that these plantings have positive benefits for the protection/ enhancement of surface water quality. This section appears to attempt to mirror a technically flawed NRCS requirement for landowner participation in USDA's CRP continuous sign-up program. The requirement for the planting of woody vegetation must be removed from this section.
Response: This is not always a requirement. A goal of this BMP is to re-establish the shoreline habitat to its natural state, which will provide wildlife and water quality benefits. This may or may not include all three layers (vegetative, shrub and tree) and may include these layers in an infinite number of varying degrees. In some cases, only the vegetative layer will be required to return the shoreline to its original condition. This provision (NR 154.04(28)(9)), coupled with the ability of project sponsor to determine the most appropriate recovery methods (NR 154.04(28)(11)), gives flexibility to address local conditions.

L87 Comment: (WLWCA/WALCE, several counties) NR 154.04(28)(d)9 and NR 154.04(28)(d)11 -- These are incompatible statements.
Response: Please refer to the response to comment L87.

L88 Comment: (Co. Ext., LCD) STREAMBANK AND SHORELINE PROTECTION -- Change the wording on Line 23 to read "...from livestock access or other agricultural or non-agricultural activities." An example would be where streambank protection is needed due to forestry equipment crossings on small streams. Add the following to the list of eligible costs: "Conservation easements, land acquisition, or other practices or programs approved in County Land and Water Resource Management Plans."
Response: Please refer to the responses to comments L4, L47 and L72.

L89 Comment: (Co. lake spec.) NR 154.04(28) -- I support the descriptive language in the design, construction and maintenance provision with the exception of 13(g), P. 53. I think there is an error. The language "In viewing and access corridors" should be replaced with "In established prairie buffer areas."
Response: We have added the language "or in established prairie buffer areas" after "in viewing and access corridors" to allow greater flexibility.

L90 Comment: (Co. lake spec.) NR 154.04(29) Streambank and Shoreline Protection -- Remove "from livestock access" from the definition. Eligible costs should include easements, land acquisition and other practices and programs approved in county LWRM plans.
Response: Please refer to the responses to comments L4, L47 and L72.

L91 Comment: (DATCP) NR 154.04(29)(b)8. ATCP 50 and NR 154 are not consistent. ATCP 50 contains no provisions for cost-sharing permits.
Response: This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

L92 Comment: (DATCP) NR 154.04(29)(c). This wording on design, construction and maintenance should be added to ATCP 50.
Response: The suggested change is to ATCP 50, not to NR 154.

L93 Comment: (NRCS) NR 154.04(30)(b). The rule states that cost-sharing may be provided for the installation of subsurface drains in stripcropping systems. Where would subsurface drains be needed in stripcropping systems?
L94 Comment: (NRCS) NR 154.04(30)(c)(2)e NRCS FOTG Standard 606 (September, 1989) should be deleted. If it is kept, then NRCS FOTG Standard 620 Underground Outlet (June, 1993) should be added.
L95 Comment: (NRCS) NR 154.04(34)(d)(1)(b) Waste Transfer Systems -- The standard listed here, Underground Outlet, is not applicable and should be deleted.
L96 Comment: (NRCS) NR 154.04(35)(c)(1) and (36)(c)(2) Water and Sediment Control Basins and Waterway Systems -- Add NRCS FOTG Standard 620 Underground Outlet (June, 1993).
L97 Comment: (NRCS) NR 154.04(37)(c)(1) Well Decommissioning. -- Should read: NRCS FOTG Standard 351 Well Decommissioning (April 1999).
L98 Comment: (Co. Ext., LCD) P.63 Line 13 -- Change the title to "WETLAND PROTECTION, DEVELOPMENT OR RESTORATION," and change the definition to include wetland protection. Add the following to the list of eligible costs: "Conservation easements, land acquisition, or other practices or programs approved in County Land and Water Resource Management Plans."
L99 Comment: (Co. lake spec.) NR 154.04(38) Wetland Development or Restoration -- Eligible costs should include easements, land acquisition, and other practices and programs approved in county Land and Water Resource Management plans.
Response: This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

L100 Comment: (WAL) NRCS technical guides are always being revised. The most up to date version (after review) should be used and we should not be locked into older versions by including the dates in this rule. (Also applies to NR 243.)
Response: S. 227.21 Wis. Stats. requires state administrative rules to reference technical standards to "the specific issue or issues of the publication in which they appear". We are required by law to reference the specific date of the publication.

L101 Comment: (WAL) P. 39 -- Manure spreading should be prohibited within 75 feet of lakes and ORW/ERW or 50 feet of wetlands or streams. There is a nutrient and a public health element here that must be considered. (Also applies to NR 243.)
L102 Comment: (WAL) P. 43 -- Riparian buffers must protect fish and other aquatic life habitat (turtles, amphibians, etc.).
Response: This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

L103 Comment: (WAL) P. 50-53 -- Good buffer provisions!!
Response: See the response to comment E149 for a response

M NR 216

M1 Comment: (WTBA) NR 216.21(2)(c) The deletion of the words "Tier 3 categories shall include" seems to be made in error. The elimination of this language would appear to eliminate the Tier 3 category from the DNR's storm water rules, while the DNR's intent appears to be to expand the Tier 3 category. We strongly support including this phrase back into the rule.
Response: We agree, and we have corrected this error.

(Comment cont'd.) We strongly support the language contained in NR216.21(2)(c)(2) that expands the Tier 3 category (if the change discussed above is made) to include facilities that certify that their "storm water discharges contain only earthen materials from non-metallic mining operations, and that this storm water is discharged to onsite seepage basins that effectively remove the contaminants prior to discharge to the groundwater." Given that lack of environmental impact associated with the facilities that can provide this certification, WTBA strongly believes that these facilities are appropriately regulated as Tier 3 operations.
Response: We agree.

M2 Comment: (WLWCA/WALCE, several counties) We strongly oppose removing the fee exclusion where local ordinances are administered after 1992.
Response: There is a combination of reasons why this exemption is to be removed. This exemption was put into effect with the assumption that local governments with commercial development ordinances would be properly reviewing and/or inspecting commercial sites and the department would not have to spend much time on them. Actually, in accordance with s. NR 216.42 (3), most commercial sites are given erosion control authorization by the Dept. of Commerce, and are not subject to the NR 216 erosion control permit and associated fee anyway. Also, a community with a local commercial erosion control ordinance does not necessarily review non-commercial erosion control projects. Currently, many permit applicants claim that the local community has a pre-1994 commercial ordinance when they do not. It has been difficult trying to track down a local ordinance that does not exist and then having to request payment from the applicant when none was originally sent in. The department also has spent a significant amount of time dealing with erosion control enforcement issues in some communities that had ordinances in effect, when the reason for the exemption was that we shouldn't have to. Lastly, the department is now required to perform a review of potential endangered and threatened resources, historic properties and wetland concerns that were not required when the original exemption was enacted, which takes additional staff time and is not necessarily performed by the local municipality.

M3 Comment: (WLWCA/WALCE, several counties) We believe the fee exclusion should be expanded to include all local ordinances regardless of adoption date. This would reduce bureaucracy, encourage

local ordinances and result in better compliance with the performance standards. Builders and developers have expressed support for the elimination of duplicative regulations.
Response: We agree that local enforcement programs have a much better potential at providing a more effective program than the department can with its limited resources. However, see response to M2. Additionally, the concept of allowing a qualified local program such as a municipality to issues erosion control permits on behalf of the department will be evaluated as part of the EPA Phase 2 changes to revise NR 216 changes that will occur with the next round of revision to NR 216 over the next year or so.

M4 Comment: (WLWCA/WALCE, several counties) Clarify that regulated communities must conduct regional storm water planning and adopt storm water management ordinances. Both are currently required, but it is very unclear in the code language.
Response: A reason why it does not specifically indicate that an ordinance is required is that there may be other alternatives that can be used to justify the necessary authority control requirements. Admittedly, an ordinance is the tool that nearly all, if not all, counties, cities and villages will use. However, subch. I of NR 216 actually regulate municipal separate storm sewer systems (MS4s) that can include federal, state, district and association storm sewer systems as well. These other MS4 systems might use other regulatory tools as appropriate since some of them do not have authority to enact ordinances. Likewise, the storm water area that needs to be evaluated for these "other" MS4s might be a much smaller area than a regional storm water planning area.

M5 Comment: (WLWCA/WALCE, several counties) The need for a "notice of intent" could also be eliminated by incorporating a reporting element into local grants for ordinance administration.
Response: The Notice of Intent (NOI) for obtaining coverage under the land disturbance construction permit is not only a state but also a federal requirement. Having this NOI form enables all appropriate information to be collected and for it to be sent to the appropriate department staff for review and recording into the permit tracking system. Also, there is a 14-working day timeline associated with reviewing the NOI in order to assure that not only erosion control but also if potential wetlands, endangered and threatened resources and historic property are of concern and could result in project adjustments. If the information contained in an NOI was mixed in with another report such as grants, this information likely not be sent as quickly to the appropriate staff for review within the 14-working day timeline resulting in automatic permit coverage without proper review. We believe that the NOI is quite a streamlined form and regardless of using the NOI or having it contained in another report, the same information would be required and again the standardized form assures that the proper information is submitted to the proper DNR staff for timely review.

M6 Comment: (WLWCA/WALCE, several counties) NR 216.002(2) We recommend the following be added to the definition of "Construction Site" on P. 2 Line 5: "...may be taking place at different times on different schedules and under different ownership but under one plan such....."
Response: The department's standing policy has been that the construction site is under an individual owner including partnerships, corporations, etc.. We do not require separate property owners to get permit coverage unless an individual owner has a site of 5 or more acres of land disturbance. Note that in March 2003 this threshold will lower down to 1 acre of land disturbance in accordance with the EPA Phase 2 storm water regulations.

M7 Comment F13 (MMSD) regarding limitations of enforcement through NR 216 permits applies to this section.

M8 Comment F10 (RPC) regarding site-by-site requirements applies to this section.

N NR 243 Animal Feeding Operations

N1 Comment: (DATCP) The department needs to state in the rule what the criteria or systems will be for determining how, when and what additional nitrogen, phosphorus, or other pollution restrictions will apply. Producers need to know the rules of the game before they make substantial investments in time and money. Producers and other members of the public should be allowed to comment on how

agriculture will be regulated. If these compliance requirements are not listed in the code, public comment for consistent and fair regulation is being denied.
Response: The department modified NR 243 to be as specific as possible regarding requirements for permitted operations [e.g., see s. NR 243.14(4)]. However, given the variability in sites where operations may locate, it is impossible to cover every water quality issue that may arise in hard code language. Therefore, in certain areas, code language is in place that provides DNR with flexibility to address site variability. In areas where the department has flexibility in addressing water quality issues, the code lists criteria that the department will consider as part of its decision making process. While this may not provide the exact verbiage of permit requirements associated with a given water quality issue, it does provide the permittee and the public with information on the factors that affect a department's permitting and review and approval process. The other option--to be very prescriptive in all aspects of the permitting process--does not provide the necessary flexibility needed to address both site and operational variability while providing adequate levels of environmental protection. Requirements associated with phosphorus concerns are a good example of where site and operational variability as well as developments in knowledge regarding practices to address impacts from phosphorus make regulatory flexibility necessary.

Part of the reason for extending the permit application requirement to 12 months versus 6 months, was to provide the department additional time to determine what additional site restrictions may apply to an operation before substantial investments of time and money occur. However, the nature of the WPDES permitting process, which includes a process for public comment, dictates that final permit requirements are not known until the permit is issued.

N2 Comment: (individual) Farms with large numbers or concentrations of livestock should be required to use anaerobic digestion to treat the manure. The methane gas produced could be burned to provide heat and could be used as fuel in a piston or turbine motor to generate electricity. Use of the methane would save the farmers fuel costs, and prevent the release of it to the atmosphere where it has a greenhouse effect.
Response: Many of the issues raised in this comment regarding creation and sale of electricity from manure generated methane are not appropriate for a code that is designed to address water quality. While there may be water quality benefits associated with anaerobic digestion of manure, it does not ensure that water quality will be protected. Improperly stored or land applied digested manure can have significant water quality impacts. WPDES permit requirements are designed to ensure proper storage and land application of manure such that manure and associated pollutants do not enter waters of the state, regardless of the technology used at an operation. The department has chosen not to dictate the technologies that operations should use to meet water quality requirements associated with a WPDES permit. Operations may choose other means of complying with permit requirements, that are equally as effective as anaerobic digestion.

N3 Comment: (conservation group) Out-of-state corporate operations are coming into the state. There have been occasions where these operations have been given fast-track approval, even when they are having major manure spills into the waterways. DNR, with limited enforcement capabilities, was unable to foresee or identify problems until after they occurred. It is important to come forth with thorough plans on these large operations to avoid catastrophic situations that have occurred in other areas of the country.
Response: NR 243 does not provide for preferential treatment of operations or fast-track approvals. As a matter of practice, the department is committed to processing a WPDES permit within 6 months of having received a complete WPDES permit application (this would be extended to 12 months under the revised code). Each operation is regulated as an individual entity, regardless of its compliance history in other states or even other parts of the state. The fact that Wisconsin has not seen the problems other states have encountered with CAFOs is due, in part, to the department having an effective means of requiring planning and addressing water quality impacts from CAFOs via the WPDES permitting program. Since the comment does not provide specific examples of non-compliance and environmental impact, the department can only respond that as with any other group of WPDES permittees (industries, municipalities), while most operations are in significant compliance with their WPDES permits, some operations are not. The WPDES permit offers the means to address noncompliance.

N4 Comment: (individual) I applaud the department's NR 243 and if anything it needs more teeth. There is no greater single threat to this state regarding water pollution then the influx of animal feeding operations. 50 to 100 animals will have little if no impact to the states water resources if proper management practices are followed. On the other hand, what happens to the states water resources if 2,000 animals are left to improper management practices?
Response: The department recognizes that to truly protect and enhance water quality in the state, all sources of pollution must be addressed. This includes point sources (industries, municipalities and CAFOs) as well as both urban and rural sources of nonpoint pollution. In terms of animal feeding operations, the department does not advocate for or against animal feeding operations based on size. The department recognizes that under certain conditions, any size animal feeding operation can have a significant impact on water quality. Ch. NR 243 and the performance standards and prohibitions in ch. NR 151 are tools to ensure that animal feeding operations of all sizes are implementing appropriate management practices.

N5 Comment: (EPA) The second version of this chapter responds in an appropriate fashion to most of the comments we previously provided, but does not establish all elements of the legal authority Wisconsin needs to administer the WPDES program for CAFOs. Pursuant to 40 CFR ss. 123.1(g)(1) and 123.25(a)(4), Wisconsin legal authority needs to:
1. Prohibit all discharges from the CAFOs described in clause (b) in the first paragraph of Appendix B to 40 CFR part 122, unless the discharges are in compliance with WPDES permits, and
2. Establish an obligation for owners or operators of these CAFOs to apply for WPDES permits if they discharge or propose to discharge.
Under the federal regulations, Wisconsin's prohibition against un-permitted discharge by the CAFOs described above needs to automatically apply as a matter of state law or administrative code. The prohibition may not be expressed such that it applies only after a CAFO becomes subject to a notice of discharge or direct enforcement under proposed s. NR 243.24(3). The duty to apply for a permit needs to be expressed in a manner that requires the CAFO owner or operator to initiate the permit application process rather than wait for the DNR to find cause to provide an application to the owner or operator. as s. NR 200.04(3) appears to contemplate. (Of course, on discovery of an un-permitted discharge from a CAFO described in clause (b) in the first paragraph of Appendix B to 40 CFR part 122, DNR can use either of the mechanisms under proposed s. NR 243.24(3) to modify the design or operation of the CAFO such that the facility no longer is a CAFO point source and, accordingly, no longer needs a WPDES permit).
Response: The prohibition against unpermitted discharges is already covered in s. 283.31(1), Stats. In addition, a note has been added beneath s. NR 243.26(4) reflecting the statute language. The department has added language requiring animal feeding operations meeting the federal definition of a point source established in 40 CFR Part 122.23 and Appendix B to 40 CFR Part 122 to apply for a WPDES permit.

N6 Comment: (EPA) We strongly encourage the DNR to incorporate the revised nutrient management standard in the version of NR243 that it will submit to the Board for final approval.
Response: Since the most recent version of NRCS Standard 590 has not been finalized to date, NR 243 will retain the reference NRCS Standard 590, March 1999. Water quality concerns associated with the landspreading of manure that may have been addressed by the new version of NRCS Standard 590 will be addressed on a case-by-case basis via the WPDES permit issuance process.

N7 Comment: (EPA) Table 2 needs to be revised as follows to conform with 40 CFR s. 123.25(a)(6) and Appendix B to 40 CFR part 122:
Beef Cattle:
1000 Steers or Cows(~~1000 lbs to Market~~ over 600 lbs) 1.0
~~1250 Steers or Cows (600 to 1000 lbs) 0.8~~
2000 Calves (under 600 lbs) 0.5

Ducks:
5000 Per Bird ~~(Wet Lot)~~ 0.2

~~100000 Per Bird (Dry Lot) 0.01~~

Response: The department has changed the animal unit equivalency numbers for beef cattle. However, the department will retain the distinction between wet lot and dry lot duck operations. EPA has recently proposed changes to federal regulations for CAFOs, including how animal unit equivalencies are calculated. DNR believes it is prudent to wait until the federal regulations are finalized before making a significant modification to animal unit equivalency numbers (i.e., reducing equivalency numbers from 100,000 to 5,000 ducks). Changes at the federal level may or may not require modification of Wisconsin's current duck equivalency numbers.

N8 Comment: (farmer) If EPA lowers to 500 AU, what impact will that have on this redesign proposal?
Response: Any changes at the federal level regarding the NPDES permit threshold for CAFOs would need to be codified at the state level. If a lowering of the WPDES permit threshold is proposed in Wisconsin Administrative Codes to reflect federal regulations, impacts would be addressed at the time of the proposed code changes.

N9 Comment: (WI Env. Decade) There is no requirement for addressing the ecology of areas where someone wants to put in CAFO. There should be basic requirement to educate producers and the public on this; all should know something about the ecosystem being impacted.
Response: The CAFO requirements in ch. NR 243 are limited to water quality protection, which we recognize is only one piece of the ecology of areas where CAFOs are sited. Environmental review activities, completed in accordance with ch. NR 150 for the majority of new permits that are issued to CAFOs, are intended to disclose to producers and the public the impacts a given operation will have beyond water quality and addresses more of the ecological impacts. However, ecological impacts identified via environmental review activities, whether they are significant or not, do not provide the department additional regulatory authority as part of the WPDES permits issued under NR 243.

N10 Comment: (MEA) Proposed NR 243 violates 40 C.F.R. 122.4(a) and 123.25(a) because the requirements are weaker than those required by the federal Clean Water Act. The state cannot issue a permit that contains conditions that "do not provide for compliance with the applicable requirements of the CWA, or regulations promulgated under the CWA." 40 C.F.R. 122.4(a). Specific examples are listed below.
Response: Where EPA has commented on ch. NR 243 regarding inconsistencies with federal regulations, the department has made appropriate changes to ch. NR 243.

N11 Comment: (MEA) The numbers used in Table 2 showing animal unit equivalency factors are not as stringent as the federal equivalency factors and should be changed to be as stringent as the federal factors. The state does not have the discretion to ignore federal factors and use less stringent factors. DNR can provide more stringent numbers and we would support that decision. When there are not federal equivalency factors available for comparison, the state factor may be more accurate if it were based on the estimated manure production from each type of animal, rather than on the animal's weight. Examples of factors incompatible with federal factors are:
For cows, the federal rule states that 700 mature dairy cattle (milked or dry) equals 1,000 animal units (see 40 C.F.R. 122, Appendix B). This calculation is made without reference to weight of the animals. The state table allows a much greater concentration of dairy cows before reaching 1,000 animal units by allowing 910 heifers weighing between 800 to 1,200 lbs. and 1,670 heifers weighing between 400 and 800 lbs.
Response: Heifers are considered to be immature dairy cattle. When a heifer first calves and begins milking it is considered to be a mature dairy cow from that point forward for the purposes of ch. NR 243, regardless of its weight. This is consistent with federal regulation for CAFOs.

(Comment cont'd.) For cattle, the federal rule states that 1,000 slaughter and feeder cattle equal 1,000 animal units (see 40 C.F.R. 122, Appendix B). The state table allows a much greater concentration of cattle before reaching 1,000 animal units. It differentiates by weight and states that 1,250 steers or cows weighing between 600 to 1,000 lbs. are equal to 1,000 animal units. This is weaker than the federal rules.

Response: DNR made changes to animal unit equivalency numbers for slaughter and feeder cattle for beef operations in response to comments made by US EPA in order to be compliant with federal rules.

(Comment cont'd.) For chickens, the federal rule states that 100,000 laying hens or broilers equal 1,000 animal units when the facility uses a continuous overflow watering system. That number goes down to 30,000 laying hens or broilers when the facility uses a liquid manure system (see 40 C.F.R. 122, Appendix B). The state table is confusing because it contains these numbers in addition to allowing 100,000 layers to equal 1,000 animal units and 200,000 broilers to equal 1,000 animal units, regardless of manure systems. The latter references should be deleted for clarity.
Response. In order to be consistent with federal CAFO regulations, NR 243 will continue to contain animal unit equivalencies that reflect wet manure handling systems (100,000 laying hens or broilers for continuous overflow watering systems, 30,000 laying hens or broilers when the facility uses a liquid manure system). NR 243 will also continue to contain the equivalency numbers (100,000 layers and 200,000 broilers) that reflect dry manure handling systems which are more typical in Wisconsin.

(Comment cont'd.) For ducks, the federal rule states that 5,000 ducks are equal to 1,000 animal units (see 40 C.F.R. 122, Appendix B). The state table is not stringent enough. It allows 100,000 ducks to equal 1,000 animal units.
Response: See response to comment N7.

(Comment cont'd.) For swine, the federal rule does not contain a category for swine under 55 lbs. However, there is no reasonable justification for allowing 10,000 pigs under 55 lbs. to equal 1,000 animal units when 2,500 pigs over 55 lbs. equal 1,000 animal units. The equivalency for smaller pigs must be much smaller.
Response: Since NR 243 contains the federal swine equivalency animal unit number (2500 pigs over 55 lbs. equals 1,000 animal units), NR 243 is consistent with federal regulations regardless of animal unit equivalency numbers for smaller pigs.

N12 Comment: (MEA) NR 243.03(2) should define animal feeding operation as including a pasture where animals are confined.
Response: The definitions of "animal feeding operation" and "pasture" in NR 243 are operational definitions designed to address the differences between these types of operations in terms of how the animals are managed within an area. In a pasture, while animals are confined to the area of the pasture, they are managed such that vegetation is maintained throughout the pasture, reducing or eliminating runoff concerns from these areas. Animal feeding operations confine animals in a manner that vegetation cannot be maintained over the feedlot. Department determinations of whether an operation is a pasture versus an animal feeding operations are more appropriate based on management within the confined area rather than solely on the concept of confinement. This is consistent with 40 CFR 122.23(b)(1).

N13 Comment: (MEA) NR243.03(5) should provide a sharper description of "chronic rain event." As currently defined, a few days of rain could be considered chronic. This impacts the enforcement of the technology-based effluent standard applicable to CAFOs, and creates a much bigger exception to the effluent standard than desirable for attaining the goals of the CWA.
Response: The EPA "Guide Manual on NPDES Regulations for Concentrated Animal Feeding Operations" (December 1995) further explains a chronic rainfall event in 40 CFR 412 as "a series of wet weather conditions that preclude dewatering of properly maintained waste retention structures." The guide provides an example of chronic rainfall event as a storm lasting six days that delivers 20 inches of rain. Given this information, there may be instances where a few days rainfall could be considered a chronic rainfall event. However, the other key component of the chronic rainfall discharge allowance is that a given facility must still be properly designed, operated and maintained. An additional key component is that such a discharge cannot result in the exceedance of groundwater or surface water standards. NR 243 reflects information available under the federal regulations and associated guidance regarding chronic rainfall events. Given the lack of a clear federal definition of a "chronic rain event" and the number of variables that come into play when determining if a discharge is the result of a chronic

rainfall event, no changes were made to the code language. Determinations of whether an operation has an acceptable discharge as a result of a chronic rainfall event will be made on a case-by-case basis.

N14 Comment: (MEA) NR 243.03(10) should delete "which flows from animal feeding operations" from the definition of "contaminated runoff." This qualifying phrase unnecessarily restricts the definition.
Response: The definition of contaminated runoff contained in NR 243 applies only to animal feeding operations regulated under NR 243 and not to the other uses of the term outside of NR 243. Recognizing that phrase "which flows from" may be limiting in its application, the definition has been modified to read "...and precipitation from animal feeding operations that transports pollutants such as...."

N15 Comment: (MEA) NR 243.12(2)(a)(3) should delete the work "preliminary" before manure management plan. The plan provides essential information about whether or not the DNR can ensure that the facility meets the federal prohibition on discharges required by 40 C.F.R. 412. In order for the public and the DNR to be fully aware of the environmental impacts from a facility, the plan must be complete and available to the public prior to public notice of a proposed permit decision.
Response: The no-discharge design standard in 40 CFR 412 applies to feedlot areas (see 40 CFR 412.10 and 412.11-- areas where animals are stabled, confined and fed or maintained), not areas used for the land application of CAFO manure. DNR has been regulating the land application of manure from CAFOs since the inception of NR 243 in the mid 1980's, because it believes that land application of manure from CAFOs represents a significant water quality concern if done improperly. The important restriction regarding land application is that proper practices are implemented as part of a Manure Management Plan to ensure that pollutants associated with manure do not result in exceedances of water quality standards.

Under current WPDES permits and revised NR 243, approval of a Manure Management Plan is at least a two-stage process. A preliminary plan is submitted with the permit to provide an initial indication of an operation's ability to meet permit requirements. The preliminary plan is available to the public as part of the public notice process of an operation's WPDES permit. DNR does not "approve" the preliminary plan because there are often additional requirements that are imposed on an operation's land application procedures as part of the finalized permit. Operations are required to submit an update of the preliminary plan for DNR approval during the permit term that reflects the final permit conditions. The public can comment on the permit conditions that affect the final plan as part of the public notice process.

N16 Comment: (MEA) NR 243.12(2) should add a sentence that also requires submission of information on the amount of water that will be used for the operation. In order to design a facility in accordance with 40 C.F.R. 412, one needs to know how much water will be used. A portion of this water will eventually need to be contained in the manure storage pits.
Response: Water usage is primarily a water quantity issue, not a water quality issue; therefore, it is not regulated under the WPDES permit program. Information on water usage is typically required as part of the information submitted to meet environmental review requirements under ch. NR 150. Design of manure storage facilities is based on manure production estimates from technical sources or experience at other operations. This is viewed as a more accurate estimate of manure production rather than water usage, recognizing water also leaves a site in forms other than manure (e.g., milk).

N17 Comment: (MEA) NR243.12(2)(4) and (2)(5) should delete "[u]pon approval by the department, plans and specifications for proposed storage or composting facilities may be submitted during the term of the permit." These plans and specifications are a primary source of information about whether or not the DNR can ensure that the facility meets the federal prohibition on discharges required by 40 C.F.R. 412. In order for the public and DNR to be fully aware of the environmental impacts from a facility, the proposed plans for storage, composting and/or runoff systems must be complete and available to the public prior to public notice of a proposed permit decision.
Response: Retention of the language provides regulatory flexibility in situations where an operation chooses or may need to submit plans and specifications for reviewable structures during the permit term. Neither federal nor state law requires that plans and specifications for structures that will be built during the permit term be submitted prior to permit issuance. Revised NR 243 requires that proposed manure storage facilities be designed to at least meet NRCS Standard 313. Also, NR 243 and WPDES permits

require that operations meet the prohibition on discharges required by 40 CFR for any proposed storage, composting and/or runoff control system (see s. NR 243.13(1)). DNR ensures compliance with this requirement via its approval process for reviewable structures and enforcement of the permit conditions. DNR records on approvals of reviewable CAFO structures, including design plans, are public record.

N18 Comment: (MEA) Although proposed NR 243.14(1) now requires landspreading of manure that does not cause or contribute to the non-attainment of surface or ground water standards, proposed NR 243.14(4)(c) only requires a phosphorous-based limitation in 303(d) waterbodies and exceptional resource waters. NR 243.14(4)(c) appears to undercut the more general standard of NR 243.14(1). Further, this does not meet the requirements of 40 C.F.R. 412. The federal regulation does not merely prohibit discharges of nitrogen and allow discharges of phosphorous or only prohibit discharges to exceptional waterbodies. The regulation prohibits all discharges from the facility. Since the facility includes the lands where manure is spread, a phosphorous-based standard must be applied to all fields where CAFOs are spreading manure.
Response: The no-discharge design standard in 40 CFR 412 applies to feedlot areas (see 40 CFR 412.10 and 412.11-- areas where animals are stabled, confined and fed or maintained), not areas used for the land application of CAFO manure. NR 243.14(4)(d) is intended to conform with NR 243.13(1) by identifying additional restrictions on CAFO land application practices in specific areas (303(d) waterbodies and ORWs and ERWs). Other areas may be subject to additional restrictions; however, this will be done on a case-by-case basis via the WPDES permitting process (see 243.14(4)(c)).

N19 Comment: (MEA) The first sentence of proposed NR 243.15(1) should be amended by deleting "unless department approval is received for a later submittal." As currently written, the proposed NR 243.15(1) violates the regulations implementing the CWA. Approval for a later submission is, in essence, using a compliance schedule to allow the facility greater time to comply with the no-discharge standard of performance for CAFOs. Federal law prohibits the use of a compliance schedule for standards of performance. All new CAFO sources must meet the design, installation and operation standard contained in 40 C.F.R. 412.15 from the facility's first day of operation under the WPDES permit (see 40 C.F.R. 122.47(a)). A permitting agency can only use compliance schedules in NPDES or WPDES permits in very limited situations. "The first NPDES permit issued to a new source or a new discharger **shall** contain a schedule of compliance **only when** necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised **after** commencement of construction but less than 3 years before commencement of the relevant discharge." (40 C.F.R. 122.47(a)(2), emphasis added).
Response: The allowance for submittal of plans and specifications for designed structures during the permit term is not considered a compliance schedule since it does not hold in abeyance the requirements to comply with the no-discharge standard contained in NR 243.13(1) that reflects 40 CFR 412. Neither federal nor state law requires that plans and specifications for structures that will be built during the permit term be submitted prior to permit issuance.

N20 Comment: (MEA) NR 243.15(2) and (3) could be improved by adding specific requirements for monitoring of these systems to ensure that they are in compliance with the effluent limit and water quality standards.
Response: Language has been added to NR 243.13 to include requirements to inspect designed structures and runoff control systems periodically to ensure compliance with permit conditions.

N21 Comment: (MEA) NR 243.15(3)(c) should be amended to add that the structure must meet the criteria of NR 243.13, rather than simply comply with NRCS Standard 313.
Response: s. NR 243.15(1)(b) and s. NR 243.15(3)(a) both reference the requirement for designed structures to meet the requirements of s. NR 243.13(1). In addition, s. NR 243.15(3)(c) has been modified to reflect the need for an owner or operator to document that structures are built to meet the criteria in NRCS Standard 313, Tables 1-5, and any additional requirements specified in NR 243.15(3)(d). s. NR 243.15(3)(c) and (d) are designed to address compliance with the requirements of NR 243.13 (1).

N22 Comment: (MEA) NR 243.15(3)(e)(1) and (e)(2) should delete the phrase "other qualified individual" from the list of people allowed to determine the structural integrity of earthen manure pits. This language will unnecessarily burden DNR with the requirement of determining whether an individual is qualified. DNR should simply rely on engineers and soil testing laboratories to conduct these important analyses.
Response: The allowance to have an "other qualified individual" applies only to individuals taking and analyzing soil samples. The allowance does not apply to the determination of the structural integrity of an earthen manure storage facility. As with any review process, the department determines if information regarding the integrity of a storage facility is acceptable; therefore, the department does not view it as an undue burden to determine whether an individual is qualified to take and analyze a soil sample.

N23 Comment: (MEA) We object to proposed NR 243.15(4). DNR cannot simultaneously allow permanent spray irrigation systems and ensure that there will be no runoff to waters of the state.
Response: All of s. NR 214.14, which is intended to prevent runoff of spray irrigated wastes and has been used to that effect for industrial wastewaters, has been referenced in NR 243.

N24 Comment: (MEA) Subchapter II—Other Animal Feeding Operations, applies a creative and reasonable tiered system for categorizing unacceptable practices.
Response: Comment acknowledged.

N25 Comment: (MEA) Subch. II still does not meet the federal requirements of 40 C.F.R. 122.23(2). Federal law allows a facility with less than 1,000 animal units to be designated as a CAFO and regulated through a permit (40 C.F.R. 122.23(2)(i)-(ii)). Proposed NR 243.24(3) should require the facility with a Category I unacceptable practice to apply for a WPDES permit, and the DNR should begin regulating pollutants from the facility under the permitting system.
Response: See response to comment N5.

N26 Comment: (MEA) NR 243.24(4)(d) should be amended to shorten the time period (2 months) for implementing corrective actions when there is "an imminent threat to public health or fish and aquatic life." If a threat is imminent, corrective measure should be undertaken immediately.
Response: The language in NR 243.24(4)(a)5. recognizes that due to necessary construction or changes in management practices, not all corrective measures will be able to implemented immediately. However, where warranted, DNR can require immediate implementation under ch. 281, Stats., or other authority.

N27 Comment: (WLWCA/WALCE, several counties) NR 243 does not reference local ordinances or county LWRM plans within the definition section or text in the administrative rule. At a minimum, the code should recognize where ordinances exist, and require compliance.
Response: See response to comments N32 and N50.

N28 Comment: (WLWCA/WALCE, several counties) The rule mandates an unrealistic "no discharge" standard for animal feedlots during all rainfall events less than the 25-year, 24-hour event. This is more restrictive than the performance standards in NR 151, making the two codes incompatible. It is also inconsistent with current and past technical standards for barnyard runoff control, making it impractical. Passage would make many previously permitted animal feeding operations in the state now out of compliance. The proposed standard should be modified to be consistent with NR 151.
Response: A "no discharge" requirement to animal feedlots applies to all animal feeding operations at some level. The "no discharge" design standard/effluent limitation for CAFOs in NR 243, reflects federal law for NPDES permits. For operations with less than 1,000 animal units, NR 243 references the prohibition on no direct runoff from feedlots into waters of the state contained in ch. NR 151.

N29 Comment: (WLWCA/WALCE, several counties) The rule constantly refers to "navigable waters" for applicability provisions while NR 151 refers to "waters of the state", which has a much broader definition. The rules should be consistent in how they are applied.

Response: The use of the terms "navigable waters" and "waters of the state" vary from within the code to reflect differences in how federal and state laws apply to animal feeding operations.

N30 Comment: (WLWCA/WALCE, several counties) It is unclear why Subchapter III is even needed in this rule. Any animal feeding operation less than 1,000 animal units that is out of compliance with any of the animal waste performance standards in NR 151 is already subject to the compliance provisions in the code. There would seem to be no need for the state to classify the operation as a "point source" under this code.
Response: Subchapter III provides regulatory flexibility in terms of how the department will address water quality impacts from animal feeding operations. There are a number of reasons why DNR would issue a Notice of Discharge to an animal feeding operation and not follow the implementation and enforcement provisions contained in NR 151. For example, for operations that fail to comply with a performance standard or prohibition that meet the federal definition of a point source, the department may decide to pursue issuance of a WDPES permit to implement corrective measures.

N31 Comment: (WLWCA/WALCE, several counties) The rule is unclear what incentive a county would have for providing technical assistance or managing cost-sharing grants to landowners, as described in this code. Yet the code does not seem to allow for cost-share grants directly between DNR and the landowner. Any county assistance should be state funded, which is also not clear. All of these issues need to be clarified.
Response: A county has two incentives to provide staffing support for NODs. First, staff funding provided by DATCP under ATCP 50 can be used to provide technical assistance for NODs. In fact, under ATCP 50.30, "farms discharging substantial pollution to waters of the state" is a statewide grant priority. Second, a county should be willing to assist in resolving these severe threats to water quality, given its technical expertise and responsibility granted under the statutes to manage soil and water resources. The department realizes there will be workload and funding issues related to statewide implementation of performance standards and has included a note in NR 151.09, NR 151.095 and NR 243 to recognize the need for an intergovernmental implementation strategy between DNR and its partners. Also, the applicable statutes only provide for cost-share grants to be made between DNR and local units of government, not to individuals or businesses.

N32 Comment: (WLWCA/WALCE, several counties) NR 243.01. The chapter's purpose is to identify the method used to insure producer compliance with the performance standards and prohibitions contained in NR 151. NR 243 fails to do so.
Response: Compliance with livestock performances standards and prohibitions is required as part of a CAFO's WPDES permit. For other animal feeding operations, NR 243 outlines authority, procedures and circumstances under which the department may issue an NOD to an animal feeding operation. One of the reasons for issuing an NOD to an operation is to obtain compliance with statewide livestock performance standards and prohibitions. There are other options available to the department to address operations that fail to comply with performance standards and prohibitions under s. NR 151.09 and 151.095. Local units of government also have authority to address operations that do not comply with performance standards and prohibitions (e.g., through a local ordinance). In some areas the local government's authority can be used to complement DNR's authority. A note was added to NR 243 and NR 151 that outlines DNR's intent to work with counties and other interested partners to develop a detailed inter-governmental strategy for achieving compliance with the performance standards and prohibitions that recognizes the procedures in these rules, state basin plans and the priorities established in county LWRM plans.

N33 Comment: (WLWCA/WALCE, several counties) NR 243.13. Clearly identify that producers must comply with the conditions set forth in local ordinances and must secure any local permits required by local ordinances.
Response: See response to comment N50.

N34 Comment: (EPA) NR 243.13(2)(c) should be revised to say: "Rain causes the discharge, and the discharge is from ...." (See 40 CFR ss. 412.13(b) and 412.25(b).)

Response: We made the recommended change.

N35 Comment: (DATCP) NR 243.13(4). This paragraph repeats what is in NR 243.14(1). One of them should be deleted. If you need to have both, use the same terms.
Response: The duplicate language was deleted from NR 243.14(1).

(Comment cont'd.) Be more specific as to the manner in which a permittee can comply with surface water quality standards and groundwater standards. For instance, complying with water standards means following NRCS Standard 590, March 1999; and the NRCS Technical Note on Conservation Planning, Wisconsin-1, for Nutrient Management, dated October 21, 1993 and any additional permit conditions. These additional permit conditions should be explained in this section or referenced to another section.
Response: See response to comment N1.

N36 Comment: (EPA) Revise NR 243.13(5) as follows: "Any other condition needed to obtain compliance with water quality standards in chs. NR 102 to ~~104~~ 105, 207, and 140..."
Response: We made the recommended change.

N37 Comment: (chemical company) NR 243.14, Manure Management, should allow the DNR to consider manure and animal litter amendment with aluminum sulfate as a factor in activation of soluble phosphorus thus reducing available nutrients in the runoff after land application.
Response: Any addition of manure or animal litter amendments would be addressed as part of an operation's manure management plan. As a general note, the department is unlikely to approve such amendments since they merely mask the presence of a pollutant and do not address the addition of a pollutant to waters of the state.

N38 Comment: (WLWCA/WALCE, several counties) NR 243.14(1) and (2); NR 243.12(1)(a), (b), and (c); and NR 243.23(1), (2), (3) and (4). These sections identify requirements of producers but fail to identify penalties for non-compliance. Clarify.
Response. NR 243 outlines procedures to address operations that are not in compliance with code requirements. The consequences of non-compliance are contained in statutes (i.e., chs. 281 and 283, Stats.) that the department may use and should not be repeated in this rule. Penalty (fine) schedules will not be included in this rule. Repeating these details in this rule is not practical nor is it appropriate for a state administrative rule.

N39 Comment: (DATCP) NR 243.14(2). Permittees should be allowed to amend their manure management plan as needed, without department approval, provided the proposed amendments comply with permit condition; NRCS Standard 590, March 1999; and the NRCS Technical Note on Conservation Planning, Wisconsin-1, for Nutrient Management, dated October 21, 1993. These amendments should be incorporated into the permittee's current nutrient management plan and reported to the department as part of the following year's nutrient management plan.
Response: The department needs to review changes to a manure management plan to ensure compliance with WPDES permit conditions.

N40 Comment: (EPA) NR 243.14(3). Revise as follows: "OTHER NUTRIENTS. Manure and wastewater application rates specified in the manure management plan shall take into account the nutrients in the soil prior to landspreading and the nutrient levels from other sources, including commercial fertilizer, biosolids, legume credits, and other sources of ~~manure~~ nutrients, ..."
Response: We have made this change.

N41 Comment: (NRCS) NR 243.14(4)(b) Manure Management Permit Conditions -- Before the DNR seeks Wisconsin Natural Resource Board approval to publish NR 243 as a final rule, Wisconsin NRCS strongly encourages the department to incorporate the revised and updated nutrient management standard, NRCS FOTG Standard 590 Nutrient Management; DATE TO BE ADDED, to NR 243.
Response: See comment N6.

N42 Comment: (EPA) NR 243.14(4) Revise as follows: "PERMIT CONDITIONS. (a) WPDES permits shall contain soil and manure sampling...."
Response: We made the recommended change.

N43 Comment: (DATCP) NR 243.14(4)(a). This section of the code should be more standardized. Record keeping and reporting requirements should be the same for all operations. This rule should also have criteria or a system for requiring manure sampling. When does solid manure need to be sampled? Can book values be used for solid manure analysis since it is very difficult to achieve a representative sample. How often should liquid systems be sampled? These requirements should be stated here so that this rule is applied evenly across all permittees.
Response: Given the wide range of water quality concerns and operational differences between CAFO sites, record keeping and reporting requirements often vary from site to site (e.g., some operations daily haul their manure, others landspread once or twice a year). Manure sampling is required of all manure, typically in the form it is landspread, in order to get representative samples of the nutrients being applied to land. For example, manure from different sources may be combined before landspreading; preferably, the combined manure would be sampled. However, there are often complicating operational restrictions that require modification of standard sampling procedures. NR 243 is drafted to provide that flexibility. Book values are allowed when an operation is submitting its preliminary plan as part of a WPDES permit application. However, once an operation is up and running, actual manure samples are required.

N44 Comment: (DATCP) NR 243.14(4)(b). This section explains 7 pollution factors that may lead to additional restrictions being included for controlling pollutants associated with the manure incorporation requirements and restrictions on winter land spreading and distribution schedules. Section NR 243.14(4)(c) explains 4 conditions for when additional restrictions will be included for controlling pollutants. Section (b) is very subjective and should be combined into NR 243.14(4)(c). The additional restrictions must be more defined as to the department's requirements.
Response: See response to comment N1.

N45 Comment: (EPA) NR 243.14(5) Be advised that for CAFOs subject to 40 CFR part 412, the effluent limitations guidelines and new source performance standards in 40 CFR part 412 apply to discharges or potential discharges from manure stacks. If a discharge from a manure stack in compliance with s. NR 243.13(2) would cause, have a reasonable potential to cause, or contribute to a violation of a water quality standard, then 40 CFR s. 122.44(d) requires the establishment of a water quality-based effluent limitation for said discharge.
Response: A specific reference to s. NR 243.13(1), which prohibits discharges from resulting in a violation of water quality standards, has been included in NR 243.14(5).

N46 Comment: (DATCP) NR 243.15(3)(a). Replace the word "specifications" with the word "criteria."
Response: We made the recommended change.

N47 Comment: (DATCP) NR 243.15(3)(e)1. This does not appear to add requirements beyond those included in the previously referenced NRCS Technical Standard 313--it could be deleted.
Response: NR 243.15(3)(e)1 outlines requirements for whomever will conduct sampling not contained in NRCS Technical Standard 313.

N48 Comment: (WLWCA/WALCE, several counties) NR 243.15(4) and NR 243.16(2). Add language stating that the requirements of local ordinances must be adhered to and all locally required permits must be secured.
Response: See response to comment N50.

N49 Comment: (DATCP) NR 243.15(6). This should include conditions or guidelines by which the department will determine the applicable code.

Response: Factors the department will use in determining the applicable code and requirements for composting have been included in the code.

N50 Comment: (WLWCA/WALCE, several counties) NR 243.15(7)(b). Language should be added stating that abandonment must comply with the requirements of NR 243.15(7)(b) or the requirements of a local ordinance, whichever is more restrictive.
Response: DNR cannot require compliance with local ordinances. A note was added beneath NR 243.11(1) stating that permittees are responsible for obtaining all necessary state and local permits and approvals in addition to the requirements outlined in NR 243. In addition, the department's WPDES permit application package emphasizes that other permits and approvals may be required by DNR or by local town or county ordinances.

N51 Comment: (DATCP) NR 243.15(7)(b). Delete or make reference to NR 151.05 that addresses abandonment of idle manure storage facilities. Inclusion here is redundant.
Response: We have retained language regarding abandonment of manure storage facilities for clarification purposes. Also, DNR may place additional restrictions or conditions, beyond those in ch. NR 151.05, on abandonment of CAFO structures or systems based on water quality concerns.

N52 Comment: (EPA) NR 243.16. Be advised that for CAFOs subject to 40 CFR part 412, the effluent limitations guidelines and new source performance standards in 40 CFR part 412 apply to discharges of "industrial wastes" such as milkhouse wastewater, egg wash water, and silage leachate. If a discharge of "industrial waste" in compliance with s. NR 243.13(2) would cause, have a reasonable potential to cause, or contribute to a violation of a water quality standard, then 40 CFR s. 122.44(d) requires the establishment of a water quality-based effluent limitation for said discharge.
Response: A specific reference to s. NR 243.13(1) has been included in ss. NR 243.16 (1) and (2). NR 243.13(1) prohibits discharges from resulting in a violation of water quality standards. The application of other NR codes for storage and land application of wastes is designed to ensure compliance with water quality standards.

N53 Comment: (EPA) Where "industrial wastes" such as milkhouse wastewater, egg wash water, or silage leachate are applied on land separate from or mixed with manure, the USEPA, Region 5, expects that the "industrial wastes" will be subject to a landspreading plan which establishes controls in accordance with s. NR 243.14 or any more stringent conditions established in or pursuant to chapters NR 213 or 214.
Response: In accordance with state land application requirements for industrial wastes, the application of NR 214 to landspreading activities and NR 213 to the design of storage structures, in addition to the requirements of s. NR 243.13(1), is designed to ensure compliance with water quality standards.

N54 Comment: (DATCP) NR 243.16(2). This should be explicit by stating that other types of waste when compromising more than 10 percent of the design storage volume or 25,000 gallons, shall be subject to other codes. Lesser amounts would be at the discretion of the department. These thresholds are consistent with NRCS Technical Guide Standard 313.
Response: The department has added criteria that will be considered when determining applicable requirements for combined wastes. The department will consider NRCS standards and other NR codes when placing conditions on combined wastes at CAFOs. While NRCS standards are considered when addressing water quality impacts from CAFOs, they are not the controlling authority.

N55 Comment: (WLWCA/WALCE, several counties) NR 243.21. Add language that acknowledges that local units of government exist.
Response: See response to comment N32.

N56 Comment: (farmer) Beef cattle should be able to graze corn stalks in winter months.
N57 Comment: (WI Cattlemen's Assn.) This section could outlaw grazing corn stalks in certain situations. It should not pertain to running of beef cattle in corn fields. If it does not cover grazing of

beef cattle, then say that it doesn't. Don't leave it open to interpretation. EPA recently indicated that it did not intend to include such grazing operations
Response: NR 243 and NR 151 do not universally prohibit the grazing of cattle on crop residue during winter months. However, there may be certain fields where compliance with the performance standards or prohibitions or the conditions of a WPDES permit would restrict this practice (e.g., grazing on corn stalks results in a failure to maintain adequate sod cover on stream banks).

To be considered a pasturing operation under ch. NR 243, vegetative cover must be maintained over all of the grazing area and must serve as the primary food source for the animals. Supplemental feeding is very limited and any that does occur cannot result in loss of vegetative cover around the feeding area. Operations that graze beef cattle on crop residue are unlikely to be considered true pasturing operations since they probably won't be able to meet the requirement of maintaining vegetative cover over all of the grazing area. While not a true pasture, this practice does not automatically qualify a field as a feedlot unless certain other conditions are met. An example is an operation where cattle graze on corn stalks in a small area for an extended period of time. At some point, the corn stalks can no longer sustain the cattle, requiring the use of significant amounts of supplemental feed. In essence, the corn field becomes a feedlot. Water quality impacts are often a concern any time animals are concentrated in a small area that is devoid of vegetation for an extended period of time. However, if the operation rotates the animals throughout a number of fields so that supplemental feeding is not necessary, this scenario is unlikely to be considered a feedlot. The determination of whether such operations are subject to feedlot requirements will likely be made on a case-by-case basis because of variability in field conditions (e.g., topography, proximity to surface waters). Operations that graze beef cattle on crop residue where the field(s) qualify as a feedlot would need to obtain a WPDES permit if they have 1,000 animal units or more.

N58 Comment: (DATCP) NR 243.23(3). "New livestock facilities" should be defined.
Response: NR 243 references NR 151.095 which addresses the definition of "new livestock facilities."

N59 Comment: (EPA) NR 243.24. This section should be revised so that in addition to the method for making a determination already described, the DNR can make a determination of a Category I unacceptable practice based on information obtained from the owner or operator through the exercise of authority Wisconsin established pursuant to the Clean Water Act, Section 402(b)(2)(B).
Response: We made the change.

N60 Comment: (WLWCA/WALCE, several counties) NR 243.24 and 24(3). These sections appears to specifically exclude local units of government from making an unacceptable practice determination. If this is an oversight, correct it. If it is not, explain why local units of government are specifically excluded from this process.
Response: For the purposes of ch. NR 243, the department does make the determination of an unacceptable practice. NR 243.24 states that the department can make a determination that an unacceptable practice exists at an operation based on investigative efforts by a local unit of government. This is intended to acknowledge that in many instances, local and department efforts to address unacceptable practices under NR 243 will be coordinated. This does not preclude a county or other local unit of government from making similar determinations under its own authority to implement performance standards and prohibitions (e.g., using a local ordinance). In addition, references to NR 151 contained in NR 243 allow local units of government to make other determinations associated with performance standard and prohibition compliance efforts under NR 243. A note was also added stating DNR's intent to work with counties and other interested partners to develop a detailed intergovernmental strategy for achieving compliance with the performance standards and prohibitions that recognizes the procedures in these rules, state basin plans and the priorities established in county LWRM plans.

N61 Comment: (WLWCA/WALCE, several counties) NR 243.24(1)(b). The definition of a Category II unacceptable practice is a very confusing concept and should be clarified.
Response: Language regarding category II (now category III) unacceptable practices was clarified.

N62 Comment: (WLWCA/WALCE, several counties) NR 243.24(3)(b). This section is confusing and must be clarified.
Response: The language regarding the categories of unacceptable practices has been modified for clarity. In addition, a note has been added outlining the department's intent to work with counties and other interested partners to develop a detailed intergovernmental strategy for achieving compliance with the performance standards and prohibitions that recognizes the procedures in these rules, state basin plans and the priorities established in county land and water resources management plans.

N63 Comment: (DATCP) NR 243.24(4)(b). Requiring corrective measures to be included in the NOD letter has often been premature. The development of corrective options often requires considerable evaluation and planning. Alternately the letter could better define the unacceptable practices to be corrected.
Response: Language has been added stating that NOD letters can be amended should corrective options change significantly based on evaluation and planning.

N64 Comment: (DATCP) NR 243.24(5)(b). This refers to "total cost." This term should be better defined to clarify if it includes labor, opportunity costs, management, etc. We presume that capitol and out-of-pocket costs are the intended definition.
Response: Required cost sharing is based on eligible costs under the programs listed, and may be a subset of the items included in the total cost. Under DNR rules, not all of the costs items listed in the total cost will even be eligible. For example, practices normally and customarily used in raising livestock and growing crops are not eligible at all for cost sharing. This may well include some labor costs, such as additional time to scrape a concrete lot or additional time to plow on the contour as opposed to up and down the slope. Once eligible items are identified, the cost share rate is applied to determine the amount of required cost share.

N65 Comment: (WAL) P. 12 Bottom line and P. 14 Line 8. The location and methods of manure spreading should be reported.
Response: Ss. NR 243.14 (1) and (4) require the reporting of location and method of manure spreading.

N66 Comment: (WAL) NRCS technical guides are always being revised. The most up to date version (after review) should be used and we should not be locked into older versions by including the dates in this rule. (Also applies to NR 154.)
Response: S. 227.21, Wis. Stats., requires state administrative rules to reference technical standards to "the specific issue or issues of the publication in which they appear." We are required by law to reference the specific date of the publication. References regarding design of manure storage facilities (NRCS Standard 313) and abandonment of manure storage facilities (NRCS Standard 360) have been updated to reflect the most up to date version of these standards. There have not been significant substantive changes to these standards. To incorporate an updated standard after rule promulgation, the change must go through the rule making process.

N67 Comment: (WAL) P. 15. Manure spreading should be prohibited within 75 feet of lakes and ORW/ERW or 50 feet of wetlands or streams. There is a nutrient and a public health element here that must be considered. (Also applies to NR 154.)
Response: The key issue is not necessarily where manure is applied, but that it is applied appropriately. A number of BMPs or management options would be as effective, if not more effective, in protecting water quality than mandatory setbacks (e.g., achieve a soil loss rate of "T" or less, reduced application rates, vegetated buffers, use of manure injection or incorporation requirements and restrictions on landspreading manure on frozen and snow covered ground). Which practices are appropriate given water quality concerns and operational restrictions at a given operation are considered on a case-by-case basis as part of the WPDES permitting process and associated approval of a CAFO's manure management plan.

N68 Comment: (WAL) P. 17. Add spreading locations to planning process.

Response: A manure management plan under NR 243 requires that operations take into account spreading locations and places additional restrictions on landspreading in certain location (e.g., highly sloped fields, areas close to streams).

N69 Comment: (WAL) P. 27 Lines 23-25. Does this protect headwaters? It should.
Response: While the requirements of NR 243 do not specifically identify protection of headwaters, DNR can address impacts to headwaters on a case-by-case basis depending on water quality concerns.

N70 Comment: (farmer) There is no designation on animal units according to size. Regarding dairy cows, there is an extreme size difference in breeds, ranging from about 850 pounds up to about 1,500 pounds. The rules appear to consider all breeds of dairy cows to be 1.4 animal units, regardless of size. In our situation, that can be a very big problem; we would be getting very close to the CAFO regulations when we are milking 400 Jerseys, which, in reality, is only 400 animal units.
Response: The animal unit equivalencies for dairy cows meets federal law.

NR 243.21 WPDES Requirement For Less Than 1,000 Animal Units
N71 Comment: (WI Livestock Breeders) This section should not pertain to wintering of beef cattle in corn fields.
Response: See comment N57.

N72 Comment: (individual) Manure lagoons are point sources of pollution. Sewage from a single family house on 1-5 acres is an acceptable amount of pollution--it can be filtered out. A manure lagoon of 1-5 acres collecting waste from 100-500-1,000 animal units is not an acceptable situation and is most positively a point source of pollution. Infiltration from these lagoons is horizontal as well as vertical. Karst geology allows anything and everything on the land to reach groundwater.
Response: Point sources are defined in accordance with federal law which includes animal feeding operations with 1,000 animal units or more. Operations with less than 1,000 animal units are considered point sources under limited conditions with respect to impacts on surface waters. Federal law does not define point sources as pollution with respect to discharges to groundwater, unless there is a hydrologic connection to surface water. However, it is the intent of NR 243 and NR 151 to address impacts on groundwater and surface water from animal feeding operations of all size.

N73 Comment: (farmer) If you want to look at it as a point source, I have a manure pit next to the stream, but it is not causing a problem. The way it is constructed, we can safely take the manure out where and when we need it. I have good control of our application process that way. We use concrete pits, pits with liners, and clay pits. Samples were tested to ensure that there will be no leakage with tiles underneath that can be tested.
Response: Individual structures at agricultural operations are not identified as point sources, except on a case-by-case basis where water quality concerns are documented.