

☞ **09hr_JCR-AR_CRule_09-112_pt03**



(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

Fiscal Estimate — 2009 Session

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number If Applicable
Bill Number	Administrative Rule Number WT-14-08

Subject
 Revisions to chapters NR 151, NR 153 and NR 155, Wis. Admin. Code, pertaining to runoff management and related grant programs.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.
 Yes No

Decrease Costs

Local: No Local Government Costs

1. Increase Costs

Permissive Mandatory

2. Decrease Costs

Permissive Mandatory

3. Increase Revenues

Permissive Mandatory

4. Decrease Revenues

Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities

Counties Others

School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Rules Summaries:

NR 151, Runoff Management: Proposed revisions create new statewide performance standards (P Index, tillage setback, process wastewater control), require reduction in pollutant discharges to meet the nonpoint source component of an approved total maximum daily load (TMDL) and targeted performance standards promulgated for the TMDL area, modify existing agricultural and non-agricultural performance standards and make minor changes to the implementation and enforcement provisions of the rule.

NR 153, Targeted Runoff Management and Notice of Discharge Grants: Proposed revisions for TRM create four competitive project categories, strengthen links between grants requirements and local implementation performance standards and prohibitions, modify application requirements and establish limits on the total amount of grant funding that a grantee can receive in a grant year.

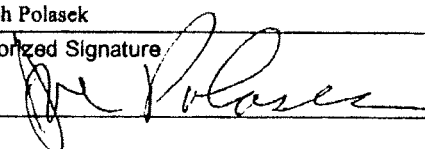
NR 155, Urban NPS Pollution Abatement and Storm Water Mgmt. Grants: Proposed revisions increase the department's oversight of subcontracts, increase grantee accountability for final products, provide more flexibility over how grants are used, and limit grantee awards in a given grant period.

State Fiscal Effect

Proposed rule revisions will result in an increased demand on agency staff devoting more time to training, education, grant oversight, enforcement and development of guidance and procedures. The department estimates that a total of 10.5 FTEs will be needed to implement all three rules as described below.

Long-Range Fiscal Implications

State cost-share grants to fully implement the process wastewater performance standard would be \$9.3 million or \$930,000 annually if awarded over a 10-year period. However, this estimate is dependent upon the availability of cost-share funds to implement the standard.

Prepared By: Joseph Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 06-07-10

Fiscal Estimate — 2009 Session

Page 2 Assumptions Narrative
Continued

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number WT-14-08

Assumptions Used in Arriving at Fiscal Estimate – Continued

NR 151, Subchapter II: Implementing and enforcing the new performance standards along with the modifications to the existing standards will require approximately 1 FTE per DNR region, or 5 FTEs statewide. Two water resource engineer positions plus 3 water resources management specialists will assist with field investigations, provide implementation guidance to department and county staff, especially in TMDL areas, and support modeling efforts and in-field evaluation designed to determine the effectiveness of these performance standards and prohibitions. This ongoing work effort will entail 2,080 hours per year per region. Salary and fringe-related costs for the engineer positions are \$150,966.40 [2,080 hours x \$36.29/hour (salary + fringe) x 2 FTE], in addition to \$5,000 in supplies costs [\$2,500/FTE x 2 FTE]. Salary and fringe-related costs for the specialist positions are \$200,241.60 [2,080 x \$32.09/hour (salary + fringe) x 3 FTE], in addition to \$7,500 in supplies costs [\$2,500/FTE x 3 FTE].

NR 151, Subchapter III and IV: For the revisions to the non-agricultural performance standards, 1.0 water resources management specialist FTE would be needed to update the construction site erosion control and post-construction storm water management model ordinances, coordinate activities not implemented under NR 216 (such as the revisions to the construction site erosion control and the developed urban area performance standards that are not permitted under NR 216), review storm water management plans, provide training to regional staff and others and conduct general implementation activities. Salary and fringe-related costs are \$66,747.20 [2,080 hours x \$32.09/hour (salary + fringe)], in addition to \$2,000 in supplies costs.

A 1.0 FTE water resources management engineer will also be required for both urban and agricultural modeling support associated with new and revised performance standards and to develop evaluation tools to measure BMP effectiveness. This FTE will use existing runoff computer modeling programs and provide support and training to department staff and consultants on the use and interpretation of these models and their results. Salary and fringe-related costs are \$75,483.20 [2,080 hours x \$36.29/hour (salary + fringe)], in addition to \$2,000 in supplies costs.

NR 153 and NR 155: The department anticipates that 0.5 FTE will be needed to develop new grant eligibility criteria and scoring procedures for the four new grant categories and the notice of discharge grant program in revisions to NR 153. This Natural Resources Financial Assistance Specialist FTE will also provide the additional oversight and review required by the revisions to NR 155. Salary and fringe-related costs are \$33,373.60 [1,040 x \$32.09/hour (salary + fringe)], in addition to \$1,000 in supplies costs.

A 0.5 FTE per region (2.5 total) are needed to oversee and inspect projects as they are implemented. This function is needed to implement the revisions calling for increased department oversight and accountability. These water resource engineering positions are important to ensure that public funding is spent in an environmentally sound manner. Salary and fringe-related costs are \$188,708 [1,040 hours x \$36.29/hour (salary + fringe) x 5 (0.5) FTE], in addition to \$6,250 in supplies costs [\$1,250 per region x 5 regions].

A 0.5 water resources management specialist FTE, located in the central office would be responsible for identifying and tracking agricultural notices of discharge for inclusion in the NOD grant program that is part of the revisions to NR 153. Salary and fringe-related costs are \$33,373.60 [1,040 hours x \$32.09/hour (salary + fringe)], in addition to \$1,000 in supplies costs.

In summary, the Department estimates total salary, fringe and supplies costs for the 10.5 FTE to be \$773,644.

The new process wastewater performance standard prohibits significant discharges of wastewater, primarily milkhouse waste, from animal feeding or production areas. The state cost is expected to be \$9,312,500 to completely implement the standard statewide. The estimate is based on the following assumptions:

- There are approximately 14,000 dairy farms in the state with an avg. herd size of 87 cows. (Ed Jesse, Growth and Transition in Wisconsin Dairying, Marketing and Policy Briefing Paper # 96, Nov. 2008).

- About 28% of dairy farms (~4,000) have long term storage that is assumed to be sufficient to handle process wastewater and 61% (~8,500) haul manure daily (Manure Management on Wisconsin Farms, PATS Research Report, #15, Jan. 2006).

- Assuming that 75% (6,375) of those that daily haul will install milkhouse waste management systems on their own as part of modernization or expansion and 25% (2,125) will be required to install them using state cost-share at 70%, the state costs would be \$7,437,500 (\$5,000 x 70% cost share rate x 2,125 farms). The \$5,000 per system cost is based on the avg. cost of installation of 26 milkhouse management systems, Engineering Milkhouse Waste Installed, 2007, Appleton Technical Center Area).

- The remaining 1,500 dairy farms that do not daily haul or have long term storage will need storage and/or milkhouse management systems to comply with the performance standard. Assume that 75% of these 1,500 farms (1,125) will install storage facilities as part of modernization or expansion and 25% (375) will be required to install them using state cost-share at 70%.

- When storage systems are built they will need to be sized to accommodate milkhouse waste and other process wastewater. The typical storage facility is built to accommodate 90 - 180 days of storage (avg. = 135 days). To accommodate the additional storage of milkhouse waste and other process wastewater, an increase of 30% (~40 days) of capacity would be needed or a total avg. storage capacity of 175 days.

- Costs for a manure storage facility are ~40% fixed costs and 60% variable costs, so the cost of the additional storage capacity would be ~20% of the total costs (60% x 30%).

- Using an avg. of the payment estimate based on NRCS cost-share rates for waste storage facility technical standard 313 (\$1.69 per animal unit per days of storage capacity) the cost for a typical manure storage facility would be \$36,082 (\$1.69 x 122 a.u. x 175 days). The cost for the additional capacity for process wastewater would be \$7,216 (\$36,082 x 20%) and the state share of the costs at a 70% rate would be ~5,000. Total costs would be \$1,875,000 (\$5,000 x 375 facilities).

- At the 70% cost-share rate, the combined state costs for milkhouse management systems and manure storage facilities would be \$9,312,500. The state share will likely come from TRM grants. The rate of implementation is subject to funding. Funding for the 2009-2011 biennium was \$7 million, but this amount is not guaranteed for future biennia.

- Since the performance standard only requires management of process wastewater that constitutes a significant discharge, the \$9,312,500 estimate is anticipated to be on the high side.

Implementation of the phosphorus index and tillage setback performance standards is not anticipated to result in additional costs beyond the staff needs that are addressed above. However, in areas of the state where TMDLs are established, the state may need to cost share the installation of best management practices that will be needed to achieve a higher level of control than in non-TMDL areas. Cost estimates will vary depending on the extent of the water resource impairment, the degree to which agricultural runoff contributes to the impairment and the types of best management practices that may be needed for a particular location. One demonstration project in northeastern Wisconsin looked at 416 agricultural best management practice scenarios applied to a largely-agricultural 36 sq. km. sub-watershed typical of those in the Lower Fox River TMDL area. The optimal scenario of best management practice combinations that produced the maximum phosphorus load reduction had a total cost of about \$350,000 for the sub-watershed or \$164.75 per kg of phosphorus reduced. Based on these estimates, more precise costs will be developed as part of each TMDL implementation plan; but those costs are too variable to estimate at this time. The state share would be 70 percent of the cost, or 90 percent for cases demonstrating economic hardship.

Local Fiscal Impact

Implementation of the new agricultural performance standards will require county staff to become educated and trained on the methodologies that will be used, including the use of computer models. Staff will also need to educate landowners about the new requirements and modifications to other performance standards that may affect them and the programs in which they participate, such as Farmland Preservation Program. Tracking and reporting systems will need to be expanded to accommodate the new compliance requirements. Additional compliance determinations and potentially working with new landowners will need to be made involving more staff time. The increase to local workloads will be mitigated by some rule provisions. These include establishment of a 5-20 foot tillage setback that can be checked visually for compliance. The PI accounting period allows the use of planning data in early years, which means that staff time needed to help farmers develop the accounting period will be greatly reduced.

For municipalities that are responsible for construction sites of one acre or greater, the proposed revisions to the construction site performance standard should have no impact, nor will the proposed revisions to the infiltration, peak flow and protective area performance standards which were made with the intent of compensating for unintended consequences of the original standards. While some entities may be required to do more to meet the standards, others will be able to do less. The net fiscal effect is expected to be neutral.

Some permitted municipalities may experience a fiscal impact in meeting the 40% total suspended solids reduction standard. Those municipalities that previously had the option of locating a detention pond in a perennial, navigable water will no longer have that option and may need to select a more costly BMP to comply with the standard. However, the department added a provision to allow more time to meet the standard and thus spread out the costs over a longer timespan.

If there is reconstruction involving a parking lot or road, there will be a fiscal impact. The existing rule exempts reconstruction that does not result in the increase in size of exposed parking lots and roads. Under the revised rule, the exemption would be removed and those sites would be required to control 40% of the total suspended solids discharged from the parking lot or road. For municipalities that are responsible for highway reconstruction, proposed revisions will increase the level of control of total suspended solids. It was not possible to estimate the total number of parking lots or minor reconstruction projects per year. For permitted municipalities that are also trying to meet the 40% TSS reduction in the developed urban area, the rule allows a delayed implementation of the road reconstruction performance standard to allow them time to find more cost-effective regional practices such as wet ponds to serve these areas. A wet detention pond typically ranges from \$7,000 to \$25,000 per acre of commercial or industrial land, depending on the cost of land values.

The department is unable to specifically estimate the overall local fiscal impact of this rule package because of the variability of each situation; therefore, it is categorized as indeterminate.

Private Sector Impact

The department does not believe that that the rule revisions will have a significant fiscal impact on the private sector.

The changes proposed to agricultural performance standards contain several provisions that will limit the financial impact of the new standards on the private sector. In the agricultural portion of NR 151, the Phosphorus Index (PI) performance standard requires that the average PI calculated over an 8-year period shall not exceed 6, and also requires that the PI shall not exceed 12 in any year. Allowing use of planning information until records can be established will greatly reduce the effort required to document the PI accounting period. Crop producers may use alternative methods to calculate the PI for situations where available tools are not adequate, which will help some producers such as cranberry farmers develop suitable methods to determine compliance. A PI cap of 12 provides considerable leeway to manage crops using conventional methods, although in some cases additional cropping management measures will still be needed such as where corn silage is grown on steeper slopes or where vegetable crops are grown in areas where excessive phosphorus has accumulated in soils. The standard tillage setback requirement is 5 feet, which will not significantly reduce the amount of land available for cropping. The rule contains provisions that allow some bare areas within pastures for cattle travel lanes and supplemental feeding areas. This will allow standard pasturing management, although if such bare areas become significant pollution sources then they will be subject to additional management requirements.

In areas of that state where TMDLs are established, agricultural producers may need to pay 30 percent of the costs (10 percent for cases of economic hardship) of best management practices that must be installed to achieve the load reduction. Cost estimates are too variable to estimate at this time and will depend on the extent of the water resource impairment, the degree to which agricultural runoff contributes to the impairment, and the types of best management practices that may be needed for a particular location (see the example in the state section of this document).

The process wastewater performance standard cannot be enforced under these rules without providing the landowner with at least 70% cost sharing. The state portion is estimated to be \$9.3 million statewide. The maximum amount that landowners would be responsible for to match state grants is approximately \$4 million statewide. Portions of this amount are typically offset with federal or local government funding.

The proposed revisions to the construction site performance standard should have minor impact. Technical standards exist to guide management options for controlling erosion on small construction sites. Proposed revisions to the construction site performance standard from an 80% sediment reduction to 5 tons/acre/year as well as the infiltration, and protective area performance standards may result in some entities having to design and install a higher level of BMP control or leaving a larger buffer between an impervious area and a waterway to meet the standards. Others will be able to do less than previously required. The net fiscal effect is expected to be neutral.

If there is reconstruction involving a parking lot or road, there will be a fiscal impact. The existing rule exempts reconstruction that does not result in the increase in size of exposed parking lots and roads, but the revised rule removes the exemption and those sites would be required to control 40% of the total suspended solids discharged from the parking lot or road, requiring new best management practices or modifications to existing controls. It was not possible to estimate the total number of parking lots or road reconstruction projects per year. But on a per project basis, typical BMPs would include swales, catchbasin devices, bioretention or biofilters, wet detention ponds, or combinations of these depending on the size, location and constraints of the site.

- Estimated avg. cost of typical biofiltration or bioretention devices is \$2,750 per acre of land use, and can go as high as \$15,000 per acre of land use depending on where in the state the site is located. Estimated avg. costs of swales is \$8,700 per acre of land use and a wet detention pond typically ranges from \$7,000 to \$25,000 per acre of commercial or industrial land, depending on the cost of land values.

Fiscal Estimate Worksheet — 2009 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number If Applicable
Bill Number	Administrative Rule Number WT-14-08

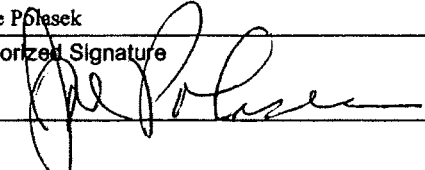
Subject
 Revisions to chapters NR 151, NR 153 and NR 155, Wis. Admin. Code, pertaining to runoff management and related grant programs.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$ 748,894	\$ -
(FTE Position Changes)		(10.50 FTE)	(- FTE)
State Operations — Other Costs		24,750	-
Local Assistance		0	-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$ 773,644	\$ -
B. State Costs by Source of Funds			
GPR		\$ 773,644	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Eamed			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
Total State Revenues		\$	\$ -

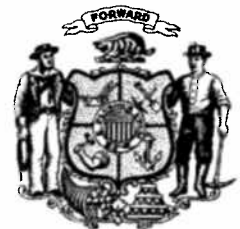
Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$ 773,644	\$
Net Change in Revenues	\$	\$

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 06-07-10



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

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

CLEARINGHOUSE RULE **09-112**

AN ORDER to ..., relating to runoff pollution performance standards and prohibitions, the targeted runoff management grant program and the urban nonpoint source and storm water management grant programs, and affecting small business.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

12-15-2009 RECEIVED BY LEGISLATIVE COUNCIL.

01-15-2010 REPORT SENT TO AGENCY.

RNS:REL

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

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

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]
Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 09-112

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

a. Throughout the rule, current rules that are not affected should not be shown. For example, the treatment clause of SECTION 7 should state that “NR 151.002 (42) (c) is amended to read:” and only par. (c) should be shown. Also see SECTION 49. The entire rule should be examined for instances of this error.

b. The entire rule should be reviewed to correct use of introductory material that is inconsistent with s. 1.03 (2) (h), Manual. Introductory material should end with a colon and lead into the subunits that follow. For example, s. NR 153.17 (2) (a) 1. (intro.) should be subd. par. a. and the other two subdivision paragraphs should be b. and c. Subsection (3) (a) (intro.) should end with a colon and “the following information” should replace “administrative information required by this subsection.” In sub. (5), “(a)” should be deleted and the remaining paragraphs should be pars. (a) to (m); a similar change is needed in sub. (6). Similar changes to these are required in many places in the proposed rule.

c. In s. NR 151.003 (1), the material in the note following this subsection appears to be substantive and should be moved to the text of the rule. The same problem occurs in ss. NR 151.002 (25m), 151.003 (5), and 151.005.

d. In s. 151.003 (3) (a), “; and” should be replaced by a period.

e. In s. NR 151.015 (7), the phrase “, but is not limited to,” should be deleted. [See s. 1.01 (7) (c), Manual.]

f. In s. NR 151.07 (2), the first note, the material in the second sentence is substantive and should be moved to the text of the rule.

g. Since s. NR 151.121 is being created, material in sub. (2) (intro.) should not be underscored or stricken.

h. Material in the second note following s. NR 151.122 (2) is substantive and should be moved to the text of the rule. Also, “can” should be changed to “may”.

i. In s. NR 151.124 (4) (a) 2., the parentheses should be replaced by commas.

j. It appears that the note following s. NR 153.14 (8) would be more appropriately placed in the “Purposes” section of the rule, s. NR 153.10.

k. The title of s. NR 153.16 (1) should be shown in all capital letters.

l. In s. NR 155.26 (1), the word “section” should not be stricken through.

3. Conflict With or Duplication of Existing Rules

Since the rule repeals s. NR 155.24, references to that section should be corrected in s. NR 154.04 (25) (c) 2. and (39) (c) 2.

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

a. In the first note following s. NR 151.09 (7) (b), the rule should specify under what “other statutory authority” the department may take direct enforcement action as described in the rule. The same problem occurs in the note following s. NR 151.095 (8) (b).

b. In the note following s. NR 151.11 (5), “s. Trans 401.07” should replace “ch. TRANS 401.07”.

c. In s. NR 151.123 (2) (intro.), “section” should replace “paragraph.”

d. In s. NR 153.205 (1), the phrase “under s. NR 153.145” should be added after “notice of discharge projects”.

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

a. In the explanation of agency authority section of the rule analysis, in the last sentence, “provide” should be changed to “provides”. In the plain language analysis section, in the second sentence of the second-to-last paragraph, “on” should be deleted.

b. In s. NR 151.002 (14g) and (18), the phrase “notice of intent” is vague and should be more specific. In sub. (14r), “regulatory authority” should be more specific. In sub. (16m), if the department maintains a list of waters that do not meet a federal water quality standard as provided in the rule, is that list available to the public? If so, a note should be added stating how to obtain the list. In sub. (25), the word “different” as used in this definition is confusing; “different” level of achieving a performance standard as compared to what? In sub. (38c), the

colon should be changed to a period. In sub. (48m), the phrase "with its own forces or by force account" is unclear and should be changed to clarify the department's intent.

c. In s. NR 151.006, ", or MEP," should be deleted. In addition, the wording of this subsection is awkward--does this mean that an applicant has shown that it meets the performance standard to the maximum extent practicable only if the applicant uses the best available technology and other items listed?

d. In s. NR 151.015 (15s), "fields" should be changed to "field".

e. In s. NR 151.015 (18) (c), "direct conduits" should be changed to "a direct conduit". Also, "ground water" should be changed to "groundwater".

f. In s. NR 151.015 (25), "applicable agricultural standards" is vague and should be clarified.

g. In s. NR 151.03 (2), it appears that "the channel" should be changed to "a channel".

h. In s. NR 151.05 (2) (a), the requirements apply to "new or substantially altered manure storage facilities" and in sub. (2) (am), other requirements are created for "storage facilities that are constructed or significantly altered on or after the effective date of this rule". The department should review all of the subsections of s. NR 151.05 to clarify what requirements apply to new or substantially altered manure storage facilities and the dates on which those requirements apply or will apply.

i. In s. NR 151.055 (2), the rule should clarify what "significant discharge" of process wastewater means.

j. In s. NR 151.125, sub. (3) (a), it appears that the term "non-transportation facility" should be defined.

k. In s. NR 151.126, the term "fueling and vehicle maintenance areas" should be defined. In addition, the material in the note is substantive and should be moved to the text of the rule.

l. The material in the first note following s. NR 151.129 (1) (b) is substantive and should be moved to the text of the rule.

m. In s. NR 151.14 (1) (e), it appears that "silviculture activity" should be defined.

n. Under s. NR 153.13 (1), federally recognized tribal governing bodies are eligible to receive funding for projects under this chapter. Therefore, it appears that the definition of "runoff management grant agreement" in s. NR 153.12 (29) should be changed to include a federally recognized tribal governing body. A similar issue occurs in s. NR 153.17 (2) (b).

o. In s. NR 153.15 (2) (j) 3., the rule should clarify what "existing urban land use or infill development" and "existing development" mean.

p. In s. NR 153.16 (2) (c), "indirect project costs" should be clarified.

q. In s. NR 153.17 (2) (a) 1. a., the rule should specify which types of "small-scale projects" this subsection applies to. A similar problem occurs in sub. (2) (a) 1. b, and s. NR 153.19 (2) and (3). In sub. (5) (a), it is unclear what a "large scale nonpoint source project" is.

r. In s. NR 153.19 (2), the note contains substantive material and should be moved to the text of the rule. In the note, "will" should be changed to "shall". In sub. (4) (b) 4., it appears that "interim" should be changed to "initial". The same problem occurs in sub. (4) (c) 4.

s. In s. NR 151.20 (2) (d) 3. c., "The department may" should be deleted and "establish" should be capitalized. In sub. (2) (d) 3. d., "The department may" should be deleted and "offer" should be capitalized. In addition, if the department intends that the material in sub. (2) (d) 3. e. be mandatory, the material should be moved to a different subsection. If the material is intended to be permissive, then "The department shall" should be deleted and "offer" should be capitalized. In sub. (3) (c), the rule should clarify which types of "large scale project" are included. This problem occurs throughout s. NR 153 and the entire rule should be checked. In sub. (5) (c) 1. and 2., the commas should be replaced by periods.

t. In s. NR 153.205 (2) (c) 1. to 6., periods should be added at the end of these subdivisions. The material in the first note following sub. (3) (b) 2. c. is substantive and should be moved to the text of the rule.

u. In s. NR 153.21 (2) (b), the rule should specify when the grant period begins; for example, from the date the department transmits the grant agreement to the grantee.

v. In s. NR 153.22 (3) (f), the phrase "and prohibitions of a previously complying parcel" is vague and should be clarified. In sub. (3) (p), it is unclear what a "full-farm inventory" means. In sub. (9), it is unclear what a "practice operation and maintenance period" is.

w. In s. NR 153.25 (3), it is unclear what "the eligibility provision of the approved grant application and the runoff management grant" is referring to. In sub. (4) (title), "DNR" should be changed to "DEPARTMENT".

x. In s. NR 153.28 (1) (b) 1., the phrase "performance standard or prohibition" is vague and should be clarified.

y. In s. NR 155.17 (2) (b) 14., "period(s)" should be changed to "period or periods".

z. In s. NR 155.20 (1) (c), it appears that the rule should specify November 1 "of each year". It also appears that the first instance of "based" should be deleted.

aa. In s. NR 155.21 (2), it appears that the rule should specify when the grant period begins.