

SUBJECT: Scope Statement Relating to Amending NR 151 and Related Administrative Rules

Subject/Objective of the Proposed Rule

Amending NR 151, 152, 153, 154 and 155 to establish additional performance standard(s), clarify language, modify grant criteria to reflect program priorities, and update certain provisions based on improved data. The NRB directed the Department to revise the runoff management administrative rule to incorporate an agricultural buffer performance standard based on Wisconsin research.

The Department proposes the following: to develop an agricultural buffer or equivalent performance standard and a performance standard to address manure runoff from smaller, non-permitted farms; modify post-construction non-agricultural performance standards, regarding infiltration and protective areas, to be consistent with information and research findings made since NR 151 became effective; revise existing agricultural performance standards and prohibitions to clarify provisions related to manure storage facility closures and direct runoff of manure; and to modify grant rules pertaining to eligibility, awards, allocation for TMDLs and project size. Other revisions are needed to clarify language in existing codes and to update certain provisions to align with other rule revisions.

In addition, the Department proposes to create a performance standard to provide adequate control of sediment, manure and other runoff from small or medium-sized, non-permitted farms that may cause water pollution and fish kills. Modifications are needed to some post-construction non-agricultural performance standards, particularly regarding infiltration and protective areas, to be consistent with information and research findings made since NR 151 became effective. Provisions to existing agricultural performance standards and prohibitions related to manure storage facility closures and direct runoff of manure also need clarification.

In addition, revisions are proposed for related administrative rules (NR 153, NR 155) pertaining to grant eligibility, awards, allocations for TMDLs and project size. Other revisions are necessary to clarify language in existing codes and to update certain provisions to align with other rule revisions.

Description of Policy Issues/Analysis of Policy Alternatives

As directed by the Natural Resources Board resolution of May 22, 2002, the Department of Natural Resources is proposing to revise administrative rules pertaining to the state's nonpoint source pollution control program by promulgation of a performance standard for agricultural buffers. The resolution was the outcome of a request by the Senate Committee on Environmental Resources to the Department to consider an agricultural buffer performance standard in the nonpoint source redesign administrative rules. Research conducted by the University of Wisconsin on agricultural riparian buffers was presented to the Natural Resources Board in Feb. 2006 and will serve as an informational guide to the development of a performance standard.

NR 151 and companion administrative rules became effective in 2002. Since then there has been scientific research findings on the functioning of riparian buffers under Wisconsin conditions in controlling nutrient inputs to surface water and improved methods of calculating phosphorus and sediment delivery to receiving waters. There has also been increased concern in recent years by the Department and the public about contaminated drinking water wells and surface water from runoff events. Information from the Wisconsin Buffer Initiative Report of 2005 and other scientific and technological sources can provide the basis for additional performance standards or enhancements to existing ones to provide a higher degree of resource protection. Several non-agricultural performance standards need to be modified to reflect updated resource information, ensure continued water quality protection, and provide equitable alternatives to achieve compliance in certain circumstances. Increased competition for grant funding and Department emphasis on addressing impaired waters necessitate modifications to the nonpoint source

grant rules. Additionally, NR 151 definitions may need to be changed to be consistent with revisions to related rules.

Groups likely to be impacted or interested in this issue include agricultural producers, municipalities, parties responsible for construction erosion control and post-construction stormwater management from construction sites of 1 acre or more, environmental organizations, conservation groups and county land conservation departments and committees.

Statutory Authority

ss. 281.16, 281.65 and 227.11(2), Wis. Stats.

Estimate of Time Needed to Develop the Rule

1140 hours

Summary and Comparison With Existing or Proposed Federal Regulations

The proposed code revisions are consistent with federal regulations that apply to control of nonpoint sources of pollution, animal feeding operations, nutrient management and stormwater management. Certain modifications would also better align state grant funding priorities with those of the federal government in regards to Total Maximum Daily Loads.