

DATE: November 16, 2007

TO: File

FROM: John Pfender, WT/2

SUBJECT: Draft Chapter NR 153 (Targeted Runoff Management & Notice of Discharge Grant Programs)

Chapter NR 153 is being revised to make changes to the targeted runoff management grant program authorized under s. 281.65(4c), Stats., and to add administrative policies and procedures necessary to implement the notice of discharge funding program newly authorized (October, 2007) under s. 281.65(4e), Stats.

Summary of Major Rule Changes, by Section

This summary does not include changes made to the rule that are only of an editorial nature. The purpose of this summary is to set forth changes in policy. As you read through this summary and the rule, the generic term “projects” refers to targeted runoff management projects and notice of discharge projects. The term “notice of discharge projects” refers only to the projects authorized under s. 281.65 (4e), Stats. The term “targeted runoff management projects” refers only to projects authorized under s. 281.65 (4c), Stats.

NR 153.10 Purpose

Added reference to policies and procedures for administering notice of discharge projects, newly authorized under s. 281.65(4e), Stats.

NR 153.11 Applicability

Added reference to include notice of discharge projects, newly authorized under s. 281.65(4e), Stats.

153.12 Definitions

Most changes clarify existing definitions. Important added definitions include “Impaired water”, “TMDL”, “Watershed”, “Notice of Discharge Projects” and “ Targeted runoff management projects”.

153.13 Eligible Applicants

Most changes clarify existing policy. One change was made to codify existing guidance that priority watershed project status runs through the BMP operation and maintenance period, which is 10 years past the signing of the last cost-share agreement. This is important because it sets the period during which DNR can receive targeted runoff management funding for its own projects. Reference to notice of discharge projects was also added.

153.14 Eligible Targeted Runoff Management Projects

This section applies only to targeted runoff management projects. The section was entirely re-written and contains many new policy initiatives. There will be four categories of targeted runoff management projects. This section of the rule defines each one. Important variables that define the categories include scale (large, small), timing (number of years), TMDL status and focus (agricultural, urban). The extensive note at the end of s. NR 153.14(6) describes how project scale and TMDL status factor into our overall strategy. Note that small scale targeted runoff management projects can be agricultural or urban, but that large scale targeted runoff management projects may only address agricultural sources.

NR 153.14(m) Eligible notice of discharge projects

The newly created section addresses eligibility requirements for notice of discharge projects authorized under s. 281.65(4e), Stats. A note explains that projects to address notice of discharge requirements can also be funded under targeted runoff management grants although the policies and procedures will differ.

153.15 Cost sharing for best management practices

Some changes clarify existing policy. There are three important additions. One change was made to codify existing guidance that allows us to reimburse the cost of regular DNR permit fees. A second allows us to provide cost-share funds to replace a BMP where the BMP is ineffective due to unforeseen design problems. A third states that we may not provide cost-sharing for “new” cropland practices and livestock facilities (includes those that were formerly in compliance with state standards or that are newly constructed).

153.16 Aids for local assistance activities

This section includes important clarifications and policy initiatives. Local assistance grants can only be made for large scale targeted runoff management projects; small scale projects will have to be implemented using other, non-DNR resources. The rule creates a list of eligible activities that include major steps to implement performance standards and prohibitions. Given other parts of the rule, this means that a county must agree to perform NR 151 implementation activities in all large and small scale targeted runoff management projects, but the activities are eligible for funding only in the large scale targeted runoff management project categories. We will no longer fund vehicles, office supplies or office space. Storm water activities are removed because we will only enter into local assistance grants for large scale agricultural targeted runoff management projects.

153.17 Targeted runoff management project application

This section applies only to targeted runoff management projects. The section includes clarifications and policy initiatives. We will accept small scale targeted runoff management project applications every year that we have money, and large scale targeted runoff management project applications each year or every other year. We clarified that a grant will only be given for an agricultural project if there is an approved county LWRM plan containing a NR 151 implementation strategy. We moved the scoring element concerning DNR basin priority from the scoring to the screening portion of the application. We added a requirement that the applicant provide any information known about site contamination, which is what we are already doing as part of the application process.

153.18 Targeted runoff management project screening

This section applies only to targeted runoff management projects. The only significant change here is to create a mechanism for us to consider information concerning site contamination in deciding whether we want to move forward with scoring an application. Other changes are minor.

153.19 Targeted runoff management project scoring

This section applies only to targeted runoff management projects. There are two important changes to this section.

We state the most important factors to consider in scoring targeted runoff management projects. For all projects it is: 1) fiscal accountability & cost-effectiveness, 2) evidence of local support and 3) extent of pollutant control. For the non-TMDL (Nonpoint Source Control) projects we add 4) water quality need. It is our intent (though not stated in the rule) that the targeted runoff management projects on ORW/ERW/threatened or in groundwater areas will be able to get a water quality need score as high as a 303(d) water for non-TMDL type projects. This will make them competitive, instead of always losing out to 303(d) projects.

We have retained the multiplier but changed it significantly. We no longer give credit in the agricultural multiplier for NR 151 program implementation. The only agricultural multiplier we assign is for local enforcement authority. It is worth 0.15. So the multiplier drops from 1.25 to 1.15. We will calculate the enforcement authority multiplier based on whether the applicant has “full” or “partial” authority to locally regulate each of the 10 standards and prohibitions. The basis for the urban multiplier was adjusted a little bit. We will be evaluating it based on all non-agricultural standards under subchapter III of NR 151.

153.20 Targeted runoff management project selection and funding

This section applies only to targeted runoff management projects. There are significant changes to how we select and score targeted runoff management projects. We will have four competitive pools, one for each targeted runoff management project category. DNR will establish the allocation each year for each category, based on our total budget and agency priorities. We will fund based on rank only for large scale targeted runoff management projects, but will retain the regional boost for small scale targeted runoff management projects. We retain the ability to “leap frog” down the list if we need to do so to match targeted runoff management projects to funds (usually federal) that are restricted in how they may be spent. DNR will have authority to put a funding cap on individual targeted runoff management projects (we intend to set this annually at about \$150,000 for small projects and at about \$600,000 for large scale projects) as well as on the total portion of the available funds that any one grantee can obtain (about 20% of the available allocation for the category). This will be decided yearly. DNR may make a partial grant award to a large targeted runoff management project, with the remaining portion granted based on satisfactory performance. Finally, we have codified our process for targeted runoff management project substitutions.

153.20(m). Notice of discharge project application, selection and funding

This is a newly created section to implement the notice of discharge projects authorized under s. 281.65(4e), Stats. It covers notice of discharge project application, selection and funding, as well as budgeting through the joint allocation process and reporting to the Land and Water Conservation Board.

153.21 Runoff management grant agreement

There are many cosmetic changes, but some important ones as well. Projects periods are set for small (2-3 years) and large-scale (3-4 years) projects. As a condition of receiving a grant, the grantee (county) must now agree to conduct basic NR 151 implementation activities (not including enforcement) for agricultural performance standards and prohibitions. These are the activities removed from the multiplier. The section of the rule also identifies the criteria DNR will use to determine if a large scale project should be fully funded or terminated. There are a few clauses that will help us avoid penalizing a county that is not spending money because it is successful in getting the farmers to do things on their own.

153.22 Cost-share agreement

There are a variety of changes. Farmers must agree to fix all performance standard/prohibition violations that do not require cost sharing as a condition of getting funds to fix the targeted problem. It also will require that all “new” non-complying practices and facilities be fixed as a condition of cost sharing (We do not cost share these). We added a sub-section on cost-share agreement satisfaction that puts our satisfaction guidance into policy.

NR 153.23 - NR 153.25

No significant changes were made.

153.26 Local assistance grant agreement

The rule states elsewhere that these grants are only for large-scale targeted runoff management projects. Here, it states that these agreements will only be made to support a cost-share grant. In other words, no stand alone local assistance grants will be made. (We will consider combining the local assistance subsections of the rule to streamline it.)

NR 153.27 Procurement

No significant changes were made.

153.28 Grant reimbursement procedures

We have created an exception to the reimbursement model. We can pay for cropping practices for the entire installation period at the end of the first year. This will help us provide adequate cost sharing to support NR 151 notices.

NR 153.29 Records

The only change is the addition of a requirement to report changes in the status of compliance with NR 151 performance standards and prohibitions that occur as a result of cost sharing through a project grant.

NR 153.30 – NR 153.32

No significant changes were made.