

**Wisconsin Department of Natural Resources  
Natural Resources Board Agenda Item**

**SUBJECT:**

Request that the Board approve the statement of scope for Board Order WT-15-16, and conditionally approve the public hearing notice and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse for proposed rules affecting ch(s). NR 151 and NR 243 related to runoff management and non-point source performance standards and Concentrated Animal Feeding Operation (CAFO) rule revisions to incorporate by reference those performance standards.

**FOR: August 2016 Board meeting**

**PRESENTER'S NAME AND TITLE:** Russ Rasmussen, Policy and External Relations Director

**SUMMARY:**

The purpose of the proposed revisions to ch. NR 151, Wis. Adm. Code, and limited incorporation by reference of those proposed revisions to ch. NR 243, is to establish agricultural nonpoint source performance standards targeted to abate nonpoint source pollution in areas of the state with shallow soils overlaying fractured bedrock (sensitive areas). Pursuant to s. 281.16(3)(a), Stats., the Department of Natural Resources is directed to promulgate by rule nonpoint source performance standards and prohibitions that are designed to comply with state surface water quality standards and ground water standards. Where statewide nonpoint source performance standards have been substantially implemented, they have not proven sufficient to achieve groundwater or surface water standards in these areas. The department has found that groundwater and surface water standards will not be attained by simply implementing the statewide performance standards and prohibitions in sensitive areas (karst geology with shallow soils) and that targeted performance standards are necessary to attain groundwater and surface water standards.

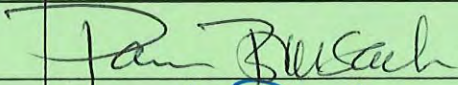
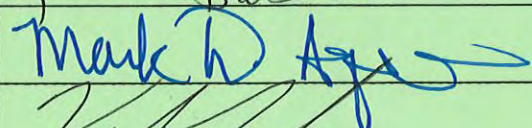

The rule revisions will include a definition of the targeted sensitive areas, and establishment of nonpoint performance standards that may apply to these areas. Standards may include: reduced manure spreading rates; incorporation and injection requirements; fertilizer and manure application timing requirements; emergency spreading restrictions; manure pathogen reduction requirements; soil map depth verification; manure and fertilizer setback requirements from public and private wells and from direct conduits to groundwater; referencing the newly promulgated federal technical standards (e.g., NRCS Tech. Std. 590); and additional changes that may be considered to provide sufficient standards to achieve groundwater and surface water standards in the defined targeted areas.

At its June 2016 meeting, the Natural Resources Board requested a scope statement for NR 151 and NR 243 be presented at its August 2016 meeting. NR 151 was first promulgated in September 2002 with revisions promulgated in December 2010. NR 243 was promulgated in April 2007. These revisions are expected to have a moderate impact on small business, primarily agricultural producers and related businesses.

**RECOMMENDATION:** That the Board approve the statement of scope and conditionally approve the public hearing notice for Board Order WT-15-16 and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse.

**LIST OF ATTACHED MATERIALS:**

- Statement of scope
- Governor approval of statement of scope

Approved by	Signature	Date
Pam Biersach, Director, Bureau of Watershed Management		7-14-16
Mark Aquino, Administrator, Division of Business Support and External Services		7/14/16
Cathy Stepp, Secretary		7/15/16

cc: Board Liaison - AD/8

Program attorney – LS/8

Department rule officer – LS/8

# STATEMENT OF SCOPE

## Department of Natural Resources

**Rule No.:** WT-15-16

**Relating to:** Runoff Management and Nonpoint Source Performance Standards and Concentrated Animal Feeding Operation (CAFO) rule revisions to incorporate by reference those Performance Standards

**Rule Type:** Permanent

**1. Finding/nature of emergency (Emergency Rule only):**

The rules will be proposed as permanent rules.

**2. Detailed description of the objective of the proposed rule:**

The purpose of the proposed revisions to ch. NR 151, Wis. Adm. Code, and limited incorporation by reference of those proposed revisions to ch. NR 243, is to establish agricultural nonpoint source performance standards targeted to abate nonpoint source pollution in areas of the state with shallow soils overlaying fractured bedrock (sensitive areas). Pursuant to s. 281.16(3)(a), Stats., the Department of Natural Resources is directed to promulgate by rule nonpoint source performance standards and prohibitions that are designed to comply with state surface water quality standards and ground water standards. Where statewide nonpoint source performance standards have been substantially implemented, they have not proven sufficient to achieve groundwater or surface water standards in these areas. The department has found that groundwater and surface water standards will not be attained by simply implementing the statewide performance standards and prohibitions in sensitive areas (karst geology with shallow soils) and that targeted performance standards are necessary to attain groundwater and surface water standards.

The rule revisions will include a definition of the targeted sensitive areas, and establishment of nonpoint performance standards that may apply to these areas. Standards may include: reduced manure spreading rates; incorporation and injection requirements; fertilizer and manure application timing requirements; emergency spreading restrictions; manure pathogen reduction requirements; soil map depth verification; manure and fertilizer setback requirements from public and private wells and from direct conduits to groundwater; referencing the newly promulgated federal technical standards (e.g., NRCS Tech. Std. 590); and additional changes that may be considered to provide sufficient standards to achieve groundwater and surface water standards in the defined targeted areas.

**3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

The current ch. NR 151 was originally promulgated in 2002 and revised in 2010. It contains statewide performance standards and prohibitions for agricultural and nonagricultural facilities designed to achieve surface water quality standards and groundwater standards. Section NR 151.004 provides for targeted performance standards to be created if the statewide standards prove insufficient to achieve surface water quality standards or groundwater standards in targeted areas. Concerns have been expressed regarding the adequacy of the statewide standards to achieve surface water quality and groundwater standards in karst areas with shallow soils – specifically in Kewaunee and adjacent counties. However, karst areas with limited soil depths are found throughout the state, and the target standards are intended to apply wherever the defined targeted areas occur.

The department has been meeting in work groups with stakeholders and federal, state and local agencies to address these concerns since August 2015. The work groups have developed a series of recommendations regarding policies and practices for targeted areas to better address these concerns. In addition, the department has been conducting a research study of the wells in Kewaunee county to obtain additional scientific information and data that will assist in the development of recommendations and proposed practices. In order to provide consistency and ensure that groundwater standards will be achieved, the department will revise ch. NR 243 to incorporate these performance standards by

reference. The Department of Agriculture, Trade and Consumer Protection (DATCP) has the authority to promulgate technical standards and conservation practices to implement the performance standards.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Section 227.11(2)(a)(intro.), Stats., provides that a state agency, "may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute." subject to certain restrictions.

Section 281.16 (3)(a), Stats., requires the department to promulgate rules prescribing performance standards and prohibitions for agricultural facilities and agricultural practices that are nonpoint sources. The performance standards and prohibitions shall be designed to achieve surface water quality standards and groundwater standards by limiting nonpoint source pollution.

Under s. 281.16(3)(e), Stats., an existing facility is not required to comply with the agricultural performance standards or prohibitions unless cost sharing is made available.

Section 281.16 (3)(e), Stats., states that the department shall promulgate criteria for determining whether cost sharing is available under s. 281.65.

Section 281.65(1), (4)(e) and (8), Stats., provides authority for the department to promulgate rules regarding eligible costs related to compliance with agricultural nonpoint source performance standards, specifications and best management practices.

Section 283.13(5), Stats., provides authority to include more stringent limitations in permits when necessary to meet water quality standards or other federal or state requirements.

Section 283.31, Stats., provides authority to include terms and conditions in a permit to comply with water quality standards, ground water standards and federal requirements.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

It is estimated that department employees will spend approximately 3,000 hours developing this rule.

**6. List with description of all entities that may be affected by the proposed rule:**

Entities affected by this rule include: agricultural producers; manure haulers; certified crop advisors; agricultural cooperatives and fertilizer sellers; county land conservation departments; the Wisconsin Department of Agriculture, Trade and Consumer Protection; rural residents with private wells; and users of community and non-community wells in agricultural areas including business employees and customers.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

The Natural Resources Conservation Service (NRCS), a component of the US Department of Agriculture, develops technical standards that apply to agricultural facilities and practices. These standards are not regulatory, but may be required for agricultural producers to qualify for federal grant or cost-share assistance and to qualify for tax credits through the state Farmland Preservation Program. Applicable NRCS technical standards are incorporated in ch. NR 151 by reference, and this revision proposes to update these references as necessary to ensure consistency with federal technical standards.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

It is estimated that the economic impact of this rulemaking would be "moderate" (between \$50,000 and \$20 million per year, combined for all impacted stakeholders). It will have an impact on small business, especially agricultural producers, and supporting businesses.

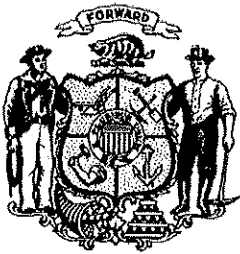
**9. Anticipated number, month and locations of public hearings:**

The Department anticipates holding two public hearings in the spring of 2017 with the added ability to broadcast the hearing to satellite viewing locations. Hearing cities or satellites will be: Luxemburg, Manitowoc, West Bend, Madison, Lacrosse and River Falls.

Contact Person: Mary Anne Lowndes (608) 261-6420

Ed. Elberta, Jr. CS  
Department Head or Authorized Signature

July 12, 2016  
Date Submitted



**SCOTT WALKER**  
**OFFICE OF THE GOVERNOR**  
**STATE OF WISCONSIN**

P.O. BOX 7863  
MADISON, WI 53707

July 13, 2016

Cathy Stepp  
Secretary  
Wisconsin Department of Natural Resources  
101 South Webster St.  
P.O. Box 7921  
Madison, WI 53707-7921

**RE: Revised Scope Statement for NR 151 (WT-15-16) relating to  
Runoff Management and Nonpoint Source Performance Standards and  
Concentrated Animal Feeding Operation (CAFO) rule revisions to  
incorporate by reference those Performance Standards**

Dear Secretary Stepp,

I hereby approve the revised statement of scope submitted on July 13, 2016, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapter NR 151 (WT-15-16) of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

A handwritten signature in black ink, appearing to be "Scott Walker".

Scott Walker  
Governor