

REASONABLE ASSURANCE FOR IMPLEMENTATION

Reasonable Assurance for implementation of the Rock River TMDL has been previously published and adopted, as section 7.0 in the 2011 Rock River TMDL (EPA, 2011). This original version is included as reference material in **Error! Reference source not found.**

This section presents the updated Reasonable Assurance to reflect the most current policies and programs available to facilitate and guide implementation. It describes the programs and management measures that provide reasonable assurance, or a level of confidence that the load allocations developed for this TMDL can be achieved. TMDL implementation will occur through existing local, state, and federal regulatory programs, and other planned and existing activities. The following are some of the activities and programs that provide reasonable assurance for implementation.

Required by the Clean Water Act, reasonable assurances provide a level of confidence that the wasteload allocations and load allocations in TMDLs will be implemented. This TMDL will be implemented through enforcement of existing regulations, new innovative policies and initiatives (e.g. Adaptive Management, Water Quality Trading, and Farmer-Led Watershed Initiatives) financial incentives, and various local, state, and federal water pollution control programs. The following are some of the activities, programs, requirements, and institutional arrangements that will provide reasonable assurance that this TMDL will be implemented and that the water quality goals will be achieved. Additional information about organizations and initiatives related to water quality in the Rock River Basin is presented in Appendix D.

IMPLEMENTATION PLAN DEVELOPMENT

The next step following approval of the TMDL was to develop an implementation plan that specifically describes how the TMDL goals will be achieved. Wisconsin DNR initiated an implementation planning process, entitled "Rock River Recovery," which builds on past planning and implementation of practices to control or reduce nutrient and sediment pollutants in the Rock River Basin (see **Error! Reference source not found.**). The implementation planning process developed strategies to most effectively utilize existing federal, state, and county-based programs to achieve wasteload and load allocations outlined in the TMDL.

The RRR process included the Implementation Team and five Sector Teams, Agriculture, Education & Outreach, Monitoring & Assessment, MS4, and Waste Water. A summary of these sector teams, members, and responsibilities are included in **Error! Reference source not found.**

MANAGEMENT STRATEGIES FOR POINT SOURCES

Point source discharges in the Rock River Basin include municipal and industrial wastewater treatment facilities, stormwater, and CAFOs. WDNR regulates point sources discharging wastewater to surface water or groundwater through the WPDES Permit Program. WPDES permits are divided into two categories - specific and general permits. Specific permits are issued to more complex facilities and activities such as municipal and industrial wastewater discharges.

General permits are issued to classes of industries or activities that are similar in nature, such as nonmetallic mining, non-contact cooling water, and stormwater discharges. Individual WPDES permits issued to municipal and industrial wastewater discharges to surface water will include limits that are consistent with the approved TMDL wasteload allocations, providing the necessary reasonable assurance that the WLAs in the TMDL will be achieved. Once a TMDL has been state and federally approved, the permit for a point source that has been allocated a WLA by the TMDL may not be reissued without a limit that is consistent with the WLA. WDNR may modify an existing permit to include WLA-derived limits or wait until the permit is reissued to include WLA-derived limits.

Facilities operating under general permits will be screened to determine whether additional requirements may be needed to ensure that the permitted activity is consistent with TMDL goals; this may include issuing individual permits or other measures. Facilities under general permits that are found to be meeting the terms of their permit will be considered in compliance with their WLA.

WDNR is developing guidance for Wastewater, Stormwater and CAFO staff to facilitate the implementation of the permitting process for WPDES permits when the TMDL is approved. The documents will provide detailed guidance to answer the many questions that will arise as the WDNR initiates these new requirements for WPDES permittees. Guidance is also being developed on the water quality trading concept and watershed permitting.

In June, 2010 the Wisconsin Natural Resources Board approved revisions to NR 102 and NR 217 to create and implement numeric phosphorus water quality standards criteria for lakes, reservoirs, streams and rivers. The rule revisions are part of a comprehensive strategy to address excess phosphorus in Wisconsin waters. The regulations are being revised in response to federal CWA regulations and identified phosphorus-related pollution problems to ensure protection of designated uses of Wisconsin's waters.

Approved revisions to NR 102.06 create numeric criteria of 100 ug/l phosphorus for certain listed rivers and 75 ug/l for all other streams, unless exempted, to protect fish and aquatic life uses. For lakes and reservoirs a series of phosphorus concentrations ranging from 15 ug/l for cold-water fishery lakes to 40 ug/l for shallow lakes and reservoirs was established. For small impoundments, the criterion is the same as that of the inflowing stream or river.

The Natural Resources Board also approved amendments to NR 217 and created new subchapters to implement the new phosphorus criteria in municipal and industrial point source WPDES permits. WDNR has regulated storm water discharges from certain MS4s, industries, and construction sites under permits issued pursuant to ch. NR 216, Wis. Adm. Code since 1994. NR 216 contains regulations derived from federal law to implement the WPDES storm water program in Wisconsin. Within the Rock River Basin, there currently are 48 MS4s, around 500 industrial facilities, and about 200 new construction sites starting up each year that are subject to regulation under NR 216. WDNR has also established its own developed urban area, construction site, and post-construction performance standards under subchs. III and IV of ch. NR 151, Wis. Adm. Code, which are implemented through storm water MS4 and construction site permits. The developed urban area performance standard requires that areas

developed prior to October 2004 control 40% of TSS relative to what performance would be with no stormwater controls; however, the 2011 State Budget removed enforceable compliance dates from these requirements.

Areas developed after October 2004 are expected to control 80% of TSS relative to what performance would be with no stormwater controls. The Natural Resources Board has recently approved revisions to ch. NR 151, and has given approval for WDNR to work on proposed revisions to ch. NR 216, in order to incorporate new federal effluent limitations guidelines and new source performance standards for construction sites.

MANAGEMENT STRATEGIES FOR NONPOINT SOURCES

To ensure the reduction goals of this TMDL are attained, management measures must be implemented and maintained to control phosphorus, sediment, and bacteria loadings from nonpoint sources of pollution. Wisconsin's Nonpoint Source Pollution Abatement Program (NPS Program), described in the state's [Nonpoint Source Program Management Plan](#), outlines a variety of financial, technical, and educational programs, which support implementation of management measures to address nonpoint source pollution. WDNR and the Department of Agriculture, Trade, and Consumer Protection (DATCP) coordinate statewide implementation of the NPS Program. The NPS Program includes core activities and programs, which are a high priority and the focus of WDNR and DATCP's efforts to address NPS pollution; these programs include the following:

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Statewide Agricultural Performance Standards & Manure Management Prohibitions

WDNR is a leader in the development of regulatory authority to prevent and control nonpoint source pollution. Chapter NR 151, Wisconsin Administrative Code, establishes runoff management performance standards and prohibitions for agricultural and non-agricultural facilities and practices.

<http://dnr.wi.gov/topic/nonpoint/nr151strategy.html>

These standards are intended to be minimum standards of performance necessary to achieve water quality standards. Implementing the performance standards and prohibitions on a statewide basis is a high priority for the NPS Program. In particular, the implementation and enforcement of agricultural performance standards and manure management prohibitions, listed below, will be critical to achieving the necessary nonpoint source load reductions throughout the TMDL area.

- **Tillage setback:** A setback of 5 feet from the top of a channel of a waterbody for the purpose of maintaining stream bank integrity and avoiding soil deposits into state waters. Tillage setbacks greater than 5 feet but no more than 20 feet may be required if necessary to meet the standard. Harvesting of self-sustaining vegetation within the tillage setback is allowed.

- **Phosphorus Index (PI):** A limit on the amount of phosphorus that may run off croplands and pastures as measured by a phosphorus index with a maximum of 6, averaged over an eight-year accounting period, and a PI cap of 12 for any individual year.
- **Process wastewater handling:** a prohibition against significant discharge of process wastewater from milk houses, feedlots, and other similar sources.
- **Meeting TMDLs:** A standard that requires crop and livestock producers to reduce discharges if necessary to meet a load allocation specified in an approved Total Maximum Daily Load (TMDL) by implementing targeted performance standards specified for the TMDL area using best management practices specified in ch. ATCP 50, Wis. Adm. Code. If a more stringent or additional performance standard is necessary, it must be promulgated by rule before compliance is required.
- **Sheet, rill and wind erosion:** All cropped fields shall meet the tolerable (T) soil erosion rate established for that soil. This provision also applies to pastures.
- **Manure storage facilities:** All new, substantially altered, or abandoned manure storage facilities shall be constructed, maintained or abandoned in accordance with accepted standards, which includes a margin of safety. Failing and leaking existing facilities posing an imminent threat to public health or fish and aquatic life or violate groundwater standards shall be upgraded or replaced.
- **Clean water diversions:** Runoff from agricultural buildings and fields shall be diverted away from contacting feedlots, manure storage areas and barnyards located within water quality management areas (300 feet from a stream or 1,000 feet from a lake or areas susceptible to groundwater contamination).
- **Nutrient management:** Agricultural operations applying nutrients to agricultural fields shall do so according to a nutrient management plan. This standard does not apply to applications of industrial waste, municipal sludge or septage regulated under other DNR programs provided the material is not commingled with manure prior to application.
- **Manure management prohibitions:**
 - no overflow of manure storage facilities
 - no unconfined manure piles in a water quality management area
 - no direct runoff from feedlots or stored manure into state waters
 - no unlimited livestock access to waters of the state in locations where high concentrations of animals prevent the maintenance of adequate or self-sustaining sod cover

WDNR, DATCP, and the county Land Conservation Departments (LCDs) will work with landowners to implement agricultural and non-agricultural performance standards and manure management prohibitions to address sediment and nutrient loadings in the TMDL area.

Many landowners voluntarily install BMPs to help improve water quality and comply with the performance standards. Cost-sharing funds may be available for many of these BMPs. Wisconsin statutes require that farmers must be offered at least 70% cost-sharing funds for BMP installation before they can be required to comply with the agricultural performance standards and prohibitions. If cost-share money is offered, those in violation of the standards are obligated to comply with the rule. DATCP's Farmland Preservation Program requires that any agricultural land enrolled in the program must be in compliance with the performance standards.

WDNR Cost-Sharing Grant Programs

The counties and other local units of government in the TMDL area may apply for grants from WDNR to control NPS pollution and meet the TMDL load allocation. The WDNR supports NPS pollution abatement by administering and providing cost-sharing grants to fund BMPs through various grant programs, including, but not limited to:

- The Targeted Runoff Management (TRM) Grant Program
- The Notice of Discharge (NOD) Grant Program
- The Urban Nonpoint Source & Storm Water Management Grant Program
- The Lake Planning Grant Program
- The Lake Protection Grant Program
- The River Planning & Protection Grant Program

Many of the counties and municipalities in the TMDL area have a track record of participating in these NPS-related grant programs.

Targeted Runoff Management Grant Program

Targeted Runoff Management (TRM) grants are provided by the WDNR to control nonpoint source pollution from both urban and agricultural sites. A combination of state General Purpose Revenue, state Bond Revenue, and federal Section 319 Grant funds is used to support TRM grants. The grants are available to local units of government (typically counties) and targeted at high-priority resource problems. TRM grants can fund the design and construction of agricultural and urban BMPs. Some examples of eligible BMPs include livestock waste management practices, some cropland protection, and streambank protection projects. These and other practices eligible for funding are listed in s. NR 154.04, Wis. Adm. Code.

Revisions to ch. NR 153, Wis. Adm. Code, (<http://legis.wisconsin.gov/rsb/code/nr/nr153.pdf>) which governs the program, took effect on January 1, 2011, and modified the grant criteria and procedures, increasing the state's ability to support performance standards implementation and TMDL implementation. Since the calendar year 2012 grant cycle, projects may be awarded in four categories:

Small-Scale TMDL <ul style="list-style-type: none">• Implements a TMDL• Agricultural or urban focus	Small-Scale Non-TMDL <ul style="list-style-type: none">• Implements NR 151 performance standards• Agricultural or urban focus
Large-Scale TMDL <ul style="list-style-type: none">• Implements a TMDL• Agricultural focus only	Large-Scale Non-TMDL <ul style="list-style-type: none">• Implements NR 151 performance standards• Agricultural focus only

Section 281.65(4c), Wis. Stats., defines additional priorities for Targeted Runoff Management Projects as follows:

- TRM projects must be targeted to an area based on any of the following:
 - Need for compliance with established performance standards.
 - Existence of impaired waters.
 - Existence of outstanding or exceptional resource waters.
 - Existence of threats to public health.
 - Existence of an animal feeding operation receiving a Notice of Discharge.
 - Other water quality concerns of national or statewide importance.
- Projects are consistent with priorities identified by WDNR on a watershed or other geographic basis.
- Projects are consistent with approved county land and water resource management plans.

The maximum cost-share rate available to TRM grant recipients is up to 70 percent of eligible costs (maximum of 90% in cases of economic hardship), with the total of state funding not to exceed established grant caps. TRM grants may not be used to fund projects to control pollution regulated under Wisconsin law as a point source.

Grant application materials are available on the WDNR web site at: <http://dnr.wi.gov/aid/targetedrunoff.html>.

Notice of Discharge Grant Program

Notice of Discharge (NOD) Project Grants, also governed by ch. NR 153, Adm. Code, are provided by WDNR and WDATCP to local units of government (typically counties). A combination of state General Purpose Revenue, state Bond Revenue, and federal Section 319 Grant funds are used to support NOD grants. The purpose of these grants is to provide cost sharing to farmers who are required to install agricultural best management practices to comply with Notice of Discharge requirements. Notices of Discharge are issued by the WDNR under ch. NR 243 Wis. Adm. Code (Animal Feeding Operations - <http://legis.wisconsin.gov/rsb/code/nr/nr243.pdf>), to small and medium animal feeding operations that pose environmental threats to state water resources. The project funds can be used to address an outstanding NOD or an NOD developed concurrently with the grant award.

Both state agencies work cooperatively to administer funds set aside to make NOD grant awards. Although the criteria for using agency funds vary between the two agencies, WDNR and WDATCP have jointly developed a single grant application that can be used to apply for funding from either agency. The two agencies jointly review the project applications and coordinate funding to assure the most cost-effective use of the available state funds. Funding decisions must take into account the different statutory and other administrative requirements each agency operates under.

Grant application materials are available on the WDNR web site at: <http://dnr.wi.gov/Aid/NOD.html>.

Lake Planning Grant Program

The WDNR provides grants to eligible parties to collect and analyze information needed to protect and restore lakes and their watersheds and develop lake management plans. Section 281.68, Wis. Stats., and ch. NR 190, Wis. Adm. Code, provide the framework and guidance for WDNR's Lake Management Planning Grant Program. Grant awards may fund up to 66% of the cost of a lake planning project. Grant awards cannot exceed \$25,000 per grant for large-scale projects.

Eligible planning projects include:

- Gathering and analysis of physical, chemical, and biological information on lakes.
- Describing present and potential land uses within lake watersheds and on shorelines.
- Reviewing jurisdictional boundaries and evaluating ordinances that relate to zoning, sanitation, or pollution control or surface use.
- Assessments of fish, aquatic life, wildlife, and their habitats. Gathering and analyzing information from lake property owners, community residents, and lake users.
- Developing, evaluating, publishing, and distributing alternative courses of action and recommendations in a lake management plan.

Grants can also be used to investigate pollution sources, including nonpoint sources, followed by incorporation into the lake management plan of strategies to address those sources. Investigation can involve many types of assessment, including determining whether or not the water quality of the lake is impaired. A plan approved by WDNR for a lake impaired by NPS pollution should incorporate the U.S. EPA's "Nine Key Elements" for watershed-based plans.

Grant application materials are available on the WDNR web site at:

<http://dnr.wi.gov/Aid/SurfaceWater.html>.

Lake Protection Grant Program

The WDNR provides grants to eligible parties for lake protection grants. Sections 281.69 and 281.71, Wis. Stats., and ch. NR 191, Wis. Adm. Code, provide the framework and guidance for the Lake Protection Grant Program. Grant awards may fund up to 75 percent of project costs (maximum grant amount \$200,000).

Eligible projects include:

- Purchase of land or conservation easements that will significantly contribute to the protection or improvement of the natural ecosystem and water quality of a lake.
- Restoration of wetlands and shorelands (including Healthy Lakes best practices) that will protect a lake's water quality or its natural ecosystem (these grants are limited to \$100,000). Special wetland incentive grants of up to \$10,000 are eligible for 100 percent state funding if the project is identified in the sponsor's comprehensive land use plan.
- Development of local regulations or ordinances to protect lakes and the education activities necessary for them to be implemented (these grants are limited to \$50,000)
- Lake management plan implementation projects recommended in a plan and approved by WDNR. These projects may include watershed management BMPs, in-lake restoration activities, diagnostic feasibility studies, or any other projects that will protect or improve lakes. Sponsors must submit a copy of their lake management plan and the recommendation(s) it wants to fund for WDNR approval at least two months in advance of the February 1 deadline. Plans must have been officially adopted by the sponsor and made available for public comment prior to submittal. The WDNR will review the plan and advise the sponsor on the project's eligibility and development of a lake protection grant application for its implementation.

Grant application materials are available on the WDNR web site at:

<http://dnr.wi.gov/Aid/SurfaceWater.html>.

River Planning & Protection Grant Program

The WDNR provides grants to eligible parties for river protection grants. Chapter 195, Wis. Adm. Code, provides the framework and guidance for the River Protection Grant Program. This program provides

assistance for planning and management to local organizations that are interested in helping to manage and protect rivers, particularly where resources and organizational capabilities may be limited.

River Planning Grants up to \$10,000 are available for:

- Developing the capacity of river management organizations,
- Collecting information on riverine ecosystems,
- River system assessment and planning,
- Increasing local understanding of the causes of river problems

River Management Grants up to \$50,000 are available for:

- Land/easement acquisition,
- Development of local regulations or ordinances that will protect or improve the water quality of a river or its natural ecosystem,
- Installation of practices to control nonpoint sources of pollution,
- River restoration projects including dam removal, restoration of in-stream or shoreland habitat,
- An activity that is approved by the WDNR and that is needed to implement a recommendation made as a result of a river plan to protect or improve the water quality of a river or its natural ecosystem,
- Education, planning and design activities necessary for the implementation of a management project.

The state share of both grants is 75% of the total project costs, not to exceed the maximum grant amount. Grant application materials are available on the WDNR web site at:

<http://dnr.wi.gov/Aid/SurfaceWater.html>.

DATCP Soil & Water Resource Management Program

DATCP oversees and supports county conservation programs that implement the state performance standards and prohibitions and conservation practices. DATCP's Soil and Water Resource Management (SWRM) Program requires counties to develop Land and Water Resource Management (LWRM) Plans to identify conservation needs. Each county Land and Water Conservation Department in the TMDL area developed an approved plan for addressing soil and water conservation concerns in its respective county.

County LWRM plans advance land and water conservation and prevent NPS pollution by:

- Inventorying water quality and soil erosion conditions in the county.
- Identifying relevant state and local regulations, and any inconsistencies between them.
- Setting water quality goals in consultation with the WDNR.
- Identifying key water quality and soil erosion problems, and practices to address those problems.
- Identifying priority farm areas using a range of criteria (e.g., impaired waters, manure management, high nutrient applications).
- Identifying strategies to promote voluntary compliance with statewide performance standards and prohibitions, including information, cost-sharing, and technical assistance.
- Identifying enforcement procedures, including notice and appeal procedures.
- Including a multi-year work plan to achieve soil and water conservation objectives.

Counties must receive DATCP's approval of their plans to receive state cost-sharing grants for BMP installation. DATCP is also responsible for providing local assistance grant funding for county

conservation staff implementing NPS control programs included in the LWRM plans. This includes local staff support for DATCP and WDNR programs. In CY 2016 alone, DATCP awarded \$1,118,912 in grants to counties in the TMDL area for local assistance and BMP implementation.

The Milwaukee River TMDL provides County Land and Water Conservation Departments with the data necessary to more effectively identify and target pollutant sources so that strategies can be developed and applied to reduce pollutant loads in TMDL waters.

Federal Programs

Numerous federal programs are also being implemented in the TMDL area and are expected to be an important source of funds for future projects designed to control phosphorus, sediment, and bacteria loadings in the Milwaukee River Basin. A few of the federal programs include:

- **Environmental Quality Incentive Program (EQIP).** EQIP is a federal cost-share program administered by the Natural Resources Conservation Service (NRCS) that provides farmers with technical and financial assistance. Farmers receive flat rate payments for installing and implementing runoff management practices. Projects include terraces, waterways, diversions, and contour strips to manage agricultural waste, promote stream buffers, and control erosion on agricultural lands.
- **Conservation Reserve Program (CRP).** CRP is a voluntary program available to agricultural producers to help them safeguard environmentally sensitive land. Producers enrolled in CRP plant long-term, resource conserving covers to improve the quality of water, control soil erosion, and enhance wildlife habitat. In return, the Farm Service Agency (FSA) provides participants with rental payments and cost-share assistance.
- **Conservation Reserve Enhancement Program (CREP).** CREP provides annual rental payments up to 15 years for taking cropland adjacent to surface water and sinkholes out of production. A strip of land adjacent to the stream must be planted and maintained in vegetative cover consisting of certain mixtures of tree, shrub, forbs, and/or grass species. Cost-sharing incentives and technical assistance are provided for planting and maintenance of the vegetative strips. Landowners also receive an upfront, lump sum payment for enrolling in the program, with the amount of payment dependent on whether they enroll in the program for 15 years or permanently.
- **Mississippi River Healthy Watersheds Initiative.** To improve the health of the Mississippi River Basin, including water quality and wildlife habitat, the USDA Natural Resources Conservation Service announced the Mississippi River Basin Healthy Watersheds Initiative (MRBI). Through this new Initiative, NRCS and its partners will help producers in selected watersheds in the Mississippi River Basin voluntarily implement conservation practices and systems that avoid, control, and trap nutrient runoff; improve wildlife habitat; and maintain agricultural productivity. The Initiative will build on the past efforts of producers, NRCS, partners, and other State and Federal agencies in the 12-State Initiative area to address nutrient loading in the Mississippi River Basin. Nutrient loading contributes to both local water quality problems and the hypoxic zone in the Gulf of Mexico. The 12 participating States are Arkansas, Kentucky, Illinois, Indiana, Iowa, Louisiana, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin. MRBI will be implemented by NRCS through the Cooperative Conservation Partnership Initiative (CCPI), the Wetlands Reserve Enhancement Program (WREP), Conservation Innovation Grants (CIG), and other programs. NRCS will offer this Initiative in fiscal years 2010 through 2013, dedicating at least \$80 million in financial assistance in each fiscal year. This is in

addition to funding by other Federal agencies, States, and partners and the contributions of producers. The \$80 million will be in addition to regular NRCS program funding in the 12 Initiative States and will be supported with needed technical assistance.

Water Quality Trading & Adaptive Management

Water Quality Trading (WQT) and Adaptive Management (AM) may be used by eligible municipal and industrial WPDES permit holders to demonstrate compliance with TMDL WLAs. Both of these compliance options provide a unique watershed-based opportunity to reduce pollutant loading to streams, rivers, and lakes through point and nonpoint source collaboration. AM and WQT may also provide a new source of funding for local assistance and implementation of management measures to address nonpoint source pollution and improve water quality. The WDNR web site provides more details;

- Water quality trading: <http://dnr.wi.gov/topic/SurfaceWater/WaterQualityTrading.html>
- Adaptive Management: <http://dnr.wi.gov/topic/SurfaceWater/AdaptiveManagement.html>.

Post-Implementation Monitoring

A post-implementation monitoring effort will determine the effectiveness of the implementation activities associated with the TMDL. WDNR will monitor the tributaries of the Rock River Basin based on the rate of management practices installed through the implementation of the TMDL, including sites where WDNR, DATCP, and NRCS grants are aimed at mitigating phosphorus and sediment loading. Monitoring will occur as staff and fiscal resources allow until it is deemed that stream quality has responded to the point where it is meeting its codified designated uses and applicable water quality standards.

In addition, the streams of the TMDL area may be monitored on a 5-year rotational basis as part of WDNR's statewide water quality monitoring strategy to assess current conditions and trends in overall stream quality. That monitoring consists of collecting data to support a myriad of metrics contained in WDNR's baseline protocol for wadeable streams, such as the IBI, the HBI, a habitat assessment tool, and several water quality parameters determined on a site by site basis.

WDNR will work in partnership with local citizen monitoring groups to support monitoring efforts which often provide a wealth of data to supplement WDNR data. All other quality-assured available data in the basin will be considered when looking at the effectiveness of the implementation activities associated with the TMDL.