

Report From Agency

REPORT TO LEGISLATURE

NR 154, Wis. Adm. Code

Board Order No. WT-03-15
Clearinghouse Rule No. 19-002

Basis and Purpose of the Proposed Rule

The primary purposes of the proposed rule change are to make the sections of ch. NR 154 regulating agricultural BMPs consistent with recent updates to ch. ATCP 50, and to identify additional cost-shareable urban BMPs and their technical standards. For agricultural BMPs, ch. NR 154 directly cross-references ch. ATCP 50, Wis. Adm. Code, which was updated in both 2014 and 2018. In order to maintain consistency with the state's nonpoint source pollution abatement programs outlined in chs. 92 and 281, Wis. Stats., these cross-references need to be updated.

The proposed rule revisions also adds references to urban BMP technical standards developed since September 2002 when ch. NR 154 became effective, so that these BMPs are now identified as cost-shareable practices.

Lastly, the proposed revisions update the provisions for economic hardship determinations to be consistent with 2011 revisions to NR 153, and adjusts optional flat reimbursement rates for some agricultural BMPs to reflect current data on actual BMP costs.

Summary of Public Comments

Public Hearing:

The department conducted a public hearing in Madison on February 13, 2018. Two individuals attended the hearing; neither individual indicated a position on the proposed rule revisions. The department received one letter containing several written comments.

Written Comments:

1. **Comment:** Chapters NR 154 and 155 of the Wisconsin Administrative Code clarify eligible and noneligible project components for the Urban Nonpoint Source and Storm Water Management (UNPS) Grant Program. While the proposed revisions to the urban storm water practices within ch. NR 154 are warranted, the code does not include newer water quality improvement technologies or practices that may be more efficient and/or cost effective. These code sections also currently do not allow water quality best management practices (BMPs) that address newer pollutants of concern such as bacteria and chlorides.

Given the above restrictions on project types, BMPs such as cisterns, green roofs, rain barrels, soil amendments, storm water trees and native plantings either do not qualify for funding or are viewed as low-priority. These same types of projects are often high priorities to local communities but cannot be completed due to the lack of available funding.

Response: The department acknowledges the existence of a wide variety of urban pollutants of concern. For this reason, s. NR 155.15 (6), Wis. Adm. Code, allows for the use of INTERIM BEST MANAGEMENT PRACTICES AND ALTERNATIVE DESIGN CRITERIA not included in ch. NR 154, Wis. Adm. Code, in projects that address something other than non-agricultural and transportation performance standards of ch. NR 151, Wis. Adm. Code, which could include practices that address pollutants such as bacteria and chlorides.

The Department also acknowledges that standards and technologies for addressing polluted runoff are continuously evolving. For this reason, s. NR 154.04 (42) (d) 2., Wis. Adm. Code, **directs the**

department to consider any standard developed under the process in subch. IV of NR 151, or other documents, when identifying acceptable standards for urban best management practices.

2. **Comment:** The current grant application review timeline often conflicts with the local budgeting process of Wisconsin's municipalities. We recommend the timing of the awards be modified to better coincide with the municipal budget schedule.

Response: The Joint Allocation Plan provides details on how the Department of Agriculture, Trade and Consumer Protection (DATCP) and the Department of Natural Resources (DNR) propose to allocate their available nonpoint grant funds to county land conservation committees and other project cooperators. Section 92.14 (6) (b), Wis. Stats., requires that this plan include amounts provided to counties under TRM and UNPS grant programs. Therefore, the timeline of the UNPS grant application and award cycle must coincide with the timeline of the DATCP - DNR Joint Allocation Plan.

3. **Comment:** The grant administration process has recently become very time consuming. Several Wisconsin communities have indicated they will likely no longer apply for UNPS grant funding because of this administrative burden. We recommend that the process be reviewed to better match the administrative needs of department staff with the time constraints of municipal staff.

Response: UNPS grant administration procedures are set forth in ch. NR 155, Wis. Adm. Code, and were established in 2002. The department has recently taken steps to reduce the administrative burden of participating in UNPS grant programs within the bounds of what is allowed by ch. NR 155. For example, the department recently revised the UNPS-Planning grant application to simplify and clarify the application process. Additionally, the department is currently in the process of developing an online grants administration system and a statewide web-based BMP tracking system, both of which are intended to reduce the burden of runoff management grant administration.

4. **Comment:** These grants will play a key role in helping Wisconsin communities comply with MS4 and TMDL storm water quality permit requirements. We strongly recommend a substantial increase in UNPS grant funding and a return to offering both programs on an annual basis.

Response: The amount available for UNPS grant awards is not determined by the department. The amount is set in the State of Wisconsin's biennial budget. The department would consider offering both UNPS-Planning and UNPS-Construction grant programs each year again, if funding levels are substantially increased in the future.

5. **Comment:** To summarize, we recommend that NR 154 and 155 be revised as noted above to better allow Wisconsin's grant programs to address the current needs of the state's municipalities. We would welcome the opportunity to meet with Department staff to further discuss these concerns.

Response: Thank you for submitting written comments regarding ch. NR 154 proposed rule changes. Your comments will become part of the official record and will be shared with the Department of Natural Resources Board prior to adoption of this rule. Please see our response to your comments above. Ch. NR 155 is not currently open for revisions. There would be an opportunity for you to provide comments on this in the future if this code is ever opened for revisions.

Modifications Made

No modifications were made to the proposed rule as a result of public comments or testimony. The only modifications made to the rule were based on the Wisconsin Legislative Council Rules Clearinghouse Report.

Appearances at the Public Hearing

Two individuals attended the public hearing, Soren Warland of Madison, WI; and Dan Deneen of Mazomanie, Wisconsin. Both individuals attended on behalf of themselves in order to learn about the proposed rule revision. Neither individual appeared or registered for or against the proposed rule.

Changes to Rule Analysis and Fiscal Estimate

No changes were made to the rule analysis and fiscal estimate due to no comments received.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on:

- Form Style and placement in Administrative Code;
- Adequacy of References to related Statutes, Rules and Forms; and
- Clarify, Grammar, Punctuation and Use of Plain Language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse.

Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis was not conducted because the rule will not have a significant economic impact on a substantial number of small businesses.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.