

Implementation Strategy for NR 151 - Agricultural Nonpoint Performance Standards and Prohibitions

OVERVIEW

This document sets forth a comprehensive strategy for the implementation of Wisconsin's agricultural performance standards and prohibitions, as defined in NR 151. If implemented consistently on a statewide basis, it will ensure that all landowners and other responsible parties comply with these standards and prohibitions. It will also bring accountability and organization to an otherwise complex and obscure redesigned nonpoint program. This document will evolve as needed as program partners gain more experience with implementing the performance standards and prohibitions.

While a successful agricultural nonpoint program will take the cooperative effort of multiple agencies, the framers of the redesign intended that Land Conservation Committees and Departments would play the lead role in the implementation of agricultural standards and prohibitions, using authorities and funding grants under Chapter 92, Wisconsin State Statutes. Thus, consistent with § 92.10(6)(a)5 and ATCP 50.12(2)(i) Wis. Admin. Code, the first component of this framework establishes that in their Land and Water Resource Management Plans, counties identify the strategy they will use locally to implement and ensure compliance with the State's agricultural performance standards and prohibitions.

Preferably, these local strategies will be developed with input from local, state and federal cooperating agencies. Likewise, the resource management and/or work plans of other agencies should be developed with input from the county. This will help ensure everyone's plan are somewhat consistent and complimentary when it comes to implementing the state nonpoint standards. While resource and work plans communicate the activities of their respective agency, they do not always communicate the roles of other participating agencies or how we'll all work together, however. Since clearly defined roles and responsibilities are critical for achieving a successful program, the second component of this framework provides that each participating agency clearly communicate and document their level of commitment towards each of the activities required to implement NR 151.

Components three through eight of the strategy outline the procedural and logistical steps and activities necessary to administer the program. These components are modeled after existing program protocols, including critical sites, animal waste (NR 243) and the Farmland Preservation Program. Components nine and ten represent the final requirements of a well-organized program, and include ongoing monitoring and reporting.

As a precursory step to blanket implementation of this strategy, the DNR will conduct surveys of counties and other partner agencies to determine what each will commit to the NR 151 workload. The survey will list the components of the strategy in a format that allows each agency to indicate which of the activities they will help accomplished by way of staff time and financial resources. The DNR will use information gathered from the surveys to subsequently develop internal workload plans and partnership arrangements.

It should be noted that this strategy is not a mandate nor does it mandate any specific county responsibilities. While it is necessary that each component must be accomplished in order for the program to be complete, counties may choose the degree and extent to which it intends to implement some, all or none of them. Consequently, the DNR will assume (to the extent it is able) or assign lead responsibilities in implementing those activities for which a county is unable or unwilling to carry out. Where there are insufficient resources and or willingness by either the county, state or federal agency to carry out one or more activities, the overall program will likely be compromised both at the local as well as the state level.

Implementation Strategy for NR 151 - Agricultural Nonpoint Performance Standards

Component 1: Plan the Implementation Approach

- A. Develop and adopt a systematic and comprehensive strategy to implement agricultural nonpoint source pollution control standards and prohibitions under NR 151. To be consistent with this statewide program, the local strategy should describe the methodology to be used for carrying out activities under components three through ten (below) including:
- Conducting information and education activities;
 - Systematically selecting and evaluating parcels for compliance with standards and prohibitions;
 - Documenting and reporting compliance status;
 - Providing or arranging for the provision of technical assistance;
 - Making cost sharing available as needed to install or implement BMP's;
 - Issuing required notices and conducting enforcement activities;
 - Tracking and reporting program activities and progress; and
 - Monitoring compliance

Notes:

- 1 For counties choosing to implement this component, the strategy must a) be defined in the county Land and Water Plan per ATCP 50.12(2)(l), Wis. Administrative Code, and b) ensure that compliance with the standards and prohibitions is achieved, per § 92.10(6)(a)5 Wis. Stats. and ATCP 50.12(2)(i) Wis. Admin. Code.*
- 2 The systematic selection of parcels will ensure that a prescribed amount of evaluations will regularly occur (e.g. annually). This will, in turn, ensure that realistic projections concerning timeframes and needed financial resources can be made and routinely updated on a statewide basis. In order to be systematic, a strategy for selecting and evaluating parcels and subsequently implementing standards does not rely only on voluntary participation.*

Component 2: Define Level of Agencies' Commitment to NR151 Workload

Consider communicate and document the level of agency (county, state and federal) commitment (staff participation, financial resources, etc) towards NR 151 workload, including but not limited to carrying out the activities under components 3 through 10.

Component 3: Conduct Information and Education Activities

- A. Develop information and education materials designed to achieve the following objectives:
- Educate landowners about Wisconsin's agricultural performance standards and prohibitions, applicable conservation practices, and cost share grant opportunities;
 - Promote implementation of conservation practices necessary to meet performance standards and prohibitions;
 - Inform landowners about procedures and agency roles to be used statewide and locally for ensuring compliance with the performance standards and prohibitions; and
 - Establish expectations for compliance and consequences for non-compliance.

Note: The DNR and DATCP have agreed that they will take the “lead” role in developing I&E materials for statewide use, and will look to the counties to take the lead role in providing that information to landowners.

- B. Deliver information and education materials (via news media, newsletters, public information meetings and one-on-one contacts) as outlined in the County LWRM Plan

Component 4: Determine Current Compliance

A. Records Inventory

(Note: The records inventory is a review of existing records of landowners throughout the county who may already be in compliance based upon past and/or present program participation. This step is intended to take less than 90 days and would be conducted before the onset of systematic onsite evaluations. Onsite evaluations for these operations are optional, except for those where O & M periods may have expired.)

1. Compile records of existing State and/or Federal program participants who have previously signed contracts to install conservation practices to control soil erosion and nonpoint sources of pollution.
2. From records, evaluate which parcels are subject to which standards and prohibitions.

(Note: For the purposes of this document, the term “parcel” may be defined as a cropped field, an agricultural or livestock facility or a group of fields (e.g. tax parcel or FSA tract) and is defined by the county based on how they organize and manage geographic data.)

3. Based on above evaluations, determine which landowners are currently already meeting standards and prohibitions as a result of:
 - a) Having installed or implemented BMP’s under an existing state or federal cost share agreement;
 - b) Maintaining compliance with Wisconsin Farmland Preservation Program and federal farm program conservation provisions; and/or
 - c) Maintaining compliance with state animal waste regulations (e.g. NR 243, WPDES, etc.)

B. Onsite Evaluations

(Note: Onsite evaluations would occur after the countywide records inventory has been completed, beginning with targeted sites and/or in high-priority areas, as defined in the county’s LWRM Plan. Also, it is not necessary to complete on-site evaluations of the entire before proceeding with the components that follow.)

1. Compile list of parcels for which on-site evaluations will be conducted, according to systematic methodology outlined in the county Land & Water Plan.
2. Contact owners of selected parcels and schedule site evaluations.
3. Conduct onsite evaluations:
 - a) Determine and document the extent of current compliance with each of the performance standards and prohibitions.
 - b) Where non-compliant, determine costs and eligibility for cost sharing.

Note: Cost share requirements are based upon whether or not the evaluated cropland or livestock facility is new or existing and whether or not corrective measures entail eligible costs. See NR 151.09(4)(b-c) and 151.095(5)(b-c).

Component 5: Prepare Report and Notify Landowners of Compliance Status

- A) Following completion of records review and or on-site evaluation, prepare and Issue NR 151 Status Report to owners of the evaluated parcels. This Report will convey, at a minimum, the following information:
- Current status of compliance of individual parcels with each of the performance standards and prohibitions.
 - Identify corrective measure options and rough cost estimates to comply with each of the performance standards and prohibitions for which a parcel is not in compliance.
 - Status of eligibility for public cost sharing.
 - Grant funding sources and technical assistance available from Federal, State, and local sources, and third party service providers.
 - An explanation of conditions that apply if public cost share funds are used. *(If public funds are used, applicable technical standards must be met.)*
 - Signature lines indicating landowner agreement or disagreement with report findings.
 - Process and procedures to contest evaluation results to county and or state.
 - (Optional) A copy of performance standards and prohibitions and technical design standards.

Note: A cover letter (signed jointly by the DNR and LCD) which describes the ramifications and assumptions related to the Status Report would be attached.

- B) Keep and maintain evaluation and compliance information as public record.

Note: The primary objective of this step is to ensure subsequent owners are made aware of (and have access to) NR 151 information pertinent to their property. Local authority may determine the method that will work best for maintaining these records and for ensuring relevant information is conveyed to subsequent owners

Component 6 Secure Funding and Technical Assistance / Issue NR 151 Notice

- A) Voluntary Component

1. Receive request for cost-share and/or technical assistance from landowner.
(Note: Landowners will be prompted to voluntarily apply for cost sharing based on information provided in a NR 151 Compliance Status Report.)
2. Confirm cost-share grant eligibility and determine availability of cost share & technical assistance.
3. Develop and issue cost-share contract (including BMP's to be installed or implemented, estimated costs and project schedule and notification requirements under NR 151.09(5-6) and/or 151.095(6-7).
4. The DNR will assist in developing proper notification language...

- B) Non-voluntary Component

In the event that a landowner chooses not to voluntarily apply for public funding to install or implement corrective measures that entail eligible costs, or to voluntarily install or implement corrective measures that do not entail eligible cost, issue Landowner Notification per NR 151.09(5-6) and/or 151.095(6-7).

- If eligible costs are involved, this notification shall include an offer of cost sharing.
- If no eligible costs are involved, or if cost sharing is or was already made available, the notification will not include an offer of cost sharing.

Note: The Notification referenced above will be designed by the DNR and contain: a) A description of the performance standard or prohibition being addressed; b) The compliance status

determination made in accordance with NR 151; c) The determination as to which best management practices or other corrective measures are needed and which, if any, are eligible for cost sharing; d) The determination that cost sharing is or has been made available, including a written offer of cost sharing when appropriate; e) An offer to provide or coordinate the provision of technical assistance; f) A compliance period for meeting the performance standard or prohibition; g) An explanation of the possible consequences if the owner or operator fails to comply with provisions of the notice; and h) An explanation of state or local appeals procedures.

Component 7: Administer Funding and Technical Assistance / Re-evaluate Parcel

- A) If cost sharing is involved, finalize and execute cost-share agreement including schedule for installing or implementing BMP(s).
- B) Provide technical services and oversight:
 - Provide conservation plan assistance.
 - Review conservation plans prepared by other parties.
 - Provide engineering design assistance.
 - Review engineering designs provided by other parties.
 - Provide construction oversight.
 - Evaluate and certify installation of conservation practices.
- C) After corrective measures are applied, conduct evaluation to determine if parcel is now in compliance with relevant performance(s) standard or prohibition(s).
 - If site is compliant, update “NR 151 Status Report ” (see per component 5.A.) and issue “Letter of NR151 Compliance”.

Note: A Letter of NR 151 Compliance serves as official notification that the site have been determined to now be in compliance with applicable performance standards and prohibitions. This letter would also include an appeals process if a landowner wishes to contest the findings. When and where counties are not operating under a local ordinance, the issuance of a Letter of NR 151 Compliance would likely be a joint effort with the DNR in order to give it the significance and standing that it merits.

- If not compliant, seek non-regulatory remedies or initiate enforcement action.

Note: Follow-up measures at this stage will differ depending on the circumstances, including whether or not failure to comply is the fault of the landowner. If this is the case, then non-regulatory remedies will likely be sufficient. If not (e.g. there is an intentional breach of contract) then enforcement action may be necessary.

Component 8: Enforcement

- A. If a landowner refuses to respond appropriately to a Notice under 6.B., or is in breach of a cost share contract under component 7.A., then prepare and issue “Notice of NR 151 Violation” letter, or other appropriate notice per local ordinance, pursuant to NR 151.09(5) or (6), or 151.095(6) or (7).

Note: Enforcement, which really first begins with this letter, will be pursued in circumstances where: (a) there is a breach of contractual agreement including failing to install, implement or maintain BMP's according to the provisions of the agreement OR the landowner has failed to comply with a notice issued under component 6.B.; AND (b) non-regulatory attempts to resolve the situation have failed.

- B. Schedule enforcement conference.
- C. Participate in enforcement conference.
- D. Initiate enforcement action:
 - Refer cases to DNR for enforcement

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- Enforce through separate county ordinance, which incorporates standards.
- Enforce through financial sanctions available through State program (e.g. FPP).
- Enforcement through the local District Attorney

Component 9: Ongoing Compliance Monitoring

- Conduct periodic evaluations to verify ongoing compliance (similar to FPP monitoring).
- Respond to public complaints alleging noncompliance.
- Ensure new owners are made aware of (and have access to) NR 151 compliance information that may pertain to the property they have just acquired.

Component 10: Annual Reporting

- A) Maintain and convey a record of annual site evaluations which shows their location and compliance status.
- B) Report estimated timeframe and staff resources needed to complete remaining site evaluations in the County
- C) Maintain a record of estimated costs of corrective measures for each parcel that has been evaluated and for which corrective measures have been estimated.
- D) Maintain and convey a record showing parcels where public cost sharing has been applied to implement standards and prohibitions, the amount and source of those funds, and the landowner share.
- E) Maintain and convey a record and location of parcels receiving notifications under component 5.B. and violation letters under Component 8.A.
- F) Maintain and convey a record of the annual cost of technical and administrative assistance needed to administer agricultural performance standards and prohibitions, as established in NR151.
- G) Other reports as may be required in ATCP50.
- H) Compile locally-developed reports into regional and statewide NR 151 Progress Reports.

Note: Program partners will jointly develop reporting forms. State agencies will provide reporting forms and guidance to counties on how these forms should be filled out. State agencies will assume responsibility for compiling county reports into statewide reports.