

Testimony of Gordon Stevenson
Chief, Runoff Management Section
Wisconsin Department of Natural Resources
July 21, 2010

NR 151, NR 153, and NR 155 Hearings
Assembly Agriculture Committee

1. Runoff pollution is a major cause of nuisance algae blooms in lakes, streams and along the coast of Lake Michigan, including those that result in toxic conditions. Runoff pollution also causes fish kills, contaminated wells and other problems fueled by pollutants running off urban areas and farm fields and entering Wisconsin lakes, rivers and groundwater.
2. These changes to DNR's runoff rules will enhance our ability to tackle those problems and to update two grant programs (NR 153 and NR 155) that help pay for those controls.
3. Phosphorus in both runoff pollution and point source pollution is one of the top reasons why 700 lakes and river segments are impaired in Wisconsin.
4. NR 151 addresses phosphorus from runoff or nonpoint sources while NR 102 and NR 217 address phosphorus from point sources. While NR 102 and NR 217 are not under consideration at this hearing, it is important to understand that NR 151, NR 102 and NR 217 will address all sources of phosphorus pollution to our waters.
5. For agriculture, NR 151 reduces the potential of croplands, pastures and winter grazing areas to contribute phosphorus to Wisconsin's lakes and rivers.
 - a. Farmers would have to meet a maximum average level of phosphorus allowed to come off their fields. DNR estimates that 80 percent of cropped fields in Wisconsin are already in compliance.
 - b. There also would be a cap on how much phosphorus can come off agricultural fields in any individual year to prevent catastrophic runoff events.
 - c. Farmers in watersheds where an impaired lake or river has an approved cleanup plan (tmdl) may be required to meet more stringent standards after a public rule-making process has occurred.
 - d. Other proposals affecting farmers would prohibit them from plowing too close to lakes and streams to keep stream banks stable and less vulnerable to erosion.
6. For building developers, NR 151 revisions strengthen what must be done after construction is finished to keep water from running off. The changes would encourage efforts to let the water soak in and stay on the site instead of running off the land or off paved areas as polluted runoff.
7. Proposed NR 151 revisions affecting municipalities would let some of them have more time to meet a 2013 deadline to reduce urban runoff by 40 percent of the pollutants carried in storm water.
8. NR 151 will provide us with additional tools to better implement a balanced point source-nonpoint source approach that is needed for all of Wisconsin's water resources and in particular, many of our impaired waters, and it will enhance our ability to provide clean water that our citizens expect.



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

July 21, 2010

Representative Amy Sue Vruwink
Chair, Assembly Committee on Agriculture
Room 112 North
State Capitol
P.O. Box 8953
Madison, WI

Subject: Clearinghouse Rule 09-112

Relating to runoff pollution performance standards and prohibitions, the targeted runoff management grant program and the urban nonpoint source and storm water management grant programs, and affecting small business.

Dear Chairperson Vruwink,

The need to update this rule is real from both water quality and agricultural perspectives. The Department of Agriculture, Trade and Consumer Protection believes that the proposed changes address environmental concerns while ensuring that agriculture can comply in cost-effective ways.

The proposed revisions to NR 151 and 153 seek to address gaps in current law related to implementing water quality improvement plans (TMDLs), a tillage setback to streams, ensuring compliance with nutrient management plans, and expanding the definition of direct discharges to include runoff from production areas. DNR conducted statewide hearings and numerous meetings with stakeholders, including DATCP, to address concerns related to this rule.

DNR resolved all the issues of significance to the Department in its final draft of the rules. We commend DNR for its willingness to cooperate with the Department and to support Wisconsin agriculture with these needed and useful changes.

Sincerely,

Rod Nilsestuen
Secretary

Agriculture generates \$51.5 billion for Wisconsin

Submitted by: *How Kuehn*
252-9325
rwk@dewitross.com
7/21/10

Ag Groups Support NR Board Approval of NR 151

On Wednesday, June 23rd, the Natural Resources Board approved a *revised* version of NR 151, Wisconsin's nonpoint source pollution rule. As a result of those revisions, agricultural groups including the Wisconsin Farm Bureau Federation, Wisconsin Corn Growers, Wisconsin Potato & Vegetable Growers Association, Wisconsin Pork Association and Wisconsin Cattlemen's Association spoke in support of the revised rule. A link to the joint press release issued by these groups is available online at: <http://www.wfbf.com/archive/jhtmArchive/showPage.aspx?page=15728.htm&id=15728>.

Key revisions to the rule included:

- **TMDL Performance Standard – Admin Rules Required:** NR 151 now requires administrative rule procedure to require compliance with more stringent or additional performance standard that is incorporated into a TMDL. Under the previous draft, compliance with a TMDL that differed from the NR 151 performance standards could be required with no additional administrative process. The final draft includes an administrative rule process for any more stringent or additional standard in a TMDL. NR 151.005: "If compliance with a more stringent or additional performance standard, other than the performance standards contained in this chapter, is required for crop producers or livestock producers to meet a load allocation in a US EPA and state approved TMDL, the department shall use the procedure in s. NR 151.004 to promulgate the more stringent or additional performance standard before compliance is required."
- **Tillage Setback Reduced:** The final rule requires tillage setbacks of 5 feet instead of 20 feet on farm fields adjacent to surface water. The streambank integrity must be maintained. A tillage setback cannot exceed 20 feet.
- **Pastures Clarified:** Under the final rule, farmers who engage in supplemental feeding of livestock in pastures do not fall under rules designed for feedlots. (Pasture *does not* include cattle lanes, high traffic areas or supplemental feeding areas.)
- **Phosphorus Index:** The final rule creates a phosphorus index (PI) of 6 is for cropland. The accounting period for a field's phosphorus index is not retroactive as originally proposed. Also, the phosphorus index will be codified and date-stamped. The maximum one-year phosphorus index is increased from a PI of 10 to a PI of 12 to accommodate the unique needs of various crop rotations and agricultural practices. Finally, flexibility was included in the rule for producers to use an alternative calculation if the PI is not applicable to a particular crop or situation.
- **No Change to Nutrient Management Standard:** The hearing draft of the rule required commercial fertilizer and other nutrients to be applied in conformance with a nutrient management plan that is "**designed to minimize the discharge of nutrients** to waters of the state for the purpose of complying with state surface and ground water quality standards." The final draft goes back to current law which allows nutrients to be applied in accordance with crop needs (NRCS 590).

**Assembly Committee on Agriculture
Public Hearing on Proposed Revisions to NR 151 - Wednesday, July 21, 2010
Clearinghouse Rule 09-112**

Good Morning Madam Chair Vruwink and Members of the Committee:

I am David Jelinski and I am here today on behalf of the Dairy Business Association (DBA) to testify in support of the proposed revisions NR 151 of the Wisconsin Administrative Code.

DBA represents milk producers, processors, dairy professionals and associated vendors in Wisconsin. Our goal is to ensure Wisconsin title's as "America's Dairy Land" by developing and growing the state's dairy industry and related infrastructure. Our mission statement is simple: "Keeping the Cows in Wisconsin."

On March 12, 2010, DBA submitted substantial written comments to the Department of Natural Resources (DNR) in opposition to proposed revisions of NR 151. We were concerned that the DNR did not have an adequate scientific basis upon which to justify the rules as proposed. We were also concerned that stakeholders had not been adequately engaged in this rulemaking process. DBA identified a number of specific concerns with the proposed revisions and requested that the Department engage stakeholders before moving the rulemaking package forward.

After the public comment period closed, the DNR did reach out to a number of stakeholder groups including DBA. The DNR proceeded to schedule several stakeholder meetings, and engage us in effective discussions on our concerns as well as the concerns of other stakeholders. We would like to thank Secretary Frank for his commitment to this process. We would also like to acknowledge our appreciation for the willingness of the Secretary's Office and DNR staff to address our specific concerns with the proposed revisions.

The result of our efforts is a set of agricultural performance standards that DBA can support. These standards hold much promise for improving our water quality while allowing adequate flexibility for practical on-farm implementation. We note, however, that water quality improvements will only happen if the DNR takes steps to actively and effectively implement this regulation. We intend to use our leadership position within the dairy industry to ensure that Wisconsin's dairy farmers understand their duties and comply with the new regulatory requirements. And, we look forward to continuing our positive working relationship with the DNR and our other partners in this regard.

Thank you for giving DBA the opportunity to comment on the final proposed revisions to NR 151. I would be happy to answer any questions or provide additional information.

Sincerely,

David Jelinski, Government Affairs Director
Dairy Business Association



John Muir Chapter

Sierra Club - John Muir Chapter
222 South Hamilton Street, Suite 1, Madison, Wisconsin 53703-3201
Telephone: (608) 256-0565 Fax: (608) 256-4562
shahla.werner@sierraclub.org <http://wisconsin.sierraclub.org>

Support adoption of Revisions to NR 151, Clearinghouse Rule 09-112, Non-Point Runoff Rules
Before the Assembly Committee on Agriculture, 07/21/2010
By Shahla M. Werner, Ph.D., Director, Sierra Club-John Muir Chapter

Good morning. Thank you for allowing me to comment today on behalf of our 15,000 Sierra Club members and supporters throughout Wisconsin. In effect since 2002, NR 151 addresses the serious problem of phosphorous runoff from nonpoint source pollution that threatens our 15,000 lakes, 84,000 river miles and over 1 million acres of wetlands. Proposed revisions will require farmers to implement best management practices and tighten up requirements for containing urban runoff, including that caused by construction. These changes will create tillage setback requirements, a phosphorus index, Total Maximum Daily Load (TMDL) performance standards, and wastewater standards. These rules go hand in hand with NR 217 that addresses point source pollution. Adopting both of these rules this year would be a huge step forward for improving water protection in Wisconsin. We commend the WDNR Natural Resources Board for unanimously approving these rules on June 23. Now we urge you to approve this comprehensive, common-sense approach to improving Wisconsin's water quality.

Support for addressing phosphorus runoff is strong. Over the past two years hundreds of Sierra Club members from throughout Wisconsin contacted their legislators and attended public hearings to support policies to protect our waterways from phosphorus found in consumer products. I want to thank all the members of this committee for your unanimous, bipartisan support for restricting phosphorus in lawn fertilizer. This law, along with 2009 Act 63, that will restrict phosphorus in household cleaning agents, are great first steps to addressing phosphorus pollution. But there is still much to be done to protect our fragile water resources.

Although addressing this problem won't come without costs, the costs of ignoring this problem are huge. Lake Kegonsa made the news just before the Fourth of July when a warning was released about blue-green algae there. This prompted scores of tourists to consider canceling their plans to spend the holiday in Wisconsin. Stories about heavy rains leading to construction erosion into our lakes continue to make headlines in Wisconsin. Failing to adopt changes to NR 151 will lead to more algae blooms, contaminated drinking water and fish kills that jeopardize public safety and threaten Wisconsin's 2.75 billion dollar per year sport fishing industry and our 13 billion dollar per year tourism industry.

For all these reasons and more, the Sierra Club urges you to adopt the proposed revisions to NR 151. We strongly support this measure as a positive step to reducing runoff pollution in our state. Thanks again for your consideration of this important matter.

TO: Members of the Assembly and Senate Committees on Agriculture

FROM: Paul Zimmerman

DATE: July 19, 2010

RE: Support NR 151

Earlier this year, the Wisconsin Department of Natural Resources (DNR) proposed to update administrative code NR 151, which contains regulations for nonpoint source pollution prevention for both agricultural and non-agricultural sources. Specific to agriculture, NR 151 establishes performance standards and prohibitions to reduce nonpoint source pollution from agricultural facilities and land.

Hundreds of farmers attended the public hearings across the state and either testified or submitted written comments on the proposed changes. After reviewing the comments, DNR modified its proposal to address the concerns raised by farmers. As a result, the Wisconsin Farm Bureau Federation supports NR 151 and requests your approval.

BACKGROUND

In 1997 state legislation was passed that directed the DNR and the Department of Agriculture, Trade and Consumer Protection (DATCP) to develop a new nonpoint source pollution prevention program in Wisconsin. DNR was directed to develop performance standards for agricultural activities. DATCP was then directed to develop best management practices that farmers would implement to meet the DNR's performance standards. The DATCP administrative rule is titled ATCP 50. Both NR 151 and ATCP 50 were finalized in 2002.

At the time the DNR adopted four performance standards for agriculture:

- * **Sheet rill and wind erosion:** Cropped fields must meet the tolerable soil erosion rate known as "T".
- * **Manure Storage Facilities:** All new, substantially altered or abandoned manure storage facilities must be constructed, maintained or abandoned according to accepted standards developed by the Natural Resources Conservation Service (NRCS).
- * **Clean Water Diversions:** Runoff from fields and farm buildings must be diverted away from contacting feedlots, manure storage areas and barnyards located within 300 feet of a river or stream or 1,000 feet of a lake or pond and in areas susceptible to groundwater contamination and those up gradient from private wells.
- * **Nutrient Management:** Nutrients being applied to fields must be done in accordance with an acceptable nutrient management plan, which is usually the NRCS technical standard 590.

In addition to these four performance standards, the DNR was also directed to include the following four prohibitions for livestock operations.

- * No overflow of manure storage facilities.
- * No unconfined manure piles within 300 feet of a stream or 1,000 feet of a lake or areas susceptible to groundwater contamination.
- * No direct runoff from a feedlot or stored manure into state waters.
- * No unlimited access by livestock to state waters where the concentration of livestock could prevent the maintenance of adequate sod cover.

A key provision contained in the 1997 legislation also stated that these performance standards were not enforceable unless at least 70 percent cost-sharing was made available to farmers in order to comply. However, in order to participate in a variety of other state or county programs, compliance was required without cost-sharing. Examples included the Farmland Preservation Program, county manure storage ordinances, locally-adopted state standards for the siting of livestock operations and DNR permits for livestock farms over 1,000 animal units.

CURRENT REVISIONS

The DNR has proposed to modify NR 151 to include four new performance standards and revise three of the existing performance standards. (The initial proposed modifications are in italics, WFBF's comments are in bold, and the final DNR proposal is listed last.)

The revisions to existing performance standards are:

- 1) *The sheet, rill and wind erosion standard would be expanded to include pastures as well as cropland.*

Farm Bureau's Response: While we understand the need to ensure that pasture land does not have significant soil erosion; we need to be certain that supplemental feeding still can occur in pastures and that the tolerable soil loss calculation is across the entire pasture.

DNR has modified its proposal by including language in the definition of feedlot to ensure that supplemental feeding in pastures is allowed. Further, DNR went on to specify that the soil erosion standard for pastures does not begin until the NRCS technical standard for soil erosion is updated to properly to address pastures.

- 2) *Manure storage facilities standards for volume and margin of safety requirements would be updated to align with NR 243, another DNR regulation that regulates animal feeding operations and manure storage facilities.*

Farm Bureau's Response: We support consistency of various regulations between agencies, and seek no changes to this revision at this time.

The original DNR language remains.

- 3) *Nutrient management standards would be modified to focus on the delivery of nutrients to surface waters rather than on soil concentration levels.*

Farm Bureau's Response: We are very concerned about this change to nutrient management planning. It could significantly alter a farmer's crop rotation and reduce yields. This provision needs to be modified to ensure that farmers still can raise crops that produce yields that make them profitable.

DNR removed this provision. Nutrient applications remain based upon the agronomic needs of the crop provided they are consistent with the other performance standards in the rule.

The new performance standards include:

1) Tillage setback: No tillage would be allowed within 20 feet of the top of the channel of a water body. Harvesting of self-sustaining vegetation within the tillage setback would be allowed.

Farm Bureau's Response: We oppose this performance standard as proposed. In essence this is mandating a 20-foot ribbon buffer along all rivers and streams, and possibly including intermitted streams. Certainly the installation of buffers may be needed in specific areas. We propose different wording that would say "Tillage activities should not compromise the integrity of the stream bank" to ensure this is truly a performance standard.

DNR has established a 5 foot tillage setback from the top of channel. In situations where this is not adequate, it can be increased up to 20 feet.

2) Phosphorous Index (PI): The PI is a runoff phosphorous loss risk assessment tool for cropland management planning. The new standard would specify a maximum PI of '6' averaged over the compliance period and set a PI cap of 10 for any individual year. The accounting period to calculate the PI would be the previous seven years plus the current year.

Farm Bureau's Response: In general it seems a PI of 6 is acceptable across the state. However, it could be an issue of concern for the vegetable and poultry industries; both of which are currently looking into this. The eight-year accounting period as proposed is unacceptable. Instead, a transition period would be needed, as many farmers do not have PI levels calculated for the past seven years. This would cause an undo and unnecessary work load for farmers and nutrient management planners. We propose starting the accounting period at the time of adoption of the rule.

DNR includes a phosphorous index of 6 over an eight year accounting period that begins at the time a farmer is required to comply. Further, DNR increased the maximum PI in any given year from 10 to 12 to accommodate various cropping rotations and nutrient applications.

3) Process wastewater handling: It would prohibit the discharge of significant amounts or processed waste water from livestock production areas to waters of the state. Processed waste water includes spillage or overflow from animal watering, water from cleaning facilities such as pens, barns and manure pits, and water that has come in contact with raw materials such as bedding, silage, grain and feed or animal byproducts such as milk, manure and mortalities. This would include milk house waste and leachate from feed storage areas.

Farm Bureau's Response: There needs to be clarification on what is a significant discharge. We oppose requiring all feed storage areas to install a leachate control system, as this should be a site specific determination.

DNR included language contained in existing NR 243 that prioritizes the best management practices needed to comply with this performance standard based upon the type of leachate, the volume of leachate, and the likelihood of the leachate reaching waters of the state.

4) *Total Maximum Daily Loads (TMDLs): It would require that best management practices be designed to meet the water quality objectives of an impaired water body.*

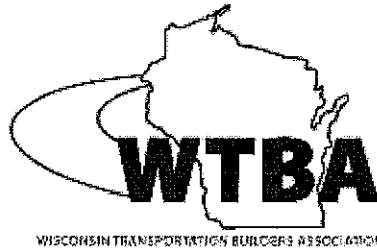
A TMDL is an analysis of the amount of a pollutant from all sources a water body can receive before exceeding water quality standards. This performance standard would only apply in impaired watersheds. (See map of where these impaired water bodies are located in Wisconsin) This performance standard would give the DNR the authority to establish (for example) a PI less than 6 for fields in impaired watersheds.

Farm Bureau's Response: We oppose the inclusion of TMDLs as a performance standard. As proposed, the DNR (without legislative oversight) could go from farm to farm and require a lower PI that could eliminate the cropping of fields, drastically change crop rotations or prohibit the application of manure. The DNR already has the authority to do targeted performance standards for impaired waters through the nonpoint program. This proposal short-circuits the administrative rule process, and therefore, this provision has to be removed.

DNR has removed TMDLs as a performance standard and has indicated that the agency will utilize its targeted runoff management authority, if needed, to adopt more restrictive performance standards in impaired watersheds. It should be noted that this is done via formal rule making which requires public hearings and legislative oversight.

CONCLUSION

WFBF appreciates the willingness of DNR to work with farmers to resolve the differences in NR 151 to make them workable for the agricultural community, while at the same time protecting the environment. WFBF respectfully requests your support for the proposed changes without modifications.



WTBA Testimony on NR 151

Assembly Committee on Agriculture

July 21, 2010

**Tom Walker
Director of Government Affairs
Wisconsin Transportation Builders Association**

Thank you, Chairperson Vruwink, for the opportunity to testify on this important rule today.

WTBA is a statewide organization of more than 260 contractors, consultants, and associated businesses. Our members design, build, rehabilitate, improve, reconstruct, expand and modernize every form of transportation infrastructure, including state and local roads and bridges, airports, railroads, and bicycle and pedestrian infrastructure. Most of our contracting members are multi-generational Wisconsin companies that employ numerous Wisconsin workers and pay family supporting wages and benefits.

We would note that unjustified regulatory costs will result in fewer workers and fewer jobs.

NR 151 is a very complex rule, which greatly affects the Agricultural community. I am not here to talk about those issues. I commend the Committee's efforts to assure that the provisions of NR 151 in this area are clear, fair, and workable.

I am here to talk about a different issue in the proposed rule. The current rule contains an exemption from erosion control regulations for land-disturbing activities on parcels under one acre in size. I want to emphasize that this exemption is incorporated in current and proposed federal stormwater rules.

The proposed rule removes the exemption, despite the objection of the construction industry. Our request is straightforward: restore the existing exemption.

The department argues that it has no choice. It believes that the transfer of Comm 60 jurisdiction to DNR in 2009 ACT 28 requires that all of the less than one acre exemptions for all other construction activities, including those on state and local transportation projects, be repealed in NR 151 as proposed.

We strongly disagree with this interpretation of ACT 28. That provision was confined to Comm 60 projects, and not universal. The Legislature also provided for a transition process requiring separate rulemaking. It did not say to apply erosion control to all projects less than one acre.

If the controversial elimination of the exemption for under one acre were a DNR priority, they should have included the concept in its scoping statement. The Department did not do that.

In the case of transportation, the rule continues a separate subchapter for transportation projects, precisely because transportation projects are unique. They are linear, and different than a normal commercial construction site. There is no logical reason to remove the exemption for transportation projects. They were never subject to Comm 60.

I also want to emphasize that transportation projects are public, not private. Every effort is made to minimize taking additional land, say for retention ponds, in order to protect adjacent land uses like agriculture. Contractors do not own the land the project is built on; they must follow the plans determined by the public sector owners of these facilities.

They have no authority to acquire additional land to manage stormwater. The smaller the project (less than 1 acre), the fewer options to retain stormwater will be available.

DNR has included language in the rule saying that it will not require erosion control plans on projects under 1 acre, to reduce erosion control plan costs for owners of transportation facilities. However, that actually makes the situation worse.

Why then do we care?

First, it sets a precedent for regulation of transportation projects not found in any other state to the best of our knowledge. It is not consistent with increasingly rigorous federal rules. We fear that future federal rules may apply to all transportation projects covered by state rules. This would result in the requirement for complex numeric analyses for what are, by consensus, very minor projects.

Second, the lack of a required erosion control plan is a problem for both transportation project owners and for contractors. What are local governments supposed to require? If the project specifications are silent, what then are the requirements that a contractor must follow? This approach adds greatly to contractor risk, when contractors should be focused on doing a good job on significant land-disturbing projects. Contractors are very supportive of stormwater controls, but they need to know what is required before they submit a bid.

Third, going beyond the requirements of federal law and rules should only occur with clear justification. To the best of our knowledge, the Department has no idea of the additional number of impacted sites, or the cost of compliance to what are by intent vague rules. Absent clear justification, the existing exemption should be retained. Fourth, removing the exemption will create unexpected costs challenges in rebuilding residential driving lots, or small parking lots, for example adjacent to bike trails.

We respectfully ask the Committee to require this change, for any project not previously covered by Comm 60. At a minimum we ask that the exemption for transportation projects be retained rather than repealed.

WTBA members are proud of their record in stormwater retention, since the creation of NR 151 and Trans 401. DOT processes under these rules provide a clear roadmap to success.

Thank you for your close attention to our request. I would be please to answer any questions.

Wisconsin Wildlife Federation

Testimony Before the Assembly Agriculture Committee on Cr-09-112---Runoff Performanc Standards and Prohibitions

Chair Vruwink, members of the Assembly Agriculture Committee, thank you for the opportunity to present brief comments today on behalf of the Wisconsin Wildlife Federation and the 168 hunting, fishing, trapping and forestry-related organizations that belong to the Federation. Our many members who hunt, fish and trap are strong supporters of efforts to increase the water quality in the many lakes and streams in this state that do not meet water quality standards as a result of excessive nutrients. The result of excessive weed and algae growth in Wisconsin lakes and streams has a wide range of damaging impacts to hunting, fishing and trapping in Wisconsin waters. These include significant degradation to fisheries habitat, the danger of blue-green algae to the health of our hunting dogs, to actual loss of the ability to navigate in certain waters at times of the year.

We applaud the efforts of the Department staff who have worked long and hard to make the improvements to the requirements of NR 151, 153 and 155. They have done a fine job in advancing the reduction of phosphorus in our waters. It was difficult to bring all of the different groups of interest together to come up with a set of rules that virtually all can live with. It took many years and great skill to do this.

However, these regulations, as good as they are, will not restore water quality in the hundreds of nutrient impaired lakes and streams in this state unless there is substantially increased funding for cost-sharing for crop and livestock producers to implement the requirements. As you know, there is a statutory requirement that a producer does not have to implement these practices unless there is seventy-percent cost sharing provided. We recognize the need to have this cost-sharing for producers. But, until there are dramatic increases in cost-sharing budgets, these regulations are only words on paper.

To be more specific, at the current rate of funding for cost share dollars, there will be excessive nutrient loadings to our lakes and streams and they will not meet state and federal water quality standards during the lifetime of your children and possibly your grandchildren. The need for increased cost share funding is one that closely unites the agriculture, municipal, and conservation communities. As legislative leaders in the agriculture community, please make an increase in such funding a high priority as you deliberate future state budgets. Our lakes and streams are an important part of Wisconsin's economy and tradition. These important state assets need to be restored to meet water quality standards for our citizens and the tourists we rely on for revenue.

Thank you again for the opportunity to testify here today on behalf of the Wildlife Federation.

Submitted by: George Meyer, Executive Director
Wisconsin Wildlife Federation---~~June~~ 21, 2010

July



RIVER ALLIANCE of Wisconsin

July 21, 2010

**Statement by Denny Caneff, Executive Director, to the Assembly Agriculture Committee in Support of
Clearinghouse Rule 09-112 (natural resources administrative rules regarding polluted runoff)**

The River Alliance of Wisconsin supports this rule that builds upon and strengthens administrative rules NR 151, 153, and 155.

After mercury, phosphorus is the most serious and challenging pollutant for surface waters in Wisconsin. The results of phosphorus pollution, especially from agriculture, are evident in the algae blooms that occur this time of year across the state, from Lake Michigan to the St. Croix River. If there is one water quality issue that concern, and frustrate, our members, it is the algae blooms caused by polluted runoff.

The aspects of the rule that deal with polluted runoff from agriculture are of particular interest to us, because for the first time, there is a target number set by this rule that farmers have to hit for each of their fields. This so-called "phosphorus index" can be measured through the nutrient management planning that every farm is required by law to do, and if the index is high for a particular field, the remedies are generally not complicated, though they could be expensive. As for expense, these new rules do NOT change the statutory requirement that 70% of the cost of a pollution control on a farm is shared with the farmer by another party – usually state or county government.

Your approval of these rules now is critical, as it comes at the same time as another set of rules – phosphorus standards for rivers and lakes that must be met by "point" sources such as factories and cities – are being reviewed and (we hope) approved by the legislature's natural resources and environment committees. While these are two separate rule packages, these non-point rules are the other side of the same coin of controlling phosphorus pollution. The promise of one of these rules cannot be fulfilled without the implementation of the other.

The two rule packages, in tandem, represent a real breakthrough in managing what is a persistent and, in some cases, increasingly dangerous pollutant for Wisconsin. (Some algae are toxic.) We urge the Assembly Agriculture Committee's approval of Clearinghouse Rule 09-112.

Everyone deserves healthy rivers



Our Mission:

"To educate and provide opportunities for people of diverse interests to work together to improve the environmental, recreational, cultural, and economic resources of the Rock River Basin"

July 21, 2010

Representative Amy Sue Vruwink, Chair
Assembly Agriculture Committee
State Capitol P.O. Box 8953
Madison, WI 53708

RE: NR 151,

Dear Representative Vruwink and Members of the Assembly Agriculture Committee,

The Rock River Basin spreads over 10 counties inhabited by more than 750,000 residents. Urban centers include Madison, Janesville and Beloit as well as smaller cities such as Waupun, Watertown, Oconomowoc, Jefferson and Beaver Dam. Although the basin is experiencing rapid growth, it is still largely rural in character with agriculture using nearly 75% of the land area. Recreation and wildlife abound on over 150 lakes and impoundments and on 2325 miles of streams. The headwaters of the Rock feed the Horicon Marsh - an internationally recognized wetland and bird sanctuary.

The Rock River and many of its tributaries do not meet water quality standards. The Waters of this basin are impaired by excessive sediment and phosphorus. In the coming years, the Rock River Coalition will be in the front lines to help implement the Rock River Recovery Plan, which will be guided by the TMDL currently being developed for our river basin.

The revisions to the NR 151 Non-point program you are considering today will be tools that are critical to the success of this huge, long-term endeavor. The proposed rules will strengthen our ability, over time, to achieve significant improvements of the Rock River and the other impaired waters of its basin.

On behalf of the Rock River Coalition Board, I wish to express our strong support NR 151 as presented, and the important balance they represent in controlling polluted runoff from both rural and urban sources.

Thanks for your attention – we look forward to being an important partner in the recovery of the waters of our Rock River Basin, and ask that you give us the tools we need to do a good job.

Sincerely,

A handwritten signature in cursive script that reads "Lisa Conley".

Lisa Conley, Past President
516 Lac La Belle Drive
Oconomowoc, WI 53066
262 567 5947



122 State Street, Suite 200, Madison, Wisconsin 53703-2500

Telephone: 608.251.7020 Fax: 608.251.1655

Website: www.cleanwisconsin.org

(Formerly Wisconsin's Environmental Decade)

**Testimony of Amber Meyer Smith, Program Director, Clean Wisconsin
Clearinghouse Rule 09-112
Revisions to NR 151 pertaining to performance standards to address polluted runoff
Assembly Committee on Agriculture
July 21, 2010**

Clean Wisconsin is the largest state environmental organization with thousands of members, and was founded as Wisconsin's Environmental Decade. We focus on clean air, clean energy and clean water issues, and celebrated our 40th anniversary in April.

Thank you for the opportunity to comment on this proposed rule revision today. Clean Wisconsin supports both the revisions to NR 151 and the phosphorus rule revisions that the Senate and Assembly Environment Committees are considering. The two rules, when combined, address the two major sources of phosphorus and are a step forward in addressing polluted runoff into our waterways.

Right now, Wisconsin's waterways are in trouble. Nearly half of our waterways are so polluted due to runoff that they are federally listed as impaired. Polluted runoff contains dirt and nutrients like phosphorus. Combined, phosphorus and sediment degrade water quality and impair ecosystems. Perhaps worst of all, they cause algae in many cases; one pound of phosphorus can cause 500 pounds of algae to grow.

Algae, especially blue-green algae, is becoming a serious water quality issue across the state. Blue-green algae is harmful to aquatic ecosystems, and is harmful to human and animal health. Once algae blooms, it dies and rots. During that process, it uses oxygen in the water, and creates a dead zone where fish and other aquatic life can't live. As this occurs more frequently, it changes the nature of the ecosystem. Blue-green algae is toxic for human, pets and wildlife. There have been reports of dog deaths due to swimming through blue-green algae blooms in recent years, and people have been getting sick from coming in contact with it or breathing in fumes from it.

Problems with blue-green algae aren't limited to environmental and human health; these problems are affecting our tourism and fishing economies throughout the state. Tourism takes a hit from polluted runoff in terms of lost beach days and related economic activity, lost boating revenue, lost fishing and related revenue, and more. Last year in Madison alone there were 10 beaches closed for a total of 90 days – all by July 17th – because of potentially dangerous algae blooms.

Fortunately, this is a problem we can do something about as a state. On average, 80% of polluted runoff comes from agricultural fields. Polluted runoff comes off of fields when rain or snowmelt runs off, carrying dirt and pollutants with it. The amount of runoff pollution from fields depends on soil type, slope of the field, type of crop, type of soil management practices, the amount of

phosphorus in the soils, and more. Many of these factors can be managed by farmers, and across an agricultural operation, you frequently will see a wide variation of runoff from fields.

As you know, all of these practices will require cost-share dollars to be implemented. This rule allows the most polluting farm fields to be targeted, and get help cleaning up. In Dane County, for instance, they have targeted a few farms that have serious manure pollution problems, and are helping pay to clean them up. This rule will give communities another tool in making sure appropriate pollution controls are put in place. Very few farms will be affected by this rule, and the farms that will be affected are the farms that most need to control pollution.

Clean Wisconsin supports this rule as a positive step forward, but as with all compromises there are things we think could be stronger in the package before you.

Having a Phosphorus Index of 6 is not an impressive standard. The Phosphorus Index is a tool to predict runoff from agricultural fields, and allows a farmer to make predictions based on certain practices; the number of the PI is the pounds of phosphorus predicted to runoff of each acre in a normal weather year. The Wisconsin Phosphorus Index homepage, run by the UW and UW-Extension, categorized a PI of 6 as one that has can result in "excessive likelihood of runoff." Clean Wisconsin does not believe adequate protections for our waterway should allow for an excessive likelihood of pollution.

Secondly, a five foot tillage setback is not protective enough of water quality. It is unfortunate that this rule does not set a more protective standard such as those recommended by the buffer initiative.

We support the rule with its PI of 6 and cap of 12 and its 5 foot tillage setback because it will set a standard of improvement for some of the most problematic fields in the state. As I noted earlier, this rule package is a positive step forward in an area where Wisconsin has to do better in protecting our waters. We urge you to support this rule.



WISCONSIN LIQUID WASTE CARRIERS ASSOCIATION, INC.

16 N. Carroll Street, Suite 900, Madison, WI 53703
Telephone: (608) 255-2770
Fax: (608) 251-8192

July 21, 2010

Assembly Agriculture Committee
c/o Rep. Amy Sue Vruwink
Room 112 North, State Capitol
Madison, WI 53708

Dear Committee Members,

My name is Ann Gryphan and I am here today on behalf of the Wisconsin Liquid Waste Carriers Association, which is a nonprofit trade association comprised of approximately 200 septage servicing companies throughout the state.

Although the Liquid Waste Carriers Association understands that tighter regulations pertaining to phosphorus – both at wastewater treatment plants and nonpoint sources – are on the horizon, we have concerns about how these rules will indirectly affect our industry.

In 2009, an estimated 800 million gallons of septage were removed from an estimated 732,000 private onsite wastewater treatment systems such as holding tanks and septic tanks in the state of Wisconsin. This waste can be disposed of at a municipal wastewater treatment plant or via land application. However, it is not uncommon to see some treatment plants in the state refuse to accept waste from private septage carriers - they either do not have the capacity to accept outside waste, or they simply do not want to "deal with it." And with phosphorus rules pending that would require treatment plants to reduce their phosphorus output, we anticipate that more and more treatment plants will simply refuse to accept septage from private carriers.

Meanwhile, landspreading options are dwindling as well. Urban sprawl is taking away agricultural land for landspreading, and the DNR is becoming more restrictive with land application site approvals. Clearinghouse Rule 09-112 will further exacerbate the problem, as increased nutrient management standards for farmers will potentially squeeze out septage disposal companies from agricultural sites.

If septage haulers are not welcome at treatment plants AND landspreading is further restricted, what solution do state leaders have for the disposal of this waste?

These rules could greatly impact not only our industry, but the hundreds of thousands of homeowners who have private onsite wastewater systems in their yards. We foresee a septage disposal crisis in coming years that must be addressed. The Wisconsin Liquid Waste Carriers Association believes that increased use of septage storage facilities is one possible answer, and we would like to see the DNR revise its rules to ease permitting requirements for septage storage facilities.

Sincerely,
Ann Gryphan, Association Manager