

**OPERATIONAL AGREEMENT  
 BETWEEN DNR & TREMPEALEAU COUNTY LAND CONSERVATION  
 DEPARTMENT  
 FOR THE  
 ADMINISTRATION AND IMPLEMENTATION OF AGRICULTURAL  
 NONPOINT POLLUTION PERFORMANCE STANDARDS AND PROHIBITIONS  
 UNDER NR151 AND NR243**

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**Appendix A. Working with Landowners to Implement  
 Agricultural Performance Standards and Prohibitions Under NR 151**

Overview and Flow Chart

- Letter Type A
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## Purpose

This memorandum of understanding is an operational agreement between the Trempealeau County Land Conservation Committee and the Wisconsin Department of Natural Resources, Western Rivers Basin Team.

This MOU has been developed by the Trempealeau County Land Conservation Committee (LCC) and the Wisconsin Department of Natural Resources (DNR) to clarify their respective roles and responsibilities as needed to:

- Implement and enforce agricultural nonpoint pollution performance standards and prohibitions established in ch. NR 151, Wis. Adm. Code.
- Implement ch. NR 243, Wis. Adm. Code as it applies to the permitting of livestock operations and the investigation of livestock facility complaints.

This agreement defines the commitment of each party to conduct administrative tasks that have been defined by Wisconsin conservation agencies as standardized components of a program delivery system. The standardized components are in a guidance document titled Implementation Strategy for NR 151 Agricultural Performance Standards and Prohibitions<sup>1</sup> (hereafter referred to as the State-wide Implementation Strategy).

Specifically, this agreement clarifies how the DNR and the County will:

- Incorporate the State-wide Implementation Strategy into routine agency operations.
- Systematically evaluate and define the level of agency commitment to the NR 151 and NR 243 workload using a county-sponsored annual needs assessment and interagency work planning process.
- Conduct information and education activities.
- Systematically select and evaluate parcels to determine compliance with standards and prohibitions.
- Prepare compliance reports and notify landowners of compliance status.
- Provide technical assistance and cost-sharing funding as available to allow landowners to meet performance standards and prohibitions.
- Issue notice letters under NR 151.09 and NR 151.095 as appropriate.
- Monitor compliance.
- Conduct enforcement activities.
- Develop annual reports.

<sup>1</sup> This document was prepared jointly by WI Dept. of Natural Resources, WI Dept. of Agriculture, Trade, and Consumer Protection, the WI Land and Water Conservation Association, and the WI Association of Land Conservation Employees (April, 2002). It has been approved by the Wisconsin Land and Water Conservation Board as Appendix E to the Land and Water Resources Management Plan Guidelines. The document can be found at <http://dnr.wi.gov/org/water/wm/nps/rules/NR151strategy.htm>.

### **A. As a basis for this agreement, the parties agree:**

1. State statutes and associated administrative rules establish the requirement that agricultural performance standards and prohibitions, established in NR151, must be implemented. (ss. 92.07, 92.10, 92.105, 92.14 and 281.16, Wis. Stats., chs. NR 151 and ATCP 50, Wis. Adm. Code.)

2. The responsibility and authority to administer and implement the agricultural performance standards and prohibitions has been delegated through State statutes and administrative rules to DNR, DATCP, and local municipalities, including the County Land Conservation Committees.
3. DNR is the state agency responsible for administering NR 243, and for implementing NR 151.09, and NR 151.095. Notes in NR 151.09(2) and NR 151.095(2) state the DNR's intent to rely on County Land Conservation Committees to fully implement performance standards and prohibitions and to develop intergovernmental agreements to guide implementation.
4. DATCP is the lead state agency responsible for administering staffing grants under ATCP 50.26 for base level conservation, priority watershed activities and performance standards & prohibitions compliance.
5. DNR has authority, but limited funding, to fund best management practices and support local staff under Targeted Runoff Management grants.
6. The Trempealeau County Land Conservation Committee employs qualified staff with the necessary contracting, planning, and engineering expertise needed to implement the NR151 standards.
7. Implementation of agricultural nonpoint standards and prohibitions is contingent upon the availability of trained technical staff and public cost share. Without funding and staff support for contracting and technical assistance, few, if any, contracts will be executed, or conservation practices constructed to implement performance standards and prohibitions.
8. Trempealeau County and the DNR share common goals and objectives toward water resources management and nonpoint source pollution control.
9. To optimize use of available State and County staff and program funding, it is in the mutual interest of the County and DNR to clarify program responsibilities and to make commitments necessary to implement State law and administrative rules.
10. Either party may cancel its agreement with 90 days written notice.

**I. Component 1: Plan the Implementation Approach**

**A. The parties agree:**

1. The State-wide Implementation Strategy provides a structural framework that can be used to discuss and plan how the parties will cooperate to implement the agricultural performance standards and prohibitions.
2. This memorandum of understanding and the County Division of Land Management Plan can be used as the means to document procedures for implementing NR 151.

3. Guidance prepared by DNR and incorporated as an appendix to this agreement (*Working with Landowners to Implement Agricultural Performance Standards & Prohibitions Under NR 151*), is useful for making formal correspondence with landowners concerning compliance issues.
4. The agricultural performance standards and prohibitions are designed to achieve water quality standards by limiting nonpoint source water pollution.
5. NR 151.004 contains a process for developing targeted performance standards where implementation of statewide performance standards and prohibitions may not be sufficient to meet water quality standards.
6. Sections NR151.09, NR 151.095, ATCP 50.04 and ATCP 50.08 require agricultural landowners and operators to meet agricultural nonpoint performance standards and manure management prohibitions. These requirements are contingent upon sufficient cost sharing for existing facilities and practices.

**B. Trempealeau County will, within the capacity of available resources:**

1. Use this memorandum of understanding to coordinate implementation of agricultural performance standards and prohibitions.
2. Implement select portions of the administrative rules and components of the State-wide Implementation Strategy, as defined in this agreement.
3. Revise the County Division of Land Management Plan by July 31, 2007, and include a comprehensive strategy to ensure compliance with the performance standards and prohibitions required by NR151.
4. Focus NR 151 implementation activities on new and expanding cropland practices and livestock facilities.
5. Cooperate with DNR to investigate facilities to determine compliance with NR 151; design appropriate best management practices to bring non-compliant facilities into compliance and pursue cost-sharing funds when required.
6. Cooperate with DNR to identify priority areas where the county may apply for funding under the Targeted Runoff Management Program to alleviate violations of performance standards and prohibitions that result in significant pollutant loadings or impacts to waters of the State.
7. Target its efforts, including education, evaluation, issuing notification letters under NR 151.09 and NR 15.095, and enforcement, toward *achieving* compliance for new and expanding cropland practices and livestock facilities and at *maintaining* compliance for existing and new practices and facilities.
8. Cooperate with DNR in identifying the need for targeted performance standards.

**C. DNR will, within the capacity of available resources:**

1. Use this memorandum of understanding to coordinate implementation of agricultural

performance standards and prohibitions.

2. Implement select portions of the administrative rules and components of the State-wide Implementation Strategy, as defined in this agreement.
3. Assign an agency representative to actively participate in the County Division of Land Management planning process and provide input into the development of the County strategy to implement agricultural nonpoint performance standards and prohibitions.
4. Target its efforts, including education, evaluation, issuing notification letters under NR 151.09 and NR 15.095, and enforcement, toward:
  - a. Areas draining to Outstanding and Exceptional Resource Waters. In doing so, the Department's efforts will be directed toward *achieving* compliance for new and expanding cropland practices and livestock facilities and at *maintaining* compliance for existing and new practices and facilities.
  - b. Areas draining to waters on the federal list of impaired water bodies (303d list), waters not meeting water quality standards or designated uses and source water protection areas. In doing so, the Department's efforts will be directed toward *achieving and maintaining* compliance for existing and new practices and facilities.
5. Work jointly with Trempealeau County to set mutual priorities for implementing agricultural performance standards and prohibitions.
6. Provide Trempealeau County with guidance needed to fulfill its agreed-upon roles and responsibilities to implement portions of NR 151.
7. Conduct high priority implementation activities as needed to supplement county roles and responsibilities agreed upon in this agreement.
8. When appropriate, identify the need for targeted performance standards.

## **II. Component 2: Define Level of Agencies' Commitment to NR151 Workload**

### **A. The parties agree:**

1. There must be a mutual understanding of each agency's responsibilities and level of commitment in carrying out implementation of agricultural performance standards and prohibitions, including implementation and enforcement activities identified under NR151.09 and NR151.095.
2. The extent of each agency's commitment is dependent upon the availability of public funds and agency priorities and, therefore, may be expected to change through time.

## **III. Component 3: Conduct Information and Education Activities**

### **A. The parties agree:**

1. That a structured information and educational program is a critical component of an agricultural nonpoint pollution control program.
2. An effective program will:
  - a. Educate landowners about the Wisconsin agricultural performance standards and prohibitions, applicable conservation practices, and cost-share grant opportunities.
  - b. Promote implementation of conservation practices necessary to meet performance standards and prohibitions.
  - c. Inform landowners about procedures and agency roles to be used statewide and locally for ensuring compliance with the performance standards and prohibitions.
  - d. Establish expectations for compliance and consequences for non-compliance.
  - e. Define target audiences, educational messages for each target audience, methods and activities to deliver the educational message to each target audience, anticipated unit costs for each activity, a proposed regional or statewide budget and a proposed implementation schedule.

**B. Trempealeau County will, within the capacity of available resources:**

1. Provide structured input into the development of a state-wide and regional information and education program to be designed by DNR to support and augment NR151 implementation efforts.
2. Within the limits of State funding allocated, implement information and education activities as scheduled through the County's LCC's annual work plan and financed through the County budget process.

**C. DNR will, within the capacity of available resources:**

1. Make available statewide information and education material to the County, and maintain an web site for access to the publications by the general public
2. Work with University of Wisconsin-Extension and DATCP to identify and develop information and education materials and activities needed on a statewide basis, and to make the materials accessible to Trempealeau County for use and dissemination.
3. Provide input into the planning of the Trempealeau County information and education program.

**IV. Component 4a: Determine Current Compliance through Records Inventory**

**A. The parties agree:**

1. Many crop and livestock producers in Trempealeau County, working independently or through public agencies, have adopted conservation practices as part of routine operations.
2. As a result of this conservation work, there are many croplands and livestock facilities that fully or partially comply with the agricultural performance standards and prohibitions.

3. Sections NR151.09(3)(b) and NR 151.095(4)(b) require existing cropland practices and livestock facilities that achieve compliance with performance standards and prohibitions to remain in compliance regardless of public cost share.
4. Sections NR 151.09(3)(d) and NR 151.095(4)(d) require new cropland practices and livestock facilities to comply with performance standards and prohibitions regardless of cost share.
5. To establish a baseline for program implementation, it is in the public's interest that documentation be made of the location of cropland practices and livestock facilities that were in compliance as of October 1, 2002, and to inform the landowners, in writing, of the compliance determination and the requirements to maintain compliance.
6. The Trempealeau County LCD has conducted a systematic review of public records to document the location of cropland practices and livestock facilities that were in compliance with Agricultural Performance Standard(s) as of the effective date of the rule.
7. State cost-share agreements, subject to contractual obligations of active operation and maintenance plans on or after October 1, 2002, were used to document the extent of current compliance achieved through previous public investments.
8. From the records review, Trempealeau County made a preliminary determination as to the location of cropland practices and livestock facilities that were clearly in compliance with all performance standards and prohibitions applicable to the parcel.
9. From the records review, Trempealeau County identified the location of parcels and operations that have records that are inconclusive and warrant an on-site evaluation to determine compliance under Component 4b.
10. Trempealeau County will use the tax parcel as the basic geographic unit for evaluating and reporting compliance. Where a tax parcel contains more than one livestock facility or cropland practice, the evaluation and reporting system will contain information to distinguish between facilities and practices based on whether they are new, existing, in compliance and out of compliance.

**B. Trempealeau County will, within the capacity of available resources:**

1. Document results of the compliance determination on standardized evaluation forms and compliance status report formats developed by the County.

**C. DNR will, within the capacity of available resources:**

1. Review Trempealeau County records evaluation forms and compliance status report forms for consistency with status determination and notification requirements under NR 151.09 and NR 151.095.
2. With regard to large scale livestock operations permitted under chapter NR 243:
  - a. Compile records of existing WPDES permits for Concentrated Animal Feeding

Operations (CAFO) and evaluate these records to determine compliance with NR 151 agricultural performance standards and prohibitions.

- b. When coverage applies, incorporate into WPDES permits standards that equal or exceed the requirements of NR151. (Note: The WPDES permit does not cover cropped fields where manure is not applied)
- c. Follow the compliance strategy and provide the County with copies of inspection check sheets and inspection letters sent to the facility. (Note: This strategy calls for two inspections every five years.)
- d. Provide the County with copies of portions of the WPDES permit application that describe a facility's manure storage, animal yards, and locations.
- e. Provide the County with copies of the manure management plan and its amendments that describe field locations, restrictions, manure application rates, and verification that fields meet "T".

*Note: The manure management prohibitions are contained in the permit, nutrient management through the manure management plan requires meeting N&P recommendation of UW Ext., meeting "T" is shown by 590 farm plan or some other approved equivalent, clean water diversions are met with the "zero" discharge up to the 25 year storm. Manure storage is met with requirement of NRCS standard and review of plans before construction and required monitoring by operator.*

#### **Component 4b: Determine Compliance through On-Site Evaluation**

##### **A. The parties agree:**

1. On-site evaluations are often necessary to document current resource conditions and current management practices, as a basis for determining compliance.
2. The accuracy of on-site evaluations will be enhanced if formal evaluation procedures and protocol are established, and standardized evaluation forms are adopted.
3. Greater consistency in conducting on-site evaluations can be achieved if a structured training program is established to educate staff about the standards, evaluation procedures, and requirements for program documentation.
4. New or expanding livestock facilities subject to regulations under NR 243 or the Trempealeau County Manure Storage Ordinance should be evaluated for compliance with performance standards and prohibitions. The evaluation should be conducted prior to issuance of the state or county permits.

##### **B. Trempealeau County will, within the capacity of available resources:**

1. Conduct on-site evaluations for whole tax parcels, as maintained on the Trempealeau County Real Property Tax Listing, to determine the extent of compliance with each agricultural nonpoint performance standard and prohibition which may apply to that parcel.
2. Within the limits of staff funding allocated by the State, systematically conduct onsite

compliance evaluations for livestock facilities and cropping practices that meet any of the following criteria:

- a. Apply for State cost-share funds, administered by Trempealeau County
  - b. Request on-site evaluations through the Trempealeau County Farm Evaluation and Certification Program
  - c. Seek permits issued through the Trempealeau County Animal Waste Storage Ordinance.
  - d. Are subject to a public complaint, submitted to the County or DNR .
  - e. Request LCD technical and/or financial assistance.
3. Systematically respond to public complaints, which allege that there is violation of state agricultural nonpoint performance standards and prohibitions, or which allege that there is an agricultural nonpoint discharge that may have an impact on waters of the state.
  4. Consult with DNR concerning non-routine evaluations, including evaluations of livestock facilities that are expanding and require DNR WPDES or county permits.
- C. DNR will, within the capacity of available resources:**
1. As part of the County LCC's annual work planning process have the opportunity to provide:
    - a. The location of livestock facilities and cropland parcels where, if standards are not implemented, there is a high potential for nonpoint discharge which may result in a significant impact to waters of the state.
    - b. Correspondence to the County requesting that an onsite evaluation be conducted, and a report be generated, to determine and to document the extent of current compliance.
  2. Provide a structured training framework and training opportunities to educate DNR and County staff about the agricultural performance standards and prohibitions, procedures for making compliance determinations, and policy aspects of program administration.
  3. Assist in developing and administering training about the use of management practices to achieve and maintain compliance with performance standards and prohibitions.
  4. Assist in the identification of environmental models, site review checklists, and other assessment tools used to evaluate compliance. Assist in providing training.
  5. Develop and provide standardized example evaluation forms and a companion electronic form/software application.
  6. Provide assistance to the county in making status determinations for high priority or potentially controversial situations, such as those that may require notification (See Attachment A, Letter Types C and D), lead to enforcement actions or may potentially be handled by the DNR under NR 243.
  7. Establish and implement a quality assurance program to establish and maintain a predefined standard of administrative performance.

8. Systematically respond to public complaints which allege that there is violation of state agricultural nonpoint performance standards and prohibitions, or which allege that there is an agricultural nonpoint discharge that may have an impact on waters of the state.
9. Consult with Trempealeau County concerning non-routine evaluations, including evaluations of livestock facilities that are expanding and require DNR WPDES or county permits.

V. **Component 5: Prepare Report and Notify Landowners of Compliance Status**

A. **The parties agree:**

1. To be valid, the results of a record review and/or on-site compliance evaluation must be documented and be based upon confirmed facts.
2. A standardized report format will allow for the systematic collection and reporting of evaluation results and will provide consistency through time.
3. A local process, independent of a formal administrative appeal under chapter 227, Wis. Stats., can be used to provide for a structured review of any local decision pertaining to an initial finding of compliance or other decision involving the interpretation of NR 151 or ATCP 50.
4. Farm evaluation forms, compliance status reports and associated correspondence are public records that should be retained by a custodial agency.
5. The compliance status report is a document that can be used to inform the landowner about the compliance status of his/her operation, seek confirmation of information used to determine current compliance, and, if necessary, resolve disagreements regarding compliance status.
6. The information included in a compliance status report provides important baseline information needed to determine, secure and allocate funding and technical assistance to address on-farm conservation needs.
7. A geographic data base and record keeping system is necessary to provide ready access to compliance reports completed over time.

*Note: The record-keeping system is the basis for a detailed accounting of the compliance history for each parcel evaluated. Information required for each tax parcel includes: location; receiving water; status (new; existing; in compliance; not in compliance) for each performance standard and prohibition applicable to the parcel; cost-share requirements; cost-share availability; notification history; compliance deadline; best management practice application & certification history; compliance history.*

8. Mapping can be used to show the cumulative location of cropland parcels and livestock facilities that have been evaluated, and the associated compliance status of these lands and facilities.

B. **Trempealeau County will, within the capacity of available resources:**

1. Establish a local process to provide for reconsideration of local administrative decisions

regarding findings of compliance as established in a compliance report. The LCC will be the administrative body that reconsiders decisions made by County staff in implementing NR 151.

2. Prepare a compliance status report to document the results of each record review and on-site evaluation conducted for a livestock facility or cropping practice. The compliance status report will include the following information:
  - a. Parcel status (new versus existing)
  - b. The current compliance status of individual tax parcels with reference to each of the performance standards and prohibitions.
  - c. 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.
  - d. Status of eligibility (costs eligible) for public cost sharing.
  - e. Grant funding sources and technical assistance available from Federal, State, and local sources, and third party service providers.
  - f. An explanation of conditions that apply if public cost share funds are used.
  - g. Signature lines indicating landowner agreement or disagreement with report findings.
  - h. The purpose of the report, the implications for achieving and maintaining compliance.
  - i. Process and procedures to discuss evaluation results with county and or state.
  - j. If appropriate, a copy of performance standards and prohibitions and technical design standards.
3. Provide a copy of the compliance status report and review it with each landowner to explain the content of the report and procedures available to contest the findings or request a reevaluation. In doing so, the County will use the administrative process outlined in the flowchart included in Appendix A. This includes preparing, signing and delivering to landowners Letter Types A and B from Appendix A.
3. In circumstances where the facts and findings of the compliance status report are not agreed to by the landowner, gather additional information and/or provide the landowner with written procedures and a timeframe to pursue reconsideration of local decisions.
4. In circumstances where livestock facilities or cropping practices are not in compliance, assess the relative pollution threat associated with the noncompliance and make a determination regarding the allocation of staff and financial resources under Section 6 of this agreement.
5. Keep and maintain public records, as the custodial authority, following requirements of the Wisconsin Open Records Law.
6. Develop and maintain a geographically-based recordkeeping system and database to record the location where farm evaluations have been conducted and where compliance status reports have been issued. At a minimum, the database will contain the following information:
  - a. Location of parcel(s) evaluated as included in the compliance status report, recorded by Town, Range, Section and  $\frac{1}{4}$   $\frac{1}{4}$  section.
  - b. Watershed where parcel is located
  - c. Owner of land at time of notification.
  - d. Date of compliance report.

- e. Date compliance report mailed to landowner.
  - f. End date for landowner request of status report appeal or reconsideration.
  - g. Date of request for reconsideration of compliance report (if submitted).
  - h. Date letter mailed to landowner.
8. Upon completion of the process, record the compliance status of each livestock facility and cropping practice on the Trempealeau County Track Index. The public documents to be formally recorded will be restricted to the following:
- a. Public cost-share and stipulation agreements.
  - b. Letters of compliance issued to document that all standards and prohibitions specified under NR151 are met (Status Letter B).
  - c. Letters of compliance issued to document that select standards and prohibitions specified on a cost-share or stipulation agreement are met (Status Letter E).
9. Develop and maintain a GIS web-based index map showing:
- a. The location of all tax parcels where compliance reports have been issued.
  - b. The locations where letters (Letter Type A, B) have been sent.
  - c. The date of the last revision.
  - d. The compliance status of the parcel.
10. Upon completion of the administrative process, issue and record a letter of compliance for each livestock facility and cropping practice, referenced to the appropriate tax parcel through the Trempealeau County Track Index.

**C. DNR will, within the capacity of available resources:**

- 1. Co-sign Letter Types A and B in cases where it concurs with the County's findings.
- 2. Provide support to Trempealeau County in explaining compliance determinations that DNR assisted in developing.

**Via. Component 6A: Secure Funding and Technical Assistance**

**A. The parties agree:**

- 1. Section 281.16(3), Wis. Stats., and sections NR151.09(3)(c), and NR151.095(4)(d) prohibit the State or municipalities from requiring that "existing" practices and facilities, which were not in compliance with the agricultural performance standards and prohibitions on the effective date of the rule, to come into compliance through State regulation or local ordinance unless public cost share funds are provided for eligible costs.
- 2. NR151.09(3) and NR151.095(4) identify compliance requirements for owners and operators of cropland practices and livestock facilities based on whether the practices and facilities determined to be "existing" or "new", and whether cost sharing is required and made available to the landowner or operator.
- 3. NR151 defines cost share availability requirements for funding administered by DNR under

281.65, Stats. ATCP 50 defines cost-share availability from any other source. These requirements must be clearly understood to ensure that proper determinations of cost-share availability, are made by DNR and County staff.

4. Cost-share funds to pursue compliance are now available from a combination of public and private non-profit grant sources.
5. Developing cost-share funding proposals and grant contracts from single or multiple grant sources, requires significant knowledge of multiple grant programs, administrative rules, and contracting requirements.

**B. Trempealeau County will, within the capacity of available resources:**

1. Through its fiscal policy and grants management strategy, reserve a portion of state cost-share funds available through the DATCP Land and Water grants program for applicants that participate in the Trempealeau County Farm Evaluation and Certification Program. These funds will be allocated where:
  - a. Croplands or livestock facilities that have not met the agricultural nonpoint standards and prohibitions since their effective dates; or
  - b. Agricultural nonpoint standards are now met and where additional conservation practices will achieve significant public water quality benefits, including circumstances where:
    - i. the pollutant source has no applicable standard, or where
    - ii. the existing nonpoint standards are not adequate to meet the State water quality standards or management objective for the water body.
2. Through its fiscal policy and grants management strategy, reserve a portion of state cost-share funding through the DATCP Land and Water grants program for cropland practices and livestock facilities that choose to not voluntarily come into compliance with standards and prohibitions, as determined through an evaluation conducted in response to a public complaint or a request submitted by DNR.
3. Within the limits of State staffing grants, apply for additional cost-share funds available through the DNR TRM grant program to provide offers of cost-share to achieve compliance with NR 151.
4. Within the limits of State staffing grants, pursue new sources of local, state and federal funds for applicants that participate in the Trempealeau County Farm Evaluation Program if required to implement performance standards and prohibitions.
5. Evaluate the availability of County staff to implement NR151.09 and NR151.095, and allocate effort based upon the availability of State staffing grants and/or direct reimbursement provided by DNR and/or DATCP for the purpose of implementing agricultural performance standards and prohibitions.
6. Evaluate and allocate County staff toward implementation of NR151.09 and NR151.095, based upon the availability of State staffing grants and/or direct reimbursement provided by DNR and/or DATCP for the explicit purpose of implementing agricultural performance standards and prohibitions through NR151.09 and NR151.095.

7. Within the limits of State staffing grants, make staffing commitments necessary to support the installation of conservation practices.

**C. DNR will, within the capacity of available resources:**

1. Assist Trempealeau County in determining what constitutes an adequate offer of cost sharing under s. 281.65, Stats and chapters NR 153 and NR 154.
2. Establish procedures with DATCP to confirm availability of cost-share funding from sources other than s. 281.65.

**Vib. Component 6B: Option to Issue Non-Voluntary NR151 Notice of Cost-Share**

**A. Parties Agree:**

1. In nearly all circumstances, landowners will be willing and able to implement conservation practices on a voluntary basis as necessary to comply with performance standards and prohibitions. In some instances, a landowner may not be willing to do so.
2. Chapter NR 151.09 and NR 151.095 set forth notification requirements that must be met before DNR can initiate enforcement action under Ch. 281, Stats., for non-compliance with performance standards and prohibitions. This includes provision of a notification to the landowner at the time that cost sharing is made available, or in cases when cost share is not required, when the compliance achievement period starts.
3. Notification requirements and cost-share availability requirements vary depending upon the legal authority that is used to enforce the standards and the source of funding. These requirements are documented in Appendix A.
4. Developing and issuing notices of cost sharing under the non-voluntary NR151 option is a joint responsibility of Trempealeau County and DNR.

**B. Trempealeau County will, within the capacity of available resources:**

1. Within limits of State staffing grants, and with input from DNR regional staff, prepare draft landowner notifications under NR 151.09 (5-6) and NR 151.095 (6-7) using DNR templates (See Letter Types C and D, Appendix A).
2. Provide draft notices to DNR regional staff for completion and DNR signature.

**C. DNR will, within the capacity of available resources:**

1. Based upon compliance determinations made the County, sign and issue notices (Appendix A, Letter Types C & D) to landowners under NR 151.09 and NR 151.095.

**VII. Component 7. Administer Funding and Technical Assistance/Re-evaluate Parcel**

**A. The parties agree:**

1. If public cost share funds are offered to install conservation practices, through either the voluntary or non-voluntary option, a cost share agreement must be developed and public funds must be accounted for.
2. Cost-share agreements have historically been developed by professional staff who have a working knowledge of administrative rules, contracting procedures, agronomy and agricultural engineering.
3. A "farm conservation planning process" has historically been used to:
  - a. Compile physical information which describes the production potential and limitations of agricultural land.
  - b. Document current management practices which are being used to manage the crop and livestock production.
  - c. Inform and educate landowners of conservation practices which are available to meet conservation objectives.
  - d. Document the location and scheduled implementation of conservation practices as a basis for cost share contract development.
4. A site evaluation and engineering process has historically been used to:
  - a. Inventory and evaluate sources of agricultural runoff and nonpoint pollution.
  - b. Identify management options and best management practices to control runoff.
  - c. Prepare cost estimates of the available management options as a basis for decision making and contracting.
  - d. Survey and design the selected management system.
  - e. Layout and supervise the construction of the runoff system.
  - f. Through post construction inspections, verify that the runoff system was constructed according to the design.
5. The successful completion of the conservation planning, contracting, and engineering process requires a broad range of skills and services in the fields of agronomy, engineering, and public administration.
6. The DNR, DATCP, and County have, through the Wisconsin Nonpoint Source Water Pollution Abatement Program and the Soil and Water Management Program, recruited, supported, and maintained a technical delivery staff with proven expertise in administering a nonpoint pollution abatement program for the purpose of meeting agricultural performance standards and prohibitions.

**B. The County will, within the capacity of available resources:**

1. Within the limits of state staffing grants, establish and administer a budget and accounting system to receive and disperse state funds administered by the County on behalf of the State.
2. Within the limits of state staffing grants, employ or contract professional staff for the purpose of developing and administering cost share contracts on behalf of state and federal agencies.

When administering state or local cost-share agreements, the agreement will stipulate (or will be accompanied by a separate stipulation agreement) that the affected cropland practices and livestock facilities will maintain or be brought into compliance with applicable performance standards and prohibitions, as enumerated in the compliance status report. These cost-share documents will be recorded.

The status of each cost-share agreement will be maintained as part of the geographic database and record keeping system described in Section V.B.6.

3. Within the limits of state staffing grants, employ or contract a certified agronomist or conservation planner, for the purpose of providing conservation planning services to landowners, or for the purpose of reviewing the adequacy of conservation plans prepared by private service providers or federal agency staff.
  4. Within the limits of state staff grants, employ or contract an engineering practitioner, for the purpose of providing engineering design services, assuring construction oversight and evaluating and certifying installation of conservation practices to meet the agricultural performance standards and prohibitions, or for the purpose of reviewing the adequacy of engineering designs, and evaluating and certifying installation of conservation practices through review of "as-built" surveys provided by third party service providers (private sector or USDA conservation delivery system).
  5. In circumstances where conservation planning or engineering services are provided to the landowner as a reimbursable expense under the DNR TRM Program or USDA cost share programs account for conservation planning and engineering expenses and bill the landowner at a standardized hourly rate upon completion of the contracted practice.
  6. Upon completion of best management practices implemented through the cost share agreement, conduct an onsite evaluation of the operation to document compliance with the agricultural nonpoint performance standards and prohibitions.
  7. Provide to DNR a draft letter of satisfaction to be issued to the landowner (See Letter Type E, Appendix A). Record this compliance following procedures in Section IV and V of this agreement.
  8. Within the limits of state staffing grants, conduct ongoing compliance monitoring through Operation and Management (O&M Plan) support.
- C. The DNR will, within the capacity of available resources:**
1. Will provide reimbursement for eligible staff resources to the County for engineering services performed to design and install best management practices included in grants awarded to the County by the TRM grant program.
  2. Within the limits of available funding, conduct program reviews to verify that cost share funding and conservation services have been administered in accordance with appropriate state administrative rules.

4. Sign and mail satisfaction letters to landowners in collaboration with the County.

#### **VIII. Component 8: Enforcement**

##### **A. The parties agree:**

1. DNR and Trempealeau County will use voluntary means, to the extent practical, to achieve compliance with performance standards and prohibitions, but may use enforcement when necessary to meet requirements of ch. 281, Stats., and NR151.
2. Each party has independent authority to enforce standards and reserves the right to exercise that authority without permission of the other.
3. To be effective, the public and affected landowners must perceive enforcement as a necessary option, pursued jointly by the parties, after voluntary measures to achieve compliance have failed.
4. Trempealeau County has authority to enforce performance standards and prohibitions through local ordinances. The County will rely on DNR to use the state's enforcement authority for cropland practices and livestock facilities that are not covered by local ordinances.
5. DNR has authority to enforce performance standards and prohibitions through a number of statutory options. These include, but are not limited to:
  - a. Referral by DNR to the Wisconsin Department of Justice to seek relief under s. 281.98, Wis. Stats.,
  - b. Use of enforcement procedures under NR 243 and s. 283.89, Stats., to obtain compliance with performance standards and prohibitions or to resolve a water quality problem.
  - c. Use of other state laws, including citation authority under s. 29.601, Wis. Stats.
6. To be effective, enforcement procedures must be well coordinated between DNR and Trempealeau County, and must be supported by both parties.
7. NR 151.09 and NR 151.095 establish the procedures that must be followed as prerequisites to enforcement when DNR funds are used or when DNR pursues enforcement under s. 281.98, Wis. Stats.
8. The start of formal enforcement procedures are recognized to begin with the issuance of a Notice of Violation. Grounds for issuing a Notice of Violation letter is non-compliance by the landowner or operator with the notice issued under NR 151.09(5), NR 151.09(6), NR 151.095(6), or NR 151.095(7) and Component 6 of this agreement.

##### **B. Trempealeau County will, within the capacity of available resources:**

1. Enforce the performance standards and prohibitions contained within its local ordinances, and support DNR's lead role in enforcing standards and prohibitions at sites that are not covered by County ordinances.

2. Identify cases where landowners do not follow the requirements of their noncompliance notices and provide this information to the DNR.
3. Participate in DNR enforcement conferences.
4. Provide background information to DNR needed for WPDES permits or to develop referral packages to the Wisconsin Department of Justice.
5. Provide testimony, documents or other technical support for enforcement cases.
6. In circumstances where the County has issued permits or is pursuing legal actions under other authority, ensure that appropriate information concerning those permits or enforcement activity is transmitted to DNR.

**C. DNR will, within the capacity of available resources:**

1. Take the lead role in initiating enforcement action for cropland practices and livestock facilities that are not covered by County ordinances, including issuing notices of violation.
2. Ensure that appropriate information concerning enforcement activity by the Department is transmitted to the County.
3. Schedule and conduct enforcement conferences if appropriate.
4. If a point source discharge exists and compliance is not obtained through NR 151 procedures, issue a WPDES permit or take enforcement action under NR 243 and ch. 283, Stats., if consistent with regional and statewide permitting priorities.
5. Determine compliance with permits if consistent with regional and statewide compliance activities.
6. Prepare referral packages to Attorney General's Office if non-compliance continues and referral is approved by the DNR Secretary's Office.

**IX. Component 9. Ongoing Compliance Monitoring**

**A. The parties agree:**

1. NR151.09(3)(b) and NR151.095(4)(b) require that existing cropland practices and livestock facilities, which are in compliance on or after October 1, 2002, remain in compliance without the offer of cost share.
2. Ongoing agricultural operations are dynamic in nature and continually change in response to market forces, changes in technology, and changes in land ownership.
3. Periodic evaluations are of direct value to current owners and operators, as they make routine business decisions which affect their agricultural operation, including those related to capital

investments, land rental, and land sales.

4. Routine compliance monitoring is of direct value to the general public as a way to verify that compliance is maintained..

**B. Trempealeau County will, within the capacity of available resources:**

1. For those operations that have received a letter indicating compliance (Appendix A, Letter Type A, B or E), implement a system of routine compliance monitoring. The extent of monitoring will be directly proportional to the amount of State funding allocated specifically to support this effort.
2. Under the monitoring system:
  - a. Conduct an annual reporting and self-certification program for operations that have an active State cost share contract subject to a 10 year Operation and Maintenance Plan.
  - b. Conduct an annual educational mailing in association with the annual property tax billing for operations that are in compliance, but no longer subject to provisions of an active operation and maintenance plan.
3. Assume a lead role in responding to public complaints following protocol for compliant response, procedures for site evaluation, and determinations as established in Sections 4 and 5 of this agreement.

**X. Component 10: Annual Reporting**

**A. The parties agree:**

1. Annual reports can be used to track progress toward implementing the NR151 agricultural nonpoint performance standards and prohibitions.
2. The information contained in an annual report must be systematically collected and be readily available from the County's record-keeping system.
3. To assure that the appropriate information is gathered, the State agencies must define, in advance, what information each agency intends to request in order to monitor the status of program implementation, and the extent to which the standards have been applied

**B. Trempealeau County will, within the capacity of available resources:**

1. By April 15 of each year, summarize and report to DNR information that summarizes the general compliance status of livestock facilities and cropland in the County. Information will be conveyed on reporting forms provided by DNR.
2. The report will be augmented by a map that will show the cumulative location of cropland parcels and livestock operations which have been evaluated, and the associated compliance status of these lands and operations.

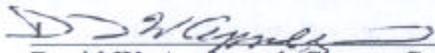
**C. DNR will, within the capacity of available resources:**

1. Develop an annual reporting form by which Counties will report the extent of confirmed compliance and the remaining workload to complete site evaluations to determine compliance.

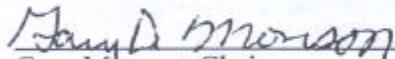
*Note: Information in the annual report is anticipated to include the following, summarized by county, watershed and performance standard/prohibition: total number of fields and facilities (estimate); portion of total that has been assessed (estimate); number of fields and facilities assessed (actual); number of assessed fields and facilities that are in compliance (actual); portion of assessed fields and facilities that are in compliance (actual).*

2. Provide the form electronically to the County at least 2 months prior to the deadline for conveyance to DNR

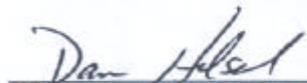
Signatures

  
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David W. Appleyard, County Conservationist  
Trempealeau County Land Conservation Department

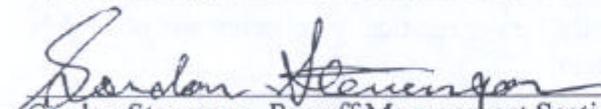
6-7-07  
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\_\_\_\_\_  
Gary Monson, Chair  
Trempealeau County Land Conservation Committee

6-7-07  
date

  
\_\_\_\_\_  
Dan Helsel, Buffalo/Trempealeau Basin Leader  
Wisconsin Department of Natural Resources

5-22-07  
date

  
\_\_\_\_\_  
Gordon Stevenson, Runoff Management Section Chief  
Wisconsin Department of Natural Resources

05/11/07  
date