

Implementing Agricultural Performance Standards and Prohibitions

County Questionnaire Results

July 2003

Background

Following the adoption of chapter NR 151, Wis. Admin. Code, several state nonpoint source program partners joined efforts to complete a detailed strategy to implement the new agricultural performance standards and prohibitions. This strategy identifies the key components that must be implemented in order that the agricultural standards and prohibitions be successfully implemented. The strategy, for the most part, does not identify specifically which program partner is responsible for conducting the components. This is because both state and local partners have the capability to perform many of the components.

In spring of 2003 DNR sent a questionnaire to each county land conservation department to identify which components of the NR 151 agricultural performance standards implementation strategy the county is willing or able to undertake. Staff from DNR recorded and tabulated the results which are summarized below. Frequency data along with follow-up comments are broken down by the ten components in the strategy. These documents are available on the DNR's Runoff Management website at <http://dnr.wi.gov/runoff/ag/standards/>.

State Nonpoint Source Program Partners

- Wisconsin Association of Land Conservation Employees (WALCE)
- Wisconsin Land and Water Conservation Association (WLWCA)
- Wisconsin Counties Association (WCA)
- Wisconsin Department of Natural Resources (DNR)
- Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP)
- University of Wisconsin Extension (UWEX)
- Natural Resources Conservation Service (NRCS)

Administering the questionnaire and analyzing the results is a precursory step in the process of implementing the strategy across the state. DNR will use information gathered from the surveys to guide development of internal workload plans as well as cooperative working agreements with each county.

Questionnaire Results

Sixty-two counties returned completed questionnaires for an 86 percent response rate. As a general indication of counties' willingness to assume responsibility for implementation steps, 26 (43%) of the respondents answered "Yes" to more than half of the questions while 18 (29%) said they were unsure the majority of the time. Only two counties responded "No" to the majority of questions.

The results are arranged according to the strategy components. When reviewing the results, it might be useful to view the strategy as three distinct categories of activities. Components 1-3 establish the framework for how the work will get done, components 4-8 represent the logistical steps of field-level implementation, and components 9-10 represent follow-up and reporting steps.

Legend for Component Tables	
* Includes responses that were changed to "Yes" based on comments	
AN = As Needed	US = Unsure
NA = No Answer	YL = Yes, local authority
Sm = Some, but not all	YS = Yes, state authority

Component 1: Plan the Implementation Approach

A total of 35 counties (56%) said they would outline a systematic and comprehensive implementation strategy and incorporate it into their Land and Water Resource Management Plans (LWRMP), 3 (5%) responded "No", and 24 (39%) were unsure.

1: Planning				
Q1: Strategy/ LWRMs?				
	Yes	No	US	NA
No.	35	3	24	0
%	56	5	39	0

The major concerns expressed were: 1) constraints on staffing and funding, 2) LWRMP revisions are too far in the future to predict county capabilities, or revisions are pending but the outcome of discussions is unpredictable, 3) concerns about ramifications if the strategy included in the LWRMP is not implemented because of circumstances beyond county control, and 4) uncertainties about what is meant by the term "systematic and comprehensive". Other reasons included problems with usability of the data, too many unanswered questions, or the topic hadn't yet been discussed with the LCC.

Component 2: Define Level of Agencies' Commitment to NR 151 Workload

2: Workload				
Q2: Working agreement?				
	Yes	No	US	NA
No.	33	2	26	1
%	53	3	42	2

Thirty-three counties (53%) responded that they would be willing to enter into a partner agreement to establish roles and responsibilities in implementing NR 151, 2 counties (3%) said "No" and 26 (42%) were unsure. The major type of agreement preferred was a Memorandum of Understanding (MOU) followed by a cooperative or working agreement. Primary reasons given by those who were unsure included: 1) uncertainty about what the agreement would require, 2) inability to take on additional workload, and 3) mistrust of inter-agency agreements or

concerns that agreements are not needed because they won't solve staff shortage problems of participating agencies.

Component 3: Conduct Information and Education (I&E) Activities

3: I&E development & delivery										
Q3: Dev. suppl. materials?						Q4: Deliver I&E?				
	Yes	No	Sm	US	NA	Yes	No	Sm	US	NA
No.	10	9	21	21	1	35	1	17	8	1
%	16	15	34	34	2	56	2	27	13	2

Ten counties (16%) said they would develop I&E materials to supplement those developed by the state, 9 (15%) said “No”, 21 (34%) replied that they would do some but not all and 21 (34%) were unsure. When asked what they would be willing to do, most counties said they would localize products that the state would provide, many said they would wait and see what the state provided and several said that would develop their own fact sheets, newsletter articles, news releases, presentations and conduct meetings. The major reason given by those who were unwilling, unable or unsure was constraints of budget and staff time.

When asked if they would deliver these I&E materials, 35 (56%) said “Yes”, 17 (27%) said “Some”, and 8 (13%) were unsure. Most counties who indicated they would deliver some materials replied that delivery would occur within existing activities (e.g. newsletters, personal contacts, mailings, presentations). Major barriers included postage, duplication and other costs.

Component 4: Determine Current Compliance

4: Compliance determination									
Q5: Records inventory?					Q6: Onsite evaluation?				
	Yes	No	US	NA	Yes	No	US	NA	
No.	23	5	33	1	29	4	28	1	
%	37	8	53	2	47	6	45	2	

Records Inventory

Twenty-three counties (37%) said they would conduct a records inventory as described in a 3-step, 90-day process, 5 (8%) answered “No”, and 33 (53%) were unsure. A follow-up question asked those who answered “Yes” to estimate when they would start and end the inventory and how much staff time it would take. The majority (10) reported that they would begin sometime in 2003 or early 2004. Four counties said they had either just started or the process was ongoing and three indicated that their paper inventories were completed although there was some concern that the inventories would have to be redone to comply with requirements to use RUSLE II (Revised Universal Soil Loss Equation). Three counties said they won't commit to a timeframe without assurances of funding and staff and would not start until 2009.

Only 7 counties estimated staff time needed to complete the paper inventory. Estimates ranged from 60 hours from a county that has completed the task to 2080 hours. The median estimate was 200 hours.

Those who had answered “No” or “Unsure” were asked to describe why. The most frequently cited response dealt with the quality or accessibility of records, including concerns over barriers to information sharing stemming from federal privacy protection laws. Constraints on staff resources, estimated timeframe and funding were also frequently cited reasons. Nine counties reported that 90 days was not

enough time to complete this step—estimates ranged from almost/at least 1 year to 7 years (including site evaluations). The uncertainty of using RUSLE II or other mandated prescriptive tools was cited by three counties and the same number said they would prefer to use a different process than the one described.

On-Site Evaluations

Twenty-nine counties (47%) said they will conduct systematic on-site evaluations, 4 (6%) said “No”, and 28 (45%) were unsure. Those responding “Yes” were asked to describe the evaluation process and how they would prioritize the process. The evaluation processes varied between counties but some general categories were identified.

Geographic or resource based targeting was the most frequently cited process. A programmatic (e.g. Farmland Preservation Program or Priority Watershed Project) or planning approach, especially through LWRM plans, was cited by several counties as the approach they would take, and a few indicated that they would focus on problem sites or violations first. Several stated that this step was yet to be determined.

Component 5: Prepare Report and Notify landowners of Compliance Status

5: Landowner notification								
Q7: Status reports?					Q8: Public record?			
	Yes	No	US	NA	Yes	No	US	NA
No.	24	7	30	1	26	3	32	1
%	39	11	48	2	42	5	52	2

Twenty-four counties (39%) said they would prepare and issue NR 151 status reports for landowners for whom they have completed evaluations, 7 (11%) said “No”, and 30 (48%) were unsure. Most of the counties who answered “No” or “Unsure” raised procedural and workload issues as the major reasons for their answers. The second most frequently cited reason was the counties' unwillingness to assume an enforcement role, either partially or entirely.

Twenty-six counties (42%) said they would keep and maintain evaluation and compliance information as public record, 3 (5%) said “No”, and 32 (52%) were unsure. When those who answered “Yes” were asked to propose how subsequent landowners be provided this information or made aware that such information exists and is available, most said they would either inform subsequent landowners directly or utilize an outreach method. A few said they would provide the information upon request.

Those same respondents were also asked their opinions on the effect of disclosure laws on their ability to provide this type of information. Most counties who responded did not think there would be a problem, a few said there would be problems and some still needed to check with their corporation counsels. (Note: The federal policy on protecting information collected from landowners, in order to determine compliance with federal farm programs, had not been widely discussed with counties at the time this survey was completed.)

When counties who responded “No” or “Unsure” were asked why, most of the responses indicated that many decisions still needed to be determined and details worked out. One respondent said it may be able to flag transfers, another said it would use periodic newspaper articles and county-wide newsletter articles, but is open to other suggestions.

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

6: Funding, tech assist, notice									
Q9: Voluntary?					Q10: Non-voluntary?				
	Yes	No	US	NA	YL	YS	No	US	NA
No.	48	1	12	1	12	7	13	29	1
%	77	2	19	2	19	11	21	47	2

Forty-eight counties (77%) indicated they would provide technical and cost-sharing assistance to eligible landowners who voluntarily apply, one (2%) said “No” and 12 (19%) were unsure. The majority of those who checked “No” or “Unsure” said that increased staff and cost-share funds would be needed to accomplish this task.

Twelve counties (19%) said they will issue notification under local authority to landowners unwilling to comply with performance standards or prohibitions, 7 counties (11%) said they will issue notification under state authority, 13 (21%) said “No” and 29 (47%) were unsure.

Most of the counties that responded negatively or were unsure commented that they were unwilling or uncomfortable having an enforcement role, some citing concern that an enforcement role would jeopardize their relationships with farmers. A few counties were willing to put a local face on the enforcement component but wanted an assurance of backing by the DNR or some flexibility for local appeals. Some counties said they would be willing to issue local notifications if their counties enact ordinances incorporating the performance standards and prohibitions, but just as many said their counties were unlikely to develop such ordinances. One county was in the process of writing a county ordinance and a few said they would use a combination of local and state notification, depending on the circumstances. There was a suggestion that the state should follow critical sites procedure. Many counties said they needed more information before they could answer this question.

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

7: Admin funding, tech assist; re-evaluate parcel													
Q11: Tech serv, oversight?					Q12: Compl eval, letters?				Q13: Admin/other remedies?				
	Yes	No	US	NA	Yes	No	US	NA	Yes	No	AN	US	NA
No.	35	1	25	1	31	2	28	1	22	2	8	28	2
%	56	2	40	2	50	3	45	2	35	3	13	45	3

Thirty-five counties (56%) reported that they would provide technical assistance and oversight, one (2%) said “No” and 25 (40%) were unsure. Most of those who were unsure cited limited staff levels as the major reason for their answers. Another barrier was limited job or engineering assistance approval or certification authority at the county staff level. Several said they needed more information to answer the question.

Thirty-one counties (50%) reported that they would conduct compliance evaluations and issue letters of compliance after practices are installed, 2 (3%) said “No” and 28 (45%) were unsure. Workload and staff resources were the major limitations that counties cited for their uncertainty. Some said they would conduct re-evaluations but would not issue letters.

Twenty-two counties (35%) reported that they would seek administrative or other non-regulatory remedies as necessary, 2 (3%) answered “No”, 8 (13%) said they would only assist the state as needed and 28 (45%) were unsure. Most of those who responded negatively or were unsure did not understand what remedies the question referred to. The next most frequently-cited reason was the additional need for staff and cost-share support from the state.

Component 8: Enforcement

8: Enforcement																				
		Q14: Notice of violation?					Q15: Schedule enforcemt conf?					Q16: Participate enforcemt conf?				Q17: Initiate enforcemt action?				
		Yes	No	AN	US	NA	Yes	No	AN	US	NA	Yes	No	US	NA	Yes*	No	AN	US	NA
No.		12	16	13	20	1	10	8	21	22	1	35	2	24	1	18	7	14	22	1
%		19	26	21	32	2	16	13	34	35	2	56	3	39	2	29	11	23	35	2

Twelve counties (19%) said they would prepare and issue a Notice of NR 151 Violation or similar local ordinance violation notice, 16 (26%) said “No”, 13 (21%) said they would only assist the state as needed and 20 (32%) were unsure. When asked if the notice issuance would be done under the provisions of NR 151 or a local ordinance, most respondents said they would work under a local ordinance while a few would prefer NR 151 either alone or jointly with DNR. Most of those who said “No” or “Unsure” commented that this was DNR's responsibility or that they did not want to assume an enforcement role.

Ten counties (16%) said they will schedule an enforcement conference, 8 (13%) said “No”, 21 (34%) said they would only assist the state as needed and 22 (35%) were unsure. The majority of those who answered “No” or “Unsure” were willing to participate in some way, such as advising or providing logistics. Again, there was a lot of uncertainty as to what this component involved and how much staff time it would take.

Thirty-five counties (56%) said they would participate in an enforcement conference, 2 (3%) said “No” and 24 (39%) were unsure. Reasons provided by those who said “No” or “Unsure” included several qualifications about the amount of participation they would be willing to provide (e.g. technical or cost-share information). Some said they would participate only if requested by the landowner while a few others said they needed opinions from their corporation counsels on this question.

Eighteen counties (29%) said they would initiate enforcement action through 4 options including: 1) refer cases to DNR for enforcement, 2) enforce through separate county ordinance, which incorporates standards, 3) enforce through financial sanctions available through state program, and 4) enforcement through the local district attorney. Seven counties (11%) said “No” to this question, 14 (23%) would only assist the state as needed and 22 (35%) were unsure. The most frequently cited option was referring cases to DNR for enforcement followed by enforcement through separate county ordinances that incorporate performance standards. Two counties stated that they would enforce through financial sanctions through a state program and another two said they would conduct all 4 options. The most frequently-cited reason for responding “No” or “Unsure” was that the counties either needed more information on this process or this issue or larger issues of implementation and enforcement have not yet been decided at the county level.

Component 9: Ongoing Compliance Monitoring

9: Monitoring						
Q18: Participate?						
		Yes	No	Sm	US	NA
No.		25	2	16	18	1
%		40	3	26	29	2

Twenty-five counties (40%) said they would participate in ongoing compliance activities that would consist of periodic evaluations to verify compliance, responding to public complaints and ensuring that new owners are made aware of or have access to NR 151 compliance information that may pertain to the property they acquire. Sixteen counties (26%) responded that they would do some but not all of these activities, 2 (3%) answered “No” and 18 (29%) indicated they were unsure.

Counties who answered “Yes” or “Some” were asked which parts of this component they would do and how compliance would be monitored. While 4 counties indicated that they would conduct all of the elements listed, most of the other respondents cited 1 or 2 that they would be willing or able to do in some form. Counties who said they would conduct ongoing compliance cited a variety of monitoring approaches such as the Farmland Preservation Program (FPP) process, visits to priority and critical sites, monitoring on a complaint basis following initial comprehensive review, checking on structural practices installed in a previous construction season, following up on enforcement of county ordinances, checking on Best Management Practices (BMPs) installed with state cost-share money, checking new Nutrient & Pest Management (NPM) plan submittals for increased phosphorus on fields and implementation of Land and Water Resource Management Plans. Most of these approaches were site specific rather than county-wide, but a few said they would work toward more comprehensive monitoring if staff resources increased.

The monitoring activities cited include periodic evaluations and status reviews. Some said they would do spot checks with one saying it would do 25% in priority areas. A couple of counties said they might do spot checks if they had enough staff. A few others cited targeting a percentage of landowners, similar to FPP on a periodic basis (one said every 5-6 years). Two counties cited the certification system similar to FPP as a way to stay in touch with landowners where compliance has been certified and to have them certify they are following a plan, maintaining cost-shared practices and maintaining their compliance status.

Responding to public complaints was an item that 7 counties said they would do while a few others were not comfortable in that role and would turn them over to DNR but be involved in an advisory position. A couple of counties said they would need more information and/or staff resources before deciding what they would do.

A few counties said they would make new owners aware of and/or ensure them access to NR 151 compliance information. One has already developed a database for tracking and reporting compliance, others said they would check property changes, conduct site visits and use information and educational tools.

When asked why, many counties who answered “No”, “Some” or “Unsure” said it would be difficult for them citing limited staff, time, expense, and lack of technological resources as reasons. Some needed more information or needed to investigate further with their corporation counsel and LCC.

Component 10: Annual Reporting

Fourteen counties (23%) said they would conduct the 8 reporting activities listed for this component, 23 (37%) reported that they would do “Some but not all”, 5 (8%) said “No” and 19 (31%) were unsure. For those who answered “Some”, a follow-up question asked which activities the county would and would not do. About half (11) identified specific items they would or would not do. The following further refines how counties responded they would perform items A-H in the reporting component.

10: Reporting					
Q19: Reporting activities?					
	Yes	No	Sm	US	NA
No.	14	5	23	19	1
%	23	8	37	31	2

- 6 counties said they would or probably would A) maintain and convey a record of annual site evaluations/location/compliance status, D) maintain and convey a record showing parcels where public cost sharing has been applied to implement standards and prohibitions, amount and source of those funds, and the landowner share.
- 5 counties said they would or probably would E) maintain and convey a record and location of parcels receiving notifications under component 5.B. and violation letters under Component 8.A and F) maintain and convey a record of the annual cost of technical and administrative assistance needed to administer agricultural performance standards and prohibitions, as established in NR151.
- 4 counties said they would or probably would do C) maintain a record of estimated costs of corrective measures for each parcel that has been evaluated and for which corrective measures have been estimated.
- 3 counties said they would/probably would do B) Report estimated timeframe and staff resources needed to complete remaining site evaluations in the County
- 1 or 2 counties said they would/probably would to G) Other reports as may be required in ATCP50 and H) Compile locally developed reports into regional and statewide NR 151 Progress Reports.

Several counties had concerns about G being too ambiguous and some said they would not do H. A few said they might be willing to do more if they had the staff time to do it. Some said the amount of reporting would depend on their degree of involvement in the activities.

Most counties who answered “No”, “Some” or “Unsure”, commented that that the agencies should keep the reporting data simple to collect and maintain, ask for only what is needed, streamline the process to avoid duplication and use the data to show accountability. Several questioned the value of all the tracking and reporting elements that were listed and did not want to see additional reporting requirements than already exist. They are willing to provide reports that are of value to the county or are statutorily or contractually required by the state agencies. A few counties requested that the agencies provide the necessary electronic tracking and reporting forms and computer upgrades.

Some suggested amending the cost-share agreements to collect information on item D and to evaluate the reports on an annual basis.

Additional Questionnaire Information

In addition to the information provided on the components of the implementation strategy, counties were asked several additional questions related to the strategy.

Level of Commitment

When asked what level of commitment in terms of numbers of staff, time, local cost sharing, etc. they will dedicate towards implementation of this strategy, ten counties provided estimates. The estimate for the number of staff ranged from 0.5 full-time employees (FTE) through 2004 to 3.6 (as available) while the number of staff hours ranged from 500/year to about 4,000 (if it's a locally –based priority or grant condition). Only 2 counties reported having a local cost-share program that they would use for state match. About 25-30% of the counties that responded to this question said they were unsure about their level of commitment. Another 25-30% said they would need more funds for staff or would have to reassign existing staff to implement the NR 151 strategy.

A companion question asked for the level of commitment from counties towards other efforts to achieve compliance with NR 151. Most of the answers were similar to those of the previous question, but 4 counties gave estimates of staff and staff hours of 25%, 50%, ¼ staff and ½ staff. Three counties stated that they are or will be devoting time to implementing non-agricultural performance standards.

Suggestions For Improving The Implementation Strategy

Most of the suggestions called for more funding, especially for staff to do the implementation and administrative work. While most funding issues are outside the scope of the implementation strategy, several of the suggestions are listed below as ideas to guide future budget discussions.

- determine and implement a dedicated funding source for county staff to do this work
- increase state funding support for those counties that implement the strategy and support counties that attempt to implement NR 151 when the going gets difficult
- re-examine the strategy in light of recent budget impacts
- tie staffing grants to implementation

The following is a sample of the many other suggestions that were submitted.

- develop a computerized system with online reporting
- make ArcGIS extensions available to counties for inventory/compliance tracking and development of conservation plans
- allow counties to identify specific performance standards that are of higher priority to them and work on those first
- make it simpler, clearer and more direct
- provide 1 state staff person for review/concern
- set goals, deadlines, etc. and meet them; set repercussions if the state does not meet reasonable deadlines and goals
- training on the implementation of the rules and how the state sees the counties' role
- provide more opportunity to share in ideas and techniques between counties
- keep paperwork and reporting to a minimum
- place a greater emphasis on voluntary approaches, landowner incentives and effective I&E rather than on inspections and enforcement
- offer some implementation options other than counties
- provide ideas or open discussion on the role other agencies may play in doing this
- put all the tools in place first (RUSLE II, MOU, staffing)

- make the strategy more targeted; allow counties to work with farmers on a voluntary basis first; at the same time target individuals (as in NR 243 violations); a watershed approach takes too long and doesn't target the right people
- start over

Components That Should be Conducted Primarily by the State

When asked which of the strategy components should be conducted primarily by the state, the majority of the counties responded that enforcement or enforcement-related activities should be handled by the state. Other components that were mentioned were 2) defining workload, 3) I&E, 4) on-site evaluations portion of determining compliance, and 5) notification of compliance status.

Additional Technical or Policy Implementation Issues

Several additional implementation issues were raised including the following examples:

- implementation of the non-agricultural/transportation performance standards and NR 216 specifically as they affect counties
- how federal cost-sharing and staff will be used
- the models that will be used to determine compliance/non-compliance need to be consistent and be such that everyone who needs them can use them (what are those models for soil prediction, standards, BMPs, etc.); there needs to be scientific verification of the models and tools necessary to implement these programs
- will the staffing resources of each county be taken into account in the state-wide strategy (e.g. impact on Land Conservation Departments (LCDs) with few staff)
- LCD staff not convinced to provide cost-sharing for practices that require maintenance, payment of "lost opportunity" costs or payment to get to "T"
- state should provide database monitoring for reports
- which components and what level of time and resources is DNR going to commit to implementing this strategy; will DNR stay committed to following through with the things they say they are going to do?
- lack of incentives to implement the redesigned program
- no goals, timeframes or expectations for when any administrative function, much less compliance, is to be achieved
- effects of farm economy—conflict between farm profitability and compliance with standards