

Response to Comments on Determining Direct Runoff from Feedlots to Waters of the State Guidance.

In 2020 the DNR started developing guidance for determining direct runoff from feedlots to waters of the state. Section NR 151.08 (4) Wis. Admin. Code prohibits “direct runoff from a feedlot or stored manure into the waters of the state,” where direct runoff includes in its definition “runoff from a feedlot that can be predicted to discharge a significant amount of pollutants to surface waters of the state or to a direct conduit to ground water.” At issue in determining whether there is direct runoff from a feedlot is whether the direct runoff “can be predicted to discharge a significant amount of pollutants.” The guidance provides factors and infield evidence to consider for making a best professional judgement in determining the significance of a discharge to waters of the state. The goal of this guidance is to provide clarification for implementors of NR 151 and develop more consistent compliance determinations for direct runoff from feedlots.

The DNR solicited public comments on the draft guidance from February 8, 2021 to March 9, 2021. This document is intended to provide the DNR response to the comments received.

Numerical Criteria and Field Sampling Procedures

The DNR received comments that in summary request additional information to be added to the guidance that is not listed in administrative code (NR 151). This information includes field sampling procedures and the development of numerical evidence for determining “significant.” Numerical evidence would include information such as runoff model results (BARNY), manure sample results, allowable concentrations of pollutants, quantifying the amount of actual runoff and establishing distance requirements to receiving waters. **Response:** The Department understands that numerical evidence may make it easier to determine what is direct runoff and compliance status with NR 151. However, the intent of Department guidance is to clarify existing administrative code. The current version of NR 151 does not include information about field sampling procedures and numeric criteria for defining compliance status. Therefore, we cannot add this additional information because it is outside of the intent of Department guidance.

Another comment received suggested that we adopt language in NR 151 that is like ATCP 50.20 for runoff management. The suggestion is to use numerical criteria to determine noncompliance with runoff from existing animal lots. **Response:** Adopting new language in NR 151 would require the full administrative rule process and is outside the intent of this effort. Department guidance is used to clarify requirements in existing administrative code.

Case Studies

Another comment received suggested case studies should be added that describes how this document would be used to determine the significance of a discharge and compliance with NR 151. **Response:** The intent of this guidance is to provide information to implementors of the agricultural performance standards in NR 151 to consider for making their best professional judgement in determining the significance of a discharge and compliance status. Each case that these factors would apply to will have unique characteristics and must be decided independently. The guidance includes observations that the user should consider for help determining the significance of a discharge on a case-by-case basis.

Additional Regulations on Producers

The Department received a comment suggesting this guidance is adding more regulations to livestock producers. **Response:** This guidance document is intended to clarify existing requirements in NR 151. No additional regulations for livestock producers were created as part of this effort.