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FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Laura D. Rose, Interim Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-025

AN ORDER to create chapter NR 153, relating to the runoff management grant program.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

02-10-00 RECEIVED BY LEGISLATIVE COUNCIL.

03-09-00 REPORT SENT TO AGENCY.

RS:DLL:rv;jal

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

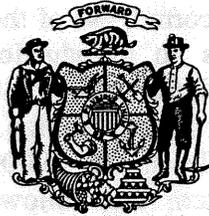
Comment Attached YES NO

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CLEARINGHOUSE RULE 00-025

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. The definition of "best management practice" in s. NR 153.002 (5) differs from s. 281.65 (2) (a), Stats., in that the statutory definition is limited to those practices identified in an areawide water quality management plan. The department does not have the authority to modify the statutory definition in this manner. The enumeration of an additional type of practice is a permissible expansion of the statutory definition, as long as it is based on practices identified in areawide water quality management plans.

b. The last sentence of s. NR 153.12 (2) (c) purports to establish duties of the Land and Water Conservation Board. While these duties are imposed on that board by statute, the Department of Natural Resources (DNR) does not have the authority to state this as a requirement of its rules. This sentence should be placed in a note or omitted.

2. Form, Style and Placement in Administrative Code

a. Sections NR 153.001 to 153.017 should constitute subch. I of ch. NR 153. The title of the subchapter could be "GENERAL PROVISIONS" and the remaining subchapters should be renumbered accordingly.

b. In s. NR 153.002 (27), a reference is made to the natural resources conservation service field office technical guide. The department should ensure that the requirements of s.

227.21, Stats., are met. Also, the word "rule" should be replaced by the word "section." (The entire rule should be reviewed for this change.)

c. The rule frequently makes incorrect use of the introduction format. [See s. 1.03 (8), Manual.] If the material that follows an introduction does not flow grammatically as a continuation of a sentence started in the introduction or, in limited circumstances, does not flow conceptually from an idea introduced in introduction, it should be placed in a separately numbered unit of the rule. For example, s. NR 153.004 (intro.) should be numbered s. NR 153.004 (1). As a corollary, each item that follows introductory language should be a grammatical (or conceptual) continuation of that language. For example, s. NR 153.007 (5) (f) does not follow grammatically from the introduction. It should be modified to read as follows: "In cases where the acquisition will prevent further degradation of water quality, the degree to which the acquisition is cost-effective, relative to the threat of further degradation to the site." In addition, when introducing a list of requirements or conditions, the introduction should indicate whether it is referring to *all* or *any* of the requirements or conditions that follow by concluding with a phrase such as "all the following" or "any of the following." For example, s. NR 153.004 (1) (intro.) should end with the phrase: ". . . a participating government unit shall do all of the following:". For another example, s. NR 153.13 (2) (intro.) should read: "An application shall include all of the following:".

d. In s. NR 153.003 (intro.), the phrase "unit of government" should be replaced by the defined term "governmental unit." (The entire rule should be reviewed for the consistent use of defined terms.)

e. In s. NR 153.004 (3) (a) and (c), the commas should be replaced by the word "or."

f. In s. NR 153.005 (3) (c), the phrase "shall apply" should be replaced by the word "applies."

g. Section NR 153.005 (5) should refer to the exception in sub. (4m).

h. Section NR 153.007 (3) (b) 3. refers to an appraisal that may be unacceptable "under department guidelines." These guidelines, if known, should be placed in rule form. [See also ss. NR 153.17, 153.33 (2) (d) and 153.37. Of course, technical standards may be incorporated by reference using the process described in s. 227.21, Stats.]

i. Section NR 153.010 (2) should be rewritten to read: "The governmental unit shall administer and successfully complete"

j. In s. NR 153.013 (3) (a), the phrase "shall be" should be replaced by the word "are." In sub. (4), the word "may" should be replaced by the word "does."

k. In s. NR 153.016, the cross-reference should read "ss. 92.14 (12) and 281.65 (4) (o), Stats."

l. Section NR 153.017 is improperly drafted. First, the subsection titles are not in the correct format. Second, sub. (3) appears to consist of only a title and no text. Third, it makes

incorrect use of the introduction format, as described above. Fourth, and most important, the subsections are not what the introduction says they are. The introduction makes reference to the requirements identified in the subsections, but those subsections do not create requirements--sub. (3) does not even consist of a complete sentence.

m. In s. NR 153.38 (3) (b) 1. a., the second sentence should be rewritten without a slashed alternative.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. This rule is very confusing. At least three pervasive problems obscure the intent of the rule and the roles of the various players in the programs that the rule creates: first, the rule is poorly organized; second, the terminology used is confusing and the definitions are inadequate; and third, the rule makes excessive use of the passive voice. The rule should be reorganized and much of it should be rewritten to address these problems.

(1) First, this report will address the problems of organization. The text of the rule fails to give a complete picture of the programs that it creates -- even the analysis does not completely describe the programs. It appears that, under the rule, DNR will award grants to local units of government to administer nonpoint source water pollution control programs. It further appears that these programs are to function by installing best management practices on specific properties to control or ameliorate existing nonpoint source pollution problems. It further appears that the local units of government that receive grants may implement best management practices by installing the practices themselves, contracting with third parties to install the practices and by awarding grants to third parties to install the practices. Thus, DNR's role includes administering grants to local units of government and exercising some level of oversight to all activities that occur under those grants; local units of government have three roles, as recipients of grants from the DNR, program administrators and providers of grants to landowners. While many of the pieces of this picture are contained in the rule, nowhere does the rule give the entire picture nor does the organization of the rule facilitate piecing the picture together.

The Administrative Rules Procedures Manual offers the following guidance on the organization of a rule:

(3) TEXT OF RULE. In drafting a chapter or section of administrative rules, proper organization of the text of the rule is important to aid the reader in understanding the pattern of regulation or required conduct set forth in the rules. Single-section chapters should be avoided. Combine similar material into a chapter with several sections, rather than arranging each section as a separate chapter. If it enhances clarity and convenience in locating provisions, a long or complex rule could be divided into

appropriate chapters. The recommended sequence of material in a rule chapter or rule section is as follows:

- (a) Scope or purpose of the chapter or section. (A scope or purpose statement is not necessary, but if it is included, it should be the first item.)
- (b) Definitions of words or terms used in the chapter or section.
- (c) Substantive provisions in their order of importance, time sequence or other logical arrangement.
- (d) Exceptions, exemptions or exclusions, if any, to the chapter or section.
- (e) Benefits, sanctions or results of compliance or noncompliance with the chapter or section.

[s. 1.02 (3), Manual.]

Chapter NR 153, as drafted, is in strong contrast to this guidance. It consists of a number of sections of apparently general applicability followed by two subchapters, each addressing a separate grant program. It appears that the department may be attempting to avoid duplication of lengthy rule provisions by combining provisions applicable to both subchapters in the preliminary provisions. This is a laudable goal, but it should never be pursued at the expense of clarity. The result in this case is that provisions are presented in a completely illogical order. Many of the provisions in the first half of the rule are difficult to understand because they are presented out of the context of the grant programs to which they apply. It might be possible to pursue the strategy of combining provisions applicable to both subchapters by placing them in a third subchapter that *follows* the two subchapters describing the individual grant programs. However, the safer approach would be to integrate the various provisions into each subchapter, as appropriate.

The rule appears to rely heavily on statements of purpose and definitions or descriptions of terms such as “runoff management grant agreement” and “cost-share agreements” to provide the general picture of the programs created by the rule. Clearly, however, this is inadequate, as the picture that this provides is incomplete. Greater detail is needed, for example, in provisions specifying what a local unit of government must do under a grant it receives from the DNR. Additional procedural provisions are needed, as well.

While the DNR has promulgated many rules for the administration of grant programs, any one of which could serve as a workable model for this rule, this rule does face certain special challenges. In particular, it needs to distinguish between the dual roles of local units of government as grant recipients and grant

administrators. In addition, it needs to clearly distinguish between the DNR's functions in administering grants that it makes to local units of government and in overseeing grants made by local units of government. However, these challenges are far from insurmountable. In designing a new organization, the drafter should work through the entire process, from the time the local unit of government first considers applying for a grant until the time that the best management practices are installed and all follow-up work has been completed. If the rule contains all the necessary requirements and describes the entire process in a sequence that is logical and easy to follow, the organization of the rule will be sufficient.

(2) With regard to terminology, the rule is inconsistent in which terms it chooses to define. For example, the term "cost-share agreements" is defined. However, other types of agreements, specifically "runoff management grant agreement" and "local assistance grant agreement," are not defined; instead, they are described in general terms in the text of the rule. Such descriptions are not an adequate substitute for definitions. Furthermore, the general description of the term "cost-share agreements" provided in s. NR 153.005 (1) is different from the definition of that term.

In addition, other terms referring to cost-sharing, such as "cost-share grantor," "cost-share grantee" and "cost-share recipient," as well as the term "cost-share," itself, are not defined. The meaning of some of these terms would be clearer if the organization of the rule were clearer, but that will not avoid the need for clear definitions. For example, what is the difference between a "cost-share grantee" and a "cost-share recipient"? Further confusion is added by the fact that "cost-share" is sometimes used as an adjective and other times used as a verb. In another example, the terms "grant period" and "cost-share agreements period" are both used in the rule; the first of these terms is defined and the second is not.

Section NR 153.013 (2) is peculiarly confusing. It suggests that there is a difference between "termination" and "annulment" of a grant, but does not indicate what the difference is. Paragraph (c) deals with *how* a grant may be terminated and par. (d) deals with *when* a grant may be annulled. This suggests that they are talking about the same thing, in which case a single term should be chosen and used consistently. If this is not the intent, then much more explanation is needed. Also, it appears that some of the provisions of par. (b) should be combined with the provisions of par. (d), which should be placed before par. (c).

Numerous other terms are inadequately defined or inconsistently applied. The following list is illustrative, but not exhaustive:

- The definition of "operation and maintenance period" identifies the beginning point of this time period but not the endpoint.
- Section NR 153.004 (3) uses the undefined term "project area."

- Section NR 153.004 (4) uses the term “maintenance periods,” which is not defined, although the term “operation and maintenance period” is defined.
- Section NR 153.005 (4) (h) refers simply to “a nondiscrimination clause”; this term should be replaced by a full description of what is intended. (Since it is used only once, a definition would be inappropriate.)
- Section NR 153.005 (5) uses the undefined term “runoff management grant agreement grantor,” a term which is never again used in the rule.

• The undefined term “least cost practice” is used in s. NR 153.011 (1) (h) without any context or cross-references to explain its meaning; the two other uses of the term in the rule are with sufficient context that its meaning is clearer.

- Section NR 153.017 (intro.) uses the undefined term “urban recommendations.”

(3) As was noted above, the rule makes excessive use of the passive voice. This grammatical construction obscures, rather than clarifies relations. Instead, to the extent possible, the rule should be written in short, clearer declarative sentences of a form such as: “X shall do Y.” Too often, requirements are stated in the form of “Y shall be done by X” or, in the worst case, “Y shall be done.” Examples:

- See s. NR 153.005 (6) (b), which states that: “[t]he operation and maintenance period for both cost-shared and not cost-shared best management practices shall be for a minimum of 10 years.” Rewriting this sentence in the active voice would not only identify who must do something, but what must be done: “X (the local unit of government? the landowner or operator?) shall do Y (maintain a best management practice installed under a cost-share agreement for a minimum of 10 years beginning upon completion of installation of the best management practice).” Note that this also obviates the need for the inadequately defined term “operation and maintenance period.”

- What does it mean, in s. NR 153.007 (3) (b) 1., that “[a]ppraisals are subject to department review and approval”? Does this mean that the governmental unit *shall* submit an appraisal to the department and the department *shall* review the appraisal and the governmental unit *may not* act upon the appraisal until it has received approval from the department? Or does it mean that the department may, on a case-by-case basis, request that certain appraisals, about which it is concerned, be submitted to it for review and approval?

- Section NR 153.010 (4) (b) is vague. Instead, this provision should state that the department shall approve the use of force account work if the governmental unit demonstrates to the department’s satisfaction that the governmental unit has the necessary competence to accomplish the work and that the work can be accomplished more economically by the use of the force account method. If this is not what the department intends, then this provision needs further clarification.

- Section NR 153.014 (2) (a) to (e) should be written in the active voice. Interestingly, the last paragraph of that subsection *is* written in the active voice.
- b. In s. NR 153.002 (4), it appears that the word “a” should be inserted after the word “means.”
- c. Section NR 153.002 (11) contains references to ch. 66, Stats. If Assembly Bill 710 is enacted, the references to ch. 66, Stats., throughout the rule will require amendment.
- d. In s. NR 153.002 (23), each occurrence of the word “project” should be replaced by the word “project’s.”
- e. In s. NR 153.005 (6) (a), the word “on” should be replaced by the word “in.”
- f. Section NR 153.005 (9) provides that if a change of ownership occurs during a cost-share agreement, a new landowner must fulfill all conditions of the cost-share agreement. How will this be enforced?
- g. In s. NR 153.005 (11) (b), the phrase “on the agreement” should be replaced by the phrase “in the agreement.”
- h. In s. NR 153.007 (3) (g), what is meant by “the interest of the state of Wisconsin”? This provision should more precisely indicate what should be recorded with the deed to protect the state’s interest in the property.
- i. In s. NR 153.011 (1) (e) 3. c., does the governmental unit official conduct the verification or the installation? Presumably, this should be rewritten as follows: “Verification, by the governmental unit official, of proper installation.”
- j. In s. NR 153.013 (1) (a), is the suspension of state liability prospective only? In par. (b) (3), the word “sent” should be replaced by the word “send.”
- k. The discussion of the key, but undefined term “target area” is buried deep within the discussion of the application process, in s. NR 153.13. The only explanation provided of how target areas are identified is found in s. NR 153.13 (2) (b) 12. a. to e. Given the importance of this concept, it would seem appropriate to devote an entire section to this explanation. Section NR 153.13 would then refer simply to certification that the project will implement nonpoint source pollution control in a target area identified under that new section.
- l. In s. NR 153.15 (4) (b), and elsewhere, what does “activities covered by the WPDES permit program” mean? Does this refer to compliance with discharge limits?
- m. Section NR 153.16 (2) (e) and (f) are very unclear. These paragraphs seem to say that the least cost practice must be used unless the department decides otherwise. Of what benefit are these provisions? [See also s. NR 153.36 (2) (e) and (f).] In par. (g), it appears that the word “up” should be deleted. In sub. (3) (intro.), the notation “, Stats.” should conclude the statutory cross-reference.

n. In s. NR 153.16 (4) (b) 1. and 2., are "the landowner or operator" and "the grant recipient" different individuals?

o. Section NR 153.34 (1) (c) provides in part that DNR may establish a minimum of points that must be earned in any given category in order to receive funding. The minimum point totals should be included in the text of the rule.

p. Section NR 153.35 (4) (g) should be rewritten to read: "Areas surrounded by areas or land uses described in pars. (c) to (f)."

1 **ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD**
2 **REPEALING AND RECREATING RULES**

3
4 The Natural Resources Board proposes an order to create ch. NR 153 relating to the
5 runoff management grant program

6
7 WT-10-00

8
9 Analysis Prepared by Department of Natural Resources

10
11 Statutory authority: ss. 227.11 and 281.65(4)(e), Stats.

12 Statutes interpreted: ss. 281.65 and 281.66, Stats.

13
14 Chapter NR 153 is a new rule under which the department will administer the Runoff
15 Management Grant Program. Chapter NR 153 is being created in response to 1997
16 Wisconsin Act 27 and 1999 Wisconsin Act 9. These statutes require significant changes
17 to the department's nonpoint source water pollution abatement program and to the
18 department of agriculture, trade and consumer protection's soil and water resources
19 management program.

20
21 Creation of chapter NR 153 is an integral part of promulgating a series of inter-related
22 administrative rules to implement a re-design of Wisconsin's nonpoint source programs
23 as set forth in these statutes. Other related components of this effort that are being
24 conducted concurrently include: repeal and recreation of chapter NR 120, Nonpoint
25 Source Pollution Abatement Program; creation of chapter NR 151, Runoff Management;
26 creation of chapter NR 152, Model Ordinances for Construction Site Erosion Control and
27 Storm Water Management; creation of chapter NR 154, Best Management Practices,
28 Technical Standards and Cost-Share Conditions; revision of chapter NR 216, Storm
29 Water Discharge Permits; repeal and recreation of chapter NR 243, Animal Feeding
30 Operations. The department of agriculture, trade and consumer protection is concurrently
31 revising ATP 50, Soil and Water Resource Management, to incorporate changes in its
32 programs.

33
34 Chapter NR 153 contains policy and procedures for administering two separate elements
35 of the Runoff Management Grant Program. Subchapter I, Targeted Nonpoint Source
36 Projects, contains policies and procedures for making grants authorized under s.
37 281.65(4c), Stats. Point sources, including municipalities required to comply with storm
38 water permitting requirements under chapter NR 216, can not be funded under this
39 subchapter. Subchapter II, Urban Nonpoint Source and Stormwater Projects, contains
40 policies and procedures for making grants authorized under s. 281.66, Stats. All projects
41 that meet the basic statutory requirements are eligible for funding, including municipal
42 projects located in municipalities required to comply with storm water permitting
43 requirements under chapter NR 216.

44
45 Once the existing priority watershed and priority lake projects selected under s.
46 281.65(3m), Stats. are completed, Subchapters I and II of chapter NR 153 will be the

1 primary vehicle by which the department focuses limited financial and technical
2 resources into areas where storm water runoff control is a high priority. Compared to the
3 priority watershed projects being completed under NR 120, the new projects conducted
4 under chapter NR 153 will be shorter in duration, smaller in cost and scope and
5 distributed more widely across the state.

6 7 Subchapter I: Targeted Nonpoint Source Program

8
9 Projects funded under this subchapter will be selected using the competitive scoring
10 system set forth in the rule. The DNR scores and selects projects annually with advice
11 from Wisconsin Land and Water Conservation Board. The scoring system considers
12 fiscal accountability, cost effectiveness, water quality, extent of pollutant control,
13 likelihood of success, and impact on storm water management in the City of Racine.
14 Projects can be up to 3 years in duration unless the department grants an extension,
15 limited to one year. Projects will be consistent with county land and water resources
16 management plans prepared under chapter ATCP 50, department priorities established on
17 a geographic basis, and performance standards contained in chapter NR 151. Projects
18 funded under this subchapter will be primarily rural, as most urban projects will be
19 funded under Subchapter II.

20
21 Runoff management and local assistance grants issued to governmental units by the
22 department for local administration and implementation of the program under this
23 subchapter may be used for cost-sharing for management practices and capital
24 improvements, easements, or other activities determined by the department to satisfy the
25 requirements of this subchapter.

26 27 Subchapter II: Urban Nonpoint Source and Storm Water Projects

28
29 This subchapter promotes management of urban stormwater runoff from existing urban
30 areas, developing urban areas and areas of urban redevelopment. The purpose of this
31 subchapter is to establish administrative policies and procedures for a competitive urban
32 grant program to control point and nonpoint sources of storm water runoff from urban
33 areas. Urban areas include commercial land use, industrial land use, or areas with a
34 population density of at least 1,000 persons per square mile. The goal of urban storm
35 water runoff management in these areas is to achieve water quality standards, minimize
36 flooding, protect groundwater, coordinate urban nonpoint source management activities
37 with the municipal storm sewer discharge permit program under s. 283.33, Stats., and
38 implement nonpoint source performance standards under chapter NR 151.

39
40 Projects funded under this subchapter will be selected using the competitive scoring
41 system set forth in the rule. The scoring system considers fiscal accountability, cost
42 effectiveness, water quality, extent of pollutant control, likelihood of success, and impact
43 on storm water management in the City of Racine. Projects can be up to 2 years in
44 duration unless the department grants an extension, limited to one year. Recipients of
45 cost-share grants must ensure adequate implementation of a local stormwater
46 management program.

1 Runoff management and local assistance grants issued to governmental units by the
2 department for local administration and implementation of the program under this
3 subchapter may be used for cost-sharing for management practices and capital
4 improvements, easements, or other activities determined by the department to satisfy the
5 requirements of this subchapter.
6

7
8 SECTION 1. Chapter NR 153 is created to read:
9

10 **Chapter NR 153**

11 **RUNOFF MANAGEMENT GRANT PROGRAM**

- 12
- 13 153.001 Purpose.
 - 14 153.002 Definitions.
 - 15 153.003 Responsibilities of state agencies, governmental units and agents
16 as cost-share recipients.
 - 17 153.004 Runoff management grant agreement.
 - 18 153.005 Cost-share agreements.
 - 19 153.006 Easements.
 - 20 153.007 Property acquisition.
 - 21 153.008 Cost containment.
 - 22 153.009 Reimbursement procedures.
 - 23 153.010 Procurement.
 - 24 153.011 Record keeping and reporting requirements.
 - 25 153.012 Record retention and auditing.
 - 26 153.013 Suspension or termination of grant.
 - 27 153.014 Grant evaluation and enforcement.
 - 28 153.015 Variances.
 - 29 153.016 Annual report.
 - 30 153.017 Conformance with priority watershed plans

31
32 **Subchapter I – Targeted Nonpoint Source Projects**

- 33 153.10 Purpose.
- 34 153.11 Applicability.
- 35 153.12 Application and project selection.
- 36 153.13 Application process.
- 37 153.14 Project scoring and selection.
- 38 153.15 Cost-share eligibility.
- 39 153.16 Cost-share rates.
- 40 153.17 New best management practices and technical standards.
- 41 153.18 Local assistance grant agreement.
- 42 153.19 Ordinance requirements.

43

1 **Subchapter II - Urban Nonpoint Source and Stormwater Projects**

- 2 153.30 Purpose.
- 3 153.31 Applicability.
- 4 153.32 Application and project selection
- 5 153.33 Application process
- 6 153.34 Project scoring and selection
- 7 153.35 Cost-share eligibility.
- 8 153.36 Cost-share rates.
- 9 153.37 New best management practices and technical standards.
- 10 153.38 Local assistance grant agreement.
- 11 153.39 Ordinance requirements.

12
13 **153.001 Purpose.** The purpose of this chapter is to establish the administrative
14 framework for the selection and implementation of watershed and lake nonpoint source
15 pollution abatement projects under s. 281.65 (4c), Stats., and for the selection and
16 implementation of urban nonpoint source water pollution abatement and stormwater
17 management projects under s. 281.66, Stats.

18 **Note:** The urban grant provisions of ch. NR 120 were transferred from ch. NR
19 120 to this chapter. Urban projects that are located outside of municipalities regulated
20 under ch. NR 216 or that do not otherwise qualify under subch. II will be administered
21 under subch. I. Urban projects that meet the eligibility requirements of subch. II,
22 including those located in municipalities regulated under ch. NR 216, will be
23 administered under subch. II. Both subchapters contain special provisions intended to
24 maintain the integrity of priority watershed projects and provide continued funding for
25 urban grantees in these priority watersheds while at the same time expanding the
26 availability of funds to municipalities statewide.

is this
explicit
in the
rule?
2
(see p. 31?)

27
28 **NR 153.002 Definitions.** In this chapter:

29 (1) "Acquisition cost" means the fair market value, recording fees and appraisal
30 costs related to the purchase of property to be acquired. It does not include the cost of
31 land surveys, relocation payments, title insurance, costs of environmental inspections,
32 audits, attorney fees, environmental clean up costs, brokerage fees paid by the buyer, real
33 estate transaction transfer taxes, or any other cost not identified in this chapter.

2
unnecessary
if not in text
of relevant
provisions

1 (2) "Additional staff" means employees hired or contracted for by the
2 governmental unit for project activities including previous or ongoing projects and
3 previous or ongoing priority watershed or priority lake projects under ch. NR 120.

4 (3) "Anticipated cost-share reimbursement amount" or "ACRA" means the annual
5 maximum amount of cost-sharing funds that a project sponsor may receive from the
6 department for a specific project selected under s. NR 153.14 or 153.34.

7 (4) "Approved areawide water quality management plan" means ^a plan which has
8 completed all steps of the basin plan process and which has been approved by the
9 governor as described in ch. NR 121.

10 (5) "Best management practice" as defined in s. 281.65 (2)(a), Stats., means a
11 practice, technique or measure, except for dredging, which is determined to be an
12 effective means of preventing or reducing pollutants generated from nonpoint sources, or
13 from the sediments of inland lakes polluted by nonpoint sources, to a level compatible
14 with water quality objectives established under this chapter and which does not have an
15 adverse impact on fish and wildlife habitat. The practices, techniques or measures include
16 land acquisition, storm sewer rerouting and the removal of structures necessary to install
17 structural urban best management practices, facilities for the handling and treatment of
18 milkhouse wastewater, repair of fences built using grants under this chapter and measures
19 to prevent or reduce pollutants generated from mine tailings disposal sites for which the
20 department has not approved a plan of operation under s. 289.30, Stats. For purposes of
21 this chapter, this definition also applies to means of preventing or reducing pollutants
22 generated by point source discharges of stormwater.

23 (6) "Cost-share agreement" means the agreement established between the
24 governmental unit and the cost-share recipient which identifies the best management
25 practices to be used on the cost-share recipient's lands and the cost estimate, installation
26 schedule and operation and maintenance requirements for these best management
27 practices.

28 (7) "Dam" means any artificial barrier in or across a waterway which has the
29 primary purpose of impounding or diverting water. A dam includes all appurtenant
30 works, such as a dike, canal or powerhouse.

5

identical to this, ✓
except ↓

identified in areawide w. q. mgmt. plans

2

added

unnecessary

why not define this, too?

ditto

1 (8) "DATCP" means the Wisconsin department of agriculture, trade and
2 consumer protection.

3 (9) "Department" means the Wisconsin department of natural resources.

4 (10) "Force account work" means the use of the governmental unit's own
5 employes or equipment for construction, construction related activities, or repair or
6 improvement to a best management practice.

7 (11) "Governmental unit" means any unit of government including, but not
8 limited to, a county, city, village, town, metropolitan sewerage district created under ss.
9 66.20 to 66.26 or 66.88 to 66.918, Stats., town sanitary district, public inland lake
10 protection and rehabilitation district, regional planning commission or drainage district
11 operating under ch. 89, 1961 Stats., or ch. 88, Stats. Governmental unit does not include
12 the state or any state agency. *has the meaning given in 281.65(2) (am)* 2

13 (12) "Grant period" means the time period during which governmental units are
14 eligible to incur costs for a project. *and what time period is that? how* 5

15 (13) "Landowner or land operator" means any individual, partnership, *established?*
16 corporation, municipality or person holding title to, having possession of or holding a
17 lease in land.

18 (14) "Local share" means the portion of the cost of the installation of a best
19 management practice, including federal cost-sharing, not funded through s. 20.115 (7) (c)
20 and (qd), 20.370 (6) (aa) and (aq) or 20.866 (2) (te) and (we), Stats.

21 (15) "Municipal WPDES storm water discharge permit" means any permit issued
22 to a municipality by the department under s. 283.33 (1), Stats., for the purpose of
23 controlling storm water discharges owned or operated by a municipality.

24 (16) "Nonpoint source" means a land management activity which contributes to
25 runoff, seepage or percolation which adversely affects or threatens the quality of waters
26 of this state and which is not a point source under s. 283.01 (12), Stats. *ditto*

27 (17) "NRCS" means the natural resources conservation service of the U.S.
28 department of agriculture.

29 (18) "Operation and maintenance period" means the length of time from which
30 the last best management practice in the cost-share agreement was installed or
31 implemented. *from installation until when?* 5

1 (19) "Population" means population shown by the last federal census or by any
2 subsequent population estimate under s. 16.96, Stats.

3 (20) "Priority lake area" means a hydrologic unit which drains to a lake or group
4 of lakes and serves as the project boundary for watershed projects identified through the
5 process in s. 281.65 (3m) (b), Stats., and implemented through the process in ch. NR 120.

6 (21) "Priority watershed" means a watershed or lake area which the department
7 has identified through the continuing planning process under s. 283.83, Stats., and which
8 has been designated by the land and water conservation board under s. 281.65 (3m) (a),
9 Stats., as one of those watersheds where the need for nonpoint source water pollution
10 abatement is most critical, and which is implemented through the process in ch. NR 120.

11 (22) "Priority watershed plan" means the detailed portion of the areawide water
12 quality management plan prepared for priority watersheds as described in s. NR 120.08.

13 (23) "Project completion" means the date on which a targeted nonpoint source
14 project, urban nonpoint source water pollution abatement project or stormwater
15 management project's runoff management grant has expired.

16 (24) "Project sponsor" means the governmental unit applying for and receiving
17 grant assistance under s. 281.65, Stats., and this chapter.

18 (25) "Redevelopment" means existing urbanized areas where new development is
19 replacing older development.

20 (26) "Source area" means a component of urban land use from which storm water
21 pollutants are generated during periods of snowmelt and rainfall runoff. Source areas
22 include rooftops, sidewalks, driveways, parking lots, storage areas, streets and lawns.

23 (27) "Technical guide" means the natural resources conservation service field
24 office technical guide, published by the natural resources conservation service of the U.S.
25 department of agriculture, that was in effect on the effective date of this rule ... [revisor
26 insert date].

27 **Note:** Copies of the technical guide are on file with the department, the secretary
28 of state, and the revisor of statutes. Copies of individual standards contained in the
29 technical guide may be obtained from the county land conservation committee or from a
30 field office of the U.S. department of agriculture, natural resources conservation service.

31 (28) "Urban area" means any of the following:

Handwritten notes:
different
from
Stats.
- ok?

Handwritten notes:
note (2)

- 1 (a) An area with a population of 1,000 or more per square mile.
- 2 (b) An area in which the land is used for industrial or commercial land uses.
- 3 (c) An area that is surrounded by an area described in par. (a) or (b).
- 4 (29) "Wetland" or "wetlands" has the meaning specified under s. 23.32, Stats.
- 5 (30) "WPDES" means Wisconsin pollutant discharge elimination system.

6
7 **NR 153.003 Responsibilities of state agencies, governmental units and agents**
8 **as cost-share recipients.** Each state agency, unit of government or agent receiving cost-
9 sharing funds in a runoff management grant shall do all of the following:

- 10 (1) Provide the department with verification of proper installation, operation and
11 maintenance of best management practices for which it is the cost-share recipient.
- 12 (2) Prepare and maintain adequate fiscal management and technical assistance
13 files as described in ss. NR 153.011 and 153.012.
- 14 (3) Obtain prior written approval from the department for use of runoff
15 management grant funds for best management practices installed on land owned or
16 operated by the grantee or on other lands as provided for under s. NR 153.35(1)(b).

17
18 **NR 153.004 Runoff management grant agreement.** ^AThe runoff management
19 grant agreement is an agreement entered into between the department and a governmental
20 unit or a state agency under s. 281.65, Stats., or between the department and a
21 governmental unit or the board of regents of the university of Wisconsin system under s.
22 281.66, Stats., to provide cost-share funding for a rural or urban runoff management
23 project. ^AThe runoff management grant agreement developed under s. 281.65, Stats., may
24 be used in lieu of a cost-share agreement with a governmental unit for the installation of a
25 structural practice on land owned or operated by a governmental unit. ^AThe runoff
26 management grant agreement developed under s. 281.66, Stats., may be used in lieu of a
27 cost-share agreement with a governmental unit for the installation of a structural practice
28 on land owned or operated by a governmental unit or on other lands as provided for under
29 s. NR 153.35(1)(b).

30 (1) Consistent with the scored and selected project application, a participating
31 governmental unit shall:

do all of the following
Page 8 of 63

separate subsection

of what?
5

definition
2

5

1 (a) Execute a runoff management grant agreement with the department for grant
2 funds necessary to administer cost-share agreements with eligible recipients. This
3 requirement may be waived if the department and the governmental unit agree to delegate
4 these responsibilities to another unit of government.

5 (b) Enter into cost-share agreements with eligible recipients located within its
6 jurisdiction. This requirement may be waived if the department and the governmental
7 unit agree to delegate this responsibility to another unit of government.

8 (c) Be fiscally responsible for the use of cost-share funds provided to cost-share
9 recipients under the runoff management grant. This includes preparing and maintaining
10 adequate fiscal management and technical assistance files as described in ss. NR 153.011
11 and 153.012. This requirement may be waived if the department and the governmental
12 unit agree to delegate these responsibilities to another unit of government.

13 (d) Provide the department with verification of proper installation, operation and
14 maintenance of best management practices for agreements in which it is the cost-share
15 grantor.

16 (e) Provide best management practice technical design and installation assistance
17 for all best management practices in cost-share agreements within its jurisdiction. The
18 governmental unit may assign this requirement to another unit of government if approved
19 by the department.

20 (f) Contact all owners or operators of lands within the project area which are in
21 non-compliance with nonpoint source performance standards under ch. NR 151.

22 (g) Participate with the department in the annual project review meeting.

23 (h) Enforce the terms and conditions of the cost-share agreement as described in s.
24 NR 153.005.

25 (2) A participating governmental unit located within the project area may identify
26 a lead unit of government responsible during the grant period for the following:

27 (a) Local project coordination.

28 (b) Identification of a project manager.

29 (c) Maintenance of project ledgers.

how do they differ?
3

5

1 (3) A participating governmental unit located within the project area shall provide
2 financial support towards the implementation of a project, including, but not limited to,
3 the following:

4 (a) Funding staff support costs necessary for the project unless provided for in a
5 local assistance grant under s. NR 153.18, 153.38 or ch. ATCP 50.

6 (b) Funding the local share of any best management practice the governmental
7 unit installs on property it owns or controls or as ^{described} listed in s. NR 153.35 (1)(b). (5)

8 (c) Funding the local share of items cost-shared in a local assistance grant under s.
9 NR 153.18, 153.38 or ch. ATCP 50.

10 (4) Participating governmental units shall perform inspections through the
11 maintenance periods of the best management practices to ensure that cost-share recipients
12 are complying with the maintenance requirements described in s. NR 153.005.

13 (5) The period in which cost-share agreements may be signed through the runoff
14 management grant agreement may not extend beyond the grant period. No cost-share
15 agreement may be signed until after the grant document has been signed.

16 (6) The grant period of the runoff management grant agreement is the period
17 when cost-share funds may be expended. The grant period for a project selected under
18 subch. I may not exceed 3 years, except that the department may approve an extension
19 for one year. The grant period for a project selected under subch. II may not exceed 2
20 years, except that the department may approve an extension for one year.

21 (7) When installing best management practices, the grantee shall:

22 (a) Comply with the responsibilities stated in s. NR 153.003.

23 (b) Submit estimates of all practice costs, eligible costs, ineligible costs, cost-
24 share rates and estimated total cost-share amount.

25 (c) Submit a schedule of installation and maintenance for the practices.

26 (d) Submit copies of all professional services contracts, construction contracts, bid
27 tabulations, force account proposals, proposals and other related information requested by
28 the department. Professional services contracts, amendments causing the total contract to
29 exceed or amendments exceeding \$25,000 and construction contracts exceeding \$50,000
30 shall be submitted to the department for approval before execution. Force account

*not the
defined
term*

*CP
grant
period*

1 proposals exceeding \$50,000 shall be submitted to the department for approval prior to
2 the initiation of construction.

3 (e) Repay the department the full amount of funds received if the grantee fails to
4 fulfill any terms of the agreement, including failing to install, operate and properly
5 maintain the practices included in the grant agreement.

6 (f) Submit a maintenance strategy for the practices.

7 (g) Agree not to adopt any land use or practice which defeats the purposes of the
8 best management practices.

9 (h) Comply with the requirements for cost-share agreements specified in s. NR
10 153.005 (6) to (8).

11 (8) The grantee may use runoff management grant funds to cover reasonable
12 expenses necessary to secure refunds, rebates or credits described in s. NR 153.009 when
13 approved by the department.

14 (9) The grantee may use runoff management grant easement funds to acquire
15 easements as provided for in s. NR 153.006 (2).

16 (10) The department may unilaterally reduce the runoff management grant to the
17 amount necessary to meet budgetary limitations. The runoff management grant may not
18 be reduced below the amount the grantee has committed on cost-share agreements and
19 contracts.

20 (11) The grant amount may be reduced by the department if the grantee has not
21 met all conditions of the grant or grant amendment or has not expended all of the
22 previously awarded funds by the end of the project period or if the grantee fails to meet a
23 schedule included in the grant for interim work products. The grantee shall provide an
24 estimate of unexpended funds at the request of the department.

25
26 **NR 153.005 Cost-share agreements. (1) PURPOSE OF AGREEMENT.** The
27 cost-share agreement is an agreement listing the best management practices and
28 establishing the conditions and considerations under which a cost-share recipient agrees
29 to install the practices listed consistent with the grant application.

(redundant and differs from the definition)

30 (2) EFFECTIVE DATE. For best management practices to be eligible for cost-
31 sharing, the runoff management grant agreement and the cost-share agreement shall be

1 signed before the installation of practices may be initiated. A cost-share agreement is not
2 necessary if the runoff management grant agreement allows the grantee to use funds
3 directly. Runoff management grant agreements used in lieu of cost-share agreements
4 shall comply with the requirements in this section as well as those in s. NR 153.004.

5 (3) PARTIES TO THE AGREEMENT. (a) The cost-share agreement shall be
6 between the participating governmental unit and the individual landowner, land operator
7 or state agency. Agreements with land operators shall be co-signed by the landowner
8 except in instances where the cost-share agreement contains no other practices than those
9 enumerated in sub. (6) (b) 1. If other practices are included through a cost-share
10 agreement amendment, the landowner shall co-sign the amendment.

11 (b) Governmental units, as cost-share agreement grantors, shall enter into cost-
12 share agreements only during the period specified in the runoff management grant.

13 (c) The cost-share agreement shall apply to all contiguous sites under the same
14 ownership. At the discretion of the governmental unit, the cost-share agreement may also
15 apply to noncontiguous sites under the same ownership or operation in the watershed.

16 (4) CONTENT OF THE AGREEMENT. The cost-share agreement shall contain
17 or describe:

18 (a) The name and address of the cost-share recipient.

19 (b) The best management practices cost-shared and not cost-shared to be applied
20 and the cost-share rates for the practices to be cost-shared.

21 (c) The estimated total practice cost, cost-share rate and estimated cost-share
22 amount.

23 (d) The installation schedule for applying the practices.

24 (e) A statement of maintenance requirements.

25 (f) A requirement to not adopt any land use or practice which defeats the purposes
26 of the best management practices, the cost-share agreement or the runoff management
27 grant agreement.

28 (g) A provision stating that the governmental unit shall provide appropriate
29 technical assistance during the required operation and maintenance period of the best
30 management practices.

31 (h) A nondiscrimination clause.

- 1 (i) A provision describing the procedure for amendment.
- 2 (j) The location of the land on which the cost-shared practice is to be installed ,
- 3 and a specific legal description of the land if cost-share payments may exceed \$10,000.
- 4 (k) A requirement that disallows any change in land use or management on the
- 5 entire property described on the cost-share agreement which may cause sources which
- 6 were adequately managed at the time of cost-share agreement signing to produce an
- 7 increased pollutant loading to surface water or ground water. If such a change in land use
- 8 or management occurs, the landowner or operator shall control the source at the
- 9 landowner or operator's own expense or return any cost-sharing funds awarded through
- 10 the cost-share agreement to the grantor.
- 11 (L) A requirement to amend the cost-share agreement if practices are added or
- 12 deleted and to add or delete practices only when they are consistent with the project grant
- 13 application.

14 **(4m) DEPARTMENT APPROVAL.** The governmental unit shall obtain prior
15 department approval when a single practice exceeds \$35,000 in state share or when the
16 total cost-share agreement amount and its amendments exceeds \$100,000 in state share.

17 **(5) SUBMITTAL TO DEPARTMENT.** The runoff management grant agreement
18 grantor shall submit a copy of the cost-share agreement or amendments to the department
19 within 30 days of execution. The department shall ratify the expenditures listed in the
20 cost-share agreement if the best management practices listed are the least cost alternatives
21 to controlling the sources of pollution, or are alternatives otherwise provided for in this
22 chapter, and the significance in the reduction of pollution justifies the expenditure of the
23 grant funds. The department may deny reimbursement to the governmental unit for costs
24 associated with the installation of a best management practice not in conformance with
25 the cost-share agreement, the runoff management grant agreement or the project grant
26 application.

!!!
Who is this?
(the only occurrence in the rule)

27 **(6) AGREEMENT PERIOD.** The cost-share agreement period shall be the period
28 from the cost-share agreement signing to installation of the last practice on the agreement
29 plus the operation and maintenance period.

Scrap the definition of this term and write this requirement in active voice

5

1 (a) The period during which practices on a signed cost-share agreement may be
2 installed may not extend beyond the grant period of the runoff management grant
3 agreement for the project.

4 (b) The operation and maintenance period for both cost-shared and not cost-
5 shared best management practices shall be for a minimum of 10 years. The operation and
6 maintenance period shall begin when the last practice in the agreement has been installed
7 or implemented.

8 1. Except where required as a component of another practice, the following
9 practices are exempt from the 10-year operation and maintenance period requirement and
10 only need to be maintained during the years for which cost-sharing is received:

- 11 a. High residue management systems.
- 12 b. Nutrient management.
- 13 c. Pesticide management.
- 14 d. Cropland protection cover (green manure).

15 2. When a practice in subd. 1. is required as a component of another practice in s.
16 NR 154.03, the operation and maintenance period for the component practice shall be the
17 same as the operation and maintenance period for the practice for which it is required.

18 (7) FAILURE TO FULFILL AGREEMENT. If the cost-share recipient fails to
19 fulfill any terms of the cost-share agreement, including failing to install, operate and
20 properly maintain the practices of the agreement, the full amount of cost-shared funds
21 received by the cost-share recipient shall be repaid to the governmental unit which is the
22 grantor of the agreement. The governmental unit grantor shall forward the repayment to
23 the department.

24 (8) INEFFECTIVE PRACTICES. If the practice becomes ineffective either
25 during or beyond the grant period of the runoff management grant agreement of the
26 project, the department may award a new grant agreement or amend and extend the
27 existing runoff management grant agreement to cost-share the replacement of the
28 practice. An appropriate maintenance period for the replacement practice shall be
29 identified in the cost share agreement.

30 (9) CHANGE IN OWNERSHIP. If a change in ownership occurs during the cost-
31 share agreement period, the new landowner shall be responsible for fulfilling all

1 conditions of the cost-share agreement. Upon receiving written approval from the
2 respective local governmental unit, the new landowner may implement alternative
3 approved best management practices provided that a comparable level of pollution
4 control is achieved.

5 **(10) RECORDING OF COST-SHARE AGREEMENTS WITH REGISTER OF**
6 **DEEDS.** (a) The governmental unit shall record the cost-share agreement and its
7 amendments in the office of the register of deeds for each county in which the property is
8 located if the total cost-share agreement amount and its amendments exceed \$10,000.

9 The governmental unit shall record these documents prior to making reimbursements to
10 the landowner or land operator.

11 (b) A cost-share agreement may be exempt from the recording requirement if the
12 cost-share agreement contains no other practices than the following:

- 13 1. Contour farming.
- 14 2. Contour and field stripcropping.
- 15 3. Cropland protection cover (green manure).
- 16 4. High residue management.
- 17 5. Nutrient management.
- 18 6. Pesticide management.

19 **(11) RELEASE OF PROPERTY FROM OBLIGATIONS OF COST-SHARE**
20 **AGREEMENTS.** (a) A governmental unit may fully or partially release a property from
21 the obligations of the cost-share agreement provided that the governmental unit has
22 determined that the best management practices installed on the property will be
23 maintained or replaced with practices which will not increase the pollutant loading to
24 surface water or groundwater counter to the water resource objectives of the grant
25 application. If state dollars in excess of \$10,000 have been expended for best
26 management practices that are located on the property to be released, the governmental
27 unit shall obtain written approval from the department before the property can be
28 released. The release form shall be obtained from the department and filed with the cost-
29 share agreement.

30 (b) With the approval of the department, a governmental unit may fully release a
31 property from the obligations of the cost-share agreement provided that the governmental

1 unit has determined that there are insufficient cost-share funds remaining in its runoff
2 management grant to provide reimbursement for the practices on the agreement and the
3 cost-share recipient has failed to install the best management practices on the agreement.

4 **Note:** Copies of the release form are available from the Bureau of Community
5 Financial Assistance, Department of Natural Resources. Box 7921, Madison, WI 53707.

6
7 **NR 153.006 Easements. (1)** Governmental units holding runoff management
8 grants from the department for a project awarded under this section may enter into
9 easements with landowners for lands identified in grant applications. Funding for the
10 easement shall be included in the application request. Easements, including donated
11 conservation easements, shall be acquired for perpetuity. Easements may be used in
12 conjunction with the following best management practices:

- 13 (a) Critical area stabilization.
- 14 (b) Shoreline buffers.
- 15 (c) Wetland restoration.
- 16 (d) Any other best management practice specified as eligible for easement support
17 in an approved grant application.
- 18 (e) Animal lot relocation in conjunction with pars. (a) to (c), provided that written
19 approval of the governmental unit is obtained prior to easement acquisition, in
20 accordance with the requirements of s. NR 154.03 (21) (b) 6.

21 **(2)** The department may authorize, in writing, any governmental unit, non-profit
22 organization or person to enter into easements or irrevocable leases or accept a donated
23 conservation easement consistent with the eligibility provision of the approved grant
24 application in accordance with the following:

- 25 (a) An easement acquired under this subsection shall be acquired for perpetuity.
- 26 (b) An irrevocable lease acquired under this subsection may not be for less than
27 20 years.
- 28 (c) Prior written department approval for the purchase of an easement or an
29 irrevocable lease shall be obtained when the cost exceeds \$50,000.

1 (d) The value of an easement or an irrevocable lease shall be based on a valuation
2 procedure that has received prior department approval. The value of an irrevocable lease
3 may not exceed 50% of the value of a perpetual easement acquired for the identical site.

4 (e) An easement or a lease acquired by a governmental unit, non-profit
5 organization or person shall be recorded in the register of deeds office in the county in
6 which the property subject to the easement or lease is located.

7 (3) Upon acceptance of a donated easement under s. NR 153.16 (3) (b) or 153.36
8 (3) (b), the department shall appraise the easement and thereafter, issue a written opinion
9 on the value or issue a statement of value of the easement.

10 (4) Under subch. I, the department may distribute grants and aids to itself or to
11 any governmental unit for the purchase of easements in project areas. Under subch. II, the
12 department may distribute grants and aids to any governmental unit for the purchase of
13 easements in project areas.

14
15 **NR 153.007 Property acquisition. (1) ELIGIBLE ACTIVITIES.** The department
16 may distribute grants to a governmental unit holding a runoff management grant under s.
17 NR 153.004 to either:

18 (a) Acquire land or an interest in land for the construction of an urban structural
19 practice.

20 (b) Acquire land or an interest in land identified in the grant application which is
21 contributing or will contribute nonpoint source or stormwater pollution.

22 (2) **ACQUISITION PROPOSALS.** A governmental unit requesting runoff
23 management grant funds for the acquisition of property under this section shall submit an
24 acquisition proposal to the department for its review and approval. The acquisition
25 proposal shall be submitted with the runoff management grant application or grant
26 amendment request. The acquisition proposal shall include the following:

27 (a) A description of the purpose for acquiring the land and how the acquisition
28 will meet applicable goals of the project for which the grant is applied.

29 (b) A description of the land management plan for the property including a list of
30 any owner-occupants or tenants that occupy the buildings or land to be acquired, a
31 general time frame for project completion, and a description of how long-term

1 management will be provided. Identification of other governmental units that will be
2 involved in management and their respective roles shall also be included.

3 (c) A copy of the appropriate county, township, topographic and local land use
4 planning maps showing the proposed acquisition.

5 (d) An estimate of overall acquisition and annual maintenance costs, including the
6 number of parcels and acres to be acquired which notes the number of improved parcels
7 involved.

8 (e) A description of how the proposed acquisition complements other nonpoint
9 source and stormwater pollution abatement program efforts.

10 (f) Other information the department may request.

11 **(3) GENERAL PROVISIONS.** (a) Governmental units shall acquire and manage
12 property acquired with a runoff management grant in accordance with all applicable
13 local, state and federal laws and regulations.

14 (b) After approval of the acquisition proposal and receipt of a local assistance
15 grant from the department, a governmental unit shall obtain an appraisal for each
16 property.

17 1. Appraisals are subject to department review and approval.

18 2. Appraisals shall be conducted by a certified or licensed appraiser as described
19 in ch. 458, Stats., and chs. RL 80 to 86.

20 3. Acquisitions with a fair market value of more than \$200,000 require 2
21 appraisals. The department may require a second appraisal for property valued under
22 \$200,000 if the property presents a difficult appraisal problem or if the first appraisal is
23 unacceptable under department guidelines.

24 **Note:** Appraisal guidelines are available as a reference from the Bureau of
25 Facilities and Lands, Department of Natural Resources, Box 7931, Madison, WI 53707.

26 (c) Property may be purchased only from willing sellers. The governmental unit
27 shall provide the seller with a just compensation statement which identifies the fair
28 market value of the property, as determined by an appraiser meeting the requirements
29 listed in par. (b) 2. and which describes the benefits due to the seller in exchange for the
30 transfer of the seller's property.

J
2

active voice

1 (d) When applicable, relocation plans shall be developed in accordance with ch.
2 COMM 202.

3 (e) Property acquired with a runoff management grant shall be maintained and
4 managed in accordance with the provisions, conditions and description in the grant
5 contract.

6 (f) A governmental unit may be allowed to acquire property prior to entering into
7 a runoff management grant agreement, provided that the governmental unit has received
8 written approval of the department prior to purchasing the targeted property. The
9 governmental unit shall submit a written statement to the department which explains the
10 special circumstances justifying the need to acquire the property at that time. Prior to
11 runoff management grant agreement reimbursement for the acquisition, the governmental
12 unit shall establish the value of the property in accordance with par. (b).

13 (g) The governmental unit shall record the deed which vests title or a property
14 interest in the governmental unit and which references the interest of the state of
15 Wisconsin in the property under the terms of the grant contract.

*What is that
interest?*
5

16 **(4) STATE COST-SHARE RATE.** (a) The maximum allowable state cost-share
17 rate for the acquisition of property under this chapter shall be 50% of the acquisition cost
18 of the property.

19 (b) The maximum allowable state cost-share rate for appraisals for the acquisition
20 of property shall be 70% of the cost of the appraisal for acquisition projects added to
21 grants after June 30, 1998. The department may cost-share up to 100% of the appraisal
22 costs when the land acquisition was added to the grant prior to July 1, 1998.

verb?

23 **(5) CRITERIA.** The department shall consider the following criteria when
24 determining whether to provide funding for the proposed acquisition. :

25 (a) The degree to which the acquisition of the property would provide for the
26 protection or improvement of water quality.

27 (b) The degree to which the acquisition of the property would provide for
28 protection or improvement of other aspects of the natural ecosystem such as fish,
29 wildlife, wetlands or natural beauty.

30 (c) The degree to which the acquisition of the property would complement other
31 watershed management efforts.

- 1 (d) The level of support from other governmental units. ? (5)
2 (e) The level of financial support by the governmental unit.
3 (f) In cases where the acquisition will prevent further degradation of water
4 quality, the acquisition ^{is} shall be cost-effective, relative to the degree of threat of further
5 degradation to the site. (5)

6
7 **NR 153.008 Cost containment procedures.** (1) Governmental units as grantors
8 of cost-share agreements shall identify and agree to use one or more of the following cost
9 containment procedures for each best management practice identified in the watershed
10 plan. : installation of shall (2)?

11 (a) *Average cost.* Based on past cost information, a governmental unit shall determine
12 an average cost per unit of materials and labor for the installation of a best management
13 practice which may not be exceeded. A committee may use its own experience, or
14 information obtained from the department or other sources, to estimate typical costs. (5)

15 (b) *Range of costs.* Based on past cost information, a governmental unit shall
16 establish a cost range for the installation of a best management practice. Eligible costs
17 may not exceed the maximum cost of the range. A committee may use its own
18 experience, or information obtained from the department or other sources, to estimate
19 typical costs. (5) this is avg. cost plus.

20 (c) *Bidding.* A governmental unit shall require the landowner to request bids from
21 contractors for the installation of a best management practice. The cost-share payment
22 shall be calculated based on the lowest bid meeting acceptable qualifications. The
23 governmental unit shall identify criteria for determining acceptable qualifications. The
24 landowner may select a qualified contractor other than the low qualified bidder, but shall
25 contribute 100% of the difference between the bids.

26 **Note:** The department suggests the following bidding procedures:

- 27 • The governmental unit shows the proposed construction site to all prospective
28 bidders on the same day and at the same time.
29 • There are at least 3 qualified bidders.
30 • All bids are sealed and delivered by a bid deadline to a location specified by
31 the governmental unit.

- 1 • Bids are opened within 2 weeks after the bid deadline.
- 2 • The amount of the cost-share grant is based on the lowest qualified bid.
- 3 • The landowner selects a higher bidding contractor only if the landowner
- 4 agrees to pay the difference.
- 5 • The landowner may not select a contractor who did not bid.

6 (d) *Maximum cost-share limit.* A governmental unit or the department ^{shall} establishes
 7 a maximum cost-share rate limit not to exceed the rates specified in s. NR 120.18 for
 8 installation of a best management practice.

②?
 max. rate ≠
 max. cost
 ⑤

9 (e) *Municipal work group.* A governmental unit hires or assigns its employes to
 10 install a best management practice for landowners and land operators if the employes are
 11 able to perform the work at a cost lower than the private sector.

12 (f) *Wisconsin conservation corps.* A governmental unit uses the Wisconsin
 13 conservation corps to install best management practices for landowners and land
 14 operators.

15 (g) *Other cost containment procedures.* If a governmental unit determines another
 16 cost containment procedure would be at least as or more effective than the cost
 17 containment procedures described in this subsection, it shall include the alternative in the
 18 detailed program for implementation portion of the watershed plan.

19 (2) A governmental unit shall develop a cost containment procedure to control in-
 20 kind contributions by landowners installing best management practices using their own
 21 labor or equipment unless in-kind contributions will not be utilized in the project.

⑤
 ? not counted
 as match or
 not done ?

23 **NR 153.009 Reimbursement procedures. (1) RUNOFF MANAGEMENT**
 24 **GRANT AGREEMENTS.** (a) State cost-share funds may be used to share in the actual
 25 cost required for the installation of eligible best management practices identified in runoff
 26 management grant agreements described in s. NR 153.004.

27 (b) Governmental units and state agencies shall comply with the following
 28 procedures when requesting reimbursement:

29 1. Reimbursement requests shall be submitted on forms provided by the
 30 department.

1 **Note:** Reimbursement request forms may be obtained, at no charge, from the
2 Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921
3 – CFA/8, Madison, Wisconsin 53707.

4 2. All reimbursement requests shall be submitted to the department within the
5 time frame established in the grant or grant amendment. Final reimbursement requests for
6 runoff management grants shall be submitted to the department after the best
7 management practice has been verified as properly installed and its cost has been
8 substantiated by the documentation required by the department.

9 3. Progress reports required by the department shall accompany each
10 reimbursement request.

11 4. Reimbursements may not exceed the grant budget line for that practice, unless
12 amended. Reimbursements during any calendar year may not exceed the amount
13 allocated by the department for that practice or activity for that year.

14 5. Eligible costs, reimbursement amounts and reimbursement filing deadlines may
15 be further specified by the department in the scope of the grant or grant amendment.

16 6. Payments for reimbursement requests submitted after the deadlines established
17 in the grant or grant amendment will be subject to the availability of state funds and to
18 financial commitments made to other grantees by the department.

19 7. Failure to submit reports on schedule may result in withholding of grant
20 payments.

21 8. The department shall deny reimbursements requested for installed practices
22 which are not included in a cost-share agreement ratified by the department, or
23 enumerated as a grantee-installed practice on the grant or grant amendment, or otherwise
24 authorized by this chapter. Reimbursement for local assistance expenses shall be limited
25 to those activities identified as a grant budget line item or specifically enumerated in the
26 grant scope.

27 **(2) LOCAL ASSISTANCE GRANT AGREEMENTS.** (a) State funds may be
28 used to share in the actual costs expended by the governmental unit for eligible activities
29 identified in local assistance grant agreements described in ss. NR 153.18 and 153.38.

30 (b) Governmental units and state agencies shall comply with the reimbursement
31 procedures listed under sub. (1).

another type of agreement?

1 (3) GENERAL PROVISIONS. (a) Grant payments to a governmental unit or
2 other grantee under this chapter are contingent on the availability of legislative
3 appropriations to fund those payments.

4 (b) The department may remove an authorized activity from a grant if there has
5 been substantial nonperformance of the project work by the grantee or the grantee has not
6 met the conditions in the grant or grant amendment.

7 (c) The state share of any refunds, rebates, credits or other amounts that accrue to
8 or are received by the grantee for the project, and that are properly allocable to costs for
9 which the grantee has been paid under a grant, shall be paid to the department.

10 (d) Prior to final payment under the grant, the grantee shall execute an assignment
11 to the department for the state share of refunds, rebates, credits or other amounts properly
12 allocable to costs for which the grantee has been paid by the department under the grant.
13 The grantee shall also execute a release discharging the department, its officers, agents
14 and employes from all liabilities, obligations and claims arising out of the project work or
15 under the grant, subject only to the exceptions specified in the release.

16 (e) The department may withhold grant payments in the following cases:

17 1. The department may withhold a grant payment if the department determines, in
18 writing, that a grantee has failed to comply with project objectives, grant or grant
19 amendment conditions or reporting requirements.

20 2. The department shall withhold payment of, or otherwise recover, the amount of
21 any indebtedness to the department, unless the department determines that collection of
22 the debt will impair accomplishment of the project objectives and that continuation of the
23 project is in the best interest of the program.

24
25 **NR 153.010 Procurement. (1) PROFITS.** Only fair and reasonable profits may
26 be earned by contractors for contracts under grant agreements described in this chapter.
27 Profits included in a formally advertised, competitively bid, fixed price construction
28 contract are presumed to be reasonable. *or under any other approved cost-containment*

29 **(2) RESPONSIBILITY.** The governmental unit is responsible for the
30 administration and successful completion of the activities for which grant assistance

5

*mechanism ?
of NR 153.008*

1 under this chapter is awarded in accordance with sound business judgment and good
2 administrative practice under state and local laws.

3 (3) GENERAL REQUIREMENTS FOR CONTRACTS. Contracts shall be all of
4 the following:

5 (a) Necessary for and directly related to the accomplishment of activities
6 necessary for the activity listed on the grant or grant amendment.

7 (b) In the form of a bilaterally executed written agreement for any professional
8 services or construction activities in excess of \$10,000.

9 (c) For monetary or in-kind consideration. *- adds nothing*

10 (4) FORCE ACCOUNT WORK. (a) A governmental unit shall secure prior
11 written approval from the department for use of the force account method in lieu of
12 contracts for any professional services or construction activities in excess of \$50,000.

13 (b) The department's approval shall be based on the governmental unit's
14 verification and demonstration that it has the necessary competence required to
15 accomplish the work and that the work can be accomplished more economically by the
16 use of the force account method.

17 (5) WISCONSIN CONSERVATION CORPS. Each governmental unit shall
18 encourage and use the Wisconsin conservation corps for appropriate projects to the
19 greatest extent practicable.

20
21 **NR 153.011 Record keeping and reporting requirements. (1) Each**
22 governmental unit as a grant agreement grantee or cost-share agreement grantor shall
23 maintain a financial management system which adequately provides for:

24 (a) Accurate, current and complete disclosure of payments to landowners, land
25 operators, contractors or municipalities and receipts, canceled checks, invoices and bills
26 to support payments made in the program in accordance with department reporting
27 requirements and in accordance with generally accepted accounting principles and
28 practices, consistently applied, regardless of the source of funds.

29 (b) Effective control over and accountability for all project funds and other assets.

30 (c) Comparison of actual costs with the grant amount.

who + contracts?
what must be in a contract or when a contract is required?
5

what result? must approve if s. demonstr.

active voice

dual role explicit

of 5

1 (d) Procedures for determining the eligibility and allocability of costs in
2 accordance with the cost containment requirements of s. NR 153.008 for all practices
3 installed by the landowner or land operator.

4 (e) Accounting records supported by source documentation including the
5 following:

6 1. One separate project account for the total grant identified in the grant
7 agreement reflecting all receipts and expenditures of that grant.

8 2. Accounting records showing all receipts, encumbrances, expenditures and fund
9 balances.

10 3. A complete file for each cost-share agreement including the following
11 documentation:

12 a. Approval of best management practices and cost-share amounts by the
13 governmental unit.

14 b. Cost-share agreement and cost-share agreement amendment forms.

15 c. Verification of proper installation by the governmental unit official.

16 d. Request for reimbursement by a landowner or land operator documenting costs
17 incurred directly or for in-kind contributions by the landowner or land operator.

18 e. Evidence of payment for best management practice by a landowner or land
19 operator including copies of checks or receipts.

20 f. Verification of practice completion in accordance with the cost-share agreement
21 including amendments and approval of cost-share amounts by the governmental unit.

22 (f) A systematic method to assure timely and appropriate resolution of audit
23 findings and recommendations by the department.

24 (g) A final accounting of project expenditures submitted to the department within
25 120 days of the completion of all project work.

26 (h) An identification of the least cost practices.

27 (2) REPORTING REQUIREMENTS. (a) *Annual reports.* Grantees shall report to
28 the department an annual accounting for accomplishments regarding its activities funded
29 under the grant.

the official verification or ins falls?
5

what are these? - xref

1 (b) *Periodic reports.* The department may require more frequent reports than
2 those required under par. (a) from a grantee which account accomplishments regarding
3 activities funded under the grant.

4 (c) *Final project report.* The grantee shall provide a final report after project
5 completion.

6
7 **NR 153.012 Record retention and auditing. (1) RECORD RETENTION**

8 **REQUIREMENTS.** (a) The governmental unit or its agent's records and the records of
9 contractors, including professional services contracts, shall be subject at all reasonable
10 times to inspection, copying and audit by the department or its agent.

11 (b) The governmental unit or its agent or contractors shall preserve and make all
12 records available to the department or its agent for the longest of the following time
13 periods:

14 1. For 3 years after the date of final settlement.

15 2. For a longer period if required by statute or contract.

16 3. For 3 years after the date of termination of a grant agreement. If a grant is
17 partially terminated, records shall be retained for a period of 3 years after the date of final
18 settlement.

19 4. For 3 years after the date of settlement of any dispute.

20 5. Cost-share agreement records shall be kept for the duration of the maintenance
21 period of the cost-share agreement with the longest maintenance period to enable the
22 governmental unit to fulfill its responsibility under s. NR 153.005 (6).

23 (c) The governmental unit or its agent or contractors of the governmental unit
24 shall preserve and make the following records available to the department until any
25 appeals, litigation, claims or exceptions have been finally resolved:

26 1. Records which relate to appeals, disputes or litigation on the settlement of
27 claims arising out of the performance of the project for which funds were awarded.

28 2. Records which relate to costs or expenses of the project to which the
29 department or any of its duly authorized representatives has taken exception.

has challenged.
5

30 **(2) AUDITING.** (a) The department may perform, or cause to be performed,
31 interim audits on all grants.

1 (b) The department may conduct a final audit after the submission of the final
2 payment request. The department shall determine the time of the final audit. Any
3 payments made prior to the final audit are subject to adjustment based on the audit.

4 (c) All audits shall include review of fiscal accountability and consistency with
5 grants or grant amendments.

6
7 **NR 153.013 Suspension or termination of grant. (1) SUSPENSION OF**
8 **GRANTS.** (a) *Liability.* The department may suspend state liability for work done under
9 a grant after notification is given to the grantee in accordance with this subsection.
10 Suspension of state liability under a grant shall be accomplished by the issuance of a
11 "stop-work order."

12 (b) *Stop-work order issuance.* 1. The department may issue a stop-work order if
13 there is a breach of the grant or grant amendment.

14 2. Prior to the issuance of a stop-work order, the department shall meet with the
15 grantee to present the facts supporting a decision to issue a stop-work order.

16 3. After discussion of the department's proposed action with the grantee, the
17 department may issue a written order to the grantee, sent certified mail, return receipt
18 requested, requiring the grantee to stop all, or any part of the project work for a period of
19 not more than 45 days after the order is delivered to the grantee, and for any extended
20 period to which the parties may agree.

21 (c) *Stop-work order components.* A stop-work order shall contain all of the
22 following:

23 1. A description of the work to be suspended.

24 2. Instructions as to the acquisition of materials or services by the grantee.

25 3. Guidance for action to be taken on contracts.

26 4. Other suggestions to the grantee for minimizing costs.

27 (d) *Suspension period.* 1. Upon receipt of a stop-work order, the grantee shall
28 comply with its terms and take all reasonable steps to minimize the incurrence of costs
29 allocable to work covered by the stop-work order during the period of work stoppage.

30 2. Within the suspension period the department shall either:

31 a. Cancel the stop-work order, in full or in part.

1 b. Terminate grant assistance for the work covered by the stop-work order under
2 sub. (2).

3 c. Authorize resumption of work.

4 (e) *Stop-work order cancellation or expiration.* If a stop-work order is canceled or
5 expires, the grantee shall promptly resume the previously suspended work. An equitable
6 adjustment may be made to the grant period, the grant amount or any combination of
7 these items. The grant award may be amended accordingly if the following conditions are
8 met:

9 1. The stop-work order results in an increase in the time required for completion
10 or an increase in the grantee's cost properly allocable to the performance of any part of
11 the project.

12 2. The grantee asserts a written claim for an adjustment within 60 days of
13 cancellation of a stop-work order or authorization to resume work.

14 (f) *Ineligible costs during suspension period.* Costs incurred by the grantee or its
15 contractors, subcontractors or representatives, after a stop-work order is issued by the
16 department, which relate to the project work suspended by the order and which are not
17 authorized by this section or specifically authorized in writing by the department, are not
18 eligible for reimbursement.

19 (2) **TERMINATION OF GRANTS.** A grant may be terminated in whole or in part
20 by the department. Grants may be terminated in accordance with this subsection.

21 (a) The parties to a grant agreement may enter into an agreement to terminate the
22 grant at any time. The agreement shall establish the effective date of termination of the
23 grant, the basis for settlement of grant termination costs and the amount and date of
24 payment of any money due either party.

25 (b) A grantee may not unilaterally terminate project work for which a grant has
26 been awarded except for good cause. The grantee shall notify the department in writing
27 within 30 days of any complete or partial termination of the project work. If the
28 department determines that there is good cause for the termination of all or any portion of
29 a project for which a grant has been awarded, the department may enter into a termination
30 agreement or unilaterally terminate the grant pursuant to par. (c). The grant termination
31 becomes effective on the date the grantee ceases project work. If the department

Intro to (c)
Intro to (d)

Why isn't
this par.
incorporated
into par.
(c) + (d)?
5

What difference!

5

1 determines that a grantee has ceased work on the project without good cause, the
2 department may unilaterally terminate the grant pursuant to par. (c) or annul the grant
3 pursuant to par. (d) ← this is the reasons for doing it ↑ this is procedural

4 (c) Grants may be terminated by the department in accordance with the following
5 procedure:

6 1. The department shall give 10 days written notice to the grantee of its intent to
7 terminate a grant in whole or in part. Notice shall be served on the grantee personally or
8 by certified mail—return receipt requested.

9 2. The department shall consult with the grantee prior to termination. Any notice
10 of termination shall be in writing and state the reasons for terminating the grant. Notices
11 of termination shall be served on the grantee personally or by certified mail—return
12 receipt requested.

13 (d) The department may annul a grant if any of the following occur:

14 1. There has been substantial nonperformance of the project work by the grantee
15 without good cause.

16 2. There is substantial evidence the grant was obtained by fraud.

17 3. There is substantial evidence of gross abuse or corrupt practices in the
18 administration of the grant or project.

19 4. The grantee has not met the conditions in the grant or grant amendment.

20 (e) Upon termination, the grantee shall refund or credit to the department that
21 portion of the grant funds paid or owed to the grantee and allocable to the terminated
22 project work, except an amount as may be required to meet commitments which became
23 enforceable prior to the termination. The grantee may not make any new commitments
24 without department approval. The grantee shall reduce the amount of outstanding
25 commitments insofar as possible and report to the department the uncommitted balance
26 of funds awarded under the grant.

27 (3) TERMINATION SETTLEMENT COSTS. (a) The reasonable costs resulting
28 from a termination order, including a previously issued stop-work order on that project
29 work or grant, shall be eligible in negotiating a termination settlement.

30 (b) The department shall negotiate appropriate termination settlement costs with
31 the grantee. The department shall pay reasonable settlement costs.

1 (4) RESPONSIBILITIES OF GOVERNMENTAL UNITS. Suspension or
2 termination of a grant or portion of grant under this section may not relieve the grantee of
3 its responsibilities under s. NR 153.003.

4 **NR 153.014 Grant evaluation and enforcement.** (1) On an annual basis, the
5 department shall evaluate the progress of projects. During the evaluation, the department
6 shall examine the progress of the project toward project goals and water quality
7 objectives specified in the grant application, grant or grant amendment. Upon consulting
8 with the project sponsor, the department may take appropriate action to improve the
9 progress of the project. Department action may include, but is not limited to, more
10 frequent project evaluation, the use of interim project goals, changes to project funding,
11 and the adoption of sanctions in sub. (2).

12 (2) The following sanctions may be imposed by the department for
13 noncompliance with the provisions of ss. 281.65 and 281.66, Stats., this chapter or any
14 grant agreement entered into or amended in accordance with this chapter:

- 15 (a) The grant may be terminated or annulled under s. NR 153.013.
16 (b) Project costs directly related to noncompliance may be declared ineligible.
17 (c) Payment otherwise due the grantee of up to 10% may be withheld under s. NR
18 153.009 (3) (e).
19 (d) Project work may be suspended under s. NR 153.013.
20 (e) Other administrative or judicial remedies may be instituted as legally available
21 and appropriate.
22 (f) The department may seek recovery of grant payments in whole or in part.

23 **NR 153.015 Variances.** The department may approve in writing a variance from
24 a requirement of this chapter upon written request when the department determines that a
25 variance is essential to effect necessary grant actions or water quality objectives and
26 where special circumstances make a variance in the best interest of the program. A
27 governmental unit's written variance request shall clearly explain the circumstances
28 justifying the variance. Before approving a variance, the department shall take into
29 account factors such as good cause, circumstances beyond the control of the
30
31

Shouldn't this precede the discussion of termination? →
5
Shouldn't this be much earlier? →

1 governmental unit and financial hardship. The department may not grant variances from
2 statutory requirements.

3
4 **NR 153.016 Annual report.** The department, jointly with DATCP, shall annually
5 prepare the report on the progress of the nonpoint source pollution abatement program
6 required in ss. 281.65 (4) (o) and 92.14 (12), Stats. Specific requirements concerning the
7 content of this report shall be in a joint program evaluation plan to be prepared by the
8 department, jointly with the DATCP and approved by the land and water conservation
9 board.

10
11 **NR 153.017 Conformance with priority watershed plans.** Grantees receiving
12 grants under this chapter for the purpose of implementing urban recommendations in an
13 approved priority watershed plan shall address minimum stormwater management
14 requirements as a condition of receiving the grant when the minimum requirements are
15 set forth as grant conditions in the priority watershed plan. Minimum stormwater
16 management requirements include those identified in ^{this section} ~~subs. (1) to (3)~~. This section applies
17 during the time prior to completion of the priority watershed project.

18 → (1) Core urban program activities, as described in s. NR 120.08 (1) (b) 1. i. Core
19 urban program activities means those activities included in a discrete set of nonstructural
20 management measures, identified jointly by the department and the governmental unit in
21 a priority watershed or priority lake area plan, that are considered to be the minimum
22 acceptable level of stormwater management.

23 (2) Management of designated critical sites owned or operated by the grantee.
24 Critical sites, as described in s. 281.65 (4) (g) 8. am., Stats., means those sites that are
25 significant sources of nonpoint source pollution upon which best management practices
26 must be implemented in order to obtain a reasonable likelihood that the water quality
27 objectives established in the priority watershed or priority lake plan can be achieved.
28 Designation of critical sites means the description or means of identifying critical sites in
29 the plan of a priority watershed or priority lake under s. NR 120.08 (1) (a) 5. which may
30 include estimations of pollutant contribution or other adverse impacts on water quality.

Format
2

check
this is not
a requirement

ditto

appears to be a title with no text!

1 (3) Adoption, implementation and enforcement of a construction site erosion
2 control ordinance in accordance with s. NR 120.16.

3
4 **Subchapter I – Targeted Nonpoint Source Projects**

5
6 **NR 153.10 Purpose.** The purpose of this subchapter is to establish administrative
7 policies and procedures for a targeted nonpoint source grant program for eligible grantees
8 seeking to control nonpoint sources of surface water and groundwater pollution, as
9 authorized by s. 281.65 (4c), Stats. This subchapter promotes management of urban and
10 rural nonpoint sources in critical geographic locations where nonpoint source related
11 water quality problems and threats are the most severe and control is most feasible.
12 Projects under this subchapter shall be selected in a manner that promotes an accelerated
13 implementation of nonpoint source water pollution control not feasible under the base
14 level funding available through s. 92.14, Stats., in target areas described in s. NR
15 153.13(2)(b)12. that are of the highest priority. Runoff management and local assistance
16 grants issued to governmental units by the department for local administration and
17 implementation of the program under this subchapter may be used for cost-sharing for
18 management practices and capital improvements, easements or other activities
19 determined by the department to satisfy the requirements of this subchapter.

20
21 **NR 153.11 Applicability.** This subchapter applies to governmental units that
22 apply for or receive grants under s. 281.65(4c), Stats. This subchapter applies to these
23 entities when acting as grant recipients and to eligible governmental units when acting as
24 grantors to landowners and operators.

Local rule again

25
26 **NR 153.12 Application and project selection.** A governmental unit may request
27 funding under this subchapter for a nonpoint source pollution abatement project that is
28 either in a priority watershed, in a priority lake area or that is not in a priority watershed
29 or a priority lake area by submitting an application to the department.

30 **(1) FREQUENCY.** The department shall solicit applications for projects to be
31 funded under this subchapter on an annual basis, subject to the availability of funding. If

1 funding is not available for the selection of new projects in a given year, the department
2 shall notify eligible applicants to this effect as soon as practicable.

3 (2) SCHEDULE. (a) The department shall provide public notice that application
4 materials are available upon request. The department shall provide public notice no later
5 than May 1 of each year that grant application materials are available for the following
6 calendar year grant awards.

7 (b) The department shall distribute a copy of the application to any potential
8 applicant that requests it. Project applications shall be submitted by project sponsors to
9 the department before July 15 of each year in order to be considered for initial funding in
10 the following calendar year.

11 (c) The department shall score and rank projects, ^{under NR 153.14} and shall notify the land and
12 water conservation board of project scores and ranks no later than September 1 of each
13 year. The department shall also notify the land and water conservation board of the
14 projects that the department proposes to select for funding in the following year. The
15 board shall review the proposal and make recommendations to the department.

16 (d) Before November 1 of each year, the department shall select projects for
17 funding under this subchapter and shall notify applicants in writing of its intent to prepare
18 grant documents for the selected projects. To the extent practicable within the
19 requirements of s. 281.65 (4c), Stats., the department shall select projects so that projects
20 are distributed evenly around the state.

21 (e) The department shall, where practicable, issue grants to project sponsors by
22 December 31 of each year.

23
24 **NR 153.13 Application process. (1) APPLICATION SUBMITTAL.** Applicants
25 shall submit a completed project application to the department to be considered for
26 project funding. Applicants may submit one or more projects for consideration in each
27 application year.

28 (2) APPLICATION CONTENT. Each applicant shall submit to the department
29 the information identified in par. (a) to (c). *An app. shall include all of the following:*

30 (a) Each applicant shall ^{actually} submit the following administrative information:

31 1. Applicant name. ^{All of}

- 1 2. Name and title of authorized representative.
- 2 3. Contact name and telephone.
- 3 4. Type of governmental unit and applicant address.
- 4 5. Applicant signature.
- 5 6. Other information that the department may require to process the application.

6 (b) ~~Each applicant shall submit~~ ^{all of} the following screening information:

7 1. A map of the project area showing the watershed, subwatershed or specific site
8 to be served by the project.

9 2. A list of the best management practices for which funding is requested,
10 including easements associated with any of these practices.

11 3. A list of other activities for which funding is requested.

12 4. Certification that the activities listed on the application will be completed
13 within 3 years of the start of the grant period unless a one-year extension is granted by
14 the department.

15 5. For applications requesting a runoff management grant for cost-sharing,
16 certification that the project sponsor has the necessary staff available for project
17 implementation. *is this the basic distinction?*

18 6. For applications requesting a local assistance grant, certification that the project
19 sponsor does not have the necessary staff available for project implementation.

20 7. Certification that staff and contractors designated for the project have adequate
21 training, knowledge and experience to implement the proposed project.

22 8. Evidence that the proposed project can meet the statewide and targeted
23 nonpoint source performance standards adopted in ch. NR 151.

24 9. Certification that the project cannot be implemented with funding provided
25 under s. 92.14, Stats.

26 10. Certification that the project is consistent with approved land and water
27 resource management plans under s. 92.10, Stats., and ch. ATCP 50.

28 11. Certification that the project is consistent with priorities identified by the
29 department on a watershed or other geographic basis.

30 12. Certification that the project will implement nonpoint source pollution control
31 in an area that is a target area based on any of the following:

define purpose of grants?

Start of description of the grants that are available
cf. p. 37

should be a section not a subsection!

*Who determines this?
how?
check stats.*

direct quote of statute
production of this

- 1 a. The need for compliance with performance standards established by the
- 2 department under s. 281.16 (2), Stats., and ch. NR 151.
- 3 b. The existence of impaired water bodies that the department has identified to the
- 4 U.S. environmental protection agency.
- 5 c. The existence of outstanding or exceptional resource waters, as designated by
- 6 the department under s. 281.15, Stats. *threatened by non-point pollution*
- 7 d. The existence of threats to public health. *due to non-point pollution*
- 8 e. The existence of an animal feeding operation that has received a notice of
- 9 discharge under ch. NR 243 or a notice of intent to issue a notice of discharge.
- 10 f. Other water quality concerns of national or statewide importance.

11 13. Other information required by the department in the grant application form.

12 (c) ~~Each applicant shall submit the following information:~~ *All of the screening* ~~that this "screening"~~

- 13 1. A work schedule, a financial budget showing total costs and all funding *info. too?*
- 14 sources, and documentation of project cost-effectiveness.
- 15 2. Documentation of water quality conditions and objectives in the project area,
- 16 consistency of the project with priorities identified by the department in the applicable
- 17 areawide water quality management plan or priority watershed or priority lake plan and a
- 18 strategy for post-project evaluation. Water quality needs and priorities may include
- 19 impaired, threatened or outstanding and exceptional surface and ground water resources.
- 20 3. Extent of pollutant control including the amount of control needed to meet *X*
- 21 water quality objectives and the amount of control that will be provided by management
- 22 activities in the project area.
- 23 4. Extent of local support and likelihood of project success, including evidence of *X*
- 24 local involvement, plans to improve local involvement, ordinances or other enforcement
- 25 mechanisms, use of other funding sources, including federal funding, to reduce the state
- 26 share eligible for funding under this subchapter. Evidence of local involvement also
- 27 includes a local unit of government's continuous decision-making process which ensures
- 28 participation by minority and low income populations in affected areas, along with
- 29 majority populations, to ensure that as an outcome all people receive the benefits of
- 30 clean, healthy and sustainable environments regardless of race, national origin or income.

A project in Superior has to address this?

5

1 5. Extent to which the project is necessary to enable the city of Racine to control
2 stormwater discharges as required under ch. NR 216.

3 6. Other information that the department may require to score projects.

4 (3) (d) Notwithstanding the application requirements of this section, the department
5 may establish modified requirements for applications submitted for funding for a project
6 or activity that existed on a priority watershed project grant prior to January 1, 2000.

2

7 in an application
8 **NR 153.14 Project scoring and selection.** (1) SCORING. The department shall
9 use the information included in s. NR 153.13 to establish funding priorities of projects for
10 which applications are submitted under this subchapter as required under s. 281.65 (4c)
11 (d), Stats. The scoring system shall meet the following conditions:

5

12 (a) Application information required under s. NR 153.13 (2) (a) may not be
13 included in the scoring system. The department may refuse to score an application if the
14 applicant fails to submit the minimum information required by the department under s.
15 NR 153.13 (2) (a).

16 (b) Application information required under s. NR 153.13 (2) (b) may not be
17 included in the scoring system. The department may not score, and shall declare
18 ineligible for funding, any application that does not qualify for funding based on the
19 information submitted under s. NR 153.13 (2) (b). The department may waive this
20 requirement for any activity that existed on a priority watershed project grant prior to
21 October 29, 1999 when completion of the project or activity is necessary to meet the
22 department's grant obligations under s. 281.65, Stats.

23 (c) Application information required under s. NR 153.13 (2) (c) shall be used by
24 the department in calculating a project score. Consistent with the requirements of s.
25 281.65 (4c) (d), Stats., the department shall distribute points as provided for in subd. 1. to
26 4. The department may establish a minimum amount of points that shall be earned in any
27 given category in order to receive funding under this subchapter:

- 28 1. Fiscal accountability and cost-effectiveness 30 points
- 29 2. Water quality 50 points
- 30 3. Extent of pollutant control 20 points
- 31 4. Extent of local support and likelihood of

5
Can this or
153.13 (2)(c)
be rewritten to
correlate points
w/ individual elements
of the application?

1 project success 45 points

2 (d) Notwithstanding the scoring system in par. (c), the department shall assign
3 maximum total points to any application that is ineligible for funding under chs. NR 120,
4 ATCP 50 or subch. II and that is submitted in order to fund a project or activity that
5 existed on a priority watershed project grant prior to October 29, 1999, when completion
6 of the project or activity is necessary to meet the department's grant obligations under s.
7 281.65, Stats.

8 (2) PROJECT SELECTION. The department shall evaluate applications and
9 assign a score to each project based on the scoring system in this section. The department
10 shall list projects in descending rank order according to total project score. The
11 department shall use the ranked list to allocate grant funds in accordance with the
12 following:

13 (a) The highest ranked project in each department region shall be selected for
14 funding.

defined?

5

15 (b) After selecting the highest ranked project in each department region, funds
16 shall be allocated for remaining eligible projects starting with the highest ranked projects
17 based on total project score and proceeding down the ranked list until available project
18 funds have been allocated.

19 (c) The department may establish a maximum amount that any project can receive
20 in grant awards based on the amount of funding available and the funding demand.

21 (d) Funding shall be provided based on activities identified in the project
22 application submitted by the grantee and approved by the department, verification by the
23 department of the eligibility of items and cost-share rates contained in the application,
24 and budgetary limitations established by the department.

25 (e) When the amount granted to an applicant is different than the amount
26 requested by the applicant, the department shall include the rationale for the amount
27 granted in a letter to the applicant.

28
29 **NR 153.15 Cost-share eligibility.** (1) The department may provide a cost-sharing
30 grant under this subchapter to a governmental unit having jurisdiction over the project
31 area to implement best management practices listed in s. NR 154.03 and practices

is this another category of grants?

1 identified through the process in s. NR 153.17 when these practices are identified in the
2 grant application. Best management practices are only eligible for cost-sharing under this
3 section when installed under the minimum conditions specified in s. NR 154.03.

4 (2) Any entity identified under sub. (1) may act as a grantor and enter into a cost-
5 share agreement with a landowner or land operator for the purposes of implementing
6 best management practices for which it receives a grant from the department under this
7 subchapter. A cost-share agreement may not be signed with an individual whose name
8 appears on the statewide support lien docket under s. 49.854 (2) (b), Stats., unless the
9 individual provides to the grantor a payment agreement that has been approved by the
10 county child support agency under s. 59.53 (5), Stats., and that is consistent with rules
11 promulgated under s. 49.858 (2) (a), Stats.

12 (3) The department shall use the runoff management grant agreement, authorized
13 under s. NR 153.004, to serve as a cost-share agreement, authorized under s. NR 153.005,
14 between the department as grantor and the governmental unit as grantee. A local
15 governmental unit shall use the cost-share agreement ^{under NR 153.005} when serving as grantor to a
16 landowner or operator as grantee. ? (5)

17 (4) The following practices, sources or activities are not eligible for cost-share
18 assistance under this subchapter:

19 (a) Best management practice installation, operation or maintenance started prior
20 to the signing of the cost-sharing agreement. i.e., compliance w/ discharge limits?

21 (b) Activities covered by the WPDES permit program including those identified
22 in chs. NR 200 to 299, except notice of discharge activities identified in ch. NR 243. X (5)

23 **Note:** Municipalities required to comply with storm water permitting
24 requirements under ch. NR 216 may apply for grant funding under subch. II.

25 (c) Activities required as part of or as a condition of a license for a solid waste
26 management site.

27 (d) Activities funded through state or federal grants for wastewater treatment
28 plants. overly broad

29 (e) Active mining activities.

30 (f) Pollutant control measures needed during building and utility construction, and
31 storm water management practices for new developments.

non-point
source

1 (g) Pollutant control measures needed during construction of highways and
2 bridges.

3 (h) The planting, growing and harvesting of trees associated with silviculture,
4 except as necessary for site stabilization.

5 (i) Installing, operating or repairing a small scale on-site human domestic waste
6 facility.

7 (j) Dredging of harbors, lakes, rivers and ditches.

8 (k) Dams, pipes, conveyance systems and urban structural practices, including
9 storm sewer rerouting and land acquisition, when intended solely for flood control.

10 (L) Operation and maintenance of cost-shared practices.

11 (m) Practices other than those in s. NR 154.03 that are normally and routinely
12 used in growing crops and required for the growing of crops or the feeding of livestock.

13 (n) Practices whose purpose is to accelerate or increase the drainage of land or
14 wetlands, except where drainage is required as a component of a best management
15 practice.

16 (o) Practices to control spills from commercial bulk storage of pesticides,
17 fertilizers, petroleum and similar materials required by chs. ATCP 32 and 33 or other
18 administrative rules.

19 (p) Practices needed to control sources which were adequately managed for the
20 specific land use at the time of cost-share agreement signing but which are producing an
21 increased amount of pollutant loading to the surface or groundwater, counter to the water
22 resource objectives of the grant application and approved areawide water quality
23 management or priority watershed plan for the area, due to the landowner's or land user's
24 changes in land management. Changes may include: increases in animal herd size,
25 changes to more intensive cropping, and other changes in land use or management which
26 increase the pollutant loading. Inconsequential fluctuations in animal herd size may not
27 be considered an increase under this section.

28 (q) Practices to be fully funded through other programs.

29 (r) Practices previously installed and necessary to support cost-shared practices.

30 (s) Changes in crop rotation unless required as a component of practices in s. NR
31 154.03 (7), (8), (10) or (11).

- 1 (t) Minimum levels of street sweeping and leaf collection.
- 2 (u) Changes in location of unconfined manure stacks involving no capital cost.
- 3 (v) Nonstationary manure spreading equipment.
- 4 (w) Practices needed for land use changes during the cost-share agreement period.
- 5 (x) Other practices which the department determines are not necessary to achieve
- 6 the objectives of the project.
- 7 (y) Correcting overtopping of a manure storage facility.
- 8 (z) Moving a manure stack.
- 9 (za) Maintaining existing grass cover.
- 10 (zb) Installing a riparian buffer strip less than 20 feet wide
- 11 (zc) Installing or modifying an agricultural facility or practice which is required
- 12 pursuant to a court order or court-ordered stipulation.

14 **NR 153.16 Cost-share rates. (1) STATE COST-SHARE RATES.** (a) The
15 maximum state cost share rate for individual best management practices cost-shared
16 under this section may not exceed 70%, except as otherwise provided in this section for
17 cases of economic hardship. The cost-share rates for best management practices under
18 existing cost-share agreements may be amended to use the rates identified in this section.

- 19 (b) The following apply:
- 20 1. Wildlife habitat re-creation associated with implementation of contour
 - 21 farming, contour strip-cropping and field strip-cropping has a maximum state cost-share
 - 22 rate of 70%.
 - 23 2. Flat rates identified under par. (c) may be used in lieu of calculating cost-share
 - 24 amounts.
 - 25 3. The flat rate identified under par. (c) shall be used to calculate the cost-share
 - 26 amount for vegetated riparian buffers.
 - 27 4. Cost-share payments for high residue management systems may not be made
 - 28 for more than a total of 4 years.
 - 29 5. Cost-share payments for cropland protection cover (green manure) may not be
 - 30 made for more than a total of 3 years.

*These aren't
rate - other
limits on cost
sharing*