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FORM 2***RULES CLEARINGHOUSE***

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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 00-028

AN ORDER to repeal and recreate chapter NR 120, relating to the priority watershed management program.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

02-10-00 RECEIVED BY LEGISLATIVE COUNCIL.

03-07-00 REPORT SENT TO AGENCY.

RNS:AS;jal;rv

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 00-028

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.]

2. Form, Style and Placement in Administrative Code

- a. The use of a "Foreward" in ch. NR 120 is not appropriate drafting style. Can the material be placed in a note?
- b. In s. NR 120.02 (1), "Acquisition cost" should replace "It."
- c. In s. NR 120.12, the introductory material should be numbered sub. (1) because it does not introduce and lead into the text and the subsequent subsections. This comment applies also to sub. (2) (intro.) and ss. NR 120.08 (1) (intro.), 120.13 (6) (intro.) and (6) (b) (intro.), 120.18 (3) (intro.), 120.186 (3) (b) (intro.) and 120.27 (2) (intro.).
- d. In s. NR 120.16 (5), there must be a title for the subsection because the other subsections have titles.
- e. Section NR 120.17 (3) allows the department to "establish alternative eligibility criteria for demonstration projects." Will these criteria be promulgated as rules? See ss. 227.01 (13) and 227.10 (1), Stats.

4. Adequacy of References to Related Statutes, Rules and Forms

- a. In s. NR 120.02 (35), the citation to s. 23.32, Stats., should be to s. 23.32 (1), Stats.

b. In s. NR 120.08 (1) (b) 1. k., the citation to s. NR 120.21 (4) (a) is incorrect. This comment also applies to subd. par. L.

c. In s. NR 120.09 (3) (b), the citation to s. NR 120.18 (1) (a) is incorrect.

d. In s. NR 120.18 (3) (intro.), should par. (qd) be included in the citation of s. 20.115 (7) (c) to be consistent with the definition of "local share" in s. NR 120.02 (21)?

e. In s. NR 120.22 (4), should the citation to s. NR 120.23 be to s. NR 120.25?

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

a. In the "Foreward" on page 4, line 12, "were" should be replaced with "are."

b. In s. NR 120.01 (1), should "grant agreement recipients" be replaced with "grant recipients"?

c. In s. NR 120.02 (1), a hyphen should be inserted between "clean" and "up."

d. In s. NR 120.02 (4), "may" should be replaced with "does."

e. In s. NR 120.02 (15) and elsewhere in the rule, ", but not limited to," should be deleted. Also see s. NR 120.22 (2).

f. In s. NR 120.02 (16), what is meant by "eligible to incur costs"?

g. In s. NR 120.02 (19), the second instance of "Land conservation committee" should be enclosed with quotation marks.

h. In s. NR 120.02 (22), "or "WPDES permit"" should be inserted after ""Municipal WPDES storm water discharge permit"" because "WPDES permit" is used in s. NR 120.17.

i. In s. NR 120.02 (24), "the certified letters" should be replaced with "a certified letter."

j. In s. NR 120.02 (29), "one of those watersheds" should be replaced with "a watershed."

k. In s. NR 120.02, should a definition of "structural urban best management practices" be inserted after sub. (33) to be consistent with the statutes?

l. In s. NR 120.02 (34), "that was" should be deleted and "on the effective date of this chapter" should be inserted after "in effect." Also, "(INSERT DATE)" should be replaced with "(revisor inserts date)." This comment applies also to s. NR 120.16 (4) (d).

m. In s. NR 120.08 (1) (a) 5., what is meant by "by criteria"?

- n. In s. NR 120.08 (2) (f), "also" should be deleted.
- o. In s. NR 120.09 (1), it would be helpful to insert "under sub. (2)" at the end of the last sentence.
- p. In s. NR 120.09 (3) (a), a hyphen should be inserted between "36" and "month."
- q. In s. NR 120.09 (7), "provided that" should be replaced with "if."
- r. In s. NR 120.12, should "or state agency" follow every instance of "governmental unit" as it does in the first sentence?
- s. In s. NR 120.12 (2), hyphens should be inserted between "sign" and "up" in every instance.
- t. In s. NR 120.12 (2) (a), a phrase such as "all the following conditions are met" should be inserted before the colon. Finally, the subsequent subdivisions should end with periods to facilitate amending the paragraph in the future.
- u. In s. NR 120.12 (3) and elsewhere in the rule, "where" should be replaced with "if." Also see ss. NR 120.13 (6) (b) 1., 120.15 (1) and (2) and 120.23 (1) (c).
- v. In s. NR 120.12 (4) (intro.), "do all of the following" should be inserted at the end of the sentence.
- w. In s. NR 120.12 (8), "on cost-share agreements" should be replaced with "in cost-share agreements."
- x. In s. NR 120.13 (3) (a), "Should other practices be included through" should be replaced with "If other practices are included in."
- y. In s. NR 120.13 (4) (f), "A requirement to not adopt" should be replaced with "A prohibition against adopting."
- z. In s. NR 120.13 (4) (h), please clarify what is meant by a "nondiscrimination clause."
- aa. In s. NR 120.13 (4) (k), "A requirement that disallows any change" should be replaced with "A prohibition against changing."
- ab. In s. NR 120.13 (4m), "the cost of" should be inserted before "a single practice."
- ac. In s. NR 120.13 (5), in the first sentence, "or" should be replaced with "and." Also in that subsection, "least cost alternatives" is an awkward phrase and should be reviewed. Could "lowest cost alternatives for controlling" replace "least cost alternatives to controlling"?
- ad. Section NR 120.13 (6) (intro.) should be reviewed. Is the intent that the cost-share agreement period is the period from when the cost-share agreement is signed until the

installation of the last practice on the agreement unless there is a subsequent operation and maintenance period? Please clarify.

ae. In s. NR 120.13 (6) (b) 1. d., and in subsequent provisions, parenthetical phrases should be avoided. [See s. 1.01 (6), Manual.]

af. In s. NR 120.13 (8) (a), "if" should replace "providing that." Also see s. NR 120.186 (3) (f).

ag. In s. NR 120.13 (11) (a), in the second to last sentence, "can" should be replaced with "may."

ah. In s. NR 120.16 (2), "these ordinances" should be replaced with "ordinances under sub. (1)." Also, "(ADD REFERENCE)" should be deleted. Also, in the last sentence, "Additional" should be deleted and ", once enacted, will be" should be replaced with "are."

ai. In s. NR 120.16 (3), "The ordinance" should be replaced with "An ordinance under sub. (1)."

aj. In s. NR 120.16 (4) (e), the two additional periods at the end of the sentence should be deleted.

ak. In s. NR 120.16 (5), "The ordinance" should be replaced with "An ordinance required under sub. (1)."

al. In s. NR 120.17 (2) (L), "Installing" should be inserted at the beginning of the sentence.

am. In s. NR 120.17 (2) (w), should "Purchase of" be inserted at the beginning of the sentence?

an. In s. NR 120.18 (1) (b) (intro.), please clarify what the subsequent subdivisions apply to.

ao. In s. NR 120.18 (1) (c) 7., "are" should be deleted. In subd. 7. a., the parenthetical material should be placed in a note at the end of the subdivision.

ap. In s. NR 120.18 (4) (a), "can demonstrate" should be replaced with "demonstrates."

aq. In s. NR 120.18 (4) (b), "can" should be replaced with "shall."

ar. In s. NR 120.18 (4) (b.) 1., what is meant by "a compilation of financial conditions"?

as. In s. NR 120.18 (4) (c), "Under" should be replaced with "If there is."

at. In s. NR 120.18 (4) (d), "Under the provision, if" should be replaced with "If there is a finding of."

au. In s. NR 120.185 (2) (c), "when" should be replaced with "if."

av. In s. NR 120.185 (3), "thereafter" should be deleted.

aw. In s. NR 120.186 (1) (intro.), a phrase such as "do any of the following" should be inserted at the end of the (intro.); in par. (a), "; or" should be replaced with a period.

ax. In s. NR 120.186 (2) (intro.), "all of" should be inserted in the last sentence before "the following."

ay. In s. NR 120.186 (2) (a), "under which the grant is applied for" should be replaced with "for which the grant is applied."

az. In s. NR 120.186 (3) (e), what is meant by "description"?

ba. In s. NR 120.186 (3) (g), should the provision specify that the deed must be recorded with the register of deeds?

bb. In s. NR 120.186 (5) (intro.), a colon should replace the period.

bc. In s. NR 120.186 (5) (f), "the acquisition shall be" should be replaced with "that the acquisition is."

bd. In s. NR 120.19 (1) (intro.), the sentence should end with a colon.

be. In s. NR 120.22 (1), "other equitable manner" should be replaced with "in another equitable manner."

bf. In s. NR 120.23 (1) (b), "the department has verified" should be replaced with "department verification of."

bg. In s. NR 120.23 (1) (d) 1., "legislative appropriations to fund those payments" could be replaced with "funding."

bh. In s. NR 120.23 (1) (d) 2., "the program" should be replaced with "the nonpoint source water pollution abatement program."

bi. In s. NR 120.23 (3) (b), there is no subd. 5. Is this intended?

bj. In s. NR 120.23 (3) (b) 4., should "completed" be inserted after "components of"?

bk. In s. NR 120.23 (3) (b) 7., how will the department set deadlines?

bl. In s. NR 120.23 (5), "(ACRA)" should be deleted because it is a defined term.

bm. In s. NR 120.24 (3), the subsequent paragraphs should end with periods to facilitate amending the subsection in the future. Also, "all of the following" should be inserted before the colon in sub. (3) (intro.). Also see s. NR 120.25 (1) (intro.).

bn. In s. NR 120.25 (1) (a), it may be helpful to include a cross-reference after the phrase "department reporting requirements."

bo. In s. NR 120.25 (1) (c), will it be clear to the reader what is meant by "on a watershed basis"?

bp. In s. NR 120.25 (1) (d), "allocability" is not a word. Could "allocation" or "ability to allocate" be used?

bq. In s. NR 120.25 (1) (f), it would be helpful to include a cross-reference following the phrase "audit findings."

br. In s. NR 120.25 (2) (b), "account" could be replaced with "document" or "describe."

bs. In s. NR 120.26 (1) (b) (intro.), a phrase such as "for whichever of the following is appropriate" should be inserted at the end of the sentence. Also, the subsequent subdivisions should end in periods.

bt. In s. NR 120.26 (1) (c) (intro.), "all of" should be inserted before "the following" and the subsequent subdivisions should end in periods.

bu. In s. NR 120.27 (1), "stop-work order" should not be enclosed in quotation marks.

bv. In s. NR 120.27 (1) (b) 3., "by" should be inserted before "certified mail."

bw. In s. NR 120.27 (1) (c) 2., "as to how the acquisition of" should be replaced with "for how the grantee may acquire."

bx. In s. NR 120.27 (1) (d) 2. (intro.), "either" should be replaced with "do one of the following" and the subsequent subdivision paragraphs should end in periods.

by. In s. NR 120.27 (1) (e) (intro.), "all of the following conditions are met" should be inserted at the end of the sentence and the subsequent subdivisions should end in periods.

bz. In s. NR 120.27 (2) (a), "to" should be inserted after "due."

ca. In s. NR 120.27 (2) (c) 1. and 2., "mail, certified mail--return receipt requested" should be replaced with "certified mail, return receipt requested."

cb. Section NR 120.28 (2) (intro.) should end with a colon. Also, the subsequent paragraphs should end with periods. Finally, in par. (c), "under s. NR 120.23 (1) (c) 1." should be replaced with "if the conditions under s. NR 120.23 (1) (c) 1. are met."

cc. In s. NR 120.28 (3), what is meant by a "notice of intent"? Would a cross-reference be helpful?

- 1 • The focus of chapter NR 120 is to administer rural nonpoint source grant activity in
2 priority watershed projects. All provisions dealing with rural and urban local
3 assistance grants have been eliminated. The department of agriculture, trade and
4 consumer protection under chapter ATCP 50 will administer rural local assistance
5 grants for priority watershed projects. The department under chapter NR 153 will
6 administer local assistance grants for most urban municipalities in priority watershed
7 projects; a more limited amount of urban storm water management activities will be
8 administered under chapter ATCP 50. All provisions dealing with urban nonpoint
9 source grants have been eliminated. These grants will be administered under chapter
10 NR 153.
- 11
- 12 • The section of existing chapter NR 120 that identifies best management practices
13 eligible for cost sharing, and applicable cost share conditions, has been eliminated.
14 This section has been moved to chapter NR 154, which will include best
15 management practices and technical standards for all activity administered under chs.
16 NR 120, 151, 153, 216 and 243.

17

18 Cost Share Administration

19

20 There are several key differences. Nonpoint source grant periods are increased,
21 procedures by which the department will recover un-used grant funds are clarified,
22 economic hardship provisions are modified pursuant to state statute, provisions allowing
23 counties to increase the state cost share rate by providing a county match are eliminated
24 pursuant to state statute, and provisions requiring counties to cover 100% of cost share
25 payments made in excess of those authorized by the department are added pursuant to
26 state statute. In addition, rural cost share rates have been changed to provide consistency
27 with cost share rates administered under chapter ATCP 50 and to assure that at least 70%
28 cost sharing is available so that the department can require landowner compliance with
29 agricultural performance standards. Minor changes have been made in code provisions
30 dealing with the following areas to reduce the burden of project administration: recording
31 cost share agreements; releasing landowners and operators from cost- share agreements;
32 department review and approval of cost share agreements; single audit requirements.

33

34 Critical Sites

35

36 Changes have been made in the schedule requirements for critical site notification.
37 Additional time is allowed where grants are delayed or funding available from the state
38 for reimbursement is inadequate. A provision has been added requiring that a grantee
39 provide cost sharing to all critical sites out of the reimbursements it receives for the
40 project from the department.

1 SECTION 1. Chapter NR 120 is repealed and recreated to read:
2
3

4 **Chapter NR 120**

5 **PRIORITY WATERSHED AND PRIORITY LAKE PROGRAM**

- 6 NR 120.01 Applicability; purpose.
7 NR 120.02 Definitions.
8 NR 120.03 Role of governmental units in watershed plan development.
9 NR 120.04 Role of citizen advisory committee.
10 NR 120.05 Responsibilities of state agencies, governmental units and agents as cost-
11 share recipients.
12 NR 120.06 Incorporation of the department of agriculture, trade and consumer
13 protection's planning elements.
14 NR 120.08 Watershed plans.
15 NR 120.09 Notification and status of critical sites.
16 NR 120.12 Nonpoint source grant agreement.
17 NR 120.13 Cost-share agreement.
18 NR 120.15 Interim best management practices and alternative design criteria.
19 NR 120.16 Ordinances.
20 NR 120.17 Cost-share eligibility.
21 NR 120.18 Cost-share rates.
22 NR 120.185 Easements.
23 NR 120.186 Property acquisition.
24 NR 120.19 Cost containment procedures.
25 NR 120.22 Interest earned on grant advances.
26 NR 120.23 Reimbursement procedures.
27 NR 120.24 Procurement.
28 NR 120.25 Record keeping and reporting requirements.
29 NR 120.26 Record retention and auditing.
30 NR 120.27 Suspension or termination of grant.
31 NR 120.28 Enforcement.
32 NR 120.29 Variances.
33 NR 120.30 Annual report.



34
35 **FOREWORD**
36

37 The Wisconsin legislature established the nonpoint source water pollution
38 abatement program in 1978. Both urban and rural nonpoint sources are recognized as
39 contributors to the degradation of Wisconsin's lakes, streams, groundwater and wetlands.
40 The legislature restructured this program in 1997 and 1999, creating new targeted runoff
41 management and urban nonpoint source and stormwater grant programs. Chapter NR 153

1 contains the administrative framework for these programs. The legislature also instructed
2 the department of natural resources in s. 281.16, Stats., to prescribe nonpoint source
3 performance standards. These performance standards are listed in ch. NR 151. The
4 priority watershed and priority lake projects established prior to the legislative
5 restructuring of the program are governed by this chapter, ch. NR 153 and ch. ATCP 50.
6 No new priority watershed or priority lake projects will be selected under this chapter.
7 Section 281.65, Stats., assigns overall responsibility for this water quality program to the
8 department of natural resources and assigns local administration and implementation
9 responsibilities to other governmental units.

10 The department of natural resources has developed the administrative framework
11 in chs. NR 120 and 121 under which areawide water quality management plans are
12 developed, priority watershed and priority lake projects were selected and governmental
13 units and state agencies are granted technical and financial assistance necessary to
14 implement priority watershed and priority lake projects. The land and water conservation
15 board designated priority watershed areas where nonpoint source related water quality
16 problems were most severe and control was most feasible. The department of natural
17 resources recommends best management practices which are the most effective means of
18 preventing or reducing nonpoint source pollution. These practices are listed in ch. NR
19 154. More specifically, the department identified lakes, streams, groundwater and other
20 water resources where the uses of the waters were impaired or threatened by nonpoint
21 sources; proposed projects to the land and water conservation board to protect or
22 rehabilitate beneficial uses of the waters, and prepared plans in cooperation with
23 governmental units identifying the best means to achieve the protection or rehabilitation.
24 The department of natural resources has entered into nonpoint source grant agreements
25 and local assistance grant agreements with governmental units and state agencies in order
26 to implement priority watershed projects. Participating governmental units enter into
27 cost-share grant agreements with landowners, land operators and state agencies in order
28 to implement the priority watershed and priority lake projects on a local level.
29 Landowners, land operators and state agencies as cost-share recipients are responsible for
30 installing and maintaining best management practices.

31

1 **NR 120.01 Applicability; purpose. (1) APPLICABILITY.** For designated priority
2 watershed and priority lake projects, this chapter applies to governmental units and state
3 agencies when acting as nonpoint source grant agreement recipients; to governmental
4 units when acting as cost-share agreement grantors; and to landowners, land operators
5 and state agencies when acting as cost-share recipients.

6 **(2) PURPOSE.** The purpose of this chapter is to establish the administrative
7 framework for the implementation of the state's priority watershed and priority lake
8 projects.

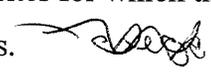
9 **Note:** This chapter is to administer existing and future grants for rural grantees
10 within priority watershed and priority lake projects. Urban grantees within priority
11 watershed and priority lake projects, formerly funded under this chapter, are now funded
12 under ch. NR 153. Local assistance grants for existing and future rural grantees within
13 priority watershed and priority lake projects, formerly funded under this chapter, are now
14 funded under ch. ATCP 50. Best management practices eligible for cost-sharing under
15 this chapter are listed in ch. NR 154.

16
17 **NR 120.02 Definitions.** In this chapter:

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

23 **(2)** "Anticipated cost-share reimbursement amount" or "ACRA" means the annual
24 amount of cost-sharing funds that a project sponsor may receive from the department for
25 a specific priority watershed or priority lake project under s. NR 120.12.

26 **(3)** "Best management practice" as defined in s. 281.65 (2)(a), Stats., means a
27 practice, technique or measure, except for dredging, which is determined to be an
28 effective means of preventing or reducing pollutants generated from nonpoint sources, or
29 from the sediments of inland lakes polluted by nonpoint sources, to a level compatible
30 with water quality objectives established under this chapter and which does not have an
31 adverse impact on fish and wildlife habitat. The practices, techniques or measures include

1 land acquisition, storm sewer rerouting and the removal of structures necessary to install
2 structural urban best management practices, facilities for the handling and treatment of
3 milkhouse wastewater, repair of fences built using grants under this chapter and measures
4 to prevent or reduce pollutants generated from mine tailings disposal sites for which the
5 department has not approved a plan of operation under s. 289.30, Stats. 

6 (4) "Contiguous" means touching or sharing a common boundary with a second
7 parcel of land. A lake, river, stream, road, railroad or utility right of way which separates
8 any part of the parcel from any other part may not render the parcel of land 
9 noncontiguous.

10 (5) "Core urban program activities" means those activities included in a discrete
11 set of nonstructural management measures, identified jointly by the department and the
12 governmental unit in the priority watershed or priority lake area plan, that are considered
13 to be the minimum acceptable level of storm water management.

14 (6) "Cost-share agreement" means the agreement established between the
15 governmental unit and the cost-share recipient which identifies the best management
16 practices to be used on the cost-share recipient's lands and the cost estimate, installation
17 schedule and operation and maintenance requirements for these best management
18 practices.

19 (7) "Critical sites", as described in s. 281.65 (4) (g) 8. am., Stats., means those
20 sites that are significant sources of nonpoint source pollution upon which best
21 management practices must be implemented in order to obtain a reasonable likelihood
22 that the water quality objectives established in the priority watershed or priority lake plan
23 can be achieved.

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

27 (9) "DATCP" means the Wisconsin department of agriculture, trade and
28 consumer protection.

29 (10) "Demonstration practices" means best management practices or interim best
30 management practices installed in order to demonstrate the efficiency or economic

1 benefits of the practices or the benefits of participating in a priority watershed or priority
2 lake project.

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

4 (12) "Designation of critical sites by criteria" means the description or means of
5 identifying critical sites in the plan of a priority watershed or priority lake which may
6 include estimations of pollutant contribution or other adverse impact on water quality.

7 (13) "Force account work" means the use of the governmental unit's own
8 employes or equipment for construction, construction related activities, or repair or
9 improvement to a best management practice.

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

16 (16) "Grant period" means the time period during which governmental units are
17 eligible to incur costs for a watershed project

18 (17) "Integrated resource management plan" means a plan for managing,
19 protecting and enhancing ground and surface water quality which considers the
20 interrelationship of water quality and land and water resources.

21 (18) "Interim best management practice" means a practice, technique or measure
22 which is approved under s. NR 120.15 as an effective means of preventing or reducing
23 pollutants generated from nonpoint sources to a level compatible with water quality
24 objectives and which does not have an adverse impact on fish and wildlife habitat.

25 (19) "Land conservation committee" means the committee created by a county
26 board under s. 92.06, Stats. Land conservation committee includes employes or agents of
27 a county land conservation committee who, with committee authorization, act on behalf
28 of the committee.

29 (20) "Landowner or land operator" means any individual, partnership,
30 corporation, municipality or person holding title to, having possession of or holding a
31 lease in land.

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

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

7 (23) "Nonpoint source" means a land management activity which contributes to
8 runoff, seepage or percolation which adversely affects or threatens the quality of waters
9 of this state and which is not a point source under s. 283.01 (12), Stats.

10 (24) "Notification to landowner" means ~~the~~ certified letters sent by the department
11 which inform landowners that one or more sites under their ownership have been verified
12 as meeting the criteria for critical sites in accordance with the provisions of s. NR 120.09.

13 (25) "NRCS" means the natural resources conservation service of the U.S.
14 department of agriculture.

15 (26) "Operation and maintenance period" means the length of time from which
16 the last best management practice in the cost-share agreement was installed or
17 implemented.

18 (27) "Period of cost-sharing availability for critical sites" means the 36 month
19 period identified in the notification of critical site designation to the landowner during
20 which cost-sharing at the maximum rate allowed under s. NR 120.18 is available.

21 (28) "Priority lake area" means a hydrologic unit which drains to a lake or group
22 of lakes and serves as the project boundary for watershed projects identified through the
23 process stated in s. 281.65 (3m) (b), Stats.

24 (29) "Priority watershed" means a watershed or lake area which the department
25 has identified through the continuing planning process under s. 283.83, Stats., and which
26 has been designated by the land and water conservation board under s. 281.65 (3m) (a),
27 Stats., as ~~one of these~~ watersheds where the need for nonpoint source water pollution
28 abatement is most critical.

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

1 (31) "Project completion" means the date on which a priority watershed project's
2 nonpoint source grant has expired.

3 (32) "Project sponsor" means the governmental unit applying for and receiving
4 grant assistance under s. 281.65, Stats., and this chapter.

5 (33) "Segmented urban program activities" means those individual structural and
6 non-structural management measures identified jointly by the department and the
7 governmental unit within the priority watershed or priority lake area plan that are
8 considered to be advanced storm water management activities.

9 (34) "Technical guide" means the natural resources conservation service field
10 office technical guide, published by the natural resources conservation service of the U.S.
11 department of agriculture, that was in effect (INSERT DATE).

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

16 (35) "Wetland" or "wetlands" has the meaning specified under s. 23.32, Stats.

17
18 **NR 120.03 Role of governmental units in watershed plan development.** A
19 governmental unit may prepare any portion of the watershed plan provided the
20 department and the governmental unit agree that the governmental unit has the
21 appropriate technical, financial and staffing capability. The governmental unit shall
22 prepare the elements of the watershed plan in accordance with s. NR 120.08(1)(b)1. This
23 requirement may be waived if the department and the governmental unit agree that
24 nonparticipation by the governmental unit will not impair the objectives of the watershed
25 plan.

26
27 **NR 120.04 Role of citizen advisory committee.** The department, in cooperation
28 with governmental units, shall appoint a citizen advisory committee for each priority
29 watershed and priority lake project in accordance with s. 281.65 (4) (dr), Stats. The
30 citizen advisory committee shall advise the department, DATCP and governmental units

1 concerning all aspects of the planning and implementation program for their specific
2 priority watershed or priority lake project.

3
4 **NR 120.05 Responsibilities of state agencies, governmental units and agents**
5 **as cost-share recipients.** Each state agency, unit of government or agent receiving cost-
6 sharing funds in a nonpoint source grant shall do all of the following:

7 (1) Provide the department with verification of proper installation, operation and
8 maintenance of best management practices for which it is the cost-share recipient.

9 (2) Prepare and maintain adequate fiscal management and technical assistance
10 files as described in ss. NR 120.25 and 120.26.

11 (3) Obtain prior written approval from the department for use of nonpoint source
12 grant funds for best management practices installed on land owned or operated by the
13 grantee.

14
15 **NR 120.06 Incorporation of the department of agriculture, trade and**
16 **consumer protection's planning elements.** (1) The department shall assist DATCP in
17 developing the following elements of priority watershed plans as described in s. 281.65
18 (5), Stats.:

19 (a) Proposed farm-specific implementation schedules for providing technical
20 assistance, contacting landowners, inspection and disbursement of grants on those farms
21 that are identified in the approved priority watershed plan.

22 (b) Proposed agriculturally related best management practices to achieve the
23 water quality objectives of the plan.

24 (c) Identification of those farms which are subject to ss. 92.104 and 92.105, Stats.

25 **Note:** All lands enrolled in the farmland preservation program subject to s.
26 92.105, Stats., are required to meet the mandatory T-value standard and other
27 discretionary soil and water conservation standards specified in ch. ATCP 50. A copy of
28 ch. ATCP 50 may be obtained, at no charge, from the Department of Agriculture, Trade
29 and Consumer Protection, P.O. Box 8911, Madison, WI 53708. 

1 (2) The department shall assist DATCP and the county involved in a watershed
2 project in developing a proposed project management schedule for the installation of
3 agriculturally related best management practices.

4 (3) The department shall approve and incorporate the elements described in subs.
5 (1) and (2) into the priority watershed plan.

6 (a)

7 **NR 120.08 Watershed plans. (1) WATERSHED PLAN CONTENT.** In
8 cooperation with DATCP and the appropriate governmental unit, the department shall
9 prepare watershed plans for all priority watersheds. A participating governmental unit
10 located within the priority watershed shall identify, in writing, a person to represent the
11 unit of government during watershed plan preparation. The watershed plan shall consist
12 of a watershed assessment, a detailed program for implementation, and a project
13 evaluation strategy. Priority watersheds and priority lakes selected after August 12, 1993,
14 shall have critical sites designated in the plan.

Bad intro.

15 *or* (a) *Watershed assessment.* The department, in cooperation with the appropriate
16 governmental units, shall prepare a watershed assessment analyzing the water quality
17 problems or threats to the water quality in the watershed's lakes, streams, wetlands and
18 groundwater and which determines the nonpoint sources causing the problem or threat.
19 The watershed assessment shall contain:

20 1. An identification of the water quality problems or threats to water quality
21 including degradation of fish habitat and wetlands caused by nonpoint sources of
22 pollution in the watershed.

23 2. An identification of water quality objectives to maintain and improve the
24 quality of lakes, streams, wetlands and groundwater of the watershed.

25 3. An identification of target levels of pollutant control and resource protection
26 necessary to meet the water quality objectives.

27 4. An identification and ranking of significant nonpoint source types and
28 contributing areas.

29 5. A designation of critical sites by criteria.

30 6. A listing of and an analysis of need for best management practices which will
31 significantly aid in the achievement of the target level of pollution abatement.

1 7. An assessment of the need for the protection and enhancement of fish and
2 wildlife habitat, endangered resources, aesthetics or other natural resources.

3 8. An analysis of the need for adoption of local ordinances for manure storage,
4 construction site erosion control and storm water management.

5 (b) *Detailed program for implementation.* 1. As required under s. 281.65 (6) (a),
6 Stats., governmental units except those waived under s. NR 120.03 shall prepare the
7 following portion of the detailed program for implementation including:

8 a. An estimate of costs for practice installation.

9 c. An information and education strategy.

10 d. A description of fiscal management procedures, including cost containment
11 procedures.

12 e. An estimate of technical assistance needs.

13 f. A grant disbursement and project management schedule.

14 g. An identification of those urban storm water control practices, techniques or
15 measures included in a municipal WPDES storm water permit for which the local
16 governmental unit may seek either local assistance or nonpoint source grant funding
17 through the priority watershed or priority lake project under ch. NR 153.

18 h. An identification of the state and local regulatory framework under which
19 erosion control activities shall be conducted.

20 i. An identification of those storm water management activities identified in the
21 watershed plan that shall be included as part of the core urban program for the local
22 governmental unit and funded under this chapter and ch. NR 153. Core urban program
23 activities may include: information and education activities; development,
24 implementation and enforcement of construction erosion control ordinances; and
25 development and implementation of activities, including, but not limited to, those
26 activities that reduce storm water pollution from lawn and leaf litter, pet waste, road
27 salting and illicit dumping into the storm sewer system. When adoption of a construction
28 site erosion control ordinance is required under the watershed plan, it shall be considered
29 a core program activity and the schedule for urban implementation activities shall provide
30 for adoption, implementation and enforcement of the ordinance within 2 years of the date
31 the department approves the watershed plan.

1 j. An identification of those storm water management activities identified in the
2 watershed plan that may be included as part of the segmented urban program for the local
3 governmental unit and funded under this chapter and ch. NR 153. Segmented urban
4 program activities may include: storm water planning for urban and urbanizing areas;
5 development, implementation and enforcement of local storm water management
6 ordinances; engineering site feasibility studies for structural urban practices; design,
7 installation and maintenance of structural urban best management practices; and
8 development of local institutional mechanisms to fund and administer storm water
9 management programs.

10 k. A schedule of rural implementation activities including those identified in s.
11 NR 120.21 (4) (a). When adoption of a manure storage ordinance is required under the
12 watershed plan, the schedule shall include a provision stating that a manure storage
13 ordinance shall be adopted within 2 years of the date the department approves the
14 watershed plan.

15 L. A schedule for urban implementation activities including those identified in s.
16 NR 120.21 (4) (a).

17 m. A schedule for the completion within 5 years of plan approval of the inventory
18 of land resources in the priority watershed or priority lake to locate sites which meet the
19 critical sites criteria.

20 n. An implementation strategy to direct staff effort at sites in proportion to the
21 amount of pollutants contributed until pollutant reduction goals are met. The strategy
22 shall contain a schedule for notification to landowners of critical sites.

23 o. A description of the measures of performance for the priority watershed or
24 priority lake project.

25 p. A strategy for measuring progress toward meeting pollutant reduction goals and
26 water quality objectives.

27 2. The department shall prepare a strategy to address the protection, enhancement
28 and mitigation of fish and wildlife habitat, endangered resources, aesthetics or other
29 natural resources through the identification of best management practices, provision of
30 information and education programs and involvement of other resource management
31 programs.

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1 **Note:** Wisconsin's Forestry Best Management Practices for Water Quality: A
2 Field Manual for Loggers, Landowners and Land Managers may be obtained, at no
3 charge, as a reference for forestry activities from the Bureau of Forestry, Department of
4 Natural Resources, Box 7921, Madison, WI 53707.

5 (c) *Project evaluation plan.* The department shall prepare as a portion of each
6 priority watershed plan a project evaluation strategy. The evaluation strategy shall
7 contain criteria and procedures to evaluate the water resource and land management
8 components of the project.

9 **(2) WATERSHED PLAN REVIEW AND APPROVAL.** (a) *Watershed plan development*
10 *meeting.* During the preparation of the watershed plan, the department and the
11 participating governmental units shall hold a public information meeting in the watershed
12 to solicit comments and information pertinent to the preparation of the plan. Following
13 the information meeting, a proposed watershed plan shall be drafted.

14 (b) *Watershed plan hearing.* After a proposed watershed plan has been drafted,
15 the department and the participating governmental units shall hold a public informational
16 hearing for comment on the proposed watershed plan.

17 (c) *Submittal of watershed plan to DATCP, county and other governmental units.*
18 Within 45 days after the public informational hearing, the department shall submit the
19 draft watershed plan to DATCP for comment; to the appropriate county or counties for
20 approval; and at the discretion of the department to other governmental units for review
21 and comment.

22 (d) *County approval of watershed plan.* Within 60 days of receipt of the draft
23 watershed plan, the appropriate county shall approve, conditionally approve or reject the
24 watershed plan. If the county conditionally approves or rejects the watershed plan, the
25 department may revise the watershed plan to address the issues identified.

26 (e) *Submittal of watershed plan to land and water conservation board.* A copy of
27 the county approved plan shall be submitted to the land and water conservation board
28 created under s. 15.135(4), Stats., for its approval.

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29 (f) *Final approval of individual county plan.* Upon receiving the approval of the
30 land and water conservation board, the department shall approve the final plan for the
31 priority watershed or priority lake area in accordance with s. 281.65 (5m), Stats. The date

1 that the secretary of the department signs the approval letter to the project sponsors also 
2 marks the beginning of eligibility for funding for implementation. Notwithstanding par.
3 (d), the department may approve the watershed plan for individual counties in
4 multicounty watershed projects if the respective county approves the watershed plan.

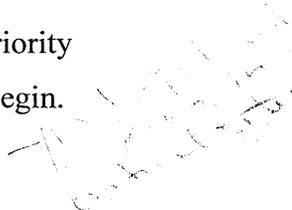
5 (3) AREAWIDE WATER QUALITY MANAGEMENT PLAN REVISION. After approval of
6 the detailed program for implementation, the watershed plan shall be approved as a
7 revision to the areawide water quality management plan for the appropriate basin as
8 described in ss. NR 121.07 and 121.08.

9 (4) WATERSHED PLAN REVISION. (a) Plan revisions may be initiated by either the
10 governmental unit or the department. The approved watershed plan may be revised using 
11 the procedures in ss. NR 121.07 and 121.08 for amending areawide water quality
12 management plans.

13 (b) Plan revisions which add or change criteria for critical sites shall be approved
14 by the land and water conservation board and by every governmental unit which
15 approved the original watershed plan.

16 (c) Plan revisions which add or change criteria for critical sites for projects which
17 have fewer than 4 years remaining for implementation shall include a schedule for
18 notification to landowners which will allow implementation of best management
19 practices at the critical sites to be completed before the end of the nonpoint source grant
20 period.

21 (d) The department shall approve or reject a governmental unit's request for a
22 revision to the watershed project's detailed program for implementation within 90 days of
23 receipt of the revision request.

24
25 **NR 120.09 Notification and status of critical sites. (1) START OF NOTIFICATION**
26 **PROCESS.** Within 6 months following issuance by the department of the first nonpoint
27 source grant after department watershed plan approval to a project sponsor for a priority
28 watershed or priority lake project, the process of notification to landowners shall begin.
29 The first to begin the process shall be those highest-ranked critical sites based on 
30 estimated pollutant contribution, which together would provide at least 25% of the
31 pollutant reduction goal for inventoried sites available at the time the final plan is written,

1 if best management practices were applied at those sites. Notification shall proceed in
2 accordance with the schedule identified in the plan. The department may grant up to 3
3 90-day extensions of this 6 month period to allow verification.

4 (2) VERIFICATION. The purpose of verification is to assure that individual sites
5 within the watershed meet the criteria for critical sites and to conduct site visits and
6 complete the inventory of nonpoint sources on additional lands in the watershed owned
7 by those landowners with sites which meet the criteria for critical sites. If the landowner
8 has not signed a cost-share agreement for required best management practices, the
9 verification findings shall be reported in writing to the department. Verification shall
10 include an on-site assessment before a notification letter can be issued.

11 (3) CONTENT OF NOTIFICATION LETTER. Within 60 days after receiving the
12 verification findings, the department shall send notification to the landowner to include
13 the following information:

14 (a) The dates of the beginning and end of the 36 month period of cost-share
15 availability.

16 (b) The potential consequences of either s. NR 120.18 (1) (a), ch. NR 243 or s.
17 281.20 (1), (3) or (5), Stats., that the landowner may face if no action is taken and the site
18 continues to meet the critical sites criteria described in the watershed plan.

19 (c) The right to appeal the designation as a critical site through a written request
20 to the county land conservation committee within 60 days of receipt of the notification
21 letter as described in s. 281.65 (7) (a), (b) and (c), Stats.

22 (d) Additional information as requested and prepared by the local governmental
23 unit.

24 (4) POSTPONEMENT OF NOTIFICATION LETTER. The department shall postpone
25 notification to any landowner who has signed a cost-share agreement and continues to
26 comply with the annual progress and implementation schedules described in s. NR
27 120.13. If the landowner is responsible for failure to comply with the schedules, the
28 department shall send the notification.

29 (5) COMPLETION OF NOTIFICATION SCHEDULE. Notification to landowners shall be
30 completed within 5 years and 60 days of the issuance of the first nonpoint source grant
31 for the project after department plan approval.

1 (6) CHANGE IN CRITICAL SITE STATUS. A site is no longer considered a critical site
2 if one of the following conditions applies:

3 (a) The site no longer meets the criteria for critical sites.

4 (b) The site has had best management practices implemented in accordance with
5 the cost-share agreement.

6 (c) The department determines that the water quality objectives for the watershed
7 have been achieved.

8 (7) PRIORITIZING USE OF COST-SHARE FUNDS. By the end of the project
9 implementation period, a project sponsor shall have offered cost-share funding to
10 landowners, in accordance with this chapter, for the control of all critical sites. This
11 requirement applies provided that during the implementation period the total amount of
12 cost-share funds made available to the project sponsor exceeded the amount necessary to
13 control all critical sites.

14
15 **NR 120.12 Nonpoint source grant agreement.** The nonpoint source grant
16 agreement is an agreement entered into between the department and a governmental unit
17 or a state agency to provide cost-share funding for a priority watershed or priority lake
18 project. The nonpoint source grant agreement may be used in lieu of a cost-share
19 agreement with a governmental unit for the installation of a structural practice on land
20 owned or operated by a governmental unit. More than one nonpoint source grant
21 agreement may be awarded for a project.

22 (1) CONDITIONS. (a) Consistent with the priority watershed plan, a participating
23 governmental unit located within the priority watershed project or priority lake area
24 project shall: *do all - - -*

25 1. Execute a nonpoint source grant agreement with the department for nonpoint
26 source pollution abatement funds necessary to administer cost-share agreements with
27 eligible recipients. This requirement may be waived if the department and the
28 governmental unit agree to delegate these responsibilities to another unit of government.

29 2. Enter into cost-share agreements with eligible recipients located within its
30 jurisdiction. This requirement may be waived if the department and the governmental
31 unit agree to delegate this responsibility to another unit of government.

1 3. Be fiscally responsible for the use of cost-share funds provided to cost-share
2 recipients under the nonpoint source grant. Specifically, this includes preparing and
3 maintaining adequate fiscal management and technical assistance files as described in ss.
4 NR 120.25 and 120.26. This requirement may be waived if the department and the
5 governmental unit agree to delegate these responsibilities to another unit of government.

6 4. Provide the department with verification of proper installation, operation and
7 maintenance of best management practices for agreements in which it is the cost-share
8 grantor.

9 5. Provide best management practice technical design and installation assistance
10 for all best management practices in cost-share agreements within its jurisdiction. The
11 governmental unit may assign this requirement to another unit of government if approved
12 by the department.

13 6. Contact all owners or operators of lands identified as significant nonpoint
14 sources in the watershed plan.

15 7. Participate with the department in the annual watershed project review meeting.

16 8. Enforce the terms and conditions of the cost-share agreement as described in s.
17 NR 120.13.

18 (b) A participating governmental unit located within the priority watershed project
19 or priority lake area project may identify a lead unit of government responsible during the
20 grant period for the following:

- 21 1. Local project coordination.
- 22 2. Identification of a project manager.
- 23 3. Maintenance of project ledgers.

24 (c) A participating governmental unit located within the priority watershed project
25 or priority lake area project shall provide financial support towards the implementation of
26 a project, including, but not limited to, the following:

- 27 1. Funding staff support costs necessary for the project that are not provided for in
28 the local assistance grant from DATCP.
- 29 2. Funding the local share of any best management practice the governmental unit
30 installs on property it owns or controls.

1 3. Funding the local share of items cost-shared in the local assistance grant from
2 DATCP.

3 (d) Participating governmental units located within the priority watershed project
4 or priority lake area project shall perform inspections beyond the nonpoint source grant
5 period and shall include this activity in the annual workload analysis submitted to
6 DATCP to ensure that cost-share recipients are complying with the maintenance
7 requirements described in s. NR 120.13.

8 (2) SIGN UP PERIOD. The period in which cost-share agreements may be signed
9 through the nonpoint source grant agreement shall be for a minimum of 3 years but may
10 not extend beyond the grant period. No cost-share agreement, except those signed under a
11 demonstration project, may be signed until after the priority watershed plan has been
12 approved.

13 (a) A watershed project in planning may choose the specific duration of the sign
14 up period, provided that:

- 15 1. The sign up period is for a minimum of 3 years;
- 16 2. The sign up period is clearly stated in the watershed plan; and
- 17 3. The watershed plan clearly delineates the procedures necessary for the
18 extension of the sign up period.

19 (b) A grantee whose watershed project is in implementation may amend the
20 nonpoint source grant agreement to modify the length of the sign up period provided that
21 a written grant amendment request and an explanation justifying circumstances is
22 submitted to the department for approval.

23 (c) The department may unilaterally extend the sign up period for a project
24 sponsor by amending the nonpoint source grant.

25 (3) LENGTH OF GRANT PERIOD. The grant period of the nonpoint source grant
26 agreement is the period when cost-share funds may be expended. The grant period may
27 not be more than 12 years. The department may adjust the grant period to meet budgetary
28 limitations or upon written request by the grantee where the additional time will result in
29 a significant reduction of the pollutant load from nonpoint sources or otherwise further
30 the intent of the program.

31 (4) When installing best management practices, the grantee shall:

- 1 (a) Comply with the responsibilities stated in s. NR 120.05.
- 2 (b) Submit estimates of all practice costs, eligible costs, ineligible costs, cost-
3 share rates and estimated total cost-share amount.
- 4 (c) Submit a schedule of installation and maintenance for the practices.
- 5 (d) Submit copies of all professional services contracts, construction contracts, bid
6 tabulations, force account proposals, proposals and other related information requested by
7 the department. Professional services contracts exceeding \$25,000, amendments causing
8 the total contract to exceed \$25,000, amendments exceeding \$25,000 and construction
9 contracts exceeding \$50,000 shall be submitted to the department for approval before
10 execution. Force account proposals exceeding \$50,000 shall be submitted to the
11 department for approval prior to the initiation of construction.
- 12 (e) Repay the department the full amount of funds received if the grantee fails to
13 fulfill any terms of the agreement, including failing to install, operate and properly
14 maintain the practices included in the grant agreement.
- 15 (f) Submit a maintenance strategy for the practices.
- 16 (g) Agree not to adopt any land use or practice which defeats the purposes of the
17 best management practices.
- 18 (h) Comply with the requirements for cost-share agreements specified in s. NR
19 120.13(6) to (8).
- 20 (5) The grantee may use nonpoint source grant funds to cover reasonable
21 expenses necessary to secure refunds, rebates or credits described in s. NR 120.23 when
22 approved by the department.
- 23 (6) The grantee may use nonpoint source easement funds to acquire easements as
24 provided for in s. NR 120.185(2).
- 25 (8) The department may unilaterally reduce the nonpoint source grant to the
26 amount necessary to meet budgetary limitations. The department shall make every effort
27 to provide funding for projects the grantee has committed to on cost-share agreements
28 and contracts.
- 29 (9) A governmental unit participating in the preparation of a watershed plan may
30 request from the department a demonstration project nonpoint source grant prior to
31 department approval of the watershed plan. Grant periods of grants awarded for

1 demonstration projects may not exceed 2 years in length. Requests for demonstration
2 projects shall include a summary of the proposed activities and their projected benefits to
3 the watershed or lake project.

4
5 **NR 120.13 Cost-share agreement. (1) PURPOSE OF AGREEMENT.** The cost-share
6 agreement is an agreement listing the best management practices and establishing the
7 conditions and considerations under which a cost-share recipient agrees to install the
8 practices listed consistent with the watershed plan.

9 **(2) EFFECTIVE DATE.** For best management practices to be eligible for cost-
10 sharing, the nonpoint source grant agreement and the cost-share agreement shall be
11 signed before the installation of practices may be initiated. A cost-share agreement is not
12 necessary if the nonpoint source grant agreement allows the grantee to use funds directly.
13 Nonpoint source grant agreements used in lieu of cost-share agreements shall comply
14 with the requirements in this section.

15 **(3) PARTIES TO THE AGREEMENT. (a)** The cost-share agreement shall be between
16 the participating governmental unit and the individual landowner, land operator or state
17 agency. Agreements with land operators shall be co-signed by the landowner except in
18 instances where the cost-share agreement contains no other practices than those
19 enumerated in sub. (6) (b) 1. ~~Should other practices be included through a cost-share~~
20 agreement amendment, the landowner shall co-sign the amendment. 

21 **(b)** Governmental units, as cost-share agreement grantors, shall enter into cost-
22 share agreements only during the period specified in the nonpoint source grant.

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

26 **(4) CONTENT OF THE AGREEMENT.** The cost-share agreement shall contain or
27 describe:

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

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

1 (c) The estimated total practice cost, cost-share rate and estimated cost-share
2 amount.

3 (d) The installation schedule for applying the practices. For sites that meet the
4 critical sites criteria, implementation shall begin within 18 months and be completed
5 within 4 years following the effective date of the cost-share agreement.

6 (e) A statement of maintenance requirements.

7 (f) A requirement to not adopt any land use or practice which defeats the purposes
8 of the best management practices, the cost-share agreement or the nonpoint source grant
9 agreement.

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

13 (h) A nondiscrimination clause.

14 (i) A provision describing the procedure for amendment.

15 (j) The location of the land on which the cost-shared practice is to be installed,
16 and a specific legal description of the land if cost share payments may exceed \$10,000.

17 (k) A requirement that disallows any change in land use or management on the
18 entire property described on the cost-share agreement which may cause sources which
19 were adequately managed at the time of cost-share agreement signing to produce an
20 increased pollutant loading to surface water or groundwater counter to the water resource
21 objectives of the approved watershed plan. If such a change in land use or management
22 occurs, the landowner or operator shall control the source at his or her own expense or
23 return any cost-sharing funds awarded through the cost-share agreement to the grantor.

24 (m) A requirement to amend the cost-share agreement if practices are added or
25 deleted and to add or delete practices only when they are consistent with watershed
26 project objectives.

27 (n) A requirement for annual progress in pollutant reduction may be imposed by
28 the governmental unit on the landowner of a critical site.

29 (4m) DEPARTMENT APPROVAL. The governmental unit shall obtain prior
30 department approval when a single practice exceeds \$35,000 in state share or when the
31 total cost-share agreement amount and its amendments exceed \$100,000 in state share.

1 The governmental unit shall provide additional information that the department may
2 request concerning the cost-effectiveness of the cost share agreement or practice.

3 (5) SUBMITTAL TO DEPARTMENT. The nonpoint source grantor shall submit a copy
4 of the cost-share agreement ^{and} or amendments to the department within 30 days of
5 execution. The department shall ratify the expenditures listed in the cost-share agreement
6 if the best management practices listed are the least cost alternatives to controlling the
7 nonpoint sources of pollution and the significance in the reduction of nonpoint source
8 pollution justifies the expenditure of the grant funds. However, the department may deny
9 reimbursement to the governmental unit for costs associated with the installation of a best
10 management practice not in conformance with the cost-share agreement, the nonpoint
11 source grant agreement or the watershed plan.

12 (6) AGREEMENT PERIOD. The cost-share agreement period shall be the period from
13 the cost-share agreement signing to installation of the last practice on the agreement plus
14 the operation and maintenance period.

15 (a) The period during which practices on a signed cost-share agreement may be
16 installed may not extend beyond the grant period of the nonpoint source grant agreement
17 for the watershed project.

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

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

- 25 a. High residue management systems.
- 26 b. Nutrient management.
- 27 c. Pesticide management.
- 28 d. Cropland protection cover (green manure).

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

1 (7) FAILURE TO FULFILL AGREEMENT. If the cost-share recipient fails to fulfill any
2 terms of the cost-share agreement, including failing to install, operate and properly
3 maintain the practices of the agreement, the full amount of cost-shared funds received by
4 the cost-share recipient shall be repaid to the governmental unit who is the grantor of the
5 agreement. The governmental unit grantor shall forward the repayment to the department.

6 (8) INEFFECTIVE PRACTICES. (a) If the practice becomes ineffective during the
7 grant period of the nonpoint source grant agreement of a watershed project, the parties to
8 the cost-share agreement may amend it to cost-share the replacement of the practice from
9 funds allocated for the project, providing that the parties identify the appropriate
10 maintenance period for the replacement practice.

11 (b) If the practice becomes ineffective beyond the grant period of the nonpoint
12 source grant agreement of the watershed project, the department may award a new grant
13 agreement or modify and extend the project's nonpoint source grant agreement.

14 (9) CHANGE IN OWNERSHIP. If a change in ownership occurs during the cost-share
15 agreement period, the new landowner shall be responsible for fulfilling all conditions of
16 the cost-share agreement. Upon receiving written approval from the respective local
17 governmental unit, the new landowner may implement alternative approved best
18 management practices in order to obtain the water quality goals in the original agreement.

19 (10) RECORDING OF COST-SHARE AGREEMENTS WITH REGISTER OF DEEDS. (a) The
20 governmental unit shall record the cost-share agreement and its amendments in the office
21 of the register of deeds for each county in which the property is located if the total cost-
22 share agreement amount and its amendments exceed \$10,000. The governmental unit
23 shall record these documents prior to making reimbursements to the landowner or land
24 operator.

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

- 27 1. Contour farming.
- 28 2. Contour and field stripcropping.
- 29 3. Cropland protection cover (green manure).
- 30 4. High residue management.
- 31 5. Nutrient management.

1 6. Pesticide management.

2 **(11) RELEASE OF PROPERTY FROM OBLIGATIONS OF COST-SHARE AGREEMENTS. (a)**

3 A governmental unit may fully or partially release a landowner's property from the
4 obligations of the cost-share agreement provided that the governmental unit has
5 determined that the best management practices installed on the property will be
6 maintained or replaced with practices which will not increase the pollutant loading to
7 surface water or groundwater counter to the water resource objectives of the approved
8 watershed plan. If state dollars in excess of \$10,000 have been expended for best
9 management practices that are located on the property to be released, the governmental
10 unit shall obtain written approval from the department before the property can be
11 released. The release form shall be obtained from the department and filed with the cost-
12 share agreement.

13 (b) With the approval of the department, a governmental unit may fully release a
14 landowner's property from the obligations of the cost-share agreement provided that both
15 of the following conditions are met:

16 1. The governmental unit has determined that there are not sufficient cost-share
17 funds remaining in its nonpoint source grant to provide reimbursement for practices for
18 which it has committed funds.

19 2. The cost-share recipient has failed to install any of the best management
20 practices identified in the agreement.

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

23 **(12) APPLICABILITY.** Subsections (3)(c), (4)(j), (k), (m), (6) (a), (9) and (10) apply
24 to all cost-share agreements signed after December 1, 1989, and amendments to those
25 agreements.

26
27 **NR 120.15 New best management practices and technical standards. (1)** The
28 department may approve best management practices other than those identified in s. NR
29 154.03 where necessary to meet the water resources objectives identified in priority
30 watershed and priority lake projects selected for funding under this chapter.

1 (2) The department may approve technical standards other than those identified in
2 s. NR 154.03 where necessary to meet the water resources objectives identified in priority
3 watershed and priority lake projects selected for funding under this chapter. In
4 developing new technical standards, the department shall use the technical standards
5 development process in s. NR 151.31.

6
7 **NR 120.16 Ordinances. (1) APPLICABILITY.** Counties, cities, villages and towns
8 located within the priority watershed project or priority lake area project shall adopt the
9 following ordinances if required within the watershed plan:

10 (a) Manure storage ordinances in accordance with s. 92.16, Stats.

11 (b) Construction site control ordinances in accordance with ss. 59.693, 60.627,
12 61.354 and 62.234, Stats.

13 (2) **CONDITION OF GRANT.** Adoption, implementation and enforcement of these
14 ordinances within the time frame specified under s. NR 120.08(1)(b)1.i. and k. shall be a
15 condition of receiving funding from the department under a nonpoint source grant and
16 from DATCP under a local assistance grant as required under s. ATCP 50 (ADD
17 REFERENCE). Additional actions to implement and enforce these ordinances, once
18 enacted, will be subject to the provisions of s. NR 120.28(1) and (2).

19 (3) **CONSTRUCTION SITE EROSION CONTROL ORDINANCES.** The ordinance shall
20 apply, at a minimum, to construction activities as defined in s. 281.33 (3) (b) 1. to 5,
21 Stats., within the jurisdiction unless the construction site activities are otherwise
22 regulated by the department under s. NR 216.42, or regulated by ch. COMM 20, 21, 50 or
23 52, or exempted by s. 13.48 (13), Stats., or subject to the department of transportation and
24 department liaison cooperative agreement under s. 30.12(4), Stats.

25 (4) **CONTENT.** The ordinance shall contain the following:

26 (a) Statements of authority, findings and purpose.

27 (b) An applicability statement identifying activities subject to the ordinance.

28 (c) Performance standards, criteria and other conditions to minimize the amount
29 of sediment and other pollutants reaching the waters of the state during the development
30 of lands and until final stabilization of the site.

1 (d) A provision requiring consistency with the best management practice
2 provisions contained in the *Wisconsin Construction Site Best Management Practice*
3 *Handbook*, WDNR Pub. WR-222, November 1993 Revision, *Appendix E* of ch. COMM
4 20 [effective date] or the Wisconsin department of transportation *Facilities Development*
5 *Manual* [effective date].

6 (e) Permit application and planning requirements.

7 (f) Permit issuance, administration and enforcement procedures.

8 (g) Violation penalties.

9 (h) Appeal procedures.

10 (5) The ordinance shall be reviewed and approved by the department prior to
11 adoption. In order to approve the local ordinance for purposes of this section, the
12 department must find that the ordinance provides a level of environmental protection
13 consistent with the goals and objectives of the state model construction site erosion
14 control ordinance identified under ch. NR 152.

15
16 **NR 120.17 Cost-share eligibility. (1) ELIGIBLE BEST MANAGEMENT PRACTICES.**

17 Best management practices listed in s. NR 154.03 that are installed and maintained to
18 control the following nonpoint sources in accordance with the minimum conditions in ch.
19 NR 154 are eligible for cost-share assistance under this chapter when addressing nonpoint
20 sources of pollution in a watershed plan:

21 (a) Croplands and undeveloped rural lands.

22 (b) Streambanks and shorelines.

23 (c) Livestock yards and manure management areas except those identified in sub.

24 (2) (c).

25 (d) Lake sediments.

26 (h) Other sources determined by the department to meet the objectives of the
27 program.

28 (i) Sources within a priority watershed or priority lake project required to meet
29 agricultural performance standards adopted under ch. NR 151.

30 (2) **INELIGIBLE BEST MANAGEMENT PRACTICES.** The following practices, sources or
31 activities are not eligible for cost-share assistance under this chapter:

1 (a) Best management practice installation, operation or maintenance started prior
2 to the signing of the cost-share agreement.

3 (b) Activities covered by the WPDES permit program including those identified
4 in chs. NR 200 to 299.

5 (c) Livestock related practices at livestock operations which: *any?*

6 1. Have applied and are eligible for a WPDES permit. *all?*

7 2. Have been issued a WPDES permit.

8 3. Have greater than 1,000 animal units.

9 4. Have greater than 1,000 animal units and have been issued a notice of

10 discharge under ch. NR 243. *J*

11 (d) Activities required as part of or as a condition of a license for a solid waste
12 management site.

13 (e) Activities funded through state or federal grants for wastewater treatment
14 plants.

15 (f) Active mining activities.

16 (g) Pollutant control measures needed during building and utility construction,
17 and storm water management practices for new developments.

18 (h) Pollutant control measures needed during construction of highways and
19 bridges.

20 (i) The planting, growing and harvesting of trees associated with silviculture,
21 except as necessary for site stabilization.

22 (j) Installing, operating or repairing a small scale on-site human domestic waste
23 facility construction.

24 (k) Dredging of harbors, lakes, rivers and ditches.

25 (L) Dams, pipes, conveyance systems and detention basins intended solely for
26 flood control.

27 (m) Operation and maintenance of cost-shared practices.

28 (n) Practices other than those in s. NR 154.03 that are normally and routinely used *J*
29 in growing crops and required for the growing of crops or the feeding of livestock.

1 (o) Practices whose purpose is to accelerate or increase the drainage of land or
2 wetlands, except where drainage is required as a component of a best management
3 practice.

4 (p) Practices to control spills from commercial bulk storage of pesticides,
5 fertilizers, petroleum and similar materials required by chs. ATCP 32 and 33 or other
6 administrative rules.

7 (q) Practices needed to control sources which were adequately managed for the
8 specific land use at the time of cost-share agreement signing but which are producing an
9 increased amount of pollutant loading to the surface or groundwater, counter to the water
10 resource objectives of the approved watershed plan, due to the landowner's or land user's
11 changes in land management. Changes may include increases in animal herd size,
12 changes to more intensive cropping, and other changes in land use or management which
13 increase the pollutant loading. Inconsequential fluctuations in animal herd size may not
14 be considered an increase under this section.

15 (r) Practices to be fully funded through other programs.

16 (s) Practices previously installed and necessary to support cost-shared practices.

17 (t) Changes in crop rotation unless required as a component of practices in s. NR
18 154.03 (7), (8), (10) or (11).

19 (v) Changes in location of unconfined manure stacks involving no capital cost.

20 (w) Nonstationary manure spreading equipment.

21 (x) Practices needed for land use changes during the cost-share agreement period.

22 (y) Other practices which the department determines are not necessary to achieve
23 the objectives of the watershed project.

24 (z) Practices that are in conflict with performance standards and prohibitions
25 adopted in ch. NR 151 unless specifically required in an approved watershed plan.

26 (za) Lawns, parking lots, streets, roofs and other areas associated with residential
27 land uses, retail businesses, office buildings, schools, libraries, parks and other similar
28 institutional buildings and areas.

29 (zb) Source areas at industrial sites that are not considered to be associated or
30 contaminated by industrial activity, as defined under ch. NR 216.

1 (zc) Urban nonpoint sources that must be controlled to meet the requirements of a
2 municipal WPDES storm water discharge permit.

3 (zd) Installation of best management practices other than those in s. NR 154.03 or *J*
4 identified through the process in s. NR 120.15.

5 (ze) Correcting overtopping of a manure storage facility.

6 (zf) Moving a manure stack.

7 (zg) Maintaining existing grass cover.

8 (zh) Installing a riparian buffer strip less than 20 feet wide

9 (zi) Installing or modifying an agricultural facility or practice which is required
10 pursuant to a court order or court-ordered stipulation.

11 (3) DEMONSTRATION PROJECTS. The department may establish alternative *rule?*
12 eligibility criteria for demonstration projects. With prior department approval,
13 demonstration projects meeting these alternative criteria may be implemented during the
14 grant period.

15
16 **NR 120.18 Cost-share rates. (1) STATE COST-SHARE RATES.** (a) The maximum
17 state cost share rate for individual best management practices cost-shared under this
18 chapter may not exceed 70%, except as otherwise provided in this section for cases of
19 economic hardship. The cost-share rates for best management practices under existing
20 cost-share agreements may be amended to use the rates identified in this section. The
21 maximum state cost-share rates shall be reduced by 50% for landowners of critical sites
22 when a cost-share agreement is signed after the period of cost-sharing availability for
23 critical sites has ended. *✓*

24 (b) The following apply:

25 1. Wildlife habitat re-creation associated with implementation of contour
26 farming, contour strip-cropping and field strip-cropping has a maximum state cost-share
27 rate of 70%.

28 2. Flat rates identified under par. (c) may be used in lieu of calculating cost-share
29 amounts.

30 3. The flat rate identified under par. (c) shall be used to calculate the cost-share
31 amount for vegetated riparian buffers.

1 4. Cost-share payments for high residue management systems may not be made
2 for more than a total of 6 years.

3 5. Cost-share payments for cropland protection cover (green manure) may not be
4 made for more than a total of 3 years.

5 6. Cost-share payments for nutrient management may not be made for more than a
6 total of 3 years.

7 7. Cost-share payments for pesticide management may not be made for more than
8 a total of 3 years.

9 8. Cost-share payments for vegetated riparian buffer may not be made for more
10 than a total of 5 years.

11 9. The maximum state cost-share amount per watering system installed as part of
12 an intensive grazing management system is \$2,000.

13 **Note:** Landowners or operators having a debt-to-asset ratio between 40% and
14 80% may wish to contact the Wisconsin Housing and Economic Development
15 Authority's Nonpoint Source Pollution (NSP) Loan Guarantee Program. The NSP
16 program may guarantee an eligible borrower's share of the cost to install eligible best
17 management practices. For more information, please contact an Economic Development
18 Representative at the Wisconsin Housing and Economic Development Authority
19 (WHEDA), One Pinckney Street, Suite 500, P.O. Box 1728, Madison, WI 53701-1728.
20 WHEDA's toll-free number is 1-800-642-6474.

21 (c) Counties may use locally determined U.S. department of agriculture cost-share
22 rates per acre as provided for in Consolidated Farm Services Agency (CFSA) Handbook,
23 1-WI (ACP), January 1994 or the following state cost-share rates per acre in lieu of the
24 state cost-share percentage listed in this section.

25 1. \$9.00 per acre for contour cropping.

26 2. \$13.50 per acre for strip-cropping.

27 3. \$7.50 per acre for field strip-cropping.

28 4. \$18.50 per acre per year for high residue management systems.

29 5. \$25 per acre per year for cropland protection cover (green manure).

30 6. \$100 per acre per year for vegetated riparian buffers.

31 7. Flat rates for fencing are as follows:

1 a. Three strand barbed wire, steel or wooden post at a flat rate of \$5.00 per linear
2 rod (1 rod = 16.5 feet). -- note

3 b. Woven wire, steel or wooden post at a flat rate of \$8.00 per linear rod.

4 c. Two strand electric, fiberglass, steel, or wooden post and insulators at a flat rate
5 of \$3.00 per linear rod.

6 d. Fiberglass posts, high tensile wire at a flat rate of \$7.50 per linear rod.

7 (2) MAXIMUM AMOUNTS. (a) *Least cost*. A governmental unit may set cost-share
8 rates up to the maximum amount specified for the practice in this section. Where 2 or
9 more practices are of equal effectiveness in reducing pollutants, the cost-share rate shall
10 be based on the least cost practice provided the practice is consistent with the use and
11 management of the land in question. The department may approve, in writing, cost-
12 sharing for a best management practice that is not the least cost if the practice is cost
13 effective in improving safety, operation and maintenance or life expectancy of the
14 practice or in providing greater control of pollutants or providing fish and wildlife
15 habitat. The department shall approve the cost-share agreement if the best management
16 practices are the least cost alternatives to control the nonpoint sources or if the practices
17 provide greater water quality improvement or habitat enhancement than the least cost
18 alternative. Only cost effective practices may be funded under this section unless an
19 exception is granted by the department under s. 281.65 (4) (em) or (8)(e), Stats.

20 (b) *Leases of manure storage tanks*. The maximum amount cost-shared for leases
21 of manure storage tanks shall be 70% of the down payment and lease cost of the tank
22 during the grant period of the watershed project.

23 (c) *Critical area stabilization*. Governmental units may establish flat rates for the
24 cost-sharing of critical area stabilization in order to simplify the administration of cost-
25 share funds for this practice. Flat rates shall be based on the percentage, up to 70%, for
26 state cost-sharing and the average cost of the practice.

27 (3) LOCAL SHARE. Cost-share grants, up to the maximum rate identified in this
28 chapter, may be made by combining funds from the appropriations under s. 20.115(7)(c),
29 20.370(6)(aa) and (aq) or 20.866(2)(te) and (we). The local share of project costs may
30 include funds from other federal, state, local or private sources. A cost-share grant under

1 this chapter may not reimburse a landowner for any cost that another unit of government
2 is also reimbursing.

3 (a) In-kind contributions of labor and material used directly in the installations of
4 best management practices may be considered part of the local share of best management
5 practice costs, if properly described and substantiated to the cost-share agreement
6 grantor.

7 (b) The value of a conservation easement donated to the department, or to any
8 person approved by the department under s. 281.65(8) (m), Stats., may be considered as a
9 portion of or all of the landowner's or operator's share of a cost-sharing grant.

10 (4) ECONOMIC HARDSHIP. (a) The rate and maximum amount paid to a landowner
11 or land operator under a cost-share agreement shall be exceeded by the governmental unit
12 with written approval from the department if the landowner or land operator can
13 demonstrate economic hardship to the appropriate responsible governmental unit.

14 (b) Economic hardship can be demonstrated by verifying in writing that all of the
15 following conditions exist for the landowner or land operator that enters into a cost-share
16 agreement:

17 1. The landowner or land operator has a debt-to-asset ratio of more than 60%,
18 and net assets of less than \$200,000, as verified by a compilation of financial conditions
19 prepared by a certified public accountant.

20 2. The grant recipient has provided to a certified public accountant a full and true
21 disclosure of personal and marital assets and liabilities, including a copy of the prior
22 year's federal tax returns, as verified by a sworn and signed affidavit. The affidavit shall
23 be made on a form provided by the department.

24 3. The grant recipient will be able to pay the balance of the cost to install the
25 practice. The governmental unit shall make this finding based on a signed statement
26 from an accredited financial institution.

27 (c) Under evidence of economic hardship, the state cost-share rate shall be
28 increased by a maximum of 20% above the percentage listed in this section for all best
29 management practices for which the landowner or land operator is eligible.

1 (d) Under the provision of economic hardship as certified under sub. (b), the
2 following percentage payment rate will apply to the construction of manure storage
3 facilities and barnyard runoff control systems:

- 4 1. First \$20,000 of eligible costs 80%
- 5 2. Remaining eligible costs 70%

6
7 **NR 120.185 Easements. (1)** The department may enter into easements with
8 landowners for lands identified in watershed plans. Easements, including donated
9 conservation easements, shall be acquired for perpetuity. Easements may be used in
10 conjunction with the following best management practices:

- 11 (a) Critical area stabilization.
- 12 (b) Shoreline buffers.
- 13 (c) Wetland restoration.

14 (d) Any other best management practice specified as eligible for easement support
15 in an approved priority watershed plan.

16 (e) Animal lot relocation in conjunction with pars. (a) to (c), provided that written
17 approval of the governmental unit is obtained prior to easement acquisition, in
18 accordance with the requirements of s. NR 154.03 (21)(b)6.

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

- 23 (a) An easement acquired under this subsection shall be acquired for perpetuity.
- 24 (b) An irrevocable lease acquired under this subsection may not be for less than
25 20 years.

26 (c) Prior written department approval for the purchase of an easement or an
27 irrevocable lease shall be obtained when the cost exceeds \$50,000.

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

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

4 (3) Upon acceptance of a donated easement under s. NR 120.18(3)(b), the
5 department shall appraise the easement and thereafter, issue a written opinion on the
6 value or issue a statement of value of the easement.

7 (4) The department may distribute grants and aids to itself or to any governmental
8 unit for the purchase of easements in priority watershed areas.

9
10 **NR 120.186 Property acquisition. (1) ELIGIBLE ACTIVITIES.** The department may
11 distribute grants to a governmental unit that is eligible for a nonpoint source grant under
12 s. NR 120.12 to:

13 (a) Acquire land or an interest in land for the construction of an urban structural
14 practice; or

15 (b) Acquire land or an interest in land identified in the watershed plan which is
16 contributing or will contribute nonpoint source pollution.

17 (2) ACQUISITION PROPOSALS. A governmental unit requesting nonpoint source
18 grant funds for the acquisition of property under this section shall submit an acquisition
19 proposal to the department for its review and approval. The acquisition proposal shall be
20 submitted with the nonpoint source grant application or grant amendment request. The
21 acquisition proposal shall include the following:

22 (a) A description of the purpose for acquiring the land and how the acquisition
23 will meet applicable goals of the priority watershed or priority lake plan under which the
24 grant is applied for.

25 (b) A description of the land management plan for the property including a list of
26 any owner-occupants or tenants that occupy the buildings or land to be acquired, a
27 general time frame for project completion, and a description of how long-term
28 management will be provided. Identification of other governmental units that will be
29 involved in management and their respective roles shall also be included.

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

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

4 (e) A description of how the proposed acquisition complements other nonpoint
5 source pollution abatement program efforts.

6 (f) Other information the department may request.

7 **(3) GENERAL PROVISIONS.** (a) Governmental units shall acquire and manage
8 property acquired with a nonpoint source grant in accordance with all applicable local,
9 state and federal laws and regulations.

10 (b) After approval of the acquisition proposal and receipt of the local assistance
11 grant from DATCP under ch. ATCP 50, a governmental unit shall obtain an appraisal for
12 each property. *no intro.*

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

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

16 3. Acquisitions with a fair market value of more than \$200,000 require 2
17 appraisals. The department may require a second appraisal for property valued under
18 \$200,000 if the property presents a difficult appraisal problem or if the first appraisal is
19 unacceptable under department guidelines. *shall have*

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

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

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

29 (e) Property acquired with a nonpoint source grant shall be maintained and
30 managed in accordance with the provisions, conditions and description in the grant
31 contract. *✓*

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

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

11 **(4) STATE COST-SHARE RATE.** The maximum allowable state cost-share rate for the
12 acquisition of property under this chapter shall be 50% of the acquisition cost of the
13 property. The maximum allowable state cost-share rate for appraisals for the acquisition
14 of property shall be 100% of the cost of the appraisal when a grant was first issued by the
15 department for this activity prior to July 1, 1998. When a grant was first issued by the
16 department for this activity ^{after} after this date, the maximum allowable state cost-share rate
17 for appraisals shall be 70%.

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

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

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

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

27 (d) The level of support from other governmental units.

28 (e) The level of financial support by the governmental unit.

29 (f) In cases where the acquisition will prevent further degradation of water
30 quality, ^{what} the acquisition shall be ^{cost} cost-effective relative to the degree of threat of further
31 degradation to the site.

1 **NR 120.19 Cost containment procedures.** (1) Governmental units as grantors
2 of cost-share agreements shall identify and agree to use one or more of the following cost
3 containment procedures for each best management practice in the detailed program for
4 implementation portion of the watershed plan.

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

9 (b) *Range of costs.* Based on past cost information, a governmental unit
10 establishes a cost range for the installation of a best management practice. Eligible costs
11 may not exceed the maximum cost of the range.. A governmental unit may use its own
12 experience, or information obtained from the department or other sources, to estimate
13 typical costs.

14 (c) *Bidding.* A governmental unit requires the landowner or land operator to
15 request competitive bids from contractors for the installation of a best management
16 practice. The cost-share payment shall be calculated based on the lowest bid meeting
17 acceptable qualifications. The governmental unit shall identify criteria for determining
18 acceptable qualifications. The landowner may select a qualified contractor other than the
19 low qualified bidder, but shall contribute 100% of the difference between the bids.

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

- 21 • The governmental unit shows the proposed construction site to all prospective
- 22 bidders on the same day and at the same time.
- 23 • There are at least 3 qualified bidders.
- 24 • All bids are sealed and delivered by a bid deadline to a location specified by the
- 25 governmental unit.
- 26 • Bids are opened within 2 weeks after the bid deadline.
- 27 • The amount of the cost-share grant is based on the lowest qualified bid.
- 28 • The landowner selects a higher bidding contractor only if the landowner agrees to
- 29 pay the difference.
- 30 • The landowner may not select a contractor who did not bid.

1 (d) *Maximum cost-share limit.* A governmental unit or the department establishes
2 a maximum cost-share rate limit not to exceed the rates specified in s. NR 120.18 for
3 installation of a best management practice.

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

7 (f) *Wisconsin conservation corps.* A governmental unit uses the Wisconsin
8 conservation corps to install best management practices for landowners and land
9 operators.

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

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

17
18 **NR 120.22 Interest earned on grant advances.** (1) Interest shall be earned and
19 accrued on nonpoint source grant advances. To determine the amount of interest to be
20 credited to the project, the governmental unit shall calculate the interest earned using an
21 average account balance and interest accrued over a period of time or other equitable
22 manner. 

23 (2) Interest money earned shall be used to support eligible activities in ongoing or
24 completed priority watershed projects including, ~~but not limited to,~~ periodic inspections 
25 after grant expiration, administrative costs of the project and, under exceptional
26 circumstances, the repair of best management practices at a cost-share rate of up to 100%.
27 When interest money is used to cost-share best management practices, the combination of
28 interest money and any other cost-share funds from this program may not exceed the
29 cost-share limits described in s. NR 120.18(1)(a) and (b).

1 (3) All interest money earned and accrued from a priority watershed project shall
2 be expended by 10 years from the end of the nonpoint source grant period as described in
3 s. NR 120.12(3). ~~(S)~~

4 (4) On or before April 15 of each year, a governmental unit shall complete and
5 file a report with the department which states the amount of interest money accrued and
6 interest money expended during the previous calendar year. During the planning and
7 implementation phases of watershed projects, these reports may be included with other
8 fiscal reports required under s. NR 120.23. ~~(S)~~
9 *now to 25*

10 **NR 120.23 Reimbursement procedures. (1) GENERAL REQUIREMENTS. (a)**

11 *Refunds, rebates and credits.* The state share of any refunds, rebates, credits or other
12 amounts that accrue to or are received by the grantee for the project, and that are properly
13 allocable to costs for which the grantee has been paid under a grant, shall be paid to the
14 department.

15 (b) *Final payment.* The department shall pay the grantee the balance of the state
16 share of the eligible project costs after project completion, department approval of the
17 request for payment which the grantee has designated "final payment request" and the
18 department has verified the grantee's compliance with all applicable requirements of this
19 chapter and the grant agreement. The final payment request shall be submitted by the
20 grantee promptly after project completion. Prior to final payment under the grant, the
21 grantee shall execute an assignment to the department for the state share of refunds,
22 rebates, credits or other amounts properly allocable to costs for which the grantee has
23 been paid by the department under the grant. The grantee shall also execute a release
24 discharging the department, its officers, agents and employes from all liabilities,
25 obligations and claims arising out of the project work or under the grant, subject only to
26 the exceptions specified in the release. ~~(S)~~

27 (c) *Withholding and recovery of funds.* The department may authorize the
28 withholding or recovery of a grant payment where the department determines, in writing,
29 that a grantee has failed to comply with project objectives, grant award conditions or
30 reporting requirements or has not expended all funds advanced or disbursed on eligible ~~(S)~~

1 activities. Withholding and recovery shall be limited to only that amount necessary to
2 assure compliance.

3 (d) *Availability of funds.* 1. Grant payments to a governmental unit or other
4 grantee under this section are contingent on the availability of legislative appropriations
5 to fund those payments.

6 2. The department shall withhold payment of the amount of any indebtedness to
7 the department, unless the department determines that collection of the debt will impair
8 accomplishment of the project objectives and that continuation of the project is in the best
9 interest of the program.

10 3. The department may recover payments made to grantees as advances or
11 disbursements when it determines that the governmental unit will not complete the
12 eligible activities on its grant within the current grant project budgeting period.

13 (2) **NONPOINT SOURCE GRANT AGREEMENTS.** (a) Cost-share funds may be used to
14 share in the actual cost required for the installation of eligible best management practices
15 identified in nonpoint source grant agreements described in s. NR 120.12.

16 (b) State agencies and governmental units shall comply with the following
17 procedures when requesting reimbursement:

18 1. Reimbursement requests shall be submitted on forms provided by the
19 department.

20 **Note:** Reimbursement request forms may be obtained, at no charge, from the
21 Bureau of Community Financial Assistance, Department of Natural Resources, Box
22 7921, Madison, Wisconsin 53707.

23 2. All reimbursement requests shall be submitted to the department after the best
24 management practice has been verified as properly installed and its cost has been verified
25 and supported by the cost-share agreement including any amendments.

26 **Note:** Cost-share calculation and practice verification forms may be obtained, at
27 no charge, from the Bureau of Community Financial Assistance, Department of Natural
28 Resources, Box 7921, Madison, Wisconsin 53707.

29 3. Reimbursement requests may be submitted for partially installed best
30 management practices.

1 4. All other reimbursement shall be for completed best management practices or
2 components of best management practices approved by the department.

3 6. Reimbursement may be denied if a cost-share agreement or amendment is not
4 in accordance with the watershed plan and grant agreement or amendment.

5 7. The department may set deadlines for receipt of reimbursement requests.

6 (c) The department may advance moneys to governmental units prior to best
7 management practice installation. The amount of the advance shall be determined by the
8 department and may not exceed the amount of the grant.

9 (4) RETENTION REQUIREMENTS. The governmental unit shall retain copies of all
10 reimbursement requests submitted to the department including the following items:

11 (a) Request for an advance or reimbursement form.

12 (b) Reimbursement claim worksheet.

13 (c) Cost-share calculation and practice verification form.

14 (5) ANTICIPATED COST-SHARE REIMBURSEMENT AMOUNT (ACRA). If the
15 department establishes an ACRA for a year for a county which receives funding under s.
16 NR 120.12 and the county makes reimbursements to eligible cost-share recipients for the
17 year which exceed the amount established by the department, the county shall provide
18 reimbursement to the cost-share recipients, from sources other than the grant agreement,
19 in the amount by which the reimbursable amounts exceed the ACRA established by the
20 department.

21
22 **NR 120.24 Procurement. (1) PROFITS.** Only fair and reasonable profits may be
23 earned by contractors for contracts under grant agreements described in this chapter.
24 Profits included in a formally advertised, competitively bid, fixed price construction
25 contract are presumed to be reasonable.

26 (2) RESPONSIBILITY. The governmental unit is responsible for the administration
27 and successful completion of the activities for which grant assistance under this chapter is
28 awarded in accordance with sound business judgment and good administrative practice
29 under state and local laws.

30 (3) GENERAL REQUIREMENTS FOR CONTRACTS. Contracts shall be:

1 (a) Necessary for and directly related to the accomplishment of activities
2 necessary to implement the watershed project;

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

5 (c) For monetary or in-kind consideration.

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

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

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

16
17 **NR 120.25 Record keeping and reporting requirements. (1) Each**

18 governmental unit as a grant agreement grantee or cost-share agreement grantor shall
19 maintain a financial management system which adequately provides for:

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

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

26 (c) Comparison of actual costs with grant amounts on a watershed basis.

27 (d) Procedures for determining the eligibility and allocability of costs in
28 accordance with the cost containment requirements of s. NR 120.19 for all practices
29 installed by the landowner or land operator.

30 (e) Accounting records supported by source documentation including the
31 following:

- 1 1. One separate project account for the total grant identified in the nonpoint
2 source grant agreement reflecting all receipts and expenditures of that grant.
- 3 2. Accounting records showing all receipts, encumbrances, expenditures and fund
4 balances.
- 5 3. A complete file for each cost-share agreement including the following
6 documentation:
- 7 a. Approval of best management practices and cost-share amounts by the
8 governmental unit.
- 9 b. Cost-share agreement and cost-share agreement amendment forms.
- 10 c. Verification of proper installation by the governmental unit official.
- 11 d. Request for reimbursement by a landowner or land operator documenting costs
12 incurred directly or for in-kind contributions by the landowner or land operator.
- 13 e. Evidence of payment for best management practice by a landowner or land
14 operator including copies of checks or receipts.
- 15 f. Verification of practice completion in accordance with the cost-share agreement
16 including amendments and approval of cost-share amounts by the governmental unit.
- 17 (f) A systematic method to assure timely and appropriate resolution of audit
18 findings, ^{under s. 120.26(2)(b)} and recommendations by the department.
- 19 (g) A final accounting of project expenditures submitted to the department within
20 120 days of the completion of all watershed project work.
- 21 (i) An identification of the least cost practices.
- 22 **(2) REPORTING REQUIREMENTS.** (a) *Annual reports.* During the project
23 implementation period, nonpoint source grantees shall report to the department an annual
24 accounting for accomplishments regarding its activities funded under the nonpoint source
25 grant and shall report the amount of interest accrued and expended as required under s.
26 NR 120.22(1).
- 27 (b) *Periodic reports.* The department may require more frequent progress reports
28 than those required under par. (a) from a nonpoint source grantee which account ^{document}
29 accomplishments regarding its activities funded under nonpoint source grants.
- 30 (c) *Final project report.* The department, with assistance from DATCP and the
31 appropriate local units of government, shall prepare and publish final priority watershed

1 and priority lake project reports when required to do so by the joint program evaluation
2 plan adopted by the land and water conservation board.

3 **Note:** A document detailing the reporting requirements required under pars. (a) to
4 (c) may be obtained, at no charge, from the Bureau of Watershed Management,
5 Department of Natural Resources, Box 7921, Madison, WI 53707.

6
7 **NR 120.26 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.

11 (b) The governmental unit or its agent or contractors of the governmental unit
12 shall preserve and make all records available to the department.

13 1. For 3 years after the date of final settlement; or

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

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

18 4. Cost-share agreement records shall be kept for the duration of the maintenance
19 period of the cost-share agreement with the longest maintenance period to enable the
20 governmental unit to fulfill its responsibility under s. NR 120.05.

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

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

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

28 **(2) AUDITING.** (a) The department may perform interim audits on all grants.

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

1 (c) All audits shall include review of fiscal accountability and program
2 consistency with the watershed plan.

3
4 **NR 120.27 Suspension or termination of grant. (1) SUSPENSION OF GRANTS. (a)**
5 *Liability.* The department may suspend state liability for work done under a grant after
6 notification is given to the grantee in accordance with the provisions of this subsection.
7 Suspension of state liability under a grant shall be accomplished by the issuance of a
8 "stop-work order."

9 (b) *Stop-work order issuance.* 1. The department may issue a stop-work order if
10 there is a breach of the grant agreement.

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

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

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

- 20 1. A description of the work to be suspended.
- 21 2. Instructions as to the acquisition of materials or services by the grantee.
- 22 3. Guidance for action to be taken on contracts.
- 23 4. Other suggestions to the grantee for minimizing costs.

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

27 2. Within the suspension period, the department shall either:

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

29 b. Terminate grant assistance for the work covered by the stop-work order under

30 sub. (2), or

31 c. Authorize resumption of work.

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

5 1. The stop-work order results in an increase in the time required for completion
6 or an increase in the grantee's cost properly allocable to the performance of any part of
7 the project; and

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

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

15 (2) TERMINATION OF GRANTS. A grant may be terminated in whole or in part by
16 the department. Grants may be terminated in accordance with the procedures of this
17 subsection.

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

22 (b) A grantee may not unilaterally terminate project work for which a grant has
23 been awarded except for good cause. The grantee shall notify the department in writing
24 within 30 days of any complete or partial termination of the project work. If the
25 department determines that there is good cause for the termination of all or any portion of
26 a project for which a grant has been awarded the department may enter into a termination
27 agreement or unilaterally terminate the grant pursuant to par. (c). The grant termination
28 becomes effective on the date the grantee ceases project work. If the department
29 determines that a grantee has ceased work on the project without good cause, the
30 department may unilaterally terminate the grant pursuant to par. (c) or annul the grant
31 pursuant to par. (d).

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

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

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

10 (d) The department may annul a grant if any of the following conditions apply:

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

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

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

16 4. The grantee has not met the conditions in the grant.

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

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

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

29 (4) RESPONSIBILITIES OF GOVERNMENTAL UNITS. Suspension or termination of a
30 grant or portion of grant under this section may not relieve the grantee of its
31 responsibilities under ss. NR 120.03 and 120.05.

1 **NR 120.28 Enforcement.** (1) On an annual basis, the department shall evaluate
2 watershed projects in implementation. During the evaluation, the department shall
3 examine the progress of the watershed project toward project goals and water quality
4 objectives specified in the watershed plan. Upon consulting with the project sponsor, the
5 department may take appropriate action to improve the progress of the watershed project.
6 Department action may include, but is not limited to, more frequent project evaluation,
7 the use of interim project goals, changes to project funding, and the adoption of sanctions
8 listed in sub. (2), when the project is in noncompliance with the priority watershed or
9 priority lake plan.

10 (2) The following sanctions may be imposed by the department for
11 noncompliance with the provisions of s. 281.65, Stats., this chapter or any grant
12 agreement entered into or amended in accordance with the provisions of this chapter.

13 (a) The grant may be terminated or annulled under s. NR 120.27;

14 (b) Watershed project costs directly related to noncompliance may be declared
15 ineligible;

16 (c) Payment otherwise due the grantee of up to 10% may be withheld under s. NR
17 120.23(1)(c)1;

18 (d) Watershed project work may be suspended under s. NR 120.27;

19 (e) Other administrative or judicial remedies may be instituted as legally available
20 and appropriate.

21 (f) The department may seek recovery of grant payments in whole or in part.

22 (3) If a site has been designated as a critical site, the provisions of ss. NR 120.08
23 and 120.09 have been met, and the owner fails to install best management practices or
24 reduce the pollutants contributed by the site through alternative actions, the department
25 may issue a notice of intent if the pollution is not caused by animal waste, in accordance
26 with s. 281.20 (1), (3) and (5), Stats. The department shall consult with DATCP when the
27 source of pollution from the site is agricultural. If the site is caused by animal waste,
28 enforcement shall be in accordance with the provisions of ch. NR 243.

29
30 **NR 120.29 Variances.** The department may approve in writing a variance from a
31 requirement of this chapter upon written request when the department determines that a

5

1 variance is essential to effect necessary grant actions or water quality objectives and
2 where special circumstances make a variance in the best interest of the program. A
3 governmental unit's written variance request shall clearly explain the circumstances
4 justifying the variance. Before approving a variance, the department shall take into
5 account factors such as good cause, circumstances beyond the control of the
6 governmental unit and financial hardship. The department may not grant variances from
7 statutory requirements.

8

9 **NR 120.30 Annual report.** The department, jointly with DATCP shall annually
10 prepare the report on the progress of the program required in ss. 281.65 (4) (o) and 92.14
11 (12), Stats. Specific requirements concerning the content of this report shall be in a joint
12 program evaluation plan to be prepared by the department, jointly with DATCP and
13 approved by the land and water conservation board.

14

15

16

The foregoing rule was approved and adopted by the State of Wisconsin Natural
17 Resources Board on _____.

18

19

The rule shall take effect on the first day of the month following publication in the
20 Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

21

22

23

Dated at Madison, Wisconsin _____

24

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STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

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By _____
George E. Meyer, Secretary

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(SEAL)