



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

BOX 7921
MADISON, WISCONSIN 53707

CR 89-26

STATE OF WISCONSIN)
DEPARTMENT OF NATURAL RESOURCES)

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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

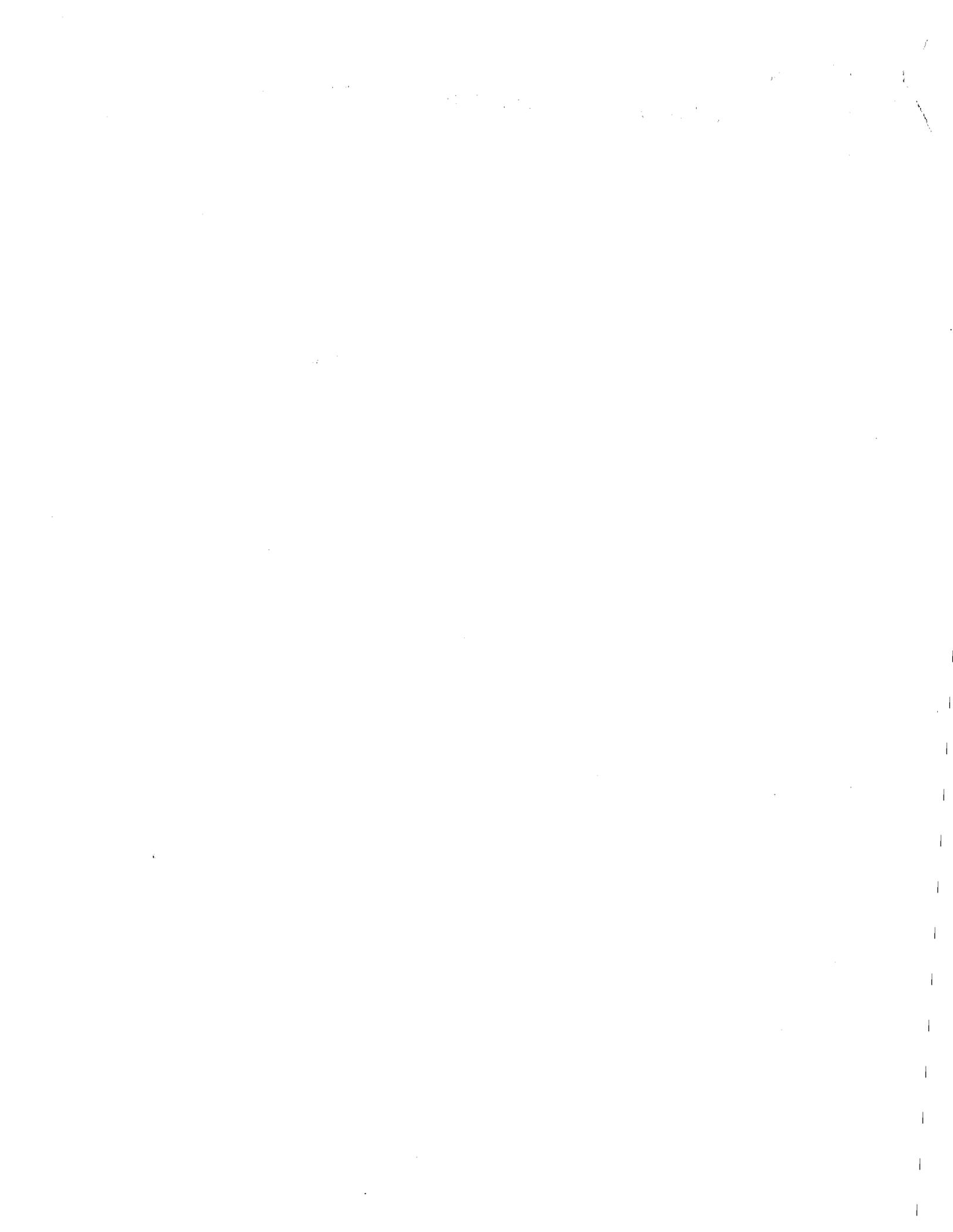
I, Bruce B. Braun, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. WR-18-89 was duly approved and adopted by this Department on May 25, 1989. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 19th day of August, 1989.

Bruce B. Braun
Bruce B. Braun, Deputy Secretary

(SEAL)

18-1-89



ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, RENUMBERING AND AMENDING, AMENDING,
REPEALING AND RECREATING AND CREATING RULES

.....
IN THE MATTER of repealing ss. NR 120.02(18) & (26), 120.09, .
120.17(7) & (8), 120.20 & 120.23(4); renumbering ss. NR 120.02 .
(3) to (17), (19) to (25), 120.17(9), 120.21(4) & 120.23(3)(b); .
renumbering and amending s. NR 120.21(2); amending ss. NR .
120.02(1) & (2), 120.03(2) to (4), 120.04(title), (1)(a), (b), .
(g) & (h), 120.05(title) & (intro.), 120.08(1)(a)(intro.), 1. .
to 3., 5. & 6., (b), (c)(title), (c) & (2)(c), 120.10(1)(intro.), .
(2)(i) to (j), (o), (r) & (s), 120.12(1) & (2), 120.13(3)(a), .
(4)(f), (5) & (10), 120.15, 120.18(1)(a), (1)(b)(intro.), .
(2)(a) & (3), 120.19(3), 120.21(1), 120.23(2)(b)(intro.)1. note .
& 2. note & (3)(a) & 120.25(1)(c)3.d.; repealing and recreating .
ss. NR 120.06, 120.07, 120.10(2)(k), 120.12(4), 120.13(9), .
120.14, 120.18(1)(a)Table 1, (2)(c), 120.21(3), 120.22, .
120.23(2)(c) & 120.24; and creating ss. NR 120.02(3), (4), .
(10), (11), (15), (19), (21), (23), (29) & (31), 120.04(1)(1) .
to (m), (4) to (7), 120.05(3), 120.08(1)(a)Table 1, 7. & .
8., (2)(cg), (cr) & (f), 120.10(2)(x), 120.12(6) to (8), .
120.13(3)(c), (4)(j) to (m) & (11), 120.18(1)(c)6. to 8., .
(d), (2)(a)(title), (b)(title) & (d), 120.185, 120.19(4), .
120.21(2)(b), (4) & (5), 120.23(2)(b)6., (3)(b) & (d), .
120.26(1)(am) & (b)4. and 120.30 of the Wisconsin Adminis- .
trative Code relating to Wisconsin's nonpoint source pollution .
abatement program .
.....

WR-18-89

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 144.25 and 227.11(2)(a), Stats.
Statutes interpreted: ss. 144.25, 92.08 and 92.14, Stats.

These proposed revisions to ch. NR 120 are intended to satisfy statutory revisions, clarify existing provisions, incorporate needed procedures and requirements, delete unnecessary provisions, and improve program efficiency. The majority of the revisions are intended to incorporate the statutory role provided for the Wisconsin Department of Agriculture, Trade and Consumer Protection. Other revisions modify the procedure for priority watershed project selection, expand the scope of priority watershed plans to address integrated resource management issues, modify cost share eligibility, provide for the use of easements, and modify local management agency eligibility for assistance.

SECTION 1. NR 120.02(1) and (2) are amended to read:

NR 120.02 (1) "Additional staff" means employees hired or contracted for by the ~~county, city or village~~ governmental unit for watershed project activities including previous or ongoing watershed projects. Furthermore, for counties, additional staff are those employees that are not necessary to meet DATCP's maintenance of effort requirements under s. 92.14(7), Stats.

(2) "Alternative best management practice" means a practice, technique or measure ~~determined-to-be~~ which is approved under s. NR 120.15 as an effective, ~~practicable~~ means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality ~~goals-and-which-does-not-appear-in~~ s. NR-120.14 objectives and which does not have an adverse impact on fish and wildlife habitat.

SECTION 2. NR 120.02(3) to (17) are renumbered 120.02(5) to (9), (12) to (14), (16) to (18), (20), (22), (24) and (25), respectively and (6), (13), (16), (18), (20), (24) and (25) as renumbered are amended to read:

NR 120.02(6) "Best management practice" as defined in s. 144.25(2)(a), Stats., means a practice, technique or measure identified in areawide water quality management plans which is determined to be the most effective, practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality ~~goals~~ objectives, which does not have an adverse impact on fish and wildlife habitat and which is described in s. NR 120.14 or 120.17.

(13) "Designated management agency" means ~~counties, cities and villages~~ governmental units or state agencies as identified in an approved watershed plan as having specific implementation responsibilities as identified in s. 144.25(6), Stats.

(16) "Existing staff" means the ~~county's, city's or village's~~ governmental unit's permanent staff or staff working on other than a project basis for the governmental unit prior to the initiation of a priority watershed project. For counties, existing staff are those employees that are required to be funded by the county to satisfy DATCP's maintenance of effort requirements under s. 92.14(7), Stats. Existing staff also means staff from other agencies assigned to work with the ~~county, city or village~~ governmental unit on a permanent basis.

(18) "Force account work" means the use of the ~~county, city or village's~~ governmental unit's own employees or equipment for construction, construction related activities, or repair or improvement to a best management practice.

(20) "Grant period" means the time period during which ~~the county, city or village is eligible to expend program grant funds~~ governmental units are eligible to incur costs for a watershed project.

(24) "Local share" means the ~~nonstate~~ portion of the cost of the installation of a best management practice ~~as part of a cost share agreement except that other state grants or appropriations may be used as a local share when a state agency is the cost share recipient,~~ including federal cost sharing, not funded through s. 20.370(4)(cc), Stats.

(25) "Nonpoint source" means a land management activity which contributes to runoff, seepage or percolation; ~~and are sources which are not as defined as point sources of pollutants~~ which adversely affects or threatens the quality of waters of this state and which is not a point source under s. 147.015(12), Stats.

SECTION 3. NR 120.02(3), (4), (10), (11), (15) and (19) are created to read:

NR 120.02(3) "Annual report" means the report jointly prepared by the department and DATCP as required under ss. 144.25(4)(o) and 92.14(13), Stats.

(4) "Annual resource management report" means the annual report summarizing soil and water resource and nonpoint source improvements submitted by each land conservation committee to DATCP.

(10) "Critical management area" means those lands and sites within a project area as identified in the project plan on which the nonpoint sources of pollution must be controlled for the project objectives to be reached.

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

(15) "Embankment height" means the structural height defined in s. NR 335.03(8).

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

SECTION 4. NR 120.02(18) is repealed.

SECTION 5. NR 120.02(19) to (25) are renumbered 120.02(26) to (28), (30), (32), (31) and (33), respectively, and 120.02(26) and (33) as renumbered are amended to read:

NR 120.02(26) "Priority watershed" means a ~~watershed-of-manageable-size, delineated-in-the-area-wide-water-quality-management-plan-and-selected-according-to-the-procedures-specified-in-s.-NR-120.06-or-120.07~~ large-scale or small-scale watershed which the department has identified through the continuing planning process under s. 147.25, Stats., as one of those watersheds where the need for nonpoint source water pollution abatement is most critical.

(33) "Technical guide" means the Wisconsin soil conservation service field office technical guide (December ~~1985~~ 1988).

Note: Copies may be inspected at the offices of the department, 101 S. Webster Street, Madison; the Secretary of State, 30 W. Mifflin, Madison; and the Revisor of Statutes, 30 W. Mifflin, Madison.

SECTION 6. NR 120.02 (21) and (23) are created to read:

NR 120.02(21) "Information and education strategy" means a component of a watershed plan which identifies the goals and objectives, the staffing, support costs and proposed methods to implement information and education programs in a watershed project. A local assistance grant may be used to support activities that have program or statewide impact including education and training activities; such as public meetings and mailings, newsletters, tours, and other activities determined by the department to support program objectives.

(23) "Large-scale watershed" means a hydrologic unit of approximately 75 to 300 square miles delineated through the continuing planning process under s. 147.25, Stats.

SECTION 7. NR 120.02(26) is repealed.

SECTION 8. NR 120.02(29) and (31) are created to read:

NR 120.02(29) "Quarterly project management report" means the quarterly report of time, financial expenditures and progress for soil and water resource management projects and nonpoint source projects submitted by each land conservation committee to DATCP.

(31) "Wetland" has the meaning specified under s. 23.32, Stats.

SECTION 9. NR 120.03 (2) to (4) are amended to read:

NR 120.03 (2) The department, ~~counties, cities and villages may~~ and governmental units shall form a watershed project committee consisting of representatives of interested groups, ~~units of government~~ governmental units and agencies to advise the department, ~~counties, cities and villages~~ on the development of the watershed plan.

(3) All ~~counties, cities, and villages~~ governmental units in the watershed may participate in the development of the watershed assessment portion of the watershed plan described in s. NR 120.08 as determined by the department.

(4) All ~~counties, cities, and villages,~~ governmental units in the watershed shall prepare ~~a~~ the portion of the detailed program for implementation for the watershed project, as described in s. NR 120.08~~(3)~~(1)(b)1. This requirement may be waived if the department and the ~~county, city or village~~ governmental unit agree that ~~the local unit of government's~~ nonparticipation by the governmental unit will not impair the objectives of the watershed plan.

SECTION 10. NR 120.04(title), (1)(a), (b), (g) and (h) are amended to read:

NR 120.04 (title) RESPONSIBILITIES OF GOVERNMENTAL UNITS IN PROJECT IMPLEMENTATION. (1)(a) Identifying, in writing, a person to represent the ~~unit of government~~ governmental units during implementation of the watershed project.

(b) Being a nonpoint source grant agreement grantee and cost share agreement grantor for cost share agreements within its jurisdiction and being fiscally responsible for the use of cost share funds provided to cost share recipients through those agreements. This requirement may be waived if the department and the ~~county, city and village~~ appropriate governmental unit agree to delegate these responsibilities to another unit of government.

(g) Contacting all owners or operators of lands identified as significant nonpoint sources in the watershed plan, within one year of the signing of a nonpoint source grant agreement. The landowners on whose property the most critical sources exist shall be contacted first. The appropriate governmental unit shall certify to the department that it has identified a strategy to comply with this paragraph.

(h) Preparing and submitting, except counties, to the department for approval, annual or periodic work plans for activities necessary to implement the watershed project in accordance with the detailed program for implementation for the watershed project. Counties shall submit the workload analysis and grant application to DATCP as required under s. Ag 166.50.

SECTION 11. NR 120.04(1)(l) to (m) are created to read:

NR 120.04(1)(l) Assisting DATCP in coordination and implementation of activities necessary to achieve water quality objectives in agricultural areas including development of a detailed program for implementation.

(j) Using, whenever possible, existing staff or contracting with existing governmental agencies to utilize that agency's existing staff to provide various field, administrative, planning and other services.

(k) Preparing and submitting to DATCP the annual resource management report required under s. Ag 166.90 to fulfill the requirements of the program evaluation plan requirements under s. 144.25(4)(p), Stats. Progress reports shall include sufficient detail to allow for evaluation of delivery of technical assistance.

(l) Participating with the department and other agencies in an annual watershed project review meeting.

(m) Enforcing the terms and conditions of the cost share agreement as defined in NR 120.13.

SECTION 12. NR 120.04(4) to (7) are created to read:

NR 120.04(4) Provision of financial support to implement the project, including but not limited to the following:

(a) Existing and additional staff support costs necessary for the project that are not provided in the local assistance grant.

(b) The local share of any best management practice the governmental unit installs on property it owns or controls.

(c) The local share of items cost shared in the local assistance grant.

(5) Adoption and enforcement of construction site erosion control ordinance and manure storage ordinance if required in the watershed plan.

(6) Performance of inspections beyond the nonpoint source grant period and including this activity in the annual workload analysis submitted to DATCP to ensure that cost share recipients are complying with the maintenance requirements described in s. NR 120.13.

(7) Compliance with the procedural requirements of this chapter.

SECTION 13. NR 120.05(title) and (intro.) are amended to read:

NR 120.05 (title) RESPONSIBILITIES OF STATE AGENCIES, GOVERNMENTAL UNITS AND AGENTS AS COST SHARE RECIPIENTS. Each ~~county, city or village participating in~~ state agency, unit of government or agent receiving cost sharing funds in a nonpoint source grant shall:

SECTION 14. NR 120.05(3) is created read:

NR 120.05(3) Obtain prior written approval from the department for use of nonpoint source grant funds for best management practices installed on property owned or operated by the grantee.

SECTION 15. NR 120.06 and 120.07 are repealed and recreated to read:

NR 120.06 INCORPORATION OF THE DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION'S PLANNING ELEMENTS. (1) The department shall assist DATCP in developing the following elements of priority watershed plans as described in s. 144.25(5), Stats:

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

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

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

(d) In cooperation with counties involved in a watershed project, a proposed project management schedule for agriculturally related best management practices installation to be used by the county in development of the annual workload analysis as described in s. NR 120.21.

(2) The department shall approve and incorporate the elements described in sub. (1) into the priority watershed plan.

NR 120.07 PRIORITY WATERSHED PROJECT SELECTION. (1) The department shall identify proposed large-scale and small-scale priority watershed projects in areawide water quality management plans. The plans shall identify critical priority watershed projects to be considered for selection.

(2) The proposed priority watershed projects shall be based on the following factors:

(a) The water quality impairment or threat to the use of the lake, stream, groundwater, wetland or any other water of the state and the practicability of alleviating the impairment or threat.

(b) The practicability of achieving a significant reduction in the amount of pollutants from the nonpoint sources in the watershed.

(c) The public use of the watershed's lakes, streams, groundwater and other waters of the state.

(d) The capability of the governmental unit to carry out the project considering commitments to ongoing projects.

(e) Unique or endangered environmental resources.

(3) The department shall prepare a 5-year program funding strategy to determine the availability of funding for project selection. The department shall seek comments on the strategy from DATCP. The strategy may be updated biennially to reflect appropriation adjustments.

(4) The department shall compile a proposed project list comprised of all high priority projects from all approved areawide water quality management plans. The department shall submit the proposed project list to DATCP for approval. The project list may be revised through amendment of the areawide water quality management plan and subsequent approval of the amendment by DATCP.

(5) The department shall select priority watershed projects from the approved list based on the availability of funding, the willingness of a governmental unit to participate in the project and the availability of department staff to accept new workloads associated with the project.

(6) The department shall appoint advisory committees at every district to participate in the selection process. The committee shall be comprised of representatives from state, regional, county land conservation committees, local and private organizations involved in water quality and soil conservation programs. The

committee shall recommend proposed projects for selection from the water quality management plan list in the appropriate district.

(7) Final project selection shall be announced by the department and DATCP on an annual basis or other timeframe determined by the department.

SECTION 16. NR 120.08(1)(a)(intro.), 1. to 3., 5. and 6. are amended to read:

NR 120.08(1)(a) Watershed assessment. The department shall prepare a watershed assessment analyzing the water quality problems or threats to the water quality in the watershed's lakes, streams, wetlands and groundwater and the nonpoint sources causing the problem or threat. The watershed assessment shall contain:

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

2. An identification of water quality objectives ~~for the watershed~~ to maintain the quality of lakes, streams, wetlands and groundwater of the watershed.

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

5. An identification of ~~priority~~ critical management areas where cost-shared and non-cost shared best management practices are to be applied.

6. A listing of and analysis of need for best management practices which will significantly aid in the achievement of the target level of pollution abatement including, but not limited to, practices listed in Table 1.

SECTION 17. Table 1 following NR 120.08(1)(a)6. is created to read:

Table 1

BEST MANAGEMENT PRACTICES (cost shared and not cost shared)

Cropland Practices:

- Change in crop rotations
- Change from cropland to grassland
- Contour cropping
- Stripcropping
- Field diversions
- Terraces
- Grassed waterways
- Reduced tillage
- Nutrient management
- Pesticide management

Cropland, Urban and Other Area Practices:

- Critical area stabilization
- Grade stabilization structures
- Shoreline and streambank protection (including fish structures)
- Shoreline buffers
- Wetland restoration
- Livestock exclusion from woodlots
- Well abandonment

Animal Waste Management Practices:

Manure spreading management

Barnyard runoff management

Animal lot relocation

Manure storage facilities

Roofs for barnyard runoff management and manure storage
facilities

Manure storage ordinances

Urban Practices:

Street sweeping

Leaf collection

Pet waste ordinances

Construction site erosion control ordinances

Infiltration basins.

Infiltration trenches

Porous pavement

Grassed swales

Wet basins

Detention basins

Wetland basins

Covering materials being stored

SECTION 18. NR 120.08(1)(a)7. and 8. are created to read:

NR 120.08(1)(a)7. An assessment of the need for the protection and enhancement of fish and wildlife habitat, endangered resources, aesthetics or other natural resources.

8. An analysis of the need for adoption of construction site and manure storage ordinances as required under ss. 144.25(4)(a)5. and 92.16, Stats., respectively.

SECTION 19. NR 120.08(1)(b) is amended to read:

NR 120.08(1)(b) Detailed program for implementation. 1. The ~~counties, cities and villages~~ governmental units as required under s. 144.25(6)(a), Stats., except those waived under s. NR 120.03(4), shall prepare ~~a~~ the following portion of the detailed program for implementation including:

~~1.~~ a. An estimate of costs for practice installation.

~~2.~~ b. A schedule for implementation activities including adoption of construction site and manure storage ordinances identified in the watershed assessment.

~~3.~~ c. An information and education strategy.

~~4.~~ d. A description of fiscal management procedures, including cost containment procedures.

~~5.~~ e. An estimate of technical assistance needs.

f. A grant disbursement and project management schedule.

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

SECTION 20. NR 120.08(1)(c)(title), (c) and (2)(c) are amended to read:

NR 120.08(1)(c) (title) Project evaluation plan. The department shall prepare as a portion of each priority watershed plan a project evaluation monitoring plan

identifying procedures and schedules for determining project progress and accomplishment. The evaluation monitoring plan shall contain criteria and procedures to evaluate the water resource and land management components of the project.

(2)(c) Watershed plan approval. Within 90 ~~45~~ days after the public informational hearing, the department shall ~~approve or reject the detatted program for implementation part of the~~ submit the draft watershed plan to DATCP and the appropriate county or counties. Within 60 days of receipt of the draft watershed plan, the appropriate county shall approve, conditionally approve or reject the watershed plan.

SECTION 21. NR 120.08(2)(cg), (cr) and (f) are created to read:

NR 120.08(2)(cg) Plan revisions. If DATCP or the county conditionally approves or rejects the watershed plan, the department may revise the watershed plan to address the issues identified.

(cr) Approval of individual county plan. Notwithstanding par. (cg), the department may approve the watershed plan for individual counties in multicounty watershed projects if DATCP and the respective county approve the watershed plan.

(f) Final project report. The department, with assistance from DATCP and local units of government, shall prepare and publish a final project report.

SECTION 22. NR 120.09 is repealed.

SECTION 23. NR 120.10(1)(Intro.) is amended to read:

NR 120.10 (1) Best management practices installed and maintained to control the following nonpoint sources are eligible for cost share assistance when

~~identified-as-significant~~ addressing critical nonpoint sources of pollution in a watershed plan:

SECTION 24. NR 120.10(2)(i) and (j) are amended to read:

NR 120.10(2)(i) Active ~~and-abandoned~~ mining activities.

(j) ~~Buttiding~~ Pollutant control measures needed during building and utility construction and storm water management practices for new developments.

SECTION 25. NR 120.10(2)(k) is repealed and recreated to read:

NR 120.10(2)(k) Pollutant control measures needed during construction of highways and bridges.

SECTION 26. NR 120.10(2)(o), (r) and (s) are amended to read:

NR 120.10(2)(o) ~~Activities-or-control-measures~~ Dams, pipes, conveyance systems and detention basins Intended primarily for flood control.

(r) Practices whose purpose is to accelerate or increase the drainage of land or wetlands.

(s) Practices ~~required~~ to control spills from commercial bulk storage of pesticides, fertilizers, petroleum and similar materials required by chs. Ag 162 and 163 or other administrative rules.

SECTION 27. NR 120.10(2)(x) is created to read:

NR 120.10(2)(x) Practices required to control sources which were adequately managed at the time of cost share agreement signing but due to the landowner's or land user's changes in land management are producing an increased amount of pollutant loading to the surface or groundwater, counter to the water resource objectives of the approved watershed plan, including increases in animal herd size,

changes to more intensive cropping and other changes in land use or management which increase the pollutant loading.

SECTION 28. NR 120.12(1) and (2) are amended to read:

NR 120.12 (1) The nonpoint source grant agreement is an agreement between the department and ~~counties, cities, villages~~ governmental units or state agencies for providing cost share funds for priority watershed ~~and small-state-watershed~~ projects. More than one nonpoint source grant agreement may be awarded for a ~~watershed~~ project.

(2) The period in which cost share agreements may be signed through the nonpoint source grant agreement shall be no more than 3 years. The department may extend this period upon written request by the grantee where the additional time will result in a significant reduction of the pollutant load from nonpoint sources or otherwise further the intent of the program and where the grantee has demonstrated satisfactory effort towards project management. The grantee may identify specific time periods for cost-sharing sign-ups within the project sign-up period if identified in an approved watershed plan.

SECTION 29. NR 120.12(4) is repealed and recreated to read:

NR 120.12(4) The grantee shall meet the following requirements when it installs best management practices:

- (a) The responsibilities in s. NR 120.05.
- (b) Submit estimates of all practice costs, eligible costs, ineligible costs, cost share rates and estimated total cost share amount.
- (c) Submit a schedule of installation and maintenance for the practices.
- (d) Submit copies of all professional services contracts, construction contracts, bid tabulations, force account proposals, proposals and other related

Information requested by the department. Professional services contracts, amendments causing the total contract to exceed or amendments exceeding \$10,000 and construction contracts exceeding \$50,000 shall be submitted to the department for approval before execution. Force account proposals exceeding \$10,000 shall be submitted to the department for approval prior to the initiation of construction.

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

(f) Submit a statement of the maintenance requirements for the practices.

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

(h) Adoption of construction site erosion control ordinance under s. 144.266, Stats., consistent with department guidelines and manure storage ordinance under s. 92.16, Stats., if required in the priority watershed plan, by one year prior to the end date of the nonpoint source grant agreement.

SECTION 30. NR 120.12(6) to (8) are created to read:

NR 120.12(6) The agreement period for best management practices installed by the grantee shall be the installation period plus the operation and maintenance period. The installation period is the time when all cost shared and non cost shared practices shall be installed. The operation and maintenance period is defined in s. NR 120.14 or, if not addressed there, will be specified in the grant agreement.

(7) If a practice is rendered ineffective due to circumstances beyond the control of the grantee, repayment of cost share payments will not be required. The department, after review for the need for the practice, may authorize the cost shared replacement of the practice. When replacement is authorized, the department

shall specify an appropriate operation and maintenance period for the practices.

The department shall provide cost sharing as follows:

(a) If the practice becomes ineffective during the grant period of the nonpoint source grant agreement of a priority watershed project, the replacement of the practice may be cost shared from funds allocated for the project.

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

(8) The department may unilaterally reduce the nonpoint source grant to the amount the grantee has committed on cost share agreements and contracts at the end of the period for the signing of cost share agreements.

SECTION 31. NR 120.13(3)(a) is amended to read:

NR 120.13(3)(a) The cost share agreement shall be between the participating ~~county, city or village~~ governmental unit and the individual landowner, land operator or state agency. Agreements with land operators shall be co-signed by the landowner.

SECTION 32. NR 120.13(3)(c) is created to read:

NR 120.13(3)(c) The cost share agreement shall apply to all sites under the same ownership that are either within the critical management area or are in the priority watershed and are contiguous to sites in the critical management area at the time of cost share agreement signing. At the discretion of the governmental unit, the cost share agreement may also apply to noncontiguous property under the same ownership in the watershed.

SECTION 33. NR 120.13(4)(f) is amended to read:

NR 120.13(4)(f) A requirement to not adopt any land use or practice which defeats the purposes of the best management practices, the cost share agreement or the nonpoint source grant agreement.

SECTION 34. NR 120.13(4)(j) to (m) are created to read:

NR 120.13(4)(j) Legal description of the entire property to which the cost share agreement applies.

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

(l) A requirement to amend the cost share agreement when there is a cost overrun or cost underrun on any or all practices exceeding \$500 in state cost share amounts.

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

SECTION 35. NR 120.13(5) is amended to read:

NR 120.13(5) SUBMITTAL TO DEPARTMENT. The ~~county, city or village~~ nonpoint source grantor shall submit a copy of the cost share agreement and amendments to the department within 30 days of execution. The department may deny reimbursement to

the governmental unit for costs associated with the installation of a best management practice not in conformance with the cost share agreement, the nonpoint source grant agreement or the watershed plan. Any cost share agreement exceeding \$50,000 in state share or amendment to an existing cost share agreement which causes the total state share commitment to the cost share agreement to exceed \$50,000 shall be submitted to the department for approval before becoming effective. The ~~county,~~ city-or-village governmental unit shall describe the best management practices available to control nonpoint sources of pollution and identify the least cost practice. The department shall approve the cost share agreement if the best management practices are the least cost alternatives to control the nonpoint sources and the significance of the nonpoint sources justifies the expenditure of the grant funds.

SECTION 36. NR 120.13(9) is repealed and recreated to read:

NR 120.13(9) CHANGE IN OWNERSHIP. If a change in ownership occurs during the cost share agreement period, the new landowner is responsible for fulfilling all conditions of the cost share agreement as described in s. NR 120.13.

SECTION 37. NR 120.13(10) is amended to read:

NR 120.13(10) RECORDING OF COST SHARE AGREEMENTS WITH REGISTER OF DEEDS. The ~~county,~~ city-or-village governmental unit shall ~~file a copy of record~~ file a copy of record the original cost share agreement ~~with the property deed at~~ and amendments in the office of the register of deeds for each county in which the property is located within 30 days after the signing of the cost share agreement.

SECTION 38. NR 120.13(11) is created to read:

NR 120.13(11) APPLICABILITY. Sections (3)(c), (4)(j), (k), (l), (m) and (9) and (10) apply to all cost share agreements signed after the effective date of this rule ...[revisor insert date], and amendments to those agreements.

SECTION 39. NR 120.14 is repealed and recreated to read:

NR 120.14 COST SHARE AGREEMENT CONDITIONS FOR BEST MANAGEMENT PRACTICES. (1) APPLICABILITY. The cost share agreement conditions described in this section apply to best management practices included in cost share agreements or otherwise provided for in s. NR 120.12 (4) or identified by variance under s. NR 120.29. Cost sharing is authorized when the best management practices are installed on critical sites in a manner consistent with the approved watershed plan.

(2) CONTOUR FARMING. (a) Description. Contour farming is farming sloped land so all cultural operations from seed bed preparation to harvest are done on the contour.

(b) Conditions. 1. Cost sharing may be provided for:

a. Establishment of a contour farming system and, if necessary, subsurface drains and the removal of obstructions.

b. Establishment of wildlife habitat to recreate habitat lost through the removal of obstructions or other means required to install the contour cropping.

2. Wildlife habitat shall be recreated to replace wildlife habitat lost through the removal of obstructions or other means required to install the contour cropping consistent with the approved watershed plan.

(c) Standards and specifications. 1. Wetlands may not be destroyed or degraded as a result of installing contour cropping.

2. SCS field office technical guide standards and specifications as of May, 1989:

a. 330 - contour farming;

- b. 500 - obstruction removal;
- c. 606 - subsurface drain; and
- d. 645 - wildlife upland habitat management.

(3) CONTOUR AND FIELD STRIPCROPPING. (a) Description. Contour and field stripcropping is growing crops in a systematic arrangement of strips or bands, usually on the contour, in alternated strips of close growing crops, such as grasses or legumes, and tilled row crops.

(b) Conditions. 1. Cost sharing may be provided for:

- a. Establishment of the stripcropping system including field stripcropping and, if necessary, removal of obstructions and installation of subsurface drains.
- b. Establishment of wildlife habitat to recreate habitat lost through the removal of obstructions or other means required to install the stripcropping.

2. Wildlife habitat shall be recreated to replace wildlife habitat lost through the removal of obstructions or other means required to install the stripcropping consistent with the approved watershed plan.

(c) Standards and specifications. 1. Wetlands may not be destroyed or degraded as a result of installing stripcropping.

2. SCS field office technical guide standards and specifications as of May, 1989:

- a. 585 - stripcropping;
- b. 586 - field stripcropping;
- c. 500 - obstruction removal;
- d. 606 - subsurface drain; and
- e. 645 - wildlife upland habitat management.

(4) FIELD DIVERSIONS. (a) Description. Field diversions are structures installed to divert water from areas where it is in excess to sites where it can be

used or transported safely. Usually the system is a channel with a supporting ridge on the lower side constructed across the slope at a suitable grade.

(b) Conditions. 1. Cost sharing may be provided for:

a. Diversions and subsurface drains necessary for proper functioning of the diversion. Cost sharing for subsurface drains is limited to areas on sloping land where the internal water seeps to the surface and causes the land or cover to lose its stability.

b. Installation of structures such as pipe, underground outlets, or other outlets, if needed, for proper functioning of the dike, for more even flow, or to protect outlets from erosion.

c. Necessary grading to permit installation of an effective system.

d. Removing obstructions necessary to permit establishment of the practice.

e. Establishment of wildlife habitat to recreate habitat lost through the removal of obstructions or other means required to install the field diversion.

f. Establishing temporary and permanent vegetative cover including seed, mulch, fertilizer and other necessary materials.

g. Fencing, if necessary, to protect the diversion from cattle.

2. Wildlife habitat shall be recreated to replace wildlife habitat lost through the removal of obstructions or other means required to install the field diversion consistent with the approved watershed plan.

3. Diversions shall discharge to a suitable outlet.

4. Cost sharing may not be authorized for ditches or dikes designed to impound water for later use, or which will be a part of a regular irrigation system.

(c) Standards and specifications. 1. Wetlands may not be destroyed or degraded as a result of installing field diversions.

2. Sediment generated from the construction of the field diversion shall be controlled consistent with standards and specifications of the Wisconsin construction site best management practice handbook, April, 1989 edition.

Note: Copies of this publication are available for inspection at the central office of the Department of Natural Resources, and the offices of the Revisor of Statutes and Secretary of State.

3. SCS field office technical guide standards and specifications as of May, 1989:

- a. 362 - diversion;
- b. 342 - critical area planting;
- c. 382 - fencing;
- d. 412 - grassed waterway or outlet;
- e. 468 - lined waterway or outlet;
- f. 500 - obstruction removal;
- g. 606 - subsurface drains;
- h. 620 - underground outlet; and
- i. 645 - wildlife upland habitat management.

(5) TERRACES. (a) Description. Terraces are a system of ridges and channels constructed on the contour with a nonerosive grade at a suitable spacing.

(b) Conditions. 1. Cost sharing may be provided for:

a. Terraces and the necessary grading to permit installation of an effective system consistent with the type of terrace and criteria for use specified in the approved watershed plan.

b. Removal of obstructions necessary to permit installation of an effective system.

c. Establishment of wildlife habitat to recreate habitat lost through the removal of obstructions or other means required to install the terraces.

d. Materials and installation of underground pipe outlets and other mechanical outlets.

e. Establishment of temporary and permanent vegetative cover including seed, mulch, fertilizer and other necessary materials.

2. Wildlife habitat shall be recreated to replace wildlife habitat lost through the removal of obstructions or other means required to install the terraces consistent with the approved watershed plan.

3. Terraces shall discharge to a suitable outlet.

(c) Standards and specifications. 1. Wetlands may not be destroyed or degraded as a result of terraces.

2. Sediment generated from the construction of the terraces shall be controlled consistent with standards and specifications of the Wisconsin construction site best management practice handbook, April, 1989 edition.

Note: Copies of this publication are available for inspection at the central office of the Department of Natural Resources, and the offices of the Revisor of Statutes and Secretary of State.

3. SCS field office technical guide standards and specifications as of May, 1989:

- a. 600 - terrace;
- b. 342 - critical area planting;
- c. 412 - grassed waterway or outlet;
- d. 468 - lined waterway or outlet;
- e. 500 - obstruction removal;
- f. 606 - subsurface drain;
- g. 620 - underground outlet; and
- h. 638 - water and sediment control basin; and
- i. 645 - wildlife upland habitat management.

(6) GRASSED WATERWAYS. (a) Description. A grassed waterway is a natural or constructed drainageway or channel shaped, graded and established in suitable cover as needed to prevent erosion by runoff waters.

(b) Conditions. 1. Cost sharing may be provided for:

a. Site preparation, grading, shaping, filling, establishing temporary and permanent vegetation cover and for subsurface drains necessary for proper functioning of the waterway.

b. Removal of obstructions necessary to permit installation of an effective system.

c. Establishment of wildlife habitat to recreate habitat lost through the removal of obstructions or other means required to install the grassed waterway.

2. Wildlife habitat shall be recreated to replace wildlife habitat lost through the removal of obstructions or other means required to install the grassed waterway consistent with the approved watershed plan.

(c) Standards and specifications. 1. Wetlands may not be destroyed or degraded as a result of installing grassed waterways.

2. Sediment generated from the construction of the grassed waterway shall be controlled consistent with standards and specifications of the Wisconsin construction site best management practice handbook, April, 1989 edition.

Note: Copies of this publication are available for inspection at the central office of the Department of Natural Resources, and the offices of the Revisor of Statutes and Secretary of State.

3. SCS field office technical guide standards and specifications as of May, 1989:

- a. 412 - grassed waterway or outlet;
- b. 342 - critical area planting;
- c. 382 - fencing;

- d. 500 - obstruction removal;
- e. 606 - subsurface drain; and
- f. 645 - wildlife upland habitat management.

(7) REDUCED TILLAGE SYSTEMS FOR CONTINUOUS ROW CROPPING AND LONG ROTATIONS.

(a) Description. Reduced tillage systems for continuous row cropping and long rotations are systems which leave roughened surfaces or substantial amounts of crop residue in or on the soil surface after crops are planted. Generally, the system consists of no more than using one primary tillage pass in the fall or spring and no more than 2 passes with light or secondary tillage equipment prior to planting. This practice applies to growing of corn, soybeans and other row crops at least 3 consecutive years. It does not apply to crops in a rotation involving hay with 2 or less years in corn.

(b) Conditions. Cost sharing may be provided for costs necessary to convert to reduced tillage systems excluding no till.

(c) Standards and specifications. 1. The minimum amount of ground cover after planting shall be at least 30%.

2. The tillage and planting shall be performed as close to the contour as practical.

(8) REDUCED TILLAGE SYSTEMS FOR SHORT CROP ROTATIONS AND FORAGE AND SMALL

GRAINS ESTABLISHMENT. (a) Description. Reduced tillage systems for short crop rotations and forage and small grains establishment are systems leaving roughened surfaces or substantial amounts of crop residue in or on the soil surface after crops are planted. This practice applies to crop rotations involving no more than 2 years of corn and small grains and hay. This practice also applies to establishment of forage crops and small grains.

(b) Conditions. Cost sharing may be provided for costs necessary to convert to reduced tillage systems including no till.

(c) Standards and specifications. 1. The minimum amount of ground cover after planting shall be at least 30%.

2. The tillage and planting shall be performed as close to the contour as practical.

3. SCS field office technical guide standards and specifications as of May, 1989: 329 - conservation tillage.

(9) NUTRIENT MANAGEMENT. (a) Description. Nutrient management is the management of the application of manure, legumes and commercial fertilizers including the rate, method and timing of application to minimize the amount of nutrients entering surface or ground waters.

(b) Conditions. As part of a nutrient management plan, cost sharing may be provided for no more than 3 years on an operation for:

1. Soil testing including residual nitrogen analysis.
2. Manure nutrient analysis.

(c) Standards and specifications. Using the process identified in s. NR 120.15(2), the department and DATCP shall identify standards and specifications consistent with the DATCP technical bulletin "Nutrient and Pesticide Best Management Practices for Wisconsin Farms", May 1989 edition.

Note: Copies of this publication are available for inspection at the central office of the Department of Natural Resources, and the offices of the Revisor of Statutes and Secretary of State.

(10) PESTICIDE MANAGEMENT. (a) Description. Pesticide management is the management of the handling, disposal and application of pesticides (including herbicides, insecticides and fungicides) including the rate, method and timing of application to minimize the amount of pesticides entering surface or ground waters.

(b) Conditions. As part of a pesticide management plan, cost sharing may be provided for:

1. Integrated pest management scouting for not more than 3 years on an operation.

2. Spill control basins with liquid-tight floors for pesticide handling areas.

(c) Standards and specifications. Using the process identified in s. NR 120.15(2), the department and DATCP shall identify standards and specifications consistent with the DATCP technical bulletin "Nutrient and Pesticide Best Management Practices for Wisconsin Farms", May 1989 edition.

Note: Copies of this publication are available for inspection at the central office of the Department of Natural Resources, and the offices of the Revisor of Statutes and Secretary of State.

(11) CRITICAL AREA STABILIZATION. (a) Description. Critical area stabilization is the planting of suitable vegetation on critical nonpoint source sites.

(b) Conditions. 1. Cost sharing may be provided for:

a. Permanent fencing to protect the site.

b. Planting trees, shrubs, temporary seeding and perennial grass cover including seed, mulch, fertilizer and other necessary materials.

c. For shaping and smoothing prior to the installation of protective structures or plantings and the removal of obstructions necessary for stabilizing the critical area.

d. Establishment of wildlife habitat to recreate habitat lost through the removal of obstructions or other means required to stabilize the critical area.

2. Wildlife habitat shall be recreated to replace wildlife habitat lost through the removal of obstructions or other means required to stabilize the critical area consistent with the approved watershed plan.

3. Trees may not be sold during the operation and maintenance period.

(c) Standards and specifications. 1. Wetlands may not be destroyed or degraded as a result of installing grassed waterways.

2. Sediment generated from the installation of the critical area stabilization shall be controlled consistent with standards and specifications of the Wisconsin construction site best management practice handbook, April, 1989 edition.

Note: Copies of this publication are available for inspection at the central office of the Department of Natural Resources, and the offices of the Revisor of Statutes and Secretary of State.

3. SCS field office technical guide standards and specifications as of May, 1989:

- a. 342 - critical area planting;
- b. 382 - fencing;
- c. 386 - field borders;
- d. 472 - livestock exclusion;
- e. 484 - mulching;
- f. 500 - obstruction removal;
- g. 612 - tree planting;
- h. crevice and sinkhole treatment; and
- i. 645 - wildlife upland habitat management.

(12) GRADE STABILIZATION STRUCTURES. (a) Description. A grade stabilization structure is a structure used to reduce the grade in a drainageway or channel to protect the channel from erosion or to prevent the formation or advance of gullies.

(b) Conditions. 1. Cost sharing may be provided for:

a. Channel linings, chutes, drop spillways and pipe drops of less than 15 feet in height to discharge excess water.

b. Detention or retention structures, such as erosion control dams, desilting reservoirs, sediment basins, debris basins or similar structures of less than 15 feet in height and with impoundment capacities of less than 15 acre-feet.

c. Fencing and temporary and permanent vegetative cover (including mulching needed to protect the structure) and for grading to permit the installation of the structure.

d. Establishment of wildlife habitat to recreate habitat lost through the removal of obstructions or other means required to stabilize the critical area, or

2. Cost sharing may be provided for structures with embankments of 15 to 25 feet in height or with impoundment capacities of 15 to 50 acre-feet if the department makes a determination in writing that all of the following apply:

a. Control of the critical site is needed to achieve the water quality objectives specified in the approved watershed plan.

b. Construction of the structure is cost effective.

c. Failure of the structure would have minimum potential to endanger life or property.

3. Wildlife habitat shall be recreated to replace wildlife habitat lost through the removal of obstructions or other means required to stabilize the critical area consistent with the approved watershed plan.

4. Cost sharing may not be authorized for any grade stabilization structure on a navigable stream or stream classified as supporting a fishery.

(c) Standards and specifications. 1. Sediment generated from the construction of the grade stabilization structure shall be controlled consistent with standards and specifications of the Wisconsin construction site best management practice handbook, April, 1989 edition.

Note: Copies of this publication are available for inspection at the central office of the Department of Natural Resources, and the offices of the Revisor of Statutes and Secretary of State.

2. SCS field office technical guide standards and specifications as of May, 1989:

- a. 410 - grade stabilization structure;
- b. 350 - sediment basin;
- c. 638 - water and sediment control basin;
- d. 342 - critical area planting;
- e. 348 - diversion dam;
- f. 362 - diversion;
- g. 382 - fencing;
- h. 412 - grassed waterway;
- i. 468 - lined waterway or outlet;
- j. 484 - mulching;
- k. 500 - obstruction removal; and
- l. 620 - underground outlet.

(13) AGRICULTURAL SEDIMENT BASINS. (a) Description. Agricultural sediment basins are permanent basins designed and constructed to reduce the transport of pollutants to surface waters and wetlands of sediment eroded from critical agricultural fields.

(b) Conditions. 1. Cost sharing may be provided for the sediment basin including embankments, principal and emergency spillway structures, including anti-seep collars, dewatering outlet, outlet protection, temporary and permanent vegetation and fencing.

2. Cost sharing may not be provided for:

a. Basins having embankments exceeding 25 feet in height or with an impoundment capacity of more than 50 acre feet.

b. Basins serving more than 150 acres.

c. Basins located where failure may result in loss of life.

3. Sediment basins with embankments of 15 to 25 feet in height or with impoundment capacities of 15 to 50 acre-feet in volume may be cost shared only when approved by the department, in writing, prior to construction. For the department to authorize such cost sharing, it must make the following findings:

a. Control of the critical site is needed to achieve the water quality objectives specified in the approved watershed plan.

b. Construction of the structure is cost effective.

c. Failure of the structure would have minimum potential to endanger life or property.

(c) Standards and specifications. 1. Wetlands may not be destroyed or degraded as a result of installing sediment basins.

2. Sediment generated from the construction of the sediment basin shall be controlled consistent with standards and specifications of the Wisconsin construction site best management practice handbook, April, 1989 edition.

Note: Copies of this publication are available for inspection at the central office of the Department of Natural Resources, and the offices of the Revisor of Statutes and Secretary of State.

3. The sediment basin shall be designed consistent with standards and specifications for construction site sediment basins in the Wisconsin construction site best management practice handbook and the SCS field office technical guide standards and specifications as of May, 1989:

a. 350 - sediment basin;

b. 342 - critical area planting;

- c. 382 - fencing;
- d. 412 - grassed waterway;
- e. 468 - lined waterway or outlet; and
- f. 484 - mulching.

(14) SHORELINE AND STREAMBANK STABILIZATION. (a) Description. Shoreline or streambank stabilization is the stabilization and protection of the banks of streams and lakes against erosion and the protection of fish habitat and water quality from livestock access.

(b) Conditions. 1. Cost sharing may be provided:

a. For permanent fencing to protect banks from damage by domestic livestock and to limit or eliminate livestock access to water.

b. For planting trees (if approved by department fish manager), shrubs and temporary and perennial grass cover as filter strips or buffer zones along banks.

c. For water pumps and other measures required to eliminate livestock access to water.

d. To install livestock and machinery crossings that will minimize disturbance of the stream channel and banks.

e. For placement of riprap and other materials on banks of less than 6 feet in height measured from the bed when other practices are not practical.

f. For shaping and smoothing banks prior to the installation of protective structures or plantings.

g. For clearing and removal of snags and trees likely to cause erosion of the stream banks.

h. For required permits.

i. For fish habitat structures installed in conjunction with riprap consistent with the priority watershed plan.

2. Riprap and other materials for banks of more than 6 feet in height measured from the bed may be cost shared only when approved by the department, in writing, prior to design. For the department to authorize such cost sharing, it must make the following findings:

a. Control of the critical site is needed to achieve the water quality objectives specified in the approved watershed plan.

b. Use of riprap and other materials is cost-effective.

c. Engineering design assistance is available.

3. The cost share recipient is responsible for obtaining all permits for the installation of the practice.

4. Cost sharing is not authorized for wood chunks, unsorted demolition material, brick, plaster, blacktop and any other material that could produce leachates or would violate provisions of statutes or administrative codes for use as riprap.

(c) Standards and specifications. 1. Sediment generated from the construction of the stream bank or shoreline protection practices shall be controlled consistent with standards and specifications of the Wisconsin construction site best management practice handbook, April, 1989 edition.

Note: Copies of this publication are available for inspection at the central office of the Department of Natural Resources, and the offices of the Revisor of Statutes and Secretary of State.

2. SCS field office technical guide standards and specifications as of May, 1989:

a. 580 - streambank and shoreline protection;

b. 342 - critical area planting;

c. 382 - fencing;

d. 472 - livestock exclusion;

- e. 612 - tree planting;
- f. 395 - fish stream improvement;
- g. 560 - access road; and
- h. 614 - trough and tank.

3. U.S. department of transportation hydraulic engineering circulars numbers 11 and 15.

4. American fisheries society's stream obstruction removal guidelines.

Note: Copies of the materials described in subs. 3. and 4. may be inspected at the offices of the department, 101 S. Webster Street, Madison; the Secretary of State, 30 W. Mifflin, Madison; and the Revisor of Statutes, 30 W. Mifflin, Madison.

(15) SHORELINE BUFFERS. (a) Description. Shoreline buffers are permanently vegetated areas immediately adjacent to lakes, streams and wetlands designed and constructed to manage critical nonpoint sources or to filter pollutants from nonpoint sources.

(b) Conditions. 1. Cost sharing may be provided only when the shoreline buffers are used consistent with the approved watershed plan.

2. For buffers used to filter pollutants, cost sharing may be provided for:

- a. Establishment of vegetative cover including wetland vegetation.
- b. Construction of level spreading structures and associated grading necessary for the buffer to properly filter pollutants.
- c. Grading of the buffer area necessary for the buffer to properly filter pollutants.
- d. Removal of obstructions necessary to permit installation of an effective system.
- e. Establishment of wildlife habitat to recreate habitat lost through the removal of obstructions or other means required to install the shoreline buffer.

3. For buffers used to manage a critical area, cost sharing may be provided for:

a. Establishment of vegetative cover.

b. Establishment of wildlife habitat to recreate habitat lost through the removal of obstructions or other means required to install the shoreline buffer.

4. Wildlife habitat shall be recreated to replace wildlife habitat lost through the removal of obstructions or other means required to install the shoreline buffer consistent with the approved watershed plan.

(c) Standards and specifications. 1. Wetlands may not be destroyed or degraded as a result of installing shoreline buffers.

2. Sediment generated from the construction of the shoreline buffer practices shall be controlled consistent with standards and specifications of the Wisconsin construction site best management practice handbook, April, 1989 edition.

Note: Copies of this publication are available for inspection at the central office of the Department of Natural Resources, and the offices of the Revisor of Statutes and Secretary of State.

3. The watershed plan shall specify the physical dimensions and the vegetative cover of the shoreline buffer.

(16) WETLAND RESTORATION. (a) Description. Wetland restoration is the construction of berms or destruction of the function of tile lines and drainage ditches to create conditions suitable for wetland vegetation.

(b) Conditions. Cost sharing may be provided for earth moving to construct berms, levees or dikes; for earth moving to fill in portions of drainage ditches; for destruction of portions of tile lines; and for vegetative cover needed to develop or restore wetlands consistent with the approved watershed plan.

(c) Standards and specifications. 1. Sediment generated from the restoration of the wetland shall be controlled consistent with standards and specifications of the Wisconsin construction site best management practice handbook, April, 1989 edition.

Note: Copies of this publication are available for inspection at the central office of the Department of Natural Resources, and the offices of the Revisor of Statutes and Secretary of State.

2. SCS field office technical guide standards and specification as of May 1989: 393 - filter strip.

(17) BARNYARD RUNOFF MANAGEMENT. (a) Description. Barnyard runoff management is the use of structural measures such as gutters, downspouts and diversions to intercept and redirect surface runoff around the barnyard, feeding area or farmstead, and collect, convey and temporarily store runoff from the barnyard, feeding area or farmstead.

(b) Conditions. Cost sharing may be provided for:

1. Components required to control the pollutants in accordance with the restrictions in s. NR 120.10(2)(x).

2. Diversions, gutters, downspouts, collection basins, infiltration areas, filter strips, waterway outlet structures, piping, land shaping and filter walls needed to manage runoff from areas where livestock manure accumulates.

3. Concrete paving of portions of yards necessary to support filter walls, necessary to enable proper yard scraping and used as a settling basin.

4. Concrete paving of all or portions of the yard required to protect groundwater when specified in the watershed plan.

5. Measures needed for the establishment of perennial grasses, including fertilizers and other minerals.

6. Permanent fencing.

(c) Standards and specifications. 1. Sediment generated from the construction of the barnyard runoff management system shall be controlled consistent with standards and specifications of the Wisconsin construction site best management practice handbook, April, 1989 edition.

Note: Copies of this publication are available for inspection at the central office of the Department of Natural Resources, and the offices of the Revisor of Statutes and Secretary of State.

2. SCS field office technical guide standards and specifications as of May, 1989:

- a. 393 - filter strip;
- b. 362 - diversion;
- c. 558 - roof runoff management;
- d. 342 - critical area planting;
- e. 561 - heavy use area protection;
- f. 382 - fencing;
- g. 412 - grassed waterway;
- h. 468 - lined waterway or outlet;
- i. 484 - mulching;
- j. 620 - underground outlet;
- k. 350 - settling basin;
- l. 233 - pumping plant; and
- m. 633 - waste utilization.

(18) ANIMAL LOT RELOCATION. (a) Description. Animal lot relocation is relocation of an animal lot from a critical site such as a floodway to a suitable site to minimize the amount of pollutants from the animal lot to surface or ground waters.

(b) Conditions. 1. Cost sharing may be provided for:

a. Construction of fences and other items necessary to confine the livestock on the new site.

b. Removal of fences and other obstructions, and the establishment of permanent vegetation on the existing site necessary to stabilize the site to be abandoned.

c. Reconstruction or replacement of buildings and other structures necessary for the relocation of the animal lot subject to limitations described in s. NR 120.18(2)(e).

d. Proper abandonment of wells required as a result of the relocation of the yard.

e. Needed runoff management practices on the relocated lot consistent with s. NR 120.14(17).

2. Wells shall be properly abandoned.

3. The abandoned site shall remain abandoned for the period of the cost share agreement.

4. A plan for relocation shall be approved by the department, in writing, prior to initiation of relocation. For the department to approve relocation, it must make the following findings:

a. Control of the critical site is needed to achieve the water quality objectives specified in the approved watershed plan.

b. The relocation is cost effective, including the loss in terms of appraised values of structures to be abandoned.

c. The relocated lot will not significantly contribute to a water quality problem.

(c) Standards and specifications. 1. Sediment generated from the relocation of the animal lot shall be controlled consistent with standards and specifications

of the Wisconsin construction site best management practice handbook, April, 1989 edition.

Note: Copies of this publication are available for inspection at the central office of the Department of Natural Resources, and the offices of the Revisor of Statutes and Secretary of State.

2. Wells shall be properly abandoned in accordance with the requirements of ch. NR 112.

3. SCS field office technical guide standards and specifications as of May, 1989:

- a. 393 - filter strip;
- b. 362 - diversion;
- c. 558 - roof runoff management;
- d. 342 - critical area planting;
- e. 561 - heavy use area protection;
- f. 382 - fencing;
- g. 412 - grassed waterway;
- h. 468 - lined waterway or outlet;
- i. 484 - mulching;
- j. 620 - underground outlet;
- k. 350 - sediment basin;
- l. 312 - waste management system;
- m. 500 - obstruction removal; and
- n. 633 - waste utilization.

(19) MANURE STORAGE FACILITIES. (a) Description. A manure storage facility is a structure for the storage of a volume of manure for which suitable land application sites or practices are temporarily unavailable generally due to frozen or saturated conditions from operations where the location and site characteristics

of areas where manure is spread have a high potential to carry pollutants to lakes, streams and groundwater and the facility is necessary to properly land apply the manure according to a manure management plan.

(b) Conditions. 1. A manure management plan for the operation is required.

2. Cost sharing may be provided for:

a. Operations where the location and site characteristics of areas where manure is spread have a high potential to carry runoff to lakes and streams and the facility is necessary to accommodate proper land application of the manure in accordance with the operation's manure management plan.

b. Operations where the storage or spreading of manure has a high potential for contaminating groundwater as specified in the watershed plan.

c. Aerobic or anaerobic basins, liquid manure tanks and solid manure stacking facilities and equipment necessary for transporting manure to the storage facility required as part of a manure management plan.

d. Storage capacities of no less than 30 days and no more than 365 day manure generation.

e. Leases of manure storage tanks subject to the restrictions of s. NR 120.18(2)(f).

f. The repair or modifications to existing manure storage facilities as needed to meet the water quality objectives of the watershed plan.

3. Cost sharing may not be provided for:

a. Operations where manure can be spread at acceptable rates on locations which are nearly flat land or which do not drain to surface waters except those having a high potential to impair groundwater quality.

b. Portable pumps and other portable equipment;

c. Buildings or modifications to buildings;

c. Equipment for land applying or incorporating manure; and

e. That portion of the facility installed under or attached to buildings serving as part of the building and its foundation.

4. Runoff from solid manure stacking facilities shall be controlled.

5. Manure stored in the storage facility shall be land applied in accordance with the operation's manure management plan. Manure stored in facilities designed to be emptied annually or semi-annually may not be applied on frozen or saturated ground and shall be incorporated within 3 days after application.

6. Basins shall be constructed to assure sealing of the bottom and sides to prevent contamination of wells and groundwater.

(c) Standards and specifications. 1. Sediment generated from the construction of the manure storage facility shall be controlled consistent with standards and specifications of the Wisconsin construction site best management practice handbook, May, 1989 edition.

Note: Copies of this publication are available for inspection at the central office of the Department of Natural Resources, and the offices of the Revisor of Statutes and Secretary of State.

2. SCS field office technical guide standards and specifications as of May, 1989:

- a. 312 - waste management system;
- b. 313 - waste storage structure;
- c. 393 - filter strips;
- d. 425 - waste storage pond;
- e. 358 - waste transfer; and
- f. 633 - waste utilization

(20) ROOFS FOR BARNYARD RUNOFF MANAGEMENT AND MANURE STORAGE FACILITIES. (a) Description. Roofs for barnyard runoff management and manure storage facilities are

a roof and supporting structure constructed specifically to prevent rain and snow from contacting manure.

(b) Conditions. 1. Cost sharing may be provided for:

- a. Operations identified in the watershed plan.
- b. Materials and labor to construct and support the roof.

2. Operations not identified in the watershed plan may be cost shared if approved, in writing, by the department prior to construction. For the department to authorize such cost sharing, it must make the following findings:

- a. Control of the critical site is needed to achieve the water quality objectives specified in the approved watershed plan.
- b. Construction of the structure is cost effective.
- c. Evidence of proper design by a registered professional engineer was provided.

3. Cost sharing may not be authorized for materials and labor for other structures or buildings.

4. The roofed structure may not be enclosed.

(c) Standards and specifications. 1. The roof shall be designed to support wind, snow and other live and dead loads consistent with the midwest plan service structures and environment handbook, 11th edition, 1987 revision.

Note: Copies of this publication are available for inspection at the central office of the Department of Natural Resources, and the offices of the Revisor of Statutes and Secretary of State.

2. The roof and supporting structure shall be constructed of materials with a life expectancy of 10 years.

3. The structure shall have sufficient ventilation.

(21) LIVESTOCK EXCLUSION FROM WOODLOTS. (a) Description. Livestock exclusion from woodlots is the protection of woodlots from livestock grazing by fencing or other means.

(b) Conditions. 1. Cost sharing may be provided for permanent fencing.

2. Livestock shall be excluded from the woodlot.

(c) Standards and specifications. SCS field office technical guide standards and specifications as of May, 1989:

1. 382 - fencing and

2. 472 - livestock exclusion.

(22) STRUCTURAL URBAN BEST MANAGEMENT PRACTICES. (a) Description. Structural urban best management practices are measures such as constructed infiltration areas, infiltration trenches, detention basins and porous pavement designed to control runoff rate or volume as a means to reduce the amounts of pollutants carried in the runoff.

(b) Conditions. 1. Cost sharing may be provided for:

a. Excavation, grading, mulching, seeding, necessary landscaping, piping, drop spillways and other measures required to construct the measure.

b. Establishment of wildlife habitat to recreate habitat lost through the installation of the practice.

2. Cost sharing may not be provided for:

a. Purchase of land.

b. Materials and labor for pipes, ditches or other means of conveyance of stormwater to the practice.

3. Wildlife habitat shall be recreated to replace wildlife habitat lost through the installation of the practice.

4. Wetlands may not be destroyed or degraded as a result of installing the practice.

5. Sediment generated from the construction of the practice shall be controlled consistent with standards and specifications of the Wisconsin construction site best management practice handbook, April, 1989 edition.

Note: Copies of this publication are available for inspection at the central office of the Department of Natural Resources, and the offices of the Revisor of Statutes and Secretary of State.

(c) Review and approval procedures. 1. The department shall identify site-specific design criteria for each measure, to the degree practicable, in the watershed plan.

2. The governmental unit, landowner or land operator and the department shall meet to discuss design procedures and alternative designs prior to the design of the practice.

3. The governmental unit, landowner or land operator shall submit preliminary designs for each identified alternative to the department for review and comment.

4. Based on the review of the preliminary designs for each alternative, the governmental unit, landowner or land operator shall submit a detailed design for the selected alternative prepared by a registered professional engineer or other individual trained in the design of the practice and approved by the department, to the department for review and approval.

5. The department shall approve or disapprove within 90 days the detailed design based on the following criteria:

- a. Adequacy of pollutant control.
- b. Adequacy of protection of other resources such as groundwater.
- c. Structural integrity of the design.
- d. Aesthetics.
- e. Susceptibility to vandalism.
- f. Recreational use.

g. Other pertinent factors.

(23) EFFECTIVE DATES FOR BEST MANAGEMENT PRACTICES. 1. The cost share conditions and standards and specifications for all best management practices shall apply to all cost share agreements signed after the effective date of this rule ...[revisor insert date].

2. All long-term and short-term manure storage facilities identified in approved watershed plans shall be included under the manure storage facility practice described in s. NR 120.14(19).

SECTION 40. NR 120.15 is amended to read:

NR 120.15 ALTERNATIVE BEST MANAGEMENT PRACTICES AND ALTERNATIVE DESIGN CRITERIA. (1) ALTERNATIVE BEST MANAGEMENT PRACTICES. The department may ~~identify~~ and approve alternative best management practices where necessary to meet the water resources objectives identified in the watershed plan. The department shall consult with DATCP regarding alternative agricultural best management practices. The department may consult with SCS, UWEX and other agencies. The department shall identify in the nonpoint source grant agreement design criteria and standards and specifications, where appropriate; cost share conditions; and cost share rates for each approved alternative best management practice.

(2) ALTERNATIVE DESIGN CRITERIA. For best management practices described in s. NR 120.14, the department may ~~identify-or~~ approve alternative design criteria or standards and specifications where an alternative will achieve the same or a greater level of pollutant control. The department shall consult with DATCP regarding alternative design criteria for agricultural best management practices. The department may consult with SCS, UWEX and other agencies.

SECTION 41. NR 120.17(7) and (8) are repealed.

SECTION 42. NR 120.17(9) is renumbered 120.17(7).

SECTION 43. NR 120.18(1)(a) is amended to read:

NR 120.18(1)(a) State cost share rates for individual best management practices are identified in Table 2. The cost share rates for best management practices under cost share agreements resulting from nonpoint source grant agreements entered into on or after ~~July 1, 1985~~ January 1, 1989, but prior to ~~July 1, 1986~~ the effective date of this rule ...[revisor insert date], may be amended to use the rates identified in this section.

SECTION 44. Table 1 following NR 120.18(1)(a) is repealed and recreated to read:

Table 2

<u>Practice</u>	<u>State cost share rate</u>
Contour farming	50%*
Contour and field stripcropping	50%*
Field diversions	70%
Terraces	70%
Grassed waterways	70%
Reduced tillage systems for continuous row cropping and long rotations	50%
Reduced tillage systems for short crop rotations and forage and small grains establishment	50%
Nutrient management	50%
Pesticide management	50%**
Critical area stabilization	70%

Grade stabilization structures	70%
Agricultural sediment basins	70%
Shoreline and streambank stabilization	70%
Shoreline buffers	70%
Wetland restoration	70%
Barnyard runoff management	70%
Animal lot relocation	70%
Manure storage facilities	70%
Roofs for barnyard runoff management and manure storage facilities	70%
Livestock exclusion from woodlots	50%
Structural urban best management practices	70%

* Wildlife habitat recreation has a state cost share rate of 70%

** Spill control basins have a state cost share rate of 70%

SECTION 45. NR 120.18(1)(b)(Intro.) is amended to read:

NR 120.18(1)(b) Counties may use the following state cost share rates per acre in lieu of the state cost share percentages listed in Table 4 2.

SECTION 46. NR 120.18(1)(c)6 to 8 and (d) are created to read:

NR 120.18(1)(c)6. Animal lot relocation.

7. Shoreline buffers.

8. Wetland restoration.

(1)(d) Funds and in kind contributions of labor and material from other state programs used directly in the installations of best management practices may be

considered part of the local matching share for best management practices described in par. (c).

SECTION 47. NR 120.18(2)(a) title is created to read:

NR 120.18(2)(a) Least cost.

SECTION 48. NR 120.18(2)(a) is amended to read:

NR 120.18(2)(a) Least cost. A ~~county, city or village~~ governmental unit may set cost share rates up to the maximum amount specified for the practice in this section. Where 2 or more practices are of equal effectiveness in the control of pollutants, the cost share rate shall be based on the least-cost practice provided the practice is consistent with the use and management of the land in question. The department may approve, in writing, cost sharing for a best management practice that is not the least cost if the practice is cost effective in providing greater control of pollutants or providing fish and wildlife habitat.

SECTION 49. NR 120.18(2)(b)(title) is created to read:

NR 120.18(2)(b)(title) Manure storage facilities.

SECTION 50. NR 120.18(2)(c) is repealed and recreated to read:

NR 120.18(2)(c) Relocation of buildings, structures and animal lots. The maximum cost share amount for relocation of buildings, structures and lots shall be 70% of the replacement cost up to the appraised value of the buildings, structures or lots to be replaced. Any salvage value or resale value realized during the maintenance period of the cost share agreement shall be deducted from the appraised value and reimbursement for the cost shared amount be made to the department.

SECTION 51. NR 120.18(2)(d) is created to read:

NR 120.18(2)(d) Leases of manure storage tanks. The maximum amount cost shared for leases of manure storage tanks shall be 70% of the down payment and lease cost of the tank during the grant period of the watershed project up to a maximum of \$10,000.

SECTION 52. NR 120.18(3) is amended to read:

NR 120.18(3) LOCAL SHARE. ~~Funds from nonstate financial assistance programs~~ Funds from sources other than the appropriation under s. 20.370(4)(cc), Stats., including federal programs, may be used to provide the local share of project costs, as set forth in s. 144.25(8), Stats., ~~except when state agencies are cost share recipients. When a state agency is the cost share recipient, other state funds may be used as the local share.~~ In kind contributions of labor and material used directly in the installations of best management practices may be considered part of the local matching share of best management practice costs, if properly described and substantiated to the cost share agreement grantor.

SECTION 53. NR 120.185 is created to read:

NR 120.185 EASEMENTS. The department may enter into easements with landowners for lands identified in watershed plans. The easements shall be for a period of no less than 20 years. Easements may be used in conjunction with the following best management practices:

- (1) Critical area stabilization.
- (2) Shoreline buffers.
- (3) Wetland restoration.

SECTION 54. NR 120.19(3) is amended to read:

NR 120.19(3) Under unusual or exceptional circumstances, the ~~county, city or village~~ governmental unit may accept costs exceeding the cost share maximum identified in an adopted cost containment procedure. Requests for exceptions from landowners or land operators and ~~county's, city's or village's~~ the governmental unit's approval shall be documented in writing explaining the unusual or exceptional circumstances and attached to the cost share agreement or amendment and attached to the request for reimbursement submitted to the department by the ~~county, city or village~~ governmental unit.

SECTION 55. NR 120.19(4) is created to read:

NR 120.19(4) A governmental unit shall develop a cost containment procedure to control in kind contributions by landowners installing best management practices using their own labor or equipment unless in kind contributions will not be utilized in the project.

SECTION 56. NR 120.20 is repealed.

SECTION 57. NR 120.21(1) is amended to read:

NR 120.21 (1) PURPOSE. The local assistance grant agreement is an agreement between the department and a state agency, ~~county, city or village~~ governmental unit or an agent acting on behalf of a state agency, ~~county, city or village~~ or governmental unit for providing funds for activities necessary ~~to implement~~ for watershed plan preparation, ordinance development and administration, information and education, demonstration practices, easement administration, educating and training staff and implementation of the priority watershed project and requiring additional staff, increased hours of existing staff or requiring the grantee to incur direct costs. A local assistance grant may be used to support activities that

have program or statewide impact including education and training activities; such as public meetings and mailings, newsletters, tours, and other activities determined by the department to support program objectives.

SECTION 58. NR 120.21(2) is renumbered (2)(a) and amended to read:

NR 120.21(2) GRANT PERIOD. (a) No local assistance grant agreement pertaining to a specific priority watershed plan may begin before the ~~signing~~ selection of the nonpoint source ~~grant-agreement, -except-for-the-training-of additional-staff~~ priority watershed project nor extend beyond the end date of the nonpoint source grant agreement.

SECTION 59. NR 120.21(2)(b) is created to read:

NR 120.21(2)(b) Grants having program or statewide impact shall include a specific grant period in the grant.

SECTION 60. NR 120.21(3) is repealed and recreated to read:

NR 120.21(3) APPLICATION PROCEDURES. The grantee shall apply for local assistance grant funds on forms provided by the department. Funding shall be provided based on activities identified in the annual or periodic work plans submitted by the grantee. Applications shall be submitted according to the following requirements.

(a) Grantees, except counties, shall submit an application for a grant or grant amendment and a work plan to the department. The department shall notify the grantee regarding approval or disapproval of the work plan within 60 days.

(b) Counties shall submit draft annual work plans and grant amendment applications in accordance with the procedures developed by DATCP in s. Ag 166.40 and the department.

(c) Amendment requests may be reduced by the department if the grantee has not expended all of the previously awarded funds by the end of the current funding period. The grantee shall provide an estimate of unexpended funds at the end of the current funding period in the amendment application.

SECTION 61. NR 120.21(4) is renumbered 120.21(6) and amended to read:

NR 120.21(6) REVIEW OF CONTRACTS. If a ~~county, city or village~~ governmental unit contracts with a government agency or person to provide field, administrative, planning or other services to carry out activities of the local assistance grant agreement, the contract shall be submitted to the department. Contracts greater than \$10,000 shall be submitted for review and approval prior to signing.

SECTION 62. NR 120.21(4) and (5) are created to read:

NR 120.21(4) ELIGIBLE COSTS. The following costs are eligible for a local assistance grant for a priority watershed project:

(a) The following costs are eligible for 100% cost sharing:

1. Labor required by the grantee to carry out the activities listed in subpars. a. to n. the following activities are eligible for grant assistance provided it requires additional staff or increased hours of existing staff to plan or implement a project. The grant assistance for supporting additional staff positions or increased existing staff hours of the state agency, governmental unit or agent shall be based on rates not exceeding appropriate rates for state agency, governmental unit or agent employees including salary and fringe benefits.

a. Contacting landowners and land operators of critical nonpoint sources described in the watershed plan;

b. Identifying site-specific best management practices to control the critical nonpoint sources;

c. Developing and reviewing cost share agreements with the cost share recipient;

d. Designing best management practices;

e. Installing and verifying best management practices;

f. Reviewing best management practice operation and maintenance;

g. Preparing information and education materials;

h. Developing and conducting demonstrations, tours and other education activities;

i. Other activities determined by the department to be necessary to implement the priority watershed project;

j. Project management and fiscal management;

k. Performing the inventories for the watershed plan;

l. Preparing other plan components as determined by the department;

m. Preparing and administering a construction site erosion control ordinance under s. 144.266, Stats., and a manure storage ordinance under s. 92.16, Stats.; and

n. Administration of easements defined in s. NR 120.18.

2. Work hours of additional staff may be used to offset the work hours spent by existing staff on the project. Reimbursement shall be based on the additional staff costs not the cost of existing staff work hours spent on the project.

3. Professional services contracts for necessary activities the grantee lacks expertise or staff to complete.

4. Information and education activities approved by the department.

5. Training of staff approved by the department. Training for county staff is limited to training included in a DATCP approved training plan.

6. The nonpoint source program's share of the single audit costs.

7. The cost of testing materials for use in best management practice design, installation or operation.

8. Travel expenses including mileage charges, vehicle leases, meals, lodging and other reasonable travel expenses necessary to the project.

9. The cost of additional office space required because of the additional staff hired for the project.

10. The cost of recording the cost share agreement with the county register of deeds.

11. Other direct costs necessary for the project and approved by the department.

12. Staff, staff support and other direct costs for work having a program or statewide impact, as approved by the department.

(b) The following costs are eligible for 70% cost sharing.

1. Computers and appurtenances necessary for the project at 70 % cost sharing if needed primarily for the project. If use will be less than 75% on the project, cost sharing shall be prorated based on percent use on the project. Computer purchases for counties will be approved in consultation with the DATCP and SCS after consideration of the counties overall land conservation office needs.

2. Office equipment and office furnishings including desks, chairs, calculators, drafting equipment, copy machines and file cabinets necessary for the project or additional staff.

3. Field equipment necessary for the project.

4. Office supplies including paper, copies, printing and postage, necessary to support staff and the project.

(c) INELIGIBLE COSTS. The following costs are not eligible for funding under local assistance grant agreements and shall be carried out by the governmental unit as part of its commitment to the project:

1. Direct costs for other items not listed as eligible for 100% or 70% cost sharing.

2. Costs to perform periodic inspections beyond the grant period.

(7) REPORTING REQUIREMENTS. (a) Grantees, except counties, shall report to the department quarterly accounting for staff time and accomplishments regarding its activities funded under this section.

(b) Counties shall submit quarterly project management reports to DATCP required under s. Ag 166.40(4) accounting for staff time, expenditures and accomplishments regarding its activities funded under this section.

Note: A document detailing reporting requirements may be obtained, at no charge, from the Bureau of Community Assistance Management, Department of Natural Resources, Box 7921, Madison, WI 53707.

SECTION 63. NR 120.22 is repealed and recreated to read:

NR 120.22 INTEREST EARNED ON NONPOINT SOURCE GRANT ADVANCES. Interest earned on the average balance of nonpoint source grant advances shall be used to support the implementation and administration of the nonpoint source priority watershed project. The governmental unit shall calculate the interest earned in an equitable manner but may utilize methods such as average account balances and interest earned over a period of time to determine the amount of interest to be credited to the project. It may be used to support project costs that are not funded. Interest earned that is not used on the project shall be returned to the department.

SECTION 64. NR 120.23(2)(b)(Intro.) 1. note and 2. note are amended to read:

NR 120.23(2)(b) State agencies, ~~counties, cities and villages~~ and governmental units shall comply with the following procedures when requesting reimbursement.

1. Note: Reimbursement request forms may be obtained, at no charge, from the Bureau of ~~Water-Grants~~ Community Assistance Management, Department of Natural Resources, Box 7921, Madison, Wisconsin 53707.

2. Note: Verification forms may be obtained, at no charge, from the Bureau of ~~Water-Grants~~ Community Assistance Management, Department of Natural Resources, Box 7921, Madison, Wisconsin 53707.

SECTION 65. NR 120.23(2)(b)6. is created to read:

NR 120.23(2)(b)6. Reimbursement may be denied if a cost share agreement or amendment is not in accordance with the watershed plan.

SECTION 66. NR 120.23(2)(c) is repealed and recreated to read:

NR 120.23(2)(c) The department may advance monies to governmental units prior to best management practice installation. The amount of the advance necessary shall be identified in the annual or periodic workplan submitted as required in s. NR 120.21(3).

SECTION 67. NR 120.23(3)(a) is amended to read:

NR 120.23(3)(a) Local assistance grant agreements grantees, except counties, shall submit quarterly reimbursement requests on forms provided by the department. Eligible costs listed in the local assistance grant agreement incurred during each quarter shall be included in the request.

SECTION 68. NR 120.23(3)(b) is renumbered NR 120.23(3)(c).

SECTION 69. NR 120.23(3)(b) and (d) are created to read:

NR 120.23(3)(b) Counties quarterly reimbursement requests are included in the quarterly project management reports submitted to DATCP required under s. Ag 166.40(4).

(d) Failure to submit reports on schedule as required by s. NR 120.21(7) may result in withholding of grant payments.

SECTION 70. NR 120.23(4) is repealed.

SECTION 71. NR 120.24 is repealed and recreated to read:

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

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

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

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

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

(c) For monetary or in-kind consideration.

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

(b) The department's approval shall be based on the governmental unit's verification and demonstration that it has the necessary competence required to

accomplish such work and that the work can be accomplished more economically by the use of the force account method.

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

SECTION 72. NR 120.25(1)(e)3.d. is amended to read:

NR 120.25(1)(e)3.d. Request for reimbursement by a landowner or land operator documenting costs incurred directly or for in-kind contributions by the landowner or land operator.

SECTION 73. NR 120.26(1)(am) and (b)4. are created to read:

NR 120.26(1)(am) Governmental units required to have a single audit based on receipt of federal funds shall include the nonpoint source program within the scope of such examinations.

(b)4. Cost share agreement records shall be kept for the duration of the maintenance period of the cost share agreement with the longest maintenance period to enable the governmental unit to fulfill its responsibility under s. NR 120.05(8).

SECTION 74. NR 120.30 is created to read:

NR 120.30 ANNUAL REPORT. The department, jointly with the DATCP shall annually prepare the report on the progress of the program required in ss. 144.25(4)(o) and 92.14(13), Stats. The report shall consider land management and water quality criteria in the evaluation of program progress. The report shall include information derived from watershed plans, annual work plans or other related activities.

SECTION 75. TERMINOLOGY CHANGES.

(1) Wherever the term "county, city or village" appears in the following sections of the code, the term "governmental unit" is substituted: NR 120.02(21) as renumbered, 120.04(1)(f) and (2), (4)(g), (6)(a) and (7), 120.19(1)(a) to (g), 120.25(1)(intro.), (e)3.a., c., f. and (2)(intro.), 120.26(1)(a), (b)(intro.) and (c)(intro.) and 120.29.

(2) Wherever the term "counties, cities and villages" appears in the following sections of the code, the term "governmental units" is substituted: 120.01(1), 120.02(6), 120.03(title) and (1), 120.04(1)(title) and (intro.), (3)(intro.), and (2)(a), 120.13(3)(b), 120.18(1)(c)(intro.), 120.19(1)(intro.) and 120.27(4)(title).

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on May 25, 1989.

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

Dated at Madison, Wisconsin August 11, 1989

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny
Carroll D. Besadny, Secretary

(SEAL)



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

August 11, 1989

1020

BOX 7921
MADISON, WISCONSIN 53707

Mr. Orlan L. Prestegard
Revisor of Statutes
Suite 702
30 W. Mifflin Street

RECEIVED

AUG 21 1989

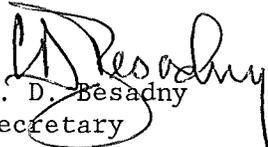
Revisor of Statutes
Bureau

Dear Mr. Prestegard:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WR-18-89. These rules were reviewed by the Assembly Committee on Environmental Resources and Utilities and the Senate Committee on Urban Affairs, Environmental Resources, Utilities and Elections pursuant to s. 227.19, Stats. A summary of the final regulatory flexibility analysis and comments of the legislative review committees is also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,


C. D. Besadny
Secretary

Enc.