

Chapter NR 120

NONPOINT SOURCE POLLUTION ABATEMENT PROGRAM

NR 120.01	Applicability; purpose	NR 120.17	Practices not cost-shared
NR 120.02	Definitions	NR 120.18	Cost-share rates
NR 120.03	Role of governmental units in watershed plan development	NR 120.185	Easements
NR 120.05	Responsibilities of state agencies, governmental units and agents as cost share recipients	NR 120.19	Cost containment procedures
NR 120.06	Incorporation of the department of agriculture, trade and consumer protection's planning elements	NR 120.21	Local assistance grant agreement
NR 120.07	Priority watershed project selection	NR 120.22	Interest earned on nonpoint source grant advances
NR 120.08	Watershed plans	NR 120.23	Reimbursement procedures
NR 120.10	Cost share eligibility	NR 120.24	Procurement
NR 120.12	Nonpoint source grant agreement	NR 120.25	County, city and village record keeping and reporting requirements
NR 120.13	Cost-share agreements	NR 120.26	Record retention and auditing
NR 120.14	Cost-share agreement conditions for best management practices	NR 120.27	Suspension or termination of grant
NR 120.15	Alternative best management practices and design criteria	NR 120.28	Enforcement
NR 120.16	Construction site ordinance	NR 120.29	Variances
		NR 120.30	Annual report

Note: Chapter NR 120 as it existed on June 30, 1986 was repealed and a new chapter NR 120 was created effective July 1, 1986.

FOREWORD

The Wisconsin legislature established the nonpoint source water pollution abatement program in 1978. Both urban and rural nonpoint sources are recognized as contributors to the degradation of Wisconsin's lakes, streams, groundwater and wetlands. Section 144.25, Stats., assigns overall responsibility for this water quality program to the department of natural resources and assigns local administration and implementation responsibilities to other governmental units.

The department of natural resources has developed the administrative framework in chs. NR 120 and 121 under which areawide water quality management areas and plans are identified, priority watershed projects are selected and governmental units and state agencies are granted technical and financial assistance necessary to implement nonpoint source water pollution abatement projects. The land and water conservation board designates priority watershed areas where nonpoint source related water quality problems are most severe and control is most feasible. The department of natural resources recommends best management practices which are the most effective means of preventing or reducing nonpoint source pollution. More specifically, the department identifies lakes, streams, groundwater and other water resources where the uses of the waters are impaired or threatened by nonpoint sources; proposes projects to the land and water conservation board to protect or rehabilitate beneficial uses of the waters; and prepares plans in cooperation with governmental units identifying the best means to achieve the protection or rehabilitation. The department of natural resources enters into nonpoint source grant agreements and local assistance grant agreements with governmental units and state agencies in order to implement priority watershed projects. The department of natural resources assists governmental units and state agencies 1) by coordinating the nonpoint source pollution abatement program with other state and federal water quality programs, 2) by providing technical and financial assistance, and 3) by evaluating the nonpoint source pollution abatement program for recommended modifications.

Participating governmental units enter into cost-share grant agreements with landowners, land operators and state agencies in order to implement the nonpoint source pollution abatement program on a local level. Landowners, land operators and state agencies as cost-share recipients are responsible for installing and maintaining best management practices.

NR 120.01 Applicability; purpose. (1) **APPLICABILITY.** This chapter applies to governmental units and state agencies when acting as nonpoint source grant agreement or local assistance grant agreement recipients; to governmental units when acting as cost-share agreement grantors; and to landowners, land operators and state agencies when acting as cost-share recipients.

(2) **PURPOSE.** The purpose of this chapter is to establish the administrative framework for the implementation of the state's nonpoint source pollution abatement program.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1), Register, November, 1989, No. 407, eff. 12-1-89; am. (1), Register, February, 1995, No. 470, eff. 3-1-95.

NR 120.02 Definitions. In this chapter:

(1) "Additional staff" means employees hired or contracted for by the governmental unit for watershed project activities including previous or ongoing watershed projects.

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

(3) "Arealwide water quality management plan" means a plan for managing, protecting and enhancing ground and surface water quality which considers the interrelationship of water quality and land and water resources on an areawide basis (hydrologic, political or other) as set forth in ch. NR 121.

(4) "Best management practice" as defined in s. 144.25 (2) (a), Stats., means a practice, technique or measure, except for dredgings, which is determined to be the most effective means of preventing or reducing pollutants generated from nonpoint sources, or from the sediments of inland lakes polluted by nonpoint sources, to a level compatible with water quality objectives established under this chapter and which does not have an adverse impact on fish and wildlife habitat. The practices, techniques or measures include land acquisition, storm sewer rerouting and the removal of structures necessary to install structural urban best management practices, facilities for the handling and treatment of milkhouse wastewater, repair of fences built using grants under this chapter and measures to prevent or reduce pollutants generated from mine

tailings disposal sites for which the department has not approved a plan of operation under s. 144.44 (3), Stats.

(5) "Completed practice" means a best management practice or alternative best management practice which has been installed and has been verified to meet the standards and specifications or procedures identified in s. NR 120.14 or 120.15.

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

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

(8) "Critical area stabilization" means the planting of suitable trees, shrubs and other vegetation on highly erodible areas such as steep slopes, gullies and roadsides, in order to reduce soil erosion or pollution on nonpoint source sites.

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

(10) "Demonstration practices" means best management practices or alternative best management practices installed in order to demonstrate the efficiency or economic benefits of the practices or the benefits of participating in a priority watershed project.

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

(12) "Designated management agency" means 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.

(13) "DILHR" means the Wisconsin department of industry, labor and human relations.

(14) "Economic hardship" means a situation where a landowner or land operator has a debt-to-asset ratio of more than 60% and verifies this to the appropriate responsible governmental unit and the department with a signed statement from an accredited financial institution.

(15) "Embankment height" means the structural height defined in s. NR 335.03 (23).

(16) "Final settlement date" means the date the final audit is accepted by the grantee or the date a final determination is made by the department of an appeal made by the grantee on the final audit.

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

(18) "Governmental unit" means any unit of government including, but not limited to, a county, city, village, town, metropolitan sewerage district created under ss. 66.20 to

66.26 or 66.88 to 66.918, Stats., 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.

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

(20) "Grassed waterway" means a natural or constructed drainageway or channel shaped, graded and established in suitable cover as needed to prevent erosion by runoff waters.

(21) "Installation period" means the time period during which all cost-shared and not cost-shared practices shall be installed.

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

(23) "Local share" means the portion of the cost of the installation of a best management practice, including federal cost-sharing, not funded through s. 20.370 (4) (cc), (cq) or 20.866 (2) (te), Stats.

(24) "Milking center waste control systems" means any equipment, practice or combination of practices installed in a milking center for the purpose of reducing the quantity or pollution potential of the wastes.

(25) "Milking center wastes" means all waste water, cleaning ingredients and waste milk which is discharged from a milkhouse or milking parlor.

(26) "Municipal WPDES storm water discharge permit" means any permit issued to a municipality by the department under s. 147.021 (1), Stats., for the purpose of controlling storm water discharges owned or operated by a municipality.

(27) "Nonpoint source" means a land management activity which contributes to runoff, seepage or percolation 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.

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

(29) "Priority lake area" means a hydrologic unit which drains to a lake or group of lakes and serves as the project boundary for watershed projects identified through the process stated in s. 144.25 (4) (cd), Stats.

(30) "Priority watershed" means a watershed or lake area which the department has identified through the continuing planning process under s. 147.25, Stats., and which has been designated by the land and water conservation board, as one of those watersheds where the need for nonpoint source water pollution abatement is most critical.

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

(32) "SCS" means the soil conservation service of the U.S. department of agriculture.

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

(34) "Technical guide" means the soil conservation service field office technical guide, published by the soil conservation service of the U.S. department of agriculture, that was in effect April, 1994.

Note: Copies of technical guides 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, 131 W. Wilson, Suite 800, Madison. Copies of technical guides are also available in Soil Conservation Service offices located throughout the state.

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

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1) and (2), r. (18) and (26), renum. (3) to (17) and (19) to (25) to be (5) to (9), (12) to (14), (16) to (18), (20), (22), (24), (25) to (28), (30), (32), (31) and (33) and am. (6), (8), (13), (16), (18), (20), (24) to (26) and (33), cr. (4), (10), (11), (15), (19), (29) and (34), Register, November, 1989, No. 407, eff. 12-1-89; r. (3), (4), (16), (23), (30), (32), renum. (5) to (7), (9), (11) to (13), (17) to (20), (24) to (27), (31), (33) and (34) to be (3) to (5), (7), (9), (11), (12), (16) to (19), (23), (27), (30), (31), (32), (34), (35) and am. (4), (5), (7), (18), (23), (30), (34), (35); am. (1), (15), (22), r. and recr. (8), (10), (14), (21), (28) and (29), Register, February, 1995, No. 470, eff. 3-1-95.

NR 120.03 Role of governmental units in watershed plan development. (1) The department and governmental units shall form a watershed project or lake project committee to advise the department on the development of the watershed plan. The watershed project committee shall be formed in accordance with s. 144.25 (4) (dr), Stats.

(2) All governmental units in the watershed shall prepare the portion of the detailed program for implementation for the watershed project as described in s. NR 120.08 (1) (b) 1. This requirement may be waived if the department and the governmental unit agree that nonparticipation by the governmental unit will not impair the objectives of the watershed plan.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am., Register, November, 1989, No. 407, eff. 12-1-89; r. and recr. (1), r. (2) and (3), renum. (4) to be (2), Register, February, 1995, No. 470, eff. 3-1-95.

NR 120.04 Responsibilities of governmental units in project implementation. **History:** Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1) (intro.), (a), (b), (f) to (h), (2) and (3) (intro.), cr. (1) (i) to (m) and (4) to (7), Register, November, 1989, No. 407, eff. 12-1-89; r., Register, February, 1995, No. 470, eff. 3-1-95.

NR 120.05 Responsibilities of state agencies, governmental units and agents as cost-share recipients. Each state agency, unit of government or agent receiving cost-sharing funds in a nonpoint source grant shall:

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

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

(3) Obtain prior written approval from the department for use of nonpoint source grant funds for best manage-

ment practices installed on property owned or operated by the grantee.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (intro.), cr. (3), Register, November, 1989, No. 407, eff. 12-1-89; am. (intro.), (1) and (2), Register, February, 1995, No. 470, eff. 3-1-95.

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 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.

(2) The department shall assist DATCP and the county involved in a watershed project in developing a proposed project management schedule for the installation of agriculturally related best management practices to be used by the county in its development of the annual workload analysis as described in s. NR 120.21.

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

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; r. and recr. Register, November, 1989, No. 407, eff. 12-1-89; am. (1) (a), renum. (1) (d) and (2) to be, (2) and (3) and am., Register, February, 1995, No. 470, eff. 3-1-95.

NR 120.07 Priority watershed project selection. (1) IDENTIFICATION OF PRIORITY WATERSHEDS. In accordance with s. 144.25 (4) (c) and (cd), Stats., the department shall identify proposed priority watershed and priority lake area projects in areawide water quality management plans. The plans shall identify critical priority watershed and priority lake area projects to be considered for selection.

(2) CRITERIA FOR RECOMMENDING PROJECTS. The department and the advisory committee described in sub. (3) shall use the following criteria for recommending projects from those identified in sub. (1) to the land and water conservation board:

(a) The water quality impairment or threat to the use of the lake, stream, groundwater, wetland or any other waters 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) The uniqueness of the designated area or the endangerment to its environmental resources.

(3) **ADVISORY COMMITTEES.** The department shall appoint advisory committees in each district to participate in the identification of priority watersheds to be recommended to the land and water conservation board. The committee shall be comprised of representatives from state agencies, regional, county land conservation committees, lake districts and 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.

(4) **LAND AND WATER CONSERVATION BOARD DESIGNATION.** After the priority watershed and priority lake area projects have been selected under the process described in subs. (1) to (3), the department shall submit the recommended watershed and lake area projects to the land and water conservation board for priority designation.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; r. and recr. Register, November, 1989, No. 407, eff. 12-1-89; am. (1), (2) (e), r. and recr. (2) (intro.), (a) and (4), r. (3), (5) and (7), renum. (6) to be (3) and am., Register, February, 1995, No. 470, eff. 3-1-95.

NR 120.08 Watershed plans. (1) WATERSHED PLAN CONTENT. In cooperation with DATCP and the appropriate governmental unit, the department shall prepare watershed plans for all priority watersheds. A participating governmental unit located within the priority watershed shall identify, in writing, a person to represent the unit of government during watershed plan preparation. The watershed plan shall consist of a watershed assessment, a detailed program for implementation, and a project evaluation strategy.

(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 which determines 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 to maintain and improve 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.

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

5. An identification of critical management areas where cost-shared and not cost-shared best management practices are to be applied.

6. A listing of and an 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.

Table 1

COST-SHARED AND NOT COST-SHARED BEST MANAGEMENT PRACTICES

Cropland Practices:

- Change in crop rotations
- Change from cropland to grassland
- Contour cropping
- Cropland protection cover (green manure)
- Stripcropping
- Reduced tillage
- Nutrient management
- Pesticide management

Cropland, Urban and Other Area Practices:

- Critical area stabilization
- Field diversions
- Grassed waterways
- Grade stabilization structures
- Intensive grazing management
- Shoreline and streambank protection
- Shoreline buffers
- Terraces
- Wetland restoration
- Livestock exclusion from woodlots
- Well abandonment
- Lake sediment treatment
- Milking center waste control systems

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
- Animal waste storage systems abandonment
- Cattle mounds

Non-structural Urban Practices:

- Street sweeping
- Leaf collection
- Pet waste ordinances
- Construction site erosion control ordinances
- Storm water management ordinances
- Storm water plans

Structural Urban Practices:

- Infiltration basins
- Infiltration trenches
- Porous pavement
- Grassed swales
- Wet basins
- Detention basins
- Wetland basins
- Covering materials being stored
- Storm water filtration devices
- Pre-treatment devices

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 local ordinances for manure storage, construction site erosion control and storm water management.

(b) *Detailed program for implementation.* 1. As required under s. 144.25 (6) (a), Stats., governmental units except those waived under s. NR 120.03 (2), shall prepare the following portion of the detailed program for implementation including:

- a. An estimate of costs for practice installation.
- c. An information and education strategy.
- d. A description of fiscal management procedures, including cost containment procedures.
- e. An estimate of technical assistance needs.
- f. A grant disbursement and project management schedule.
- g. An identification of those urban storm water control practices, techniques or measures included in a municipal WPDES storm water permit for which the local governmental unit may seek either local assistance or nonpoint source grant funding through the nonpoint source program.
- h. An identification of the state and local regulatory framework under which construction site erosion control activities shall be conducted.
- i. An identification of those storm water management activities identified in the watershed plan that shall be included as part of the core urban program for the local governmental unit. Core urban program activities can include: information and education activities; development and implementation of construction erosion control ordinances; and development and implementation of activities such as those that reduce storm water pollution from lawn and leaf litter, pet waste, road salting and illicit dumping into the storm sewer system. When adoption of a construction site erosion control ordinance is required under the watershed plan, it shall include a provision stating that the construction site erosion control ordinance shall be adopted within 2 years of the date the department approves the watershed plan.
- j. An identification of those storm water management activities identified in the watershed plan that may be included as part of the segmented urban program for the local governmental unit. Segmented urban program activities can include: storm water planning for urban and urbanizing areas; development and implementation of local storm water management ordinances; engineering site feasibility studies for structural urban practices; design, installation and maintenance of structural urban best management practices; and development of local institutional mechanisms to fund and administer storm water management programs.
- k. A schedule of rural implementation activities including those identified in s. NR 120.21 (4) (a). When adoption of a manure storage ordinance is required under the watershed plan, the schedule shall include a provision stat-

ing that manure storage ordinance shall be adopted within 2 years of the date the department approves the watershed plan.

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

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.

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

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

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

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

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

(e) *Submittal of watershed plan to land and water conservation board.* A copy of the county approved plan shall be submitted to the land and water conservation board for its approval.

(f) *Final approval of individual county plan.* Upon receiving the approval of the land and water conservation board, the department shall prepare and approve the final plan for the priority watershed or priority lake area in accordance with s. 144.25 (5m), Stats. Notwithstanding par. (d), the department may approve the watershed plan for individual counties in multicounty watershed projects if the respective county approves the watershed plan.

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

(4) **WATERSHED PLAN REVISION.** The approved watershed plan may be revised using the procedures in ss. NR 121.07 and 121.08 for amending areawide water quality management plans. The department shall approve or reject a governmental unit's request for a revision to the watershed project's detailed program for implementation within 90 days of receipt of the revision request.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1) (a) (intro.), 1. to 3., 5. and 6., (b), (c) and (2) (c), cr. Table 1, (1) (a) 7. and 8., (2) (cg), (cr) and (f), Register, November, 1989, No. 407, eff. 12-1-89; am. (1) (intro.), (a) (intro.), 2., 5. and 6., Table 1, (b) 1. intro., (c), (2) (a) to (c), r. (1) (a) 5. and 6., (b) 1. b., (2) (cg) and (f), r. and recr. (1) (a) 8., cr. (1) (b) 1. g. to l., (2) (d) and (e), renum. (2) (cr), (d) and (e) to be (2) (f), (3) and (4) and am. (2) (f), and (4), Register, February, 1995, No. 470, eff. 3-1-95.

NR 120.10 Cost-share eligibility. (1) Best management practices installed and maintained to control the following nonpoint sources are eligible for cost-share assistance when addressing critical nonpoint sources of pollution in a watershed plan:

- (a) Croplands and undeveloped rural lands.
- (b) Streambanks and shorelines.
- (c) Livestock yards and manure management areas except those identified in sub. (2) (c).
- (d) Lake sediments.
- (e) Lawns, parking lots, streets, roofs, and other areas associated with residential land uses, retail businesses, office buildings, schools, libraries, parks, and other similar institutional buildings and areas.
- (f) Source areas at industrial sites that are not considered to be associated or contaminated by industrial activity, as defined under ch. NR 216.
- (g) Urban nonpoint sources that must be controlled to meet the requirements of a municipal WPDES storm water discharge permit provided that:
 1. Control of the sources is identified in the priority watershed plan.
 2. Sources are not required to obtain coverage under a WPDES storm water permit for discharges associated with industrial activity, as defined under ch. NR 216.

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

(2) The following practices, sources or activities are not eligible for cost-share assistance:

- (a) Best management practice installation, operation or maintenance started prior to the signing of the cost-share agreement.
- (b) Best management practices described in s. NR 120.17.
- (c) Activities covered by the Wisconsin pollutant discharge elimination system permit program including those identified in chs. NR 200 to 299, except as provided for in sub. (1) (g).
- (d) Livestock operations with more than 1,000 animal units or livestock operations issued a notice of discharge under ch. NR 243.

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

(h) Activities funded through state or federal grants for wastewater treatment plants.

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

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

(l) The planting, growing and harvesting of trees associated with silviculture.

(m) Small scale on-site human domestic waste facility construction.

(n) Dredging of harbors, lakes, rivers and ditches.

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

(p) Operation and maintenance of cost-shared practices.

(q) Practices normally and routinely used in growing crops and required for the growing of crops or the feeding of livestock.

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

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

(w) Other practices or activities determined by the department not to meet the objectives of the program.

(x) Practices needed to control sources which were adequately managed for the specific land use at the time of cost-share agreement signing but which are producing an increased amount of pollutant loading to the surface or groundwater, counter to the water resource objectives of the approved watershed plan, due to the landowner's or land user's changes in land management. Changes may include: increases in animal herd size, changes to more intensive cropping, and other changes in land use or management which increase the pollutant loading.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1) (intro.), (2) (i), (j), (o), (r) and (s), r. and recr. (2) (k), cr. (2) (x), Register, November, 1989, No. 407, eff. 12-1-89; am. (1) (intro.), (e), (2) (intro.), (a) to (d), (2) (n) to (p), (r), (s) and (x), r. and recr. (1) (d), renum. (1) (f) to be (1) (h), cr. (1) (f) and (g), r. (2) (e), (f), (i) and (t) to (v), Register, February, 1995, No. 470, eff. 3-1-95; correction in (2) (s) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1995, No. 477.

NR 120.11 Allocation of grant funds. **History:** Cr. Register, June, 1986, No. 366, eff. 7-1-86; r., Register, February, 1995, No. 470, eff. 3-1-95.

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

(1) **CONDITIONS** (a) A participating governmental unit located within the priority watershed project or priority lake area project shall:

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

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

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

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

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

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

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

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

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

1. Local project coordination.
2. Identification of a project manager.
3. Maintenance of project ledgers.

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

1. Funding existing and additional staff support costs necessary for the project that are not provided for in the local assistance grant.
2. Funding the local share of any best management practice the governmental unit installs on property it owns or controls.

3. Funding the local share of items cost-shared in the local assistance grant.

(d) Participating governmental units located within the priority watershed project or priority lake area project shall perform inspections beyond the nonpoint source grant period and shall include 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.

(e) Counties, cities, villages and towns located within the priority watershed project or priority lake area project shall adopt and enforce the following ordinances if required in the watershed plan within 2 years of department approval of the watershed plan:

1. Manure storage ordinances in accordance with s. 92.16, Stats.

2. Construction site erosion control ordinances in accordance with ss. 59.974, 60.627, 61.354 and 62.234, Stats., respectively, for all construction activities as defined in s. 144.266 (3) (b) 1 to 5, Stats., within the county's, city's, village's or town's jurisdiction unless the construction site activities are otherwise regulated by the department under ch. NR 216, or regulated by DILHR.

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

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

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

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

(c) Nonpoint source grant agreements between the department and local governmental units for urban structural practices may be signed anytime within the grant period provided that deadlines established in this chapter for cost-share fund expenditures are met. Funding for urban structural practices shall be conditional upon the implementation of core urban program activities identified in the priority watershed plan.

(3) **LENGTH OF GRANT PERIOD.** The grant period of the nonpoint source grant agreement is the period when cost-share funds may be expended. It may not be more than 10 years from department plan approval. Demonstration practices may be allowed prior to department plan approval. The department may extend the grant period for one year 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.

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

(a) Comply with the responsibilities stated 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 maintenance strategy for the practices.

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

(h) Comply with the requirements for cost-share agreements specified in s. NR 120.13 (6) to (8).

(5) The grantee may use nonpoint source grant funds to cover reasonable expenses necessary to secure refunds, rebates or credits described in s. NR 120.23 when approved by the department.

(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.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1) and (2), r. and recr. (4), cr. (6) to (8), Register, November, 1989, No. 407, eff. 12-1-89; cr. (intro.), (2) (a) to (c), r. and recr. (1) and (4) (h), am. (2) to (4) (b) and (f) and (8), r. (6) and (7), Register, February, 1995, No. 470, eff. 3-1-95.

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

(2) EFFECTIVE DATE For best management practices to be eligible for cost-sharing, the nonpoint source grant agreement and the cost-share agreement shall be signed before the installation of practices may be initiated. A cost-share agreement is not necessary if the nonpoint source grant agreement allows the grantee to use funds directly.

Register, September, 1995, No. 477

(3) PARTIES TO THE AGREEMENT. (a) The cost-share agreement shall be between the participating governmental unit and the individual landowner, land operator or state agency. Agreements with land operators shall be co-signed by the landowner.

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

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

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

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

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

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

(d) The installation period and the schedule for applying the practices.

(e) A statement of maintenance requirements.

(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.

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

(h) A nondiscrimination clause.

(i) A provision describing the procedure for amendment.

(j) A 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.

(4m) **DEPARTMENT APPROVAL.** The governmental unit shall obtain prior department approval when any practice exceeds \$50,000 or when the total cost-share agreement amount and its amendments exceed \$100,000.

(5) **SUBMITTAL TO DEPARTMENT.** The nonpoint source grantor shall submit a copy of the cost-share agreement or amendments to the department within 30 days of execution. The department shall ratify the expenditures listed in the cost-share agreement if the best management practices listed are the least cost alternatives to controlling the nonpoint sources of pollution and the significance in the reduction of nonpoint source pollution justifies the expenditure of the grant funds. However, 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.

(6) **AGREEMENT PERIOD.** The cost-share agreement period shall be the installation period plus the operation and maintenance period.

(a) The installation period may not extend beyond the grant period of the nonpoint source grant agreement for the watershed project.

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

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

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

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

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

(10) **RECORDING OF COST-SHARE AGREEMENTS WITH REGISTER OF DEEDS.** The governmental unit shall record the cost-share agreement and its 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 if the total cost-share agreement amount and its amendments exceed \$1,000. A cost-share agreement may be exempt from the recordation requirement if the cost-share agreement contains no other practices than the following:

- (a) Contour farming.
- (b) Contour and field stripcropping.
- (c) Cropland protection cover (green manure).
- (d) Reduced tillage systems.
- (e) Nutrient management.
- (f) Pesticide management.

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

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (3) (a) and (b), (4) (f), (5) and (10), cr. (3) (c), (4) (j) to (m) and (11), r. and recr. (9), Register, November, 1989, No. 407, eff. 12-1-89; am. (1) to (4) (c), (e), (f), (j), (k), (m), (5) to (8) (a) and (9) to (11), cr. (4m), Register, February, 1995, No. 470, eff. 3-1-95.

NR 120.14 Cost-share agreement conditions for best management practices. (1) **GENERAL APPLICABILITY.** (a) 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.

(b) The following conditions shall be met while implementing the best management practices listed in subs. (2) to (22):

1. Wildlife habitat shall be recreated to replace wildlife habitat lost through the removal of obstructions or other means required to install the best management practice.

2. Wetlands may not be destroyed or degraded as a result of installing the best management practice.

3. Sediment generated from the construction of the best management practice shall be controlled consistent with standards and specifications of the *Wisconsin Construction Site Best Management Practice Handbook*, WDNR Pub. WR-222, November 1993 Revision.

4. Permanent and temporary vegetative cover including seed, mulch, fertilizer, trees, shrubs and other necessary materials, except for conventional agricultural crop cover, shall be established.

5. Preparation, grading, shaping, and removal of obstructions necessary to permit the installation of best management practices shall be conducted on the site.

6. Temporary or permanent fencing and the repair of fencing necessary to implement or protect a best management practice shall be built.

(c) A landowner, land operator or governmental unit shall comply with the standards and specifications provided for in each of the following subsections when installing a best management practice identified in this chapter.

(d) Cost-sharing is authorized when the best management practices are installed on sites in a manner consistent with the approved watershed plan and par. (b).

(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.* Cost-sharing may be provided for the establishment of a contour farming system and, if necessary, subsurface drains and the removal of obstructions.

(c) *Standards and specifications.* SCS field office technical guide standards and specifications as of January, 1995:

1. 330 - contour farming;
2. 500 - obstruction removal;
3. 606 - subsurface drain; and
4. 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 the establishment of the stripcropping system including field stripcropping and, if necessary, removal of obstructions and installation of subsurface drains.

(c) *Standards and specifications.* SCS field office technical guide standards and specifications as of January, 1995:

1. 585 - stripcropping;
2. 586 - field stripcropping;
3. 500 - obstruction removal;
4. 606 - subsurface drain; and
5. 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.

2. Diversions shall discharge to a suitable outlet.

3. 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.* SCS field office technical guide standards and specifications as of January, 1995:

1. 362 - diversion;
2. 342 - critical area planting;
3. 382 - fencing;
4. 412 - grassed waterway or outlet;
5. 468 - lined waterway or outlet;
6. 500 - obstruction removal;
7. 606 - subsurface drains;
8. 620 - underground outlet; and
9. 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. Materials and installation of underground pipe outlets and other mechanical outlets necessary for the proper functioning of the terrace.

2. Terraces shall discharge to a suitable outlet.

(c) *Standards and specifications.* SCS field office technical guide standards and specifications as of January, 1995:

1. 600 - terrace;
2. 342 - critical area planting;
3. 412 - grassed waterway or outlet;
4. 468 - lined waterway or outlet;
5. 500 - obstruction removal;
6. 606 - subsurface drain;
7. 620 - underground outlet; and
8. 638 - water and sediment control basin; and
9. 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.

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.

(b) *Standards and specifications.* SCS field office technical guide standards and specifications as of January, 1995:

1. 412 - grassed waterway or outlet;
2. 342 - critical area planting;
3. 382 - fencing;
4. 500 - obstruction removal;
5. 606 - subsurface drain; and
6. 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, 1986: 329 - conservation tillage.

(9) **NUTRIENT MANAGEMENT.** (a) *Description.* Nutrient management is controlling the amount, source, form, loca-

tion and timing of application of plant nutrients, including organic wastes, sludge, commercial fertilizers, soil reserves and legumes, for the purpose of providing plant nutrients and minimizing the entry of nutrient to surface water and groundwater.

(b) *Conditions.* As part of a nutrient management plan, cost-sharing may not be provided for more than 3 years on an operation for:

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

3. Use of crop consulting services for the purpose of preparing and implementing a nutrient management plan.

(c) *Standards and specifications.* SCS field office technical guide January, 1995: 590 - nutrient management. Consultants shall meet the certification requirements in s. ATCP 50.895.

(10) **PESTICIDE MANAGEMENT.** (a) *Description.* Pesticide management is controlling the handling, disposal, type, amount, location and timing of application of pesticides used in crop production in order to minimize contamination of water, air and nontarget organisms.

(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.

3. Use of crop consulting services for the purpose of preparing and implementing an integrated crop management plan which includes nutrient and pest management.

(c) *Standards and specifications.* SCS field office technical guide as of January, 1995: 595 - pest management. Consultants shall meet the certification requirements in s. ATCP 50.895.

(10m) **CROPLAND PROTECTION COVER (GREEN MANURE).**

(a) *Description.* Cropland protection cover are close-growing grasses, legumes or small grain grown for seasonal protection and soil improvement.

(b) *Conditions.* 1. Cost-sharing may be provided for the planting of cover and green manure crops:

- a. To control erosion during periods when the major crops do not furnish adequate cover;
- b. To add organic material to the soil; or
- c. To improve infiltration, aeration and tilth to the soil.

2. Cost-sharing may only be provided for those fields that contribute to the degradation of water quality as a result of harvesting crops early including, but not limited to, vegetable crops.

(c) *Standards and specifications.* SCS field office technical guide as of May, 1986: 340 - cover and green manure crop (acre).

(10p) **INTENSIVE GRAZING MANAGEMENT (ROTATIONAL GRAZING).** (a) *Description.* Intensive grazing management

is the division of pastures into multiple cells that receive a short but intensive grazing period with high animal density followed by a period suitable to allow for the recovery of the vegetative cover. Rotational grazing systems can correct existing pasturing practices that result in degradation and should replace the practice of summer dry-lots when this practice results in water quality degradation.

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

a. The installment of rotational grazing systems on croplands that are currently contributing sediments, nutrients or pesticides to a water source. This practice may be eligible if the average sediment delivery exceeds the identified priority watershed delivery threshold.

b. Sites which have streambank erosion and streambank habitat degradation.

c. Sites which exclude livestock from woodlands, wildlife lands and recreational lands.

d. The establishment of cattle (access) lanes that are stable and not prone to erosion. This includes cattle crossings either on streams or severely eroded areas.

e. The development of permanent boundary and main paddock fences. This may include perimeter fencing, land fencing, portable fencing and gates.

f. The establishment of good seeding stands for pasture and hayland planting.

g. The development of a watering system including pipeline/pasture watering systems, wells, spring developments and portable watering systems such as pumps, pipes and tanks. The total cost-share of the watering system may not exceed \$2,000 for components listed in this subparagraph.

h. The stabilization of a site eroding due to cattle access or cropland erosion through the critical area planting process.

(c) *Standards and specifications*. 1. SCS field office technical standards and specifications as of January, 1995:

a. 342 - critical area planting;

b. 382 - fencing;

c. 560 - access road, cattle crossings;

d. 512 - pasture and hayland planting;

e. 472 - livestock exclusion;

f. 580 - streambank protection;

g. 561 - heavy use area protection - cattle lanes; and

h. 642 - well.

2. UWEX Publication A3529 *Wisconsin Pastures for Profit: A hands on guide to rotational grazing*.

3. Field Office Computer System (FOCS) - Grazing land application module.

(11) **CRITICAL AREA STABILIZATION**. (a) *Description*. Critical area stabilization is the planting of suitable trees, shrubs, and other vegetation appropriate for controlling

Register, September, 1995, No. 477

and stabilizing sloped lands which are eroding from nonpoint source pollutants.

(b) *Conditions*. Trees may not be sold during the operation and maintenance period.

(c) *Standards and specifications*. SCS field office technical guide standards and specifications as of January, 1995:

1. 342 - critical area planting;

2. 382 - fencing;

3. 386 - field borders;

4. 472 - livestock exclusion;

5. 484 - mulching;

6. 500 - obstruction removal;

7. 612 - tree planting;

8. crevice and sinkhole treatment; and

9. 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.

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 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. 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*. SCS field office technical guide standards and specifications as of January, 1995:

1. 410 - grade stabilization structure;

2. 350 - sediment basin;

3. 638 - water and sediment control basin;

4. 342 - critical area planting;

5. 348 - diversion dam;
6. 362 - diversion;
7. 382 - fencing;
8. 412 - grassed waterway;
9. 468 - lined waterway or outlet;
10. 484 - mulching;
11. 500 - obstruction removal; and
12. 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 and outlet protection.

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 shall make the following findings:

a. Control of the 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.* 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 January, 1995:

1. 350 - sediment basin;
2. 342 - critical area planting;
3. 382 - fencing;
4. 412 - grassed waterway;
5. 468 - lined waterway or outlet; and
6. 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. The cost-share recipient is responsible for obtaining all permits for the installation of the practice.

2. Cost-sharing may be provided:

a. For planting trees if approved by department fish manager.

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

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

d. For the design and 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.

e. For required permits.

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

3. 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.* SCS field office technical guide standards and specifications as of January, 1995;

1. 580 - streambank and shoreline protection;
2. 342 - critical area planting;
3. 382 - fencing;
4. 472 - livestock exclusion;
5. 612 - tree planting;
6. 395 - fish stream improvement;
7. 560 - access road;
8. 614 - trough and tank; and
9. 510 - pasture and hayland management.

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

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

5. U.S. department of agriculture's *Stream Habitat Improvement Handbook*, publication R8-TP-16, June 1992.

Note: Copies of the materials described in subs 3 to 5 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, 131 W. Wilson, Suite 800, 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 native and 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.

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

a. Establishment of vegetative cover.

b. Establishment of buffers on non-critical sites in order to provide a continuous shoreline or streambank buffer system on the cost-share recipient's property.

(c) *Standards and specifications*. 1. The physical dimension of the shoreline buffer shall be a minimum of 66 feet.

2. Agricultural Stabilization and Conservation Service (ASCS) standard and specification: WP-7 - riparian buffer strips, as described in 1-WI (ACP), January 1994.

(15m) LAKE SEDIMENT TREATMENT. (a) *Description*. Lake sediment treatment is a chemical, physical or biological treatment of polluted lake sediments.

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

a. Design and treatment of lake sediments with chemical compounds, including, but not limited to, aluminum sulfate, sodium aluminate, ferric chloride, calcium hydroxide and calcium carbonate.

b. Treatment of lake sediments with physical or biological methods including, but not limited to, the aeration of water overlaying lake sediments and the biological manipulation of organisms which exacerbate sediment contamination of overlaying lake water.

2. Cost-sharing may not be provided for the dredging of sediments.

3. Water quality objectives shall be achieved through the control of polluted lake sediments.

4. Sources of the pollution to the lake shall be controlled prior to treatment of lake sediments.

5. The engineering design shall be approved by the department prior to implementation.

6. An appropriate permit, if required, and approval shall be obtained.

(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:

1. Earth moving to construct berms, levees or dikes;

2. Earth moving to fill in portions of drainage ditches;

3. Destruction of portions of tile lines; and

4. Vegetative cover needed to develop or restore wetlands consistent with the approved watershed plan.

(c) *Standards and specifications*. SCS field office technical guide standards and specifications as of March, 1994: 657 - wetland restoration.

(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.

(c) *Standards and specifications*. SCS field office technical guide standards and specifications as of January, 1995:

1. 393 - filter strip;

2. 362 - diversion;

3. 558 - roof runoff management;

4. 342 - critical area planting;

5. 561 - heavy use area protection;

6. 382 - fencing;

7. 412 - grassed waterway;

8. 468 - lined waterway or outlet;

9. 484 - mulching;

10. 620 - underground outlet;

11. 350 - settling basin;

12. 233 - pumping plant; and

13. 590 - nutrient management; and

14. 312 - waste management system.

(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. Stabilization of 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) (c).

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 permanently.

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 site is needed to achieve the water quality objectives specified in the approved watershed plan.

b. The relocation is cost effective compared to repairing or reconstructing the structure or facility, 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. Wells shall be properly abandoned in accordance with the requirements of ch. NR 812.

2. SCS field office technical guide standards and specifications as of January, 1995;

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. 590 - nutrient management.

(19) **MANURE STORAGE FACILITIES.** (a) *Description.* A manure storage facility is a structure which stores manure from operations where manure is generated or from operations where the location and site characteristics of manure spreading areas result in a high potential for runoff to carry pollutants to lakes, streams and groundwater during periods of frozen or saturated condi-

tions. The facility shall be necessary to accommodate proper land application of manure in accordance with a nutrient management plan.

(b) *Conditions.* 1. A nutrient 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 nutrient 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 nutrient 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) (d).

f. The repair, modification or abandonment of existing manure storage facilities needed to meet the water quality objectives of the watershed plan including well abandonment required under ch. NR 812.

g. Operations where manure is generated.

3. Cost-sharing may not be provided for:

a. Operations where manure can be spread at acceptable rates on locations which are nearly flat and represent a minimal risk to surface and groundwater or which do not drain to surface waters.

b. Portable pumps and other portable equipment;

c. Buildings or modifications to buildings;

d. 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 nutrient 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.* SCS field office technical guide standards and specifications as of January, 1995:

1. 312 - waste management system;
2. 313 - waste storage structure;
3. 393 - filter strips;
4. 425 - waste storage pond;
5. 358 - waste transfer; and
6. 590 - nutrient management

(19e) ANIMAL WASTE STORAGE SYSTEM ABANDONMENT.

(a) *Description.* Animal waste storage system abandonment is the proper abandonment of leaking and improperly sited manure storage systems including, a system with bottom at or below groundwater level; a system whose pit fills with groundwater; a system whose pit leaks into the bedrock; a system which has documented reports of discharging manure into surface or groundwater due to structural failure; and a system where there is evidence of structural failure.

(b) *Conditions.* 1. Cost-sharing may be provided for the following practices to protect water resources from contamination by animal waste:

- a. Proper removal and disposal of accumulated wastes in the pond;
- b. Removal of any constructed soil liner, concrete or membrane liner;
- c. Removal of all soil saturated with waste which can be removed;
- d. Proper land spreading of excavated liner material and waste saturated soil; and
- e. Filing, shaping to insure surface drainage away from site, and seeding of area.

2. Cost-sharing may not be provided for removal and spreading of manure that can be removed using conventional equipment and routine agricultural practices.

(c) *Standards and specifications.* SCS field office technical guide standard 425 - Waste Storage Pond as of January, 1995.

(19s) MILKING CENTER WASTE CONTROL SYSTEMS. (a) *Description.* A milking center waste control system is a piece of equipment, practice or combination of practices installed in a milking center for purposes of reducing the quantity or pollution potential of the wastes.

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

- a. Filter strip systems with appropriate pretreatment measures, storage systems and land irrigation equipment.
- b. Repair or modification of existing milking center waste control measures.
- c. Waste transfer equipment needed to transport milking center wastes to storage, treatment or land application systems provided that the equipment is an integral component of the system and is designed for that exclusive use.
- d. Other milking center waste control measures when they are needed to assure that the milking center waste treatment systems will meet identified water quality objectives. These measures may include conservation

sinks, pre-cooler water utilization systems, manifold cleaning systems, air injection systems, waste milk diverter valves, booster pumps for parlor floor cleaning and other measures as approved by the department.

2. Cost-sharing may not be provided for:

a. Systems, practices or components that are installed or adopted for purposes other than for the correction of an identified water pollution hazard.

b. Buildings or modifications to buildings, unless modifications to buildings are essential for installation of a milking center waste control system.

c. Portable equipment for spreading milking center wastes onto land or incorporating the wastes into land.

(c) *Standards and specifications.* 1. Storage, treatment and land application systems shall meet the following SCS field technical guide standards and specifications as January, 1995:

- a. 393 - filter strip;
- b. 358 - waste transfer;
- c. 442 - irrigation system sprinkler; and
- d. 614 - trough or tank.

2. Milking center waste control systems shall be planned in accordance with the *Pollution Control Guide for Milking Center Wastewater Management* (UWEX Pub. No. A3592), and designed in accordance with standards approved by the department.

(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 not be authorized for materials and labor for other structures or buildings.

2. 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 *American Society of Agricultural Engineers (ASAE) Engineering Practice (EP) 288.4, 1990.*

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 January, 1995:

1. 382 - fencing, and
2. 472 - livestock exclusion.

(21m) CATTLE MOUNDS. (a) *Description.* Cattle mounds are earthen mounds used in conjunction with feeding and dry lot operations and are intended to provide a dry and stable surface area for cattle.

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

a. To replace dry-lots or loafing areas that are identified as pollution sources.

b. To achieve shoreline and streambank protection in riparian zones where existing dry-lots and loafing areas are stabilized.

2. In cases where water resources are in close proximity to the animal lots, additional runoff control practices may be required.

3. Cost-sharing may not be provided for wind breaks associated with cattle mounds.

(c) *Standards and specifications.* 1. The animal lot meets current eligibility criteria identified in the watershed plan.

2. The proposed cattle mound provides water quality benefits which are verified by the BARNY model.

3. The cattle mound is an integral component of a comprehensive runoff control system.

4. The design and construction of the cattle mound is in accordance with standards approved by the department.

5. The grant recipient agrees to abandon all loafing areas or dry-lots, with the exception of approved pastures, and agrees to convert these areas to uses compatible with water quality goals. This provision shall be documented in the cost-share agreement.

6. The runoff from the cattle mound shall be treated to levels equivalent to barnyard runoff control systems.

Note: The preferable method is to have cattle mound runoff captured and treated within the filtration or containment system for the planned barnyard.

(22) STRUCTURAL URBAN BEST MANAGEMENT PRACTICES.

(a) *Description.* Structural urban best management practices are source area measures, transport system and end-of-pipe measures designed to control storm water runoff rates, volumes and discharge quality. These practices will reduce the amount of pollutants carried in runoff and flows destructive to stream habitat. These measures include, but are not limited, to such practices as infiltration trenches, porous pavement, oil water separators, sediment chambers, sand filtration units, grassed swales, infiltration basins and detention/retention basins.

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

a. For engineering design, excavation, grading, mulching, seeding, necessary landscaping, piping, drop spillways and other measures required to construct the measure.

b. For land acquisition, including storm sewer rerouting and the removal of structures necessary to install structural urban best management practices.

c. For materials and labor for the initial installation of groundwater monitoring wells required by the department.

d. On a prorated basis, for a practice which serves to manage both water quality and unrelated water quantity problems.

2. Cost-sharing may not be provided for:

a. Land acquisition, storm sewer rerouting or removal of structures where such practices serve solely to solve drainage and flooding problems unrelated to the primary water quality improvement strategy in the watershed plan.

b. Removal or disposal of accumulated sediments or other materials needed to properly maintain the practice.

(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.

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 including pertinent information addressing each criteria listed in subd. 5., 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 to protect surface water, groundwater and wetland resources.

b. Consistency with water quality provisions of department approved plans, such as areawide water quality management plans, remedial action plans or wellhead protection plans, or with existing local storm water management ordinances or plans that meet minimum department requirements.

c. Structural integrity of the design.

d. Aesthetics.

e. The degree to which other environmental considerations are integrated in the proposal.

f. The adequacy of the provisions for long-term maintenance of the structural practice.

g. Other pertinent factors.

6. The department may waive or modify the review or approval procedures under subds. 3. to 5. Any waiver shall be specifically described in the grant agreement or the cost-share agreement.

(23) EFFECTIVE DATES FOR BEST MANAGEMENT PRACTICES. The cost-share conditions and standards and speci-

NR 120.14

fications for all best management practices shall apply to all cost-share agreements signed after March 1, 1995.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; r. and recr. Register, November, 1989, No. 407, eff. 12-1-89; r. and recr. Register, February, 1995, No. 470, eff. 3-1-95; reprinted to restore dropped copy in (22), Register, June, 1995, No. 474.

NR 120.15 Alternative best management practices and design criteria. (1) **ALTERNATIVE BEST MANAGEMENT PRACTICES.** The department may 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 identify in the nonpoint source grant agreement design criteria and standards and specifications; 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 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.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. Register, November, 1989, No. 407, eff. 12-1-89; am. (1) and (2), Register, February, 1995, No. 470.

NR 120.16 Construction site ordinance. Where construction sites have been identified as significant nonpoint sources in a watershed plan, the enactment of a construction site erosion control ordinance shall be a condition of the nonpoint source grant agreement.

(1) **APPLICABILITY.** The ordinance shall apply, at a minimum, to construction activities not otherwise regulated by the department under ch. NR 216, or regulated by DILHR.

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

(a) A statement of activities subject to the ordinance.

(b) Standards, criteria and other conditions to:

1. Minimize the amount of sediment and other pollutants reaching the waters of the state during the development of lands.

(c) Permit application and issuance procedures.

(d) Administration and enforcement procedures.

(e) Violation penalties.

(f) Appeal procedures.

(g) A provision requiring consistency with the best management practice provisions contained in the *Wisconsin Construction Site Best Management Practice Handbook*, WDNR Pub. WR-222, November 1993 Revision.

(3) The ordinance shall be reviewed and approved by the department prior to adoption.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (intro.), (1) (intro.), r. (1) (a) to (d), (2) (b) 2. to 4., cr. (2) (g), Register, February, 1995, No. 470.

NR 120.17 Practices not cost-shared. The following best management practices are not eligible for cost-sharing but shall be requirements included in cost-share agreements:

(1) Practices to be fully funded through other programs.

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

(3) Changes in crop rotation.

(4) Minimum levels of street sweeping and leaf collection.

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

(6) Nonstationary manure spreading equipment.

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

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

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; r. (7) and (8), renum. (9) to be (7), Register, November, 1989, No. 407, eff. 12-1-89; am. (intro.), (1), (2) and (6), renum. (7) to be (8) and am., cr. (7), Register, February, 1995, No. 470, eff. 3-1-95.

NR 120.18 Cost-share rates. (1) **STATE COST-SHARE RATES.** (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 may use the rates identified in this section.

Table 2

Practice	State cost-share rate
Contour farming	50%*
Contour and field stripcropping	50%*
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%**
Livestock exclusion from woodlots	50%
Intensive grazing management	50%****
Manure storage facilities - for first \$20,000 costs	70%*****
Manure storage facilities - for remaining costs	50%*****
Animal waste system storage abandonment	70%
Field diversions	70%
Terraces	70%
Grassed waterways	70%
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%
Roofs for barnyard runoff management and manure storage facilities	70%
Structural urban best management practices	70%***
Milking center waste control	70%
Cattle mounds	70%
Lake sediment treatment	70%

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

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

*** The maximum cost-share rate for land acquisition, storm sewer rerouting, and removal of structures necessary to install structural urban best management practices is 50%.

**** The maximum cost-share rate per watering system is \$2,000.

***** The maximum cost-share rate for manure storage facilities may not exceed \$35,000 total per facility. (See sub. (2) (b) for more detail).

(b) Counties may use locally determined U.S. department of agriculture's cost-share rates per acre as provided for in Agricultural Stabilization and Conservation Service

(ASCS) Handbook, 1-WI (ACP), January 1994 or the following state cost-share rates per acre in lieu of the state cost-share percentages listed in Table 2.

1. \$6 per acre for contour cropping.
2. \$12 per acre for strip cropping.
3. \$10 per acre for field strip cropping.
4. \$45 per acre over 3 years for reduced tillage on continuous row croplands.
5. \$15 per acre for one year only for reduced tillage on crop rotations involving hay.
6. \$25 per acre for up to 3 years for cropland protection cover (green manure).

(c) Counties may increase the state cost-share rate up to 80% for the following practices provided the conditions of s. 144.25 (8) (h), Stats., are met:

1. Critical area stabilization.
2. Grade stabilization structures.
3. Shoreline protection.
4. Roofs for animal lots and manure storage facilities.
5. Demonstration practices when approved by the department.
6. Animal lot relocation.
7. Shoreline buffers.
8. Wetland restoration.

(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).

(2) MAXIMUM AMOUNTS. (a) *Least cost.* A 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 reducing 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 improving safety, operation and maintenance or life expectancy of the practice or in providing greater control of pollutants or providing fish and wildlife habitat. The department shall approve the cost-share agreement if the best management practices are the least-cost alternatives to control the nonpoint sources or if the practices provide greater water quality improvement or habitat enhancement than the least-cost alternative.

(b) *Manure storage facilities.* The maximum cost-share for manure storage facilities may not exceed \$35,000 total per facility including manure transfer equipment which is an integral component of the system and is designed for that exclusive use.

Note: The higher \$35,000 total maximum state cost-share amount may only be available for a manure storage facility presently under an existing cost-share agreement which has not yet been certified as complete.

(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.

(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 \$20,000.

(e) *Fencing and critical area stabilization.* Governmental units may establish flat rates for the cost-sharing of fencing and critical area stabilization in order to simplify the administration of cost-share funds for these practices. Flat rates shall be based on 70% of average cost and installation of these practices.

(3) **LOCAL SHARE.** Funds from sources other than appropriations granted under ss. 20.370 (4) (cc), and (cg) and 20.866 (2) (te), Stats., including federal programs, may be used to provide the local share of project costs, as set forth in s. 144.25 (8) (i) and (j), Stats.

(a) 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.

(b) The value of a conservation easement donated to the department, or to any person approved by the department under s. 144.25 (8) (m), Stats., may be considered as a portion of or all of the landowner's or operator's share of a cost-sharing grant.

(4) **ECONOMIC HARDSHIP.** (a) The rate and maximum amount paid to a landowner or land operator under a cost-share agreement may be exceeded only for manure storage facilities and barnyard runoff control systems with written approval from the department if the landowner or land operator can demonstrate economic hardship as defined in s. NR 120.02 (14). Under the provision of economic hardship, the following percentage payment rates and maximum payments will apply.

1. Manure storage facilities - for first \$20,000 costs	85%
2. Manure storage facilities - for remaining costs	75%
3. Barnyard runoff control systems	85%

(b) The maximum grant from the department for economic hardship cases for construction of manure storage facilities and barnyard runoff control systems, at the rates established under par. (a) 1. to 3., may not exceed \$45,000.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1) (a), (b) (intro.), (c) (intro.), (2) (a) and (3), r. and recr. Table 1 and (2) (c), cr. (1) (c) 6 to 8., (d) and (2) (d), Register, November, 1989, No. 407, eff. 12-1-89; emerg. am. (2) (b), eff. 9-13-93; am. (2) (b), Register, April, 1994, No. 460, eff. 5-1-94; am. (1) (a), (b) (intro.), (c) (intro.), (d), (2) and (3), r. and recr. (1) (a) Table 2, cr. (1) (b) 6., (3) (b) and (4), Register, February, 1995, No. 470, eff. 3-1-95.

Register, September, 1995, No. 477

NR 120.185 Easements. (1) The department may enter into easements with landowners for lands identified in watershed plans. Easements, including donated conservation easements, shall be for a period of no less than 20 years. Easements may be used in conjunction with the following best management practices:

(a) Critical area stabilization.

(b) Shoreline buffers.

(c) Wetland restoration.

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

(2) The department may authorize, in writing, any governmental unit, non-profit organization or person to enter into easements or accept a donated conservation easement consistent with the eligibility provision of the approved priority watershed plan.

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

(4) The department may distribute grants and aids to itself or to any governmental unit that is eligible for a local assistance grant under s. NR 120.21 for the purchase of easements in priority watershed areas.

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; renum. 120.185 to be (1), cr. (1) (d) and (2), Register, February, 1995, No. 470, eff. 3-1-95.

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

(a) *Average cost.* Based on past cost information, a governmental unit determines an average cost per unit of materials and labor for the installation of a best management practice which may not be exceeded.

(b) *Range of costs.* Based on past cost information, a governmental unit establishes a cost range for the installation of a best management practice. Eligible costs may not exceed the maximum cost of the range.

(c) *Bidding.* A governmental unit requires the landowner or land operator to request bids from contractors for the installation of a best management practice. The landowner or land operator shall accept the low bid.

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

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

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

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

(3) Under unusual or exceptional circumstances, the 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 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 governmental unit.

(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.

History: Cr Register, June, 1986, No. 366, eff. 7-1-86; am. (1) and (3), cr. (4), Register, November, 1989, No. 407, eff. 12-1-89; am. (1) (intro.), (d), (e), (3) and (4), r. (2), Register, February, 1995, No. 470.

NR 120.21 Local assistance grant agreement. (1) PURPOSE. The local assistance grant agreement is an agreement between the department and a state agency, governmental unit or an agent acting on behalf of a state agency, or governmental unit for providing funds for activities necessary for watershed plan preparation, ordinance development and administration, information and education, demonstration practices, easement acquisition and 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.

(2) **GRANT PERIOD INITIATION.** No local assistance grant agreement pertaining to a specific priority watershed plan may begin before the selection of the nonpoint source priority watershed project.

(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 pro-

cedures developed by DATCP in ss. ATCP 50.50 and 50.53 and the department.

(c) The grant amount 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 request of the department.

(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 subd. 1. a. to s. The following activities may be eligible for grant assistance provided additional staff or increased hours of existing staff are required 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;

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 and storm water management ordinance, and a manure storage ordinance under s. 92.16, Stats.;

n. Administration of easements defined in s. NR 120.185;

o. Fiscal management;

p. Designing components of stormwater plans for urban development;

q. Conducting engineering feasibility studies for existing development for urban structural practices that are needed to achieve the water quality goals stated in the watershed plan; and

r. Evaluating alternatives for local financing of storm water management programs; and

s. Administrative costs associated with initial establishment of local funding programs such as storm water utilities.

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.

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) 1. To be eligible, core urban program activities, other than construction site erosion control ordinances, shall be initiated within 3 years of the date the department approves the watershed plan or applicable plan amendment. Construction site erosion control ordinances shall be adopted within 2 years of watershed plan approval.

2. Eligibility for urban storm water management activities identified for assistance in a priority watershed or

Register, September, 1995, No. 477

priority lake area plan may not be affected as a result of such activities being included as requirements in a municipal WPDES storm water discharge permit.

(d) 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.

3. Indirect costs.

(6) **REVIEW OF CONTRACTS.** If a 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.

(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. ATCP 50.40 (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.

History: Cr Register, June, 1986, No. 366, eff. 7-1-86; am. (1), renum. (2) and (4) to be (2) (a) and (6) and am., cr. (2) (b), (4), (5) and (7), r. and recr. (3), Register, November, 1989, No. 407, eff. 12-1-89; am. (1), (2), (3) (b), (c), (4) (a) 1. intro., c., j., m., n., (4) (a) 2., 5., 10., (b), (7) (b), cr. (4) (a) 1. o. to s., (4) (c) 1., 2. and (d) 3., renum. (4) (c) to be (4) (d), Register, February, 1995, No. 470; reprinted to correct printing errors in (4), Register, June, 1995, No. 474.

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.

History: Cr Register, June, 1986, No. 366, eff. 7-1-86; r. and recr. Register, November, 1989, No. 407, eff. 12-1-89.

NR 120.23 Reimbursement procedures. (1) GENERAL REQUIREMENTS. (a) *Refunds, rebates and credits.* The state share of any refunds, rebates, credits or other amounts that accrue to or are received by the grantee for the project, and that are properly allocable to costs for which the grantee has been paid under a grant, shall be paid to the department.

(b) *Final payment.* The department shall pay the grantee the balance of the state share of the eligible pro-

ject costs after project completion, department approval of the request for payment which the grantee has designated "final payment request" and the department has verified the grantee's compliance with all applicable requirements of this chapter and the grant agreement. The final payment request shall be submitted by the grantee promptly after project completion. Prior to final payment under the grant, the grantee shall execute an assignment to the department for the state share of refunds, rebates, credits or other amounts properly allocable to costs for which the grantee has been paid by the department under the grant. The grantee shall also execute a release discharging the department, its officers, agents and employees from all liabilities, obligations and claims arising out of the project work or under the grant, subject only to the exceptions specified in the release.

(c) *Withholding of funds.* 1. The department may authorize the withholding of a grant payment where the department determines, in writing, that a grantee has failed to comply with project objectives, grant award conditions or reporting requirements. Withholding shall be limited to only that amount necessary to assure compliance.

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

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

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

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

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

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

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

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

4. Reimbursement requests may be submitted for partially installed best management practices when the cost will exceed the advance monies paid under par. (c).

5. If a reimbursement request exceeds \$40,000 for a partially completed structural urban best management practice described in s. NR 120.14 (22), documentation of

costs incurred is required at the time reimbursement is requested.

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

(c) The department may advance monies to governmental units prior to best management practice installation. The amount of the advance necessary shall be proposed in the annual or periodic workplan submitted as required in s. NR 120.21 (3) and determined by the department. The amount of the advance may not exceed the amount of the grant.

(3) **LOCAL ASSISTANCE GRANT AGREEMENTS.** (a) Local assistance grant agreement grantees, except counties, shall submit reimbursement requests on forms provided by the department on a schedule determined by the department. Eligible costs listed in the local assistance grant agreement incurred during the period covered by the reimbursement request shall be included in the request.

(c) The department may advance monies to local assistance agreement grantees.

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

History: Cr Register, June, 1986, No. 366, eff. 7-1-86; am. (2) (b) (intro.) and (3) (a), renum. (3) (b) to be (3) (c), cr. (2) (b) 6., (3) (b) and (d), r. and recr. (2) (c), r. (4), Register, November, 1989, No. 407, eff. 12-1-89; am. (2) (a), (b) 2., 5., 6; (c), (3) (a), (c), r. (3) (b), Register, February, 1995, No. 470, eff. 3-1-95.

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.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; r. and recr. Register, November, 1989, No. 407, eff. 12-1-89.

NR 120.25 Governmental unit record keeping and reporting requirements. (1) Each governmental unit as a grant agreement grantee or cost-share agreement grantor shall maintain a financial management system which adequately provides for:

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

(f) Accurate and complete time reports for all employees working on the project.

Register, September, 1995, No. 477

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

(h) A final accounting of project expenditures submitted to the department within 120 days of the completion of all watershed project work.

(i) Accurate and complete time reports for all employees working on the project.

(j) The best management practices available to control nonpoint sources of pollution.

(k) An identification of the least cost practices.

(2) The governmental unit shall retain copies of all reimbursement requests submitted to the department including the following items:

(a) Request for an advance or reimbursement form.

(b) Reimbursement claim worksheet.

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

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am., (1) (intro.), (e) 3. a., d. and f., (2) (intro.), Register, November, 1989, No. 407, eff. 12-1-89; am. (1) (intro.), (e) 3. intro., a., b., f., (h) and (2) (c), cr. (1) (i) to (k), Register, February, 1995, No. 470, eff. 3-1-95.

NR 120.26 Record retention and auditing. (1) RECORD RETENTION REQUIREMENTS. (a) The governmental unit or its agent's records and the records of contractors, including professional services contracts, shall be subject at all reasonable times to inspection, copying and audit by the department.

(am) Governmental units required to have a single audit based on receipt of federal funds shall include local assistance grants within the scope of such examinations.

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

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

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

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

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.

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

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

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

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

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

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

(3) **FINAL PROJECT REPORT.** The department with assistance from DATCP and local units of government, shall prepare and publish a final project report within 18 months of the end of the grant period.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1) (a), (b) (intro.) and (c) (intro.), cr. (1) (am) and (b) 4., Register, November, 1989, No. 407, eff. 12-1-89; am. (1) (a), (am), (b) 4., (c) 2., (2) (b), cr. (3), Register, February, 1995, No. 470, eff. 3-1-95.

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

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

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

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

(c) *Stop-work order components.* 1. A description of the work to be suspended;

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

3. Guidance for action to be taken on contracts; and

4. Other suggestions to the grantee for minimizing costs.

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

2. Within the suspension period the department shall either:

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

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

c. Authorize resumption of work.

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

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

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

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

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

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

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

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

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

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

NR 120.27

(d) The department may annul a grant if:

1. There has been substantial nonperformance of the project work by the grantee without good cause;
2. There is substantial evidence the grant was obtained by fraud; or
3. There is substantial evidence of gross abuse or corrupt practices in the administration of the grant or project.

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

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

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

(4) RESPONSIBILITIES OF GOVERNMENTAL UNITS. Suspension or termination of a grant or portion of grant under this section may not relieve the grantee of its responsibilities under in ss. NR 120.04 and 120.05.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86.

NR 120.28 Enforcement. The following sanctions may be imposed by the department for noncompliance with the provisions of s. 144.25, Stats., this chapter or any grant agreement entered into or amended in accordance with the provisions of this chapter.

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

(2) Watershed project costs directly related to noncompliance may be declared ineligible;

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

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

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

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

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86.

NR 120.29 Variances. The department may approve in writing a variance from a requirement of this chapter upon the written request of a governmental unit when the department determines that a variance is essential to effect necessary grant actions or program objectives and where special circumstances make a variance in the best interest of the program. Before approving a variance, the department shall take into account such factors as good cause, circumstances beyond the control of the governmental unit and financial hardship. The department may not grant variances from statutory requirements.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. Register, November, 1989, No. 407, eff. 12-1-89.

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 (12), 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.

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; am., Register, February, 1995, No. 470.