

Chapter NR 120

NONPOINT SOURCE POLLUTION ABATEMENT PROGRAM

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Note: Chapter NR 120 as it existed on June 30, 1986 was repealed and a new chapter NR 120 was created effective July 1, 1986. Corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, September, 1997, No. 501.

Preface

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 281.65, 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) "Acquisition cost" means the fair market value, recording fees and appraisal costs related to the purchase of property to be acquired. It does not include the cost of land surveys, relocation payments, title insurance, costs of environmental inspections, audits, attorney fees, environmental clean up costs, brokerage

fees paid by the buyer, real estate transaction transfer taxes, or any other cost not identified in this chapter.

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

(3) "Approved areawide water quality management plan" means an areawide water quality management plan which has completed all steps of the basin plan process and which has been approved by the governor as described in ch. NR 121.

(4) "Areawide 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.

(5) "Best management practice" as defined in s. 281.65 (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. 289.30, Stats.

(6) "Completed practice" means a best management practice or interim 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.

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

(8) "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.

(9) "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.

(10) "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.

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

(11m) "Crop year" means the time frame from the harvest of a particular agricultural crop to the time of the next harvest of that crop. The actual time frame and specific dates signifying the start and end of the crop year may vary by crop, year and field.

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

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

(14) "Demonstration practices" means best management practices or interim 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.

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

(16) "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. 281.65 (6), Stats.

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

(18) "DILHR" means the Wisconsin department of commerce.

(19) "Economic hardship" means a situation where the landowner or land operator of an eligible site as identified in the watershed plan 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 or a certified public accountant.

(20) "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.

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

(22) "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.

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

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

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

(26) "Interim 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.

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

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

(29) "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 (6) (aa), (aq) or 20.866 (2) (te), Stats.

(30) "Maximum storage capacity" means the volume of water in acre-feet capable of being stored behind a dam at maximum water elevation before overtopping any part that is not part of the spillway system.

(31) "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.

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

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

(34) "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. 283.01 (12), Stats.

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

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

Note: The natural resources conservation service is the new name for the soil conservation service.

(37) "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.

(38) "Period of cost-sharing availability for critical sites" means the 36 month period which begins with a notification to the landowner.

(39) "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. 281.65 (4) (cd), Stats.

(40) "Priority watershed" means a watershed or lake area which the department has identified through the continuing planning process under s. 283.83, 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.

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

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

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

(44) "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.

(45) "Structural height" means the difference in elevation in feet between the point of lowest elevation of a dam before overtopping and the lowest elevation of the natural stream or lake bed at the downstream toe of the dam.

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

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

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

(48) "Workplan" means the description jointly developed by the governmental unit and the department of activities expected to be completed during project implementation.

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; renum. (1), (3), (4), (6) to (9), and (11) to (13) to be (2), (4), (5), (8), (9), (10), (13), (15), (16) and (18), r. (15), renum. (16) to (31) to be (20), (21), (22), (23), (24), (25), (28), (29), (31), (32), (33), (34), (37), (39), (40) and (41), r. (32), renum. (33) and (35) to be (44) and (47), renum. (2), (5), (10), (14) and (34) to be (26), (6), (14), (19) and (46) and am., cr. (1), (3), (7), (11), (12), (17), (27), (30), (35), (36), (38), (42), (43), (45) and (48), Register, July, 1996, No. 487, eff. 8-1-96; cr. (11m), Register, September, 1997, No. 501, eff. 10-1-97; **correction in (29) made under s. 13.93 (2m) (b) 1., Stats., Register, November, 1999, No. 527.**

NR 120.03 Role of governmental units in watershed plan development. A governmental unit may prepare any portion of the watershed plan provided the department and the governmental unit agree that the governmental unit has the appropriate technical, financial and staffing capability. The governmental unit shall prepare the elements of the watershed plan in accordance with 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; r. (1), renum. (2) and am., Register, July 1996, No. 487, eff. 8-1-96.

NR 120.04 Role of citizen advisory committee. The department, in cooperation with governmental units, shall appoint a citizen advisory committee for each priority watershed and priority lake project in accordance with s. 281.65 (4) (dr), Stats. The citizen advisory committee shall advise the department, the DATCP and governmental units concerning all aspects of the nonpoint source pollution abatement program for their specific priority watershed or priority lake project.

History: Cr. Register, July, 1996, No. 487, eff. 8-1-96.

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 management practices installed on land 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; am. (3), Register, July, 1996, No. 487, eff. 8-1-96.

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. 281.65 (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.

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

(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. 281.65 (4) (c) and (cd), Stats., the department shall identify proposed priority watershed and priority lake area projects in approved areawide water quality management plans. The plans shall identify critical priority watershed and priority lake area projects to be considered for selection.

(3) DISTRICT 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 planning commissions, county land conservation committees, lake districts, local and private organizations and local units of government 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 identified 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; am. (1), (3) and (4), r. (2), Register, July, 1996, No. 487, eff. 8-1-96.

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. Priority watersheds and priority lakes selected after August 12, 1993, shall have critical sites designated in the plan.

(a) *Watershed assessment.* The department, in cooperation with the appropriate governmental units, 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. A designation of critical sites by criteria.
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.
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. 281.65 (6) (a), Stats., governmental units except those waived under s. NR 120.03, 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 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 may include: information and education activities; development, implementation and enforcement of construction erosion control ordinances; and development and implementation of activities, including, but not limited to, those activities that reduce storm water pollution from lawn and leaf litter, pet waste, road salting and illicit dumping into the storm sewer sys-

tem. When adoption of a construction site erosion control ordinance is required under the watershed plan, it shall be considered a core program activity and the schedule for urban implementation activities shall provide for adoption, implementation, and enforcement of the ordinance 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 may include: storm water planning for urban and urbanizing areas; development, implementation and enforcement 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 stating that manure storage ordinance shall be adopted within 2 years of the date the department approves the watershed plan.

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

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

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

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

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

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.

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

(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 approve the final plan for the priority watershed or priority lake area in accordance with s. 281.65 (5m), Stats. The date that the secretary of the department signs the approval letter to the project sponsors also marks the beginning of eligibility for funding for implementation. Notwithstanding par. (d), the department may approve the watershed plan for individual counties in multi-county 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. (a) Plan revisions may be initiated by either the governmental unit or the department. 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.

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

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

(d) 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; am. (1) (intro.), (a) (intro.), 5. and 6., (b) 1. h. to j., (2) (f), r. (1) (a) 6. Table 1, cr. (1) (b) 1. m. to p., am. r. and recr. (4), Register, July, 1996, No. 487, eff. 8-1-96.

NR 120.09 Notification and status of critical sites.

(1) START OF NOTIFICATION PROCESS. Within 6 months following department plan approval, the process of notification to landowners shall begin. The first to begin the process shall be those highest-ranked critical sites based on estimated pollutant contribution, which together would provide at least 25% of the pollutant reduction goal for inventoried sites available at the time the final plan is written, if best management practices were applied at those sites. Notification shall proceed in accordance with the schedule identified in the plan and modified, if necessary, in the annual workplan. The department may grant up to 3 90-day extensions of this 6 month period to allow verification.

(2) VERIFICATION. The purpose of verification is to assure that individual sites within the watershed meet the criteria for critical sites and to conduct site visits and complete the inventory of non-

point sources on additional lands in the watershed owned by those landowners with sites which meet the criteria for critical sites. If the landowner has not signed a cost-share agreement for required best management practices, the verification findings shall be reported in writing to the department. Verification shall include an on-site assessment before a notification letter can be issued.

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

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

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

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

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

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

(5) COMPLETION OF NOTIFICATION SCHEDULE. Notification to landowners shall be completed within 5 years and 60 days of department plan approval.

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

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

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

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

History: Cr. Register, July, 1996, No. 487, eff. 8-1-96.

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) Consistent with the priority watershed plan, 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.

(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.

(6) The grantee may use nonpoint source easement funds to acquire easements as provided for in s. NR 120.185 (2).

(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; am. (1) (a) (intro.), r. (1) (e), cr. (6), Register, July, 1996, No. 487, eff. 8-1-96.

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. Nonpoint source grant agreements used in lieu of cost-share agreements shall comply with the requirements in this section.

(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 sites 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. For sites that meet the critical sites criteria, implementation shall begin within 18 months and be completed within 4 years following the effective date of the cost-share agreement.
- (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.
- (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.
- (n) A requirement for annual progress in pollutant reduction may be imposed by the governmental unit on the landowner of a critical site.

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

(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 for a minimum of 10 years. The operation and maintenance period shall begin when the last practice in the agreement has been installed or implemented.

1. Except where required as a component of another practice, the following practices are exempt from the 10-year operation and maintenance period requirement and only need to be maintained during the 3 years for which cost-sharing is received:

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

2. When a practice in subd. 1. is required as a component of another practice in s. NR 120.14, the operation and maintenance period for the component practice shall be the same as the operation and maintenance period for the practice for which it is required.

(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 respective local governmental unit, the new landowner may implement alternative approved 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. (a) 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.

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

1. Contour farming.
2. Contour and field stripcropping.
3. Cropland protection cover (green manure).
4. High residue management.
5. Nutrient management.
6. Pesticide management.

(11) RELEASE OF PROPERTY FROM OBLIGATIONS OF COST-SHARE AGREEMENTS. A governmental unit may fully or partially release a landowner's property from the obligations of the cost-share agreement provided that the governmental unit has determined that the best management practices installed on the property will

be maintained or replaced with practices which will not increase the pollutant loading to surface water or groundwater counter to the water resource objectives of the approved watershed plan. If state dollars in excess of \$10,000 have been expended for best management practices that are located on the property to be released, the governmental unit shall obtain written approval from the department before the property can be released. The release form shall be obtained from the department and filed with the cost-share agreement.

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

(12) APPLICABILITY. Subsections (3) (c), (4) (j), (k), (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; am. (2), (3) (c), (4) (d), (4m), (6) (b), (9), (10) (intro.), r. (4) (l), cr. (4) (m), (6) (b) 1. and 2., (11), renum. (10) (a) to (f) and (11) to be (10) (b) 1. to 6. and (12) and am. (10) (b) 4. and (12), Register, July, 1996, No. 487, eff. 8-1-96.

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.

7. All required permits, including those mandated by the department, shall be obtained prior to installing a best management practice listed in this chapter.

(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).

(e) Best management practices listed in this chapter and which are conducted below the ordinary high water mark may be eligible for cost-sharing only when all of the following criteria are met:

1. The practice is the most cost-effective.

2. The practice is the most effective means of preventing or reducing pollutants generated from nonpoint sources or from sediments of inland lakes polluted by nonpoint sources.

(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.* NRCS 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.* NRCS 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.* NRCS 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.* NRCS 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.* 1. 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.* NRCS 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) HIGH RESIDUE MANAGEMENT SYSTEMS. (a) *Description.* High residue management systems refer to any tillage and planting system that is designed to reduce soil erosion caused by water or wind. These systems include the following:

1. No-till: The soil is left undisturbed prior to planting. Planting is completed in a narrow seedbed or slot created by the planter or drill.

2. Mulch-till: The total soil surface is disturbed by tillage prior to planting. Tillage tools such as chisels, field cultivators, disks or sweeps are used.

3. Ridge-till: The soil is left undisturbed prior to planting. The seedbed is prepared on ridges with sweeps, disks, or other row cleaners. The ridges are rebuilt for the next year's crop during cultivation.

4. Strip-till: The soil is left undisturbed prior to planting. Tillage in the row is done at planting using tools such as a rototiller, in row chisel, or other row cleaner.

(b) *Conditions.* 1. Cost-sharing may be provided on a per acre basis to convert to high residue management systems.

2. Cost-sharing may not be provided to a landowner or land operator for both this practice and cropland protection cover (green manure) for the same acreage in the same crop year without prior departmental approval.

3. Cost-sharing may be provided for a maximum of 6 years.

4. Cost-sharing may not be provided for continuous no-till unless surface applications of nutrients, including animal manure, are prohibited, or unless otherwise described in the watershed plan. Continuous no-till is defined as 3 or more consecutive years.

5. Cost-sharing may be provided for nutrient management and pesticide management under subs. (9) and (10) provided that the watershed plan identifies these practices as eligible.

(c) *Standards and specifications.* 1. A minimum of 30% residue coverage shall remain on the soil surface after planting.

2. Tillage and planting shall occur as close to the contour as practical.

3. Residue cover may be from meadow, winter cover crop, small grain or row crop.

4. The practice shall meet the requirements in NRCS field office technical guide May, 1989: 329 – Conservation Tillage.

(9) NUTRIENT MANAGEMENT. (a) *Description.* Nutrient management is controlling the amount, source, form, location 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 be provided 3 times within the grant period 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.* NRCS field office technical guide January, 1995: 590 – nutrient management. Consultants shall meet the certification requirements in ch. ATCP 50.

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

(b) *Conditions.* 1. As part of a pesticide management plan, cost-sharing may be provided for:

a. Spill control facilities with liquid-tight floors for pesticide handling areas. Spill control facilities consist of structures designed to contain accidental spills or overflows from pesticide mixing, loading and unloading operations for the purposes of groundwater and surface water protection. The items eligible for cost-share funds associated with these facilities include, but are not limited to a sealed, liquid-tight, reinforced concrete pad for the mixing area; water-tight walls or perimeter flow diversion structures to convey spills or contaminated water to the sump area; perimeter flow diversion structures needed to convey surface water away from the mixing area; a shallow sump collection area capable of storing spills, rinsate, washwater, and precipitation that may leak or fall on the pad; roof structures and walls protecting the pad mixing area; approach ramps; water supply systems needed for the facility; and sump pump alarm and recovery systems.

b. Use of crop consulting services for the purpose of preparing and implementing an integrated crop management plan for not more than 3 years per operation.

c. Operators shall adhere to the requirements of chs. ATCP 29 (Pesticide Use and Control) and ATCP 33 (Pesticide Bulk Storage).

d. Licensed commercial pesticide applicators, as described in s. ATCP 29.11, are not eligible for cost-share funding for this practice.

2. Material storage buildings are not eligible for cost-sharing under this subsection.

(c) *Standards and specifications*. 1. NRCS field office technical guide as of January, 1995: 595 – pest management. Consultants shall meet the certification requirements in ch. ATCP 50.

2. Designing Facilities for Pesticide and Fertilizer Containment, MWPS-37, 1st ed. 1991.

(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 a crop during the growing season that either leaves the field devoid of residue or lacks enough residue from the harvested crop to provide for adequate surface protection.

(c) *Standards and specifications*. NRCS 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 be provided for:

a. The installment of rotational grazing systems on croplands, animal lots or pastures that are currently contributing sediments, nutrients or pesticides to a water source. This practice may be eligible if the average sediment delivery to surface water for the croplands exceeds the delivery threshold identified in the plan, the cropland acres to be converted to a rotational grazing system are eroding at a rate greater than the tolerable soil loss level as determined by the universal soil loss equation, or the practice allows the abandonment of an animal lot that adversely affects groundwater or surface water.

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, lane 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. NRCS 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 and stabilizing sloped lands which are producing nonpoint source pollutants and lands which drain into bedrock crevices, openings and sinkholes.

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

(c) *Standards and specifications*. NRCS 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 structural height and with maximum storage capacities of less than 15 acre-feet.

2. Cost-sharing may be provided for structures with embankments of 15 to 25 feet in structural height or with maximum storage 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 real or personal 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*. NRCS 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 structural height or with maximum storage capacity of more than 50 acre-feet.

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

3. Sediment basins with embankments of 15 to 25 feet in structural height or with maximum storage 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 real or personal 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, WDNR Pub. WR-222, November 1993 Revision and the NRCS 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 PROTECTION. (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 practices such as shaping and placement of vegetation, riprap or structures which improve fishery habitat, or other materials on banks and shores identified within the priority watershed plan, or in areas where streambank repair is the least costly alternative. Written departmental approval is required for the stabilization of banks with structural heights higher than 15 feet.

e. For required permits.

Note: A permit may be required under ch. 30, Stats., when installing this best management practice. For more information, please contact the Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, Wisconsin 53707.

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

a. 580 – streambank and shoreline protection;

b. 342 – critical area planting;

c. 382 – fencing;

d. 472 – livestock exclusion;

e. 612 – tree planting;

f. 395 – fish stream improvement;

g. 560 – access road;

h. 614 – trough and tank; and

i. 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.

6. Natural Resources Conservation Service Engineering Field Handbook, Soil Bioengineering for Upland Slope Protection and Erosion Reduction, Pub. 210-EFH, October, 1992.

Note: Copies of the materials described in subds. 3. to 6. 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.* Buffers are permanently vegetated areas immediately adjacent to lakes, streams, wetlands, bedrock crevices, openings and sinkholes 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 at non-critical locations 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 either 66 feet or that distance specified in a locally approved ordinance that meets the objective of the watershed or lake plan.

2. Consolidated Farm Services Agency (CFSA) (formerly Agricultural Stabilization and Conservation Service (ASCS)) Handbook 1-WI (ACP), January 1994, practice WP-7, riparian buffer strips for recommended practice layout and design criteria.

(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 overlying lake sediments and the biological manipulation of organisms which exacerbate sediment contamination of overlying 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 or remove 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.* NRCS 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 120.17 (2) (q).
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 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.* NRCS 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 – sediment basin;
12. 233 – pumping plant; and
13. 590 – nutrient management; and
14. 312 – waste management system.

(18) ANIMAL LOT ABANDONMENT OR RELOCATION. (a) *Description.* Animal lot relocation is relocation of an animal lot from a 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 and abandonment of a site which does or does not include relocation to a different site owned, operated or con-

trolled by the cost-share recipient. For abandonment of a site which does not include relocation, the site shall either have been in existence for a minimum of 3 years and found to be a significant nonpoint source of pollution or was identified during the watershed inventory as being a nonpoint source of pollution and listed as eligible in the approved watershed plan.

b. Reconstruction or replacement of buildings and other structures necessary for the relocation of the animal lot.

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

d. Needed runoff management practices on the relocated lot consistent with subs. (17), (19) and (20).

e. Stabilization and abandonment of a previously used earthen animal lot which has either been in existence for a minimum of 3 years and is found to be a significant nonpoint source of pollution or was identified during the watershed inventory as being a nonpoint source of pollution and is listed as eligible in the approved watershed plan.

2. Wells shall be properly abandoned.

3. The landowner agrees to abandon the existing site permanently for livestock use and agrees to record a restrictive covenant to this effect in the office of the register of deeds for each county in which the property is located. The restrictive covenant shall permanently exclude the use of the property by livestock. A maximum of 10 animals may be kept on the site, provided that no more than 4 individual animals exceed a live weight of 200 pounds and the desired level of pollutant control for the site is maintained.

4. A plan for relocation shall be approved by the governmental unit, in writing, prior to initiation of relocation. The watershed plan shall list criteria for relocation plan approval. At a minimum, these criteria shall include the following:

a. The site is identified as eligible in the approved watershed plan.

b. The relocation to a site owned, operated or controlled by the cost-share recipient is cost effective provided the cost-sharing for repairing, reconstructing or replacement of buildings and other structures at the relocation site do not exceed the appraised values of the buildings and other structures to be abandoned which have utility for livestock operations.

c. Cost-share grants for best management practices implemented at the relocation site which are necessitated by the relocated livestock may not exceed the estimated cost-share grant of the best management practices which would have been installed at the abandoned site. The best management practice cost-effective requirement may be waived by the department if the site to be abandoned has a significant water quality impact and the proposed best management practices cannot ensure an acceptable level of water quality protection when compared to relocation.

d. The abandonment of a site without relocation to a site owned, operated or controlled by the cost-share recipient is cost-effective provided the cost-share grant does not exceed the estimated cost-share grant of the best management practices which would have been installed at the abandoned site. The best management practice cost-effective requirement may be waived by the department if the site to be abandoned has a significant water quality impact and the proposed best management practice cannot ensure an acceptable level of water quality protection when compared to relocation.

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

5. If the cost-share recipient has received state cost-share funding under this chapter at the site to be abandoned for practices listed in this paragraph, the amount of cost-sharing received shall be deducted from the relocation cost-share payment.

6. In cases of abandonment which does not include relocation to a different site owned, operated or controlled by the cost-share recipient, livestock may not be relocated to a site which will sig-

nificantly contribute to surface or groundwater quality degradation. A written plan shall be submitted to the governmental unit for approval detailing the disbursement of the animals.

(c) *Standards and specifications.* 1. Wells shall be properly abandoned in accordance with the requirements of ch. NR 812.

2. NRCS 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.

(18a) WELL ABANDONMENT. (a) *Description.* Well abandonment is the proper filling and sealing of a well to prevent it from acting as a channel for contaminants to reach the groundwater or as a channel for the vertical movement of surface water to groundwater.

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

- a. The removal of the pump, pump piping, debris or other obstacles that interfere with the proper sealing of the well.
- b. The sand-cement grout, sodium bentonite, clay slurry, chipped bentonite or concrete used for the well sealing.
- c. Chlorine used as a disinfectant.
- d. The backfilling operations to fill the surface around a well pit.
- e. The necessary labor costs to complete the proper abandonment.

2. Cost-sharing may not be provided for:

- a. The abandonment of wells at an oil or gas drilling site or wells that produced gas or oil.
- b. The abandonment of wells used for test or exploratory purposes.
- c. The abandonment of wells that are driven (punched).
- d. The abandonment of mine shafts, drill holes or air vents associated with the mining industry.

3. The maximum cost-share rate for well abandonment is 70% of the total eligible cost.

(c) *Standards and specifications.* 1. NRCS field office technical guide standard and specification as of January, 1995: 642 – Well.

2. Section NR 812.26, “Well and drillhole abandonment”.

(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 conditions. 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) (c).

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. Additional costs associated with the construction of a manure storage facility incurred for the purpose of providing structural support for a building or other structure located over or attached to the facility.

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.* NRCS 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 or structure;
- 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. Filling, 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.* NRCS field office technical guide standards 313 – waste storage structure and 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 NRCS 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 permanently enclosed unless the governmental unit receives written approval from the department.

a. For purposes of this subsection, an enclosed structure is a structure where the sum of the walls exceed 50% of the total length of the perimeter of the structure. When the structure has a shape

other than a rectangle or square, each rectangular or square portion of the total structure, excluding the common sides, shall be calculated separately to determine whether it exceeds 50%. A segment of the perimeter shall be considered a wall if greater than 50% of the opening from eave to floor is of solid building material.

b. An application requesting the enclosure of a roofed barnyard runoff management system shall be submitted in writing to the department for its approval. The written application and the applicable cost-share agreement shall include a recognition by the landowner or land operator that the barnyard may not be used for purposes other than an animal lot for the duration of the cost-share agreement.

3. The livestock facility may not establish additional outdoor animal lots on the site unless the department certifies that adequate runoff control practices are established for the duration of the cost-share agreement.

(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 FENCING. (a) *Description.* Livestock fencing is the enclosure, separation or division of one area of land from another in such a manner that it provides a permanent barrier to livestock. The purpose of the practice is to exclude livestock from land areas that should be protected from grazing or gleaning where degradation of the natural resource will likely result if livestock access is permitted.

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

a. Fencing is needed to eliminate the degradation of a surface water body.

b. Fencing is needed to reduce the impact to a resource from sedimentation that is being caused by livestock.

c. Fencing is needed to exclude livestock from a forest or woodlot.

d. Fencing is needed to eliminate the degradation of other natural resources as defined within the watershed plan.

2. Cost-sharing may not be provided for:

a. Fencing of cropland fields for the sole purpose of providing areas for gleaning by livestock.

b. Temporary fencing.

c. Situations where benefits to water quality improvement cannot be readily defined.

d. Electric fence energizers.

3. The maximum state cost-share rate is 50% of the total eligible cost or:

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

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

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

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

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

1. 382 – fencing.

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.

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 ground-water monitoring wells required by the department.

d. On a prorated basis, for a practice which manages 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 alterna-

tive 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 subsd. 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 specifications 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; cr. (1) (b) 7. and (e), (10) (c) 2., (14) (c) 6., (18) (b) 1. e., 4. c., d., 5., 6., (18a), (20) (b) 2. and 3., am. (2) (c) (intro.), (3) (c) (intro.), (4) (c) (intro.), (5) (c) (intro.) and (6) (b) (intro.), r. and recr. (7), (10) (b), (14) (b) 2. d., (18) (b) 3., (19) (b) 3. e., (21), r. (8), (13) (b) 2. b., (14) (b) 2. f., am. (9) (b) (intro.), (9) (c) and (10) (a), renum. (10) (c) (intro.) to be (10) (c) 1. and am., am. (10m) (b) 2. and (c), (10p) (b) 1. (intro.), a. and e. and (c) 1. (intro.), (11) (a), (c) (intro.) and (c) 8., (12) (b) 1. b. and 2. (intro.), c. and (c) (intro.) and (13) (b) 2. a., renum. (13) (b) 2. c. to be (13) (b) 2. b., am. (13) (b) 3. (intro.), c. and (c) (intro.), am. (15) (a), (b) 3. b. and (c), (16) (b) 1. and (c), (17) (b) 3., (c) (intro.) and 11., (18), (a) and (b) 1. a., renum. (18) (b) 1. c. to be (18) (b) b. and am., renum. (18) (b) 1. d. to be 120.14 (18) (b) c., renum. (18) (b) 1. e. to be (18) (b) d. and am., am. (18) (b) 4. (intro.) and a. and b., renum. (18) (b) 4. c. to be (18) (b) 4. e., am. (18) (c) 2. (intro.), am. (19) (b) 2. e., am. (19) (c) (intro.), (19e) (b) 1. a. and e. and (c), (19s) (c) 1. (intro.) and (20) (b) 2. (intro.), and am. (21m) (c) 2., (22) (a) and (22) (b) 1. d., Register, July 1996, No. 487, eff. 8-1-96; r. and recr. (7) (b) 2. and 3, Register, September, 1997, No. 501, eff. 10-1-97.

NR 120.15 Interim best management practices and alternative design criteria. (1) INTERIM BEST MANAGEMENT PRACTICES.

The department may approve interim best management practices where necessary to meet the water resources objectives identified in the watershed plan. The department shall consult with DATCP regarding interim 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 interim 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; am. (1), Register, July, 1996, No. 487, eff. 8-1-96.

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

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

(b) Construction site control ordinances in accordance with ss. 59.974, 60.627, 61.354 and 62.234, Stats.

(2) **CONDITION OF GRANT.** Adoption, implementation and enforcement of these ordinances within the time frame specified under s. NR 120.08 (1) (b) 1. i. and k. shall be a condition of receiving funding from the department under a local assistance grant or a nonpoint source grant. Additional actions to implement and enforce these ordinances, once enacted, will be included in the annual workplan and will be subject to the provisions of s. NR 120.28 (1) and (2).

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

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

- (a) A statement of activities subject to the ordinance.
- (b) Standards, criteria and other conditions to 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.

(5) 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; r. (intro.), renum. (1) to (3) to be (3) to (5) and am. (4) (b) and cr. (1) and (2), Register, July, 1996, No. 487, eff. 8-1-96.

NR 120.17 Cost-share eligibility. (1) ELIGIBLE BEST MANAGEMENT PRACTICES. 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 Wisconsin pollutant discharge elimination system (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) **INELIGIBLE BEST MANAGEMENT PRACTICES.** 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) Activities covered by the WPDES permit program including those identified in chs. NR 200 to 299, except as provided in sub. (1) (g).
 - (c) Livestock operations which:
 - 1. Have applied and are eligible for a WPDES permit.
 - 2. Have been issued a WPDES permit.
 - 3. Have greater than 1,000 animal units.
 - 4. Have greater than 1,000 animal units and have been issued a notice of discharge under ch. NR 243.
 - (d) Activities required as part of or as a condition of a license for a solid waste management site.
 - (e) Activities funded through state or federal grants for wastewater treatment plants.
 - (f) Active mining activities.
 - (g) Pollutant control measures needed during building and utility construction, and storm water management practices for new developments.
 - (h) Pollutant control measures needed during construction of highways and bridges.
 - (i) The planting, growing and harvesting of trees associated with silviculture, except as necessary for site stabilization.
 - (j) Small scale on-site human domestic waste facility construction.
 - (k) Dredging of harbors, lakes, rivers and ditches.
 - (L) Dams, pipes, conveyance systems and detention basins intended solely for flood control.
 - (m) Operation and maintenance of cost-shared practices.
 - (n) Practices normally and routinely used in growing crops and required for the growing of crops or the feeding of livestock.
 - (o) 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.
 - (p) 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.
 - (q) 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. Inconsequential fluctuations in animal herd size may not be considered an increase under this section.
 - (r) Practices to be fully funded through other programs.
 - (s) Practices previously installed and necessary to support cost-shared practices.
 - (t) Changes in crop rotation.
 - (u) Minimum levels of street sweeping and leaf collection.
 - (v) Changes in location of unconfined manure stacks involving no capital cost.
 - (w) Nonstationary manure spreading equipment.
 - (x) Practices needed for land use changes during the cost-share agreement period.
 - (y) Other practices which the department determines are not necessary to achieve the objectives of the watershed project.
- (3) **DEMONSTRATION PROJECTS.** The department may establish alternative eligibility criteria for urban and rural demonstration

projects. With prior department approval, urban and rural demonstration projects meeting these alternative criteria may be implemented during the grant period.

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; r. (intro.), renum. (1) to (8) to be (2) (r) to (y), cr. (1) and (2) (a) to (q) and (3), Register, July, 1996, No. 487, eff. 8-1-96.

NR 120.18 Cost-share rates. (1) STATE COST-SHARE RATES. (a) Maximum state cost-share rates for individual best management practices are identified in Table 2. The cost-share rates for best management practices under existing cost-share agreements may be amended to use the rates identified in this section. The following maximum state cost-share rates shall be reduced by 50% for landowners of critical sites when a cost-share agreement is signed after the period of cost-sharing availability for critical sites has ended.

Practice	Maximum state cost-share rate
Contour farming	50%*
Contour and field strip-cropping	50%*
High residue management systems	50%
Cropland protection cover (green manure)	50%
Nutrient management (not to exceed a total of 3 years)	50%
Pesticide management (not to exceed a total of 3 years)	50%
Livestock fencing	50%
Intensive grazing management	50%****
Manure storage facilities – for first \$20,000 costs	70%*****
Manure storage facilities – for remaining costs	50%*****
Pesticide spill control facilities	70%
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 protection	70%
Shoreline buffers	70%
Wetland restoration	70%
Barnyard runoff management	70%
Animal lot abandonment or 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%
Well abandonment	70%

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

**Spill control facilities 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).

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

(b) Counties may use locally determined U.S. department of agriculture's cost-share rates per acre as provided for in Consolidated Farm Services Agency (CFSA) 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.

- \$9.00 per acre for contour cropping.
- \$13.50 per acre for strip-cropping.
- \$7.50 per acre for field strip-cropping.
- \$18.50 per acre per year for no more than 6 years for high residue management systems.
- \$25 per acre per year for up to 3 years for cropland protection cover (green manure).

(c) Counties may increase the state cost-share rate to a maximum of 80% for the following practices provided the conditions of s. 281.65 (8) (h), Stats., are met:

- Critical area stabilization.
- Grade stabilization structures.
- Shoreline and streambank protection.
- Roofs for animal lots and roofs for manure storage facilities.
- Demonstration practices when approved by the department.
- Animal lot relocation.
- Shoreline buffers.
- Wetland restoration.
- Structural urban best management practices installed by landowners other than governmental units.

(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) *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 \$35,000.

(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 the percentages for state cost-sharing in Table 2 and the average cost of these practices.

(3) LOCAL SHARE. Funds from sources other than appropriations granted under ss. 20.370 (6) (aa) and (aq) 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. 281.65 (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. 281.65 (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 with written approval from the department if the landowner or land operator can demonstrate economic hardship as defined in s. NR 120.02 (19). Under the provision of economic hardship, the state cost-share rate may be increased by a maximum of 15% above the standard percentage listed in Table 2 for all best management practices for which the landowner or land operator is eligible.

(b) Under the provision of economic hardship, the following percentage payment rates will apply to the construction of manure storage facilities and barnyard runoff control systems:

1. First \$20,000 of eligible costs	85%
2. Eligible costs over \$20,000	75%

(c) The maximum grant from the department for economic hardship cases for the construction of manure storage facilities 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; am. (1) (a) (intro.), (1) (a) Table 2 and (1) (b) (intro.), 1. to 3., 6., (c), (2) (e), (4) (a), r. and recr. (1) (b) 4., (4) (b), r. (1) (b) 5., (2) (c), renum. (2) (d) to be (2) (c) and am., cr. (4) (c), Register, July, 1996, No. 487, eff. 8-1-96; am. (1) (b) 4., Register, September, 1997, No. 501, eff. 10-1-97; **correction in (3) (intro) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1999, No. 527.**

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 acquired for perpetuity. 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.

(e) Animal lot relocation in conjunction with pars. (a) to (c), provided that written approval of the governmental unit is obtained prior to easement acquisition, in accordance with the requirements of s. NR 120.14 (18) (b) 6.

(2) The department may authorize, in writing, any governmental unit, non-profit organization or person to enter into easements or irrevocable leases or accept a donated conservation ease-

ment consistent with the eligibility provision of the approved priority watershed plan in accordance with the following:

(a) An easement acquired under this subsection shall be acquired for perpetuity.

(b) An irrevocable lease acquired under this subsection may not be for less than 20 years.

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

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

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

(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 for the purchase of easements in priority watershed areas.

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; renum. NR 120.185 to be (1), cr. (1) (d) and (2), Register, February, 1995, No. 470, eff. 3-1-95; am. (1) (intro.), (2) (intro.) and (4), cr. (1) (e), (2) (a) to (e), Register, July, 1996, No. 487, eff. 8-1-96.

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

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

(b) Acquire land or an interest in land which is contributing or will contribute nonpoint source pollution.

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

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

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

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

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

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

(f) Other information the department may request.

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

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

1. Appraisals are subject to department review and approval.

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

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

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

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

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

(e) Property acquired with a nonpoint source grant shall be maintained and managed in accordance with the provisions, conditions and descriptions in the grant contract.

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

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

(4) STATE COST-SHARE RATE. The maximum allowable state cost-share rate for the acquisition of property under this chapter shall be 50% of the acquisition cost of the property. The maximum allowable state cost-share rate for appraisals for the acquisition of property shall be 100% of the cost of the appraisal.

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

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

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

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

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

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

(f) In cases where the acquisition will prevent further degradation of water quality, the acquisition shall be cost-effective relative to the degree of threat of further degradation to the site.

History: Cr. Register, July, 1996, No. 487, eff. 8-1-96.

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 may select a contractor other than the low bidder, but shall contribute 100% of the difference between the bids. The cost-share payment shall be calculated based on the lowest bid received. However, cost-share may include additional final costs resulting from necessary design modifications as approved by the local governmental unit.

(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; am. (1) (c), Register, July, 1996, No. 487, eff. 8-1-96.

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 including the development of nutrient management assessments (including, but not limited to, those developed through professional service contracts), ordinance development, implementation and enforcement, information and education, pre-design and design of demonstration practices, easement administration, educating and training staff and implementation of the priority watershed project and requiring additional staff or 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. (a) Except as provided in par. (b), no local assistance grant shall be made for a watershed or lake

before the watershed or lake has been chosen by the land and water conservation board as a priority watershed or a priority lake.

(b) Local assistance grant allocations may be made to local governmental units sponsoring watershed or lake projects being considered as priority watershed or priority lake projects by the land and water conservation board under s. 281.65 (3) (am), Stats.

1. Subject to the availability of departmental funding, grant allocations may be made by the department to a maximum amount of \$20,000 per watershed or lake project.

2. Each grant allocation shall require a 100% match from the project sponsor.

3. The following costs are eligible expenditures for a local assistance grant allocation prior to being chosen as a priority watershed or priority lake project by the land and water conservation board:

- a. Delineation of watershed and subwatershed boundaries within the project area.
- b. Listing of names and addresses of landowners in the watershed.
- c. Surveys of land and water conservation practices within the watershed.
- d. Surveys of landowner needs and attitudes within the watershed.
- e. Development of information and education strategies for the project.
- f. Formation of a project citizens' advisory committee under s. NR 120.04.
- g. Other activities as approved by the department.

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

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

(b) Counties shall submit draft annual work plans and grant amendment applications in accordance with the procedures developed by DATCP in ch. ATCP 50 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 t. The following activities shall be eligible for grant assistance if additional staff or existing staff are required to plan or implement a project. The department may fund either existing or additional staff up to but not in excess of the amount set forth in the grant award. The participating governmental unit shall complete time sheets which will track hours spent on the project by all staff. Effective August 1, 1996, staff hours may not be accrued or carried over to a subsequent calendar year.
 - 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 during the implementation period;

- 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, implementing and enforcing a construction site erosion control and storm water management ordinance, and a manure storage ordinance under s. 92.16, Stats., except for those portions of the ordinance enforced under the authority of ch. Comm 21. The department may identify, in the watershed plan, a period of time, not to exceed 5 years, during which ordinance support will be made available to a local unit of government and may also identify the level of reduction in cost-share rates during the specified period of time in order to reflect the actual or anticipated collection of revenues;
- 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.
- s. Administrative costs associated with initial establishment of local funding programs such as storm water utilities.
- t. Costs of appraisals for the acquisition of property defined in s. NR 120.186.
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 personal vehicle mileage charges, meals, lodging and other reasonable travel expenses necessary to the project.
9. The cost of office space required for the project prorated based on percent use on 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.
13. Annual vehicle expenses for an owned or leased vehicle, including:
 - a. Depreciation, if owned.
 - b. Lease payments, if leased.
 - c. Gas, oil, maintenance and insurance paid by the grantee. A mileage log shall be kept for each vehicle used in the nonpoint source pollution abatement program listing the total miles driven. The annual costs claimed shall be based on a proration of the miles driven for eligible tasks stated in subd. 1. versus the total miles driven.
14. Travel expenses for the citizen advisory committee established under s. NR 120.04 including mileage charges and meals necessary to the committee's function. Mileage and meal expen-

ses may not exceed the allowable state per diem rate. Total committee reimbursements may not exceed \$1,000 per year.

(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 NRCS after consideration of the counties' overall land conservation office needs.

2. Office equipment and office furnishings including desks, chairs, calculators, drafting equipment, telephones, 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. As a condition of a local assistance grant for core and segmented urban program activities, core urban program activities, with the exception of developing 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, implemented and enforced in accordance with the time frame in s. NR 120.08 (1) (b) 1. i.

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

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

(a) Direct costs for other items not listed as eligible for 100% or 70% cost-sharing.

(b) 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.

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; am. (1), (2) (intro.), (3) (b), (4) (a) (intro.), 1. (intro.), f., m., r. and s., 8. and 9. (b) 1. and 2., (c) 1., cr. (2) (b), (4) (a) 1. t., 13. and 14., r. (4) (a) 2., (d) 2. and (7), renum. (4) (d) (intro.), 1. and 3. to be (5) (intro.), (a) and (b) and am. (5) (a), Register, July, 1996, No. 487, eff. 8-1-96; **correction in (4) (a) 1. m. made under s. 13.93 (2m) (b) 1., Stats., Register, November, 1999, No. 527.**

NR 120.22 Interest earned on grant advances.

(1) Interest shall be earned and accrued on nonpoint source grant advances. The tracking of interest on local assistance grant disbursements is optional. To determine the amount of interest to be credited to the project, the governmental unit shall calculate the interest earned using an average account balance and interest accrued over a period of time or other equitable manner.

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

exceed the cost-share limits described in s. NR 120.18 (1) (a) and (b).

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

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

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, July, 1996, No. 487, eff. 8-1-96.

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 project 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 Financial Assistance, 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: Cost-share calculation and practice verification forms may be obtained, at no charge, from the Bureau of Community Financial Assistance, 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 grant agreement grantees.

(d) Failure to submit reports on schedule as required by s. NR 120.25 (2) may result in withholding of grant payments.

(4) RETENTION REQUIREMENTS. 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. (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; am. (3) (d), cr. (4), Register, July, 1996, No. 487, eff. 8-1-96; **corrections in (4) made under s. 13.93 (2m) (b) 1., Stats., Register, November, 1999, No. 527.**

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 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 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) A systematic method to assure timely and appropriate resolution of audit findings and recommendations by the department.
 - (g) A final accounting of project expenditures submitted to the department within 120 days of the completion of all watershed project work.
 - (h) Accurate and complete time reports for all employees working on the project.
 - (i) An identification of the least cost practices.

(2) REPORTING REQUIREMENTS. (a) *Annual reports.* Local assistance and nonpoint source grantees in implementation shall report to the department an annual accounting for staff time and accomplishments regarding its activities funded under the local assistance and nonpoint source grants and shall report the amount of interest accrued and expended as required under s. NR 120.22 (1).

(b) *Periodic reports.* The department may require more frequent reports that those required under par. (a) from a local assist-

ance or nonpoint source grantee which account for staff time and accomplishments regarding its activities funded under local assistance and nonpoint source grants.

(c) *Final project report.* The department, with assistance from DATCP and the appropriate local units of government, shall prepare and publish a final project report within 18 months of project completion.

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

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; am. (1) (b), r. (1) (f), (j), renum. (1) (g) to (i) and (k) to be (1) (f) to (i), r. and recr. (2), Register, July, 1996, No. 487, eff. 8-1-96.

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.

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; r. (3), Register, July, 1996, No. 487, eff. 8-1-96.

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).

(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 ss. NR 120.03 and 120.05.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (4), Register, July, 1996, No. 487, eff. 8-1-96.

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

(2) The following sanctions may be imposed by the department for noncompliance with the provisions of s. 281.65, Stats.,

this chapter or any grant agreement entered into or amended in accordance with the provisions of this chapter.

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

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

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

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

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

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

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

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; renum. (intro.), (1) to (6) to be (2) (intro.), (a) to (f), cr. (1) and (3), Register, July, 1996, No. 487, eff. 8-1-96.

NR 120.29 Variances. The department may approve in writing a variance from a requirement of this chapter upon written request when the department determines that a variance is essential to effect necessary grant actions or water quality objectives and where special circumstances make a variance in the best interest of the program. A governmental unit's written variance request shall clearly explain the circumstances justifying the variance. 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; am. Register, July, 1996, No. 487, eff. 8-1-96.

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. 281.65 (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 accomplishment reports, annual work plans or other related activities.

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; am., Register, February, 1995, No. 470; am. Register, July, 1996, No. 487, eff. 8-1-96.

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