

B

**J25 Comment:** (LCD) For the regulator and regulated the rules lack uniform statewide implementation strategies and incentives necessary to accelerate the program beyond current capabilities. The real impact of the rules will be negligible because:

- Implementation grants from the TRM program continue to be based on voluntary applications and awarded through competitive scoring.
- Selected isolated TRM projects are still "distributed evenly around the state" by political boundary, not priority.
- Within TRM project areas there is no requirement for compliance with the performance standards. (see additional comments under NR 151, general comments on implementation)

**Response:** See answer to J5 above. In addition, there is nothing in the statutes that require a governmental unit to enforce performance standards or to submit grant applications. Consequently, DNR has no authority to require local participation in these rules. Also, the requirement to fund at least one project in each DNR region is to implement the statutory requirement under s. 281.65 (4c) (c). This states that "To the extent practical, within the requirements of this section, the department shall select projects so that projects are distributed evenly around the state." The department believes that selecting one project per region and then continuing with the selection based on rank score is a responsible method to distribute projects around the state without sacrificing project quality. Finally, the state statute authorizing this grant program lists several water resources needs that the program is to address. Compliance with performance standards is only one of several needs identified. NR 153 will place a high priority on projects designed to meet performance standards but, in keeping with the statute, will allow funding for other types of projects where the water quality need is high and the project is cost-effective.

**J26 Comment:** (LCD) The rules do not require that performance standards be met in those state funded project areas (voluntary, competitively scored TRM projects).

**Response:** The state statute lists six types of water quality concerns that TRM projects may address, only one of which is the need to meet performance standards. This is clear statutory direction that compliance with performance standards is only one of several program goals. Projects designed to meet performance standards will have a competitive edge against other projects, all other factors being equal. However, DNR recognizes there may be occasional projects needed to manage problems for which there are no performance standards, including chlorides, thermal impacts, loss of water quality corridors, channelized flow and streambank erosion.

**J27 Comment:** (LCD) The majority of funds available for the redesigned nonpoint program are only available through TRM grants. These grants, to be awarded on a voluntary competitive scoring system, ignores legislative intent as well as the 1998 WCA "Block Grant" resolution that was approved by counties on a vote of 60 to 9.

**Response:** See answer to J5 above. Also, the department must draft rules consistent with state law. Block grants are not a legal mechanism for distributing grants under s. 281.65(4c).

**J28 Comment:** (Co. Ext., LCD) The phased out funding for the priority watershed program needs to be allocated to effective local assistance grants for county LCDs to include opportunities for implementing prevention-based strategies. It is especially important that the local assistance grants provide for a minimum of three full-time staff for LCDs in all counties. Additional priority watershed funds that come available should be allocated to that purpose, not to creating a large new TRM grant program through NR 153. If the partnership with the LCDs is not staffed and funded equitably across the state, the overall nonpoint source management objectives have no hope of being implemented.

**Response:** See responses to comments J5 and J23 above. Also, the type of funding for TRM grants is primarily bonding revenue, which can only be spent on structural management practices. It cannot be spent on non-structural practices, such as nutrient management or conservation tillage, and it cannot be spent to support staff.

**J29 Comment:** (WPVGA). We support a 90% cost-share provision to comply with the rules. Because of the poor economic times in agriculture, it makes little sense to make it even tougher for agricultural

producers to survive by requiring producers to comply with expensive new regulation. If these rules are truly for the public good, the public should participate in the cost.

**Response:** Statutes [s. 281.65 (8) (f)] limit DNR cost-sharing of TRM grants to 70% maximum, except in the case of economic hardship when the cost sharing will be increased up to a rate of 90%.

**J30 Comment:** (WLWCA/WALCE, several counties) NR 153.15(1) Eligible costs. Clarify if the implication is that counties can be reimbursed for their "design and construction services" costs.

**Response:** The department can not pay the county to perform design work under a local assistance grant to the county. However, the department can provide, as part of a construction grant, funds to reimburse the farmer if he hires someone, such as a consultant, to do the design work. This arrangement is required by changes in the state law that removed DNR's ability to write local assistance grants to governmental units for several activities formerly covered under the Priority Watershed Program.

**J31 Comment:** (WLWCA/WALCE, several counties) NR 153.15(2) Ineligible Costs. This whole section is confusing due in part to definitions for "significant expansion," "significant changes" and "significant increases." Subd. (a) and (c) will be particularly difficult to decipher and administer and need clarification. This section's requirements based on livestock numbers ignore location and topography in terms of impact. Large operations aren't always significant as small operations aren't always insignificant. We recommend clarifying these terms and eliminate requirements based on numbers of livestock below NPDES permit levels, and base compliance on meeting a performance standard, as was intended by AWAC and OAC.

**Response:** We reorganized this subsection to help clarify how expansions of livestock facilities affect eligibility. We agree with the comment that compliance requirements should be based on whether performance standards are being violated, not on the size of the operation. The draft rules require compliance at all sites that do not meet performance standards, regardless of size. The *cost-share policies* for expansions are different, however, for different size operations. NR 151 states that cost sharing of water quality controls needed to meet performance standards is *required* for small expansions if the expansion occurs at the time the base facility is being upgraded to meet performance standards. NR 153 makes these costs *eligible* so that DNR has a mechanism to meet the cost share requirement of NR 151. NR 153 also allows the cost-sharing of water quality controls needed to meet performance standards for expansions up to 20% for operations that are between 250 and the size requiring a WPDES permit, but this cost sharing is *not required* as a condition of compliance. It would be up to the local LCD staff to determine whether water quality controls for such expansions should be cost-shared. This policy was developed as a mechanism to integrate small expansions at smaller operations at the time when management improvement are being made to comply with the performance standards. This policy should help maintain the viability of smaller operations. Cost sharing is not required, or even eligible, for water quality controls needed to comply with a WPDES permit.

**J32 Comment:** (individual) NR 153.15(2). Make eligible design work that is completed prior to initiation of construction grant.

**Response:** DNR agrees with this comment and made the appropriate change.

**J33 Comment:** (WLWCA/WALCE, several counties) NR 153.15(2)(d)2 specifies that base livestock numbers are registered the day that a county or the DNR visits a site and documents the number. This appears to contradict the responsibility of a landowner to meet a performance standard particularly if due to increases in livestock cause non-compliance prior to a site visit. Clarify "when" a landowner becomes out of compliance with a performance standard, based on numbers of livestock or based on direct runoff, and how this impacts cost share requirements.

**Response:** See response to J31 above. The other questions raised by this comment are dealt with in NR 151.095, which identifies compliance and cost share requirements. A note was added to NR 153.15 that cross-references NR 151.09 and NR 151.095 and explains how these rule provisions are linked.

**J34 Comment:** (DATCP) NR 153.15(2)(l). Modify "the planting, growing and harvesting of trees associated with silviculture, except as necessary for site stabilization, and for buffer areas." As written, this paragraph seems to prohibit cost-sharing for trees established in riparian buffer areas.

**Response:** The department agrees, but at the same time does not want to use cost share funds to plant trees intended for commercial harvest. This clause was modified to state that a cost share grant may not be used to reimburse a landowner for the planting of trees intended for commercial harvest.

**J35 Comment:** (DATCP) NR 153.15(2)(zd). We agree that the DNR should not reimburse costs that another unit of government is also reimbursing. This paragraph should clarify how this will be documented.

**Response:** The department agrees. This paragraph was supplemented by clarifying language in that portion of the rule that identifies eligible projects. In addition, language was added to the section on reimbursement procedures that will require that information be submitted as part of the reimbursement request indicating if other funding sources are being used and to show that cost-share provisions are not being violated.

**J36 Comment:** (WLWCA/WALCE, several counties) NR 153.15(2)(zd). Clarify what this implies in terms of cost share funds supplied by local units of government in excess of the state's 70 percent.

**Response:** See answer to J1 above.

**J37 Comment:** (individual) NR 153.15(3). Allow the use of interim BMPs and alternative design criteria for urban as well as agricultural BMPs.

**Response:** DNR agrees that this option should be available in limited circumstances. It will not be available if the BMP is being installed to meet a performance standard contained in NR 151. Any BMP installed to meet a performance standard under NR 151 must meet technical standards developed through the process in NR 151, Subchapter V. The language was modified to incorporate the comment with the restrictions noted.

**J38 Comment:** (DATCP) NR 153.15(3)(b)2b. Add the underlined words: "That the practice is a cost-effective means..."

**Response:** This change has been made.

**J39 Comment J22 (DATCP)** regarding least cost provisions also applies to NR 153.15(6)(b).

**J40 Comment:** (LCD) NR 153.16(1)(d) We oppose funding being provided through TRM grants to compensate staff for time spent providing technical assistance or administrative services related to the TRM project. These references create a funding source for TRM project management and diminish the single grant concept for funding supported by the counties through LWRM plans. It was not the intention of the legislature to recreate the old non-point source program by shaping the TRM projects to look like priority watersheds. Eliminate these references but ensure that phased out nonpoint source project funding is used to enhance the single grant awards to counties.

**Response:** See answer to J5 above. In addition, it is important that the rule provide for the administration of staff support for these projects in the event that, in the future, funding for this purpose becomes available. This provision would provide funding opportunities for non-county grantees such as cities, villages, towns or lake districts. It might also provide limited opportunities for a landowner or county to seek reimbursement for selected activities that are not being funded under ATCP 50. Any appropriation for this type of activity would be separate and distinct from appropriations that DATCP uses to support county staff funding under ATCP 50, and would not reduce in any way the amount of funding that DATCP has to support staff through its base level staffing program.

**J41 Comment:** (DATCP) NR 153.16(2). Modify "Applicants shall submit completed project applications to the department by April 15 of each year...." The current language indicates a due date of July 15 each year, but s. 281.65(4C)5(b) requires the DNR to provide the land and water conservation board with the scores of project applications no later than September 1 of each year. Two (2) weeks does

not allow much time for the review and scoring of applications, including consultation with other agencies. In addition, the DNR and DATCP are required to jointly prepare an annual allocation plan. The timing of the application processes for the targeted runoff management projects should coincide with the application for DATCP's funding. This will facilitate preparation of the joint allocation plan, and assure that targeted runoff management project scoring and selection takes into account the availability of s. 92.14 funding for cost-sharing from DATCP. Conversely, it will facilitate DATCP consideration of staff funding needs for targeted runoff management projects.

**J42 Comment:** (individual) NR 153.17(1). July 15 is too late in the year to be starting the application review process. The DNR should be allowed to require application submittals earlier in the year, such as May 1.

**Response:** The due date will be changed to April 15 to be consistent with the deadline for applications under ATCP 50 and to provide a longer review period.

**J43 Comment:** (Co. lake spec.) NR 153.17(2) Project Scoring. I am glad that the rules include the existence of threatened waters, rather than just impaired waters. It is a lot easier and less expensive for Wisconsin to protect non-degraded waters than to only address already degraded waters.

**Response:** We are glad you agree.

**J44 Comment:** (DATCP) NR 153.17(2)(b)8. Modify "Evidence that the proposed project is consistent with the statewide and targeted nonpoint source performance standards in ch. NR 151, areawide water quality plans, and county land and water resource management plans." S. 281 makes it clear that the targeted runoff management plans must be consistent with these two plans.

**Response:** DNR agrees that grants must be consistent with both of these documents. This requirement appears in a different part of the rule that addresses what projects are eligible. NR 153 requires that eligible project must be consistent with DNR objectives established on a watershed or other geographic basis and with approved county LWRM plans. This requirement is reiterated by cross-reference elsewhere in the rule. No further references or language are needed.

**J45 Comment:** (co. ext., LCD) NR 153.17, Project Application (2) Required Information. I appreciated the department's efforts in this application section to include criteria for grant selection that recognize and include threats to water quality, not just already impaired waters. On P. 21 Lines 14-16, add the following language to continue recognizing threats: "A project evaluation and monitoring strategy including pre- and post-project information concerning actual or potential changes in land use, changes in pollutant loading or changes in chemical, physical or biological conditions of the water resources affected by the project.

**Response:** We agree and made the sentence change to include "actual or potential" regarding land use.

**J46 Comment:** (WLWCA/WALCE, several counties) NR 153.19 Project Scoring. The intent to achieve performance standards should be the highest priority for evaluating TRM scores. The rules do not require that critical sites, much less higher priority sites within TRM projects, be treated. We recommend that, consistent with the critical sites concept in the priority watershed program, landowners with non-complying sites within a TRM project area be required to comply with performance standards as a first use of cost-share funding. Also add this requirement to NR 153.21(3) and to NR 151.

**Response:** DNR agrees that compliance with performance standards is an important program goal, but it is not the only one. While compliance will be a dominant criterion in determining project priority, other key factors are important and are included in the proposed rule. If the county applies for a TRM grant specifically to bring all sources within an area into compliance with performance standards, this will be reflected in the grant. It is not appropriate to make this requirement in the rule as this will not be the strategy of all projects that are funded. Also, if a grantee can achieve compliance with all sources on all sites within the project period, that is good but is not required by the rule. A grantee will be able to use multiple TRM grants to accomplish this goal. DNR feels that this flexibility is important to efficiently use the funds available in accordance with the capability of landowners.

**J47 Comment:** (Co. lake spec.) NR 153.19 Project Scoring. I disagree with the highest priority being given to impaired waterbodies. It counteracts the language in NR 153.17 that recognizes the importance of addressing threatened waterbodies.

**Response:** We disagree. We intended that both types of projects can be funded under this grant program, and a higher priority is given to waterbodies deemed "impaired"; DNR has several other funding sources that address "threatened" waterbodies such as River Protection or Lake Protection grants.

**J48 Comment:** (Co. lake spec.) NR 153.19. I strongly disagree with giving multipliers to projects that are agricultural or urban in nature. By doing so, it discriminates against rural, non-agricultural nonpoint source pollution. Rural residential development, commercial development outside of urban areas, and forestry practices are all very critical sources of nonpoint source pollution in northern Wisconsin. We need the means to address these concerns. These are nonpoint rules, not urban or rural nonpoint rules.

**Response:** DNR believes that projects located in areas that have good implementation and enforcement programs should be rewarded with multipliers. We agree that projects that are neither strictly rural nor urban in nature should be able to receive the same multipliers as those projects that are either clearly rural or urban in nature. Consequently, the rule was revised to provide that if a project does not clearly fall under either the agricultural or urban provisions (such as a non-agricultural project in a rural setting), DNR and the grantee will jointly determine which "multiplier" provisions will apply.

**J49 Comment:** (individual) NR 153.19(2). Some sort of scoring priority should be specifically mentioned for projects affecting surface or groundwater sources of public drinking water.

**Response:** We agree, but no change is needed. Scoring priorities are based on water quality need. The list of water quality needs is included in the rule and specifically mentions needs related to surface and ground water sources of drinking water.

**J50 Comment:** (DATCP) NR 153.19(2)(b)1. Modify "Key components to include: "...consistency of project with county land and water resource management plans and other resource management plans..."

**Response:** DNR recognizes and the statute reflects the importance of county land and water resource management plans and we cannot make a grant unless it is consistent with these plans.

**J51 Comment:** (DATCP) NR 153.19(3). Add two (2) new paragraphs: "(5) Consistency with county land and water resource management plans" and "(6) Insufficient availability of funds provided under s. 92.14 to conduct the project."

**Response:** Consistency with county LWRM plans is a basic eligibility requirement and is covered already under NR 153. DNR does not believe that it is appropriate to assign a minimum score requirement to projects that cannot be funded sufficiently under s. 92.14 because it is not always apparent this early in the process exactly how each county will apply funds from different programs. The rule allows funds under s. 92.14 and 281.65 to be combined to form the state share up to 70%. These safeguards are adequate. Attempting to figure all this out at the time of application, which is a full year before implementation, is too restrictive. If DNR and DATCP believe that grant overlap is a problem the agencies can adjust grants under the allocation plan. In addition, reimbursement procedures are being amended to require an accounting of where projects are jointly funded and to show that restrictions on combined cost sharing are not exceeded.

**J52 Comment:** (DATCP) NR 153.19(4). The proposed rule should not increase the scores for projects as a result of counties having ordinances. This approach places too much emphasis on one type of implementation strategy over another, and does not consider the enforcement provisions under s. 281.98 Wis. Stats. It means that most of the funding would be targeted to counties with ordinances, leaving other counties with effective voluntary strategies unable to secure adequate funding.

**J53 Comment:** (DATCP) NR 153.19(4)(b)2c. For funding TRM projects, DNR should not give additional scoring points to counties that have adopted local ordinances that regulate sources of nonpoint source pollution in the proposed TRM area.

**Response:** The creation of a multiplier for counties with ordinances is appropriate. The multiplier is NOT a screening question. This means that counties without local ordinances are still eligible to apply,

although they will not compete as well, everything else being equal. We believe it is more cost-effective to spend money in counties that have ordinances in place because it is more likely that other actions needed to protect water quality will be taken. Projects in areas with ordinances will be recognized in the review process and receive a higher overall score.

**J54 Comment:** (DATCP) NR 153.20(1)(a). Modify "The department shall also notify the land and water conservation board of the projects that it has identified and proposes to select for funding in the following calendar year, as part of the joint annual allocation plan prepared in consultation with the department of agriculture, trade and consumer protection."

**Response:** We will use the LWCB notification process that is outlined in the statute and reflected in the rule. DNR agrees that the final allocation plan should reflect the TRM grant information. We added a clause to the rule requiring DNR to submit information about its grant decisions to DATCP for inclusion in the joint allocation plan. It will be up to DATCP to incorporate that information into the plan. Since DATCP is required to submit the plan to the LWCB, the use of the plan as a vehicle to inform the board of DNR grant decisions will occur.

**J55 Comment:** (WLWCA/WALCE, several counties) NR 153.20(1)(b) Project selection and funding. This paragraph undermines the whole notion of targeting projects based on impairment. We recommend that annual cost-share grants to counties be used to satisfy the even distribution requirements in the statutes and allow the competitive TRM grant system be used as a means of truly "targeting" priority resource concerns.

**J56 Comment:** (LCD) This is no different than the current watershed programs. There are too many strings attached to the DNR. Wasn't the purpose of this effort to improve on the current nonpoint program, which is not very effective? We should not create another grant program in which counties are competing with each other on a biennial basis. We at the county level are constantly applying for grants, which takes time away from other "on-the-ground" duties. Let counties identify needs through their LWRM plans and supply us with a consistent long term base funding.

**Response:** This is a practical way of implementing the statutory requirements and has been used for the last three years under the direction of the LWCB. By state law all of TRM funding needs to be distributed under a competitive process; base grants suggested by this comment must come from DATCP.

**J57 Comment:** (WLWCA/WALCE, several counties) NR 153.21(2) Grant period length. The 3-4 year time frame is inconsistent with the requirement to provide cost sharing for certain BMPs for a period of 6 years. These inconsistencies will create a real problem for compliance and administration.

**Response:** The grant period is a statutory limit. The department has changed funding periods for practices to a 4-year maximum to be consistent with statutory requirements.

**J58 Comment:** (DATCP) NR 153.21(5)(d). Add a new sentence to the end of this paragraph: "The department shall also require that the grantee certify that funds provided by the department of agriculture, trade and consumer protection under s. 92.14 are insufficient for this purpose."

**Response:** This department agrees with this concept and reflects the restrictions imposed under s. 281.65(4c)(am)2. in three locations of the rule. First, the statutory clause will be added to the basic project eligibility section along with a statement that the department may consider funding under s. 92.14 to be insufficient until such time as a joint allocation plan is developed and approved that specifically identifies full funding under s. 92.14 for the project. Clauses were added to the cost share eligibility sections and to the reimbursement sections that guard against funds under s. 92.14 and s. 281.65 being combined in such a way as to exceed a total of 70% in state share, or 90% in cases of economic hardship.

**J59 Comment:** (WLWCA/WALCE, several counties) NR 153.22. Cost-share agreement. Change "comparable" level of pollution control to "equal to or greater" level of pollution control.

**Response:** The department agrees and made the recommended language change.

**J60 Comment:** (Co. lake spec.) NR 153.22 Change the threshold for recording cost-share agreements with the register of deeds office to \$25,000 to make it consistent with DATCP's cost sharing.

**J61 Comment:** (WLWCA/WALCE, several counties) NR 153.22 Cost-share agreement -- The \$10,000 per BMP threshold for recording a contract with the register of deeds is too low and will create unnecessary paper work for small projects. We recommend increasing this limit to \$25,000 to be consistent with the limit already established by DATCP.

**Response:** See response to comment E321.

**J62 Comment:** (DATCP) NR 153.22(3)(k). Modify "...including compliance with performance standards under ch. NR 151 to produce a significant increase in on-going pollutant loading to surface water or ground water." The current language would prohibit the landowner from receiving cost sharing for needed conservation practices, or require the landowner to pay back any cost-share funds that had previously been received. This would be the case even if the amount of increased pollutants was relatively insignificant. For example, the landowner might wish to change land use on some part of the operation from agricultural to forestry, which might involve some small increase in erosion or sediment during the period of establishment.

**Response:** The department agrees, and has added a qualifier.

**J63 Comment** C68 (WAL) regarding maintenance period apply to this section.

**J64 Comment:** (DATCP) NR 153.23(2)b. Modify "The maximum value of donated labor may not exceed the local market wage for equivalent work." Landowners who "donate" their labor as part of the matching requirement for cost-share funds should not be forced to do so at a rate equivalent to the federal minimum wage, regardless of the degree of labor involved.

**Response:** The department agrees. Local market wage will be included as the standard.

**J65 Comment:** (individual) There should be consistency between NR 153 and NR 155. Consequently, applicable comments under NR 153 should be carried through to NR 155. Specifically, this includes comments to add urban structural practices to the list of BMPs eligible for easements, to add cost-share rates for easements in general, to make eligible the design work that is completed prior to the initiation of a grant, and to allow use of interim BMPs and alternative design criteria for urban practices.

**Response:** Urban structural practices were added to the list of BMPs for which easements can be funded. Maximum cost share rates for easements and land purchases will be clearly stated in both codes. Design work completed prior to the initiation of a grant will be eligible under both NR 153 and NR 155 to encourage more cost-effective projects. Interim and alternative criteria were added for urban practices except for those cases when the urban BMP is designed specifically to meet a performance standard. In those cases, the standard must follow the development process outlined in sub-chapter V of NR 151.

**J66 Comment:** (co. Ext., LCD) NR 153.24, Easements. I support the inclusion and use of easements as very valuable strategies along with property acquisition and urge identical language in this section as I recommended for NR 120.185 related to eligible practices and specific wording changes. These include eliminating the riparian buffer dimensional requirement, adding wetland protection, adding shoreline protection and restoration, adding county land and water resource management plans for approval of any other best management practice, and adding easement cost share rates (70 percent for easements and 100 percent for appraisals).

**Response:** The cost-share rates for easements and property acquisitions was clarified. The maximum cost-share rate will be 70% for rural easements, 50% urban project easements and 50% for all property acquisitions. Appraisals will remain at 70% because of statutory limits. A clause was also added that DNR must review and approve the appraisals, to maintain assurance that the 70% rate is applied to a reasonable appraisal and to maintain consistency with property acquisition procedures, where DNR must also do this. Under ch. NR 155, The maximum cost share rate will be 50% for property acquisitions and easements.

The water quality corridor standard has been deleted. Riparian buffers will be encouraged, but not required. The minimum width of riparian buffers must be 35 feet to be eligible for cost sharing. Urban structural practices were added to the list of BMPs for which easements can be funded. Design work completed prior to the initiation of a grant will be eligible under both NR 153 and NR 155 to encourage

more cost-effective projects. Interim and alternative criteria were added for urban practices except for those cases when the urban BMP is designed specifically to meet a performance standard. In those cases, the standard must follow the development process outlined in sub-chapter V of NR 151.

The use of easements will be restricted to restoration projects and will not be expanded to protection projects as requested. DNR has other programs (e.g. Stewardship) that focus on easements as protective measures. Property acquisition under NR 153 may be used for either restoration or protection. We did not include the reference to LWRM plans because by statute TRM grants must be consistent with county land and water resource management plans. This requirement appears elsewhere in the rule.

**J67 Comment:** (Co. lake spec.). NR 153.24. I support the use of TRM funds for easements and the provision to authorize non-profit organizations to accept a donated conservation easement. I question the riparian buffer width requirement of 66 feet. It should really be consistent with other buffer standards in these rules. Inconsistencies make these rules harder to implement.

**Response:** The water quality corridor is no longer required, but eligible as a voluntary practice. Minimum width required for cost-sharing is 35 feet.

**J68 Comment:** (individual) NR 153.24(2). Add structural urban best management practices to the list of practices eligible for easements.

**Response:** The department agrees and has made the change.

**J69 Comment:** (individual) NR 153.24(5). Add cost-share rate for easements.

**Response:** See response to comment J66.

**J70 Comment:** (co. Ext., LCD) NR 153.25. Property acquisition. Eligible activities should include protection-based property acquisition, not just for lands already contributing nonpoint source pollution. Add the following wording: "(b) Acquire land or an interest in land identified in the grant application, which is contributing or will contribute nonpoint source pollution, or provide protection from nonpoint source pollution."

**Response:** The sentence in question is very clear. The comment's suggestion would be redundant.

**J71 Comment:** (DATCP) NR 153.29(3). Add a new paragraph: "(d) Financial audits for county grantees will normally be conducted through the annual "single county audit."

**Response:** DNR no longer uses the single audit, but instead hires outside auditors.

**J72 Comment:** (DATCP) NR 153.29. Add two new paragraphs and number them NR 153.29(4) Open Records Requirements: "(a) All project-related records are subject to the state's open records law." and "(b) The grantee will keep any confidential information that is not subject to the open records law, such as social security numbers that is required for income tax purposes for the cost-share funding safe from unauthorized access."

**Response:** We agree and added language as suggested that incorporates open records language.

**J73 Comment:** (DATCP) NR 153.30. There is no provision for long-term monitoring and evaluation of whether the targeted runoff management project made a lasting change. Add a new paragraph: (4) The department may require the grantee to track the project outcome in the county land and water resource management plan, according to the schedule agreed between the department and the county in which the project is located.

**Response:** DNR will require that the grantee submit an evaluation report consistent with the evaluation strategy included in the grant application. The proposed rule does not require that each project perform water quality monitoring to evaluate project success because this approach is expensive and technically problematic. However, the reporting of evaluation measures the grantee has identified and upon which the score is based will be explicitly required. The comment suggests how county plans might be used to plan and implement water quality monitoring. DNR has no authority over the content of county LWRM plans and consequently cannot create a requirement like that suggested. However, the DNR, DATCP and governmental units will enter into an intergovernmental agreement that sets forth an implementation

strategy. One of the subjects to be covered in the agreement is program evaluation including, if appropriate, water quality monitoring.

**J74 Comment:** (WLWCA/WALCE, several counties) NR 153.31 Variances, and NR 153.32 Grant evaluation and enforcement -- Neither one of these sections specifies a procedure or timetable for DNR to respond to appeals from the county over a determination made by the DNR. We recommend adding procedures and timetable for responses from the DNR to both sections.

**Response:** This language is not appropriate for this rule. Grantees already have normal appeal rights under state law.

### **K NR 155 Urban Nonpoint Source Water Pollution Abatement and Storm Water Management Grant Program**

**K1 Comment:** (WLWCA/WALCE, several counties) There is too much overlap between NR 155 and NR 153. There should be a split between point/nonpoint or urban/rural. Right now urban nonpoint projects don't know which grant to apply for and have the potential to drain funding for rural projects.

**Response:** It is true that both of these grant programs have an "urban" component but NR 153 and NR 155 are governed by separate statutes and have well-defined policies, we are obligated to keep them separate and maintain two distinct programs. The department believes the current organization of these rules (NR 153 and NR 155) is the best. No matter how these rules are organized, it will not affect the fact that urban projects can be funded under the TRM program; municipalities are entitled under the statutes to apply for and receive these grants.

**K2 Comment:** (CWC) We are concerned about the enforcement provisions. Grants to counties should both encourage local ordinances and require a county receiving a grant to have to refer enforcement actions to the DNR. It makes no sense to give grants to local agencies that do not have a process for referring enforcement actions when appropriate.

**Response:** Under this rule, the department may not provide grant funding for management practices unless the governmental unit with jurisdiction over the project area ensures adequate implementation of construction site erosion and storm water management. The assurance requirements are to be met by the adoption, implementation and enforcement of local policies, plans and ordinances. The department does not believe that a requirement for formal referral to DNR is appropriate or necessary as a condition of receiving a grant.

**K3 Comment:** (WLWCA/WALCE, several counties) Local staff previously funded by state grants should qualify for local assistance funding for urban ordinances (especially if DATCP cuts urban funding).

**Response:** Ordinance development is already covered, including staff, under ch. 155. Short-term ordinance enforcement might be covered, depending on how competitive the application is, but the program intends this function to be funded primarily, if not completely, with local permit fees.

**K4 Comment:** (DATCP) Some mention should be made of protecting cultural resources as these urban runoff control projects are built.

**Response:** DNR agrees and added language in four parts of the rule to cover this and other related issues. The revised language balances the need to select and conduct projects with the need to assure that projects comply with a multitude of other state laws. First, the map submitted with the application is to be accompanied by information the applicant is aware of that concerns endangered, threatened or wetland resources, historic properties or historic places contained in the project area or potentially affected by the project. Second, the DNR may consider an application incomplete, and will not score the project, if issues relating to navigable waters, wetlands, historic places, historic properties, endangered resources or threatened resources are significant and unlikely to be resolved in a timely manner. Third, if DNR proceeds and scores a project it will inform applicants if the location of a selected project indicates measures may be needed to address potential negative impacts of the project on navigable waters or these endangered, threatened or historic resources or sites. Finally, if these issues are not resolved at the time a grant is scheduled to be issued, DNR can decide to not issue the grant or to issue the grant with conditions that the other resource issues be resolved.

strategy. One of the subjects to be covered in the agreement is program evaluation including, if appropriate, water quality monitoring.

**J74 Comment:** (WLWCA/WALCE, several counties) NR 153.31 Variances, and NR 153.32 Grant evaluation and enforcement -- Neither one of these sections specifies a procedure or timetable for DNR to respond to appeals from the county over a determination made by the DNR. We recommend adding procedures and timetable for responses from the DNR to both sections.

**Response:** This language is not appropriate for this rule. Grantees already have normal appeal rights under state law.

- A General Comments
- B General Funding & Cost Sharing
- C NR 120 – Priority Watershed Management
- D NR 151, subch. I – General
- E NR 151, subch. II – Agriculture Performance Standards and Prohibitions
- F NR 151, subch. III – Non-agriculture Performance Standards
- G NR 151, subch. IV – Transportation Performance Standards
- H NR 151, subch. V – Technical Standards Development Process for Non-agriculture Performance Standards
- I NR 152 – Model Ordinance for Stormwater Management
- J NR 153 and General Grants Comments
- K NR 155 – Urban Nonpoint Source Water Pollution Abatement & Storm Water Management Grant Program
- L NR 154 – Best Management Practices & Cost Share Conditions
- M NR 216 – Stormwater Discharge Permits
- N NR 243 - Animal Feeding Operations

**K NR 155 Urban Nonpoint Source Water Pollution Abatement and Storm Water Management Grant Program**

**K1 Comment:** (WLWCA/WALCE, several counties) There is too much overlap between NR 155 and NR 153. There should be a split between point/nonpoint or urban/rural. Right now urban nonpoint projects don't know which grant to apply for and have the potential to drain funding for rural projects.

**Response:** It is true that both of these grant programs have an "urban" component but NR 153 and NR 155 are governed by separate statutes and have well-defined policies, we are obligated to keep them separate and maintain two distinct programs. The department believes the current organization of these rules (NR 153 and NR 155) is the best. No matter how these rules are organized, it will not affect the fact that urban projects can be funded under the TRM program; municipalities are entitled under the statutes to apply for and receive these grants.

**K2 Comment:** (CWC) We are concerned about the enforcement provisions. Grants to counties should both encourage local ordinances and require a county receiving a grant to have to refer enforcement actions to the DNR. It makes no sense to give grants to local agencies that do not have a process for referring enforcement actions when appropriate.

**Response:** Under this rule, the department may not provide grant funding for management practices unless the governmental unit with jurisdiction over the project area ensures adequate implementation of construction site erosion and storm water management. The assurance requirements are to be met by the adoption, implementation and enforcement of local policies, plans and ordinances. The department does not believe that a requirement for formal referral to DNR is appropriate or necessary as a condition of receiving a grant.

**K3 Comment:** (WLWCA/WALCE, several counties) Local staff previously funded by state grants should qualify for local assistance funding for urban ordinances (especially if DATCP cuts urban funding).

**Response:** Ordinance development is already covered, including staff, under ch. 155. Short-term ordinance enforcement might be covered, depending on how competitive the application is, but the program intends this function to be funded primarily, if not completely, with local permit fees.

**K4 Comment:** (DATCP) Some mention should be made of protecting cultural resources as these urban runoff control projects are built.

**Response:** DNR agrees and added language in four parts of the rule to cover this and other related issues. The revised language balances the need to select and conduct projects with the need to assure that projects comply with a multitude of other state laws. First, the map submitted with the application is to be accompanied by information the applicant is aware of that concerns endangered, threatened or wetland resources, historic properties or historic places contained in the project area or potentially affected by the project. Second, the DNR may consider an application incomplete, and will not score the project, if issues relating to navigable waters, wetlands, historic places, historic properties, endangered resources or threatened resources are significant and unlikely to be resolved in a timely manner. Third, if DNR proceeds and scores a project it will inform applicants if the location of a selected project indicates measures may be needed to address potential negative impacts of the project on navigable waters or these endangered, threatened or historic resources or sites. Finally, if these issues are not resolved at the time a grant is scheduled to be issued, DNR can decide to not issue the grant or to issue the grant with conditions that the other resource issues be resolved.

**K5 Comment:** (WLWCA/WALCE, several counties) The rules are missing a 1.25 multiplier, which is needed to encourage local ordinances to implement all the non-agricultural performance standards.

**K6 Comment:** (LCD) We suggest making the incentive stronger by requiring local erosion control or storm water ordinances as a condition of the grants. This would prevent the public from paying for fixing one urban nonpoint problem while new problems are still being created within the same community due to a lack of regulations.

**Response:** There is no multiplier for this element because both the statute and the proposed rule require that the municipality assure adequate storm water management for construction, post-construction and existing urban areas as a pre-condition to receiving a grant. The department will use information submitted under the rule to determine if the basic eligibility criteria are met. The department will base its decision on existence of regulations for construction site erosion control, plans and regulations for post-construction storm water management and plans and policies for runoff from existing development. Note that a multiplier is included for municipalities that have an implementation program that improves efficiency and effectiveness of its regulatory program.

**K7 Comment:** (DATCP) NR 155.12(5). Cost-share amounts should be based on actual bids, not estimates. This amount cannot be exceeded unless the agreement is amended. This should hold true for urban projects as well.

**Response:** These cost-share agreements are made in advance, before bidding, and are a contract solely between the governmental unit and the individual landowner/operator. Adjustments may be made after bidding, as long as the governmental unit has funds under its grant to cover any increases.

**K8 Comment:** (DATCP) NR 155.12(8). Include drainage districts under this definition.

**Response:** Drainage districts are already listed in the definition.

**K9 Comment:** (DATCP) NR 155.12(12). A land operator does not hold title to the land. Rather, they are the ones using the land and responsible for the day-to-day care of it. See Ch. 92.03(4) and (5) for alternate definitions.

**Response:** We agree with the distinction. We have included separate definitions for landowner and land operator.

**K10 Comment:** (DATCP) NR 155.12(20). "Watershed" is used here, but not defined later.

**Response:** We have added a definition.

**K11 Comment:** (DATCP) NR 155.12(28). Include buffers, diversions, and rain gardens as eligible structural practices.

**Response:** This change is not possible because the definition of "structural urban best management practices" is statutory and limited to a selected array of practices. DNR created, by rule, a class of "urban best management practices" that include "structural urban best management practices" as well as a broad array of other management practices including those mentioned in the comment. The effect of the rule and statute will be that a wide array of management practices will be eligible for cost-sharing, but some practice components such as storm sewer re-routing and land acquisition will be restricted to specific practices: detention basins, wetland basins, infiltration basins, infiltration trenches and wetland basins.

**K12 Comment:** (DATCP) NR 155.14(3). The "20 year rule" seems a bit subjective. A rural area should be considered rural until it is urbanized, especially if its current use is agricultural. This could result in confusion as to which agency has jurisdiction.

**Response:** This 20 year rule is contained in the statute.

**K13 Comment:** (DATCP) NR 155.15(1)(f) and (g). These two paragraphs seem to be saying the same thing. Delete one or combine the two into one paragraph.

**Response:** The two paragraphs relate to different circumstances: the first to the grant between DNR and the municipality (the BMP must be in the grant to be eligible); the second to the cost-share agreement

signed between the municipality and the individual landowner (the BMP must then also be in the cost-share agreement in order to be considered eligible).

**K14 Comment:** (DATCP) NR 155.15(5) A better definition of cost-effective is needed. It is easy to pick the least cost practice if both are equally effective, but what if the more effective one also costs more? How much is an incremental amount of performance worth? What about life-cycle costs? The least-cost practice may have higher maintenance requirements, and therefore, cost more over the life of the project.

**Response:** A minor change has been made to delete redundant language in this section. We believe that this section as changed, in association with the definition of cost-effective, is sufficient.

**K15 Comment F34 (WAL)** regarding exemptions for urban redevelopment sites applies to this section:



1 As required by statute, the department will select projects for funding by using the competitive scoring  
2 system set forth in the rule. The DNR will score and select projects annually with advice from the  
3 Wisconsin Land and Water Conservation Board. The scoring system considers fiscal accountability, cost  
4 effectiveness, water quality, extent of pollutant control, project evaluation and monitoring, likelihood of  
5 success and regulatory storm water management requirements for the City of Racine. Projects can be up  
6 to 3 years in duration unless the department grants an extension, limited to one year. Projects will be  
7 consistent with county land and water resources management plans prepared under chapter ATCP 50 and  
8 department priorities established on a geographic basis. Projects are not limited to implementation of state  
9 nonpoint source performance standards contained in chapter NR 151, but it is expected that many projects  
10 will focus on compliance with these standards. Projects may be located anywhere in the state, including  
11 areas within and outside of existing priority watershed and priority lake projects.

12  
13 The department may not use funding from this program to make grants for managing point source  
14 discharges of storm water. This includes point source discharges of animal waste regulated under chapter  
15 NR 243 and point source discharges of storm water regulated under chapter NR 216. A statutory  
16 exception is made for the City of Racine, which can apply for grants under either chapters NR 153 or NR  
17 155 to meet regulatory requirements imposed under chapter NR 216. Other local governments that seek  
18 funding to conduct activities required under chapter NR 216 may apply for funding under proposed  
19 chapter NR 155.

20  
21 The department currently administers priority watershed and priority lake projects under chapter NR 120.  
22 These projects will be gradually phased out and the funding sources gradually re-directed to fund projects  
23 selected under chapter NR 153. After this transition occurs, chapter NR 153 will be the primary vehicle  
24 by which the department focuses limited financial and technical resources into areas where control of  
25 urban and rural nonpoint pollution sources is a high priority. Projects conducted under chapter NR 153  
26 will be shorter in duration, smaller in cost and scope and distributed more widely across the state than  
27 priority watershed or priority lake projects. The department will normally reflect, in the annual joint  
28 allocation plan prepared under s. 281.65 (4) (pm) and s. 92.14 (14), the grants that it makes to counties  
29 under chapter NR 153.

### 30 31 32 Chapter NR 155

33  
34 Chapter NR 155 contains policy and procedures for administering the urban nonpoint source and storm  
35 water management grant program authorized under s. 281.66, Stats. The department may make grants  
36 under this program to governmental units for the purpose of controlling both point and nonpoint sources  
37 of storm water runoff from existing urban areas, developing urban areas and areas of urban  
38 redevelopment. Urban areas include commercial land use, industrial land use (excluding non-municipal  
39 industrial areas regulated under ch. NR 216) or areas with a population density of at least 1,000 persons  
40 per square mile. In order to receive a cost-share grant, the governmental unit with jurisdiction over the  
41 project area must assure adequate implementation of a comprehensive storm water management program.

42  
43 The goal of this grant program is to achieve water quality standards, minimize flooding, protect  
44 groundwater, coordinate urban nonpoint source management activities with the municipal storm water  
45 discharge permit program and implement the non-agricultural nonpoint source performance standards

1 under chapter NR 151. Grants to a governmental unit may be used to cost share the installation of best  
2 management practices as well as to support a variety of local administrative and planning functions. The  
3 department may also make grants to the board of regents of the University of Wisconsin System to  
4 control urban storm water runoff from campuses in selected locations.  
5

6 As required by statute, the department will select projects for funding by using the competitive scoring  
7 system set forth in the rule. The scoring system considers fiscal accountability, cost effectiveness, water  
8 quality, extent of pollutant control, project evaluation and monitoring, likelihood of success and  
9 regulatory storm water management requirements for the City of Racine. Projects will be consistent with  
10 department priorities established on a watershed or other geographic basis. Projects can be up to 2 years  
11 in duration unless the department grants an extension, limited to one year. The department will use the  
12 grant policies and procedures in chapter NR 155, with some modifications, to fulfill its remaining grant  
13 obligations to urban grantees in the priority watershed program. The department will normally reflect, in  
14 the annual joint allocation plan prepared under s. 281.65 (4) (pm) and s. 92.14 (14), the grants that is  
15 makes to counties under chapter NR 155.  
16

---

17  
18  
19 SECTION 1. Chapter NR 153 is created to read:  
20

21 CHAPTER NR 153

22 TARGETED RUNOFF MANAGEMENT GRANT PROGRAM  
23

24	NR 153.10	Purpose
25	NR 153.11	Applicability
26	NR 153.12	Definitions
27	NR 153.13	Eligible applicants
28	NR 153.14	Eligible projects
29	NR 153.15	Cost sharing for best management practices
30	NR 153.16	Aids for local assistance activities
31	NR 153.17	Project application
32	NR 153.18	Project screening
33	NR 153.19	Project scoring
34	NR 153.20	Project selection and funding
35	NR 153.21	Runoff management grant agreement
36	NR 153.22	Cost-share agreement
37	NR 153.23	Cost containment
38	NR 153.24	Easements
39	NR 153.25	Property acquisition
40	NR 153.26	Local assistance grant agreement

1	NR 153.27	Procurement
2	NR 153.28	Grant reimbursement procedures
3	NR 153.29	Records
4	NR 153.30	Project evaluation and reporting
5	NR 153.31	Variances
6	NR 153.32	Grant evaluation and enforcement

7

8           **NR 153.10 Purpose.** The purpose of this chapter is to establish the administrative  
9 framework for the selection of projects under s. 281.65 (4c), Stats., and implementation of  
10 projects under s. 281.65, Stats. This chapter promotes management of urban and rural nonpoint  
11 pollution sources in critical geographic locations where nonpoint source related water quality  
12 problems and threats are most severe and control is most feasible. This chapter accelerates  
13 implementation of nonpoint source water pollution control in areas where funding available  
14 through s. 92.14, Stats., is inadequate to meet water quality goals.

15           **Note:** The department will not use this chapter to administer grants for activities to  
16 control point source pollution, including activities required to comply with provisions of ch. NR  
17 216 or 243, except if the grant is provided to the city of Racine to comply with municipal storm  
18 water permit requirements. Chapter NR 155 is used by the department to administer grants for  
19 both point source and nonpoint source projects in urban areas as defined under s. 281.66 (1) (e),  
20 Stats. Projects that are located in urban areas but are not required to comply with ch. NR 216  
21 are eligible to apply for funding under ch. NR 153 or 155, or both.

22

23           **NR 153.11 Applicability.** This chapter applies to all of the following:

24           (1) The department when acting to solicit and accept project applications, score  
25 applications and select projects, under s. 281.65 (4c), Stats., for funding under s. 281.65, Stats.

26           (2) The department when acting to administer grants and the grant program under s.  
27 281.65, Stats., including when the department acts as the grantor of a runoff management grant  
28 agreement, grantor of a local assistance grant agreement or provider of a cost-share agreement to  
29 a governmental unit or a state agency.

1           (3) Governmental units when acting to submit applications to the department for projects  
2 under s. 281.65 (4c), Stats., receive grants from the department for projects under s. 281.65,  
3 Stats., and serve as cost-share providers to landowners, land operators or state agencies.

4           (4) State agencies, including the department, when acting as grant applicants, runoff  
5 management grantees or cost-share recipients.

6           (5) Land owners and land operators when acting as cost-share recipients.

7  
8           **NR 153.12 Definitions.** In this chapter:

9           (1) "Approved areawide water quality management plan" means a plan that has been  
10 adopted pursuant to ch. NR 121.

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

21           (3) "Certification" means that an authorized representative has attested in writing that the  
22 statement is true.

23           (4) "Cost-effective" means economical in terms of the tangible benefits produced by the  
24 money spent. Tangible benefits include pollution control, fish and wildlife habitat enhancement,  
25 enhancements to recreation, public safety, economical operation, economical maintenance and  
26 enhanced life expectancy of the best management practice.

27           (5) "Cost-share agreement" means the agreement established between the governmental  
28 unit and the cost-share recipient which identifies the best management practices to be used on the

1 cost-share recipient's lands and the cost estimate, installation schedule and operation and  
2 maintenance requirements for these best management practices.

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

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

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

9 (9) "Governmental unit" means any unit of government including, but not limited to, a  
10 county, city, village, town, metropolitan sewerage district created under ss. 200.01 to 200.15 or  
11 200.21 to 200.65, Stats., town sanitary district, public inland lake protection and rehabilitation  
12 district, regional planning commission or drainage district operating under ch. 89, 1961 Stats., or  
13 ch. 88, Stats. Governmental unit does not include the state or any state agency.

14 (10) "Grant period" means the time period during which a governmental unit is eligible to  
15 incur eligible costs and obtain departmental reimbursement for a project under a runoff  
16 management grant agreement or a local assistance grant agreement.

17 (11) "Grantee" means a governmental unit or state agency that receives funding from the  
18 department under a runoff management grant agreement or a local assistance grant agreement.

19 (12) "Grantor" means the department when serving to provide funds under this chapter to  
20 a grantee.

21 (13) "Landowner" means any individual, partnership, corporation, municipality or  
22 person holding title to land.

23 (14) "Land operator" means any individual, partnership, corporation, municipality or  
24 person having possession of or holding a lease in land and who is not a landowner.

25 (15) "Least cost practice" means the best management practice that requires the lowest  
26 amount of money to install when compared to other practice alternatives.

1           **(16)** "Local assistance grant agreement" means an agreement between the department and  
2 a state agency or governmental unit providing funds for staffing activities to carry out the tasks  
3 identified in a project selected for funding under this chapter.

4           **(17)** "Local share" means that portion of the best management practice installation cost  
5 that is not authorized for funding under s. 92.14, 281.65, 281.66 or 281.665, Stats.

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

9           **(19)** "Operation and maintenance period" means the length of time a best management  
10 practice included on a cost-share agreement or a runoff management grant agreement shall be  
11 operated and maintained.

12           **(20)** "Priority lake area" means a hydrologic unit which drains to a lake or group of lakes  
13 and serves as the project boundary for watershed projects identified through the process in s.  
14 281.65 (3m) (b), Stats., and implemented through the process in ch. NR 120.

15           **(21)** "Priority watershed" means any watershed that is identified under s. 281.65 (3) (am)  
16 or 4 (cm) or (co).

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

19           **(23)** "Project" means targeted runoff management project.

20           **(24)** "Project area" means the geographic extent of a targeted runoff management project.

21           **(25)** "Project completion" means the expiration date of a runoff management grant  
22 agreement.

23           **(26)** "Project sponsor" means the governmental unit or state agency applying for and  
24 receiving grant assistance under s. 281.65 (4c), Stats., and this chapter.

25           **(27)** "Provider" means a governmental unit when serving to administer cost-share funds  
26 through a cost-share agreement with a private landowner, land operator or state agency.  
27  
28

1 (28) "Recipient" means the receiver of cost-share funds from a provider.

2 (29) "Runoff management grant agreement" means an agreement entered into between  
3 the department of natural resources and a state agency or governmental unit which establishes  
4 the terms under which funds are provided by the department for the installation of best  
5 management practices or the purchase of property or easements in a project funded under s.  
6 281.65 (4c), Stats.

7 (30) "Structural urban best management practices" means detention basins, wet basins,  
8 infiltration basins and trenches and wetland basins.

9 (31) "Targeted runoff management project" means a project selected by the department  
10 for funding under s. 281.65 (4c), Stats.

11 (32) "Urban best management practices" means structural urban best management  
12 practices and other source area measures, transport system and end-of-pipe measures designed to  
13 control storm water runoff rates, volumes and discharge quality. In this definition, "source area"  
14 means a component of urban land use including rooftops, sidewalks, driveways, parking lots,  
15 storage areas, streets and lawns from which storm water pollutants are generated during periods  
16 of snowmelt and rainfall runoff.

17 (33) "Wetland" or "wetlands" has the meaning specified under s. 23.32 (1), Stats.

18 (34) "WPDES" means Wisconsin pollutant discharge elimination system.

19  
20 **NR 153.13 Eligible applicants.** (1) Governmental units are eligible to apply for and  
21 receive targeted runoff management grants administered under this chapter.

22 **Note:** A landowner or land operator that is not a governmental unit may not apply  
23 directly to the department for a targeted runoff management grant. However, a landowner or  
24 land operator may enter into a cost-share agreement with a governmental unit to receive grant  
25 funds awarded by the department under s. NR 153.20.

26 (2) A state agency, including the department, may apply for a targeted runoff  
27 management grant administered under this chapter for a project on land under state ownership or

1 control if the project affects a priority lake or is in a priority watershed area. The department may  
2 apply for a grant to purchase an easement in a priority watershed area.

3 **Note:** A state agency, including the department, may not apply directly to the department  
4 for a targeted runoff management grant for a project located outside of a priority watershed or  
5 priority lake area. However, for work in these areas a state agency, including the department,  
6 may enter into a cost-share agreement with a governmental unit to receive grant funds awarded  
7 under s. NR 153.20.

8  
9 **NR 153.14 Eligible projects.** (1) An eligible project is that specified in the scope of the  
10 runoff management grant agreement developed in accordance with s. NR 153.21 or the scope of  
11 the local assistance grant agreement developed in accordance with s. NR 153.26. A project  
12 scope shall have a geographic component and a time component.

13 (a) The geographic component of the project scope may range from controlling pollution  
14 from a single source on a property to controlling nonpoint pollution sources within a specified  
15 drainage area.

16 (b) The time component of the project scope may last up to 3 years. The department may  
17 grant an extension of up to one year pursuant to s. NR 153.21 (2). Multiple projects can be  
18 conducted consecutively or simultaneously in the same project area.

19 (2) The department may provide funding under this chapter for a project only if all of the  
20 following apply:

21 (a) The project application submitted under s. NR 153.17 specifies the watershed, sub-  
22 watershed or specific site that will be served by the project.

23 (b) The project will implement nonpoint source pollution control in an area that is a target  
24 area based on any of the following:

25 1. The need for compliance with performance standards established by the department in  
26 ch. NR 151.

27 2. The existence of impaired water bodies that the department has identified to the federal  
28 environmental protection agency under 33 USC 1313 (d) (1) (A).

1 3. The existence of outstanding or exceptional resource waters, as designated by the  
2 department under s. 281.15, Stats.

3 4. The existence of threats to public health.

4 5. The existence of an animal feeding operation that has received a notice of discharge  
5 under ch. NR 243 or a notice of intent to issue a notice of discharge.

6 6. Other water quality concerns of national importance.

7 7. Other water quality concerns of statewide importance.

8 (c) The project is consistent with priorities identified by the department on a watershed or  
9 other geographic basis.

10 (d) The project is consistent with approved land and water conservation plans under s.  
11 92.10, Stats.

12 (e) The department, in consultation with the department of agriculture, trade and  
13 consumer protection determines that funding provided under s. 92.14, Stats., is insufficient to  
14 fund the project. The department may consider funding under s. 92.14, Stats., to be insufficient  
15 until such time as a joint allocation plan prepared and approved pursuant to ss. 281.65 (4) (pm)  
16 and 92.14 (14), Stats., identifies that the project will be fully funded under s. 92.14, Stats.

17

18 **NR 153.15 Cost sharing for best management practices. (1) ELIGIBLE COSTS.**

19 (a) The department may provide cost sharing for the construction or implementation of best  
20 management practices in projects located either inside or outside of priority watershed and  
21 priority lake areas. The department may attribute design and construction services costs to the  
22 cost of construction or implementation of the best management practice.

23 (b) 1. If the purpose of the best management practice is to comply with agricultural  
24 performance standards and prohibitions identified in subch. II of ch. NR 151, technical standards  
25 for the best management practice shall be included in subch. VIII of ch. ATCP 50 in order for the  
26 best management practice to be considered eligible for cost sharing under this chapter.

27 2. Subd.1 does not apply if the department determines there is no technical standard in  
28 subch. VIII of ATCP 50 capable of meeting the performance standard or prohibition.

1 (c) If the purpose of the best management practice is to comply with a performance  
2 standard under subch. III or IV of ch. NR 151, or if the purpose of the best management practice  
3 is to reduce pollution from a source for which a performance standard is not included in ch. NR  
4 151, the best management practice shall meet one of the following criteria to be considered  
5 eligible for cost sharing under this chapter:

- 6 1. Be included in ch. NR 154.
- 7 2. Be included in subch. VIII of ch. ATP 50.
- 8 3. Be available in accordance with the technical standards development and  
9 dissemination requirements of subch. V of ch. NR 151.
- 10 4. Be identified as an interim best management practice or alternative design criteria in  
11 accordance with sub. (3).

12 (d) The best management practice shall be constructed in accordance with applicable  
13 technical standards and conditions identified in this chapter, subch. VIII of ch. ATP 50, ch. NR  
14 154, in a document that meets the requirements of subch. V of ch. NR 151 or a runoff  
15 management grant agreement as provided for under sub. (3) in order to be considered eligible for  
16 cost sharing under this chapter.

17 (e) The best management practice shall be included as an eligible item for cost sharing on  
18 a runoff management grant agreement, signed by the department and the governmental unit or  
19 state agency, in order to be considered eligible for cost sharing under this chapter.

20 (f) If a cost-share agreement is required, the best management practice shall be included  
21 as an eligible item on the cost-share agreement, signed by the governmental unit and a  
22 landowner, land operator or state agency in order to be considered eligible for cost sharing under  
23 this chapter.

24 (g) Best management practices funded under s. 20.866 (2) (te), Stats., shall meet  
25 requirements for use of bond-sourced funding.

26 **Note:** This section governs what pollution sources are eligible for cost sharing under ch.  
27 NR 153. It does not address requirements for compliance with performance standards, nor does  
28 it address cost-share funding as a precondition for compliance. Compliance requirements,

1 including when cost-share funding must be made available as a precondition of compliance, are  
2 set forth in ss. NR 151.09 and 151.095.

3 (2) INELIGIBLE COSTS. All of the following practices, sources or activities are  
4 ineligible for cost sharing under this chapter unless approved by the department as part of a  
5 demonstration project in accordance with sub. (4):

6 (a) Best management practices for which cost sharing has been provided, after the  
7 effective date of this rule ... [revisor insert date], provided that the cost-share rate was 70% or  
8 more of the eligible costs for best management practices designed to achieve an agricultural  
9 performance standard or prohibition under subch. II of ch. NR 151 or was 50% or more of the  
10 eligible costs for best management practices designed to achieve performance standards under  
11 subch. III or IV of ch. NR 151. The department may make an exception in accordance with par.

12 (b).

13 (b) Operation and maintenance of best management practices, except that the department  
14 may provide cost sharing one time to re-establish an agricultural best management practice cost  
15 shared after the effective date of this rule ... [revisor insert date] that is damaged within the cost-  
16 share operation and maintenance period by natural causes beyond the control of the landowner or  
17 land operator.

18 (c) Cropland and manure management practices needed to control sources that were  
19 adequately managed for the specific land use at the time of cost-share agreement signing but that  
20 are producing an increased amount of pollutant loading to the surface water or groundwater  
21 counter to water resource objectives or a performance standard under ch. NR 151. Water  
22 resources objectives include those identified in an approved areawide water quality management  
23 plan, priority watershed plan or county land and water resources management plan.

24 (d) Significant expansions of livestock operations. The department shall use the criteria in  
25 this paragraph for determining whether an increase in the size of the livestock population  
26 constitutes a significant expansion and is ineligible for cost sharing. In this paragraph,  
27 "livestock population size" means the size of the livestock population, in animal units. In this  
28 paragraph, "base livestock population size" means the livestock population size determined when

1 the department or governmental unit, including a county land conservation committee, visits the  
2 site and documents the size of the livestock population. In this paragraph, animal unit has the  
3 meaning given in ch. NR 243.

4 1. If the base livestock population size is less than or equal to 250 animal units, that  
5 portion of the expansion that results in a livestock population size exceeding 300 animal units is  
6 considered to be significant and ineligible for cost sharing under this chapter.

7 2. If the base livestock population size is greater than 250 animal units but less than that  
8 required to apply for a WPDES permit under s. NR 243.12 (1) (a) or (b), and the expanded  
9 livestock population size will be less than that required to apply for a WPDES permit under s.  
10 NR 243.12 (1) (a) or (b), that portion of the expansion that is greater than 20% of the base  
11 livestock population size is considered to be significant and ineligible for cost sharing under this  
12 chapter.

13 3. Any expansion to a base livestock population size that results in a livestock population  
14 size required to apply for a WPDES permit under s. NR 243.12 (1) (a) or (b) is considered to be  
15 significant and ineligible for cost sharing under this chapter, and shall also render the base  
16 livestock population component ineligible for cost sharing in accordance with s. NR 153.15 (2)  
17 (f) 2.

18 **Note:** The department may not provide cost sharing under this chapter for activities  
19 requiring coverage under a WPDES permit for livestock operations.

20 (e) Best management practice installation started prior to the signing of the runoff  
21 management grant agreement and the cost-share agreement. This paragraph does not preclude  
22 the department from providing reimbursement for structural best management practice design  
23 work commenced or completed prior to signing the runoff management grant agreement and the  
24 cost-share agreement, provided that practice construction is commenced prior to reimbursement.

25 (f) Activities requiring coverage under a WPDES permit including any of the following:

26 1. Activities requiring WPDES permit coverage at livestock operations with less than  
27 1,000 animal units that have been issued a WPDES permit by the department under ch. 283,

1 Stats. In this paragraph, "livestock operation" has the meaning given in s. 281.16 (1) (c), Stats.

2 In this paragraph, "animal unit" has the meaning given in ch. NR 243.

3 2. Activities requiring WPDES permit coverage at livestock operations that have, or will  
4 have within 12 months, at least 1,000 animal units and are required to apply for a WPDES permit  
5 under s. NR 243.12 (1) (a) or (b).

6 3. All other activities requiring coverage under a WPDES permit issued under chs. NR  
7 200 to 242 and 244 to 299 except for activities required of the city of Racine to comply with  
8 municipal storm water permit requirements under ch. NR 216.

9 **Note:** A municipality required to comply with storm water permitting requirements  
10 under ch. NR 216 may apply for grant funding under ch. NR 155.

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

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

14 (i) Active mining activities.

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

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

18 (l) The planting of trees intended for commercial harvest.

19 (m) Installing, operating or repairing a small-scale on-site human domestic waste facility.

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

21 (o) Installing dams, pipes, conveyance systems and urban best management practices,  
22 including storm sewer rerouting and land acquisition, when intended solely for flood control. In  
23 this paragraph, "dam" means any artificial barrier in or across a waterway, which has the primary  
24 purpose of impounding or diverting water. A dam includes all appurtenant works, such as a  
25 dike, canal or powerhouse.

26 (p) Practices other than those in ch. NR 154 that are normally and routinely used in  
27 growing crops and required for the growing of crops or the feeding of livestock.

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

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

5 (s) Practices to be fully funded through other programs.

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

7 (u) Changes in crop rotation unless required as a component of practices in subch. VIII of  
8 ch. ATCP 50 or NR 154.

9 (v) Minimum levels of street sweeping and leaf collection.

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

11 (x) Purchase of non-stationary manure spreading equipment.

12 (y) Correcting over-topping of a manure storage facility.

13 (z) Maintaining existing grass cover.

14 (za) Installing or modifying an agricultural facility or practice which is required pursuant  
15 to a court order or court-ordered stipulation.

16 (zb) Best management practices that do not meet the eligibility criteria under sub. (1).

17 (zc) Costs that another governmental unit is also reimbursing.

18 (zd) Other practices which the department determines are not necessary to achieve the  
19 objectives of the project.

20 **(3) INTERIM BEST MANAGEMENT PRACTICES AND ALTERNATIVE DESIGN**  
21 **CRITERIA.** (a) *Purpose.* The purpose of this subsection is to provide for the use of best  
22 management practices, management measures, design criteria or standards and specifications that  
23 are not included in subch. VIII of ch. ATCP 50 or ch. NR 154 but that will contribute to  
24 achieving water quality goals.

25 (b) *Requirements.* The department may approve cost sharing for best management  
26 practices, management measures, design criteria or standards and specifications other than those  
27 included in subch. VIII of ch. ATCP 50 or ch. NR 154 provided that all of the conditions in this  
28 paragraph are met.

1 1. The practices, design criteria, standards or specifications developed under this  
2 subsection may not be applied for the purpose of meeting an agricultural or urban performance  
3 standard identified in ch. NR 151 unless the department determines that existing practices,  
4 design criteria or technical standards contained in chs. NR 154 or ATCP 50 are not capable of  
5 meeting the performance standards or, in the absence of a performance standard, the project  
6 water quality goals

7 **Note:** The department of agriculture, trade and consumer protection is the lead agency  
8 responsible for developing practices, design criteria, standards and specifications to meet  
9 agricultural performance standards.

10 2. The applicant shall justify all of the following:

11 a. That the practices, design criteria, standards or specifications are necessary to meet the  
12 water quality objectives of the project.

13 b. That the practice is a cost-effective means of preventing or reducing pollutants  
14 generated from nonpoint sources.

15 c. That the practice does not have an adverse impact on fish and wildlife habitat.

16 3. The department shall consult with DATCP if the best management practice, design  
17 criteria, standards or specifications are agricultural.

18 4. The department shall identify the best management practice, design criteria, standards,  
19 specifications, operation and maintenance period, cost-share rates and cost-share conditions in  
20 the runoff management grant agreement.

21 (c) *Time period.* Approvals by the department under par. (b) shall be for a limited period  
22 of time, which the department shall specify. After the specified time period has expired, the  
23 department will either discontinue the approved use of the interim measures or adopt the  
24 measures in ch. NR 154.

25 (4) **DEMONSTRATION PROJECTS.** (a) The department may allow cost sharing for  
26 items identified under sub. (2) if necessary to implement a demonstration project. The  
27 department shall require demonstration projects to meet the all of the following criteria to be  
28 considered eligible for cost sharing under this subsection:

1 1. The project shall be selected according to the process identified in s. NR 153.20.

2 2. The project shall be determined by the department to have statewide or regional  
3 significance and shall be designed to provide results that are transferable to other locations  
4 within the state. This includes projects that demonstrate traditional or innovative management  
5 measures or best management practices in order to increase acceptance, use and understanding of  
6 cost-effectiveness, including pollutant control capability.

7 3. The project shall have an approved strategy for developing and disseminating  
8 information and education materials explaining the project and its management implications.

9 (b) The department may consult with the university of Wisconsin-extension or its agent  
10 in considering demonstration project proposals.

11 (5) COST-SHARE RATES AND COST-SHARE CONDITIONS. Cost-share rates and  
12 cost-share conditions, including provisions for economic hardship, identified in ch. NR 154 shall  
13 be used for best management practices funded under this chapter.

14 (6) COST-EFFECTIVENESS. (a) Only cost-effective practices may be funded under this  
15 section unless an exception is granted by the department under s. 281.65 (8) (e) or (4) (em),  
16 Stats.

17 (b) The state cost-sharing amount shall be the total cost of an eligible practice multiplied  
18 by the cost-share rate, unless otherwise provided for in this chapter or in ch. NR 154. Where 2 or  
19 more practices are equally cost-effective in reducing pollutants consistent with par. (a), the  
20 amount of cost sharing shall be based on the least cost practice.

21  
22 **NR 153.16 Aids for local assistance activities. (1) ELIGIBLE COSTS.** (a) The  
23 department may provide cost sharing under s. NR 153.26 for local assistance activities in  
24 projects located either inside or outside of priority watershed and priority lake areas.

25 (b) The cost-share rate for local assistance activities may not exceed 70% of the eligible  
26 costs identified in this section.

1 (c) The following activities are eligible for local assistance funding if additional staff are  
2 hired or retained under contract to perform the project activities, or if a professional services  
3 contract is developed and implemented to perform the project activities:

- 4 1. Contacting landowners and land operators.
- 5 2. Determining compliance with performance standards contained in ch. NR 151.
- 6 3. Identifying site-specific best management practices needed to achieve compliance with  
7 performance standards or otherwise control nonpoint pollution sources.
- 8 4. Developing and reviewing cost-share agreements with the cost-share recipient and  
9 developing and issuing the notice under ss. NR 151.09 and 151.095.
- 10 5. Installing and verifying best management practices.
- 11 6. Reviewing best management practice operation and maintenance during the  
12 implementation period.
- 13 7. Developing and transmitting to the department information that identifies non-  
14 cooperators that do not comply with performance standards.
- 15 8. Project management.
- 16 9. Administration of easements in accordance with s. NR 153.24.
- 17 10. Fiscal management.
- 18 11. Costs of appraisals for the acquisition of property in accordance with s. NR 153.25.
- 19 12. Evaluating alternatives for local financing of stormwater management programs.
- 20 13. Administrative costs associated with initial establishment of local funding programs  
21 such as stormwater utilities.
- 22 14. Storm water planning, not including development of ordinances.
- 23 15. Development of informational materials, including videos or brochures.
- 24 16. Project evaluation activities identified in the project application and required by the  
25 runoff management grant agreement, including monitoring.
- 26 17. Other activities approved by the department as being necessary to implement the  
27 project.

28 (d) The following staff support costs are eligible for cost sharing:

1 1. The cost of testing materials for use in best management practice design, installation or  
2 operation or in project evaluation, including monitoring.

3 2. Travel expenses including personal vehicle mileage charges, meals, lodging and other  
4 reasonable travel expenses necessary to the project.

5 3. The cost of office space required for the project prorated based on percent use on the  
6 project.

7 4. The cost of recording the cost-share agreement with the county register of deeds.

8 5. Field equipment necessary to conduct or evaluate the project.

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

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

12 **(2) INELIGIBLE COSTS.** The following costs are not eligible for local assistance  
13 funding under this section:

14 (a) Activities for which WPDES permit coverage is required under chs. NR 200 to 299,  
15 except the following:

16 1. Notice of discharge activities identified in ch. NR 243.

17 2. Activities, in accordance with this section, required by the city of Racine to comply  
18 with municipal storm water permit requirements under ch. NR 216.

19 **Note:** Municipalities required to comply with storm water permitting requirements under  
20 ch. NR 216 may apply for grant funding under ch. NR 155.

21 (b) Direct costs for other items not listed in this section as eligible for up to 70% cost  
22 sharing, including best management practice design, education training and assistance, ordinance  
23 development and administration and promotional items except when used for educational  
24 purposes.

25 (c) Indirect project costs.

26 **Note:** DATCP is the primary state agency that supports local assistance activities  
27 conducted by county land conservation committees. In many instances, local assistance

1 activities required to support agricultural targeted runoff management projects will be supported  
2 under grants made by DATCP to counties.

3  
4 **NR 153.17 Project application. (1) APPLICATION PROCESS.** (a) Subject to the  
5 availability of funds, the department shall:

6 1. Solicit applications on an annual basis for projects to be funded under this chapter by  
7 providing public notice that application materials are available upon request.

8 2. Distribute to any potential applicant that requests it a copy of the application,  
9 instructions for completing the application and guidelines that the department will use to score  
10 project applications.

11 (b) A governmental unit may request funding under this chapter for one or more projects  
12 that are located in an area that is a priority watershed or a priority lake area, or in an area that is  
13 not in a priority watershed or a priority lake area, by submitting an application to the department.

14 (c) A state agency, including the department, may request funding under this chapter for a  
15 project that is on land under state ownership or control and that affects a priority lake or is in a  
16 priority watershed area by submitting an application to the department.

17 (d) The department may request funding for the purchase of easements in priority  
18 watershed areas.

19 (e) Applicants shall submit completed project applications to the department before April  
20 15 of each year in order to be considered for funding in the following calendar year.

21 **(2) REQUIRED INFORMATION.** An applicant shall submit the information required by  
22 this subsection to be considered for funding under this chapter

23 (a) Administrative information required by the department to administer the grant  
24 request. Administrative information includes all of the following:

- 25 1. Applicant name.
- 26 2. Name and title of authorized representative.
- 27 3. Contact name and telephone.
- 28 4. Type of governmental unit and applicant address.

1 5. Applicant signature.

2 6. Project scope.

3 7. Other information that the department determines necessary to process the application.

4 (b) Screening information required by the department to determine whether the proposed  
5 project complies with basic program and statutory funding requirements. This information  
6 includes all of the following:

7 1. Certification that the project meets the eligibility requirements of s. NR 153.14 (2).

8 2. A map of the project area showing the watershed, subwatershed or specific site to be  
9 served by the project. The map shall be accompanied by information the applicant is aware of  
10 that concerns endangered, threatened or wetland resources, historic properties or historic places  
11 contained in the project area or potentially affected by the project.

12 3. A list of the best management practices for which funding is requested, including  
13 easements associated with any of these practices, and identification of practice eligibility under s.  
14 NR 153.15.

15 4. A list of local assistance activities for which funding is requested and an identification  
16 of eligibility under s. NR 153.16.

17 5. Certification that the activities listed on the application will be completed within the  
18 allowable time period specified by the department in the application materials.

19 6. Certification that the project sponsor has made arrangements to provide the staff  
20 necessary to implement the project.

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

23 8. Evidence that the proposed project is consistent with the statewide and targeted  
24 nonpoint source performance standards adopted in ch. NR 151.

25 9. Other information that the department may require to screen the application for  
26 compliance with minimum requirements.

27 (c) Scoring information required by the department to evaluate and rank the project.

28 Scoring information includes all of the following:

1           1. Fiscal accountability and cost-effectiveness information for the proposed project  
2 including:

- 3           a. A work schedule.
- 4           b. A financial budget showing total costs.
- 5           c. All funding sources, including sources of in-kind local share donation as provided for  
6 in subd. 8., as well as information necessary to administer ss. NR 153.23 (2) and 153.27 (3) (c).
- 7           d. Documentation of project cost-effectiveness.

8           2. A project evaluation and monitoring strategy including pre- and post-project  
9 information concerning actual or potential changes in land use, changes in pollutant loading or  
10 changes in chemical, physical or biological conditions of the water resources affected by the  
11 project.

12           3. Evidence of local support and involvement including support from governmental units,  
13 interest groups, landowners and land operators that need to implement best management  
14 practices. Evidence of local involvement also includes a governmental unit's continuous  
15 decision-making process which ensures participation by minority and low income populations in  
16 affected areas, along with majority populations, to ensure that as an outcome all people receive  
17 the benefits of a clean, healthy and sustainable environment regardless of race, national origin or  
18 income.

19           4. The project priority in relation to other department water basin priorities such as those  
20 identified on priority lists established by the department or its basin partnership teams, or the  
21 priority based on department statewide research needs relating to evaluation of best management  
22 practices.

23           5. The water quality need to be addressed by the project including impairment or threats  
24 to water quality caused or contributed to by nonpoint pollution sources in the project area that  
25 will be addressed by the project. The water quality need shall be related to one or more of the  
26 following categories:

- 27           a. Existence of impaired water bodies that the department has identified to the federal  
28 environmental protection agency under 33 USC 1313 (d) (1) (A).

1           b. Existence of groundwater impairment due to nitrates or other compounds exceeding  
2 the ground water enforcement standards.

3           c. Existence of surface waters identified in an areawide water quality management plan as  
4 partially meeting designated uses.

5           d. Existence of surface waters where water quality is significantly threatened based on  
6 changes in land use or evidence of declining water quality.

7           e. Existence of groundwater impairment due to nitrates or other compounds that are  
8 greater than the preventive action limit but less than the enforcement standard.

9           f. Existence of high quality, recreationally significant waters, such as outstanding or  
10 exceptional resource waters, where potential degradation is a concern but the waterbody is not  
11 considered to be currently threatened.

12           g. Existence of waters that are neither high quality, recreationally significant nor  
13 considered to be currently threatened but where nonpoint source pollution control is needed to  
14 prevent eventual degradation.

15           h. Existence of waters used for public drinking water supplies where control of  
16 contaminants is desired in the designated wellhead protection or source water protection area.

17           6. The extent of pollutant control to be achieved by the project, including the level of  
18 knowledge concerning the amount of pollution control needed to achieve water quality goals and  
19 the extent of pollution control that will be achieved in the project area.

20           7. Consistency between the project and other resource management plans such as storm  
21 water management plans, land use plans, growth management plans, wellhead protection plans,  
22 lake management plans, county land and water resource management plans and remedial action  
23 plans.

24           8. The use of other funding sources to supplement or reduce the state cost share provided  
25 under this chapter, such as funding from federal, state, local and interest group sources or the  
26 application of in-kind contributions to capital costs only.

1 9. The extent of local implementation and enforcement programs in effect over the  
2 project area, including information required to determine the project multiplier under s. NR  
3 153.19 (4).

4 10. The way in which the proposed project will contribute to meeting storm water  
5 requirements under ch. NR 216 for the city of Racine.

6 (d) Notwithstanding the application requirements of this subsection, the department may  
7 establish modified requirements for applications submitted for funding for a project or activity  
8 that meets all of the following:

9 1. The project or activity existed on a priority watershed project grant prior to January 1,  
10 2000.

11 2. The department has a remaining contractual obligation to fund the project or activity.

12  
13 **NR 153.18 Project screening. (1)** The department may deny consideration of  
14 applications that are incomplete by the submittal deadline. The department may consider an  
15 application incomplete if the project proposal requires significant additional review to determine  
16 compliance with other state laws and the department determines that such reviews may  
17 significantly delay the project. State laws that the department may consider in determining if the  
18 application is incomplete include those to protect navigable waters, wetlands, historic places,  
19 historic properties, endangered resources or threatened resources.

20 (2) The department shall screen each completed project application to determine if the  
21 project meets basic eligibility criteria for funding under this chapter. The department shall use  
22 the information required in s. NR 153.17 (2) (b) to make this determination.

23 (3) Notwithstanding sub. (1), the department may provide funding for projects or  
24 activities that meet all of the following:

25 (a) The project or activity existed on a priority watershed project grant prior to January 1,  
26 2000.

27 (b) The department has a remaining contractual obligation to fund the project or activity.

28

1           **NR 153.19 Project scoring. (1) SCORING PROCEDURE.** The department shall use the  
2 procedure in this subsection to score each project that passes the eligibility screening under s. NR  
3 153.18.

4           (a) The department shall develop an initial project score using the information submitted  
5 by the applicant under s. NR 153.17 (2) (c) and detailed scoring guidelines developed by the  
6 department. The department shall develop and maintain detailed scoring guidelines in  
7 accordance with sub. (2).

8           (b) The department shall evaluate the initial project sub-score for each element of the  
9 project to determine if the project has overall viability. The department shall determine viability  
10 of the project in accordance with sub. (3). Projects considered to be non-viable shall be removed  
11 from further consideration.

12           (c) The department shall multiply the initial project score by a factor based on local  
13 implementation and enforcement capability to determine the final project score. The department  
14 shall determine the local implementation and enforcement factor in accordance with sub. (4).

15           **(2) INITIAL PROJECT SCORE.** (a) The department shall develop guidelines to assure  
16 consistent and fair scoring of project applications. The department shall revise the guidelines  
17 periodically as necessary to assure that project selections are consistent with priorities in s.  
18 281.65 (4c), Stats. The department may convene an advisory committee to assist itself in  
19 developing and revising the scoring guidelines.

20           (b) Guidelines for developing initial project scores shall be consistent with all of the  
21 following:

22           1. Sub-scores shall be developed for key project components. Key components include:  
23 fiscal accountability and cost effectiveness, project evaluation and monitoring strategy, evidence  
24 of local support and involvement, consistency with department water basin priorities, water  
25 quality need, extent of pollutant control, consistency of project with other resource management  
26 plans, use of other funding sources and application of the project to storm water requirements for  
27 the city of Racine.

1           2. The project component for water quality need shall be assigned the highest sub-score.  
2 The priorities within this sub-score component shall address the list of water quality needs in s.  
3 NR 153.17 (2) (c) 5. The highest priority within this list shall be assigned to water quality need  
4 that is based on the existence of impaired water bodies that the department has identified to the  
5 federal environmental protection agency under 33 USC 1313 (d) (1) (A).

6           3. The intent to achieve performance standards contained in ch. NR 151 shall be  
7 considered as a criterion for evaluating at least one of the key project components listed in subd.  
8 1., and shall be the highest priority in developing that component sub-score.

9           4. The component related to application of the project to municipal storm water permit  
10 requirements under ch. NR 216 for the city of Racine shall be assigned the lowest sub-score.

11           5. The initial project score shall be the sum of the sub-scores.

12           **(3) MINIMUM QUALIFYING SCORE REQUIREMENTS.** (a) The department shall  
13 identify minimum qualifying initial sub-score requirements to determine viable projects for  
14 further consideration.

15           (b) The department shall consider minimum qualifying score requirements for the  
16 following project components:

- 17           1. Fiscal accountability and cost effectiveness.
- 18           2. Project evaluation and monitoring strategy.
- 19           3. Local support and involvement.
- 20           4. Consistency with department water basin priorities.

21           **(4) MULTIPLIERS FOR LOCAL IMPLEMENTATION PROGRAMS.** (a) The  
22 department shall increase the initial project score in accordance with this subsection if there is a  
23 local implementation program or a local implementation and enforcement program applicable to  
24 the project area. The result shall be the final project score.

25           (b) The department shall increase the initial score in accordance with the following for  
26 projects that are agricultural in nature.

1           1. The department shall multiply the initial project score by a factor of 1.1 if the applicant  
2 certifies to the department that it has a qualifying local implementation program in effect for the  
3 project area.

4           a. The applicant may certify that it has a qualifying local implementation program if it  
5 develops and implements a program to conduct the activities in this subd. 1. b. to h. The  
6 department shall consider the county to meet the certification requirements for this subd. 1. b. to  
7 d. if the county includes provisions for conducting these activities in a land and water resources  
8 management plan developed and approved in accordance with ch. ATCP 50.

9           b. Conduct information and education programming for landowners and land operators  
10 required to comply with performance standards.

11           c. Implement on-site visits to landowners and land operators to conduct land management  
12 inventories, determine and convey status of compliance with performance standards and discuss  
13 alternative solutions and best management practices.

14           d. Develop cost-share agreements with, and provide technical assistance to, landowners  
15 and land operators to achieve compliance with performance standards.

16           e. Apply for grants from the department, or work to secure grants from other state, federal  
17 or local sources to provide cost sharing to landowners and land operators to achieve compliance  
18 with performance standards.

19           f. Provide notice to landowners and land operators in accordance with ss. NR 151.09 and  
20 151.095.

21           g. Agree to refer cases of non-compliance with performance standards to the department  
22 or the local district attorney for enforcement action if the county has no authority under local  
23 ordinance to bring an enforcement action.

24           h. Implement a system to track, evaluate and report to the department the status of  
25 compliance with performance standards.

26           2. The department shall multiply the initial project score by a factor of 1.25 if the  
27 applicant certifies to the department that it has a qualifying local implementation and  
28 enforcement program in effect in the project area.

1 a. The applicant may certify that it has a qualifying local implementation and  
2 enforcement program if it develops and implements a program to conduct the activities in this  
3 subd. 2. b. to c.

4 b. Activities identified in subd. 1. b. to h.

5 c. Adopt local ordinances that regulate the sources in the project area for which the  
6 targeted runoff management grant is to be used.

7 3. a. The department may adjust the multiplier applicable to projects in areas with a local  
8 enforcement program based on the scope of the ordinance coverage and the potential effect of  
9 ordinance variance clauses. Adjustments under this subdivision may be made so that the  
10 multiplier is greater than 1.1 but less than 1.25. The department may request that a copy of  
11 applicable ordinances be submitted to the department for review to determine the appropriate  
12 adjustment to the multiplication factor.

13 b. The department may adjust the multiplier if local ordinances regulate some, but not all,  
14 of the sources in the project area for which the grant is to be used.

15 c. The department may adjust the multiplier if the ordinance contains a variance clause  
16 that significantly reduces the effectiveness of the ordinance in achieving compliance with  
17 performance standards or prohibitions, or both. The department may not consider a variance  
18 clause to significantly reduce the effectiveness of an ordinance if it requires alternative  
19 performance or technical standards be implemented to ensure compliance with water quality  
20 goals, does not allow variances due to economic hardship and requires that the conditions for the  
21 variance not be self created.

22 (c) The department shall increase the initial project score in accordance with the  
23 following for projects that are urban in nature:

24 1. The department shall multiply the initial project score by a factor of 1.1 if the applicant  
25 certifies to the department that it has a qualifying local implementation program in effect for the  
26 project area.

27 a. The applicant may certify that it has a qualifying local implementation program if it  
28 develops and implements a program to conduct the activities in this subd. 1. b. to e.

1           b. Implement a construction site erosion control ordinance that includes performance  
2 standards and applicability requirements consistent with s. NR 151.11.

3           c. Implement a pollution prevention information and education program targeted for  
4 property owners and other residents.

5           d. Implement nutrient management for municipally owned properties.

6           e. Implement tracking and reporting to the department on construction site erosion and  
7 storm water management permit activity.

8           2. The department shall multiply the initial project score by a factor of 1.25 if the  
9 applicant certifies to the department that it has a qualifying local implementation and  
10 enforcement program in effect in the project area.

11           a. The applicant may certify that it has a qualifying local implementation and  
12 enforcement program if it develops and implements a program to conduct the activities in this  
13 subd. 2. b. to c.

14           b. Activities identified in subd. 1. b. to e.

15           c. Adoption of a storm water management ordinance that includes performance standards  
16 and applicability requirements consistent with s. NR 151.12.

17           3. a. The department may adjust the multiplier applicable to projects in areas with a local  
18 enforcement program based on the scope of the ordinance coverage and the potential effect of  
19 ordinance variance clauses. Adjustments under this subdivision may be made so that the  
20 multiplier is greater than 1.1 but less than 1.25. The department may request that a copy of  
21 applicable ordinances be submitted to the department for review to determine the appropriate  
22 adjustment to the multiplication factor.

23           b. The department may adjust the multiplier if local ordinances regulate some, but not all,  
24 of the sources in the project area for which the grant is to be used.

25           c. The department may adjust the multiplier if the ordinance contains a variance clause  
26 that significantly reduces the effectiveness of the ordinance in achieving compliance with  
27 performance standards. The department may not consider a variance clause to significantly  
28 reduce the effectiveness of an ordinance if it requires alternative performance or technical

1 standards be implemented to ensure compliance with water quality goals, does not allow  
2 variances due to economic hardship and requires that the conditions for the variance not be self  
3 created.

4 (d) If the department is required to assign a multiplier pursuant to this section and the  
5 project is not clearly rural or urban in nature, the department, in consultation with the applicant,  
6 shall choose and apply one of the multipliers in accordance with par. (b) or (c).

7 (e) The department may not increase the score of an urban or rural project located in an  
8 area where a local implementation or enforcement program does not meet the requirements of  
9 par. (b) to (d). In this case, the interim score shall be the final project score.

10 (f) Notwithstanding the scoring system in this section, the department may assign  
11 maximum total points to any project application that meets the criteria in subd. 1. or 2.

12 1. The project meets all of the following criteria:

13 a. The project or activity existed on a priority watershed project grant prior to January 1,  
14 2000.

15 b. The department has a remaining contractual obligation to fund the project or activity.

16 2. The nonpoint sources of pollution to be controlled through the project pose an  
17 imminent threat to public health or fish and aquatic life.

18  
19 **NR 153.20 Project selection and funding. (1) SELECTION.** (a) The department shall  
20 place the projects on a list in descending rank order according to the final project score. The  
21 department shall use the ranked list and available budget in accordance with the following  
22 procedure to allocate grant funds.

23 (b) The department shall identify for funding the highest ranked project in each  
24 department region to assure that projects are distributed evenly around the state.

25 (c) After identifying the highest ranked project in each department region, the department  
26 shall identify additional projects for funding on a statewide basis in accordance with the amount  
27 of funds available. The additional projects shall be identified by starting with the highest ranked  
28 project based on total project score and proceeding down the ranked list until available project

1 funds have been allocated. The department shall identify these additional projects based on score  
2 only, without regard to statewide distribution.

3 (d) The department shall notify the land and water conservation board of project scores  
4 and ranks no later than September 1 of each year. The department shall also notify the land and  
5 water conservation board of the projects that it has identified and proposes to select for funding  
6 in the following calendar year.

7 (e) Before November 1 of each year, the department shall select projects for funding  
8 under this chapter based on the final project scores and input from the land and water  
9 conservation board.

10 (f) After selecting projects for funding, the department shall notify applicants in writing  
11 of its intent to prepare grant documents for the selected projects. The department shall inform  
12 applicants if the location of the project indicates measures may be needed to address potential  
13 negative impacts of the project on navigable waters, endangered, threatened or wetland  
14 resources, historic properties or historic places.

15 **(2) FUNDING.** (a) The department shall, where practicable, issue grants to grantees by  
16 December 31 of each year for work in the following calendar year. The department shall  
17 consider the factors in pars. (b) to (f) when determining final grant awards.

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

20 (c) If the project selected for funding is also eligible for funding with an ACRA under ch.  
21 NR 120, the department may reduce the award under this chapter if it determines that the  
22 applicant can use ACRA funds to help implement the project. In this paragraph, "ACRA" means  
23 the anticipated cost-share reimbursement amount that a project sponsor may receive from the  
24 department for a specific priority watershed or priority lake project under s. NR 120.12. The  
25 department shall consider all of the items in this paragraph in making a determination as to  
26 whether to reduce the amount of funding awarded for the project:

27 1. The amount of the ACRA in relation to the amount requested for the project.

1 2. Competing uses for the ACRA funds in the priority watershed project or priority lake  
2 project area and the likelihood that the ACRA funding will be used to meet those needs during  
3 the term of the project.

4 (d) The department shall make adjustments to the requested grant amount if necessary to  
5 correct errors made by the applicant concerning eligibility of items for cost sharing and errors in  
6 cost-share rates used in developing the application.

7 (e) If the department determines, following scoring, that a project may have unacceptable  
8 impacts on endangered, threatened or wetland resources, historic places or historic properties, it  
9 may do any of the following:

10 1. Decide not to provide a grant for the project.

11 2. Place a condition on a grant requiring that the grantee take specific actions to reduce or  
12 eliminate the impacts of the project.

13 3. Place a condition in a grant that the grantee and the department identify an acceptable  
14 plan to reduce or eliminate impacts of the project.

15 **Note:** In addition, s. NR 154.04 (2) (k) states that all required permits, including those  
16 mandated by the department, shall be obtained prior to installing a best management practice  
17 listed in this chapter.

18 (f) The department may fund in a grant those planning activities needed to identify  
19 impacts on navigable waters, endangered, threatened or wetland resources, historic places or  
20 historic properties and actions needed to reduce or eliminate the impacts.

21 **(3) JOINT ALLOCATION PLAN.** The department shall provide the department of  
22 agriculture, trade and consumer protection information about grant decisions it has made under  
23 this section for incorporation into the joint allocation plan required under  
24 ss. 281.65 (4) (pm) and 92.14 (14), Stats.

25  
26 **NR 153.21 Runoff management grant agreement. (1) PURPOSE.** (a) The department  
27 shall use the runoff management grant agreement to commit funds to a governmental unit or

1 state agency for the purpose of implementing best management practices for a project selected  
2 under s. NR 153.20.

3 **Note:** In this situation, the department is a grantor of funds to the governmental unit or  
4 state agency. The governmental unit or state agency serves as a grantee in receiving funds from  
5 the department. A governmental unit may also serve as a provider of those funds to cost-share  
6 recipients such as landowners and land operators.

7 (b) The department may use the runoff management grant agreement in lieu of a cost-  
8 share agreement required under s. NR 153.22 with a governmental unit or state agency for the  
9 installation of a best management practice on land the governmental unit or state agency owns or  
10 operates.

11 **Note:** In this situation, the department is a grantor of funds to the governmental unit or  
12 state agency. The governmental unit or state agency receiving these funds serves as the grantee.

13 **(2) GRANT PERIOD LENGTH.** (a) The department may set the grant period for one to  
14 3 years from the date the department transmits the agreement to the grantee, except that the  
15 department may approve an extension for one year.

16 (b) The department shall require that a grantee submit a written request in order to  
17 consider a project extension. The request shall meet all the following requirements:

- 18 1. Be received by the department prior to the expiration of the grant period.
- 19 2. Identify how the additional time will result in a significant reduction in the pollutant  
20 loading from the project area or otherwise further the intent of the project.

21 **(3) LOCAL GOVERNMENT RESPONSIBILITIES AS A RUNOFF MANAGEMENT**  
22 **GRANTEE AND COST-SHARE PROVIDER.** The department shall require the governmental  
23 unit to do all of the following as conditions of receiving a runoff management grant when the  
24 governmental unit will use the grant funds to provide cost sharing to landowners and land  
25 operators.

26 (a) Execute a runoff management grant agreement with the department for grant funds  
27 necessary to administer cost-share agreements with eligible landowners and land operators. This  
28 requirement may be waived if the department and the governmental unit agree to delegate these

1 responsibilities to another governmental unit with jurisdiction sufficient to meet all the  
2 conditions of the grant.

3 (b) Enter into cost-share agreements with eligible recipients located within the project  
4 area. This requirement may be waived if the department and the governmental unit agree to  
5 delegate this responsibility to another governmental unit with jurisdiction sufficient to enforce all  
6 the conditions of the cost-share agreement.

7 (c) Be fiscally responsible for the use of cost-share funds provided to cost-share  
8 recipients under the runoff management grant agreement. This includes preparing and  
9 maintaining adequate fiscal management and technical assistance files as described in s. NR  
10 153.29. This requirement may be waived if the department and the governmental unit agree to  
11 delegate these responsibilities to another governmental unit with adequate jurisdiction.

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

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

18 (f) Contact all landowners and land operators of lands within the project area that are the  
19 target of technical assistance and cost sharing under the grant.

20 (g) Participate with the department in project reviews.

21 (h) Enforce the terms and conditions of the cost-share agreement as described in s. NR  
22 153.22.

23 (i) Provide financial support towards the implementation of a project including:

24 1. Arrange funding for staff support necessary to complete the project.

25 2. Arrange funding for the local share of any best management practice the governmental  
26 unit installs on property it owns or controls.

27 **(4) LOCAL GOVERNMENT AND STATE AGENCY RESPONSIBILITIES AS A**  
28 **COST-SHARE RECIPIENT.** The department shall require the governmental unit or state

1 agency to do all of the following as conditions of receiving a runoff management grant to  
2 perform work on lands the grant recipient owns or operates.

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

5 (b) Prepare and maintain adequate fiscal management and technical assistance files as  
6 described in s. NR 153.29.

7 (c) Obtain prior written approval from the department for use of runoff management  
8 grant funds for best management practices installed on land owned or operated by the grantee.

9 (d) When installing best management practices, the grantee shall do all of the following:

10 1. Submit to the department estimates of all practice costs, eligible costs, ineligible costs,  
11 cost-share rates and estimated total cost-share amount.

12 2. Submit to the department a schedule of installation and maintenance for the practices.

13 3. Submit to the department copies of all professional service contracts, construction  
14 contracts, bid tabulations, force account proposals, proposals and other related information  
15 requested by the department.

16 a. Professional service contracts exceeding \$10,000 and construction contracts exceeding  
17 \$35,000 shall be submitted to the department for approval before execution.

18 b. Force account proposals exceeding \$35,000 shall be submitted to the department for  
19 approval prior to the initiation of construction.

20 4. Repay the department the full amount of funds received if the governmental unit fails  
21 to fulfill any terms of the agreement, including failing to install, operate and properly maintain  
22 the practices included in the runoff management grant agreement or failure to evaluate or  
23 monitor the project in accordance with the provisions of the runoff management grant agreement.

24 5. Submit a maintenance strategy for the practices.

25 6. Agree not to adopt any land use or practice that reduces the effectiveness or defeats the  
26 purposes of the best management practices.

27 7. Comply with the requirements for cost-share agreements specified in s. NR 153.22.

28 8. Provide financial support towards the implementation of a project including:

1 a. Arrange funding for staff support necessary to complete the project.

2 b. Arrange funding for the local share of any best management practice the governmental  
3 unit installs on property it owns or controls.

4 (5) OTHER GRANT PROVISIONS. (a) The period in which cost-share agreements may  
5 be signed through the runoff management grant agreement may not extend beyond the runoff  
6 management grant period. For best management practices to be eligible for cost sharing, the  
7 runoff management grant agreement shall be signed prior to entering into a cost-share agreement.

8 (b) The grantee may use runoff management grant funds to cover reasonable expenses  
9 necessary to secure refunds, rebates or credits described in s. NR 153.28 (3) when approved by  
10 the department.

11 (c) The grantee may use runoff management grant funds to acquire easements or acquire  
12 land as provided for in ss. NR 153.24 and 153.25.

13 (d) If the runoff management grant provides cost-share funding to accelerate  
14 implementation of best management practices within a priority watershed project, the department  
15 shall require that the funds be administered consistent with requirements of the approved priority  
16 watershed plan.

17 (e) If the purpose of the project for which the runoff management grant is provided  
18 includes achieving compliance with performance standards under ch. NR 151, the governmental  
19 unit shall assure that funding under the grant is used in a manner consistent with providing cost  
20 sharing at levels adequate to meet the requirements of s. 281.16 (3) (e) and (4), Stats.

21 (f) The department may unilaterally reduce the runoff management grant to the amount  
22 necessary to meet budgetary limitations. The runoff management grant may not be reduced  
23 below the amount the grantee has committed in signed cost-share agreements and contracts.

24 (g) The runoff management grant amount may be reduced by the department if the  
25 grantee has not met all conditions of the grant or grant amendment or has not expended all of the  
26 previously awarded funds by the end of the project period, or if the grantee fails to meet a  
27 schedule included in the grant for interim work products. The grantee shall provide an estimate  
28 of unexpended grant funds at the request of the department.