Chapter NR 153

TARGETED RUNOFF MANAGEMENT AND NOTICE OF DISCHARGE GRANT PROGRAMS

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

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

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: am. Register December 2010 No. 660, eff. 1−1−11.

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

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

(1m) The department when accepting applications, selecting and funding notice of discharge projects under s. 281.65 (4e), Stats.

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

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

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

(5) Landowners and land operators when acting as cost−share recipients.

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: am (1), (3), cr. (1m) Register December 2010 No. 660, eff. 1−1−11.

NR 153.12 Definitions. In this chapter:

(1) "Acquisition cost" means the purchase price actually paid by the grantee and reasonable costs related to the purchase of the property limited to the cost of appraisals, land surveys, relocation payments, title evidence, recording fees, historical and cultural assessments required by the department, and environmental inspections and assessments. It does not include attorneys fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes or any other cost not identified in this subsection.

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

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

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

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

(5m) "Cost−share recipient" means the receiver of cost−share funds from a provider.

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

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

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

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

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

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

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

(12m) "Impaired water" means a water body that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

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

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

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

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

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

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

(18g) "Notice of discharge" means a notice issued from the department to a landowner or operator under s. NR 243.24.

(18r) "Notice of discharge project" means a project funded by the department under s. 281.65 (4e), Stats.

(19) "Operation and maintenance period" means the length of time a best management practice included on a cost−share agreement or a runoff management grant agreement shall be operated and maintained to fulfill conditions of the agreement.

(19m) "Priority lake" means any lake or group of lakes that are identified under s. 281.65 (3) (am), Stats.

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

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

(23) "Project" means any targeted runoff management project or a notice of discharge project.

(24) "Project area" means the geographic extent of a project.

(25) "Project completion" means the expiration date of a runoff management grant agreement or the date all practice installations were certified as complete.

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

(27) "Provider" means a governmental unit that administers cost−share funds through a cost−share agreement with a landowner, operator, or state agency.

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

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

(31) "Targeted runoff management project" means either a TMDL or a non−TMDL control project selected by the department for funding under s. 281.65 (4c), Stats.

(31m) "TMDL" means the amount of pollutants specified as a function of one or more water quality parameters that can be discharged into a water quality limited surface water segment and still ensure attainment of the applicable water quality standard.

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

(32g) "US EPA" means the United States environmental protection agency.

(32r) "Watershed" means the geographic area draining to a specified portion of the surface or groundwater resource.

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

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

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: r. and recr. (1), cr. (5m), (12m), (18g), (18r), (19m), (31m), (32g), (32r), am. (8), (19), (23) to (27), (29), (31), r. (22), (28) Register December 2010 No. 660, eff. 1−1−11.

NR 153.13 Eligible applicants. (1) Governmental units and federally recognized tribal governing bodies are eligible to apply for and receive funding for projects administered under this chapter.

Note: A landowner or land operator that is not a governmental unit may not apply directly to the department for a targeted runoff management grant or a notice of discharge grant. However, a landowner or land operator may enter into a cost−share agreement with a governmental unit to receive grant funds awarded by the department under s. NR 153.20 or 153.205.

(2) A state agency, including the department, may apply for a targeted runoff management project grant administered under this chapter for a project on land under state ownership or control if the project area is within the boundaries of a priority watershed or priority lake project. The department may apply for a grant to purchase an easement for a targeted runoff management project or a notice of discharge project located in a priority watershed or priority lake project. For purposes of this subsection, a priority watershed or priority lake project is considered to retain its project status through the end of the tenth year beyond the expiration date of the nonpoint source grant agreement entered into under s. NR 120.12.

Note: A state agency, including the department, may not apply directly to the department for a targeted runoff management project grant if the project area is located outside the boundaries of a priority watershed or priority lake project. For work in these areas a state agency, including the department, may only receive funds for a targeted runoff management project if a governmental unit submits an application on its behalf.

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: am. Register December 2010 No. 660, eff. 1−1−11.

NR 153.14 Eligible targeted runoff management projects. (1) APPLICABILITY. This section applies only to targeted runoff management projects.

(2) PROJECT CATEGORIES. The following four categories of targeted runoff management projects are eligible for funding under this chapter:

(a) Large–scale TMDL implementation project.

(b) Small–scale TMDL implementation project.

(c) Large–scale non–TMDL control project.

(d) Small–scale non–TMDL control project.

(3) GENERAL ADMINISTRATIVE PROJECT CRITERIA FOR ALL PROJECTS. Any project funded under this section shall meet all of the following administrative criteria:

(a) The project application submitted under s. NR 153.17 shall specify the watershed, sub–watershed, or specific site that will be served by the project.

(b) The project shall be consistent with priorities identified by the department on a watershed or other geographic basis.

(c) The project shall be consistent with the county land and water resources management plan approved under s. 92.10, Stats.

(d) The project may not have been allocated full cost–share funding by the department of agriculture, trade and consumer protection under the joint allocation plan approved under ss. 92.14 (14) and 281.65 (4) (pm), Stats.

(4) GENERAL WATER QUALITY CRITERIA FOR ALL PROJECTS. Any project funded under this section shall implement nonpoint source pollution control in an area that is a target area based on at least one of the following:

(a) The need for compliance with performance standards established by the department in ch. NR 151.

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

(c) The existence of outstanding or exceptional resource waters, as designated by the department under s. 281.15, Stats.

(d) The existence of threats to public health.

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

(f) Other water quality concerns of national or statewide importance as identified by the department in application materials.

(5) LARGE–SCALE TMDL IMPLEMENTATION PROJECT ELIGIBILITY CRITERIA. Large–scale TMDL implementation projects shall meet the following specific criteria:

(a) The project shall directly implement the pollutant–specific goals of either a draft TMDL, a US EPA–approved TMDL, a draft TMDL implementation plan, a department approved TMDL implementation plan, or an equivalent to any of the foregoing as identified by the department.

(b) The project shall be designed to control the most critical nonpoint pollution sources within a designated watershed area.

Note: The boundaries of the watershed area will be based on factors including the amount of funds available, the management needs identified in the TMDL and the management strategy set forth in the TMDL implementation plan.

(c) The project shall be limited to managing agricultural sources of nonpoint pollution.

(d) The project shall focus on controlling those nonpoint pollution sources in the project area that are determined to be significant based on their relative contribution to the impairment and that can be cost–effectively controlled.

(e) The intended project period may not exceed 3 years in duration, with the possibility of extension to 4 years if approved by the department.

(6) SMALL–SCALE TMDL IMPLEMENTATION PROJECT ELIGIBILITY CRITERIA. Small–scale TMDL implementation projects shall meet the following specific criteria:

(a) The project shall directly implement the pollutant–specific goals of either a draft TMDL, a US EPA–approved TMDL, a draft TMDL implementation plan, a department approved TMDL implementation plan, or an equivalent to any of the foregoing as identified by the department.

(b) The project may focus on one or more sites or farms.

(c) The project may address nonpoint pollution from either agricultural or urban sources.

(d) The project shall focus on controlling those nonpoint pollution sources in the project area that are determined to be significant based on their relative contribution to the impairment and that can be cost–effectively controlled.

(e) The intended project period may not exceed two years in duration, with the possibility of extension to 3 years if approved by the department.

(7) LARGE–SCALE NON–TMDL CONTROL PROJECTS ELIGIBILITY CRITERIA. Large–scale non–TMDL control projects shall meet the following specific criteria:

(a) The project shall implement water resource management goals included in a watershed plan or strategy acceptable to the department.

(b) The project shall be designed to control the most critical nonpoint pollution sources within a designated watershed area. The designated watershed area shall be not less than 8 square miles nor more than 39 square miles in areal extent.

Note: The Wisconsin Buffer Initiative finds that watersheds in this size range provide the best opportunity for cost–effectively solving surface water resource problems in threatened or partially degraded waters using agricultural nonpoint source pollution control best management practices. The Wisconsin Buffer Initiative is published by the University of Wisconsin College of Agricultural and Life Sciences. Copies are on file with the department and the secretary of state.

(c) The project shall be limited to managing agricultural sources of nonpoint pollution.

(d) The project shall focus on controlling those nonpoint pollution sources in the project area that are determined to be significant based on their relative contribution to the impairment and that can be cost–effectively controlled.

(e) The project shall focus on attainment of performance standards and prohibitions established by the department under s. 281.16 (3), Stats.

(f) The intended project period may not exceed 3 years in duration, with the possibility of extension to a fourth year if approved by the department.

(8) SMALL–SCALE NON–TMDL CONTROL PROJECT ELIGIBILITY CRITERIA. Small–scale nonpoint source control projects shall meet the following specific criteria:

(a) The project may focus on one or more sites or farms.

(b) The project may address nonpoint pollution from either agricultural or urban sources.

(c) Agricultural projects shall be designed to achieve attainment of agricultural performance standards and prohibitions established by the department under s. 281.16 (3), Stats. Urban projects shall be designed to achieve attainment of non–agricultural performance standards established by the department under s. 281.16 (2), Stats.

(d) The intended project period may not exceed 2 years in duration, with the possibility of extension to 3 years if approved by the department.

Note: TMDL implementation projects contribute to the cost–effective removal of surface waters from the state's impaired waters list in a way that is consistent with TMDLs and TMDL implementation plans. The degree to which compliance with state performance standards and prohibitions is needed to address these impairments will vary by waterbody.

Non–TMDL control projects improve degraded surface waters (including surface waters on the section 303 (d) list that do not yet have TMDLs or TMDL implementation plans), to improve degraded groundwater and to protect threatened and high

quality surface and ground waters from degradation. These projects achieve their goals by implementing state performance standards and prohibitions.

Large–scale projects and small–scale TMDL implementation projects set control priorities based on a watershed plan or other process to identify needs and cost–effective strategies. Small–scale non–TMDL control projects implement state performance standards and prohibitions wherever they may occur, leading to a general reduction in nonpoint source pollution.

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; CR 09–112: r. and recr. Register December 2010 No. 660, eff. 1–1–11; correction in (7) (title), (8) (title) made under s. 13.92 (4) (b) 2., Stats., Register December 2010 No. 660.

NR 153.145 Eligible notice of discharge projects. (1) This section applies only to notice of discharge projects.

(2) Eligibility for funding under this section includes notice of discharge projects that implement best management practices for animal waste management at animal feeding operations for which the department has issued a notice required under s. 281.65 (4e), Stats. Notice of discharge projects shall be designed to meet the water quality goals established in s. 281.65 (4e), Stats.

Note: The department may fund management practices to meet notice of discharge requirements in two ways. It may fund required management practices through a notice of discharge project authorized under s. 281.65 (4e), Stats. Alternatively, it may fund the required management practices under a targeted runoff management project authorized under s. 281.65 (4c), Stats. This chapter establishes separate requirements and procedures for each of these alternative funding mechanisms.

History: CR 09–112: cr. Register December 2010 No. 660, eff. 1–1–11.

NR 153.15 Cost sharing for best management practices. (1) ELIGIBLE COSTS. (a) The department may provide cost sharing for the construction or implementation of best management practices in any project selected for funding under the chapter. The department may attribute design and construction services costs to the cost of construction or implementation of the best management practice. State and local administrative permit fees are not reimbursable as part of the construction cost.

Note: Although local administrative fees are not reimbursable, the department may reimburse governmental units for design and construction services subject to the limitations of s. NR 153.27 (4).

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

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

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

1. Be included in ch. NR 154.

2. Be included in subch. VIII of ch. ATCP 50.

3. Be available in accordance with the technical standards development and dissemination requirements of subch. V of ch. NR 151.

4. Be identified by the department as an interim best management practice or alternative design criteria in accordance with sub. (3) (b) 4.

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

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

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

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

Note: This section governs what pollution sources are eligible for cost sharing under ch. NR 153. It does not address requirements for compliance with performance standards, nor does it address cost–share funding as a precondition for compliance. Compliance requirements, including when cost–share funding must be made available as a precondition of compliance, are set forth in ss. NR 151.09 and 151.095.

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

(a) Best management practices for croplands classified as "new" under s. NR 151.09 (4) (b) 3. or best management practices for livestock facilities classified as "new" under s. NR 151.095 (5) (b) 2.

(ag) Best management practices to address pollution from a livestock facility or cropland practice that was previously in compliance with standards and prohibitions on or after the date the standard or prohibition became effective under ch. NR 151, regardless of cost share history. The department may make an exception and provide cost sharing to replace practices or practice components previously cost shared by the department that are ineffective during the operation and maintenance period due to unforeseen design problems.

Note: If a source loses its compliance status because of changes to the standard, cost sharing may be offered for management measures needed to bring the source into compliance with the new standard.

(ar) Best management practices to address a pollution source for which the department included a previous offer of cost sharing as part of a notice issued pursuant to ch. NR 151 and the management practices were not installed within the required compliance period.

(b) Routine operation and maintenance of best management practices. The department may provide cost sharing one time to re–establish an agricultural best management practice cost shared after October 1, 2002, that is damaged within the cost–share operation and maintenance period by natural causes beyond the control of the landowner or land operator.

(d) Significant expansions of livestock operations are not eligible for cost sharing. The department shall use the criteria in this paragraph for determining whether an increase in the size of the livestock population constitutes a significant expansion and is ineligible for cost sharing. In this paragraph, "livestock population size" means the size of the livestock population, in animal units. In this paragraph, "base livestock population size" means the livestock population size determined when the department or governmental unit, including a county land conservation committee, documents the size of the livestock population. In this paragraph, "animal unit" has the meaning given it in ch. NR 243.

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

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

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

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

(e) Best management practice installation activities conducted prior to the signing of the runoff management grant agreement and the cost–share agreement. This paragraph does not preclude the department from providing reimbursement for structural best management practice design work commenced or completed prior to signing the runoff management grant agreement and the cost–share agreement, provided that practice construction commences after the grant agreement is signed by all parties.

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

1. Activities requiring WPDES permit coverage at livestock operations with less than 1,000 animal units that have been issued a WPDES permit by the department under ch. 283, Stats. In this paragraph, "livestock operation" has the meaning given in s. 281.16 (1) (c), Stats. In this paragraph, "animal unit" has the meaning given in ch. NR 243.

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

3. All other activities requiring coverage under a WPDES permit issued under chs. NR 200 to 240 and 245 to 299 except for activities required of the city of Racine to comply with municipal storm water permit requirements under ch. NR 216.

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

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

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

(i) Active mining activities.

(j) Urban best management practices associated with new construction or new development, including the following:

1. Construction site erosion control measures subject to the requirements of s. NR 151.11, except those required by this chapter to control erosion during construction of a best management practice.

2. Post–construction storm water management practices for new development subject to the requirements of subch. III of ch. NR 151.

3. The department may consider redevelopment of an existing development and in–fill to be either existing development or new development for purposes of this paragraph. In making its determination, the department shall consider the type of land cover within and adjacent to the development and the areal extent of the development.

4. In this paragraph, "existing development" has the meaning given it in s. NR 151.002 (14g), "in–fill" has the meaning given it in s. NR 151.002 (18), and "new development" means development resulting from the conversion of previously undeveloped land or agricultural land uses initiated after October 1, 2004, or development for which a notice of intent was received by the department or the department of safety and professional services after October 1, 2004.

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

(L) The planting of trees intended for commercial harvest.

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

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

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

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

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

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

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

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

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

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

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

(x) Purchase of non–stationary manure spreading equipment.

(y) Best management practices to correct overtopping caused by mismanagement of a manure storage facility.

(z) Maintaining existing grass cover.

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

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

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

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

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

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

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

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

2. The applicant shall justify all of the following:

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

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

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

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

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

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

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

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

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

3. The project shall have a strategy approved by the department for developing and disseminating information and education materials explaining the project and its management implications.

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

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

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

(b) The state cost–sharing amount shall be determined by multiplying the eligible installation cost by the cost–share rate, unless otherwise provided for in this chapter or in ch. NR 154. Where 2 or more practices are equally cost–effective in reducing pollutants consistent with par. (a), the amount of cost sharing shall be based on the least cost practice.

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; corrections in (2) (f) 3. made under s. 13.93 (2m) (b) 7., Stats., Register September 2002 No. 561; CR 09–112: am. (1) (a), (c) (intro.), 4., (g), (2) (b), (d) (intro.), (e), (y), (3) (b) 1., (4) (a) 3., (6) (b), r. (2) (c), r. and recr. (2) (a), (j), cr. (2) (ag), (ar) Register December 2010 No. 660, eff. 1–1–11; correction in (2) (r) made under s. 13.92 (4) (b) 7., Stats., Register December 2010 No. 660; correction in (2) (j) 4. made under s. 13.92 (4) (b) 6., Stats., Register December 2011 No. 672.

NR 153.16 Aids for local assistance activities. (1) ELIGIBLE COSTS. (a) The department may provide cost sharing under s. NR 153.26 for local assistance activities conducted during the grant period in large–scale TMDL implementation projects and large–scale non–TMDL control projects.

Note: Small–scale TMDL projects, small–scale non–TMDL control projects, and notice of discharge projects are not eligible for local assistance grants. However, design and construction services costs in small–scale and notice of discharge projects may be included in the cost of construction for reimbursement purposes.

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

(c) The following activities are eligible for local assistance funding when conducted in the project area:

1. Identifying high priority nonpoint pollution sources for control.

2. Contacting and informing landowners and land operators of conservation program opportunities and requirements, including those relating to state performance standards and prohibitions.

3. Determining and documenting compliance of cropland practices and livestock facilities with performance standards and prohibitions.

4. Identifying site–specific best management practices needed to achieve compliance with performance standards and prohibitions or to otherwise control nonpoint pollution sources.

5. Developing and reviewing cost–share agreements with the cost–share recipient.

6. Providing assistance to the department in developing and issuing notices under ss. NR 151.09 and 151.095 and developing and issuing comparable notices under local ordinances.

7. Best management practice construction services, including construction management and verification of best management practices installation.

8. Reviewing best management practice operation and maintenance during the grant period.

9. Developing and transmitting to the department information that identifies landowners and operators that do not comply with performance standards or prohibitions.

10. Administration of property acquisition in accordance with s. NR 153.25.

11. Fiscal management.

12. Development of informational materials, including videos or brochures.

13. Project evaluation activities identified in the project application and required by the runoff management grant agreement, including monitoring.

14. Other activities approved by the department as being necessary to implement the project.

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

1. The cost of testing materials for use in best management practice design and installation.

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

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

4. Field equipment necessary to conduct or evaluate the project.

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

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

(a) Activities for which WPDES permit coverage is required.

(b) Direct costs for other items not listed in this section, including best management practice design, staff training, ordinance development and administration, promotional items except when used for educational purposes, and the purchase or lease of motor vehicles.

(c) Indirect project costs that are not directly related to the output of a product or service or cannot be identified specifically with a single cost objective in an economically feasible manner.

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; CR 09–112: r. and recr. Register December 2010 No. 660, eff. 1–1–11.

NR 153.17 Targeted runoff management project application. (1) APPLICABILITY. This section applies only to targeted runoff management projects.

(2) APPLICATION PROCESS. (a) Subject to the availability of funds, the department shall do the following:

1. Solicit applications for projects to be funded under this chapter by providing the public with information that application materials are available upon request.

a. The department shall solicit applications for any small–scale project on an annual basis provided there is adequate funding available.

b. The department may solicit applications for any large–scale project on an annual or biennial basis depending on the availability of funds.

2. Distribute to any potential applicant that requests it a copy of the appropriate application and application instructions.

Note: Grant applications and instructions are available from the department. Phone: (608) 266–7555.

(b) All applicants for funding shall submit project applications on forms provided by the department. A governmental unit or federally recognized tribal governing body may request funding under this chapter for one or more projects by submitting the appropriate applications to the department.

Note: Forms can be obtained from the department's Bureau of Watershed Management or the department's Bureau of Community Financial Assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707–7921. Phone: (608) 266–7555.

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

(d) The department may request funding for the purchase of eligible easements located in a priority watershed project area by submitting the appropriate application to the department.

(e) Applicants shall submit completed project applications to the department in order to be considered for funding in the following calendar year. Applications shall be delivered or post–marked by midnight, April 15.

(3) REQUIRED ADMINISTRATIVE INFORMATION. An applicant for any targeted runoff management project shall submit the following information to be considered for funding:

(a) Applicant name.

(b) Name and title of authorized representative.

(c) Contact name and telephone number.

(d) Type of governmental unit and applicant address.

(e) Signature of authorized representative.

(f) Project name and scope.

(g) Other administrative information that the department determines necessary to process the application.

(4) REQUIRED SCREENING INFORMATION. An applicant for a targeted runoff management project shall submit the screening information required by this subsection to be considered for funding.

(a) Certification that the project meets applicable eligibility requirements of s. NR 153.14. To demonstrate consistency with a county's land and water resource management plan as required under s. NR 153.14 (3) (c) a county shall substantiate that the land and water resource management plan, plan amendment, or work plan prepared under s. ATCP 50.12 identifies goals, objectives, or activities related to the resource concerns being addressed by the project.

(b) A map of the project area showing the watershed, subwatershed, or specific site to be served by the project. The map shall be accompanied by information the applicant is aware of that concerns environmental contamination, endangered, threatened or wetland resources, historic properties, or historic places contained in the project area and potentially impacted by the project.

(c) A list of the best management practices for which funding is requested, including property acquisition associated with any of these practices, and identification of practice eligibility under s. NR 153.15. For land acquisition, a certification statement that the applicant will obtain control of the property upon which the practice will be constructed prior to commencement of the grant period.

(d) A list of local assistance and design activities for which funding is requested and an identification of eligibility under s. NR 153.16.

Note: Local assistance activities eligible for reimbursement are identified in s. NR 153.16. Reimbursement may also be sought for design and construction services work under s. NR 153.15 (1) (a).

(e) Certification that the activities listed on the application are scheduled for completion within the allowable time period specified by the department in the application materials.

(f) Certification that the applicant has made arrangements to provide the staff necessary to implement the project.

(g) Certification that staff and contractors designated for the project have adequate training, knowledge, and experience to implement the proposed project.

(h) Evidence that the proposed project does not conflict with statewide and targeted nonpoint source performance standards and prohibitions.

(i) For agricultural projects, documentation that the county has a qualifying strategy to implement state agricultural performance standards and prohibitions contained in subch. II of ch. NR 151. To qualify, the strategy shall address the following key actions:

1. Inform and educate landowners and land operators required to comply with performance standards.

2. Conduct compliance status inventories based on records reviews and on–site visits.

3. Document inventory results and maintain compliance status records.

4. Report inventory results and continuing compliance maintenance requirements to landowners and operators.

5. Identify best management practices to achieve compliance.

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

7. Develop cost–share agreements and provide for technical assistance to landowners and land operators to achieve compliance with performance standards.

8. Assist the department at its request in drafting ch. NR 151 notices to landowners and land operators.

9. Fulfill annual program reporting requirements.

(j) Other information that the department may require to screen the application for compliance with minimum program and statutory requirements.

(5) REQUIRED SCORING INFORMATION FOR LARGE SCALE PROJECTS. An applicant for any large–scale TMDL project or large–scale non–TMDL project shall submit the following information to be considered for funding under this chapter:

(a) Receiving water quality need, including impairment or threats to water quality caused or contributed to by nonpoint pollution sources that will be addressed by the project.

(b) Expected reduction in pollutant loading attributed to the project.

(c) Potential for the desired water quality response to implementation of best management practices.

(d) Justification for geographic extent of the proposed project area.

(e) Information regarding specific nonpoint pollution sources in the project area and the need and strategy for collecting and evaluating additional inventory information.

(f) Proposed nonpoint pollution control strategy for the project area, including contacting and educating landowners and operators, conducting farm evaluations, identifying and targeting high priority nonpoint pollution sources such as sites failing to meet state standards and prohibitions, selecting cost–effective best management practices, delivering cost sharing and technical assistance, using local and state regulatory tools to facilitate attainment, and continuing maintenance of state performance standards and prohibitions.

(g) Evidence of local support and involvement including support from governmental units, interest groups, landowners, and

land operators. The department may also request information concerning a governmental unit's continuous decision−making process which ensures participation by minority and low income populations in affected areas, along with majority populations, to ensure that as an outcome all people receive the benefits of a clean, healthy, and sustainable environment regardless of race, national origin, or income.

(h) Consistency of the proposed project with other local land and water resource management plans, including the county land and water resources management plan.

(i) Project budget and cost−effectiveness.

(j) Partnerships in the project area, including the extent to which available federal funding and other staffing and financial resources will be used.

(k) Strategy for evaluating changes in pollution potential, pollutant loading, and receiving water response after implementation of the project.

(L) The extent of local authority to enforce performance standards and prohibitions, including information required to determine the project score enforcement multiplier under s. NR 153.19 (4).

(m) For the city of Racine, an explanation of how the proposed project will contribute to meeting storm water requirements under ch. NR 216.

(6) REQUIRED SCORING INFORMATION FOR SMALL SCALE PROJECTS. An applicant for any small−scale TMDL project or small scale non−TMDL project shall submit the following information to be considered for funding:

(a) Receiving water quality need, including impairment or threats to water quality caused or contributed to by nonpoint pollution sources that will be addressed by the project.

(b) Expected reduction in pollutant loading or pollution potential attributed to the project.

(c) Extent to which performance standards and prohibitions will be implemented.

(d) Potential for the desired water quality response to implementation of best management practices.

(e) Evidence of local support and involvement, including support from governmental units, interest groups, landowners, and land operators. The department may also request information concerning a governmental unit's continuous decision−making process which ensures participation by minority and low income populations in affected areas, along with majority populations, to ensure that as an outcome all people receive the benefits of a clean, healthy, and sustainable environment regardless of race, national origin, or income.

(f) Consistency between the project and other state and local resource management plans.

(g) Project budget and cost effectiveness.

(h) Use of other funding sources to supplement or reduce the state cost share provided under this chapter.

(i) Strategy for evaluating changes in pollution potential, pollutant loading, and receiving water response after implementation of the project.

(j) Extent of local authority to enforce performance standards and prohibitions, including information required to determine the project score enforcement multiplier under s. NR 153.19 (4).

(k) For the city of Racine, an explanation of how the proposed project will contribute to meeting storm water requirements under ch. NR 216.

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: r. and recr. Register December 2010 No. 660, eff. 1−1−11; correction of numbering of (3), (4) made under s. 13.92 (4) (b) 1., Stats., Register December 2010 No. 660.

NR 153.18 Targeted runoff management project screening. This section applies only to targeted runoff management projects.

(1) The department may deny consideration of applications that are incomplete by the submittal deadline. The department may consider an application incomplete if the project proposal requires significant additional review to determine compliance with other state laws and the department determines that such reviews may significantly delay the project. State laws that the department may consider in determining if the application is incomplete include those to protect navigable waters, wetlands, historic places, historic properties, endangered resources, or threatened resources and laws for managing environmental hazards due to site contamination.

(2) The department shall screen each completed project application to determine if the project meets basic eligibility criteria for funding under this chapter. The department shall use the information required in s. NR 153.17 (4) to make this determination. The department shall remove from further consideration applications that fail to satisfy screening requirements and shall inform the applicant of this decision.

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: am. Register December 2010 No. 660, eff. 1−1−11.

NR 153.19 Targeted runoff management project scoring. (1) APPLICABILITY. This section applies only to targeted runoff management projects.

Note: Scoring guidance is available from the department. Phone: (608) 266−7555.

(2) SCORING PROCEDURE FOR SMALL SCALE PROJECTS. The department shall use the procedure in this subsection to score any small scale project that passes the eligibility screening under s. NR 153.18.

(a) The department shall develop an initial project score using the information submitted by the applicant under s. NR 153.17 (6).

1. The department shall assign a sub−score to each of the application elements identified under s. NR 153.17 (6). The initial project score shall be the sum of the sub−scores.

2. In determining the initial project score for small scale projects, the department shall give greatest weight to water quality need, extent of pollution control, and cost−effectiveness.

3. The department may establish minimum score requirements to identify projects that should be removed from further consideration.

(b) The department shall multiply the initial project score by a factor based on local enforcement authority to determine the final project score. The department shall determine the local enforcement factor in accordance with sub. (4).

(3) SCORING PROCEDURE FOR LARGE SCALE PROJECTS. The department shall use the procedure in this subsection to score any large scale project that passes the eligibility screening under s. NR 153.18.

(a) The department shall develop an initial project score using the information submitted by the applicant under s. NR 153.17 (5).

(b) The department shall multiply the initial project score by a factor based on local enforcement authority to determine the final project score. The department shall determine the local enforcement factor in accordance with sub. (4).

(4) MULTIPLIERS FOR LOCAL ENFORCEMENT AUTHORITY. (a) The department shall increase the initial project score in accordance with this subsection if there are local regulations adopted prior to application submittal that give local authority to enforce state performance standards and prohibitions. The result shall be the final project score.

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

1. The department shall multiply the initial project score by a factor of 1.15 if the applicant certifies to the department that it has local authority to enforce all state agricultural performance standards and prohibitions at all sites within the local jurisdiction where such state agricultural performance standards and prohibitions apply.

2. The department shall adjust the enforcement multiplier based on the scope of the local ordinance coverage. Adjustments under this subdivision shall be made so that the multiplier is greater than 1.0 but less than 1.15 for instances where the local regulations cover some, but not all, of the state agricultural performance standards and prohibitions or where a local regulation is applicable to some, but not all, of the sites where the state agricultural performance standard or prohibition applies. The department may request that a copy of applicable ordinances be made available to the department for review in determining the enforcement multiplier.

3. The department may adjust the multiplier if the ordinance contains a variance clause that significantly reduces the effectiveness of the ordinance in achieving compliance with the state agricultural performance standards or prohibitions, or both.

4. If no multiplier is earned, the initial score shall be the final project score.

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

1. The department shall multiply the initial project score by a factor of 1.15 if the applicant certifies to the department that it has local authority to enforce all state non−agricultural performance standards and prohibitions at all sites within the local jurisdiction where such state non−agricultural performance standards and prohibitions apply.

2. The department shall adjust the enforcement multiplier based on the scope of the local ordinance coverage. Adjustments under this subdivision shall be made so that the multiplier is greater than 1.0 but less than 1.15 for instances where the local regulations cover some, but not all, of the state non−agricultural performance standards and prohibitions or where a local regulation is applicable to some, but not all, of the sites where the state non−agricultural performance standard or prohibition applies. The department may request that a copy of applicable ordinances be made available to the department for review in determining the enforcement multiplier.

3. The department may adjust the multiplier if the ordinance contains a variance clause that significantly reduces the effectiveness of the ordinance in achieving compliance with performance standards.

4. If no multiplier is earned, the initial score shall be the final project score.

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

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: r. and recr. Register December 2010 No. 660, eff. 1−1−11.

NR 153.20 Targeted runoff management project selection and funding. (1) APPLICABILITY. This section applies only to targeted runoff management projects.

(2) SELECTION. (a) The department shall assign each project application to one of the four project categories identified in s. NR 153.14 (2).

(b) From the total budget available to fund targeted runoff management projects, the department shall create annual budget sub−allocations for each of the project categories the department intends to fund in the application cycle. Sub−allocations may change from year to year. The amount in each sub−allocation shall be based on the department's water quality goals and the quality of applications submitted.

(c) Projects compete for funding only against other projects in the same category.

(d) Within each category, the department shall place the projects on a statewide selection list.

1. For each small scale project category, the department shall use the following procedure to create the statewide selection lists:

a. Identify the highest scoring project in each department region. Provided that the highest regional project score is equal to or greater than the median score for all qualifying applications submitted statewide, place the project with the highest regional score at the top of the statewide selection list. If the highest scoring project in the department region is less than the median for all qualifying applications, the project may not be moved to the top of the statewide selection list and shall be ranked with other projects in accordance with subd. 1. b.

Note: This will increase the likelihood that at least one project from each department region will be at the top of the statewide selection lists for each small scale project category.

b. Following projects with the highest regional score, the department shall place all remaining eligible projects on the statewide selection list, in rank order from highest to lowest score.

c. Projects shall be selected in order from the top to the bottom of the statewide selection lists until available funds have been allocated.

2. For each large scale project category, the department shall use the following procedure to create the statewide selection lists:

a. The department shall place all eligible projects on the statewide selection list, in rank order from highest to lowest score. There may be no regional adjustments in the ranking for large−scale projects.

b. Projects shall be selected in order from the top to the bottom of the statewide selection lists until available funds have been allocated.

3. Notwithstanding subds. 1. and 2., the department may do the following when selecting any small or large scale project for funding:

a. Not select a higher scoring project in favor of funding a lower scoring project if federal funds are being allocated for the project, the higher scoring project is ineligible to receive the federal funds, and the lower scoring project is eligible to receive the federal funds.

Note: There are geographic restrictions on the use of certain federal funds being used to support grant awards, such as those allocated to the state under section 319 of the Clean Water Act. In order to use the available federal funds, it may be necessary to leap−frog down the ranked list to match a project with the federal funds.

b. Establish a maximum total amount of funding that a grantee may receive in multiple grant awards in any one year. This amount may not exceed 20 percent of the grant funds available in the funding category or the maximum allowable funding amount allowed for a single project, whichever is greater. Projects on the ranked list whose selection for funding would exceed the allowable grantee total will be moved to the bottom of the list and funded only after all other eligible projects have been funded.

c. Establish a maximum grant award that any single project can receive based on the amount of funding available and the funding demand in any year. For purposes of administering this subdivision paragraph for small scale projects, all management practices proposed on contiguous property shall be considered part of a single project regardless of whether the management practices are submitted on the same or separate project applications. In this subdivision paragraph, "contiguous" means touching or sharing a common boundary with a second parcel of land. A lake, river, stream, road, railroad or utility right of way which separates any part of the parcel from any other part does not render the parcel of land non−contiguous.

d. Offer reduced grants for projects that do not require minimum cost−sharing to meet the requirements of s. 281.16 (3) (e), Stats. Reduced grant offers may be based on a reduction in the cost share rate or a reduction in the maximum project grant award amount.

Note: This includes projects that are not being implemented to meet required state performance standards or prohibitions under ch. NR 151.

e. Offer an award of less than the amount requested if that is the only funding remaining. In these circumstances, the applicant is required to complete the project as specified in the application if the partial funding is accepted.

(e) The department shall notify the land and water conservation board of project scores and ranks no later than September 1 of each year.

(f) Before November 1 of each year, the department shall also notify the land and water conservation board of the budget sub−allocations determined in accordance with par. (b) and the projects that it has identified and proposes to select for funding in the following calendar year.

(g) After selecting projects for funding, the department shall notify applicants in writing of its intent to offer grant agreements for the selected projects. The department shall inform applicants if the location of the project indicates measures may be needed to address environmental contamination, potential negative impacts of the project on navigable waters, endangered, threatened, or wetland resources, historic properties, or historic places.

(3) FUNDING. (a) The department shall, where practicable, issue grants to successful applicants by December 31 of each year for work that begins in the following calendar year. The department shall consider the factors in pars. (b) to (e) when determining final grant awards.

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

(c) For any large scale project, the department may make a partial grant award. The department shall complete the grant award based on availability of funds and project performance as defined under s. NR 153.21 (5) (h) 2.

(d) The department may offer an award of less than the amount requested if that is the only funding remaining. In these circumstances, the applicant is required to complete the project as specified in the application if partial funding is accepted.

(e) If the department determines, following scoring, that a project may have unacceptable impacts on endangered, threatened, or wetland resources, historic places, or historic properties, or that it may expose environmental hazards at the project location, it may do any of the following:

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

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

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

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

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

Note: The joint allocation plan is distributed to counties for review and comment and is submitted to the Wisconsin land and water conservation board which may make recommendations to the department of agriculture, trade and consumer protection on approval, modification, or disapproval. This process affords the affected public and the board an opportunity to make recommendations on items such as budget sub−allocations and project selections determined in accordance with the procedures set forth in the section.

(5) PROJECT SUBSTITUTION. (a) A grantee may request a substitution to a project selected under this section. The request may be to change best management practices or install the best management practices at an alternative location.

(b) The grantee shall submit the request to the department prior to the end of the grant period. The grantee shall submit the substitution request on a form provided by the department.

Note: Forms can be obtained from the department's Bureau of Watershed Management or the department's Bureau of Community Financial Assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707−7921.

(c) The department shall consider the substitution request and inform the grantee of its decision. The department may approve the substitution request only if all of the following criteria are met:

1. The grantee provides a description and rationale for the substitution.

2. The altered project meets project screening, minimum scoring, and local share requirements of this chapter.

3. The altered project is cost−effective, will not increase the original grant award, and will achieve results substantially similar to those anticipated through the original project proposal.

4. The altered project will affect the same hydrologic unit and water resources identified in the original application.

5. There is sufficient time remaining to complete the revised project.

6. The substitution will not result in removing a cost−share offer included in a notice that has been issued or is expected to be issued under s. NR 151.09 or 151.095.

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: r. and recr. Register December 2010 No. 660, eff. 1−1−11.

NR 153.205 Notice of discharge project application, selection and funding. (1) APPLICABILITY. This section applies only to notice of discharge projects under s. NR 153.145.

(2) APPLICATION PERIOD AND CONTENT. (a) The department may accept notice of discharge project applications from governmental units on a continuous basis. Applications shall remain active for one year unless terminated by the applicant. After one year, the governmental unit shall resubmit the application in order for the application to remain active for the department's funding consideration.

(b) The department shall require that applications be submitted on forms provided by the department.

Note: Forms can be obtained from the department's Bureau of Watershed Management or the department's Bureau of Community Financial Assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707−7921.

(c) The application information shall include all of the following:

1. Name and address of the prospective cost−share recipient and project location.

2. Site map.

3. Size of livestock operation, in animal units.

4. Site history, description of discharge, and method of problem determination.

5. Extent and severity of the threat or impact to waters of the state and urgency of installing management measures.

6. Proposed management practices, estimated costs, and implementation timeline.

7. Concurrence from the department of natural resources that the site has been issued, or will be issued concurrent with the runoff management agreement, a notice under s. NR 243.24.

(3) PROJECT SELECTION AND FUNDING. (a) Each year, the department shall identify up to four specific periods when active applications will be considered for funding. Applications considered for funding during each period include the active, unfunded applications from the prior period plus any new applications received prior to the end of the subsequent period. The department shall determine what portion of the available funds will be

made available to fund projects being considered in each selection period.

(b) The department shall consider the information submitted under sub. (2) and make a decision whether to award funding for the project based on the merits of the proposed project, the amount of funding available for project selection, availability of other funding sources, farm viability, and state cost–share requirements under ch. NR 243.

1. If grant funds are awarded under this subsection for a landowner or operator to comply with a notice issued by the department for a category II unacceptable practice under s. NR 243.24 (1) (b), the department's grant award shall, alone or in combination with other sources, meet the state cost–share requirements under s. 281.16 (3) (e), Stats. Requests for economic hardship shall be administered in accordance with s. NR 154.03 (3).

2. If grant funds are awarded under this subsection for a landowner or operator to comply with a notice issued by the department for a category I unacceptable practice under s. NR 243.24 (1) (a) or category III unacceptable practice under s. NR 243.24 (1) (c), the department may do any of the following:

a. Limit the grant award to less than 70% of eligible costs.

b. Establish a maximum dollar amount that may be awarded under the grant for the project.

c. Offer additional cost sharing for economic hardship cases. Requests for economic hardship shall be administered in accordance with s. NR 120.18 (4).

Note: Under ch. NR 243, the department has authority to require compliance with a notice issued for a category I or category III unacceptable practice regardless of cost sharing. Consequently, the department may provide limited or no cost–share assistance for these situations.

Note: Prior to making a funding decision, the department intends to consult with the department of agriculture, trade and consumer protection concerning the availability and suitability of alternative funding sources available through the soil and water resources management grant program administered under ch. ATCP 50.

(c) The department may enter into a runoff management grant agreement with a governmental unit only after a notice has been issued pursuant to s. NR 243.24.

(4) JOINT ALLOCATION PLAN. The department shall establish a budget reserve for notice of discharge projects in the annual joint allocation plan required under ss. 92.14 (14) and 281.65 (4) (pm), Stats.

Note: The department intends to transfer funds from the reserve to governmental units by entering into runoff management agreements.

History: CR 09–112: cr. Register December 2010 No. 660, eff. 1–1–11.

NR 153.21 Runoff management grant agreement. **(1)** PURPOSE. (a) The department shall use the runoff management grant agreement to commit funds to a governmental unit or state agency for the purpose of implementing best management practices for any project selected under s. NR 153.20 or 153.205.

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

(2) GRANT PERIOD LENGTH. (a) For a large–scale TMDL or large–scale non–TMDL project, the department may set the grant period for one to 3 years. The department may approve an extension to 4 years.

(b) For a small scale project, the department may set the grant period for one to 2 years. The department may approve an extension to 3 years. The start of the grant period shall be that specified on the signed grant award.

(c) For a notice of discharge project, the department shall establish, and extend if necessary, the grant period for a length of time sufficient to accommodate the compliance period authorized under s. NR 243.24 (4) (b) 5.

(d) For a targeted runoff management project, the department shall require that a grantee submit a written request in order to consider a project extension. The request shall:

1. Justify the extension request by identifying reasons for the project delay that were beyond the control of the grantee.

2. Be received by the department prior to the expiration of the grant period.

3. Identify how the additional time will result in a significant reduction in the pollutant loading from the project area or otherwise further the intent of the project.

(e) For a notice of discharge project, the grantee shall submit the extension request to the department prior to the expiration of the grant period. The extension request shall include documentation that the provisions of s. NR 243.24 (4) (b) 5. c. have been satisfied.

(3) LOCAL GOVERNMENT RESPONSIBILITIES AS A RUNOFF MANAGEMENT GRANTEE AND COST–SHARE PROVIDER. The governmental unit shall do all of the following as conditions of receiving a runoff management grant:

(a) Execute a runoff management grant agreement with the department for grant funds necessary to administer cost–share agreements with eligible landowners and land operators. This requirement may be waived if the department and the governmental unit agree to delegate these responsibilities to another governmental unit with jurisdiction sufficient to meet all the conditions of the grant.

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

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

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

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

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

(g) Participate with the department in project reviews.

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

(i) Arrange funding for staff support necessary to complete the project.

(j) For a targeted runoff management project, conduct the following activities in addition to technical and financial assistance to implement agricultural performance standards and prohibitions contained in ch. NR 151 for cropland practices and livestock facilities in the project area:

1. Inform landowners and land operators of performance standards and prohibitions.

2. Through records reviews and on–site assessments, evaluate and document the compliance status of cropland practices and livestock facilities with agricultural performance standards and prohibitions on all properties of the farm operation owned or operated by the grantee. If the cost–share is offered as part of a notice issued under s. NR 151.09 or 151.095 or a local regulation, the governmental unit may with prior department approval limit the on–site assessments to parcels identified in the notice.

3. Document and convey the results to landowners of the compliance status evaluation for the whole farm, by field or parcel.

4. Document and keep office records of changes in compliance status of cropland practices and livestock facilities by parcel for recipients of cost sharing provided under this chapter.

5. Inform landowners in writing of requirements for continuing compliance maintenance of cropland practices and livestock facilities that meet state standards and prohibitions.

6. Conduct enforcement activities consistent with the local authority identified as part of the application materials for which the grant was awarded.

7. Provide assistance to the department as requested to develop and issue notices under ss. NR 151.09 and 151.095 and to develop and issue letters explaining that the notice has been satisfied.

(k) For notice of discharge projects, conduct the following activities in addition to technical and financial assistance:

1. For all notice of discharge categories:

a. Inform landowners and land operators of performance standards and prohibitions.

b. Provide assistance to the department as requested to develop and issue letters explaining that the notice has been satisfied.

2. For notices of discharge issued for category II unacceptable practices identified in accordance with s. NR 243.24 (1) (b):

a. Inform landowners and land operators of performance standards and prohibitions.

b. Document and keep office records of changes in compliance status of livestock facilities by parcel for recipients of cost sharing provided under this chapter.

c. Inform landowners in writing of requirements for continuing compliance maintenance of livestock facilities that meet state standards and prohibitions.

d. Provide assistance to the department as requested to develop and issue letters explaining that the notice has been satisfied.

(4) LOCAL GOVERNMENT AND STATE AGENCY RESPONSIBILITIES AS A COST–SHARE RECIPIENT. The governmental unit or state agency shall do all of the following as conditions of receiving a runoff management grant to perform work on lands the governmental unit or state agency owns or operates:

(a) Arrange funding for the local share of any best management practice the governmental unit installs on property it owns or controls.

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

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

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

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

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

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

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

a. Professional service contracts and construction contracts shall be submitted to the department for approval before execution.

b. Force account proposals shall be submitted to the department for approval prior to the initiation of construction.

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

5. Submit a maintenance strategy for the practices.

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

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

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

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

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

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

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

(c) The grantee may use runoff management grant funds to acquire property as provided for in s. NR 153.25.

(e) If the purpose of the project for which the runoff management grant is provided is to require a landowner to comply with performance standards or prohibitions under ch. NR 151, the governmental unit shall assure that funding under the grant is used to make a cost share offer that meets the requirements of s. 281.16 (3) (e) and (4), Stats.

(f) The department may unilaterally reduce the runoff management grant award for any of the following reasons, but may not reduce the grant below the amount the grantee has committed in signed cost−share agreements and contracts. The grantee shall provide an estimate of unexpended grant funds at the request of the department.

1. The reduction is necessary to meet budgetary limitations.

2. The grantee has not met all conditions of the grant.

3. The grantee fails to meet a schedule included in the grant for interim work products.

(g) For targeted runoff management projects, if a grantee successfully meets the nonpoint source pollution reduction goals in the project area without fully using the cost share award, the grantee may with prior department approval use the remaining funds to control additional nonpoint pollution sources in the project area.

(h) If the department has made a partial grant award under s. NR 153.20 (3) (c), it shall consider the following in determining whether to complete the grant award:

1. The availability of funds to complete the grant award.

Note: Large−scale projects may require funds from more than one state budget. In such cases, the department must await subsequent budgets before completing the grant awards for on−going projects.

2. Project performance. The department may terminate the grant if sufficient progress has not been made. Factors to be included in considering project performance include commitment of cost share resources, installation of best management practices, and reduction in nonpoint source pollutant loads.

Note: Cost−share resources are committed by signing cost share agreements, issuing offers of cost share under ss. NR 151.09 and 151.095, and making reimbursements for installed practices. Pollutant load reduction can be credited for installed best management practices regardless of whether the practice installation is cost shared using state funds as may have been originally intended.

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: r. and recr. Register December 2010 No. 660, eff. 1−1−11.

NR 153.22 Cost−share agreement. (1) PURPOSE OF AGREEMENT. (a) The cost−share agreement is an agreement listing the best management practices and establishing the conditions and considerations under which a cost−share recipient agrees to install the practices listed. The cost−share agreement may be used as an offer of cost sharing in accordance with ss. NR 151.09, 151.095, and 243.24 (4) (b) 4.

(b) A local governmental unit shall use the cost−share agreement if serving as a cost−share provider to a landowner, land operator, or state agency.

(c) The department may use the runoff management grant agreement in lieu of a cost−share agreement if it serves as a grantor of funds to a governmental unit or state agency and the grant recipient uses the funds to implement management practices on lands it owns or operates. Runoff management grant agreements used in lieu of cost−share agreements shall comply with the requirements in this section as well as those in s. NR 153.21.

(d) For best management practices to be eligible for cost sharing, the cost−share agreement shall be signed by the cost−share provider and cost−share recipient before best management practice installation is initiated.

(2) PARTIES TO THE AGREEMENT. (a) The cost−share agreement shall be between the governmental unit and the individual landowner, land operator or state agency. Agreements with land operators shall be co−signed by the landowner except in instances where the cost−share agreement contains no other practices than those enumerated in sub. (6) (b) 1. If other practices are included in a cost−share agreement amendment, the landowner shall co−sign the amendment.

(b) Governmental units, as cost−share agreement providers, shall enter into cost−share agreements only during the period specified in the runoff management grant agreement.

(c) The cost−share agreement applies to all contiguous sites under the same ownership. At the discretion of the governmental unit, the cost−share agreement may also apply to noncontiguous sites under the same ownership or operation in the watershed. In this paragraph, "contiguous" means touching or sharing a common boundary with a second parcel of land. A lake, river, stream, road, railroad or utility right of way that separates any part of the parcel from any other part does not render the parcel of land noncontiguous.

(d) A cost−share agreement may not be signed with an individual whose name appears on the statewide support lien docket under s. 49.854 (2) (b), Stats., unless the individual submits to the provider a payment agreement that has been approved by the county child support agency under s. 59.53 (5), Stats., and that is consistent with rules promulgated under s. 49.858 (2) (a), Stats.

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

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

(b) The best management practices to be applied and the cost−share rates for those practices that are to be cost shared. The cost−share agreement shall require that all best management practices listed on the cost−share agreement be implemented and maintained as a condition of the agreement.

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

(d) The installation schedule for applying the cost−shared practices. The cost−share agreement shall also require that the cost−share recipient comply with state performance standards and prohibitions for existing cropland practices and livestock facilities that do not require cost sharing under s. NR 151.09 or 151.095. The cost−share provider may limit this requirement to significant pollution sources with prior approval from the department.

(e) A statement of maintenance requirements.

(f) A prohibition against adopting any land use or practice which defeats the purposes of the best management practices, the cost−share agreement, or the runoff management grant agreement. This includes a prohibition against any change in land use or management of a cropland practice or livestock facility that leads to non−compliance with state performance standards and prohibitions for a parcel where continuing compliance with a state standard or prohibition is required under s. NR 151.09 (3) (b) or 151.095 (4) (b). This also requires meeting performance standards and prohibitions, without regard to cost sharing, for all new cropland practices and livestock facilities. If such a change in land use or management occurs, the landowner or land operator shall control the source at the landowner or land operator's own expense or return any cost−sharing funds awarded through the cost−share agreement to the provider.

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

(h) A stipulation that the cost−share recipient may not discriminate against a contractor on the basis of age, sex, religion or other prohibited factor.

(i) A provision describing the procedure for amendment.

(j) The location of the land on which the cost−shared practice is to be installed, and a specific legal description of the land if recording of the cost−share agreement is required under sub. (10).

(L) A requirement to amend the cost−share agreement if practices are added or deleted and to add or delete practices only if they are consistent with the project grant application.

(m) A statement that any loss of cost sharing that results from a cost−share recipient's failure to abide by the conditions of the cost−share agreement does not void the notice issued under s. NR 151.09, 151.095, or 243.24.

(n) A statement that partial or full release from the cost−share agreement in accordance with this section does not void the notice issued under s. NR 151.09, 151.095, or 243.24.

Note: Compliance with conditions in a cost−share agreement does not assure compliance with performance standards under ch. NR 151. For example, the operation and maintenance period for purposes of cost sharing is 10 years for most practices. However, best management practices must be maintained in perpetuity to comply with performance standards under ch. NR 151. Under ch. NR 151, cost sharing must only be made available once to bring a specific nonpoint source into compliance with the performance standard. Continued cost sharing is not required to be made available and long−term compliance with performance standards is the responsibility of the landowner or operator, heirs or subsequent owners or operators. Chapters NR 151 and ATCP 50 identify when cost sharing is considered to be available for purposes of required compliance with performance standards.

(o) A statement that the cost−share recipient agrees to provide information related to cost sharing and work performed under other federal, state, and local grant programs, if required by the cost share provider to meet the reporting requirements of this chapter.

(p) The cost−share recipient shall allow the governmental unit to conduct an inventory of the entire farm for compliance with state performance standards and prohibitions as a condition of cost−share eligibility.

(4) DEPARTMENT APPROVAL. The governmental unit shall obtain prior department approval when the total cost−share agreement amount, including amendments, exceeds $50,000 in state share. The department shall consider the cost−effectiveness of the

best management practices and eligibility for cost sharing under this chapter in making its decision whether to grant approval.

(5) SUBMITTAL TO DEPARTMENT. Unless required otherwise under sub. (4), the cost−share agreement provider shall submit a copy of the cost−share agreement and amendments to the department within 30 days of execution. The department may deny reimbursement to the governmental unit for costs associated with the installation of a best management practice not in conformance with the cost−share agreement, the runoff management grant agreement or the project grant application.

(6) AGREEMENT PERIOD. The cost−share agreement period shall be the period from the cost−share agreement signing to the end of the operation and maintenance period.

(a) The period during which practices in a signed cost−share agreement may be installed may not extend beyond the period of the runoff management grant agreement for the project.

(b) For purposes of complying with the cost−share agreement, the operation and maintenance period for a best management practice begins when the best management practice installation is complete and ends after the required operation and maintenance period has expired. The operation and maintenance period for each cost−shared and not cost−shared best management practice shall last for a minimum of 10 years except that the operation and maintenance period shall last for a minimum of 15 years if a payment is made under s. NR 154.03 (1) (i) 3.

1. Except if required as a component of another practice, the following practices are required under the cost−share agreement to meet the maintenance requirement only during the years for which cost sharing is received:

a. High residue management systems.

b. Nutrient management.

c. Pesticide management.

d. Cropland protection cover or green manure.

2. If a practice in subd. 1. is required as a component of another practice in ch. NR 154, the operation and maintenance period for the component practice shall be the same as the operation and maintenance period for the practice for which it is required.

Note: Cost−share agreement operation and maintenance periods are conditions of cost−sharing. Violation of operation and maintenance requirements of cost−share agreements may result in recovery of cost−share payments received by the cost−share recipient. There is a separate requirement under ch. NR 151 that once a cropland practice or livestock facility is brought into compliance with performance standards and prohibitions, compliance must be maintained in perpetuity.

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

Note: Under s. NR 153.22 (3) (m), loss of cost sharing that results from failure to fulfill the agreement does not void the notice issued under s. NR 151.09, 151.095, or 243.24.

(8) INEFFECTIVE PRACTICES. (a) If the practice becomes ineffective either during the grant period of the runoff management grant agreement or during the operation and maintenance period for the project, and the reason for the practice becoming ineffective is beyond the control of the cost−share recipient, the department may award a new grant agreement or amend and extend the existing runoff management grant agreement to cost share the replacement of the practice.

(b) An appropriate operation and maintenance period for the replacement practice shall be identified in the cost−share agreement.

(9) CHANGE IN OWNERSHIP. If a change in ownership occurs during the cost−share agreement period or during the operation and maintenance period of a practice, the new landowner shall be responsible for fulfilling all conditions of the cost−share agreement. Upon receiving written approval from the respective local governmental unit, the new landowner may implement alternative approved best management practices provided that an equal or greater level of pollution control is achieved.

(10) RECORDING OF COST−SHARE AGREEMENTS WITH REGISTER OF DEEDS. (a) The governmental unit shall record the cost−share agreement and its amendments in the office of the register of deeds for each county in which the property is located if the cost−share agreement includes a riparian buffer, or payments under s. NR 154.03 (1) (i) 3., or if the total cost−share agreement amount exceeds the following:

1. $10,000 prior to January 1, 2005.

2. $12,000 after December 31, 2004 and prior to January 1, 2010.

3. $14,000 after December 31, 2009.

(b) The governmental unit shall record these documents prior to making reimbursements to the landowner or land operator.

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

1. Contour farming.

2. Contour and field strip−cropping.

3. Cropland protection cover or green manure.

4. High residue management.

5. Nutrient management.

6. Pesticide management.

(11) RELEASE OF PROPERTY FROM OBLIGATIONS OF COST−SHARE AGREEMENTS. At the request of the cost−share recipient, a governmental unit may fully or partially release a property from the obligations of the cost−share agreement provided that the governmental unit has determined that the best management practices installed on the property will be maintained or replaced with practices which will not increase the pollutant loading to surface water or groundwater counter to the water resource objectives of the grant application. If state dollars in excess of the amounts enumerated under sub. (10) (a) have been expended for best management practices that are located on the property to be released, the governmental unit shall obtain written approval from the department before releasing the property from the obligations of the cost−share agreement. The release form shall be obtained from the department and filed with the cost−share agreement.

Note: Forms can be obtained from the department's Bureau of Watershed Management or the department's Bureau of Community Financial Assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707−7921.

Note: Under s. NR 153.22 (3) (n), any release granted under this subsection does not void the notice issued under s. NR 151.09, 151.095, or 243.24.

(12) SATISFACTION OF COST−SHARE AGREEMENTS. At the request of the cost−share recipient, the governmental unit may issue a certificate of satisfaction provided the governmental unit has determined that the cost−share recipient has met all of the obligations of the cost−share agreement, including the operation and maintenance period. The satisfaction shall be documented on a form provided by the department and filed with the cost−share agreement. For cost−share agreements recorded with the register of deeds under sub. (10), the satisfaction form shall be recorded in the office of the register of deeds for each county in which the property is located.

Note: Forms can be obtained from the department's Bureau of Watershed Management or the department's Bureau of Community Financial Assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707−7921.

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: am. (1) (a), (3) (d), (f), (j), (m), (n), (6) (b) 1. (intro.), (7), (8) (a), (9), (11), r. (3) (k), cr. (3) (o), (p), (12) Register December 2010 No. 660, eff.1−1−11.

NR 153.23 Cost containment. (1) Governmental units as providers of cost−share agreements shall identify and agree to use one or more of the following cost containment procedures for each best management practice identified in the runoff management grant agreement.

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

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

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

(d) *Maximum cost−share limit.* A governmental unit or the department establishes a maximum cost−share rate limit not to exceed the rates specified in ch. NR 154 for installation of a best management practice.

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

(g) *Other cost containment procedures.* If a governmental unit determines another cost containment procedure would be at least as or more effective than the cost containment procedures described in this subsection, it shall include the alternative in the project application and the department shall include the alternative in the runoff management grant agreement.

(2) The cost−containment procedures in this section shall be used to control the cost of in−kind contributions, including the substantiated value of donated materials, equipment, services and labor by landowners or land operators installing best management practices:

(a) All sources of local share donation shall be indicated in the project application submitted under s. NR 153.17.

(b) The maximum value of donated labor may not exceed the prevailing local market wage for equivalent work.

(c) The value of donated equipment may not exceed the equipment rates for highways established by the Wisconsin department of transportation.

Note: The county highway rates for equipment are formulated under s. 84.07, Stats., and can be found in chapter 5 of the State Highway Maintenance Manual published by the Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Madison, WI 53705.

(d) The value of donated materials and services may not exceed market rates and shall be established by invoice.

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: am. (1) (e) (title), r. (1) (f) Register December 2010 No.660, eff. 1−1−11.

NR 153.25 Property acquisition. (1) ELIGIBLE ACTIVITIES. The department may provide funding to a governmental unit holding a runoff management grant agreement under s. NR 153.21 for any of the following:

(a) Acquire land in fee or an easement identified in the grant application for the construction of a structural urban best management practice.

(b) Acquire land in fee or an easement identified in the grant application for land which is contributing or will contribute nonpoint source pollution. This includes property acquisition to support best management practices such as critical area stabilization, riparian buffers, wetland restoration and the abandonment or relocation of livestock and livestock facilities.

(c) Acquire land in fee or an easement to abandon or relocate livestock or livestock facilities provided that any of the following conditions are met:

1. The acquisition is an eligible best management practice.

2. If the acquisition amount is greater than the amount of funding required to install best management practices at the site, the acquisition may be selected as the cost−effective best management practice if the department concurs that the acquisition is justified based on the additional degree of water quality protection.

3. If the acquisition amount is less than the amount required to install best management practices and the landowner is unwilling to sell the property right, the department may use the acquisition amount as a cost−share ceiling on the cost of installing the best management practice.

(2) MUTUAL AGREEMENT AND DURATION. The landowner and the department shall mutually agree to the conducting of an appraisal. Easements, including donated conservation easements, shall be acquired for perpetuity.

(3) DONATED EASEMENTS. The department may authorize, in writing, any governmental unit, qualified non−profit organization, or person to use grant funds under this chapter to enter into easements or accept a donated conservation easement consistent with the grant application and runoff management grant. Upon acceptance of a donated easement under s. NR 154.03 (2) (c), the department shall appraise the easement and issue a written opinion on the value or issue a statement of value of the easement.

(4) GRANTS TO THE DEPARTMENT FOR EASEMENT PURCHASE. The department may distribute grants and aids to itself for the purchase of easements in a priority watershed area. For purposes of this subsection, a priority watershed or priority lake project is considered to retain its project status through the end of the tenth year beyond the expiration date of the nonpoint source grant agreement entered into under s. NR 120.12.

(5) ACQUISITION PROPOSALS. (a) A governmental unit requesting runoff management grant funds under this section for the acquisition of property in fee or an easement shall submit an acquisition proposal to the department for its review and approval. The acquisition proposal shall be submitted with the runoff management grant application or grant amendment request.

(b) The acquisition proposal for fee title or easement shall include all of the following:

1. A description of the purpose for acquiring the land and how the acquisition will meet applicable goals of the project for which the grant is applied.

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

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

4. Other information the department may request.

(c) For fee title acquisition, the following additional information is required as part of the acquisition proposal:

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

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

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

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

1. All appraisals shall be subject to department review and approval.

2. After it has received approval from the department, the governmental unit may act on the appraisal.

3. All appraisals shall be conducted by a certified or licensed appraiser as described in ch. 458, Stats., and chs. SPS 85 to 86.

4. All acquisitions with a fair market value of more than $350,000 shall require 2 appraisals. The department may require a second appraisal for property valued under $350,000 if the department finds that the property presents a difficult appraisal problem or if the first appraisal is unacceptable.

(c) Property may be purchased only from willing sellers. The governmental unit shall provide the seller with a just compensation statement, which identifies the fair market value of the property, as determined by an appraiser meeting the requirements listed in par. (b) 3. and which describes the benefits due to the seller in exchange for the transfer of the seller's property.

(d) If applicable, relocation plans shall be developed in accordance with ch. Adm 92.

(e) Property acquired with a runoff management grant shall be maintained and managed in accordance with the provisions, conditions, and scope description in the grant contract.

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

(g) The governmental unit shall record in the office of the register of deeds for each county in which property is located the deed which vests title or a property interest in the governmental unit and which references the interest of the state of Wisconsin in the property under the terms of the grant contract.

(7) STATE COST–SHARE RATE. (a) The maximum allowable state cost−share rate for the acquisition of property under this chapter is 70 percent, except that the maximum allowable state cost−share shall be 50 percent when the purpose of the acquisition is to support a structural urban best management practice.

(b) The cost share rate shall be applied to the lesser of the following 2 amounts:

1. The acquisition cost of the property.

2. The certified appraisal value as determined by the department and reasonable costs related to the purchase of the property limited to the cost of appraisals, land surveys, relocation payments, title evidence, recording fees, historical and cultural assessments required by the department, and environmental inspections and assessments. Reasonable costs do not include attorneys fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes, or any other cost not identified in this subdivision.

(c) The department may not reimburse acquisition costs related to purchase of the property until the property acquisition has been completed.

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

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

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

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

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: r. and recr. Register December 2010 No. 660, eff. 1−1−11; correction in (6) (b) 3., (d) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **correction in (6) (b) 3. made under s. 13.92 (4) (b) 7., Stats., Register January 2017 No. 733**.

NR 153.26 Local assistance grant agreement. (1) The local assistance grant agreement is an agreement between the department and a state agency or governmental unit providing funds for activities to carry out the tasks identified in a project selected for funding under this chapter. A local assistance grant awarded under this section may be used for local project administration and management activities determined by the department to satisfy the requirements of s. 281.65 (4) (f), Stats.

(2) If the local assistance grant provides funding to accelerate implementation of best management practices within a priority watershed project, the department shall require that the funds be administered consistent with requirements of the approved priority watershed plan.

(3) All water tests that require laboratory analyses and which are part of the project shall be analyzed by a laboratory certified in accordance with ch. NR 149. In the event there is no certification available for the analyses to be conducted, the department shall approve the selection of a laboratory.

(4) Any grant provided for funding of a project that includes acquisition of physical, biological or chemical data may be conditioned to require implementation of a quality control and quality assurance plan approved by the department. The methods and procedures to be used in the project are subject to department approval.

(5) The department may only award a local assistance grant for the purpose of implementing a runoff management agreement under s. NR 153.21.

(6) The grantee shall apply for local assistance grant funds using the application process under s. NR 153.17.

(7) If a governmental unit contracts with a government agency or person to provide field, administrative, planning, or other services to carry out activities of the local assistance grant agreement, the contract shall be submitted to the department for review and approval prior to signing.

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

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: am. (1), (5), (7) Register December 2010 No. 660, eff. 1−1−11; removal of (8) (title) made under s. 13.92 (4) (b) 2., Stats., Register December 2010 No. 660.

NR 153.27 Procurement. (1) PROFITS. Contractors for contracts under grants described in this chapter may earn only fair and reasonable profits. Profits included in a formally advertised, competitively bid, fixed price construction contract are presumed to be reasonable.

(2) RESPONSIBILITY. The governmental unit shall administer and successfully complete activities for which grant assistance under this chapter is awarded in accordance with sound business judgment and good administrative practice under state and local laws.

(3) GENERAL REQUIREMENTS FOR CONTRACTS. Contracts shall be all of the following:

(a) Necessary for and directly related to the accomplishment of activities necessary for the activity listed on the grant or grant amendment.

(b) In the form of a bilaterally executed written agreement for any professional services or construction activities.

(c) For monetary or in−kind consideration.

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

(b) The department shall approve the use of force account work if the governmental unit demonstrates to the department's satisfaction that the governmental unit has the necessary competence required to accomplish the work and that the work can be accomplished more economically by the use of the force account method.

(c) The force account reimbursement for design and construction services shall be based on the actual cost of services provided and may not exceed 5 percent of the total project reimbursement when bond−sourced funds are used.

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: am. (3) (b), (4) (a), cr. (4) (c), r. (5) Register December 2010 No. 660, eff. 1−1−11.

NR 153.28 Grant reimbursement procedures. **(1)** RUNOFF MANAGEMENT GRANT AGREEMENTS. (a) State cost−share funds may be used to share in the actual cost required for the installation of eligible best management practices identified in runoff management grant agreements described in s. NR 153.21.

(b) Governmental units and state agencies shall comply with the following procedures when requesting reimbursement:

1. Reimbursement requests shall be submitted on forms provided by the department. When reimbursement is for a best management practice installed to meet a performance standard or prohibition contained in subchapter II of ch. NR 151, a statement of ch. NR 151 compliance shall be provided to the landowner or operator and a copy shall be attached to the reimbursement request.

Note: Forms can be obtained from the department's Bureau of Watershed Management or the department's Bureau of Community Fiscal Assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707−7921.

2. All reimbursement requests shall be submitted to the department within the time frame established in the grant agreement. Payments for reimbursement requests submitted after the deadlines established in the grant agreement or grant amendment will be subject to the availability of state funds and to financial commitments made to other grantees by the department.

a. Final reimbursement requests for runoff management grants shall be submitted to the department after the best management practice has been verified as properly installed and its cost has been substantiated by the documentation required by the department.

b. The grantee may submit a reimbursement request for a partially installed best management practice with approval from the department. In making its reimbursement decision, the department shall consider the level of pollution control provided by the completed component and the component's structural and functional relationship to other components of the best management practice. A grantee may submit a request for reimbursement of up−front payments made to a cost−share recipient for multi−year cropping practices, including high residue management, cropland protection cover, nutrient management, and pesticide management, without prior approval from the department provided that the cost−share recipient completes the first full year of implementation in accordance with program requirements.

c. The department may deny reimbursement if a cost−share agreement or amendment is not in accordance with the project application or the runoff management grant agreement.

3. Progress reports required by the department shall accompany each reimbursement request. A final report shall be submitted on forms provided by the department as part of the final reimbursement request.

Note: Forms can be obtained from the department's Bureau of Watershed Management or the department's Bureau of Community Financial Assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707−7921.

4. Reimbursements may not exceed the grant budget line for that practice, unless amended.

5. Reimbursement may not be made in any amount that results in the combined state share under s. 92.14, Stats., and this chapter exceeding the cost share rate required under s. 281.16 (3) (e) or (4), Stats.

6. The department, in the scope of the grant agreement or grant amendment, may further specify eligible costs, reimbursement amounts and reimbursement filing deadlines.

7. Failure to submit reports on schedule may result in withholding of grant payments.

8. The department shall deny reimbursements requested for installed practices which are not included in a cost−share agreement ratified by the department, or enumerated as a grantee−installed practice on the grant agreement or grant amendment, or otherwise authorized by this chapter. Reimbursement for local assistance expenses shall be limited to those activities identified as a grant budget line item or specifically enumerated in the grant agreement scope.

(2) LOCAL ASSISTANCE GRANT AGREEMENTS. (a) State funds may be used to share in the actual costs expended by the governmental unit for eligible activities identified in local assistance grant agreements.

(b) Governmental units and state agencies shall comply with the reimbursement procedures listed under sub. (1).

(3) GENERAL PROVISIONS. (a) Grant payments to a governmental unit or other grantee under this chapter are contingent on the availability of funding.

(b) The department may remove an authorized activity from a grant if there has been substantial nonperformance of the project work by the grantee or the grantee has not met the conditions in the grant or grant amendment.

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

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

(e) The department may withhold a grant payment if the department determines, in writing, that a grantee has failed to

comply with project objectives, grant or grant amendment conditions or reporting requirements.

(f) The department shall withhold payment of, or otherwise recover, the amount of any indebtedness to the department, unless the department determines that collection of the debt will impair accomplishment of the project objectives and that continuation of the project is in the best interest of the nonpoint source water pollution abatement program.

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: am. (1) (b) 1., 2. b., 3., 5. Register December 2010 No. 660, eff. 1−1−11.

NR 153.29 Records. (1) REQUIRED RECORDS. Each governmental unit serving as a runoff management grant grantee or as a cost−share agreement provider shall maintain a financial management system which adequately provides for all of the following:

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

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

(c) Comparison of actual costs with the grant amount on each grant.

(d) Procedures for determining the eligibility and allocability of installation expenses in accordance with the cost containment requirements of s. NR 153.23 for all practices installed by the landowner or land operator.

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

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

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

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

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

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

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

d. Request for reimbursement by a landowner or land operator documenting costs incurred directly or for in−kind contributions by the landowner or land operator. For management practices funded jointly under this chapter and other sources, the request shall verify that funding under this chapter is in accordance with s. NR 153.28 (1) (b) 5.

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

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

g. Change in compliance status, by parcel, with agricultural performance standards and prohibitions of cropland practices and livestock facilities owned or operated by the cost−share recipient.

4. A duplicate copy of each reimbursement request submitted to the department.

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

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

(h) Records which relate to appeals, disputes or litigation on the settlement of claims arising out of the performance of the project for which funds were awarded.

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

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

(b) The governmental unit or its agent or contractors shall preserve and make all records available to the department or its agent for whichever of the following is appropriate for their grant situation:

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

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

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

4. For 3 years after the date of settlement of any dispute.

5. Cost−share agreement records shall be kept for the duration of the operation and maintenance period of the cost−share agreement with the longest operation and maintenance period to enable the governmental unit to fulfill its responsibility under this chapter.

(3) AUDITING. (a) The department may perform, or cause to be performed, interim audits on all grants.

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

(c) All audits shall include review of fiscal accountability and consistency with grants or grant amendments.

(4) OPEN RECORDS REQUIREMENTS. (a) All project−related records are subject to the state's open records law.

(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.

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: cr. (1) (e) 3. g. Register December 2010 No. 660, eff. 1−1−11.

NR 153.30 Project evaluation and reporting. (1) Grantees shall report to the department an annual accounting for accomplishments regarding its activities funded under the grant.

(2) The department may require more frequent reports than those required under sub. (1) from a grantee which document accomplishments regarding activities funded under the grant.

(3) The grantee shall submit a final report after project completion. At a minimum, the report shall include project evaluation and monitoring information consistent with the commitments made in the project application submitted under s. NR 153.17. The department may require the grantee to submit other information in the final report.

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02.

NR 153.31 Variances. The department may approve in writing a variance from a requirement of this chapter upon written request from the grantee if the department determines that a variance is essential to effect necessary grant actions or water quality objectives and where special circumstances make a variance in the best interest of the program. A grantee's written variance request shall clearly explain the circumstances justifying the variance. Before approving a variance, the department shall take into

account factors such as good cause, circumstances beyond the control of the grantee and financial hardship. The department may not grant variances from statutory requirements.

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02.

NR 153.32 Grant evaluation and enforcement. **(1)** On an annual basis, the department shall evaluate the progress of projects. During the evaluation, the department shall examine the progress of the project toward project goals and water quality objectives specified in the grant application, grant or grant amendment. Upon consulting with the project sponsor, the department may take appropriate action to improve the progress of the project. Department action may include, but is not limited to, more frequent project evaluation, the use of interim project goals, changes to project funding, and the adoption of sanctions in sub. (2).

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

(a) The grant may be terminated or annulled under sub. (4).

(b) Project costs directly related to noncompliance may be declared ineligible.

(c) Up to 10% of the payment otherwise due the grantee may be withheld if the conditions of par. (f) are met.

(d) Project work may be suspended under sub. (3).

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

(f) The department may authorize the withholding or recovery of a grant payment if the department determines, in writing, that a grantee has failed to comply with project objectives, grant award conditions or reporting requirements or has not expended all funds it has received under this chapter on eligible activities. The department may recover payments made to grantees when it determines that the governmental unit will not complete the eligible activities on its grant within the current grant project budgeting period. Withholding and recovery shall be limited to only that amount necessary to assure compliance.

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

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

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

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

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

1. A description of the work to be suspended.

2. Instructions for how the grantee may acquire materials or services.

3. Guidance for action to be taken on contracts.

4. Other suggestions to the grantee for minimizing costs.

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

2. Within the suspension period the department shall do one of the following:

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

b. Terminate grant assistance for the work covered by the stop−work order under par. (b).

c. Authorize resumption of work.

(e) *Stop−work order cancellation or expiration.* If a stop−work order is canceled or expires, the grantee shall promptly resume the previously suspended work. An equitable adjustment may be made to the grant period.

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

(4) TERMINATION OF GRANTS. (a) A grant may be terminated or annulled in whole or in part by the department in accordance with this subsection.

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

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

(d) The department in accordance with the following procedure may terminate grants:

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

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

(e) The department may annul a grant if any of the following occur:

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

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

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

4. The grantee has not met the conditions in the grant or grant amendment.

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

(g) Upon termination, all prospective department liability ceases.

(h) Upon annulment, the grant agreement is null and void and all department liability is extinguished.

(5) TERMINATION SETTLEMENT COSTS. (a) The reasonable costs resulting from a termination order, including a previously issued stop−work order on a project's work or grant, are eligible in negotiating a termination settlement.

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

(6) RESPONSIBILITIES OF GOVERNMENTAL UNITS. Suspension or termination of a grant or portion of grant under this section does not relieve the grantee of its responsibilities under this chapter.

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02.