

Report to
Legislative Council Rules Clearinghouse
NR 154, Wis. Adm. Code
Natural Resources Board Order No. WT-03-15

Wisconsin Statutory Authority

Section. 281.65, Stats., establishes the framework for the Targeted Runoff Management (“TRM”) and Notice of Discharge (“NOD”) grant programs that provide financial assistance for nonpoint sources of pollution to governmental units and state agencies and allows governmental units to request financial assistance to address manure management problems for which notices of discharge have been issued. Subsection. 281.65 (4) (e) Stats explicitly directs the department to promulgate rules necessary for the execution and administration of these financial assistance programs that include standards and specifications concerning best management practices which are required to be met by grant recipients to be eligible to receive cost-sharing grants under this section.

Section. 281.66, Stats., establishes the framework for the Urban Nonpoint Source (“UNPS”) pollution abatement and storm water management program that provides financial assistance to governmental units to control both point and nonpoint sources of storm water runoff from existing urban areas, developing urban areas and areas of urban redevelopment. Subsection 281.66(2)(c) directs the department to administer the UNPS and storm water management program and requires implementation of nonpoint source performance standards under s. 281.16 (2). Subsection 281.16 (2) (a) explicitly directs the department to prescribe by rule performance standards for nonpoint sources that are not agricultural facilities or agricultural practices and 281.16 (2) (b) directs the department to specify by rule a process for the development and dissemination of technical standards to implement performance standards for nonpoint sources that are not agricultural.

Paragraph 227.11(2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute. The department considers the rules created by this Order to be necessary to effectuate the purposes of administering the financial assistance requirements of ss. 281.65 and 281.66 Stats.

Federal Authority

The objective of the federal Clean Water Act (“CWA”), 33 U.S.C § 1251 **et. Seq.**, is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters. As part of achieving this objective, Section 319 of the CWA (33 U.S.C. § 1329 directs states to develop a management program to for controlling pollution from nonpoint sources to navigable waterways that identifies best management practices to be undertaken to reduce pollution and financial assistance programs to achieve implementation of best management practices (See, 33 U.S.C § 1329(b)(1) and (b) (2) (A) & (B)). 33 U.S.C § 1329 (h) (1) requires the USEPA to make grants available to states for implementing such a nonpoint pollution control program. 33 U.S. Code § 1329 (h) (3) limits federal grants to states to a maximum of 60 percent of the cost incurred by the state. Federal rules do not explicitly identify BMPs or specify cost share rates which states may use for implementing their financial assistance programs. In Wisconsin, Chapter 154 establishes the BMPs which are eligible for cost-share grants.

Comparison of Adjacent States

Chapter NR 154, Wis. Admin. Code, identifies the agricultural and urban best management practices (BMPs) that are eligible for cost-share under Wisconsin’s runoff management grant programs, and identifies eligible grantees, and cost share rates and conditions for such financial assistance. Overall, rules in Illinois, Iowa, Michigan and Minnesota do not provide as much specificity as NR 154, and administer similar programs wholly or in part via guidance not promulgated rule or law. Iowa is the state most similar to Wisconsin in that it is the only other of the four states that identifies BMPs eligible for cost-

sharing by rule. However, unlike Wisconsin, Iowa only identifies agricultural BMPs eligible for cost-sharing by rule, and identifies eligible urban BMPs in guidance. Cost share rates in these four neighboring states range from 50 to 75 percent, so at 70 percent Wisconsin is within this range. Specific details of similarities and differences between NR 154 and rules for similar grant programs in Illinois, Iowa, Michigan and Minnesota are summarized below.

Illinois - Illinois does not implement its Section 319 grant program (or any other financial assistance program for controlling nonpoint source pollution) by rule and so does not have any rules similar to NR 154. The Illinois EPA has statutory authority to “accept, receive, and administer on behalf of the State any grants, gifts, loans, indirect cost reimbursements, or other funds made available to the State from any source for purposes of the Act or for air or water pollution control, public water supply, solid waste disposal, noise abatement, or other environmental protection activities, surveys, or programs.” 415 Ill. Comp. Stat. 5/4(k). The Illinois Nonpoint Source grant program follows USEPA’s 319 guidance documents and grant regulations (40 CFR parts 31 and 35). According to Illinois guidance (which is based on USEPA guidance) eligible applicants and grantees are broader than Wisconsin’s. In Illinois grant funds are available to any entity that has legal status to accept funds from the state of Illinois and the authority and ability to implement or subcontract the proposed project, whereas Wisconsin only awards TRM, UNPS, and NOD grants to governmental units. Illinois offers cost sharing for up to 60% of total eligible project costs, whereas Wisconsin cost shares up to 70% of total eligible BMP cost.

In its guidance, Illinois provides a partial list of BMPs that control NPS pollution to be used as a starting point for consideration. For urban projects, Illinois recommends that BMPs follow the *Illinois Urban Manual* http://www.aiswcd.org/wp-content/uploads/2013/11/IUM_FM_2013_WEBSITE_hyperlinks.pdf and requires that BMPs be certified by a Professional Engineer (PE) and reviewed and approved by the Illinois EPA Project Manager.

Iowa -The Iowa Department of Agriculture and Land Stewardship (“IDALS”) administers two cost-sharing financial assistance programs – the Iowa Financial Incentive Program for Soil Erosion Control, and the Water Protection Fund. Cost share rates and eligible best management practices for these two programs are established in Iowa Admin. Code Section 27 Chapters 10 and 12, respectively.

- **Iowa Financial Incentive Program for Soil Erosion Control** - Whereas Wisconsin cost-shares up to 70 percent of the cost of eligible practices, Iowa Admin. Code 27-10.41(1) allows cost share up to 50 percent of the approved cost of permanent soils and water conservation practices that control erosion. Iowa Admin. Code 27-10.41(4) allows cost share up to 60 percent of the cost of such practices if they are part of special watershed project. Wisconsin allocates funds to counties, who in turn enter into cost-share agreements with land owners. In a similar manner, Iowa Admin. Code 27-10.50(161A), directs IDALS to allocate its soil erosion control program funds to soil and water conservation districts, who then subsequently enter into cost-share agreements with individual landowners to implement practices. Similar to Wisconsin’s optional flat rates for cropping practices at Wis. Admin Code NR 154.03, Iowa Admin. Code 27-10.60 (1) c., allows flat rate payments to landowners for implementing cropping practices including no-till, ridge-till, strip-till, contour farming, strip-cropping and cover crops. Like Wisconsin, Iowa agricultural best management practices eligible for cost-sharing are provided by rule; specifically, Iowa Admin. Code 27-10.82(1) identifies eligible residue and management practices; Iowa Admin. Code 27-10.82(2) identifies eligible temporary practices; and Iowa Admin. Code 27-10.82(3) identifies eligible permanent practices. Like Wisconsin, Iowa Admin. Code 27-84. (161A) references NRCS Conservation Technical Field guide for agricultural conservation practices technical standards.
- **Iowa Water Protection Fund** - Whereas Wisconsin allows cost-shares for up to 70 percent of the cost of eligible practices, Iowa Admin. Code 27-12.77 (1) allows cost share up to 50 of the eligible or estimated cost, whichever is less for practices cost-shared under the Iowa Water Protection fund. Similar to how Wisconsin allocates funds to counties, who in turn enter into cost-share agreements with land owners, Iowa Admin. Code 27-12.51(161C) directs IDALS to allocate funds for this program to its soil and water conservation districts who subsequently enter into cost-share agreements

with individual landowners to implement practices. Iowa Admin. Code 27-15.60 (161C). Like Wisconsin, Iowa agricultural best management practices eligible for cost-sharing are specified by rule; specifically, Iowa Adm. Code 27-12.72 (161C) and Iowa Adm. Code 27.12.73 (161C), respectively, identify agricultural practices eligible for cost-sharing and define the categories of urban storm water best management practices eligible for cost-sharing. However, for urban practice technical standards, grantees are required to follow the [Iowa Stormwater Management Manual](#).

In addition to its IDALS programs, Iowa also administers a Section 319 grant program. Like Illinois, Iowa's 319 Program relies on federal EPA rules, guidance and grant agreement conditions to establish requirements for BMPs, technical standards and funding requirements.

Michigan – Michigan's regulates its Section 319 program under Mich. Admin. Code r. 324.8801-8810. The Michigan rule is broader in scope than NR 154, encompassing grant program and process components found in NR 153, NR 154, and 155. In regards to cost-share rates and eligible best management practices, Michigan's rules do not provide as much detail as NR 154. Notable similarities and differences between the two are described below.

- MR 324.8805: Michigan's eligible applicants and grantees are broader than Wisconsin's. Michigan provides grants to local units of government and not-for-profit entities. Wisconsin only provides TRM, UNPS or NOD grants to governmental units.
- MR 324.8809: Michigan cost shares up to 75% of total eligible BMP cost (grantee share no less than 25%). Wisconsin cost shares up to 70% of total eligible BMP cost.
- MR 324.8809: There are no economic hardship provisions in Michigan's rules, as there are in NR 154.03(3) for TRM grantees.
- Michigan uses Michigan Department of Environmental Quality ("MDEQ") guidance rather than rule to establish eligible BMPs. Wisconsin establishes eligible BMPs by rule in NR 154.04. MDEQ has developed the *Michigan's Nonpoint Source Program Plan* which identifies MDEQ manuals it uses for establishing eligibility of BMPs (See, https://www.michigan.gov/documents/deq/wrd-nps-program-plan-2015_511849_7.pdf). This program plan is a Section 319 Grant requirement and equivalent to *Wisconsin's Nonpoint Source Program Management Plan* (<https://dnr.wi.gov/topic/Nonpoint/documents/NPSPProgramManagementPlan20162020.pdf>). The *Michigan's Nonpoint Source Program Plan* references NRCS's *Field Office Technical Guide* for agricultural BMPs and the *MDEQ Best Management Practice Manual* for urban BMPs.

Minnesota – Minnesota's Section 319 grants are governed by Minn. Stat. §§ 103F.701 – 103F.755 and Minn. R. 7076. Minn. Stat. 103F.725 subdivision 1. and Minn. R. 7076.0120 subpart 1 both specify that their agency may award grants for up to 50 percent of the eligible cost for projects, whereas Wisconsin cost shares up to 70% of total eligible BMP cost. Minn Stats. 103F.731 Subd. 2. and Minn. R. 7076.0130. subpart 1. state that, like Wisconsin, only local units of government in Minnesota are eligible to apply for financial assistance. Minnesota Pollution Control Agency identifies and recommends urban BMP in their storm water manual but does not identify eligible practices in their rules.

For agricultural practices, Minn R. 8400.0600 directs the state Soil and Water Resource Board allocate cost-share funds to district boards that have fully complied with Minnesota Statutes, all erosion control and water management program rules, and all program policies. Minn. R. 8400.0500 gives the state Soil and Water Resource Board the authority to establish the maximum percent or amount of the total cost of a conservation practice that may be funded using state cost-share funds. Minnesota does not identify eligible agricultural BMPs in their rules, but instead relies on credentialed Technical Assistance Providers to oversee practice selection and their Grants Administration Manual which has a chapter covering technical standards.

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

Chapter NR 154, Best Management Practices and Cost-share Conditions, sets forth best management practices (“BMPs”), technical standards, cost-share rates and cost-share conditions that apply to grant recipients under chs. NR 153 and NR 155. The provisions of Chapter NR 154 complement additional cost-sharing provisions contained in Chapter NR 153, which governs the administration of targeted runoff management grants and Chapter NR 155, which governs the administration of UNPS water pollution abatement and storm water management grants.

The primary purposes of the proposed rule change is to make the sections of ch. NR 154 regulating agricultural BMPs consistent with recent updates to ch. ATCP 50 and to identify additional cost-shareable urban BMPs and their technical standards. For agricultural BMPs, ch. NR 154 directly cross-references ch. ATCP 50, Wis. Adm. Code, which was updated in both 2014 and 2018. In order to maintain consistency with the state’s nonpoint source pollution abatement programs outlined in chs. 92 and 281, Wis. Stats., these cross-references need to be updated.

The proposed rule revisions also adds references to urban BMP technical standards developed since September 2002 when ch. NR 154 became effective, so that these BMPs are now identified as cost-shareable practices.

Lastly, the proposed revisions update the provisions for economic hardship determinations to be consistent with 2011 revisions to NR 153, and adjusts optional flat reimbursement rates for some agricultural BMPs to reflect current data on actual BMP costs.

Agency Procedures for Promulgation

Public hearing in February 2019; approval by the Natural Resources Board followed by Governor’s office approval; and review by legislative committees. Final rule promulgation expected before January 2020.

Description of any Forms

- Targeted Runoff Management (TRM) Grant Program Small-Scale Agricultural Application
<https://dnr.wi.gov/files/PDF/forms/8700/8700-300.pdf>
- Targeted Runoff Management (TRM) Grant Program Large-Scale Agricultural Application
<https://dnr.wi.gov/files/PDF/forms/8700/8700-333.pdf>
- Urban Nonpoint Source & Storm Water (UNPS&SW) Program Construction Grant Application
<https://dnr.wi.gov/files/PDF/forms/8700/8700-299.pdf?p=q>
- Urban Nonpoint Source & Storm Water (UNPS&SW) Program Planning Grant Application
<https://dnr.wi.gov/files/PDF/forms/8700/8700-299a.pdf?p=q>

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