

Clearinghouse Rule 19-002

DRAFT #1

October 15, 2018

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING, AMENDING, REPEALING AND RECREATING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 154.03 (1) (i) 3. b., (1) (j) 3., and (1) (j) 6., and NR 154.04 (15), (20) (c) (1) (note) and (42) (d) 1. a. (note); to **amend** NR 154.01 (2), NR 154.02 (15) (note), NR 154.03 (1) (h), (1) (i) 1. and 3, (1) (i) 5., (1) (j) 1., (1) (j) 5., and (1) (j) 8. and (3) (a), NR 154.04 (1) (c), (2) (g) and (2) (g) (note), (3) (b), (4) (b), (5) (b), (6), (7), (8) (b), (9), (10) (b), (11) (b), (12) (b), (13) (b), (14), (17) (b), (18) (b), (19) (b), (20) (b) and (c) (1), (21) (b), (22) (b), (23) (b), (24) (b), (25) (b), (26) (b), (27) (b), (28) (b), (29) (d) 13. k. (note), (30) (b), (31), (32), (33) (b), (34) (b), (35) (b), (36) (b), (37) (b), (38) (b), (39) (b), (40) (b), (41) (b), (42) (c) 1., (42) (d) 1. a. and (42) (d) 2.; and to **create** NR 154.04 (2m), (11m), (31m), and (42) (d) (note), (42) (d) 1. ab., af., ak., ap., as., aw., and ay., relating to best management practices, conditions and technical standards to be used in administering cost sharing under chs. NR 153 and 155 and affecting small business.

WT-03-15

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: s. 281.65, Stats., s. 281.66, Stats

2. Statutory Authority: ss. 227.11(2)(a) and 281.65 (4) (e), Stats.

3. Explanation of Agency 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.

4. Related Statutes or Rules: 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.

5. Plain Language Analysis:

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 rates for some agricultural BMPs to reflect current data on actual BMP costs.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

Section 319 Nonpoint Source Management programs - 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.

Environmental Quality Incentives Program (“EQIP”) – EQIP provides technical and financial assistance to facilitate the adoption of agricultural conservation practices that address natural resource concerns, including conservation practices that reduce the flow of pollutants from fields. 16 U.S. Code 3839aa-2 allows for payments to agricultural producers that enter into contracts to implement conservation practices for up to 75 percent of the costs associated with planning, design, materials, equipment, installation, labor, management, maintenance, or training; 100 percent of income foregone by the producer; and in such the cases where both of these apply, the sum of these two amounts.

7. Comparison with Similar Rules in 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/NPSProgramManagementPlan20162020.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.

8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

This rule does not invoke or create any new authority. Ch. NR 154, Wis. Adm. Code, uses the prescribed non-agricultural performances standards of ch. NR 151, Wis. Adm. Code.

9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

The department is providing a comment period on the economic impact of these proposed rule changes. All local governmental units will have the opportunity to participate in the development of this EIA.

10. Effect on Small Business (initial regulatory flexibility analysis):

This rule does not invoke or create any new authority. The primary entities who will be directly affected by the proposed rule are:

- Local government units and urban businesses and residents. The proposed rule changes will provide consistency and clarity for the eligibility criteria for cost sharable urban BMPs which may be required to meet state urban storm water performance standards.
- Agricultural crop and livestock producers. The proposed rule changes will make ch. NR 154, Wis. Adm. Code consistent with recent changes promulgated at ch. ATCP 50, Wis. Adm. Code.
- Private consulting firms. The proposed rule changes will provide consistency and clarity for the eligibility criteria and technical standards for cost sharable urban BMPs which may be required to meet state urban storm water performance standards.

Ch. NR 154, Wis. Adm. Code has a positive fiscal impact for local governments and agricultural crop and livestock producers while having minimal fiscal impact to the state.

11. Agency Contact Person:

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12. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, fax or email to the contact information listed above.

Hearing dates and the comment submission deadline are to be determined.

Written comments may also be submitted to the Department at
DNRAAdministrativeRulesComments@wisconsin.gov.

Hearing dates and the comment submission deadline are to be determined.

The consent of the Attorney General will be requested for the incorporation by reference of the following Wisconsin Department of Natural Resources Conservation Practice Standards:

- 1001 wet detention basin (October 2007);
- 1002 site evaluation for storm water infiltration (September 2017).
- 1003 infiltration basin (October 2004);
- 1004 bioretention for infiltration (October 2014);
- 1005 vegetated swale (December 2017);
- 1006 Proprietary storm water sedimentation devices (April 2009);
- 1007 infiltration trench (May 2012); and
- 1008 permeable pavement (February 2016).

SECTION 1. NR 154.01 (2) is amended to read:

NR 154.01 (2) The provisions of this chapter apply to cost-share agreements and grants signed after ~~October 1, 2002~~, [insert effective date of revised rule], unless a waiver is granted by the department under s. 281.65 (4) (e), Stats.

SECTION 2. NR 154.02 (15) (note) is amended to read:

NR 154.02 (15) (note): Note: Copies of the technical guide are on file with the department, the secretary of state, and the legislative reference bureau. Copies of individual

standards contained in the technical guide may be obtained from ~~the~~ a county land conservation committee or from a field office of the U.S. department of agriculture, natural resources conservation service department, an NRCS field office, or the national NRCS website at: <http://www.nrcs.usda.gov/>, or the Wisconsin NRCS website at: <http://www.wi.nrcs.usda.gov>.

SECTION 3. NR 154.03 (1) (h) and (i) 1. and (i) 3. are amended to read:

NR 154.03 (1) (h) The cost-share rates for agricultural best management practices on cost-share agreements funded under ch. NR 153 and signed prior to October 1, 2002, [insert effective date of revised rule], may be amended to use the rates identified in this section.

NR 154.03 (1) (i) 1. Wildlife habitat recreation associated with implementation of contour farming, ~~contour strip cropping and field strip cropping~~ and stripcropping funded under ch. NR 153 has a maximum state cost-share rate of 70%.

NR 154.03 (1) (i) 3. For the best management practices practice under s. NR 154.04 (25), riparian buffers, and s. NR 154.04 (39), ~~waterway systems~~, a single payment in addition to installation costs may be made in accordance with the following:

SECTION 4. NR 154.03 (1) (i) 3. b. is repealed.

SECTION 5. NR 154.03 (1) (i) 5. and (j) 1. are amended to read:

NR 154.03 (1) (i) 5. Cost-share payments for ~~cropland protection cover (green manure)~~ crop may not be made for more than a total of 4 years.

(1) (j) 1. \$9.00 per acre for contour ~~cropping~~ farming.

SECTION 6. NR 154.03 (1) (j) 3. is repealed.

SECTION 7. NR 154.03 (1) (j) 5. is amended to read:

NR 154.03 (1) (j) 5. \$25-\$70 per acre per year for ~~cropland protection cover (green manure)~~ crop.

SECTION 8. NR 154.03 (1) (j) 6. is repealed.

SECTION 9. NR 154.03 (1) (j) 8. and (3) (a) are amended to read:

NR 154.03 (1) (j) 8. ~~\$6.00-\$10.00~~ per acre for ~~the first year nutrient management plan~~ and ~~\$4.00~~ per acre for subsequent years of nutrient management plans.

NR 154.03 (3) (a) The governmental unit submitting an application under s. [NR 153.17](#) shall exceed the cost-share limits identified under sub. (1) if the landowner or land operator that will provide the local share of best management practice installation either meets the application and economic hardship requirements in this subsection- or meets the application and economic hardship requirements in section NR 120.18(4).

SECTION 10. NR 154.04 (1) (c) is amended to read:

NR 154.04 (1) (c) The cost-share conditions and standards for all best management practices listed in this chapter shall apply to all cost-share and grant agreements signed after ~~October 1, 2002~~ [insert effective date of revised rule].

SECTION 11. NR 154.04 (2) (g) and (2) (g) (note) are amended to read:

NR 154.04 (2) (g) Erosion and sediment ~~Sediment~~ generated from the construction of the best management practice shall be controlled ~~consistent with performance standards in ch. NR 151 and with standards of the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR 222, November 2001 Revision, which is incorporated by reference for this chapter. in conformance with the applicable performance standards in ss. NR 151.105 and 151.11, Wis. Adm. Code, using the technical standards developed pursuant to subch. V of ch. NR 151, Wis. Adm. Code, or equivalent methodology.~~

NR 154.04 (2) (g) (note): Copies of ~~this document~~ construction site erosion control technical standards may be inspected at the offices of the department's bureau of watershed management, the secretary of state and the legislative reference bureau, all in Madison, WI. ~~The Wisconsin Construction Site Best Management Practice Handbook is available through WI Department of Administration, Document Sales, 4622 University Avenue, Madison, WI 53705-2156. They are also available electronically at~~

SECTION 12. NR 154.04 (2m) is created to read:

NR 154.04 (2m) VOLUNTARY USE OF UPDATED TECHNICAL STANDARDS. The department may cost-share the updated version of a technical standard listed in this subchapter if all of the following apply:

(a) The updated technical standard provides water quality benefits at least as beneficial as the version listed in this subchapter.

(b) The updated technical standard has been developed by DNR according to the procedures of subch. V of ch. NR 151, or adopted by NRCS, or adopted by another applicable technical standards entity listed in this subchapter.

(c) The landowner or grantee voluntarily agrees to the use of the updated technical standard to implement the best management practice.

SECTION 13. NR 154.04 (3) (b), (4) (b), (5) (b), (6), (7), (8) (b), (9), (10) (b) and (11) (b) are amended to read:

NR 154.04 (3) (b) Except as provided under par. (c), the provisions for a manure storage system included in s. [ATCP 50.62](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (4) (b) The provisions for a manure storage system included in s. [ATCP 50.63](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (5) (b) Except as provided under par. (c), the provisions for barnyard runoff control included in s. [ATCP 50.64](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (6) ACCESS ROADS AND CATTLE CROSSINGS.

(a) The department may provide cost-share grants to implement access roads ~~and cattle crossings~~.

(b) The provisions for access roads ~~and cattle crossings~~ included in s. [ATCP 50.65](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (7) ANIMAL TRAILS AND WALKWAYS.

(a) The department may provide cost-share grants to implement ~~animal~~ trails and walkways.

(b) The provisions for ~~animal~~ trails and walkways included in s. [ATCP 50.66](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (8) (b) Except as provided under par. (c), the provisions for contour farming included in s. [ATCP 50.67](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (9) COVER AND GREEN MANURE CROPS.

(a) The department may provide cost-share grants to implement cover ~~and green manure~~ crops.

(b) The provisions for cover ~~and green manure~~ crops included in s. [ATCP 50.68](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (10) (b) The provisions for critical area stabilization included in s. [ATCP 50.69](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (11) (b) Except as provided under par. (c), the provisions for diversions included in s. [ATCP 50.70](#), ~~as it existed on October 1, 2002~~ shall apply.

SECTION 14. NR 154.04 (11m) is created to read:

NR 154.04 (11m) FEED STORAGE RUNOFF CONTROL SYSTEMS.

(a) The department may provide cost-share grants to implement feed storage runoff control systems.

(b) The provisions for feed storage runoff control systems included in s. [ATCP 50.705](#) shall apply.

SECTION 15. NR 154.04 (12) (b), (13) (b) and (14) are amended to read:

NR 154.04 (12) (b) The provisions for field windbreaks included in s. [ATCP 50.71](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (13) (b) The provisions for filter strips included in s. [ATCP 50.72](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (14) GRADE STABILIZATION.

(a) The department may provide cost-share grants to implement grade stabilization structure.

(b) The provisions for grade stabilization structure included in s. [ATCP 50.73](#), ~~as it existed on as on October 1, 2002~~ shall apply.

SECTION 16. NR 154.04 (15) is repealed.

SECTION 17. NR 154.04 (17) (b), (18) (b), (19) (b), and (20) (b) and (c) (1) are amended to read:

NR 154.04 (17) (b) The provisions for livestock fencing included in s. [ATCP 50.75](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (18) (b) The provisions for livestock watering facilities included in s. [ATCP 50.76](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (19) (b) The provisions for milking center waste control included in s. [ATCP 50.77](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (20) (b) Except as provided under par. (c), the provisions for nutrient management included in s. [ATCP 50.78](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (20) (c) 1. Costs for soil and plant nutrient testing, including residual nitrogen analysis, and costs for nutrient analysis of manure and other organic wastes are eligible for cost sharing to implement nutrient management provided that testing and analysis are conducted by a laboratory ~~that is certified through a certification program acceptable to the department~~ ~~conducted by a laboratory~~ certified under s. [ATCP 50.50](#).

SECTION 18. NR 154.04 (20) (c) (1) (note) is repealed.

SECTION 19. NR 154.04 (21) (b), (22) (b), (23) (b), (24) (b), (25) (b), (26) (b), (27) (b), (28) (b), (29) (d) 13. k. (note), (30) (b) and (31) are amended to read:

NR 154.04 (21) (b) The provisions for pesticide management included in s. [ATCP 50.79](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (22) (b) The provisions for prescribed grazing included in s. [ATCP 50.80](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (23) (b) The provisions for relocating or abandoning animal feeding operations included in s. [ATCP 50.81](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (24) (b) Except as provided under par. (c), the provisions for residue management included in s. [ATCP 50.82](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (25) (b) Except as provided under par. (c), the provisions for riparian buffers included in s. [ATCP 50.83](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (26) (b) The provisions for roofs included in s. [ATCP 50.84](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (27) (b) The provisions for roof runoff systems included in s. [ATCP 50.85](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (28) (b) Except as provided under par. (c), the provisions for sediment included in s. [ATCP 50.86](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (29) (d) 13. k. (note) Note: Copies of this document may be inspected at the offices of the department's bureau of watershed management, the secretary of state and the legislative reference bureau, all in Madison, WI. [GWQ014](#) is also available electronically at <http://clean-water.uwex.edu/pubs/pdf/shorlpl.pdf>.

NR 154.04 (30) (b) The provisions for sinkhole treatment included in s. [ATCP 50.87](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (31) STREAMBANK AND/OR SHORELINE PROTECTION.

(a) The department may provide cost-share grants to implement streambank ~~and~~ or shoreline protection.

(b) Except as provided under par. (c), the provisions for streambank ~~and~~ or shoreline protection included in s. [ATCP 50.88](#), ~~as it existed on October 1, 2002~~ shall apply

SECTION 20. NR 154.04 (31m) is created to read:

NR 154.04 (31m) STREAM CROSSING.

(a) The department may provide cost-share grants to implement a stream crossing.

(b) The provisions for stream crossing included in s. [ATCP 50.885](#) shall apply.

SECTION 21. NR 154.04 (32), (33) (b), (34) (b), (35) (b), (36) (b), (37) (b), (38) (b), (39) (b), (40) (b), (41) (b) and (42) (c) 1. are amended to read:

NR 154.04 (32) ~~STRIP CROPPING~~STRIPCROPPING.

(a) The department may provide cost-share grants to implement ~~strip cropping~~ stripcropping.

(b) The provisions for ~~strip cropping~~ stripcropping included in s. [ATCP 50.89](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (33) (b) The provisions for subsurface drains included in s. [ATCP 50.90](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (34) (b) The provisions for terrace systems included in s. [ATCP 50.91](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (35) (b) The provisions for underground outlets included in s. [ATCP 50.92](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (36) (b) The provisions for waste transfer systems included in s. [ATCP 50.93](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (37) (b) The provisions for wastewater treatment strips included in s. [ATCP 50.94](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (38) (b) The provisions for water and sediment control basins included in s. [ATCP 50.95](#), ~~as it existed on October 1, 2002~~ shall apply.

NR 154.04 (39) (b) Except as provided under par. (c), the provisions for ~~waterways~~ waterway systems included in s. ~~ATCP 50.96, as it existed on October 1, 2002~~ shall apply.

NR 154.04 (40) (b) The provisions for well decommissioning included in s. ~~ATCP 50.97, as it existed on October 1, 2002~~ shall apply.

NR 154.04 (41) (b) The provisions for wetland development or restoration included in s. ~~ATCP 50.98, as it existed on October 1, 2002~~ shall apply.

NR 154.04 (42) (c) 1. Costs for best management practices, land acquisition, storm sewer rerouting or removal of structures where the practices serve solely to solve drainage and flooding problems unrelated to ~~the primary water quality improvement strategy in a priority watershed or lake plan or application selected for funding under this chapter.~~

SECTION 22. NR 154.04 (42) (d) (note) is created to read:

NR 154.04 (42) (d) (note) Note: Copies of urban best management technical standards may be inspected at the offices of the department's bureau of watershed management, the secretary of state and the legislative reference bureau, all in Madison, WI. They are also available electronically at https://dnr.wi.gov/topic/Stormwater/standards/postconst_standards.html.

SECTION 23. NR 154.04 (42) (d) 1. a. is amended to read:

NR 154.04 (42) (d) 1. a. Wet detention basins shall be designed consistent with the Wisconsin department of natural resources conservation practice standard 1001, wet detention basin 1001 (~~June, 1999~~ October 2007), which is incorporated by reference for this chapter.

SECTION 24. NR 154.04 (42) (d) 1. a. (note) is repealed.

SECTION 25. NR 154.04 (42) (d) 1. ab., af., ak., ap., as., aw., and ay. are created to read:

NR 154.04 (42) (d) 1. ab. Infiltration basins shall be designed consistent with the Wisconsin department of natural resources conservation practice standard 1003, infiltration basin 1003 (October 2004), which is incorporated by reference for this chapter.

NR 154.04 (42) (d) 1. af. Bioretention devices shall be designed consistent with the Wisconsin department of natural resources conservation practice standard 1004, bioretention for infiltration 1004 (October 2014), which is incorporated by reference for this chapter.

NR 154.04 (42) (d) 1. ak. Vegetated swales shall be designed consistent with the Wisconsin department of natural resources conservation practice standard 1005, vegetated swale 1005 (December 2017), which is incorporated by reference for this chapter.

NR 154.04 (42) (d) 1. ap. Proprietary storm water sedimentation devices shall be designed consistent with the Wisconsin department of natural resources conservation practice standard 1006, Proprietary storm water sedimentation devices 1006 (April 2009), which is incorporated by reference for this chapter.

NR 154.04 (42) (d) 1. as. Infiltration trench shall be designed consistent with the Wisconsin department of natural resources conservation practice standard 1007, infiltration trench 1007 (May 2012), which is incorporated by reference for this chapter.

NR 154.04 (42) (d) 1. aw. Permeable pavement shall be designed consistent with the Wisconsin department of natural resources conservation practice standard 1008, permeable pavement 1008 (February 2016), which is incorporated by reference for this chapter.

NR 154.04 (42) (d) 1. ay. Site evaluations for storm water infiltration practices including bioretention devices, infiltration basins, and infiltration trenches shall be conducted consistent with the Wisconsin department of natural resources conservation practice standard 1002, site evaluation for storm water infiltration 1002 (September 2017), which is incorporated by reference for this chapter.

SECTION 26. NR 154.04 (42) (d) 2. is amended to read:

NR 154.04 (42) (d) 2. The department shall consider standards developed under the process in subch. ~~IV~~ V of ch. NR 151 and other documents when identifying acceptable standards for urban best management practices.

SECTION 28. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 29. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF Wisconsin DNR

DEPARTMENT OF NATURAL RESOURCES

BY _____

Preston D. Cole, Secretary

(SEAL)