



NR 120

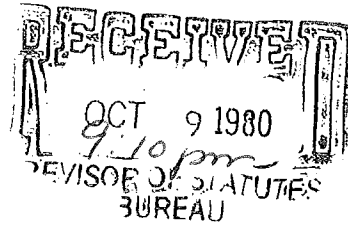
State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Anthony S. Earl  
Secretary

BOX 7921  
MADISON, WISCONSIN 53707

IN REPLY REFER TO: \_\_\_\_\_

STATE OF WISCONSIN )  
 )  
DEPARTMENT OF NATURAL RESOURCES ) ss



TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Anthony S. Earl, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. WQ-63-79 was duly approved and adopted by this Department on May 29, 1980. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at General Executive Facility #2 in the City of Madison, this 1<sup>st</sup> day of October, 1980.

Anthony S. Earl, Secretary

(SEAL)

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD

AMENDING RULES

.....  
 IN THE MATTER OF AMENDING chapter NR 120 .  
 of the Wisconsin Administrative Code .  
 pertaining to nonpoint source water . WQ-63-79  
 pollution abatement program .  
 .....

Analysis Prepared by Department of Natural Resources

The revisions to chapter NR 120, Wis. Adm. Code, are required to:

- 1) Incorporate revisions necessitated by changes in s. 144.25, Stats.;
- 2) Incorporate best management practice cost-share agreement conditions currently used as guidelines;
- 3) Incorporate fiscal management requirements currently used as guidelines; and
- 4) Make clarifications of existing rules.

The revisions represent a natural progression in the first years of a program. They do not represent major policy changes.

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Pursuant to the authority vested in the State of Wisconsin Natural Resources Board by sections 144.25 and 227.014, Wisconsin Statutes, the State of Wisconsin Natural Resources Board hereby amends rules interpreting section 144.25, Wisconsin Statutes, as follows:

Chapter NR 120  
NONPOINT SOURCE WATER POLLUTION ABATEMENT PROGRAM

NR 120.01 Purpose	NR 120.11 <u>Nonpoint source grant agreement</u>
NR 120.02 Definitions	NR 120.12 <u>The cost-sharing agreement</u>
NR 120.03 Role of the department	NR 120.13 <u>Cost-sharing agreement conditions</u>
NR 120.04 Role of the BSWCD	<u>for best management practices</u>
NR 120.05 State nonpoint source coordinating committee	NR 120.14 <u>Cost-sharing rates</u>
NR 120.06 Role of the designated management agency	NR 120.15 <u>Auditing and reporting</u>
NR 120.07 Priority watershed selection	NR 120.16 <u>Program reporting and evaluation</u>
NR 120.08 Priority watershed plan	NR 120.17 <u>Resolution of administrative</u>
NR 120.09 <del>Nonpriority-area-activities</del> <u>Local priority projects</u>	<u>conflicts between the BSWCD and</u>
NR 120.10 Eligibility and application procedures	<u>the department</u>
	NR 120.18 <u>Severability</u>

NR 120.01 Purpose. (1) The purpose of this chapter is to develop an administrative structure to accomplish the objectives of the nonpoint source water pollution abatement program contained in s. 144.25, Stats. The following policies are established to limit nonpoint source water pollution:

(a) Grants shall be made for the implementation of best management practices on the basis of the expected water quality benefits accruing to the public and secondarily on the basis of financial hardship.

(b) Priority watershed plan development, land management needs determination, and practice design and implementation shall involve local agencies.

(c) Project locations and practice eligibilities shall be coordinated with related federal programs to bring about the maximum utilization of federal cost-sharing monies and technical assistance.

NR 120.02 Definitions. (1) "Areawide water quality management plan" means a plan for protecting and enhancing water quality which considers the interrelationship of water quality and land and water resources on an areawide basis (hydrologic, political, or other) as set forth in ~~chapter ch.~~ NR 121, Wis. Adm. Code.

(2) "ASCS" means the agricultural stabilization and conservation service of the U.S. department of agriculture.

~~(2)~~ (3) "Best management practices" as defined in s. 144.25(2)(a), Stats., means practices, techniques or measures identified in areawide water quality management plans which are determined to be the most effective, practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

~~(3)~~ (4) "BSWCD" means the Wisconsin board of soil and water conservation districts.

(5) "Completed practice" means a best management practice which has been installed and certified to meet the standards and specifications identified in NR 120.10(4)(b).

~~(4)~~ (6) "Cost-sharing agreement" means the contract established between the designated management agency and the grant recipient and described in ~~NR-120.11~~ NR 120.12.

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

~~(6)~~ (8) "Designated management agency" means any agency designated in an areawide water quality management plan having responsibility for implementing specific plan recommendations. This may be done through direct activities of the designated management agency or through delegation to other agencies, or units of government.

~~(7)~~ (9) "Designated planning agency" means any agency designated by the governor to prepare an areawide water quality management plan for an area similarly designated.

(10) "Lead designated management agency" means the designated management agency selected by all the designated management agencies involved in a priority watershed project to carry out the provisions of NR 120.06(2) or the designated management agency carrying out a local priority project.

(11) "Local priority project" means an implementation project outside of priority watersheds selected according to procedures specified in NR 120.09.

~~(8)~~ (12) "Local share" means the nonfederal or nonstate portion of the cost of the installation of a best management practice as part of a cost-sharing agreement.

(13) "Nonpoint source" as set forth in s.144.25, Stats., means a land management or use activity contributing to runoff, seepage or percolation and are sources which are not defined as a point source under s. 147.015(8), Stats.

~~(9) --"Nonpriority area" means any area outside of a priority watershed. Eligibility for funding in nonpriority areas is contingent upon meeting the conditions set out in NR-120.09(1).~~

~~(10)~~ (14) "Priority management area" means that portion of a watershed from which the quantity of pollutants is most significant and where the application of best management practices will be the most effective.

~~(11)~~ (15) "Priority watershed" means a watershed of manageable size, delineated in the areawide water quality management plan, and selected according to the procedures specified in NR 120.07.

~~(12)~~ (16) "Priority watershed plan" means detailed element of the areawide water quality management plan prepared in priority watersheds as described in NR 120.08.

(17) "Program for implementation" means a written strategy to implement the priority watershed plan.

~~(13)~~ (18) "SCS" means the soil conservation service of the U.S. department of agriculture.

~~(14)~~ (19) "Substitute management practices" means practices, techniques or measures determined to be effective, practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals, and which do not appear in the appropriate areawide water quality management plan, or priority watershed plan.

~~(15)~~ (20) "Technical guide" means the Wisconsin SCS technical guide (~~July 1978~~) (March 1980).

Copies may be inspected at the offices of the department, the secretary of state and the revisor of statutes.

NR 120.03 Role of the department. In addition to those responsibilities specifically set out in s. 144.25(4), Stats., the department shall:

- (1) Develop agreements where appropriate with federal, state and regional agencies to accomplish the purposes and objectives set forth in s. 144.25, Stats., and this chapter.
- (2) Prepare priority watershed plans as described in NR 120.08.
- (3) Evaluate the overall nonpoint source water pollution abatement program and make periodic recommendations to the governor and legislature for statutory changes in the program.

NR 120.04 Role of the BSWCD. In addition to those responsibilities set out in s. 144.25(5), Stats., the BSWCD shall have ~~additional~~ responsibilities defined in an interagency agreement with the department.

~~Note--it-is-the-intention-of-the-department-to-enter-into-an-interagency-agreement-with-the-BSWCD-to define-the-working-relationship-between-the-two-agencies-for-the-nonpoint-source-water-pollution-abatement program.--The-single-asterisks-throughout-these-rules-indicate-areas-in-which-the-department-intends-to investigate-a-role-for-the-BSWCD.~~

Note: The department and the BSWCD have entered into an interagency agreement which further defines the working relationships between the two agencies for this program. The agreement will be reviewed on an annual basis. Single asterisks used throughout these rules indicate activities the BSWCD will carry out as the department's designee.

NR 120.05 State nonpoint source coordinating committee. (1) The department shall form a state nonpoint source coordinating committee to provide coordination among state and federal programs having as an objective the abatement of nonpoint source water pollution.

(2) Membership. The membership on the state nonpoint source coordinating committee shall include the department's administrator of the division of environmental standards or designee, and the executive secretary of the BSWCD, or designee. Representatives from the following agencies shall be invited to participate as members on the committee:

- (a) Each of the designated planning agencies,
- (b) The soil and water conservation districts,
- (c) The agricultural stabilization and conservation service of the U.S. department of agriculture.
- (d) The farmer's home administration of the U.S. department of agriculture,
- (e) The economics, statistics, and cooperatives service of the U.S. department of agriculture,
- (f) The forest service of the U.S. department of agriculture,
- (g) The university of Wisconsin extension,
- (h) The environmental protection agency,
- (i) The soil conservation service of the U.S. department of agriculture,
- (j) The Wisconsin department of administration,
- (k) The Wisconsin department of agriculture, trade and consumer protection,

~~(+)~~ ~~Two representatives of the local agricultural interests to be nominated jointly by the national farmers organization, the Wisconsin farm bureau federation, the Wisconsin farmers union and the Wisconsin state grange.~~

(1) Each of the following local agricultural interests:

1. the national farmers organization;
2. the Wisconsin farm bureau federation;
3. the Wisconsin farmers union; and
4. the Wisconsin state grange.

~~(m)~~ ~~Two representatives of the local urban interests to be nominated jointly by the league of Wisconsin municipalities, the Wisconsin alliance of cities, and the Wisconsin association of public works and~~

(m) Each of the following urban interests:

1. the league of Wisconsin municipalities;
2. the Wisconsin alliance of cities; and
3. the Wisconsin chapter of the American public works association.

(n) Any other members appointed by the governor.

(3) The meetings will be chaired by the department's administrator of the division of environmental standards, or designee.

(4) The department shall inform the committee of ongoing and proposed nonpoint source water pollution abatement planning and implementation activities and policy issues. Based on this information the state nonpoint source coordinating committee shall advise the department and those agencies designated by the department as having roles in this program on the following:

- (a) The selection of priority watersheds.
- (b) The selection of ~~problems or~~ local priority projects ~~for cost-sharing grants in nonpriority areas.~~
- (c) The allocation of cost-sharing monies among priority watersheds and ~~nonpriority-area~~ local priority projects within the direction set out in s. 144.25~~(6)(g)~~(8)(k), Stats.
- (d) Needed overall program policy and administrative rule changes as indicated by program evaluation.

NR 120.06 Role of the designated management agency. (1) The designated management agency identified in the areawide water quality management plan pursuant to ~~section~~ s. NR 121.05(13), Wis. Adm. Code, shall be responsible for local implementation of the nonpoint source water pollution abatement program as specified in s. 144.25(6), Stats; and including the following activities:

- (a) Assist or lead in the development of priority watershed plans.
- (b) Recommend to the department revisions to the areawide water quality management plan to allow for new technologies, land use changes or other significant changes.
- (c) Screen applications for individual variances to the established cost-sharing rates.

(2) For priority watershed projects, the lead designated management agency shall prepare a program for implementation.

(a) The program for implementation shall identify procedures for:

~~(e)~~ 1. Carrying out an education and information program aimed at water quality/land management needs identified in the priority watershed plan.

~~(d)~~ 2. ~~Administer the cost-sharing element of this program~~ Fiscal management at the watershed level including processing sign-ups, approvals, authorization of payments, and maintenance of adequate records as set forth in NR 120.15.

~~(e)~~ 3. ~~Develop and implement procedures for Certification of~~ Certifying installation, operation and maintenance of best management practices, including the requirements specified in ~~NR 120.12(5)~~ NR 120.12(5)(e).

~~(f)~~ 4. Coordinate ~~Coordinating~~ disbursements of state nonpoint source water pollution control cost-sharing monies with local and federal cost-sharing program monies as appropriate.

~~(g)~~ ~~Report to the department's designee on the progress of the nonpoint source water pollution abatement program and recommended program modifications.~~

~~(h)~~ ~~Screen applications for individual variances to the established cost-sharing rates.~~

~~(i)~~ 5. Determine ~~Determining~~ the priority order of assistance among grant applicants in accord with needs identified in the priority watershed plan.

~~(j)~~ 6. Provide ~~Providing~~ technical assistance including:

~~(k)~~ ~~Coordinate technical input into priority watershed plans.~~

2- a. Prepare ~~Preparing~~ the cost-sharing agreement for each grant applicant in the program.

3- b. Determine ~~Determining~~ specific needs, design and layout the installation of best management practices agreed to in the cost-sharing agreements.

7. Contacting all rural landowners and land users and all cities and villages within the priority management area within one year of approval of the priority watershed plan,

(b) A draft of the program for implementation shall be part of the public hearing held for the priority watershed plan.

(c) The department shall approve the program for implementation before entering into a nonpoint source grant agreement with the lead designated management agency.

~~(2)~~ (3) The designated management agencies may carry out the provisions of this section by direct activities or by delegation to other agencies or units of government, in accordance with S. 144.25(6)(b) Stats.

(4) The lead designated management agency shall report annually to the department the number of practices completed by practice and funds encumbered for additional practices.

(5) The lead designated management agency, either directly or through contract, shall establish a record keeping system including the following:

(a) One separate project account for the total grant identified in the nonpoint source grant agreement reflecting all receipts and expenditures of that grant.

(b) Accounting records showing all receipts, encumbrances, expenditures, and fund balances.

(c) A complete file for each cost-sharing agreement including the following minimum documentation:

1. Application for cost sharing.
2. Approval of best management practices and cost share amounts by the designated management agency.
3. Cost-sharing agreement form (department form 3400-68).
4. Technical referral and certification by technician.
5. Request for reimbursement by landowner, land user, or municipality.
6. Evidence of payment for best management practice by landowner, land user, or municipality including checks or receipts.

7. Certification of practice completion in accordance with cost-sharing agreement and approval of cost share amount by the designated management agency.

(d) The individual landowner, land user, or municipality water quality plan.

(6) The lead designated management agency shall submit a final accounting of project expenditures to the department within 60 days after the priority watershed or local priority project completion.

~~(3) In priority watersheds where more than one designated management agency exists, the designated management agencies shall select one agency to serve as the lead agency for carrying out all provisions of this section. In watersheds where there is only one designated management agency, that agency shall be the lead designated management agency.~~

(4) (7) In the event a designated management agency does not agree to assume the responsibilities in NR-129.06(1) sub.(1), funding shall not be made available to the area served by that designated management agency.

NR 120.07 Priority watershed selection. After consultation with the state nonpoint source coordinating committee, the department shall select a limited number of priority watersheds. The selection shall take place in 3 steps:

(1) Initial screening. The department shall develop an initial screening process.

(a) The objectives of the initial screening are to give preference to watersheds where:

1. The water quality improvement or protection will be great in relation to the funds expended.
2. It is feasible to abate the water pollution problem through the application of best management practices.

(b) All watersheds in the state shall be screened using the following criteria:

1. Water quality. The water quality factor identifies the types of water bodies and their water quality conditions. This factor consists of 2 parts, lakes and streams.

2. Land management. The land management factor assesses land uses within a watershed based on the feasibility for improving water quality through the application of best management practices.

3. The water quality factor and land management factor shall receive equal weight.

4. In the water quality factor, lakes and streams shall receive equal weight.

(2) Local screening and recommendation. Annually the top 25 % of the watersheds, based on the initial screening, are equally eligible for further consideration.

(a) The following procedure shall be used to recommend selected watersheds from this top 25 % for final consideration:



1. Up to 3 watersheds shall be recommended in order of priority by each areawide water quality policy advisory committee in the nondesignated areas of the state.

2. Up to 3 watersheds shall be recommended in order of priority by each designated planning agency in the designated areas of the state.

Note: The intention of this step in the selection process is to identify up to 24 watersheds out of approximately 90 which shall be submitted to the policy advisory committees and the designated planning agencies each year.

(b) The following criteria shall be used in this local screening and recommendation process:

1. Further evaluation of the factors used in the initial screening.

2. Willingness and capability of the local designated management agency or agencies to carry out responsibilities delegated by this program.

3. Availability of local cost-sharing assistance to assist in achieving overall water quality program objectives.

4. Local capability to control all critical ~~nonpoint~~ sources of water pollution.

a. In watersheds where septic systems are critical sources, the counties involved shall be participating or willing to participate in the septic system grant program established under s. 144.24(10), Stats.

5. Undue restrictions on public access.

(3) Final screening and selection. The locally recommended watersheds are equally eligible for further consideration. Annually the department shall make the final selection considering the advice of the state nonpoint source coordinating committee based on the following criteria:

(a) Further evaluation of the factors used in the initial screening.

(b) Willingness and capability of the local management agency or agencies to carry out responsibilities delegated by this program.

(c) Availability of local cost-sharing assistance to assist in achieving overall water quality program objectives.

(d) Local capability to control all critical ~~nonpoint~~ sources of water pollution.

1. In watersheds where septic systems are critical sources, the counties involved shall be participating or willing to participate in the septic system grant program established under s. 144.24(10), Stats.

(e) Undue restrictions on public access.

(f) Locally indicated priorities.

NR 120.08 Priority watershed plans. (1) Priority watershed plans shall be prepared for all priority watersheds jointly by the department and by applicable designated management and planning agencies with the assistance of other appropriate agencies, and units of government. The purpose of the priority watershed plan is to provide a technical assessment of the water quality problems and nonpoint source control needs for each priority watershed.

(2) The priority watershed plan shall consist of:

(a) An identification of the water quality problems caused by nonpoint sources of pollution in the watershed.

(b) An assessment of the magnitude of these problems relative to overall water quality objectives for the watershed.

(c) An identification of target levels of pollutant control necessary to meet water quality objectives.

(d) An identification and ranking of significant nonpoint source types and contributing areas.

(e) A mapping of priority management areas.

(f) A listing of best management practices which will significantly aid in the achievement of the target level of pollution abatement.

(g) An estimate of costs for practice installation, operation and maintenance.

(3) Notification, review and approval of priority watershed plans.

(a) Before beginning preparation of the priority watershed plan, the department and those agencies designated by the department as having a role in the program shall hold a public informational meeting in the watershed to solicit comments and information pertinent to the preparation of the plan.

(b) After preparation of a draft of the priority watershed plan, the department or its designee and the lead designated management agency shall hold a public hearing for comment on the priority watershed plan.

(c) Within 30 days after the public hearing, the lead designated management agency shall approve or reject the priority watershed plan. If after 30 days the lead designated management agency has not acted, the department shall ~~adopt~~ approve the priority watershed plan as part of the areawide water quality management plan and submit it to the governor ~~as per~~ under NR-120.08(3)(d) sub. (3)(d).

(d) After ~~receiving the approval of the lead designated management agency~~, the priority watershed plan shall be adopted as a part of the areawide water quality management plan for the appropriate basin and submitted to the governor for certification and transmittal to the environmental protection agency.

(e) Within 90 days of submission, the governor shall certify or reject all or portions of the areawide water quality management plan as amended. If the governor does not act in this time period, the amended areawide water quality management plan shall be considered certified in its entirety.

(4) The approved priority watershed plan may be amended using the procedures provided in ~~section~~ s. NR 121.07 and NR 121.08, Wis. Adm. Code, for amending areawide water quality management plans.

~~NR 120.09 Nonpriority-area-activities.~~ Local priority projects. (1) Types of activities. Grants may be provided to applicants not in a priority watershed for best management practices which are:

(a) Identified in areawide water quality management plans.

(b) Directed at critical water quality/land management needs identified by the designated management agency or agencies.

(c) Located in the priority management area as defined in NR 120.02.

~~(d) --located-in-a-watershed-not-likely-to-receive-priority-watershed-funding-in-the-near-future--~~

(2) Activity designation. After consultation with the state nonpoint source coordinating committee, annually, using the criteria set forth in NR-120.09(1) sub. (1) the department shall determine the ~~problems~~ and projects which shall receive ~~consideration for~~ funding in ~~nonpriority areas~~.

~~(3) The department's designee annually shall make available to all designated management agencies in the state a list of the projects and localized water quality problems which may be eligible for cost-sharing grants in nonpriority areas.\*~~

(4) (3) The department's designee shall be responsible for working with the designated management agencies in contacting potential applicants and developing cost-sharing agreements in ~~nonpriority areas~~ local priority projects areas.\*

NR 120.10 Eligibility and application procedures. (1) Priority watershed eligibility.

(a) A priority watershed shall qualify for continued cost-sharing funds for 3 years following certification as described in NR 120.08 if the following conditions are met:

1. At least 50% of the landowners or land operators in the priority management area or 50% of the land in the priority management area is committed to entering into cost-sharing agreements within one year of certification. Alternatively, within one year of certification, cost-sharing agreements are committed to by landowners or land operators to implement practices which will provide 50% control, as defined in the priority watershed plan. If this does not occur, future commitments for funding in the watershed may be curtailed. .

2. At least 75% of the landowners or land operators in the priority management area or 75% of the land in the priority management area is committed to entering into cost-sharing agreements within 2 years of certification. Alternatively, within 2 years of certification, cost-sharing agreements are committed to by landowners or land operators to implement practices which will provide 75% control, as defined in the priority

(b) Variances from the specific eligibility percentages listed, or from the 3 year eligibility restriction may be granted by the department after consultation with the state nonpoint source coordinating committee provided the lead designated management agency demonstrates the agency's inability to meet the participation goals was due to circumstances beyond it's control.

(2) Grant applicant eligibility in priority watersheds. Provided the best management practices to be installed are on lands within the boundaries of the priority management area of a priority watershed during its eligibility period, the landowner or land operator of that property is eligible to become a grant applicant.

(3) Grant applicant eligibility ~~in nonpriority areas~~ for local priority projects.

(a) Cost-sharing grants may be provided to applicants not in a priority watershed for the installation of best management practices which are in conformance with the objectives set forth in NR 120.09(1).

~~(b) Annually, the department's designee shall make available to designated management agencies a list of the problems and projects which are eligible for funding in nonpriority areas.\*~~

(4) Practices eligible for inclusion in cost-sharing agreements.

(a) Funds available through this program shall be used to share in the cost of installing best management practices identified in priority watershed plans or in areawide water quality management plans, when these practices are installed explicitly to meet the objectives of such plans.

(b) The standards and specifications and design criteria required for best management practices shall be those found in the technical guide, except when alternative less restrictive design criteria exist which will achieve the same level of control. The standards and specifications and design criteria for those best management practices not included in the technical guide shall be provided by the department or its designee on a case by case basis."

(c) Procedure for substituting best management practices.

1. These practices must be reviewed and approved by the designated management agency and the department's designee. The department's designee shall notify the department of any practices approved for substitution."

2. Standards and specifications and design criteria not contained in the technical guide for substitute management practices shall be provided approved by the department or its designee on a case-by-case basis."

3. Cost-sharing rates for substitute best management practices shall be established using the procedure set out in NR-120-12 NR 120.14.

(5) Best management practices not eligible for cost-sharing. Best management practices to control pollutants from the following nonpoint source activities are not eligible for cost-sharing:

- (a) Mining.
- (b) Construction (on privately owned lands).
- (c) Silviculture (excluding farm woodlots).
- (d) Small scale onsite human domestic waste disposal.
- (e) Dredging.
- (f) Practices installed primarily for flood control purposes.

~~(g) Application approval process.~~

~~(a) The designated management agency shall receive and screen applications for cost-sharing grants, develop cost-sharing agreements and initiate the installation phase of the agreements.~~

~~(b) The lead designated management agency shall submit the cost-sharing agreements to the department's designee for approval of the technical sufficiency of the proposed best management practices and for review for consistency with the appropriate areawide water quality management plan or priority watershed plan."~~

NR 120.11 Nonpoint source grant agreement.

(1) The nonpoint source grant agreement is a contract between the department and the lead designated management agency for priority watershed and local priority projects.

(2) The period in which funds may be allocated through the nonpoint source grant agreement shall be no more than 3 years unless exempted through procedures described in NR. 120.10(1)(b).

(3) The duration of the nonpoint source grant agreement shall be the period specified in sub. (2) plus the installation phase of the cost-sharing agreement.

NR 120.12 12 The cost-sharing agreement. (1) The cost-sharing agreement is a contract establishing the conditions and considerations under which a grant recipient agrees to cooperate with a designated management agency to achieve the water quality objectives of a certified priority watershed plan, or accepted water quality objectives where a certified priority watershed plan does not exist.

(2) For best management practices to be eligible for cost-sharing under this program, the nonpoint source grant agreement and the cost-sharing agreement shall be signed before practice initiation can occur.

(3) Designated management agencies shall enter into cost-sharing agreements only during the period in which funds are allocated to the project as specified in the nonpoint source grant agreement.

(4) The designated management agency and the landowner, land operator or municipality shall be parties to the cost-sharing agreement.

(5) The cost-sharing agreement shall contain or describe: (a) The name and address of the grant applicant and landowner (if other than applicant).

(b) The best management practices to be applied and the cost-sharing rates for those practices to be cost-shared.

(c) The schedule for applying the practices and an estimated costs.

(d) A method ~~for to certification by the designated management agency that~~ certify the cost-shared practices have been ~~properly installed or applied and qualify for payment,~~ maintained.

~~(e) A procedure for annual site inspection of practices and review of the contract.~~

~~(f) A provision for annual certification of proper maintenance of the practices cost-shared under this program during their expected useful life after the installation phase of the contract is completed.~~

~~(g) Agreement by the grant applicant to assume responsibility for the operation and maintenance of cost-shared practices for their duration as specified in the technical guide.~~

(e) A provision for maintenance of the cost-sharing agreement requiring the grant recipient to:

1. Comply with the cost-sharing agreement conditions specified in NR 120.13.
2. Operate and maintain both the cost-shared and noncost-shared best management practices.
3. Not adopt any land use or practice which defeats the purposes of the best management practices.

~~(f) Agreement on the part of the designated management agency to~~ A provision stating the designated management agency shall provide appropriate technical assistance during the expected life of the best management practice.

(g) A nondiscrimination clause.

(h) A procedure for amendment.

(6) The designated management agency shall submit a copy of the cost-sharing agreement to the department.

(7) Duration of the cost-sharing agreement. The duration of the cost-sharing agreement shall be the installation phase plus the operation and maintenance phase. (a) The installation phase of the cost-sharing agreement shall not exceed 5 years.

(b) The operation and maintenance phase of the cost-sharing agreement shall extend to the normal expected life span of the management practice as specified in the ~~technical guide,~~ NR 120.13.

~~(8) Maintenance of practices and penalties in the agreement. (a) The practices included in the agreement shall be maintained in an effective condition for their expected useful life span as specified in the technical guide.~~

~~(b)~~ (8) ~~If a practice is rendered ineffective during its life span due to action or neglect.~~ If a breach of the cost-sharing agreement is made by the grant recipient:

(a) The full amount of cost-shared funds shall be repaid to the state-by-the-grant-recipient. lead designated management agency.

(b) If the repayment occurs after the duration of the nonpoint source grant agreement the lead designated management agency shall forward the repayment to the department.

(9) Destruction of practices due to circumstances beyond the control of grant recipient.

(a) If a practice is rendered ineffective during its life span due to circumstances beyond the control of the grant recipient, repayment of cost-share payments shall not be required.

(b) If the practice becomes ineffective during the grant period of the nonpoint source grant agreement for a priority watershed project, the replacement of the practice may be cost-shared from funds allocated for the project.

(c) For situations not covered in par. (a), replacement of the practice may be cost-shared as a local priority project.

(10) Change in ownership. (e) If a change in ownership or land use or management occurs during the expected life span of a best management practice, repayment of cost-shared funds by the grant recipient or the land owner shall be required unless at least one of the following conditions exists.

1+ (a) The new owner in writing assumes operation and maintenance of the best management practices.

2+ (b) It is demonstrated to the designated management agency that the change in land use or management will not result in additional degradation of existing water quality.

NR 120.13 Cost-sharing agreement conditions for best management practices.

(1) Contour cropping.

(a) Description: Farming sloped land so all cultural operations from seed bed preparation to harvest are done on the contour.

(b) Conditions:

1. Cost-sharing shall be limited to establishment of a contour farming system and the removal of obstacles, where applicable.

2. All agricultural operations shall be performed as nearly as practicable on the contour.

3. To the extent practical, on acreage devoted to rowcrops:

a. A crop stubble or residue shall be left on the surface over the winter;

b. A winter cover crop shall be established; or

c. Protective tillage operations shall be performed.

4. The contour cropping system shall be maintained for 5 years after the year of establishment.

(c) Specifications: SCS technical guide specifications 330 and 344.

(2) Strip cropping.

(a) Description: Growing crops, usually on the contour, in alternated strips of close growing crops, clean tilled row crops, and grass-legumes.

(b) Conditions:

1. Cost-sharing shall be limited to establishment of the strip-cropping system including field strip-cropping and, if necessary, removal of obstacles.
2. All cultural operations shall be performed as nearly as practicable on the contour.
3. To the extent practical, on acreage devoted to row crops:
  - a. A crop stubble or residue shall be left on the surface over the winter;
  - b. A winter cover crop shall be established; or
  - c. Protective tillage operation shall be performed.
4. The strip cropping system shall be maintained for 10 years after the year of establishment.

(c) Specifications: SCS technical guide specifications 585A, 585B, 585C

(3) Diversions.

(a) Description: Structure installed to divert water from areas where it is in excess to sites where it can be used or transported safely. Usually the system is a channel with a supporting ridge on the lower side constructed across the slope at a suitable grade.

(b) Conditions:

1. An adequate outlet shall exist.
2. Cost-sharing shall be authorized for:
  - a. Diversions, ditches, dikes or subsurface drains. Cost-sharing for subsurface drains is limited to areas on sloping land where the internal water seeps to the surface and causes the land or cover to lose its stability.
  - b. Installation of structures such as pipe, underground outlets, or other outlets, if needed, for proper functioning to a ditch or dike, for more even flow, or to protect outlets from erosion.
  - c. Necessary leveling and filling to permit installation of an effective system.
  - d. Removing obstructions necessary to permit establishment of the practice.
3. Cost-sharing shall not be authorized for ditches or dikes designed to impound water for later use, or which will be a part of a regular irrigation system.
4. The system shall be maintained for a minimum of 15 years following the year of installation.

(c) Specifications: SCS technical guide specifications 362, 606, 607, 412.

(4) Terrace systems.

(a) Description: A system of ridges and channels constructed across the slope on a non-erosive grade at a suitable spacing.

(b) Conditions:

1. Cost-sharing shall be authorized for:
  - a. Terraces and the necessary leveling and filling to permit installation of an effective system.
  - b. Removal of obstructions necessary to permit installation of an effective system.
  - c. Materials and installation of underground pipe outlets and other mechanical outlets.

d. Converting the present system to a new system only if the present system is not serving its intended conservation purpose. Cost-sharing shall not be authorized if the sole purpose of the conversion is to accommodate changes in cropping patterns or equipment used by the farmer.

2. A protective outlet or waterway is required.

3. The system shall be maintained for a minimum of 20 years following the year of installation.

(c) Specifications: SCS technical guide specifications 412, 600 and 606.

(5) Waterways.

(a) Description: A natural or constructed watercourse shaped, graded and established in suitable cover as needed to prevent erosion by runoff waters.

(b) Conditions:

1. Cost-sharing shall be authorized for site preparation, grading, shaping, filling, and establishing permanent vegetative cover. Cost-sharing is also authorized for subsurface drains necessary for proper functioning of the waterway.

2. The cover may consist of sod-forming grasses, legumes, mixtures of grasses and legumes or other types of vegetative cover that will provide the needed protection from erosion.

3. Close-sown small grains, annuals or mulching may be used for temporary protection if followed by eligible permanent vegetative cover established by seeding or natural revegetation.

4. The practice shall be maintained for a minimum of 10 years following the year of installation.

(c) Specifications: SCS technical guide specifications 342, 412, 484, and 606.

(6) Minimum tillage system (Conservation tillage except for no-till).

(a) Description: Tillage practices which disturb and roughen the entire soil surface but not to the extent of mold board tillage systems. Some vegetative residue must remain on the surface.

(b) Conditions:

1. Cost-sharing shall be based on the custom rate for minimum tillage plowing for a single year.

2. Cost-sharing shall not be authorized where the farmer has already adopted a satisfactory tillage system.

3. Cost-sharing for this practice shall not be approved for a person more than once.

4. The land involved shall be protected by crop residue, temporary cover, or other permitted management methods to the extent practical from harvest until the next planting.

5. Eligible tillage operations include:

a. Chisel plowing with other limited operations,

b. Plow-plant, or

c. Light tillage without plowing.

6. On sloping land all tillage operations shall be performed as nearly as practicable on the contour or parallel to terraces.

7. The system shall be maintained for a minimum of 5 years following the initial year.

(c) Specifications: SCS technical guide specification 478.

(7) No-till system.



(a) Description: Planting systems using a narrow slot or disturbing a narrow strip of soil rather than disturbing and roughening the entire soil system.

(b) Conditions:

1. Cost-sharing shall be based on the custom rate for no-till planting.
2. Cost-sharing shall not be authorized where the farmer has already adopted a satisfactory tillage system.
3. Cost-sharing for this practice shall not be approved for a person more than once.
4. On sloping land all operations shall be performed as nearly as practicable on the contour or parallel to terraces.
5. The system shall be maintained for a minimum of 5 years following the initial year.

(c) Specifications: SCS technical guide specification 378.

(8) Critical area stabilization.

(a) Description: Planting suitable vegetation on highly erodable areas (e.g., gulleys, roadsides, construction activities on public lands).

(b) Conditions:

1. Cost-sharing shall be authorized for:
  - a. Permanent fencing to protect the site.
  - b. Planting trees, shrubs, perennial grass cover.
  - c. For shaping and smoothing prior to the installation of protective structures or plantings.
2. The practice shall be maintained for a minimum of 25 years after the year of installation.

(c) Specifications: SCS technical guide specifications 342, 472, 484, 512 and 612.

(9) Grade stabilization structures.

(a) Description: A structure used to reduce the grade in a channel to protect the channel from erosion or to prevent the formation or advance of gullies.

(b) Conditions:

1. Cost-sharing shall be authorized for:
  - a. Channel linings, chutes, drop spillways, and pipe drops to discharge excess water.
  - b. Fencing and vegetative cover (including mulching needed to protect the structure) and for leveling and filling to permit the installation of the structure.
2. The structure shall be maintained for a minimum of 25 years following the year of installation.

(c) Specifications: SCS technical guide specifications 402, 350, 382, 410, 425 and 468.

(10) Shoreline protection (streambank protection).

(a) Description: Stabilizing and protecting banks of streams and lakes against erosion.

(b) Conditions:

1. Cost-sharing shall be authorized:
  - a. For permanent fencing to protect banks from damage by domestic livestock.

b. For planting trees, shrubs, perennial grass cover as filter strips or buffer zones along banks.

c. To limit livestock access to water.

d. To install livestock and machinery crossings that will minimize disturbance of the stream channel and banks.

e. For placement of riprap and other materials on the bank when other practices are not practical.

f. For shaping and smoothing banks prior to the installation of protective structures or plantings.

2. Livestock shall be excluded from the sloped and planted area.

3. The land user is responsible for obtaining all permits for the installation of the practice.

4. The practice shall be maintained for a minimum of 10 years following the calendar year of installation.

(c) Specifications: SCS technical guide specifications 326, 382, 580 and 342.

(11) Settling basin.

(a) Description: An impoundment created to retain sediment and other pollutants carried by runoff waters.

(b) Conditions:

1. Cost-sharing shall be authorized:

a. For detention or retention structures, such as erosion control dams (excluding water storage type dams), desilting reservoirs, sediment basins, debris basins, or similar structures.

b. For channel linings, chutes, drop spillways, and pipe drops that dispose of excess water.

c. For fencing and vegetative cover (including mulching needed to protect the structure) and for leveling and filling to permit the installation of the structure.

2. Cost-sharing shall not be authorized for structures with a primary purpose of flood control or creation of a permanent pool.

3. The structure shall be maintained for a minimum of 25 years following the year of installation.

Note: Maintenance requirements, including dredging, need to be addressed in the design of the structure.

(c) Specifications: SCS technical guide specifications 402, 350, 382, 410, 425 and 468.

(12) Barnyard runoff management.

(a) Description: Using structural practices such as gutters, downspouts and diversions to intercept and redirect surface runoff around the barnyard, feeding area or farmstead, and/or to collect, convey and temporarily store runoff from the barnyard, feeding area or farmstead.

(b) Conditions:

1. Cost-sharing shall be authorized for:

a. Diversions, gutters, downspouts, collection basins, infiltration areas, waterway outlet structures, piping and land shaping needed to manage runoff from areas where livestock manure accumulates.

b. Measures needed for the establishment of perennial grasses, including fertilizers and other minerals.

c. Permanent fencing.

2. The practice shall be maintained for a minimum of 15 years following the year of installation.

(c) Specifications: SCS technical guide specifications 312, 342, 362, 383, 412, 425 and 606.

(13) Manure storage facilities.

(a) Description: A structure for temporary storage of manure.

(b) Conditions:

1. Cost-sharing shall be authorized for:

a. Aerobic or anaerobic lagoons, liquid manure tanks and solid manure stacking facilities and equipment necessary for transporting manure to the storage facility required as part of a manure management plan.

2. Cost-sharing shall not be authorized for:

a. Operations where manure can be spread on locations which are nearly flat land or which do not drain to surface waters.

b. Portable pumps and other portable equipment;

c. Buildings or modifications to buildings;

d. Equipment for spreading or incorporating manure; and

e. That portion of the facility installed under or attached to buildings serving as part of the building or its foundation.

3. Storage facility shall have a minimum of 180-day storage capacity.

4. Runoff from solid manure stacking facilities shall be controlled.

5. Manure shall not be spread when the ground is frozen or saturated.

6. Manure shall be incorporated into the soil as soon as practicable after spreading.

7. Lagoons shall be constructed to assure sealing of the bottom and sides to prevent contamination of wells and groundwater.

8. The practice shall meet all pertinent sections of NR 112, Wis. Adm. Code.

9. The practice shall be maintained for a minimum of 20 years following the year of installation.

(c) Specifications: SCS technical guide specifications 313, 425 and 359.

(14) Livestock exclusion from woodlots.

(a) Description: Protection of woodlots from livestock grazing by fencing or other means.

(b) Conditions:

1. Cost-sharing shall be authorized for permanent fencing.

2. Livestock shall be excluded from the woodlot.

3. The practice shall be maintained for a minimum of 20 years following the year of installation.

(c) Specifications: SCS technical guide specifications 383, 472.

Note: Livestock exclusion from streambanks is included as part of shoreline protection.

(15) Leaf collection.

(a) Description: Collection or management of leaves, seeds, grass clippings and other vegetative matter in order to prevent accumulation in gutters and leaching of nutrients.

(b) Conditions:

1. Cost-sharing shall be authorized for equipment (or prorated portion of time that equipment is used) or manpower required to increase the frequency and/or efficiency of vegetative matter collection for a one-year period.

2. Cost-sharing for this practice shall not be approved for a municipality more than once.

3. The practice shall be maintained for a minimum of 5 years after the initial year.

(16) Street sweeping.

(a) Description: Mechanical street sweeping to remove vegetative matter, debris and particulates from gutters.

(b) Conditions:

1. Cost sharing shall be authorized for equipment (or prorated portion of time that equipment is used) and manpower required to increase street sweeping efficiency or frequency to more than once every two weeks during the period of April 1 to November 1 for a one-year period.

2. Cost-sharing for this practice shall not be approved for a municipality more than once.

3. The practice shall be maintained for a minimum of 5 years after the initial year.

(17) Infiltration systems.

(a) Description: Structures such as dutch drains, porous pavement, lattice blocks and dry wells which increase infiltration and reduce runoff from impervious surfaces.

(b) Conditions:

1. Cost-sharing shall be authorized for:

a. Excavation, grading and shaping;

b. Construction materials and

c. Installation of material.

2. Cost-sharing shall not be authorized for the portion of the total costs normally associated with conventional systems (i.e., costs associated with conventional paving of parking lots or roadways is not considered as an eligible cost).

3. The practice shall be maintained for a minimum of 10 years after the year of installation.

NR 120.12 14 Cost-sharing rates. (1) Financial assistance may be used to share in the actual cost required for the installation of eligible best management practices that are listed in cost-sharing agreements under the conditions set forth in s. 144.25(5)(f), Stats. identified in the nonpoint source grant agreement described in NR 120.11.

(2) Payment procedures.

(a) The designated management agency shall be reimbursed by the department only for completed best management practices included in cost-sharing agreements.

(b) The designated management agency shall submit vouchers to the department before reimbursement shall be made.

(3) Ineligible costs. (a) Financial assistance may not be used to share in the costs associated with the operation and maintenance of a best management practice.

(b) Financial assistance may not be used for practices which:

1. Are normally and routinely used in growing crops. However, practices such as fertilizing, liming and seeding, may be eligible for cost-sharing when used to aid in establishing and maintaining protective vegetative cover on noncropland areas of high soil erosion hazard, or on a constructed practice such as a terrace or grassed waterway.

- 2. Are normally and customarily used in the cleaning of streets and roads.
- 3. Have the drainage of land as the primary objective.

(4) Annually, the ~~lead-designated-management-agency~~ department shall review the cost-sharing rates for best management practices and may revise these rates within the limits prescribed by s. 144.25~~(g)(7)~~(8), Stats., considering the following criteria:

- (a) The effectiveness in reducing pollutant discharge.
- (b) Capital cost.
- (c) Short-term economic return or other on-site benefits to the grant recipient.
- (d) Relationship of the best management practice to customary operating practices.

(5) The designated management agency may set cost-share rates up to the maximum in NR 120.14(9) through (12).

~~(5)~~ (6) Where 2 or more practices are of equal effectiveness in the control of pollutants, the maximum cost-share shall be based on the least-cost practice provided the practice is consistent with the use and management of the land in question.

~~(6)~~ (7) Cost-share rates for ~~individual-grant-applicants~~ best management practices may be increased above 50% up to 70% as set forth in s. 144.25~~(g)(7)~~(8)(g), Stats., provided ~~that~~ ~~all~~ ~~the~~ both conditions listed below exist:

- (a) Adequate documentation exists that a 50% cost-sharing rate for the best management practice would place an unreasonable burden on an applicant, or that a 50% cost-sharing rate would be unreasonable due to the applicant's specific financial circumstances.
- (b) The main benefits to be derived are related to improving water quality.

~~(c) --The-lead-designated-management-agency-and-the-department's-designee-recommend-the-higher-rate,-and this-rate-is-approved-by-the-department--"~~

(8) Cost-share rates for specific best management practices identified in sub. (9) may be increased up to 80% as set forth in s. 144.25(8)(h), Stats., provided:

- (a) The practice produces negligible benefit to the landowner, land user, or municipality.
- (b) The primary benefits of the practice are related to improving water quality.
- (c) Limiting the cost-sharing to 70% would place an unreasonable cost burden on applicants.
- (d) A county matching share is provided for the completed practice equal to the state share over 70%.
- (9) Cost share rates for individual best management practices are identified in table 1.

Table 1

<u>Practice</u>	<u>Maximum State Cost-Sharing Rate</u>
<u>1. Contour Cropping</u>	<u>50%</u>
<u>2. Strip Cropping (including field strip cropping)</u>	<u>50%</u>
<u>3. Diversions</u>	<u>70%</u>
<u>4. Terraces</u>	<u>70%</u>
<u>5. Waterways</u>	<u>70%</u>
<u>6. Minimum Tillage (except for no-till)</u>	<u>50%</u>

<u>7. No-till</u>	<u>50%</u>
<u>8. Critical Area Stabilization</u>	<u>70%</u>
<u>9. Grade Stabilization Structures</u>	<u>70%</u>
<u>10. Shoreline Protection</u>	<u>70%</u>
<u>11. Settling Basins</u>	<u>70%</u>
<u>12. Barnyard Runoff Management</u>	<u>70%</u>
<u>13. Manure Storage Facilities</u>	<u>70%</u>
<u>14. Livestock Exclusion From Woodlots</u>	<u>50%</u>
<u>15. Leaf Collection</u>	<u>50%</u>
<u>16. Street Sweeping</u>	<u>50%</u>
<u>17. Infiltration Systems</u>	<u>70%</u>

(10) Designated management agencies may use the following rates per acre instead of cost-share percentages listed in table 1.

- (a) \$6 per acre for contour cropping.
- (b) \$12 per acre for strip cropping.
- (c) \$10 per acre for field strip cropping.
- (d) \$8 per acre for minimum tillage.
- (e) \$8 per acre for no-till.

(11) Designated management agencies may increase the state cost-sharing up to 80% for the following practices provided the conditions of s. 144.25(8)(h), Stats. are met:

- (a) Critical area stabilization.
- (b) Grade stabilization structures.
- (c) Shoreline protection.
- (d) Settling basins.

(12) The maximum cost-sharing for manure storage facilities shall not exceed \$6,000 per facility in priority watershed projects and \$4,000 per facility in local priority projects.

~~(7)~~ (13) Relation to financial assistance programs. State funds may be used to increase the combined federal and state cost-share to the limits prescribed in s. 144.25(6)(f), Stats. NR 120.14(9).

~~(8)~~ (14) Local contributions. (a) Funds from nonfederal and nonstate financial assistance programs may be used to provide the local share of project costs, as set forth in s. 144.25(6)(f)(8), Stats.

(b) In kind contributions of labor and material used directly in the installation of management practices may be considered part of the local share of practice costs, if properly described and substantiated to the designated management agency.

~~NR-120.13 NR 120.15 Auditing and reporting. (1) Annually, the department shall prepare and make available a report which shall include: allocation of funds for technical assistance, planning, program administration and grant assistance costs, the number of practices completed, funds encumbered for additional practices, and the balance of nonencumbered funds.~~

~~(2) The department's designee shall report annually the number of practices completed by priority watershed or nonpriority area activity.~~

~~(3) The lead designated management agency in each priority watershed shall report annually the number of practices completed by practice and by watershed and funds encumbered for additional practices.~~

(1) The department shall conduct a final audit and may conduct pre-award and interim audits for each priority watershed and local priority project.

(2) Audits will include review of fiscal accountability as set forth in NR 120.06(5) and (6) and program consistency with the priority watershed plan or approval portions of the local priority project application.

(3) The final audit may be prior or subsequent to final settlement.

(4) Any payment made prior to the final audit is subject to adjustment based on the audit.

NR-120-14 NR 120.16 Program reporting and evaluation.

(1) Annually, the department shall prepare a report which includes:

(a) Allocation of cost-sharing funds by priority watershed and local priority project.

(b) Number of cost-sharing agreements entered into, best management practices installed, funds encumbered for best management practices remaining to be installed for each priority watershed or local priority project.

~~(1)~~ (2) The department shall have the overall responsibility for program evaluation and shall after consultation with the state nonpoint source coordinating committee and the BSWCD, recommend program policy and administrative rule changes to the governor and legislature based on:

(a) Water quality monitoring to be conducted by the department in selected priority watersheds.

(b) The annual net changes in best management practices application within priority watersheds, as contained in the annual reports.

(2) The department shall report back to the legislature prior to January 1, 1982, detailing progress in the nonpoint source water pollution abatement program. The report by the department may include, but is not limited to:

(a) Progress toward achievement of water quality goals and objectives.

(b) Needed adjustments in the cost-sharing element of the program.

(c) Need for additional authority or changes in existing authority to meet the objectives and purposes of the program.

NR-120-15 NR 120.17 Resolution of administrative conflicts between the BSWCD and the department. In the event that conflicts between the BSWCD and the department which cannot be resolved by the appropriate staffs of the department and the BSWCD develop in the conduct of this program, the following procedure shall be used: a committee consisting of the chairman of the BSWCD or designee, the executive secretary of the BSWCD, the chairman of the natural resources board or designee, and the secretary of the department shall be convened for the purpose of resolving the identified conflicts.

NR-120-16 NR 120.18 Severability. Should any section, paragraph, phrase or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on May 29, 1980.

The rules contained herein shall take effect upon publication as provided in Section 227.026 (1) intro., Wisconsin Statutes.

Dated at Madison, Wisconsin 1 October 1980

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Anthony S. Earle  
Anthony S. Earle, Secretary

(SEAL)