



CR 85-207

State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

BOX 7921
MADISON, WISCONSIN 53707

STATE OF WISCONSIN)
DEPARTMENT OF NATURAL RESOURCES) ss

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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy 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. WR-2-86 was duly approved and adopted by this Department on February 27, 1986. 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 29th day of April, 1986.

Bruce B. Braun
Bruce B. Braun, Deputy Secretary

(SEAL)

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

.....
IN THE MATTER of repealing and recreating .
chapter NR 120, relating to Wisconsin's .
Nonpoint Source Pollution Abatement .
Program. .
.....

WR-2-86

Analysis Prepared by Department of Natural Resources

These proposed revisions to Chapter NR 120 are intended to clarify existing provisions, incorporate needed procedures and requirements and delete unnecessary provisions. The majority of the revisions are intended to meet needs identified by the Legislative Audit Bureau including the addition of cost containment procedures, the addition of an education grant agreement and changes to the local assistance grant agreement. The change from the existing priority watershed selection process towards a five year schedule is proposed to better enable department staff to schedule work and counties, cities and villages to anticipate watershed projects.

Pursuant to the authority vested in the State of Wisconsin Natural Resources Board by ss. 144.25 and 227.014(2)(a), Stats., the State of Wisconsin Natural Resources Board hereby repeals and recreates rules interpreting s. 144.25, Stats., as follows:

SECTION 1. Chapter NR 120 is repealed and recreated to read:

FOREWORD

The Wisconsin legislature established the nonpoint source water pollution abatement program in 1978. Both urban and rural nonpoint sources are recognized as contributors to the degradation of Wisconsin's lakes, streams, and groundwater. Section 144.25, Stats., assigns overall responsibility for this water quality program to the department of natural resources and local implementation responsibilities to counties, cities and villages.

The department of natural resources has developed the administrative framework in chs. NR 120 and 121 under which areawide water quality management areas and plans are identified, priority watershed projects are selected and counties, cities, villages and state agencies receive technical and financial assistance necessary to implement nonpoint source pollution abatement projects. The department of natural resources identifies priority watershed areas where nonpoint source related water quality problems are most severe and control is most feasible and develops best management practices which are the most effective, practicable means of preventing or reducing nonpoint source pollution. More specifically, the department identifies lakes, streams, groundwater and other water resources where the uses of the waters are impaired or threatened by nonpoint sources; selects projects to protect or rehabilitate beneficial uses of the waters; and prepares plans identifying the best means to achieve the protection or rehabilitation. The statewide water quality advisory committee assists the department of natural resources in selecting priority watershed areas and in the planning and implementation of

projects and best management practices in priority watersheds. The department of natural resources enters into nonpoint source grant agreements, local assistance grant agreements and education grant agreements with counties, cities, villages and state agencies in order to implement priority watershed projects. The department of natural resources assists counties, cities, villages and state agencies by coordinating the nonpoint source pollution abatement program with other state and federal water quality programs, by providing technical and financial assistance and by evaluating the nonpoint source pollution abatement program for recommended modifications.

Counties, cities and villages enter into cost share grant agreements with landowners, land operators and state agencies in order to implement the nonpoint source pollution abatement program on a local level. Landowners, land operators and state agencies as cost share recipients are responsible for installing and maintaining best management practices.

NR 120.01 APPLICABILITY; PURPOSE. (1) APPLICABILITY. This chapter applies to counties, cities, villages and state agencies when acting as nonpoint source grant agreement, local assistance grant agreement or education grant agreement recipients; to counties, cities and villages when acting as cost share agreement grantors; and to landowners, land operators and state agencies when acting as cost share recipients.

(2) PURPOSE. The purpose of this chapter is to establish the administrative framework for the implementation of the state's nonpoint source pollution abatement program.

NR 120.02 DEFINITIONS. (1) "Additional staff" means employees hired or contracted for by the county, city or village for watershed project activities including previous or ongoing watershed projects.

(2) "Alternative best management practice" means a practice, technique or measure determined to be an effective, practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals and which does not appear in s. NR 120.14.

(3) "Areawide water quality management plan" means a plan for managing, protecting and enhancing ground and surface 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 ch. NR 121.

(4) "Best management practice" as defined in s. 144.25(2)(a), Stats., means a practice, technique or measure identified in areawide water quality management plans which is 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 and described in s. NR 120.14.

(5) "Completed practice" means a best management practice or alternative best management practice which has been installed and verified to meet the standards and specifications or procedures identified in ss. NR 120.14 or NR 120.15.

(6) "Cost containment procedure" means one or more procedures specified in this chapter to be utilized by counties, cities and villages for controlling costs of landowner and land operator installed best management practices.

(7) "Cost share agreement" means the agreement established between the county, city or village and the cost share recipient which identifies the best management practices and the cost, installation schedule and operation and

maintenance requirements for the best management practices on the cost share recipient's lands.

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

(9) "Designated management agency" means counties, cities and villages as identified in s. 144.25(6), Stats.

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

(11) "Existing staff" means the county's, city's or village's permanent staff or staff from other agencies assigned to work with the county, city or village on a permanent basis.

(12) "Final settlement date" means the date the final audit is accepted by the grantee or the date a final determination is made by the department of any appeal made by the grantee on the final audit.

(13) "Force account work" means the use of the county, city or village's own employees or equipment for construction, construction related activities, or repair or improvement to a best management practice.

(14) "Grant period" means the time period during which the county, city or village is eligible to expend program grant funds for a watershed project.

(15) "Landowner or land operator" means any individual, partnership, corporation, municipality or person holding title to or having an interest in land who is a cost share recipient of a cost share agreement with a county, city or village for the purpose of installing best management practices.

(16) "Local share" means the nonstate portion of the cost of the installation of a best management practice as part of a cost share agreement except that other state grants or appropriations may be used as a local share when a state agency is the cost share recipient.

(17) "Nonpoint source" means a land management activity which contributes to runoff, seepage or percolation; and are sources which are not defined as point sources of pollutants under s. 147.015(12), Stats.

(18) "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.

(19) "Priority watershed" means a watershed of manageable size, delineated in the areawide water quality management plan and selected according to the procedures specified in s. NR 120.06 or 120.07.

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

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

(22) "Records" means books, documents, papers, accounting records, audits, and other evidence and accounting procedures and practices.

(23) "Small-scale watershed" means a hydrologic unit of approximately 10 square miles or less which drains to a single lake, specific stream segment or portion of the groundwater and serves as the project boundary for watershed projects described in s. NR 120.09.

(24) "SCS" means the soil conservation service of the U.S. department of agriculture.

(25) "Technical guide" means the Wisconsin soil conservation service technical guide (December 1985).

Note: Copies may be inspected at the offices of the department, 101 S. Webster Street, Madison; the Secretary of State, 201 E. Washington Ave., Madison; and the Revisor of Statutes, 30 W. Mifflin, Madison.

(26) "Watershed project" means a priority watershed project or small-scale watershed project.

NR 120.03 ROLE OF COUNTIES, CITIES AND VILLAGES IN WATERSHED PLAN

DEVELOPMENT. (1) All counties, cities and villages in a watershed selected for a watershed project shall identify in writing a person to represent the unit of government during watershed plan preparation.

(2) The department, counties, cities and village may form a watershed project committee consisting of representatives of interested groups, units of government and agencies to advise the department, counties, cities and villages on the development of the watershed plan.

(3) All counties, cities and villages in the watershed may participate in the development of the watershed assessment portion of the watershed plan described in s. NR 120.08.

(4) All counties, cities and villages in the watershed shall prepare a detailed program for implementation for the watershed project, as described in s. NR 120.08(3). This requirement may be waived if the department and the county, city or village agree that the local unit of government's nonparticipation will not impair the objectives of the watershed plan.

NR 120.04 RESPONSIBILITIES OF COUNTIES, CITIES AND VILLAGES IN WATERSHED

PROJECT IMPLEMENTATION. (1) Counties, cities and villages are assigned the responsibility for the local implementation activities described in s. 144.25(6), Stats. The responsibilities of each county, city or village shall include:

(a) Identifying, in writing, a person to represent the unit of government during implementation of the watershed project.

(b) Being a nonpoint source grant agreement grantee and cost share agreement grantor for cost share agreements within its jurisdiction and being fiscally responsible for the use of cost share funds provided to cost share recipients through those agreements. This requirement may be waived if the department and the county, city or village agree to delegate these responsibilities to another unit of government.

(c) Preparing and maintaining adequate fiscal management and technical assistance files as described in ss. NR 120.25 and 120.26. This requirement may be waived if the department and the county, city or village agree to delegate these responsibilities to another unit of government.

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

(e) Submitting, periodically, to the department a list of cost share agreements that it believes are eligible for extension under s. NR 120.13(8)(a). The submittal shall include:

1. Cost share agreement number.
2. Landowner or land operator name.
3. Best management practice installations which are to be delayed.
4. Section NR 120.13(8)(a) reason and explanation for delay.

(f) Providing best management practice technical design and installation assistance for all best management practices in cost share agreements within its jurisdiction. The county, city or village may assign this requirement to another unit of government if approved by the department.

(g) Contacting all owners or operators of lands identified as significant nonpoint sources in the watershed plan, within one year of the signing of a nonpoint source grant agreement.

(h) Preparing and submitting to the department for approval, annual or periodic work plans for activities necessary to implement the watershed project in accordance with the detailed program for implementation for the watershed project.

(2) Each county, city or village may provide best management practice technical design and installation assistance to other units of government.

(3) The counties, cities and villages included in a watershed project may identify a lead unit of government responsible during the grant period for the following.

- (a) Local project coordination.
- (b) Identification of a project manager.
- (c) Maintenance of project ledgers.

NR 120.05 RESPONSIBILITIES OF COUNTIES, CITIES AND VILLAGES AS COST SHARE RECIPIENTS. Each county, city or village participating in cost sharing shall:

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

(2) Prepare and maintain adequate fiscal management and technical assistance files as described in ss. NR 120.25 and 120.26.

NR 120.06 PRIORITY WATERSHED SELECTION. (1) Priority watershed projects shall be selected by the department using the following 4 step process until the priority watershed project scheduling procedure described in s. NR 120.07 becomes effective.

(a) Initial list. The department shall prepare an unranked list of watersheds in the state having the most merit for selection. The list may not

exceed 25% of the state's watersheds which have not been selected as priority watershed projects.

(b) Regional committee recommendations. (1) The department shall delineate regions of the state. A committee shall be formed in each region to review the initial list of watersheds in the committee's region and recommend watersheds for further consideration. The members of the committee shall consist of:

a. The board of each designated planning agency in the designated areas of the state.

b. One representative of each county board and each city or village of over 10,000 in population within the region.

2. The regional committees shall recommend up to the number of watersheds requested by the department.

(c) State review committee recommendations. A committee appointed by the statewide water quality advisory committee shall review the regional committees recommendations and recommend watersheds for inclusion in a selection pool. The department shall specify the number of watersheds that will be added to the selection pool.

(d) Department selection. The department shall select watersheds from the selection pool.

(2) SELECTION CRITERIA. Each regional committee, the state review committee and the department shall base its recommendations or selection primarily on the water quality impairment of the use of the waters of the state and the practicability of alleviating the impairment or the threat to high quality recreationally valuable waters of the state. As secondary criteria the following shall be considered:

(a) The practicability of achieving a significant reduction in the amount of pollutants from the nonpoint sources in the watershed.

(b) Willingness and capability of counties, cities and villages in the watershed to initiate the project within a 2 to 3 year period.

(c) Likelihood of owners or operators of critical nonpoint sources to participate in the project.

(d) Public use of the lakes, streams and groundwater.

NR 120.07 PRIORITY WATERSHED PROJECT SCHEDULING. (1) Every third year beginning on January 1, 1988, the department shall prepare a proposed schedule of priority watershed projects. The proposed schedule shall rank priority watershed projects in the order they are most likely to be selected during the next 5 years.

(2) The proposed schedule of priority watershed projects shall be based on the following factors:

(a) The water quality impairment or threat to the use of the lake, stream, groundwater or any other water of the state and the practicability of alleviating the impairment or threat.

(b) The practicability of achieving a significant reduction in the amount of pollutants from the nonpoint sources in the watershed.

(c) The public use of the watershed's lakes, streams, groundwater and other waters of the state.

(d) The capability of the county, city or village to carry out the project considering commitments to ongoing projects.

(3) The proposed schedule shall be presented at one or more public informational hearings for review and comment.

(4) The department may revise the schedule in response to comments from the public.

(5) The department shall select priority watershed projects in the order listed in the final schedule.

NR 120.08 WATERSHED PLANS. (1) WATERSHED PLAN CONTENT. Watershed plans shall be prepared for all watershed projects. The watershed plan shall consist of a watershed assessment, a detailed program for implementation, and a project evaluation.

(a) Watershed assessment. The department shall prepare a watershed assessment analyzing the water quality problems or threats of the water quality in the watershed's lakes, streams and groundwater and the nonpoint sources causing the problem or threat. The watershed assessment shall contain:

1. An identification of the water quality problems or threats to water quality caused by nonpoint sources of pollution in the watershed.

2. An identification of water quality objectives for the watershed.

3. An identification of target levels of pollutant control necessary to meet water quality objectives.

4. An identification and ranking of significant nonpoint source types and contributing areas.

5. An identification of priority management areas.

6. A listing of and analysis of need for best management practices which will significantly aid in the achievement of the target level of pollution abatement.

(b) Detailed program for implementation. The counties, cities and villages as required under s. 144.25(6)(a), Stats., except those waived under s. NR 120.03(4), shall prepare a detailed program for implementation including:

1. An estimate of costs for practice installation.
2. A schedule for implementation activities.
3. An information and education strategy.
4. A description of fiscal management procedures, including cost containment procedures.
5. An estimate of technical assistance needs.

(c) Project evaluation. The department shall prepare a project evaluation identifying procedures and schedules for determining project progress and accomplishment.

(2) WATERSHED PLAN REVIEW, APPROVAL AND REVISION. (a) Watershed plan development meeting. During the preparation of the watershed plan, the department and the participating counties, cities and villages shall hold a public informational meeting in the watershed to solicit comments and information pertinent to the preparation of the plan.

(b) Watershed plan hearing. After the preparation of a draft of the watershed plan, the department and the participating counties, cities or villages shall hold a public informational hearing for comment on the watershed plan.

(c) Watershed plan approval. Within 90 days after the public informational hearing, the department shall approve or reject the detailed program for implementation part of the watershed plan.

(d) Areawide water quality management plan revision. After approval of the detailed program for implementation, the watershed plan shall be approved as a revision to the areawide water quality management plan for the appropriate basin as described in ss. NR 121.07 and 121.08.

(e) Watershed plan revision. The approved watershed plan may be revised using the procedures in ss. NR 121.07 and 121.08 for amending areawide water quality management plans. The department shall approve or reject a county's, city's or village's request for a revision to the watershed project's detailed program for implementation within 90 days of receipt of the revision request.

NR 120.09 SMALL-SCALE WATERSHED PROJECTS. (1) The department may identify small-scale watershed projects where it determines a watershed project would significantly aid in the achievement of water quality objectives. The projects may not encompass more than approximately 10 square miles and may not be located in ongoing priority watershed project areas.

(2) The department shall select small-scale watershed projects based primarily on the water quality problem or the threat to water quality and the practicability of abating the problem or threat. The department shall use the following as secondary criteria:

(a) The practicability of achieving a significant reduction in the amount of pollutants from the nonpoint sources in the watershed.

(b) Willingness and capability of counties, cities and villages in the watershed to initiate the project.

(c) Likelihood of landowners or land operators of critical nonpoint sources to participate in the project.

(d) Public use of the lakes, streams and groundwater.

(3) A watershed plan as described in s. NR 120.08 shall be prepared for the project.

(4) Implementation of the watershed plan shall follow the same procedures as priority watershed projects.

NR 120.10 COST SHARE ELIGIBILITY. (1) Best management practices

installed and maintained to control the following nonpoint sources are eligible for cost share assistance when identified as significant nonpoint sources of pollution in a watershed plan:

(a) Croplands and undeveloped rural lands.

(b) Streambanks and shorelines.

(c) Livestock yards and manure management areas except those identified in sub. (2)(c).

(d) Lawns, streets, roofs, and other areas associated with residential land uses.

(e) Lawns, parking lots, streets, roofs, and other areas associated with retail businesses, office buildings, schools, libraries, parks, and similar institutional buildings and areas.

(f) Other sources determined by the department to meet the objectives of the program.

(2) The following practices, sources or activities are not eligible for cost share assistance:

(a) Best management practice installation, operation or maintenance started prior to the signing of the cost share agreement.

(b) Best management practices not cost shared described in s. NR 120.17.

(c) Activities covered by the Wisconsin pollutant discharge elimination system permit program including those identified in chs. NR 200 to 299.

(d) Livestock operations with more than 1000 animal units or livestock operations issued a notice of discharge under ch. NR 243.

(e) Industrial processes and lands directly related to industrial processes including plant yards, immediate access roads, drainage ponds, refuse piles, storage piles or areas and material or product loading areas.

(f) Commercial operations and processes and lands directly related to commercial operations and processes including:

1. Tank farms and fuel refilling;
2. Coal storage yards;
3. Salt storage yards;
4. Stockyards;
5. Grain elevators;
6. Railroad yards;
7. Salvage and junkyards; and
8. Airport runways, terminals and fueling areas.

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

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

(i) Active and abandoned mining activities.

(j) Building and utility construction.

(k) Highway construction.

(l) The planting, growing and harvesting of trees associated with silviculture.

(m) Small scale on-site human domestic waste facility construction.

(n) Dredging of harbors, lakes and ditches.

(o) Activities or control measures intended primarily for flood control.

(p) Operation and maintenance of cost shared practices.

(q) Practices normally and routinely used in growing crops and required for the growing of crops or the feeding of livestock.

(r) Practices whose purpose is to accelerate or increase the drainage of land.

(s) Practices required to control spills from bulk storage of pesticides, fertilizers, petroleum and similar materials.

(t) Practices required to control industrial wastes.

(u) Practices required to properly store toxic or hazardous materials.

(v) Practices required to control seepage or runoff from materials stored for resale.

(w) Other practices or activities determined by the department not to meet the objectives of the program.

NR 120.11 ALLOCATION OF GRANT FUNDS. (1) If annual grant funds are not sufficient to fund all anticipated grant needs, the department shall allocate funds to watershed projects in the following order:

(a) First priority. Grant funds shall be allocated first to meet the cost share and local assistance grant needs scheduled through signed cost share agreements in approved watershed projects.

(b) Second priority. Any grant funds not allocated under par. (a) shall be allocated to meet anticipated cost share and local assistance grant needs in approved watershed projects.

(c) Third priority. Any grant funds not allocated under pars. (a) and (b) shall be allocated to meet anticipated cost share, local assistance and education needs in watershed projects in the plan development stage.

(2) Within each group of projects identified in sub. (1), the department shall allocate grant funds to watershed projects based on the severity of the water quality problems, the feasibility of controlling the water quality problems and the progress in achieving the water quality objectives.

NR 120.12 NONPOINT SOURCE GRANT AGREEMENT. (1) The nonpoint source grant agreement is an agreement between the department and counties, cities, villages or state agencies for providing cost share funds for priority watershed and small-scale watershed projects. More than one nonpoint source grant agreement may be awarded for a watershed project.

(2) The period in which cost share agreements may be signed through the nonpoint source grant agreement shall be no more than 3 years. The department may extend this period upon written request by the grantee where the additional time will result in a significant reduction of the pollutant load from nonpoint sources or otherwise further the intent of the program.

(3) The grant period of the nonpoint source grant agreement is the period when cost share funds may be expended. It shall be no more than 8 years. The department may extend the grant period upon written request by the grantee where the additional time will result in a significant reduction of the pollutant load from nonpoint sources or otherwise further the intent of the program.

(4) The grantee may use nonpoint source grant funds for cost share practices on property owned or operated by it provided the practices are consistent with the watershed plan and prior written approval is obtained from the department. The grantee shall meet the requirements identified for cost share agreements in s. NR 120.13 including installation and operation and maintenance requirements.

(5) The grantee may use nonpoint source grant funds to cover reasonable expenses necessary to secure refunds, rebates or credits described in s. NR 120.23 when approved by the department.

NR 120.13 COST SHARE AGREEMENT. (1) PURPOSE OF AGREEMENT. The cost share agreement is an agreement listing the best management practices and establishing the conditions and considerations under which a cost share recipient agrees to install the practices listed consistent with the watershed plan.

(2) EFFECTIVE DATE. For best management practices to be eligible for cost sharing, the nonpoint source grant agreement and the cost share agreement, shall be signed before practices may be initiated. A cost share agreement is not necessary if the nonpoint source grant agreement allows the grantee to use funds directly.

(3) PARTIES TO THE AGREEMENT. (a) The cost share agreement shall be between the participating county, city or village and the individual landowner, land operator or state agency.

(b) Counties, cities and villages, as cost share agreement grantors, shall enter into cost share agreements only during the period specified in the nonpoint source grant agreement.

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

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

(b) The best management practices cost shared and not cost shared to be applied and the cost share rates for the practices to be cost shared.

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

(d) The installation period and the schedule for applying the practices.

(e) A statement of maintenance requirements including those specified in s. NR 120.14.

(f) A requirement to not adopt any land use or practice which defeats the purposes of the best management practices.

(g) A provision stating that the county, city or village shall provide appropriate technical assistance during the required operation and maintenance period of the best management practices.

(h) A nondiscrimination clause.

(i) A provision describing the procedure for amendment.

(5) SUBMITTAL TO DEPARTMENT: The county, city or village shall submit a copy of the cost share agreement and amendments to the department. Any cost share agreement exceeding \$50,000 in state share shall be submitted to the department for approval before becoming effective. The county, city or village shall describe the best management practices available to control nonpoint sources of pollution and identify the least cost practice. The department shall approve the cost share agreement if the best management practices are the least cost alternatives to control the nonpoint sources and the significance of the nonpoint sources justifies the expenditure of the grant funds.

(6) AGREEMENT PERIOD. The cost share agreement period shall be the installation period plus the operation and maintenance period.

(a) The installation period is the time when all cost shared and not cost shared practices shall be installed. The installation period may not exceed 5 years. The department may grant a variance from this subsection under the procedures described in s. NR 120.29, if the county, city or village submits a written request. In no case may the installation period extend beyond the grant period of the nonpoint source grant agreement identified in s. NR 120.12(3). In support of its request for a variance from this subsection, the

county, city or village shall, for each cost share agreement, justify the extension taking into account the following:

1. Economic hardship,
2. Construction delay,
3. Change in ownership, and
4. Addition of practices to the cost share agreement.

(b) The operation and maintenance period for both cost shared and not cost shared best management practices shall be 10 years beginning when the last practice on the agreement has been installed. The parties to a cost share agreement signed prior to [the date this rule becomes effective] may amend the agreement to include a 10 year operation and maintenance period. The department may exempt demonstration practices included in education grant agreements from the 10 year operation and maintenance period.

(7) FAILURE TO FULFILL AGREEMENT. If the cost share recipient fails to fulfill any terms of the cost share agreement, including failing to install, operate and properly maintain the practices of the agreement, the full amount of cost shared funds received by the cost share recipient shall be repaid to the county, city or village who is the grantor of the agreement. The county, city or village grantor shall forward the repayment to the department.

(8) INEFFECTIVE PRACTICES. If a practice is rendered ineffective during the the cost share agreement period due to circumstances beyond the control of the cost share recipient, repayment of cost share payments will not be required. The department, after review for the need for the practice, may authorize the cost shared replacement of the practice. When replacement is authorized, the department shall specify an appropriate operation and maintenance period for the practices. The department shall provide cost sharing as follows:

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

(b) If the practice becomes ineffective beyond the grant period of the nonpoint source grant agreement of the watershed project the department may award a new grant agreement or modify and extend the project's nonpoint source grant agreement.

(9) CHANGE IN OWNERSHIP. If a change in ownership or land use or management occurs during the cost share agreement period, repayment of cost shared funds by the cost share recipient shall be required unless at least one of the following conditions exists:

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

(b) It is demonstrated to the county, city or village that the change in land use or management will not result in the degradation of existing water quality.

(10) FILING OF COST SHARE AGREEMENTS WITH REGISTER OF DEEDS. The county, city or village shall file a copy of the original cost share agreement with the property deed at the office of the register of deeds.

NR 120.14 COST SHARE AGREEMENT CONDITIONS FOR BEST MANAGEMENT PRACTICES.

(1) CONTOUR CROPPING. (a) Description. Contour cropping is 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, if necessary, subsurface drains and the removal of obstacles.

(c) Specifications. SCS technical guide specifications as of December, 1985: 330 - contour farming, 500 - obstruction removal; and 606 - subsurface drain.

(2) STRIP CROPPING. (a) Description. Strip cropping is 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 and installation of subsurface drains.

(c) Specifications. SCS technical guide specifications as of December, 1985: 585 - strip cropping, 586 - field strip cropping, 500 - obstruction removal and 606 - subsurface drains.

(3) FIELD DIVERSIONS. (a) Description. Field diversions are structures 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. Cost sharing shall be authorized for:

a. Diversions, ditches, dikes or subsurface drains necessary for proper functioning of the diversion. 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.

e. Establishing permanent vegetative cover.

f. Fencing, if necessary, to protect the diversion from cattle.

2. Cost sharing may 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.

(c) Specifications. SCS technical guide specifications as of December, 1985:

1. 362 - diversion;

2. 342 - critical area planting;

3. 382 - fencing;

4. 412 - grassed waterway;

5. 468 - lined waterway;

6. 500 - obstruction removal;

7. 606 - subsurface drains; and

8. 620 - underground outlet.

(4) TERRACE SYSTEMS. (a) Description. Terraces are a system of ridges and channels constructed across the slope on a nonerosive 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.

(c) Specifications. SCS technical guide specifications as of December, 1985:

1. 600 - terrace;
2. 342 - critical area planting;
3. 412 - grassed waterway or outlet;
4. 468 - lined waterway or outlet;
5. 500 - obstruction removal;
6. 606 - subsurface drain;
7. 620 - underground outlet; and
8. 638 - water and sediment control basin.

(5) GRASSED WATERWAYS. (a) Description. A grassed waterway is a natural or constructed water course 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, establishing permanent vegetation cover and for subsurface drains necessary for proper functioning of the waterway.

(c) Specifications. SCS technical guide specifications as of December, 1985:

1. 412 - grassed waterway or outlet;
2. 342 - critical area planting;
3. 382 - fencing; and
4. 606 - subsurface drain.

(6) REDUCED TILLAGE SYSTEMS. (a) Description. Reduced tillage systems are systems which leave roughened surfaces or substantial amounts of crop residue in or on the soil surface after crops are planted. Generally, the system consists of no more than using one primary tillage pass in the fall or

spring and no more than 2 passes with light or secondary tillage equipment prior to planting.

(b) Conditions. Cost sharing is authorized for costs necessary to convert to reduced tillage systems.

(c) Specifications. 1. The minimum amount of ground cover after planting shall be at least 30%.

2. The tillage and planting shall be performed as close to the contour as practical.

3. Fertilizers, herbicides and insecticides applied shortly before, at the same time or shortly after planting shall be injected, in-row applied or incorporated. If no-till systems are used and injection or in-row application is not applicable, chemicals may not be applied to crop residue and residue shall be moved aside to allow application of chemicals directly on the soil and followed by a method of incorporation.

4. Cultivation after planting is permitted to control weeds and when required to break a surface crust.

5. A moldboard plow or other tillage or cultivation implement may be used only once every 5 years if necessary to alleviate insect, weed or disease problems and if approved in writing by the county.

(7) CRITICAL AREA STABILIZATION. (a) Description. Critical area stabilization is the planting of suitable vegetation on highly erodible areas (e.g., gullies and roadside).

(b) Conditions. 1. Cost sharing shall be authorized for:

1. Permanent fencing to protect the site.

2. Planting trees, shrubs, perennial grass cover.

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

(c) Specifications. SCS technical guide specifications as of December, 1985:

1. 342 - critical area planting;
2. 382 - fencing;
3. 386 - field borders;
4. 393 - filter strip;
5. 484 - mulching; and
6. 612 - tree planting.

(8) GRADE STABILIZATION STRUCTURES. (a) Description. A grade stabilization structure is 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. Detention or retention structures, such as erosion control dams, desilting reservoirs, sediment basins, debris basins or similar structures.
 - c. 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 may be authorized for structures with embankments of 6 to 25 feet in height or with impoundment capacities of 15 to 50 acre-feet only when approved, in writing, by the department prior to construction.
3. Cost sharing may not be authorized for impoundments with embankments of more than 25 feet in height or with an impoundment capacity of more than 50 acre-feet.

(c) Specifications. SCS technical guide specifications as of December, 1985:

1. 410 - grade stabilization structure;
2. 350 - sediment basin;
3. 638 - water and sediment control basin;
4. 342 - critical area planting;
5. 348 - diversion dam;
6. 362 - diversion;
7. 382 - fencing;
8. 412 - grassed waterway;
9. 468 - lined waterway or outlet;
10. 484 - mulching; and
11. 620 - underground outlet.

(9) SHORELINE PROTECTION (STREAMBANK STABILIZATION). (a) Description.

Shoreline or streambank stabilization is the stabilization and protection of the 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 (if approved by department fish manager), 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. Riprap and other materials for banks of more

than 6 feet in height may be authorized for cost sharing only when approved, in writing, by the department prior to construction.

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

g. For clearing and removal of snags and trees likely to cause snags.

h. For required permits.

2. The cost share recipient is responsible for obtaining all permits for the installation of the practice.

(c) Specifications. 1. SCS technical guide specifications as of December, 1985:

a. 580 - streambank and shoreline protection;

b. 342 - critical area planting;

c. 382 - fencing; and

d. 612 - tree planting.

2. U.S. department of transportation hydraulic engineering circulars numbers 11 and 15.

3. American fisheries society's stream obstruction removal guidelines.

Note: Copies of the materials described in subs. 2. and 3. may be inspected at the offices of the department, 101 S. Webster Street, Madison; the Secretary of State, 201 E. Washington Ave., Madison; and the Revisor of Statutes, 30 W. Mifflin, Madison.

(10) BARNYARD RUNOFF MANAGEMENT. (a) Description. Barnyard runoff management is the use of structural measures such as gutters, downspouts and diversions to intercept and redirect surface runoff around the barnyard, feeding area or farmstead, and collect, convey and temporarily store runoff from the barnyard, feeding area or farmstead.

(b) Conditions. 1. Cost sharing shall be authorized for:

1. Diversion, gutters, downspouts, collection basins, infiltration areas, waterway outlet structures, piping, land shaping and filter walls needed to manage runoff from areas where livestock manure accumulates. Concrete paving of yards is limited to the area necessary to support filter walls and enable proper yard scraping except where additional areas need to be paved to protect groundwater.

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

3. Permanent fencing.

(c) Specifications. SCS technical guide specifications as of December, 1985:

1. 393 - filter strip;
2. 362 - diversion;
3. 558 - roof runoff management;
4. 342 - critical area planting;
5. 561 - heavy use area protection;
6. 382 - fencing;
7. 412 - grassed waterway;
8. 468 - lined waterway or outlet;
9. 484 - mulching;
10. 620 - underground outlet; and
11. 350 - settling basin.

(11) LONG-TERM MANURE STORAGE FACILITIES. (a) Description. A long-term manure storage facility is a structure for storage of manure through the winter and early spring.

(b) Conditions. 1. Cost sharing shall be authorized for:

a. Operations where the location and site characteristics of areas where manure is spread in the winter and early spring have a high potential to carry runoff to lakes and streams and the facility is necessary to properly spread and incorporate the manure.

b. Operations where the storage or spreading of manure has a high potential for contaminating groundwater.

c. Aerobic or anaerobic basins, 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 may not be authorized for:

a. Operations where manure can be spread at acceptable rates on locations which are nearly flat land or which do not drain to surface waters except those having a high potential to impair groundwater quality.

b. Operations where short-term manure storage facilities will achieve adequate pollutant control;

c. Portable pumps and other portable equipment;

d. Buildings or modifications to buildings;

e. Equipment for spreading or incorporating manure; and

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

3. Storage facilities shall have 180 to 365 day storage capacity.

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

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

6. Manure shall be incorporated into the soil within 3 days after spreading.

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

(c) Specifications. SCS technical guide specifications as of December, 1985:

1. 312 - waste management system;
2. 313 - waste storage structure;
3. 393 - filter strips;
4. 425 - waste storage pond;
5. 358 - waste transfer; and
6. 633 - waste utilization

(12) SHORT-TERM MANURE STORAGE FACILITIES. (a) Description. A short-term manure storage facility is a structure for storage of manure for the period of snow melt and when the soils are saturated during early spring.

(b) Conditions. 1. Cost sharing shall be authorized for:

a. Operations where the location and site characteristics of areas where the manure is spread during snowmelt periods and early spring have a high potential to carry runoff to lakes and streams and the facility is necessary to properly spread and incorporate the manure.

b. Solid manure stacking facilities with liquid tight floors and equipment necessary for transporting manure to the storage facility required as part of a manure management plan.

2. Cost sharing may 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 except those having a high potential to impair groundwater.

b. Buildings or modifications to buildings;

c. Equipment for spreading or incorporating manure; and

3. Storage facilities shall have a minimum of 60 day storage and a maximum of 120 days storage.

4. Manure shall be stored in the facility during snow melt and the portion of the spring when soils are saturated.

5. Manure stored in the facility may not be spread when the ground is frozen or saturated.

6. Manure stored in the facility shall be incorporated into the soil within 3 days after spreading.

(c) Specifications. SCS technical guide specifications as of December, 1985:

1. 393 - filter strip;
2. 312 - waste management system;
3. 313 - waste storage structure;
4. 358 - waste transfer; and
5. 633 - waste utilization.

(13) ROOFS FOR BARNYARD RUNOFF MANAGEMENT AND MANURE STORAGE FACILITIES.

(a) Description. A roof and supporting structure constructed specifically to prevent rain and snow from contacting manure.

(b) Conditions. 1. Cost sharing shall be authorized for materials and labor to construct and support the roof.

2. Cost sharing may not be authorized for materials and labor for other structures or buildings.

(c) Specifications. 1. The roof shall be designed to support wind, snow and other live and dead loads.

2. The roof and supporting structure shall be constructed of materials resistant to corrosion.

3. The structure shall have sufficient ventilation.

(14) LIVESTOCK EXCLUSION FROM WOODLOTS. (a) Description. Livestock exclusion from woodlots is the 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.

(c) Specifications. SCS technical guide specifications as of December, 1985:

1. 382 - fencing and

2. 472 - livestock exclusion.

(15) STRUCTURAL URBAN BEST MANAGEMENT PRACTICES. (a) Description. Structural urban best management practices are measures such as constructed infiltration areas, infiltration trenches, detention basins and porous pavement designed to control runoff rate or volume as a means to reduce the amounts of pollutants carried in the runoff.

(b) Conditions. 1. Cost sharing shall be authorized for excavation, grading, mulching, seeding, necessary landscaping, piping, drop spillways and other measures required to construct the measure.

2. Cost sharing may not be authorized for purchase of land.

(c) Review and approval procedures. 1. The department shall identify site-specific design criteria for each measure, to the degree practicable, in the watershed plan.

2. The county, city, village, landowner or land operator and the department shall meet to discuss design procedures and alternative designs prior to the design of the practice.

3. The county, city, village, landowner or land operator shall submit preliminary designs for each identified alternative to the department for review and comment.

4. Based on the review of the preliminary designs for each alternative, the county, city, village, landowner or land operator shall submit a detailed design for the selected alternative prepared by a registered professional engineer or other individual trained in the design of the practice and approved by the department, to the department for review and approval.

5. The department shall approve or disapprove within 90 days the detailed design based on the following criteria:

- a. Adequacy of pollutant control.
- b. Adequacy of protection of other resources such as groundwater.
- c. Structural integrity of the design.
- d. Aesthetics.
- e. Susceptibility to vandalism.
- f. Recreational use.
- g. Other pertinent factors.

NR 120.15 ALTERNATIVE BEST MANAGEMENT PRACTICES AND ALTERNATIVE DESIGN

CRITERIA. (1) ALTERNATIVE BEST MANAGEMENT PRACTICES. The department may identify and approve alternative best management practices where necessary to meet the water resources objectives identified in the watershed plan. The department shall identify in the nonpoint source grant agreement design criteria and standards and specifications, where appropriate; cost share conditions; and cost share rates for each approved alternative best management practice.

(2) ALTERNATIVE DESIGN CRITERIA. For best management practices described in s. NR 120.14, the department may identify or approve alternative design criteria or standards and specifications where an alternative will achieve the same or a greater level of pollutant control.

NR 120.16 CONSTRUCTION SITE ORDINANCE. Where construction sites have been identified as significant nonpoint sources in a watershed plan, the enactment of a construction site erosion control and runoff management ordinance shall be a condition of the nonpoint source grant agreement or a not cost shared practice of a cost share agreement.

(1) APPLICABILITY. The ordinance shall apply to all construction activities within the unit of government's jurisdiction including the following:

(a) Residential dwelling construction including single family home construction.

(b) Subdivisions, certified surveys and planned urban developments.

(c) Commercial, institutional and industrial buildings and associated yards and lots.

(d) Utility and transportation system construction.

(2) CONTENT. The ordinance shall contain the following:

(a) A statement of activities subject to the ordinance.

(b) Standards, criteria and other conditions to:

1. Minimize the amount of sediment and other pollutants reaching the waters of the state during the development of lands.

2. Manage the runoff water volume and rate during both the development period and afterwards to prevent adverse environmental impact such as flooding, channel modification and streambank erosion.

3. Manage the infiltration levels of the developed area to prevent adverse changes to normal dry weather flows in receiving streams.

4. Manage the amount of pollutants from the developed site so that waters of the state will not be adversely impacted.

(c) Permit application and issuance procedures.

(d) Administration and enforcement procedures.

(e) Violation penalties.

(f) Appeal procedures.

(3) The ordinance shall be reviewed and approved by the department prior to adoption.

NR 120.17 PRACTICES NOT COST SHARED. The following best management practices are not eligible for cost sharing but shall be requirements included in cost share agreements.

(1) Practices to be funded through other programs.

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

(3) Changes in crop rotation.

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

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

(6) Manure spreading management.

(7) Fertilizer management.

(8) Pesticide management.

(9) Other practices the department determines are necessary to achieve the objectives of the watershed project.

NR 120.18 COST SHARE RATES. (1) STATE COST SHARE RATES. (a) State cost share rates for individual best management practices are identified in Table 1. The cost share rates for best management practices under cost share agreements resulting from nonpoint source grant agreements entered into on or after July 1, 1985, but prior to [the effective date of this rule], may be amended to use the rates identified in this section.

Table 1

<u>PRACTICE</u>	<u>STATE COST SHARE RATE</u>
1. Contour Cropping.....	50%
2. Strip Cropping (including field strip cropping)...	50%
3. Field Diversions.....	70%
4. Terraces.....	70%
5. Waterways.....	70%
6. Reduced Tillage.....	50%
7. Critical Area Stabilization.....	70%
8. Grade Stabilization Structures.....	70%
9. Shoreline Protection.....	70%
10. Barnyard Runoff Management.....	70%
11. Long-term Manure Storage Facilities.....	70%
12. Short-term Manure Storage Facilities.....	70%
13. Roofs for Barnyard Management and Manure Storage Facilities.....	70%
14. Livestock Exclusion from Woodlots.....	50%
15. Structural Urban Best Management Practices.....	70%

(b) Counties may use the following state cost share rates per acre in lieu of the state cost share percentages listed in Table 1.

1. \$6 per acre for contour cropping.
2. \$12 per acre for strip cropping.
3. \$10 per acre for field strip cropping.
4. \$45 per acre over 3 years for reduced tillage on continuous row croplands.

5. \$15 per acre for one year only for reduced tillage on crop rotations involving hay.

(c) Counties, cities and villages may increase the state cost share rate up to 80% for the following practices provided the conditions of s. 144.25(8)(h), Stats., are met:

1. Critical area stabilization.
2. Grade stabilization structures.
3. Shoreline protection.
4. Roofs for animal lots and manure storage facilities.
5. Demonstration practices when approved by the department.

(2) MAXIMUM AMOUNTS. (a) A county, city or village may set cost share rates up to the maximum amount specified for the practice in this section. Where 2 or more practices are of equal effectiveness in the control of pollutants, the cost share rate shall be based on the least-cost practice provided the practice is consistent with the use and management of the land in question.

(b) The maximum cost share for long-term manure storage facilities may not exceed \$10,000 total per facility including no more than \$5,000 for manure transfer equipment such as pipes, pumps, hoppers and push off ramps.

(c) The maximum cost-share for short-term manure storage facilities may not exceed \$6,000 total per facility including no more than \$3,000 for manure transfer equipment such as pipes, pumps, hoppers and push off ramps.

(3) LOCAL SHARE. Funds from nonstate financial assistance programs may be used to provide the local share of project costs, as set forth in s. 144.25(8), Stats., except when state agencies are cost share recipients. When a state agency is the cost share recipient, other state funds may be used as the local share. In kind contributions of labor and material used directly in

the installations of best management practices may be considered part of the local matching share of best management practice costs, if properly described and substantiated to the cost share agreement grantor.

NR 120.19 COST CONTAINMENT PROCEDURES. (1) Counties, cities and villages as grantors of costs share agreements shall identify and agree to use one or more of the following cost containment procedures for each best management practice in the detailed program for implementation portion of the watershed plan.

(a) Average cost. Based on past cost information, a county, city or village determines an average cost per unit of materials and labor for the installation of a best management practice which may not be exceeded.

(b) Range of costs. Based on past cost information, a county, city or village establishes a cost range for the installation of a best management practice. Eligible costs may not exceed the maximum cost of the range.

(c) Bidding. A county, city or village requires the landowner or land operator to request bids from contractors for the installation of a best management practice. The landowner or land operator shall accept the low bid.

(d) Maximum cost share limit. A county, city, village or the department establishes a maximum cost share rate limit not to exceed the rates specified in s. NR 120.18 for installation of a best management practice.

(e) Municipal work group. A county, city or village hires or assigns its employees to install a best management practice for a number of landowners and land operators if the employees are able to perform the work more economically than the private sector.

(f) Wisconsin conservation corps. A county, city or village uses the Wisconsin conservation corps to install best management practices for landowners and land operators.

(g) Other cost containment procedures. If a county, city or village determines another cost containment procedure would be more effective than the cost containment procedures described in this subsection, it shall include the alternative in the detailed program for implementation portion of the watershed plan.

(2) Amendments to cost containment procedures contained in the detailed program for implementation shall follow the procedures provided in s. NR 120.08.

(3) Under unusual or exceptional circumstances, the county, city or village may accept costs exceeding the cost share maximum identified in an adopted cost containment procedure. Requests for exceptions from landowners or land operators and county's, city's or village's approval shall be documented in writing explaining the unusual or exceptional circumstances and attached to the cost share agreement or amendment and attached to the request for reimbursement submitted to the department by the county, city or village.

NR 120.20 EDUCATION GRANT AGREEMENT. (1) PURPOSE. The education grant agreement is an agreement between the department and a state agency, county, city, village or an agent acting on behalf of a state agency, county, city or village for providing funds for information, education and demonstration activities within watershed projects.

Note: University of Wisconsin-Extension may be an eligible education grant agreement as either a state agency or as an agent acting on behalf of a county, city or village.

(2) GRANT PERIOD. The grant agreement may not begin prior to a watershed project being selected and may not extend beyond the signing of the watershed project's nonpoint source grant and local assistance agreements, except when necessary to complete activities begun prior to the signing of the nonpoint source grant and local assistance agreements.

(3) CONTENT. The grant agreement shall list the activities to be carried out by the state agency, county, city, village or agent. The grant assistance for supporting additional grantee staff positions or increased staff hours shall be based on state agency, county, city or village rates for the position including salary, fringe benefits and other items determined to be appropriate by the department. Eligible activities include:

(a) Labor required to carry out activities identified in the grant agreement provided they require additional staff or increased hours of existing staff. Work hours of additional staff may be used to offset the work hours spent by existing staff on the education activities identified in the education grant agreement;

(b) Direct costs for surveys, newsletters, brochures, mailings professional services contracts and similar items;

(c) Demonstration activities and practices at the cost share rates specified in s. NR 120.18; and

(d) Other costs determined by the department to be necessary to carry out an adequate education program for the watershed project.

NR 120.21 LOCAL ASSISTANCE GRANT AGREEMENT. (1) PURPOSE. The local assistance grant agreement is an agreement between the department and a state agency, county, city, village or an agent acting on behalf of a state agency, county, city or village for providing funds for activities necessary to

implement the watershed project and requiring additional staff, increased hours of existing staff or requiring the grantee to incur direct costs.

(2) GRANT PERIOD. No local assistance grant agreement may begin before the signing of the nonpoint source grant agreement, except for the training of additional staff, nor extend beyond the end date of the nonpoint source grant agreement.

(3) CONTENT. Funding shall be provided based on activities identified in the annual or periodic workplans submitted by the county, city or village as required by s. NR 120.04. The local assistance grant agreement may be periodically amended to provide funding to adequately implement activities of the project workplan. The grant assistance for supporting additional staff positions or increased existing staff hours of the state agency, county, city, village or agent shall be based on rates not exceeding appropriate rates for state agency, county, city, village or agent employees including salary, fringe benefits and other items determined to be appropriate by the department.

(a) Eligible activities. The following activities are eligible for funding under local assistance grant agreements:

1. Labor required by the county, city or village to carry out the following activities is eligible for grant assistance provided, it requires additional staff or increased hours of existing staff:

a. Contacting landowners and land operators of critical nonpoint sources described in the watershed plan;

b. Identifying site-specific best management practices to control the critical nonpoint sources;

c. Developing and reviewing cost share agreements with the cost share recipient;

d. Designing best management practices;

e. Installing and verifying best management practices;
f. Reviewing best management practice operation and maintenance;
g. Preparing information and education materials;
h. Developing and conducting demonstrations, tours and other education activities; and

i. Other activities determined by the department to be necessary to implement the watershed project.

2. Work hours of additional staff may be used to offset the work hours spent by existing staff on the watershed project.

3. Direct costs incurred by the county, city or village for printing, mailing and distributing project materials, professional service contracts and other activities determined by the department to be necessary to implement the watershed project.

(b) Ineligible activities. The following activities are not eligible for funding under local assistance grant agreements unless approved under par. (c) and shall be carried out by the county, city or village as part of its commitment to the watershed project:

1. Fiscal management; including grant accounting, preparing and updating ledgers, processing reimbursement requests and the typing of cost share agreements.

2. Project management; including preparing annual workplan, scheduling activities and meetings with elected officials.

(c) Eligible activities if approved. A county's, city's or village's fiscal management and project management activities for a watershed project may be eligible for grant assistance if approved by the department. The department may approve grant assistance for county's, city's or village's fiscal management and project management activities for concurrent watershed

projects but may not approve grant assistance for the watershed project requiring the greatest number of fiscal management and project management hours estimated in the approved annual or periodic workplan described in s. NR 120.04(1)(1).

(4) REVIEW OF CONTRACTS. If a county, city or village contracts with a government agency to provide field, administrative, planning or other services to carry out activities of the local assistance grant agreement, the contract shall be submitted to the department for review prior to signing.

NR 120.22 COMBINED GRANT AGREEMENT. The department may grant assistance to state agencies, counties, cities, villages and agents acting on the behalf of a state agency, county, city or village by issuing a grant agreement combining the provisions of the nonpoint source grant agreement described in s. NR 120.12 and the local assistance grant agreement described in s. NR 120.21. A combined grant agreement may be issued if the department determines combining the grant agreements is in the department's best interest by increasing grant administration efficiency and decreasing the cost and time necessary for grant administration and does not unnecessarily burden grantees. The grant agreement shall be administered and performed in accordance with the requirements of ss. NR 120.12 and 120.21.

NR 120.23 REIMBURSEMENT PROCEDURES. (1) GENERAL REQUIREMENTS.
(a) Refunds, rebates and credits. The state share of any refunds, rebates, credits or other amounts that accrue to or are received by the grantee for the project, and that are properly allocable to costs for which the grantee has been paid under a grant, shall be paid to the department.

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

(c) Withholding of funds. 1. The department may authorize the withholding of a grant payment where the department determines, in writing, that a grantee has failed to comply with project objectives, grant award conditions or reporting requirements. Withholding shall be limited to only that amount necessary to assure compliance.

2. The department shall withhold payment of the amount of any indebtedness to the department, unless the department determines that collection of the debt will impair accomplishment of the project objectives and that continuation of the project is in the best interest of the program.

(2) NONPOINT SOURCE GRANT AGREEMENTS. (a) Cost share funds may be used to share in the actual cost required for the installation of eligible best management practices identified in nonpoint source grant agreements described in s. NR 120.12.

(b) State agencies, counties, cities and villages shall comply with the following procedures when requesting reimbursement.

1. Reimbursement requests shall be submitted on forms provided by the department.

Note: Reimbursement request forms may be obtained, at no charge, from the Bureau of Water Grants, Department of Natural Resources, Box 7921, Madison, Wisconsin 53707.

2. All reimbursement requests shall be submitted to the department after the best management practice has been verified as properly installed and its cost has been verified and supported by the cost share agreement including any amendments by the grantee.

Note: Verification forms may be obtained, at no charge, from the Bureau of Water Grants, Department of Natural Resources, Box 7921, Madison, Wisconsin 53707.

3. All other reimbursement shall be for completed best management practices or components of best management practices approved by the department.

4. Reimbursement requests may be submitted for partially installed best management practices when the cost will exceed the advance monies paid under par. (c).

5. If a reimbursement request exceeds \$40,000 for a partially completed structural urban best management practice described in s. NR 120.14(15), documentation of costs incurred is required at the time reimbursement is requested.

(c) The department may advance monies to counties, cities and villages prior to best management practice installation up to the following limits.

1. 10% of the grant amount for grant agreements less than or equal to \$2,000,000, and

2. 5% of the grant amount for grant agreements exceeding \$2,000,000.

(3) LOCAL ASSISTANCE GRANT AGREEMENTS. (a) Local assistance grant agreement grantees shall submit quarterly reimbursement requests on forms provided by the department. Eligible costs listed in the local assistance grant agreement incurred during each quarter shall be included in the request.

(b) The department may advance monies to local assistance agreement grantees up to 50% of the estimated 12 month grant amount.

(4) EDUCATION GRANT AGREEMENTS. (a) Education grant agreement grantees shall submit quarterly reimbursement requests for costs incurred on forms provided by the department. Reimbursement requests for the installation of eligible best management practices shall follow procedures described in sub. (2)(b).

(b) The department may advance monies to recipients of education grant agreements up to 50% of the grant agreement amount.

NR 120.24 PROCUREMENT. (1) APPLICABILITY. Procurement of professional services and construction contracts by counties, cities and villages as grantees under grant agreements described in this chapter for implementation of best management practices shall be entered into in accordance with state and local law.

Note: See ss. 59.08, 61.54, 61.55, 62.15 and 66.29, Stats.

(2) PROFITS. Only fair and reasonable profits may be earned by contractors for contracts under grant agreements described in this chapter. Profits included in a formally advertised, competitively bid, fixed price construction contract are presumed to be reasonable.

(3) RESPONSIBILITY. The county, city or village is responsible for the administration and successful completion of the activities for which grant assistance under this chapter is awarded in accordance with sound business judgment and good administrative practice under state and local laws.

(4) GENERAL REQUIREMENTS FOR CONTRACTS. Contracts shall be:

(a) Necessary for and directly related to the accomplishment of activities necessary to implement the watershed project;

(b) In the form of a bilaterally executed written agreement for any professional services or construction activities in excess of \$5,000; and

(c) For monetary or in-kind consideration.

(5) FORCE ACCOUNT WORK. (a) A county, city or village shall secure prior written approval from the department for use of the force account method in lieu of contracts for any professional services or construction activities in excess of \$5,000.

(b) The department's approval shall be based on the county's, city's or village's verification and demonstration that it has the necessary competence required to accomplish such work and that the work can be accomplished more economically by the use of the force account method.

(6) WISCONSIN CONSERVATION CORPS. Counties, cities and villages shall encourage and use the Wisconsin conservation corps for appropriate projects to the greatest extent practicable.

NR 120.25 COUNTY, CITY AND VILLAGE RECORD KEEPING AND REPORTING REQUIREMENTS. (1) Each county, city or village as a grant agreement grantee or cost share agreement grantor shall maintain a financial management system which adequately provides for:

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

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

(c) Comparison of actual costs with grant amounts on a watershed basis.

(d) Procedures for determining the eligibility and allocability of costs in accordance with the cost containment requirements of s. NR 120.19 for all practices installed by the landowner or land operator.

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

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

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

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

a. Approval of best management practices and cost share amounts by the county, city or village.

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

c. Verification of proper installation by the county, city or village official.

d. Request for reimbursement by a landowner or land operator.

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

f. Verification of practice completion in accordance with the cost share agreement including amendments and approval of cost share amount by the county, city or village.

(f) Accurate and complete time reports for all employees working on the project.

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

(h) A final accounting of project expenditures submitted to the department within 60 days of the completion of all watershed project work.

(2) The county, city or village shall retain copies of all reimbursement requests submitted to the department including the following items:

(a) Request for an advance or reimbursement form.

(b) Reimbursement claim worksheet.

(c) Cost share calculation and practice verification form.

NR 120.26 RECORD RETENTION AND AUDITING. (1) RECORD RETENTION

REQUIREMENTS. (a) The county, city or village or its agent's records and the records of contractors, including professional services contracts, shall be subject at all reasonable times to inspection, copying and audit by the department.

(b) The county, city or village or its agent or contractors of the county, city or village shall preserve and make all records available to the department:

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

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

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

(c) The county, city or village or its agent or contractors of the county, city or village shall preserve and make the following records available to the department until any appeals, litigation, claims or exceptions have been finally resolved;

1. Records which relate to appeals, disputes or litigation on the settlement of claims arising out of the performance of the project for which funds were awarded; and

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

(2) AUDITING. (a) The department may perform interim audits on all grants.

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

(c) All audits shall include review of fiscal accountability and program consistency with the watershed plan.

NR 120.27 SUSPENSION OR TERMINATION OF GRANT. (1) SUSPENSION OF GRANTS. (a) Liability. The department may suspend state liability for work done under a grant after notification is given to the grantee in accordance with the provisions of this subsection. Suspension of state liability under such a grant shall be accomplished by the issuance of a "stop-work order."

(b) Stop-work order issuance. 1. The department may issue a stop-work order if there is a breach of the grant agreement.

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

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

(c) Stop-work order components. 1. A description of the work to be suspended;

2. Instructions as to the acquisition of materials or services by the grantee;

3. Guidance for action to be taken on contracts; and

4. Other suggestions to the grantee for minimizing costs.

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

2. Within the suspension period the department shall either:

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

b. Terminate grant assistance for the work covered by the stop-work order under sub. (2), or

c. Authorize resumption of work.

(e) Stop-work order cancellation or expiration. If a stop-work order is canceled or expires, the grantee shall promptly resume the previously suspended work. An equitable adjustment may be made to the grant period, the grant amount or any combination of these items. The grant award may be amended accordingly, if;

1. The stop-work order results in an increase in the time required for completion or an increase in the grantee's cost properly allocable to the performance of any part of the project; and

2. The grantee asserts a written claim for such adjustment within 60 days of cancellation of a stop-work order or authorization to resume work.

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

(2) TERMINATION OF GRANTS. A grant may be terminated in whole or in part by the department. Grants may be terminated in accordance with the procedures of this subsection.

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

(b) A grantee may not unilaterally terminate project work for which a grant has been awarded except for good cause. The grantee shall notify the department in writing within 30 days of any complete or partial termination of

the project work. If the department determines that there is good cause for the termination of all or any portion of a project for which a grant has been awarded the department may enter into a termination agreement or unilaterally terminate the grant pursuant to par. (c). The grant termination becomes effective on the date the grantee ceases project work. If the department determines that a grantee has ceased work on the project without good cause, the department may unilaterally terminate the grant pursuant to par. (c) or annul the grant pursuant to par. (d).

(c) Grants may be terminated by the department in accordance with the following procedure:

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

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

(d) The department may annul a grant if:

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

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

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

(e) Upon termination, the grantee shall refund or credit to the department that portion of the grant funds paid or owed to the grantee and allocable to the terminated project work, except such an amount as may be required to meet commitments which became enforceable prior to the

termination. The grantee may not make any new commitments without department approval. The grantee shall reduce the amount of outstanding commitments insofar as possible and report to the department the uncommitted balance of funds awarded under the grant.

(3) TERMINATION SETTLEMENT COSTS. (a) The reasonable costs resulting from a termination order, including a previously issued stop-work order on that project work or grant, shall be eligible in negotiating a termination settlement.

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

(4) RESPONSIBILITIES OF COUNTIES, CITIES AND VILLAGES. Suspension or termination of a grant or portion of grant under this section may not relieve the grantee of it's responsibilities under in ss. NR 120.04 and 120.05.

NR 120.28 ENFORCEMENT. The following sanctions may be imposed by the department for noncompliance with the provisions of s. 144.25, Stats., this chapter or any grant agreement entered into or amended in accordance with the provisions of this chapter.

(1) The grant may be terminated or annulled under s. NR 120.27;

(2) Watershed project costs directly related to noncompliance may be declared ineligible;

(3) Payment otherwise due the grantee of up to 10% may be withheld under s. NR 120.22(c)1.;

(4) Watershed project work may be suspended under s. NR 120.27;

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

(6) The department may seek recovery of grant payments in whole or in part.

NR 120.29 VARIANCES. The department may approve in writing a variance from a requirement of this chapter upon the written request of a county, city or village when the department determines that a variance is essential to effect necessary grant actions or program objectives and where special circumstances make a variance in the best interest of the program. Before approving a variance, the department shall take into account such factors as good cause, circumstances beyond the control of the county, city or village and financial hardship. The department may not grant variances from statutory requirements.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on

The rules herein shall take effect as provided in s. 227.026(1) (intro.), Stats.

Dated at Madison, Wisconsin April 29 1986
STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny
Carroll D. Besadny, Secretary

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