Chapter NR 120

PRIORITY WATERSHED AND PRIORITY LAKE PROGRAM

Note: Chapter NR 120 as it existed on June 30, 1986 was repealed and a new chapter NR 120 was created effective July 1, 1986. Corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, September, 1997, No. 501. Chapter NR 120 as it existed on September 30, 2002 was repealed and a new chapter NR 120 was created effective October 1, 2002.

Preface

The Wisconsin legislature established the nonpoint source water pollution abatement program in 1978, recognizing both urban and rural nonpoint sources as contributors to the degradation of Wisconsin's lakes, streams, groundwater and wetlands. The department identified lakes, streams, groundwater and other water resources where the uses of the waters were impaired or threatened by nonpoint sources; proposed projects to the land and water conservation board to protect or rehabilitate beneficial uses of the waters, and prepared plans in cooperation with governmental units identifying the best means to achieve the protection or rehabilitation. The department of natural resources has entered into nonpoint source grant agreements and local assistance grant agreements with governmental units and state agencies in order to implement priority watershed projects.

The legislature restructured the nonpoint source program in 1997 and 1999, creating a new targeted runoff management grant program under ch. NR 153 and a new urban nonpoint source and stormwater grant program under ch. NR 155. The legislature also instructed the department of natural resources in s. 281.16, Stats., to prescribe nonpoint source performance standards. These performance standards are listed in ch. NR 151.

The priority watershed and priority lake projects established prior to the legislative restructuring of the program are governed by this chapter and ch. ATCP 50. Section 281.65, Stats., assigns overall responsibility for this water quality program to the department of natural resources and assigns local administration and implementation responsibilities to other governmental units. Chapter ATCP 50 contains policy and procedures for DATCP to use to administer staffing grants to counties needed to operate watershed projects. No new priority watershed or priority lake projects will be selected under this chapter.

Note: All documents incorporated by reference in this chapter may be inspected at the offices of the Department, the Secretary of State, 30 West Mifflin Street, Madison, Wisconsin 53702 and the Legislative Reference Bureau, One East Main Street, Suite 200, Madison, Wisconsin, 53701. Copies of these documents may be obtained from the Department of Natural Resources, Bureau of Watershed Management, 101 South Webster Street, Madison, Wisconsin 53702.

NR 120.01 Applicability; purpose. (1) APPLICABILITY. For designated priority watershed and priority lake projects, this chapter applies to governmental units and state agencies when acting as nonpoint source grantees; to governmental units 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 priority watershed and priority lake projects.

Note: This chapter is to administer existing and future grants for rural grantees within priority watershed and priority lake projects. Urban grantees within priority watershed and priority lake projects, formerly funded under this chapter, are now funded under chs. NR 153 and 155. Local assistance grants for existing and future rural grantees within priority watershed and priority lake projects, formerly funded under this chapter, are now funded under ch. ATCP 50.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

NR 120.02 Definitions. In this chapter:

(1) "Anticipated cost-share reimbursement amount" or "ACRA" means the annual amount of cost-sharing funds that a project sponsor may receive from the department for a specific priority watershed or priority lake project under s. NR 120.12.

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

(3) "Contiguous" means touching or sharing a common boundary with a second parcel of land. A lake, river, stream, road, railroad or utility right of way which separates any part of the parcel from any other part does not render the parcel of land noncontiguous.

(4) "Core urban program activities" means those activities included in a discrete set of nonstructural management measures, identified jointly by the department and the governmental unit in the priority watershed or priority lake area plan, that are considered to be the minimum acceptable level of storm water management.

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

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

(7) "Critical sites" as described in s. 281.65 (4) (g) 8. am., Stats., means those sites that are significant sources of nonpoint source pollution upon which best management practices must be implemented in order to obtain a reasonable likelihood that the water quality objectives established in the priority watershed or priority lake plan can be achieved.

(8) "Dam" means any artificial barrier in or across a waterway which has the primary purpose of impounding or diverting water. A dam includes all appurtenant works, such as a dike, canal or powerhouse.

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

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

(11) "Designation of critical sites by criteria" means the description or means of identifying critical sites in the plan of a priority watershed or priority lake which may include estimations of pollutant contribution or other adverse impact on water quality.

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

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

(14) "Grant period" means the time period during which governmental units are eligible to incur eligible costs and obtain departmental reimbursement for a watershed project.

(15) "Integrated resource 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.

(16) "Interim best management practice" means a practice, technique or measure which is approved under s. NR 120.15 as an effective means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality objectives and which does not have an adverse impact on fish and wildlife habitat.

(17) "Land conservation committee" means the committee created by a county board under s. 92.06, Stats. "Land conservation committee" includes employees or agents of a county land conservation committee whom, with committee authorization, act on behalf of the committee.

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

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

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

(21) "Maximum storage capacity" means the volume of water in acre-feet capable of being stored behind a dam at maximum water elevation before overtopping any part that is not part of the spillway system.

(22) "Milking center wastes" means all wastewater, cleaning ingredients, waste milk or other discharges from a milkhouse or milking parlor.

(23) "Municipal WPDES storm water discharge permit" means any permit issued to a municipality by the department under s. 283.33 (1), Stats., for the purpose of controlling storm water discharges owned or operated by a municipality.

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

(25) "Notification to landowner" means a certified letter sent by the department to inform landowners that one or more sites under their ownership have been verified as meeting the criteria for critical sites in accordance with the provisions of s. NR 120.09.

(26) "NRCS" means the natural resources conservation service of the U.S. department of agriculture.

(27) "Operation and maintenance period" means the length of time a best management practice shall be operated and maintained.

(28) "Period of cost-sharing availability for critical sites" means the 36 month period identified in the notification of critical site designation to the landowner during which cost-sharing at the maximum rate allowed under s. NR 120.18 is available.

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

(30) "Priority watershed" means a watershed or lake area which the department has identified through the continuing planning process under s. 283.83, Stats., and which has been designated by the land and water conservation board under s. 281.65 (3m) (a), Stats., as a watershed where the need for nonpoint source water pollution abatement is most critical.

(31) "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.

(32) "Project completion" means the date on which a priority watershed project's nonpoint source grant has expired.

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

(34) "Segmented urban program activities" means those individual structural and non-structural management measures identified jointly by the department and the governmental unit within the priority watershed or priority lake area plan that are considered to be advanced storm water management activities.

(35) "Structural height" means the difference in elevation in feet between the point of lowest elevation of a dam before overtopping and the lowest elevation of the natural stream or lake bed at the downstream toe of the dam.

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

(37) "Technical guide" means Section IV of the Wisconsin natural resources conservation service field office technical guide, published by the natural resources conservation service of the U.S. department of agriculture, which is incorporated by reference for this chapter.

Note: Copies of the technical guide are on file with the department, the Secretary of State, and the Legislative Reference Bureau. Copies of individual standards contained in the technical guide may be obtained from the county land conservation committee or from a field office of the U.S. Department of Agriculture, Natural Resources Conservation Service.

(38) "Urban best management practice" means a practice, technique or measure, except for dredging, which is determined to be an effective means of preventing or reducing urban runoff to a level compatible with water quality objectives established under this chapter and which does not have an adverse impact on fish and wildlife habitat. The practices, techniques or measures include source area, transport system and end-of-pipe measures designed to control storm water runoff rates, volumes and discharge quality, including structural urban best management practices and land acquisition, storm sewer rerouting and the removal of structures necessary to install structural urban best management practices.

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

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

NR 120.03 Role of governmental units in watershed plan development. A governmental unit may prepare any portion of the watershed plan provided the department and the governmental unit agree that the governmental unit has the appropriate technical, financial and staffing capability. The governmental unit shall prepare the elements of the watershed plan in accordance with s. NR 120.08 (1) (b). This requirement may be waived if the department and the governmental unit agree that nonparticipation by the governmental unit will not impair the objectives of the watershed plan.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

NR 120.04 Role of citizen advisory committee. The department, in cooperation with governmental units, shall appoint a citizen advisory committee for each priority watershed and priority lake project in accordance with s. 281.65 (4) (dr), Stats. The citizen advisory committee shall advise the department, DATCP and governmental units concerning all aspects of the planning and implementation program for their specific priority watershed or priority lake project.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

NR 120.05 Responsibilities of state agencies, governmental units and agents as cost-share recipients. Each state agency, unit of government or agent receiving cost-sharing funds in a nonpoint source grant shall do all of the following:

(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.

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

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

NR 120.06 Incorporation of the department of agriculture, trade and consumer protection's planning elements. (1) The department shall assist DATCP in developing the following elements of priority watershed plans as described in s. 281.65 (5), Stats.:

(a) Proposed farm-specific implementation schedules for providing technical assistance, contacting landowners, inspection and disbursement of grants on those farms that are identified in the approved priority watershed plan.

(b) Proposed agriculturally related best management practices to achieve the water quality objectives of the plan.

(c) Identification of those farms which are subject to subch. V of ch. 91, Stats.

Note: All landowners claiming farmland preservation tax credits are required to meet land and water conservation standards specified in s. ATCP 50.16. A copy of ch. ATCP 50 may be obtained, at no charge, from the Department of Agriculture, Trade and Consumer Protection's website at: http://datcp.wi.gov/ATCP50.

(2) The department shall assist DATCP and the county involved in a watershed project in developing a proposed project management schedule for the installation of agriculturally related best management practices.

(3) The department shall approve and incorporate the elements described in subs. (1) and (2) into the priority watershed plan.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02; correction in (1) (c) made under s. 13.92 (4) (b) 7., Stats., Register March 2011 No. 663..

NR 120.08 Watershed plans. (1) WATERSHED PLAN CONTENT. (a) *Watershed plan.* In cooperation with DATCP and the appropriate governmental unit, the department shall prepare watershed plans for all priority watersheds. A participating governmental unit located within the priority watershed shall identify, in writing, a person to represent the unit of government during watershed plan preparation. The watershed plan shall consist of a watershed assessment, a detailed program for implementation, and a project evaluation strategy. Priority watersheds and priority lakes selected after August 12, 1993, shall have critical sites designated in the plan.

(b) *Watershed assessment.* The department, in cooperation with the appropriate governmental units, shall prepare a watershed assessment analyzing the water quality problems or threats to the water quality in the watershed's lakes, streams, wetlands and groundwater and which determines 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 including degradation of fish habitat and wetlands caused by nonpoint sources of pollution in the watershed.

2. An identification of water quality objectives to maintain and improve the quality of lakes, streams, wetlands and groundwater of the watershed.

3. An identification of target levels of pollutant control and resource protection necessary to meet the water quality objectives.

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

5. A designation of critical sites listing their respective water quality problems or threats to water quality.

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

7. An assessment of the need for the protection and enhancement of fish and wildlife habitat, endangered resources, aesthetics or other natural resources.

8. An analysis of the need for adoption of local ordinances for manure storage, construction site erosion control and storm water management.

(c) *Detailed program for implementation.* 1. As required under s. 281.65 (6) (a), Stats., governmental units except those waived under s. NR 120.03 shall prepare the following portion of the detailed program for implementation including:

a. An estimate of costs for practice installation.

b. An information and education strategy.

c. A description of fiscal management procedures, including cost containment procedures.

d. An estimate of technical assistance needs.

e. A grant disbursement and project management schedule.

f. An identification of those urban storm water control practices, techniques or measures included in a municipal WPDES storm water permit for which the local governmental unit may seek either local assistance or nonpoint source grant funding through the priority watershed or priority lake project under ch. NR 153.

g. An identification of the state and local regulatory framework under which erosion control activities shall be conducted.

h. An identification of those storm water management activities identified in the watershed plan that shall be included as part of the core urban program for the local governmental unit and funded under this chapter and ch. NR 153. Core urban program activities may include: information and education activities; development, implementation and enforcement of construction erosion control ordinances; and development and implementation of activities, including, but not limited to, those activities that reduce storm water pollution from lawn and leaf litter, pet waste, road salting and illicit dumping into the storm sewer system. When adoption of a construction site erosion control ordinance is required under the watershed plan, it shall be considered a core program activity and the schedule for urban implementation activities shall provide for adoption, implementation and enforcement of the ordinance within 2 years of the date the department approves the watershed plan.

i. An identification of those storm water management activities identified in the watershed plan that may be included as part of the segmented urban program for the local governmental unit and funded under this chapter and ch. NR 153. Segmented urban program activities may include: storm water planning for urban and urbanizing areas; development, implementation and enforcement of local storm water management ordinances; engineering site feasibility studies for urban best management practices; design, installation and maintenance of urban best management practices; and development of local institutional mechanisms to fund and administer storm water management programs.

j. A schedule of rural implementation activities. When adoption of a manure storage ordinance is required under the watershed plan, the schedule shall include a provision stating that a manure storage ordinance shall be adopted within 2 years of the date the department approves the watershed plan.

k. A schedule for urban implementation activities.

L. A schedule for the completion within 5 years of plan approval of the inventory of land resources in the priority watershed or priority lake to locate sites which meet the critical sites criteria.

m. An implementation strategy to direct staff effort at sites in proportion to the amount of pollutants contributed until pollutant reduction goals are met. The strategy shall contain a schedule for notification to landowners of critical sites.

n. A description of the measures of performance for the priority watershed or priority lake project.

o. A strategy for measuring progress toward meeting pollutant reduction goals and water quality objectives.

2. The department shall prepare a strategy to address the protection, enhancement and mitigation of fish and wildlife habitat, endangered resources, aesthetics or other natural resources through the identification of best management practices, provision of information and education programs and involvement of other resource management programs.

Note: Wisconsin's Forestry Best Management Practices for Water Quality: A Field Manual for Loggers, Landowners and Land Managers may be obtained, at no charge, as a reference for forestry activities from the Bureau of Forestry, Department of Natural Resources, Box 7921, Madison, WI 53707.

(d) *Project evaluation plan.* The department shall prepare as a portion of each priority watershed plan a project evaluation strategy. The evaluation strategy shall contain criteria and procedures to evaluate the water resource and land management components of the project.

(2) WATERSHED PLAN REVIEW AND APPROVAL. (a) *Watershed plan development meeting.* During the preparation of the watershed plan, the department and the participating governmental units shall hold a public information meeting in the watershed to solicit comments and information pertinent to the preparation of the plan. Following the information meeting, a proposed watershed plan shall be drafted.

(b) *Watershed plan hearing.* After a proposed watershed plan has been drafted, the department and the participating governmental units shall hold a public informational hearing for comment on the proposed watershed plan.

(c) *Submittal of watershed plan to DATCP, county and other governmental units.* Within 45 days after the public informational hearing, the department shall submit the draft watershed plan to DATCP for comment; to the appropriate county or counties for approval; and at the discretion of the department, to other governmental units for review and comment.

(d) *County approval of watershed plan.* Within 60 days of receipt of the draft watershed plan, the appropriate county shall approve, conditionally approve or reject the watershed plan. If the county conditionally approves or rejects the watershed plan, the department may revise the watershed plan to address the issues identified.

(e) *Submittal of watershed plan to land and water conservation board.* A copy of the county approved plan shall be submitted to the land and water conservation board created under s. 15.135 (4), Stats., for its approval.

(f) *Final approval of individual county plan.* Upon receiving the approval of the land and water conservation board, the department shall approve the final plan for the priority watershed or priority lake area in accordance with s. 281.65 (5m), Stats. The date that the secretary of the department signs the approval letter to the project sponsors marks the beginning of eligibility for funding for implementation. Notwithstanding par. (d), the department may approve the watershed plan for individual counties in multicounty watershed projects if the respective county approves the watershed plan.

(3) 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.

(4) WATERSHED PLAN REVISION. (a) Plan revisions may be initiated by either the governmental unit or the department. 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.

(b) Plan revisions which add or change criteria for critical sites shall be approved by the land and water conservation board and by every governmental unit which approved the original watershed plan.

(c) Plan revisions which add or change criteria for critical sites for projects which have fewer than 4 years remaining for implementation shall include a schedule for notification to landowners which will allow implementation of best management practices at the critical sites to be completed before the end of the nonpoint source grant period.

(d) The department shall approve or reject a governmental unit's request for a revision to the watershed project's detailed

program for implementation within 90 days of receipt of the revision request.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

NR 120.09 Notification and status of critical sites. **(1)** START OF NOTIFICATION PROCESS. Within 6 months following issuance by the department of the first nonpoint source grant after department watershed plan approval to a project sponsor for a priority watershed or priority lake project, the process of notification to landowners shall begin. The first to begin the process shall be those highest-ranked critical sites based on estimated pollutant contribution, which together would provide at least 25% of the pollutant reduction goal for inventoried sites available at the time the final plan is written, if best management practices were applied at those sites. Notification shall proceed in accordance with the schedule identified in the plan. The department may grant up to three 90-day extensions of this 6 month period to allow verification under sub. (2).

(2) VERIFICATION. The purpose of verification is to assure that individual sites within the watershed meet the criteria for critical sites and to conduct site visits and complete the inventory of nonpoint sources on additional lands in the watershed owned by those landowners with sites which meet the criteria for critical sites. If the landowner has not signed a cost-share agreement for required best management practices, the verification findings shall be reported in writing to the department. Verification shall include an on-site assessment before a notification letter can be issued.

(3) CONTENT OF NOTIFICATION LETTER. Within 60 days after receiving the verification findings, the department shall send notification to the landowner to include the following information:

(a) The dates of the beginning and end of the 36-month period of cost-share availability.

(b) The potential consequences of either s. NR 120.18 (1) (a), ch. NR 243 or s. 281.20 (1), (3) or (5), Stats., that the landowner may face if no action is taken and the site continues to meet the critical sites criteria described in the watershed plan.

(c) The right to appeal the designation as a critical site through a written request to the county land conservation committee within 60 days of receipt of the notification letter as described in s. 281.65 (7) (a), (b) and (c), Stats.

(d) Additional information as requested and prepared by the local governmental unit.

(4) POSTPONEMENT OF NOTIFICATION LETTER. The department shall postpone notification to any landowner who has signed a cost-share agreement and continues to comply with the annual progress and implementation schedules described in s. NR 120.13. If the landowner is responsible for failure to comply with the schedules, the department shall send the notification.

(5) COMPLETION OF NOTIFICATION SCHEDULE. Notification to landowners shall be completed within 5 years and 60 days of the issuance of the first nonpoint source grant for the project after department plan approval.

(6) CHANGE IN CRITICAL SITE STATUS. A site is no longer considered a critical site if one of the following conditions applies:

(a) The site no longer meets the criteria for critical sites.

(b) The site has had best management practices implemented in accordance with the cost-share agreement.

(c) The department determines that the water quality objectives for the watershed have been achieved.

(7) PRIORITIZING USE OF COST-SHARE FUNDS. By the end of the project implementation period, a project sponsor shall have offered cost-share funding to landowners, in accordance with this chapter, for the control of all critical sites. During the implementation period, this requirement applies if the total amount of cost-share funds made available to the project sponsor equals or exceeds the amount necessary to control all critical sites.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

NR 120.12 Nonpoint source grant agreement. **(1)** GRANT AGREEMENT. The nonpoint source grant agreement is an agreement entered into between the department and a grantee, consisting either of a governmental unit or a state agency, to provide cost-share funding for a priority watershed or priority lake project. The nonpoint source grant agreement may be used in lieu of a cost-share agreement with a grantee for the installation of a structural practice on land owned or operated by the grantee. More than one nonpoint source grant agreement may be awarded for a project.

(2) CONDITIONS. (a) Consistent with the priority watershed plan, a grantee located within the priority watershed project or priority lake area project shall:

1. Execute a nonpoint source grant agreement with the department for nonpoint source pollution abatement funds necessary to administer cost-share agreements with eligible recipients. This requirement may be waived if the department and the grantee agree to delegate these responsibilities to another grantee.

2. Enter into cost-share agreements with eligible recipients located within its jurisdiction. This requirement may be waived if the department and the grantee agree to delegate this responsibility to another grantee.

3. Be fiscally responsible for the use of cost-share funds provided to cost-share recipients under the nonpoint source grant. Specifically, this includes 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 grantee agree to delegate these responsibilities to another grantee.

4. Provide the department with verification of proper installation, operation and maintenance of best management practices for agreements in which it is the cost-share grantor.

5. Provide best management practice technical design and installation assistance for all best management practices in cost-share agreements within its jurisdiction. The grantee may assign this requirement to another grantee if approved by the department.

6. Contact all owners or operators of lands identified as significant nonpoint sources in the watershed plan.

7. Participate with the department in the annual watershed project review meeting.

8. Enforce the terms and conditions of the cost-share agreement as described in s. NR 120.13.

(b) A grantee located within the priority watershed project or priority lake area project may identify a lead grantee responsible during the grant period for the following:

1. Local project coordination.

2. Identification of a project manager.

3. Maintenance of project ledgers.

(c) A grantee located within the priority watershed project or priority lake area project shall provide financial support towards the implementation of a project, including, but not limited to, the following:

1. Funding staff support costs necessary for the project that are not provided for in the local assistance grant from DATCP.

2. Funding the local share of any best management practice the grantee installs on property it owns or controls.

3. Funding the local share of items cost-shared in the local assistance grant from DATCP.

(d) Grantees located within the priority watershed project or priority lake area project shall perform inspections beyond the nonpoint source grant period and shall include this activity in the work plan portion of the county land and water resource management plan to ensure that cost-share recipients are complying with the maintenance requirements described in s. NR 120.13.

(3) SIGN-UP PERIOD. (a) The period in which cost-share agreements may be signed through the nonpoint source grant agreement shall be for a minimum of 3 years but may not extend beyond the grant period. No cost-share agreement, except those signed under a demonstration project, may be signed until after the priority watershed plan has been approved.

(b) A watershed project in planning may choose the specific duration of the sign-up period, provided that all the following conditions are met:

1. The sign-up period is for a minimum of 3 years.

2. The sign-up period is clearly stated in the watershed plan.

3. The watershed plan clearly delineates the procedures necessary for the extension of the sign-up period.

(c) A grantee whose watershed project is in implementation may amend the nonpoint source grant agreement to modify the length of the sign-up period provided that a written grant amendment request and an explanation justifying circumstances is submitted to the department for approval.

(d) The department may unilaterally extend the sign-up period for a project sponsor by amending the nonpoint source grant.

(4) LENGTH OF GRANT PERIOD. The grant period of the nonpoint source grant agreement is the period when cost-share funds may be expended.

(a) The department may adjust the grant period to meet budgetary limitations.

(b) Extensions to grant periods shall be consistent with s. 281.65 (5q) or (11), Stats.

(5) INSTALLING BEST MANAGEMENT PRACTICES. When installing best management practices, the grantee shall do all of the following:

(a) Comply with the responsibilities stated in s. NR 120.05.

(b) Submit estimates of all practice costs, eligible costs, ineligible costs, cost-share rates and estimated total cost-share amount.

(c) Submit a schedule of installation and maintenance for the practices.

(d) Submit copies of all professional services contracts, construction contracts, bid tabulations, force account proposals, proposals and other related information requested by the department. Professional services contracts exceeding $10,000, or amendments causing the total contract to exceed $10,000, amendments exceeding $10,000 and construction contracts exceeding $35,000 shall be submitted to the department for approval before execution. Force account proposals exceeding $35,000 shall be submitted to the department for approval prior to the initiation of construction.

(e) Repay the department the full amount of funds received if the grantee fails to fulfill any terms of the agreement, including failing to install, operate and properly maintain the practices included in the grant agreement.

(f) Submit a maintenance strategy for the practices.

(g) Agree not to adopt any land use or practice which defeats the purposes of the best management practices.

(h) Comply with the requirements for cost-share agreements specified in s. NR 120.13 (6) to (8).

(6) EXPENSES. 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.

(7) FUNDS FOR EASEMENTS. The grantee may use nonpoint source easement funds to acquire easements as provided for in s. NR 120.185 (2).

(8) GRANT REDUCTIONS. The department may unilaterally reduce the nonpoint source grant to the amount necessary to meet budgetary limitations. The department shall make every effort to provide funding for projects the grantee has committed to in cost-share agreements and contracts.

(9) DEMONSTRATION PROJECTS. A governmental unit participating in the preparation of a watershed plan may request from the department a demonstration project nonpoint source grant prior to department approval of the watershed plan. Grant periods of grants awarded for demonstration projects may not exceed 2 years in length. Requests for demonstration projects shall include a summary of the proposed activities and their projected benefits to the watershed or lake project.

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

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

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 the installation of practices may be initiated. A cost-share agreement is not necessary if the nonpoint source grant agreement allows the grantee to use funds directly. Nonpoint source grant agreements used in lieu of cost-share agreements shall comply with the requirements in this section.

(3) PARTIES TO THE AGREEMENT. (a) The cost-share agreement shall be between the participating grantee and the individual landowner or landowners if joint owners, land operator or state agency. Agreements with land operators shall be co-signed by the landowner except in instances where the cost-share agreement contains no other practices than those enumerated in sub. (6) (c) 2. If other practices are included in a cost-share agreement amendment, the landowner shall co-sign the amendment.

(b) Governmental units, as cost-share agreement grantors, shall enter into cost-share agreements only during the period specified in the nonpoint source grant.

(c) The cost-share agreement shall apply to all contiguous sites under the same ownership. At the discretion of the governmental unit, the cost-share agreement may also apply to noncontiguous sites under the same ownership or operation in the watershed.

(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 schedule for applying the practices. For sites that meet the critical sites criteria, implementation shall begin within 18 months and be completed within 4 years following the effective date of the cost-share agreement.

(e) A statement of maintenance requirements.

(f) A prohibition against adopting any land use or practice which defeats the purposes of the best management practices, the cost-share agreement or the nonpoint source grant agreement.

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

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

(i) A provision describing the procedure for amendment.

(j) The location of the land on which the cost-shared practice is to be installed, and a specific legal description of the land if cost share payments may exceed $10,000.

(k) A prohibition against any significant change in land use or management on the entire property described on the cost-share agreement which may cause sources which were adequately managed at the time of cost-share agreement signing to produce a significant increase in pollutant loading to surface water or groundwater counter to the water resource objectives of the approved watershed plan. If a significant change in land use or management occurs, the landowner or land operator shall control the source at his or her own expense or return any cost-sharing funds awarded through the cost-share agreement to the grantor.

(L) A requirement to amend the cost-share agreement if practices are added or deleted and to add or delete practices only when they are consistent with watershed project objectives.

(m) A requirement for annual progress in pollutant reduction may be imposed by the governmental unit on the landowner of a critical site, subject to availability of cost-sharing funds.

(4m) DEPARTMENT APPROVAL. The governmental unit shall obtain prior department approval when the total cost-share agreement amount, including amendments, exceeds $50,000 in state share. The department shall consider the cost-effectiveness of the best management practices and eligibility for cost-sharing under this chapter in making its decision whether to grant approval.

(5) SUBMITTAL TO DEPARTMENT. The cost-share agreement provider shall submit a copy of the cost-share agreement and amendments to the department within 30 days of execution. The department may deny reimbursement to the governmental unit for costs associated with the installation of a best management practice not in conformance with the cost-share agreement, the nonpoint source grant agreement or the priority watershed plan.

(6) AGREEMENT PERIOD. (a) The cost-share agreement period shall be the period from the cost-share agreement signing through 10 years after the last practice is installed, unless all practices in the agreement are those identified in par. (c) 2., in which case the agreement shall end when cost-sharing ceases.

(b) The period during which practices on a signed cost-share agreement may be installed may not extend beyond the grant period of the nonpoint source grant agreement for the watershed project.

(c) Unless otherwise provided for in this paragraph, the operation and maintenance period for both cost-shared and not cost-shared best management practices shall begin when the practice is installed and shall end at least 10 years past the installation date for the last practice on the agreement.

1. The operation and maintenance period shall be a minimum of 15 years if a payment is made under s. NR 120.18 (1) (f) 2.

2. Except if required as a component of another practice, the following practices are exempt from the multi-year operation and maintenance period requirement and only need to be maintained during the years for which cost-sharing is received:

a. High residue management systems.

b. Nutrient management.

c. Pesticide management.

d. Cropland protection cover (green manure).

3. When a practice in subd. 2. is required as a component of another practice in s. NR 154.04, the operation and maintenance period for the component practice shall be the same as the operation and maintenance period for the practice for which it is required.

(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 governmental unit who is the grantor of the agreement. The governmental unit grantor shall forward the repayment to the department.

(8) INEFFECTIVE PRACTICES. (a) If the practice becomes ineffective during the grant period of the nonpoint source grant agreement of a watershed project, the parties to the cost-share agreement may amend it to cost-share the replacement of the practice from funds allocated for the project, if the parties identify the appropriate maintenance period for the replacement practice.

(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 occurs during the cost-share agreement period, the new landowner shall be responsible for fulfilling all conditions of the cost-share agreement. Upon receiving written approval from the respective local governmental unit, the new landowner may implement alternative approved best management practices in order to obtain the water quality goals in the original agreement.

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

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

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

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

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

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

1. Contour farming.

2. Contour and field stripcropping.

3. Cropland protection cover (green manure).

4. High residue management.

5. Nutrient management.

6. Pesticide management.

(11) RELEASE OF PROPERTY FROM OBLIGATIONS OF COST-SHARE AGREEMENTS. (a) A governmental unit may fully or partially release a landowner's property from the obligations of the cost-share agreement provided that the governmental unit has determined that the best management practices installed on the property will be maintained or replaced with practices which will not increase the pollutant loading to surface water or groundwater counter to the water resource objectives of the approved watershed plan. If state dollars in excess of $10,000 have been expended for best management practices that are located on the property to be released, the governmental unit shall obtain written approval from the department before the property may be released. The release form shall be obtained from the department and filed with the cost-share agreement.

(b) With the approval of the department, a governmental unit may fully release a landowner's property from the obligations of the cost-share agreement provided that both of the following conditions are met:

1. The governmental unit has determined that there are not sufficient cost-share funds remaining in its nonpoint source grant to provide reimbursement for practices for which it has committed funds.

2. The cost-share recipient has failed to install all of the best management practices identified in the agreement.

Note: Copies of the release form are available from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison, WI 53707.

(12) APPLICABILITY. Subsections (3) (c), (4) (j), (k), (m), (6) (a), (9) and (10) apply to all cost-share agreements signed after December 1, 1989, and amendments to those agreements.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

NR 120.14 Cost-share agreement conditions for best management practices. (1) GENERAL APPLICABILITY. (a) The cost-share agreement conditions described in this section apply to best management practices included in cost-share agreements or otherwise provided for in s. NR 120.12 (5) or identified by variance under s. NR 120.29. The cost-share conditions and standards for all best management practices listed in this chapter shall apply to all cost-share agreements signed after October 1, 2002.

(b) The following conditions shall be met while implementing the best management practices in this chapter:

1. Wildlife habitat shall be recreated to replace significant wildlife habitat lost through the removal of obstructions or other means required to install the best management practice.

2. Wetlands may not be destroyed or degraded as a result of installing the best management practice.

3. Sediment generated from the construction of the best management practice shall be controlled consistent with performance standards in ch. NR 151 and with standards of the *Wisconsin Construction Site Best Management Practice Handbook*, WDNR Pub. WR-222, November 2001 Revision, which is incorporated by reference for this chapter and other technical standards disseminated by the department under subch. V of ch. NR 151.

Note: Copies of the materials described in subd. 3. may be inspected at the offices of the department, 101 S. Webster Street, Madison; the Secretary of State, 30 W. Mifflin, Madison; and the Legislative Reference Bureau, One E. Main Street, Suite 200, Madison.

4. Permanent and temporary vegetative cover including any or all of the following: seed, mulch, fertilizer, trees, shrubs and other necessary materials, except for conventional agricultural crop cover, shall be established.

5. Preparation, grading, shaping and removal of obstructions necessary to permit the installation of best management practices shall be conducted on the site.

6. Temporary or permanent fencing and the repair of fencing necessary to implement or protect a best management practice shall be built.

7. All required permits, including those mandated by the department, shall be obtained prior to installing a best management practice listed in this chapter.

(c) A landowner, land operator or governmental unit shall comply with the standards in subs. (2) to (28) when installing best management practices.

(d) Cost-sharing is authorized when the best management practices are installed on sites in a manner consistent with par. (b) and the watershed plan approved under this chapter.

(e) Best management practices listed in this chapter and which are conducted below the ordinary high water mark may be eligible for cost-sharing only when the practice is a cost-effective means of preventing or reducing pollutants generated from sources of runoff or from sediments of inland lakes polluted by runoff.

(2) CONTOUR FARMING. (a) *Description.* Contour farming is farming on sloped land so all cultural operations from seedbed preparation to harvest are done on the contour. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* Cost-sharing may be provided for the establishment of a contour farming system and, if necessary, subsurface drains and the removal of obstructions.

(c) *Standards.* Standards from the NRCS field office technical guide are as follows:

1. 330 — contour farming; May, 1986.
2. 500 — obstruction removal; January, 1983.
3. 606 — subsurface drain; September, 1989.
4. 645 — wildlife upland habitat management; June, 1987.

(3) CONTOUR AND FIELD STRIPCROPPING. (a) *Description.* Contour and field stripcropping is growing crops in a systematic arrangement of strips or bands, usually on the contour, in alternated strips of close growing crops, such as grasses or legumes, and tilled row crops. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* Cost-sharing may be provided for the establishment of the stripcropping system including field stripcropping.

(c) *Standards.* Standards from the NRCS field office technical guide are as follows:

1. 585 — contour stripcropping; July, 1987.
2. 586 — field stripcropping; August, 1983.
3. 500 — obstruction removal; January, 1983.
4. 606 — subsurface drain; September, 1989.
5. 645 — wildlife upland habitat management; June, 1987.
6. 330 — contour farming; May, 1986.
7. 589 — wind strip-cropping; July, 1987.

(4) FIELD DIVERSIONS. (a) *Description.* Field diversions are structures installed to divert excess water to areas where it can be used, transported or discharged without causing excessive erosion or contacting materials with water pollution potential. Usually the system is a channel with a supporting ridge on the lower side constructed across the slope at a suitable grade with a self-discharging and non-erosive gradient. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* 1. Cost-sharing may be provided for:

a. Diversions and 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. Installations of structures such as pipe, underground outlets or other outlets, if needed, for proper functioning of the dike, for more even flow or to protect outlets from erosion.

2. Diversions shall discharge to a suitable outlet.

3. 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) *Standards.* Standards are the following from the NRCS field office technical guide:

1. 362 — diversion; September, 1989.
2. 342 — critical area planting; November, 1999.
3. 382 — fence; November, 1999.
4. 412 — grassed waterway; June, 1993.
5. 468 — lined waterway or outlet; June, 1993.
6. 500 — obstruction removal; January, 1983.
7. 606 — subsurface drains; September, 1989.
8. 620 — underground outlet; June, 1993.
9. 645 — wildlife upland habitat management; June, 1987.

(5) TERRACES. (a) *Description.* Terraces are a system of ridges and channels constructed on the contour with a non-erosive grade at a suitable spacing. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* 1. Cost-sharing may be provided for:

a. Terraces and the necessary grading to permit installation of an effective system consistent with the type of terrace and criteria for use specified in the approved priority watershed plan, priority lake plan or project grant application.

b. Materials and installation of underground pipe outlets and other mechanical outlets necessary for the proper functioning of the terrace.

2. Terraces shall discharge to a suitable outlet.

(c) *Standards.* Standards from the NRCS field office technical guide are as follows:

1. 600 — terrace; September, 1990.
2. 342 — critical area planting; November, 1999.
3. 412 — grassed waterway; June, 1993.
4. 468 — lined waterway or outlet; June, 1993.
5. 500 — obstruction removal; January, 1983.
6. 606 — subsurface drain; September, 1989.
7. 620 — underground outlet; June, 1993.
8. 638 — water and sediment control basin; September, 1989.
9. 645 — wildlife upland habitat management; June, 1987.

(6) GRASSED WATERWAYS. (a) *Description.* A grassed waterway is a natural or constructed drainageway or channel which is shaped, graded and established in suitable cover as needed to prevent erosion by runoff waters. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* Cost-sharing may be provided for the following:

1. Site preparation, grading, shaping, filling, establishing temporary and permanent vegetation cover and for subsurface drains necessary for proper functioning of the waterway.

2. Removal of obstructions necessary to permit installation of an effective system.

(c) *Standards.* Standards from the NRCS field office technical guide are as follows:

1. 412 — grassed waterway or outlet; June, 1993.
2. 342 — critical area planting; November, 1999.
3. 382 — fence; November, 1999.
4. 500 — obstruction removal; January, 1983.
5. 606 — subsurface drain; September, 1989.
6. 645 — wildlife upland habitat management; June, 1987.
7. 484 — mulching; July, 1987.
8. 620 — underground outlet; June, 1993.

(7) HIGH RESIDUE MANAGEMENT SYSTEMS. (a) *Description.* High residue management systems refer to any tillage and planting system that is designed to reduce soil erosion caused by water or wind. This practice shall be implemented using one or more of the standards in par. (c). These systems include the following:

1. No-till. The soil is left undisturbed prior to planting. Planting is completed in a narrow seedbed or slot created by the planter or drill.

2. Mulch-till. The total soil surface is disturbed by tillage prior to planting. Tillage tools such as chisels, field cultivators, disks or sweeps are used.

3. Ridge-till. The soil is left undisturbed prior to planting. The seedbed is prepared on ridges with sweeps, disks or other row cleaners. The ridges are rebuilt for the next year's crop during cultivation.

4. Strip-till. The soil is left undisturbed prior to planting. Tillage in the row is done at planting using tools such as a rototiller, in row chisel or other row cleaner.

(b) *Conditions.* 1. Cost-sharing may be provided on a per acre basis to convert to high residue management systems.

2. Cost-sharing may not be provided to a landowner or land operator for both this practice and cropland protection cover (green manure) for the same acreage in the same crop year without prior departmental approval.

3. Cost-sharing may not be provided for continuous no-till unless surface applications of nutrients, including animal manure, are prohibited or the surface application of nutrients is in compliance with s. NR 151.07. Continuous no-till is defined as 3 or more consecutive years.

4. Cost-sharing may be provided for nutrient management and pesticide management under subs. (8) and (9) provided that the approved priority watershed plan, priority lake plan or project grant application identifies these practices as eligible.

5. A minimum 30% residue coverage shall remain on the soil surface after planting.

6. Tillage and planting shall occur as close to the contour as practical.

7. Residue cover may be from meadow, winter cover crop, and small grain or row crop.

(c) *Standards.* The practice shall meet the requirements in either NRCS field office technical guide, Technical Standard:

1. 329A – residue management, no till and strip till; May, 1998.

2. 329B — residue management mulch till; May 1998.

(8) NUTRIENT MANAGEMENT. (a) *Description.* Nutrient management is controlling the amount, source, form, location and timing of application of plant nutrients, including organic wastes, sludge, commercial fertilizers, soil reserves and legumes, for the purpose of providing plant nutrients and minimizing the entry of nutrient to surface water and groundwater. This practice shall be implemented using the standard in par. (c).

(b) *Conditions.* As part of a nutrient management plan, cost-sharing may be provided for:

1. Soil testing including residual nitrogen analysis. Cost-sharing for soil testing shall be limited to an initial testing for purposes of plan preparation and another test 4 years after plan preparation.

2. Manure nutrient analysis. Cost-sharing for manure nutrient analysis shall be limited to an initial analysis for purposes of plan preparation and another analysis 4 years after plan preparation.

3. Use of crop consulting services for the purpose of preparing and implementing a nutrient management plan. To be eligible for cost-sharing, consultants shall meet the certification requirements in ch. ATCP 50.

(c) *Standards.* NRCS field office technical standard: 590-nutrient management; March, 1999.

(9) PESTICIDE MANAGEMENT. (a) *Description.* Pesticide management is controlling the handling, disposal, type, amount, location and timing of application of pesticides in order to minimize contamination of water, air and nontarget organisms. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* 1. As part of a pesticide management plan, cost-sharing may be provided for:

a. Spill control facilities with liquid-tight floors for pesticide handling areas. Spill control facilities consist of structures designed to contain accidental spills or overflows from pesticide mixing, loading and unloading operations for the purposes of groundwater and surface water protection. The items eligible for cost-share funds associated with these facilities include a sealed, liquid-tight, reinforced concrete pad for the mixing area; watertight walls or perimeter flow diversion structures to convey spills or contaminated water to the sump area; perimeter flow diversion structures needed to convey surface water away from the mixing area; a shallow sump collection area capable of storing spills, rinsate, washwater and precipitation that may leak or fall on the pad; roof structures and walls protecting the pad mixing area; approach ramps; water supply systems needed for the facility; and sump pump alarm and recovery systems.

b. Use of crop consulting services for the purpose of preparing and implementing an integrated crop management plan for not more than 3 years per operation. To be eligible for cost-sharing, consultants shall meet the certification requirements in ch. ATCP 50.

2. Operators shall adhere to the requirements of chs. ATCP 29 and 33 (pesticide use and control and pesticide bulk storage).

3. Licensed commercial pesticide applicators, as described in s. ATCP 29.11, are not eligible for cost-share funding for this practice.

4. Material storage buildings are not eligible for cost-sharing under this subsection.

(c) *Standards.* The following standards apply under this subsection:

1. NRCS field office technical standard — 595-pest management; January, 1991.

2. Designing Facilities for Pesticide and Fertilizer Containment, MWPS-37, 1st ed. 1991, which is incorporated by reference for this chapter.

Note: Copies of this publication may be inspected at the offices of the department, 101 S. Webster Street, Madison; NRCS; the Secretary of State, 30 W. Mifflin, Madison; and the Legislative Reference Bureau, One E. Main Street, Suite 200, Madison.

(10) CROPLAND PROTECTION COVER (GREEN MANURE). (a) *Description.* Cropland protection cover are close-growing grasses, legumes or small grain grown for seasonal protection and soil improvement. This practice shall be implemented using the standard in par. (c).

(b) *Conditions.* 1. Cost-sharing may be provided for the planting of cover and green manure crops for all of the following purposes:

a. To control erosion during periods when the major crops do not furnish adequate cover.

b. To add organic material to the soil.

c. To improve infiltration, aeration and tilth to the soil.

2. Cost-sharing may only be provided for those fields that contribute to the degradation of water quality as a result of harvesting a crop during the growing season that either leaves the field devoid of residue or lacks enough residue from the harvested crop to provide for adequate surface protection.

3. Cost-sharing may not be provided to a landowner or land operator for both this practice and high residue management systems for the same acreage in the same crop year without prior departmental approval.

(c) *Standards.* NRCS field office technical guide: 340 — cover and green manure crop (acre); May, 1986.

(11) INTENSIVE GRAZING MANAGEMENT (ROTATIONAL GRAZING). (a) *Description.* Intensive grazing management is the division of pastures into multiple cells that receive a short but intensive grazing period with high animal density followed by a period suitable to allow for the recovery of the vegetative cover. Rotational grazing systems can correct existing pasturing practices that result in degradation and should replace the practice of summer dry-lots when this practice results in water quality degradation.

(b) *Conditions.* 1. Cost-sharing may be provided for the installment of rotational grazing systems on croplands, animal lots or pastures that are currently contributing sediments, nutrients or pesticides to a water source. This practice may also be eligible for an animal lot that adversely impacts groundwater or surface water, provided the adverse impacts are adequately addressed through the resulting reduction in animal manure and use of any additional cost-effective best management practices such as clean water diversions.

2. In instances of eligibility due to soil loss or eligibility due to animal lot abandonment, cost-sharing may be provided for:

a. Practices that would remediate streambank erosion and streambank habitat degradation.

b. Practices that would exclude livestock from woodlands, wildlife lands and recreational lands.

c. The establishment of cattle access lanes that are stable and not prone to erosion. This includes cattle crossings either on streams or severely eroded areas.

d. The development of permanent boundary and main paddock fences. This may include perimeter fencing, lane fencing, portable fencing including gates and electrical connections and supply limited to the immediate area being protected.

e. The establishment of good seeding stands for pasture and hayland planting.

f. The development of a watering system including pipeline watering systems, pasture watering systems, wells, spring developments and portable watering systems such as pumps, pipes and tanks. The total cost-share of the watering system may not exceed $2,000 for components listed in this subparagraph.

g. The stabilization of a site eroding due to cattle access or cropland erosion through the critical area planting processes.

Note: NRCS has examples of practices that may be beneficial to this BMP, for example 512-pasture and hayland planting; March, 1992. For more information ref-

erence UWEX Publication A3529 Wisconsin Pastures for Profit: A guide to rotational grazing — 1997"

Note: Copies of "Wisconsin Pastures for Profit: A guide to rotational grazing" are on file with the department, the Secretary of State and the Legislative Reference Bureau. Copies may be purchased from the department or from the University of Wisconsin-Extension, UWEX Pub. No. A3529.

(12) CRITICAL AREA STABILIZATION. (a) *Description.* Critical area stabilization is the planting of suitable trees, shrubs and other vegetation appropriate for controlling and stabilizing sloped lands which are producing nonpoint source pollutants and lands which drain into bedrock crevices, openings and sinkholes. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* Trees may not be sold during the operation and maintenance period.

(c) *Standards.* Standards from the NRCS field office technical guide are as follows:

1. 342 — critical area planting; November, 1999.
2. 382 — fence; November, 1999.
3. 386 — field borders; December, 1991.
4. 472 — livestock exclusion; June, 1983.
5. 484 — mulching; July, 1987.
6. 500 — obstruction removal; January, 1983.
7. 612 — tree planting; October, 1991.
8. 725 — sinkhole treatment; March, 2000.
9. 645 — wildlife upland habitat management; June, 1987.

(13) GRADE STABILIZATION STRUCTURES. (a) *Description.* A grade stabilization structure is a structure used to reduce the grade in a drainageway or channel to protect the channel from erosion or to prevent the formation or advance of gullies. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* 1. Cost-sharing may be provided for:

a. Channel linings, chutes, drop spillways and pipe drops of less than 15 feet in height to discharge excess water.

b. Detention or retention structures, such as erosion control dams, desilting reservoirs, sediment basins, debris basins or similar structures of less than 15 feet in structural height and with maximum storage capacities of less than 15 acre-feet.

2. Cost-sharing may be provided for structures with embankments of 15 to 25 feet in structural height or with maximum storage capacities of 15 to 50 acre-feet if the department makes a determination in writing that all of the following apply:

a. Control of the site is needed to achieve the water quality objectives specified in an approved priority watershed or lake plan or in the approved priority watershed plan, priority lake plan or project grant application.

b. Construction of the structure is cost-effective.

c. Failure of the structure would have minimum potential to endanger life or real or personal property.

3. Cost-sharing may not be authorized for any grade stabilization structure on a navigable stream or stream classified as supporting a fishery.

(c) *Standards.* Standards from the NRCS field office technical guide are as follows:

1. 410 — grade stabilization structure; July, 1994.
2. 350 — sediment basin; September, 1990.
3. 638 — water and sediment control basin; September, 1989.
4. 342 — critical area planting; November, 1999.
5. 348 — diversion dam; March, 1987.
6. 362 — diversion; September, 1989.
7. 382 — fence; November, 1999.
8. 412 — grassed waterway; June, 1993.
9. 468 — lined waterway or outlet; June, 1993.
10. 484 — mulching; July, 1987.
11. 500 — obstruction removal; January, 1983.
12. 620 — underground outlet; June, 1993.
13. 606 — subsurface drain; September, 1989.
14. 638 — water and sediment control basin; September, 1989.

(14) AGRICULTURAL SEDIMENT BASINS. (a) *Description.* Agricultural sediment basins are permanent basins designed and constructed to reduce the transport of pollutants to surface waters and wetlands of sediment eroded from critical agricultural fields. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* 1. Cost-sharing may be provided for the sediment basin including embankments, principal and emergency spillway structures, including anti-seep collars, dewatering outlet and outlet protection.

2. Cost-sharing may not be provided for:

a. Basins having embankments exceeding 25 feet in structural height or with maximum storage capacity of more than 50 acre-feet.

b. Basins located where failure may result in loss of life.

3. Sediment basins with embankments of 15 to 25 feet in structural height or with maximum storage capacities of 15 to 50 acre-feet in volume may be cost-shared only when approved by the department, in writing, prior to construction. For the department to authorize cost-sharing, it shall make the following findings:

a. Control of the site is needed to achieve the water quality objectives specified in the approved priority watershed plan, priority lake plan or project grant application.

b. Construction of the structure is cost-effective.

c. Failure of the structure would have minimum potential to endanger life or real or personal property.

(c) *Standards.* The sediment basin shall be designed consistent with standards for construction site sediment basins in the *Wisconsin Construction Site Best Management Practice Handbook*, WDNR Pub. WR-222, November 2001 Revision, the Wisconsin department of natural resources conservation practice standard 1001 for wet detention basins, June 1999 and the NRCS field office technical standards from the NRCS field office technical guide as follows:

1. 350 — sediment basin; September, 1990.
2. 342 — critical area planting; November, 1999.
3. 382 — fence; November, 1999.
4. 412 — grassed waterway; June, 1993.
5. 468 — lined waterway or outlet; June, 1993.
6. 484 — mulching; July, 1987.
7. 393 — filter strip; January, 1984.
8. 561— heavy use protection area; September, 1999.
9. 620 — underground outlet; June, 1993.

Note: Copies of this publication may be inspected at the offices of the department, 101 S. Webster Street, Madison; the Secretary of State, 30 W. Mifflin, Madison; and the Legislative Reference Bureau, One E. Main Street, Suite 200, Madison. Copies of the NRCS technical standards may also be inspected at each county land conservation department office and at the state NRCS office, 6515 Watts Road, Madison.

(15) SHORELINE AND STREAMBANK PROTECTION. (a) *Description.* Shoreline or streambank stabilization is the stabilization and protection of the banks of streams and lakes against erosion and the protection of fish habitat and water quality from live-

stock access. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* 1. The cost-share recipient is responsible for obtaining all permits for the installation of the practice.

2. Cost-sharing may be provided:

a. For planting trees if approved by a county's land conservation department in consultation with the department fish manager.

b. For water pumps and other measures required to eliminate livestock access to water.

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

d. For the design and placement of practices such as shaping and placement of vegetation, riprap or structures which improve fishery habitat, or other materials on banks and shores identified in an approved priority watershed plan, priority lake plan or the project grant application, or in areas where streambank repair is the least costly alternative. Written departmental approval is required for the stabilization of banks with structural heights higher than 15 feet.

e. For required permits.

Note: A permit may be required under ch. 30, Stats., when installing this best management practice. For more information, please contact the Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, Wisconsin 53707.

3. Cost-sharing is not authorized for wood chunks, unsorted demolition material, brick, plaster, blacktop and any other material that could produce leachates or would violate provisions of statutes or administrative codes for use as riprap.

(c) *Standards.* 1. Standards from the NRCS field office technical guide are as follows:

a. 580 — streambank and shoreline protection; February, 1997.

b. 342 — critical area planting; November, 1999.

c. 382 — fence; November, 1999.

d. 472 — livestock exclusion; June, 1983.

e. 612 — tree planting; October, 1991.

f. 395 — fish stream improvement; June, 1987.

g. 560 — access road; March, 1989.

h. 614 — trough or tank; September, 1989.

i. 510 — pasture and hayland management; December, 1984.

2. Other standards:

a. U.S. department of transportation hydraulic engineering Circulars numbers 11, Design of Riprap Revetment, Pub. No. FH WA-IP-89-016, March, 1989 and 15, Design of Roadside Channels with Flexible Linings, Pub. No. FH WA-IP-87-7, April, 1998, which are incorporated by reference for this chapter.

b. American fisheries society's stream obstruction removal guidelines, which are incorporated by reference for this chapter.

c. U.S. department of agriculture's Stream Habitat Improvement Handbook, publication R8-TP-16, June 1992, which is incorporated by reference for this chapter.

d. Natural Resources Conservation Service Engineering Field Handbook, Soil Bioengineering for Upland Slope Protection and Erosion Reduction, Pub. 210-EFH, October, 1992, which is incorporated by reference for this chapter.

Note: Copies of the materials described in subd. 2. a. to d. may be inspected at the offices of the department, 101 S. Webster Street, Madison; the Secretary of State, 30 W. Mifflin, Madison; and the Legislative Reference Bureau, One E. Main Street, Suite 200, Madison.

(16) RIPARIAN BUFFERS. (a) *Description.* Riparian buffers are areas in which vegetation is enhanced or established to reduce or eliminate the movement of sediment, nutrients and other nonpoint source pollutants to adjacent surface water resources or groundwater recharge areas and to protect the banks of streams and lakes from erosion and to protect fish habitat. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* 1. Cost-sharing may be provided only when the riparian buffers are used consistent with the approved priority watershed plan, priority lake plan or project grant application or approved priority watershed or lake plan.

2. Cost-sharing may be provided for:

a. Permanent fencing to protect a riparian buffer.

b. Establishment or enhancement of permanent vegetative cover in a riparian buffer.

c. Mulch, fertilizer, seed, seedling trees and other necessary materials.

(c) *Standards.* NRCS field office technical guide technical standards are as follows:

1. 342 — critical area planting; May, 2000.

2. 382 — fence; November, 1999.

3. 386 — field border; December, 1991.

4. 393 — filter strip; January, 2001.

5. 472 — livestock exclusion; June, 1983.

6. 484 — mulching; July, 1987.

7. 645 — wildlife upland habitat management; July, 2000.

(17) LAKE SEDIMENT TREATMENT. (a) *Description.* Lake sediment treatment is a chemical, physical or biological treatment of polluted lake sediments.

(b) *Conditions.* 1. Cost-sharing may be provided for:

a. Design and treatment of lake sediments with chemical compounds, including, but not limited to, aluminum sulfate, sodium aluminate, ferric chloride, calcium hydroxide and calcium carbonate.

b. Treatment of lake sediments with physical or biological methods including, but not limited to, the aeration of water overlaying lake sediments and the biological manipulation of organisms which exacerbate sediment contamination of overlaying lake water.

2. Cost-sharing may not be provided for the dredging of sediments.

3. Water quality objectives shall be achieved through the control of polluted lake sediments.

4. Significant nonpoint sources of the pollution to the lake shall be controlled prior to treatment of lake sediments.

5. The department prior to implementation shall approve the engineering design and, if required will issue an appropriate permit.

(c) *Standards.* The design and proposed implementation of lake sediment treatments shall be approved by the department prior to implementation.

(18) WETLAND RESTORATION. (a) *Description.* Wetland restoration is the construction of berms or destruction of the function of tile lines and drainage ditches to create conditions suitable for wetland vegetation. This practice shall be implemented using the standard in par. (c).

(b) *Conditions.* Cost-sharing may be provided for:

1. Earth moving to construct or remove berms, levees or dikes.

2. Earth moving to fill in portions of drainage ditches.

3. Destruction of portions of tile lines.

4. Vegetative cover needed to develop or restore wetlands consistent with the approved priority watershed plan, priority lake plan or project grant application.

(c) *Standards.* NRCS field office technical guide technical standards 657 — wetland restoration; September, 2000.

(19) SHORELINE HABITAT RESTORATION FOR DEVELOPED AREAS. (a) *Description.* Shoreline habitat restoration is the establishment in developed areas of a shoreline buffer zone of diverse native vegetation that extends inland and waterward from the ordinary high water mark. The shoreline habitat restoration design seeks to restore the functions provided by the original, natural vegetation, and includes a mixture of native trees, shrubs, ground cover or wetland species. This practice includes the following:

1. Natural recovery. Used where native vegetation will recover naturally when a site is protected from disturbance, due to the presence of existing native plants, and adequate seed sources and site conditions. This method may be applied to wet margins of lakes or rivers where turf grasses are not well established and in shallow water areas adjacent to shoreland restoration areas.

2. Accelerated recovery. Used in areas not suited for natural recovery. Native vegetation is established by seeding and planting. This method shall be used in areas where dense turf grasses have been maintained for several years. This may also be used in limited situations where one or more layers of natural vegetative cover have been removed if approved by the department. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* 1. Cost-sharing for shoreline habitat restoration may be approved when existing shoreline vegetation lacks the structure or complexity to support habitat functions for littoral and riparian areas.

2. Cost-sharing may be provided for plants, seed, mulch and erosion control materials.

3. Cost-sharing may be provided for labor and services necessary for installation, not to exceed 70% of total practice costs, or not to exceed a cost containment policy developed by the governmental unit for this practice.

4. Cost-sharing may not be provided for the following:

a. Practice design unless approved by the department.

b. Plants, seed, mulch or other materials not approved by the department.

c. Shoreline erosion control materials such as riprap or biologs unless approved by the department.

d. Material for stairs, walkways, paths or other access structures.

5. The following conditions shall be met in order for cost-sharing to be available:

a. No violations of county and local shoreland zoning requirements are present on the entire property.

b. Runoff from roofs, driveways or other hard surfaces on the property shall be maintained in sheet flow with no channels or gullies to the greatest extent possible. This can be accomplished with downspout runoff spreaders, directing runoff to flat or gently sloping grassy areas and minor landscaping to temporarily pond or spread out runoff. There may be no channelized flow through the restoration area. Where fertilizers are desired outside the buffer area, zero-phosphorus types shall be used unless soil tests specifically indicate a need for phosphorus and the project sponsor approves its use.

c. No changes in land use or management may occur that cause increased pollution to surface water from sources that were controlled prior to the installation of a shoreline habitat restoration practice.

6. The following dimensions or restrictions apply to the restoration:

a. The buffer created by shoreline habitat restoration shall extend the entire length of the lot along the shoreline except that a viewing and access corridor is allowed, which corridor will not be eligible for cost-sharing. Corridors may not exceed 30 feet in width and may encompass no greater than 30% of the property for lots less than 100 feet wide. The restoration area design may include the provision of water access, the enhancement of desirable views, the screening of unwanted views and consideration of privacy. Where buildings are set back 50 feet or more, the buffer shall extend at least 35 feet inland from the ordinary high water mark. Where buildings are set back less than 50 feet, the zone where vegetation removal and land-disturbing activity are prohibited after buffer establishment, shall extend to within 15 feet of the structure.

b. Shallow water areas that are capable of supporting aquatic vegetation waterward of the ordinary high water mark shall be managed as a zone where vegetation removal and land-disturbing activity are prohibited after buffer establishment. Areas waterward of the viewing and access corridor are exempt from this condition.

c. An evaluation of existing vegetation on the site is necessary prior to the selection of plant materials and restoration method. The natural vegetation that occurs in the region or vicinity of the restoration site shall be considered in developing restoration plans.

d. In order to restore the functional values of the vegetative buffer, it shall consist of 3 layers: a ground cover, a shrub layer and a tree canopy. Vegetation in all 3 layers shall be vigorous, diverse and structurally complex. The only exception to this requirement shall be where natural conditions in the region lack these characteristics.

e. Vegetation shall be adapted to the local soils, climate and the surrounding vegetation. Only species approved by the project sponsor may be planted. Native species are required, and certain invasive species such as reed canary grass and purple loosestrife are prohibited.

f. The project sponsor shall identify the most appropriate recovery methods for each individual site.

7. The following conditions apply to practice installation:

a. Refer to compliance with local NRCS planting recommendations to determine recommended planting dates for ground covers, shrubs and trees.

b. Exposure of bare soil shall be kept to an absolute minimum by using methods such as black plastic covers to remove competing weeds. All exposed soils shall be mulched. A temporary seeding is required on sites where permanent ground cover will not be established until the following year. A temporary or companion seeding is required on any exposed slopes exceeding 12%. Mulching and netting or erosion control matting is required on slopes exceeding 20%.

c. Zero-phosphorus start-up fertilization is permitted. Phosphorus application is only permitted where soil tests indicate deficiencies.

d. Herbicides approved for use near water may be used only where essential, and with the approval of the project sponsor.

e. Heavy equipment is prohibited, except where specifically approved by the project sponsor, to prevent soil compaction. If heavy equipment is used, tree roots shall be protected by not driving over the root zone.

8. The following conditions apply to practice operation and maintenance:

a. All buffer areas are to be managed as zones where vegetation removal and land-disturbing activity are prohibited after buffer establishment.

b. Fertilizers are prohibited after the buffer is established.

c. Herbicides are prohibited except as approved by the project sponsor, where this is the best method to control undesirable invasive species.

d. Burning to clear or maintain buffer areas shall be approved by the project sponsor, and is limited to regions where prairies are the natural habitat.

e. Cutting of trees or shrubs may be done only to prevent safety hazards, or to remove undesirable competitive species, and shall be approved by the project sponsor.

f. The forest floor duff layer and leaf litter shall remain intact to provide a continuous ground cover and meet the habitat functions of this practice.

g. Lawn mowing is permitted in the viewing and access corridors. Elsewhere, mowing is prohibited except in established prairie buffer areas, and in accordance with a mowing plan approved by the project sponsor. In viewing and access corridors, mowing is allowed to a minimum height of 10 inches, and only as needed to reduce competition from undesirable species. Mowing may occur only between August 1 and September 1 to avoid disturbance of nesting birds and allow regrowth before winter.

h. Vehicles, boats, docks or other equipment storage shall be excluded from the restoration area to prevent soil compaction and damage to the buffer vegetation. Boats and docks may be temporarily stored during non-growing seasons as long as vegetative cover is unaffected.

i. The access corridor may not channel runoff to the waterbody and shall be located to avoid areas of high runoff or erodible soils. Grass or other cover that will hold the soil is required for the access corridor.

j. Except for areas waterward of the access corridor, areas waterward of the buffer shall be managed as zones where vegetation removal and land-disturbing activity are prohibited after buffer establishment.

(c) *Standards.* UW Extension Publication GWQ014, *Shoreline Plants and Landscaping*, DNR Publication PUBL-WM-228, *Home on the Range — Restoring and Maintaining Grasslands for Wildlife,* which is incorporated by reference for this chapter, or similar publications as approved by the project sponsor.

Note: Copies of these publications may be inspected at the offices of the department, 101 S. Webster Street, Madison; the Secretary of State, 30 W. Mifflin, Madison; and the Legislative Reference Bureau, One E. Main Street, Suite 200, Madison.

(20) BARNYARD RUNOFF MANAGEMENT. (a) *Description.* Barnyard runoff management is the use of structural measures to contain, divert, retard, treat, collect, convey, store or otherwise control the discharge of surface runoff from outdoor areas of concentrated livestock activity. Measures include, gutters, downspouts and diversions to intercept and redirect runoff around the barnyard, feeding area or farmstead. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* 1. Cost-sharing may not be provided if:

a. The operator intentionally aggravated a pollution discharge for the purpose of receiving cost-sharing.

b. The discharge could be prevented through improved management practices at significantly lower costs than for a barnyard runoff system.

c. The operator could have prevented the discharge by means of a previously agreed operations and maintenance plan with the department, the department of agriculture, trade and consumer protection, the county land conservation committee or the natural resources conservation service.

2. Cost-sharing may not be provided for:

a. Costs to design or construct a barnyard that is not installed.

b. Costs to construct or modify a building. This subdivision paragraph does not apply to a modification that is essential for the installation of a barnyard runoff control system or to the construction of a roof system pursuant to sub. (26).

c. Costs for equipment to apply manure to land.

d. Costs resulting from anticipated changes in livestock numbers, housing or management.

3. Cost-sharing may be provided for:

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

b. Concrete paving of portions of yards necessary to support walls, necessary to enable proper yard scraping and used as a settling basin.

c. Concrete paving of all or portions of the yard required to protect groundwater when specified in the approved priority watershed plan, priority lake plan, ch. NR 243 project or other project grant application.

(c) *Standards.* 1. Standards from the NRCS field office technical guide are as follows:

a. 362 — diversion; September, 1989.

b. 558 — roof runoff management; March, 1996.

c. 342 — critical area planting; May, 2000.

d. 561 — heavy use area protection; August, 1999.

e. 382 — fence; November, 1999.

f. 412 — grassed waterway; June, 1993.

g. 468 — lined waterway or outlet; June, 1993.

h. 484 — mulching; July, 1987.

i. 620 — underground outlet; June, 1993.

j. 350 — sediment basin; September, 1990.

k. 533 — pumping plant for water control; September, 1986.

L. 590 — nutrient management; March, 1999.

m. 312 — waste management system; January 1987.

2. Other standards as approved by the department.

(21) ANIMAL LOT ABANDONMENT OR RELOCATION. (a) *Description.* Animal lot relocation is relocation of an animal lot from a site such as a floodway to a suitable site to minimize the amount of pollutants from the animal lot to surface or ground waters. This practice does not include the purchase of land. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* 1. Cost-sharing may be provided for:

a. Stabilization and abandonment of a site, which does or does not include relocation to a different site owned, operated or controlled by the cost-share recipient. For abandonment of a site which does not include relocation, the site shall either have been in existence for a minimum of 3 years and found to be a significant nonpoint source of pollution, have been issued a notice of discharge under ch. NR 243, or have been identified during a watershed inventory as being a nonpoint source of pollution and listed as eligible in the approved priority watershed plan, priority lake plan or project grant application.

b. Reconstruction or replacement of buildings and other structures necessary for the relocation of the animal lot.

c. Proper abandonment of wells required as a result of the relocation of the animal lot.

d. Runoff management practices needed on the relocated lot consistent with sub. (20).

e. Stabilization and abandonment of a previously used earthen animal lot which has either been in existence for a minimum of 3 years and is found to be a significant nonpoint source

of pollution or has been identified during a watershed inventory as being a nonpoint source of pollution and is listed as eligible in the approved priority watershed plan, priority lake plan or project grant application.

2. Wells shall be properly abandoned in accordance with the requirements of ch. NR 812.

3. The landowner agrees to abandon the existing site permanently for livestock use and agrees to record a restrictive covenant to this effect in the office of the register of deeds for each county in which the property is located. The restrictive covenant shall permanently exclude the use of the property by livestock. A maximum of 10 animals may be kept on the site, provided that no more than 4 individual animals exceed a live weight of 200 pounds and the desired level of pollutant control for the site is maintained.

4. A plan for relocation shall be approved by the governmental unit, in writing, prior to initiation of relocation. The project grant application shall list criteria for relocation plan approval. At a minimum, these criteria shall include the following:

a. The site is identified as eligible in the approved priority watershed plan, priority lake plan or project grant application.

b. The relocation to a site owned, operated or controlled by the cost-share recipient is cost-effective provided the cost-sharing for repairing, reconstructing or replacement of buildings and other structures at the relocation site does not exceed the appraised values of the buildings and other structures to be abandoned which have utility for livestock operations.

c. The relocated lot will not significantly contribute to a water quality problem.

5. If the cost-share recipient has received state cost-share funding at the site to be abandoned for practices listed in this paragraph, the amount of cost-sharing received shall be deducted from the relocation cost-share payment.

6. In cases of abandonment which does not include relocation to a different site owned, operated or controlled by the cost-share recipient, livestock may not be relocated to a site which will significantly contribute to surface water or groundwater quality degradation. A written plan shall be submitted to the governmental unit for approval detailing the disbursement of the animals.

7. The abandonment of a site without relocation to a site owned, operated or controlled by the cost-share recipient is cost-effective provided the cost-share grant does not exceed the estimated cost-share grant of the best management practices which would have been installed at the abandoned site. The best management practice cost-effective requirement may be waived by the department if the site to be abandoned has a significant water quality impact and the proposed best management practice cannot ensure an acceptable level of water quality protection when compared to relocation.

(c) *Standards.* Standards from the NRCS field office technical guide are as follows:

1. 635 — wastewater treatment strip; July, 2001.
2. 362 — diversion; September, 1989.
3. 558 — roof runoff management; March, 1996.
4. 342 — critical area planting; November, 1999.
5. 561 — heavy use area protection; August, 1999.
6. 382 — fence; November, 1999.
7. 412 — grassed waterway; June, 1993.
8. 468 — lined waterway or outlet; June, 1993.
9. 484 — mulching; July, 1987.
10. 620 — underground outlet; June, 1993.
11. 350 — sediment basin; September, 1990.
12. 312 — waste management system; January, 1987.
13. 500 — obstruction removal; January, 1983.
14. 590 — nutrient management; March, 1999.

(22) WELL ABANDONMENT. (a) *Description.* Well abandonment is the proper filling and sealing of a well to prevent it from acting as a channel for contaminants to reach the groundwater or as a channel for the vertical movement of surface water to groundwater. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* 1. Cost-sharing may be provided for:

a. The removal of the pump, pump piping, debris or other obstacles that interfere with the proper sealing of the well.

b. The sand-cement grout, sodium bentonite, clay slurry, chipped bentonite or concrete used for the well sealing.

c. Chlorine used as a disinfectant.

d. The backfilling operations to fill the surface around a well pit.

e. The necessary labor costs to complete the proper abandonment.

2. Cost-sharing may not be provided for:

a. The abandonment of wells at an oil or gas drilling site or wells that produced gas or oil.

b. The abandonment of wells used for test or exploratory purposes.

c. The abandonment of mine shafts, drill holes or air vents associated with the mining industry.

d. The abandonment of high capacity wells.

(c) *Standards.* 1. NRCS field office technical standard 351 — Well Decommissioning; April, 1999.

2. Section NR 812.26 on well and drillhole abandonment.

(23) MANURE STORAGE FACILITIES. (a) *Description.* A manure storage facility is a structure which stores manure from operations where manure is generated or from operations where the location and site characteristics of manure spreading areas result in a high potential for runoff to carry pollutants to lakes, streams and groundwater during periods of frozen or saturated conditions. The facility shall be necessary to accommodate proper land application of manure in accordance with a nutrient management plan. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* 1. A nutrient management plan for the operation is required.

2. Cost-sharing may be provided if:

a. The locations and site characteristics of areas where manure is spread have high potentials to carry runoff to lakes and streams and the facilities are necessary to accommodate proper land application of the manure in accordance with the nutrient management plan.

b. The existing storage or spreading of manure has a high potential for contaminating groundwater as specified in the approved priority watershed plan, priority lake plan or project grant application.

3. Cost-sharing may be provided for:

a. Aerobic or anaerobic basins, liquid manure tanks and solid manure stacking facilities, piping and other stationary equipment necessary for conveying manure to the storage facility required as part of a nutrient management plan.

b. Storage capacities of no less than 30 days and no more than 365 day manure generation.

c. Leases of manure storage tanks subject to the restrictions of ss. NR 120.18 (2) (b) and 154.03 (1) (i) 8.

d. The repair, modification or abandonment of existing manure storage facilities needed to meet water quality objectives including well abandonment required under ch. NR 812.

e. Manure storage structures at operations where manure is generated.

4. Cost-sharing may not be provided if:

a. Manure can be spread at acceptable rates on locations which are nearly flat and represent a minimal risk to surface water and groundwater or which do not drain to surface waters.

b. The landowner intentionally aggravated conditions in order to qualify for cost-sharing.

5. Cost-sharing may not be provided for any of the following:

a. Portable pumps and other nonstationary equipment.

b. Buildings or modifications to buildings.

c. Equipment for land applying or incorporating manure.

d. Additional costs associated with the construction of a manure storage facility incurred for the purpose of providing structural support for a building or other structure located over or attached to the facility.

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

7. Manure stored in the storage facility shall be land applied in accordance with the operation's nutrient management plan. Manure stored in facilities designed to be emptied annually or semi-annually may not be applied on frozen or saturated ground and shall be incorporated within 3 days after application.

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

9. The project sponsor prior to the payment of cost-share funds shall certify compliance with the manure management prohibitions in s. NR 151.08.

(c) *Standards.* 1. NRCS field office technical guides are as follows:

a. 312 — waste management system; January, 1987.

b. 313 — waste storage structure; September, 1998.

c. 634 — manure transfer; January, 1999.

d. 590 — nutrient management; March, 1999.

e. 382 — fence; November, 1999.

f. 561 — heavy use protection area; September, 1999.

2. Other standards as specified by the department.

(24) ANIMAL WASTE STORAGE SYSTEM ABANDONMENT. (a) *Description.* Manure storage system abandonment is the permanent disabling and proper abandonment of leaking and improperly sited manure storage systems including a system with bottom at or below groundwater level; a system whose pit fills with groundwater; a system whose pit leaks into the bedrock; a system which has documented reports of discharging manure into surface water or groundwater due to structural failure; or a system with evidence of existing structural failure or evidence of imminent structural failure that will likely result in resource degradation. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* 1. Cost-sharing may be provided for the following practices to protect water resources from contamination by manure:

a. Proper removal and disposal of accumulated wastes in the pond or structure.

b. Removal of any constructed soil liner, concrete or membrane liner.

c. Removal of all soil saturated with waste, which can be removed.

d. Proper land spreading of excavated liner material and waste saturated soil.

e. Filling, shaping to insure surface drainage away from site, and seeding of area.

2. Cost-sharing may not be provided for removal and spreading of manure that can be removed using conventional equipment and routine agricultural practices.

(c) *Standards.* 1. Standards from the NRCS field office technical guide are as follows:

a. 312 — waste management system; January, 1987.

b. 313 — waste storage structure; September, 1998.

c. 634 — manure transfer; January, 1999.

d. 590 — nutrient management; March, 1999.

e. 382 — fence; November, 1999.

f. 561 — heavy use protection area; September, 1999.

2. Other standards as specified by the department.

(25) MILKING CENTER WASTE CONTROL SYSTEMS. (a) *Description.* A milking center waste control system is a piece of equipment, practice or combination of practices installed in a milking center for purposes of reducing the quantity or pollution potential of the wastes. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* 1. Cost-sharing may be provided for:

a. Design and construction of filter strip systems with appropriate pretreatment measures, storage systems and land irrigation equipment.

b. Repair or modification of existing milking center waste control measures.

c. Stationary waste transfer equipment, such as piping and pumps, needed to convey milking center wastes to storage, treatment or land application systems provided that the equipment is an integral component of the system and is designed for that exclusive use.

d. Other milking center waste control measures when they are needed to assure that the milking center waste treatment systems will meet identified water quality objectives. These measures may include conservation sinks, pre-cooler water utilization systems, manifold cleaning systems, air injection systems, waste milk diverter valves, booster pumps for parlor floor cleaning and other measures as approved by the department.

2. Cost-sharing may not be provided for:

a. Design and construction of systems, practices or components that are installed or adopted for purposes other than for the correction of an identified water pollution hazard.

b. Buildings or modifications to buildings, unless modifications to buildings are essential for installation of a milking center waste control system.

c. Portable equipment for spreading milking center wastes onto land or incorporating the wastes into land.

(c) *Standards.* 1. Standards from the NRCS field office technical guide are as follows:

a. 635 — wastewater treatment strip; July, 2001.

b. 634 — manure transfer; January, 1999.

c. 614 — trough or tank; September, 1989.

d. 313 — waste storage facility; September, 1998.

e. 590 — nutrient management; March, 1999.

2. Milking center waste control systems shall be planned in accordance with the Pollution Control Guide for Milking Center Wastewater Management (UWEX Pub. No. A3592-July, 1994),

which is incorporated by reference for this chapter and designed in accordance with standards approved by the department.

Note: Copies of this document may be inspected at the offices of the Department's Bureau of Watershed Management, NRCS, the Secretary of State and the Legislative Reference Bureau, all in Madison, WI.

(26) ROOFS FOR BARNYARD RUNOFF MANAGEMENT AND MANURE STORAGE FACILITIES. (a) *Description.* Roofs for barnyard runoff management and manure storage facilities are a roof and supporting structure constructed specifically to prevent precipitation from contacting manure. This practice shall be implemented using the standards in par. (c).

(b) *Conditions.* 1. Cost-sharing may not be provided for materials and labor for other structures or buildings.

2. The roofed structure may not be permanently enclosed unless the landowner receives written approval from the department.

a. For purposes of this subsection, a permanently enclosed structure is defined as a structure where the sum of the length of the walls exceeds 50% of the total length of the perimeter of the structure. When the structure has a shape other than a rectangle or square, each rectangular or square portion of the total structure, excluding the common sides, shall be calculated separately to determine whether it exceeds 50%. A segment of the perimeter shall be considered a wall if greater than 50% of the opening from eave to floor is of solid building material.

b. An application requesting cost-sharing for the enclosure of a roofed barnyard runoff management system shall be submitted in writing to the department for its approval. The written application and the applicable cost-share agreement shall include a recognition by the landowner or land operator that the barnyard may not be used for purposes other than an animal lot for the duration of the cost-share agreement.

3. The livestock facility may not establish additional outdoor animal lots on the site unless the department certifies that adequate runoff control practices are established for the duration of the cost-share agreement.

(c) *Standards.* 1. The roof shall be designed to support wind, snow and other live and dead loads consistent with the American Society of Agricultural Engineers (ASAE) Engineering Practice (EP) 288.5, 1992, which is incorporated by reference for this chapter.

Note: Copies of this publication are available for inspection at the central office of the department of Natural Resources, and the offices of the Legislative Reference Bureau and Secretary of State.

2. The roof and supporting structure shall be constructed of materials with a life expectancy of a minimum of 10 years.

3. The structure shall have sufficient ventilation.

(27) LIVESTOCK FENCING. (a) *Description.* Livestock fencing is the enclosure, separation or division of one area of land from another in a manner that provides a permanent barrier to livestock. The purpose of the practice is to exclude livestock from land areas that should be protected from grazing or gleaning where degradation of the natural resource will likely result if livestock access is permitted. This practice shall be implemented using one or more of the standards in par. (c).

(b) *Conditions.* 1. Cost-sharing may be provided for permanent fencing when fencing is needed to:

a. Eliminate the degradation of a surface water body.

b. Reduce the impact to a resource from sedimentation that is being caused by livestock.

c. Exclude livestock from a forest or woodlot.

d. Eliminate the degradation of other natural resources as defined within the approved priority watershed plan, priority lake plan, notice of discharge or project grant application.

2. Cost-sharing may not be provided for:

a. Fencing of cropland fields for the primary purpose of providing areas for gleaning by livestock or for handling or segregating of livestock.

b. Temporary fencing.

c. Situations where benefits to water quality improvement cannot be readily defined.

d. Electric fence energizers.

(c) *Standards and specifications.* NRCS field office technical guide standards and specifications are as follows:

1. 382 — fence; November, 1999.

2. 472 — livestock exclusion; June, 1983.

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

(b) *Conditions.* 1. Cost-sharing may be provided for:

a. Excavation, grading, mulching, seeding, necessary landscaping, piping, drop spillways and other measures required to implement the practice.

b. Land acquisition, including storm sewer rerouting and the removal of structures necessary to install structural urban best management practices.

c. Materials and labor for the initial installation of groundwater monitoring wells required by the department.

d. On a prorated basis, for multi-purpose practices which manage both water quality and unrelated water quantity problems.

2. Cost-sharing under this chapter may not be provided for:

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

b. Removal or disposal of accumulated sediments or other materials needed to properly maintain the practice.

(c) *Review and approval procedures.* 1. The department shall identify acceptable standards for each best management practice in an approved priority watershed plan, approved priority lake plan or project grant.

2. The department shall consider documents containing nonagricultural technical standards developed under the process in subch. V of ch. NR 151 and other documents when identifying acceptable technical standards.

3. The governmental unit, 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 governmental unit, landowner or land operator shall submit a detailed design including pertinent information addressing each criterion listed in subd. 5., 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 to protect surface water, groundwater and wetland resources in accordance with the objectives of a watershed plan. Applicable performance standards identified in ch. NR 151 may be considered and addressed in the detailed design.

b. Consistency with water quality provisions of department approved plans, such as priority watershed or lake plans, integrated resource management plans, remedial action plans or wellhead protection plans, or with existing local storm water management ordinances or plans that meet minimum department requirements.

c. Structural integrity of the design.

d. Aesthetics.

e. The degree to which other environmental considerations are integrated in the proposal.

f. The adequacy of the provisions for long-term maintenance of the structural practice.

g. Other pertinent factors.

6. The department may waive or modify the review or approval procedures under subds. 3. to 5. Any waiver shall be specifically described in the grant agreement or the cost-share agreement.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

NR 120.15 Interim best management practices. (1) INTERIM BEST MANAGEMENT PRACTICES. The department may approve best management practices not listed in s. NR 120.14 where necessary to meet the water resources objectives identified in the watershed plan. The department shall consult with DATCP regarding agricultural best management practices approved under this subsection. The department may identify in the nonpoint source grant agreement design criteria and standards and specifications; cost-share conditions; and cost-share rates for each best management practice approved under this section.

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

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

NR 120.16 Ordinances. (1) APPLICABILITY. Counties, cities, villages and towns located within the priority watershed project or priority lake area project shall adopt the following ordinances if required within the watershed plan:

(a) Manure storage ordinance under s. 92.16, Stats.

(b) Construction site control ordinance under s. 59.693, 60.627, 61.354 or 62.234, Stats.

(2) CONDITION OF GRANT. Adoption, implementation and enforcement of ordinances under sub. (1) within the time frame specified under s. NR 120.08 (1) (c) 1. h. and j. shall be a condition of receiving funding from the department under a nonpoint source grant. Actions to implement and enforce these ordinances are subject to the provisions of s. NR 120.28 (1) and (2).

(3) CONSTRUCTION SITE EROSION CONTROL ORDINANCES. (a) An ordinance to control construction site erosion that is adopted by the governmental unit prior to October 1, 2002 shall meet the requirements of this paragraph.

1. An ordinance under sub. (1) shall apply, at a minimum, to construction activities as defined in s. 281.33 (3) (b) 1. to 5., Stats., within the jurisdiction unless the construction site activities are otherwise regulated by the department under subch. III of ch. NR 216, or regulated by ch. SPS 320, 321, or 361 to 365, or exempted by s. 13.48 (13), Stats., or subject to the department of transportation and department liaison cooperative agreement under s. 30.2022, Stats.

2. The ordinance shall contain the following:

a. Statements of authority, findings and purpose.

b. An applicability statement identifying activities subject to the ordinance.

c. Performance standards, criteria and other conditions to minimize the amount of sediment and other pollutants reaching the waters of the state during the development of lands and until final stabilization of the site.

d. A provision requiring consistency with the accepted design criteria, standards and specifications identified in the *Wisconsin Construction Site Best Management Practice Handbook,* WDNR Pub. WR-222 November 2001 Revision, which is incorporated by reference for this chapter or other design guidance and technical standards identified, developed or disseminated by the department under subch. V of ch. NR 151.

Note: Copies of this document may be inspected at the offices of the Department's Bureau of Watershed Management, NRCS, the Secretary of State and the Legislative Reference Bureau, all in Madison, WI.

e. Permit application and planning requirements.

f. Permit issuance, administration and enforcement procedures.

g. Violation penalties.

h. Appeal procedures.

(b) An ordinance to control construction site erosion adopted by the governmental unit after October 1, 2002 shall be consistent with the performance standards in s. NR 151.11.

(4) DEPARTMENTAL APPROVAL. An ordinance required under sub. (1) shall be reviewed and approved by the department prior to adoption.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02; CR 03-028: am. (3) (a) 1. Register July 2004 No. 583, eff. 8-1-04; correction in (3) (a) 1. made under s. 13.93 (2m) (b) 7., Stats., Register July 2004 No. 583; correction in (3) (a) 1. made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672.

NR 120.17 Cost-share eligibility. (1) ELIGIBLE BEST MANAGEMENT PRACTICES. Best management practices listed in s. NR 154.04 that are installed and maintained to control the following nonpoint sources in accordance with the minimum conditions in ch. NR 154 are eligible for cost-share assistance under this chapter when addressing nonpoint sources of pollution in a watershed plan:

(a) Croplands and undeveloped rural lands.

(b) Non-agricultural pollution sources.

(c) Streambanks and shorelines.

(d) Livestock yards and manure management areas except those identified in sub. (2) (b) 1. to 2.

(e) Lake sediments.

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

(2) INELIGIBLE BEST MANAGEMENT PRACTICES. The following practices, sources or activities are not eligible for cost-share assistance under this chapter:

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

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

1. Activities at livestock operations with less than 1,000 animal units that have been issued a WPDES permit by the department under ch. 283, Stats. In this paragraph, "livestock opera-

tion" has the meaning given in s. 281.16 (1) (c), Stats. In this paragraph, "animal unit" has the meaning given in ch. NR 243.

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

3. All other activities requiring coverage under a WPDES permit issued under chs. NR 200 to 240 and 245 to 299.

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

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

(e) Active mining activities.

(f) Pollutant control measures needed during building and utility construction, and storm water management practices for new developments.

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

(h) The planting, growing and harvesting of trees associated with silviculture, except as necessary for site stabilization.

(i) Installing, operating or repairing a small scale on-site human domestic waste facility construction.

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

(k) Installing dams, pipes, conveyance systems and detention basins intended solely for flood control.

(L) Operation and maintenance of cost-shared practices.

(m) Practices other than those in s. NR 154.04 that are normally and routinely used in growing crops and required for the growing of crops or the feeding of livestock.

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

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

(p) Significant expansions of livestock operations that are not in compliance with agricultural performance standards under subch. II of ch. NR 151. Significant expansions shall be determined using the criteria under par. (q) 2. The base livestock population and the portion of the expansion that is considered less than significant shall be eligible.

(q) Practices needed to control sources that were adequately managed for the specific land use at the time of cost-share agreement signing, including management of a source in compliance with performance standards, but that are producing an increased amount of pollutant loading to the surface water or groundwater due to the landowner's or land operator's significant changes in land management.

1. Changes that the department may consider significant and ineligible for cost sharing include significant increases in size of the livestock population, changes to more intensive cropping and other changes in land use or management which increase the pollutant loading counter to the water resource objectives in an approved areawide water quality management plan, priority watershed plan, county land and water resources management plan or performance standard for the area.

2. For purposes of this paragraph, the department shall use the criteria in this subdivision in determining whether the increase in the size of the livestock population is significant and ineligible for cost sharing. In this subdivision, "livestock population size" means the size of the livestock population, in animal units. In this subdivision, "base livestock population size" means the livestock population size determined when the department or governmental unit, including a county land conservation committee, visits the site and documents the size of the livestock population. In this subdivision, "animal unit" has the meaning given in ch. NR 243.

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

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

c. Any expansion to a base livestock population size that results in a livestock population size required to apply for a WPDES permit under s. NR 243.12 (1) (a) or (b) is considered to be significant and ineligible for cost sharing under this chapter, and shall also render the base livestock population component ineligible for cost sharing in accordance with s. NR 153.15 (2) (f) 2.

d. The base livestock population and the portion of the expansion that is considered less than significant shall be eligible.

Note: The department may not provide cost sharing under this chapter for activities requiring coverage under a WPDES permit. This includes activities requiring permit coverage at livestock operations that are greater than or equal to 1,000 animal units in size or that will become greater than or equal to 1,000 animal units through an expansion.

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

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

(t) Changes in crop rotation unless required as a component of practices in s. NR 154.04 (9), (20), (22) or (24).

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

(v) Purchase of nonstationary manure spreading equipment.

(w) Practices needed for land use changes during the cost-share agreement period.

(x) Urban nonpoint sources that must be controlled to meet the requirements of a municipal WPDES storm water discharge permit.

(y) Correcting overtopping of a manure storage facility.

(z) Moving a manure stack.

(za) Maintaining existing grass cover.

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

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

(3) DEMONSTRATION PROJECTS. The department may establish alternative eligibility criteria for demonstration projects. With prior department approval, demonstration projects meeting these alternative criteria may be implemented during the grant period.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02; corrections in (2) (b) 3. made under s. 13.93 (2m) (b) 7., Stats., Register September 2002 No. 561; correction in (2) (o) made under s. 13.92 (4) (b) 7., Stats., Register March 2011 No. 663.

NR 120.18 Cost-share rates. (1) STATE COST-SHARE RATES. (a) The maximum state cost share rate for individual best management practices cost-shared under this chapter may not exceed 70%, except as otherwise provided in this subsection. Cost-share funds from the appropriations under s. 20.115 (7) (c) and

(qd), 20.370 (6) (aq), or 20.866 (2) (te) and (we), Stats., shall be considered part of the state rate.

(b) Cost-share rates in this section shall be increased in cases of economic hardship in accordance with sub. (4).

(c) The department may provide cost-share up to 100% to replace best management practices eligible in accordance with s. NR 120.186 (4).

(d) The cost-share rates for best management practices under existing cost-share agreements may be amended to use the rates identified in this section.

(e) The maximum state cost-share rates shall be reduced by 50% for landowners of critical sites when a cost-share agreement is signed after the period of cost-sharing availability for critical sites has ended.

(f) The following conditions further specify eligibility criteria for cost-share reimbursements under this section:

1. Wildlife habitat re-creation associated with implementation of contour farming, contour strip-cropping and field strip-cropping has a maximum state cost-share rate of 70%.

2. For the best management practices under s. NR 120.14 (16), riparian buffers, and s. NR 120.14 (6), grassed waterways, a single payment in addition to installation costs may be made in accordance with the following:

a. For riparian buffers under s. NR 120.14 (16), $500 per acre used for the buffer.

b. For waterway systems under s. NR 120.14 (6), $300 per acre used for the waterway system.

c. Payments under this subdivision are eligible only for acreage upon which a commodity crop was harvested in at least 2 of the 5 years prior to the signing of the cost-share agreement. The 2 years need not be consecutive if separated by non-grain portions of a normal crop rotation.

3. Cost-share payments for high residue management systems may not be made for more than a total of 6 years.

4. Cost-share payments for cropland protection cover (green manure) may not be made for more than a total of 3 years.

5. Flat rates identified under par. (g) may be used in lieu of calculating cost-share amounts.

6. Cost-share payments for nutrient management may not be made for more than a total of 3 years.

7. Cost-share payments for pesticide management may not be made for more than a total of 3 years.

8. The maximum amount cost-shared for leases of manure storage tanks shall be 70% of the down payment and lease cost of the tank during the grant period of the watershed project.

9. A governmental unit may establish a flat rate for cost-sharing critical area stabilization in order to simplify the administration of cost-share funding for this best management practice. The flat rate shall be calculated based on the cost-share rate, up to 70%, and the average cost of the practice.

(g) Counties may use the following state cost-share rates per acre in lieu of the state cost-share percentage listed in this section.

1. $9.00 per acre for contour cropping.

2. $13.50 per acre for strip-cropping.

3. $7.50 per acre for field strip-cropping.

4. $18.50 per acre per year for high residue management systems.

5. $25 per acre per year for cropland protection cover (green manure).

6. Flat rates for fencing as follows:

a. Three strand barbed wire, steel or wooden post at a flat rate of $5.00 per linear rod.

b. Woven wire, steel or wooden post at a flat rate of $8.00 per linear rod.

c. Two strand electric, fiberglass, steel or wooden post and insulators at a flat rate of $3.00 per linear rod.

d. Fiberglass posts, high tensile wire at a flat rate of $7.50 per linear rod.

(2) MAXIMUM AMOUNTS. (a) *Least cost.* A governmental unit 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 reducing 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. The department may approve, in writing, cost-sharing for a best management practice that is not the least cost if the practice is more cost effective. The department shall approve the cost-share agreement if the best management practices are the least-cost alternatives to control the nonpoint sources or if the practices provide greater water quality improvement or habitat enhancement than the least-cost alternative.

(b) *Leases of manure storage tanks.* The maximum amount cost-shared for leases of manure storage tanks shall be 70% of the down payment and lease cost of the tank during the grant period of the watershed project.

(c) *Critical area stabilization.* Governmental units may establish flat rates for the cost-sharing of critical area stabilization in order to simplify the administration of cost-share funds for this practice. Flat rates shall be based on the percentage, up to 70%, for state cost-sharing and the average cost of the practice.

(3) LOCAL SHARE. (a) The local share of project costs may include funds from federal, local or private sources, or state sources not identified under s. NR 120.18 (1) (a). A cost-share grant under this chapter may not reimburse a landowner or land operator for any cost that another unit of government is also reimbursing.

(b) In-kind contributions of labor and material used directly in the installations of best management practices may be considered part of the local share of best management practice costs, if properly described and substantiated to the cost-share agreement grantor.

(c) The value of a conservation easement donated to the department, or to any person approved by the department under s. 281.65 (8) (m), Stats., may be considered as a portion of or all of the landowner's or land operator's share of a cost-sharing grant.

(4) ECONOMIC HARDSHIP. (a) The governmental unit submitting the cost-share agreement under s. NR 120.13 (5) shall exceed the cost-share limits identified under sub. (2) if the landowner or land operator that will provide the local share of best management practice installation meets the application and economic hardship requirements as set forth in this subsection.

(b) The landowner or land operator shall submit an application to the governmental unit in accordance with this subsection in order to be considered for a determination of economic hardship. The governmental unit may not make a determination of economic hardship for cost-share purposes until it has received a completed application.

(c) The landowner or land operator shall include the following financial information in the application:

1. The landowner or land operator's debt-to-asset ratio or the capital debt repayment liability ratio.

2. Demonstration that the landowner or land operator has the ability to pay the local share of the best management practice installation cost.

3. The information required under subds. 1. and 2. shall be

documented by a signed and notarized statement from an accredited financial institution or a certified public accountant. The grant recipient shall provide to the accredited financial institution or certified public accountant a full and true disclosure of applicable corporate, partnership, personal and marital assets and liabilities, including a copy of the prior year's federal tax returns, as verified by a sworn and signed affidavit. The affidavit shall be made on a form provided by the department.

(d) The governmental unit shall make a determination of economic hardship if the statement under par. (c) 3. verifies that one or both of the following conditions exist for the landowner or land operator:

1. The landowner or land operator of an eligible site has a debt-to-asset ratio of more than 60%, and net assets of less than $200,000.

2. The landowner or land operator of an eligible site has a capital debt repayment liability ratio of more than 60%. The capital debt repayment liability ratio is determined by the following formula: (total debt payment) divided by (annual income + depreciation) — (family living expenses + annual debt principal payment).

(e) If evidence of economic hardship is verified in accordance with the criteria in par. (d), the governmental unit shall increase the cost-share rate in accordance with this paragraph for all best management practices for which the landowner or land operator is eligible.

1. If the cost-share amount is based on a cost-share rate, the cost-share rate shall be increased so that the cost-share rate is not less than 70% and not greater than 90%.

2. If the cost-share amount is based on a flat rate, the flat rate shall be increased so that it approximates a cost-share rate that is not less than 70% and not greater than 90%.

(f) The governmental unit shall notify the department in writing when it has made a determination of economic hardship.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02; correction in (1) (a) made under s. 13.93 (2m) (b) 7., Stats., Register September 2002 No. 561; correction in (1) (a) under s. 13.92 (4) (b) 7., Stats., Register January 2017 No. 733.

NR 120.185 Easements. (1) The department may enter into easements with landowners or land operators for lands identified in watershed plans. Easements shall be acquired for perpetuity. Easements may be used in conjunction with the following best management practices:

(a) Critical area stabilization.

(b) Riparian buffer.

(c) Wetland restoration.

(d) Structural urban best management practice.

(e) Any other best management practice specified as eligible for easement support in an approved priority watershed plan.

(f) Animal lot relocation in conjunction with pars. (a) to (c), provided that written approval of the governmental unit is obtained prior to easement acquisition, in accordance with the requirements of s. NR 154.04 (23) (b)

(2) The department may authorize, in writing, any governmental unit, non-profit organization or person to enter into easements or accept a donated conservation easement consistent with the eligibility provision of the approved priority watershed plan in accordance with the following:

(a) Prior written department approval for the purchase of an easement shall be obtained if the cost exceeds $50,000.

(b) The value of an easement shall be based on a valuation procedure that has received prior department approval.

(c) An easement or a lease acquired by a governmental unit, non-profit organization or person shall be recorded in the register of deeds office in the county in which the property subject to the easement is located.

(3) Upon acceptance of a donated easement under s. NR 120.18 (3) (b), the department shall appraise the easement and issue a written opinion on the value or issue a statement of value of the easement.

(4) The department may distribute grants and aids to itself or to any governmental unit for the purchase of easements in priority watershed areas.

(5) STATE COST-SHARE RATE. The maximum allowable state cost-share rate for the acquisition of easements under this chapter shall be 70% of the acquisition cost of the easement, except that the maximum allowable state cost-share shall be 50% when the purpose of the easement is to support a structural urban best management practice. The maximum allowable state cost-share rate for appraisals for the acquisition of property shall be 100% of the cost of the appraisal when a grant was first issued by the department for this activity prior to July 1, 1998. When a grant was first issued by the department for this activity after this date, the maximum allowable state cost-share rate for appraisals shall be 70%. In this subsection, "acquisition cost" means the fair market value of the property as determined by department appraisal guidelines and reasonable costs related to the purchase of the property limited to the cost of appraisals, land surveys, relocation payments, title evidence, recording fees, historical and cultural assessments required by the department, and environmental inspections and assessments. It does not include attorneys fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes or any other cost not identified in this subsection.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

NR 120.186 Property acquisition. (1) ELIGIBLE ACTIVITIES. The department may distribute grants to a governmental unit that is eligible for a nonpoint source grant under s. NR 120.12 to perform any of the following activities:

(a) Acquire land or an interest in land for the construction of a structural urban best management practice.

(b) Acquire land or an interest in land identified in the watershed plan which is contributing or will contribute nonpoint source pollution. Land acquisition for the purpose of complying with a Notice of Discharge issued pursuant to ch. NR 243 is not eligible for funding under this section.

(2) ACQUISITION PROPOSALS. A governmental unit requesting nonpoint source grant funds for the acquisition of property under this section shall submit an acquisition proposal to the department for its review and approval. The acquisition proposal shall be submitted with the nonpoint source grant application or grant amendment request. The acquisition proposal shall include all of the following:

(a) A description of the purpose for acquiring the land and how the acquisition will meet applicable goals of the priority watershed or priority lake plan for which the grant is applied.

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

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

(d) An estimate of overall acquisition and annual maintenance

costs, including the number of parcels and acres to be acquired which notes the number of improved parcels involved.

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

(f) Other information the department may request.

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

(b) After approval of the acquisition proposal and receipt of the local assistance grant from DATCP under ch. ATCP 50, a governmental unit shall obtain an appraisal for each property.

(c) All appraisals shall be subject to department review and approval.

(d) All appraisals shall be conducted by a certified or licensed appraiser as described in ch. 458, Stats., and chs. SPS 85 to 87.

(e) All acquisitions with a fair market value of more than $200,000 shall require 2 appraisals. The department may require a second appraisal for property valued under $200,000 if the department finds that the property presents a difficult appraisal problem or if the first appraisal is unacceptable.

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

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

(h) Property acquired with a nonpoint source grant shall be maintained and managed in accordance with the provisions, conditions and scope description in the grant contract.

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

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

(4) STATE COST-SHARE RATE. The maximum allowable state cost-share rate for the acquisition of property under this chapter shall be 50% of the acquisition cost of the property. The maximum allowable state cost-share rate for appraisals for the acquisition of property shall be 100% of the cost of the appraisal when a grant was first issued by the department for this activity prior to July 1, 1998. When a grant was first issued by the department for this activity after this date, the maximum allowable state cost-share rate for appraisals shall be 70%. In this subsection, "acquisition cost" means the fair market value of the property as determined by department appraisal guidelines and reasonable costs related to the purchase of the property limited to the cost of appraisals, land surveys, relocation payments, title evidence, recording fees, historical and cultural assessments required by the department, and environmental inspections and audits. It does not include attorneys fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes or any other cost not identified in this subsection.

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

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

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

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

(d) The level of financial support by the governmental unit.

(e) In cases where the acquisition will prevent further degradation of water quality, that the acquisition is cost-effective relative to the degree of threat of further degradation to the site.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02; correction in (3) (d), (g) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; correction in (3) (d) made under s. 13.92 (4) (b) 7., Stats., Register July 2015 No. 715.

NR 120.19 Cost containment procedures. (1) Governmental units as providers of cost-share agreements shall identify and agree to use one or more of the following cost containment procedures for each best management practice identified in the runoff management grant agreement:

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

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

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

Note: The department suggests the following bidding procedures:

- The governmental unit shows the proposed construction site to all prospective bidders on the same day and at the same time.
- There are at least 3 qualified bidders.
- All bids are sealed and delivered by a bid deadline to a location specified by the governmental unit.
- Bids are opened within 2 weeks after the bid deadline.
- The amount of the cost-share grant is based on the lowest qualified bid.
- The landowner selects a higher bidding contractor only if the landowner agrees to pay the difference.
- The landowner may not select a contractor who did not bid.

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

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

(f) *Wisconsin conservation corps.* A governmental unit uses

the Wisconsin conservation corps to install best management practices for landowners and land operators.

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

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

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

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

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

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

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

NR 120.22 Interest earned on grant advances. (1) Interest shall be earned and accrued on nonpoint source grant advances. To determine the amount of interest to be credited to the project, the governmental unit shall calculate the interest earned using an average account balance and interest accrued over a period of time or in another equitable manner.

(2) Interest money earned shall be used to support eligible activities in ongoing or completed priority watershed projects including, but not limited to, periodic inspections after grant expiration, administrative costs of the project and, under exceptional circumstances, the repair of best management practices; when interest money is used to cost-share best management practices, the combination of interest money and any other cost-share funds from this program may not exceed the cost-share limits described in s. NR 120.18 (1).

(3) All interest money earned and accrued from a priority watershed project shall be expended by 10 years from the end of the nonpoint source grant period as described in s. NR 120.12 (4).

(4) On or before April 15 of each year, a governmental unit shall complete and file a report with the department which states the amount of interest money accrued and interest money expended during the previous calendar year. During the planning and implementation phases of watershed projects, these reports may be included with other fiscal reports required under ss. NR 120.23 and 120.25.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

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

(c) *Withholding and recovery of funds.* The department may authorize the withholding or recovery of a grant payment if the department determines, in writing, that a grantee has failed to comply with project objectives, grant award conditions or reporting requirements or has not expended all funds advanced or disbursed on eligible activities. Withholding and recovery shall be limited to only that amount necessary to assure compliance.

(d) *Availability of funds.* 1. Grant payments to a governmental unit or other grantee under this section are contingent on the availability of funding.

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 nonpoint source water pollution abatement program.

3. The department may recover payments made to grantees as advances or disbursements when it determines that the governmental unit will not complete the eligible activities on its grant within the current grant project budgeting period.

(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 and governmental units 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 Community Financial Assistance, 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.

Note: Cost-share calculation and practice verification forms may be obtained, at no charge, from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921, Madison, Wisconsin 53707.

3. Reimbursement requests may be submitted for partially installed best management practices.

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

5. Reimbursement may be denied if a cost-share agreement or amendment is not in accordance with the watershed plan and grant agreement or amendment.

6. The department may set deadlines for receipt of reimbursement requests by specifying the deadlines within the scope section of the grant or grant amendment.

(c) The department may advance moneys to governmental units prior to best management practice installation. The amount of the advance shall be determined by the department and may not exceed the amount of the grant.

(3) RETENTION REQUIREMENTS. The governmental unit 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.

(4) ANTICIPATED COST-SHARE REIMBURSEMENT AMOUNT. If the department establishes an ACRA for a year for a county which receives funding under s. NR 120.12 and the county makes reimbursements to eligible cost-share recipients for the year which exceed the amount established by the department, the county shall provide reimbursement to the cost-share recipients, from sources other than the grant agreement, in the amount by which the reimbursable amounts exceed the ACRA established by the department.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

NR 120.24 Procurement. (1) 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.

(2) RESPONSIBILITY. The governmental unit 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.

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

(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 $10,000.

(c) For monetary or in-kind consideration.

(4) FORCE ACCOUNT WORK. (a) A governmental unit shall secure prior written approval from the department for use of the force account method in lieu of contracts for any professional services or construction activities in excess of $35,000.

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

(5) WISCONSIN CONSERVATION CORPS. Each governmental unit shall encourage and use the Wisconsin conservation corps for appropriate projects to the greatest extent practicable.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

NR 120.25 Record keeping and reporting requirements. (1) Each governmental unit as a grant agreement grantee or cost-share agreement grantor shall maintain a financial management system which adequately provides for all of the following:

(a) Accurate, current and complete disclosure of payments to landowners, land operators, contractors or municipalities and receipts, canceled checks, invoices and bills to support payments made in the program in accordance with department reporting requirements in this chapter and in the grant conditions 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 and other assets.

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

(d) Procedures for determining the eligibility and cost-effectiveness of installation expenses 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 all of 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 all of the following documentation:

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

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

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

d. Request for reimbursement by a landowner or land operator documenting costs incurred directly or for in-kind contributions by the landowner or land operator.

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

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

(f) A systematic method to assure timely and appropriate resolution of audit findings and recommendations by the department under s. NR 120.26.

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

(h) An identification of the least cost practices.

(2) REPORTING REQUIREMENTS. (a) *Annual reports.* During the project implementation period, nonpoint source grantees shall report to the department an annual accounting for accomplishments regarding its activities funded under the nonpoint source grant and shall report the amount of interest accrued and expended as required under s. NR 120.22 (1).

(b) *Periodic reports.* The department may require more frequent progress reports than those required under par. (a) from a nonpoint source grantee which document accomplishments regarding its activities funded under nonpoint source grants.

(c) *Final project report.* The department, with assistance from DATCP and the appropriate local units of government, shall prepare and publish final priority watershed and priority lake project reports when required to do so by the joint program evaluation plan adopted by the land and water conservation board.

Note: A document detailing the reporting requirements required under pars. (a) to (c) may be obtained, at no charge, from the Bureau of Watershed Management. Department of Natural Resources, Box 7921, Madison, WI 53707.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

NR 120.26 Record retention and auditing. (1) RECORD RETENTION REQUIREMENTS. (a) The governmental unit or its agent's records and the records of contractors, including professional services contracts, shall be subject at all reasonable times to inspection, copying and audit by the department.

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

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

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

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

4. Cost-share agreement records shall be kept for the duration of the maintenance period of the cost-share agreement with the longest maintenance period to enable the governmental unit to fulfill its responsibility under s. NR 120.05.

(c) The governmental unit or its agent or contractors of the governmental unit shall preserve and make all of 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.

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

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

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

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 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 by certified mail, return receipt requested, requiring the grantee to stop all, or any part of the project work for a period of not more than 45 days after the order is delivered to the grantee, and for any extended period to which the parties may agree.

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

1. A description of the work to be suspended.

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

3. Guidance for action to be taken on contracts.

4. Other suggestions to the grantee for minimizing costs.

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

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

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

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

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 all of the following conditions are met:

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.

2. The grantee asserts a written claim for an 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) 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.

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

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

(d) 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.

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

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

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

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

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

(f) Upon termination, the grantee shall refund or credit to the department that portion of the grant funds paid or owed to the grantee and allocable to the terminated project work, except an amount as may be required to meet commitments which became enforceable prior to the termination. The grantee may not make

any new commitments without department approval. The grantee shall reduce the amount of outstanding commitments insofar as possible and report to the department the uncommitted balance of funds awarded under the grant.

(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 GOVERNMENTAL UNITS. Suspension or termination of a grant or portion of a grant under this section may not relieve the grantee of its responsibilities under ss. NR 120.03 and 120.05.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

NR 120.28 Enforcement. (1) On an annual basis, the department shall evaluate watershed projects in implementation. During the evaluation, the department shall examine the progress of the watershed project toward project goals and water quality objectives specified in the watershed plan. Upon consulting with the project sponsor, the department may take appropriate action to improve the progress of the watershed project. Department action may include, but is not limited to, more frequent project evaluation, the use of interim project goals, changes to project funding, and the adoption of sanctions listed in sub. (2), when the project is in noncompliance with the priority watershed or priority lake plan.

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

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

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

(c) Payment otherwise due the grantee of up to 10% may be withheld if the conditions of s. NR 120.23 (1) (c) are met.

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

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

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

(3) If a site has been designated as a critical site, the provisions of ss. NR 120.08 and 120.09 have been met, and the owner fails to install best management practices or reduce the pollutants contributed by the site through alternative actions, the department may issue a notice of intent, in accordance with s. 281.20 (1), (3) and (5), Stats., if the pollution is not caused by animal waste. If the site is caused by animal waste, enforcement shall be in accordance with the provisions of ch. NR 243. The department shall consult with DATCP when the source of pollution from the site is agricultural.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

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

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.

NR 120.30 Annual report. The department, jointly with DATCP shall annually prepare the report on the progress of the program required in ss. 281.65 (4) (o) and 92.14 (12), Stats. Specific requirements concerning the content of this report shall be in a joint program evaluation plan to be prepared by the department, jointly with DATCP and approved by the land and water conservation board.

History: CR 00-028: cr. Register September 2002 No. 561, eff. 10-1-02.