

Chapter NR 120

NONPOINT SOURCE WATER POLLUTION
ABATEMENT PROGRAM

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

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

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

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

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) "Technical guide" means the Wisconsin SCS technical guide (July 1978). Copies may be inspected at the offices of the department, the secretary of state and the revisor of statutes.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

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

(1) Develop agreements where appropriate with federal, state and regional agencies to accomplish the purposes and objectives set forth in s. 144.25, Stats., and this chapter.

(2) Prepare priority watershed plans as described in NR 120.08.

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(3) Evaluate the overall nonpoint source water pollution abatement program and make periodic recommendations to the governor and legislature for statutory changes in the program.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

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

Note: It is the intention of the department to enter into an interagency agreement with the BSWCD to define the working relationship between the 2 agencies for the nonpoint source water pollution abatement program. The single asterisks throughout these rules indicate areas in which the department intends to investigate a role for the BSWCD.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

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

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

- (a) Each of the designated planning agencies,
- (b) The soil and water conservation districts,
- (c) The agricultural stabilization and conservation service of the U.S. department of agriculture,
- (d) The farmer's home administration of the U.S. department of agriculture,
- (e) The statistics and cooperative service of the U.S. department of agriculture,
- (f) The forest service of the U.S. department of agriculture,
- (g) The university of Wisconsin extension,
- (h) The environmental protection agency,
- (i) The soil conservation service of the U.S. department of agriculture,
- (j) The Wisconsin department of administration,
- (k) The Wisconsin department of agriculture trade and consumer protection,
- (l) Two representatives of the local agricultural interests to be nominated jointly by the national farmers organization, the Wisconsin farm bureau federation, the Wisconsin farmers union and the Wisconsin state grange.
- (m) Two representatives of the local urban interests to be nominated jointly by the league of Wisconsin municipalities, the Wisconsin alliance of cities, and the Wisconsin association of public works, and

(n) Any other members appointed by the governor.

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

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

(a) The selection of priority watersheds.

(b) The selection of problems or projects for cost-sharing grants in nonpriority areas.

(c) The allocation of cost sharing monies among priority watersheds and nonpriority area projects within the direction set out in s. 144.25 (6) (g), Stats.

(d) Needed overall program policy and administrative rule changes as indicated by program evaluation.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 120.06 Role of the designated management agency. (1) The designated management agency identified in the areawide water quality management plan pursuant to section NR 121.05 (l) (n), Wis. Adm. Code, shall be responsible for local implementation of the nonpoint source water pollution abatement program including the following activities:

(a) Assist or lead in the development of priority watershed plans.

(b) Recommend to the department revisions to the areawide water quality management plan to allow for new technologies, land use changes or other significant changes.

(c) Carry out an education and information program aimed at water quality/land management needs identified in the priority watershed plan.

(d) Administer the cost-sharing element of this program at the watershed level including processing sign-ups, approvals, authorization of payments, and maintenance of adequate records.

(e) Develop and implement procedures for certification in installation, operation and maintenance of best management practices, including the requirements specified in NR 120.11 (5).

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

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

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

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

(j) Provide technical assistance including:

1. Coordinate technical input into priority watershed plans.
2. Prepare the cost-sharing agreement for each grant applicant in the program.
3. Determine specific needs, design and layout the installation of best management practices agreed to in the cost-sharing agreements.

(2) The designated management agencies may carry out the provisions of this section by direct activities or by delegation to other agencies or units of government.

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

(4) In the event a designated management agency does not agree to assume the responsibilities in NR 120.06 (1), funding shall not be made available to the area served by that designated management agency.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

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

(1) **INITIAL SCREENING.** The department shall develop an initial screening process.

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

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

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

1. **Water quality.** The water quality factor identifies the types of water bodies and their water quality conditions. This factor consists of 2 parts, lakes and streams.
2. **Land management.** The land management factor assesses land uses within a watershed based on the feasibility for improving water quality through the application of best management practices.

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

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

(2) **LOCAL SCREENING AND RECOMMENDATION.** Annually the top 25% of the watersheds, based on the initial screening, are equally eligible for further consideration.

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

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

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

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

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

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

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

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

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

5. Undue restrictions on public access.

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

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

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

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

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

(e) Undue restrictions on public access.

(f) Locally indicated priorities.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

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

(2) The priority watershed plan shall consist of:

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

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

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

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

(e) A mapping of priority management areas.

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

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

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

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

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

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

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

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

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

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

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

- (a) Identified in areawide water quality management plans.
- (b) Directed at critical water quality/land management needs identified by the designated management agency or agencies.
- (c) Located in the priority management area as defined in NR 120.02.
- (d) Located in a watershed not likely to receive priority watershed funding in the near future.

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

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

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

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 120.10 Eligibility and application procedures. (1) **PRIORITY WATERSHED ELIGIBILITY.** (a) A priority watershed shall qualify for continued cost-sharing funds for 3 years following certification as described in NR 120.08 if the following conditions are met:

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

2. At least 75% of the land owners or land operators in the priority management area or 75% of the land in the priority management area is committed to entering into cost-sharing agreements within 2 years of certification. Alternatively, within 2 years of certification, cost-sharing agreements are committed to by land owners or land operators to implement practices which will provide 75% control, as defined in the priority watershed plan. If this does not occur future commitments for funding in the watershed may be curtailed.

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

(2) **GRANT APPLICANT ELIGIBILITY IN PRIORITY WATERSHEDS.** Provided the best management practices to be installed are on lands within the boundaries of the priority management area of a priority watershed during its eligibility period, the landowner or land operator of that property is eligible to become a grant applicant.

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

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

(4) **PRACTICES ELIGIBLE FOR INCLUSION IN COST-SHARING AGREEMENTS.** (a) Funds available through this program shall be used to share in the cost of installing best management practices identified in priority watershed plans or in areawide water quality management plans, when these practices are installed explicitly to meet the objectives of such plans.

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

(c) Procedure for substituting best management practices. 1. These practices must be reviewed and approved by the designated management agency and the department's designee. The department's designee shall notify the department of any practices approved for substitution.*

2. Standards and specifications and design criteria for substitute management practices shall be provided by the department or its designee on a case by case basis.*

3. Cost-sharing rates for substitute best management practices shall be established using the procedure set out in NR 120.12.

(5) **BEST MANAGEMENT PRACTICES NOT ELIGIBLE FOR COST-SHARING.** Best management practices to control pollutants from the following nonpoint source activities are not eligible for cost-sharing:

(a) Mining.

(b) Construction (on privately owned lands).

(c) Silviculture (excluding farm woodlots).

(d) Small scale onsite human domestic waste disposal.

- (e) Dredging.
- (f) Practices installed primarily for flood control purposes.
- (6) Application approval process.

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

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

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 120.11 The cost-sharing agreement. (1) The cost-sharing agreement is a contract establishing the conditions and considerations under which a grant recipient agrees to cooperate with a designated management agency to achieve the water quality objectives of a certified priority watershed plan, or accepted water quality objectives where a certified priority watershed plan does not exist.

(2) The designated management agency and the land owner, land operator or municipality shall be parties to the agreement.

(3) The agreement shall contain or describe: (a) The name and address of the grant applicant and land owner (if other than applicant).

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

(c) The schedule for applying the practice and an estimated cost.

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

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

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

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

(h) Agreement on the part of the designated management agency to provide appropriate technical assistance during the expected life of the best management practice.

(i) A nondiscrimination clause.

(4) Duration of the agreement. (a) The installation phase of the agreement shall not exceed 5 years.

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(b) The operation and maintenance phase of the agreement shall extend to the normal expected life span of the management practice as specified in the technical guide.

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

(b) If a practice is rendered ineffective during its life span due to action or neglect by the grant recipient the full amount of cost-shared funds shall be repaid to the state by the grant recipient.

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

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

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

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 120.12 Cost-sharing rates. (1) Financial assistance may be used to share in the cost required for the installation of best management practices that are listed in cost-sharing agreements under the conditions set forth in s. 144.25 (6) (f), Stats.

(2) Eligible costs. Financial assistance may be used to share in the installation costs of best management practices.

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

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

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

2. Are normally and customarily used in the cleaning of streets and roads.

3. Have the drainage of land as the primary objective.

(4) Annually, the lead designated management agency shall review the cost-sharing rates for best management practices and may revise these rates within the limits prescribed by s. 144.25 (6) (f), Stats., considering the following criteria:

(a) The effectiveness in reducing pollutant discharge.

(b) Capital cost.

(c) Short-term economic return or other on-site benefits to the grant recipient.

(d) Relationship of the best management practice to customary operating practices.

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

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

(a) Adequate documentation exists that a 50% cost-sharing rate for the best management practice would place an unreasonable burden on an applicant, or that a 50% cost-sharing rate would be unreasonable due to the applicant's specific financial circumstances.

(b) The main benefits to be derived are related to improving water quality.

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

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

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

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

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

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

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

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

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 120.14 Program evaluation. (1) The department shall have the overall responsibility for program evaluation and shall after consultation with the state nonpoint source coordinating committee and the

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BSWCD, recommend program policy and administrative rule changes to the governor and legislature based on:

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

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

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

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

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

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

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 120.15 Resolution of administrative conflicts. In the event that conflicts which cannot be resolved by the appropriate staffs of the department and the BSWCD develop in the conduct of this program, the following procedure shall be used: a committee consisting of the chairman of the BSWCD or designee, the executive secretary of the BSWCD, the chairman of the natural resources board or designee, and the secretary of the department shall be convened for the purpose of resolving the identified conflicts.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

NR 120.16 Severability. Should any section, paragraph, phrase or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.