

c. 442 - irrigation system sprinkler; and

d. 614 - trough or tank.

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), and designed in accordance with standards approved by the department.

(20) 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 rain and snow from contacting manure.

(b) *Conditions*. 3. Cost-sharing may not be authorized for materials and labor for other structures or buildings.

4. The roofed structure may not be enclosed.

(c) *Standards and specifications*. 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) 288.4, 1990*.

Note: Copies of this publication are available for inspection at the central office of the Department of Natural Resources, and the offices of the Revisor of Statutes and Secretary of State.

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

3. The structure shall have sufficient ventilation.

(21) LIVESTOCK EXCLUSION FROM WOODLOTS. (a) *Description*. Livestock exclusion from woodlots is the protection of woodlots from livestock grazing by fencing or other means.

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

2. Livestock shall be excluded from the woodlot.

(c) *Standards and specifications*. SCS field office technical guide standards and specifications as of January, 1995:

1. 382 - fencing, and

2. 472 - livestock exclusion.

(21m) CATTLE MOUNDS. (a) *Description*. Cattle mounds are earthen mounds used in conjunction with feeding and dry lot operations and are intended to provide a dry and stable surface area for cattle.

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

a. To replace dry-lots or loafing areas that are identified as pollution sources.

b. To achieve shoreline and streambank protection in riparian zones where existing dry-lots and loafing areas are stabilized.

2. In cases where water resources are in close proximity to the animal lots, additional runoff control practices may be required.

3. Cost-sharing may not be provided for wind breaks associated with cattle mounds.

(c) *Standards and specifications.* 1. The animal lot meets current eligibility criteria identified in the watershed plan.

2. The proposed cattle mound provides water quality benefits which are verified by the BARNY model.

3. The cattle mound is an integral component of a comprehensive runoff control system.

4. The design and construction of the cattle mound is in accordance with standards approved by the department.

5. The grant recipient agrees to abandon all loafing areas or dry-lots, with the exception of approved pastures, and agrees to convert these areas to uses compatible with water quality goals. This provision shall be documented in the cost-share agreement.

6. The runoff from the cattle mound shall be treated to levels equivalent to barnyard runoff control systems.

Note: The preferable method is to have cattle mound runoff captured and treated within the filtration or containment system for the planned barnyard.

(22) **STRUCTURAL URBAN BEST MANAGEMENT PRACTICES.** (a) *Description.* Structural urban best management practices are source area measures, transport system and end-of-pipe measures designed to control storm water runoff rates, volumes and discharge quality. These practices will reduce the amount of pollutants carried in runoff and flows destructive to stream habitat. These measures include, but are not limited, to such practices as infiltration trenches, porous pavement, oil water separators, sediment chambers, sand filtration units, grassed swales, infiltration basins and detention/retention basins.

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

a. For engineering design, excavation, grading, mulching, seeding, necessary landscaping, piping, drop spillways and other measures required to construct the measure.

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

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

d. On a prorated basis, for a practice which serves to manage both water quality and unrelated water quantity problems.

2. Cost-sharing may not be provided for:

a. Land acquisition, storm sewer rerouting or removal of structures where such practices serve solely to solve drainage and flooding problems unrelated to the primary water quality improvement strategy in the watershed plan.

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 site-specific design criteria for each measure, to the degree practicable, in the watershed plan.

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 criteria 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, ground-water and wetland resources.

b. Consistency with water quality provisions of department approved plans, such as areawide water quality 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 subsd. 3. to 5. Any waiver shall be specifically described in the grant agreement or the cost-share agreement.

(23) **EFFECTIVE DATES FOR BEST MANAGEMENT PRACTICES.** The cost-share conditions and standards and specifications for all best management practices shall apply to all cost-share agreements signed after March 1, 1995.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; r. and rec. Register, November, 1989, No. 407, eff. 12-1-89; r. and rec. Register, February, 1995, No. 470, eff. 3-1-95; reprinted to restore dropped copy in (22), Register, June, 1995, No. 474.

NR 120.15 Alternative best management practices and design criteria. (1) **ALTERNATIVE BEST MANAGEMENT PRACTICES.** The department may approve alternative best management practices where necessary to meet the water resources objectives identified in the watershed plan. The department shall consult with DATCP regarding alternative agricultural best management practices. The department may identify in the nonpoint source grant agreement design criteria and standards and spec-

ifications; cost-share conditions; and cost-share rates for each approved alternative best management practice.

(2) **ALTERNATIVE DESIGN CRITERIA.** For best management practices described in s. NR 120.14, the department may 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. Register, June, 1986, No. 366, eff. 7-1-86; am. Register, November, 1989, No. 407, eff. 12-1-89; am. (1) and (2), Register, February, 1995, No. 470.

NR 120.16 Construction site ordinance. Where construction sites have been identified as significant nonpoint sources in a watershed plan, the enactment of a construction site erosion control ordinance shall be a condition of the nonpoint source grant agreement.

(1) **APPLICABILITY.** The ordinance shall apply, at a minimum, to construction activities not otherwise regulated by the department under ch. NR 216, or regulated by DILHR.

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

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

(b) Standards, criteria and other conditions to:

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

(c) Permit application and issuance procedures.

(d) Administration and enforcement procedures.

(e) Violation penalties.

(f) Appeal procedures.

(g) A provision requiring consistency with the best management practice provisions contained in the *Wisconsin Construction Site Best Management Practice Handbook*, WDNR Pub. WR-222, November 1993 Revision.

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

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (intro.), (1) (intro.), r. (1) (a) to (d), (2) (b) 2. to 4., cr. (2) (g), Register, February, 1995, No. 470.

NR 120.17 Practices not cost-shared. The following best management practices are not eligible for cost-sharing but shall be requirements included in cost-share agreements:

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

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

(3) Changes in crop rotation.

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

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

Register, June, 1995, No. 474

(6) Nonstationary manure spreading equipment.

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

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

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; r. (7) and (8), renum. (9) to be (7), Register, November, 1989, No. 407, eff. 12-1-89; am. (Intro.), (1), (2) and (6), renum. (7) to be (8) and am., cr. (7), Register, February, 1995, No. 470, eff. 3-1-95.

NR 120.18 Cost-share rates. (1) STATE COST-SHARE RATES. (a) State cost-share rates for individual best management practices are identified in Table 2. The cost-share rates for best management practices under cost-share agreements may use the rates identified in this section.

Table 2

Practice	State cost-share rate
Contour farming	50%*
Contour and field stripcropping	50%*
Reduced tillage systems for continuous row cropping and long rotations	50%
Reduced tillage systems for short crop rotations and forage and small grains establishment	50%
Nutrient management	50%
Pesticide management	50%**
Livestock exclusion from woodlots	50%
Intensive grazing management	50%****
Manure storage facilities - for first \$20,000 costs	70%*****
Manure storage facilities - for remaining costs	50%*****
Animal waste system storage abandonment	70%
Field diversions	70%
Terraces	70%
Grassed waterways	70%
Critical area stabilization	70%
Grade stabilization structures	70%
Agricultural sediment basins	70%
Shoreline and streambank stabilization	70%
Shoreline buffers	70%
Wetland restoration	70%
Barnyard runoff management	70%
Animal lot relocation	70%
Roofs for barnyard runoff management and manure storage facilities	70%
Structural urban best management practices	70%***
Milking center waste control	70%
Cattle mounds	70%
Lake sediment treatment	70%

* Wildlife habitat recreation has a state cost-share rate of 70%

** Spill control basins have a state cost-share rate of 70%

*** The maximum cost-share rate for land acquisition, storm sewer rerouting, and removal of structures necessary to install structural urban best management practices is 50%.

**** The maximum cost-share rate per watering system is \$2,000.

***** The maximum cost-share rate for manure storage facilities may not exceed \$35,000 total per facility. (See par. (2) (b) below for more detail).

(b) Counties may use locally determined U.S. department of agriculture's cost-share rates per acre as provided for in Agricultural Stabilization and Conservation Service (ASCS) Handbook, 1-WI (ACP), January 1994 or the following state cost-share rates per acre in lieu of the state cost-share percentages listed in Table 2.

1. \$6 per acre for contour cropping.
2. \$12 per acre for strip cropping.
3. \$10 per acre for field strip cropping.
4. \$45 per acre over 3 years for reduced tillage on continuous row croplands.
5. \$15 per acre for one year only for reduced tillage on crop rotations involving hay.
6. \$25 per acre for up to 3 years for cropland protection cover (green manure).

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

1. Critical area stabilization.
2. Grade stabilization structures.
3. Shoreline protection.
4. Roofs for animal lots and manure storage facilities.
5. Demonstration practices when approved by the department.
6. Animal lot relocation.
7. Shoreline buffers.
8. Wetland restoration.

(d) Funds and in-kind contributions of labor and material from other state programs used directly in the installations of best management practices may be considered part of the local matching share for best management practices described in par. (c).

(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 cost effective in improving safety, operation and maintenance or life expectancy of the practice or in providing greater control of pollutants or providing fish and wildlife habitat. 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) *Manure storage facilities.* The maximum cost-share for manure storage facilities may not exceed \$35,000 total per facility including manure transfer equipment which is an integral component of the system and is designed for that exclusive use.

Note: The higher \$35,000 total maximum state cost-share amount may only be available for a manure storage facility presently under an existing cost-share agreement which has not yet been certified as complete.

(c) *Relocation of buildings, structures and animal lots.* The maximum cost-share amount for relocation of buildings, structures and lots shall be 70% of the replacement cost up to the appraised value of the buildings, structures or lots to be replaced. Any salvage value or resale value realized during the maintenance period of the cost-share agreement shall be deducted from the appraised value and reimbursement for the cost-shared amount be made to the department.

(d) *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 up to a maximum of \$20,000.

(e) Governmental units may establish flat rates for the cost-sharing of fencing and critical area stabilization in order to simplify the administration of cost-share funds for these practices. Flat rates shall be based on 70% of average cost and installation of these practices.

(3) LOCAL SHARE. Funds from sources other than appropriations granted under ss. 20.370 (4) (cc), and (cg) and 20.866 (2) (te), Stats., including federal programs, may be used to provide the local share of project costs, as set forth in s. 144.25 (8) (i) and (j), Stats.

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

(b) The value of a conservation easement donated to the department, or to any person approved by the department under s. 144.25 (8) (m), Stats., may be considered as a portion of or all of the landowner's or operator's share of a cost-sharing grant.

(4) ECONOMIC HARDSHIP. (a) The rate and maximum amount paid to a landowner or land operator under a cost-share agreement may be exceeded only for manure storage facilities and barnyard runoff control systems with written approval from the department if the landowner or land operator can demonstrate economic hardship as defined in s. NR 120.02 (14). Under the provision of economic hardship, the following percentage payment rates and maximum payments will apply.

1. Manure storage facilities - for first \$20,000 costs	85%
2. Manure storage facilities - for remaining costs	75%
3. Barnyard runoff control systems	85%

(b) The maximum grant from the department for economic hardship cases for construction of manure storage facilities and barnyard runoff

control systems, at the rates established under par. (a) 1 to 3, may not exceed \$45,000.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1) (a), (b) (intro.), (c) (intro.), (2) (a) and (3), r. and recr. Table 1 and (2) (c), cr. (1) (c) 6. to 8., (d) and (2) (d), Register, November, 1989, No. 407, eff. 12-1-89; emerg. am. (2) (b), eff. 9-13-93; am. (2) (b), Register, April, 1994, No. 460, eff. 6-1-94; am. (1) (a), (b) (intro.), (c) (intro.), (d), (2) and (3), r. and recr. (1) (a) Table 2, cr. (1) (b) 6., (3) (b) and (4), Register, February, 1995, No. 470, eff. 3-1-95.

NR 120.185 Easements. (1) The department may enter into easements with landowners for lands identified in watershed plans. Easements, including donated conservation easements, shall be for a period of no less than 20 years. Easements may be used in conjunction with the following best management practices:

- (a) Critical area stabilization.
- (b) Shoreline buffers.
- (c) Wetland restoration.

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

(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.

(3) Upon acceptance of a donated easement under s. NR 120.18 (3) (b), the department shall appraise the easement and thereafter, 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 that is eligible for a local assistance grant under s. NR 120.21 for the purchase of easements in priority watershed areas.

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; renum. 120.185 to be (1), cr. (1) (d) and (2), Register, February, 1995, No. 470, eff. 3-1-95.

NR 120.19 Cost containment procedures. (1) Governmental units as grantors of cost-share agreements shall identify and agree to use one or more of the following cost containment procedures for each best management practice in the detailed program for implementation portion of the watershed plan.

(a) *Average cost.* Based on past cost information, a 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.

(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.

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

(d) *Maximum cost-share limit.* A governmental unit or the department establishes a maximum cost-share rate limit not to exceed the rates specified in s. NR 120.18 for installation of a best management practice.

(e) *Municipal work group.* A governmental unit hires or assigns its employees to install a best management practice for a number of landowners and land operators if the employees are able to perform the work 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 more effective than the cost containment procedures described in this subsection, it shall include the alternative in the detailed program for implementation portion of the watershed plan.

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

(4) A governmental unit shall develop a cost containment procedure to control in-kind contributions by landowners installing best management practices using their own labor or equipment unless in-kind contributions will not be utilized in the project.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1) and (3), cr. (4), Register, November, 1989, No. 407, eff. 12-1-89; am. (1) (Intro.), (d), (e), (3) and (4), r. (2), Register, February, 1995, No. 470.

NR 120.21 Local assistance grant agreement. (1) **PURPOSE.** The local assistance grant agreement is an agreement between the department and a state agency, governmental unit or an agent acting on behalf of a state agency, or governmental unit for providing funds for activities necessary for watershed plan preparation, ordinance development and administration, information and education, demonstration practices, easement acquisition and administration, educating and training staff and implementation of the priority watershed project and requiring additional staff, increased hours of existing staff or requiring the grantee to incur direct costs. A local assistance grant may be used to support activities that have program or statewide impact including education and training activities; such as public meetings and mailings, newsletters, tours, and other activities determined by the department to support program objectives.

(2) **GRANT PERIOD INITIATION.** No local assistance grant agreement pertaining to a specific priority watershed plan may begin before the selection of the nonpoint source priority watershed project.

(3) **APPLICATION PROCEDURES.** The grantee shall apply for local assistance grant funds on forms provided by the department. Funding shall be provided based on activities identified in the annual or periodic work

plans submitted by the grantee. Applications shall be submitted according to the following requirements.

(a) Grantees, except counties, shall submit an application for a grant or grant amendment and a work plan to the department. The department shall notify the grantee regarding approval or disapproval of the work plan within 60 days.

(b) Counties shall submit draft annual work plans and grant amendment applications in accordance with the procedures developed by DATCP in ss. ATCP 50.50 and 50.53 and the department.

(c) The grant amount may be reduced by the department if the grantee has not expended all of the previously awarded funds by the end of the current funding period. The grantee shall provide an estimate of unexpended funds at the request of the department.

(4) **ELIGIBLE COSTS.** The following costs are eligible for a local assistance grant for a priority watershed project:

(a) The following costs are eligible for 100% cost sharing:

1. Labor required by the grantee to carry out the activities listed in subd. 1. a. to s. The following activities may be eligible for grant assistance provided additional staff or increased hours of existing staff are required to plan or implement a project. The grant assistance for supporting additional staff positions or increased existing staff hours of the state agency, governmental unit or agent shall be based on rates not exceeding appropriate rates for state agency, governmental unit or agent employees including salary and fringe benefits.

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

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

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

d. Designing best management practices;

e. Installing and verifying best management practices;

f. Reviewing best management practice operation and maintenance;

g. Preparing information and education materials;

h. Developing and conducting demonstrations, tours and other education activities;

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

j. Project management;

k. Performing the inventories for the watershed plan;

l. Preparing other plan components as determined by the department;

m. Preparing and administering a construction site erosion control and storm water management ordinance, and a manure storage ordinance under s. 92.16, Stats.;

n. Administration of easements defined in s. NR 120.185;

o. Fiscal management;

p. Designing components of stormwater plans for urban development;

q. Conducting engineering feasibility studies for existing development for urban structural practices that are needed to achieve the water quality goals stated in the watershed plan; and

r. Evaluating alternatives for local financing of storm water management programs; and

s. Administrative costs associated with initial establishment of local funding programs such as storm water utilities.

2. Work hours of additional staff may be used to offset the work hours spent by existing staff on the project. Reimbursement shall be based on the additional staff costs not the cost of existing staff work hours spent on the project.

3. Professional services contracts for necessary activities the grantee lacks expertise or staff to complete.

4. Information and education activities approved by the department.

5. Training of staff approved by the department.

6. The nonpoint source program's share of the single audit costs.

7. The cost of testing materials for use in best management practice design, installation or operation.

8. Travel expenses including mileage charges, vehicle leases, meals, lodging and other reasonable travel expenses necessary to the project.

9. The cost of additional office space required because of the additional staff hired for the project.

10. The cost of recording the cost share agreement with the county register of deeds.

11. Other direct costs necessary for the project and approved by the department.

12. Staff, staff support and other direct costs for work having a program or statewide impact, as approved by the department.

(b) The following costs are eligible for 70% cost sharing.

1. Computers and appurtenances necessary for the project at 70% cost sharing if needed primarily for the project. If use will be less than 75% on the project, cost sharing shall be prorated based on percent use on the project. Computer purchases for counties will be approved in consultation with the DATCP and SCS after consideration of the counties overall land conservation office needs.

2. Office equipment and office furnishings including desks, chairs, calculators, drafting equipment, copy machines and file cabinets necessary for the project or additional staff.

3. Field equipment necessary for the project.

4. Office supplies including paper, copies, printing and postage, necessary to support staff and the project.

(c) 1. To be eligible, core urban program activities, other than construction site erosion control ordinances, shall be initiated within 3 years of the date the department approves the watershed plan or applicable plan amendment. Construction site erosion control ordinances shall be adopted within 2 years of watershed plan approval.

2. Eligibility for urban storm water management activities identified for assistance in a priority watershed or priority lake area plan may not be affected as a result of such activities being included as requirements in a municipal WPDES storm water discharge permit.

(d) The following costs are not eligible for funding under local assistance grant agreements and shall be carried out by the governmental unit as part of its commitment to the project:

1. Direct costs for other items not listed as eligible for 100% or 70% cost sharing.

2. Costs to perform periodic inspections beyond the grant period.

3. Indirect costs.

(6) **REVIEW OF CONTRACTS.** If a governmental unit contracts with a government agency or person to provide field, administrative, planning or other services to carry out activities of the local assistance grant agreement, the contract shall be submitted to the department. Contracts greater than \$10,000 shall be submitted for review and approval prior to signing.

(7) **REPORTING REQUIREMENTS.** (a) Grantees, except counties, shall report to the department quarterly accounting for staff time and accomplishments regarding its activities funded under this section.

(b) Counties shall submit quarterly project management reports to DATCP required under s. ATCP 50.40 (4) accounting for staff time, expenditures and accomplishments regarding its activities funded under this section.

Note: A document detailing reporting requirements may be obtained, at no charge, from the Bureau of Community Assistance Management, Department of Natural Resources, Box 7921, Madison, WI 53707.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1), renum. (2) and (4) to be (2) (a) and (6) and am., cr. (2) (b), (4), (5) and (7), r. and recr. (3), Register, November, 1989, No. 407, eff. 12-1-89; am. (1), (2), (3) (b), (c), (4) (a) 1. intro., c., j., m., n., (4) (a) 2., 5., 10., (b), (7) (b), cr. (4) (a) 1. o. to s., (4) (c) 1., 2. and (d) 3., renum. (4) (c) to be (4) (d), Register, February, 1995, No. 470; reprinted to correct printing errors in (4), Register, June, 1995, No. 474.

NR 120.22 Interest earned on nonpoint source grant advances. Interest earned on the average balance of nonpoint source grant advances shall be used to support the implementation and administration of the nonpoint source priority watershed project. The governmental unit shall calculate the interest earned in an equitable manner but may utilize methods such
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as average account balances and interest earned over a period of time to determine the amount of interest to be credited to the project. It may be used to support project costs that are not funded. Interest earned that is not used on the project shall be returned to the department.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; r. and recr. Register, November, 1989, No. 407, eff. 12-1-89.

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

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

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

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

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

(b) State agencies 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 Assistance Management, Department of Natural Resources, Box 7921, Madison, Wisconsin 53707.

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

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

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

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

5. If a reimbursement request exceeds \$40,000 for a partially completed structural urban best management practice described in s. NR 120.14 (22), documentation of costs incurred is required at the time reimbursement is requested.

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

(c) The department may advance monies to governmental units prior to best management practice installation. The amount of the advance necessary shall be proposed in the annual or periodic workplan submitted as required in s. NR 120.21 (3) and determined by the department. The amount of the advance may not exceed the amount of the grant.

(3) LOCAL ASSISTANCE GRANT AGREEMENTS. (a) Local assistance grant agreement grantees, except counties, shall submit reimbursement requests on forms provided by the department on a schedule determined by the department. Eligible costs listed in the local assistance grant agreement incurred during the period covered by the reimbursement request shall be included in the request.

(c) The department may advance monies to local assistance agreement grantees.

(d) Failure to submit reports on schedule as required by s. NR 120.21 (7) may result in withholding of grant payments.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (2) (b) (intro.) and (3) (a), renun. (3) (b) to be (3) (c), cr. (2) (b) 6., (3) (b) and (d), r. and recr. (2) (c), r. (4), Register, November, 1989, No. 407, eff. 12-1-89; am. (2) (a), (b) 2., 5., 6; (c), (3) (a), (c), r. (3) (b), Register, February, 1995, No. 470, eff. 3-1-95.

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:

(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; and

(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 \$10,000.

(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 such 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. Register, June, 1986, No. 366, eff. 7-1-86; r. and recr. Register, November, 1989, No. 407, eff. 12-1-89.

NR 120.25 Governmental unit 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:

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

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

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

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

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

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

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

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

a. Approval of best management practices and cost-share amounts by the 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) Accurate and complete time reports for all employees working on the project.
 - (g) A systematic method to assure timely and appropriate resolution of audit findings and recommendations by the department.
 - (h) A final accounting of project expenditures submitted to the department within 120 days of the completion of all watershed project work.
 - (i) Accurate and complete time reports for all employees working on the project.
 - (j) The best management practices available to control nonpoint sources of pollution.
 - (k) An identification of the least cost practices.
- (2) 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.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am., (1) (intro.), (e) 3. a., d. and f., (2) (intro.), Register, November, 1989, No. 407, eff. 12-1-89; am. (1) (intro.), (e) 3. intro., a., b., f., (h) and (2) (c), cr. (1) (i) to (k), Register, February, 1995, No. 470, eff. 3-1-95.

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.

(am) Governmental units required to have a single audit based on receipt of federal funds shall include local assistance grants within the scope of such examinations.

(b) The governmental unit or its agent or contractors of the governmental unit shall preserve and make all records available to the department:

1. For 3 years after the date of final settlement; or
2. For a longer period if required by statute or contract; or

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

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 the following records available to the department until any appeals, litigation, claims or exceptions have been finally resolved:

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

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

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

(b) The department 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.

(3) FINAL PROJECT REPORT. The department with assistance from DATCP and local units of government, shall prepare and publish a final project report within 18 months of the end of the grant period.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1) (a), (b) (intro.) and (c) (intro.), cr. (1) (am) and (b) 4., Register, November, 1989, No. 407, eff. 12-1-89; am. (1) (a), (am), (b) 4., (c) 2., (2) (b)., cr. (3), Register, February, 1995, No. 470, eff. 3-1-95.

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

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

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

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

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

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

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

4. Other suggestions to the grantee for minimizing costs.

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

2. Within the suspension period the department shall either:

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

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

c. Authorize resumption of work.

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

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

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

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

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

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

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

agreement or unilaterally terminate the grant pursuant to par. (c). The grant termination becomes effective on the date the grantee ceases project work. If the department determines that a grantee has ceased work on the project without good cause, the department may unilaterally terminate the grant pursuant to par. (c) or annul the grant pursuant to par. (d).

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

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

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

(d) The department may annul a grant if:

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

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

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

(e) Upon termination, the grantee shall refund or credit to the department that portion of the grant funds paid or owed to the grantee and allocable to the terminated project work, except such an amount as may be required to meet commitments which became enforceable prior to the termination. The grantee may not make any new commitments without department approval. The grantee shall reduce the amount of outstanding commitments insofar as possible and report to the department the uncommitted balance of funds awarded under the grant.

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

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

(4) **RESPONSIBILITIES OF GOVERNMENTAL UNITS.** Suspension or termination of a grant or portion of grant under this section may not relieve the grantee of its responsibilities under in ss. NR 120.04 and 120.05.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86.

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

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

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

(3) Payment otherwise due the grantee of up to 10% may be withheld under s. NR 120.23 (1) (c) 1.;

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

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

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

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86.

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

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. Register, November, 1989, No. 407, eff. 12-1-89.

NR 120.30 Annual report. The department, jointly with the DATCP shall annually prepare the report on the progress of the program required in ss. 144.25 (4) (o) and 92.14 (12), Stats. The report shall consider land management and water quality criteria in the evaluation of program progress. The report shall include information derived from watershed plans, annual work plans or other related activities.

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; am., Register, February, 1995, No. 470.

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