

B56 Comment: (individual) This measure provides a good way that urban people, farmers, and conservationists can go to the legislature and the people that reauthorize the Farm Bill and say, "fund these programs." Even though this is a bad time for dairy prices, one of the promising opportunities is more money for green payments. There's about 43,000 acres backlogged in the riparian corridor program in Wisconsin, according to NRCS, 8,000 acres backlogged in the wetland reserve program, 97,000 acres of contour strips backlogged — there's a lot of demand for farmers to be involved in these programs.
Response: We agree that conservation payments are important.

B57 Comment: (farmer) I would like to bring up the importance to the environment of the use-value assessment being discussed concerning the state's farmland. Once fragile land is gone, it's gone forever.
Response: These rules do not address use-value.

B58 Comment: (agricultural crop consultant) Federal farm programs for the last 60 years encourage maximum production. They try to tie environmental programs to the entitlement programs that really do not make a lot of sense in the farmer's mind. You really need to separate federal farm programs from environmental compliance. They should eliminate federal farm programs and pay farmers directly for environmental compliance.
Response: The department does not have authority to change federal programs.

B59 Comment: (farmer) If a person is required to install a rain gutter as a cost-share practice, if that happens to be torn off is that replaced? Is there funding to replace those again? What if it is damaged by a weather event?
Response: There is provision for cost-share funds to replace them.

B60 Comment: (farmer) New and existing operations with animal units under 1,000 head should be eligible for cost sharing under any and all conditions.

B61 Comment: (farmer) All farms regardless of whether they are new and existing operations or regardless of how many animal units they have, should be eligible for cost sharing

B62 Comment: (WI Agri-Service Assn., WI Pork Producers, WPVGA, WI State Cranberry Growers) The distinctions drawn between large and small farms must be eliminated, especially those that limit or eliminate cost sharing for large farms. These distinctions are inconsistent with the enabling statute and result in unequal protection of the laws among persons in the same class (all farmers).

Response: New or existing facilities and practices, including those with less than 1,000 animal units, are eligible for cost sharing, unless they are required to obtain a WPDES permit. However, for new facilities and practices, cost sharing is not required in order to enforce compliance with the performance standards and prohibitions. Operations required to obtain a WPDES permit are considered point sources and are not eligible for cost sharing under s. 281.65, Wis. Stats, for activities covered under the WPDES permit.

B63 Comment: (farmer) The requirement that new operations have to be constructed to meet performance standards immediately and without funding really defeats family farming and minimizes the number of young people who would enter into a new farming operation.

B64 Comment: (farmer) These proposed cost-sharing eligibility requirements eliminate financial support for new family farms, thus making it next to impossible for young farmers to get started because of the additional financial burden.

Response: It should be noted that a new farming operation is not defined by a simple change of ownership. It must be an operation where either no agriculture existed before or where there is a substantial change in the type of agriculture practices — for example changing from hogs to dairy. Even there, cropping practices would not be affected. A daughter or son that wishes to continue a farming operation practiced by a parent would not be considered a new operation and will continue to be eligible for cost-sharing. New operations, structures or practices are those that are installed or substantially altered after the date of rule promulgation and can be designed to meet the performance standards and prohibitions immediately upon construction without costly retrofitting. While cost-sharing is not required if enforcement action is needed to make a new operation, practice or structure meet a performance

standard or prohibition, it is still eligible for cost-sharing and may receive cost-sharing if deemed a high enough priority by the department and/or the county.

B65 Comment: (CWAC) We need to provide adequate dollars for these rules. The agricultural community is suffering, and farmers need help. We support the idea of means testing. Some large operations with absentee owners are quite wealthy. Taxpayers should not have to subsidize large operations. Most people would be happy to help small farmers that need more help. If that means most get 90% cost sharing, that is reasonable. Green Bay spent something like \$75 million to upgrade one sewage treatment plant. Our state can certainly muster \$75-\$80 million to help our farmers achieve water quality at their home sites.

Response: The amount of money available for cost-sharing BMPs will be determined by the legislature. With the current budget crises at the state level, it remains to be seen what resources will be allocated to this effort.

B66 Comment: (farmer) Everyone should get help. Small farmers might need more help than big farmers, not necessarily in money. Because small farms are not regulated, they're slightly out of touch.

Response: Small farms may be regulated under these performance standards and prohibitions because they apply to all sizes of operation. As a requirement of regulation however, these operators must be offered cost-sharing and will be offered technical assistance as well.

B67 Comment: (farmer) I'm very concerned on how you write exclusions to cost-share dollars. The way you have them now, you can exclude just about anybody.

Response: Cost-share eligibility is extensive under these rules.

B68 Comment: (farmer) We have only 2 kinds of farms in Wisconsin — permitted and not permitted. Some of us may expand, and some of us will stay the same. We don't need to go down the road of determining new or existing—how are you going to determine that? For about 90% of us, expansion comes because of a change in the family operation. The average age of Wisconsin farmers is 55-plus years — we don't want to be sending a negative signal to the younger generation. Let's be cautious when we look at these expanding operations because there are real reasons why we need to grow.

Response: Determinations of whether agricultural facilities and practices are new or existing will be made by DNR in accordance with the requirements of NR 151. The majority of new facilities and practices are eligible for cost sharing; however, cost sharing is not required for new facilities and practices in order to enforce compliance with the standards. Much of the requirement to provide cost sharing for existing facilities and practices is intended to offset the cost of retrofitting and is not designed to fund farm expansions. New facilities should be constructed to meet the performance standards and shouldn't require the retrofitting expenditures. Given limitations on funding, it would be impossible to cost share all new facilities and practices.

B69 Comment: (farmer) The rules are still confusing for those of us who are not eligible for cost sharing. When I read NR 151, it directed me over to NR 154.03, and I still could not find out exactly what you wanted me to do.

Response: NR 151 and NR 154 are only applicable for BMPs that DNR cost shares. ATCP 50, which specifies conservation practices to be used both with and without cost sharing, is the appropriate rule to refer to.

B70 Comment: (LCD) Regarding cost-sharing someone who failed to maintain a practice that we cost shared before, the language in the rules is unclear, and I hope you don't have to cost-share over and over.

Response: We do not have to cost share BMPs that are not maintained.

B71 Comment: (WAL) Funding for purchase of easements (and) buffer strips should be available to qualified non-profits as well as governments.

Response: Non-profits are authorized to hold title to easements, but only the local sponsor or governmental unit can receive a grant through the nonpoint program for the purchase of an easement.

The local sponsor can transfer ownership of the easement (assign) to the non-profit. Non-profits can apply for grants for the purchase of easements through the Stewardship Streambank Easement program.

B72 Comment: (LCD) The following is an example of the potential problems with the current proposal. An operator has 30 head of cattle located within 30 feet of the stream and is currently violating the manure management prohibitions. The rules say that we cannot force them to take action unless cost sharing is offered. What if the operator says that he/she wants to expand to 200 head? This would require a significant facility, of which we are required to provide 70% cost sharing. If we were given unlimited funds for cost sharing, then there is not problem, but if funding is limited like it has been in previous experience, we will be reluctant to offer cost sharing to this individual because it could deplete our funding for the year. As a result, the operator is not required to fix the problem due to lack of cost sharing, we have not improved the resources, and it makes us all look bad in the eyes of the public.

Response: While this issue may arise, it is unlikely. In this situation, the vast majority of costs will be borne by the operator (e.g., cattle, other housing structures, equipment, etc.). The costs to comply with the performance standards or prohibitions could be relatively small in comparison. The cases where cost sharable expenses are high will be very few and the benefits of allowing most small expansions to occur with cost sharing outweigh the risks.

B73 Comment: (LCD) The largest problem I have with the rule package as proposed is that nothing can be done unless cost sharing is made available. This is a great weakness in this set of rules.

Response: The cost-share requirement is in state law, and the rule must be consistent with the state law.

Environmental Assessment

B74 Comment: (turf co.) While Roger Bannerman (DNR) has conducted good work measuring contributions from streets and hard surfaces of phosphorus in urban runoff, we find the methodology he used to measure phosphorus runoff from lawns less than acceptable from an agronomic standpoint. The sampling devices employed in lawns were scientifically flawed and did not measure actual runoff from turf but simply gave mere indications of a natural phosphorus cycle that occurs within the turf environment. Any conclusions drawn from such techniques must be discounted and should not be used in the development of public environmental policy.

Response: The research conducted by Roger Bannerman was designed to measure runoff from real life situations. Residential lawns vary with homeowner effort. A number of lawns were sampled using widely accepted monitoring equipment and techniques. The testing provided information on the relative importance of lawns in contributing phosphorus to local water resources. While the runoff from these lawns may be low, the number of acres of pervious area can be half the total area in a watershed, so the pollutants from this source area can be the highest load for any given watershed. The research done at the university for agronomic purposes was conducted under ideal conditions, including a significant amount of topsoil under the sod. We do not dispute that the amount of runoff is lower on a per acre basis from pervious areas than from all other source areas. However, when conducting statewide or watershed wide planning efforts, this source is still significant and DNR's data is valid in this context.

B75 Comment: (city public works dept.) The code, especially the infiltration performance standard, encourages sprawl development. The impacts of sprawl on the transportation system should be acknowledged in the environmental assessment. These costs include the cost of improving additional roads from cities to the fringe developments and the incremental energy costs that can be expected to be incurred from increased trip generation from these developments to urban centers. Increased amounts of road surfaces in a contiguous development should be addressed in the environmental assessment (i.e., additional roadway per housing unit is encouraged by this code even in contiguous development).

Response: We disagree that the performance standards encourage sprawl. The infiltration standard was revised to reduce the amount of land needed. With creative planning, the BMPs may not require that any more land be set aside than municipalities already require for flood control. When municipalities required flood control to protect property, land was needed to meet this requirement. No one was pointing to that requirement as the cause of urban sprawl. Sprawl is a product of perceived economic advantage either to the landowner or the developer and occurs when development leapfrogs open space to locate beyond the

existing limits of a municipality. The rules do not encourage this kind of development. The impact to a municipality having to serve sprawl development, with adequate infrastructure, is significant and should be looked at more closely outside these rules. The impact of development, wherever it occurs, must be mitigated if the water resources are to be protected and that is the purpose of these rules.

B76 Comment: (LCD) While the EA states that performance standards are intended to be implemented by counties through local ordinances, very little is provided to recognize, much less encourage this.

Response: While the department encourages implementation through local ordinances, it does not have the authority to require them. We re-wrote the implementation section to simplify it, and we will further encourage local ordinances through the MOU process. We also developed the model ordinances in proposed NR 152 as a service to municipalities who wish to voluntarily adopt one or both of them.

B77 Comment: (WAL) Along with costs to individuals, the economic (recreational, tourism, health, aesthetic) benefits gained by having clean water in our communities should be mentioned.

Response: We have included these economic benefits in the EA.

B78 Comment: (WAL) Important issue: "Phosphorus is a particular problem in Wisconsin because 77 percent of the state's soils have tested high or excessively high in phosphorus concentrations."

Response: We agree that phosphorus is a problem.

- A General Comments
- B General Funding & Cost Sharing
- C NR 120 – Priority Watershed Management
- D NR 151, subch. I – General
- E NR 151, subch. II – Agriculture Performance Standards and Prohibitions
- F NR 151, subch. III – Non-agriculture Performance Standards
- G NR 151, subch. IV – Transportation Performance Standards
- H NR 151, subch. V – Technical Standards Development Process for Non-agriculture Performance Standards
- I NR 152 – Model Ordinance for Stormwater Management
- J NR 153 and General Grants Comments
- K NR 155 – Urban Nonpoint Source Water Pollution Abatement & Storm Water Management Grant Program
- L NR 154 – Best Management Practices & Cost Share Conditions
- M NR 216 – Stormwater Discharge Permits
- N NR 243 - Animal Feeding Operations

C NR 120

C1 Comment: (LCD) Many landowners are unwilling to participate in state conservation programs because of the requirement to record the cost-share agreement on landowner deeds. One way to protect the state's investment on structural practices other than as a deed instrument would be to allow the county to pass an ordinance protecting all structural conservation practices. Landowners would be required to receive LCD approval before any structural conservation practice could be removed or altered. Federal conservation programs do not see a need for nor require deed instruments.

Response: The department believes that deed recording is needed for two purposes. It is an effective mechanism to notify one purchasing the property that an obligation has been created binding any owner of the land to comply with the cost-share agreement. The department routinely fields information requests from title searchers indicating that this is an effective notification tool. Second, recording is needed to legally link the cost-share agreement requirements to the land. The department does not believe that local ordinances will, in and of themselves, serve to effectively notify potential buyers of cost-share agreement requirements. The department also believes that deed recording is the most effective mechanism to assure that a link is created to protect the state's interest in the management practices, as local ordinances may be amended over time and local ability to staff ordinance implementation may vary.

C2 Comment: (DATCP) NR 120.01(2). Note – Clarify whether tribal units of government are to be considered as urban grantees.

Response: According to 2001 WI Act 16 (budget bill), the Oneida Tribe is considered a rural grantee, complete with ACRA's from the DNR and LAG funding from DATCP. For other tribal grantees, the distinction is moot for this chapter, since they would fit in under either NR 153 or 155 (NR 120 being only for existing Priority Watershed grantees).

C3 Comment: (DATCP) NR 120.02(2). Modify "...Which is determined to be a cost-effective means..." as well as, "The practices, techniques or measures include such activities as land acquisitions..." This last modification is needed to avoid the interpretation that the BMPs only include the specific activities listed.

Response: This definition is verbatim from the statute, and cannot be modified by code.

C4 Comment: (DATCP) NR 120.02(15). It is not clear how this differs from a "best management practice". If there is an implied time element for the landowner to fully implement the BMP, that should be clarified.

Response: We clarified the language on how these two definitions differ in the rule.

C5 Comment: (DATCP) NR 120.02(18). Modify "...not funded through ss. 20.115(7)(c) and (qd), 20.370(6)(aa) and (aq) or 20.866(2)(te) and (we), or 92.14, Stats."

Response: We agree and changed the specific references to more generally reflect statutory language.

C6 Comment: (DATCP) NR 120.08(1)(c)1f. Modify "A projected grant disbursement and project management schedule."

Response: This comment is a moot point since all priority watershed plans have been completed to meet this criteria.

C7 Comment: (DATCP) NR 120.09(2). Modify "if the landowner has not ~~signed a cost share agreement~~ for agreed to implement the required best management practices...." Not all BMPs will require cost-sharing.

Response: This pertains to the verification process for critical sites and does not relate directly to whether cost-sharing has been offered or accepted. It is intended to be a screening mechanism. If a cost-share agreement has been signed then verification only has to be done on those parcels for which there is no agreement. The fact that there is no agreement doesn't mean that the ultimate solution will be a cost-shared practice.

C8 Comment: (DATCP) NR 120.12(2)(d). Modify "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 ~~annual workload analysis submitted to DATCP~~ 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."

Response: We have made the change that is stated in this comment.

C9 Comment: (WLWCA/WALCE, several counties) NR 120.12(2)(d). Delete this paragraph. We oppose having the rule "require" counties to perform inspections and annually report these activities to DATCP.

Response: This requirement has been in place since the inception of the Priority Watershed Grant program. DATCP is the authority on base funding allocations.

C10 Comment: (Co. Ext., LCD) NR 120.12(4). Priority watershed grant periods should remain at 10 years and not extend to 12 years.

Response: The grant period extension merely codifies the *Financing Plan for Priority Watershed Projects* adopted by the Land and Water Conservation Board.

(Comment cont'd.) Phasing out this program as originally intended would allow more funds to be allocated sooner to other statewide projects and programs as prioritized through the county LWRM plans.

Response: The statutory language of the appropriation funding the nonpoint program includes both the existing priority watershed program and the targeted runoff management program: the funds are allocated jointly to these two, and **only** these two, programs. Therefore, money not allocated to the priority watershed program remains available for the TRM program. By statute, the TRM program is to be competitive, where grants are required to be allocated on the basis of a stipulated scoring system; and, they are neither based upon, nor statutorily intended to fund, county LWRM plans.

C11 Comment: (DATCP) NR 120.12(5)(e). Modify "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, subject to paragraph (8) of this section."

C12 Comment: (DATCP) NR 120.12(8). Add a new sentence to the end of the paragraph: "The grantee is correspondingly relieved of the duty imposed under paragraph (5)(e) of this section, to the extent cost-sharing funds are reduced by the department."

Response: C11 and C12 relate to provisions concerning county-installed projects/BMPs, where the county is both the grantee and the recipient/landowner. They do not receive reimbursement unless they

have installed the practice; therefore, if they failed to install it, there would be nothing to return. And, they would, like any other recipient/landowner, be required to fulfill the O&M requirements of the code.

C13 Comment: (WI Pork Producers) NR 120.12(8). "The department may unilaterally reduce the nonpoint source grant to the amount necessary to meet budgetary limitations." There is no other place in the rules where the DNR could make this unilateral decrease in funding. No similar options exist for producers to make unilateral decisions of this type.

Response: Nonpoint (priority watershed program and TRM) grants are only made to units of government, in this instance, counties -- not to individual landowners/operators. In addition, cost-sharing of at least 70% of eligible installation costs must first be offered to a producer before the standards could be enforced (per statute).

C14 Comment: (DATCP) NR 120.13(3). The required parties to cost-share agreements with the DNR should be the same as those required for cost-share agreements with DATCP. At this time, DATCP requires that spouses be included as parties to the agreements, including amendments.

Response: We agree and made this change.

C15 Comment: (DATCP) NR 120.13(4)(f) and (4)(k). These two paragraphs seem to say the same thing. Combine them into one paragraph that makes the repayment of funds contingent on a significant increase in on-going pollutant loadings. See the comments made on NR 153.22(3)(k).

Response: We made the change to correct this redundancy of information.

C16 Comment: (DATCP) NR 120.13(4)(m). Modify "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."

Response: The landlord must meet critical site requirements without cost sharing if he/she does not accept a cost-share offer.

C17 Comment: (WLWCA/WALCE, several counties) NR 120.13(4m) We do not support changing approval requirements from \$50,000 to \$35,000 per practice and from \$100,000 to \$50,000 per contract.

Response: To be consistent with ATCP 50, we require that that the department review any cost-share agreement having a total cost-share rate of \$50,000 or more.

C18 Comment: (DATCP) NR 120.13(6)(c). Modify "...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, consistent with cropping rotations and other management practices identified in the approved conservation plan for the operation."

Response: There is no need to add this statement. The operation and maintenance should already take into account the cropping rotations and other practices.

C19 Comment: (DATCP) NR 120.13(7). Modify "...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, with the exception of extenuating circumstances beyond the control of the cost-share recipient (e.g., drought, flood, death of operator, etc.). The extenuating circumstances would need to be of the degree that would result in dire financial or other hardship for the cost-share recipient or, in the case of death, result in dire financial or other hardship for the remaining spouse or otherwise leave minor children and other dependents without adequate means of financial support. In the event of such circumstances, the cost-share recipient may ask the granting agency to forward a request to amend the cost-share agreement to change the terms of repayment. The department shall determine whether or not to approve the request, and may consider alternatives which range from an extension of time to complete the best management practice to forgiveness of the obligation to pay back the cost-share agreement amounts."

Response: We agree there may be extenuating circumstances that occur, but in these special cases a variance under s. NR 120.29 might be applicable here.

C20 Comment: (WI Pork Producers) NR 120.13(11)(b). The use of the word "may" instead "shall" is confusing in "...a governmental unit may fully release a landowner's property from the obligations of the cost-share agreement..."

Response: Using the word "may" indicates that it is the governmental unit's discretion to release the owner from this obligation. It allows the agency to judge whether releasing the owner from this obligation will cause a negative environmental impact. To use the word "shall" requires release even in cases where such release would have a negative environmental impact and in cases of negligence or lack of a good faith effort.

C21 Comment: (DATCP, WLWCA/WALCE and several counties) NR 120.14. NR 120 should not list eligible BMPs; instead, it should cross-reference the list of practices in ATCP 50, as is done in NR 153. Also, the standards for each practice should not identify specific dates but should refer to the design standard that is current as of the date of final publication of the rule.

Response: There are 63 active priority watershed projects representing millions of dollars in existing cost-share agreements that are directly tied to the BMPs in NR 120. Although some modifications will be made to those standards it is not desirable to fundamentally change the list of BMPs as would occur if we referenced those in ATCP 50. State administrative procedures require DNR to include specific reference dates for each of the standards in the rule.

C22 Comment: (WI Pork Producers) NR 120.14(1)(b)1. This leaves open the question of how wildlife habitat should be replaced. Will a producer have to install a tangle of briars and brush elsewhere on his property if same has to be removed to install the BMP? (Also applies to NR 120.18(1)(f)1)

Response: The department has a responsibility to protect other natural resources such as wildlife habitat when providing cost sharing for nonpoint source pollution control. If the destruction of habitat is significant, mitigation will be required. As a note, this mitigation would be eligible for cost-sharing.

C23 Comment: (NRCS) NR 120.14(3)(b). Regarding cost sharing for the installation of subsurface drains in stripcropping systems, where would subsurface drains be needed in stripcropping systems?

Response: The subsurface drains language was removed. The flows that exist for a contour or field stripcropping situation should not result in a need for subsurface drains.

C24 Comment: (NRCS) NR 120.14(4)(c) Why would NRCS FOTG Standard 7. 606 – subsurface drains; September, 1989, be needed for field diversions?

Response: It could be used for sloped areas or to divert flows from an erosive gully to a more stable area.

C25 Comment: (NRCS) NR 120.14(4)(c) Why would NRCS FOTG Standard 8. 620 – underground outlet; June, 1993, be needed for field diversions?

Response: There may be special cases where this provision will be used to reroute flows on unstable soils.

C26 Comment: NRCS noted several corrections to technical standards citations and additions or corrections to various technical standard references.

Response: All corrections were made.

NR 120.14(4)(c): deleted the reference to 356—dikes (not applicable);

NR 120.14(6)(c): added to the list NRCS FOTG Standard 620 Underground Outlet; June, 1993.

NR 120.14(11)(c): added to the list NRCS FOTG Standard 516 Pipeline; May, 1987; NRCS FOTG Standard 574 Spring Development; May 1987; NRCS FOTG Standard 614 Trough or Tank; September 1989

NR 120.14(12)(c): corrected the citation to NRCS FOTG Standard 725 Sinkhole Treatment; March 2000

NR 120.14(13)(c): deleted the following because they are not applicable: 13. 356 – dike; DATE TO BE ADDED and 14. 404 – floodway; DATE TO BE ADDED

NR 120.14(18)(c): corrected to NRCS FOTG Standard 657 Wetland Restoration; September 2000.

NR 120.14(21)(c): changed 1. 393 filter strip; January 1984 to NRCS FOTG Standard 635 Wastewater Treatment Strip; DATE TO BE ADDED

NR 120.14(22)(c): corrected citation to NRCS FOTG Standard 351 Well Decommissioning; April 1999.
NR 120.14(23)(c): deleted Standard e., 359, waste treatment lagoon; DATE TO BE ADDED
NR 120.14(24)(c): deleted Standard 3., 359 – waste treatment lagoon; DATE TO BE ADDED
NR 120.14(25)(c): changed first standard listed to NRCS FOTG Standard 635 Wastewater Treatment Strip; DATE TO BE ADDED; changed Standard e. to NRCS FOTG Standard e. 313 – Waste Storage Facility; September 1998.
NR 120.18(1)(g): deleted the reference to the ACP program that no longer exists.

C27 Comment: (WLWCA/WALCE, several counties) NR 120.14(7) The eligible number of years for which cost sharing can be provided for practices such as high residue management and nutrient management is inconsistent between 120.14, 120.18 and 154.03.

Response: The inconsistencies in 120.14 and 120.18 have been removed. The time periods difference between 154.03 and 120.18 cannot be the same due to statutory limits.

C28 Comment: (WI Pork Producers) NR 120.14(7)(b)4. This discourages continuous no-till and does not appear to be wise in areas where no-till is critical for maintaining erosion control, especially wind erosion. If you have to incorporate manure, it defeats the purpose of no-till.

Response: The blanket prohibition of not allowing surface application of nutrients associated with no-till systems has been removed in cases where an operation demonstrates compliance with the performance standard for nutrient management contained in s. NR 151.07. The prohibition on surface application of nutrients and manure would continue for operations that do not comply with the performance standard for nutrient management. Complying with the performance standard for nutrient management helps to ensure that manure and commercial fertilizer are being land applied appropriately under no-till systems.

C29 Comment: (WI Pork Producers) NR 120.14(8)(c). The NRCS reference to nutrient management plans (590) falls under DATCP, not DNR. Does this reference to 590 move us closer to a phosphorus based standard? This should be clarified.

Response: We will leave the current 590 standard in ch. NR 120 which is nitrogen based.

C30 Comment: (DATCP) NR 120.14(11)(b). Modify "This practice may also be eligible if an animal lot that adversely affects groundwater or surface water, provided the animal lot is ~~permanently abandoned~~, adequately addressed through the resulting reduction in animal manure and through use of any additional cost-effective best management practices (e.g., clean water diversions)." The current language creates disincentives for landowners to consider managed intensive grazing, since the animal lot at the barnyard would need to be permanently abandoned.

Response: Language was changed to reflect the above manure reduction and there are also provisions for erosion control through adequate sod or vegetative cover.

C31 Comment: (DATCP) NR 120.14(11)(b)2d. Modify to add: "...and electrical connections and supply..." to end of second sentence.

Response: The language was changed to reflect the suggested addition of electrical connections and supply, but must be limited to the immediate area being protected and should not be a means for a farmer getting a free electrical system for the farm.

C32 Comment: (Co. Ext., LCD) NR 120.14(15), SHORELINE AND STREAMBANK PROTECTION. The description should be modified as follows to be inclusive of a wide range of nonpoint pollution issues, not just livestock access: "Shoreline or streambank protection ~~stabilization~~ is the stabilization and protection of the banks of streams and lakes against erosion and the protection of fish and wildlife habitat and water quality from livestock access or other agricultural or non-agricultural activities."

Response: This description will stay as is, there is another practice that covers this.

C33 Comment: (Co. Ext., LCD) NR 120.14(15). Tree planting should be eligible if approved by county conservation department staff we well. Strike out the following words: "~~if approved by department fish manager.~~"

Response: We agree in part--instead of deleting the clause, we have inserted "if approved by the LCD in consultation with the department fish manager."

C34 Comment: (Co. Ext., LCD) NR 120.14(16), RIPARIAN BUFFERS. Modify the description to include maintenance (protection) of riparian buffers as part of this BMP as follows: "Riparian buffers are areas in which vegetation is maintained, enhanced or established to reduce...."

Response: The descriptions of the practices in NR 120 detail the installation of such practices. While maintenance is intrinsically tied to the success of a practice, maintenance requirements are covered under NR 120.13. As a point of clarification, it is not clear if this comment is intended to include maintenance in the practice description in order to require that cost-sharing is required for maintenance activities. Cost-sharing is only provided for the installation, not maintenance, of practices.

C35 Comment (Co. Ext., LCD) NR 120.14(16) Conditions should also include providing cost sharing consistent with other plans including the "County Land and Water Resource Management Plans and DNR Basin Plans."

C36 Comment: (Co. Ext., LCD) NR 120.14(16), NR 120.14(18) and NR 120.14(19). Other eligible practices need to be included in the cost-sharing list including the following: (16)d., (18)5. and (19)4. Conservation easements or land acquisition. (16)e., (18)6. and (19)5. Other practices or programs approved in County Land and Water Resource Management Plans."

Response: (16)d., (18)5. and (19)4.: s. 120.18 and 120.186 already provide for the acquisition (purchase & easement) of property for purposes of the chapter. (16)e., (18)6. and (19)5.: ch. 120 only applies to the priority watershed program, not to general county land management issues; and, it encompasses other activities than those contained in the LWRM plans.

C37 Comment: (WAL) NR 120.14(17). We are glad to see BMPs include inland lake sediment remediation, except dredging. Degraded lakes will not improve without attention to the accumulated nutrients being recycled within the system.

Response: Thank you for your comment.

C38 Comment: (Co. Ext., LCD) NR 120.14(18), WETLAND PROTECTION AND RESTORATION. Add the words "Protection and" to the title of the BMP, and change the wording of the description to include wetland protection and restoration, so the standard goes beyond just berm, tile and ditch work.

Response: If a wetland needs protection from a nonpoint pollution source, this can be accomplished by using other BMPs listed in this section.

C39 Comment: (Co. Ext., LCD) NR 120.14(19). SHORELINE HABITAT PROTECTION AND RESTORATION FOR DEVELOPED AREAS— Change the title to reflect a need to include protection-based strategies as well as restoration and remove the emphasis on "for developed areas."

Response: This is specifically directed toward areas that have the capability of improvement. In the less developed areas where a vegetative protection of water resources is needed, the practices that should be used are described in NR 120.14(16) Riparian Buffers or (15) Shoreline and Streambank Protection.

C40 Comment: (Co. Ext., LCD) NR 120.14(19). Modify the description as follows to include prevention/protection strategies that are important for many of the northern lake counties: "Shoreline habitat protection and restoration is the maintenance or 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 ~~design~~ practice seeks to maintain and restore the functions provided by the original, natural vegetation...."

Response: This change is not needed. Protection is included under Riparian Buffer.

C41 Comment: (Co. Ext., LCD) NR 120.14(19). Add the following statement to include protection strategies for existing shoreline habitats: "3. Protection. Where natural shoreline habitat continues to exist, these habitats need long term protection to prevent nonpoint source pollution from occurring. This practice may be implemented using such practices as cost sharing of permanent conservation easements,

land acquisition or other incentives or programs as defined in County Land and Water Resource Management Plans." Note: A good example of other types of practices that should be eligible for funding under this standard is the new, innovative Burnett County shoreline buffer incentives program.
Response: We disagree. We cover this under 120.186(1)(c).

C42 Comment: (Co. Ext., LCD) NR 120.14(19). Regarding accelerated recovery, add the following wording to address other impacted shoreline areas beyond those that are completely converted to mowed lawn: "...where grasses have been maintained for several years, or where one or more layers of natural vegetative cover have been removed."
Response: We made this change.

C43 Comment: (Co. Ext., LCD) NR 120.14(19). Practice design should not be listed as an ineligible cost. The cost of developing shoreline restoration plans should be a cost-shared practice. This will encourage more landscaping firms to become educated and promote shoreline restoration efforts overall.
Response: We agree and have deleted practice design from ineligible costs in this section.

C44 Comment: (Co. Ext., LCD) NR 120.14(19). Biologs should not be listed as an ineligible cost, although riprap should be ineligible. The rationale for biologs is that these help to establish natural vegetation at the water's edge that will help to protect shoreline slopes from being eroded by wave action and, therefore, creating areas that will also be less subject to erosion from runoff.
Response: Language was added that will include biologs for situations where the waterbody fetch and expected boat wave action does not exceed the limitations of biologs.

C45 Comment: (WAL) NR 120.14(8)(b)(1). Soil testing must also include residual phosphorus.
Response: No change. We feel that this is already covered under this subdivision.

C46 Comment: (WAL) Regarding shoreland habitat restoration for developed areas, we like the criteria for 3 layers of structure — ground, shrub and tree and the reference to fish and wildlife habitat.
Response: Thank you for your comment.

C47 Comment: (WAL). NR 120.14(19)(b)6.b. We like the language protecting in-lake shoreline habitat.
Response: Thank you for your comment.

C48 Comment: (WAL) NR 120.14(19)(b)7(c). The limitations on use of phosphorus fertilizer are very important and provide equity between the rural and urban parts of these rules.
Response: We agree.

C49 Comment: (NRCS) NR 120.14(20)(c) -- Barnyard Runoff Management, Standards. These standards should be added: NRCS FOTG Standard 313 Waste Storage Facility; September 1998, and NRCS FOTG Standard 635 Wastewater Treatment Strip; DATE TO BE ADDED.
Response: These are not applicable to barnyards. The standards suggested are addressed in NR 120(23) Manure Storage Facilities, and (26) Roofs for Barnyard Runoff Management and Manure Storage Facilities. The Wastewater Treatment Strip cannot be added without a date.

C50 Comment: (WI Pork Producers) NR 120.14(23)(b)7. This defeats the purpose of no-till and does not allow for situations where you may need to spread. Unless the situation is ideal, unless the structure is running over, this may not be very workable.
Response: The requirement that all manure contained in a manure storage facility be incorporated within 3 days after application has been removed. To insure that manure (and commercial fertilizer) is applied appropriately, NR 120.14(23)(b)1 was modified to state that a facility must also demonstrate compliance with the nutrient management performance standard contained in s. NR 151.07. The prohibition on applying manure on frozen or saturated ground has been retained for storage facilities designed to be emptied annually or semi-annually. Operations will need to ensure that manure is emptied annually or semi-annually to ensure that the storage facility does not overflow.

C51 Comment: (individual) NR 120.17(2). Make eligible design work that is completed prior to initiation of a construction grant.

Response: DNR cannot cover design work under this program. Design work is paid for under ATCP 50.

C52 Comment: (WI Pork Producers) NR 120.17(2)(q)1. The phrase, "...the department may consider..." sounds as if the DNR staff is making those decisions. But the rules provide no ideas of what DNR staff would consider significant, arbitrary, and undefined.

Response: DNR in cooperation with DATCP and county LCDs will be making these decisions. Because the situations are so varied, many of the decisions will be on a best professional judgment basis.

C53 Comment: (WI Pork Producers) NR 120.17(2)(q)2.a. If 299 animal units is available for cost sharing, 301 is not, and that seems like a political decision rather than a pollution reduction issue. I'm very concerned that the rule is missing a lot of livestock in the state (300-1,000 animal units). I'm also concerned that this is an unfunded mandate.

Response: Except for situations involving critical sites, NR 120 continues to be a voluntary program. As long as an operation is not required to apply for a WPDES permit, all existing facilities (e.g., manure storage facility) or practices at animal feeding operations are eligible for cost-sharing at their current size. Only portions of an expansion of an existing facility or practice become ineligible for cost-sharing when it is expanded beyond a certain size to accommodate an increase in animal units. DNR wanted to recognize that in many instances, operations are likely to need to expand in order to install new facilities or practices and remain economically viable. However, DNR does not want to fund expansion for the sake of expansion. Determining the size of expansion that would be considered to be beyond what was necessary to remain economically viable and thus should not be eligible for cost-sharing was based partly on current U.S. EPA federal regulatory thresholds for animal feeding operations (1,000 animal units or more, 300 to 999 animal units, and 299 animal units or less) and partly on a general recognition of economies of scale for larger operations versus smaller operations. Under federal regulations, operations with 300 to 999 animal units are more easily designated as a point source and required to obtain a WPDES permit than operations with 299 or less animal units. Expansions of existing facilities or practices at animal feeding operations with more than 250 animal units are still eligible for cost-sharing in order to accommodate up to 20% increase in animal units.

C54 Comment: (Co. Ext., LCD) NR 120.18. The maximum cost share rate for riparian buffers should not be \$100 per acre. We have plenty of experience with shoreline restoration projects where the cost per acre is significantly higher, especially where all three layers of native vegetation need to be restored. This practice, as well as the shoreline habitat practice, should remain funded at the 70% cost-share rate. It should be up to the LCD to determine reasonable costs for these areas with the diversity of habitats across the state. Eliminate Lines 1-4 and Line 29 altogether.

Response: We revised the cost-share package for riparian buffers. In addition to cost sharing the installation of the buffer, we may also provide compensation for lost crop production at a rate of 70% of the present value of the county rental rate for a period. Alternatively, an easement could be purchased.

C55 Comment: (Co. Ext., LCD) NR 120.18. Costs for appraisals for conservation easements should be eligible for up to 100% cost share. This could be an important incentive for interested landowners to voluntarily donate conservation easements and the permanent protection would be well worth funding in full.

C56 Comment: (individual) Easements should be eligible for the 70% cost-share rate and appraisals for easements be eligible for 100% cost sharing "(5) Allowable cost sharing rate is 70 percent for easements and up to 100 percent of easement appraisal costs."

Response: Easements for urban practices will be cost-shared at 50% and those for rural practices will be cost-share at 70%. The rural rate is capped by statute. The urban rate is capped to be consistent with cost-share policies under NR 153 and NR 155. The cost-share rate for appraisals is capped by statute (ss. 281.65 and 281.66) at 70%, except for work done under TRM grants signed prior to July 1, 1998. The 100% rate for old TRM grants is being maintained. The 100% rate for grants under NR 155 was

mistakenly included in the public hearing draft and should not have been as it is contrary to statute. Therefore, it will be removed in the final version of the rule.

C57 Comment: (Co. Ext., LCD) I applaud the department for recognizing the value of conservation easement donations and believe this should be extended to include easements in other standards.

Response: It already applies as a general condition anywhere an easement is granted.

C58 Comment: (individual) NR 120.18(4). The criteria for determining economic hardship need to incorporate the concepts of cash-flow, not just debt-to-asset ration.

Response: We have substituted amended hardship language that includes cash-flow criteria.

C59 Comment: (co. Ext., LCD) NR 120.185, Easements -- This standard needs to be expanded to include eligibility for conservation easements for other practices.

Response: NR 120.185(1)(d) allows for other BMPs as specified in the priority watershed plan. If the plan does not include the requested BMP, the plan can be amended.

(Comment cont'd.) Riparian buffer -- Leave out the minimum dimensional standard, as it is poorly defined and does not reflect any other buffer distances in the code. The county LCD should determine the dimensional standards to be applied for the diverse habitat types around the state.

Response: We removed this dimensional requirement except for cases when the buffer is purchased directly by DNR.

C60 Comment: (individual) NR 120.185(1). Add structural urban BMPs to the list of practices eligible for easements.

Response: The addition has been made.

C61 Comment: (individual) NR 120.185(4). Add cost-share rate for easements.

Response: We agree. The cost-share rate for urban practice easements will be 50% and for rural practice easements will be 70%.

C62 Comment: (individual) Wetland Protection and Restoration -- This is a great example of an easement eligible practice that should include protecting existing natural wetlands.

Response: There are other grants offered through the department that fund projects for protection. Examples are River Protection grants and Lake Protection grants.

C63 Comment: (individual) Add "(d) Shoreline Habitat Protection and Restoration" as an eligible practice for conservation easements. This would be highly beneficial for long-term nonpoint source pollution prevention. Modify the existing language in this section as follows: "Any other best management practice specified as eligible for easement support in an approved priority watershed plan, County Land and Water Resource Management Plan, DNR Basin Plan, or other approved plan."

Response: We disagree: NR 120 is limited to the priority watershed program and only deals with activities proposed in watershed plans.

C64 Comment: (individual) There is a lack of clarity regarding cost sharing amounts for the purchase of land and easements. It is not clear if there are different cost-share amounts available for land acquisition versus the purchase of an easement or for easements used to support rural practices, as opposed to urban practices. These points need to be clarified.

Response: We have modified the rule language so that the rates for rural easements (70%), urban easements (50%) and all property acquisitions (50%) are clearly stated.

C65 Comment: (DATCP) NR 120.19. Would it be possible to define this only under NR 153.23 and cross-reference here? Otherwise, the procedures should be the same in both places.

Response: We agree. The procedures are now the same.

C66 Comment: (DATCP) NR 120.25. See comments made for NR 153.29 re single audits.

C67 Comment: (DATCP) NR 120.26. See comments made for NR 153.29 re open records requirements.

Response: (a) regarding single audit - DNR no longer uses the single audit, but instead contracts with outside, independent auditors to review grantee records. (b) regarding open records - we included these two provisions, relating to applicability of the state's open records law to grantee paperwork and sequestering personal information about individuals from this open records requirement. (c) regarding continued tracking requirement by grantee - we included this suggested language, which would bolster our commitment to obtaining information re the effectiveness of the pollution abatement measures installed under grants.

C68 Comment: (WAL) Several key practices, including nutrient management, pesticide management, low-till and cover crops are only required to be maintained during the years cost sharing is received, and cost sharing is limited to 3-4 years (P. 6-7 NR 154). Nutrient management is key to program success. This is very short-term thinking for a long-term problem.

Response: The reference to the maintenance period only refers to the agreement period for cost-sharing (4 years). Compliance with performance standards and prohibitions must be maintained in perpetuity.

C69 Comment: (WAL) We support the flexibility offered by the provision for alternative design criteria.

Response: Thank you for your comment.

D General NR 151 Comments

D1 Comment: (Milw. Co.) The effectiveness of the implementation of NR 151 will be severely handicapped by the lack of consensus among the parties involved. An illustration of this is how the pollutant removal benefits of standards (BMPs) are determined. This seems to be left entirely up to DNR with little local input. It also appears the LCCs have no role in this effort at all.

Response: LCCs through their land conservation departments have been determining pollutant loads in priority watershed projects for over 20 years. DNR in conjunction with other state agencies, LCDs, and interest groups have been developing BMPs and technical standards that may be used to reduce the impacts of nonpoint source pollution for several years. The technical standards development process through the Standard Oversight Committee (SOC), consists of identifying a nonpoint pollution abatement need and forming a group of technical experts to devise a standard to address the problem. The final rules were developed through a consensus process involving many agencies and interests.

D2 Comment: (individual) This is just another situation where the DNR is generalizing all runoff and fertilizer problems into one category. Fertilizing a lawn in northern Wisconsin (sandy soil) is not the same as spreading manure on clay topsoil sloped toward a river in southern Wisconsin. Every situation is somewhat different and must be looked at separately.

Response: The rules cover a number of nonpoint pollution sources both in the agricultural and non-agricultural land uses. The rule for fertilizer use on lawns is different than the one for manure spreading. The rules recognize the need for specific standards to address particular sources. They are, however, applied statewide. If a specific watershed needs something different, then a targeted performance standard can be promulgated.

D3 Comment: (LCD) Some of the standards in the rules are too prescriptive. They go from a description of what needs to be done to enforcement. (LCD) There's no reason to specify BMPs for clean water diversions. The only reason you need BMPs is when you're going to cost-share them. The same applies to buffer areas along streams. We submitted language on minimum soil cover to reduce sediment. There's no reason to prescribe tillage practices. Farmers are flexible.

Response: The rules were modified and removed references to standards except in cases where it is necessary; this is particularly true in reference to tillage practices. If your statement is meant to imply that BMPs should be cited in the rules only when cost sharing is available, the point is taken. If you mean BMPs are only needed when cost sharing is available, we take issue with this position. It is our position that it is the responsibility of DNR, DATCP, LCDs, municipal governments, as well as other state and federal agencies to develop BMPs and guidance for their use in order to reduce nonpoint source

C66 Comment: (DATCP) NR 120.25. See comments made for NR 153.29 re single audits.

C67 Comment: (DATCP) NR 120.26. See comments made for NR 153.29 re open records requirements.

Response: (a) regarding single audit - DNR no longer uses the single audit, but instead contracts with outside, independent auditors to review grantee records. (b) regarding open records - we included these two provisions, relating to applicability of the state's open records law to grantee paperwork and sequestering personal information about individuals from this open records requirement. (c) regarding continued tracking requirement by grantee - we included this suggested language, which would bolster our commitment to obtaining information re the effectiveness of the pollution abatement measures installed under grants.

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Response: The reference to the maintenance period only refers to the agreement period for cost-sharing (4 years). Compliance with performance standards and prohibitions must be maintained in perpetuity.

C69 Comment: (WAL) We support the flexibility offered by the provision for alternative design criteria.

Response: Thank you for your comment.