

1 (f) Animal lot relocation in conjunction with pars. (a) to (c), provided that written  
2 approval of the governmental unit is obtained prior to easement acquisition, in  
3 accordance with the requirements of s. NR 154.03 (21)(b)6.

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

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

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

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

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

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

20 (5) STATE COST-SHARE RATE. The maximum allowable state cost-share rate for the  
21 acquisition of easements under this chapter shall be 70% of the acquisition cost of the  
22 easement, except that the maximum allowable state cost-share shall be 50% when the  
23 purpose of the easement is to support a structural urban best management practice. The  
24 maximum allowable state cost-share rate for appraisals for the acquisition of property  
25 shall be 100% of the cost of the appraisal when a grant was first issued by the department  
26 for this activity prior to July 1, 1998. When a grant was first issued by the department for  
27 this activity after this date, the maximum allowable state cost-share rate for appraisals  
28 shall be 70%. In this subsection, "acquisition cost" means the fair market value of the  
29 property as determined by department valuation guidelines and reasonable costs related  
30 to the purchase of the property limited to the cost of appraisals, land surveys, relocation  
31 payments, title evidence costs, recording fees, interest on installment payments with prior

1 written approval of the department, and the cost of environmental inspections and audits.  
2 It does not include attorneys fees, environmental clean up costs, brokerage fees paid by  
3 the buyer, real estate transfer taxes or any other cost not identified in this subsection.  
4

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

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

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

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

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

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

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

29 (d) An estimate of overall acquisition and annual maintenance costs, including the  
30 number of parcels and acres to be acquired which notes the number of improved parcels  
31 involved.

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

3 (f) Other information the department may request.

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

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

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

11 (d) All appraisals shall be conducted by a certified or licensed appraiser as  
12 described in ch. 458, Stats., and chs. RL 80 to 86.

13 (e) All acquisitions with a fair market value of more than \$200,000 shall require  
14 2 appraisals. The department may require a second appraisal for property valued under  
15 \$200,000 if the department finds that the property presents a difficult appraisal problem  
16 or if the first appraisal is unacceptable.

17 (f) Property may be purchased only from willing sellers. The governmental unit  
18 shall provide the seller with a just compensation statement which identifies the fair  
19 market value of the property, as determined by an appraiser meeting the requirements  
20 listed in par. (d)2. and which describes the benefits due to the seller in exchange for the  
21 transfer of the seller's property.

22 (g) When applicable, relocation plans shall be developed in accordance with ch.  
23 COMM 202.

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

27 (i) A governmental unit may be allowed to acquire property prior to entering into  
28 a nonpoint source grant agreement, provided that the governmental unit has received  
29 written approval of the department prior to purchasing the targeted property. The  
30 governmental unit shall submit a written statement to the department which explains the  
31 special circumstances justifying the need to acquire the property at that time. Prior to

1 nonpoint source grant agreement reimbursement for the acquisition, the governmental  
2 unit shall establish the value of the property in accordance with par.(b) to (e).

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

7 (4) STATE COST-SHARE RATE. The maximum allowable state cost-share rate for the  
8 acquisition of property under this chapter shall be 50% of the acquisition cost of the  
9 property. The maximum allowable state cost-share rate for appraisals for the acquisition  
10 of property shall be 100% of the cost of the appraisal when a grant was first issued by the  
11 department for this activity prior to July 1, 1998. When a grant was first issued by the  
12 department for this activity after this date, the maximum allowable state cost-share rate  
13 for appraisals shall be 70%. In this subsection, "Acquisition cost" means the fair market  
14 value of the property as determined by department valuation guidelines and reasonable  
15 costs related to the purchase of the property limited to the cost of appraisals, land  
16 surveys, relocation payments, title evidence costs, recording fees, interest on installment  
17 payments with prior written approval of the department, and the cost of environmental  
18 inspections and audits. It does not include attorneys fees, environmental clean up costs,  
19 brokerage fees paid by the buyer, real estate transfer taxes or any other cost not identified  
20 in this subsection.

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

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

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

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

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

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

4  
5 **NR 120.19 COST CONTAINMENT PROCEDURES.** (1) Governmental  
6 units as providers of cost-share agreements shall identify and agree to use one or more of  
7 the following cost containment procedures for each best management practice identified  
8 in the runoff management grant agreement:

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

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

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

24 **Note:** The department suggests the following bidding procedures:

- 25 • The governmental unit shows the proposed construction site to all prospective bidders  
26 on the same day and at the same time.
- 27 • There are at least 3 qualified bidders.
- 28 • All bids are sealed and delivered by a bid deadline to a location specified by the  
29 governmental unit.
- 30 • Bids are opened within 2 weeks after the bid deadline.
- 31 • The amount of the cost-share grant is based on the lowest qualified bid.

1 • The landowner selects a higher bidding contractor only if the landowner agrees to pay  
2 the difference.

3 • The landowner may not select a contractor who did not bid.

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

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

10 (f) *Wisconsin conservation corps.* A governmental unit uses the Wisconsin  
11 conservation corps to install best management practices for landowners and land  
12 operators.

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

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

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

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

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

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

31

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

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

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

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

21

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

27           (b) *Final payment.* The department shall pay the grantee the balance of the state  
28 share of the eligible project costs after project completion, department approval of the  
29 request for payment which the grantee has designated "final payment request" and  
30 department verification of the grantee's compliance with all applicable requirements of  
31 this chapter and the grant agreement. The final payment request shall be submitted by the

1 grantee promptly after project completion. Prior to final payment under the grant, the  
2 grantee shall execute an assignment to the department for the state share of refunds,  
3 rebates, credits or other amounts properly allocable to costs for which the grantee has  
4 been paid by the department under the grant. The grantee shall also execute a release  
5 discharging the department, its officers, agents and employees from all liabilities,  
6 obligations and claims arising out of the project work or under the grant, subject only to  
7 the exceptions specified in the release.

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

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

16 2. The department shall withhold payment of the amount of any indebtedness to  
17 the department, unless the department determines that collection of the debt will impair  
18 accomplishment of the project objectives and that continuation of the project is in the best  
19 interest of the nonpoint source water pollution abatement program.

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

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

26 (b) State agencies and governmental units shall comply with the following  
27 procedures when requesting reimbursement:

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



1           **Note:** Reimbursement request forms may be obtained, at no charge, from the  
2 Bureau of Community Financial Assistance, Department of Natural Resources, Box  
3 7921, Madison, Wisconsin 53707.

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

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

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

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

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

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

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

21          **(3) RETENTION REQUIREMENTS.** The governmental unit shall retain copies of all  
22 reimbursement requests submitted to the department including the following items:

- 23           1. Request for an advance or reimbursement form.
- 24           2. Reimbursement claim worksheet.
- 25           3. Cost-share calculation and practice verification form.

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

1 in the amount by which the reimbursable amounts exceed the ACRA established by the  
2 department.

3

4 **NR 120.24 Procurement. (1) PROFITS.** Only fair and reasonable profits may be  
5 earned by contractors for contracts under grant agreements described in this chapter.  
6 Profits included in a formally advertised, competitively bid, fixed price construction  
7 contract are presumed to be reasonable.

8 **(2) RESPONSIBILITY.** The governmental unit is responsible for the administration  
9 and successful completion of the activities for which grant assistance under this chapter is  
10 awarded in accordance with sound business judgment and good administrative practice  
11 under state and local laws.

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

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

16 (b) In the form of a bilaterally executed written agreement for any professional  
17 services or construction activities in excess of \$10,000.

18 (c) For monetary or in-kind consideration.

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

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

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

29

30 **NR 120.25 Record keeping and reporting requirements.**

1           (1) Each governmental unit as a grant agreement grantee or cost-share agreement  
2 grantor shall maintain a financial management system which adequately provides for all  
3 of the following:

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

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

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

12           (d) Procedures for determining the eligibility and cost-effectiveness of installation  
13 expenses in accordance with the cost containment requirements of s. NR 120.19 for all  
14 practices installed by the landowner or land operator.

15           (e) Accounting records supported by source documentation including all of the  
16 following:

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

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

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

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

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

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

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

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

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

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

5 (g) A final accounting of project expenditures submitted to the department within  
6 120 days of the completion of all watershed project work.

7 (h) An identification of the least cost practices.

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

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

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

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

23

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

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

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

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

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

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

8           (c) The governmental unit or its agent or contractors of the governmental unit  
9 shall preserve and make all of the following records available to the department until any  
10 appeals, litigation, claims or exceptions have been finally resolved:

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

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

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

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

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

21

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

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

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

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

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

- 8           1. A description of the work to be suspended.
- 9           2. Instructions for how the grantee may acquire materials or services.
- 10          3. Guidance for action to be taken on contracts.
- 11          4. Other suggestions to the grantee for minimizing costs.

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

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

- 16          a. Cancel the stop-work order, in full or in part.
- 17          b. Terminate grant assistance for the work covered by the stop-work order under  
18 sub. (2).
- 19          c. Authorize resumption of work.

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

- 25          1. The stop-work order results in an increase in the time required for completion  
26 or an increase in the grantee's cost properly allocable to the performance of any part of  
27 the project.
- 28          2. The grantee asserts a written claim for an adjustment within 60 days of  
29 cancellation of a stop-work order or authorization to resume work.

30          (f) *Ineligible costs during suspension period.* Costs incurred by the grantee or its  
31 contractors, subcontractors or representatives, after a stop-work order is issued by the

1 department, which relate to the project work suspended by the order and which are not  
2 authorized by this section or specifically authorized in writing by the department, are not  
3 eligible for reimbursement.

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

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

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

21 (d) Grants may be terminated by the department in accordance with the following  
22 procedure:

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

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

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

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

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

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

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

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

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

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

19           **(4) RESPONSIBILITIES OF GOVERNMENTAL UNITS.** Suspension or termination of a  
20 grant or portion of a grant under this section may not relieve the grantee of its  
21 responsibilities under ss. NR 120.03 and 120.05.

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



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

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

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

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

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

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

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

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

20  
21           **NR 120.29 Variances.** The department may approve in writing a variance from a  
22 requirement of this chapter upon written request when the department determines that a  
23 variance is essential to effect necessary grant actions or water quality objectives and  
24 where special circumstances make a variance in the best interest of the program. A  
25 governmental unit's written variance request shall clearly explain the circumstances  
26 justifying the variance. Before approving a variance, the department shall take into  
27 account factors such as good cause, circumstances beyond the control of the  
28 governmental unit and financial hardship. The department may not grant variances from  
29 statutory requirements.

30

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

6

7           The foregoing rules were approved and adopted by the State of Wisconsin Natural  
8 Resources Board on January 22, 2002.

9

10           The rules shall take effect on the first day of the month following publication in  
11 the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

12

13

14           Dated at Madison, Wisconsin \_\_\_\_\_

15

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17

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

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By \_\_\_\_\_  
Darrell Bazzell, Secretary

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(SEAL)

26

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 00-028**

AN ORDER to repeal and recreate chapter NR 120, relating to the priority watershed management program.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

02-10-00 RECEIVED BY LEGISLATIVE COUNCIL.  
03-07-00 REPORT SENT TO AGENCY.

RNS:AS:jal;rv

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

NO

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## CLEARINGHOUSE RULE 00-028

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 2. Form, Style and Placement in Administrative Code

- a. The use of a "Foreward" in ch. NR 120 is not appropriate drafting style. Can the material be placed in a note?
- b. In s. NR 120.02 (1), "Acquisition cost" should replace "It."
- c. In s. NR 120.12, the introductory material should be numbered sub. (1) because it does not introduce and lead into the text and the subsequent subsections. This comment applies also to sub. (2) (intro.) and ss. NR 120.08 (1) (intro.), 120.13 (6) (intro.) and (6) (b) (intro.), 120.18 (3) (intro.), 120.186 (3) (b) (intro.) and 120.27 (2) (intro.).
- d. In s. NR 120.16 (5), there must be a title for the subsection because the other subsections have titles.
- e. Section NR 120.17 (3) allows the department to "establish alternative eligibility criteria for demonstration projects." Will these criteria be promulgated as rules? See ss. 227.01 (13) and 227.10 (1), Stats.

#### 4. Adequacy of References to Related Statutes, Rules and Forms

- a. In s. NR 120.02 (35), the citation to s. 23.32, Stats., should be to s. 23.32 (1), Stats.

- b. In s. NR 120.08 (1) (b) 1. k., the citation to s. NR 120.21 (4) (a) is incorrect. This comment also applies to subd. par. L.
- c. In s. NR 120.09 (3) (b), the citation to s. NR 120.18 (1) (a) is incorrect.
- d. In s. NR 120.18 (3) (intro.), should par. (qd) be included in the citation of s. 20.115 (7) (c) to be consistent with the definition of “local share” in s. NR 120.02 (21)?
- e. In s. NR 120.22 (4), should the citation to s. NR 120.23 be to s. NR 120.25?

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

- a. In the “Foreward” on page 4, line 12, “were” should be replaced with “are.”
- b. In s. NR 120.01 (1), should “grant agreement recipients” be replaced with “grant recipients”?
- c. In s. NR 120.02 (1), a hyphen should be inserted between “clean” and “up.”
- d. In s. NR 120.02 (4), “may” should be replaced with “does.”
- e. In s. NR 120.02 (15) and elsewhere in the rule, “, but not limited to,” should be deleted. Also see s. NR 120.22 (2).
- f. In s. NR 120.02 (16), what is meant by “eligible to incur costs”?
- g. In s. NR 120.02 (19), the second instance of “Land conservation committee” should be enclosed with quotation marks.
- h. In s. NR 120.02 (22), “or “WPDES permit”” should be inserted after ““Municipal WPDES storm water discharge permit”” because “WPDES permit” is used in s. NR 120.17.
- i. In s. NR 120.02 (24), “the certified letters” should be replaced with “a certified letter.”
- j. In s. NR 120.02 (29), “one of those watersheds” should be replaced with “a watershed.”
- k. In s. NR 120.02, should a definition of “structural urban best management practices” be inserted after sub. (33) to be consistent with the statutes?
- l. In s. NR 120.02 (34), “that was” should be deleted and “on the effective date of this chapter” should be inserted after “in effect.” Also, “(INSERT DATE)” should be replaced with “(revisor inserts date).” This comment applies also to s. NR 120.16 (4) (d).
- m. In s. NR 120.08 (1) (a) 5., what is meant by “by criteria”?

- n. In s. NR 120.08 (2) (f), “also” should be deleted.
- o. In s. NR 120.09 (1), it would be helpful to insert “under sub. (2)” at the end of the last sentence.
- p. In s. NR 120.09 (3) (a), a hyphen should be inserted between “36” and “month.”
- q. In s. NR 120.09 (7), “provided that” should be replaced with “if.”
- r. In s. NR 120.12, should “or state agency” follow every instance of “governmental unit” as it does in the first sentence?
- s. In s. NR 120.12 (2), hyphens should be inserted between “sign” and “up” in every instance.
- t. In s. NR 120.12 (2) (a), a phrase such as “all the following conditions are met” should be inserted before the colon. Finally, the subsequent subdivisions should end with periods to facilitate amending the paragraph in the future.
- u. In s. NR 120.12 (3) and elsewhere in the rule, “where” should be replaced with “if.” Also see ss. NR 120.13 (6) (b) 1., 120.15 (1) and (2) and 120.23 (1) (c).
- v. In s. NR 120.12 (4) (intro.), “do all of the following” should be inserted at the end of the sentence.
- w. In s. NR 120.12 (8), “on cost-share agreements” should be replaced with “in cost-share agreements.”
- x. In s. NR 120.13 (3) (a), “Should other practices be included through” should be replaced with “If other practices are included in.”
- y. In s. NR 120.13 (4) (f), “A requirement to not adopt” should be replaced with “A prohibition against adopting.”
- z. In s. NR 120.13 (4) (h), please clarify what is meant by a “nondiscrimination clause.”
  - aa. In s. NR 120.13 (4) (k), “A requirement that disallows any change” should be replaced with “A prohibition against changing.”
  - ab. In s. NR 120.13 (4m), “the cost of” should be inserted before “a single practice.”
  - ac. In s. NR 120.13 (5), in the first sentence, “or” should be replaced with “and.” Also in that subsection, “least cost alternatives” is an awkward phrase and should be reviewed. Could “lowest cost alternatives for controlling” replace “least cost alternatives to controlling”?
  - ad. Section NR 120.13 (6) (intro.) should be reviewed. Is the intent that the cost-share agreement period is the period from when the cost-share agreement is signed until the

installation of the last practice on the agreement unless there is a subsequent operation and maintenance period? Please clarify.

ae. In s. NR 120.13 (6) (b) 1. d., and in subsequent provisions, parenthetical phrases should be avoided. [See s. 1.01 (6), Manual.]

af. In s. NR 120.13 (8) (a), "if" should replace "providing that." Also see s. NR 120.186 (3) (f).

ag. In s. NR 120.13 (11) (a), in the second to last sentence, "can" should be replaced with "may."

ah. In s. NR 120.16 (2), "these ordinances" should be replaced with "ordinances under sub. (1)." Also, "(ADD REFERENCE)" should be deleted. Also, in the last sentence, "Additional" should be deleted and ", once enacted, will be" should be replaced with "are."

ai. In s. NR 120.16 (3), "The ordinance" should be replaced with "An ordinance under sub. (1)."

aj. In s. NR 120.16 (4) (e), the two additional periods at the end of the sentence should be deleted.

ak. In s. NR 120.16 (5), "The ordinance" should be replaced with "An ordinance required under sub. (1)."

al. In s. NR 120.17 (2) (L), "Installing" should be inserted at the beginning of the sentence.

am. In s. NR 120.17 (2) (w), should "Purchase of" be inserted at the beginning of the sentence?

an. In s. NR 120.18 (1) (b) (intro.), please clarify what the subsequent subdivisions apply to.

ao. In s. NR 120.18 (1) (c) 7., "are" should be deleted. In subd. 7. a., the parenthetical material should be placed in a note at the end of the subdivision.

ap. In s. NR 120.18 (4) (a), "can demonstrate" should be replaced with "demonstrates."

aq. In s. NR 120.18 (4) (b), "can" should be replaced with "shall."

ar. In s. NR 120.18 (4) (b.) 1., what is meant by "a compilation of financial conditions"?

as. In s. NR 120.18 (4) (c), "Under" should be replaced with "If there is."

at. In s. NR 120.18 (4) (d), "Under the provision, if" should be replaced with "If there is a finding of."



au. In s. NR 120.185 (2) (c), "when" should be replaced with "if."

av. In s. NR 120.185 (3), "thereafter" should be deleted.

aw. In s. NR 120.186 (1) (intro.), a phrase such as "do any of the following" should be inserted at the end of the (intro.); in par. (a), "; or" should be replaced with a period.

ax. In s. NR 120.186 (2) (intro.), "all of" should be inserted in the last sentence before "the following."

ay. In s. NR 120.186 (2) (a), "under which the grant is applied for" should be replaced with "for which the grant is applied."

az. In s. NR 120.186 (3) (e), what is meant by "description"?

ba. In s. NR 120.186 (3) (g), should the provision specify that the deed must be recorded with the register of deeds?

bb. In s. NR 120.186 (5) (intro.), a colon should replace the period.

bc. In s. NR 120.186 (5) (f), "the acquisition shall be" should be replaced with "that the acquisition is."

bd. In s. NR 120.19 (1) (intro.), the sentence should end with a colon.

be. In s. NR 120.22 (1), "other equitable manner" should be replaced with "in another equitable manner."

bf. In s. NR 120.23 (1) (b), "the department has verified" should be replaced with "department verification of."

bg. In s. NR 120.23 (1) (d) 1., "legislative appropriations to fund those payments" could be replaced with "funding."

bh. In s. NR 120.23 (1) (d) 2., "the program" should be replaced with "the nonpoint source water pollution abatement program."

bi. In s. NR 120.23 (3) (b), there is no subd. 5. Is this intended?

bj. In s. NR 120.23 (3) (b) 4., should "completed" be inserted after "components of"?

bk. In s. NR 120.23 (3) (b) 7., how will the department set deadlines?

bl. In s. NR 120.23 (5), "(ACRA)" should be deleted because it is a defined term.

bm. In s. NR 120.24 (3), the subsequent paragraphs should end with periods to facilitate amending the subsection in the future. Also, "all of the following" should be inserted before the colon in sub. (3) (intro.). Also see s. NR 120.25 (1) (intro.).

bn. In s. NR 120.25 (1) (a), it may be helpful to include a cross-reference after the phrase "department reporting requirements."

bo. In s. NR 120.25 (1) (c), will it be clear to the reader what is meant by "on a watershed basis"?

bp. In s. NR 120.25 (1) (d), "allocability" is not a word. Could "allocation" or "ability to allocate" be used?

bq. In s. NR 120.25 (1) (f), it would be helpful to include a cross-reference following the phrase "audit findings."

br. In s. NR 120.25 (2) (b), "account" could be replaced with "document" or "describe."

bs. In s. NR 120.26 (1) (b) (intro.), a phrase such as "for whichever of the following is appropriate" should be inserted at the end of the sentence. Also, the subsequent subdivisions should end in periods.

bt. In s. NR 120.26 (1) (c) (intro.), "all of" should be inserted before "the following" and the subsequent subdivisions should end in periods.

bu. In s. NR 120.27 (1), "stop-work order" should not be enclosed in quotation marks.

bv. In s. NR 120.27 (1) (b) 3., "by" should be inserted before "certified mail."

bw. In s. NR 120.27 (1) (c) 2., "as to how the acquisition of" should be replaced with "for how the grantee may acquire."

bx. In s. NR 120.27 (1) (d) 2. (intro.), "either" should be replaced with "do one of the following" and the subsequent subdivision paragraphs should end in periods.

by. In s. NR 120.27 (1) (e) (intro.), "all of the following conditions are met" should be inserted at the end of the sentence and the subsequent subdivisions should end in periods.

bz. In s. NR 120.27 (2) (a), "to" should be inserted after "due."

ca. In s. NR 120.27 (2) (c) 1. and 2., "mail, certified mail--return receipt requested" should be replaced with "certified mail, return receipt requested."

cb. Section NR 120.28 (2) (intro.) should end with a colon. Also, the subsequent paragraphs should end with periods. Finally, in par. (c), "under s. NR 120.23 (1) (c) 1." should be replaced with "if the conditions under s. NR 120.23 (1) (c) 1. are met."

cc. In s. NR 120.28 (3), what is meant by a “notice of intent”? Would a cross-reference be helpful?