

**L55 Comment:** (DATCP) NR 154.04(17)(b)5. "The costs for practices that would remediate streambank erosion and streambank habitat degradation." -- This is not an allowable cost under ATCP 50.77. The differences could cause confusion in county administration of the two rules. This could be eliminated in NR 154 because the landowner could get cost sharing under "Streambank and Shoreline Protection."

**L56 Comment:** (DATCP) NR 154.04(17)(c)1. This should be removed from NR 154. This is listed under design, construction and maintenance and is actually a condition for eligibility. The following current NR 154 wording under eligible costs indicate the reasons for eligibility: "replacing animal lots or pastures, or establishing an intensive grazing management system on croplands, that are currently contributing sediments, nutrients or pesticides to a water resource." This wording allows flexibility in selecting the right water quality reason for allowing cost sharing (e.g., replacing dirt feeding areas in pasture, reducing the usage of farmstead feedlot areas, limiting cattle access to streams, and limiting cropland erosion and sediment). This condition holds merit when counties are trying to narrow approvals of limited cost sharing, but this should be a county decision and not put in rule.

**L57 Comment:** (WLWCA/WALCE, several counties) NR 154.04(17)(c)1. Explain what this paragraph means and clarify it in the rule.

**Response:** This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

**L58 Comment:** (chemical company) NR 154.04(18)(b)1 Lakes Sediment Treatment -- Ferric sulfate, aluminum chloride, and polyaluminum chloride are also recognized chemicals for this purpose. Please add to the list of technologies.

**Response:** This list only provides examples and does not imply that the listed chemicals are the only ones that can be used.

**L59 Comment:** (WLWCA/WALCE, several counties) NR 154.04(18)(d)4 -- Acknowledges that any permits required by local ordinance must be obtained prior to the removal of lake sediments. This statement should also appear in NR 154.04(3), (4), (5), (21), (22), (23), (25), (26), and (29).

**Response:** Rather than duplicate the same provision multiple times, this is addressed by a general provision in the rule that requires all permits be obtained.

**L60 Comment:** (WLWCA/WALCE, several counties) NR 154.04(19)(c)2 -- Remove from the ineligible cost list. Portable equipment is an essential component of livestock fencing, particularly for managed intensive grazing (MIG).

**L61 Comment:** (NRCS) NR 154.04(21)(e)(1)b -- This standard has been changed to: NRCS FOTG Standard 635 Wastewater Treatment Strip; DATE TO BE ADDED.

**Response:** This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

**L62 Comment:** (NRCS) NR 154.04(21)(e)(1)e and NR 154.04(22)(c)1. Before the DNR seeks Wisconsin Natural Resource Board approval to publish NR 154 as a final rule, Wisconsin NRCS strongly encourages the department to incorporate the revised and updated nutrient management standard, NRCS FOTG Standard 590 Nutrient Management; DATE TO BE ADDED, to NR 154.

**Response:** NRCS 590 is not finalized and the department cannot reference a proposed standard in its rule. However, the department revised its nutrient management performance standard that may require both nitrogen and phosphorus-based nutrient management depending on a given location's impact on water quality. While DATCP has the responsibility to determine a nutrient management standard, both nutrients (N and P) will need to be addressed to meet the performance standard.

**L63 Comment:** (pest control co.) NR 154.04(22). Sufficient flexibility must be given in the nutrient management plans to allow growers to react to the changing environment that farming presents. For example, if a grower can document a nutrient deficiency using tissue testing, some allowance for nutrient inputs in excess of UWEX recommendations (publication A2809) must be given.

UWEX publication A2809 states that soil sampling should be done on a maximum of 5-acre units to comprise a composite sample for testing. There is no inference that farmers must manage each 5-acre unit separate from all others in the field even though this would be a desirable approach. Our company pulled a total of 1,300 soil samples in 2000. If we adhere to the 5-acres standard, this number would increase to 8,000—a huge increase in cost and labor for farmers and planners. We will be unable to hire the temporary labor required to pull these volumes of samples. Please allow some flexibility for the farmer and/or planner to determine the fields to be tested, based on their past testing history and knowledge of the farm.

The requirement for nutrient management plans to be written for each and every crop field across the state will create a paper chase of enormous proportions. Who will do all that work? Currently only about 25% of the state's farmland gets a soil test on a regular basis. We need to get those not currently soil testing to begin, and have whole farm plans written that reflect some effort towards field by field nutrient management. Layers of management can be added once its determined what environmental benefits these efforts bring in relation to the costs.

**L64 Comment:** (WI Agri-Service Assn., WI Pork Producers, WPVGA, WI State Cranberry Growers). NR 154.04(22) -- The DNR should delete the technical standard details for nutrient management plans from its proposed rules with special emphasis on deletion of the manure management sections. Authority over the nutrient management program, including manure, was statutorily given to DATCP.

**Response:** This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

**L65 Comments and response to E210 and E211 regarding lab certification apply to this section.**

**L66 Comment:** (ag. co-op/soil-forage lab) NR 149 will increase the cost of analyzing each soil sample in the range of 2 to 3 times their present rate. That additional cost would have to be passed on to our clients.

**Response:** The department laboratory certification program has not resulted in costs increasing to any great extent for other programs, and we do not believe costs will increase as a result of certification in this case. The current certification provisions in ATCP 50 are inadequate, and would need to be consistent with NR 149 procedures even if DATCP administers the program.

**L67 Comment:** (ag. lab) Requiring soil testing laboratories to be certified by NR 149 or the Farm Service Agency or both, is redundant and will increase costs because labs will be forced to carry certification by two government agencies.

**Response:** Please refer to the responses to the 2 previous comments.

**L68 Comment:** (DATCP) NR 154.04(22)(b)5. ATCP 50 and NR 154 are not consistent. NR 154 allows spill control facilities as eligible and ATCP does not. DNR should change NR 154 to be consistent with ATCP 50.

**Response:** This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

**L69 Comment:** (individual) NR 154.04(22)(c)5 should be changed to: "The landowner or land operator agrees in writing to maintain a minimum horizontal separation distance of 250 feet in all directions from any private and non-community well, private non-potable well, reservoir or spring when spreading manure, injecting manure or applying by other means and 1,000 feet from any community well." This language is more consistent with chapters NR 809, NR 811 and NR 812 Wis. Adm. Code.

**Response:** The department believes that the current section providing restrictions for spreading manure close to wells is protective of the groundwater.

**L70 Comment:** (DATCP) NR 154.04(23)(c). This contains wording for design and maintenance of practices. ATCP 50 is lacking a design and maintenance section. Consider adding this language to ATCP 50.

**L71 Comment:** (Co. Ext., LCD) Riparian Buffers. Add the following wording to the description on Line 20: "In this subsection, "riparian buffer" means an area in which vegetation is maintained, enhanced or established..."

**Response:** This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

**L72 Comment:** (Co. Ext., LCD). Easement costs should be eligible for riparian buffers for all types of lands, not just previously-cropped lands. Also add land acquisition and other practices as indicated in the following suggested changes: "Costs of easements in accordance with s. NR 153.24, land acquisition, or other practices or programs approved in County Land and Water Resource Management Plans for previously-cropped lands that are used as buffers."

**Response:** NR 153 and NR 154 have been changed to address the issue of previously cropped lands. There is nothing in NR 153 or the portions of ATCP 50 cross-referenced in NR 153 that would limit cost sharing to previously cropped lands. We do not agree that further changes are necessary and the department is not willing to allow as eligible costs a broad sweeping statement such as "programs approved in county land and water resource management plans" since we have no role in approving these plans.

**L73 Comment:** (Co. lake spec.) NR 154.04(24). Change the definition to be: "an area in which vegetation exists that reduces or eliminates the movement of sediment..." This change would make the definition consistent with other BMP definitions in that it describes physically what a buffer is. By including the words "enhanced" or "established" it does not provide for a landowner to follow the BMP by maintaining an existing buffer.

**Response:** This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

**L74 Comment:** (Co. lake spec.) NR 154.04(24)(b)(4). Remove the eligible cost provision for easements for only previously-cropped lands. Nonpoint funds should be used for agricultural and non-agricultural lands. Also, Paragraph (c) is missing.

**Response:** Easements can be purchased for urban and rural practices as stated in NR 153 and NR 155. In addition, please refer to the responses to comments L4 and L72.

**L75 Comment:** (WLWCA/WALCE, several counties) NR 154.04(25)(e)5. This should allow for an alternate use in the event that a perpetual livestock and deed restriction is in place on a parcel.

**Response:** This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

**L76 Comment:** (DATCP) NR 154.04(27)(b). This language regarding eligible costs should be added to ATCP 50.

**Response:** The suggested change is to ATCP 50, not to NR 154.

**L77 Comment** E166 (LCC) regarding NR 151.04 table applies to NR 154.04(24)(d)(4).

**L78 Comment:** (Co. Ext., LCD)P. 49 Line 13 – Change the title to : "Shoreline Habitat Protection and Restoration for Developed Areas" and on Line 14 to the following: "Shoreline habitat protection and restoration means the maintenance or establishment in developed areas of a shoreline buffer zone..."

**Response:** This BMP is focused on restoration, not prevention. There are other programs that are designed for prevention including the Stewardship Program, and other BMPs that may be used such as Riparian Buffers.

**L79 Comment:** (Co. lake spec.) NR 154.04(28) Shoreline Habitat – The definition should physically describe the area. The eligible costs should dictate that the establishment of a shoreline habitat area is what would be covered under cost-sharing. Eligible costs should include easements and land acquisition for shoreline habitat areas and other practices or incentive programs approved in county LWRM plans.

**Response:** The definition of shoreline habitat restoration in NR 154.04(29)(a) describes the area. Also please refer to the response to comment L72.

**L80 Comment:** (Co. Ext., LCD, Co. lake spec.) NR 154.04(28)2(c)3. Shoreline Habitat. Biologists should not be listed as ineligible costs—they are sometimes needed to help establish plants in near-shore areas where wave action would otherwise prevent it.

**L81 Comment:** (WAL) P. 54, 3 -- Why not fund biologists?

**Response:** We have changed the ineligible costs section for this BMP in both NR 120 and NR 154 to allow the use of riprap and biologists if approved by the department. The department's experience is that these practices have often been used unnecessarily or in areas where they are ineffective and so wishes to ensure that expenditures for these practices are appropriate.

**L82 Comment:** (Co. Ext., LCD) Regarding accelerated recovery, add the following wording to address more impacted shoreline areas than 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 agree that accelerated recovery may be used in certain cases where one or more layers of natural vegetative cover has been removed; however, a landowner should not be eligible for cost-sharing simply because they decided to remove some trees or shrubs. We have added a qualified statement in the rule that can allow cost-sharing in these cases, but only after review and approval by the department.

**L83 Comment:** (Co. Ext., LCD) P. 50 -- Add the following statement after Line 3 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."

**Response:** Please refer to the responses to comments L76 and L81.

**L84 Comment:** (Co. Ext., LCD) P. 50. Other eligible practices need to be included in the cost-sharing list including the following: "4. Conservation easements or land acquisition. 5. Other practices or programs approved in County Land and Water Resource Management Plans."

**Response:** Please refer to the responses to comments L76 and L81.

**L85 Comment:** (Co. Ext., LCD) I disagree the practice design should be listed as an ineligible cost as indicated in comments for NR 120.

**Response:** We have added the possibility that practice design may be an eligible cost if approved by the department. In most cases, the landowner is able to develop a simple design that is adequate, but we agree that in some complex projects, a professional design may be necessary.

**L86 Comment:** (WLWCA/WALCE, several counties) NR 154.04(28). It should not be assumed that the planting of trees and shrubs along streambanks is a good or necessarily beneficial practice for streambank protection/stabilization or that these plantings have positive benefits for the protection/ enhancement of surface water quality. This section appears to attempt to mirror a technically flawed NRCS requirement for landowner participation in USDA's CRP continuous sign-up program. The requirement for the planting of woody vegetation must be removed from this section.

**Response:** This is not always a requirement. A goal of this BMP is to re-establish the shoreline habitat to its natural state, which will provide wildlife and water quality benefits. This may or may not include all three layers (vegetative, shrub and tree) and may include these layers in an infinite number of varying degrees. In some cases, only the vegetative layer will be required to return the shoreline to its original condition. This provision (NR 154.04(28)(9)), coupled with the ability of project sponsor to determine the most appropriate recovery methods (NR 154.04(28)(11)), gives flexibility to address local conditions.

**L87 Comment:** (WLWCA/WALCE, several counties) NR 154.04(28)(d)9 and NR 154.04(28)(d)11 -- These are incompatible statements.

**Response:** Please refer to the response to comment L87.

**L88 Comment:** (Co. Ext., LCD) STREAMBANK AND SHORELINE PROTECTION -- Change the wording on Line 23 to read "...from livestock access or other agricultural or non-agricultural activities." An example would be where streambank protection is needed due to forestry equipment crossings on small streams. Add the following to the list of eligible costs: "Conservation easements, land acquisition, or other practices or programs approved in County Land and Water Resource Management Plans."

**Response:** Please refer to the responses to comments L4, L47 and L72.

**L89 Comment:** (Co. lake spec.) NR 154.04(28) -- I support the descriptive language in the design, construction and maintenance provision with the exception of 13(g), P. 53. I think there is an error. The language "In viewing and access corridors" should be replaced with "In established prairie buffer areas."

**Response:** We have added the language "or in established prairie buffer areas" after "in viewing and access corridors" to allow greater flexibility.

**L90 Comment:** (Co. lake spec.) NR 154.04(29) Streambank and Shoreline Protection -- Remove "from livestock access" from the definition. Eligible costs should include easements, land acquisition and other practices and programs approved in county LWRM plans.

**Response:** Please refer to the responses to comments L4, L47 and L72.

**L91 Comment:** (DATCP) NR 154.04(29)(b)8. ATCP 50 and NR 154 are not consistent. ATCP 50 contains no provisions for cost-sharing permits.

**Response:** This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

**L92 Comment:** (DATCP) NR 154.04(29)(c). This wording on design, construction and maintenance should be added to ATCP 50.

**Response:** The suggested change is to ATCP 50, not to NR 154.

**L93 Comment:** (NRCS) NR 154.04(30)(b). The rule states that cost-sharing may be provided for the installation of subsurface drains in stripcropping systems. Where would subsurface drains be needed in stripcropping systems?

**L94 Comment:** (NRCS) NR 154.04(30)(c)(2)e NRCS FOTG Standard 606 (September, 1989) should be deleted. If it is kept, then NRCS FOTG Standard 620 Underground Outlet (June, 1993) should be added.

**L95 Comment:** (NRCS) NR 154.04(34)(d)(1)(b) Waste Transfer Systems -- The standard listed here, Underground Outlet, is not applicable and should be deleted.

**L96 Comment:** (NRCS) NR 154.04(35)(c)(1) and (36)(c)(2) Water and Sediment Control Basins and Waterway Systems -- Add NRCS FOTG Standard 620 Underground Outlet (June, 1993).

**L97 Comment:** (NRCS) NR 154.04(37)(c)(1) Well Decommissioning. -- Should read: NRCS FOTG Standard 351 Well Decommissioning (April 1999).

**L98 Comment:** (Co. Ext., LCD) P.63 Line 13 -- Change the title to "WETLAND PROTECTION, DEVELOPMENT OR RESTORATION," and change the definition to include wetland protection. Add the following to the list of eligible costs: "Conservation easements, land acquisition, or other practices or programs approved in County Land and Water Resource Management Plans."

**L99 Comment:** (Co. lake spec.) NR 154.04(38) Wetland Development or Restoration -- Eligible costs should include easements, land acquisition, and other practices and programs approved in county Land and Water Resource Management plans.

**Response:** This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

**L100 Comment:** (WAL) NRCS technical guides are always being revised. The most up to date version (after review) should be used and we should not be locked into older versions by including the dates in this rule. (Also applies to NR 243.)

**Response:** S. 227.21 Wis. Stats. requires state administrative rules to reference technical standards to "the specific issue or issues of the publication in which they appear". We are required by law to reference the specific date of the publication.

**L101 Comment:** (WAL) P. 39 -- Manure spreading should be prohibited within 75 feet of lakes and ORW/ERW or 50 feet of wetlands or streams. There is a nutrient and a public health element here that must be considered. (Also applies to NR 243.)

**L102 Comment:** (WAL) P. 43 -- Riparian buffers must protect fish and other aquatic life habitat (turtles, amphibians, etc.).

**Response:** This language is no longer included in NR 154, but cross-referenced to ATCP 50. Please refer to the response to comment L4.

**L103 Comment:** (WAL) P. 50-53 -- Good buffer provisions!!

**Response:** See the response to comment E149 for a response

1                   **ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD**  
2                   **CREATING RULES**

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5                   The Wisconsin Natural Resources Board proposes an order to create NR 154 relating to best  
6 management practices, conditions and technical standards to be used in administering cost  
7 sharing under chs. NR 153 and 155.

8                   WT-11-00

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10                   Analysis Prepared by the Department of Natural Resources

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12  
13                   Statutory authority: ss. 227.11(2)(a) and 281.65 (4) (e), Stats.

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15                   Statutes interpreted: s. 281.65, Stats.  
16

17                   Chapter NR 154, Best Management Practices and Cost-share Conditions, is a new rule that sets  
18 forth best management practices, technical standards, cost-share rates and cost-share conditions  
19 that apply to grant recipients under chs. NR 153 and NR 155. The provisions of Chapter NR 154  
20 complement additional cost-sharing provisions contained in Chapter NR 153, which governs the  
21 administration of targeted runoff management grants and Chapter NR 155, which governs the  
22 administration of urban nonpoint source water pollution abatement and storm water management  
23 grants.

24  
25                   Chapter NR 154 is being created in response to 1997 Wisconsin Act 27 and 1999 Wisconsin Act  
26 9. These statutes require changes to the department's nonpoint source water pollution abatement  
27 program and to the department of agriculture, trade and consumer protection's soil and water  
28 resources management program. Creation of chapter NR 154 is an integral part of promulgating

1 a series of inter-related administrative rules to implement a re-design of Wisconsin's nonpoint  
2 source programs as set forth in these statutes. The department has worked closely with the  
3 department of agriculture, trade and consumer protection in the development of the standards  
4 contained in this rule.

5  
6 Other related components of this effort that are conducted concurrently include: repeal and  
7 recreation of chapter NR 120, Priority Watershed and Priority Lake Program; creation of NR  
8 151, Runoff Management; creation of chapter NR 152, Model Ordinances for Construction Site  
9 Erosion Control and Post-Construction Storm Water Management; creation of chapter NR 153,  
10 Targeted Runoff Management Grant Program; creation of chapter NR 155, Urban Nonpoint  
11 Source Water Pollution Abatement and Storm Water Management Grant Program; and revision  
12 of chapter NR 216, Storm Water Discharge Permits; repeal and recreation of chapter NR 243,  
13 Animal Feeding Operations. The department submitted these rules to the Land and Water  
14 Conservation Board at its December, 2001 meeting for its review under 281.65(3)(at), Stats. The  
15 department of agriculture, trade and consumer protection is concurrently revising ATCP 50, Soil  
16 and Water Resource Management, to incorporate changes in its program.

17  
18 SECTION 1: Chapter NR 154 is created to read:

19  
20 **Chapter NR 154**

21  
22 **BEST MANAGEMENT PRACTICES AND COST SHARE CONDITIONS**

23  
24 **NR 154.01 Purpose and applicability**

25 **NR 154.02 Definitions**

26 **NR 154.03 Cost-share rates**

27 **NR 154.04 Best management practices, cost-share eligibility and standards**



1           **NR 154.01 Purpose and applicability.** (1) The purpose of this chapter is to identify  
2 best management practices, technical standards and cost-share conditions that apply to the  
3 department, state agencies, governmental units, the board of regents and cost-share recipients  
4 when serving to provide or receive cost-share funds under ch. NR 153 or 155. These provisions  
5 and provisions contained in chs. NR 153 and 155 shall be met in administering grants under chs.  
6 NR 153 and 155.

7           (2) The provisions of this chapter apply to cost-share agreements and grants signed after  
8 the effective date of this rule... [revisor insert date], unless a waiver is granted by the department  
9 under s. 281.65 (4) (e), Stats.

10  
11           **NR 154.02 Definitions.** As used in this chapter:

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

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

26           (3) "Cost-share agreement" means the agreement established between the governmental  
27 unit and the cost-share recipient which identifies the best management practices to be used on the

1 cost-share recipient's lands and the cost estimate, installation schedule and operation and  
2 maintenance requirements for these best management practices.

3 (4) "Cost-sharing" means the action of financing a best management practice, or  
4 conservation practice by means of a cost-share agreement.

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

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

9 (7) "Governmental unit" means any unit of government including, but not limited to, a  
10 county, city, village, town, metropolitan sewerage district created under ss. 200.01 to 200.15 or  
11 200.21 to 200.65, Stats., town sanitary district, public inland lake protection and rehabilitation  
12 district, regional planning commission or drainage district operating under ch. 89, 1961 Stats., or  
13 ch. 88, Stats. Governmental unit does not include the state or any state agency.

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

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

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

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

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

25 (13) "Project sponsor" means a governmental unit or state agency applying for and  
26 receiving grant assistance under s. 281.65 or 281.66, Stats.

1           (14) "Structural height" means the difference in elevation in feet between the point of  
2 lowest elevation of a dam before over-topping and the lowest elevation of the natural stream or  
3 lake bed at the downstream toe of the dam.

4           (15) "Technical guide" means the NRCS field office technical guide, published by the  
5 NRCS.

6           **Note:** Copies of the technical guide are on file with the department, the secretary of state,  
7 and the revisor of statutes. Copies of individual standards contained in the technical guide may  
8 be obtained from the county land conservation committee or from a field office of the U.S.  
9 department of agriculture, natural resources conservation service.

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

11          (17) "WPDES permit" means a ch. 283, Stats., Wisconsin pollutant discharge elimination  
12 system permit.

13  
14          **NR 154.03 Cost-share rates. (1) STATE COST-SHARE RATES.** (a) The cost-share rates in  
15 this section apply to eligible costs in projects funded under chs. NR 153 and 155 unless specified  
16 otherwise in this section.

17          (b) Except in cases of economic hardship, the maximum state cost share rate for  
18 individual best management practices cost-shared in a targeted runoff management project under  
19 ch. NR 153 may not exceed 70%.

20          (c) The cost-share rates for best management practices implemented in an urban nonpoint  
21 source water pollution abatement and storm water management project under ch. NR 155 are as  
22 follows:

23           1. The cost-share rate may not exceed 70% of the eligible costs for individual best  
24 management practices committed on signed cost-share agreements or nonpoint source grants  
25 prior to October 29, 1999.

26           2. The cost-share rate may not exceed 50% of the eligible cost for individual best  
27 management practices committed on signed cost-share agreements or nonpoint source grants  
28 after October 29, 1999.

1 (d) The state cost-share rates for land acquisition, storm sewer rerouting and removal of  
2 structures necessary to install structural urban best management practices may not exceed 50%  
3 of the eligible costs.

4 (e) Cost-share funding authorized under s. 92.14, 281.65, 281.66 or 281.665, Stats., shall  
5 be considered part of the state rate.

6 (f) In cases of economic hardship, cost-share rates and flat rates in this section shall be  
7 increased in accordance with sub. (3), if the project is funded under ch. NR 153.

8 (g) The department may provide cost sharing up to the original cost-shared rate to replace  
9 an agricultural best management practice cost-shared under ch. NR 153, in accordance with s.  
10 NR 153.15 (2) (b).

11 (h) The cost-share rates for agricultural best management practices on cost-share  
12 agreements funded under ch. NR 153 and signed prior to the effective date of this rule ...  
13 [revisor insert date] may be amended to use the rates identified in this section.

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

16 1. Wildlife habitat recreation associated with implementation of contour farming,  
17 contour strip-cropping and field strip-cropping funded under ch. NR 153 has a maximum state  
18 cost-share rate of 70%.

19 2. Flat rates identified under par. (j) may be used in lieu of calculating cost-share  
20 amounts for any project.

21 3. For the best management practices under s. NR 154.04(25), riparian buffers, and (39),  
22 waterway systems, a single payment in addition to installation costs may be made in accordance  
23 with the following:

24 a. For riparian buffers under s. NR 154.04(25), \$500 per acre used for the buffer.

25 b. For waterway systems under s. NR 154.04(39), \$300 per acre used for the waterway  
26 system.

1 c. Payments under this subdivision are eligible only for acreage upon which a commodity  
2 crop was harvested in at least 2 of the 5 years prior to the signing of the cost-share agreement.

3 The 2 years need not be consecutive if separated by non-grain portions of a normal crop rotation.

4 4. Cost-share payments for high residue management systems may not be made for more  
5 than a total of 4 years.

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

8 6. Cost-share payments for nutrient management may not be made for more than a total  
9 of 4 years.

10 7. Cost-share payments for pesticide management may not be made for more than a total  
11 of 4 years.

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

14 (j) A governmental unit may use the following state cost-share rates per acre in lieu of the  
15 state cost-share percentage listed in this section:

16 1. \$9.00 per acre for contour cropping.

17 2. \$13.50 per acre for strip-cropping.

18 3. \$7.50 per acre for field strip-cropping.

19 4. \$18.50 per acre per year for high residue management systems.

20 5. \$25 per acre per year for cropland protection cover (green manure).

21 6. Flat rates for fencing as follows:

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

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

24 c. Two strand electric, fiberglass, steel or wooden post and insulators at a flat rate of  
25 \$3.00 per linear rod.

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

27 7. A governmental unit may establish a flat rate for cost-sharing critical area stabilization  
28 in order to simplify the administration of cost-share funding for this best management practice.

1 The flat rate shall be calculated based on the cost-share rate, up to 70%, and the average cost of  
2 the practice.

3 8. \$6.00 per acre for the first year nutrient management plan and \$4.00 per acre for  
4 subsequent years of nutrient management plans.

5 (2) LOCAL SHARE. (a) The local share of project costs for projects funded under ch. NR  
6 153 or 155 may include funds from federal, local or private sources, or state sources not  
7 identified under sub. (1) (e).

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

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

14 (3) ECONOMIC HARDSHIP. (a) The governmental unit submitting an application under s.  
15 NR 153.17 shall exceed the cost-share limits identified under sub. (1) if the landowner or land  
16 operator that will provide the local share of best management practice installation meets the  
17 application and economic hardship requirements in this subsection.

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

22 (c) The landowner or land operator shall include the following financial information and  
23 supporting documentation in the application:

24 1. A signed and notarized statement by a certified public accountant or accredited  
25 financial institution certifying that, based on a financial statement prepared according to  
26 generally accepted accounting principles that:

27 a. The landowner or land operator is unable to make the cost-share contribution normally  
28 required under sub. (2).

1           b. The landowner or land operator will be able to pay the balance of the cost to install the  
2 cost-shared practice if the landowner or land operator receives hardship cost sharing under par.  
3 (e).

4           2. A certification by the landowner or land operator in a sworn affidavit that the  
5 landowner or land operator has provided to the certified public accountant or accredited financial  
6 institution under this section a full and true disclosure of the landowner's or land operator's  
7 financial condition, including a copy of the landowner's or land operator's latest farm financial  
8 statement.

9           3. The department may require that it approve the method used by the certified public  
10 accountant or accredited financial institution under this paragraph.

11           (d) The governmental unit shall make a determination of economic hardship based on the  
12 recommendation of the certified public accountant or accredited financial institution on the  
13 application received in par. (c).

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

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

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

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

23  
24           **NR 154.04    Best management practices, cost-share eligibility and standards.**

25           **(1) GENERAL APPLICABILITY.** (a) The best management practices, technical  
26 standards and cost-share eligibility conditions in this section may be used to achieve compliance  
27 with the performance standards under ch. NR 151 and shall be used, in conjunction with the  
28 other provisions of this chapter and chs. NR 153 and 155 to determine cost-share amounts.

1 (b) Inconsistencies between provisions concerning cost-share eligibility or cost-share  
2 conditions contained in portions of ch. ATCP 50 incorporated by reference into this section, and  
3 provisions concerning cost-share eligibility or cost-share conditions contained in ch. NR 153 or  
4 this chapter, shall be resolved in favor of the cost-share eligibility and cost-share conditions  
5 provisions in chs. NR 153 or this chapter.

6 (c) The cost-share conditions and standards for all best management practices listed in  
7 this chapter shall apply to all cost-share and grant agreements signed after the effective date of  
8 this rule...[revisor insert date].

9 **(2) GENERAL CONDITIONS.** (a) The cost-share conditions in this subsection apply to  
10 best management practices funded under chs. NR 153 and 155. The conditions in this  
11 subsection, subs. (3) to (42) and chs. NR 153 and 155 shall be met in administering grants under  
12 chs. NR 153 and 155.

13 (b) Any references to s. ATCP 50.40 made by cross-reference in this section do not  
14 apply to the department.

15 (c) Notwithstanding cross-references to ch. ATCP 50, the department shall make all  
16 required determinations for the purposes of chs. NR 120, 151, 153, 155, 216, 243 and this  
17 chapter.

18 (d) If the department finds that a standard or best management practice in this section is  
19 not adequate to implement a performance standard, it shall notify the state agency responsible for  
20 the standard or best management practice in writing, or institute the technical standard  
21 development process of ch. NR 151.

22 (e) All of the standards and best management practices in this chapter are considered  
23 cost-effective best management practices if they are implemented in accordance with s. NR  
24 153.15(6) or 155.15(5).

25 (f) Wetlands may not be destroyed or degraded as a result of installing a best  
26 management practice.

27 (g) Sediment generated from the construction of the best management practice shall be  
28 controlled consistent with performance standards in ch. NR 151 and with standards of the



1 *Wisconsin Construction Site Best Management Practice Handbook*, WDNR Pub. WR-222,  
2 November 1993 Revision.

3 **Note:** The *Wisconsin Construction Site Best Management Practice Handbook* is  
4 available through WI Department of Administration, Document Sales, 202 S. Thornton Ave.,  
5 Madison, WI 53707.

6 (h) Permanent and temporary vegetative cover including materials such as seed, mulch,  
7 fertilizer, trees or shrubs, except for conventional agricultural cover crop, shall be established  
8 where necessary to prevent soil erosion during and after the installation of a best management  
9 practice in this chapter.

10 (i) Preparation, grading, shaping and removal of obstructions necessary to allow the  
11 installation of best management practices shall be conducted on the site.

12 (j) Temporary or permanent fencing and the repair of fencing necessary to implement or  
13 protect a best management practice shall be built.

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

16 (l) A best management practice listed in this chapter and which are conducted below the  
17 ordinary high water mark may be eligible for cost-sharing only when the practice is a cost-  
18 effective means of preventing or reducing pollutants generated from sources of runoff or from  
19 sediments of inland lakes polluted by runoff, or a practice designed to promote and enhance fish  
20 habitat.

21 (m) If the department determines that a best management practice or technical standard  
22 cross-referenced in this chapter to ch. ATCP 50 is cost-effective to address a non-agricultural or  
23 transportation performance standard required by subch. III or IV of ch. NR 151, the department  
24 may use the best management practice or technical standard, or may modify the best  
25 management practice or technical standard according to the procedures of subch. V of ch. NR  
26 151.

27 **(3) MANURE STORAGE SYSTEMS.** (a) The department may provide cost-share  
28 grants to implement manure storage systems.

1 (b) Except as provided under par. (c) the provisions for a manure storage system included  
2 in s. ATCP 50.62, as it existed on the effective date of this rule...[revisor insert date], shall  
3 apply.

4 (c) The following are exceptions to par. (b):

5 1. Leases of manure storage tanks are eligible for funding in accordance with this chapter.

6 2. The department may not award a cost-share grant for a manure storage system if the  
7 landowner or operator holds a WPDES permit or if the department determines that the landowner  
8 or operator is required to hold a WPDES permit.

9 (4) MANURE STORAGE SYSTEM CLOSURE (a) The department may provide cost-  
10 share grants to implement closure of manure storage systems.

11 (b) The provisions for a manure storage system included in s. ATCP 50.63, as it existed  
12 on the effective date of this rule ...[revisor insert date], shall apply.

13 (5) BARNYARD RUNOFF CONTROL SYSTEMS. (a) The department may provide  
14 cost-share grants to implement barnyard runoff control systems.

15 (b) Except as provided under par. (c), the provisions for barnyard runoff control included  
16 in s. ATCP 50.64, as it existed on the effective date of this rule ...[revisor insert date], shall  
17 apply.

18 (c) The department may not award a cost-share grant for a barnyard runoff control system  
19 if the landowner or operator holds a WPDES permit or if the department determines that the  
20 landowner or operator is required to hold a WPDES permit.

21 (6) ACCESS ROADS AND CATTLE CROSSINGS. (a) The department may provide  
22 cost-share grants to implement access roads and cattle crossings.

23 (b) The provisions for access roads and cattle crossings included in s. ATCP 50.65, as it  
24 existed on the effective date of this rule ...[revisor insert date], shall apply.

25 (7) ANIMAL TRAILS AND WALKWAYS. (a) The department may provide cost-share  
26 grants to implement animal trails and walkways.

27 (b) The provisions for animal trails and walkways included in s. ATCP 50.66, as it  
28 existed on the effective date of this rule ...[revisor insert date], shall apply.

1           **(8) CONTOUR FARMING.** (a) The department may provide cost-share grants to  
2 implement contour farming.

3           (b) Except as provided under par. (c), the provisions for contour farming included in s.  
4 ATCP 50.67, as it existed on the effective date of this rule ...[revisor insert date], shall apply.

5           (c) A cost-share grant under ch. NR 153 may be used to mitigate loss of wildlife upland  
6 habitat if all of the following conditions apply:

7           1. Mitigation is warranted because of contour farming implemented using a cost-share  
8 grant provided under ch. NR 153.

9           2. Mitigation is conducted in accordance with the NRCS field office technical standard;  
10 wildlife upland habitat management - 645 (July, 2000). The NRCS technical standard 645 (July,  
11 2000) is incorporated by reference for this chapter.

12           **Note:** Copies of NRCS technical standard 645 may be obtained at the department of  
13 natural resources, secretary of state and the revisor of statutes, Madison, Wisconsin.

14           **(9) COVER AND GREEN MANURE CROP.** (a) The department may provide cost-share  
15 grants to implement cover and green manure crops.

16           (b) The provisions for cover and green manure crops included in s. ATCP 50.68, as it  
17 existed on the effective date of this rule ...[revisor insert date], shall apply.

18           **(10) CRITICAL AREA STABILIZATION.** (a) The department may provide cost-share  
19 grants to implement critical area stabilization.

20           (b) The provisions for critical area stabilization included in s. ATCP 50.69, as it existed  
21 on the effective date of this rule ...[revisor insert date], shall apply.

22           **(11) DIVERSIONS.** (a) The department may provide cost-share grants to implement  
23 diversions.

24           (b) Except as provided under par. (c), the provisions for diversions included in s. ATCP  
25 50.70, as it existed on the effective date of this rule ...[revisor insert date], shall apply.

26           (c) A cost-share grant under ch. NR 153 may be used to mitigate loss of wildlife upland  
27 habitat if all of the following conditions apply.

1           1. Mitigation is warranted because of diversions implemented using a cost-share grant  
2 provided under ch. NR 153.

3           2. Mitigation is conducted in accordance with the NRCS field office technical standard;  
4 wildlife upland habitat management - 645 (July, 2000).

5           **(12) FIELD WINDBREAKS.** (a) The department may provide cost-share grants to  
6 implement field windbreaks.

7           (b) The provisions for field windbreaks included in s. ATCP 50.71, as it existed on the  
8 effective date of this rule ...[revisor insert date], shall apply.

9           **(13) FILTER STRIPS.** (a) The department may provide cost-share grants to implement  
10 filter strips.

11           (b) The provisions for filter strips included in s. ATCP 50.72, as it existed on the  
12 effective date of this rule ...[revisor insert date], shall apply.

13           **(14) GRADE STABILIZATION.** (a) The department may provide cost-share grants to  
14 implement grade stabilization.

15           (b) The provisions for grade stabilization included in s. ATCP 50.73, as it existed on the  
16 effective date of this rule ...[revisor insert date], shall apply.

17           **(15) HEAVY USE AREA PROTECTION.** (a) The department may provide cost-share  
18 grants to implement heavy use area protection.

19           (b) The provisions for heavy use area protection included in s. ATCP 50.74, as it existed  
20 on the effective date of this rule ...[revisor insert date], shall apply.

21           **(16) LAKE SEDIMENT TREATMENT.** (a) *Definitions.* In this subsection, “lake  
22 sediment treatment” is defined as a chemical, physical or biological treatment of polluted lake  
23 sediments for purposes of minimizing potential adverse impacts from the pollutants.

24           (b) *Eligible costs.* A cost-share grant may reimburse the following:

25           1. Costs for the design and treatment of lake sediments with chemical compounds,  
26 including aluminum sulfate, sodium aluminate, ferric chloride, calcium hydroxide and calcium  
27 carbonate.

1           2. Costs for treatment of lake sediments with physical or biological methods, including  
2 the aeration of water overlaying lake sediments and the biological manipulation of organisms  
3 which exacerbate sediment contamination of overlaying lake water.

4           (c) *Ineligible costs.* Costs for the dredging of sediments are ineligible for reimbursement.

5           (d) *Design, construction and maintenance.* A cost-share grant under ch. NR 153 or 155  
6 may not reimburse any costs related to lake sediment treatment unless all the following  
7 conditions are met:

8           1. Water quality objectives are achieved through the control of polluted lake sediments.

9           2. Significant nonpoint sources of the pollution to the lake are controlled prior to  
10 treatment of lake sediments.

11           3. The department approves the engineering design for the lake sediment treatment plan  
12 prior to implementation of the plan.

13           4. All necessary and required federal, state and local permits are obtained prior to  
14 construction.

15           5. The design and implementation of lake sediment treatment plans are conducted in  
16 accordance with standards and best management practices approved on the effective date of this  
17 rule a case-by-case basis by the department.

18           **(17) LIVESTOCK FENCING.** (a) The department may provide cost-share grants to  
19 implement livestock fencing.

20           (b) The provisions for livestock fencing included in s. ATCP 50.75, as it existed on the  
21 effective date of this rule ...[revisor insert date], shall apply.

22           **(18) LIVESTOCK WATERING FACILITIES.** (a) The department may provide cost-  
23 share grants to implement livestock watering facilities.

24           (b) The provisions for livestock watering facilities included in s. ATCP 50.76, as it  
25 existed on the effective date of this rule ...[revisor insert date], shall apply.

26           **(19) MILKING CENTER WASTE CONTROL SYSTEMS.** (a) The department may  
27 provide cost-share grants to implement milking center waste control systems.

1 (b) The provisions for milking center waste control included in s. ATCP 50.77, as it  
2 existed on the effective date of this rule ...[revisor insert date], shall apply.

3 (20) NUTRIENT MANAGEMENT. (a) The department may provide cost-share grants  
4 to implement nutrient management.

5 (b) Except as provided under par. (c), the provisions for nutrient management included in  
6 s. ATCP 50.78, as it existed on the effective date of this rule ...[revisor insert date], shall apply.

7 (c) 1. Costs for soil and plant nutrient testing, including residual nitrogen analysis, and  
8 costs for nutrient analysis of manure and other organic wastes are eligible for cost sharing  
9 provided that testing and analysis are conducted by a laboratory that is certified through a  
10 certification program acceptable to the department.

11 **Note:** The department intends to consult with the department of agriculture, trade and  
12 consumer protection, the University of Wisconsin and affected private laboratories to develop an  
13 effective certification program, including laboratory audits, acceptable to all parties.

14 2. A cost-share grant under ch. NR 153 may not reimburse nutrient management costs  
15 under this subsection unless the landowner or land operator agrees in writing to maintain a  
16 minimum horizontal separation distance of 100 feet in all directions from any potable well, non-  
17 potable well, reservoir or spring when spreading manure, injecting manure or applying manure  
18 by other means.

19 (21) PESTICIDE MANAGEMENT. (a) The department may provide cost-share grants  
20 to implement pesticide management.

21 (b) The provisions for pesticide management included in s. ATCP 50.79, as it existed on  
22 the effective date of this rule ...[revisor insert date], shall apply.

23 (22) PRESCRIBED GRAZING. (a) The department may provide cost-share grants to  
24 implement prescribed grazing.

25 (b) The provisions for prescribed grazing included in s. ATCP 50.80, as it existed on the  
26 effective date of this rule ...[revisor insert date], shall apply.

1           **(23) RELOCATING OR ABANDONING ANIMAL FEEDING OPERATIONS.** (a) The  
2 department may provide cost-share grants to implement relocation or abandonment of animal  
3 feeding operations.

4           (b) The provisions for relocating or abandoning animal feeding operations included in s.  
5 ATCP 50.81, as it existed on the effective date of this rule ...[revisor insert date], shall apply.

6           **(24) RESIDUE MANAGEMENT** (a) The department may provide cost-share grants to  
7 implement residue management.

8           (b) Except as provided under par. (c), the provisions for residue management included in  
9 s. ATCP 50.82, as it existed on the effective date of this rule ...[revisor insert date], shall apply.

10           (c) A cost-share grant under ch. NR 153 may not reimburse costs for continuous no-till  
11 unless surface applications of nutrients, including animal manure, are prohibited or the surface  
12 application of nutrients is in compliance with s. NR 151.07. Continuous no-till is defined as  
13 implementation of the practice for 3 or more consecutive years.

14           **(25) RIPARIAN BUFFERS.** (a) The department may provide cost-share grants to  
15 implement riparian buffers.

16           (b) Except as provided under par. (c), the provisions for riparian buffers included in s.  
17 ATCP 50.83, as it existed on the effective date of this rule ...[revisor insert date] shall apply.

18           (c) The following are exceptions to par. (b):

19           1. Single payments in addition to installation cost-shared in accordance with s. NR  
20 154.03(1)(i)3.

21           2. Eligible costs for easement purchases shall be determined in accordance with s. NR  
22 153.24 or 155.24 rather than ch. ATCP 50.

23           3. Riparian buffer widths under this subsection shall be a minimum of 35 feet from the  
24 top of the channel as defined in s. NR 151.002(46).

25           **(26) ROOFS.** (a) The department may provide cost-share grants to implement roofs for  
26 animal lot and manure storage structures.

27           (b) The provisions for roofs included in s. ATCP 50.84, as it existed on the effective date  
28 of this rule ...[revisor insert date], shall apply.

1           **(27) ROOF RUNOFF SYSTEMS.** (a) The department may provide cost-share grants to  
2 implement roof runoff systems.

3           (b) The provisions for roof runoff systems included in s. ATCP 50.85, as it existed on the  
4 effective date of this rule ...[revisor insert date], shall apply.

5           **(28) SEDIMENT BASINS.** (a) The department may provide cost-share grants to  
6 implement sediment basins.

7           (b) Except as provided under par. (c), the provisions for sediment included in s. ATCP  
8 50.86, as it existed on the effective date of this rule ...[revisor insert date], shall apply.

9           (c) Sediment basins with embankments of 15 to 25 feet in structural height or with  
10 maximum storage capacities of 15 to 50 acre-feet in volume may be cost-shared only if the  
11 department makes a finding, in writing and prior to construction, that failure of the structure  
12 would have minimum potential to endanger life or real or personal property.

13           **(29) SHORELINE HABITAT RESTORATION FOR DEVELOPED AREAS.** (a)

14 *Definitions.* In this subsection, “shoreline habitat restoration” means the establishment in  
15 developed areas of a shoreline buffer zone of diverse native vegetation that extends inland and  
16 water-ward from the ordinary high water mark. The shoreline habitat restoration design seeks to  
17 restore the functions provided by the original, natural vegetation, and includes a mixture of  
18 native trees, shrubs, ground cover or wetland species. This practice includes the following:

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

24           2. Accelerated recovery. Used in areas not suited for natural recovery. Native vegetation  
25 is established by seeding and planting. This method shall be used in areas where dense turf  
26 grasses have been maintained for several years. This may also be used in limited situations  
27 where one or more layers of natural vegetative cover have been removed if approved by the  
28 department.



1 (b) *Eligible costs.* Costs eligible for cost-sharing reimbursement include:

- 2 1. Costs for shoreline habitat restoration when existing shoreline vegetation lacks the  
3 structure or complexity to support habitat functions for littoral and riparian areas.
- 4 2. Costs for plants, seed, mulch and erosion control materials.
- 5 3. Costs for labor and services necessary for installation.

6 (c) *Ineligible costs.* Costs ineligible for cost-sharing reimbursement include:

- 7 1. Cost for practice design unless approved by the department.
- 8 2. Cost for plants, seed, mulch or other materials not approved by the department.
- 9 3. Costs for shoreline erosion control materials such as riprap or biologs unless approved  
10 by the department.
- 11 4. Cost for materials for stairs, walkways, paths or other access structures.

12 (d) *Design, construction and maintenance.* A cost-share grant under ch. NR 153 may not  
13 reimburse any costs related to shoreline habitat restoration for developed areas unless all the  
14 following conditions are met:

- 15 1. No violations of county and local shoreland zoning requirements are present on the  
16 effective date of this rule the entire property.
- 17 2. Runoff from roofs, driveways or other hard surfaces on the property is maintained in  
18 sheet flow with no channels or gullies, to the greatest extent possible using downspout runoff  
19 spreaders, directing runoff to flat or gently sloping grassy areas and minor landscaping to  
20 temporarily pond or spread out runoff or other means.
- 21 3. No channelized flow occurs through the restoration.
- 22 4. If fertilizer use is desired outside the buffer area, zero-phosphorus types are used  
23 unless soil tests specifically indicate a need for phosphorus and the project sponsor approves its  
24 use.
- 25 5. No changes in land use or management may occur that cause increased pollution to  
26 surface water from sources that were controlled prior to the installation of a shoreline habitat  
27 restoration practice.

1           6. The buffer created by shoreline habitat restoration extends the entire length of the lot  
2 along the shoreline except that a viewing and access corridor is allowed. The corridor is not  
3 eligible for cost sharing. Corridors may not exceed 30 feet in width and may encompass no  
4 greater than 30% of the property for lots less than 100 feet wide. The restoration area design may  
5 include the provision of water access, the enhancement of desirable views, the screening of  
6 unwanted views and consideration of privacy. Where buildings are set back 50 feet or more, the  
7 buffer shall extend at least 35 feet inland from the ordinary high water mark. Where buildings  
8 are set back less than 50 feet, a no touch zone where no vegetation is removed or land is  
9 disturbed shall extend to within 15 feet of the structure.

10           7. Shallow water areas that are capable of supporting aquatic vegetation waterward of  
11 the ordinary high water mark shall be managed so that vegetation, land or other habitat features  
12 are not disturbed after the buffer is established. Areas waterward of the viewing and access  
13 corridor are exempt from this condition.

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

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

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

24           11. The project sponsor shall identify the most appropriate recovery methods for each  
25 individual site.

26           12. The following conditions apply to installation practices:

27           a. Comply with local NRCS planting recommendations to determine recommended  
28 planting dates for ground covers, shrubs and trees.

1           b. Exposure of bare soil shall be kept to an absolute minimum by using methods such as  
2 black plastic covers to remove competing weeds. All exposed soils shall be mulched. A  
3 temporary seeding is required on sites where permanent ground cover will not be established  
4 until the following year. A temporary or companion seeding is required on any exposed slopes  
5 exceeding 12%. Mulching and netting or erosion control matting is required on slopes exceeding  
6 20%.

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

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

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

14           13. The following conditions apply to practice operation and maintenance:

15           a. All buffer areas are to be managed as no-touch zones unless otherwise approved by the  
16 department.

17           b. Fertilizers are prohibited after the buffer is established.

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

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

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

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

26           g. Lawn mowing is permitted in the viewing and access corridors. Elsewhere, mowing is  
27 prohibited except in established prairie buffer areas, and in accordance with a mowing plan  
28 approved by the project sponsor. In viewing and access corridors, mowing is allowed to a

1 minimum height of 10 inches, and only as needed to reduce competition from undesirable  
2 species. Mowing may occur only between August 1 and September 1 to avoid disturbance of  
3 nesting birds and allow regrowth before winter.

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

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

11 j. Except for areas waterward of the access corridor, areas waterward of the buffer shall  
12 be managed as no-touch zones.

13 k. The shoreline habitat restoration project complies with UW-Extension Publication  
14 GWQ014, *Shoreline Plants and Landscaping*, DNR Publication PUBL-WM-228, *Home on the*  
15 *Range - Restoring and Maintaining Grasslands for Wildlife*, or similar publications as approved  
16 by the project sponsor.

17 14. The landowner or land operator agrees to maintain the shoreline habitat restoration  
18 project.

19 **(30) SINKHOLE TREATMENT.** (a) The department may provide cost-share grants to  
20 implement sinkhole treatment.

21 (b) The provisions for sinkhole treatment included in s. ATCP 50.87, as it existed on the  
22 effective date of this rule ...[revisor insert date], shall apply.

23 **(31) STREAMBANK AND SHORELINE PROTECTION.** (a) The department may  
24 provide cost-share grants to implement streambank and shoreline protection.

25 (b) Except as provided under par. (c), the provisions for streambank and shoreline  
26 protection included in s. ATCP 50.88, as it existed on the effective date of this rule ...[revisor  
27 insert date], shall apply.

1 (c) The 25% cost-share limitation for a cost-share grant for rock and timber riprap used to  
2 establish fish habitat in s. ATCP 50.88(2)(b) does not apply to grants issued by the department.

3 **(32) STRIP-CROPPING.** (a) The department may provide cost-share grants to implement  
4 strip-cropping.

5 (b) The provisions for strip-cropping included in s. ATCP 50.89, as it existed on the  
6 effective date of this rule ...[revisor insert date], shall apply.

7 **(33) SUBSURFACE DRAINS.** (a) The department may provide cost-share grants to  
8 implement subsurface drains.

9 (b) The provisions for subsurface drains included in s. ATCP 50.90, as it existed on the  
10 effective date of this rule ...[revisor insert date], shall apply.

11 **(34) TERRACE SYSTEMS.** (a) The department may provide cost-share grants to  
12 implement terrace systems.

13 (b) The provisions for terrace systems included in s. ATCP 50.91, as it existed on the  
14 effective date of this rule ...[revisor insert date], shall apply.

15 **(35) UNDERGROUND OUTLETS.** (a) The department may provide cost-share grants to  
16 implement underground outlets.

17 (b) The provisions for underground outlets included in s. ATCP 50.92, as it existed on the  
18 effective date of this rule ...[revisor insert date], shall apply.

19 **(36) WASTE TRANSFER SYSTEMS.** (a) The department may provide cost-share grants  
20 to implement waste transfer systems.

21 (b) The provisions for waste transfer systems included in s. ATCP 50.93, as it existed on  
22 the effective date of this rule ...[revisor insert date], shall apply.

23 **(37) WASTEWATER TREATMENT STRIPS** (a) The department may provide cost-  
24 share grants to implement wastewater treatment strips.

25 (b) The provisions for wastewater treatment strips included in s. ATCP 50.94, as it  
26 existed on the effective date of this rule ...[revisor insert date], shall apply.

27 **(38) WATER AND SEDIMENT CONTROL BASINS.** (a) The department may provide  
28 cost-share grants to implement water and sediment control basins.

1 (b) The provisions for water and sediment control basins included in s. ATCP 50.95, as it  
2 existed on the effective date of this rule ...[revisor insert date], shall apply.

3 (39) WATERWAY SYSTEMS. (a) The department may provide cost-share grants to  
4 implement waterway systems.

5 (b) Except as provided under par. (c), the provisions for waterway included in s. ATCP  
6 50.96, as it existed on the effective date of this rule ...[revisor insert date] shall apply.

7 (c) The following are exceptions to par. (b):

8 1. Single payments in addition to installation costs are cost-shared in accordance with s.  
9 NR 154.03(1)(i)3.

10 2. Eligible costs for easement purchases shall be determined in accordance with s. NR  
11 153.24 or 155.24 rather than ch. ATCP 50.

12 (40) WELL DECOMMISSIONING. (a) The department may provide cost-share grants to  
13 implement well decommissioning.

14 (b) The provisions for well decommissioning included in s. ATCP 50.97, as it existed on  
15 the effective date of this rule ...[revisor insert date], shall apply.

16 (41) WETLAND DEVELOPMENT OR RESTORATION. (a) The department may  
17 provide cost-share grants to implement wetland development or restoration.

18 (b) The provisions for wetland development or restoration included in s. ATCP 50.98, as  
19 it existed on the effective date of this rule ...[revisor insert date], shall apply.

20 (42) URBAN BEST MANAGEMENT PRACTICES. (a) *Definitions.* In this subsection:

21 1. "Structural urban best management practices" means detention basins, wet basins,  
22 infiltration basins and trenches and wetland basins.

23 2. "Urban best management practices" means structural urban best management  
24 practices and other source area measures, transport system and end-of-pipe measures designed to  
25 control storm water runoff rates, volumes and discharge quality. "Source area" means a  
26 component of urban land use including rooftops, sidewalks, driveways, parking lots, storage  
27 areas, streets and lawns from which storm water pollutants are generated during periods of  
28 snowmelt and rainfall runoff.

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

2 1. Costs for excavation, grading, mulching, seeding, necessary landscaping, piping, drop  
3 spillways and other measures required to implement the practice.

4 2. Costs for land acquisition, including storm sewer rerouting and the removal of  
5 structures necessary to install structural urban best management practices.

6 3. Costs for materials and labor for the initial installation of groundwater monitoring  
7 wells required by the department.

8 4. Costs, on a prorated basis, for multi-purpose practices which manage both water  
9 quality and unrelated water quantity problems.

10 (c) *Ineligible costs.* Cost-sharing under this chapter may not be provided for:

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

15 2. Costs for removal or disposal of accumulated sediments or other materials needed to  
16 properly maintain the practice.

17 (d) *Design, construction and maintenance.* 1. The department shall identify acceptable  
18 standards for each structural urban best management practice enumerated in an approved priority  
19 watershed plan, approved priority lake plan or project grant.

20 1. A cost-share grant under ch. NR 153 or 155 may not reimburse costs for urban best  
21 management practices under this section unless those practices comply with all the following  
22 that apply:

23 a. Wet detention basins shall be designed consistent with the Wisconsin department of  
24 natural resources conservation practice standard 1001, wet detention basin 1001 (June, 1999).

25 b. The governmental unit, landowner or land operator shall submit preliminary designs  
26 for each identified alternative to the department for review and comment.

27 c. Based on the review of the preliminary designs for each alternative, the governmental  
28 unit, landowner or land operator shall submit a detailed design including pertinent information

1 addressing each criterion listed in subd. 3., for the selected alternative prepared by a registered  
2 professional engineer or other individual trained in the design of the practice and approved by  
3 the department, to the department for review and approval.

4 2. The department shall consider standards developed under the process in subch. IV of  
5 ch. NR 151 and other documents when identifying acceptable standards for urban best  
6 management practices.

7 3. The department shall approve or disapprove within 90 days the detailed design based  
8 on the following criteria:

9 a. Adequacy of pollutant control to protect surface water, groundwater and wetland  
10 resources in accordance with the objectives of a watershed plan. Applicable performance  
11 standards identified in ch. NR 151 may be considered and addressed in the detailed design.

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

16 c. Structural integrity of the design.

17 d. Aesthetics.

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

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

20 g. Other pertinent factors.

21 h. The department may waive or modify the review or approval procedures under this  
22 subdivision.

23 4. Any waiver shall be specifically described in the grant agreement or the cost-share  
24 agreement.

25 5. The department may consider providing cost-sharing for accelerated or high efficiency  
26 street sweeping systems.

27 6. The owner of the practice agrees to maintain the practice.

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

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

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

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

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

(SEAL)