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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

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* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

(e) For highly susceptible wetlands, 75 feet. Highly susceptible wetlands include the following types: calcareous fens, sedge meadows, open and coniferous bogs, low prairies, coniferous swamps, lowland hardwood swamps and ephemeral ponds.

Note: Information on wetland types can be found at:

<http://dnr.wi.gov/wetlands/types.html>. Additional information on wetland types including ephemeral ponds is given under wetland community at:

<http://dnr.wi.gov/org/land/er/communities/>

(f) For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include: degraded wetlands dominated by invasive species such as reed canary grass; cultivated hydric soils; and any gravel pits, or dredged material or fill material disposal sites that take on the attributes of a wetland.

(g) In pars. (d) to (f), determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in s. NR 103.03.

(h) Wetland boundary delineation shall be made in accordance with s. NR 103.08 (1m). This paragraph does not apply to wetlands that have been completely filled in compliance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in compliance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed. Where there is a legally authorized wetland fill, the protective area standard need not be met in that location.

(i) For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.

(j) Notwithstanding pars. (a) to (i), the greatest protective area width shall apply where rivers, streams, lakes, and wetlands are contiguous.

Note: A stream or lake is not eligible for a lower protective area width even if contiguous to a less susceptible wetland.

(2) **APPLICABILITY.** This section applies to transportation facility post-construction sites located within a protective area, except those areas exempted pursuant to sub. (4).

(3) **REQUIREMENTS.** The following requirements shall be met:

(a) No impervious surface of a transportation facility may be constructed within a protective area, unless the transportation facility authority determines, in consultation with the department, that there is no practical alternative. If there is no practical alternative to locating a

transportation facility within a protective area, the transportation facility may be constructed in the protective area only to the extent the transportation facility authority, in consultation with the department, determines is reasonably necessary. The transportation facility authority shall state in the design plan prepared pursuant to s. NR 151.241 (3), why it is necessary to construct the transportation facility within a protective area.

(b) Where land disturbing construction activity occurs within a protective area, adequate sod or self-sustaining vegetative cover of 70 percent or greater shall be established and maintained where no impervious surface is present. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion such as on steep slopes or where high velocity flows occur.

Note: It is recommended that seeding of non-invasive vegetative cover be used in the protective areas. Some invasive plants are listed in ch. NR 40. Vegetation that is flood and drought tolerant and can provide long-term bank stability because of an extensive root system is preferable. Vegetative cover may be measured using the line transect method described in the University of Wisconsin extension publication number A3533, titled "Estimating Residue Using the Line Transect Method".

(c) Best management practices such as filter strips, swales or wet detention ponds, that are designed to control pollutants from non-point sources, may be located in the protective area.

Note: Other laws, such as ch. 30, Stats., and chs. NR 103, 115, 116 and 117 and their associated review and approval processes may apply in the protective area.

(4) EXEMPTIONS. This section does not apply to any of the following:

(a) Except as provided under s. NR 151.241 (4), non-highway transportation redevelopment post-construction sites.

(b) Structures that cross or access surface waters such as boat landings, bridges and culverts.

(c) Structures constructed in accordance with s. 59.692 (1v), Stats.

(d) Transportation facilities from which the runoff does not enter the surface water, including wetlands, without first being treated by a BMP to meet the requirements of ss. NR

151.242 to 151.243, except to the extent that vegetative ground cover is necessary to maintain bank stability.

Note: A vegetated protective area to filter runoff pollutants from transportation facilities described in par. (d) is not necessary since the runoff at that location is treated prior to entering the surface water. Other practices necessary to meet the requirements of this section, such as a swale or pond, will need to be designed and implemented to reduce runoff pollutants prior to runoff entering a surface water of the state. The requirements of ch. NR 103 still apply and should be considered before runoff is diverted to or from a wetland.

NR 151.246 Fueling and vehicle maintenance areas performance standard. Fueling and vehicle maintenance areas shall have BMPs designed, installed and maintained to reduce petroleum within runoff, so that the runoff that enters waters of the state contains no visible petroleum sheen, or to the maximum extent practicable.

Note: A combination of the following BMPs may be used: oil and grease separators, canopies, petroleum spill cleanup materials, or any other structural or non-structural method of preventing or treating petroleum in runoff.

NR 151.247 Location. To comply with the standards required under ss. NR 151.242 to 151.244, BMPs may be located on-site or off-site as part of a regional storm water device, practice or system, but shall be installed in accordance with s. NR 151.003.

NR 151.248 Timing. The BMPs that are required under ss. NR 151.242 to 151.246 and NR 151.249 shall be installed before the construction site has undergone final stabilization.

Note: In accordance with subch. V, the department has developed technical standards to help meet the post-construction performance standards. These technical standards are available on the department web page at: <http://dnr.wi.gov/runoff/stormwater/techstds.htm>.

NR 151.249 Swale treatment performance standard. (1) REQUIREMENT. Except as provided in sub. (2), transportation facilities that use swales for runoff conveyance and pollutant removal are exempt from the requirements of ss. NR 151.242 to 151.244, if the swales are designed to do all of the following or to the maximum extent practicable:

(a) Swales shall be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.

Note: It is preferred that tall and dense vegetation be maintained within the swale due to its greater effectiveness at enhancing runoff pollutant removal.

(b) Swales shall comply with the department technical standard 1005, "Vegetated Infiltration Swale", dated May, 2007, except as otherwise authorized in writing by the department.

Note: In accordance with subch. V, the department has developed technical standards to help meet the post-construction performance standards. These technical standards are available on the department web page at: <http://dnr.wi.gov/runoff/stormwater/techstds.htm>.

(2) OTHER REQUIREMENTS. (a) Notwithstanding sub. (1), the department may, consistent with water quality standards, require that other requirements, in addition to swale treatment, be met on a transportation facility with an average daily traffic rate greater than 2,500 and where the initial surface water of the state that the runoff directly enters is any of the following:

1. An outstanding resource water.
2. An exceptional resource water.
3. Waters listed in s. 303 (d) of the federal clean water act that are identified as impaired in whole or in part, due to nonpoint source impacts.
4. Waters where targeted performance standards are developed pursuant to s. NR 151.004.

(b) The transportation facility authority shall contact the department's regional storm water staff or the department's liaison to the department of transportation to determine if additional BMPs beyond a water quality swale are needed under this subsection.

SECTION 74. NR 151.25 is repealed and recreated to read:

NR 151.25 Developed urban area performance standard for transportation facilities. (1) APPLICABILITY. This section applies to transportation facilities under the jurisdiction of the department of transportation for maintenance purposes that are located within a municipality regulated under subch. I of ch. NR 216.

Note: Transportation facilities that are not under the jurisdiction of the department of transportation for maintenance purposes are subject to the performance standards in s. NR 151.13.

(2) REQUIREMENTS. (a) Except as provided in par. (c) the department of transportation shall develop and implement a storm water management plan in consultation with the department to control pollutants from transportation facilities described in sub. (1), for runoff from existing transportation facilities that enters waters of the state as compared to no storm water management controls. By design, the plan shall do the following:

1. A 20 percent reduction in total suspended solids or to the maximum extent practicable, beginning not later than a date consistent with the municipality regulated under subch. I of ch. NR 216.

2. A 40 percent reduction in total suspended solids in runoff by March 31, 2013, for transportation facilities within a municipality that received permit coverage under subch. I of ch. NR 216 on or before January 1, 2010.

3. A 40 percent reduction in total suspended solids in runoff within 7 years, for transportation facilities within a municipality receiving permit coverage under subch. I of ch. NR 216 after January 1, 2010.

4. Evidence of meeting the performance standard of this paragraph shall require the use of a model or an equivalent methodology approved by the department. Acceptable models and model versions include SLAMM version 9.2 and P8 version 3.4 or subsequent versions of those models. An earlier version of SLAMM is acceptable if no credit is being taken for street cleaning.

Note: Information on how to access SLAMM and P8 and the relevant parameter files is available at: <http://dnr.wi.gov/runoff/models/index.htm> or by contacting the department's storm water management program at (608) 267-7694.

(b) The department of transportation shall inform and educate appropriate department of transportation staff and any transportation facility maintenance authority contracted by the department of transportation to maintain transportation facilities owned by the department of transportation regarding nutrient, pesticide, salt and other deicing material and vehicle maintenance management activities in order to prevent runoff pollution of waters of the state.

(c) If the department of transportation has determined that it will not achieve a 40 percent reduction in total suspended solids in runoff that enters waters of the state as compared to no controls by the applicable date of par. (a) 2. or 3., then 6 months before the applicable date, the department of transportation shall submit a report to the department describing the control

measures that it has implemented and shall submit a long term storm water management plan in accordance with s. NR 151.13 (2) (b) 3. The department shall review the plan in accordance with s. NR 151.13 (2) (b) 4.

(d) To comply with the standards required under this subsection, BMPs may be located on-site or off-site as part of a regional storm water device, practice or system, but shall be installed in accordance with s. NR 151.003.

SECTION 75. NR 151.26 (1) is amended to read:

NR 151.26 (1) If a transportation facility that is ~~exempted~~ exempt from prohibitions, permit or approval requirements by s. ~~30.12(4)~~, 30.2022 (1), Stats., does not comply with the performance standards of this subchapter, the department shall initiate the conflict resolution process specified in the cooperative agreement between the department of transportation and the department established under the interdepartmental liaison procedures under s. ~~30.12(4)(b)~~, 30.2022 (2), Stats.

SECTION 76. NR 151.31 (1) (intro.) is amended to read:

NR 151.31 Technical standards development process. (1) The department shall develop and revise technical standards to implement the performance standards in ~~ss. NR 151.11, 151.12, 151.13, 151.23, 151.24 and 151.25~~ subchs. III and IV through a process outlined as follows:

SECTION 77. NR 151.31 (1) (f) 1.a. and 2. are amended to read:

NR 151.31 (1) (f) 1. a. Develop a technical standard that by design, meets the performance standard established in s. NR 151.23 ~~(3) (4) and (4m)~~.

2. For transportation facility construction sites, the technical standard developed under this paragraph shall also indicate any conditions under which it may not be used to implement the performance standard established in s. NR 151.23 ~~(3) (4) and (4m)~~.

SECTION 78. Chapter NR 153 (title), 153.10 and 153.11 (1) are amended to read:

CHAPTER NR 153 (title) TARGETED RUNOFF MANAGEMENT AND NOTICE OF DISCHARGE GRANT PROGRAM PROGRAMS

NR 153.10 Purpose. The purpose of this chapter is to establish the administrative framework for the selection of all targeted runoff management projects under s. 281.65 (4c), Stats., the selection of notice of discharge projects under s. 281.65 (4e), Stats., and implementation of these projects under s. 281.65, Stats. This chapter promotes management of urban and rural nonpoint pollution sources in critical geographic locations where nonpoint source related water quality problems and threats are most severe and control is most feasible. This chapter accelerates implementation of nonpoint source water pollution control in areas where funding available through s. 92.14, Stats., is inadequate to meet water quality goals.

Note: The department will not use this chapter to administer grants for activities to ~~control point source pollution, including activities~~ required to comply with ~~provisions~~ WPDES permit requirements of ch. NR 216 or 243, except if the grant is provided to the city of Racine to comply with municipal storm water permit requirements. Chapter NR 155 is used by the department to administer grants for both point source and nonpoint source projects in urban areas as defined under s. 281.66 (1) (e), Stats. Projects that are located in urban areas but are not required to comply with ch. NR 216 are eligible to apply for funding under ch. NR 153 or 155, or both.

NR 153.11 (1) The department when acting to solicit and accept all targeted runoff management project applications, score applications and select projects, under s. 281.65 (4c), Stats., for funding under s. 281.65, Stats.

SECTION 79. NR 153.11 (1m) is created to read:

NR 153.11 (1m) The department when accepting applications, selecting and funding notice of discharge projects under s. 281.65 (4e), Stats.

SECTION 80. NR 153.11 (3) is amended to read:

NR 153.11 (3) Governmental units when acting to submit applications to the department for projects under s. 281.65 (4c) or 281.65 (4e), Stats., receive grants from the department for projects under s. 281.65, Stats., and serve as cost-share providers to landowners, land operators or state agencies.

SECTION 81. NR 153.12 (1) is repealed and recreated to read:

NR 153.12 (1) "Acquisition cost" means the purchase price actually paid by the grantee and reasonable costs related to the purchase of the property limited to the cost of appraisals, land

surveys, relocation payments, title evidence, recording fees, historical and cultural assessments required by the department, and environmental inspections and assessments. It does not include attorneys fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes or any other cost not identified in this subsection.

SECTION 82. NR 153.12 (5m) is created to read:

NR 153.12 (5m) "Cost-share recipient" means the receiver of cost-share funds from a provider.

SECTION 83. NR 153.12 (8) is amended to read:

NR 153.12 (8) "Force account work" means the use of the governmental unit's own employees or equipment for project planning, design, construction, construction related activities, inspection, or repair or improvement to a best management practice.

SECTION 84. NR 153.12 (12m), (18g) and (18r) are created to read:

NR 153.12 (12m) "Impaired water" means a water body that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

(18g) "Notice of discharge" means a notice issued from the department to a landowner or operator under s. NR 243.24.

(18r) "Notice of discharge project" means a project funded by the department under s. 281.65 (4e), Stats.

SECTION 85. NR 153.12 (19) is amended to read:

NR 153.12 (19) "Operation and maintenance period" means the length of time a best management practice included on a cost-share agreement or a runoff management grant agreement shall be operated and maintained to fulfill conditions of the agreement.

SECTION 86. NR 153.12 (19m) is created to read:

NR 153.12 (19m) "Priority lake" means any lake or group of lakes that are identified under s. 281.65 (3) (am), Stats.

SECTION 87. NR 153.12 (22) is repealed.

SECTION 88. NR 153.12 (23) to (27) are amended to read:

NR 153.12 (23) "Project" means any targeted runoff management project or a notice of discharge project.

(24) "Project area" means the geographic extent of a ~~targeted runoff management~~ project.

(25) "Project completion" means the expiration date of a runoff management grant agreement or the date all practice installations were certified as complete.

(26) "Project sponsor" means the governmental unit or state agency applying for and receiving grant assistance under s. 281.65 (4c) or (4e), Stats., and this chapter.

(27) "Provider" means a governmental unit ~~when serving to administer~~ that administers cost-share funds through a cost-share agreement with a ~~private~~ landowner, ~~land~~ operator or state agency.

SECTION 89. NR 153.12 (28) is repealed.

SECTION 90. NR 153.12 (29) and (31) are amended to read:

NR 153.12 (29) "Runoff management grant agreement" means an agreement entered into between the department of natural resources and a state agency or governmental unit or federally recognized tribal governing body which establishes the terms under which funds are provided by the department for the installation of best management practices or the purchase of property or easements in a project funded under s. 281.65 (4c) or 281.65 (4e), Stats.

(31) "Targeted runoff management project" means either a TMDL or a non-TMDL control project selected by the department for funding under s. 281.65 (4c), Stats.

SECTION 91. NR 153.12 (31m), (32g) and (32r) are created to read:

NR 153.12 (31m) "TMDL" means the amount of pollutants specified as a function of one or more water quality parameters, that can be discharged into a water quality limited surface water segment and still ensure attainment of the applicable water quality standard.

(32g) "US EPA" means the United States environmental protection agency.

(32r) "Watershed" means the geographic area draining to a specified portion of the surface or groundwater resource.

SECTION 92. NR 153.13 is amended to read:

NR 153.13 Eligible applicants. (1) Governmental units and federally recognized tribal governing bodies are eligible to apply for and receive ~~targeted runoff management grants~~ funding for projects administered under this chapter.

Note: A landowner or land operator that is not a governmental unit may not apply directly to the department for a targeted runoff management grant or a notice of discharge grant. However, a landowner or land operator may enter into a cost-share agreement with a governmental unit to receive grant funds awarded by the department under s. NR 153.20 or 153.205.

(2) A state agency, including the department, may apply for a targeted runoff management project grant administered under this chapter for a project on land under state ownership or control if the project ~~affects a priority lake or is in a priority watershed area~~ area is within the boundaries of a priority watershed or priority lake project. The department may apply for a grant to purchase an easement for a targeted runoff management project or a notice of discharge project located in a priority watershed area or priority lake project. For purposes of this subsection, a priority watershed or priority lake project is considered to retain its project status through the end of the tenth year beyond the expiration date of the nonpoint source grant agreement entered into under s. NR 120.12.

Note: A state agency, including the department, may not apply directly to the department for a targeted runoff management project grant ~~for a project if the project area is located outside the boundaries of a priority watershed or priority lake area project~~. However, for For work in these areas a state agency, including the department, ~~may enter into a cost share agreement with a governmental unit to receive grant funds awarded to the governmental unit under s. NR 153.20~~ may only receive funds for a targeted runoff management project if a governmental unit submits an application on its behalf.

SECTION 93. NR 153.14 is repealed and recreated to read:

NR 153.14 Eligible targeted runoff management projects. (1) **APPLICABILITY.** This section applies only to targeted runoff management projects.

(2) **PROJECT CATEGORIES.** The following four categories of targeted runoff management projects are eligible for funding under this chapter:

- (a) large-scale TMDL implementation project
- (b) small-scale TMDL implementation project
- (c) large-scale non-TMDL control project
- (d) small-scale non-TMDL control project

(3) GENERAL ADMINISTRATIVE PROJECT CRITERIA FOR ALL PROJECTS. Any project funded under this section shall meet all of the following administrative criteria:

(a) The project application submitted under s. NR 153.17 shall specify the watershed, sub-watershed or specific site that will be served by the project.

(b) The project shall be consistent with priorities identified by the department on a watershed or other geographic basis.

(c) The project shall be consistent with the county land and water resources management plan approved under s. 92.10, Stats.

(d) The project may not have been allocated full cost-share funding by the department of agriculture, trade and consumer protection under the joint allocation plan approved under ss. 92.14 (14) and 281.65 (4) (pm), Stats.

(4) GENERAL WATER QUALITY CRITERIA FOR ALL PROJECTS. Any project funded under this section shall implement nonpoint source pollution control in an area that is a target area based on at least one of the following:

(a) The need for compliance with performance standards established by the department in ch. NR 151.

(b) The existence of impaired water bodies that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

(c) The existence of outstanding or exceptional resource waters, as designated by the department under s. 281.15, Stats.

(d) The existence of threats to public health.

(e) The existence of an animal feeding operation that has received a notice of discharge under ch. NR 243 or a notice of intent to issue a notice of discharge.

(f) Other water quality concerns of national or statewide importance as identified by the department in application materials.

(5) LARGE-SCALE TMDL IMPLEMENTATION PROJECT ELIGIBILITY

CRITERIA. Large-scale TMDL implementation projects shall meet the following specific criteria:

(a) The project shall directly implement the pollutant-specific goals of either a draft TMDL, a US EPA-approved TMDL, a draft TMDL implementation plan, a department approved TMDL implementation plan, or an equivalent to any of the foregoing as identified by the department.

(b) The project shall be designed to control the most critical nonpoint pollution sources within a designated watershed area.

Note: The boundaries of the watershed area will be based on factors including the amount of funds available, the management needs identified in the TMDL and the management strategy set forth in the TMDL implementation plan.

(c) The project shall be limited to managing agricultural sources of nonpoint pollution.

(d) The project shall focus on controlling those nonpoint pollution sources in the project area that are determined to be significant based on their relative contribution to the impairment and that can be cost-effectively controlled.

(e) The intended project period may not exceed 3 years in duration, with the possibility of extension to 4 years if approved by the department.

(6) SMALL-SCALE TMDL IMPLEMENTATION PROJECT ELIGIBILITY

CRITERIA. Small-scale TMDL implementation projects shall meet the following specific criteria:

(a) The project shall directly implement the pollutant-specific goals of either a draft TMDL, a US EPA-approved TMDL, a draft TMDL implementation plan, a department approved TMDL implementation plan, or an equivalent to any of the foregoing as identified by the department.

(b) The project may focus on one or more sites or farms.

(c) The project may address nonpoint pollution from either agricultural or urban sources.

(d) The project shall focus on controlling those nonpoint pollution sources in the project area that are determined to be significant based on their relative contribution to the impairment and that can be cost-effectively controlled.

(e) The intended project period may not exceed two years in duration, with the possibility of extension to 3 years if approved by the department.

(7) LARGE-SCALE NON-TMDL CONTROL PROJECTS. Large-scale non-TMDL control projects shall meet the following specific criteria:

(a) The project shall implement water resource management goals included in a watershed plan or strategy acceptable to the department.

(b) The project shall be designed to control the most critical nonpoint pollution sources within a designated watershed area. The designated watershed area shall be not less than 8 square miles nor more than 39 square miles in areal extent.

Note: The Wisconsin Buffer Initiative finds that watersheds in this size range provide the best opportunity for cost-effectively solving surface water resource problems in threatened or partially degraded waters using agricultural nonpoint source pollution control best management practices. The Wisconsin Buffer Initiative is published by the University of Wisconsin College of Agricultural and Life Sciences. Copies are on file with the department and the secretary of state.

(c) The project shall be limited to managing agricultural sources of nonpoint pollution.

(d) The project shall focus on controlling those nonpoint pollution sources in the project area that are determined to be significant based on their relative contribution to the impairment and that can be cost-effectively controlled.

(e) The project shall focus on attainment of performance standards and prohibitions established by the department under s. 281.16 (3), Stats.

(f) The intended project period may not exceed 3 years in duration, with the possibility of extension to a fourth year if approved by the department.

(8) SMALL-SCALE NON-TMDL CONTROL PROJECT. Small-scale nonpoint source control projects shall meet the following specific criteria:

(a) The project may focus on one or more sites or farms.

(b) The project may address nonpoint pollution from either agricultural or urban sources.

(c) Agricultural projects shall be designed to achieve attainment of agricultural performance standards and prohibitions established by the department under s. 281.16 (3), Stats. Urban projects shall be designed to achieve attainment of non-agricultural performance standards established by the department under s. 281.16 (2), Stats.

(d) The intended project period may not exceed 2 years in duration, with the possibility of extension to 3 years if approved by the department.

Note: TMDL implementation projects contribute to the cost-effective removal of surface waters from the state's impaired waters list in a way that is consistent with TMDLs and TMDL implementation plans. The degree to which compliance with state performance standards and prohibitions is needed to address these impairments will vary by waterbody.

Non-TMDL control projects improve degraded surface waters (including surface waters on the s. 303 (d) list that do not yet have TMDLs or TMDL implementation plans), to improve degraded groundwater and to protect threatened and high quality surface and ground waters from degradation. These projects achieve their goals by implementing state performance standards and prohibitions.

Large-scale projects and small-scale TMDL implementation projects set control priorities based on a watershed plan or other process to identify needs and cost-effective strategies. Small-scale non-TMDL control projects implement state performance standards and prohibitions wherever they may occur, leading to a general reduction in nonpoint source pollution.

SECTION 94. NR 153.145 is created to read:

NR 153.145 Eligible notice of discharge projects. (1) This section applies only to notice of discharge projects.

(2) Eligibility for funding under this section includes notice of discharge projects that implement best management practices for animal waste management at animal feeding operations for which the department has issued a notice required under s. 281.65 (4e), Stats. Notice of discharge projects shall be designed to meet the water quality goals established in s. 281.65 (4e), Stats.

Note: The department may fund management practices to meet notice of discharge requirements in two ways. It may fund required management practices through a notice of discharge project authorized under s. 281.65 (4e), Stats. Alternatively, it may fund the required management practices under a targeted runoff management project authorized under s. 281.65 (4c), Stats. This chapter establishes separate requirements and procedures for each of these alternative funding mechanisms.

SECTION 95. NR 153.15 (1) (a), (c) (intro.) and 4., and (g) are amended to read:

NR 153.15 (1) (a) The department may provide cost sharing for the construction or implementation of best management practices in ~~projects located either inside or outside of priority watershed and priority lake areas~~ any project selected for funding under the chapter. The department may attribute design and construction services costs to the cost of construction or implementation of the best management practice. State and local administrative permit fees are not reimbursable as part of the construction cost.

Note: Although local administrative fees are not reimbursable, the department may reimburse governmental units for design and construction services subject to the limitations of s. NR 153.27 (4).

(c) If the purpose of the best management practice is to comply with a non-agricultural performance standard under subch. III or IV of ch. NR 151, or if the purpose of the best management practice is to reduce pollution from a source for which a performance standard is not included in ch. NR 151, the best management practice shall meet one of the following criteria to be considered eligible for cost sharing under this chapter:

4. Be identified by the department as an interim best management practice or alternative design criteria in accordance with sub. (3) (b) 4.

(g) Best management practices funded under s. 20.866 (2) (te) or (tf), Stats., shall meet requirements for use of bond-sourced funding.

SECTION 96. NR 153.15 (2) (a) is repealed and recreated to read:

NR 153.15 (2) (a) Best management practices for croplands classified as “new” under s. NR 151.09 (4) (b) 3. or best management practices for livestock facilities classified as “new” under s. NR 151.095 (5) (b) 2.

SECTION 97. NR 153.15 (2) (ag) and (ar) are created to read:

NR 153.15 (2) (ag) Best management practices to address pollution from a livestock facility or cropland practice that was previously in compliance with standards and prohibitions on or after the date the standard or prohibition became effective under ch. NR 151, regardless of cost share history. The department may make an exception and provide cost sharing to replace practices or practice components previously cost shared by the department that are ineffective during the operation and maintenance period due to unforeseen design problems.

Note: If a source loses its compliance status because of changes to the standard, cost sharing may be offered for management measures needed to bring the source into compliance with the new standard.

(ar) Best management practices to address a pollution source for which the department included a previous offer of cost sharing as part of a notice issued pursuant to ch. NR 151 and the management practices were not installed within the required compliance period.

SECTION 98. NR 153.15 (2) (b) is amended to read:

NR 153.15 (2) (b) ~~Operation~~ Routine operation and maintenance of best management practices, ~~except that the~~. The department may provide cost sharing one time to re-establish a best management practice cost shared after October 1, 2002 that is damaged within the cost-share operation and maintenance period by natural causes beyond the control of the landowner or land operator.

SECTION 99. NR 153.15 (2) (c) is repealed.

SECTION 100. NR 153.15 (2) (d) (intro.) and (e) are amended to read:

NR 153.15 (2) (d) Significant expansions of livestock operations are not eligible for cost sharing. The department shall use the criteria in this paragraph for determining whether an increase in the size of the livestock population constitutes a significant expansion and is ineligible for cost sharing. In this paragraph, "livestock population size" means the size of the livestock population, in animal units. In this paragraph, "base livestock population size" means the livestock population size determined when the department or governmental unit, including a county land conservation committee, ~~visits the site and~~ documents the size of the livestock population. In this paragraph, "animal unit" has the meaning given it in ch. NR 243.

(e) Best management practice installation activities conducted prior to the signing of the runoff management grant agreement and the cost-share agreement. This paragraph does not preclude the department from providing reimbursement for structural best management practice design work commenced or completed prior to signing the runoff management grant agreement and the cost-share agreement, provided that practice construction ~~is commenced prior to reimbursement~~ commences after the grant agreement is signed by all parties.

SECTION 101. NR 153.15 (2) (j) is repealed and recreated to read:

NR 153.15 (2) (j) Urban best management practices associated with new construction or new development, including the following:

1. Construction site erosion control measures subject to the requirements of s. NR 151.11, except those required by this chapter to control erosion during construction of a best management practice.

2. Post-construction storm water management practices for new development subject to the requirements of subch. III of ch. NR 151.

3. The department may consider redevelopment of an existing development and in-fill to be either existing development or new development for purposes of this paragraph. In making its determination, the department shall consider the type of land cover within and adjacent to the development and the areal extent of the development.

4. In this paragraph, "existing development" has the meaning given it in s. NR 151.002 (14g), "in-fill" has the meaning given it in s. NR 151.002 (18) and "new development" means development resulting from the conversion of previously undeveloped land or agricultural land uses initiated after October 1, 2004 or development for which a notice of intent was received by the department or the department of commerce after October 1, 2004.

SECTION 102. NR 153.15 (2) (y), (3) (b) 1., (4) (a) 3., and (6) (b) are amended to read:

NR 153.15 (2) (y) ~~Correcting over-topping of a manure storage facility.~~ Best management practices to correct overtopping caused by mismanagement of a manure storage facility.

(3) (b) 1. The practices, design criteria, standards or specifications developed under this subsection may not be applied for the purpose of meeting an agricultural or urban performance standard identified in ch. NR 151 unless the department determines that existing practices, design criteria or technical standards contained in ~~chs. ch.~~ NR 154 or ATCP 50 ~~are not capable of meeting~~ cannot cost-effectively meet the performance standards or, in the absence of a performance standard, the project water quality goals.

(4) (a) 3. The project shall have ~~an approved strategy~~ a strategy approved by the department for developing and disseminating information and education materials explaining the project and its management implications

(6) (b) The state cost-sharing amount shall be determined by multiplying the total eligible installation cost of an eligible practice multiplied by the cost-share rate, unless otherwise provided for in this chapter or in ch. NR 154. Where two or more practices are equally cost-effective in reducing pollutants consistent with par. (a), the amount of cost sharing shall be based on the least cost practice.

SECTION 103. NR 153.16 and 153.17 are repealed and recreated to read:

NR 153.16 Aids for local assistance activities (1) ELIGIBLE COSTS. (a) The department may provide cost sharing under s. NR 153.26 for local assistance activities conducted during the grant period in large-scale TMDL implementation projects and large-scale non-TMDL control projects.

Note: Small-scale TMDL projects, small-scale non-TMDL control projects and notice of discharge projects are not eligible for local assistance grants. However, design and construction services costs in small-scale and notice of discharge projects may be included in the cost of construction for reimbursement purposes.

(b) The cost-share rate for local assistance activities may not exceed 70 percent of the eligible costs identified in this section.

(c) The following activities are eligible for local assistance funding when conducted in the project area:

1. Identifying high priority nonpoint pollution sources for control
2. Contacting and informing landowners and land operators of conservation program opportunities and requirements, including those relating to state performance standards and prohibitions.
3. Determining and documenting compliance of cropland practices and livestock facilities with performance standards and prohibitions
4. Identifying site-specific best management practices needed to achieve compliance with performance standards and prohibitions or to otherwise control nonpoint pollution sources.
5. Developing and reviewing cost-share agreements with the cost-share recipient.
6. Providing assistance to the department in developing and issuing notices under ss. NR 151.09 and 151.095 and developing and issuing comparable notices under local ordinances.

7. Best management practice construction services, including construction management and verification of best management practices installation.

8. Reviewing best management practice operation and maintenance during the grant period.

9. Developing and transmitting to the department information that identifies landowners and operators that do not comply with performance standards or prohibitions.

10. Administration of property acquisition in accordance with s. NR 153.25.

11. Fiscal management.

12. Development of informational materials, including videos or brochures.

13. Project evaluation activities identified in the project application and required by the runoff management grant agreement, including monitoring.

14. Other activities approved by the department as being necessary to implement the project.

(d) The following staff support costs are eligible for cost sharing:

1. The cost of testing materials for use in best management practice design and installation.

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

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

4. Field equipment necessary to conduct or evaluate the project.

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

(2) INELIGIBLE COSTS. The following costs are not eligible for local assistance funding under this section:

(a) Activities for which WPDES permit coverage is required.

(b) Direct costs for other items not listed in this section, including best management practice design, staff training, ordinance development and administration, promotional items except when used for educational purposes and the purchase or lease of motor vehicles.

(c) Indirect project costs that are not directly related to the output of a product or service or cannot be identified specifically with a single cost objective in an economically feasible manner.

NR 153.17 Targeted runoff management project application. (1) APPLICABILITY.

This section applies only to targeted runoff management projects.

(2) APPLICATION PROCESS. (a) Subject to the availability of funds, the department shall do the following:

1. Solicit applications for projects to be funded under this chapter by providing the public with information that application materials are available upon request.

a. The department shall solicit applications for any small-scale project on an annual basis provided there is adequate funding available.

b. The department may solicit applications for any large-scale project on an annual or biennial basis depending on the availability of funds.

2. Distribute to any potential applicant that requests it a copy of the appropriate application and application instructions.

Note: The department maintains grant applications and instructions at:

<http://dnr.wi.gov/runoff/grants/applications/>

(b) All applicants for funding shall submit project applications on forms provided by the department. A governmental unit or federally recognized tribal governing body may request funding under this chapter for one or more projects by submitting the appropriate applications to the department.

Note: Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

(c) A state agency, including the department, may request funding under this chapter for a project that is on land under state ownership or control and is in a priority watershed or priority lake area by submitting the appropriate application to the department.

(d) The department may request funding for the purchase of eligible easements located in a priority watershed project area by submitting the appropriate application to the department.

(e) Applicants shall submit completed project applications to the department in order to be considered for funding in the following calendar year. Applications shall be delivered or post-marked by midnight, April 15.

(3) REQUIRED ADMINISTRATIVE INFORMATION. (a) An applicant for any targeted runoff management project shall submit the following information to be considered for funding:

1. Applicant name.
2. Name and title of authorized representative.
3. Contact name and telephone number.
4. Type of governmental unit and applicant address.
5. Signature of authorized representative.
6. Project name and scope.
7. Other administrative information that the department determines necessary to process the application.

(4) REQUIRED SCREENING INFORMATION. (a) An applicant for a targeted runoff management project shall submit the screening information required by this subsection to be considered for funding.

1. Certification that the project meets applicable eligibility requirements of s. NR 153.14. To demonstrate consistency with a county's land and water resource management plan as required under s. NR 153.14 (3) (c) a county shall substantiate that the land and water resource management plan, plan amendment or work plan prepared under s. ATCP 50.12 identifies goals, objectives or activities related to the resource concerns being addressed by the project.

2. A map of the project area showing the watershed, subwatershed or specific site to be served by the project. The map shall be accompanied by information the applicant is aware of that concerns environmental contamination, endangered, threatened or wetland resources, historic properties or historic places contained in the project area and potentially impacted by the project.

3. A list of the best management practices for which funding is requested, including property acquisition associated with any of these practices, and identification of practice eligibility under s. NR 153.15. For land acquisition, a certification statement that the applicant will obtain control of the property upon which the practice will be constructed prior to commencement of the grant period.

4. A list of local assistance and design activities for which funding is requested and an identification of eligibility under s. NR 153.16.

Note: Local assistance activities eligible for reimbursement are identified in s. NR 153.16. Reimbursement may also be sought for design and construction services work under s. NR 153.15 (1) (a).

5. Certification that the activities listed on the application are scheduled for completion within the allowable time period specified by the department in the application materials.

6. Certification that the applicant has made arrangements to provide the staff necessary to implement the project.

7. Certification that staff and contractors designated for the project have adequate training, knowledge and experience to implement the proposed project.

8. Evidence that the proposed project does not conflict with statewide and targeted nonpoint source performance standards and prohibitions.

9. For agricultural projects, documentation that the county has a qualifying strategy to implement state agricultural performance standards and prohibitions contained in subch. II of ch. NR 151. To qualify, the strategy shall address the following key actions:

a. Inform and educate landowners and land operators required to comply with performance standards.

b. Conduct compliance status inventories based on records reviews and on-site visits

c. Document inventory results and maintain compliance status records

d. Report inventory results and continuing compliance maintenance requirements to landowners and operators.

e. Identify best management practices to achieve compliance.

f. Apply for grants from the department, or work to secure grants from other state, federal or local sources to provide cost sharing to landowners and land operators to achieve compliance with performance standards

g. Develop cost-share agreements and provide for technical assistance to landowners and land operators to achieve compliance with performance standards.

h. Assist the department at its request in drafting NR 151 notices to landowners and land operators.

i. Fulfill annual program reporting requirements.

10. Other information that the department may require to screen the application for compliance with minimum program and statutory requirements.

(5) REQUIRED SCORING INFORMATION FOR LARGE SCALE PROJECTS. An applicant for any large-scale TMDL project or large-scale non-TMDL project shall submit the following information to be considered for funding under this chapter:

(a) Receiving water quality need, including impairment or threats to water quality caused or contributed to by nonpoint pollution sources that will be addressed by the project.

(b) Expected reduction in pollutant loading attributed to the project.

(c) Potential for the desired water quality response to implementation of best management practices.

(d) Justification for geographic extent of the proposed project area

(e) Information regarding specific nonpoint pollution sources in the project area and the need and strategy for collecting and evaluating additional inventory information.

(f) Proposed nonpoint pollution control strategy for the project area, including contacting and educating landowners and operators, conducting farm evaluations, identifying and targeting high priority nonpoint pollution sources such as sites failing to meet state standards and prohibitions, selecting cost-effective best management practices, delivering cost sharing and technical assistance, using local and state regulatory tools to facilitate attainment and continuing maintenance of state performance standards and prohibitions.

(g) Evidence of local support and involvement including support from governmental units, interest groups, landowners and land operators. The department may also request information concerning a governmental unit's continuous decision-making process which ensures participation by minority and low income populations in affected areas, along with majority populations, to ensure that as an outcome all people receive the benefits of a clean, healthy and sustainable environment regardless of race, national origin or income.

(h) Consistency of the proposed project with other local land and water resource management plans, including the county land and water resources management plan

(i) Project budget and cost-effectiveness

(j) Partnerships in the project area, including the extent to which available federal funding and other staffing and financial resources will be used

(k) Strategy for evaluating changes in pollution potential, pollutant loading and receiving water response after implementation of the project.

(L) The extent of local authority to enforce performance standards and prohibitions, including information required to determine the project score enforcement multiplier under s. NR 153.19 (4).

(m) For the City of Racine, an explanation of how the proposed project will contribute to meeting storm water requirements under ch. NR 216.

(6) REQUIRED SCORING INFORMATION FOR SMALL SCALE PROJECTS. An applicant for any small-scale TMDL project or small scale non-TMDL project shall submit the following information to be considered for funding:

(a) Receiving water quality need, including impairment or threats to water quality caused or contributed to by nonpoint pollution sources that will be addressed by the project.

(b) Expected reduction in pollutant loading or pollution potential attributed to the project.

(c) Extent to which performance standards and prohibitions will be implemented.

(d) Potential for the desired water quality response to implementation of best management practices.

(e) Evidence of local support and involvement including support from governmental units, interest groups, landowners and land operators. The department may also request information concerning a governmental unit's continuous decision-making process which ensures participation by minority and low income populations in affected areas, along with majority populations, to ensure that as an outcome all people receive the benefits of a clean, healthy and sustainable environment regardless of race, national origin or income.

(f) Consistency between the project and other state and local resource management plans

(g) Project budget and cost effectiveness

(h) Use of other funding sources to supplement or reduce the state cost share provided under this chapter

(i) Strategy for evaluating changes in pollution potential, pollutant loading and receiving water response after implementation of the project.

(j) Extent of local authority to enforce performance standards and prohibitions, including information required to determine the project score enforcement multiplier under s. NR 153.19(4).

(k) For the City of Racine, an explanation of how the proposed project will contribute to meeting storm water requirements under ch. NR 216.

SECTION 104. NR 153.18 (title), (intro), (1), (2) and (3) are amended to read:

NR 153.18 Project Targeted runoff management project screening. This section applies only to targeted runoff management projects.

(1) The department may deny consideration of applications that are incomplete by the submittal deadline. The department may consider an application incomplete if the project proposal requires significant additional review to determine compliance with other state laws and the department determines that such reviews may significantly delay the project. State laws that the department may consider in determining if the application is incomplete include those to protect navigable waters, wetlands, historic places, historic properties, endangered resources or threatened resources and laws for managing environmental hazards due to site contamination.

(2) The department shall screen each completed project application to determine if the project meets basic eligibility criteria for funding under this chapter. The department shall use the information required in ~~s. NR 153.17 (2)(b)~~ s. NR 153.17 (4) to make this determination. The department shall remove from further consideration applications that fail to satisfy screening requirements and shall inform the applicant of this decision.

~~(3) Notwithstanding sub. (1), the department may provide funding for projects or activities that meet all of the following:~~

~~(a) The project or activity existed on a priority watershed project grant prior to January 1, 2000.~~

~~(b) The department has a remaining contractual obligation to fund the project or activity.~~

SECTION 105. NR 153.19 and 153.20 are repealed and recreated to read:

NR 153.19 Targeted runoff management project scoring. (1) APPLICABILITY. This section applies only to targeted runoff management projects.

Note: The department maintains scoring guidance at:

<http://dnr.wi.gov/runoff/grants/applications/>

(2) SCORING PROCEDURE FOR SMALL SCALE PROJECTS. The department shall use the procedure in this subsection to score any small scale project that passes the eligibility screening under s. NR 153.18.

(a) The department shall develop an initial project score using the information submitted by the applicant under s. NR 153.17 (6).

1. The department shall assign a sub-score to each of the application elements identified under s. NR 153.17 (6). The initial project score shall be the sum of the sub-scores.

2. In determining the initial project score for small scale projects, the department shall give greatest weight to water quality need, extent of pollution control and cost-effectiveness.

3. The department may establish minimum score requirements to identify projects that should be removed from further consideration.

(b) The department shall multiply the initial project score by a factor based on local enforcement authority to determine the final project score. The department shall determine the local enforcement factor in accordance with sub. (4).

(3) SCORING PROCEDURE FOR LARGE SCALE PROJECTS The department shall use the procedure in this subsection to score any large scale project that passes the eligibility screening under s. NR 153.18.

(a) The department shall develop an initial project score using the information submitted by the applicant under s. NR 153.17 (5).

(b) The department shall multiply the initial project score by a factor based on local enforcement authority to determine the final project score. The department shall determine the local enforcement factor in accordance with sub. (4).

(4) MULTIPLIERS FOR LOCAL ENFORCEMENT AUTHORITY. (a) The department shall increase the initial project score in accordance with this subsection if there are local regulations adopted prior to application submittal that give local authority to enforce state performance standards and prohibitions. The result shall be the final project score.

(b) The department shall increase the initial project score in accordance with the following for projects that are agricultural in nature.

1. The department shall multiply the initial project score by a factor of 1.15 if the applicant certifies to the department that it has local authority to enforce all state agricultural performance standards and prohibitions at all sites within the local jurisdiction where such state agricultural performance standards and prohibitions apply.

2. The department shall adjust the enforcement multiplier based on the scope of the local ordinance coverage. Adjustments under this subdivision shall be made so that the multiplier is greater than 1.0 but less than 1.15 for instances where the local regulations cover some, but not all, of the state agricultural performance standards and prohibitions or where a local regulation is applicable to some, but not all, of the sites where the state agricultural performance standard or

prohibition applies. The department may request that a copy of applicable ordinances be made available to the department for review in determining the enforcement multiplier.

3. The department may adjust the multiplier if the ordinance contains a variance clause that significantly reduces the effectiveness of the ordinance in achieving compliance with the state agricultural performance standards or prohibitions, or both.

4. If no multiplier is earned, the initial score shall be the final project score.

(c) The department shall increase the initial project score in accordance with the following for projects that are urban in nature:

1. The department shall multiply the initial project score by a factor of 1.15 if the applicant certifies to the department that it has local authority to enforce all state non-agricultural performance standards and prohibitions at all sites within the local jurisdiction where such state non-agricultural performance standards and prohibitions apply.

2. The department shall adjust the enforcement multiplier based on the scope of the local ordinance coverage. Adjustments under this subdivision shall be made so that the multiplier is greater than 1.0 but less than 1.15 for instances where the local regulations cover some, but not all, of the state non-agricultural performance standards and prohibitions or where a local regulation is applicable to some, but not all, of the sites where the state non-agricultural performance standard or prohibition applies. The department may request that a copy of applicable ordinances be made available to the department for review in determining the enforcement multiplier.

3. The department may adjust the multiplier if the ordinance contains a variance clause that significantly reduces the effectiveness of the ordinance in achieving compliance with performance standards.

4. If no multiplier is earned, the initial score shall be the final project score.

(d) If the department is required to assign a multiplier pursuant to this section and the project is not clearly rural or urban in nature, the department, in consultation with the applicant, shall choose and apply one of the multipliers in accordance with par. (b) or (c).

NR 153.20 Targeted runoff management project selection and funding. (1)
APPLICABILITY. This section applies only to targeted runoff management projects.

(2) SELECTION (a) The department shall assign each project application to one of the four project categories identified in s. NR 153.14 (2).

(b) From the total budget available to fund targeted runoff management projects, the department shall create annual budget sub-allocations for each of the project categories the department intends to fund in the application cycle. Sub-allocations may change from year to year. The amount in each sub-allocation shall be based on the department's water quality goals and the quality of applications submitted.

(c) Projects compete for funding only against other projects in the same category.

(d) Within each category, the department shall place the projects on a statewide selection list.

1. For each small scale project category, the department shall use the following procedure to create the statewide selection lists:

a. Identify the highest scoring project in each department region. Provided that the highest regional project score is equal to or greater than the median score for all qualifying applications submitted statewide, place the project with the highest regional score at the top of the statewide selection list. If the highest scoring project in the department region is less than the median for all qualifying applications, the project may not be moved to the top of the statewide selection list and shall be ranked with other projects in accordance with subdivision paragraph b.

Note: This will increase the likelihood that at least one project from each department region will be at the top of the statewide selection lists for each small scale project category.

b. Following projects with the highest regional score, the department shall place all remaining eligible projects on the statewide selection list, in rank order from highest to lowest score.

c. Projects shall be selected in order from the top to the bottom of the statewide selection lists until available funds have been allocated.

2. For each large scale project category, the department shall use the following procedure to create the statewide selection lists:

a. The department shall place all eligible projects on the statewide selection list, in rank order from highest to lowest score. There may be no regional adjustments in the ranking for large-scale projects.

b. Projects shall be selected in order from the top to the bottom of the statewide selection lists until available funds have been allocated.

3. Notwithstanding subs. 1. and 2., the department may do the following when selecting any small or large scale project for funding:

a. Not select a higher scoring project in favor of funding a lower scoring project if federal funds are being allocated for the project, the higher scoring project is ineligible to receive the federal funds, and the lower scoring project is eligible to receive the federal funds.

Note: There are geographic restrictions on the use of certain federal funds being used to support grant awards, such as those allocated to the state under section 319 of the Clean Water Act. In order to use the available federal funds, it may be necessary to leap-frog down the ranked list to match a project with the federal funds.

b. Establish a maximum total amount of funding that a grantee may receive in multiple grant awards in any one year. This amount may not exceed 20 percent of the grant funds available in the funding category or the maximum allowable funding amount allowed for a single project, whichever is greater. Projects on the ranked list whose selection for funding would exceed the allowable grantee total will be moved to the bottom of the list and funded only after all other eligible projects have been funded.

c. Establish a maximum grant award that any single project can receive based on the amount of funding available and the funding demand in any year. For purposes of administering this subdivision paragraph for small scale projects, all management practices proposed on contiguous property shall be considered part of a single project regardless of whether the management practices are submitted on the same or separate project applications. In this subdivision paragraph, "contiguous" means touching or sharing a common boundary with a second parcel of land. A lake, river, stream, road, railroad or utility right of way which separates any part of the parcel from any other part does not render the parcel of land non-contiguous.

d. Offer reduced grants for projects that do not require minimum cost-sharing to meet the requirements of s. 281.16 (3) (e), Stats. Reduced grant offers may be based on a reduction in the cost share rate or a reduction in the maximum project grant award amount.

Note: This includes projects that are not being implemented to meet required state performance standards or prohibitions under ch. NR 151.

e. Offer an award of less than the amount requested if that is the only funding remaining. In these circumstances, the applicant is required to complete the project as specified in the application if the partial funding is accepted.

(e) The department shall notify the land and water conservation board of project scores and ranks no later than September 1 of each year.

(f) Before November 1 of each year, the department shall also notify the land and water conservation board of the budget sub-allocations determined in accordance with par. (b) and the projects that it has identified and proposes to select for funding in the following calendar year.

(g) After selecting projects for funding, the department shall notify applicants in writing of its intent to offer grant agreements for the selected projects. The department shall inform applicants if the location of the project indicates measures may be needed to address environmental contamination, potential negative impacts of the project on navigable waters, endangered, threatened or wetland resources, historic properties or historic places.

(3) FUNDING. (a) The department shall, where practicable, issue grants to successful applicants by December 31 of each year for work that begins in the following calendar year. The department shall consider the factors in pars. (b) to (e) when determining final grant awards.

(b) The department shall make adjustments to the requested grant amount if necessary to correct errors made by the applicant concerning eligibility of items for cost sharing and errors in cost-share rates used in developing the application.

(c) For any large scale project, the department may make a partial grant award. The department shall complete the grant award based on availability of funds and project performance as defined under s. NR 153.21 (5) (h) 2.

(d) The department may offer an award of less than the amount requested if that is the only funding remaining. In these circumstances, the applicant is required to complete the project as specified in the application if partial funding is accepted.

(e) If the department determines, following scoring, that a project may have unacceptable impacts on endangered, threatened or wetland resources, historic places or historic properties, or that it may expose environmental hazards at the project location, it may do any of the following:

1. Decide not to provide a grant for the project.
2. Place a condition on a grant requiring that the grantee take specific actions or develop a plan to reduce or eliminate the impacts of the project.

Note: In addition, s. NR 154.04 (2) (k) states that all required permits, including those mandated by the department, shall be obtained prior to installing a best management practice listed in this chapter.

(f) The department may fund, in a grant, activities needed to identify impacts on navigable waters, endangered, threatened or wetland resources, historic places or historic properties and actions needed to reduce or eliminate the impacts.

(4) JOINT ALLOCATION PLAN. The department shall provide information to the department of agriculture, trade and consumer protection about grant decisions it has made under this section for incorporation into the joint allocation plan required under ss. 92.14 (14) and 281.65 (4) (pm), Stats.

Note: The joint allocation plan is distributed to counties for review and comment and is submitted to the Wisconsin land and water conservation board which may make recommendations to the department of agriculture, trade and consumer protection on approval, modification or disapproval. This process affords the affected public and the board an opportunity to make recommendations on items such as budget sub-allocations and project selections determined in accordance with the procedures set forth in the section.

(5) PROJECT SUBSTITUTION. (a) A grantee may request a substitution to a project selected under this section. The request may be to change best management practices or install the best management practices at an alternative location.

(b) The grantee shall submit the request to the department prior to the end of the grant period. The grantee shall submit the substitution request on a form provided by the department.

Note: Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

(c) The department shall consider the substitution request and inform the grantee of its decision. The department may approve the substitution request only if all of the following criteria are met:

1. The grantee provides a description and rationale for the substitution.
2. The altered project meets project screening, minimum scoring and local share requirements of this chapter.

3. The altered project is cost-effective, will not increase the original grant award and will achieve results substantially similar to those anticipated through the original project proposal.

4. The altered project will affect the same hydrologic unit and water resources identified in the original application.

5. There is sufficient time remaining to complete the revised project.

6. The substitution will not result in removing a cost-share offer included in a notice that has been issued or is expected to be issued under s. NR 151.09 or NR 151.095.

SECTION 106. NR 153.205 is created to read:

NR 153.205 Notice of discharge project application, selection and funding. (1)
APPLICABILITY. This section applies only to notice of discharge projects under s. NR 153.145.

(2) APPLICATION PERIOD AND CONTENT. (a) The department may accept notice of discharge project applications from governmental units on a continuous basis. Applications shall remain active for one year unless terminated by the applicant. After one year, the governmental unit shall resubmit the application in order for the application to remain active for the department's funding consideration.

(b) The department shall require that applications be submitted on forms provided by the department.

Note: Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

(c) The application information shall include all of the following:

1. Name and address of the prospective cost-share recipient and project location.
2. Site map.
3. Size of livestock operation, in animal units.
4. Site history, description of discharge and method of problem determination.
5. Extent and severity of the threat or impact to waters of the state and urgency of installing management measures.
6. Proposed management practices, estimated costs and implementation timeline.
7. Concurrence from the department of natural resources that the site has been issued, or will be issued concurrent with the runoff management agreement, a notice under s. NR 243.24.

(3) PROJECT SELECTION AND FUNDING. (a) Each year, the department shall identify up to four specific periods when active applications will be considered for funding. Applications considered for funding during each period include the active, unfunded applications from the prior period plus any new applications received prior to the end of the subsequent period. The department shall determine what portion of the available funds will be made available to fund projects being considered in each selection period.

(b) The department shall consider the information submitted under sub. (2) and make a decision whether to award funding for the project based on the merits of the proposed project, the amount of funding available for project selection, availability of other funding sources, farm viability and state cost-share requirements under ch. NR 243.

1. If grant funds are awarded under this subsection for a landowner or operator to comply with a notice issued by the department for a category II unacceptable practice under s. NR 243.24 (1) (b), the department's grant award shall, alone or in combination with other sources, meet the state cost-share requirements under s. 281.16 (3) (e), Stats. Requests for economic hardship shall be administered in accordance with s. NR 154.03 (3).

2. If grant funds are awarded under this subsection for a landowner or operator to comply with a notice issued by the department for a category I unacceptable practice under s. NR 243.24 (1) (a) or category III unacceptable practice under s. NR 243.24 (1) (c), the department may do any of the following:

- a. Limit the grant award to less than 70% of eligible costs
- b. Establish a maximum dollar amount that may be awarded under the grant for the project.
- c. Offer additional cost sharing for economic hardship cases. Requests for economic hardship shall be administered in accordance with s. NR 120.18 (4).

Note: Under ch. NR 243, the department has authority to require compliance with a notice issued for a category I or category III unacceptable practice regardless of cost sharing. Consequently, the department may provide limited or no cost-share assistance for these situations.

Note: Prior to making a funding decision, the department intends to consult with the department of agriculture, trade and consumer protection concerning the availability and suitability of alternative funding sources available through the soil and water resources management grant program administered under ch. ATCP 50.

(c) The department may enter into a runoff management grant agreement with a governmental unit only after a notice has been issued pursuant to s. NR 243.24.

(4) **JOINT ALLOCATION PLAN.** The department shall establish a budget reserve for notice of discharge projects in the annual joint allocation plan required under ss. 92.14 (14) and 281.65 (4) (pm), Stats.

Note: The department intends to transfer funds from the reserve to governmental units by entering into runoff management agreements.

SECTION 107. NR 153.21 is repealed and recreated to read:

NR 153.21 Runoff management grant agreement. (1) PURPOSE. (a) The department shall use the runoff management grant agreement to commit funds to a governmental unit or state agency for the purpose of implementing best management practices for any project selected under s. NR 153.20 or 153.205.

(b) The department may use the runoff management grant agreement in lieu of a cost-share agreement required under s. NR 153.22 with a governmental unit or state agency for the installation of a best management practice on land the governmental unit or state agency owns or operates.

(2) **GRANT PERIOD LENGTH.** (a) For a large-scale TMDL or large-scale non-TMDL project, the department may set the grant period for one to 3 years. The department may approve an extension to 4 years.

(b) For a small scale project, the department may set the grant period for one to 2 years. The department may approve an extension to 3 years. The start of the grant period shall be that specified on the signed grant award.

(c) For a notice of discharge project, the department shall establish, and extend if necessary, the grant period for a length of time sufficient to accommodate the compliance period authorized under s. NR 243.24 (4) (b) 5.

(d) For a targeted runoff management project, the department shall require that a grantee submit a written request in order to consider a project extension. The request shall:

1. Justify the extension request by identifying reasons for the project delay that were beyond the control of the grantee.
2. Be received by the department prior to the expiration of the grant period.
3. Identify how the additional time will result in a significant reduction in the pollutant loading from the project area or otherwise further the intent of the project.

(e) For a notice of discharge project, the grantee shall submit the extension request to the department prior to the expiration of the grant period. The extension request shall include documentation that the provisions of s. NR 243.24 (4) (b) 5. c. have been satisfied.

(3) LOCAL GOVERNMENT RESPONSIBILITIES AS A RUNOFF MANAGEMENT GRANTEE AND COST-SHARE PROVIDER. The governmental unit shall do all of the following as conditions of receiving a runoff management grant:

(a) Execute a runoff management grant agreement with the department for grant funds necessary to administer cost-share agreements with eligible landowners and land operators. This requirement may be waived if the department and the governmental unit agree to delegate these responsibilities to another governmental unit with jurisdiction sufficient to meet all the conditions of the grant.

(b) Enter into cost-share agreements with eligible cost-share recipients located within the project area. This requirement may be waived if the department and the governmental unit agree to delegate this responsibility to another governmental unit with jurisdiction sufficient to enforce all the conditions of the cost-share agreement.

(c) Be fiscally responsible for the use of cost-share funds provided to cost-share recipients under the runoff management grant agreement. This includes preparing and maintaining adequate fiscal management and technical assistance files as described in s. NR 153.29. This requirement may be waived if the department and the governmental unit agree to delegate these responsibilities to another governmental unit with adequate jurisdiction.

(d) Provide the department with verification of proper installation, operation and maintenance of best management practices for cost-share agreements for which it is the cost-share provider.

(e) Provide technical design and installation assistance for all best management practices in cost-share agreements within its jurisdiction. The governmental unit may assign this requirement to another governmental unit if approved by the department.

(f) Contact all landowners and land operators of lands within the project area that are the target of technical assistance and cost sharing under the grant.

(g) Participate with the department in project reviews.

(h) Enforce the terms and conditions of the cost-share agreement as described in s. NR 153.22.

(i) Arrange funding for staff support necessary to complete the project.

(j) For a targeted runoff management project, conduct the following activities in addition to technical and financial assistance to implement agricultural performance standards and prohibitions contained in ch. NR 151 for cropland practices and livestock facilities in the project area:

1. Inform landowners and land operators of performance standards and prohibitions.
2. Through records reviews and on-site assessments, evaluate and document the compliance status of cropland practices and livestock facilities with agricultural performance standards and prohibitions on all properties of the farm operation owned or operated by the grantee. If the cost-share is offered as part of a notice issued under s. NR 151.09 or 151.095 or a local regulation, the governmental unit may with prior department approval limit the on-site assessments to parcels identified in the notice.
3. Document and convey the results to landowners of the compliance status evaluation for the whole farm, by field or parcel.
4. Document and keep office records of changes in compliance status of cropland practices and livestock facilities by parcel for recipients of cost sharing provided under this chapter.
5. Inform landowners in writing of requirements for continuing compliance maintenance of cropland practices and livestock facilities that meet state standards and prohibitions
6. Conduct enforcement activities consistent with the local authority identified as part of the application materials for which the grant was awarded.
7. Provide assistance to the department as requested to develop and issue notices under ss. NR 151.09 and 151.095 and to develop and issue letters explaining that the notice has been satisfied.

(k) For notice of discharge projects, conduct the following activities in addition to technical and financial assistance:

1. For all notice of discharge categories:
 - a. Inform landowners and land operators of performance standards and prohibitions
 - b. Provide assistance to the department as requested to develop and issue letters explaining that the notice has been satisfied.
2. For notices of discharge issued for category II unacceptable practices identified in accordance with s. NR 243.24 (1) (b):

- a. Inform landowners and land operators of performance standards and prohibitions.
- b. Document and keep office records of changes in compliance status of livestock facilities by parcel for recipients of cost sharing provided under this chapter.
- c. Inform landowners in writing of requirements for continuing compliance maintenance of livestock facilities that meet state standards and prohibitions
- d. Provide assistance to the department as requested to develop and issue letters explaining that the notice has been satisfied.

(4) LOCAL GOVERNMENT AND STATE AGENCY RESPONSIBILITIES AS A COST-SHARE RECIPIENT. The governmental unit or state agency shall do all of the following as conditions of receiving a runoff management grant to perform work on lands the governmental unit or state agency owns or operates:

- (a) Arrange funding for the local share of any best management practice the governmental unit installs on property it owns or controls.
- (b) Provide the department with verification of proper installation, operation and maintenance of best management practices for which it is the cost-share recipient.
- (c) Prepare and maintain adequate fiscal management and technical assistance files as described in s. NR 153.29.
- (d) Obtain prior written approval from the department for use of runoff management grant funds for best management practices installed on land owned or operated by the grantee.
- (e) When installing best management practices, the grantee shall do all of the following:
 - 1. Submit to the department estimates of all practice costs, eligible costs, ineligible costs, cost-share rates and estimated total cost-share amount.
 - 2. Submit to the department a schedule of installation and maintenance for the practices.
 - 3. Submit to the department copies of all professional service contracts, construction contracts, bid tabulations, force account proposals, proposals and other related information requested by the department.
 - a. Professional service contracts and construction contracts shall be submitted to the department for approval before execution.
 - b. Force account proposals shall be submitted to the department for approval prior to the initiation of construction.

4. Repay the department the full amount of funds received if the governmental unit fails to fulfill any terms of the agreement, including failing to install, operate and properly maintain the practices included in the runoff management grant agreement or failure to evaluate or monitor the project in accordance with the provisions of the runoff management grant agreement.

5. Submit a maintenance strategy for the practices.

6. Agree not to adopt any land use or practice that reduces the effectiveness or defeats the purposes of the best management practices.

7. Comply with the requirements for cost-share agreements specified in s. NR 153.22.

8. Provide financial support towards the implementation of a project including:

a. Arrange funding for staff support necessary to complete the project.

b. Arrange funding for the local share of any best management practice the governmental unit installs on property it owns or controls.

(5) OTHER GRANT PROVISIONS. (a) The period in which cost-share agreements may be signed through the runoff management grant agreement may not extend beyond the runoff management grant period. For best management practices to be eligible for cost sharing, the runoff management grant agreement shall be signed prior to entering into a cost-share agreement.

(b) The grantee may use runoff management grant funds to cover reasonable expenses necessary to secure refunds, rebates or credits described in s. NR 153.28 (3) when approved by the department.

(c) The grantee may use runoff management grant funds to acquire property as provided for in s. NR 153.25.

(e) If the purpose of the project for which the runoff management grant is provided is to require a landowner to comply with performance standards or prohibitions under ch. NR 151, the governmental unit shall assure that funding under the grant is used to make a cost share offer that meets the requirements of s. 281.16 (3) (e) and (4), Stats.

(f) The department may unilaterally reduce the runoff management grant award for any of the following reasons, but may not reduce the grant below the amount the grantee has committed in signed cost-share agreements and contracts. The grantee shall provide an estimate of unexpended grant funds at the request of the department.

1. The reduction is necessary to meet budgetary limitations.

2. The grantee has not met all conditions of the grant.
3. The grantee fails to meet a schedule included in the grant for interim work products.

(g) For targeted runoff management projects, if a grantee successfully meets the nonpoint source pollution reduction goals in the project area without fully using the cost share award, the grantee may with prior department approval use the remaining funds to control additional nonpoint pollution sources in the project area.

(h) If the department has made a partial grant award under s. NR 153.20 (3) (c), it shall consider the following in determining whether to complete the grant award:

1. The availability of funds to complete the grant award.

Note: Large-scale projects may require funds from more than one state budget. In such cases, the department must await subsequent budgets before completing the grant awards for on-going projects.

2. Project performance. The department may terminate the grant if sufficient progress has not been made. Factors to be included in considering project performance include commitment of cost share resources, installation of best management practices and reduction in nonpoint source pollutant loads.

Note: Cost-share resources are committed by signing cost share agreements, issuing offers of cost share under ss. NR 151.09 and 151.095, and making reimbursements for installed practices. Pollutant load reduction can be credited for installed best management practices regardless of whether the practice installation is cost shared using state funds as may have been originally intended.

SECTION 108. NR 153.22 (1) (a) and (3) (d), (f) and (j) are amended to read:

NR 153.22 (1) (a) The cost-share agreement is an agreement listing the best management practices and establishing the conditions and considerations under which a cost-share recipient agrees to install the practices listed. The cost-share agreement may be used as an offer of cost sharing in accordance with ss. NR 151.09, ~~and~~ 151.095 and 243.24 (4) (b) 4.

(3) (d) The installation schedule for applying the cost-shared practices. The cost-share agreement shall also require that the cost-share recipient comply with state performance standards and prohibitions for existing cropland practices and livestock facilities that do not require cost

sharing under s. NR 151.09 or 151.095. The cost-share provider may limit this requirement to significant pollution sources with prior approval from the department.

(f) A prohibition against adopting any land use or practice which defeats the purposes of the best management practices, the cost-share agreement or the runoff management grant agreement. This includes a prohibition against any change in land use or management of a cropland practice or livestock facility that leads to non-compliance with state performance standards and prohibitions for a parcel where continuing compliance with a state standard or prohibition is required under s. NR 151.09 (3) (b) or s. NR 151.095 (4) (b). This also requires meeting performance standards and prohibitions, without regard to cost sharing, for all new cropland practices and livestock facilities. If such a change in land use or management occurs, the landowner or land operator shall control the source at the landowner or land operator's own expense or return any cost-sharing funds awarded through the cost-share agreement to the provider.

(j) The location of the land on which the cost-shared practice is to be installed, and a specific legal description of the land if ~~cost share payments may exceed \$10,000~~ recording of the cost-share agreement is required under sub. 10.

SECTION 109. NR 153.22 (3) (k) is repealed.

SECTION 110. NR 153.22 (3) (m) and (n) are amended to read:

NR 153.22 (3) (m) A statement that any loss of cost sharing that results from a cost-share recipient's failure to abide by the conditions of the cost-share agreement does not void the notice issued under ~~ss. NR 151.09 and 151.095~~ s. NR 151.09, 151.095 or 243.24.

(n) A statement that partial or full release from the cost-share agreement in accordance with this section does not void the notice issued under ~~ss. NR 151.09 and 151.095~~ s. NR 151.09, 151.095 or 243.24.

SECTION 111. NR 153.22 (3) (o) and (p) are created to read:

NR 153.22 (3) (o) A statement that the cost-share recipient agrees to provide information related to cost sharing and work performed under other federal, state and local grant programs, if required by the cost share provider to meet the reporting requirements of this chapter.

(p) The cost-share recipient shall allow the governmental unit to conduct an inventory of the entire farm for compliance with state performance standards and prohibitions as a condition of cost-share eligibility.

SECTION 112. NR 153.22 (6) (b) 1. (intro.) and 2. (note) and (7), (8) (a), (9) and (11) are amended to read:

NR 153.22 (6) (b) 1. Except if required as a component of another practice, the following practices are ~~exempt from the multi-year operation and~~ required under the cost-share agreement to meet the maintenance period requirement and only need to be maintained during the years for which cost sharing is received:

2. **Note:** ~~In many situations, best management practices will need to be maintained in perpetuity to comply with performance standards in ch. NR 151. Cost-share agreement operation and maintenance periods are conditions of cost-sharing. Violation of operation and maintenance requirements of cost-share agreements may result in recovery of cost-share payments received by the cost-share recipient. There is a separate requirement under ch. NR 151 that once a cropland practice or livestock facility is brought into compliance with performance standards and prohibitions, compliance must be maintained in perpetuity.~~

(7) **FAILURE TO FULFILL AGREEMENT.** If the cost-share recipient fails to fulfill any terms of the cost-share agreement, including failing to install, operate and properly maintain the practices of the agreement, ~~the full amount of~~ cost-shared funds received by the cost-share recipient shall be repaid to the governmental unit which is the provider of the agreement. The provider shall forward the repayment to the department.

Note: Under s. NR 153.22 (3) (m), loss of cost sharing that results from failure to fulfill the agreement does not void the notice issued under ss. NR 151.09, ~~and 151.095~~ or 243.24.

(8) **INEFFECTIVE PRACTICES.** (a) If the practice becomes ineffective either during ~~or beyond~~ the grant period of the runoff management grant agreement or during the operation and maintenance period for the project, and the reason for the practice becoming ineffective is beyond the control of the cost-share recipient, the department may award a new grant agreement or amend and extend the existing runoff management grant agreement to cost share the replacement of the practice.

(a) ~~The department may not provide cost sharing for the replacement of a practice more than once.~~

(9) CHANGE IN OWNERSHIP. If a change in ownership occurs during the cost-share agreement period or during the operation and maintenance period of a practice, the new landowner shall be responsible for fulfilling all conditions of the cost-share agreement. Upon receiving written approval from the respective local governmental unit, the new landowner may implement alternative approved best management practices provided that an equal or greater level of pollution control is achieved.

(11) RELEASE OF PROPERTY FROM OBLIGATIONS OF COST-SHARE AGREEMENTS. At the request of the cost-share recipient, a governmental unit may fully or partially release a property from the obligations of the cost-share agreement provided that the governmental unit has determined that the best management practices installed on the property will be maintained or replaced with practices which will not increase the pollutant loading to surface water or groundwater counter to the water resource objectives of the grant application. If state dollars in excess of \$10,000 the amounts enumerated in sub. (10) (a) have been expended for best management practices that are located on the property to be released, the governmental unit shall obtain written approval from the department before ~~the property may be released~~ releasing the property from the obligations of the cost-share agreement. The release form shall be obtained from the department and filed with the cost-share agreement.

Note: Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

Note: Under s. NR 153.22 (3) (n), any release granted under this subsection does not void the notice issued under ~~ss. NR 151.09 and 151.095~~ s. NR 151.09, 151.095 or 243.24.

SECTION 113. NR 153.22 (12) is created to read:

NR 153.22 (12) SATISFACTION OF COST-SHARE AGREEMENTS. At the request of the cost-share recipient, the governmental unit may issue a certificate of satisfaction provided the governmental unit has determined that cost-share recipient has met all of the obligations of the cost-share agreement, including the operation and maintenance period. The satisfaction shall be documented on a form provided by the department and filed with the cost-share agreement. For cost-share agreements recorded with the register of deeds under sub. (10), the satisfaction form shall be recorded in the office of the register of deeds for each county in which the property is located.

Note: Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

SECTION 114. NR 153.23 (1) (c) and (e) (title) are amended to read:

NR 153.23 (1) (c) *Competitive bidding.* A governmental unit requires the landowner or land operator to request bids from contractors for the installation of a best management practice. The cost-share payment shall be calculated based on the lowest bid meeting acceptable qualifications. The governmental unit shall identify criteria for determining acceptable qualifications. The landowner or land operator may select a qualified contractor other than the low qualified bidder, but shall contribute 100 percent of the difference between the bids.

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

- ~~• The governmental unit shows the proposed construction site to all prospective bidders on the same day and at the same time.~~
- ~~• There are at least 3 qualified bidders.~~
- ~~• All bids are sealed and delivered by a bid deadline to a location specified by the governmental unit.~~
- ~~• Bids are opened within 2 weeks after the bid deadline.~~
- ~~• The amount of the cost share grant is based on the lowest qualified bid.~~
- ~~• The landowner or land operator selects a higher bidding contractor only if the landowner or land operator agrees to pay the difference.~~
- ~~• The landowner or land operator may not select a contractor who did not bid.~~

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

SECTION 115. NR 153.23 (1) (f) and 153.24 are repealed.

SECTION 116. NR 153.25 is repealed and recreated to read:

NR 153.25 Property acquisition. (1) ELIGIBLE ACTIVITIES. The department may provide funding to a governmental unit holding a runoff management grant agreement under s. NR 153.21 for any of the following:

(a) Acquire land in fee or an easement identified in the grant application for the construction of a structural urban best management practice.

(b) Acquire land in fee or an easement identified in the grant application for land which is contributing or will contribute nonpoint source pollution. This includes property acquisition to support best management practices such as critical area stabilization, riparian buffers, wetland restoration and the abandonment or relocation of livestock and livestock facilities.

(c) Acquire land in fee or an easement to abandon or relocate livestock or livestock facilities provided that any of the following conditions are met:

1. The acquisition is an eligible best management practice.

2. If the acquisition amount is greater than the amount of funding required to install best management practices at the site, the acquisition may be selected as the cost-effective best management practice if the department concurs that the acquisition is justified based on the additional degree of water quality protection.

3. If the acquisition amount is less than the amount required to install best management practices and the landowner is unwilling to sell the property right, the department may use the acquisition amount as a cost-share ceiling on the cost of installing the best management practice.

(2) MUTUAL AGREEMENT AND DURATION. The landowner and the department shall mutually agree to the conducting of an appraisal. Easements, including donated conservation easements, shall be acquired for perpetuity.

(3) DONATED EASEMENTS. The department may authorize, in writing, any governmental unit, qualified non-profit organization or person to use grant funds under this chapter to enter into easements or accept a donated conservation easement consistent with the grant application and runoff management grant. Upon acceptance of a donated easement under s. NR 154.03 (2) (c), the department shall appraise the easement and issue a written opinion on the value or issue a statement of value of the easement.

(4) GRANTS TO DEPARTMENT FOR EASEMENT PURCHASE. The department may distribute grants and aids to itself for the purchase of easements in a priority watershed area. For purposes of this sub-section, a priority watershed or priority lake project is considered to retain its

project status through the end of the tenth year beyond the expiration date of the nonpoint source grant agreement entered into under s. NR 120.12.

(5) ACQUISITION PROPOSALS. (a) A governmental unit requesting runoff management grant funds under this section for the acquisition of property in fee or an easement shall submit an acquisition proposal to the department for its review and approval. The acquisition proposal shall be submitted with the runoff management grant application or grant amendment request.

(b) The acquisition proposal for fee title or easement shall include all of the following:

1. A description of the purpose for acquiring the land and how the acquisition will meet applicable goals of the project for which the grant is applied.

2. A copy of the appropriate county, township, topographic and local land use planning maps showing the proposed acquisition.

3. A description of how the proposed acquisition complements other nonpoint source pollution abatement program efforts.

4. Other information the department may request.

(c) For fee title acquisition, the following additional information is required as part of the acquisition proposal:

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

2. An estimate of overall acquisition and annual maintenance costs, including the number of parcels and acres to be acquired which notes the number of improved parcels involved.

(6) GENERAL PROVISIONS. (a) Governmental units shall acquire and manage property acquired with a runoff management grant in accordance with all applicable local, state and federal laws and regulations.

(b) After approval of the acquisition proposal and receipt of a grant from the department, a governmental unit shall obtain an appraisal for each property.

1. All appraisals shall be subject to department review and approval.

2. After it has received approval from the department, the governmental unit may act on the appraisal.

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

4. All acquisitions with a fair market value of more than \$350,000 shall require 2 appraisals. The department may require a second appraisal for property valued under \$350,000 if the department finds that the property presents a difficult appraisal problem or if the first appraisal is unacceptable.

(c) Property may be purchased only from willing sellers. The governmental unit shall provide the seller with a just compensation statement, which identifies the fair market value of the property, as determined by an appraiser meeting the requirements listed in par. (b) 3. and which describes the benefits due to the seller in exchange for the transfer of the seller's property.

(d) If applicable, relocation plans shall be developed in accordance with ch. COMM 202.

(e) Property acquired with a runoff management grant shall be maintained and managed in accordance with the provisions, conditions and scope description in the grant contract.

(f) A governmental unit may be allowed to acquire property prior to entering into a runoff management grant agreement, provided that the governmental unit has received written approval from the department prior to purchasing the targeted property. The governmental unit shall submit a written statement to the department, which explains the special circumstances justifying the need to acquire the property at that time. Prior to runoff management grant reimbursement for the acquisition, the governmental unit shall establish the value of the property in accordance with par. (b).

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

(7) STATE COST-SHARE RATE. (a) The maximum allowable state cost-share rate for the acquisition of property under this chapter is 70 percent, except that the maximum allowable state cost-share shall be 50 percent when the purpose of the acquisition is to support a structural urban best management practice.

(b) The cost share rate shall be applied to the lesser of the following 2 amounts:

1. The acquisition cost of the property.

2. The certified appraisal value as determined by the department and reasonable costs related to the purchase of the property limited to the cost of appraisals, land surveys, relocation payments, title evidence, recording fees, historical and cultural assessments required by the department, and environmental inspections and assessments. Reasonable costs do not include attorneys fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes or any other cost not identified in this subdivision.

(c) The department may not reimburse acquisition costs related to purchase of the property until the property acquisition has been completed.

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

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

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

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

SECTION 117. NR 153.26 (1), (5) and (7) are amended to read:

NR 153.26 (1) The local assistance grant agreement is an agreement between the department and a state agency or governmental unit providing funds for activities to carry out the tasks identified in a project selected for funding under this chapter. A local assistance grant awarded under this section may be used for local project administration and management activities ~~or other activities~~ determined by the department to satisfy the requirements of s. 281.65 (4) (f), Stats.

~~(5) No local assistance grant may be made for a project under this chapter before the project has been selected by the department.~~ The department may only award a local assistance grant for the purpose of implementing a runoff management agreement under s. NR 153.21.

(7) If a governmental unit contracts with a government agency or person to provide field, administrative, planning or other services to carry out activities of the local assistance grant

agreement, the contract shall be submitted to the department. ~~Contracts greater than \$10,000 shall be submitted~~ for review and approval prior to signing.

SECTION 118. NR 153.27 (3) (b) and (4) (a) are amended to read:

NR 153.27 (3) (b) In the form of a bilaterally executed written agreement for any professional services or construction activities ~~in excess of \$10,000~~.

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

SECTION 119. NR 153.27 (4) (c) is created to read:

NR 153.27 (4) (c) The force account reimbursement for design and construction services shall be based on the actual cost of services provided and may not exceed 5 percent of the total project reimbursement when bond-sourced funds are used.

SECTION 120. NR 153.27 (5) is repealed.

SECTION 121. NR 153.28 (1) (b) 1., 2. b., 3. and 5. are amended to read:

NR 153.28 (1) (b) 1. Reimbursement requests shall be submitted on forms provided by the department. When reimbursement is for a best management practice installed to meet a performance standard or prohibition contained in subchapter II of ch. NR 151, a statement of ch. NR 151 compliance shall be provided to the landowner or operator and a copy shall be attached to the reimbursement request.

Note: Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

2. b. The grantee may submit a reimbursement request for a partially installed best management practice with approval from the department. In making its reimbursement decision, the department shall consider the level of pollution control provided by the completed component and the component's structural and functional relationship to other components of the best management practice. A grantee may submit a request for reimbursement of up-front payments made to a cost-share recipient for multi-year cropping practices, including high residue

management, cropland protection cover, nutrient management and pesticide management, without prior approval from the department provided that the cost-share recipient completes the first full year of implementation in accordance with program requirements.

3. Progress reports required by the department shall accompany each reimbursement request. A final report shall be submitted on forms provided by the department as part of the final reimbursement request.

Note: Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

5. Reimbursement may not be made in any amount that results in the combined state share under s. 92.14, Stats., and this chapter exceeding the cost share rate required under s. 281.16 (3) (e) or (4), Stats.

SECTION 122. NR 153.29 (1) (e) 3. g. is created to read:

NR 153.29 (1) (e) 3. g. Change in compliance status, by parcel, with agricultural performance standards and prohibitions of cropland practices and livestock facilities owned or operated by the cost-share recipient.

SECTION 123. NR 155.12 (7) is amended to read:

NR 155.12 (7) "Force account work" means the use of the governmental unit's or board of regent's own employees and equipment for project planning, design, construction, construction related activities, ~~or inspections~~, repair or improvement to a an urban best management practice.

SECTION 124. NR 155.13 (1) (intro) is amended to read:

NR 155.13 (1) A governmental unit or a federally recognized tribal governing body is eligible to apply for and receive a runoff management grant and local assistance grant administered under this chapter if at least one of the following conditions is met:

SECTION 125. NR 155.14 (3) is amended to read:

NR 155.14 (3) (a) The department may award a local assistance grant in accordance with s. NR 155.16 (1) or NR 155.26 for an urban runoff project in an urban area and for projects in

areas that are expected to become an urban area within 20 years. For purposes of administering this subsection, the department shall use the criteria under s. NR 155.17 (2) (b) 3. to determine whether an area is, or will become, urban based on population density, ~~and the~~ The criteria under s. NR 155.15 (1) (b) 3. to 6. shall be used to determine if an area is an eligible commercial or industrial land use. The department may waive the requirement that the project be in an urban area, or an area projected to become an urban area, for grants made to the board of regents.

SECTION 126. NR 155.14 (3) (b) is created to read:

NR 155.14 (3) (b) To be eligible for reimbursement, a storm water management planning project funded under this paragraph shall meet the planning requirements of subch. I of ch. NR 216.

Note: Department guidance and planning standards can be found at <http://dnr.wi.gov/runoff/stormwater.htm>.

SECTION 127. NR 155.15 (1) (a) and (e) (note) are amended to read:

NR 155.15 (1) (a) The department may provide cost sharing for the construction of urban best management practices to abate urban runoff. Design and construction services are included as eligible components of the construction or implementation of the urban best management practice. State and local administrative permit fees are not reimbursable as part of the construction cost.

Note: Although local administrative fees are not reimbursable, the department may reimburse governmental units for design and construction services subject to the limitations of s. NR 155.27 (4).

(e) Note: Standards developed by the department are available for viewing at: <http://dnr.wi.gov/runoff/stormwater/techstds.htm>

SECTION 128. NR 155.15 (2) (g) is repealed and recreated to read:

NR 155.15 (2) (g). Urban best management practices associated with new construction or new development, including the following:

1. Construction site erosion control measures subject to the requirements of s. NR 151.11, except those required by this chapter to control erosion during construction of a best management practice.

2. Post-construction storm water management practices for new development subject to the requirements of subch. III of ch. NR 151.

3. The department may consider redevelopment of an existing development and in-fill to be either existing development or new development for purposes of this paragraph. In making its determination, the department shall consider the type of land cover within and adjacent to the development and the areal extent of the development.

4. In this paragraph, "existing development" has the meaning given it in s. NR 151.002 (14g), "in-fill" has the meaning given it in s. NR 151.002 (18) and "new development" means development resulting from the conversion of previously undeveloped land or agricultural land uses initiated after October 1, 2004 or development for which a notice of intent was received by the department or the department of commerce after October 1, 2004.

SECTION 129. NR 155.16 (1) (b) and (c) (intro) and 1. a. are amended to read:

NR 155.16 (1) (b) The cost-share rates for eligible activities in par. (c) may not exceed 70 percent of the cost of the activities for which the grant is provided.

(c) The activities identified in this paragraph are eligible for cost sharing ~~if additional staff are hired or retained under contract to perform the project activities, or if a professional services contract is developed and implemented to complete the activities.~~

1. a. Developing comprehensive urban runoff control plans for existing development, new development and redevelopment including planning, pre-design and general engineering feasibility studies. ~~Plans for existing development include urban runoff control planning for urban areas, plans for illicit discharge detection, pollution prevention and good housekeeping for municipal, university or facility operations. Planning includes activities necessary to develop a storm water management program consistent with the program elements identified under s. NR 216.07. Urban storm water planning activities for industrial sites subject to subch. II of ch. NR 216 are not eligible for reimbursement under this chapter except for facilities owned or operated by a governmental unit.~~

SECTION 130. NR 155.16 (1) (c) 2. a. is repealed.

SECTION 131. NR 155.16 (1) (c) 2. c. is amended to read:

NR 155.16 (1) (c) 2. c. Conducting detailed engineering designs and detailed site engineering feasibility studies for projects in existing urban areas and areas of urban redevelopment. The department may ~~include~~ also provide reimbursement for detailed engineering designs and detailed engineering feasibility studies for projects in new development ~~for where the~~ practices are to be owned and operated by a governmental unit or the board of regents.

SECTION 132. NR 155.16 (1) (c) 2. d., e. and f. and 3. and (d) 3., 6., 7. and 9. are repealed.

SECTION 133. NR 155.16 (1) (e) is amended to read:

NR 155.16 (1) (e) The participating governmental unit and board of regents shall provide to the department an accounting of hours spent on the project by staff ~~complete time sheets which shall track hours spent on the project by all staff hired to conduct the project. Hours of staff retained under contract shall be accounted for as specified under the terms of the contract.~~

SECTION 134. NR 155.16 (1) (f) is repealed.

SECTION 135. NR 155.17 (2) (b) 2. and 4. b. are amended to read:

NR 155.17 (2) (b) 2. A map of the project area showing the watershed, subwatershed or specific site to be served by the project. The map shall be accompanied by information the applicant is aware of that concerns environmental contamination, endangered, threatened or wetland resources, historic properties or historic places contained in the project area and potentially affected by the project.

4.b. Adoption, implementation and enforcement of urban runoff control plans and ordinances to control post-construction runoff from areas of new development and redevelopment consistent with non-agricultural performance standards in s. ~~NR 151.12~~ subch. III of ch. NR 151.

SECTION 136. NR 155.17 (2) (b) 13. and 14. are created to read:

NR 155.17 (2) (b) 13. Certification that the applicant will obtain control of the property upon which the practice will be constructed prior to commencement of the grant period.

14. Written confirmation that the applicant's prior urban nonpoint construction grant projects will be completed within the applicable grant period or periods.

SECTION 137. NR 155.17 (2) (d) is repealed.

SECTION 138. NR 155.18 (2) is amended to read:

NR 155.18 (2) The department shall screen each completed project application to determine if the project meets basic eligibility criteria for funding under this chapter. The department shall use the information required in s. NR 155.17 (2) (b) to make this determination. The department may consider an application incomplete if the project proposal requires significant additional review to determine compliance with other state laws, and the department determines that such reviews may significantly delay the project. State laws that the department may consider in determining if the application is incomplete include those to protect navigable waters, wetlands, historic places, historic properties, endangered resources or threatened resources and laws for managing environmental hazards due to site contamination.

SECTION 139. NR 155.18 (3) is repealed.

SECTION 140. NR 155.19 (3) (a) and (b) (intro.) are amended to read:

NR 155.19 (3) (a) The department shall may identify minimum qualifying component sub-score requirements to determine viable projects for further consideration.

(b) The department shall may consider minimum qualifying component sub-score requirements for the following project components:

SECTION 141. NR 155.19 (4) (d) is repealed.

SECTION 142. NR 155.20 is repealed and recreated to read:

NR 155.20 Project selection and funding. (1) SELECTION. (a) The department shall place all of the projects scored in accordance with s. NR 155.19 on a statewide list in descending rank order according to the final project score. The department shall use the statewide ranked list, available budget and funding considerations in sub. (2) to select projects for funding.

(b) The projects shall be identified for funding by starting with the highest ranked projects on the statewide list and proceeding down the ranked list until available project funds have been allocated.

(c) Before November 1, the department shall select projects, based on the final project scores, for funding under this chapter for the following calendar year.

(d) After selecting projects for funding, the department shall notify applicants in writing of its intent to prepare grant documents for the selected projects.

(2) FUNDING. (a) The department shall, where practicable, issue grants to grantees by December 31 for work in the following calendar year. The department may limit grant awards based on the amount of funding available, the funding demand in any year and the factors in pars. (b) to (h).

(b) If the statewide application demand exceeds available funding, the department shall establish a maximum total amount of funding which a grantee may receive in multiple grant awards for the application year. This amount may not exceed 20 percent of the grant funds available in the grant year for projects funded under this chapter, or the amount established by the department under par. (c) for that grant year, whichever is greater.

(c) The department may establish a maximum grant award amount that any single project can receive in grant awards based upon the amount of funding available in that category of grants for that grant cycle and the amount of funding demand for that period.

(d) The department shall make adjustments to the requested grant amount if necessary to correct errors made by the applicant concerning eligibility of items for cost-sharing and errors in cost-share rates used in developing the application.

(e) The department may offer an award of less than the amount requested if that is the only funding remaining. In these circumstances, the applicant is required to complete the project as specified in the application if funds are accepted.

(f) Prior to issuing a grant, the department may require submittal of an environmental hazards site assessment for projects involving excavation. The assessment shall be submitted on a form available from the department.

Note: Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

(g) If the department determines, following scoring, that a project may have unacceptable impacts on endangered, threatened or wetland resources, historic places or historic properties, or that it may expose environmental hazards at the project location, it may do any of the following:

1. Decide not to provide a grant for the project.
2. Place a condition on a grant requiring that the grantee take specific actions or develop a plan to reduce or eliminate the impacts of the project.

(h) The department may deny a grant for a project that otherwise scores well enough to be funded if the applicant is or has been delinquent in meeting grant commitments for previously funded projects.

Note: In addition, s. NR 154.04 (2) (k) states that all required permits, including those mandated by the department, shall be obtained prior to installing a best management practice listed in this chapter.

SECTION 143. NR 155.21 (2) (a) and (b) (intro.) are amended to read:

NR 155.21 (2) GRANT PERIOD LENGTH. (a) The department may set the grant period for one up to 2 years from the date the department transmits the agreement to the grantee, except that the department may approve an extension for one year. The start of the grant period shall be that specified on the signed grant award.

(b) ~~The department shall require that~~ To receive an extension, a grantee shall submit a written request in order to consider a project extension to the department. The request shall meet all the following requirements:

SECTION 144. NR 155.21 (2) (b) 3. is created to read:

NR 155.21 (2) (b) 3. Specify the reasons which necessitate the grant extension which were beyond the control of the grantee.

SECTION 145. NR 155.21 (4) (d) 3. is amended to read:

NR 155.21 (4) (d) 3. Submit to the department copies of all professional service contracts, construction contracts, bid tabulations, force account proposals, designs, proposals and other related information requested by the department.

~~a. Professional services contracts exceeding \$10,000 and construction contracts exceeding \$35,000 shall be submitted to the department for approval before execution.~~

~~b. Force account proposals exceeding \$35,000 shall be submitted to the department for approval prior to the initiation of construction.~~

SECTION 146. NR 155.22 (3) (i), (4), (10) (a) and (11) are amended to read:

NR 155.22 (3) (i) The location of the land on which the cost-shared practice is to be installed, and a specific legal description of the land ~~if cost share payments may exceed \$10,000.~~

(4) DEPARTMENT APPROVAL. The governmental unit shall obtain prior department approval ~~of the cost share agreement when the cost of a single practice exceeds \$35,000 in state share or when the total cost share agreement amount exceeds \$50,000 in state share.~~ The department shall consider the cost-effectiveness of the urban best management practices and eligibility for cost sharing under this chapter in making its decision whether to grant approval.

(10) RECORDING OF COST-SHARE AGREEMENTS WITH REGISTER OF DEEDS.

(a) The governmental unit shall record the cost-share agreement and its amendments in the office of the register of deeds for each county in which the property is located ~~if the cost share agreement includes a riparian buffer, or payments under s. NR 154.03(1)(i)3., or if the total cost share agreement amount exceeds the following:~~

- ~~1. \$10,000 prior to January 1, 2005.~~
- ~~2. \$12,000 after December 31, 2004 and prior to January 1, 2010.~~
- ~~3. \$14,000 after December 31, 2009.~~

(11) RELEASE OF PROPERTY FROM OBLIGATIONS OF COST-SHARE AGREEMENTS. At the request of the cost-share recipient, a governmental unit may fully or partially release a property from the obligations of the cost-share agreement provided that the governmental unit has determined that the urban best management practices installed on the property will be maintained or replaced with practices which will not increase the pollutant loading to surface water or groundwater counter to the water resource objectives of the grant application. ~~If state dollars in excess of \$10,000 have been expended for urban best management practices that are located on the property to be released, the~~ The governmental unit shall obtain written approval from the department before the property may be released. The release form shall be obtained from the department and filed with the cost-share agreement.

Note: Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

SECTION 147. NR 155.23 (1) (c) (note) is amended to read:

NR 155.23 (1) (c) Note: The department suggests the following bidding procedures: set forth in the *Procurement Guide for Local Governments Receiving Grants from the Wisconsin Dept. of Natural Resources*, available from the department.

- ~~The governmental unit shows the proposed construction site to all prospective bidders on the same day and at the same time.~~
- ~~There are at least 3 qualified bidders.~~
- ~~All bids are sealed and delivered by a bid deadline to a location specified by the governmental unit.~~
- ~~Bids are opened within 2 weeks after the bid deadline.~~
- ~~The amount of the cost share grant is based on the lowest qualified bid.~~
- ~~The landowner or land operator selects a higher bidding contractor only if the landowner or land operator agrees to pay the difference.~~
- ~~The landowner or land operator may not select a contractor who did not bid.~~

SECTION 148. NR 155.23 (1) (f) is repealed.

SECTION 149. NR 155.23 (3) and (4) are created to read:

NR 155.23 (3) Governmental units installing best management practices under a department cost-share grant shall follow the bidding and advertising provisions of their applicable municipal statutes. All contracts shall be subject to approval by the departmental project manager, with respect to reimbursement eligibility, technical standards, and storm water permitting requirements.

Note: Relevant municipal statutes include ss. 59.52, 60.47, 61.55 and 62.15, Stats.

(4) Governmental units that contract with an outside consultant to perform services under a local assistance grant shall, at a minimum, use a quality-based selection approach and interview

firms with proven experience in the field of storm water planning. All contracts shall be subject to approval by the departmental project manager, with respect to reimbursement eligibility, technical standards, and storm water permitting requirements.

SECTION 150. NR 155.24 is repealed.

SECTION 151. NR 155.25 is repealed and recreated to read:

NR 155.25 Property acquisition. (1) ELIGIBLE ACTIVITIES. The department may provide funding to a governmental unit holding a runoff management grant agreement under s. NR 155.21 to perform any of the following:

(a) Acquire land in fee or an easement identified in the grant application for the construction of a structural urban best management practice.

(b) Acquire land in fee or an easement identified in the grant application for land which is contributing or will contribute nonpoint source pollution. This includes property acquisition to support best management practices such as critical area stabilization, riparian buffers, wetland restoration and the abandonment or relocation of livestock and livestock facilities.

(2) MUTUAL AGREEMENT AND DURATION. The landowner and the department must mutually agree to the conducting of an appraisal. Easements, including donated conservation easements, shall be acquired for perpetuity.

(3) DONATED EASEMENTS. The department may authorize, in writing, any governmental unit, qualified non-profit organization or person to use grant funds under this chapter to enter into easements or accept a donated conservation easement consistent with the eligibility provision of the approved grant application and runoff management grant. Upon acceptance of a donated easement under s. NR 154.03 (2) (c), the department shall appraise the easement and issue a written opinion on the value or issue a statement of value of the easement.

(4) ACQUISITION PROPOSALS. (a) A governmental unit requesting runoff management grant funds under this section for the acquisition of property in fee or an easement shall submit an acquisition proposal to the department for its review and approval. The acquisition proposal shall be submitted with the runoff management grant application or grant amendment request.

(b) The acquisition proposal for fee title or easement shall include all of the following:

1. A description of the purpose for acquiring the land and how the acquisition will meet applicable goals of the project for which the grant is applied.

2. A copy of the appropriate county, township, topographic and local land use planning maps showing the proposed acquisition.

3. A description of how the proposed acquisition complements other nonpoint source pollution abatement program efforts.

4. Other information the department may request.

(c) For fee title acquisition, the following additional information is required as part of the acquisition proposal:

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

2. An estimate of overall acquisition and annual maintenance costs, including the number of parcels and acres to be acquired which notes the number of improved parcels involved.

(5) GENERAL PROVISIONS. (a) Governmental units shall acquire and manage property acquired with a runoff management grant in accordance with all applicable local, state and federal laws and regulations.

(b) After approval of the acquisition proposal and receipt of a grant from the department, a governmental unit shall obtain an appraisal for each property.

1. All appraisals shall be subject to department review and approval.

2. After it has received approval from the department, the governmental unit may act on the appraisal.

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

4. All acquisitions with a fair market value of more than \$350,000 shall require 2 appraisals. The department may require a second appraisal for property valued under \$350,000 if the department finds that the property presents a difficult appraisal problem or if the first appraisal is unacceptable.

(c) Property may be purchased only from willing sellers. The governmental unit shall provide the seller with a just compensation statement, which identifies the fair market value of the property, as determined by an appraiser meeting the requirements listed in par. (b) 3. and which describes the benefits due to the seller in exchange for the transfer of the seller's property.

(d) If applicable, relocation plans shall be developed in accordance with ch. Comm 202.

(e) Property acquired with a runoff management grant shall be maintained and managed in accordance with the provisions, conditions and scope description in the grant contract.

(f) A governmental unit may receive funds under this chapter for property acquired prior to entering into a runoff management grant agreement, provided that the governmental unit has received written approval from the department prior to purchasing the targeted property. The governmental unit shall submit a written statement to the department, which explains the special circumstances justifying the need to acquire the property at that time. Prior to runoff management grant reimbursement for the acquisition, the governmental unit shall establish the value of the property in accordance with par. (b).

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

(6) STATE COST-SHARE RATE. (a) The maximum allowable state cost-share rate for the acquisition of property under this chapter is 50 percent.

(b) The cost share rate shall be applied to the lesser of the following 2 amounts:

1. The acquisition cost of the property.

2. The certified appraisal value as determined by the department and reasonable costs related to the purchase of the property limited to the cost of appraisals, land surveys, relocation payments, title evidence, recording fees, historical and cultural assessments required by the department, and environmental inspections and assessments. Reasonable costs do not include attorney's fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes or any other cost not identified in this subdivision.

(c) The department may not reimburse acquisition costs related to purchase of the property until the property acquisition has been completed.

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

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

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

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

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

SECTION 152. NR 155.26 (1) and (6) are amended to read:

NR 155.26 Local assistance grant agreement. (1) The local assistance grant agreement is an agreement between the department and the board of regents or governmental unit providing funds for activities to carry out the tasks identified in a project selected for funding under this section. A local assistance grant awarded under this section may be used for local project ~~administration and management activities, easement or property appraisals or other activities~~ determined by the department to satisfy the requirements of s. 281.66, Stats.

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

SECTION 153. NR 155.27 (3) (b) is amended to read:

NR 155.27 (3) (b) In the form of a bilaterally executed written agreement for any professional services or construction activities ~~in excess of \$10,000.~~

SECTION 154. NR 155.27 (4) is repealed and recreated to read:

NR 155.27 (4) FORCE ACCOUNT WORK. (a) A governmental unit or the board of regents shall secure prior written approval from the department for use of the force account method in lieu of contracts for any professional services or construction activities.

(b) The department shall approve the use of force account work if the governmental unit or board of regents demonstrates to the department's satisfaction that the governmental unit or board of regents has the necessary competence required to accomplish the work and that the work can be accomplished more economically by the use of the force account method.

(c) The force account reimbursement for design and construction services shall be based on the actual cost of services provided and departmental reimbursement for such costs may not exceed 5 percent of the total project reimbursement when bond-sourced funds are used.

SECTION 155. NR 155.27 (5) is repealed.

SECTION 156. NR 155.28 (1) (b) 3. is amended to read:

NR 155.28 (1) (b) 3. Progress reports required by the department shall accompany each reimbursement request. A project final report shall be submitted on forms available from the department and shall accompany the final reimbursement request.

Note: Forms can be obtained from the department's bureau of watershed management or the department's bureau of community financial assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.

SECTION 157. The cross-references shown in the second column from the left in the table below are corrected to read as shown in the third column:

Location	Current Cite	New Cite	Comment
NR 154.04 (25) (c) 2.	NR 155.24	None	repealed
NR 154.04 (39) (c) 2.	NR 155.24	None	repealed

SECTION 158. **EFFECTIVE DATE.** This rule 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.

WT-14-08

SECTION 159. BOARD ADOPTION. The forgoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 23, 2010.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____.

Matthew J. Frank, Secretary

(SEAL)