

Chapter NR 120

NONPOINT SOURCE POLLUTION ABATEMENT PROGRAM

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Note: Chapter NR 120 as it existed on June 30, 1986 was repealed and a new chapter NR 120 was created effective July 1, 1986.

FOREWORD

The Wisconsin legislature established the nonpoint source water pollution abatement program in 1978. Both urban and rural nonpoint sources are recognized as contributors to the degradation of Wisconsin's lakes, streams, and groundwater. Section 144.25, Stats., assigns overall responsibility for this water quality program to the department of natural resources and local implementation responsibilities to counties, cities and villages.

The department of natural resources has developed the administrative framework in chs. NR 120 and 121 under which areawide water quality management areas and plans are identified, priority watershed projects are selected and counties, cities, villages and state agencies receive technical and financial assistance necessary to implement nonpoint source pollution abatement projects. The department of natural resources identifies priority watershed areas where nonpoint source related water quality problems are most severe and control is most feasible and develops best management practices which are the most effective, practicable means of preventing or reducing nonpoint source pollution. More specifically, the department identifies lakes, streams, groundwater and other water resources where the uses of the waters are impaired or threatened by nonpoint sources; selects projects to protect or rehabilitate beneficial uses of the waters; and prepares plans identifying the best means to achieve the protection or rehabilitation. The statewide water quality advisory committee assists the department of natural resources in selecting priority watershed areas and in the planning and implementation of projects and best management practices in priority watersheds. The department of natural resources enters into nonpoint source grant agreements, local assistance grant agreements and education grant agreements with counties, cities, villages and state agencies in order to implement priority watershed projects. The department of natural resources assists counties, cities, villages and state agencies by coordinating the nonpoint source pollution abatement program with other state and federal water quality programs, by providing technical and financial assistance and by evaluating the nonpoint source pollution abatement program for recommended modifications.

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Counties, cities and villages enter into cost share grant agreements with landowners, land operators and state agencies in order to implement the nonpoint source pollution abatement program on a local level. Landowners, land operators and state agencies as cost share recipients are responsible for installing and maintaining best management practices.

NR 120.01 Applicability; purpose. (1) **APPLICABILITY.** This chapter applies to governmental units and state agencies when acting as nonpoint source grant agreement, local assistance grant agreement or education grant agreement recipients; to governmental units when acting as cost share agreement grantors; and to landowners, land operators and state agencies when acting as cost share recipients.

(2) **PURPOSE.** The purpose of this chapter is to establish the administrative framework for the implementation of the state's nonpoint source pollution abatement program.

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

NR 120.02 Definitions. (1) "Additional staff" means employes hired or contracted for by the governmental unit for watershed project activities including previous or ongoing watershed projects. Furthermore, for counties, additional staff are those employes that are not necessary to meet DATCP's maintenance of effort requirements under s. 92.14 (7), Stats.

(2) "Alternative best management practice" means a practice, technique or measure which is approved under s. NR 120.15 as an effective means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality objectives and which does not have an adverse impact on fish and wildlife habitat.

(3) "Annual report" means the report jointly prepared by the department and DATCP as required under ss. 144.25 (4) (o) and 92.14 (13), Stats.

(4) "Annual resource management report" means the annual report summarizing soil and water resource and nonpoint source improvements submitted by each land conservation committee to DATCP.

(5) "Areawide water quality management plan" means a plan for managing, protecting and enhancing ground and surface water quality which considers the interrelationship of water quality and land and water resources on an areawide basis (hydrologic, political or other) as set forth in ch. NR 121.

(6) "Best management practice" as defined in s. 144.25 (2) (a), Stats., means a practice, technique or measure identified in areawide water quality management plans which is determined to be the most effective, practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality objectives, which does not have an adverse impact on fish and wildlife habitat and which is described in s. NR 120.14 or 120.17.

(7) "Completed practice" means a best management practice or alternative best management practice which has been installed and verified to meet the standards and specifications or procedures identified in s. NR 120.14 or 120.15.

(8) "Cost containment procedure" means one or more procedures specified in this chapter to be utilized by governmental units for control-

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ling costs of landowner and land operator installed best management practices.

(9) "Cost share agreement" means the agreement established between the governmental unit and the cost share recipient which identifies the best management practices and the cost, installation schedule and operation and maintenance requirements for the best management practices on the cost share recipient's lands.

(10) "Critical management area" means those lands and sites within a project area as identified in the project plan on which the nonpoint sources of pollution must be controlled for the project objectives to be reached.

(11) "DATCP" means the Wisconsin department of agriculture, trade and consumer protection.

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

(13) "Designated management agency" means governmental units or state agencies as identified in an approved watershed plan as having specific implementation responsibilities as identified in s. 144.25 (6), Stats.

(14) "Designated planning agency" means any agency designated by the governor to prepare an areawide water quality management plan for an area similarly designated.

(15) "Embankment height" means the structural height defined in s. NR 335.03 (8).

(16) "Existing staff" means the governmental unit's permanent staff or staff working on other than a project basis for the governmental unit prior to the initiation of a priority watershed project. For counties, existing staff are those employees that are required to be funded by the county to satisfy DATCP's maintenance of effort requirements under s. 92.14 (7), Stats. Existing staff also means staff from other agencies assigned to work with the governmental unit on a permanent basis.

(17) "Final settlement date" means the date the final audit is accepted by the grantee or the date a final determination is made by the department of an appeal made by the grantee on the final audit.

(18) "Force account work" means the use of the governmental unit's own employees or equipment for construction, construction related activities, or repair or improvement to a best management practice.

(19) "Governmental unit" means any unit of government including, but not limited to, a county, city, village, town, metropolitan sewerage district created under s. 66.20 to 66.26 or 66.88 to 66.918, town sanitary district, public inland lake protection and rehabilitation district, regional planning commission or drainage district operating under ch. 89, 1961 Stats., or ch. 88, Stats. Governmental unit does not include the state or any state agency.

(20) "Grant period" means the time period during which governmental units are eligible to incur costs for a watershed project.

(21) "Information and education strategy" means a component of a watershed plan which identifies the goals and objectives, the staffing,

support costs and proposed methods to implement information and education programs in a watershed project. A local assistance grant may be used to support activities that have program or statewide impact including education and training activities; such as public meetings and mailings, newsletters, tours, and other activities determined by the department to support program objectives.

(22) "Landowner or land operator" means any individual, partnership, corporation, municipality or person holding title to or having an interest in land who is a cost share recipient of a cost share agreement with a county, city or village for the purpose of installing best management practices.

(23) "Large-scale watershed" means a hydrologic unit of approximately 75 to 300 square miles delineated through the continuing planning process under s. 147.25, Stats.

(24) "Local share" means the portion of the cost of the installation of a best management practice, including federal cost sharing, not funded through s. 20.370 (4) (cc), Stats.

(25) "Nonpoint source" means a land management activity which contributes to runoff, seepage or percolation which adversely affects or threatens the quality of waters of this state and which is not a point source under s. 147.015 (12), Stats.

(26) "Priority watershed" means a large-scale or small-scale watershed which the department has identified through the continuing planning process under s. 147.25, Stats., as one of those watersheds where the need for nonpoint source water pollution abatement is most critical.

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

(28) "Program for implementation" means a written strategy to implement the priority watershed plan.

(29) "Quarterly project management report" means the quarterly report of time, financial expenditures and progress for soil and water resource management projects and nonpoint source projects submitted by each land conservation committee to DATCP.

(30) "Records" means books, documents, papers, accounting records, audits, and other evidence and accounting procedures and practices.

(31) "SCS" means the soil conservation service of the U.S. department of agriculture.

(32) "Small-scale watershed" means a hydrologic unit of approximately 10 square miles or less which drains to a single lake, specific stream segment or portion of the groundwater and serves as the project boundary for watershed projects described in s. NR 120.09.

(33) "Technical guide" means the Wisconsin soil conservation service field office technical guide (December 1988).

Note: Copies may be inspected at the offices of the department, 101 S. Webster Street, Madison; the Secretary of State, 30 W. Mifflin, Madison; and the Revisor of Statutes, 30 W. Mifflin, Madison.

(34) "Wetland" has the meaning specified under s. 23.32, Stats.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1) and (2), r. (18) and (26), renum. (3) to (17) and (19) to (25) to be (5) to (9), (12) to (14), (16) to (18), (20), (22), (24), (25) to (28), (30), (32), (31) and (33) and am. (6), (8), (13), (16), (18), (20), (24) to (26) and (33), cr. (4), (10), (11), (15), (19), (29) and (34), Register, November, 1989, No. 407, eff. 12-1-89.

NR 120.03 Role of governmental units in watershed plan development.

(1) All governmental units in a watershed selected for a watershed project shall identify in writing a person to represent the unit of government during watershed plan preparation.

(2) The department and governmental units shall form a watershed project committee consisting of representatives of interested groups, governmental units and agencies to advise the department on the development of the watershed plan.

(3) All governmental units in the watershed may participate in the development of the watershed assessment portion of the watershed plan described in s. NR 120.08 as determined by the department.

(4) All governmental units in the watershed shall prepare the portion of the detailed program for implementation for the watershed project as described in s. NR 120.08 (1) (b)1. This requirement may be waived if the department and the governmental unit agree that nonparticipation by the governmental unit will not impair the objectives of the watershed plan.

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

NR 120.04 Responsibilities of governmental units in project implementation. (1) Governmental units are assigned the responsibility for the local implementation activities described in s. 144.25(6), Stats. The responsibilities of each governmental unit shall include:

(a) Identifying, in writing, a person to represent the governmental units during implementation of the project.

(b) Being a nonpoint source grant agreement grantee and cost share agreement grantor for cost share agreements within its jurisdiction and being fiscally responsible for the use of cost share funds provided to cost share recipients through those agreements. This requirement may be waived if the department and the appropriate governmental unit agree to delegate these responsibilities to another unit of government.

(c) Preparing and maintaining adequate fiscal management and technical assistance files as described in ss. NR 120.25 and 120.26. This requirement may be waived if the department and the governmental unit agree to delegate these responsibilities to another unit of government.

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

(e) Submitting, periodically, to the department a list of cost share agreements that it believes are eligible for extension under s. NR 120.13(8)(a). The submittal shall include:

1. Cost share agreement number.

2. Landowner or land operator name.
3. Best management practice installations which are to be delayed.
4. Section NR 120.13(8)(a) reason and explanation for delay.

(f) Providing best management practice 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 unit of government if approved by the department.

(g) Contacting all owners or operators of lands identified as significant nonpoint sources in the watershed plan, within one year of the signing of a nonpoint source grant agreement. The landowners on whose property the most critical sources exist shall be contacted first. The appropriate governmental unit shall certify to the department that it has identified a strategy to comply with this paragraph.

(h) Preparing and submitting, except counties, to the department for approval, annual or periodic work plans for activities necessary to implement the project in accordance with the detailed program for implementation for the project. Counties shall submit the workload analysis and grant application to DATCP as required under s. Ag 166.50.

(i) Assisting DATCP in coordination and implementation of activities necessary to achieve water quality objectives in agricultural areas including development of a detailed program for implementation.

(j) Using, whenever possible, existing staff or contracting with existing governmental agencies to utilize that agency's existing staff to provide various field, administrative, planning and other services.

(k) Preparing and submitting to DATCP the annual resource management report required under s. Ag 166.90 to fulfill the requirements of the program evaluation plan requirements under s. 144.25 (4) (p), Stats. Progress reports shall include sufficient detail to allow for evaluation of delivery of technical assistance.

(l) Participating with the department and other agencies in an annual watershed project review meeting.

(m) Enforcing the terms and conditions of the cost share agreement as defined in s. NR 120.13.

(2) Each governmental unit may provide best management practice technical design and installation assistance to other units of government.

(3) The governmental units included in a watershed project may identify a lead unit of government responsible during the grant period for the following.

- (a) Local project coordination.
- (b) Identification of a project manager.
- (c) Maintenance of project ledgers.

(4) Provision of financial support to implement the project, including but not limited to the following:

(a) Existing and additional staff support costs necessary for the project that are not provided in the local assistance grant.

(b) The local share of any best management practice the governmental unit installs on property it owns or controls.

(c) The local share of items cost shared in the local assistance grant.

(5) Adoption and enforcement of construction site erosion control ordinance and manure storage ordinance if required in the watershed plan.

(6) Performance of inspections beyond the nonpoint source grant period and including this activity in the annual workload analysis submitted to DATCP to ensure that cost share recipients are complying with the maintenance requirements described in s. NR 120.13.

(7) Compliance with the procedural requirements of this chapter.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1) (intro.), (a), (b), (f) to (h), (2) and (3) (intro.), cr. (1) (i) to (m) and (4) to (7), Register, November, 1989, No. 407, eff. 12-1-89.

NR 120.05 Responsibilities of state agencies, governmental units and agents as cost share recipients. Each state agency, unit of government or agent receiving cost sharing funds in a nonpoint source grant shall:

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

(2) Prepare and maintain adequate fiscal management and technical assistance files as described in ss. NR 120.25 and 120.26.

(3) Obtain prior written approval from the department for use of nonpoint source grant funds for best management practices installed on property owned or operated by the grantee.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (intro.), cr. (3), Register, November, 1989, No. 407, eff. 12-1-89.

NR 120.06 Incorporation of the department of agriculture, trade and consumer protection's planning elements. (1) The department shall assist DATCP in developing the following elements of priority watershed plans as described in s. 144.25 (5), Stats.:

(a) Proposed farm-specific implementation schedules for providing technical assistance, contacting landowners, inspection, and disbursement of grants on those farms that are identified in critical management areas as identified in the approved priority watershed plan.

(b) Proposed agriculturally related best management practices to achieve the water quality objectives of the plan.

(c) Identification of those farms which are subject to ss. 92.104 and 92.105, Stats.

(d) In cooperation with counties involved in a watershed project, a proposed project management schedule for agriculturally related best management practices installation to be used by the county in development of the annual workload analysis as described in s. NR 120.21.

(2) The department shall approve and incorporate the elements described in sub. (1) into the priority watershed plan.

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

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NR 120.07 Priority watershed project selection. (1) The department shall identify proposed large-scale and small-scale priority watershed projects in areawide water quality management plans. The plans shall identify critical priority watershed projects to be considered for selection.

(2) The proposed priority watershed projects shall be based on the following factors:

(a) The water quality impairment or threat to the use of the lake, stream, groundwater, wetland or any other water of the state and the practicability of alleviating the impairment or threat.

(b) The practicability of achieving a significant reduction in the amount of pollutants from the nonpoint sources in the watershed.

(c) The public use of the watershed's lakes, streams, groundwater and other waters of the state.

(d) The capability of the governmental unit to carry out the project considering commitments to ongoing projects.

(e) Unique or endangered environmental resources.

(3) The department shall prepare a 5-year program funding strategy to determine the availability of funding for project selection. The department shall seek comments on the strategy from DATCP. The strategy may be updated biennially to reflect appropriation adjustments.

(4) The department shall compile a proposed project list comprised of all high priority projects from all approved areawide water quality management plans. The department shall submit the proposed project list to DATCP for approval. The project list may be revised through amendment of the areawide water quality management plan and subsequent approval of the amendment by DATCP.

(5) The department shall select priority watershed projects from the approved list based on the availability of funding, the willingness of a governmental unit to participate in the project and the availability of department staff to accept new workloads associated with the project.

(6) The department shall appoint advisory committees at every district to participate in the selection process. The committee shall be comprised of representatives from state, regional, county land conservation committees, local and private organizations involved in water quality and soil conservation programs. The committee shall recommend proposed projects for selection from the water quality management plan list in the appropriate district.

(7) Final project selection shall be announced by the department and DATCP on an annual basis or other timeframe determined by the department.

History: Cr. Register, June, 1966, No. 366, eff. 7-1-86; r. and recr. Register, November, 1989, No. 407, eff. 12-1-89.

NR 120.08 Watershed plans. (1) **WATERSHED PLAN CONTENT.** Watershed plans shall be prepared for all watershed projects. The watershed plan shall consist of a watershed assessment, a detailed program for implementation, and a project evaluation.

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(a) *Watershed assessment.* The department shall prepare a watershed assessment analyzing the water quality problems or threats of the water quality in the watershed's lakes, streams, wetlands and groundwater and the nonpoint sources causing the problem or threat. The watershed assessment shall contain:

1. An identification of the water quality problems or threats to water quality including degradation of fish habitat and wetlands caused by nonpoint sources of pollution in the watershed.
2. An identification of water quality objectives to maintain the quality of lakes, streams, wetlands and groundwater of the watershed.
3. An identification of target levels of pollutant control and resource protection necessary to meet the water quality objectives.
4. An identification and ranking of significant nonpoint source types and contributing areas.
5. An identification of critical management areas where cost-shared and non-cost shared best management practices are to be applied.
6. A listing of and analysis of need for best management practices which will significantly aid in the achievement of the target level of pollution abatement including, but not limited to, practices listed in Table 1.

Table 1

BEST MANAGEMENT PRACTICES
(cost shared and not cost shared)

<p>Cropland Practices: Change in crop rotations Change from cropland to grassland Contour cropping Stripcropping Field diversions Terraces Grassed waterways Reduced tillage Nutrient management Pesticide management</p>	<p>Animal Waste Management Practices: Manure spreading management Barnyard runoff management Animal lot relocation Manure storage facilities Roofs for barnyard runoff management and manure storage facilities Manure storage ordinances</p>
<p>Cropland, Urban and Other Area Practices: Critical area stabilization Grade stabilization structures Shoreline and streambank protection (including fish structures) Shoreline buffers Wetland restoration Livestock exclusion from woodlots Well abandonment</p>	<p>Urban Practices: Street sweeping Leaf collection Pet waste ordinances Construction site erosion control ordinances Infiltration basins Infiltration trenches Porous pavement Grassed swales Wet basins Detention basins Wetland basins Covering materials being stored</p>

5. An identification of priority management areas.

6. A listing of and analysis of need for best management practices which will significantly aid in the achievement of the target level of pollution abatement.

7. An assessment of the need for the protection and enhancement of fish and wildlife habitat, endangered resources, aesthetics or other natural resources.

8. An analysis of the need for adoption of construction site and manure storage ordinances as required under ss. 144.25 (4) (a) 5. and 92.16, Stats., respectively.

(b) *Detailed program for implementation.* 1. The governmental units as required under s. 144.25 (6) (a), Stats., except those waived under s. NR 120.03 (4), shall prepare the following portion of the detailed program for implementation including:

a. An estimate of costs for practice installation.

b. A schedule for implementation activities including adoption of construction site and manure storage ordinances identified in the watershed assessment.

c. An information and education strategy.

d. A description of fiscal management procedures, including cost containment procedures.

e. An estimate of technical assistance needs.

f. A grant disbursement and project management schedule.

2. The department shall prepare a strategy to address the protection, enhancement and mitigation of fish and wildlife habitat, endangered resources, aesthetics or other natural resources through the identification of best management practices, provision of information and education programs and involvement of other resource management programs.

(c) *Project evaluation plan.* The department shall prepare as a portion of each priority watershed plan a project evaluation monitoring plan identifying procedures and schedules for determining project progress and accomplishment. The evaluation monitoring plan shall contain criteria and procedures to evaluate the water resource and land management components of the project.

(2) **WATERSHED PLAN REVIEW, APPROVAL AND REVISION.** (a) *Watershed plan development meeting.* During the preparation of the watershed plan, the department and the participating counties, cities and villages shall hold a public informational meeting in the watershed to solicit comments and information pertinent to the preparation of the plan.

(b) *Watershed plan hearing.* After the preparation of a draft of the watershed plan, the department and the participating counties, cities or villages shall hold a public informational hearing for comment on the watershed plan.

(c) *Watershed plan approval.* Within 45 days after the public informational hearing, the department shall submit the draft watershed plan to DATCP and the appropriate county or counties. Within 60 days of re-

ceipt of the draft watershed plan, the appropriate county shall approve, conditionally approve or reject the watershed plan.

(cg) *Plan revisions.* If DATCP or the county conditionally approves or rejects the watershed plan, the department may revise the watershed plan to address the issues identified.

(cr) Approval of individual county plan. Notwithstanding par. (cg), the department may approve the watershed plan for individual counties in multicounty watershed projects if DATCP and the respective county approve the watershed plan.

(d) *Areawide water quality management plan revision.* After approval of the detailed program for implementation, the watershed plan shall be approved as a revision to the areawide water quality management plan for the appropriate basin as described in ss. NR 121.07 and 121.08.

(e) *Watershed plan revision.* The approved watershed plan may be revised using the procedures in ss. NR 121.07 and 121.08 for amending areawide water quality management plans. The department shall approve or reject a county's, city's or village's request for a revision to the watershed project's detailed program for implementation within 90 days of receipt of the revision request.

(f) *Final project report.* The department, with assistance from DATCP and local units of government, shall prepare and publish a final project report.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1) (a) (intro.), 1. to 3., 5. and 6., (b), (c) and (2) (c), cr. Table 1, (1) (a) 7. and 8., (2) (cg), (cr) and (f), Register, November, 1989, No. 407, eff. 12-1-89.

NR 120.09 Small-scale watershed projects. *History:* Cr. Register, June, 1986, No. 366, eff. 7-1-86; r. Register, November, 1989, No. 407, eff. 12-1-89.

NR 120.10 Cost share eligibility. (1) Best management practices installed and maintained to control the following nonpoint sources are eligible for cost share assistance when addressing critical nonpoint sources of pollution in a watershed plan:

- (a) Croplands and undeveloped rural lands.
- (b) Streambanks and shorelines.
- (c) Livestock yards and manure management areas except those identified in sub. (2)(c).
- (d) Lawns, streets, roofs, and other areas associated with residential land uses.
- (e) Lawns, parking lots, streets, roofs, and other areas associated with retail businesses, office buildings, schools, libraries, parks, and similar institutional buildings and areas.
- (f) Other sources determined by the department to meet the objectives of the program.

(2) The following practices, sources or activities are not eligible for cost share assistance:

- (a) Best management practice installation, operation or maintenance started prior to the signing of the cost share agreement.

(b) Best management practices not cost shared described in s. NR 120.17.

(c) Activities covered by the Wisconsin pollutant discharge elimination system permit program including those identified in chs. NR 200 to 299.

(d) Livestock operations with more than 1000 animal units or livestock operations issued a notice of discharge under ch. NR 243.

(e) Industrial processes and lands directly related to industrial processes including plant yards, immediate access roads, drainage ponds, refuse piles, storage piles or areas and material or product loading areas.

(f) Commercial operations and processes and lands directly related to commercial operations and processes including:

1. Tank farms and fuel refilling;
2. Coal storage yards;
3. Salt storage yards;
4. Stockyards;
5. Grain elevators;
6. Railroad yards;
7. Salvage and junkyards; and
8. Airport runways, terminals and fueling areas.

(g) Activities required as part of or as a condition of a license for a solid waste management site.

(h) Activities funded through state or federal grants for wastewater treatment plants.

(i) Active mining activities.

(j) Pollutant control measures needed during building and utility construction and storm water management practices for new developments.

(k) Pollutant control measures needed during construction of highways and bridges.

(l) The planting, growing and harvesting of trees associated with silviculture.

(m) Small scale on-site human domestic waste facility construction.

(n) Dredging of harbors, lakes and ditches.

(o) Dams, pipes, conveyance systems and detention basins intended primarily for flood control.

(p) Operation and maintenance of cost shared practices.

(q) Practices normally and routinely used in growing crops and required for the growing of crops or the feeding of livestock.

(r) Practices whose purpose is to accelerate or increase the drainage of land or wetlands.

(s) Practices to control spills from commercial bulk storage of pesticides, fertilizers, petroleum and similar materials required by chs. Ag 162 and 163 or other administrative rules.

(t) Practices required to control industrial wastes.

(u) Practices required to properly store toxic or hazardous materials.

(v) Practices required to control seepage or runoff from materials stored for resale.

(w) Other practices or activities determined by the department not to meet the objectives of the program.

(x) Practices required to control sources which were adequately managed at the time of cost share agreement signing but due to the landowner's or land user's changes in land management are producing an increased amount of pollutant loading to the surface or groundwater, counter to the water resource objectives of the approved watershed plan, including increases in animal herd size, changes to more intensive cropping and other changes in land use or management which increase the pollutant loading.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1) (intro.), (2) (i), (j), (o), (r) and (s), r. and recr. (2) (k), cr. (2) (x), Register, November, 1989, No. 407, eff. 12-1-89.

NR 120.11 Allocation of grant funds. (1) If annual grant funds are not sufficient to fund all anticipated grant needs, the department shall allocate funds to watershed projects in the following order:

(a) *First priority.* Grant funds shall be allocated first to meet the cost share and local assistance grant needs scheduled through signed cost share agreements in approved watershed projects.

(b) *Second priority.* Any grant funds not allocated under par. (a) shall be allocated to meet anticipated cost share and local assistance grant needs in approved watershed projects.

(c) *Third priority.* Any grant funds not allocated under pars. (a) and (b) shall be allocated to meet anticipated cost share, local assistance and education needs in watershed projects in the plan development stage.

(2) Within each group of projects identified in sub. (1), the department shall allocate grant funds to watershed projects based on the severity of the water quality problems, the feasibility of controlling the water quality problems and the progress in achieving the water quality objectives.

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

NR 120.12 Nonpoint source grant agreement. (1) The nonpoint source grant agreement is an agreement between the department and governmental units or state agencies for providing cost share funds for priority watershed projects. More than one nonpoint source grant agreement may be awarded for a project.

(2) The period in which cost share agreements may be signed through the nonpoint source grant agreement shall be no more than 3 years. The department may extend this period upon written request by the grantee where the additional time will result in a significant reduction of the pollutant load from nonpoint sources or otherwise further the intent of the program and where the grantee has demonstrated satisfactory effort

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towards project management. The grantee may identify specific time periods for cost-sharing sign-ups within the project sign-up period if identified in an approved watershed plan.

(3) The grant period of the nonpoint source grant agreement is the period when cost share funds may be expended. It shall be no more than 8 years. The department may extend the grant period upon written request by the grantee where the additional time will result in a significant reduction of the pollutant load from nonpoint sources or otherwise further the intent of the program.

(4) The grantee shall meet the following requirements when it installs best management practices:

(a) The responsibilities in s. NR 120.05.

(b) Submit estimates of all practice costs, eligible costs, ineligible costs, cost share rates and estimated total cost share amount.

(c) Submit a schedule of installation and maintenance for the practices.

(d) Submit copies of all professional services contracts, construction contracts, bid tabulations, force account proposals, proposals and other related information requested by the department. Professional services contracts, amendments causing the total contract to exceed or amendments exceeding \$10,000 and construction contracts exceeding \$50,000 shall be submitted to the department for approval before execution. Force account proposals exceeding \$10,000 shall be submitted to the department for approval prior to the initiation of construction.

(e) Repay the department the full amount of funds received if the grantee fails to fulfill any terms of the agreement, including failing to install, operate and properly maintain the practices included in the grant agreement.

(f) Submit a statement of the maintenance requirements for the practices.

(g) Agree not to adopt any land use or practice which defeats the purposes of the best management practices.

(h) Adoption of construction site erosion control ordinance under s. 144.266, Stats., consistent with department guidelines and manure storage ordinance under s. 92.16, Stats., if required in the priority watershed plan, by one year prior to the end date of the nonpoint source grant agreement.

(5) The grantee may use nonpoint source grant funds to cover reasonable expenses necessary to secure refunds, rebates or credits described in s. NR 120.23 when approved by the department.

(6) The agreement period for best management practices installed by the grantee shall be the installation period plus the operation and maintenance period. The installation period is the time when all cost shared and noncost shared practices shall be installed. The operation and maintenance period is defined in s. NR 120.14 or, if not addressed there, will be specified in the grant agreement.

(7) If a practice is rendered ineffective due to circumstances beyond the control of the grantee, repayment of cost share payments will not be required. The department, after review for the need for the practice, may authorize the cost shared replacement of the practice. When replacement is authorized, the department shall specify an appropriate operation and maintenance period for the practices. The department shall provide cost sharing as follows:

(a) If the practice becomes ineffective during the grant period of the nonpoint source grant agreement of a priority watershed project, the replacement of the practice may be cost shared from funds allocated for the project.

(b) If the practice becomes ineffective beyond the grant period of the nonpoint source grant agreement of the priority watershed project, the department may award a new grant agreement or modify and extend the project's nonpoint source grant agreement.

(8) The department may unilaterally reduce the nonpoint source grant to the amount the grantee has committed on cost share agreements and contracts at the end of the period for the signing of cost share agreements.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1) and (2), r. and recr. (4), cr. (6) to (8), Register, November, 1989, No. 407, eff. 12-1-89.

NR 120.13 Cost share agreement. (1) PURPOSE OF AGREEMENT. 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 consistent with the watershed plan.

(2) **EFFECTIVE DATE.** For best management practices to be eligible for cost sharing, the nonpoint source grant agreement and the cost share agreement, shall be signed before practices may be initiated. A cost share agreement is not necessary if the nonpoint source grant agreement allows the grantee to use funds directly.

(3) **PARTIES TO THE AGREEMENT.** (a) The cost share agreement shall be between the participating governmental unit and the individual landowner, land operator or state agency. Agreements with land operators shall be co-signed by the landowner.

(b) Governmental units, as cost share agreement grantors, shall enter into cost share agreements only during the period specified in the nonpoint source grant agreement.

(c) The cost share agreement shall apply to all sites under the same ownership that are either within the critical management area or are in the priority watershed and are contiguous to sites in the critical management area at the time of cost share agreement signing. At the discretion of the governmental unit, the cost share agreement may also apply to noncontiguous property under the same ownership in the watershed.

(4) **CONTENT OF THE AGREEMENT.** The cost share agreement shall contain or describe:

(a) The name and address of the cost share recipient.

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(b) The best management practices cost shared and not cost shared to be applied and the cost share rates for the practices to be cost shared.

(c) The estimated total practice cost, cost share rate and estimated cost share amount.

(d) The installation period and the schedule for applying the practices.

(e) A statement of maintenance requirements including those specified in s. NR 120.14.

(f) A requirement to not adopt any land use or practice which defeats the purposes of the best management practices, the cost share agreement or the nonpoint source grant agreement.

(g) A provision stating that the governmental unit shall provide appropriate technical assistance during the required operation and maintenance period of the best management practices.

(h) A nondiscrimination clause.

(i) A provision describing the procedure for amendment.

(j) Legal description of the entire property to which the cost share agreement applies.

(k) A requirement that disallows any change in land use or management on the entire property described on the cost share agreement which may cause sources which were adequately managed at the time of cost share agreement signing to produce an increased pollutant loading to surface water or groundwater counter to the water resource objectives of the approved watershed plan. If such a change in land use or management occurs, the landowner or operator shall control the source at his or her own expense or return any cost sharing funds awarded through the cost share agreement to the grantor.

(l) A requirement to amend the cost share agreement when there is a cost overrun or cost underrun on any or all practices exceeding \$500 in state cost share amounts.

(m) A requirement to amend the cost share agreement if practices are added or deleted and to add or delete practices only when they are consistent with watershed project objectives.

(5) **SUBMITTAL TO DEPARTMENT.** The nonpoint source grantor shall submit a copy of the cost share agreement and amendments to the department within 30 days of execution. The department may deny reimbursement to the governmental unit for costs associated with the installation of a best management practice not in conformance with the cost share agreement, the nonpoint source grant agreement or the watershed plan. Any cost share agreement exceeding \$50,000 in state share or amendment to an existing cost share agreement which causes the total state share commitment to the cost share agreement to exceed \$50,000 shall be submitted to the department for approval before becoming effective. The governmental unit shall describe the best management practices available to control nonpoint sources of pollution and identify the least cost practice. The department shall approve the cost share agreement if the best management practices are the least cost alternatives to control the nonpoint sources and the significance of the nonpoint sources justifies the expenditure of the grant funds.

(6) **AGREEMENT PERIOD.** The cost share agreement period shall be the installation period plus the operation and maintenance period.

(a) The installation period is the time when all cost shared and not cost shared practices shall be installed. The installation period may not exceed 5 years. The department may grant a variance from this subsection under the procedures described in s. NR 120.29, if the governmental unit submits a written request. In no case may the installation period extend beyond the grant period of the nonpoint source grant agreement identified in s. NR 120.12(3). In support of its request for a variance from this subsection, the governmental unit shall, for each cost share agreement, justify the extension taking into account the following:

1. Economic hardship,
2. Construction delay,
3. Change in ownership, and
4. Addition of practices to the cost share agreement.

(b) The operation and maintenance period for both cost shared and not cost shared best management practices shall be 10 years beginning when the last practice on the agreement has been installed. The parties to a cost share agreement signed prior to July 1, 1986 may amend the agreement to include a 10 year operation and maintenance period. The department may exempt demonstration practices included in education grant agreements from the 10 year operation and maintenance period.

(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 who is the grantor of the agreement. The governmental unit grantor shall forward the repayment to the department.

(8) **INEFFECTIVE PRACTICES.** If a practice is rendered ineffective during the cost share agreement period due to circumstances beyond the control of the cost share recipient, repayment of cost share payments will not be required. The department, after review for the need for the practice, may authorize the cost shared replacement of the practice. When replacement is authorized, the department shall specify an appropriate operation and maintenance period for the practices. The department shall provide cost sharing as follows:

(a) If the practice becomes ineffective during the grant period of the nonpoint source grant agreement of a watershed project, the replacement of the practice may be cost shared from funds allocated for the project.

(b) If the practice becomes ineffective beyond the grant period of the nonpoint source grant agreement of the watershed project, the department may award a new grant agreement or modify and extend the project's nonpoint source grant agreement.

(9) **CHANGE IN OWNERSHIP.** If a change in ownership occurs during the cost share agreement period, the new landowner is responsible for fulfilling all conditions of the cost share agreement as described in s. NR 120.13.

(10) RECORDING OF COST SHARE AGREEMENTS WITH REGISTER OF DEEDS. The governmental unit shall record the cost share agreement and amendments in the office of the register of deeds for each county in which the property is located within 30 days after the signing of the cost share agreement.

(11) APPLICABILITY. Subsections (3) (c), (4) (j), (k), (l), (m) and (9) and (10) apply to all cost share agreements signed after December 1, 1989, and amendments to those agreements.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (3) (a) and (b), (4) (f), (5) and (10), cr. (3) (c), (4) (j) to (m) and (11), r. and recr. (9), Register, November, 1989, No. 407, eff. 12-1-89.

NR 120.14 Cost share agreement conditions for best management practices. (1) APPLICABILITY. The cost share agreement conditions described in this section apply to best management practices included in cost share agreements or otherwise provided for in s. NR 120.12 (4) or identified by variance under s. NR 120.29 Cost sharing is authorized when the best management practices are installed on critical sites in a manner consistent with the approved watershed plan.

(2) CONTOUR FARMING. (a) *Description.* Contour farming is farming sloped land so all cultural operations from seed bed preparation to harvest are done on the contour.

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

a. Establishment of a contour farming system and, if necessary, sub-surface drains and the removal of obstructions.

b. Establishment of wildlife habitat to recreate habitat lost through the removal of obstructions or other means required to install the contour cropping.

2. Wildlife habitat shall be recreated to replace wildlife habitat lost through the removal of obstructions or other means required to install the contour cropping consistent with the approved watershed plan.

(c) *Standards and specifications.* 1. Wetlands may not be destroyed or degraded as a result of installing contour cropping.

2. SCS field office technical guide standards and specifications as of May, 1989:

a. 330 - contour farming;

b. 500 - obstruction removal;

c. 606 - subsurface drain; and

d. 645 - wildlife upland habitat management.

(3) CONTOUR AND FIELD STRIPCROPPING. (a) *Description.* Contour and field stripcropping is growing crops in a systematic arrangement of strips or bands, usually on the contour, in alternated strips of close growing crops, such as grasses or legumes, and tilled row crops.

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

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(c) *Review and approval procedures.* 1. The department shall identify site-specific design criteria for each measure, to the degree practicable, in the watershed plan.

2. The governmental unit, landowner or land operator and the department shall meet to discuss design procedures and alternative designs prior to the design of the practice.

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

4. Based on the review of the preliminary designs for each alternative, the governmental unit, landowner or land operator shall submit a detailed design for the selected alternative prepared by a registered professional engineer or other individual trained in the design of the practice and approved by the department, to the department for review and approval.

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

- a. Adequacy of pollutant control.
- b. Adequacy of protection of other resources such as groundwater.
- c. Structural integrity of the design.
- d. Aesthetics.
- e. Susceptibility to vandalism.
- f. Recreational use.
- g. Other pertinent factors.

(23) **EFFECTIVE DATES FOR BEST MANAGEMENT PRACTICES.** 1. The cost share conditions and standards and specifications for all best management practices shall apply to all cost share agreements signed after December 1, 1989.

2. All long-term and short-term manure storage facilities identified in approved watershed plans shall be included under the manure storage facility practice described in sub. (19).

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

NR 120.15 Alternative best management practices and alternative design criteria. (1) **ALTERNATIVE BEST MANAGEMENT PRACTICES.** The department may approve alternative best management practices where necessary to meet the water resources objectives identified in the watershed plan. The department shall consult with DATCP regarding alternative agricultural best management practices. The department may consult with SCS, UWEX and other agencies. The department shall identify in the nonpoint source grant agreement design criteria and standards and specifications, where appropriate; cost share conditions; and cost share rates for each approved alternative best management practice.

(2) **ALTERNATIVE DESIGN CRITERIA.** For best management practices described in s. NR 120.14, the department may approve alternative design criteria or standards and specifications where an alternative will

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achieve the same or a greater level of pollutant control. The department shall consult with DATCP regarding alternative design criteria for agricultural best management practices. The department may consult with SCS, UWEX and other agencies.

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

NR 120.16 Construction site ordinance. Where construction sites have been identified as significant nonpoint sources in a watershed plan, the enactment of a construction site erosion control and runoff management ordinance shall be a condition of the nonpoint source grant agreement or a not cost shared practice of a cost share agreement.

(1) **APPLICABILITY.** The ordinance shall apply to all construction activities within the unit of government's jurisdiction including the following:

(a) Residential dwelling construction including single family home construction.

(b) Subdivisions, certified surveys and planned urban developments.

(c) Commercial, institutional and industrial buildings and associated yards and lots.

(d) Utility and transportation system construction.

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

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

(b) Standards, criteria and other conditions to:

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

2. Manage the runoff water volume and rate during both the development period and afterwards to prevent adverse environmental impact such as flooding, channel modification and streambank erosion.

3. Manage the infiltration levels of the developed area to prevent adverse changes to normal dry weather flows in receiving streams.

4. Manage the amount of pollutants from the developed site so that waters of the state will not be adversely impacted.

(c) Permit application and issuance procedures.

(d) Administration and enforcement procedures.

(e) Violation penalties.

(f) Appeal procedures.

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

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

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

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- (1) Practices to be funded through other programs.
- (2) Practices previously installed and necessary to support cost shared practices.
- (3) Changes in crop rotation.
- (4) Minimum levels of street sweeping and leaf collection.
- (5) Changes in location of unconfined manure stacks involving no capital cost.
- (6) Manure spreading management.
- (7) Other practices the department determines are necessary to achieve the objectives of the watershed project.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; r. (7) and (8), renum. (9) to be (7), Register, November, 1989, No. 407, eff. 12-1-89.

NR 120.18 Cost share rates. (1) STATE COST SHARE RATES. (a) State cost share rates for individual best management practices are identified in Table 2. The cost share rates for best management practices under cost share agreements resulting from nonpoint source grant agreements entered into on or after January 1, 1989, but prior to December 1, 1989, may be amended to use the rates identified in this section.

Table 2

Practice	State cost share rate
Contour farming	50%*
Contour and field stripcropping.....	50%*
Field diversions	70%
Terraces	70%
Grassed waterways.....	70%
Reduced tillage systems for continuous row cropping and long rotations	50%
Reduced tillage systems for short crop rotations and forage and small grains establishment ..	50%
Nutrient management.....	50%
Pesticide management	50%**
Critical area stabilization	70%
Grade stabilization structures	70%
Agricultural sediment basins	70%
Shoreline and streambank stabilization	70%
Shoreline buffers	70%
Wetland restoration.....	70%
Barnyard runoff management	70%
Animal lot relocation.....	70%
Manure storage facilities	70%
Roofs for barnyard runoff management and manure storage facilities.....	70%
Livestock exclusion from woodlots	50%
Structural urban best management practices ...	70%

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

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

(b) Counties may use the following state cost share rates per acre in lieu of the state cost share percentages listed in Table 2.

1. \$6 per acre for contour cropping.
2. \$12 per acre for strip cropping.
3. \$10 per acre for field strip cropping.
4. \$45 per acre over 3 years for reduced tillage on continuous row croplands.
5. \$15 per acre for one year only for reduced tillage on crop rotations involving hay.

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

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

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

(2) MAXIMUM AMOUNTS. (a) *Least cost.* A governmental unit may set cost share rates up to the maximum amount specified for the practice in this section. Where 2 or more practices are of equal effectiveness in the control of pollutants, the cost share rate shall be based on the least-cost practice provided the practice is consistent with the use and management of the land in question. The department may approve, in writing, cost sharing for a best management practice that is not the least cost if the practice is cost effective in providing greater control of pollutants or providing fish and wildlife habitat.

(b) *Manure storage facilities.* The maximum cost share for long-term manure storage facilities may not exceed \$10,000 total per facility including no more than \$5,000 for manure transfer equipment such as pipes, pumps, hoppers and push off ramps.

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

(d) *Leases of manure storage tanks.* The maximum amount cost shared for leases of manure storage tanks shall be 70% of the down payment and

lease cost of the tank during the grant period of the watershed project up to a maximum of \$10,000.

(3) **LOCAL SHARE.** Funds from sources other than the appropriation under s. 20.370 (4) (cc), Stats., including federal programs, may be used to provide the local share of project costs, as set forth in s. 144.25 (8), Stats. In kind contributions of labor and material used directly in the installations of best management practices may be considered part of the local matching share of best management practice costs, if properly described and substantiated to the cost share agreement grantor.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1) (a), (b) (intro.), (c) (intro.), (2) (a) and (3), r. and rec. Table 1 and (2) (c), cr. (1) (c) 6. to 8., (d) and (2) (d), Register, November, 1989, No. 407, eff. 12-1-89.

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

- (1) Critical area stabilization.
- (2) Shoreline buffers.
- (3) Wetland restoration.

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89.

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

(a) *Average cost.* Based on past cost information, a governmental unit determines an average cost per unit of materials and labor for the installation of a best management practice which may not be exceeded.

(b) *Range of costs.* Based on past cost information, a governmental unit establishes a cost range for the installation of a best management practice. Eligible costs may not exceed the maximum cost of the range.

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

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

(e) *Municipal work group.* A governmental unit hires or assigns its employees to install a best management practice for a number of landowners and land operators if the employees are able to perform the work more economically than the private sector.

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

(g) *Other cost containment procedures.* If a governmental unit determines another cost containment procedure would be more effective than

the cost containment procedures described in this subsection, it shall include the alternative in the detailed program for implementation portion of the watershed plan.

(2) Amendments to cost containment procedures contained in the detailed program for implementation shall follow the procedures provided in s. NR 120.08.

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

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

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (1) and (3), cr. (4), Register, November, 1989, No. 407, eff. 12-1-89.

NR 120.20 Education grant agreement.

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

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

(2) GRANT PERIOD. (a) No local assistance grant agreement pertaining to a specific priority watershed plan may begin before the selection of the nonpoint source priority watershed project, nor extend beyond the end date of the nonpoint source grant agreement.

(b) Grants having program or statewide impact shall include a specific grant period in the grant.

(3) APPLICATION PROCEDURES. The grantee shall apply for local assistance grant funds on forms provided by the department. Funding shall be provided based on activities identified in the annual or periodic work plans submitted by the grantee. Applications shall be submitted according to the following requirements.

(a) Grantees, except counties, shall submit an application for a grant or grant amendment and a work plan to the department. The department Register, November, 1989, No. 407

ment shall notify the grantee regarding approval or disapproval of the work plan within 60 days.

(b) Counties shall submit draft annual work plans and grant amendment applications in accordance with the procedures developed by DATCP in s. Ag 166.40 and the department.

(c) Amendment requests may be reduced by the department if the grantee has not expended all of the previously awarded funds by the end of the current funding period. The grantee shall provide an estimate of unexpended funds at the end of the current funding period in the amendment application.

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

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

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

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

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

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

d. Designing best management practices;

e. Installing and verifying best management practices;

f. Reviewing best management practice operation and maintenance;

g. Preparing information and education materials;

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

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

j. Project management and fiscal management;

k. Performing the inventories for the watershed plan;

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

m. Preparing and administering a construction site erosion control ordinance under s. 144.266, Stats., and a manure storage ordinance under s. 92.16, Stats.; and

n. Administration of easements defined in s. NR 120.18.

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

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

4. Information and education activities approved by the department.

5. Training of staff approved by the department. Training for county staff is limited to training included in a DATCP approved training plan.

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

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

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

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

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

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

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

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

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

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

3. Field equipment necessary for the project.

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

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

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

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

(6) **REVIEW OF CONTRACTS.** If a governmental unit contracts with a government agency or person to provide field, administrative, planning Register, November, 1989, No. 407

or other services to carry out activities of the local assistance grant agreement, the contract shall be submitted to the department. Contracts greater than \$10,000 shall be submitted for review and approval prior to signing.

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

(b) Counties shall submit quarterly project management reports to DATCP required under s. Ag 166.40 (4) accounting for staff time, expenditures and accomplishments regarding its activities funded under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. If a reimbursement request exceeds \$40,000 for a partially completed structural urban best management practice described in s. NR 120.14(15), documentation of costs incurred is required at the time reimbursement is requested.

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

(c) The department may advance monies to governmental units prior to best management practice installation. The amount of the advance necessary shall be identified in the annual or periodic workplan submitted as required in s. NR 120.21 (3).

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

(b) Counties quarterly reimbursement requests are included in the quarterly project management reports submitted to DATCP required under s. Ag 166.40 (4).

(c) The department may advance monies to local assistance agreement grantees up to 50% of the estimated 12 month grant amount.

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

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

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

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

(3) **GENERAL REQUIREMENTS FOR CONTRACTS.** Contracts shall be:

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

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

(c) For monetary or in-kind consideration.

(4) **FORCE ACCOUNT WORK.** (a) A governmental unit shall secure prior written approval from the department for use of the force account method in lieu of contracts for any professional services or construction activities in excess of \$10,000.

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

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

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

NR 120.25 Governmental unit record keeping and reporting requirements. (1) Each governmental unit as a grant agreement grantee or cost share agreement grantor shall maintain a financial management system which adequately provides for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Accurate and complete time reports for all employees working on the project.

(g) A systematic method to assure timely and appropriate resolution of audit findings and recommendations by the department.

(h) A final accounting of project expenditures submitted to the department within 60 days of the completion of all watershed project work.

(2) The governmental unit shall retain copies of all reimbursement requests submitted to the department including the following items:

(a) Request for an advance or reimbursement form.

(b) Reimbursement claim worksheet.

(c) Cost share calculation and practice verification form.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am., (1) (intro.), (e) 3. a., d. and f., (2) (intro.), Register, November, 1989, No. 407, eff. 12-1-89.
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NR 120.26 Record retention and auditing. (1) RECORD RETENTION REQUIREMENTS. (a) The governmental unit or its agent's records and the records of contractors, including professional services contracts, shall be subject at all reasonable times to inspection, copying and audit by the department.

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

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

1. For 3 years after the date of final settlement; or
2. For a longer period if required by statute or contract; or
3. For 3 years after the date of termination of a grant agreement. If a grant is partially terminated, records shall be retained for a period of 3 years after the date of final settlement.
4. Cost share agreement records shall be kept for the duration of the maintenance period of the cost share agreement with the longest maintenance period to enable the governmental unit to fulfill its responsibility under s. NR 120.05 (8).

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

1. Records which relate to appeals, disputes or litigation on the settlement of claims arising out of the performance of the project for which funds were awarded; and
2. Records which relate to costs or expenses of the project to which the department or any of its duly authorized representatives has taken exception.

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

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

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

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

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

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

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

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

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

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

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

4. Other suggestions to the grantee for minimizing costs.

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

2. Within the suspension period the department shall either:

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

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

c. Authorize resumption of work.

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

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

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

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

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

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

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

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

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

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

(d) The department may annul a grant if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NR 120.30 Annual report. The department, jointly with the DATCP shall annually prepare the report on the progress of the program required in ss. 144.25 (4) (o) and 92.14 (13), Stats. The report shall consider land management and water quality criteria in the evaluation of program progress. The report shall include information derived from watershed plans, annual work plans or other related activities.

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89.

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