

## Chapter NR 153

## TARGETED RUNOFF MANAGEMENT GRANT PROGRAM

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

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

**History:** CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02.

**NR 153.11 Applicability.** This chapter applies to all of the following:

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

(2) The department when acting to administer grants and the grant program under s. 281.65, Stats., including when the department acts as the grantor of a runoff management grant agreement, grantor of a local assistance grant agreement or provider of a cost–share agreement to a governmental unit or a state agency.

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

(4) State agencies, including the department, when acting as grant applicants, runoff management grantees or cost–share recipients.

(5) Landowners and land operators when acting as cost–share recipients.

**History:** CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02.

**NR 153.12 Definitions.** In this chapter:

(1) “Approved areawide water quality management plan” means a plan that has been adopted pursuant to ch. NR 121.

(2) “Best management practice” as defined in s. 281.65 (2) (a), Stats., means a practice, technique or measure, except for dredging, which is determined to be an effective means of preventing or reducing pollutants generated from nonpoint sources, or from the sediments of inland lakes polluted by nonpoint sources, to a level compatible with water quality objectives established under this chapter and which does not have an adverse impact on fish and

wildlife habitat. The practices, techniques or measures include land acquisition, storm sewer rerouting and the removal of structures necessary to install urban structural practices, facilities for the handling and treatment of milkhouse wastewater, repair of fences built using grants under this chapter and measures to prevent or reduce pollutants generated from mine tailings disposal sites for which the department has not approved a plan of operation under s. 289.30, Stats.

(3) “Certification” means that an authorized representative has attested in writing that the statement is true.

(4) “Cost–effective” means economical in terms of the tangible benefits produced by the money spent. Tangible benefits include pollution control, fish and wildlife habitat enhancement, enhancements to recreation, public safety, economical operation, economical maintenance and enhanced life expectancy of the best management practice.

(5) “Cost–share agreement” means the agreement established between the governmental unit and the cost–share recipient which identifies the best management practices to be used on the cost–share recipient’s lands and the cost estimate, installation schedule and operation and maintenance requirements for these best management practices.

(6) “DATCP” means the Wisconsin department of agriculture, trade and consumer protection.

(7) “Department” means the Wisconsin department of natural resources.

(8) “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.

(9) “Governmental unit” means any unit of government including, but not limited to, a county, city, village, town, metropolitan sewerage district created under ss. 200.01 to 200.15 or 200.21 to 200.65, Stats., 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.

(10) “Grant period” means the time period during which a governmental unit is eligible to incur eligible costs and obtain departmental reimbursement for a project under a runoff management grant agreement or a local assistance grant agreement.

(11) “Grantee” means a governmental unit or state agency that receives funding from the department under a runoff management grant agreement or a local assistance grant agreement.

(12) “Grantor” means the department when serving to provide funds under this chapter to a grantee.

(13) “Landowner” means any individual, partnership, corporation, municipality or person holding title to land.

(14) “Land operator” means any individual, partnership, corporation, municipality or person having possession of or holding a lease in land and who is not a landowner.

(15) “Least cost practice” means the best management practice that requires the lowest amount of money to install when compared to other practice alternatives.

(16) “Local assistance grant agreement” means an agreement between the department and a state agency or governmental unit providing funds for staffing activities to carry out the tasks identified in a project selected for funding under this chapter.

(17) “Local share” means that portion of the best management practice installation cost that is not authorized for funding under s. 281.14, 281.65, 281.66 or 281.665, Stats.

(18) “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. 283.01 (12), Stats.

(19) “Operation and maintenance period” means the length of time a best management practice included on a cost–share agreement or a runoff management grant agreement shall be operated and maintained.

(20) “Priority lake area” means a hydrologic unit which drains to a lake or group of lakes and serves as the project boundary for watershed projects identified through the process in s. 281.65 (3m) (b), Stats., and implemented through the process in ch. NR 120.

(21) “Priority watershed” means any watershed that is identified under s. 281.65 (3) (am) or (4) (cm) or (co).

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

(23) “Project” means targeted runoff management project.

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

(25) “Project completion” means the expiration date of a runoff management grant agreement.

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

(27) “Provider” means a governmental unit when serving to administer cost–share funds through a cost–share agreement with a private landowner, land operator or state agency.

(28) “Recipient” means the receiver of cost–share funds from a provider.

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

(30) “Structural urban best management practices” means detention basins, wet basins, infiltration basins and trenches and wetland basins.

(31) “Targeted runoff management project” means a project selected by the department for funding under s. 281.65 (4c), Stats.

(32) “Urban best management practices” means structural urban best management practices and other source area measures, transport system and end–of–pipe measures designed to control storm water runoff rates, volumes and discharge quality. In this definition, “source area” means a component of urban land use including rooftops, sidewalks, driveways, parking lots, storage areas, streets and lawns from which storm water pollutants are generated during periods of snowmelt and rainfall runoff.

(33) “Wetland” or “wetlands” has the meaning specified under s. 23.32 (1), Stats.

(34) “WPDES” means Wisconsin pollutant discharge elimination system.

**History:** CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02.

**NR 153.13 Eligible applicants.** (1) Governmental units are eligible to apply for and receive targeted runoff management grants administered under this chapter.

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

(2) A state agency, including the department, may apply for a targeted runoff management grant administered under this chapter for a project on land under state ownership or control if the project affects a priority lake or is in a priority watershed area. The department may apply for a grant to purchase an easement in a priority watershed area.

**Note:** A state agency, including the department, may not apply directly to the department for a targeted runoff management grant for a project located outside of a priority watershed or priority lake area. However, for work in these areas a state agency, including the department, may enter into a cost–share agreement with a governmental unit to receive grant funds awarded under s. NR 153.20.

**History:** CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02.

**NR 153.14 Eligible projects.** (1) An eligible project is that specified in the scope of the runoff management grant agreement developed in accordance with s. NR 153.21 or the scope of the local assistance grant agreement developed in accordance with s. NR 153.26. A project scope shall have a geographic component and a time component.

(a) The geographic component of the project scope may range from controlling pollution from a single source on a property to controlling nonpoint pollution sources within a specified drainage area.

(b) The time component of the project scope may last up to 3 years. The department may grant an extension of up to one year pursuant to s. NR 153.21 (2). Multiple projects can be conducted consecutively or simultaneously in the same project area.

(2) The department may provide funding under this chapter for a project only if all of the following apply:

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

(b) The project will implement nonpoint source pollution control in an area that is a target area based on any of the following:

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

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

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

4. The existence of threats to public health.

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

6. Other water quality concerns of national importance.

7. Other water quality concerns of statewide importance.

(c) The project is consistent with priorities identified by the department on a watershed or other geographic basis.

(d) The project is consistent with approved land and water conservation plans under s. 92.10, Stats.

(e) The department, in consultation with the department of agriculture, trade and consumer protection determines that funding provided under s. 92.14, Stats., is insufficient to fund the project. The department may consider funding under s. 92.14, Stats., to be insufficient until such time as a joint allocation plan prepared and approved pursuant to ss. 281.65 (4) (pm) and 92.14 (14),

Stats., identifies that the project will be fully funded under s. 92.14, Stats.

**History:** CR 00-025: cr. Register September 2002 No. 561, eff. 10-1-02.

**NR 153.15 Cost sharing for best management practices.** (1) **ELIGIBLE COSTS.** (a) The department may provide cost sharing for the construction or implementation of best management practices in projects located either inside or outside of priority watershed and priority lake areas. The department may attribute design and construction services costs to the cost of construction or implementation of the best management practice.

(b) 1. If the purpose of the best management practice is to comply with agricultural performance standards and prohibitions identified in subch. II of ch. NR 151, technical standards for the best management practice shall be included in subch. VIII of ch. ATCP 50 in order for the best management practice to be considered eligible for cost sharing under this chapter.

2. Subd. 1 does not apply if the department determines there is no technical standard in subch. VIII of ch. ATCP 50 capable of meeting the performance standard or prohibition.

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

1. Be included in ch. NR 154.

2. Be included in subch. VIII of ch. ATCP 50.

3. Be available in accordance with the technical standards development and dissemination requirements of subch. V of ch. NR 151.

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

(d) The best management practice shall be constructed in accordance with applicable technical standards and conditions identified in this chapter, subch. VIII of ch. ATCP 50, ch. NR 154, in a document that meets the requirements of subch. V of ch. NR 151 or a runoff management grant agreement as provided for under sub. (3) in order to be considered eligible for cost sharing under this chapter.

(e) The best management practice shall be included as an eligible item for cost sharing on a runoff management grant agreement, signed by the department and the governmental unit or state agency, in order to be considered eligible for cost sharing under this chapter.

(f) If a cost-share agreement is required, the best management practice shall be included as an eligible item on the cost-share agreement, signed by the governmental unit and a landowner, land operator or state agency in order to be considered eligible for cost sharing under this chapter.

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

**Note:** This section governs what pollution sources are eligible for cost sharing under ch. NR 153. It does not address requirements for compliance with performance standards, nor does it address cost-share funding as a precondition for compliance. Compliance requirements, including when cost-share funding must be made available as a precondition of compliance, are set forth in ss. NR 151.09 and 151.095.

(2) **INELIGIBLE COSTS.** All of the following practices, sources or activities are ineligible for cost sharing under this chapter unless approved by the department as part of a demonstration project in accordance with sub. (4):

(a) Best management practices for which cost sharing has been provided, after the effective date of the performance standard or prohibition, provided that the cost-share rate was 70% or more of the eligible costs for best management practices designed to achieve an agricultural performance standard or prohibition under subch. II of ch. NR 151 or was 50% or more of the eligible costs

for best management practices designed to achieve performance standards under subch. III or IV of ch. NR 151. The department may make an exception in accordance with par. (b).

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

(c) Cropland and manure management practices needed to control sources that were adequately managed for the specific land use at the time of cost-share agreement signing but that are producing an increased amount of pollutant loading to the surface water or groundwater counter to water resource objectives or a performance standard under ch. NR 151. Water resources objectives include those identified in an approved areawide water quality management plan, priority watershed plan or county land and water resources management plan.

(d) Significant expansions of livestock operations. The department shall use the criteria in this paragraph for determining whether an increase in the size of the livestock population constitutes a significant expansion and is ineligible for cost sharing. In this paragraph, "livestock population size" means the size of the livestock population, in animal units. In this paragraph, "base livestock population size" means the livestock population size determined when the department or governmental unit, including a county land conservation committee, visits the site and documents the size of the livestock population. In this paragraph, animal unit has the meaning given in ch. NR 243.

1. If the base livestock population size is less than or equal to 250 animal units, that portion of the expansion that results in a livestock population size exceeding 300 animal units is considered to be significant and ineligible for cost sharing under this chapter.

2. If the base livestock population size is greater than 250 animal units but less than that required to apply for a WPDES permit under s. NR 243.12 (1) (a) or (b), and the expanded livestock population size will be less than that required to apply for a WPDES permit under s. NR 243.12 (1) (a) or (b), that portion of the expansion that is greater than 20% of the base livestock population size is considered to be significant and ineligible for cost sharing under this chapter.

3. Any expansion to a base livestock population size that results in a livestock population size required to apply for a WPDES permit under s. NR 243.12 (1) (a) or (b) is considered to be significant and ineligible for cost sharing under this chapter, and shall also render the base livestock population component ineligible for cost sharing in accordance with par. (f) 2.

**Note:** The department may not provide cost sharing under this chapter for activities requiring coverage under a WPDES permit for livestock operations.

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

(f) Activities requiring coverage under a WPDES permit including any of the following:

1. Activities requiring WPDES permit coverage at livestock operations with less than 1,000 animal units that have been issued a WPDES permit by the department under ch. 283, Stats. In this paragraph, "livestock operation" has the meaning given in s. 281.16 (1) (c), Stats. In this paragraph, "animal unit" has the meaning given in ch. NR 243.

2. Activities requiring WPDES permit coverage at livestock operations that have, or will have within 12 months, at least 1,000 animal units and are required to apply for a WPDES permit under s. NR 243.12 (1) (a) or (b).

3. All other activities requiring coverage under a WPDES permit issued under chs. NR 200 to 240 and 245 to 299 except for activities required of the city of Racine to comply with municipal storm water permit requirements under ch. NR 216.

**Note:** A municipality required to comply with storm water permitting requirements under ch. NR 216 may apply for grant funding under ch. NR 155.

(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 of trees intended for commercial harvest.

(m) Installing, operating or repairing a small-scale on-site human domestic waste facility.

(n) Dredging of harbors, lakes, rivers and ditches.

(o) Installing dams, pipes, conveyance systems and urban best management practices, including storm sewer rerouting and land acquisition, when intended solely for flood control. In this paragraph, “dam” means any artificial barrier in or across a waterway, which has the primary purpose of impounding or diverting water. A dam includes all appurtenant works, such as a dike, canal or powerhouse.

(p) Practices other than those in ch. NR 154 that are normally and routinely used in growing crops and required for the growing of crops or the feeding of livestock.

(q) Practices whose purpose is to accelerate or increase the drainage of land or wetlands, except where drainage is required as a component of a best management practice.

(r) Practices to control spills from commercial bulk storage of pesticides, fertilizers, petroleum and similar materials required by chs. ATCP 32 and 33 or other administrative rules.

(s) Practices to be fully funded through other programs.

(t) Practices previously installed and necessary to support cost-shared practices.

(u) Changes in crop rotation unless required as a component of practices in subch. VIII of ch. ATCP 50 or ch. NR 154.

(v) Minimum levels of street sweeping and leaf collection.

(w) Changes in location of unconfined manure stacks involving no capital cost.

(x) Purchase of non-stationary manure spreading equipment.

(y) Correcting over-topping of a manure storage facility.

(z) Maintaining existing grass cover.

(za) Installing or modifying an agricultural facility or practice which is required pursuant to a court order or court-ordered stipulation.

(zb) Best management practices that do not meet the eligibility criteria under sub. (1).

(zc) Costs that another governmental unit is also reimbursing.

(zd) Other practices which the department determines are not necessary to achieve the objectives of the project.

**(3) INTERIM BEST MANAGEMENT PRACTICES AND ALTERNATIVE DESIGN CRITERIA.** (a) *Purpose.* The purpose of this subsection is to provide for the use of best management practices, management measures, design criteria or standards and specifications that are not included in subch. VIII of ch. ATCP 50 or ch. NR 154 but that will contribute to achieving water quality goals.

(b) *Requirements.* The department may approve cost sharing for best management practices, management measures, design criteria or standards and specifications other than those included in subch. VIII of ch. ATCP 50 or ch. NR 154 provided that all of the conditions in this paragraph are met.

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

**Note:** The department of agriculture, trade and consumer protection is the lead agency responsible for developing practices, design criteria, standards and specifications to meet agricultural performance standards.

2. The applicant shall justify all of the following:

a. That the practices, design criteria, standards or specifications are necessary to meet the water quality objectives of the project.

b. That the practice is a cost-effective means of preventing or reducing pollutants generated from nonpoint sources.

c. That the practice does not have an adverse impact on fish and wildlife habitat.

3. The department shall consult with DATCP if the best management practice, design criteria, standards or specifications are agricultural.

4. The department shall identify the best management practice, design criteria, standards, specifications, operation and maintenance period, cost-share rates and cost-share conditions in the runoff management grant agreement.

(c) *Time period.* Approvals by the department under par. (b) shall be for a limited period of time, which the department shall specify. After the specified time period has expired, the department will either discontinue the approved use of the interim measures or adopt the measures in ch. NR 154.

**(4) DEMONSTRATION PROJECTS.** (a) The department may allow cost sharing for items identified under sub. (2) if necessary to implement a demonstration project. The department shall require demonstration projects to meet the all of the following criteria to be considered eligible for cost sharing under this subsection:

1. The project shall be selected according to the process identified in s. NR 153.20.

2. The project shall be determined by the department to have statewide or regional significance and shall be designed to provide results that are transferable to other locations within the state. This includes projects that demonstrate traditional or innovative management measures or best management practices in order to increase acceptance, use and understanding of cost-effectiveness, including pollutant control capability.

3. The project shall have an approved strategy for developing and disseminating information and education materials explaining the project and its management implications.

(b) The department may consult with the university of Wisconsin–extension or its agent in considering demonstration project proposals.

**(5) COST-SHARE RATES AND COST-SHARE CONDITIONS.** Cost-share rates and cost-share conditions, including provisions for economic hardship, identified in ch. NR 154 shall be used for best management practices funded under this chapter.

**(6) COST-EFFECTIVENESS.** (a) Only cost-effective practices may be funded under this section unless an exception is granted by the department under s. 281.65 (8) (e) or (4) (em), Stats.

(b) The state cost-sharing amount shall be the total cost of an eligible practice multiplied by the cost-share rate, unless otherwise provided for in this chapter or in ch. NR 154. Where 2 or more practices are equally cost-effective in reducing pollutants

consistent with par. (a), the amount of cost sharing shall be based on the least cost practice.

**History:** CR 00-025; cr. Register September 2002 No. 561, eff. 10-1-02; corrections in (2) (f) 3. made under s. 13.93 (2m) (b) 7., Stats., Register September 2002 No. 561.

**NR 153.16 Aids for local assistance activities.**

**(1) ELIGIBLE COSTS.** (a) The department may provide cost sharing under s. NR 153.26 for local assistance activities in projects located either inside or outside of priority watershed and priority lake areas.

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

(c) The following activities are eligible for local assistance funding if additional staff are hired or retained under contract to perform the project activities, or if a professional services contract is developed and implemented to perform the project activities:

1. Contacting landowners and land operators.
2. Determining compliance with performance standards contained in ch. NR 151.
3. Identifying site-specific best management practices needed to achieve compliance with performance standards or otherwise control nonpoint pollution sources.
4. Developing and reviewing cost-share agreements with the cost-share recipient and developing and issuing the notice under ss. NR 151.09 and 151.095.
5. Installing and verifying best management practices.
6. Reviewing best management practice operation and maintenance during the implementation period.
7. Developing and transmitting to the department information that identifies non-cooperators that do not comply with performance standards.
8. Project management.
9. Administration of easements in accordance with s. NR 153.24.
10. Fiscal management.
11. Costs of appraisals for the acquisition of property in accordance with s. NR 153.25.
12. Evaluating alternatives for local financing of stormwater management programs.
13. Administrative costs associated with initial establishment of local funding programs such as stormwater utilities.
14. Storm water planning, not including development of ordinances.
15. Development of informational materials, including videos or brochures.
16. Project evaluation activities identified in the project application and required by the runoff management grant agreement, including monitoring.
17. Other activities approved by the department as being necessary to implement the project.

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

1. The cost of testing materials for use in best management practice design, installation or operation or in project evaluation, including monitoring.
2. Travel expenses including personal vehicle mileage charges, meals, lodging and other reasonable travel expenses necessary to the project.
3. The cost of office space required for the project prorated based on percent use on the project.
4. The cost of recording the cost-share agreement with the county register of deeds.
5. Field equipment necessary to conduct or evaluate the project.

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

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

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

(a) Activities for which WPDES permit coverage is required under chs. NR 200 to 299, except the following:

1. Notice of discharge activities identified in ch. NR 243.
2. Activities, in accordance with this section, required by the city of Racine to comply with municipal storm water permit requirements under ch. NR 216.

**Note:** Municipalities required to comply with storm water permitting requirements under ch. NR 216 may apply for grant funding under ch. NR 155.

(b) Direct costs for other items not listed in this section as eligible for up to 70% cost sharing, including best management practice design, education training and assistance, ordinance development and administration and promotional items except when used for educational purposes.

(c) Indirect project costs.

**Note:** DATCP is the primary state agency that supports local assistance activities conducted by county land conservation committees. In many instances, local assistance activities required to support agricultural targeted runoff management projects will be supported under grants made by DATCP to counties.

**History:** CR 00-025; cr. Register September 2002 No. 561, eff. 10-1-02.

**NR 153.17 Project application. (1) APPLICATION PROCESS.** (a) Subject to the availability of funds, the department shall:

1. Solicit applications on an annual basis for projects to be funded under this chapter by providing public notice that application materials are available upon request.

2. Distribute to any potential applicant that requests it a copy of the application, instructions for completing the application and guidelines that the department will use to score project applications.

(b) A governmental unit may request funding under this chapter for one or more projects that are located in an area that is a priority watershed or a priority lake area, or in an area that is not in a priority watershed or a priority lake area, by submitting an application to the department.

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

(d) The department may request funding for the purchase of easements in priority watershed areas.

(e) Applicants shall submit completed project applications to the department before April 15 of each year in order to be considered for funding in the following calendar year.

**(2) REQUIRED INFORMATION.** An applicant shall submit the information required by this subsection to be considered for funding under this chapter

(a) Administrative information required by the department to administer the grant request. Administrative information includes all of the following:

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

(b) Screening information required by the department to determine whether the proposed project complies with basic program and statutory funding requirements. This information includes all of the following:

1. Certification that the project meets the eligibility requirements of s. NR 153.14 (2).

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

3. A list of the best management practices for which funding is requested, including easements associated with any of these practices, and identification of practice eligibility under s. NR 153.15.

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

5. Certification that the activities listed on the application will be completed within the allowable time period specified by the department in the application materials.

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

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

8. Evidence that the proposed project is consistent with the statewide and targeted nonpoint source performance standards adopted in ch. NR 151.

9. Other information that the department may require to screen the application for compliance with minimum requirements.

(c) Scoring information required by the department to evaluate and rank the project. Scoring information includes all of the following:

1. Fiscal accountability and cost-effectiveness information for the proposed project including:

a. A work schedule.

b. A financial budget showing total costs.

c. All funding sources, including sources of in-kind local share donation as provided for in subd. 8., as well as information necessary to administer ss. NR 153.23 (2) and 153.27 (3) (c).

d. Documentation of project cost-effectiveness.

2. A project evaluation and monitoring strategy including pre- and post-project information concerning actual or potential changes in land use, changes in pollutant loading or changes in chemical, physical or biological conditions of the water resources affected by the project.

3. Evidence of local support and involvement including support from governmental units, interest groups, landowners and land operators that need to implement best management practices. Evidence of local involvement also includes a governmental unit's continuous decision-making process which ensures participation by minority and low income populations in affected areas, along with majority populations, to ensure that as an outcome all people receive the benefits of a clean, healthy and sustainable environment regardless of race, national origin or income.

4. The project priority in relation to other department water basin priorities such as those identified on priority lists established by the department or its basin partnership teams, or the priority based on department statewide research needs relating to evaluation of best management practices.

5. The water quality need to be addressed by the project including impairment or threats to water quality caused or contributed to by nonpoint pollution sources in the project area that will be addressed by the project. The water quality need shall be related to one or more of the following categories:

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

b. Existence of groundwater impairment due to nitrates or other compounds exceeding the ground water enforcement standards.

c. Existence of surface waters identified in an areawide water quality management plan as partially meeting designated uses.

d. Existence of surface waters where water quality is significantly threatened based on changes in land use or evidence of declining water quality.

e. Existence of groundwater impairment due to nitrates or other compounds that are greater than the preventive action limit but less than the enforcement standard.

f. Existence of high quality, recreationally significant waters, such as outstanding or exceptional resource waters, where potential degradation is a concern but the waterbody is not considered to be currently threatened.

g. Existence of waters that are neither high quality, recreationally significant nor considered to be currently threatened but where nonpoint source pollution control is needed to prevent eventual degradation.

h. Existence of waters used for public drinking water supplies where control of contaminants is desired in the designated well-head protection or source water protection area.

6. The extent of pollutant control to be achieved by the project, including the level of knowledge concerning the amount of pollution control needed to achieve water quality goals and the extent of pollution control that will be achieved in the project area.

7. Consistency between the project and other resource management plans such as storm water management plans, land use plans, growth management plans, wellhead protection plans, lake management plans, county land and water resource management plans and remedial action plans.

8. The use of other funding sources to supplement or reduce the state cost share provided under this chapter, such as funding from federal, state, local and interest group sources or the application of in-kind contributions to capital costs only.

9. The extent of local implementation and enforcement programs in effect over the project area, including information required to determine the project multiplier under s. NR 153.19 (4).

10. The way in which the proposed project will contribute to meeting storm water requirements under ch. NR 216 for the city of Racine.

(d) Notwithstanding the application requirements of this subsection, the department may establish modified requirements for applications submitted for funding for a project or activity that meets all of the following:

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

2. The department has a remaining contractual obligation to fund the project or activity.

**History:** CR 00-025: cr. Register September 2002 No. 561, eff. 10-1-02.

**NR 153.18 Project screening. (1)** The department may deny consideration of applications that are incomplete by the submittal deadline. The department may consider an application incomplete if the project proposal requires significant additional review to determine compliance with other state laws and the department determines that such reviews may significantly delay the project. State laws that the department may consider in determining if the application is incomplete include those to protect navigable waters, wetlands, historic places, historic properties, endangered resources or threatened resources.

**(2)** The department shall screen each completed project application to determine if the project meets basic eligibility criteria for funding under this chapter. The department shall use the information required in s. NR 153.17 (2) (b) to make this determination.

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

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

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

History: CR 00-025: cr. Register September 2002 No. 561, eff. 10-1-02.

**NR 153.19 Project scoring. (1) SCORING PROCEDURE.**

The department shall use the procedure in this subsection to score each project that passes the eligibility screening under s. NR 153.18.

(a) The department shall develop an initial project score using the information submitted by the applicant under s. NR 153.17 (2) (c) and detailed scoring guidelines developed by the department. The department shall develop and maintain detailed scoring guidelines in accordance with sub. (2).

(b) The department shall evaluate the initial project sub-score for each element of the project to determine if the project has overall viability. The department shall determine viability of the project in accordance with sub. (3). Projects considered to be non-viable shall be removed from further consideration.

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

(2) INITIAL PROJECT SCORE. (a) The department shall develop guidelines to assure consistent and fair scoring of project applications. The department shall revise the guidelines periodically as necessary to assure that project selections are consistent with priorities in s. 281.65 (4c), Stats. The department may convene an advisory committee to assist itself in developing and revising the scoring guidelines.

(b) Guidelines for developing initial project scores shall be consistent with all of the following:

1. Sub-scores shall be developed for key project components. Key components include: fiscal accountability and cost effectiveness, project evaluation and monitoring strategy, evidence of local support and involvement, consistency with department water basin priorities, water quality need, extent of pollutant control, consistency of project with other resource management plans, use of other funding sources and application of the project to storm water requirements for the city of Racine.

2. The project component for water quality need shall be assigned the highest sub-score. The priorities within this sub-score component shall address the list of water quality needs in s. NR 153.17 (2) (c) 5. The highest priority within this list shall be assigned to water quality need that is based on the existence of impaired water bodies that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

3. The intent to achieve performance standards contained in ch. NR 151 shall be considered as a criterion for evaluating at least one of the key project components listed in subd. 1., and shall be the highest priority in developing that component sub-score.

4. The component related to application of the project to municipal storm water permit requirements under ch. NR 216 for the city of Racine shall be assigned the lowest sub-score.

5. The initial project score shall be the sum of the sub-scores.

(3) MINIMUM QUALIFYING SCORE REQUIREMENTS. (a) The department shall identify minimum qualifying initial sub-score requirements to determine viable projects for further consideration.

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

1. Fiscal accountability and cost effectiveness.

2. Project evaluation and monitoring strategy.

3. Local support and involvement.

4. Consistency with department water basin priorities.

(4) MULTIPLIERS FOR LOCAL IMPLEMENTATION PROGRAMS. (a) The department shall increase the initial project score in accordance with this subsection if there is a local implementation program or a local implementation and enforcement program applicable to the project area. The result shall be the final project score.

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

1. The department shall multiply the initial project score by a factor of 1.1 if the applicant certifies to the department that it has a qualifying local implementation program in effect for the project area.

a. The applicant may certify that it has a qualifying local implementation program if it develops and implements a program to conduct the activities in this subd. 1. b. to h. The department shall consider the county to meet the certification requirements for this subd. 1. b. to d. if the county includes provisions for conducting these activities in a land and water resources management plan developed and approved in accordance with ch. ATPC 50.

b. Conduct information and education programming for landowners and land operators required to comply with performance standards.

c. Implement on-site visits to landowners and land operators to conduct land management inventories, determine and convey status of compliance with performance standards and discuss alternative solutions and best management practices.

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

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

f. Provide notice to landowners and land operators in accordance with ss. NR 151.09 and 151.095.

g. Agree to refer cases of non-compliance with performance standards to the department or the local district attorney for enforcement action if the county has no authority under local ordinance to bring an enforcement action.

h. Implement a system to track, evaluate and report to the department the status of compliance with performance standards.

2. The department shall multiply the initial project score by a factor of 1.25 if the applicant certifies to the department that it has a qualifying local implementation and enforcement program in effect in the project area.

a. The applicant may certify that it has a qualifying local implementation and enforcement program if it develops and implements a program to conduct the activities in this subd. 2. b. to c.

b. Activities identified in subd. 1. b. to h.

c. Adopt local ordinances that regulate the sources in the project area for which the targeted runoff management grant is to be used.

3. a. The department may adjust the multiplier applicable to projects in areas with a local enforcement program based on the scope of the ordinance coverage and the potential effect of ordinance variance clauses. Adjustments under this subdivision may be made so that the multiplier is greater than 1.1 but less than 1.25. The department may request that a copy of applicable ordinances be submitted to the department for review to determine the appropriate adjustment to the multiplication factor.

b. The department may adjust the multiplier if local ordinances regulate some, but not all, of the sources in the project area for which the grant is to be used.

c. The department may adjust the multiplier if the ordinance contains a variance clause that significantly reduces the effectiveness of the ordinance in achieving compliance with performance standards or prohibitions, or both. The department may not consider a variance clause to significantly reduce the effectiveness of an ordinance if it requires alternative performance or technical standards be implemented to ensure compliance with water quality goals, does not allow variances due to economic hardship and requires that the conditions for the variance not be self created.

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

1. The department shall multiply the initial project score by a factor of 1.1 if the applicant certifies to the department that it has a qualifying local implementation program in effect for the project area.

a. The applicant may certify that it has a qualifying local implementation program if it develops and implements a program to conduct the activities in this subd. 1. b. to e.

b. Implement a construction site erosion control ordinance that includes performance standards and applicability requirements consistent with s. NR 151.11.

c. Implement a pollution prevention information and education program targeted for property owners and other residents.

d. Implement nutrient management for municipally owned properties.

e. Implement tracking and reporting to the department on construction site erosion and storm water management permit activity.

2. The department shall multiply the initial project score by a factor of 1.25 if the applicant certifies to the department that it has a qualifying local implementation and enforcement program in effect in the project area.

a. The applicant may certify that it has a qualifying local implementation and enforcement program if it develops and implements a program to conduct the activities in this subd. 2. b. to c.

b. Activities identified in subd. 1. b. to e.

c. Adoption of a storm water management ordinance that includes performance standards and applicability requirements consistent with s. NR 151.12.

3. a. The department may adjust the multiplier applicable to projects in areas with a local enforcement program based on the scope of the ordinance coverage and the potential effect of ordinance variance clauses. Adjustments under this subdivision may be made so that the multiplier is greater than 1.1 but less than 1.25. The department may request that a copy of applicable ordinances be submitted to the department for review to determine the appropriate adjustment to the multiplication factor.

b. The department may adjust the multiplier if local ordinances regulate some, but not all, of the sources in the project area for which the grant is to be used.

c. The department may adjust the multiplier if the ordinance contains a variance clause that significantly reduces the effectiveness of the ordinance in achieving compliance with performance standards. The department may not consider a variance clause to significantly reduce the effectiveness of an ordinance if it requires alternative performance or technical standards be implemented to ensure compliance with water quality goals, does not allow variances due to economic hardship and requires that the conditions for the variance not be self created.

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

(e) The department may not increase the score of an urban or rural project located in an area where a local implementation or enforcement program does not meet the requirements of pars. (b) to (d). In this case, the interim score shall be the final project score.

(f) Notwithstanding the scoring system in this section, the department may assign maximum total points to any project application that meets the criteria in subd. 1. or 2.

1. The project meets all of the following criteria:

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

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

2. The nonpoint sources of pollution to be controlled through the project pose an imminent threat to public health or fish and aquatic life.

History: CR 00-025: cr. Register September 2002 No. 561, eff. 10-1-02.

### **NR 153.20 Project selection and funding. (1) SELECTION.**

(a) The department shall place the projects on a list in descending rank order according to the final project score. The department shall use the ranked list and available budget in accordance with the following procedure to allocate grant funds.

(b) The department shall identify for funding the highest ranked project in each department region to assure that projects are distributed evenly around the state.

(c) After identifying the highest ranked project in each department region, the department shall identify additional projects for funding on a statewide basis in accordance with the amount of funds available. The additional projects shall be identified by starting with the highest ranked project based on total project score and proceeding down the ranked list until available project funds have been allocated. The department shall identify these additional projects based on score only, without regard to statewide distribution.

(d) The department shall notify the land and water conservation board of project scores and ranks no later than September 1 of each year. The department shall also notify the land and water conservation board of the projects that it has identified and proposes to select for funding in the following calendar year.

(e) Before November 1 of each year, the department shall select projects for funding under this chapter based on the final project scores and input from the land and water conservation board.

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

**(2) FUNDING.** (a) The department shall, where practicable, issue grants to grantees by December 31 of each year for work in the following calendar year. The department shall consider the factors in pars. (b) to (f) when determining final grant awards.

(b) The department may establish a maximum amount that any project can receive in grant awards based on the amount of funding available and the funding demand in any year.

(c) If the project selected for funding is also eligible for funding with an ACRA under ch. NR 120, the department may reduce the award under this chapter if it determines that the applicant can use ACRA funds to help implement the project. In this paragraph, "ACRA" means the anticipated cost-share reimbursement amount that a project sponsor may receive from the department for a specific priority watershed or priority lake project under s. NR 120.12. The department shall consider all of the items in this



paragraph in making a determination as to whether to reduce the amount of funding awarded for the project:

1. The amount of the ACRA in relation to the amount requested for the project.

2. Competing uses for the ACRA funds in the priority watershed project or priority lake project area and the likelihood that the ACRA funding will be used to meet those needs during the term of the project.

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

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

1. Decide not to provide a grant for the project.

2. Place a condition on a grant requiring that the grantee take specific actions to reduce or eliminate the impacts of the project.

3. Place a condition in a grant that the grantee and the department identify an acceptable plan to reduce or eliminate impacts of the project.

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

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

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

**History:** CR 00-025: cr. Register September 2002 No. 561, eff. 10-1-02.

### NR 153.21 Runoff management grant agreement.

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

**Note:** In this situation, the department is a grantor of funds to the governmental unit or state agency. The governmental unit or state agency serves as a grantee in receiving funds from the department. A governmental unit may also serve as a provider of those funds to cost-share recipients such as landowners and land operators.

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

**Note:** In this situation, the department is a grantor of funds to the governmental unit or state agency. The governmental unit or state agency receiving these funds serves as the grantee.

**(2) GRANT PERIOD LENGTH.** (a) The department may set the grant period for one to 3 years from the date the department transmits the agreement to the grantee, except that the department may approve an extension for one year.

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

1. Be received by the department prior to the expiration of the grant period.

2. Identify how the additional time will result in a significant reduction in the pollutant loading from the project area or otherwise further the intent of the project.

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

ernmental unit will use the grant funds to provide cost sharing to landowners and land operators.

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

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

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

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

(e) Provide 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 governmental unit if approved by the department.

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

(g) Participate with the department in project reviews.

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

(i) Provide financial support towards the implementation of a project including:

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

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

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

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

(b) Prepare and maintain adequate fiscal management and technical assistance files as described in s. NR 153.29.

(c) Obtain prior written approval from the department for use of runoff management grant funds for best management practices installed on land owned or operated by the grantee.

(d) When installing best management practices, the grantee shall do all of the following:

1. Submit to the department estimates of all practice costs, eligible costs, ineligible costs, cost-share rates and estimated total cost-share amount.

2. Submit to the department a schedule of installation and maintenance for the practices.

3. Submit to the department copies of all professional service contracts, construction contracts, bid tabulations, force account proposals, proposals and other related information requested by the department.

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

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

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

5. Submit a maintenance strategy for the practices.

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

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

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

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

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

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

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

(c) The grantee may use runoff management grant funds to acquire easements or acquire land as provided for in ss. NR 153.24 and 153.25.

(d) If the runoff management grant provides cost–share funding to accelerate implementation of best management practices within a priority watershed project, the department shall require that the funds be administered consistent with requirements of the approved priority watershed plan.

(e) If the purpose of the project for which the runoff management grant is provided includes achieving compliance with performance standards under ch. NR 151, the governmental unit shall assure that funding under the grant is used in a manner consistent with providing cost sharing at levels adequate to meet the requirements of s. 281.16 (3) (e) and (4), Stats.

(f) The department may unilaterally reduce the runoff management grant to the amount necessary to meet budgetary limitations. The runoff management grant may not be reduced below the amount the grantee has committed in signed cost–share agreements and contracts.

(g) The runoff management grant amount may be reduced by the department if the grantee has not met all conditions of the grant or grant amendment or has not expended all of the previously awarded funds by the end of the project period, or if the grantee fails to meet a schedule included in the grant for interim work products. The grantee shall provide an estimate of unexpended grant funds at the request of the department.

**History:** CR 00–025; cr. Register September 2002 No. 561, eff. 10–1–02.

**NR 153.22 Cost–share agreement. (1) PURPOSE OF AGREEMENT.** (a) The cost–share agreement is an agreement listing the best management practices and establishing the conditions and considerations under which a cost–share recipient agrees to

install the practices listed. The cost–share agreement may be used as an offer of cost sharing in accordance with ss. NR 151.09 and 151.095.

(b) A local governmental unit shall use the cost–share agreement if serving as a cost–share provider to a landowner, land operator or state agency.

(c) The department may use the runoff management grant agreement in lieu of a cost–share agreement if it serves as a grantor of funds to a governmental unit or state agency and the grant recipient uses the funds to implement management practices on lands it owns or operates. Runoff management grant agreements used in lieu of cost–share agreements shall comply with the requirements in this section as well as those in s. NR 153.21.

(d) For best management practices to be eligible for cost sharing, the cost–share agreement shall be signed by the cost–share provider and cost–share recipient before best management practice installation is initiated.

**(2) PARTIES TO THE AGREEMENT.** (a) The cost–share agreement shall be between the governmental unit and the individual landowner, land operator or state agency. Agreements with land operators shall be co–signed by the landowner except in instances where the cost–share agreement contains no other practices than those enumerated in sub. (6) (b) 1. If other practices are included in a cost–share agreement amendment, the landowner shall co–sign the amendment.

(b) Governmental units, as cost–share agreement providers, shall enter into cost–share agreements only during the period specified in the runoff management grant agreement.

(c) The cost–share agreement applies to all contiguous sites under the same ownership. At the discretion of the governmental unit, the cost–share agreement may also apply to noncontiguous sites under the same ownership or operation in the watershed. In this paragraph, “contiguous” means touching or sharing a common boundary with a second parcel of land. A lake, river, stream, road, railroad or utility right of way that separates any part of the parcel from any other part does not render the parcel of land non–contiguous.

(d) A cost–share agreement may not be signed with an individual whose name appears on the statewide support lien docket under s. 49.854 (2) (b), Stats., unless the individual submits to the provider a payment agreement that has been approved by the county child support agency under s. 59.53 (5), Stats., and that is consistent with rules promulgated under s. 49.858 (2) (a), Stats.

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

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

(b) The best management practices to be applied and the cost–share rates for those practices that are to be cost shared. The cost–share agreement shall require that all best management practices listed on the cost–share agreement be implemented and maintained as a condition of the agreement.

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

(d) The installation schedule for applying the practices.

(e) A statement of maintenance requirements.

(f) A prohibition against adopting any land use or practice which defeats the purposes of the best management practices, the cost–share agreement or the runoff management grant agreement.

(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 stipulation that the cost–share recipient may not discriminate against a contractor on the basis of age, sex, religion or other prohibited factor.

(i) A provision describing the procedure for amendment.

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

(k) A prohibition against 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, including compliance with performance standards under ch. NR 151 to produce a significant increase in pollutant loading to surface water or ground water. If such a change in land use or management occurs, the landowner or land operator shall control the source at the landowner or land operator’s own expense or return any cost–sharing funds awarded through the cost–share agreement to the provider.

(L) A requirement to amend the cost–share agreement if practices are added or deleted and to add or delete practices only if they are consistent with the project grant application.

(m) A statement that any loss of cost sharing that results from a recipient’s failure to abide by the conditions of the cost–share agreement does not void the notice issued under ss. NR 151.09 and 151.095.

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

**Note:** Compliance with conditions in a cost–share agreement does not assure compliance with performance standards under ch. NR 151. For example, the operation and maintenance period for purposes of cost sharing is 10 years for most practices. However, best management practices must be maintained in perpetuity to comply with performance standards under ch. NR 151. Under ch. NR 151, cost sharing must only be made available once to bring a specific nonpoint source into compliance with the performance standard. Continued cost sharing is not required to be made available and long–term compliance with performance standards is the responsibility of the landowner or operator, heirs or subsequent owners or operators. Chapters NR 151 and ATPC 50 identify when cost sharing is considered to be available for purposes of required compliance with performance standards.

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

**(5) SUBMITTAL TO DEPARTMENT.** Unless required otherwise under sub. (4), the cost–share agreement provider 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 runoff management grant agreement or the project grant application.

**(6) AGREEMENT PERIOD.** The cost–share agreement period shall be the period from the cost–share agreement signing to the end of the operation and maintenance period.

(a) The period during which practices in a signed cost–share agreement may be installed may not extend beyond the period of the runoff management grant agreement for the project.

(b) For purposes of complying with the cost–share agreement, the operation and maintenance period for a best management practice begins when the best management practice installation is complete and ends after the required operation and maintenance period has expired. The operation and maintenance period for each cost–shared and not cost–shared best management practice shall last for a minimum of 10 years except that the operation and maintenance period shall last for a minimum of 15 years if a payment is made under s. NR 154.03 (1) (i) 3.

1. Except if required as a component of another practice, the following practices are exempt from the multi–year operation and maintenance period requirement and only need to be maintained during the years for which cost sharing is received:

- a. High residue management systems.
- b. Nutrient management.
- c. Pesticide management.

d. Cropland protection cover or green manure.

2. If a practice in subd. 1. is required as a component of another practice in ch. NR 154, the operation and maintenance period for the component practice shall be the same as the operation and maintenance period for the practice for which it is required.

**Note:** In many situations, best management practices will need to be maintained in perpetuity to comply with performance standards in ch. NR 151.

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

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

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

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

(b) An appropriate operation and maintenance period for the replacement practice shall be identified in the cost–share agreement.

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

**(10) RECORDING OF COST–SHARE AGREEMENTS WITH REGISTER OF DEEDS.** (a) The governmental unit shall record the cost–share agreement and its amendments in the office of the register of deeds for each county in which the property is located if the cost–share agreement includes a riparian buffer, or payments under s. NR 154.03 (1) (i) 3., or if the total cost–share agreement amount exceeds the following:

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

(b) The governmental unit shall record these documents prior to making reimbursements to the landowner or land operator.

(c) A cost–share agreement may be exempt from the recording requirement if the cost–share agreement contains no other practices than the following:

1. Contour farming.
2. Contour and field strip–cropping.
3. Cropland protection cover or green manure.
4. High residue management.
5. Nutrient management.
6. Pesticide management.

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

property to be released, the governmental unit shall obtain written approval from the department before the property may be released. The release form shall be obtained from the department and filed with the cost-share agreement.

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

**History:** CR 00-025: cr. Register September 2002 No. 561, eff. 10-1-02.

**NR 153.23 Cost containment. (1)** Governmental units as providers of cost-share agreements shall identify and agree to use one or more of the following cost containment procedures for each best management practice identified in the runoff management grant agreement.

(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. A governmental unit may use its own experience, or information obtained from the department or other sources, to estimate typical costs.

(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. A governmental unit may use its own experience, or information obtained from the department or other sources, to estimate typical costs.

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

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

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

(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 ch. NR 154 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 landowners and land operators if the employees are able to perform the work at a cost lower 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 at least as or more effective than the cost containment procedures described in this subsection, it shall include the alternative in the project application and the department shall include the alternative in the runoff management grant agreement.

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

(a) All sources of local share donation shall be indicated in the project application submitted under s. NR 153.17.

(b) The maximum value of donated labor may not exceed the prevailing local market wage for equivalent work.

(c) The value of donated equipment may not exceed the equipment rates for highways established by the Wisconsin department of transportation.

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

(d) The value of donated materials and services may not exceed market rates and shall be established by invoice.

**History:** CR 00-025: cr. Register September 2002 No. 561, eff. 10-1-02.

**NR 153.24 Easements. (1)** Governmental units holding runoff management grants from the department for a project awarded under this section may enter into easements with landowners. Easements, including donated conservation easements, shall be acquired for perpetuity. Funding for the easement shall be included in the project application submitted under s. NR 153.17. In no instance shall funding for an easement under this section be required to accomplish compliance with a performance standard.

**(2)** Easements may be used in conjunction with the following best management practices:

- (a) Critical area stabilization.
- (b) Riparian buffer.
- (c) Wetland restoration.
- (d) Structural urban best management practices.
- (e) Any other best management practice specified as eligible for easement support in an approved runoff management grant.

(f) Animal lot relocation in conjunction with pars. (a) to (c), provided that written approval of the governmental unit is obtained prior to easement acquisition, in accordance with the requirements of ch. NR 154.

**(3)** (a) The maximum allowable state cost-share rate for the acquisition cost of easements under this chapter shall be 70% of the acquisition cost of the easement, except that the maximum allowable state cost-share shall be 50% when the purpose of the easement is to support a structural urban best management practice.

(b) The maximum allowable state cost-share rate for appraisals for the acquisition of property shall be 100% of the cost of the appraisal when a grant for the appraisal was first issued by the department for this activity prior to July 1, 1998. When a grant for the appraisal was first issued by the department for this activity after July 1, 1998, the maximum allowable state cost-share rate for appraisals shall be 70%.

(c) Eligible acquisition costs include the fair market value of the property as determined by department appraisal guidelines and reasonable costs related to the purchase of the property limited to the cost of appraisals, land surveys, relocation payments, title evidence, recording fees, historical and cultural assessments required by the department, and environmental inspections and assessments. It does not include attorneys fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes or any other cost not identified in this subsection.

**(4)** The department may authorize, in writing, any governmental unit, non-profit organization or person to enter into easements or accept a donated conservation easement consistent with the eligibility provision of the approved grant application and runoff management grant in accordance with the following:

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

(b) The value of an easement shall be based on a valuation procedure that has received prior department approval. The department shall review and approve the appraisal.

(c) An easement acquired by a governmental unit, non-profit organization or person shall be recorded in the register of deeds

office in each of the counties in which the property subject to the easement is located. The deed will vest title or a property interest in the governmental unit and reference the interest of the state of Wisconsin in the property under the terms of the grant contract.

(5) Upon acceptance of a donated easement under s. NR 154.03 (2) (c), the department shall appraise the easement and issue a written opinion on the value or issue a statement of value of the easement.

(6) The department may distribute grants and aids to itself for the purchase of easements in a priority watershed area. In no instance shall the department be required to obtain an easement from a landowner in order to accomplish compliance with a performance standard.

History: CR 00-025: cr. Register September 2002 No. 561, eff. 10-1-02.

**NR 153.25 Property acquisition. (1) ELIGIBLE ACTIVITIES.** The department may distribute grants to a governmental unit holding a runoff management grant agreement under s. NR 153.21 to perform any of the following activities:

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

(b) Acquire land or an interest in land identified in the grant application, which is contributing or will contribute nonpoint source pollution. In no instance shall funding for property acquisition under this section be required to accomplish compliance with a performance standard.

(c) Land acquisition for the purpose of complying with a notice of discharge under ch. NR 243 is not eligible for cost sharing.

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

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

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

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

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

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

(f) Other information the department may request.

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

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

1. All appraisals shall be subject to department review and approval in accordance with the following procedure:

a. The governmental unit shall submit the appraisal to the department.

b. The department shall review and approve the appraisal.

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

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

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

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

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

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

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

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

(4) STATE COST-SHARE RATE. (a) The maximum allowable state cost-share rate for the acquisition of property under this chapter shall be the lesser of the following 2 amounts:

1. 50% of the acquisition cost of the property. In this subsection, "acquisition cost" means the fair market value of the property as determined by department appraisal guidelines and reasonable costs related to the purchase of the property limited to the cost of appraisals, land surveys, relocation payments, title evidence, recording fees, historical and cultural assessments required by the department, and environmental inspections and assessments. It does not include attorneys fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes or any other cost not identified in this subsection.

2. 50% of the appraisal amount approved by the department.

(b) The maximum allowable state cost-share rate for appraisals for the acquisition of property shall be 70% of the cost of the appraisal for acquisition projects added to grants after June 30, 1998. The department may cost share up to 100% of the appraisal costs if the land acquisition was added to the grant prior to July 1, 1998.

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

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

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

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

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

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

**History:** CR 00-025: cr. Register September 2002 No. 561, eff. 10-1-02.

**NR 153.26 Local assistance grant agreement.**

(1) The local assistance grant agreement is an agreement between the department and a state agency or governmental unit providing funds for activities to carry out the tasks identified in a project selected for funding under this chapter. A local assistance grant awarded under this section may be used for local project administration and management activities or other activities determined by the department to satisfy the requirements of s. 281.65 (4) (f), Stats. A local assistance grant may not be used for promotional items, except for promotional items that are used for informational purposes, such as brochures or videos.

(2) If the local assistance grant provides funding to accelerate implementation of best management practices within a priority watershed project, the department shall require that the funds be administered consistent with requirements of the approved priority watershed plan.

(3) All water tests that require laboratory analyses and which are part of the project shall be analyzed by a laboratory certified in accordance with ch. NR 149. In the event there is no certification available for the analyses to be conducted, the department shall approve the selection of a laboratory.

(4) Any grant provided for funding of a project that includes acquisition of physical, biological or chemical data may be conditioned to require implementation of a quality control and quality assurance plan approved by the department. The methods and procedures to be used in the project are subject to department approval.

(5) No local assistance grant may be made for a project under this chapter before the project has been selected by the department.

(6) The grantee shall apply for local assistance grant funds using the application process under s. NR 153.17.

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

(8) **GRANT ADJUSTMENTS.** The grant amount may be reduced by the department if the grantee has not met all conditions of the grant or grant amendment or has not expended all of the awarded funds by the end of the project period or if the grantee fails to meet a schedule included in the grant for interim work products. The grantee shall provide an estimate of unexpended funds at the request of the department.

**History:** CR 00-025: cr. Register September 2002 No. 561, eff. 10-1-02.

**NR 153.27 Procurement. (1) PROFITS.**

Contractors for contracts under grants described in this chapter may earn only fair and reasonable profits. Profits included in a formally advertised, competitively bid, fixed price construction contract are presumed to be reasonable.

(2) **RESPONSIBILITY.** The governmental unit shall administer and successfully complete 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 all of the following:

(a) Necessary for and directly related to the accomplishment of activities necessary for the activity listed on the grant or grant amendment.

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

(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 \$35,000.

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

(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 00-025: cr. Register September 2002 No. 561, eff. 10-1-02.

**NR 153.28 Grant reimbursement procedures.**

(1) **RUNOFF MANAGEMENT GRANT AGREEMENTS.** (a) State cost-share funds may be used to share in the actual cost required for the installation of eligible best management practices identified in runoff management grant agreements described in s. NR 153.21.

(b) Governmental units and state agencies 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 Financial Assistance, Department of Natural Resources, Box 7921 - CFA/8, Madison, Wisconsin 53707.

2. All reimbursement requests shall be submitted to the department within the time frame established in the grant agreement. Payments for reimbursement requests submitted after the deadlines established in the grant agreement or grant amendment will be subject to the availability of state funds and to financial commitments made to other grantees by the department.

a. Final reimbursement requests for runoff management grants shall be submitted to the department after the best management practice has been verified as properly installed and its cost has been substantiated by the documentation required by the department.

b. The grantee may submit a reimbursement request for a partially installed best management practice with approval from the department. In making its reimbursement decision, the department shall consider the level of pollution control provided by the completed component and the component's structural and functional relationship to other components of the best management practice.

c. The department may deny reimbursement if a cost-share agreement or amendment is not in accordance with the project application or the runoff management grant agreement.

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

3. Progress reports required by the department shall accompany each reimbursement request.

4. Reimbursements may not exceed the grant budget line for that practice, unless amended.

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

6. The department, in the scope of the grant agreement or grant amendment, may further specify eligible costs, reimbursement amounts and reimbursement filing deadlines.

7. Failure to submit reports on schedule may result in withholding of grant payments.

8. The department shall deny reimbursements requested for installed practices which are not included in a cost-share agreement ratified by the department, or enumerated as a grantee-installed practice on the grant agreement or grant amendment, or otherwise authorized by this chapter. Reimbursement for local assistance expenses shall be limited to those activities identified as a grant budget line item or specifically enumerated in the grant agreement scope.

**(2) LOCAL ASSISTANCE GRANT AGREEMENTS.** (a) State funds may be used to share in the actual costs expended by the governmental unit for eligible activities identified in local assistance grant agreements.

(b) Governmental units and state agencies shall comply with the reimbursement procedures listed under sub. (1).

**(3) GENERAL PROVISIONS.** (a) Grant payments to a governmental unit or other grantee under this chapter are contingent on the availability of funding.

(b) The department may remove an authorized activity from a grant if there has been substantial nonperformance of the project work by the grantee or the grantee has not met the conditions in the grant or grant amendment.

(c) 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.

(d) 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 department verification of 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 employees 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.

(e) The department may withhold a grant payment if the department determines, in writing, that a grantee has failed to comply with project objectives, grant or grant amendment conditions or reporting requirements.

(f) The department shall withhold payment of, or otherwise recover, 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 nonpoint source water pollution abatement program.

History: CR 00-025; cr. Register September 2002 No. 561, eff. 10-1-02.

**NR 153.29 Records.** **(1) REQUIRED RECORDS.** Each governmental unit serving as a runoff management grant grantee or as a cost-share agreement provider shall maintain a financial management system which adequately provides for all of the following:

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

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

(c) Comparison of actual costs with the grant amount on each grant.

(d) Procedures for determining the eligibility and allocability of installation expenses in accordance with the cost containment requirements of s. NR 153.23 for all practices installed by the landowner or land operator.

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

1. One separate project account for the total grant identified in the 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 by the governmental unit official of proper installation.

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. For management practices funded jointly under this chapter and other sources, the request shall verify that funding under this chapter is in accordance with s. NR 153.28 (1) (b) 5.

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.

4. A duplicate copy of each reimbursement request submitted to the department.

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

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

(h) 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.

(i) 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) RECORD RETENTION.** (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 or its agent.

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

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

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

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. For 3 years after the date of settlement of any dispute.

5. Cost-share agreement records shall be kept for the duration of the operation and maintenance period of the cost-share agreement with the longest operation and maintenance period to enable the governmental unit to fulfill its responsibility under this chapter.

**(3) AUDITING.** (a) The department may perform, or cause to be performed, interim audits on all grants.

(b) The department may 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 consistency with grants or grant amendments.

**(4) OPEN RECORDS REQUIREMENTS.** (a) All project-related records are subject to the state's open records law.

(b) The grantee will keep any confidential information that is not subject to the open records law, such as social security numbers that is required for income tax purposes for the cost-share funding, safe from unauthorized access.

History: CR 00-025: cr. Register September 2002 No. 561, eff. 10-1-02.

### NR 153.30 Project evaluation and reporting.

**(1)** Grantees shall report to the department an annual accounting for accomplishments regarding its activities funded under the grant.

**(2)** The department may require more frequent reports than those required under sub. (1) from a grantee which document accomplishments regarding activities funded under the grant.

**(3)** The grantee shall submit a final report after project completion. At a minimum, the report shall include project evaluation and monitoring information consistent with the commitments made in the project application submitted under s. NR 153.17. The department may require the grantee to submit other information in the final report.

History: CR 00-025: cr. Register September 2002 No. 561, eff. 10-1-02.

### NR 153.31 Variances.

The department may approve in writing a variance from a requirement of this chapter upon written request from the grantee if the department determines that a variance is essential to effect necessary grant actions or water quality objectives and where special circumstances make a variance in the best interest of the program. A grantee's written variance request shall clearly explain the circumstances justifying the variance. Before approving a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the grantee and financial hardship. The department may not grant variances from statutory requirements.

History: CR 00-025: cr. Register September 2002 No. 561, eff. 10-1-02.

### NR 153.32 Grant evaluation and enforcement.

**(1)** On an annual basis, the department shall evaluate the progress of projects. During the evaluation, the department shall examine the progress of the project toward project goals and water quality objectives specified in the grant application, grant or grant amendment. Upon consulting with the project sponsor, the department may take appropriate action to improve the progress of the project. Department action may include, but is not limited to, more frequent project evaluation, the use of interim project goals, changes to project funding, and the adoption of sanctions in sub. (2).

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

(a) The grant may be terminated or annulled under sub. (4).

(b) Project costs directly related to noncompliance may be declared ineligible.

(c) Up to 10% of the payment otherwise due the grantee may be withheld if the conditions of par. (f) are met.

(d) Project work may be suspended under sub. (3).

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

(f) The department may authorize the withholding or recovery of a grant payment if the department determines, in writing, that a grantee has failed to comply with project objectives, grant award conditions or reporting requirements or has not expended all funds it has received under this chapter on eligible activities. The

department may recover payments made to grantees when it determines that the governmental unit will not complete the eligible activities on its grant within the current grant project budgeting period. Withholding and recovery shall be limited to only that amount necessary to assure compliance.

**(3) 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 this subsection. Suspension of state liability under 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 or grant amendment.

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 by 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.* A stop-work order shall contain all of the following:

1. A description of the work to be suspended.

2. Instructions for how the grantee may acquire materials or services.

3. Guidance for action to be taken on contracts.

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 do one of the following:

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 par. (b).

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.

(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.

**(4) TERMINATION OF GRANTS.** (a) A grant may be terminated or annulled in whole or in part by the department in accordance with this subsection.

(b) 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 to either party.

(c) 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. (d). 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. (d) or annul the grant pursuant to par. (e).

(d) The department in accordance with the following procedure may terminate grants:

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 of intent to terminate the grant shall be served on the grantee personally or by 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 certified mail, return receipt requested.

(e) The department may annul a grant if any of the following occur:

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.

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

4. The grantee has not met the conditions in the grant or grant amendment.

(f) 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 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.

(g) Upon termination, all prospective department liability ceases.

(h) Upon annulment, the grant agreement is null and void and all department liability is extinguished.

**(5) TERMINATION SETTLEMENT COSTS.** (a) The reasonable costs resulting from a termination order, including a previously issued stop-work order on a project's work or grant, are 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.

**(6) RESPONSIBILITIES OF GOVERNMENTAL UNITS.** Suspension or termination of a grant or portion of grant under this section does not relieve the grantee of its responsibilities under this chapter.

**History:** CR 00-025: cr. Register September 2002 No. 561, eff. 10-1-02.