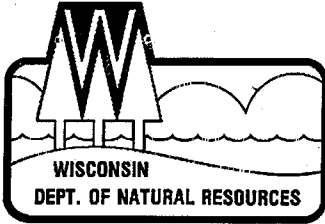


Clearinghouse Rule 95-108

95-108



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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STATE OF WISCONSIN)
DEPARTMENT OF NATURAL RESOURCES) ss



TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. WR-35-95 was duly approved and adopted by this Department on October 26, 1995. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

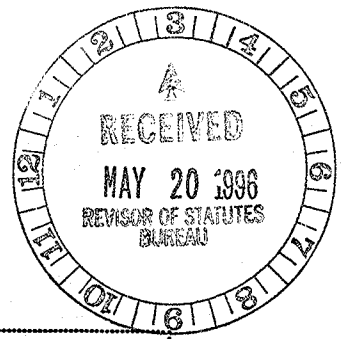
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 13th day of May, 1996.

George E. Meyer
George E. Meyer, Secretary

(SEAL)



ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, AMENDING,
REPEALING AND RECREATING, AND CREATING RULES



The State of Wisconsin Natural Resources Board adopts an order to repeal NR 120.02(15), 120.02(32), 120.03(1), 120.07(2), 120.08(1)(a)6.(Table 1), 120.10, 120.12(1)(e), 120.13(4)(l), 120.14(8), (13)(b)2.b., and (14)(b)2.f., 120.16(intro.), 120.17(intro.), 120.18(1)(b)5., 120.18(2)(c), 120.21(4)(a)2., (5)(b) and (7), 120.25(1)(f) and (j), and 120.26(3); to renumber NR 120.02(1), (3), (4), (6) to (9), (11) to (13), (16) to (31), (33) and (35), 120.14(13)(b)2.c. and (18)(b)4.c., 120.17(1) to (8), 120.21(4)(d)(title), (intro.), and 1. to 3., 120.25(1)(g) to (i) and (k), and 120.28(intro.) and (1) to (6); to renumber and amend NR 120.02(2), (5), (10), (14), and (34), 120.03(2), 120.13(10)(a) to (f) and (11), 120.14(10)(c)(intro.) and (18)(b)1.c. to e., 120.16(1) to (3) and (4)(b), 120.18(2)(d) and 120.21(5)(a); to amend NR 120.05(3), 120.07(1), (3) and (4), 120.08(1)(intro.), (a)(intro.), 5., 6. and (b)1.h. to j. and (2)(f), 120.12(1)(a)(intro.), 120.13(title), (2), (3)(c), (4)(d), (4m), (6)(b), (9), and (10)(intro.), 120.14(2)(c)(intro.), (3)(c)(intro.), (4)(c)(intro.), (5)(c)(intro.), (6)(b)(intro.), (9)(b)(intro.), (9)(c), (10)(a), (10m)(b)2. and (c), (10p)(b)1.(intro.), a. and e. and (c)1.(intro.), (11)(a) and (c)(intro.) and 8., (12)(b)1.b., 2.(intro.), c., and (c)(intro.), (13)(b)2.a., 3.(intro.), c., and (c)(intro.), (14)(title), (c)2.(intro.), and (note), (15)(a), (b)3.b., and (c), (16)(b)1. and (c), (17)(b)3., (c)(intro.) and 11., (18)(title), (a), (b)1.a. and 4.(intro.), a. and b., and (c)2.(intro.), (19)(b)2.e. and (c)(intro.), (19e)(b)1.a. and e. and (c), (19s)(c)1.(intro.), (20)(b)2.(intro.), (21m)(c)2., (22)(a) and (b)1.d., 120.15(title) and (1), 120.16(title), 120.18(title), (1)(a)(intro.) and (Table 2), (b)(intro.), 1. to 3., 6., (c) and (e), 120.18(4)(a), 120.185(1)(intro.), (2)(intro.), and (4), 120.19(1)(c) and (d)(title), 120.21(1), (2)(intro.), (3)(b), (4)(a)(intro.) and 1.(intro.), f., m., r., and s., 8., and 9., (b)1. and 2., and (c)1., 120.23(2)(b)1.(note), 2.(note), and (3)(d), 120.25(title), (1)(b), 120.27(4), 120.29, and 120.30; to repeal and recreate NR 120.08(4), 120.14(7), (10)(b), (14)(b)2.d., (18)(b)3., (19)(b)3.e., and (21), 120.17(title), 120.18(1)(b)4. and (4)(b), 120.21(5)(title), 120.22, and 120.25(2); to create NR 120.02(1), (3), (7), (11), (12), (17), (27), (30), (35), (36), (38), (42), (43), (45), and (48), 120.04, 120.06(1)(c)(note), 120.08(1)(b)1.m. to p. and 2.(note), 120.09, 120.12(6), 120.13(4)(n), (6)(b)1. and 2. and (11), 120.14(1)(b)7. and (e), (10)(c)2., (14)(b)2.e.(note) and (c)6., (18)(b)1.e., 4.c. and d., 5. and 6., (18a) and (20)(b)2.a., b. and 3., 120.16(1) and (2), 120.17(1), (2)(a) to (q), and (3), 120.18(1)(a)(note) and (4)(c), 120.185(1)(e) and (2)(a) to (e), 120.186, 120.21(2)(a), (4)(a)1.t., 13. and 14., 120.23(4), and 120.28(1) and (3) relating to the Nonpoint Source Pollution Abatement Program.

Analysis Prepared by Department of Natural Resources

Authorizing statutes: ss. 144.025, 144.25, and 227.11(2)(a), Stats.

Statutes interpreted: ss. 144.025 (2)(u), (v), and (w), 144.25(4)(g)8.am., 144.25(4m)(d), 144.25(5s), 144.25(5w), 144.25(5y), 144.25(7), 144.25(8)(jm) and (m), 227.10(2) and 227.11(2)(a), Stats.

Changes made to ss. 144.025 and 144.25, Stats., resulting from the passage of 1991 Wisconsin Act 309, 1993 Wisconsin Act 16, and 1993 Wisconsin Act 166 necessitate the proposed changes to this rule.

Specifically, the August, 1993 biennial budget bill, 1993 Wisconsin Act 16, and 1993 Wisconsin Act 166 (March 1994) created ss. 144.25(4)(g)8.am., 144.25(7), and 144.25(8)(jm), Stats. This new statutory language introduces the concept of critical sites to the Nonpoint Source Pollution Abatement Program. Critical sites are areas where nonpoint source pollution must be controlled in order to meet a watershed or lake project's water quality goals. Means to enforce the implementation of best management practices at critical sites are provided in ss. 144.025(2)(u), (v), and (w), Stats., as amended by Act 166. A process for landowner appeal of critical site designation is described in s. 144.25(7), Stats. The proposed changes to this rule addressing the subject of critical sites are contained in ss. NR 120.08(4), 120.09, 120.18(1), and 120.28(3).

Additionally, in consultation with the Department of Agriculture, Trade and Consumer Protection, the Department has expanded and streamlined best management practices under s. NR 120.14, including high residue management systems, animal lot abandonment/relocation, livestock fencing, well abandonment, and roofs for barnyard runoff management systems and for manure storage facilities.

Other proposed revisions address the priority watershed selection process (s. NR 120.07(2)), the role of local governmental units in preparing watershed plans (s. NR 120.03), property acquisition (s. NR 120.186), the development of nutrient management assessments during the planning phase of a watershed project (s. NR 120.21(1)), and the release of property from the obligations of cost-share agreements (s. NR 120.13(11)).

A last group of revisions addresses program administration, and includes changes to the list of eligible costs under local assistance grant funding relating to vehicle expenses (s. NR 120.21(4)(a)13.), specifications for the use of accrued interest money (s. NR 120.22), and the elimination of procedures for carryover hours (s. NR 120.21(4)(a)). All of the proposed revisions are intended to affect counties, municipalities, landowners and operators in a positive manner.

SECTION 1. NR 120.02(1), (3), (4), (6) to (9), and (11) to (13) are renumbered (2), (4), (5), (8), (9), (10), (13), (15), (16), and (18), respectively.

SECTION 2. NR 120.02(15) is repealed.

SECTION 3. NR 120.02(16) to (31) are renumbered (20), (21), (22), (23), (24), (25), (28), (29), (31), (32), (33), (34), (37), (39), (40), and (41), respectively.

SECTION 4. NR 120.02(32) is repealed.

SECTION 5. NR 120.02(33) and (35) are renumbered (44) and (47), respectively.

SECTION 6. NR 120.02(2) is renumbered (26), and (26), as renumbered, is amended to read:

NR 120.02(26) "Alternative Interim best management practice" means a practice, technique or measure which is approved under s. NR 120.15 as an effective means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality objectives and which does not have an adverse impact on fish and wildlife habitat.

SECTION 7. NR 120.02(5) is renumbered (6), and (6), as renumbered, is amended to read:

NR 120.02(6) "Completed practice" means a best management practice or alternative interim best management practice which has been installed and has been verified to meet the standards and specifications or procedures identified in s. NR 120.14 or 120.15.

SECTION 8. NR 120.02(10) is renumbered (14), and (14), as renumbered, is amended to read:

NR 120.02(14) "Demonstration practices" means best management practices or alternative interim best management practices installed in order to demonstrate the efficiency or economic benefits of the practices or the benefits of participating in a priority watershed project.

SECTION 9. NR 120.02(14) is renumbered (19), and (19), as renumbered, is amended to read:

NR 120.02(19) "Economic hardship" means a situation where a the landowner or land operator of an eligible site as identified in the watershed plan has a debt-to-asset ratio of more than 60 percent and verifies this to the appropriate responsible governmental unit and the department with a signed statement from

an accredited financial institution or a certified public accountant.

SECTION 10. NR 120.02(34) is renumbered (46), and (46), as renumbered, is amended to read:

NR 120.02(46) "Technical guide" means the natural resources soil conservation service field office technical guide, published by the soil natural resources conservation service of the U.S. department of agriculture, that is in effect April, 1994.

Note: Copies of the technical guides ~~may be inspected at the offices of~~ are on file with the department, 101 S. Webster Street, Madison, the Secretary of State, 30 W. Mifflin, Madison, and the Revisor of Statutes, 131 W. Wilson, Suite 800, Madison. Copies of individual standards contained in the technical guides ~~are also available in~~ may be obtained from the county land conservation committee or from a field office of the U.S. department of agriculture, natural resources Soil Conservation Service offices located throughout the state.

SECTION 11. NR 120.02(1), (3), (7), (11), (12), (17), (27), (30), (35), (36), (38), (42), (43), (45), and (48) are created to read:

NR 120.02(1) "Acquisition cost" means the fair market value, recording fees and appraisal costs related to the purchase of property to be acquired. It does not include the cost of land surveys, relocation payments, title insurance, costs of environmental inspections, audits, attorney fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transaction transfer taxes, or any other cost not identified in this chapter.

(3) "Approved areawide water quality management plan" means an areawide water quality management plan which has completed all steps of the basin plan process and which has been approved by the governor as described in ch. NR 121.

(7) "Contiguous" means touching or sharing a common boundary with a second parcel of land. A lake, river, stream, road, railroad or utility right of way which separates any part of the parcel from any other part may not render the parcel of land noncontiguous.

(11) "Critical sites", as described in s. 144.25(4)(g)8.am., Stats., means those sites that are significant sources of nonpoint source pollution upon which best management practices must be implemented in order to obtain a reasonable likelihood that the water quality objectives established in the priority watershed or priority lake plan can be achieved.

(12) "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.

(17) "Designation of critical sites by criteria" means the description or means of identifying critical sites in the plan of a priority watershed or priority lake which may include estimations of pollutant contribution or other adverse impact on water quality.

(27) "Land conservation committee" means the committee created by a county board under s. 92.06, Stats. Land conservation committee includes employees or agents of a county land conservation committee who, with committee authorization, act on behalf of the committee.

(30) "Maximum storage capacity" means the volume of water in acre-feet capable of being stored behind a dam at maximum water elevation before overtopping any part that is not part of the spillway system.

(35) "Notification to landowner" means the certified letters sent by the department which inform landowners that one or more sites under their ownership have been verified as meeting the criteria for critical sites in accordance with the provisions of s. NR 120.09.

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

Note: The natural resources conservation service is the new name for the soil conservation service.

(38) "Period of cost-sharing availability for critical sites" means the 36 month period which begins with a notification to the landowner.

(42) "Project completion" means the date on which a priority watershed project's nonpoint source grant has expired.

(43) "Project sponsor" means the governmental unit applying for and receiving grant assistance under s. 144.25, Stats., and this chapter.

(45) "Structural height" means the difference in elevation in feet between the point of lowest elevation of a dam before overtopping and the lowest elevation of the natural stream or lake bed at the downstream toe of the dam.

(48) "Workplan" means the description jointly developed by the governmental unit and the department of activities expected to be completed during project implementation.

SECTION 12. NR 120.03(1) is repealed.

SECTION 13. NR 120.03(2) is renumbered NR 120.03(1), and (1), as renumbered, is amended to read:

~~NR 120.03(1) All governmental units in the watershed shall prepare the portion of the detailed program for implementation for the watershed project as described in s. NR 120.08 (1)(b) 1.~~
A governmental unit may prepare any portion of the watershed plan provided the department and the governmental unit agree that the governmental unit has the appropriate technical, financial and staffing capability. The governmental unit shall prepare the elements of the watershed plan in accordance with s. NR 120.08(1)(b)1. This requirement may be waived if the department and the governmental unit agree that nonparticipation by the governmental unit will not impair the objectives of the watershed plan.

SECTION 14. NR 120.04 is created to read:

NR 120.04 ROLE OF CITIZEN ADVISORY COMMITTEE. The department, in cooperation with governmental units, shall appoint a citizen advisory committee for each priority watershed and priority lake project in accordance with s. 144.25(4)(dr), Stats. The citizen advisory committee shall advise the department, the DATCP and governmental units concerning all aspects of the nonpoint source pollution abatement program for their specific priority watershed or priority lake project.

SECTION 15. NR 120.05(3) is amended to read:

NR 120.05(3) Obtain prior written approval from the department for use of nonpoint source grant funds for best management practices installed on property land owned or operated by the grantee.

SECTION 16. NR 120.06(1)(c)(note) is created to read:

Note: All lands enrolled in the farmland preservation program subject to s. 92.105, Stats., are required to meet the mandatory T-value standard and other discretionary soil and water conservation standards specified in ch. ATCP 50. A copy of ATCP 50 may be obtained, at no charge, from the Department of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708.

SECTION 17. NR 120.07(1) is amended to read:

NR 120.07(1) IDENTIFICATION OF PRIORITY WATERSHEDS. In accordance with s. 144.25 (4)(c) and (cd), Stats., the department shall identify proposed priority watershed and priority lake area projects in approved areawide water quality management plans. The plans shall identify critical priority watershed and priority lake area projects to be considered for selection.

SECTION 18. NR 120.07(2) is repealed.

SECTION 19. NR 120.07(3) is amended to read:

NR 120.07(3)(title) DISTRICT ADVISORY COMMITTEES. The department shall appoint advisory committees in each district to participate in the identification of priority watersheds to be recommended to the land and water conservation board. The committee shall be comprised of representatives from state agencies, regional planning commissions, county land conservation committees, lake districts ~~and~~, local and private organizations and local units of government involved in water quality and soil conservation programs. The committee shall recommend proposed projects for selection from the water quality management plan list in the appropriate district.

SECTION 20. NR 120.07(4) is amended to read:

NR 120.07(4) LAND AND WATER CONSERVATION BOARD DESIGNATION. After the priority watershed and priority lake area projects have been ~~selected~~ identified under the process described in subs. (1) to (3), the department shall submit the recommended watershed and lake area projects to the land and water conservation board for priority designation.

SECTION 21. NR 120.08(1)(intro.), (a)(intro.), 5, and 6 are amended to read:

NR 120.08(1) WATERSHED PLAN CONTENT. (intro.) In cooperation with DATCP and the appropriate governmental unit, the department shall prepare watershed plans for all priority watersheds. A participating governmental unit located within the priority watershed shall identify, in writing, a person to represent the unit of government during watershed plan preparation. The watershed plan shall consist of a watershed assessment, a detailed program for implementation, and a project evaluation strategy. Priority watersheds and priority lakes selected after August 12, 1993 shall have critical sites designated in the plan.

(a) Watershed assessment. (intro.) The department, in cooperation with the appropriate governmental units, shall prepare a watershed assessment analyzing the water quality

problems or threats to the water quality in the watershed's lakes, streams, wetlands and groundwater and which determines the nonpoint sources causing the problem or threat. The watershed assessment shall contain:

5. ~~An identification~~ A designation of critical management areas where ~~cost shared and not cost shared best management practices are to be applied~~ sites by criteria.

6. A listing of and an analysis of need for best management practices which will significantly aid in the achievement of the target level of pollution abatement ~~including, but not limited to, practices listed in Table 1.~~

SECTION 22. NR 120.08(1)(a)6., Table 1 is repealed.

SECTION 23. NR 120.08(1)(b)1.h. to j. are amended to read:

NR 120.08(1)(b)1.h. An identification of the state and local regulatory framework under which ~~construction site~~ erosion control activities shall be conducted.

i. An identification of those storm water management activities identified in the watershed plan that shall be included as part of the core urban program for the local governmental unit. Core urban program activities ~~can~~ may include: information and education activities; development, and implementation and enforcement of construction erosion control ordinances; and development and implementation of activities ~~such as these, including, but not limited to, those activities that~~ reduce storm water pollution from lawn and leaf litter, pet waste, road salting and illicit dumping into the storm sewer system. When adoption of a construction site erosion control ordinance is required under the watershed plan, it shall include a provision stating that the construction site erosion control ordinance shall be adopted it shall be considered a core program activity and the schedule for urban implementation activities shall provide for adoption, implementation, and enforcement of the ordinance within 2 years of the date the department approves the watershed plan.

j. An identification of those storm water management activities identified in the watershed plan that may be included as part of the segmented urban program for the local governmental unit. Segmented urban program activities ~~can~~ may include: storm water planning for urban and urbanizing areas; development, and implementation and enforcement of local storm water management ordinances; engineering site feasibility studies for structural urban practices; design, installation and maintenance of structural urban best management practices; and development of local institutional mechanisms to fund and administer storm water management programs.

SECTION 24. NR 120.08(1)(b)1.m. to p. are created to read:

NR 120.08(1)(b)1.m. A schedule for the completion within 5 years of plan approval of the inventory of land resources in the priority watershed or priority lake to locate sites which meet the critical sites criteria.

n. An implementation strategy to direct staff effort at sites in proportion to the amount of pollutants contributed until pollutant reduction goals are met. The strategy shall contain a schedule for notification to landowners of critical sites.

o. A description of the measures of performance for the priority watershed or priority lake project.

p. A strategy for measuring progress toward meeting pollutant reduction goals and water quality objectives.

SECTION 25. NR 120.08(1)(b)2.(note) is created to read:

Note: Wisconsin's Forestry Best Management Practices for Water Quality: A Field Manual for Loggers, Landowners and Land Managers may be obtained, at no charge, as a reference for forestry activities from the Bureau of Forestry, Department of Natural Resources, Box 7921, Madison, WI 53707.

SECTION 26. NR 120.08(2)(f) is amended to read:

NR 120.08(2)(f) Final approval of individual county plan. Upon receiving the approval of the land and water conservation board, the department shall ~~prepare and~~ approve the final plan for the priority watershed or priority lake area in accordance with s. 144.25(5m), Stats. The date that the secretary of the department signs the approval letter to the project sponsors also marks the beginning of eligibility for funding for implementation. Notwithstanding par. (d), the department may approve the watershed plan for individual counties in multicounty watershed projects if the respective county approves the watershed plan.

SECTION 27. NR 120.08(4) is repealed and recreated to read:

NR 120.08(4) WATERSHED PLAN REVISION. (a) Plan revisions may be initiated by either the governmental unit or the department. The approved watershed plan may be revised using the procedures in ss. NR 121.07 and 121.08 for amending areawide water quality management plans.

(b) Plan revisions which add or change criteria for critical sites shall be approved by the land and water conservation board and by every governmental unit which approved the original watershed plan.

(c) Plan revisions which add or change criteria for critical sites for projects which have fewer than 4 years remaining for implementation shall include a schedule for notification to landowners which will allow implementation of best management practices at the critical sites to be completed before the end of the nonpoint source grant period.

(d) The department shall approve or reject a governmental unit's request for a revision to the watershed project's detailed program for implementation within 90 days of receipt of the revision request.

SECTION 28. NR 120.09 is created to read:

NR 120.09 NOTIFICATION AND STATUS OF CRITICAL SITES. (1) START OF NOTIFICATION PROCESS. Within 6 months following department plan approval, the process of notification to landowners shall begin. The first to begin the process shall be those highest-ranked critical sites based on estimated pollutant contribution, which together would provide at least 25% of the pollutant reduction goal for inventoried sites available at the time the final plan is written, if best management practices were applied at those sites. Notification shall proceed in accordance with the schedule identified in the plan and modified, if necessary, in the annual workplan. The department may grant up to 3 90-day extensions of this 6 month period to allow verification.

(2) VERIFICATION. The purpose of verification is to assure that individual sites within the watershed meet the criteria for critical sites and to conduct site visits and complete the inventory of nonpoint sources on additional lands in the watershed owned by those landowners with sites which meet the criteria for critical sites. If the landowner has not signed a cost-share agreement for required best management practices, the verification findings shall be reported in writing to the department. Verification shall include an on-site assessment before a notification letter can be issued.

(3) CONTENT OF NOTIFICATION LETTER. Within 60 days after receiving the verification findings, the department shall send notification to the landowner to include the following information:

(a) The dates of the beginning and end of the 36 month period of cost-share availability.

(b) The potential consequences of either s. NR 120.18(1)(a), ch. NR 243 or s. 144.025(2)(u), (v) or (w), Stats., that the landowner may face if no action is taken and the

site continues to meet the critical sites criteria described in the watershed plan.

(c) The right to appeal the designation as a critical site through a written request to the county land conservation committee within 60 days of receipt of the notification letter as described in s. 144.25 (7)(a), (b) and (c), Stats.

(d) Additional information as requested and prepared by the local governmental unit.

(4) POSTPONEMENT OF NOTIFICATION LETTER. The department shall postpone notification to any landowner who has signed a cost-share agreement and continues to comply with the annual progress and implementation schedules described in s. NR 120.13. If the landowner is responsible for failure to comply with the schedules, the department shall send the notification.

(5) COMPLETION OF NOTIFICATION SCHEDULE. Notification to landowners shall be completed within 5 years and 60 days of department plan approval.

(6) CHANGE IN CRITICAL SITE STATUS. A site is no longer considered a critical site if one of the following conditions applies:

(a) The site no longer meets the criteria for critical sites.

(b) The site has had best management practices implemented in accordance with the cost-share agreement.

(c) The department determines that the water quality objectives for the watershed have been achieved.

SECTION 29. NR 120.10 is repealed.

SECTION 30. NR 120.12(1)(a)(intro.) is amended to read:

NR 120.12(1)(a)(intro.) A Consistent with the priority watershed plan, a participating governmental unit located within the priority watershed project or priority lake area project shall:

SECTION 31. NR 120.12(1)(e) is repealed.

SECTION 32. NR 120.12(6) is created to read:

NR 120.12(6) The grantee may use nonpoint source easement funds to acquire easements as provided for in s. NR 120.185(2).

SECTION 33. NR 120.13 (title) is amended to read:

NR 120.13 (title) COST-SHARE AGREEMENT.

SECTION 34. NR 120.13(2) is amended to read:

NR 120.13(2) EFFECTIVE DATE. For best management practices to be eligible for cost-sharing, the nonpoint source grant agreement and the cost-share agreement shall be signed before the installation of practices may be initiated. A cost-share agreement is not necessary if the nonpoint source grant agreement allows the grantee to use funds directly. Nonpoint source grant agreements used in lieu of cost-share agreements shall comply with the requirements in this section.

SECTION 35. NR 120.13(3)(c) is amended to read:

NR 120.13(3)(c) The cost-share agreement shall apply to all contiguous sites under the same ownership. At the discretion of the governmental unit, the cost-share agreement may also apply to noncontiguous ~~property~~ sites under the same ownership in the watershed.

SECTION 36. NR 120.13(4)(d) is amended to read:

NR 120.13(4)(d) The installation period and the schedule for applying the practices. For sites that meet the critical sites criteria, implementation shall begin within 18 months and be completed within 4 years following the effective date of the cost-share agreement.

SECTION 37. NR 120.13(4)(l) is repealed.

SECTION 38. NR 120.13(4)(n) is created to read:

NR 120.13(4)(n) A requirement for annual progress in pollutant reduction may be imposed by the governmental unit on the landowner of a critical site.

SECTION 39. NR 120.13(4m) is amended to read:

NR 120.13(4m) DEPARTMENT APPROVAL. The governmental unit shall obtain prior department approval when ~~any~~ a single practice exceeds \$50,000 in state share or when the total cost-share agreement amount and its amendments exceed \$100,000 in state share.

SECTION 40. NR 120.13(6)(b) is amended to read:

NR 120.13(6)(b) The operation and maintenance period for both cost-shared and not cost-shared best management practices shall be for a minimum of 10 years. The operation and

maintenance period shall begin when the last practice in the agreement has been installed or implemented.

SECTION 41. NR 120.13(6)(b)1. and 2. are created to read:

NR 120.13(6)(b)1. Except where required as a component of another practice, the following practices are exempt from the 10-year operation and maintenance period requirement and only need to be maintained during the 3 years for which cost-sharing is received:

- a. High residue management systems.
- b. Nutrient management.
- c. Pesticide management.
- d. Cropland protection cover (green manure).

2. When a practice in subd. 1. is required as a component of another practice in s. NR 120.14, 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.

SECTION 42. NR 120.13(9) is amended to read:

NR 120.13(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 ~~department and the~~ respective local governmental unit, the new landowner may ~~institute alternative~~ implement alternative approved best management practices in order to obtain the water quality goals in the original agreement.

SECTION 43. NR 120.13(10)(intro.) is amended to read:

NR 120.13(10) RECORDING OF COST-SHARE AGREEMENTS WITH REGISTER OF DEEDS. (intro.) (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 within 30 days after the signing of the cost-share agreement if the total cost-share agreement amount and its amendments exceed \$1,000.

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

SECTION 44. NR 120.13(10)(a) to (f) are renumbered NR 120.13(10)(b)1. to NR 120.13(10)(b)6., respectively, and NR 120.13(10)(b)4., as renumbered, is amended to read:

NR 120.13(10)(b)4. ~~Reduced tillage systems~~ High residue management.

SECTION 45. NR 120.13(11) is renumbered (12) and is amended to read:

NR 120.13(12) APPLICABILITY. Subsections (3)(c), (4)(j), (k), ~~(l)~~, (m), (6)(a) and (9) and (10) apply to all cost-share agreements signed after December 1, 1989, and amendments to those agreements.

SECTION 46. NR 120.13(11) is created to read:

NR 120.13(11) RELEASE OF PROPERTY FROM OBLIGATIONS OF COST-SHARE AGREEMENTS. A governmental unit may fully or partially release a landowner's 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 approved watershed plan. 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 can be released. The release form shall be obtained from the department and filed with the cost-share agreement.

Note: Copies of the release form are available from the Bureau of Community Assistance, Department of Natural Resources, Box 7921, Madison WI 53707.

SECTION 47. NR 120.14(1)(b)7. is created to read:

NR 120.14(1)(b)7. All required permits, including those mandated by the department, shall be obtained prior to installing a best management practice listed in this chapter.

SECTION 48. NR 120.14(1)(e) is created to read:

NR 120.14(1)(e) Best management practices listed in this chapter and which are conducted below the ordinary high water mark may be eligible for cost-sharing only when all of the following criteria are met:

1. The practice is the most cost-effective.

2. The practice is the most effective means of preventing or reducing pollutants generated from nonpoint sources or from sediments of inland lakes polluted by nonpoint sources.

SECTION 49. NR 120.14(2)(c)(intro.) is amended to read:

NR 120.14(2)(c) Standards and specifications. (intro.)
~~SNRCS~~ field office technical guide standards and specifications as of January, 1995:

SECTION 50. NR 120.14(3)(c)(intro.) is amended to read:

NR 120.14(3)(c) Standards and specifications. (intro.)
~~SNRCS~~ field office technical guide standards and specifications as of January, 1995:

SECTION 51. NR 120.14(4)(c)(intro.) is amended to read:

NR 120.14(4)(c) Standards and specifications. (intro.)
~~SNRCS~~ field office technical guide standards and specifications as of January, 1995:

SECTION 52. NR 120.14(5)(c)(intro.) is amended to read:

NR 120.14(5)(c) Standards and specifications. (intro.)
~~SNRCS~~ field office technical guide standards and specifications as of January, 1995:

SECTION 53. NR 120.14(6)(b)(intro.) is amended to read:

NR 120.14(6)(b) Standards and specifications. (intro.)
~~SNRCS~~ field office technical guide standards and specifications as of January, 1995:

SECTION 54. NR 120.14(7) is repealed and recreated to read:

NR 120.14(7) HIGH RESIDUE MANAGEMENT SYSTEMS. (a)
Description. High residue management systems refer to any tillage and planting system that is designed to reduce soil erosion caused by water or wind. These systems include the following:

1. No-till: The soil is left undisturbed prior to planting. Planting is completed in a narrow seedbed or slot created by the planter or drill.

2. Mulch-till: The total soil surface is disturbed by tillage prior to planting. Tillage tools such as chisels, field cultivators, disks or sweeps are used.

3. Ridge-till: The soil is left undisturbed prior to planting. The seedbed is prepared on ridges with sweeps, disks,

or other row cleaners. The ridges are rebuilt for the next year's crop during cultivation.

4. Strip-till: The soil is left undisturbed prior to planting. Tillage in the row is done at planting using tools such as a rototiller, in row chisel, or other row cleaner.

(b) Conditions. 1. Cost-sharing may be provided on a per acre basis to convert to high residue management systems.

2. Cost-sharing may not exceed \$18.50 per acre per year.

3. Cost-sharing may not be provided for more than 3 years.

4. Cost-sharing may not be provided for continuous no-till unless surface applications of nutrients, including animal manure, are prohibited, or unless otherwise described in the watershed plan. Continuous no-till is defined as 3 or more consecutive years.

5. Cost-sharing may be provided for nutrient management and pesticide management under s. NR 120.14(9) and (10) provided that the watershed plan identifies these practices as eligible.

(c) Standards and specifications. 1. A minimum of 30% residue coverage shall remain on the soil surface after planting.

2. Tillage and planting shall occur as close to the contour as practical.

3. Residue cover may be from meadow, winter cover crop, small grain or row crop.

4. The practice shall meet the requirements in NRCS field office technical guide May, 1989: 329 - Conservation Tillage.

SECTION 55. NR 120.14(8) is repealed.

SECTION 56. NR 120.14(9)(b)(intro.) is amended to read:

NR 120.14(9)(b) Conditions. (intro.) As part of a nutrient management plan, cost-sharing may ~~not~~ be provided ~~for more than 3 years on an operation 3 times within the grant period~~ for:

SECTION 57. NR 120.14(9)(c) is amended to read:

NR 120.14(9)(c) Standards and specifications. ~~SNRCS~~ NRCS field office technical guide January, 1995: 590 - nutrient management. Consultants shall meet the certification requirements in ~~s- ch.~~ ch. ATCP 50-~~895.~~

SECTION 58. NR 120.14(10)(a) is amended to read:

NR 120.14(10)(a) Description. Pesticide management is controlling the handling, disposal, type, amount, location and timing of application of pesticides ~~used in crop production~~ in order to minimize contamination of water, air and nontarget organisms.

SECTION 59. NR 120.14(10)(b) is repealed and recreated to read:

NR 120.14(10)(b) Conditions. 1. As part of a pesticide management plan, cost-sharing may be provided for:

a. Spill control facilities with liquid-tight floors for pesticide handling areas. Spill control facilities consist of structures designed to contain accidental spills or overflows from pesticide mixing, loading and unloading operations for the purposes of groundwater and surface water protection. The items eligible for cost-share funds associated with these facilities include, but are not limited to a sealed, liquid-tight, reinforced concrete pad for the mixing area; water-tight walls or perimeter flow diversion structures to convey spills or contaminated water to the sump area; perimeter flow diversion structures needed to convey surface water away from the mixing area; a shallow sump collection area capable of storing spills, rinsate, washwater, and precipitation that may leak or fall on the pad; roof structures and walls protecting the pad mixing area; approach ramps; water supply systems needed for the facility; and sump pump alarm and recovery systems.

b. Use of crop consulting services for the purpose of preparing and implementing an integrated crop management plan for not more than 3 years per operation.

c. Operators shall adhere to the requirements of chs. ATCP 29 (Pesticide Use and Control) and ATCP 33 (Pesticide Bulk Storage).

d. Licensed commercial pesticide applicators, as described in s. ATCP 29.11, are not eligible for cost-share funding for this practice.

2. Material storage buildings are not eligible for cost-sharing under s. NR 120.14(10).

SECTION 60. NR 120.14(10)(c)(intro.) is renumbered NR 120.14(10)(c)1. and amended to read:

NR 120.14(10)(c)1. ~~SNRCS~~ SNRCS field office technical guide as of January, 1995: 595 - pest management. Consultants shall meet the certification requirements in ~~s. ch. ATCP 50.89550~~.

SECTION 61. NR 120.14(10)(c)2. is created to read:

NR 120.14(10)(c)2. Designing Facilities for Pesticide and Fertilizer Containment, MWPS-37, 1st ed. 1991.

SECTION 62. NR 120.14(10m)(b)2. is amended to read:

NR 120.14(10m)(b)2. Cost-sharing may only be provided for those fields that contribute to the degradation of water quality as a result of harvesting ~~early including, but not limited to, vegetable crops~~ a crop during the growing season that either leaves the field devoid of residue or lacks enough residue from the harvested crop to provide for adequate surface protection.

SECTION 63. NR 120.14(10m)(c) is amended to read:

NR 120.14(10m)(c) Standards and specifications. SNRCS field office technical guide as of May, 1986: 340 - cover and green manure crop (acre).

SECTION 64. NR 120.14(10p)(b)1.(intro.), a. and e. are amended to read:

NR 120.14(10p)(b)1.(intro.) Cost-sharing may ~~only~~ be provided for:

a. The installment of rotational grazing systems on croplands, animal lots or pastures that are currently contributing sediments, nutrients or pesticides to a water source. This practice may be eligible if the average sediment delivery to surface water for the croplands exceeds the ~~identified priority watershed~~ delivery threshold identified in the plan, the cropland acres to be converted to a rotational grazing system are eroding at a rate greater than the tolerable soil loss level as determined by the universal soil loss equation, or the practice allows the abandonment of an animal lot that adversely affects groundwater or surface water.

e. The development of permanent boundary and main paddock fences. This may include perimeter fencing, ~~land~~ lane fencing, portable fencing, and gates.

SECTION 65. NR 120.14(10p)(c)1.(intro.) is amended to read:

NR 120.14(10p)(c)1.(intro.) SNRCS field office technical standards and specifications as of January, 1995.

SECTION 66. NR 120.14(11)(a) is amended to read:

NR 120.14(11)(a) Description. Critical area stabilization is the planting of suitable trees, shrubs, and other vegetation appropriate for controlling and stabilizing sloped lands which

are ~~eroding from~~ producing nonpoint source pollutants and lands which drain into bedrock crevices, openings and sinkholes.

SECTION 67. NR 120.14(11)(c)(intro.) is amended to read:

NR 120.14(11)(c)(intro.) ~~SNRCS~~ SNRCS field office technical guide standards and specifications as of January, 1995:

SECTION 68. NR 120.14(11)(c)8. is amended to read:

NR 120.14(11)(c)8. ~~e~~Crevice and sinkhole sinkhole treatment; and

SECTION 69. NR 120.14(12)(b)1.b. and 2.(intro.) are amended to read:

NR 120.14(12)(b)1.b. Detention or retention structures, such as erosion control dams, desilting reservoirs, sediment basins, debris basins or similar structures of less than 15 feet in structural height and with ~~impoundment~~ maximum storage capacities of less than 15 acre-feet.

2. Cost-sharing may be provided for structures with embankments of 15 to 25 feet in structural height or with ~~impoundment~~ maximum storage capacities of 15 to 50 acre-feet if the department makes a determination in writing that all of the following apply:

SECTION 70. NR 120.14(12)(b)2.c. is amended to read:

NR 120.14(12)(b)2.c. Failure of the structure would have minimum potential to endanger life or real or personal property.

SECTION 71. NR 120.14(12)(c)(intro.) is amended to read:

NR 120.14(12)(c)(intro.) ~~SNRCS~~ SNRCS field office technical guide standards and specifications as of January, 1995:

SECTION 72. NR 120.14(13)(b)2.a. is amended to read:

NR 120.14(13)(b)2.a. Basins having embankments exceeding 25 feet in structural height or with ~~an impoundment~~ maximum storage capacity of more than 50 acre-feet.

SECTION 73. NR 120.14(13)(b)2.b. is repealed.

SECTION 74. NR 120.14(13)(b)2.c. is renumbered NR 120.14(13)(b)2.b.

SECTION 75. NR 120.14(13)(b)3.(intro.) is amended to read:

NR 120.14(13)(b)3.(intro.) Sediment basins with embankments of 15 to 25 feet in structural height or with impoundment maximum storage capacities of 15 to 50 acre-feet in volume may be cost-shared only when approved by the department, in writing, prior to construction. For the department to authorize such cost-sharing, it shall make the following findings:

SECTION 76. NR 120.14(13)(b)3.c. is amended to read:

NR 120.14(13)(b)3.c. Failure of the structure would have minimum potential to endanger life or real or personal property.

SECTION 77. NR 120.14(13)(c)(intro.) is amended to read:

NR 120.14(13)(c)(intro.) The sediment basin shall be designed consistent with standards and specifications for construction site sediment basins in the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR-222, November 1993 Revision and the SNRCS field office technical guide standards and specifications as of January, 1995:

SECTION 78. NR 120.14(14)(title) is amended to read:

NR 120.14(14)(title) SHORELINE AND STREAMBANK PROTECTION.

SECTION 79. NR 120.14(14)(b)2.d. is repealed and recreated to read:

NR 120.14(14)(b)2.d. For the design and placement of practices such as shaping and placement of vegetation, riprap or structures which improve fishery habitat, or other materials on banks and shores identified within the priority watershed plan, or in areas where streambank repair is the least costly alternative. Written departmental approval is required for the stabilization of banks with structural heights higher than 15 feet.

SECTION 80. NR 120.14(14)(b)2.e.(note) is created to read:

Note: A permit may be required under ch. 30, Stats., when installing this best management practice. For more information, please contact the Bureau of Water Regulation and Zoning, P.O. Box 7921, Madison, Wisconsin 53707.

SECTION 81. NR 120.14(14)(b)2.f. is repealed.

SECTION 82. NR 120.14(14)(c)2.(intro.) is amended to read:

NR 120.14(14)(c)2.(intro.) SNRCS field office technical guide standards and specifications as of January, 1995:

SECTION 83. NR 120.14(14)(c)6. is created to read:

NR 120.14(14)(c)6. Natural Resources Conservation Service Engineering Field Handbook, Soil Bioengineering for Upland Slope Protection and Erosion Reduction, Pub. 210-EFH, October 1992.

SECTION 84. NR 120.14(14)(c)(note) is amended to read:

NR 120.14(14)(c)(note) Note: Copies of the materials described in subds. 3 to 5 6 may be inspected at the offices of the department, 101 S. Webster Street, Madison; the Secretary of State, 30 W. Mifflin, Madison; and the Revisor of Statutes, 131 W. Wilson, Suite 800, Madison.

SECTION 85. NR 120.14(15)(a) and NR 120.14(15)(b)3.b. are amended to read:

NR 120.14(15)(a) Description. Shoreline buffers Buffers are permanently vegetated areas immediately adjacent to lakes, streams, and wetlands, bedrock crevices, openings and sinkholes designed and constructed to manage critical nonpoint sources or to filter pollutants from nonpoint sources.

(b)3.b. Establishment of buffers ~~en~~ at non-critical sites locations in order to provide a continuous shoreline or streambank buffer system on the cost-share recipient's property.

SECTION 86. NR 120.14(15)(c) is amended to read:

NR 120.14(15)(c) Standards and specifications. 1. The physical dimension of the shoreline buffer shall be a minimum of either 66 feet or that distance specified in a locally approved ordinance that meets the objective of the watershed or lake plan.

2. Consolidated Farm Services Agency (CFSA) (formerly Agricultural Stabilization and Conservation Service (ASCS)) standard and specification: WP-7 riparian buffer strips, as described in Handbook 1-WI(ACP), January, 1994, practice WP-7, riparian buffer strips for recommended practice layout and design criteria.

SECTION 87. NR 120.14(16)(b)1. is amended to read:

NR 120.14(16)(b)1. Earth moving to construct or remove berms, levees or dikes;

SECTION 88. NR 120.14(16)(c) is amended to read:

NR 120.14(16)(c) Standards and specifications. SNRCS field office technical guide standards and specifications as of March, 1994: 657 - Wetland Restoration.

SECTION 89. NR 120.14(17)(b)3. is amended to read:

NR 120.14(17)(b)3. Concrete paving of portions of yards necessary to support filter walls, necessary to enable proper yard scraping and used as a settling basin.

SECTION 90. NR 120.14(17)(c)(intro.) is amended to read:

NR 120.14(17)(c)(intro.) SNRCS field office technical guide standards and specifications as of January, 1995:

SECTION 91. NR 120.14(17)(c)11. is amended to read:

NR 120.14(17)(c)11. 350 - settling sediment basin;

SECTION 92. NR 120.14(18)(title) is amended to read:

NR 120.14(18)(title) ANIMAL LOT ABANDONMENT OR RELOCATION.

SECTION 93. NR 120.14(18)(a) is amended to read:

NR 120.14(18)(a) Description. Animal lot relocation is the relocation of an animal lot from a ~~critical~~ site such as a floodway to a suitable site to minimize the amount of pollutants from the animal lot to surface or ground waters.

SECTION 94. NR 120.14(18)(b)1.a. is amended to read:

NR 120.14(18)(b)1.a. Stabilization and abandonment of the a site which does or does not include relocation to a different site owned, operated or controlled by the cost-share recipient. For abandonment of a site which does not include relocation, the site shall either have been in existence for a minimum of 3 years and found to be a significant nonpoint source of pollution or was identified during the watershed inventory as being a nonpoint source of pollution and listed as eligible in the approved watershed plan.

SECTION 95. NR 120.14(18)(b)1.c. to e. are renumbered NR 120.14(18)(h)b. to d., and NR 120.14(18)(b)b. and NR 120.14(18)(b)d., as renumbered, are amended to read:

NR 120.14(18)(b)1.b. Reconstruction or replacement of buildings and other structures necessary for the relocation of the animal lot ~~subject to limitations described in s. NR 120.18(2)(e).~~

d. Needed runoff management practices on the relocated lot consistent with ~~s. NR 120.14~~ subs. (17), (19) and (20).

SECTION 96. NR 120.14(18)(b)1.e. is created to read:

NR 120.14(18)(b)1.e. Stabilization and abandonment of a previously used earthen animal lot which has either been in existence for a minimum of 3 years and is found to be a significant nonpoint source of pollution or was identified during the watershed inventory as being a nonpoint source of pollution and is listed as eligible in the approved watershed plan.

SECTION 97. NR 120.14(18)(b)3. is repealed and recreated to read:

NR 120.14(18)(b)3. The landowner agrees to abandon the existing site permanently for livestock use and agrees to record a restrictive covenant to this effect in the office of the register of deeds for each county in which the property is located. The restrictive covenant shall permanently exclude the use of the property by livestock. A maximum of 10 animals may be kept on the site, provided that no more than 4 individual animals exceed a live weight of 200 pounds and the desired level of pollutant control for the site is maintained.

SECTION 98. NR 120.14(18)(b)4.(intro.), a. and b. are amended to read:

NR 120.14(18)(b)4. A plan for relocation shall be approved by the ~~department governmental unit~~, in writing, prior to initiation of relocation. ~~For the department to approve relocation, it must make the following findings~~ The watershed plan shall list criteria for relocation plan approval. At a minimum, these criteria shall include the following:

a. ~~Control of the site is needed to achieve the water quality objectives specified in the approved watershed plan. The site is identified as eligible in the approved watershed plan.~~

b. The relocation to a site owned, operated or controlled by the cost-share recipient is cost effective compared to repairing or reconstructing the structure or facility, including the loss in terms of appraised values of structures to be abandoned provided the cost-sharing for repairing, reconstructing or replacement of buildings and other structures at the relocation site do not exceed the appraised values of the buildings and other structures to be abandoned which have utility for livestock operations.

SECTION 99. NR 120.14(18)(b)4.c. is renumbered NR 120.14(18)(b)4.e.

SECTION 100. NR 120.14(18)(b)4.c. and d., 5. and 6. are created to read:

NR 120.14(18)(b)4.c. Cost-share grants for best management practices implemented at the relocation site which are necessitated by the relocated livestock may not exceed the estimated cost-share grant of the best management practices which would have been installed at the abandoned site. The best management practice cost-effective requirement may be waived by the department if the site to be abandoned has a significant water quality impact and the proposed best management practices cannot ensure an acceptable level of water quality protection when compared to relocation.

d. The abandonment of a site without relocation to a site owned, operated or controlled by the cost-share recipient is cost-effective provided the cost-share grant does not exceed the estimated cost-share grant of the best management practices which would have been installed at the abandoned site. The best management practice cost-effective requirement may be waived by the department if the site to be abandoned has a significant water quality impact and the proposed best management practice cannot ensure an acceptable level of water quality protection when compared to relocation.

5. If the cost-share recipient has received state cost-share funding under this chapter at the site to be abandoned for practices listed in par.(b), the amount of cost-sharing received shall be deducted from the relocation cost-share payment.

6. In cases of abandonment which does not include relocation to a different site owned, operated or controlled by the cost-share recipient, livestock may not be relocated to a site which will significantly contribute to surface or groundwater quality degradation. A written plan shall be submitted to the governmental unit for approval detailing the disbursement of the animals.

SECTION 101. NR 120.14(18)(c)2.(intro.) is amended to read:

NR 120.14(18)(c)2.(intro.) SNRCS field office technical guide standards and specifications as of January, 1995:

SECTION 102. NR 120.14(18a) is created to read:

NR 120.14(18a) WELL ABANDONMENT. (a) Description. Well abandonment is the proper filling and sealing of a well to prevent it from acting as a channel for contaminants to reach the groundwater or as a channel for the vertical movement of surface water to groundwater.

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

a. The removal of the pump, pump piping, debris or other obstacles that interfere with the proper sealing of the well.

b. The sand-cement grout, sodium bentonite, clay slurry, chipped bentonite or concrete used for the well sealing.

c. Chlorine used as a disinfectant.

d. The backfilling operations to fill the surface around a well pit.

e. The necessary labor costs to complete the proper abandonment.

2. Cost-sharing may not be provided for:

a. The abandonment of wells at an oil or gas drilling site or wells that produced gas or oil.

b. The abandonment of wells used for test or exploratory purposes.

c. The abandonment of wells that are driven (punched).

d. The abandonment of mine shafts, drill holes or air vents associated with the mining industry.

3. The maximum cost-share rate for well abandonment is 70% of the total eligible cost.

(c) Standards and specifications. 1. NRCS field office technical guide standard and specification as of January, 1995:

a. 642 - Well.

2. s. NR 812.26, "Well and drillhole abandonment".

SECTION 103. NR 120.14(19)(b)2.e. is amended to read:

NR 120.14(19)(b)2.e. Leases of manure storage tanks subject to the restrictions of s. NR 120.18(2)~~(d)~~(c).

SECTION 104. NR 120.14(19)(b)3.e. is repealed and recreated to read:

NR 120.14(19)(b)3.e. Additional costs associated with the construction of a manure storage facility incurred for the

purpose of providing structural support for a building or other structure located over or attached to the facility.

SECTION 105. NR 120.14(19)(c)(intro.) is amended to read:

NR 120.14(19)(c)(intro.) ~~SNRCS~~ SNRCS field office technical guide standards and specifications as of January, 1995:

SECTION 106. NR 120.14(19e)(b)1.a. and e. are amended to read:

NR 120.14(19e)(b)1.a. Proper removal and disposal of accumulated wastes in the pond or structure;

e. ~~Filing~~ Filling, shaping to insure surface drainage away from site, and seeding of area.

SECTION 107. NR 120.14(19e)(c) is amended to read:

NR 120.14(19e)(c) Standards and specifications. ~~SNRCS~~ SNRCS field office technical guide ~~standard~~ standards 313 - waste storage structure and 425 - Waste Storage Pond waste storage pond as of January, 1995.

SECTION 108. NR 120.14(19s)(c)1.(intro.) is amended to read:

NR 120.14(19s)(c)1.(intro.) Storage, treatment and land application systems shall meet the following ~~SNRCS~~ SNRCS field technical guide standards and specifications as of January, 1995:

SECTION 109. NR 120.14(20)(b)2.(intro.) is amended to read:

NR 120.14(20)(b)2.(intro.) The roofed structure may not be permanently enclosed unless the governmental unit receives written approval from the department.

SECTION 110. NR 120.14(20)(b)2.a. and b. and 3. are created to read:

NR 120.14(20)(b)2.a. For purposes of this subsection, an enclosed structure is a structure where the sum of the walls exceed 50% of the total length of the perimeter of the structure. When the structure has a shape other than a rectangle or square, each rectangular or square portion of the total structure, excluding the common sides, shall be calculated separately to determine whether it exceeds 50%. A segment of the perimeter shall be considered a wall if greater than 50% of the opening from eave to floor is of solid building material.

b. An application requesting the enclosure of a roofed barnyard runoff management system shall be submitted in writing to the department for its approval. The written application and the applicable cost-share agreement shall include a recognition

by the landowner or land operator that the barnyard may not be used for purposes other than an animal lot for the duration of the cost-share agreement.

3. The livestock facility may not establish additional outdoor animal lots on the site unless the department certifies that adequate runoff control practices are established for the duration of the cost-share agreement.

SECTION 111. NR 120.14(21) is repealed and recreated to read:

NR 120.14(21) LIVESTOCK FENCING. (a) Description. Livestock fencing is the enclosure, separation or division of one area of land from another in such a manner that it provides a permanent barrier to livestock. The purpose of the practice is to exclude livestock from land areas that should be protected from grazing or gleaning where degradation of the natural resource will likely result if livestock access is permitted.

(b) Conditions. 1. Cost-sharing may be provided for permanent fencing when:

a. Fencing is needed to eliminate the degradation of a surface water body.

b. Fencing is needed to reduce the impact to a resource from sedimentation that is being caused by livestock.

c. Fencing is needed to exclude livestock from a forest or woodlot.

d. Fencing is needed to eliminate the degradation of other natural resources as defined within the watershed plan.

2. Cost-sharing may not be provided for:

a. Fencing of cropland fields for the sole purpose of providing areas for gleaning by livestock.

b. Temporary fencing.

c. Situations where benefits to water quality improvement cannot be readily defined.

d. Electric fence energizers.

3. The maximum state cost-share rate is 50% of the total eligible cost or:

a. Three strand barbed wire, steel or wooden post at a flat rate of \$5.00 per linear rod (1 rod = 16.5 feet).

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

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

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

(c) Standards and specifications. NRCS field office technical guide standards and specifications as of January, 1995:

1. 382 - fencing.
2. 472 - livestock exclusion.

SECTION 112. NR 120.14(21m)(c)2. is amended to read:

NR 120.14(21m)(c)2. The proposed cattle mound provides water quality benefits ~~which are verified by the BARNY model.~~

SECTION 113. NR 120.14(22)(a) is amended to read:

NR 120.14(22)(a) Description. Structural urban best management practices are source area measures, transport system and end-of-pipe measures designed to control stormwater runoff rates, volumes and discharge quality. These practices will reduce the amount of pollutants carried in runoff and flows destructive to stream habitat. These measures include, but are not limited, to, such practices as infiltration trenches, porous pavement, oil water separators, sediment chambers, sand filtration units, grassed swales, infiltration basins, and detention/retention basins.

SECTION 114. NR 120.14(22)(b)1.d. is amended to read:

NR 120.14(22)(b)1.d. On a prorated basis, for a practice which ~~serves to manage~~ manages both water quality and unrelated water quantity problems.

SECTION 115. NR 120.15(title) is amended to read:

NR 120.15(title) NR 120.15 INTERIM BEST MANAGEMENT PRACTICES AND ALTERNATIVE DESIGN CRITERIA

SECTION 116. NR 120.15(1) is amended to read:

NR 120.15(1) INTERIM BEST MANAGEMENT PRACTICES. The department may approve alternative interim best management practices where necessary to meet the water resources objectives identified in the watershed plan. The department shall consult with DATCP regarding alternative interim agricultural best

management practices. The department may identify in the nonpoint source grant agreement design criteria and standards and specifications; cost-share conditions; and cost-share rates for each approved alternative interim best management practice.

SECTION 117. NR 120.16(title) is amended to read:

NR 120.16(title) NR 120.16 ORDINANCES.

SECTION 118. NR 120.16(intro) is repealed.

SECTION 119. NR 120.16(1) to (3) are renumbered NR 120.16(3) to (5), and NR 120.16(3), as renumbered, is amended to read:

NR 120.16(3) CONSTRUCTION SITE EROSION CONTROL ORDINANCES. The ordinance shall apply, at a minimum, to construction activities ~~not~~ as defined in s. 144.266(3)(b) 1 to 5, Stats., within the jurisdiction unless the construction site activities are otherwise regulated by the department under ch. NR 216 s. NR 216.42, or regulated by DILHR chs. ILHR 20, 21, 50 or 52, or exempted by s. 13.48(13), Stats., or subject to the department of transportation and department liaison cooperative agreement under s. 30.12(4), Stats.

SECTION 120. NR 120.16(1) and (2) are created to read:

NR 120.16(1) APPLICABILITY. Counties, cities, villages and towns located within the priority watershed project or priority lake area project shall adopt the following ordinances if required within the watershed plan:

(a) Manure storage ordinances in accordance with s. 92.16, Stats.

(b) Construction site control ordinances in accordance with ss. 59.974, 60.627, 61.354 and 62.234, Stats.

(2) CONDITION OF GRANT. Adoption, implementation and enforcement of these ordinances within the time frame specified under s. NR 120.08(1)(b)1.i. and k. shall be a condition of receiving funding from the department under a local assistance grant or a nonpoint source grant. Additional actions to implement and enforce these ordinances, once enacted, will be included in the annual workplan and will be subject to the provisions of s. NR 120.28(1) and (2).

SECTION 121. NR 120.16(4)(b), as renumbered, is amended to read:

NR 120.16(4)(b) Standards, criteria and other conditions to: ~~1. Minimize~~ minimize the amount of sediment and other

pollutants reaching the waters of the state during the development of lands.

SECTION 122. NR 120.17(title) is repealed and recreated to read:

NR 120.17 COST-SHARE ELIGIBILITY.

SECTION 123. NR 120.17(intro.) is repealed.

SECTION 124. NR 120.17(1) to (8) are renumbered NR 120.17(2)(r) to (y).

SECTION 125. NR 120.17(1) and (2)(a) to (q) are created to read:

NR 120.17(1) ELIGIBLE BEST MANAGEMENT PRACTICES. Best management practices installed and maintained to control the following nonpoint sources are eligible for cost-share assistance when addressing critical nonpoint sources of pollution in a watershed plan:

- (a) Croplands and undeveloped rural lands.
- (b) Streambanks and shorelines.
- (c) Livestock yards and manure management areas except those identified in sub. (2)(c).
- (d) Lake sediments.
- (e) Lawns, parking lots, streets, roofs and other areas associated with residential land uses, retail businesses, office buildings, schools, libraries, parks and other similar institutional buildings and areas.
- (f) Source areas at industrial sites that are not considered to be associated or contaminated by industrial activity, as defined under ch. NR 216.
- (g) Urban nonpoint sources that must be controlled to meet the requirements of a municipal Wisconsin pollutant discharge elimination system (WPDES) storm water discharge permit provided that:
 1. Control of the sources is identified in the priority watershed plan.
 2. Sources are not required to obtain coverage under a WPDES storm water permit for discharges associated with industrial activity, as defined under ch. NR 216.
- (h) Other sources determined by the department to meet the objectives of the program.

(2) INELIGIBLE BEST MANAGEMENT PRACTICES. The following practices, sources or activities are not eligible for cost-share assistance:

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

(b) Activities covered by the WPDES permit program including those identified in chs. NR 200 to 299, except as provided in sub.(1)(g).

(c) Livestock operations which:

1. Have applied and are eligible for a WPDES permit.
2. Have been issued a WPDES permit.
3. Have greater than 1,000 animal units.
4. Have greater than 1,000 animal units and have been issued a notice of discharge under ch. NR 243.

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

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

(f) Active mining activities.

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

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

(i) The planting, growing and harvesting of trees associated with silviculture, except as necessary for site stabilization.

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

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

(l) Dams, pipes, conveyance systems and detention basins intended solely for flood control.

(m) Operation and maintenance of cost-shared practices.

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

(o) 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.

(p) 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.

(q) Practices needed to control sources which were adequately managed for the specific land use at the time of cost-share agreement signing but which are producing an increased amount of pollutant loading to the surface or groundwater, counter to the water resource objectives of the approved watershed plan, due to the landowner's or land user's changes in land management. Changes may include: increases in animal herd size, changes to more intensive cropping, and other changes in land use or management which increase the pollutant loading. Inconsequential fluctuations in animal herd size may not be considered an increase under this section.

SECTION 126. NR 120.17(3) is created to read:

NR 120.17(3) DEMONSTRATION PROJECTS. The department may establish alternative eligibility criteria for urban and rural demonstration projects. With prior department approval, urban and rural demonstration projects meeting these alternative criteria may be implemented during the grant period.

SECTION 127. NR 120.18(title) is amended to read:

NR 120.18 COST-SHARE RATES.

SECTION 128. NR 120.18(1)(a)(intro.) is amended to read:

NR 120.18(1)(a)(intro.) State Maximum state cost-share rates for individual best management practices are identified in Table 2. The cost-share rates for best management practices under existing cost-share agreements may be amended to use the rates identified in this section. The following maximum state cost-share rates shall be reduced by 50% for landowners of critical sites when a cost-share agreement is signed after the period of cost-sharing availability for critical sites has ended.

SECTION 129. NR 120.18(1)(a) Table 2 is amended to read:

Table 2

<u>Practice</u>	<u>Maximum State cost-share rate</u>
Contour farming	50%*
Contour and field striperopping <u>strip-cropping</u>	50%*
Reduced tillage systems for continuous- row cropping and long rotations	50%
Reduced tillage systems for short- crop rotations and forage and- small grains establishment	50%
<u>High residue management systems</u>	<u>50%</u>
<u>Cropland protection cover (green manure)</u>	<u>50%</u>
Nutrient management <u>(not to exceed a total of 3 years)</u>	50%
Pesticide management <u>(not to exceed a total of 3 years)</u>	50%**
Livestock exclusion from woodlots <u>fencing</u>	50%
Intensive grazing management	50%****
Manure storage facilities - for first \$20,000 costs	70%*****
Manure storage facilities - for remaining costs	50%*****
<u>Pesticide spill control facilities</u>	<u>70%</u>
Animal waste storage system abandonment	70%
Field diversions	70%
Terraces	70%
Grassed waterways	70%
Critical area stabilization	70%
Grade stabilization structures	70%
Agricultural sediment basins	70%
Shoreline and streambank stabilization <u>protection</u>	70%
Shoreline buffers	70%
Wetland restoration	70%
Barnyard runoff management	70%
Animal lot <u>abandonment or relocation</u>	70%
Roofs for barnyard runoff management and manure storage facilities	70%
Structural urban best management practices	70% ***
Milking center waste control	70%
Cattle Mounds	70%
Lake Sediment Treatment	70%
<u>Well abandonment</u>	<u>70%</u>

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

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

*** The maximum cost-share rate for land acquisition, storm sewer rerouting, and removal of structures necessary to install structural urban best management practices is 50%.

**** The maximum cost-share rate per watering system is \$2,000.

***** The maximum cost-share rate for manure storage facilities

may not exceed \$35,000 total per facility. (See par. (2)(b) below for more detail).

SECTION 130. NR 120.18(1)(a)(note) is created to read:

Note: Landowners or operators having a debt-to-asset ratio between 40% and 80% may wish to contact the Wisconsin Housing and Economic Development Authority's Nonpoint Source Pollution (NSP) Loan Guarantee Program. The NSP program may guarantee an eligible borrower's share of the cost to install eligible best management practices. For more information, please contact an Economic Development Representative at the Wisconsin Housing and Economic Development Authority (WHEDA), One Pinckney Street, Suite 500, P.O. Box 1728, Madison, WI 53701-1728. WHEDA's toll-free number is 1-800-642-6474.

SECTION 131. NR 120.18(1)(b)(intro.), 1. to 3. are amended to read:

NR 120.18(1)(b) Counties may use locally determined U. S. department of agriculture's cost-share rates per acre as provided for in ~~Agricultural Stabilization and Conservation Service (ASCS)~~ Consolidated Farm Services Agency (CFSA) Handbook, 1-WI(ACP), January 1994 or the following state cost-share rates per acre in lieu of the state cost-share percentages listed in Table 2.

1. \$6 9.00 per acre for contour cropping.
2. ~~\$12~~ 13.50 per acre for ~~striperepping~~ strip-cropping.
3. ~~\$10~~ 7.50 per acre for field ~~striperepping~~ strip-cropping.

SECTION 132. NR 120.18(1)(b)4. is repealed and recreated to read:

NR 120.18(1)(b)4. \$18.50 per acre per year for no more than 3 years for high residue management systems.

SECTION 133. NR 120.18(1)(b)5. is repealed.

SECTION 134. NR 120.18(1)(b)6. and (c) are amended to read:

NR 120.18(1)(b)6. \$25 per acre per year for up to 3 years for cropland protection cover (green manure).

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

1. Critical area stabilization.

2. Grade stabilization structures.
3. Shoreline and streambank protection.
4. Roofs for animal lots and roofs for manure storage facilities.
5. Demonstration practices when approved by the department.
6. Animal lot relocation.
7. Shoreline buffers.
8. Wetland restoration.
9. Structural urban best management practices installed by landowners other than governmental units.

SECTION 135. NR 120.18(1)(e) is amended to read:

NR 120.18(1)(e) Governmental units may establish flat rates for the cost-sharing of fencing and critical area stabilization in order to simplify the administration of cost-share funds for these practices. Flat rates shall be based on 70% of the percentages for state cost-sharing in Table 2 and the average cost and installation of these practices.

SECTION 136. NR 120.18(2)(c) is repealed, and (d) is renumbered (c), and (c), as renumbered, is amended to read:

NR 120.18(2)(c) Leases of manure storage tanks. The maximum amount cost-shared for leases of manure storage tanks shall be 70% of the down payment and lease cost of the tank during the grant period of the watershed project up to a maximum of ~~\$20,000~~ \$35,000.

SECTION 137. NR 120.18(4)(a) is amended to read:

NR 120.18(4)(a) The rate and maximum amount paid to a landowner or land operator under a cost-share agreement may be exceeded ~~only for manure storage facilities and barnyard runoff control systems~~ with written approval from the department if the landowner or land operator can demonstrate economic hardship as defined in s. NR 120.02~~(14)~~(19). Under the provision of economic hardship, ~~the following percentage payment rates and maximum payments will apply~~ the state cost-share rate may be increased by a maximum of 15% above the standard percentage listed in Table 2 for all best management practices for which the landowner or land operator is eligible.

~~1. Manure storage facilities for first \$20,000 costs~~
85%

~~2. Manure storage facilities for remaining costs 75%~~

~~3. Barnyard runoff control systems 85%~~

SECTION 138. NR 120.18(4)(b) is repealed and recreated to read:

NR 120.18(4)(b) Under the provision of economic hardship, the following percentage payment rates will apply to the construction of manure storage facilities and barnyard runoff control systems:

1. First \$20,000 of eligible costs 85%
2. Eligible costs over \$20,000 75%

SECTION 139. NR 120.18(4)(c) is created to read:

NR 120.18(4)(c) The maximum grant from the department for economic hardship cases for the construction of manure storage facilities may not exceed \$45,000.

SECTION 140. NR 120.185(1)(intro.) is amended to read:

NR 120.185(1)(intro.) The department may enter into easements with landowners for lands identified in watershed plans. Easements, including donated conservation easements, shall be acquired for ~~a period of no less than 20 years~~ perpetuity. Easements may be used in conjunction with the following best management practices:

SECTION 141. NR 120.185(1)(e) is created to read:

NR 120.185(1)(e) 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 s. NR 120.14(18)(b)6.

SECTION 142. NR 120.185(2)(intro.) is amended to read:

NR 120.185(2)(intro.) The department may authorize, in writing, any governmental unit, non-profit organization or person to enter into easements or irrevocable leases or accept a donated conservation easement consistent with the eligibility provision of the approved priority watershed plan in accordance with the following:-

SECTION 143. NR 120.185(2)(a) to (e) are created to read:

NR 120.185(2)(a) An easement acquired under this subsection shall be acquired for perpetuity.

(b) An irrevocable lease acquired under this subsection may not be for less than 20 years.

(c) Prior written department approval for the purchase of an easement or an irrevocable lease shall be obtained when the cost exceeds \$50,000.

(d) The value of an easement or an irrevocable lease shall be based on a valuation procedure that has received prior department approval. The value of an irrevocable lease may not exceed 50% of the value of a perpetual easement acquired for the identical site.

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

SECTION 144. NR 120.185(4) is amended to read:

NR 120.185(4) The department may distribute grants and aids to itself or to any governmental unit ~~that is eligible for a local assistance grant under s. NR 120.21~~ for the purchase of easements in priority watershed areas.

SECTION 145. NR 120.186 is created to read:

NR 120.186 PROPERTY ACQUISITION. (1) ELIGIBLE ACTIVITIES. The department may distribute grants to a governmental unit that is eligible for a nonpoint source grant under s. NR 120.12 to:

(a) Acquire land or an interest in land for the construction of an urban structural practice; or

(b) Acquire land or an interest in land which is contributing or will contribute nonpoint source pollution.

(2) ACQUISITION PROPOSALS. A governmental unit requesting nonpoint source 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 nonpoint source grant application or grant amendment request. The acquisition proposal shall include the following:

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

(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 nonpoint source grant in accordance with all applicable local, state and federal laws and regulations.

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

1. Appraisals are subject to department review and approval.

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

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

Note: Appraisal guidelines are available as a reference from the Bureau of Property Management, Department of Natural Resources, Box 7931, Madison WI 53707.

(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) When applicable, relocation plans shall be developed in accordance with ch. ILHR 202.

(e) Property acquired with a nonpoint source grant shall be maintained and managed in accordance with the provisions, conditions and descriptions in the grant contract.

(f) A governmental unit may be allowed to acquire property prior to entering into a nonpoint source 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 nonpoint source grant agreement 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 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. The maximum allowable state cost-share rate for the acquisition of property under this chapter shall be 50% of the acquisition cost of the property. The maximum allowable state cost-share rate for appraisals for the acquisition of property shall be 100% of the cost of the appraisal.

(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 support from other governmental units.

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

(f) In cases where the acquisition will prevent further degradation of water quality, the acquisition shall be cost-

effective relative to the degree of threat of further degradation to the site.

SECTION 146. NR 120.19(1)(c) and (d)(title) are amended to read:

NR 120.19(1)(c) Bidding. A governmental unit requires the landowner or land operator to request bids from contractors for the installation of a best management practice. ~~The landowner or land operator shall accept the low bid.~~ The landowner may select a contractor other than the low bidder, but shall contribute 100% of the difference between the bids. The cost-share payment shall be calculated based on the lowest bid received. However, cost-share may include additional final costs resulting from necessary design modifications as approved by the local governmental unit.

(d)(title) Maximum cost-share limit.

SECTION 147. NR 120.21(1) and (2)(intro.) are amended to read:

NR 120.21(1) PURPOSE. The local assistance grant agreement is an agreement between the department and a state agency, governmental unit or an agent acting on behalf of a state agency, or governmental unit for providing funds for activities necessary for watershed plan preparation including the development of nutrient management assessments (including, but not limited to, those developed through professional service contracts), ordinance development and administration, implementation and enforcement, information and education, pre-design and design of demonstration practices, easement acquisition and administration, educating and training staff and implementation of the priority watershed project and requiring additional staff increased hours of or existing staff or requiring the grantee to incur direct costs. A local assistance grant may be used to support activities that have program or statewide impact including education and training activities; such as public meetings and mailings, newsletters, tours, and other activities determined by the department to support program objectives.

(2) GRANT PERIOD INITIATION. (intro.) ~~No~~ Except as provided in par. (a), no local assistance grant agreement pertaining to a specific priority shall be made for a watershed plan or lake may begin before the selection of the nonpoint source watershed or lake has been chosen by the land and water conservation board as a priority watershed project or a priority lake.

SECTION 148. NR 120.21(2)(a) is created to read:

NR 120.21(2)(a) Local assistance grant allocations may be made to local governmental units sponsoring watershed or lake projects being considered as priority watershed or priority lake

projects by the land and water conservation board under s. 144.25(3)(am), Stats.

1. Subject to the availability of departmental funding, grant allocations may be made by the department to a maximum amount of \$20,000 per watershed or lake project.

2. Each grant allocation shall require a 100% match from the project sponsor.

3. The following costs are eligible expenditures for a local assistance grant allocation prior to being chosen as a priority watershed or priority lake project by the land and water conservation board:

a. Delineation of watershed and subwatershed boundaries within the project area.

b. Listing of names and addresses of landowners in the watershed.

c. Surveys of land and water conservation practices within the watershed.

d. Surveys of landowner needs and attitudes within the watershed.

e. Development of information and education strategies for the project.

f. Formation of a project citizens' advisory committee under s. NR 120.04.

g. Other activities as approved by the department.

SECTION 149. NR 120.21(3)(b) is amended to read:

NR 120.21(3)(b) Counties shall submit draft annual work plans and grant amendment applications in accordance with the procedures developed by DATCP in ~~ss. ch. ATCP 50.50 and ATCP 50.5350~~ and the department.

SECTION 150. NR 120.21(4)(a)(intro.) and 1. are amended to read:

NR 120.21(4)(a)(intro.) The following costs are eligible for 100% ~~cost-sharing~~ cost-sharing:

1. Labor required by the grantee to carry out the activities listed in subpars. a. to ~~st.~~ st. The following activities ~~may~~ shall be eligible for grant assistance ~~provided if~~ provided if additional staff or ~~increased hours of existing staff~~ are required to plan or implement a project. ~~The grant assistance for supporting~~

~~additional staff positions or increased existing staff hours of the state agency, governmental unit or agent shall be based on rates not exceeding appropriate rates for state agency, governmental unit or agent employees including salary and fringe benefits. The department may fund either existing or additional staff up to but not in excess of the amount set forth in the grant award. The participating governmental unit shall complete time sheets which will track hours spent on the project by all staff. Effective the effective date of this rule...[revisor insert date], staff hours may not be accrued or carried over to a subsequent calendar year.~~

SECTION 151. NR 120.21(4)(a)1.f. is amended to read:

NR 120.21(4)(a)1.f. Reviewing best management practice operation and maintenance during the implementation period;

SECTION 152. NR 120.21(4)(a)1.m. is amended to read:

NR 120.21(4)(a)1.m. ~~Preparing and administering,~~ implementing and enforcing a construction site erosion control and storm water management ordinance and a manure storage ordinance under s. 92.16, Stats., except for those portions of the ordinance enforced under the authority of ch. ILHR 21. The department may identify, in the watershed plan, a period of time, not to exceed 5 years, during which ordinance support will be made available to a local unit of government and may also identify the level of reduction in cost-share rates during the specified period of time in order to reflect the actual or anticipated collection of revenues;

SECTION 153. NR 120.21(4)(a)1.r. and s. are amended to read:

NR 120.21(4)(a)1.r. Evaluating alternatives for local financing of stormwater management programs ~~and.~~

s. Administrative costs associated with initial establishment of local funding programs such as stormwater utilities.

SECTION 154. NR 120.21(4)(a)1.t. is created to read:

NR 120.21(4)(a)1.t. Costs of appraisals for the acquisition of property defined in s. NR 120.186.

SECTION 155. NR 120.21(4)(a)2. is repealed.

SECTION 156. NR 120.21(4)(a)8. and 9. are amended to read:

NR 120.21(4)(a)8. Travel expenses including personal vehicle mileage charges, ~~vehicle leases,~~ meals, lodging and other reasonable travel expenses necessary to the project.

9. The cost of additional office space required because of the additional staff hired for the project prorated based on percent use on the project.

SECTION 157. NR 120.21(4)(a)13. and 14. are created to read:

NR 120.21(4)(a)13. Annual vehicle expenses for an owned or leased vehicle, including:

a. Depreciation, if owned.

b. Lease payments, if leased.

c. Gas, oil, maintenance and insurance paid by the grantee. A mileage log shall be kept for each vehicle used in the nonpoint source pollution abatement program listing the total miles driven. The annual costs claimed shall be based on a proration of the miles driven for eligible tasks stated in subd. 1. versus the total miles driven.

14. Travel expenses for the citizen advisory committee established under s. NR 120.04 including mileage charges and meals necessary to the committee's function. Mileage and meal expenses may not exceed the allowable state per diem rate. Total committee reimbursements may not exceed \$1,000 per year.

SECTION 158. NR 120.21(4)(b)1. and 2. are amended to read:

NR 120.21(4)(b)1. Computers and appurtenances necessary for the project at 70% cost sharing if needed primarily for the project. If use will be less than 75% on the project, ~~cost sharing~~ cost-sharing shall be prorated based on percent use on the project. Computer purchases for counties will be approved in consultation with the DATCP and ~~SES~~ NRCS after consideration of the counties' overall land conservation office needs.

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

SECTION 159. NR 120.21(4)(c)1. is amended to read:

NR 120.21(4)(c)1. ~~To be eligible, core urban program activities, other than construction site erosion control ordinances,~~ As a condition of a local assistance grant for core and segmented urban program activities, core urban program activities, with the exception of developing construction site erosion control ordinances, shall be initiated within 3 years of the date the department approves the watershed plan or applicable plan amendment. ~~Construction site erosion control ordinances shall be adopted within 2 years of watershed plan approval.~~

Construction site erosion control ordinances shall be adopted, implemented and enforced in accordance with the time frame in s. NR 120.08(1)(b)1.i.

SECTION 160. NR 120.21(4)(d)(title) and 2. are repealed.

SECTION 161. NR 120.21(4)(d)(intro.), 1. and 3. are renumbered NR 120.21(5)(intro.), (a) and (b), respectively.

SECTION 162. NR 120.21(5)(title) is created to read:

NR 120.21(5)(title) INELIGIBLE COSTS.

SECTION 163. NR 120.21(5)(a), as renumbered, is amended to read:

NR 120.21(5)(a) Direct costs for other items not listed as eligible for 100% or 70% ~~cost-sharing~~ cost-sharing.

SECTION 164. NR 120.21(7) is repealed.

SECTION 165. NR 120.22 is repealed and recreated to read:

NR 120.22 INTEREST EARNED ON GRANT ADVANCES. (1) Interest shall be earned and accrued on nonpoint source grant advances. The tracking of interest on local assistance grant disbursements is optional. To determine the amount of interest to be credited to the project, the governmental unit shall calculate the interest earned using an average account balance and interest accrued over a period of time or other equitable manner.

(2) Interest money earned shall be used to support eligible activities in ongoing or completed priority watershed projects including, but not limited to, periodic inspections after grant expiration, administrative costs of the project and, under exceptional circumstances, the repair of best management practices at a cost-share rate of up to 100%. When interest money is used to cost-share best management practices, the combination of interest money and any other cost-share funds from this program may not exceed the cost-share limits described in s. NR 120.18(1)(a) and (b).

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

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

SECTION 166. NR 120.23(2)(b)1.(note) and 2.(note) are amended to read:

NR 120.23(2)(b)1.(note) Note: Reimbursement request forms may be obtained, at no charge, from the Bureau of Community Assistance Management, Department of Natural Resources, Box 7921, Madison, Wisconsin 53707.

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

SECTION 167. NR 120.23(3)(d) is amended to read:

NR 120.23(3)(d) Failure to submit reports on schedule as required by s. NR ~~120.21(7)~~ 120.25(2) may result in withholding of grant payments.

SECTION 168. NR 120.23(4) is created to read:

NR 120.23(4) RETENTION REQUIREMENTS. The governmental unit shall retain copies of all reimbursement requests submitted to the department including the following items:

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

SECTION 169. NR 120.25(title) is amended to read:

NR 120.25 (title) RECORD KEEPING AND REPORTING REQUIREMENTS.

SECTION 170. NR 120.25(1)(b) is amended to read:

NR 120.25(1)(b) Effective control over and accountability for all project funds, ~~property~~ and other assets.

SECTION 171. NR 120.25(1)(f) is repealed.

SECTION 172. NR 120.25(1)(g) to (i) are renumbered (f) to (h), respectively.

SECTION 173. NR 120.25(1)(j) is repealed.

SECTION 174. NR 120.25(1)(k) is renumbered (i).

SECTION 175. NR 120.25(2) is repealed and recreated to read:

NR 120.25(2) REPORTING REQUIREMENTS. (a) Annual reports. Local assistance and nonpoint source grantees in implementation shall report to the department an annual accounting for staff time and accomplishments regarding its activities funded under the local assistance and nonpoint source grants and shall report the amount of interest accrued and expended as required under s. NR 120.22(1).

(b) Periodic reports. The department may require more frequent reports than those required under par. (a) from a local assistance or nonpoint source grantee which account for staff time and accomplishments regarding its activities funded under local assistance and nonpoint source grants.

(c) Final project report. The department, with assistance from DATCP and the appropriate local units of government, shall prepare and publish a final project report within 18 months of project completion.

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

SECTION 176. NR 120.26(3) is repealed.

SECTION 177. NR 120.27(4) is amended to read:

NR 120.27(4) RESPONSIBILITIES OF GOVERNMENTAL UNITS. Suspension or termination of a grant or portion of a grant under this section may not relieve the grantee of its responsibilities under ~~in~~ ss. NR ~~120.04~~120.03 and 120.05.

SECTION 178. NR 120.28(1) to (6) are renumbered NR 120.28(2)(a) to (f), respectively.

SECTION 179. NR 120.28(1) is created to read:

NR 120.28(1) On an annual basis, the department shall evaluate watershed projects in implementation. During the evaluation, the department shall examine the progress of the watershed project toward project goals and water quality objectives specified in the watershed plan. Upon consulting with the project sponsor, the department may take appropriate action to improve the progress of the watershed 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 listed in sub. (2), when the project is in noncompliance with either the annual workplan or the priority watershed or priority lake plan.

SECTION 180. NR 120.28(intro.) is renumbered NR 120.28(2)(intro.).

SECTION 181. NR 120.28(3) is created to read:

NR 120.28(3) If a site has been designated as a critical site, the provisions of ss. NR 120.08 and 120.09 have been met, and the owner fails to install best management practices or reduce the pollutants contributed by the site through alternative actions, the department may issue a notice of intent if the pollution is not caused by animal waste, in accordance with s. 144.025(2)(u), (2)(v) and (2)(w), Stats. The department shall consult with DATCP when the source of pollution from the site is agricultural. If the site is caused by animal waste, enforcement shall be in accordance with the provisions of ch. NR 243.

SECTION 182. NR 120.29 is amended to read:

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

SECTION 183. NR 120.30 is amended to read:

NR 120.30 ANNUAL REPORT. The department, jointly with DATCP shall annually prepare the report on the progress of the program required in ss. 144.25 (4) (o) and 92.14 (12), Stats. The report shall consider land management and water quality criteria in the evaluation of program progress. The report shall include information derived from watershed plans, annual accomplishment reports, annual workplans or other related activities.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on October 26, 1995.

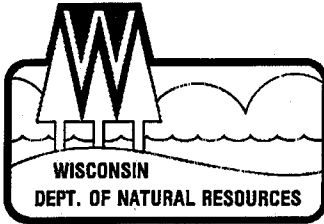
The rules shall take effect on the first day of the month following publication as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin May 13, 1996

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer
George E. Meyer, Secretary

(SEAL)



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary

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TELEPHONE 608-266-2621
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May 13, 1996

Mr. Gary L. Poulson
Assistant Revisor of Statutes
131 West Wilson Street - Suite 800
Madison, WI



Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WR-35-95. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Energy pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,

George E. Meyer
Secretary

Enc.