

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

Draft November 16, 2007

The Natural Resources Board proposes an order to revise ch. NR 153 relating to the targeted runoff management grant program and the notice of discharge grant program.
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WT-10-00

Analysis Prepared by Department of Natural Resources

Overview

Chapter NR 153

SECTION 1. Chapter NR 153 is ~~created~~ revised to read:

CHAPTER NR 153

TARGETED RUNOFF MANAGEMENT AND NOTICE OF DISCHARGE GRANT PROGRAMS

NR 153.10	Purpose
NR 153.11	Applicability
NR 153.12	Definitions
NR 153.13	Eligible applicants
NR 153.14	Eligible <u>targeted runoff management</u> projects
<u>NR 153.14(m)</u>	<u>Eligible notice of discharge projects</u>
NR 153.15	Cost sharing for best management practices
NR 153.16	Aids for local assistance activities
NR 153.17	<u>Targeted runoff management</u> project application
NR 153.18	<u>Targeted runoff management</u> project screening
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NR 153.20	<u>Targeted runoff management</u> project selection and funding
<u>NR 153.20(m)</u>	<u>Notice of discharge project application, selection and funding</u>
NR 153.21	Runoff management grant agreement
NR 153.22	Cost-share agreement
NR 153.23	Cost containment
NR 153.24	Easements
NR 153.25	Property acquisition
NR 153.26	Local assistance grant agreement
NR 153.27	Procurement
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NR 153.32	Grant evaluation and enforcement

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

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

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

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

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

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

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

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

(5) Land owners and land operators when acting as cost-share recipients.

NR 153.12 Definitions. In this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) "Local share" means that portion of the best management practice installation cost that is not authorized for funding under s. 92.14, 281.65, 281.66 or 281.665, Stats.

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(28)~~ "Recipient" means the receiver of cost share funds from a provider.

~~(298)~~ "Runoff management grant agreement" means an agreement entered into between the department of natural resources and a state agency or governmental unit which establishes the terms under which funds are provided by the department for the installation of best management practices or the purchase of property or easements in a project funded under s. 281.65 (4c) or 281.65 (4e), Stats.

~~(3029)~~ "Structural urban best management practices" means detention basins, wet basins, infiltration basins and trenches and wetland basins.

~~(3130)~~ "Targeted runoff management project" means either a TMDL or a nonpoint source control project selected by the department for funding under s. 281.65 (4c), Stats.

~~(31)~~ "TMDL" means total maximum daily load, or the amount of a pollutant that a surface water can tolerate and still meet water quality standards.

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

~~(3233)~~ "US EPA" means the United States Environmental Protection Agency.

~~(3234)~~ "Watershed" means the geographic area draining to a specified portion of the surface or groundwater resource.

~~(3335)~~ "Wetland" or "wetlands" has the meaning specified under s. 23.32 (1), Stats.

~~(3436)~~ "WPDES" means Wisconsin pollutant discharge elimination system.

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

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

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

(3) For purposes of this section, a priority watershed or priority lake project is considered to retain its project status through the end of the tenth year beyond the expiration date of the Nonpoint Source Grant Agreement entered into under s. NR 120.12.

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

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

(1m) PROJECT CATEGORIES. There are four categories of targeted runoff management projects eligible for funding under this chapter.

- (a) Large-scale TMDL Implementation Project
- (b) Small-scale TMDL Implementation Project
- (c) Large-scale Nonpoint Source Control Project
- (d) Small-scale Nonpoint Source Control Project

(2) GENERAL ADMINISTRATIVE PROJECT CRITERIA. Any project funded under this chapter shall meet all of the following administrative criteria:

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

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

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

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

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

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

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

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

(d) The existence of threats to public health.

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

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

(4) LARGE-SCALE TMDL IMPLEMENTATION PROJECT ELIGIBILITY CRITERIA. Large-scale TMDL Implementation projects shall meet the following specific criteria:

(a) The project must directly implement the pollutant-specific goals of either a public comment draft TMDL, an EPA-approved TMDL, a public comment draft TMDL Implementation Plan, a department approved TMDL Implementation Plan, or an equivalent to any of the foregoing as identified by the department.

(b) The project shall be conducted at a watershed scale that meets the size requirements specified by the department in application materials.

Note: The department intends to set limits on the size of project areas to achieve a density of management practices adequate to meet water quality goals.

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

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

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

(5) SMALL-SCALE TMDL IMPLEMENTATION PROJECT ELIGIBILITY CRITERIA.

Small-scale TMDL Implementation projects shall meet the following specific criteria:

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

(b) The project may focus on one or more sites. Work on a watershed scale is not required.

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

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

(e) The intended project period shall not exceed 2 years in duration, with the possibility of extension to a third year if approved by the department.

(6) LARGE-SCALE NONPOINT SOURCE CONTROL PROJECTS. Large-scale Nonpoint Source Control Projects shall meet the following specific criteria:

(a) The project must further implementation of water resource management goals included in a watershed plan or strategy acceptable to the department.

(b) The project shall be conducted at a watershed scale that meets the size requirements specified by the department in application materials.

Note: The department intends to set limits on the size of project areas to achieve a density of management practices adequate to meet water quality goals.

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

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

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

(7) SMALL-SCALE NONPOINT SOURCE CONTROL PROJECT. Small-scale Nonpoint Source Control Projects shall meet the following specific criteria:

(a) The project may focus on one or more sites or farms. Work on a watershed scale is not required.

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

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

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

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

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

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

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

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

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

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

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

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

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

- ~~_____ 2. The existence of impaired water bodies that the department has identified to the federal environmental protection agency under 33-USC-1313 (d) (1) (A).~~
- ~~_____ 3. The existence of outstanding or exceptional resource waters, as designated by the department under s. 281.15, Stats.~~
- ~~_____ 4. The existence of threats to public health.~~
- ~~_____ 5. The existence of an animal feeding operation that has received a notice of discharge under ch. NR-243 or a notice of intent to issue a notice of discharge.~~
- ~~_____ 6. Other water quality concerns of national importance.~~
- ~~_____ 7. Other water quality concerns of statewide importance.~~
- ~~_____ (c) The project is consistent with priorities identified by the department on a watershed or other geographic basis.~~
- ~~_____ (d) The project is consistent with approved land and water conservation plans under s. 92.10, Stats.~~
- ~~_____ (e) The department, in consultation with the department of agriculture, trade and consumer protection determines that funding provided under s. 92.14, Stats., is insufficient to fund the project. The department may consider funding under s. 92.14, Stats., to be insufficient until such time as a joint allocation plan prepared and approved pursuant to ss. 281.65 (4) (pm) and 92.14 (14), Stats., identifies that the project will be fully funded under s. 92.14, Stats.~~

NR 153.14(m) Eligible notice of discharge projects. (1) This section applies only to notice of discharge projects.

(2) Eligibility for funding under this chapter is restricted to notice of discharge projects that implement best management practices for animal waste management at animal feeding operations for which the department has issued a notice of discharge. Notice of discharge projects are further restricted to those that are necessary to meet the water quality goals established in s. 281.65(4e)(b), Stats.

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

NR 153.15 Cost sharing for best management practices. (1) ELIGIBLE COSTS.

(a) The department may provide cost sharing for the construction or implementation of best management practices in targeted runoff management projects and notice of discharge projects located either inside or outside of priority watershed and priority lake areas. The

department may attribute design costs, ~~and~~ construction services costs and the cost of regular department permit fees to the cost of construction or implementation of the best management practice.

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

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

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

1. Be included in ch. NR 154.
2. Be included in subch. VIII of ch. ATCP 50.
3. Be available in accordance with the technical standards development and dissemination requirements of subch. V of ch. NR 151.
4. Be identified by the department as an interim best management practice or alternative design criteria in accordance with sub. (3).

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

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

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

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

Note: This section governs what pollution sources are eligible for cost sharing under ch. NR 153. It does not address requirements for compliance with NR 151 performance standards and prohibitions or compliance requirements of notices of discharge, nor does it address cost-

share funding as a precondition for compliance with NR 151 performance standards and prohibitions. Compliance requirements for NR 151, including when cost-share funding must be made available as a precondition of compliance, are set forth in ss. NR 151.09 and 151.095.

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

(a) Best management practices for which cost sharing has been provided, after the effective date of the performance standard or prohibition, provided that the cost-share rate was 70% or more of the eligible costs for best management practices designed to achieve an agricultural performance standard or prohibition under subch. II of ch. NR 151 or was 50% or more of the eligible costs for best management practices designed to achieve performance standards under subch. III or IV of ch. NR 151. ~~The department may make an exception in accordance with par. (b).~~ The Department may make an exception and provide cost sharing to replace a practice or practice components that are ineffective due to unforeseen design problems.

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

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

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

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

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

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

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

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

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

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

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

3. All other activities requiring coverage under a WPDES permit issued under chs. NR 200 to 242 and 244 to 299 except for activities required of the city of Racine to comply with municipal storm water permit requirements under ch. NR 216.

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

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

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

(i) Active mining activities.

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

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

(L) The planting of trees intended for commercial harvest.

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

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

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

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

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

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

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

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

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

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

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

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

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

(z) Maintaining existing grass cover.

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

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

(zc) Best management practices for cropland practices classified as "new" under s. NR 151.09(4)(b)3. and livestock facilities classified as "new" under s. NR 151.095(5)(b)2.

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

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

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

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

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

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

2. The applicant shall justify all of the following:
- a. That the practices, design criteria, standards or specifications are necessary to meet the water quality objectives of the project.
 - b. That the practice is a cost-effective means of preventing or reducing pollutants generated from nonpoint sources.
 - c. That the practice does not have an adverse impact on fish and wildlife habitat.
3. The department shall consult with DATCP if the best management practice, design criteria, standards or specifications are agricultural.
4. The department shall identify the best management practice, design criteria, standards, specifications, operation and maintenance period, cost-share rates and cost-share conditions in the runoff management grant agreement.

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

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

1. The project shall be selected according to the process identified in s. NR 153.20.
2. The project shall be determined by the department to have statewide or regional significance and shall be designed to provide results that are transferable to other locations within the state. This includes projects that demonstrate traditional or innovative management

measures or best management practices in order to increase acceptance, use and understanding of cost-effectiveness, including pollutant control capability.

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

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

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

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

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

NR 153.16 Aids for local assistance activities. (1) ELIGIBLE COSTS. (a) The department may provide cost sharing under s. NR 153.26 for local assistance activities conducted during the grant period in projects located either inside or outside of priority watershed and priority lake areas. Large-scale TMDL Implementation Projects and Large-scale Nonpoint Source Control Projects.

Note: Small-scale TMDL Projects, Small-scale Nonpoint Source Control Projects and Notice of Discharge Projects are not eligible for local assistance grants. However, design costs in small-scale and notice of discharge projects may be included in the cost of construction for reimbursement purposes.

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

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

1. Contacting and informing landowners and land operators of conservation program opportunities and requirements, including those relating to state performance standards and prohibitions.

2. Determining and documenting compliance of cropland practices and livestock facilities with performance standards and prohibitions ~~contained in ch. NR 151.~~

3. Identifying site-specific best management practices needed to achieve compliance with performance standards and prohibitions or to otherwise control nonpoint pollution sources.

4. Developing and reviewing cost-share agreements with the cost-share recipient.

4m. Providing assistance to the department in developing and issuing notices under ss. NR 151.09 and 151.095.

5. Best management practice construction services, including construction management and verification of installing and verifying best management practices installation.

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

7. Developing and transmitting to the department information that identifies ~~non-~~ cooperators landowners and operators that do not comply with performance standards or prohibitions.

8. Project management.

9. Administration of easements and property acquisition in accordance with ss. NR 153.24 and 153.25.

10. Fiscal management.

~~11. Costs of appraisals for the acquisition of property in accordance with s. NR 153.25.~~

~~12. Evaluating alternatives for local financing of stormwater management programs.~~

~~13. Administrative costs associated with initial establishment of local funding programs such as stormwater utilities.~~

~~14. Storm water planning, not including development of ordinances.~~

~~15~~11. Development of informational materials, including videos or brochures.

~~16~~12. Project evaluation activities identified in the project application and required by the runoff management grant agreement, including monitoring.

~~17~~13. Other activities approved by the department as being necessary to implement the project.

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

1. The cost of testing materials for use in best management practice design and installation. ~~or operation or in project evaluation, including monitoring.~~

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

~~3. The cost of office space required for the project prorated based on percent use on the project.~~

~~4~~3. The cost of recording the cost-share agreement with the county register of deeds.

~~5~~4. Field equipment necessary to conduct or evaluate the project.

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

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

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

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

1. ~~Notice of discharge activities identified in ch. NR 243.~~

2. ~~Activities, in accordance with this section, required by the city of Racine to comply with municipal storm water permit requirements under ch. NR 216.~~

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

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

(c) Indirect project costs.

Note: ~~DATCP is the primary state agency that supports local assistance activities conducted by county land conservation committees to implement land and water conservation plans. For small scale TMDL projects and small scale non TMDL projects, In many instances, local assistance activities required to support agricultural targeted runoff management projects may be supported under grants made by DATCP to counties.~~

NR 153.17 Targeted runoff management project application. (1m) APPLICABILITY.
This section applies only to targeted runoff management projects.

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

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

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

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

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

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

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

(d) The department may request funding for the purchase of easements provided that the project is located in a priority watershed or priority lake project areas.

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

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

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

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

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

1. Certification that the project meets the eligibility requirements of s. NR 153.14 ~~(2)~~.
2. A map of the project area showing the watershed, subwatershed or specific site to be served by the project. The map shall be accompanied by information the applicant is aware of that concerns environmental contamination, endangered, threatened or wetland resources, historic properties or historic places contained in the project area or potentially affected by the project.
3. A list of the best management practices for which funding is requested, including easements associated with any of these practices, and identification of practice eligibility under s. NR 153.15.

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

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

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

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

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

8. Evidence that the proposed project ~~is consistent with~~ will not work at cross purposes to the statewide and targeted nonpoint source performance standards and prohibitions adopted in ch. NR 151.

8m. For agricultural projects, documentation that the county has a Land and Water Resources Management Plan, including a NR 151 implementation strategy, that has been approved by the department of agriculture, trade and consumer protection under s. 92.10(4)(d), Stats.

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

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

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

- a. A work schedule.
- b. A financial budget showing total costs.
- c. All funding sources, including sources of in-kind local share donation as provided for in subd. 8., as well as information necessary to administer ss. NR 153.23 (2) and 153.27 (3) (c).
- d. Documentation of project cost-effectiveness.

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

3. Evidence of local support and involvement including support from governmental units, interest groups, landowners and land operators that need to implement best management practices. ~~Evidence of local involvement also includes~~ The department may also request information concerning a governmental unit's continuous decision-making process which-

ensures participation by minority and low income populations in affected areas, along with majority populations, to ensure that as an outcome all people receive the benefits of a clean, healthy and sustainable environment regardless of race, national origin or income.

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

~~§ 4.~~ The water quality need to be addressed by the project including impairment or threats to water quality caused or contributed to by nonpoint pollution sources in the project area that will be addressed by the project. Categories of need include:

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

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

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

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

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

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

f. Existence of groundwater susceptible to contamination

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

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

~~6 5.~~ The extent of pollutant control to be achieved by the project, including the extent to which performance standards and prohibitions will be implemented, the level of knowledge concerning the amount of pollution control needed to achieve water quality goals and the extent of pollution control that will be achieved in the project area.

~~7 6.~~ Consistency between the project and other resource management plans such as storm water management plans, land use plans, growth management plans, wellhead protection plans, lake management plans, county land and water resource management plans and remedial action plans.

~~8~~ 7. The use of other funding sources to supplement or reduce the state cost share provided under this chapter, such as funding from federal, state, local and interest group sources or the application of in-kind contributions to capital costs only.

~~9-8~~. The extent of local ~~implementation and enforcement programs~~ authority to enforce performance standards and prohibitions, ~~in effect over the project area,~~ including information required to determine the project score enforcement multiplier under s. ~~NR 153.19 (4)~~. NR 153.19 (2).

~~10~~ 9. The way in which the proposed project will contribute to meeting storm water requirements under ch. NR 216 for the city of Racine.

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

- ~~1. The project or activity existed on a priority watershed project grant prior to January 1, 2000.~~
- ~~2. The department has a remaining contractual obligation to fund the project or activity.~~

NR 153.18 Targeted runoff management project screening. (1m) This section applies only to targeted runoff management projects.

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

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

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

- ~~(a) The project or activity existed on a priority watershed project grant prior to January 1, 2000.~~
- ~~(b) The department has a remaining contractual obligation to fund the project or activity.~~

(3) The department shall notify applicants that have submitted applications failing to pass the screening step.

NR 153.19 Targeted runoff management project scoring. (1m) APPLICABILITY.

This section applies only to targeted runoff management projects.

(1) SCORING PROCEDURE. The department shall use the procedure in this subsection to score each project that passes the eligibility screening under s. NR 153.18. The department shall develop and maintain guidelines consistent with this subsection to assure consistent and fair scoring of project applications.

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

1. The department shall assign a sub-score to each of the application elements identified under s. NR 153.17(2)(c). The initial project score shall be the sum of the sub-scores.

2. In determining the initial project score for TMDL implementation projects, the department shall give greatest weight to fiscal accountability and cost-effectiveness, evidence of local support and involvement, and extent of pollution control.

3. In determining the initial project score for Nonpoint Source Control projects, the department shall give greatest weight to fiscal accountability and cost-effectiveness, evidence of local support and involvement, water quality need and extent of pollution control.

4. The department shall establish minimum required sub-scores for fiscal accountability and cost effectiveness, project evaluation and monitoring, and evidence of local support and involvement to determine if the project has overall viability. Projects considered to be non-viable shall be removed from further consideration.

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

~~(c) The department shall multiply the initial project score by a factor based on local implementation and enforcement capability enforcement authority to determine the final project score. The department shall determine the local implementation and enforcement factor in accordance with sub. (4) (2).~~

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

~~(d) The initial project score shall be the sum of the sub-scores.~~

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

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

- ~~_____ 1. fiscal accountability and cost effectiveness.~~
- ~~_____ 2., project evaluation and monitoring strategy.~~
- ~~_____ 3., local support and involvement.~~
- ~~_____ 4. consistency with department water basin priorities.~~

~~(4) (2) MULTIPLIERS FOR LOCAL IMPLEMENTATION PROGRAMS ENFORCEMENT AUTHORITY.~~ (a) The department shall increase the initial project score in accordance with this subsection if there is a local implementation program or a local implementation and authority to enforce state agricultural performance standards and prohibitions . program applicable to the project area. The result shall be the final project score.

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

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

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

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

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

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

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

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

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

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

~~2. 1. The department shall multiply the initial project score by a factor of 4.25 1.15 if the applicant certifies to the department that it has a ~~qualifying local program~~ authority to enforce all state agricultural performance standards and prohibitions at all sites within the local jurisdiction where such state agricultural performance standards and prohibitions apply. ~~implementation and enforcement program in effect in the project area.~~~~

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

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

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

~~3. a. 2. The department may shall adjust the enforcement multiplier applicable to projects in areas with a local enforcement program based on the scope of the local ordinance coverage and the potential effect of ordinance variance clauses. Adjustments under this subdivision may shall be made so that the multiplier is greater than 4.4 1.0 but less than 4.25 1.15 for instances where the local regulations cover some, but not all, of the state agricultural performance standards and prohibitions or where a local regulation is applicable to some, but not all, of the sites where the state agricultural performance standard or prohibition applies. The department may request that a copy of applicable ordinances be made available ~~submitted~~ to the department for review in determining the enforcement multiplier. ~~to determine the appropriate adjustment to the multiplication factor.~~~~

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

~~e. 3. The department may adjust the multiplier if the ordinance contains a variance clause that significantly reduces the effectiveness of the ordinance in achieving compliance with the state agricultural performance standards or prohibitions, or both. The department may not consider a variance clause to significantly reduce the effectiveness of an ordinance if it requires alternative performance or technical standards be implemented to ensure compliance with water quality goals, does not allow variances due to economic hardship and requires that the conditions for the variance not be self created.~~

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

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

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

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

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

~~d. Implement nutrient management for municipally owned properties.~~

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

~~1.2. The department shall multiply the initial project score by a factor of 4.25 1.15 if the applicant certifies to the department that it has a qualifying local program authority to enforce all state non-agricultural performance standards and prohibitions at all sites within the local jurisdiction where such state non-agricultural performance standards and prohibitions apply.~~

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

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

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

~~2.3. a. The department may shall adjust the enforcement multiplier applicable to projects in areas with a local enforcement program based on the scope of the local ordinance coverage and the potential effect of ordinance variance clauses. Adjustments under this subdivision may shall be made so that the multiplier is greater than ~~4.4~~ 1.0 but less than ~~4.25~~ 1.15 for instances where the local regulations cover some, but not all, of the state non-agricultural performance standards and prohibitions or where a local regulation is applicable to some, but not all, of the sites where the state non-agricultural performance standard or prohibition applies. The department may request that a copy of applicable ordinances be made available ~~submitted~~ to the department for review in determining the enforcement multiplier. ~~to determine the appropriate adjustment to the multiplication factor.~~~~

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

~~e. 3. The department may adjust the multiplier if the ordinance contains a variance clause that significantly reduces the effectiveness of the ordinance in achieving compliance with performance standards. The department may not consider a variance clause to significantly reduce the effectiveness of an ordinance if it requires alternative performance or technical~~

standards be implemented to ensure compliance with water quality goals, does not allow variances due to economic hardship and requires that the conditions for the variance not be self created.

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

~~(e) The department may not increase the score of an urban or rural project located in an area where a local implementation or enforcement program does not meet the requirements of pars. (b) to (d). In this case, if no multiplier is earned, the interim score shall be the final project score.~~

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

~~_____ 1. The project meets all of the following criteria:~~

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

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

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

NR 153.20 Targeted runoff management project selection and funding. (1)
SELECTION. (a) The department shall place the projects on a list in descending rank order according to the final project score. The department shall use the ranked list and available budget in accordance with the following procedure to allocate grant funds.

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

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

~~_____ **(1m) APPLICABILITY.** This section applies only to targeted runoff management projects.~~

~~**(1) SELECTION (a)** The department shall assign each project application to one of the four project categories identified in s. NR 153.14(1).~~

~~(b) From the total budget available to fund targeted runoff management projects, the department shall create annual budget sub-allocations for each of the project categories the department intends to fund. Sub-allocations may change from year to year. The amount in each~~

sub-allocation shall be based on the department's water quality goals, the quality of applications submitted and the funding demand for projects in each category.

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

(d) Within each category, the department shall place the projects on a list in descending rank order according to the final project score. The department shall use the ranked list and available budget in accordance with the following procedure and funding limitations identified under sub. 2, to allocate grant funds.

1. For each of the small scale project categories, the department shall identify for funding the highest ranked project in each department region to assure that projects are selected in all regions of the state. After identifying the highest ranked project in each department region, the department shall identify additional projects in each category for funding on a statewide basis in accordance with the amount of funds available. The additional projects in each category shall be identified by starting with the highest ranked project based on the final project score and proceeding down the ranked list until available project funds for the category have been allocated. The department shall identify these additional projects in each category based on score only, without regard to statewide distribution.

2. For each of the large scale project categories, the department shall identify projects in each category for funding on a statewide basis in accordance with the amount of funds available. The projects in each category shall be identified by starting with the highest ranked project based on the final project score and proceeding down the ranked list until available project funds for the category have been allocated.

3. Notwithstanding pars. 1 and 2., the department may bypass a higher scoring project in favor of funding a lower scoring project if all of the following conditions are met:

a. federal funds are being allocated,

b. the higher scoring project is ineligible to receive the federal funds, and

c. the lower scoring project is eligible to receive the federal funds.

(e) The department shall notify the land and water conservation board of project scores and ranks no later than September 1 of each year. The department shall also notify the land and water conservation board of the budget sub-allocations determined in accordance with par. b and the projects that it has identified and proposes to select for funding in the following calendar year.

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

(g) After selecting projects for funding, the department shall notify applicants in writing of its intent to offer grant agreements ~~prepare grant documents~~ for the selected projects. The department shall inform applicants if the location of the project indicates measures may be needed to address environmental contamination, potential negative impacts of the project on

navigable waters, endangered, threatened or wetland resources, historic properties or historic places.

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

(b) The department may establish a maximum total amount of funding that a grantee may receive in multiple grant awards in any one year. The department may also establish a maximum grant award amount that any single project can receive ~~in grant awards~~ based on the amount of funding available and the funding demand in any year.

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

- ~~1. The amount of the ACRA in relation to the amount requested for the project.~~
- ~~2. Competing uses for the ACRA funds in the priority watershed project or priority lake project area and the likelihood that the ACRA funding will be used to meet those needs during the term of the project.~~

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

(e) For a large scale project, the department may make a partial grant award. The department shall base completion of the grant award on availability of funds and project performance as defined under s. NR 153.21(5)(i).

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

1. Decide not to provide a grant for the project.
2. Place a condition on a grant requiring that the grantee take specific actions to reduce or eliminate the impacts of the project.
3. Place a condition in a grant that the grantee and the department identify an acceptable plan to reduce or eliminate impacts of the project.

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

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

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

Note: The Joint Allocation Plan is distributed to Counties for review and comment and is submitted to the Wisconsin Land and Water Conservation Board which may make recommendations to DATCP on approval, modification or disapproval. This process affords the affected public and the Board an opportunity to make recommendations on items such as budget sub-allocations and project selections determined in accordance with the procedures set forth in the section.

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

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

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

1. The grantee provides a description and rationale for the substitution,
2. The altered project meets project screening, minimum scoring and local share requirements of this chapter,
3. The altered project is cost-effective, will not increase the original grant award and will achieve results substantially similar to those anticipated through the original project proposal.
4. The altered project will affect the same hydrologic unit and water resources identified in the original application.
5. There is sufficient time remaining to complete the revised project.

NR 153.20(m). Notice of discharge project application, selection and funding.

(1) APPLICABILITY. This section applies only to notice of discharge projects.

(2) APPLICATION PERIOD and CONTENT. (a) The department may accept notice of discharge project applications from governmental units on a continuous basis.

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

1. Name and address of the prospective cost-share recipient

2. Site map showing sources for which the notice of discharge is being issued, property boundary and waters of the state.

3. Assessment of problems and solutions to be implemented through cost-sharing.

4. A written statement from the department of natural resources that the site has been issued, or will be issued concurrent with the runoff management agreement, a notice of discharge under s. NR 243.24.

(3) PROJECT SELECTION AND FUNDING. (a) The department shall consider applications and make a funding decision based on the merits of the proposed project.

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

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

(4) JOINT ALLOCATION PLAN. The department shall establish a budget reserve for notice of discharge projects in the annual joint allocation plan required under ss. 281.65 (4) (pm) and 92.14 (14), Stats. The department will transfer funds from the reserve to governmental units by entering into runoff management agreements. The department shall report to the Land and Water Conservation Board annually on notice of discharge projects funded from the reserve.

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

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

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

installation of a best management practice on land the governmental unit or state agency owns or operates.

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

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

~~(b) For a small scale project, the department may set the grant period for one to 2 years. from the date the department transmits the agreement to the grantee, except that the~~ The department may approve an extension for one year.

~~(c) For notice of discharge project, the department may set the grant period consistent with the compliance period authorized under 243.24(4)(b)5.~~

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

~~1. Justify the extension request by identifying reasons for the project delay that were beyond the control of the grantee~~

~~4. 2. Be received by the department prior to the expiration of the grant period.~~

~~2- 3. Identify how the additional time will result in a significant reduction in the pollutant loading from the project area or otherwise further the intent of the project.~~

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

(3) LOCAL GOVERNMENT RESPONSIBILITIES AS A RUNOFF MANAGEMENT GRANTEE AND COST-SHARE PROVIDER. The department shall require the governmental unit to do all of the following as conditions of receiving a runoff management grant when the governmental unit will use the grant funds to provide cost sharing to landowners and land operators.

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

(b) Enter into cost-share agreements with eligible cost-share recipients located within the project area. This requirement may be waived if the department and the governmental unit agree

to delegate this responsibility to another governmental unit with jurisdiction sufficient to enforce all the conditions of the cost-share agreement.

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

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

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

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

(g) Participate with the department in project reviews.

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

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

~~1. (i) Arrange funding for staff support necessary to complete the project.~~

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

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

1. Inform landowners and land operators of performance standards and prohibitions.

2. Through records reviews and on-site assessments, evaluate and document the compliance status of cropland practices and livestock facilities with agricultural performance standards and prohibitions on all properties owned by the grantee contiguous to the property where the best management practices are installed with funding provided under this chapter.

3. Document and convey the results to landowners of the compliance status evaluation for the whole farm, by field or parcel.

4. Document and keep office records of changes in compliance status of cropland practices and livestock facilities by parcel for recipients of cost sharing provided under this chapter.

5. Inform landowners in writing of requirements for continuing compliance maintenance of cropland practices and livestock facilities that meet state standards and prohibitions

6. Conduct enforcement activities consistent with the local authority identified as part of the application materials for which the grant was awarded.

7. Provide assistance to the department as requested to develop and issue notices under ss. NR 151.09 and 151.095 and to develop and issue letters explaining that the notice has been satisfied.

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

1. For all notice of discharge categories:

a. Inform landowners and land operators of performance standards and prohibitions

b. Provide assistance to the department as requested to develop and issue letters explaining that the notice has been satisfied.

2. For notices of discharge issued for Category II unacceptable practices identified in accordance with s. NR 243.24(1)(b):

a. Inform landowners and land operators of performance standards and prohibitions.

b. Document and keep office records of changes in compliance status of livestock facilities by parcel for recipients of cost sharing provided under this chapter.

c. Inform landowners in writing of requirements for continuing compliance maintenance of livestock facilities that meet state standards and prohibitions

d. Provide assistance to the department as requested to develop and issue letters explaining that the notice has been satisfied.

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

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

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

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

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

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

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

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

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

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

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

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

5. Submit a maintenance strategy for the practices.

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

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

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

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

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

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

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

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

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

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

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

1. The reduction is to the amount necessary to meet budgetary limitations.
2. The grantee has not met all conditions of the grant.
3. The grantee fails to meet a schedule included in the grant for interim work products.

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

(h) If the department has made a partial grant award under s. NR 153.20(2)(e), it shall consider the following in completing the grant award:

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

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

2. Project performance. The department may terminate the grant if sufficient progress has not been made. The department will base progress on the criteria under pars. a – c. Negotiation of a cost-share agreement is not adequate evidence of progress.

- a. The extent of pollution control achieved by installation of best management practices. Progress under this criterion will be credited regardless of whether cost-share resources made available under the grant were actually used to install the practices as originally intended.

Note: In some cases, the grantee may find other funding sources to install management practices or the prospective cost-share recipient may decide to control pollution sources with reduced or no cost sharing.

- b. The actual reimbursement made to cost-share recipients for installation of best management practices.

- c. Funds committed to offers of cost sharing made in notices issued under s. NR 151.09 or NR 151.095, regardless of whether the practices have been installed.

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

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

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

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

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

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

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

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

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

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

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

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

(d) The installation schedule for applying the cost-shared practices. The cost-share agreement shall also require that the cost-share recipient comply with all state performance standards and prohibitions that do not require cost sharing under s. NR 151.09 or NR 151.095.

(e) A statement of maintenance requirements.

(f) A prohibition against adopting any land use or practice which defeats the purposes of the best management practices, the cost-share agreement or the runoff management grant agreement. This requires meeting performance standards and prohibitions, without regard to cost sharing, for all new cropland practices and livestock facilities.

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

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

(i) A provision describing the procedure for amendment.

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

(k) A prohibition against any change in land use or management on the entire property described on the cost-share agreement which may cause sources which were adequately managed at the time of cost-share agreement signing, ~~including compliance with performance standards under ch. NR 151~~ to produce a significant increase in pollutant loading to surface water or ground water. If such a change in land use or management occurs, the landowner or land operator shall control the source at the landowner or land operator's own expense or return any cost-sharing funds awarded through the cost-share agreement to the provider.

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

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

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

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

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

(5) SUBMITTAL TO DEPARTMENT. Unless required otherwise under sub. (4), the cost-share agreement provider shall submit a copy of the cost-share agreement and amendments to the department within 30 days of execution. The department may deny reimbursement to the governmental unit for costs associated with the installation of a best management practice not in conformance with the cost-share agreement, the runoff management grant agreement or the project grant application.

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

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

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

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

a. High residue management systems.

- b. Nutrient management.
- c. Pesticide management.
- d. Cropland protection cover or green manure.

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

Note: Cost-share agreement operation and maintenance periods are conditions of cost-sharing. Violation of operation and maintenance requirements of cost-share agreements may result in forfeiture of cost-share payments received by the cost-share recipient. There is a separate requirement under ch. NR 151 that once a cropland practice or livestock facility is brought into compliance with performance standards and prohibitions, compliance must be maintained in perpetuity. Those who violate the compliance maintenance provisions of NR 151 may be prosecuted under s. 281.98, Stats. In many situations, best management practices will need to be maintained in perpetuity to comply with performance standards in ch. NR 151.

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

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

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

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

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

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

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

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

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

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

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

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

(11) RELEASE OF PROPERTY FROM OBLIGATIONS OF COST-SHARE

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

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

(12) SATISFACTION OF COST-SHARE AGREEMENTS. At the request of the cost-share recipient, the governmental unit shall conduct a satisfaction to discharge the cost-share recipient of the obligations of the cost-share agreement. A satisfaction may be conducted provided that the governmental unit has determined that cost-share recipient has met all of the obligations of the cost-share agreement, including the operation and maintenance period. The satisfaction form shall be obtained from the department and filed with the cost-share agreement.

For cost-share agreements recorded with the register of deeds under sub. (10), the satisfaction form shall be recorded in the office of the register of deeds for each county in which the property is located.

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

(a) *Average cost.* Based on past cost information, a governmental unit determines an average cost per unit of materials and labor for the installation of a best management practice which may not be exceeded. A governmental unit may use its own experience, or information obtained from the department or other sources, to estimate typical costs.

(b) *Range of costs.* Based on past cost information, a governmental unit establishes a cost range for the installation of a best management practice. Eligible costs may not exceed the maximum cost of the range. A governmental unit may use its own experience, or information obtained from the department or other sources, to estimate typical costs.

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

Note: The department suggests the following bidding procedures:

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

(d) *Maximum cost-share limit.* A governmental unit or the department establishes a maximum cost-share rate limit not to exceed the rates specified in ch. NR 154 for installation of a best management practice.

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

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

(g) ~~f) Other cost containment procedures.~~ If a governmental unit determines another cost containment procedure would be at least as or more effective than the cost containment procedures described in this subsection, it shall include the alternative in the project application and the department shall include the alternative in the runoff management grant agreement.

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

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

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

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

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

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

NR 153.24 Easements. (1) Governmental units holding runoff management grants from the department for a project awarded under this section may enter into easements with landowners. Easements, including donated conservation easements, shall be acquired for perpetuity. Funding for the easement shall be included in the project application submitted under s. NR 153.17. ~~In no instance shall funding for an easement under this section be required to accomplish compliance with a performance standard.~~ Funding under this section for the acquisition of easements shall not be considered a required component of a cost-share offer made to meet the requirements of s. 281.16(3)(e) or 281.16 (4), Stats.

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

(a) Critical area stabilization.

(b) Riparian buffer.

(c) Wetland restoration.

(d) Structural urban best management practices.

(e) Any other best management practice specified as eligible for easement support in an approved runoff management grant.

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

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

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

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

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

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

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

(c) An easement acquired by a governmental unit, non-profit organization or person shall be recorded in the register of deeds office in each of the counties in which the property subject to the easement is located. The deed will vest title or a property interest in the governmental unit and reference the interest of the state of Wisconsin in the property under the terms of the grant contract.

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

(6) For targeted runoff management projects, the department may distribute grants and aids to itself for the purchase of easements in a priority watershed area. For purposes of this subsection, a priority watershed or priority lake project is considered to retain its project status through the end of the tenth year beyond the expiration date of the Nonpoint Source Grant Agreement entered into under s. NR 120.12.

(7) In no instance shall the department be required to obtain an easement from a landowner in order to accomplish compliance with a performance standard.

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

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

(b) Acquire land or an interest in land identified in the grant application, which is contributing or will contribute nonpoint source pollution. In no instance shall funding for property acquisition under this section be required to accomplish compliance with a performance standard. Funding under this section for the acquisition of property shall not be considered a required component of a cost-share offer made to meet the requirements of s. 281.16(3)(e) or 281.16 (4), Stats.

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

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

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

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

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

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

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

(f) Other information the department may request.

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

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

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

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

b. The department shall review and approve the appraisal.

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

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

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

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

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

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

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

the acquisition, the governmental unit shall establish the value of the property in accordance with par. (b).

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

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

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

2. 50% of the ~~certified appraisal amount approved~~ value as determined by the department and reasonable costs related to the purchase of the property limited to the cost of appraisals, land surveys, relocation payments, title evidence, recording fees, historical and cultural assessments required by the department, and environmental inspections and assessments. It does not include attorneys fees, environmental clean up costs, brokerage fees paid by the buyer, real estate transfer taxes or any other cost not identified in this subsection.

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

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

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

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

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

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

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

NR 153.26 Local assistance grant agreement. (1) The local assistance grant agreement is an agreement between the department and a state agency or governmental unit providing funds for activities to carry out the tasks identified in a project selected for funding under this chapter. A local assistance grant awarded under this section may be used for local project administration and management activities or other activities determined by the department to satisfy the requirements of s. 281.65 (4) (f), Stats. A local assistance grant may not be used for promotional items, except for promotional items that are used for informational purposes, such as brochures or videos.

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

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

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

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

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

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

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

NR 153.27 Procurement. (1) PROFITS. Contractors for contracts under grants described in this chapter may earn only fair and reasonable profits. Profits included in a formally advertised, competitively bid, fixed price construction contract are presumed to be reasonable.

(2) RESPONSIBILITY. The governmental unit shall administer and successfully complete activities for which grant assistance under this chapter is awarded in accordance with sound business judgment and good administrative practice under state and local laws.

(3) GENERAL REQUIREMENTS FOR CONTRACTS. Contracts shall be all of the following:

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

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

(c) For monetary or in-kind consideration.

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

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

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

NR 153.28 Grant reimbursement procedures. (1) RUNOFF MANAGEMENT GRANT AGREEMENTS. (a) State cost-share funds may be used to share in the actual cost required for the installation of eligible best management practices identified in runoff management grant agreements described in s. NR 153.21.

(b) Governmental units and state agencies shall comply with the following procedures when requesting reimbursement:

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

Note: Reimbursement request forms may be obtained, at no charge, from the Bureau of Community Financial Assistance, Department of Natural Resources, Box 7921 – CFA/8, Madison, Wisconsin 53707.

2. All reimbursement requests shall be submitted to the department within the time frame established in the grant agreement. Payments for reimbursement requests submitted after the deadlines established in the grant agreement or grant amendment will be subject to the

availability of state funds and to financial commitments made to other grantees by the department.

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

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

c. A grantee may submit a request for reimbursement of up-front payments made to a cost-share recipient for multi-year cropping practices, including high residue management, cropland protection cover, nutrient management and pesticide management, without prior approval from the department provided that the cost-share recipient completes the first full year of implementation in accordance with program requirements.

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

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

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

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

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

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

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

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

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

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

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

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

(c) The state share of any refunds, rebates, credits or other amounts that accrue to or are received by the grantee for the project, and that are properly allocable to costs for which the grantee has been paid under a grant, shall be paid to the department.

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

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

(f) The department shall withhold payment of, or otherwise recover, the amount of any indebtedness to the department, unless the department determines that collection of the debt will impair accomplishment of the project objectives and that continuation of the project is in the best interest of the nonpoint source water pollution abatement program.

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

(a) Accurate, current and complete disclosure of payments to landowners, land operators, contractors or municipalities including receipts, canceled checks, invoices and bills to support payments made in the program in accordance with department reporting requirements in

this chapter and in the grant conditions. All records shall be in accordance with generally accepted accounting principles and practices, consistently applied, regardless of the source of funds.

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

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

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

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

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

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

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

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

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

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

d. Request for reimbursement by a landowner or land operator documenting costs incurred directly or for in-kind contributions by the landowner or land operator. For management practices funded jointly under this chapter and other sources, the request shall verify that funding under this chapter is in accordance with s. NR 153.28 (1) (b) 5.

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

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

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

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

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

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

(h) Records which relate to appeals, disputes or litigation on the settlement of claims arising out of the performance of the project for which funds were awarded.

(i) Records which relate to costs or expenses of the project to which the department or any of its duly authorized representatives has taken exception.

(2) RECORD RETENTION. (a) The governmental unit or its agent's records and the records of contractors, including professional services contracts, shall be subject at all reasonable times to inspection, copying and audit by the department or its agent.

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

1. For 3 years after the date of final settlement.
2. For a longer period if required by statute or contract.
3. For 3 years after the date of termination of a grant agreement. If a grant is partially terminated, records shall be retained for a period of 3 years after the date of final settlement.
4. For 3 years after the date of settlement of any dispute.
5. Cost-share agreement records shall be kept for the duration of the operation and maintenance period of the cost-share agreement with the longest operation and maintenance period to enable the governmental unit to fulfill its responsibility under this chapter.

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

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

(c) All audits shall include review of fiscal accountability and consistency with grants or grant amendments.

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

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

NR 153.30 Project evaluation and reporting. **(1)** Grantees shall report to the department an annual accounting for accomplishments regarding its activities funded under the grant.

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

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

NR 153.31 Variances. The department may approve in writing a variance from a requirement of this chapter upon written request from the grantee if the department determines that a variance is essential to effect necessary grant actions or water quality objectives and where special circumstances make a variance in the best interest of the program. A grantee's written variance request shall clearly explain the circumstances justifying the variance. Before approving a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the grantee and financial hardship. The department may not grant variances from statutory requirements.

NR 153.32 Grant evaluation and enforcement. (1) On an annual basis, the department shall evaluate the progress of projects. During the evaluation, the department shall examine the progress of the project toward project goals and water quality objectives specified in the grant application, grant or grant amendment. Upon consulting with the project sponsor, the department may take appropriate action to improve the progress of the project. Department action may include, but is not limited to, more frequent project evaluation, the use of interim project goals, changes to project funding, and the adoption of sanctions in sub. (2).

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

(a) The grant may be terminated or annulled under sub. (4).
(b) Project costs directly related to noncompliance may be declared ineligible.
(c) Up to 10% of the payment otherwise due the grantee may be withheld if the conditions of par. (f) are met.

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

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

(f) The department may authorize the withholding or recovery of a grant payment if the department determines, in writing, that a grantee has failed to comply with project objectives, grant award conditions or reporting requirements or has not expended all funds it has received under this chapter on eligible activities. The department may recover payments made to grantees when it determines that the governmental unit will not complete the eligible activities on its grant within the current grant project budgeting period. Withholding and recovery shall be limited to only that amount necessary to assure compliance.

(3) SUSPENSION OF GRANTS. (a) Liability. The department may suspend state liability for work done under a grant after notification is given to the grantee in accordance with this

subsection. Suspension of state liability under a grant shall be accomplished by the issuance of a "stop-work order."

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

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

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

(c) *Stop-work order components.* A stop-work order shall contain all of the following:

1. A description of the work to be suspended.
2. Instructions for how the grantee may acquire materials or services.
3. Guidance for action to be taken on contracts.
4. Other suggestions to the grantee for minimizing costs.

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

2. Within the suspension period the department shall do one of the following:

- a. Cancel the stop-work order, in full or in part.
- b. Terminate grant assistance for the work covered by the stop-work order under par. (b).
- c. Authorize resumption of work.

(e) *Stop-work order cancellation or expiration.* If a stop-work order is canceled or expires, the grantee shall promptly resume the previously suspended work. An equitable adjustment may be made to the grant period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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