Chapter NR 155

URBAN NONPOINT SOURCE WATER POLLUTION ABATEMENT AND STORM WATER MANAGEMENT GRANT PROGRAM

NR 155.10 Purpose.
NR 155.11 Applicability.
NR 155.12 Definitions.
NR 155.13 Eligible applicants.
NR 155.14 Eligible projects.
NR 155.15 Cost sharing for urban best management practices.
NR 155.16 Aids for local assistance activities.
NR 155.17 Project application.
NR 155.18 Project screening.
NR 155.19 Project scoring.
NR 155.20 Project selection and funding.
NR 155.21 Runoff management grant agreement.
NR 155.22 Cost–share agreement.
NR 155.23 Cost containment.
NR 155.25 Property acquisition.
NR 155.26 Local assistance grant agreement.
NR 155.27 Procurement.
NR 155.28 Grant reimbursement procedures.
NR 155.29 Records.
NR 155.30 Project evaluation and reporting.
NR 155.31 Variances.
NR 155.32 Grant evaluation and enforcement.

NR 155.10 Purpose. The purpose of this chapter is to establish administrative policies and procedures for a competitive grant program to abate urban nonpoint source water pollution and storm water runoff, as authorized by s. 281.66, Stats. This chapter promotes management of urban runoff from existing urban areas, developing urban areas and areas of urban redevelopment. The goal of urban runoff management in these areas is to achieve water quality standards, minimize flooding, protect groundwater, coordinate urban nonpoint source management activities with the municipal storm sewer discharge permit program authorized under s. 283.33, Stats., and implement non–agricultural nonpoint source performance standards authorized under s. 281.16 (2), Stats.

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

NR 155.11 Applicability. This chapter applies to all of the following when conducting urban nonpoint source water pollution abatement and storm water management activities authorized under s. 281.66, Stats.:

(1) The department, when acting to solicit, accept and score urban runoff project applications and select urban runoff projects.

(2) The department when acting to administer grants and the grant program, including when the department acts as the grantor of runoff management grant agreements and local assistance grant agreements for urban runoff projects.

(3) Governmental units when acting to submit applications to the department for urban runoff projects, receive grants from the department for urban runoff projects and serve as cost–share providers to landowners and land operators in urban runoff projects.

(4) The Board of Regents, when acting as a grant applicant, runoff management grantee or a local assistance grantee for urban runoff projects.

(5) Landowners and land operators when acting as cost–share recipients in urban runoff projects.

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; **2015 Wis. Act 330 s. 20: am. (4) Register April 2016 No. 724, eff. 5–1–16.**

NR 155.12 Definitions. In this chapter:

(1) "Applicant" means a governmental unit or Board of Regents when applying for a grant under this chapter.

(2) "Board of Regents" means the Board of Regents of the University of Wisconsin System.

(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 urban best management practice.

(5) "Cost–share agreement" means the agreement established between the governmental unit and the cost–share recipient which identifies the urban 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 urban best management practices.

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

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

(8) "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.

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

(10) "Grantee" means a governmental unit or the Board of Regents that receives funding from the department under a runoff management grant agreement or a local assistance grant agreement.

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

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

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

(14) "Local assistance grant agreement" means an agreement between the department and a governmental unit or the Board of Regents for the purpose of providing funds for staffing activities to carry out the tasks identified in an urban runoff project selected for funding under this chapter.

(15) "Local share" means that portion of the best management practice installation cost funded under sources other than those authorized in s. 92.14, 281.65, 281.66 or 281.665, Stats.

(16) "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.

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

(18) "Point source" has the meaning in s. 283.01 (12), Stats.

(19) "Population" means population shown by the last federal census or by subsequent population estimate under s. 16.96, 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), Stats.

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

(23) "Project" means an urban runoff project.

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

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

(26) "Provider" means a governmental unit when serving to administer cost−share funds through a cost−share agreement with a private landowner or land operator.

(27) "Recipient" means the receiver of cost−share funds from a provider.

(28) "Runoff management grant agreement" means an agreement entered into between the department and a governmental unit or the Board of Regents which establishes the terms under which funds are provided by the department for the installation of urban best management practices or the purchase of property or easements in an urban runoff project funded under this chapter.

(29) "Source area" means a component of urban land use including rooftops, sidewalks, driveways, parking lots, storage areas, streets and lawns from which urban runoff pollutants are generated during periods of snow melt and rainfall runoff.

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

(31) "Urban area" means an area with a population density of 1,000 or more per square mile, or an area of industrial or commercial land uses, or an area that is surrounded by an area described in this definition.

(32) "Urban best management practice" 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.

(33) "Urban runoff" means runoff from rainfall or snow melt that is either a point source discharge as defined under s. 283.01 (12), Stats., or a nonpoint source discharge as defined under s. 281.65 (2) (b), Stats.

(34) "Watershed" means a region or area bounded peripherally by a divide and draining ultimately to a water of the state.

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

(36) "WPDES" means Wisconsin pollutant discharge elimination system.

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: am. (7) Register December 2010 No. 660, eff. 1−1−11; **2015 Wis. Act 330 s. 20: am. (1), (2), (9), (10), (14), (28) Register April 2016 No. 724, eff. 5−1−16.**

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

(a) The grant application is for a local governmental unit having jurisdiction over the project area.

(b) The grant application is for a local governmental unit not having jurisdiction over the project area if both of the following conditions are met:

1. The local governmental unit is required to control storm water discharges under s. 283.33, Stats.

2. Inter−governmental agreements are in place, or will be put in place, as needed to assure urban best management practices included on the grant are installed and maintained.

(2) The Board of Regents is eligible to apply for and receive a runoff management grant and a local assistance grant administered under this chapter if all of the following conditions are met:

(a) The grant is for practices, techniques or measures to control stormwater discharges on a University of Wisconsin System campus, including the acquisition of property or easements as required to install structural urban best management practices.

(b) The university of Wisconsin campus where the project is located is in a municipality required to obtain a permit under s. 283.33, Stats.

(c) The municipality where the campus is located meets at least one of the following:

1. It is located in a priority watershed as defined in s. 281.65 (2) (c), Stats.

2. It is located in a priority lake area as defined in s. 281.65 (2) (bs), Stats.

3. It is located in an area identified as an area of concern by the international joint commission as defined in s. 281.35 (1) (h), Stats., under the great lakes water quality agreement.

Note: A landowner or land operator that is not a governmental unit or the Board of Regents may not apply directly to the department for a runoff management or local assistance 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 to the governmental unit.

History: CR 00−025: cr. Register September 2002 No. 561, eff. 10−1−02; CR 09−112: am (1) (intro.) Register December 2010 No. 660, eff. 1−1−11; **2015 Wis. Act 330 s. 20: am. (2) (intro.), (a) Register April 2016 No. 724, eff. 5−1−16.**

NR 155.14 Eligible projects. (1) An eligible project is that specified in the scope of a runoff management grant agreement developed in accordance with s. NR 155.21 or in the scope of a local assistance grant agreement developed in accordance with s. NR 155.26. 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 pollution sources within a specified drainage area.

(b) The time component of the project scope may last up to 2 years. The department may grant an extension of up to one year in accordance with s. NR 155.21 (2). Multiple projects can be conducted consecutively or simultaneously in the same project area.

(2) The department may provide a runoff management grant under s. NR 155.21 for a project to design and install urban best management practices, stream bank stabilization projects or shoreline stabilization projects necessary to control pollution. The department may provide a runoff management grant only if all of the following apply:

(a) The project application submitted under s. NR 155.17 specifies the watershed, sub−watershed or specific site that will be served by the project.

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

(c) The project is consistent with non−agricultural performance standards under subchs. III and IV of ch. NR 151.

(d) The project is in an urban area.

1. For purposes of administering this paragraph, the department shall use the criteria under s. NR 155.17 (2) (b) 3. to determine whether an area is urban based on population density and the criteria under s. NR 155.15 (1) (b) 3. to 6. to determine if an area is an eligible commercial or industrial land use.

2. The department may waive the requirement in this paragraph for grants made to the Board of Regents.

(e) The governmental unit with jurisdiction over the project area ensures, in accordance with s. NR 155.17 (2) (b) 4. adequate implementation of construction site pollution control, and of storm water management after development, for development and redevelopment of sites of one or more acres.

(3) (a) The department may award a local assistance grant in accordance with s. NR 155.16 (1) or 155.26 for an urban runoff project in an urban area and for projects in areas that are expected to become an urban area within 20 years. For purposes of administering this subsection, the department shall use the criteria under s. NR 155.17 (2) (b) 3. to determine whether an area is, or will become, urban based on population density. The criteria under s. NR 155.15 (1) (b) 3. to 6. shall be used to determine if an area is an eligible commercial or industrial land use. The department may waive the requirement that the project be in an urban area, or an area projected to become an urban area, for grants made to the Board of Regents.

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

Note: Department guidance and planning standards are available from the department at (608) 267–7694.

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; CR 09–112: am (3), cr. (3) (b) Register December 2010 No. 660, eff. 1–1–11; **2015 Wis. Act 330 s. 20: am. (2) (d) 2., (3) (a) Register April 2016 No. 724, eff. 5–1–16.**

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

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

(b) Urban best management practices are eligible for cost–sharing when used to:

1. Stabilize stream banks and shorelines in areas under subds. 2. to 7. as necessary to filter or infiltrate urban runoff or to reduce sediment pollution caused by stream bank erosion.

2. Abate urban runoff from an area with a population of 1,000 or more per square mile.

3. Abate urban runoff from commercial land uses such as strip commercial, office parks, shopping centers and downtown commercial.

4. Abate urban runoff from government, institutional, transportation and recreational land uses where the land uses contain source areas that generate above average urban runoff volumes, peak flows or pollutant loading.

5. Abate urban runoff from manufacturing and non–manufacturing industrial land uses owned or operated by a governmental unit or the Board of Regents, including sites requiring coverage under subch. II of ch. NR 216.

6. Abate urban runoff from industrial land uses that are not owned or operated by a municipality or the Board of Regents, but only those source areas within these industrial land uses that are not considered to be associated or contaminated by industrial activity, as defined under subch. II of ch. NR 216.

7. Abate urban runoff from areas geographically surrounded by areas described in subds. 2. to 6.

(c) Eligible costs include land acquisition, easements, storm sewer rerouting and removal of structures and associated flood management necessary to implement structural urban best management practices.

(d) An urban best management practice shall be included in ch. NR 154 or be available in accordance with the technical standards development and dissemination requirements of subch. V of ch. NR 151 to be considered eligible for cost sharing under this chapter.

(e) An urban best management practice shall be constructed in accordance with applicable technical standards and conditions identified in this chapter, ch. NR 154, in a document identified or developed by a state agency in accordance with subch. V of ch. NR 151 or a runoff management grant agreement in order to be considered eligible for cost sharing under this chapter.

Note: Standards developed by the department are available from the department at (608) 267–7694.

(f) An urban 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 the Board of Regents in order to be considered eligible for cost sharing under this chapter.

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

(h) Urban best management practice costs shall meet requirements for use of bond–sourced funding to be eligible for funding from the appropriation under s. 20.866 (2) (th), Stats.

(2) INELIGIBLE COSTS. All of the following practices, sources and activities are ineligible for cost sharing under this chapter unless approved by the department as part of a demonstration project in accordance with sub. (3):

(a) The replacement cost of any urban best management practice that is designed to achieve non–agricultural performance standards under subch. III or IV of ch. NR 151. The department may make an exception for an urban best management practice if the urban best management practice was constructed, and the design life of the urban best management practice expired prior to October 1, 2002.

(b) Operation and maintenance of urban best management practices.

(c) Best management practices needed to control sources of urban runoff that were adequately managed for the specific land use at the time the cost–share agreement or runoff management grant agreement is signed, including management of a source in compliance with performance standards, but that are producing an increased amount of pollutant loading to the surface water or groundwater due to the landowner's or land operator's significant changes in land management. Changes that the department may consider significant and ineligible for cost–sharing include those that create an increase in the urban runoff counter to the water resource objectives in an approved areawide water quality management plan, priority watershed or priority lake plan, county land and water resources management plan or performance standard for the area. In this paragraph, "approved areawide water quality management plan" means a plan, which has been adopted pursuant to ch. NR 121.

(d) Urban best management practice installation, started prior to the signing of a runoff management grant and, when required, a 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.

(e) Activities covered by the WPDES permit program including those identified in chs. NR 200 to 299, except for municipal activities identified in sub. (1) carried out by the municipality to comply with municipal storm water permitting requirements under ch. NR 216.

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

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

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

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

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

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

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

(i) Installing, operating and repairing a small–scale on–site human domestic waste facility.

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

(k) Installing dams, pipes, conveyance systems and urban best management practices, including storm sewer rerouting and land acquisition for structural urban best management practices, when intended solely for flood control. In this subsection, "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.

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

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

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

(o) Practices previously installed and necessary to support cost–shared practices.

(p) Urban best management practices located outside an eligible geographic area.

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

(r) Active mining activities.

(s) Urban best management practices that do not meet the eligibility criteria under sub. (1).

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

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

(3) 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 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 155.20.

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 urban best management practices needed in order to increase acceptance, use and understanding of cost–effectiveness, including pollutant control capability.

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

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

(4) COST–SHARE RATES AND COST–SHARE CONDITIONS. Cost–share rates and cost–share conditions identified in ch. NR 154 or the runoff management grant agreement shall be used for urban best management practices funded under this chapter.

(5) COST–EFFECTIVENESS. The state cost–sharing amount shall be the total cost of an eligible practice multiplied by the cost–share rate, unless otherwise provided for in this chapter or in ch. NR 154. Where 2 or more practices are of equal effectiveness in reducing pollutants, the amount of cost sharing shall be based on the least cost practice.

(6) 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 ch. NR 154 but that will contribute to achieving water quality goals.

(b) *Requirements.* The department may consider eligible for cost sharing best management practices, management measures, design criteria or standards and specifications other than those included in 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 a non–agricultural or transportation performance standard identified in ch. NR 151.

Note: Development of urban practices, design criteria and standards for compliance with non–agricultural performance standards must be in accordance with subch. V of ch. NR 151.

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.

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

3. 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.* Department approval to use a practice, measure, standard or specification not included in ch. NR 154 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.

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; CR 09–112: am. (1) (a), r. and recr. (2) (g) Register December 2010 No. 660, eff. 1–1–11; correction in (2) (m) made under s. 13.92 (4) (b) 7., Stats., Register December 2010 No. 660; correction in (2) (g) 4. made under s. 13.92 (4) (b) 6., Stats., Register December 2011 No. 672; **2015 Wis. Act 330 s. 20: am. (1) (b) 5., 6., (f) Register April 2016 No. 724, eff. 5–1–16.**

NR 155.16 Aids for local assistance activities.

(1) ELIGIBLE COSTS. (a) The department may provide cost shar-

ing under s. NR 155.26 for activities in projects selected by the department under this chapter that are in an urban area or area expected to become urban within 20 years of the application submittal date.

(b) The cost–share rates for eligible activities in par. (c) may not exceed 70% of the cost of the activities for which the grant is provided.

(c) The activities identified in this paragraph are eligible for cost sharing.

1. Urban runoff control planning activities, for all or part of a municipality or University of Wisconsin System campus identified in s. NR 155.13 (2). Activities include:

a. Developing comprehensive urban runoff control plans for existing development, new development, and redevelopment, including planning, pre–design, and general engineering feasibility studies. Planning includes activities necessary to develop a storm water management program consistent with the program elements identified under s. NR 216.07. Urban storm water planning activities for industrial sites subject to subch. II of ch. NR 216 are not eligible for reimbursement under this chapter except for facilities owned or operated by a governmental unit.

b. Preparing local ordinances including urban runoff control ordinances, construction site erosion control ordinances, pet waste management ordinances, illicit discharge management ordinances and other environmental resource conservation ordinances that the department determines can further the intent of this chapter.

c. Evaluating alternatives for local financing of urban runoff control programs, including storm water utilities.

d. Other urban runoff control planning activities determined by the department to further the intent of this chapter.

2. Urban runoff control implementation activities, to include:

b. Administration associated with initial establishment of local funding programs such as storm water utilities.

c. Conducting detailed engineering designs and detailed site engineering feasibility studies for projects in existing urban areas and areas of urban redevelopment. The department may also provide reimbursement for detailed engineering designs and detailed engineering feasibility studies for projects in new development where the practices are to be owned and operated by a governmental unit or the Board of Regents.

g. Contacting landowners and land operators of urban runoff sources described in the project.

h. Developing, reviewing and implementing cost–share agreements with the cost–share recipient.

i. Illicit discharge detection and elimination.

j. Pollution prevention and good housekeeping measures for municipal facilities or operations.

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

L. Other storm water management implementation activities determined by the department to be necessary to implement the project.

4. Public participation, education and outreach activities to include:

a. Forming partnerships to cost–effectively manage urban runoff.

b. Preparing and using educational materials and strategies.

c. Developing and conducting demonstrations, tours and activities that incorporate citizen involvement.

d. Other education activities determined by the department to be necessary to implement the project.

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

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

1. Information and education activities approved by the department.

2. Training of staff approved by the department.

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

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

8. Field equipment necessary for the project.

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

(e) The participating governmental unit and Board of Regents shall provide to the department an accounting of hours spent on the project by staff.

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

(a) Direct costs for other items not listed as eligible for up to 70% cost–sharing.

(b) Indirect project costs.

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; CR 09–112: am. (1) (b), (c) (intro.), 1. a., 2. c., (e), r. (1) (c) 2. a., d., e., f., 3., (d) 3., 6., 7., 9., (f) Register December 2010 No. 660, eff. 1–1–11; **2015 Wis. Act 330 s. 20: am. (1) (c) 1. (intro.), 2. c., (e) Register April 2016 No. 724, eff. 5–1–16.**

NR 155.17 Project application. (1) APPLICATION PROCESS. (a) Subject to the availability of funds, the department shall:

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

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

(b) A governmental unit or the Board of Regents may request funding under this chapter for one or more projects.

(c) Applicants shall submit completed project applications to the department in order to be considered for funding in the following calendar year. The department shall establish the deadline for project application and shall include the deadline in the application materials.

(2) REQUIRED INFORMATION. An applicant shall submit all of 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 shall include all of the following unless otherwise exempted in this section:

1. Applicant name.

2. Name and title of authorized representative.

3. Contact name and telephone.

4. Type of governmental unit and applicant address.

5. Applicant's signature.

6. Project scope.

7. Other information that the department determines necessary to process the application.

(b) Screening information required by the department to determine whether the proposed project complies with basic program and statutory funding requirements. This information shall include all of the following unless otherwise exempted in this section:

1. Certification that the project meets the eligibility requirements of s. NR 155.14 (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 and potentially affected by the project.

3. For a project to be funded with a cost–sharing grant, documentation that the project is in an urban area. For a project to be funded with a local assistance grant, documentation that the project area is in an urban area or an area expected to become urban within 20 years of the application date. In determining if a project area is, or will become urban:

a. Existing and projected population shall be the population shown by the last federal census or by any subsequent population estimate under s. 16.96, Stats.

b. When the project covers part of a municipality or campus, such as a project for a urban best management practice that serves a limited geographic area or an urban runoff control plan for a limited area, the area over which the population density is calculated shall be limited, to the extent allowed by the population data, to that included in the project area.

c. When the project covers substantially all of a municipality or campus, such as a project for a comprehensive municipal urban runoff management plan, an information and education program or a municipal ordinance, the area over which the population density is calculated shall be the entire area within the municipal or campus boundary to the extent practical given existing census data.

d. The department may waive the information requirement under this subdivision for projects on a University of Wisconsin System campus meeting the requirements of s. NR 155.13 (2).

4. For projects to be funded with a cost–share grant, documentation that the applicant can ensure adequate implementation of construction site pollution control, and of urban runoff control after development, for development and redevelopment of project sites of one or more acres within the municipality or campus. Information shall be submitted indicating the extent to which the applicant can assure management of urban runoff from these sources. Information includes:

a. Adoption, implementation and enforcement of local regulations for construction site erosion control consistent with non–agricultural performance standards in s. NR 151.11.

Note: Chapter NR 152 contains a model ordinance to guide municipalities in developing local regulations to control construction site erosion.

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

Note: Chapter NR 152 contains a model ordinance to guide municipalities in developing local regulations to control post–construction urban runoff from areas of new development and redevelopment.

c. Adoption of municipal storm water plans or policies for developed urban areas consistent with non–agricultural performance standards in s. NR 151.13.

5. A list of the urban best management practices for which funding is requested, including easements or property acquisitions associated with any of these practices, and identification of practice eligibility under s. NR 155.15.

6. Evidence that the proposed project is consistent with non–agricultural and transportation performance standards contained in subchs. III and IV of ch. NR 151.

7. Evidence that inter–municipal agreements have been or will be executed when needed to assure design, construction, operation and maintenance of urban runoff control implemented cooperatively by multiple units of government or the Board of Regents.

8. A list of local assistance activities for which funding is requested and an identification of eligibility under s. NR 155.16.

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

10. Certification that the applicant has made arrangements to provide the staff or contract services necessary to implement the project.

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

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

13. Certification that the applicant will obtain control of the property upon which the practice will be constructed prior to commencement of the grant period.

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

(c) Scoring information required by the department to evaluate and rank the project. Scoring information includes all of the following unless otherwise exempted in this section.

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 s. NR 155.23 (2).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. The extent of local implementation programs in effect over the project area, including information required to determine the project multiplier under s. NR 155.19 (4).

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

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; CR 09–112: am. (2) (b) 2., 4. b., cr. (2) (b) 13., 14., r. (2) (d) Register December 2010 No. 660, eff. 1–1–11; **2015 Wis. Act 330 s. 20: am. (1) (b), (2) (b) 3. d., 7., (c) 3. Register April 2016 No. 724, eff. 5–1–16.**

NR 155.18 Project screening. (1) The department may deny consideration of applications that are incomplete by the submittal deadline. The department may consider an application incomplete if the project proposal requires significant additional review to determine compliance with other state laws and the department determines that such reviews may significantly delay the project. State laws that the department may consider in determining if the application is incomplete include those to protect navigable waters, wetlands, historic places, historic properties, endangered resources or threatened resources.

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

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; CR 09–112: am. (2), r. (3) Register December 2010 No. 660, eff. 1–1–11.

NR 155.19 Project scoring. (1) SCORING PROCEDURE. The department shall use the procedure in this subsection to score each project that passes the eligibility screening under s. NR 155.18.

(a) The department shall develop an initial project score using the information submitted by the applicant under s. NR 155.17 (2) (c) and detailed scoring guidelines developed by the department. The department shall develop and maintain detailed scoring guidelines in accordance with sub. (2).

(b) The department shall evaluate the initial project component 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 capability to determine the final project score. The department shall determine the local implementation factor in accordance with sub. (4).

(2) INITIAL PROJECT SCORE. (a) The department shall develop guidelines to assure consistent and fair scoring of project applications. The department shall revise the guidelines periodically as necessary to assure that project selections are consistent with priorities in s. 281.66, Stats. The department may convene an advisory committee to assist itself in developing and revising the scoring guidelines.

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

1. Sub–scores shall be developed for key project components. Key components include all of the following:

a. Fiscal accountability and cost–effectiveness.

b. Project evaluation and monitoring strategy.

c. Evidence of local support and involvement.

d. Consistency with department water basin priorities.

e. Water quality need.

f. Extent of pollutant control.

g. Consistency of project with other resource management plans.

h. Use of other funding sources.

i. Application of the project to storm water requirements for the city of Racine.

2. The project component for water quality need shall be assigned the highest sub–score. The priorities within this sub–score component shall address the list of water quality needs in s. NR 155.17 (2) (c) 5. The highest priority within this list shall be assigned to water quality need that is based on the existence of impaired water bodies that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

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

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

5. The initial project score for a project shall be the sum of the project's component sub–scores.

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

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

1. Fiscal accountability and cost effectiveness.

2. Project evaluation and monitoring strategy.

3. Local support and involvement.

4. Consistency with department water basin priorities.

(4) MULTIPLIERS FOR LOCAL IMPLEMENTATION PROGRAMS. (a) The department shall increase the initial project score in accord-

ance with this subsection if there is a local implementation 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:

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 d.

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

c. Implement nutrient management for properties owned by the municipality or the Board of Regents.

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

(c) The department may not increase the score of an urban project located in an area where a local implementation program does not meet the requirements under par. (b). In this case, the interim score shall be the final project score.

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; CR 09–112: am. (3) (a), (b) (intro.), r. (4) (d) Register December 2010 No. 660, eff. 1–1–11; **2015 Wis. Act 330 s. 20: am. (4) (b) 1. c. Register April 2016 No. 724, eff. 5–1–16.**

NR 155.20 Project selection and funding.

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

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

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

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

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

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

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

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

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

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

Note: Forms can be obtained from the department's Bureau of Watershed Management or the department's Bureau of Community Financial Assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707–7921.

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

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

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

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

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

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; CR 09–112: r. and recr. Register December 2010 No. 660, eff. 1–1–11.

NR 155.21 Runoff management grant agreement.

(1) PURPOSE. (a) The department shall use the runoff management grant agreement to commit funds to a governmental unit or the Board of Regents for the purpose of implementing urban best management practices for a project selected under s. NR 155.20.

Note: In this situation, the department is a grantor of funds to the governmental unit or Board of Regents. The governmental unit or Board of Regents 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 155.22 with a governmental unit or the Board of Regents for the installation of a urban best management practice on land the governmental unit or Board of Regents owns or operates. The department may also may use the runoff management grant agreement in lieu of a cost–share agreement required under s. NR 155.22 with a governmental unit not having jurisdiction over the project area if the local government is required to control storm water discharges under s. 283.33, Stats., provided that inter–governmental agreements are in place, or will be put in place, as needed to assure the measure is installed and maintained. Runoff management grant agreements used in lieu of cost–share agreements shall comply with the requirements of s. NR 155.22.

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

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

(b) To receive an extension, a grantee shall submit a written request to the department. The request shall meet all the following requirements:

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

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

3. Specify the reasons which necessitate the grant extension which were beyond the control of the grantee.

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

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

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

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

(c) Be fiscally responsible for the use of cost–share funds provided to cost–share recipients under the runoff management grant agreement. This includes preparing and maintaining adequate fiscal management and technical assistance files as described in s. NR 155.29. 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 urban best management practices for cost–share agreements for which it is the cost–share provider.

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

(f) Participate with the department in project reviews.

(g) Enforce the terms and conditions of the cost–share agreement as described in s. NR 155.22.

(4) LOCAL GOVERNMENT AND BOARD OF REGENTS RESPONSIBILITIES AS A COST–SHARE RECIPIENT. The department shall require the governmental unit and the Board of Regents to do all of the following as conditions of receiving a runoff management grant to perform work on lands the grant recipient owns, operates or otherwise controls in accordance with s. NR 155.13 (1) (b).

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

(b) Prepare and maintain adequate fiscal management and technical assistance files as described in s. NR 155.29.

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

(d) When installing urban 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, operation and maintenance for the practices.

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

4. Repay the department the full amount of funds received if the grantee fails to fulfill any terms of the agreement, including failing to install, operate and properly maintain the practices included in the 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 an operation and 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 urban best management practices.

7. Comply with the requirements for cost–share agreements specified in s. NR 155.22.

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 urban best management practice the grantee 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 urban 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 155.28 (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 s. NR 155.25.

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

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

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; CR 09–112: am. (2) (a), (b) (intro.), (4) (d) 3., cr. (2) (b) 3. Register December 2010 No. 660, eff. 1–1–11; correction in (5) (c) made under s. 13.92 (4) (b) 7., Stats., Register December 2010 No. 660; **2015 Wis. Act 330 s. 20: am. (1) (a), (b), (4) (intro.) Register April 2016 No. 724, eff. 5–1–16.**

NR 155.22 Cost–share agreement. (1) PURPOSE OF AGREEMENT. (a) The cost–share agreement is an agreement listing the urban best management practices and establishing the conditions and considerations under which a cost–share recipient agrees to install the practices listed.

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

(c) For urban 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 urban 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 or land operator. Agreements with land operators shall be co–signed by the landowner.

(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 urban 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 cost–shared urban best management practices be implemented and maintained as a condition of the agreement.

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

(d) The installation schedule for applying the practices.

(e) A statement of operation and maintenance requirements.

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

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

(h) A provision describing the procedure for amendment.

(i) The location of the land on which the cost–shared practice is to be installed, and a specific legal description of the land.

(j) 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 significantly increased pollutant loading to surface water or groundwater.

1. If 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.

2. Increases in urban pollutant loading resulting from the conversion of land to urban land cover may not be considered significant if the land development or redevelopment activity meets the non–agricultural and transportation performance standards in subchs. III and IV of ch. NR 151.

(k) 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.

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, compliance with non–agricultural and transportation performance standards under ch. NR 151 must be maintained in perpetuity.

(4) DEPARTMENT APPROVAL. The governmental unit shall obtain prior department approval of the cost share agreement. The department shall consider the cost–effectiveness of the urban best management practices and eligibility for cost sharing under this chapter in making its decision whether to grant approval.

(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 urban best management practice not in conformance with the cost–share agreement, the runoff management grant agreement and 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 an urban best management practice begins when the urban 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 urban 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.

(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.

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

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

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

(9) CHANGE IN OWNERSHIP. If a change in ownership occurs during the cost–share agreement period, the new landowner shall be responsible for fulfilling all conditions of the cost–share agreement. Upon receiving written approval from the respective local governmental unit, the new landowner may implement alternative approved urban 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.

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

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

Note: Forms can be obtained from the department's Bureau of Watershed Management or the department's Bureau of Community Financial Assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707–7921.

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; CR 09–112: am. (3) (i), (4), (10) (a), (11) Register December 2010 No. 660, eff. 1–1–11.

NR 155.23 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 urban 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 urban 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 an urban 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 an urban 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 bidding procedures set forth in the *Procurement Guide for Local Governments Receiving Grants from the Wisconsin Dept. of Natural Resources*, available from the department.

(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 and this chapter for installation of an urban best management practice.

(e) *Municipal work group.* A governmental unit hires or assigns its employees to install an urban 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.

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

(2) The cost–containment procedures in this subsection 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 urban best management practices:

(a) All sources of local share donation shall be indicated in the project application submitted under s. NR 155.17.

(b) The maximum value of donated labor may not exceed the 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.

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

Note: Relevant municipal statutes include ss. 59.52, 60.47, 61.54, and 62.15, Stats.

(4) Governmental units that contract with an outside consultant to perform services under a local assistance grant shall, at a minimum, use a quality–based selection approach and interview firms with proven experience in the field of storm water planning. All contracts shall be subject to approval by the departmental project manager, with respect to reimbursement eligibility, technical standards, and storm water permitting requirements.

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; CR 09–112: r. (1) (f), cr. (3), (4) Register December 2010 No. 660, eff. 1–1–11.

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

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

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

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

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

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

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

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

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

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

4. Other information the department may request.

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

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

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

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

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

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

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

3. All appraisals shall be conducted by a certified or licensed appraiser as described in ch. 458, Stats., and chs. SPS 85 to 86.

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

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

(d) If applicable, relocation plans shall be developed in accordance with ch. Adm 92.

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

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

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

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

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

1. The acquisition cost of the property.

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

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

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

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

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

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

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

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; CR 09–112: r. and recr. Register December 2010 No. 660, eff. 1–1–11; correction in (5) (b) 3., (d) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; **correction in (5) (b) 3. made under s. 13.92 (4) (b) 7., Stats., Register April 2016 No. 724.**

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

(2) 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.

(3) 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.

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

(5) The grantee shall apply for local assistance grant funds using the application process under s. NR 155.17.

(6) If a governmental unit or the Board of Regents contracts with a government agency or person to provide field, administrative, planning or other services to carry out activities of the local assistance grant agreement, the contract shall be submitted to the department for review and approval prior to signing.

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

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; CR 09–112: am. (1), (6) Register December 2010 No. 660, eff. 1–1–11; **2015 Wis. Act 330 s. 20: am. (1), (6) Register April 2016 No. 724, eff. 5–1–16.**

NR 155.27 Procurement. **(1)** PROFITS. Only fair and reasonable profits may be earned by contractors for contracts under grants described in this chapter. Profits included in a formally advertised, competitively bid, fixed price construction contract is presumed to be reasonable.

(2) RESPONSIBILITY. The governmental unit and Board of Regents 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.

(c) For monetary or in–kind consideration.

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

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

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

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; CR 09–112: am. (3) (b), r. and recr. (4), r. (5) Register December 2010 No. 660, eff. 1–1–11; **2015 Wis. Act 330 s. 20: am. (2), (4) (a), (b) Register April 2016 No. 724, eff. 5–1–16.**

NR 155.28 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 urban best management practices identified in runoff management grant agreements described in s. NR 155.21.

(b) Governmental units and the Board of Regents 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 shall 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 urban 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 urban 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 urban best management practice.

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

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

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

Note: Forms can be obtained from the department's Bureau of Watershed Management or the department's Bureau of Community Financial Assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707–7921.

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

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

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

7. The department shall deny reimbursements requested for installed practices that are not included in a cost–share agreement or enumerated as a grantee–installed practice on the grant agreement 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 and Board of Regents 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 under this chapter to a governmental unit or the Board of Regents 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 grant payments in the following cases:

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

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

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; CR 09–112: am. (1) (b) 3. Register December 2010 No. 660, eff. 1–1–11; **2015 Wis. Act 330 s. 20: am. (1) (b) (intro.), (2) (a), (3) (a) Register April 2016 No. 724, eff. 5–1–16.**

NR 155.29 Records. (1) REQUIRED RECORDS. A governmental unit serving as a runoff management grant grantee or as a cost–share agreement provider, and the Board of Regents serving as a runoff management grantee, 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 report-

ing 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 155.23 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 urban 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 grantee 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.

e. Evidence of payment for urban 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 grantee.

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 board of regent's records and the records of contractors, including professional service contracts, shall be subject at all reasonable times to inspection, copying and audit by the department or its agent.

(b) The governmental unit, the Board of Regents and 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 shall keep any confidential information that is not subject to the open records law, such as social security numbers that is required for income tax purposes for the cost–share funding, safe from unauthorized access.

History: CR 00–025: cr. Register September 2002 No. 561, eff. 10–1–02; **2015 Wis. Act 330 s. 20: am. (1) (intro.), (2) (b) (intro.) Register April 2016 No. 724, eff. 5–1–16.**

NR 155.30 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 155.17. The department may require the grantee to submit other information in the final report.

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

NR 155.31 Variances. The department may approve in writing a variance from a requirement of this chapter upon written request from the grantee if the department determines that a variance is essential to effect necessary grant actions or water quality objectives and where special circumstances make a variance in the best interest of the program. A grantee's written variance request shall clearly explain the circumstances justifying the variance. Before approving a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the grantee and financial hardship. The department may not grant variances from statutory requirements.

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

NR 155.32 Grant evaluation and enforcement. **(1)** EVALUATION. 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 grantee, 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) SANCTIONS. The department may impose the following sanctions for noncompliance with the provisions of s. 281.66, Stats., this chapter or any grant agreement entered into or amended in accordance with this chapter:

(a) The department may terminate or annul the grant under sub. (4).

(b) The department may declare ineligible project costs directly related to noncompliance.

(c) The department may withhold up to 10% of the payment otherwise due the grantee if the conditions of par. (f) are met.

(d) The department may suspend project work under sub. (3).

(e) The department may institute other administrative or judicial remedies 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 is 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 cost.

(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 under sub. (2) for the work covered by the stop–work order.

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 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 GRANTEES. Suspension or termination of a grant or portion of grant under this section does not relieve the grantee of its responsibilities under this chapter.

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