

**NORTH DAKOTA  
NONPOINT SOURCE POLLUTION MANAGEMENT  
PROGRAM**



**COST-SHARE GUIDELINES  
FOR  
NONPOINT SOURCE POLLUTION CONTROL  
BEST MANAGEMENT PRACTICES**

**May 2007**

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## **I. INTRODUCTION**

Sediments, nutrients, pesticides, and livestock wastes are the most common NPS pollutants affecting the water quality of many North Dakota waterbodies. These pollutants are generally delivered to waterbodies by way of runoff waters, wind, percolation, or atmospheric deposition. To effectively reduce or eliminate the transport of these pollutants to surface and/or groundwater, various source control measures must be implemented within the watersheds of the impaired waterbodies.

Under the NPS Pollution Management Program, a variety of source control measures have been approved for controlling or preventing urban and rural NPS pollution. These control measures are defined as best management practices (BMP) which are designed to: 1) prevent pollutants from leaving a specific area; 2) reduce/eliminate the introduction of pollutants; 3) protect sensitive areas; or 4) prevent the interaction between precipitation and pollutants. Some common examples of source control BMP utilized by the NPS Program are conservation tillage, grassed waterways, nutrient management, stormwater retention ponds, and livestock manure containment facilities.

Voluntary implementation of the appropriate BMP is best accomplished by providing one-on-one technical assistance and, when necessary, sufficient cost-share assistance to install the BMP. Ultimately, the specific BMP which are actually implemented will be dependent on the: 1) type of NPS pollutants, 2) source and cause of the pollutants, 3) delivery mechanisms being addressed, and 4) physical/financial limitations associated with the implementation of the practices.

## **II. APPROVED AGRICULTURAL BEST MANAGEMENT PRACTICES**

While many agricultural BMP can be implemented with very little or no expense to the landowner, some practices do require a substantial investment. Because of such instances, the NPS Program will provide cost-share assistance, when necessary, to offset expenses associated with the application of certain BMP. Cost-share assistance will be provided at a sixty percent (60%) Federal and forty percent (40%) landowner matching ratio.

Agricultural BMP eligible for cost-share assistance through the NPS Program include many of the conservation practices listed in the NRCS electronic Field Office Technical Guide (eFOTG). The BMP guidelines developed by the North Dakota Forest Service (NDFS) may also be utilized to ensure the appropriate practices are prescribed under resource management plans involving forestry management. Table 1 identifies the specific BMP from the eFOTG which are eligible for cost-share assistance through the North Dakota Nonpoint Source Pollution Management Program (NPS Program).

**Table 1: Approved Best Management Practices from the NRCS eFOTG**

<b>NRCS CODE</b>	<b>PRACTICE</b>	<b>LIFE SPAN (YEARS)</b>	<b>FLAT RATE</b>	<b>COST-SHARE PAYMENT</b>
328	Conservation Crop Rotation	--	NCP	NCP
656	Constructed Wetland	10	AC	*
332	Contour Buffer Strips	10	AC	*
340	Cover Crop	--	NCP	NCP
342	Critical Area Planting	10	AC	*
356	Dike	10	AC	*
362	Diversions	10	AC	*
382	Fencing	10	AC	*
386	Field Border (planting/establishment only)	10	AC	*
393	Filter Strip (planting/establishment only)	10	AC	*
410	Grade Stabilization Structure	10	AC	*
412	Grassed Waterway	10	AC	*
422	Hedgerow Planting	10	AC	*
603	Herbaceous Wind Barriers	5	\$12.00/acre	\$7.20/acre
447	Irrigation System Tailwater Recovery	10	AC	*
472	Use Exclusion (Livestock only)	1	\$15.00/acre	\$9.00/acre
634	Manure Transfer	10	AC	*
590	Nutrient Management	1	\$5.00/acre	\$3.00/acre
512	Pasture and Hayland Planting	10	AC	*
595	Pest Management	--	NCP	NCP
516	Pipelines	10	AC	*
378	Pond	10	AC	*
528A	Prescribed Grazing	--	NCP	NCP
550	Range Planting	10	AC	*
329A	Residue Management, No Till & Strip Till	--	NCP	NCP
329B	Residue Management, Mulch Till	--	NCP	NCP
329C	Residue Management, Ridge Till	--	NCP	NCP
391	Riparian Forest Buffer	10	AC	*

<b>NRCS CODE</b>	<b>PRACTICE</b>	<b>LIFE SPAN (YEARS)</b>	<b>FLAT RATE</b>	<b>COST-SHARE PAYMENT</b>
390	Riparian Herbaceous Cover	10	AC	*
558	Roof Runoff Structure	10	AC	*
570	Runoff Management System (construction sites)	1	AC	*
350	Sediment Basin	10	AC	*
574	Spring Development	10	AC	*
584	Stream Channel Stabilization	10	AC	*
580	Streambank & Shoreline Protection	10	AC	*
587	Structure for Water Control	10	AC	*
600	Terrace	10	AC	*
610	Salinity & Sodic Soil Management (establishing vegetative cover only)	10	AC	*
614	Trough and Tank	10	AC	*
601	Vegetative Barrier (establishment only)	10	AC	*
312	Livestock Manure Management System	10	**	**
635	Waste Water Treatment Strip (establishment only)	10	AC	*
633	Waste Utilization	1	NCP	NCP
638	Water and Sediment Control Basin	10	AC	*
640	Water Spreading	10	AC	*
642	Well (livestock only)	10	AC	*
351	Well Decommissioning	10	AC	*
658	Wetland Creation	10	AC	*
657	Wetland Restoration	10	AC	*
380	Windbreak/Shelterbelt Establishment	10	AC	*
<b>NCP</b>	Non cost-shared practice			
<b>AC</b>	The flat rate is the actual costs not to exceed the unit costs identified in the NRCS eFOTG. However, if the actual costs exceed the eFOTG costs by more than 10% , the “higher” flat rate can be used if approved by the NPS Program and two or more written price quotes are obtained to verify the actual costs exceed the eFOTG costs by more than 10%.			

NRCS CODE	PRACTICE	LIFE SPAN (YEARS)	FLAT RATE	COST-SHARE PAYMENT
*	Cost-share assistance for these BMP must be based on the actual costs, not to exceed 60% of the unit costs identified in Section I of the NRCS eFOTG. However, in the event the actual costs exceed the eFOTG unit costs by more than 10%, cost-share payments can be based on the “higher” actual costs, if approved by the NPS Program and two or more written price quotes are obtained to verify the actual costs exceed the eFOTG costs by more than 10%.			
**	See Section IX for the different practices and cost share assistance policies associated with the installation of the manure management systems.			

The NPS Program also supports several practices that are not listed in Tables 1 and 4 of this document. These additional eligible BMP are listed in Sections VII and VIII as well as Appendix A.

### III. SECTION 319 BMP IMPLEMENTATION AND COST SHARE AGREEMENTS

Local Section 319 project staff will be responsible for the development of the appropriate producer agreements scheduling BMP implementation and cost share assistance. All information, (e.g., completion dates, amounts, costs, etc.) pertaining to the planned BMP must be included in the producer’s Section 319 Conservation Plan of Operation (CPO) and the associated CPO Comments Form. The CPO and Comments Form, in conjunction with the Section 319 Cost Share Agreement Provisions Form, will serve as the sponsor’s contractual agreement with the producer. Prior to the installation of the planned BMP, the CPO and Provisions Form must be signed and dated by the cooperating producer. The project sponsors must also sign the CPO to document their approval of the financial assistance for the planned BMP.

The CPO and CPO Comment Form are reports generated through the NPS Program BMP Tracking database. NPS Program contact information for downloading the database is provided in Appendix B. The Section 319 Cost Share Agreement Provisions Form is provided in Appendix C.

During the development of a CPO, all sources of NPS pollution should be identified on the farm unit to determine specific types of BMP needed. Only the agreed upon BMP that will effectively address the identified NPS pollution sources can be included in the Section 319 CPO. While it is recommended the CPO address all NPS pollution management needs on the entire farm, a CPO for site specific concerns or a single practice is allowable.

The initial length of a CPO should not exceed three years. In the event it is necessary to exceed three years, the project sponsors must be able to ensure sufficient financial and technical assistance will be available to support the financial obligations and BMP implementation requirements described in the CPO. In addition, each cooperating producer within a specific project area will be limited to one CPO for the duration of the project period. However, the CPO can be revised and/or extended throughout the project period. A summary of the information required in a signed and approved CPO is as follows:

- Name and address of the cooperating producers.
- Types of BMP scheduled for cost-share assistance as well as any non-cost-shared management requirements.

- Total acreage under contract. If more than one BMP is scheduled for implementation, list the acreage for each BMP.
- Maps and legal descriptions (Twp/Range/Sec/Qtr/Qtr) of the locations of cost-shared and non-cost-shared BMP scheduled under the CPO.
- BMP implementation and cost-share payment schedule.
- The "flat rate" for the scheduled BMP as identified in this document or the appropriate cost estimates identified in the NRCS eFOTG.
- Amount of cost-share assistance being requested for each BMP.
- Amount of producer match per scheduled BMP.
- Appropriate language requiring proper operation and maintenance of scheduled BMP for the approved lifetime of the practice.
- If applicable, a producer agreement to donate BMP inkind match to the project to support project management and planning assistance. The Cost Share Agreement Provisions in Appendix C include language pertaining to BMP inkind match donation..
- The amount of BMP inkind match to be donated by the producer; BMP that will be used to generate the match; and the year the match will be donated to the sponsors.

Under an approved CPO, cost-share assistance can only be provided after a scheduled BMP has been fully implemented according to NRCS standards and specifications or other standards approved by the NPS Program. In the event a producer or landowner is unable to implement or maintain a BMP due to uncontrollable circumstances, cost-share payments will not be issued that particular year. In such cases, the CPO can be revised to adjust the BMP implementation and payment schedule. Subsequent cost-share payments would then be based on the new schedule. The local sponsors and project staff will be responsible for verifying proper implementation and/or noncompliance occurrences for all BMP scheduled under a CPO.

#### **IV. AGRICULTURAL BMP COST SHARE ASSISTANCE**

Section 319 cost share assistance for approved agricultural BMP must be based on the "flat rates" identified in this document (i.e., Table 1, Table 4, or Appendix A). Cost-share payments provided through the NPS Program cannot exceed 60 percent of the practice-specific "flat rate." The remaining 40 percent will be the responsibility of the cooperating producer and/or sponsoring entity. The 40 percent match requirement can be provided in the form of cash and/or inkind match. All forms of match must be documented and verified by the project sponsors or staff before cost-share assistance can be issued.

##### **A. Cost-Share Limitations**

For certain BMP, limitations have been established to ensure efficient use of cost-share funds within the local project areas. The restrictions for the applicable BMP are as follows: 1) maximum of two years of cost share assistance; 2) full implementation with no cost share assistance during one year of the CPO; and

3) maximum of 640 acres eligible for cost-share assistance. Specific BMP for which these restrictions apply are listed in Table 2:

**Table 2: BMP With Cost-Share and Acreage Limitations**

Herbaceous Wind Barrier	Use Exclusion (Livestock)
Nutrient Management	

A CPO scheduling the implementation of any BMP listed in Table 2 must comply with all the limitations described in the previous paragraph. Total acreage per BMP enrolled for cost share assistance cannot exceed 640 acres. Cost share assistance for the BMP must be limited to a maximum of 2 years under a 3-year CPO and one year under a 2-year CPO. In addition, for any length CPO, the scheduled BMP must also be fully implemented at least one year without Section 319 cost share assistance. This non-cost shared year should be identified as the “management year” under the CPO. During the management year, the scheduled BMP must to be implemented according to the applicable standards and specifications. The local project sponsors can schedule the “management year” for any year under a CPO.

**B. Authorization Criteria for Cost-Share Assistance**

Section 319 cost-share assistance will be authorized when the following criteria have been met:

- The BMP has been implemented according to the NRCS standards and specifications or alternative standards and specifications approved by the NPS Program. For manure management systems or structural BMP that require professional engineer services, the project’s design engineer must provide verification the BMP has been installed according to design.
- Project personnel have verified the completion of the BMP and compliance with the operation and maintenance conditions for the cost-shared practice.
- The associated expenses have been properly documented and the cooperating producer has provided the appropriate documentation to the project sponsors or staff.
- An Application for Payment Form has been completed to identify the costs of the completed BMP and the form has been reviewed and signed by the cooperating producer. *(Note: The Application for Payment Form is a report generated by the NPS Program BMP Tracking database. Refer to Appendix B for individuals to contact to obtain the database.)*
- The project sponsors have approved and signed the producer’s Application for Payment Form and provided a copy to NPS Program personnel.
- The appropriate Section 319 reimbursement paperwork, (including copies of the signed Application for Payment Forms and the associated BMP Expenditure Summary Report), has been submitted by the project sponsors to the NPS Program for review and approval. *(Note: The BMP Expenditure Summary Report can be developed with the NPS Program BMP Tracking database)*

**V. ELIGIBLE INKIND MATCH ASSOCIATED WITH BMP IMPLEMENTATION**

Given the management year requirement discussed in Section IV, the BMP listed in Table 3 will be implemented without Section 319 cost share assistance for at least one year under an approved CPO. If the scheduled BMP is identified as a priority practice in the approved project implementation plan (PIP) and is needed to accomplish the project goals, the flat rate or “value” of the practice during the management year can be documented as “BMP inkind match” in the project budget. The specific value of this BMP inkind match must be based on the flat rates indicated in Table 3.

**Table 3. Eligible BMP and Rates for Calculating BMP Inkind Match Values.**

Herbaceous Wind Barrier - \$12/acre	Use Exclusion (Livestock) - \$15/acre
Prescribed Grazing - \$5/acre (See Footnote *)	Nutrient Management - \$5/acre

\* Prescribed Grazing must be the management component of all grazing systems scheduling the installation of livestock watering facilities, fences, etc.. When “Prescribed Grazing” is scheduled in a CPO and applied according to approved standards and specifications, the value of the BMP inkind match for Prescribed Grazing can be documented each year of a two or three year CPO. The maximum number of acres that can be used to calculate the annual BMP inkind match value for Prescribed Grazing will be limited to 640 acres. The value of the Prescribed Grazing inkind match must be documented on an annual basis and will not be recognized as eligible match until the project coordinator has verified the grazing system had been implemented as planned for the past grazing season. This compliance review must occur at the end of the annual grazing season/rotation.

**A. BMP Inkind Match Limitations**

With the exception of Prescribed Grazing (See Footnote to Table 3), all BMP listed in Table 3 are limited on the number of years the practices are eligible for cost share assistance. This limitation restricts Section 319 cost-share assistance to a maximum of two years under a three year CPO or one year under a two year CPO. During the non-cost share year or “management year” for a practice, the producer is still required to maintain the scheduled BMP with no cost-share assistance. Consequently, during the management year, the value of the scheduled BMP can be documented as eligible BMP inkind match if the practice was fully implemented according to the applicable standards and specifications. This “BMP inkind match” can only be generated through the implementation of the practices listed in Table 3.

Utilization of BMP inkind match generated from the practices listed in Table 3 will be limited to the support of costs associated with technical assistance provided by the local project sponsors. BMP inkind match generated through the implementation of the practices listed in Table 3 will not be eligible match for other cost-shared practices implemented under a producer’s CPO. During the development of the CPO, the cooperating producer must be informed of the BMP inkind match and agree to donate the BMP inkind match to the project sponsor before it can be documented as eligible match. The producer’s agreement to donate the BMP inkind match must be reflected in the signed CPO and documented in the appropriate financial records (i.e., Application for Payment Forms & Inkind Match Summary of NDDH - Form #2) for the project. Project staff must also verify and document that the BMP were properly installed and maintained throughout the management year before the BMP inkind match can be included in the project’s inkind match budget.

**B. Authorization Criteria for BMP Inkind Match Eligibility**

BMP inkind match will be eligible match to Section 319 funds used to support the delivery of technical assistance if all the following criteria are met and properly documented:

- The CPO and Section 319 Cost Share Agreement Provisions Form have been reviewed and signed by the producer. The CPO must also be signed by the project sponsors.
- The applied BMP is identified in the approved Section 319 project implementation plan as a practice needed to address documented water quality and/or NPS pollution concerns in the project area.
- The BMP is listed in Table 3 and was scheduled for implementation under an approved CPO.
- The BMP was not being actively implemented prior to the development of the CPO and will result in an improvement of previous management activities on the identified acreage.
- The BMP was fully installed and maintained according to NRCS standards and specifications or alternative practice specifications approved by the NPS Program.
- Compliance with the appropriate BMP standards and specifications has been verified and properly documented by local project staff.
- The value of BMP in-kind match was based on the appropriate BMP acreage rates listed in the Table 3.

## **VI. BMP OPERATION AND MAINTENANCE CONDITIONS**

Recipients of Section 319 cost-share assistance for the installation of BMP will be responsible for the operation and maintenance (O&M) of such practices. All cost-shared BMP must be maintained at a functional level for the life span of the practice as identified in Table 1 of Section II of this document. The life span of a practice is the minimum number of years the practice should serve its purpose with normal care and maintenance. Cost sharing must be refunded if the recipient destroys a practice during its life span unless a release is approved by the project sponsor and NPS Program before the practice is destroyed.

Maintenance of a practice is the keeping of a practice in a workable condition for its specified life span. There are many practices, such as forestry plantings, critical area treatments, and livestock manure containment facilities, that should last well beyond the maximum 10-year life span. Therefore, the project sponsors and staff must advise cost-share recipients they will be expected to maintain the practice for all its useful life.

The operation and maintenance of cost-shared practices will be determined through periodic compliance checks. The frequency of O&M compliance reviews will be dependant on the type of practice and its designated life span. For the “management practices” with a one year life span, compliance reviews will be conducted annually to determine compliance and eligibility for cost share assistance. Structural practices with life spans greater than one year will be inspected immediately after construction to verify completion and at least two more times during the project period to determine if the practice continues to be properly maintained. For O&M compliance review purposes, the maximum life span for any practice will not

exceed 10 years. Those practices with a life span greater than ten years will only be subject to compliance reviews during the first 10 years.

The Section 319 Cost Share Agreement Provisions Form signed by the producer requires any cost-shared practices to be maintained for the entire life span identified in Table 1. The local Section 319 project sponsors and/or staff will be responsible for verifying compliance with this operation and maintenance condition for the duration of the project period. When necessary, post-project compliance inspections of BMP with life spans exceeding the length of the project will be coordinated between the NPS Program and the previous project sponsors. The NPS Program will be responsible for the initiation of these post-project inspections.

## **VII. NPS PROGRAM COST-SHARE POLICIES FOR THE REPLACEMENT OR REPAIR OF ONSITE SEWAGE TREATMENT SYSTEMS**

Section 319 funding can be used to cost-share the repair or replacement of some privately owned onsite sewage treatment systems. Eligible systems will be limited to treatment systems installed before January 1, 2000 that are discharging effluent directly into a waterbody and/or identified as a primary source of pollutants impairing the beneficial uses of a waterbody. Section 319 financial support will be based on the documented costs associated with the onsite repair or replacement of the failed system.

### **A. Cost-share Policies**

Section 319 cost-share assistance will be authorized for the repair or replacement of an eligible onsite sewage treatment system (system) if the following criteria are met.

- Failure of the system cannot be attributed to mismanagement or accidental damage by the current owner.
- The system is discharging directly into a waterbody and/or has been identified, through the appropriate study or investigation, to be a primary source of pollutants impairing a waterbody's beneficial uses
- The system is for a private household or privately owned dairy facility.
- The system replacement or repairs have been installed according to Plumbing Codes for Private Sewage Disposal Systems (Chapter 62-03.1-03) and/or any requirements established by the local District Health Unit. As applicable, written verification of compliance with this criteria must be obtained from authorized District Health Unit personnel or the contractor that installed the system.
- All eligible costs have been properly documented and the appropriate forms (i.e., CPO, Application For Payment, etc.) have been signed by the system owner and approved by the project sponsor and the NPS Program.

If an onsite sewage treatment system will be replaced with an alternative system that exceeds the minimum requirements for onsite sewage treatment, Section 319 financial support will be determined using a prorated value rather than the actual costs for the alternative system. This value will be based on the estimated costs to repair or replace the failed system with an individual onsite sewage treatment system that meets the minimum requirements. Total Section 319 support for the alternative system cannot exceed 60% of this prorated value. Additional information that must also be provided to the NPS Program when financial support is requested for an alternative sewage treatment system is as follows:

- Identification of the total number and type of individual systems that do not comply with state or local regulations or requirements for onsite sewage treatment. This number must be verified by the local authority responsible for enforcement of the requirements.
- Written verification from the appropriate local authority regarding the specific onsite sewage treatment options (e.g., holding tanks, drainfield systems, etc.) that are allowable under local and/or state regulations or requirements.
- Two or more written price quotes on the estimated average costs to install the different onsite treatment options that would be allowable. These cost estimates must be provided for each treatment option or system type to allow verification of the least costly onsite treatment option.

## **B. Cost-Share Eligibility and Rates**

For a single household or dairy facility, eligible costs for Section 319 financial support will be limited to construction materials and services needed to install an onsite sewage treatment system that will comply with state or local regulations or requirements. This includes the costs for the repair of the current treatment system or replacement of the existing system with an equivalent onsite sewage treatment system. Expansion or upgrades to an existing treatment system will not be eligible for Section 319 financial support. Cost-share payments for a single household or dairy facility will be based on the actual documented costs. Section 319 cost-share assistance per system cannot exceed 60% of the total eligible costs. The balance of costs (i.e., 40%) will be the responsibility of system owner and/or local project sponsors.

The level of Section 319 financial support for the replacement of privately owned onsite sewage treatment systems with an alternative system that exceeds minimum onsite sewage treatment requirements and/or replaces multiple onsite sewage treatment systems will be determined using the following criteria:

- \* Total number and type of existing onsite sewage treatment systems that do not comply with local and/or state requirements or regulations.
- \* Lowest estimated cost to replace each failed system with an individual onsite sewage treatment system that will comply with the minimum state or local requirements.

Total Section 319 financial support for an alternative system will be based on the lowest estimated costs to install individual onsite treatment systems that will fully comply with the minimum requirements for onsite sewage treatment. Section 319 cost share assistance cannot exceed 60% of this estimated cost. The

balance of costs (i.e., 40% match to the 319 funds plus any additional costs for the alternative system) will be the responsibility of system owners and/or local project sponsors. If the total costs for the alternative system are lower than the total estimated costs for the appropriate onsite repairs or replacements, Section 319 financial support will be based on the total documented costs of the alternative system.

## **VIII. NPS PROGRAM COST-SHARE POLICIES AND RATES FOR URBAN STORMWATER MANAGEMENT BMP**

In the past, urban stormwater management systems were typically designed to serve as water conveyance systems. These systems utilized culverts, ditches, storm drain systems, bridges, etc. to move stormwater runoff safely and efficiently from one area to another. However, with growing public concern regarding water quality impacts associated with urban NPS pollution, several new types of stormwater management BMP have been developed. These “new” stormwater BMP are designed to not only transport runoff waters, but also to modify the flow rates and volume of water as well as improve the quality of the water transported in the system. The new stormwater management systems address both water quality and quantity by utilizing BMP such as wet or dry detention ponds, retention areas, natural filters (e.g., sand, vegetation), and/or constructed wetlands.

### **A. Cost-Share Policies**

Although urban areas occupy only a small percentage of the total acreage in North Dakota, polluted runoff from these areas can have a significant impact on the water quality and beneficial uses of a waterbody. To help address this concern, Section 319 cost-share assistance can be provided to install several types of urban BMP, if current Phase I or II Stormwater Rules do not apply to the targeted urban area. Section 319 financial assistance cannot be used to support activities associated with compliance requirements under the Phase I or II Stormwater rules.

Given the requirements under the Phase I & II Stormwater Rules and the complexities associated with the design and installation of stormwater management systems, cost share eligibility of urban BMP will be determined on a case-by-case basis. All eligibility determinations will be accomplished, in cooperation with the NDDH and EPA Region VIII Stormwater Program staff as well as the ND NPS Pollution Task Force during the annual project development and review process. Final approval for Section 319 funding will be dependent on current requirements under the Phase I and II Stormwater regulations and other criteria such as; the type of BMP, beneficial use impacts, interaction with existing stormwater management BMP, and appropriateness of the proposed BMP.

### **B. Cost-Share Eligibility and Rates**

If Phase I or II Stormwater Regulations do not apply to the targeted urban area, eligible urban BMP and cost share policies under the N.D. NPS Pollution Management Program are as follows:

Infiltration Basins	Wet Detention Ponds
Infiltration Trenches	Biofiltration Practices
Exfiltration Trenches	Constructed Wetlands
Pervious Pavement	Stormwater Filters
Modular Pavement	Extended Dry Detention Basins

## Dry Detention Basins

Section 319 cost-share assistance for the installation of an approved urban BMP will be based on actual documented costs. These costs may include, but not be limited to, contractor fees, materials, and equipment rental. All project costs must be documented and verified by the sponsoring entity and submitted to the NDDH. Cost-share assistance for eligible BMP will be provided at a sixty (60) percent Federal and forty (40) percent local matching ratio.

## **IX. NPS PROGRAM COST SHARE POLICIES FOR LIVESTOCK MANURE MANAGEMENT FACILITIES**

### **A. Eligible Facilities**

Section 319 financial assistance will be limited to animal feeding operations (AFO) that have been in existence for 5 or more years and do not meet the federal definitions for a large concentrated animal feeding operation (large CAFO). Facilities that are determined to be a large CAFO will not be eligible for Section 319 financial assistance. Designation of a facility as a large CAFO must be based on the federal limits set for the minimum number of animals allowed for a particular type (e.g., beef, dairy, etc) of animal feeding operation. The federal limits for the minimum number of animals per specific type of large CAFO are listed in Subsection K.

### **B. On-Site Total Containment Facility Construction**

Installation of the appropriate runoff control or containment practices within the existing feeding area must always be the first management option considered. Specific practices that will be installed and the construction schedules for the practices must be identified in the producer's CPO and/or attachments to the CPO (e.g., engineer cost estimate worksheet). Section 319 cost share assistance obligated under the CPO for the eligible components of the facility must be based on the NPS Program flat rates listed in Table 4 in Subsection I. Final construction designs for the facility must be approved by a registered professional engineer.

### **C. Facility Relocation**

In some cases, relocation of the animal feeding operation may be the most cost effective option. Section 319 financial and technical assistance can be used to support facility relocations if it is determined to be the most cost effective solution and approved by the project sponsors, NDDH and cooperating producer. Planning policies and limitations associated with a facility relocation are as follows:

\* Documentation verifying that relocation is the most cost effective solution must be obtained and included in the producer file. This documentation must compare the costs for facility construction at the existing feeding area versus the relocation site. Section 319 financial support must be limited to the least costly solution.

\* Management limitations within the abandoned feeding area, (including buildings), must be included in the operation and maintenance component of the producer's CPO. Continued concentration and/or feeding of livestock within the abandoned area will not be allowed following

the relocation of the feeding area.

\* To the extent possible, existing equipment and/or materials (e.g. fencing, waterers, etc.) within the abandoned feeding area must be salvaged and moved to the relocation site. Specific items to be moved must be identified during the design and planning phase. As applicable, the in-kind value and/or costs associated with the relocation of the materials and/or equipment must be included in the producer's CPO and engineer's cost estimates.

\* If it is determined that certain materials or equipment (e.g., waterers, windbreaks, etc.) cannot be moved or salvaged, Section 319 financial assistance can be used to replace the number or amount of materials and/or equipment that will be abandoned within the existing feeding area. Costs for additional materials or equipment (beyond what was at the existing feeding area) installed at the relocation site will not be eligible Section 319 expenses or in-kind match.

\* Cost share assistance to move or replace buildings used within the existing/abandoned feeding area must be approved by the NDDH during the planning phase. If replacing a building, the square footage of the replacement building to be cost shared cannot exceed the total area housed by the building(s) being abandoned within the existing feeding area. Financial assistance to move or replace a building must be based on the actual costs not to exceed the flat rate in Table 4. Section 319 cost share cannot exceed \$2.40/square foot (i.e., 60% of \$4.00). The approved flat rate and estimated Section 319 cost share assistance must be included in the producer's CPO.

\* Potential surface and ground water impacts must be evaluated at the relocation site. Relocated facilities cannot be located in a flood plain or within an area with a water table less than 6 feet from the surface.

\* The total surface area contained by the relocated facility cannot exceed the total surface area of the existing/abandoned feeding area or 500 square feet per animal. If loafing mounds are to be constructed at the relocated facility, the maximum allowable space per animal is 300 square feet. Square feet per animal must be based on the documented peak livestock concentrations at the existing feeding area.

\* The bunk-line or feeding space per animal within the relocated system cannot exceed the space that was provided at the existing/abandoned facility or 1 ½ feet per animal.

\* A relocated facility must be designed to achieve full compliance with all federal and state rules and regulations pertaining to livestock manure management.

\* The owner/operator of the facility must obtain the applicable permit or approval-to-operate from the NDDH.

\* Final construction designs for the relocation site must be approved by a registered professional engineer.

\* Section 319 assistance obligated for the eligible components of the facility must be based on the approved NPS Program flat rates listed in Table 4.

#### **D. Partial Manure Management Systems for Small Feeding Areas**

Under certain situations, Section 319 funding can be used to support the installation of BMP's to partially address manure management concerns associated with smaller livestock feeding areas. Section 319 cost share can be used to install individual practices that will help improve manure management and/or minimize runoff from or through the existing feeding area. Management practices that will reduce the number of livestock or the length of time they are within a concentrated feeding area will also be eligible for Section 319 support. Specific eligibility requirements that must be met to allow Section 319 financial support for a partial manure management system are as follows:

\* The feeding area is located more than 500 feet from surface waters of the state.

\* Livestock will not be fed or housed within the feeding area for more than 120 days during any 12-month period. This restriction does not apply to mature dairy cows or housed swine or turkeys. Upon request, the NDDH will also consider exceptions for special situations such as feeding replacement stock or sick animals.

\* Under typical management, the maximum number of animals fed and/or housed within the facility for any 12-month period will not exceed the following limits:

- Cattle (other than mature dairy cows or veal calves)	299
- Mature Dairy Cows	99
- Swine (>55 lbs.)	749
- Swine (< 55 lbs.)	2,999
- Turkeys	16,499
- Horses	149
- Sheep or Lambs	2,999

\* Structural practices and/or management measures will be implemented to prevent and/or minimize runoff from and through the feeding area.

\* Management practices will be implemented to keep the feeding area free of excessive manure accumulations. The feeding area will be scraped on a regular basis (e.g., 2-3 times per year) and all stockpiled manure will be field applied annually.

\* Total construction costs for the system do not exceed \$25,000 (i.e., \$15,000 in Section 319 cost share assistance).

The requirements listed above must be addressed in a management plan for the feeding area and the fields where manure will be applied. This plan must identify the structural practices to be installed as well as the annual management measures that will be implemented to prevent or reduce the transport of manure to waters of the state. The completed plan must be submitted to the NPS Program for approval before any BMP can be cost shared. Required information to include in the management plan is as follows:

- \* Producer name/address and location of the facility.
- \* The maximum number of animals to be fed and/or housed within the feeding area during any 12-month period.
- \* Time period and number of days the maximum number of animals will be fed or housed within the feeding area. If applicable, also provide the number of animals that will be within the feeding area for more than 120 days and why they will be there.
- \* List of all practices, including management measures and/or structural practices, that will be implemented. This list must include the estimated total costs, Section 319 cost share, and producer cash/in-kind match for each planned practice.
- \* If applicable, engineering designs and specifications for the planned structural practices. The designs for structural practices that require excavation (e.g., clean water diversions, earthen dikes, etc.) must be approved by a professional engineer.
- \* Site map(s) showing the locations of the planned practices, soil types, topography, and distance to waters of the state. Well locations/depths and static water table on site must also be provided.
- \* A nutrient management plan describing manure utilization measures that will be implemented on an annual basis. Information to include in the nutrient management plan is as follows:
  - Expected volume of manure to be applied annually.
  - Total acreage and maps of fields where manure will be applied.
  - Timing and frequency of manure applications.
  - Crops to be grown on fields where manure is applied.
  - Anticipated manure application rates and methods for determining the rates.
  - Location of manure storage/stockpiling area(s).
  - Measures to be used to prevent runoff from land application areas (e.g., 100 ft. setbacks from stream, vegetated buffers, etc.)
  - Description of annual records that will be kept to track annual manure application methods, timing, locations and rates.
- \* The management plan must be signed and dated by the producer. The NPS Program form for a Small Feeding Area Manure Management Plan is provided in Appendix D.

If the management plan meets NPS Program requirements, an approval letter will be issued to recognize the producer's efforts to improve manure management. The letter will not be a permit or approval to operate, but instead is intended to be a means to formally approve the planned BMP. This recognition will

only be applicable if the facility remains the same size (i.e., in acreage and livestock numbers) and follows the annual BMP implementation schedule described in the approved management plan. If a facility does expand or deviate from the approved management plan, the producer will need to coordinate with local NPS project staff and/or NDDH personnel to reevaluate if current state or federal permit requirements are applicable to the updated or expanded feeding area.

### **E. Construction & Cost Share Assistance Scheduling**

During the planning process, a facility construction and cost share schedule (start/completion date) must be established and identified in the producer's CPO. If construction of the system will occur over two phases or years, the completion dates; scheduled practices; and specific costs for each phase or year must be identified in the producer's CPO. The maximum allowable length for a construction and cost share schedule cannot exceed two phases or two years. In addition, cost share payments must be limited to two payments per system.

Under a two phase schedule, the practices needed to comply with state manure management regulations (e.g., containment pond, clean water diversions, etc.) must be installed during the first construction phase of the facility. Installation of remaining practices such as fencing, watering facilities, and seeding must be scheduled to occur during the second and final phase. Completion of all practices scheduled for a particular phase must be verified by the project coordinator and the design engineer before Section 319 cost share assistance can be solicited from the NPS Program. All the appropriate forms or documents verifying completion must be signed and included in the cost share request to the NPS Program.

### **F. Procurement of Services and Bid Policies**

Due to construction requirements associated with manure management facilities, it may be necessary for cooperating producers to employ private contractors. The specific method used by a producer to secure a private contractor will generally be contingent upon the estimated costs and type of services needed. Local project coordinators should review all the approved procurement methods with the producer and assist them with the selection of the most applicable method. All applicable procurement requirements for small or large purchases must be followed by the producer. Information on the approved procurement methods and definitions of small and large purchases are provided in Section X.

### **G. Producer Inkind Contributions**

Eligible producer inkind contributions will only include services and equipment provided entirely by the cooperating producer and/or their employees to complete a scheduled component of the livestock manure management facility. Table 4 lists the value of producer inkind match associated with the eligible construction items. Services or equipment purchased from an off-farm contractor or vendor will not be recognized as producer inkind match. These types of costs must be documented as actual costs with the appropriate receipt or voucher.

The value of eligible producer inkind services per construction item must be determined prior to construction and agreed upon by the producer and project sponsors. These agreed upon producer inkind services and values must be included in the producer's CPO and/or associated attachments.

## H. NDDH Permits and Approval to Operate

With the exception of eligible partial systems (see Subsection D), manure management systems supported with Section 319 funds must comply with the applicable federal and state livestock manure management rules and regulations. The owners and/or operators of these facilities must obtain a permit, if applicable, or an “approval-to-operate” from the NDDH, Livestock Waste Systems Permit Program. Technical assistance to solicit and gain a NDDH permit or approval-to-operate for the completed system should be provided by the local Section 319 project staff.

## I. Unit Cost Flat Rates for Eligible Construction Items

The approved NPS Program flat rate for each construction item must be used during the planning and design phase to develop estimates for: 1) total facility costs; 2) Section 319 cost-share obligations; and 3) producer match requirements. Since these design phase values will only reflect estimated costs for each construction item, actual costs per item must be documented by the producer and/or project sponsors. Upon completion of the scheduled construction items or phase, Section 319 cost share assistance and/or the value of producer inkind services must be determined using the actual documented costs and methods described in Table 4. In most cases, the Section 319 assistance will be based on the documented actual costs and the value of producer inkind services will be based on the design phase cost estimates or written price quotes. Completion of all construction items for the entire facility or a specific construction phase must be verified by the design engineer and project staff before Section 319 cost share assistance can be requested from the NDDH.

**Table 4. NPS Program Flat Rates for Estimating Manure Management System Costs and Determining Section 319 Cost Share Assistance and the Value of Producer Inkind Services.**

<b>Soil and Concrete Testing</b>			
<b>Construction Item</b>	<b>Flat Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Test Pits, General	\$75.00/pit	Based on actual costs	\$75.00/pit
Test Pits, Walk-in	\$100.00/pit	Based on actual costs	\$100.00/pit
Initial Soil Testing	\$800/facility	Based on actual costs	Not an eligible inkind service
Clay Liner Testing	\$1200/facility	Based on actual costs	Not an eligible inkind service
Concrete Testing	\$20.00/cylinder	Based on actual costs	Not an eligible inkind service

<b>Construction Area Site Preparation</b>			
<b>Construction Item</b>	<b>Flat Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Tree/Obstruction Removal	\$1000/acre	Based on actual costs, not to exceed \$1000/acre	\$1000/acre
Manure Removal	\$500/day	Based on actual costs, not to exceed \$2000/facility	\$500/day, not to exceed \$2000/facility
Fence Removal	\$1.00/linear foot	Based on actual costs, not to exceed \$1.00/linear foot.	\$1.00/linear foot
Windbreak/Board Fence Removal	\$2.00/linear foot	Based on actual costs, not to exceed \$2.00/linear foot.	\$2.00/linear foot
Waterer Removal	\$150/waterer	Based on actual costs, not to exceed \$150/waterer	\$150/waterer
Building Removal (Salvaged & Relocated to site in new system)	\$4.00/square foot	Based on actual costs not to exceed \$4.00/square foot.	Not an eligible inkind service
Building Removal (destroyed to allow construction - burned, buried, etc.)	\$0.50/square foot	Based on actual costs not to exceed \$0.50/square foot.	\$0.50/square foot
<b>Earthwork</b>			
<b>Construction Item</b>	<b>Flat Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Excavation/Earthfill	\$1.90/cubic yard	Based on actual costs	\$1.90/cubic yard
Sand over Liner (in-place)	\$1.50/cubic yard	Based on actual costs	\$1.50/cubic yard
Clay Liner Fill (placement)	\$2.20/cubic yard	Based on actual costs	\$2.20/cubic yard
Clay Liner Fill (stockpile)	\$1.45/cubic yard	Based on actual costs	\$1.45/cubic yard
Topsoil stripping	\$1.90/cubic yard	Based on actual costs	\$1.90/cubic yard
Topsoiling	\$0.40/square yard	Based on actual costs	\$0.40/square yard
Water for Construction	\$13.00/Kgal	Based on actual costs	\$13.00/Kgal

<b>Solid Separator Installation</b>			
<b>Construction Item</b>	<b>Flat Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Concrete Walls & Flatwork (in-place)	\$350/cubic yard	Based on actual costs	Actual costs for material plus \$110/cubic yard for installation
Drainfill (in-place)	\$12.00/cubic yard	Based on actual costs	\$12.00/cubic yard
Screens (in-place)	\$120/screen	Based on actual costs	\$120/screen
12" PVC Pipe	\$12.60/foot	Based on actual costs	Not an eligible inkind service
12" PVC Elbow	\$441/elbow	Based on actual costs	Not an eligible inkind service
<b>Underground Outlet Pipes and Culverts</b>			
<b>Construction Item</b>	<b>Flat Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
24" PE Pipe	\$19.65/foot	Based on actual costs	Not an eligible inkind service
18" PE Pipe	\$12.90/foot	Based on actual costs	Not an eligible inkind service foot
12" PE Pipe	\$6.70/foot	Based on actual costs	Not an eligible inkind service
18" Culvert	\$22.50/foot	Based on actual costs	Not an eligible inkind service
15" Culvert	\$18.75/foot	Based on actual costs	Not an eligible inkind service
Flared Ends	\$110/each	Based on actual costs	Not an eligible inkind service
Installation	\$10.00/foot	Based on actual costs	\$10.00/foot
<b>Access Road</b>			
<b>Construction Item</b>	<b>Flat Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Gravel (in-place)	\$12.00/cubic yard	Based on actual costs	\$12.00/cubic yard
Woven Geotextile	\$1.00/square yard	Based on actual costs	Not an eligible inkind service
Geotextile Placement	\$1.00/square yard	Based on actual costs	\$1.00/square yard

<b>Rock Rip Rap</b>			
<b>Construction Item</b>	<b>Flat Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Rock (in-place)	\$25.00/cubic yard	Based on actual costs	\$25.00/cubic yard
Non-woven Geotextile	\$1.00/square yard	Based on actual costs	Not an eligible inkind service
Geotextile Placement	\$1.00/square yard	Based on actual costs	\$1.00/square yard
<b>Heavy Use Areas (Note: Bunkline flatwork is limited to 12 ft. x 1 ½ ft./animal)</b>			
<b>Construction Item</b>	<b>Flat Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Concrete Headwall (in-place)	\$300/cubic yard	Based on actual costs	Actual costs for materials plus \$110/cubic yard for installation
Concrete Curb (in-place)	\$350/cubic yard	Based on actual costs	Actual costs for material plus \$210/cubic yard for installation
Concrete Flatwork (in-place)	\$210/cubic yard	Based on actual costs	Actual costs for materials plus \$110/cubic yard for installation
Drainfill (in-place)	\$12.00/cubic yard	Based on actual costs	\$12.00/cubic yard
<b>Fencing</b>			
<b>Construction Item</b>	<b>Flat Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Bunkline Fence (in-place)	\$7.00/linear foot	Based on actual costs, not to exceed \$7.00/linear foot	\$7.00/linear foot
Perimeter/Interior Fence (in-place)	\$7.00/linear foot	Based on actual costs, not to exceed \$7.00/linear foot	\$7.00/linear foot
Woven Wire Pond Fence (in-place)	\$1.25/linear foot	Based on actual costs, not to exceed \$1.25/linear foot	\$1.25/linear foot
Warning Signs	\$20/each	Based on actual costs	\$20/each
Windbreak Fence (Replacement of fence lost due to construction only)	\$11.00/linear foot	Based on actual costs, not to exceed \$11.00/linear foot	\$11.00/linear foot

<b>Watering Supply</b>			
<b>Construction Item</b>	<b>Flat Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Waterers (not to exceed the number of waterers prior to construction)	\$500/waterer	Based on actual costs, not to exceed \$500/waterer	Not an eligible inkind service
Trenching	\$2.75/foot	Based on actual costs	\$2.75/foot
Waterline (in-place)	\$2.40/foot	Based on actual costs	\$2.40/foot
Well & Pump (Only eligible if existing water source is verified as being inadequate)	Due to variability will be based on lowest local costs	Based on lowest of two or more written price quotes or bids	Not an eligible inkind service
Electrical Hookup (Only eligible if existing water source is verified as being inadequate)	Due to variability will be based on lowest local costs	Based on lowest of two or more written price quotes or bids	Not an eligible inkind service
<b>Seeding</b>			
<b>Construction Item</b>	<b>Flat Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Shaping, Grading, Mulching & Seeding	\$600/acre	Based on actual costs, not to exceed \$600/acre	\$600/acre
<b>Building Relocation (must be approved by the NDDH during the planning phase)</b>			
<b>Construction Item</b>	<b>Flat Rates for Estimating Design Phase Costs</b>	<b>Method for Calculating Amount of Section 319 Cost Share Assistance *</b>	<b>Value of Producer Inkind Services **</b>
Building Relocation or Replacement (if a replacement, total square feet cannot exceed square feet of abandoned buildings)	\$4.00/square foot	Based on actual costs not to exceed \$4.00/square foot.	Not an eligible inkind service

\* **Actual Costs** must be documented with the appropriate bid contracts, vouchers, receipts, etc.. Section 319 cost share cannot exceed 60% of the actual costs.

\*\* **Producer Inkind Services** are defined as services and materials provided entirely by the producer and/or their employees to accomplish a specific construction item. This does not include independent “off-farm” services and/or contractors (e.g., custom gravel hauling, manure hauling, etc.) hired by the producer or materials purchased from a private vendor. These costs must be documented with the appropriate receipts or vouchers and identified as actual costs rather than producer inkind services.

Eligible Section 319 costs and/or in-kind services associated with a livestock manure management system are limited to the construction items listed in Table 4. However, it is recognized that all potential costs associated with on-site construction or relocation of a manure management facility may not be included in Table 4. In such cases, Section 319 financial support for the omitted construction item or practice can be addressed on a case-by-case basis by the NDDH.

**J. Section 319 Cost Share Limitation per System**

Total Section 319 cost share assistance for a manure management system cannot exceed \$130,000. The Section 319 funds must first be used to support the installation of the practices needed to protect surface and ground water quality and comply with applicable state regulations. Eligible BMP would include practices such as holding ponds, diversions, clay liners and dikes. Additional practices that do not directly address potential water quality impacts, (e.g., interior fencing; heavy use pads; buildings, etc.), may also be cost shared if sufficient funds are available under the \$130,000 limit and only after the necessary practices have been installed to protect surface and ground water resources. In the event the Section 319 cost share limitation will not allow sufficient support for the practices needed to prevent contamination of surface and/or ground water resources, approval to exceed the \$130,000 limit must be obtained from the NPS Program.

**K. Federal Animal Limitations for Large CAFO's**

As previously indicated, large concentrated animal feeding operations are not eligible for Section 319 financial assistance. If the peak number of animals at a facility exceeds the federal limit listed below for that type of feeding operation, the facility is considered a large CAFO. Specific federal limits on the minimum number of animals for the most common types of large CAFO's are as follows:

<u>Animal Type</u>	<u>Minimum Number of Animals</u>
Cattle (other than mature dairy cows and veal calves)	1000
Mature Dairy Cows	700
Swine (> 55 lbs.)	2,500
Swine (< 55 lbs.)	10,000
Turkeys	55,000
Horses	500
Sheep or Lambs	10,000

## **X. APPROVED METHODS AND REQUIREMENTS FOR PROCURING CONSTRUCTION SERVICES, EQUIPMENT AND SUPPLIES**

Implementation of Section 319 projects may require the purchase of various equipment and supplies as well as the employment of private contractors to construct scheduled BMP. Practices that may require the acquisition of a private contractor include BMP such as livestock manure management facilities, clean water diversions, pipelines and ponds. Equipment purchases may include such items as computers, flow meters, and data loggers. Vehicles and construction equipment are not eligible equipment purchases under the NPS Program.

The costs and qualifications of private vendors and contractors may vary significantly within a project area. To ensure the project sponsors or producers secure the most qualified contractor or vendor for the lowest possible cost, the appropriate procurement method must be utilized. When planning major purchases or selecting a contractor, each of the approved procurement methods must be reviewed by the project sponsors or cooperating producer to ensure they are aware of their responsibilities and the specific procurement method required for the proposed purchase or BMP construction. Summaries of the approved methods for procuring construction services, equipment, or supplies are provided in the following subsections.

### **A. Procurement Procedures for Small Purchases:**

This category includes services, supplies, or other property that cost, in aggregate, between \$5,000 and \$25,000.

- Provide the appropriate information to the potential contractors or vendors and obtain written price or rate quotations from two or more qualified sources.
- Document the price quotes and dates they were received from each of the companies or vendors providing quotations.

### **B. Procurement Procedures for Large Purchases:**

This category includes all services, supplies, equipment, or other property that cost, in aggregate, more than \$25,000. Sealed bids, competitive proposals, or noncompetitive proposals are eligible procurement methods for large purchases. The specific method that can be used may differ between projects and will be dependant on the conditions and requirements of the procurement method. Following the completion of any procurement method for a Large Purchase, a contractual agreement should be developed between the approved contractor or vendor and the recipient of the services, supplies, or equipment. A sample Landowner/Contractor contract is provided in Appendix D. Summaries of the requirements for each procurement process are as follows:

## 1) Sealed Bids:

(a) Procurement by Sealed Bid - Bids must be publicly solicited, with a firm-fixed price contract (lump sum or unit price) being awarded to the entity whose bid conforms with the material terms and conditions of the bid invitation, and is the lowest in price. The sealed bid process is the recommended method for securing constructions services. To ensure sealed bid procurement is the most appropriate method, the following conditions must apply:

- Complete, adequate, and realistic specifications or purchase descriptions are available.
- Two or more responsible bidders are willing and able to compete for the business.
- The procurement lends itself to a firm-fixed price contract and selection of the successful bidder can be made principally on the basis of price.

(b) Sealed Bid Requirements: If a sealed bid process is used the following requirements must be met:

- Publicly advertized bids must be solicited from two or more suppliers. All potential bidders must be made aware of the established bid opening time and location.
- The bid invitation must be publicly advertized a minimum of 30 days prior to the established bid opening date.
- If necessary, the producer may establish a bid holding period, not to exceed 20 days, to allow for closer review of bids and bidder qualifications following the bid opening date.
- The bid invitation shall include specifications and pertinent attachments that clearly define the items or services associated with the project.
- All bids must be publicly opened at a specified time and at the lead project sponsor's office. This specific time and location must be described in the bid invitation.
- A written firm-fixed price contract award must be developed with the lowest responsive and responsible bidder.
- Any or all bids may be rejected if there are sound documented reasons.

## 2) Competitive Proposals:

(a) Procurement by Competitive Proposal: The competitive proposal process can be utilized if more than one source can submit an offer and either a fixed-price or cost-reimbursement type contract will be awarded. This method is generally used when conditions are not appropriate

for the use of sealed bids and factors other than the “lowest price” are needed to select the most appropriate services and/or entity.

This procurement process basically includes three phases or steps. The first phase involves a publicized request for proposals describing contractor qualifications and experience. Price quotes or bids are not included in this first phase. The second step of the process focuses on the review of proposals and the selection of the most qualified applicant. During the third and final phase, the producer and/or sponsors meet with the successful applicant to negotiate a mutually agreed upon price. If an acceptable price cannot be established, the producer and/or sponsor can obtain price quotes from the next most qualified applicants.

(b) Competitive Proposal Requirements: If the competitive proposal method is used the following requirements must be met:

- The request for proposals must identify all evaluation factors and their relative importance and be publicly advertized.
- The request for proposals must identify a deadline date and address for submitting proposals. A minimum of 30 days must be allowed for responses to the publicized request for proposals.
- Proposals must be solicited from two or more qualified sources and submitted to the project sponsor’s office.
- The project sponsors and/or individual(s) responsible for the review of the competitive proposals must have an established method for evaluating the proposals received and selecting the most appropriate proposal. The length of this review process should not exceed 20 days.
- The contract award must be offered to the entity or firm whose proposal is most advantageous to the project, with consideration given to the price and other factors necessary for successful completion of the project. This method should involve an evaluation of the competitors bid price and their qualifications and past experience relative to the project.

### **3) Noncompetitive Proposals:**

(a) Procurement by Noncompetitive Proposals: This method involves the procurement of services through the solicitation of a proposal from only one source. Noncompetitive proposals can only be used when it has been determined through previous solicitations of multiple sources that competition for the project is inadequate. This method may not be used if the sealed bid or competitive proposal methods can be used to secure the necessary services.

(b) Noncompetitive Proposal Requirements: If the sealed bid or competitive proposal procedures are not feasible, the noncompetitive proposal procurement method may be used if one or more of the following circumstances apply:

- The necessary services and/or items are only available through a single source.
- A public emergency requiring the project will not allow for delays associated with other procurement methods.
- The NDDH has approved the use of noncompetitive proposal procedures.
- After solicitation of a number of sources, competition is determined to be inadequate. The NDDH must be involved in the process that is used to make this determination.

## **LIST OF APPENDICES**

- Appendix A: Additional Practices Eligible for Section 319 Cost Share Assistance
- Appendix B: Contacts for Downloading the NSP Program BMP Tracking Database
- Appendix C: Section 319 Cost Share Agreement Provisions
- Appendix D: Small Feeding Area Manure Management Plan
- Appendix E: Sample Landowner/Contractor Contract

## Appendix A

### Additional Eligible Best Management Practices

The following practices, (in addition to those listed in previous Tables and subsections), are eligible for Section 319 cost share assistance within approved project areas. The Section 319 cost share assistance must be based on the actual documented costs to install the practice. Total Section 319 assistance cannot exceed 60% of the documented actual costs. The balance of costs (i.e., 40%) will be the responsibility of the local sponsors and/or cooperating landowner or producer.

<b>Code</b>	<b>Practice</b>	<b>Code</b>	<b>Practices</b>
001	Cultural Resource Review	028	Streambank Reshaping
003	Tree Hand Plants (Rooted)	029	Rock Toe or Barb (in-place)
004	Solar Pumps	030	Root Wads (in-place)
005	Engineering Services - Pre-Construction	031	Vegetated Gabions
006	Engineering Services - Construction	032	Weed Control for Established Trees
007	Engineering Services - Post-Construction	033	Site Prep for Trees (Light Mechanical w/Chemical)
020	Tree Machine Planting	034	Site Prep for Trees (Heavy Mechanical w/Chemical)
021	Tree Hand Plants (2 ft. Non-Rooted)	035	Site Prep for Trees (Light Mechanical)
022	Willow Post Planting	036	Site Prep for Trees (Heavy Mechanical)
023	Willow Fascines, Wattles, or Barbs	037	Soil Test (Cropland Nutrient Mgt.) (Non Cost Shared Practice)
024	Brush Mattress, Layering, or Packing	038	Precision Nutrient Management (Non Cost Shared Practice)
025	Evergreen Revetment	039	GPS Equipment (Nutrient Management)
026	Timber Stand Improvement (Scarification)	056	Alternative Power Source (Livestock Watering Only)
027	Direct Seeding of Trees		

## **Appendix B**

### **Contacts for Downloading the NSP Program BMP Tracking Database**

The NPS Program BMP Tracking database must be used to track Section 319 expenditures on BMP implemented within the project areas. The database will generate all the required producer agreement forms for scheduling BMP implementation and Section 319 cost share assistance. These required documents include the 1) Application for Assistance; 2) Conservation Plan of Operation; and 3) Application for Payment. Numerous other reports can also be developed by the database to aid with the management of Section 319 BMP cost share funds.

Training on the use and management of the database will be provided, as needed, by NDDH staff. To request training or information on how to access the database, contact Greg Sandness at [gsandnes@state.nd.us](mailto:gsandnes@state.nd.us) or 701-328-5232 or Joe Gross at [jlgross@state.nd.us](mailto:jlgross@state.nd.us) or 701-328-5292.

## **Appendix C**

### **Section 319 Cost Share Agreement Provisions**

**(Must be Attached to the Producer's CPO)**

Each undersigned person agrees to participate in the Section 319 Conservation Plan of Operation (CPO) and to comply with the following terms set forth and approved by the Section 319 Project Sponsors for the period covered by this agreement. The terms are as follows:

- The conservation and/or environmental practices identified herein address all the major nonpoint source pollution (NPS) concerns on the identified land units and will directly or indirectly improve the water quality and beneficial use conditions in the watershed project area. The specific corrective measures needed to reduce identified NPS pollution impacts to water quality and beneficial uses of the targeted waterbody are contained in the Conservation Plan Schedule of Operations (CPO) approved by the Section 319 Project Sponsors. All practices shall be performed according to the CPO and in accordance with the Natural Resources Conservation Service (NRCS) standards and specifications or alternative standards approved by the ND NPS Program that are in effect at the time the practice is performed. The practices shall be maintained for their normal lifespans even though the agreement has expired. Section 319 cost-share assistance for eligible practices will be issued upon completion of the practice and as scheduled in the agreed upon CPO or subsequently revised CPO approved by the cooperating producer/operator and Section 319 Project Sponsors.
- The undersigned person recognizes that the implementation of some practices in the CPO may result in the generation of eligible in-kind match. The in-kind match value of the specific practices scheduled in the undersigned's CPO has been reviewed with Section 319 project staff. Based on the information reviewed and contained in the CPO, the undersigned agrees to donate the in-kind match as scheduled in the CPO to the Section 319 Project Sponsors to support technical assistance provided by the project.
- Application for payment of Section 319 cost share assistance obligated for the completed practices scheduled under this agreement will be made on the ND NPS Program "Application for Payment" form which upon approval by the Section 319 Project Sponsors will become part of this agreement.
- Each undersigned person is jointly and severally responsible for compliance with the terms and conditions of this agreement as to the conservation and environmental problems that will be addressed by corrective measures identified in the CPO on the specified land units on which the undersigned is an owner and/or operator and for refund of payments determined in accordance with the following regulations for failure to comply with the terms and conditions of this agreement.
  - The undersigned voluntarily destroys the practice(s) installed.
  - The undersigned voluntarily relinquish control and/or title to the land on which the installed practices have been established and the new owner and/or operator of the land does not agree in writing to properly maintain the practices installed for the remainder of

- its specified lifespan and/or continue to fulfill the remaining contract requirements.
- Practice failure is determined by sponsors to be caused primarily by the fault of the undersigned.
- Any part of the CPO that is not followed or completed as scheduled will be a contract violation and refund of all cost shared items will be collected depending on the violation hearing and ruling of the Section 319 Project Sponsors, unless advance notification and revision of the CPO is completed prior to the scheduled contract completion date.

I certify that I have read and understand the provisions listed above:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix D

### SMALL FEEDING AREA MANURE MANAGEMENT PLAN

#### Name & Address

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### Location of Feeding Area (Legal Land Description)

Township\_\_\_\_ Range\_\_\_\_ Section\_\_\_\_ 1/4\_\_\_\_ 1/4\_\_\_\_

County: \_\_\_\_\_

#### Type of Facility (Note: Only existing feeding areas are eligible)

1) Confined Barn\_\_\_\_ Open Lot\_\_\_\_ Other\_\_\_\_(Describe)\_\_\_\_\_  
\_\_\_\_\_

2) Unpaved or dirt\_\_\_\_ Hard Surface\_\_\_\_ Other\_\_\_\_(Describe)\_\_\_\_\_  
\_\_\_\_\_

#### Type and Number of Animals

1) Total days per any 12-month period livestock are fed within the feeding area: \_\_\_\_\_

2) Time frame when a majority of livestock are fed within the feeding area (e.g., November - March): \_\_\_\_\_

3) Maximum number of all types of livestock fed/housed within the feeding area for any 12-month period:

<u>Type</u>	<u>Maximum Number</u>	<u>Time Period Present</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

## **Feeding Area Information**

- 1) Size of confined feeding area \_\_\_\_\_ (acres)
- 2) Type (e.g., cropland, winter pasture) and acres of additional areas that may be used for livestock winter feeding. List type and acres. \_\_\_\_\_  
\_\_\_\_\_
- 3) Distance of confined feeding area to nearest surface water of the state. \_\_\_\_\_ (miles)
- 4) Depth of wells on site \_\_\_\_\_ (feet) and depth to static water table \_\_\_\_\_ (feet)
- 5) Main soil type within the feeding area \_\_\_\_\_
- 6) Average percent slope within the feeding area \_\_\_\_\_ %
- 7) Provide a general description of land use and cover between the feeding area and the nearest surface water. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 8) Attach a summary of the type and total costs for all best management practices (BMP) scheduled to be installed. This summary should indicate the Section 319 and producer commitments for each BMP.
- 9) If applicable, provide construction designs for BMP requiring significant excavation (e.g., diversions, dikes, retention ponds, etc.). These designs must be approved by a professional engineer.
- 10) Attach an overview map of the feeding area(s) showing the locations of all feeding areas; shelters, manure storage areas, wells, and planned BMP's. The feeding area's proximity to the nearest surface water should also be shown on the map.

## **Nutrient Management Plan**

- 1) Method of manure applications: \_\_\_\_\_
- 2) Expected volume of manure to be applied annually: \_\_\_\_\_ (tons)
- 3) Number of times lots will be scraped/cleaned per year. \_\_\_\_\_
- 4) How and where will manure be stored between field applications \_\_\_\_\_  
\_\_\_\_\_

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5) Total acreage available for manure application:\_\_\_\_\_ Attach maps of fields and indicate the anticipated number of times manure will be applied to each field during a five year period.

6) Timing (e.g, spring, summer, etc.) and frequency (e.g., monthly, annually, etc.) of manure applications:\_\_\_\_\_

7) List the crops that are likely to be grown during a 5-year period on the fields where manure will be applied.\_\_\_\_\_

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8) Methods to be used to determine application rates: (e.g. annual soil and manure tests; book values for manure and periodic soil tests, etc.)\_\_\_\_\_

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9) List management measures that will be implemented to prevent runoff from the fields where manure is applied.\_\_\_\_\_

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10) Describe the type of records that will be kept to track the amount, location(s) and timing of annual manure applications.\_\_\_\_\_

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### **Certification**

I certify that I have examined and understand all the information provided in this management plan application and the associated attachments and that, to the extent possible, the information is true, accurate, and complete. I also certify that I have been informed and am fully aware that this management plan and the planned practices therein may not result in full compliance with current state rules regarding livestock manure management.

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(Owner/Operator Signature)

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(Date)

## Appendix E

### Sample Landowner/Contractor Contract (For Contractor Installation of BMP's)

Landowner and/or Producer	Contractor
<b>Name:</b>	<b>Name:</b>
<b>Address:</b>	<b>Address:</b>
<b>Telephone: ( )</b>	<b>Telephone: ( )</b>

<b>Project Location:</b>	<b>Attached Plans: Dated: _____, _____ Pages 1-</b> <b>Drawing No. _____</b>
<b>Project Description:</b>	<b>Attached Specifications:</b>

**BID ITEMS TO BE CONTRACTED IN THIS AGREEMENT:**

This Contract is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and between \_\_\_\_\_ hereinafter called the "Contractor" and \_\_\_\_\_ hereinafter called the "Landowner", to install the project, or bid item listed above, as specified above.

The Contractor shall perform all the work in accordance with the above referenced Plans and Specifications and subject to the general provisions hereinafter listed and the special provisions that may be hereinafter listed, for the Contract sum of \_\_\_\_\_ Dollars (\$) \_\_\_\_\_ as detailed on the attached bid sheet or written quote. The work shall be performed between \_\_\_\_\_ 20\_\_ and \_\_\_\_\_ 20\_\_.

**A. GENERAL PROVISIONS**

1. Except where otherwise noted, the Contractor shall provide and pay for all materials, labor, equipment, tools, power, water and other items necessary to complete the work.
2. Unless otherwise specified, all materials will be new, and both workmanship and materials shall be of a good quality and all work completed in a workmanlike manner.
3. Subcontractors engaged by the Contractor shall be bound by the plans and specifications and provisions of this Contract. The Contractor assumes the responsibility for payment of the Subcontractors. No contract between a Contractor and a Subcontractor will be considered a contract between the Landowner and/or Producer and the Contractor. Anything mentioned in the specifications, and not shown on the drawings, or shown in the drawings and not mentioned in the specifications, shall be of like effect as if shown in both. In the case of difference between the drawings and specifications, the specifications shall govern. In the case of discrepancy in figures, in the drawings, or in the specifications, the matter shall promptly be submitted to the Contracting Officer Representative (Project Engineer or Designated Representative) who shall make a determination in writing. Any adjustment by the Contractor without such determination shall be at the

Contractor's own risk and expense.

4. The Contractor shall, during his regular working hours, permit observation of the work by the Landowner and/or Producer, his authorized agents and public authorities who have a legitimate interest in the successful completion of the work.
5. Work items which require inspection and approval, which cannot be inspected at a later date due to being buried or covered, shall be performed only during regular work hours, 8:00 AM - 4:30 PM, Monday through Friday, with the exception of holidays, except with the prior permission of the Project Inspector. The Contractor shall allow inspections at the date and time set forth in the inspection plan.
6. When a unit price has been requested as a method of payment, the unit price submitted shall apply within a range of +/- 10 percent of the estimated number of units on the bid sheet
7. All disputes arising under or related to this Contract, shall be resolved by stating the problem in writing to the other party and that party must document the nature of the claim.
8. When additional work or changes in work are necessary, the Contractor, Landowner and/or Producer, Project Engineer and/or Project Designer must review the changes and make a technical determination that the work is needed. When a modification is approved, the design modification will be completed by the Project Engineer and signed by the Project Engineer. No design modifications may occur without the approval of the Project Engineer.
9. The Contractor shall re-execute any work that fails to conform to the requirements of this Contract and that appears during the progress of work. The Contractor shall remedy any defects due to faulty materials or workmanship that appear within one (1) year of the project's certification. This provision does not supersede any warranty on manufactured materials, equipment or components of the BMP that extend beyond one (1) year.
10. Should the Contractor fail to execute the work or make reasonable progress towards completion, the Landowner and/or Producer may issue a written "stop work notice" or terminate the contract. The Contractor shall not be entitled to compensation for completed work or installed materials and shall be responsible for the cost of removal or correction of faulty work or materials.
11. Should work be stopped for thirty (30) days or more by an act of God or other problems beyond the control of the Contractor, then the Landowner and/or Producer and Contractor will review the Contract and modify the performance dates.
12. The Landowner and/or Producer and Contractor shall each maintain adequate insurance to protect himself/herself from claims by employees, subcontractors and other items, which may arise from activities under this Contract.
13. The Contractor shall comply with all local, state, and federal regulations that apply to the contracted work.
14. Unless otherwise specified in the drawings and specifications, the Contractor shall remove all trash and debris that results from this contract from the site.
15. The Contractor shall be responsible for the repair or replacement of property that is damaged by the Contractor and/or his/her employees.

## **B. SPECIAL PROVISIONS**

The Landowner and/or Producer and Contractor will be responsible for the development of a payment schedule and guidelines for the practices and/or bid item listed above. This schedule should be completed prior to signing this contract. [NOTE: If applicable, Section 319 cost share assistance can only be requested upon completion of the practices or bid items listed above. Issuance of the cost share payment to the Landowner and/or Producer may take between 45 to 60 days.]

There are no other Special Provisions attached to this contract.

**In witness whereof, the parties hereto have executed this contract:**

Landowner's and/or  
Producer's Signature:

\_\_\_\_\_

Date: \_\_\_\_\_

Contractor:

\_\_\_\_\_

Date: \_\_\_\_\_