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LA CROSSE COUNTY DEPARTMENT OF LAND CONSERVATION

COUNTY ADMINISTRATIVE CENTER • LA CROSSE, WI 54601-3200

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August 28, 2001

James E. Harsdorf
Secretary
Wisconsin Department of Agriculture, Trade and Consumer Protection
PO Box 8911
Madison, Wisconsin 53708-8911

Public Hearing Testimony ATCP 50
August 29, 2001 Richland Center Wisconsin

On 8/2/01 the La Crosse County Land Conservation Committee approved the following regarding ATCP 50 Administrative Rules. The Land Conservation Committee, the primary implementers of the state's non-point source rules, opposes ATCP 50 in its present form for the following reasons:

- **Administrative Funding** As stated in DATCP's rule summary under, "*Cost to Local Governments*", the rules "*will have some impact on local governments*". The staffing strategy in ATCP 50 falls far short of the funding needed to implement this program. There is no clear strategy tying implementation of the state's performance standards with staff funding and Land and Water Resource Management Plan implementation. By resolution of the La Crosse County Board, new un-funded programs are unacceptable. The LCC is opposed to any new state mandated program that provides less than 100% reimbursement for staff.
- **Program Funding** ATCP 50 cost estimates do not include two new and unprecedented payments for producers. The addition of new "lost opportunity" and blanket upfront "maintenance" costs will actually reduce the number of eligible participants by substantially increasing payments for larger producers; for expansions; and for corporate farm acquisitions of non-conforming properties, thus limiting the amount of available funding for small farm operations.
- **Pre-emption** The LCC is adamantly opposed to DATCP's attempt to expand its statutory authority (based on DATCP's broad interpretation of s.281.16 (3)(e) over local governments through the pre-emption of how counties apply existing authority under 92.02 (3)(d). We do not believe that ATCP 50.01 (15) can require that "*any*" "*local regulation*" of "*soil and water conservation*" requires counties to make unprecedented new "lost opportunity" and "maintenance" payments or other payments as indicated in the rule as a condition of that local regulation.

(Over)

- **Rule Effect** ATCP 50 changes the non-point source “redesign” from a performance based rule as envisioned by the legislature, whereby producers, given a timetable, could reasonably meet “performance standards” outside of government intervention, to a prescriptive program that has no timetable, and does not require anyone to do anything unless funding for more costly prescriptive measures has been “received”. Good stewardship and voluntary efforts are not encouraged under this rule. Included in DATCP’s assessment of the rule is this statement regarding its effect:

“Farmers and landowners who have not requested funds for constructing practices or who have not been offered (now “receive”) cost-share funds when required to meet goals by a county implementation program are exempt from having to meet the goals of the proposed rule”

This statement is a clear indication of the agency’s failure to accomplish the legislative intent, that is, to “re-design” and “accelerate” the existing non-point source program.

- **Cooperation** Land Conservation Committees and their administrative staff were neither consulted nor heard in the construction of this rule draft. Many specific concerns were submitted after the first draft testimony, but were not addressed, while new and very troubling language was added. A rule this important should not be developed without seriously considering the input of its primary implementers. The La Crosse County Land Conservation Committee strongly recommends that DATCP staff be instructed to redraft ATCP 50 with extensive input through regularly scheduled meetings with LCC’s and their staff as represented by the Wisconsin Association of Land Conservation Committees.

La Crosse County would like to thank you for the opportunity to comment on this rule. More specific comments regarding the rule will be submitted prior to the end of the comment period.

Respectfully Submitted,

La Crosse County Land Conservation Committee and Department

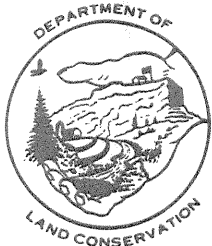
CC:Local Legislators

James Ehram, Chairman La Crosse County Board

Pat Thompson, Administrative Coordinator

Rebecca Baumann, Executive Director, WLWCA

WCA



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September 12, 2001

Mark Meyer
32nd District State Senator
State Capitol
PO Box 7882
Madison, WI 53707-7882

Dear State Senator Meyer;

The La Crosse County Land Conservation Committee, the primary implementers of the states "redesigned" non-point source program, has registered in **opposition to Draft Rules ATCP 50**. Attached is the public hearing testimony. More specific detailed comments have been sent to DATCP. In general the rule does not embody any of the concepts for the re-design as envisioned by the legislature, or agreed upon by the Animal Waste Advisory Committee or the Outreach Advisory Committee whose members included both agricultural and environmental groups. The foundation concepts missing from this rule are:

- Clear landowner expectations, what must be done and by when
- Reasonable time frames for a systematic evaluation of needs
- Use of "performance", not just prescriptive standards, with timelines for implementation
- Reasonable time frames for implementation of practices after site evaluations
- Reasonable cost share levels based on shared private and public responsibility
- Once installed, practices should be maintained at private not public expense
- Standards compliance for new and expanding operations at landowner expense
- Local ordinances must be respected and supported, not undermined
- Reimbursement of county expenses to implement the program

The LCC recommends that DATCP re-draft the rule and include the input of the Wisconsin Association of Land and Water Conservation Committees.

An unprecedented number of organizations and citizens have registered in opposition to this rule; however, the rule may still go forward in its present form. Please feel free to contact me if you have any immediate questions or concerns.

Sincerely

Don Franke
Director, Dept. of Land Conservation

CC: Three Local Legislators
DATCP Secretary Harsdorf
Jim Ehram
Pat Thompson
Rebecca Bauman, WLWCA

ATCP 50 Revisions

Issue	Revision
<p>Establish a single erosion model. s. ATCP 50.04(2) (Page 33)</p>	<ul style="list-style-type: none"> • Use the same model for soil erosion, RUSLE 2, as DNR.
<p>Include phosphorous (P) standard as part of nutrient management. s. ATCP 50.04(3) (Page 36) <i>References: DNR COMMENT, p. 2, WLWCA</i></p>	<ul style="list-style-type: none"> • Phase in P standard for nutrient management: <ol style="list-style-type: none"> a. DATCP and DNR use nitrogen-based standard for enforcement of performance standards; DNR to phase in use of P standard for impaired watersheds and outstanding waters. b. DATCP adds clarifying note that NRCS 590 standard is undergoing revision, and this may require revisiting standards. c. DATCP to initiate rulemaking to create a P standard before Jan 1, 2005. • DATCP will come up with tools to manage for P
<p>Create uniform procedures for local implementation, compliance and enforcement of state standards. ss. ATCP 50.06 NOTE, 50.08, 50.54(2) (Pages 38-39, 111) <i>References: DNR COMMENT, pp. 3-4, WLWCA</i></p>	<ul style="list-style-type: none"> • Develop a consistent and common approach for implementation, compliance and enforcement. • DATCP incorporated DNR standards determination of “existing” farms for purpose of required cost-sharing. • Establish a DNR/DATCP/County team to build on local implementation guidance.
<p>A landowner entitled to cost-sharing is not required to take action unless he or she receives cost-share grant. s. 50.08(1) (Page 39) <i>References: DNR COMMENT, 3-4; WLWCA COMMENT, p. 3</i></p>	<ul style="list-style-type: none"> • Added the phrase “an offer of” after the word “receives.”

Issue	Revision
<p>Define operations entitled to cost-sharing (new v. existing). s. ATCP 50.08(1) (Pages 39-40, 45-6) <i>Reference: ss. NR 151.09 and 151.095, Bethke, p. 1, Masterpole, , p 1</i></p>	<ul style="list-style-type: none"> • Incorporate DNR definitions for “existing” cropland and livestock operations into rule for purpose of determining cost-share entitlement.
<p>Modify cost-sharing requirement for aggravated conduct, emergency pollution problems and other circumstances. ss. ATCP 50.08, 50.54 (Pages 45, 111) <i>References: Key DATCP-DNR Issues memo, 9/13/01, p. 1</i></p>	<ul style="list-style-type: none"> • Establish exceptions to cost-share requirement for: <ol style="list-style-type: none"> a. Actions required to correct criminal or grossly negligent discharge of pollutants into waters of the state. b. WPDES permit holder. • Cost-sharing requirement does not limit emergency or interim action needed to prevent or mitigate imminent harm to waters of the state.
<p>Paying maintenance as part of cost-share. ss. ATCP 50.08(2), 50.40(3) (Pages 41-42, 82) <i>References: DNR COMMENT, p. 4; WLWCA COMMENT, p. 1.</i></p>	<ul style="list-style-type: none"> • Revise cost-sharing requirement for maintenance to exclude costs for normal operating routines such as clean outs of barnyards, storage facilities, and gutters. • Limit payments for mowing to \$10 per acre twice a year. • Delete “out of pocket” phrase from rule language.
<p>Paying the land-out-of production costs as part of cost-share. ss. ATCP 50.08(2), 50.40(17) (Pages 38-39, 82) <i>References DNR COMMENT, 4; WLWCA COMMENT, p.1</i></p>	<ul style="list-style-type: none"> • Limit payments based on parcel size of 1/2 acre. • Require payment according to higher CREP equivalent formula if farmers agree similar conditions
<p>Establish consistent minimum maintenance periods for nutrient management and other practices. s. ATCP 50.08(3) (Page 44) <i>References DNR COMMENT, p. 4</i></p>	<ul style="list-style-type: none"> • Use a 10-year maintenance period for capital improvements. • Use a 4-year period for nutrient management and other soft practices.

Issue	Revision
<p>Allow nutrient management requirements to be tailored to meet county needs. s. ATCP 50.12(2)(f) (Page 49) <i>References: WLWCA MEETING</i></p>	<ul style="list-style-type: none"> • Counties can prioritize areas NM where needed. • Support education effort.
<p>Ordinances must be reasonably consistent with ATCP 50. ss. ATCP 50.12(2)(b), 50.54(1) (Pages 48, 111) <i>References DNR COMMENT, p. 5; WLWCA</i></p>	<ul style="list-style-type: none"> • Delete requirement, and replace with requirement for submission of ordinances.
<p>Eliminate suggestion that counties have option to develop compliance procedures in LWRM plans. s. ATCP 50.12(2)(h) (Page 50) <i>References: WLWCA MEETING</i></p>	<ul style="list-style-type: none"> • Revised to require compliance procedures that will apply
<p>Specify criteria for the approval of a LWRM plan. s. ATCP 50.12(5) (Page 51) <i>References: WLWCA COMMENT, p. 3</i></p>	<ul style="list-style-type: none"> • Incorporate reference to require plan approval based on s. ATCP 50.12.
<p>Maintain cross-compliance requirement for farmland preservation. ss. ATCP 50.08(6), 50.16 (Page 45)</p>	<ul style="list-style-type: none"> • Require that farmers participating in FPP meeting standard to retain eligibility for program.
<p>Provide counties adequate opportunity for input on annual grant allocation plan. s. ATCP 50.28(2) (Page 64) <i>References WLWCA COMMENT, p 4</i></p>	<ul style="list-style-type: none"> • Provide a 30-day notice to counties and other interested parties before LWCB review.
<p>Reflect joint nature of that annual grant allocation. s. ATCP 50.28(2) (Page 64) <i>References DNR COMMENT, p. 6</i></p>	<ul style="list-style-type: none"> • Revise this section to better reflect the role of DNR.

Issue**Revision**

<p>Incorporate funding recommendations for county staffing grants provided by advisory committee. s. ATCP 50.32 (Pages 70-71) <i>References: WCA COMMENT, p. 4</i></p>	<ul style="list-style-type: none"> • Include three-part funding formula: <ol style="list-style-type: none"> 1. Maintain funding at levels that reflect watershed staff grants (only until closing date for watershed) 2. Increase, if needed, minimum amount to \$85,000, subject to appropriation 3. Distribute remaining funds using a formula based on county contribution to support staff. County will need to supply annual update on county contribution.
<p>Increase eligible staff support costs. s. ATCP 50.32(4) (Page 70) <i>References: WCA COMMENT, p. 5; Bethke, p. 2</i></p>	<ul style="list-style-type: none"> • Expand itemized list to include costs for information and education materials, newsletters, office supplies, maps and plats, photocopying, printing, and postage.
<p>Use of bond revenue funds. s. ATCP 50.34(4) (Page 76)</p>	<ul style="list-style-type: none"> • Ensure that DNR and DATCP apply same standard for using bond revenue funds, as determined by bond counsel.
<p>Ordinance requirement for providing cost-sharing in a city and village s. ATCP 50.40(2) (Page 81) <i>References WLWCA COMMENT, p. 4</i></p>	<ul style="list-style-type: none"> • Eliminate this requirement as a condition for cost-sharing.
<p>Redefine prohibited uses of cost-share grants. s. ATCP 50.40(3) (Page 83) <i>References: DNR COMMENT, p. 6</i></p>	<ul style="list-style-type: none"> • Modify the prohibition against payments for routine cropping and livestock practices to allow payment for no-till, contour stripping and other specified conservation practices, or in the alternative, delete this prohibition.

Issue**Revision**

<p>Third party signature of DATCP on cost-share contracts over \$50,000. s. ATCP 50.40(8) (Page 85) <i>References: WLWCA COMMENT, p. 4</i></p>	<ul style="list-style-type: none">• Retain dollar threshold and ensure that DNR requirements are consistent.• Follow DNR procedure for approval: receive contract, issue approval letter.
<p>Dollar amount triggering requirement to record cost-share contracts. s. ATCP 50.40(9)(Pages 85, 87) <i>References: DNR COMMENT, p. 7</i></p>	<ul style="list-style-type: none">• Lower trigger to \$10,000 consistent with DNR rules.• Include inflation factor: raise trigger to \$12,000 in 2005, and \$14,000 in 2010.
<p>Restrictions on use of funds for providing cost-sharing. s. ATCP 50.42(2) (Page 93) <i>References: DNR COMMENT, p. 7</i></p>	<ul style="list-style-type: none">• No change needed, adequately addressed at s. 50.40(16) (Page 80) that restricts funds from programs under chapters 92 and 281, Stats., from being combined to exceed 70% cost-sharing (90% for economic hardship).
<p>Tighten standards for qualifying for economic hardship. s. ATCP 50.42(4) & (5) (Page 94-5) <i>Reference: DNR COMMENT, p. 7; WLWCA COMMENT, p. 4</i></p>	<ul style="list-style-type: none">• Make revision requiring that a CPA or bank provide certification to the county land conservation committee, based on a financial statement prepared according to generally accepted accounting principles.• Create option for DATCP or DNR to review the certification method; agency providing cost-share funds would have the review option.
<p>Determine standards for certification of laboratories. s. ATCP 50.50 (Pages 106-07) <i>References DNR COMMENT, p. 8</i></p>	<ul style="list-style-type: none">• Revise rule to include standards for soil tests, test methods and nitrogen estimation.• Establish procedures for laboratory evaluation.

Issue**Revision**

As part of voluntary permit programs, cost-sharing must be offered for local regulations that require landowners to submit nutrient management plans or comply with other requirements as part of manure storage ordinance.
ss. ATCP 50.54(2), 50.08(2) (Pages 111)
References: WLWCA COMMENT, p. 2

- Create an exception to the cost-sharing requirement for nutrient management for local regulation that establishes a voluntary permit program for manure storage facilities adopted under s. 92.16 or 92.17, Wis. Stats.
- Insure that existing operations are not required to obtain a permit as a condition to continue operating.

DATCP review of proposed county ordinances.

s. ATCP 50.54(3) (Page 111-112)
References: WLWCA COMMENT, p. 2

- Eliminate mandatory submission of all proposed county ordinances for review.

Establish procedures for review and approval of local livestock regulation.

s. ATCP 50.60 (Page 117)
References: WLWCA

- Use of the same standards as DNR for ordinance approval under s. 92.15, Stats., subject to AG's opinion.
- Include specific language that requires local government to show why more stringent regulation is needed to achieve compliance with water quality standards and why less stringent provisions could not achieve compliance.

Establish DATCP as lead agency for technical standards.

ATCP 50, Subchapter VIII (s. ATCP 50.61 et seq) (Page 108)

- Made the changes recommended by DNR to the following rule sections: 50.62(3)(h), 50.63(2), 50.63(4) and 50.72(2).

Establish non-rulemaking procedures for adopting technical standards.

s. ATCP 50.61(2) (Page 121)
References: DNR COMMENT, p. 9; WLWCA COMMENT p. 4

- Clarified procedures used for adoption of standards described in note.

MINUTES
BOARD OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
February 12, 2002

Prior to the Business meeting, the board members had an informal discussion with State Representative Al Ott, Representative John Ainsworth and a Legislative Aide from Senator Hansen's Office. No action was taken during this information discussion. Representative Ott's Challenge-Stop using excuses, when there is a problem, address it. The Board needs to provide the leadership and get people behind them to move the agriculture industry forward and to fight for the future of agriculture and the dairy industry in Wisconsin.

Call to Order: Chair Mike Dummer called the meeting to order at approximately 9:15 a.m. at the Department of Agriculture, Trade and Consumer Protection, Madison, Wisconsin.

Members Present: Mike Dummer, Pete Knigge, Cindy Jarvis, Jeff Pickerign, Bev Anderson, Bill Geary, John Malchine, and Jim Holte.

Minutes: Pete Knigge moved to approve the minutes from the January 10, 2002 Board meeting. Bill Geary second. **Board approved motion unanimously.**

Board Member Matters:

Anderson: Consumer Protection-the top issues dealing with consumer protection are changing with technology being a leader in complaints; land use issues; Secretary's speech in Juda, Wisconsin on his version of leadership was very good.

Pickerign: Congratulations to the Secretary on his confirmation; land-use value assessment-farmers in his area are relieved, however wish that woodland areas would be put into the formula; in response to Representative Ott's challenge, Pickerign would like to see the Board become more economical; FFA students have been marketing ice cream at his high school every Friday.

Malchine: Congratulations to the Secretary for his confirmation; received wonderful feedback on the Secretary's speech in Juda; weather-nice warm dry winter; initiative of Governor for shared revenues is being misconveyed to public, feels it is a move in the right direction to make people more accountable for their budgets.

Holte: Attended conference in Denver on the National Cattlemen's Beef Association which is the least impacted by government programs in country. President shows this organization to be the only agriculture organization he addressed in the last number of years. President Bush was also in attendance.

Jarvis: Weather; attended Agriculture Day at the Capitol last week in January. It was a good day to meet with legislators and discuss issues and encouraged them not to lose

sight of non-point issues. Governor's speech was well received by the people in attendance; use-value assessment-education needs to be done in both areas so farmers understand the advantage but also for the non-farm agriculture community; forest products are something that should be looked at. Would like to see that pursued. Has been asked to be a meat moderator for FFA next month and is excited.

Geary: Congratulations to Secretary Harsdorf on his confirmation; attended the Wisconsin Pork Producers annual meeting, the Wisconsin Cattlemen's annual meeting and the Wisconsin Agri-Business Council annual meeting all conducted together in Wisconsin. The attitude was very positive. Spoke to a "farmers night" put on by the local area Lion's Club. 92 farmers were present in the Markisan area. As they talked about various issues, and rules in lights in the farming community, non-point was without question, perceived with a very positive attitude. Most farmers at the function were under the age of 40; Casino's and their compacts.

Knigge: Has been an excellent winter to work with livestock because of weather; there has been a 15 cent drop in cheese prices and milk prices are softening, but there should be respectable prices through the summer. Had a meeting last week at the Department of Commerce with the Auther Anderson consulting firm. They are specifically trying to develop a message for the governor to work with, and looking for what the Department of Commerce, the Department of Agriculture and the dairy industry can do for the Wisconsin dairy industry. They are trying to develop a unified voice and had some excellent input from a wide cross section of Wisconsin's dairy industry. At another meeting last week with Tri-County Land Conservation Committee, representing Winnebago, Calumet, and Outagamie counties, each county has declined to enroll in CREP program at this point. Keith Voyer was there and represented the Department very well. Next month will have the opportunity to be guest lecturer at the University of Wisconsin-Oshkosh relating to agriculture and the environment. The course title is the "eco system in crisis."

Dummer: Congratulations to the Secretary on his confirmation. Thank to Dave Jelinski for coming to La Crosse County to talk about CREP. Did a half-hour radio show with La Crosse County Farming Family Living agent and spoke predominantly on trade and consumer protection. In regards to Representative Ott's challenge: we have to recognize agriculture will look different, and we have to recognize some of the outcry from out in the country is simply those who resist change. Then you have to see the people who struggle to adjust to the change. They deserve some help and we need to help open the road to those who openly grasp the opportunity for change and make sure we remove the obstacles out of their way so they can move ahead.

Secretary's Report: The secretary updated the board on the following items:

- Budget: the Governor's message is clear. There is a \$1.1 billion shortfall and we are not going to fix that problem by raising taxes. There has so far been a 11 percent cut in the budget in the Department. This cut has not been done unilaterally. The Marketing Division is now the Division of Economic Development. We have saved

\$260,000 by doing this. The division of Food Safety and Animal Health will be working more closely together. Consumer Protection will be moving to the ground floor of the building, eliminating the regional office. Overall, this has effected 30 people with 10 layoffs in the department, down from the original 38 planned.

- His appointment as Secretary was confirmed by the Senate. Appreciates support.
- La Crosse Farm Show. Good opportunity to see where the industry sees itself.
- Attended a dairy forum in Pheonix, AZ for a day. Incredible to talk to people from the west coast and throughout the country who have a deep concern for where the dairy industry is going. Seventy permits have been stopped because the environmental regulations in California and there is deep concerns that while they have built additional cheese plant capacity, they may not have the milk to fill it.
- Attended the Wisconsin Pork Producers Winter Expo in the Dells and spoke to both them and the Wisconsin Cattlemen
- Went to the Wisconsin Independent Livestock Dealers and Auction Market Association where they have raised a lot of concern over the Animal ID issue and how it will impact them.
- Value-Added Conference in Eau Claire with over 250 people looking to try new innovative ideas and have been successful in doing that.
- Attended the Graziers Conference in Stevens Point with about 300 people in attendance that was very well received. It was the first time the Secretary has participated in the Graziers Conference.
- Joe Chrenlich, CEO of the State Fair, was at the agency to meet with the all the state fair superintendents from the livestock sector. Joe being the new CEO, thought it was important to establish a good working relationship between them. Good things are happening at State Fair Park
- Trying to establish a monthly program in Eau Claire on Consumer Protection issues.
- Chris Wallace from 20/20 came over to do a story on a very successful effort that our consumer protection had last summer that the court order taking on the door to door sales from the Kirby Vacuum Company using misrepresentation in terms of entering person's home trying to make sales.
- Thank you to Secretary Darrell Bazzell and Al Shea for their efforts in a cooperative step to develop non-point rules.

Public Appearances: Representative DuWayne Johnsrud and Representative Al Ott testified to the Board they support ATCP 50 and discussed the process for reviewing the rule in the legislature. They also thanked the Board, Secretary Harsdorf and the staff for their hard work with the rule.

Darrell Bazzell, Secretary of the Department of Natural Resources, and Al Shea spoke to the Board regarding their strong support of ATCP 50. A few weeks ago, the Board of Natural Resources passed their side of the package. Special thanks to former Chair, John Malchine, current Chair, Mike Dummer, Secretary Harsdorf, Nick Neher, Dave Jelinski and staff who worked tirelessly on this package.

Ron Statz, representing the National Farmers Organization, spoke to the Board regarding their support for ATCP 50. Statz stressed ATCP 50 is just one piece of the package and

it is important to realize that we need to have the partnership with government and citizens. Allowing a funding partnership is a key source in the package.

Bill Pielsticker, representing Wisconsin Trout Unlimited and The Clean Water Coalition, spoke to the Board regarding their support for ATCP 50. The group has concerns regarding vegetative buffer strips to protect rivers, streams and lakes and requirements for cost sharing for county ordinances. They believe that counties should retain local control and the flexibility to determine more site-specific solutions to challenging issues.

Caryl Terrell, representing the Sierra Club-John Muir Chapter, spoke to the Board regarding their support for ATCP 50. Terrell was pleased that the rule now includes requirement for the NRCS 590 standard based on phosphorus. The club appreciates the modifications made to the economic hardship formula and believes that the new formula will best ensure that we spend our limited funds on projects that have the greatest chance of success and farmer commitment. We also appreciate the rules recognition of the importance of vegetative buffers. We agree that it is important to require an extensive maintenance period on installation of these buffers, similar to the requirements of the CREP program.

Greg Gliechert, representing the Jennie-O Turkey Store, spoke to the Board regarding their support for ATCP 50. They do have a concern on implementation and the competitiveness of farming in today's economy in Wisconsin. Specifically with statute 50.60 and the review of county and local ordinances as it relates to water quality. Gliechert thought that the provision was too weak and did not follow statutory direction under 92.15.

David Crass, representing the Dairy Business Association of Wisconsin, spoke to the Board regarding their support for ATCP 50. Overall, they support the rule. However, they feel that provision 50.60 is too weak and did not follow the statutory direction under 92.15. Crass went on to provide the board with his legal arguments as to why ATCP 50 was legally inconsistent with the statutory requirements that dealt with local ordinances.

Bob Denman, representing the Wisconsin Farmers Union, spoke to the Board regarding their support for ATCP 50. Denman has followed this process since the beginning of the Outreach Advisory Committee and could not believe the number of issues that were on the table and the different positions that were taken by the interest groups. He never thought a draft would come together between farmers and environmentalists, however is pleased that this has happened.

Paul Zimmerman, representing Wisconsin Farm Bureau, spoke to the Board regarding their support for ATCP 50. Zimmerman feels this is a fair rule as it relates to agriculture. Farmers are willing to change things that improve water quality and believes that cost sharing is an effective part of this rule that will assist farmers in the cost associated with implementing these new rules.

ATCP 50-Land and Water Resource Management (Final Draft) – Nick Neher, Administrator for the Division of Agricultural Resource Management, and David Jelinski

spoke to the Board on approving the final draft of ATCP 50. Moved by Jim Holte and seconded by Cindy Jarvis, to amend proposed s. ATCP 50.08(3)(d) as follows:

(d) The landowner's cost to take or keep land out of agricultural production, if the landowner must take or keep more than ½ acre out of agricultural production in order to install or maintain the conservation practice. The landowner's cost, determined on the date of the cost-share contract, equals the sum of the ~~present values of the~~ annual costs that the landowner will incur over the maintenance period specified in the cost-share contract. The landowner's annual cost, for each year of the maintenance period, equals the number of affected acres multiplied by the per-acre weighted average soil rental rate in the county on the date of the cost-share contract. ~~The present value of each year's cost is that cost discounted at 3% per year, from the year of the cost share contract to that year.~~

Approved Unanimously.

Moved by Bev Anderson, seconded by Jeff Pickerign, to amend proposed s. ATCP 50.16(5) as follows:

(5) MONITORING COMPLIANCE. (a) A county land conservation committee may inspect a landowner's compliance with the conservation standards under sub. (1) and any farm conservation plan under sub. (4). A county land conservation committee shall inspect each landowner's compliance with the conservation standards under sub (1) at least once every 6 years, or on another basis that the secretary approves in writing after consulting the LWCB.

Approved Unanimously.

Bill Geary moved to approve the final draft of ATCP 50 with the amended proposals. Jim Holte second. **Motion approved unanimously.**

ATCP 30 – Atrazine for 2003 (Scope Statement) – Nick Neher asked the board to approve a scope statement for ATCP 30 for the department's annual atrazine rule update. Bev Anderson moved to approve the scope statement. Pete Knigge second. **Motion approved unanimously.**

ATCP 16 – Kennel Regulations (Scope Statement) – Dr. Clarence Siroky, State Veterinarian and Administrator for the Division of Animal Health, and Dr. Yvonne Bellay asked the Board to approve a scope statement for ATCP 16 which deals with kennels and pet facilities regulation. Pete Knigge moved to approve the scope statement. Bev Anderson second. **Motion approved unanimously.**

State Budget Adjustment Bill – Secretary Harsdorf and Barb Knapp updated the Board on the State Budget Adjustment Bill. There have been 10 layoffs in the Department. Georgia Pedracine, Human Resources Director, has been assisting those effected by the cuts with finding job and assisting with resumes and applications. The Secretary spoke to

each individual division explaining the cuts. ACT 16, the Biennial Budget, took a 5% cut. There was a 1.47 percent GPR lapse and a 3.5 percent lapse with the budget reform act.

Gypsy Moth Report – Nick Neher and Steve Millet updated the Board on the Gypsy Moth Program. In 2001, there were 30,000 traps set in Wisconsin and 378,939 catches. For 2002 there are 108 sites in 24 counties that are going to be used as spray blocks for a total of 365,000 acres. Wisconsin currently sprays with Pheromone Flakes and *Bacillus Thuringiensis* subsp. *kurstaki* (Btk.) which is applied between May 7 and May 31 with two treatments one week apart. The Pheromone Flakes are applied in late June with just one treatment. Btk is not harmful to humans, wildlife, pets, birds or fish. Pheromone Flakes prevents males from finding females and is used in low populations. Pheromone Flakes only affects gypsy moths.

Consumer Protection Report – Fran Tryon, Acting Administrator for the Division of Trade and Consumer Protection, and Jim Rabbit updated the Board on Consumer Protection issues. The Division has a core budget of \$3.5 million, however, the Consumer Protection division has returned over \$8.8 million to Wisconsin consumers. Other issues are as follows: gas price gauging-gas companies that raised prices during the September 11 attacks have returned \$500,000 to the consumers or donated to charities; Do not call list-draft rule will be presented to the Board at the March 12 meeting. There are scheduled hearings taking place in April and May; Internet charges-there have been many complaints regarding internet charges that the consumer was not made aware of prior to signing up for their particular carrier. Internet Service providers were part of the top ten list of consumer complaints. Other products of the Top 10 consumer complaints in order of ranking were as follows: (1) Telecommunications (2) Landlord/Tenant (3) Home Improvements (4) Gifting Pyramid Scheme (5) Mail Order Sales (6) Investments (7) Motor Vehicle Repairs (8) Telemarketing (9) Internet Service Providers (10) Magazines.

Rural Energy Management Advisory Council Report – Stan Shaw, Administrator for the Division of Marketing, asked the board for their consideration for appointments of John Bahnub, Chuck Cloninger, Ken Dixon, John Farrow, Jeff Opitz, and Stan Shaw to the Rural Energy Management Advisory Council. Shaw reported that a report on the REMC council will be provided to the Board at a later date. Jim Holte moved to approve the members of the council as presented. Jeff Pickering second. **Motion approved unanimously.**

Board Schedule: The Board of Agriculture, Trade and Consumer Protection will meet on Tuesday, March 12, in Green Bay at the Trade and Consumer Protection Regional Offices; Thursday, April 11 in Madison; Tuesday, May 14 in Madison and Thursday and Friday, June 6-7 in Wisconsin Rapids in conjunction with the Alice in Dairyland Finals.

Adjournment: By unanimous consent, the meeting was adjourned at 3:45 p.m.

Jim Holte, Secretary

Mike Dummer, Chair



STATE REPRESENTATIVE

Rick Skindrud

Committee Assignments:
Chair, State Affairs Committee

Member:
Agriculture Committee
Insurance Committee
Small Business Committee
Tourism Committee
Governor's Council on Tourism

FEB 18 2002

February 14, 2002

Rep. Al Ott
318 North, State Capitol
Madison, WI 53708

Dear Representative Ott,

The board of the state Department of Agriculture recently approved rules regarding soil conservation and water runoff.

I urge you, as Chair of the Assembly Committee on Agriculture, to take a very close look at this rule. The entire farming community and I are concerned about the restrictions and the substantial cost that it imposes on farmers. Also, this rule carries a significant price tag for the State to administer in a time when we are looking to cut costs to reduce our looming deficit. Please see if there are any changes that can or should be made.

Thank you for taking the time to consider my request.

Sincerely,

Rick

Rick Skindrud
79th Assembly District

Serving the Seventy-Ninth. New ideas for a new future...

Office: P.O. Box 8953, State Capitol • Madison, WI 53708-8953
(608) 266-3520 • Fax: (608) 266-7038 • Rep.Skindrud@legis.state.wi.us
District: 1261 LaFollette Road • Mt. Horeb, WI 53572 • (608) 832-4843



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection
James E. Harsdorf, Secretary

DATE: February 13, 2002

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South, State Capitol
P.O. Box 7882
Madison 53707-7882

The Honorable Scott R. Jensen
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
P.O. Box 8952
Madison 53708-8952

FROM: James E. Harsdorf, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Soil and Water Resource Management;**
Final Draft Rule (Clearinghouse Rules 00-039 and 01-090)

The Department of Agriculture, Trade and Consumer Protection is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. The department will publish a notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

Background

This rule is part of a comprehensive redesign of state nonpoint pollution control programs, mandated by the Legislature. The Department of Natural Resources (DNR) is proposing companion rules. The DNR rules establish performance standards to reduce pollution runoff from farms and other entities. The Department of Agriculture, Trade and Consumer Protection (DATCP) must adopt rules to implement the DNR performance standards. The Legislature has also directed DATCP to establish a nutrient management program and establish standards for certain soil and water professionals.

DATCP administers Wisconsin's soil and water conservation program under ch. 92, Stats. DATCP also administers the Conservation Reserve Enhancement Program (CREP), in cooperation with the U.S. Department of Agriculture. CREP is a temporary program that will fund long-term conservation practices (mainly shoreland buffer strips) on farms. CREP will provide up to \$40 million in state (bond revenue) funds to leverage up to \$200 million in federal funds for Wisconsin.

Honorable Fred Risser
Honorable Scott R. Jensen
February 13, 2002
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DATCP works with counties to implement these programs. DATCP helps pay for county staff, and finances county cost-share payments to landowners. DNR administers related cost-share grant programs to prevent nonpoint source pollution. DATCP has worked with DNR to coordinate these programs and minimize inconsistencies.

This rule repeals and recreates DATCP's soil and water resource management rules under ch. ATCP 50, Wis. Adm Code. This rule does not apply to the CREP program, but is designed to be consistent with CREP. We are enclosing several *fact sheets* summarizing key aspects of the rule. The *summary analysis* accompanying the rule explains the entire rule in plain language. Among other things, this rule:

- Requires farm conservation practices, subject to cost-sharing. Conservation requirements are based on DNR performance standards.
- Creates a farm nutrient management program to reduce water pollution.
- Spells out standards for cost-shared practices, to ensure that state money is well spent.
- Spells out standards for county programs. Counties have substantial flexibility to determine local needs and priorities, subject to this rule. The rule provides accounting controls to ensure proper use of state tax dollars.
- Spells out standards and procedures for DATCP grants to counties. These procedures are "transparent," so that counties and others can see exactly how dollars are being allocated. DATCP allocates available funds in an *Annual Grant Allocation Plan*. DATCP prepares this plan in cooperation with DNR. The Land and Water Conservation Board reviews and comments on a draft plan, before the DATCP Secretary signs it. Counties and other interested parties may also comment on the draft plan.
- Spells out standards and procedures for county cost-share payments to landowners.
- Spells out standards for soil and water professionals (agricultural engineering practitioners, nutrient management planners and soil testing laboratories).
- Coordinates state, county and local regulation of farm conservation practices.

Cost-Share Requirements

It will be costly to implement DNR performance standards over the entire state. Costs will vary from farm to farm, but many individual farmers will incur substantial costs. *DATCP and DNR estimate that it will cost farmers between \$373 and \$573 million to achieve full statewide compliance with DNR pollution runoff standards over 10 years.* This does not include the cost of county staff providing assistance to farmers.

State funds will pay part of this cost. DATCP and DNR will provide cost-share funding to counties, subject to legislative appropriations. Counties will provide cost-share grants to farmers to help them comply. DATCP and DNR currently provide about \$18 million in cost-share funding to counties each year. That level of funding, if continued, would provide \$180 million in cost-share dollars over 10 years.

Assuming a 70% average cost-share rate, the current level of funding would install approximately \$26 million worth of conservation practices each year, or \$260 million over 10 years. The CREP program, which is not affected by this rule, will also provide funding for conservation practices (mainly riparian buffers).

Counties typically use cost-share grants to encourage *voluntary* installation of conservation practices. In a voluntary arrangement, the parties are free to negotiate the cost-share rate (up to the maximum allowed by this rule). But if a county or local government *forces* a farmer to change an *existing* farming operation, the county or local government *must* offer cost-sharing under this rule.

In a voluntary transaction, a county may cost-share *up to 70%* of a farmer's cost (up to 90% if there is an "economic hardship"). If a county or local government *forces* a farmer to change an *existing* farming operation (as defined by DNR), the county or local government must offer *at least 70%* cost-sharing (at least 90% if there is an "economic hardship").

DATCP has worked with DNR in an effort to clarify cost-sharing rules. Cost-sharing will facilitate compliance with new regulatory requirements, and will affect the pace at which conservation practices are implemented. It will also affect the allocation of costs between farmers and taxpayers. This has been an area of special concern to farmers, counties, environmental groups and others.

Program Accountability

DATCP provides staffing grant funds to help pay for county conservation staff. DATCP and DNR also provide cost-share funds to pay for county cost-share grants to landowners. There are many needs and limited resources. This rule spells out standards for county programs. It establishes transparent procedures for allocating scarce funds among competing counties. It establishes sound accounting controls to ensure proper use of state tax dollars. It also clarifies the relationship between state and local laws related to soil and water conservation.

Rule Changes after Public Hearings

DATCP held hearings on its initial draft rule in March and April, 2000 (see Hearing Summary, *Attachment 1*). DATCP revised the draft rule following those hearings. On August 28-30, 2001, DATCP held hearings on its revised draft rule (see Hearing Summary, *Attachment 2*). DATCP made further revisions following those hearings. The DATCP Board approved a final draft rule on February 12, 2002. The final draft rule includes the following changes from the first and second hearing drafts:

Conservation Practices

- The final draft deletes conservation requirements that restate or overlap DNR performance standards. Instead, the final draft cross-references DNR performance standards.
- The final draft adopts effective dates that are consistent with the effective dates of DNR performance standards.
- The final draft clarifies nutrient management standards. In the final draft:
 - Standards are based on nitrogen, not phosphorus. DATCP will initiate rulemaking to incorporate federal phosphorus standards by 2005 if the federal government adopts phosphorus standards by that date.
 - Farmers applying manure or chemical fertilizers must have an annual nutrient management plan, prepared by a qualified planner. Farmers may prepare their own plans if they are qualified to do so. Plans must be based on reliable soil tests performed at certified laboratories, and must comply with standards in this rule.
 - Nutrient management requirements are phased in, according to DNR rules. The requirements first apply on January 1, 2005 for “existing” cropland in areas of special water quality concern. The requirements first apply to other “existing” cropland in 2008. But the requirements first apply to “new” cropland one year after the rule effective date. DNR rules define “new” and “existing” cropland.
- The final draft modifies technical standards for cost-shared conservation practices, to ensure consistency with DNR. DNR rules will cross-reference (rather than duplicate) DATCP technical standards.
- The final draft clarifies that soil erosion will be measured by a single, uniform method (RUSLE II) used by the federal government.

- The final draft strengthens DATCP certification of laboratories doing soil tests for nutrient management plans. DATCP or its agent may evaluate lab proficiency in performing soil tests. DATCP will work with DNR, the University of Wisconsin and others to develop an effective certification program.
- The final draft updates technical standards for cost-shared conservation practices, and establishes standards for a new “wastewater treatment strip” practice.

Cost-Sharing

- The final draft clarifies that a landowner is not *required* to change an “existing” agricultural practice without an offer of 70% cost-sharing (90% if there is an “economic hardship”). DNR rules determine whether an agricultural practice qualifies as an “existing” practice.
- The final draft clarifies that a landowner’s “cost” includes all the following:
 - Reasonable and necessary costs to install *and maintain* the conservation practice.
 - The reasonable value of necessary labor, equipment and supplies provided by the landowner.
 - The landowner’s cost to take land out of agricultural production, if the landowner must take more than ½ acre out of production in order to install or maintain a conservation practice. The landowner’s cost, determined on the date of the cost-share contract, is the sum of the annual costs that will be incurred over the maintenance period specified in the contract. A landowner may get a higher CREP-equivalent payment if the terms of the cost-share contract are equivalent to those under the CREP program, even if the land is not eligible for the CREP program. This CREP-equivalent payment does not apply to cost-share contracts signed after the CREP program expires.
- The final draft distinguishes between voluntary cost-sharing arrangements, and cost-sharing required for enforcement. In a *voluntary* arrangement, the parties are free to negotiate the cost-share rate (up to the maximum allowed by this rule). But if a county *requires* a farmer to change an “existing” agricultural practice, the county must offer at least 70% cost-sharing (90% if there is an “economic hardship”).
- The final draft clarifies “economic hardship.” A farmer qualifies for higher “economic hardship” cost-share payments if a bank or CPA certifies, based on a farm financial statement prepared according to generally accepted accounting principles, that the farmer is unable to make the normal 30% cost-share contribution. DATCP may review an “economic hardship” finding, as necessary.

- The final draft clarifies that the 70% (90% hardship) minimum cost-share requirement does not apply to any of the following:
 - A capital improvement if the landowner has already received cost-sharing to install and maintain that capital improvement for at least 10 years. (Most cost-shared practices are considered capital improvements.) *But if a county requires a landowner to keep more than ½ acre out of agricultural production in order to maintain a capital improvement beyond 10 years, the county must continue to share the cost of keeping that land out of production.* Land is not considered to be “out of production” if the landowner is free to use it for the landowner’s choice of the following: pasture, hay, or cropping using conservation tillage.
 - Annual conservation practices (contour farming, cropland cover, nutrient management, pesticide management, residue management or strip-cropping) for which the landowner has already received 4 years’ worth of cost-share payments. These annual practices are not considered capital improvements.
 - Conservation practices or costs to correct a landowner’s criminal or grossly negligent pollution discharge.
 - Conservation practices required under a WPDES permit issued by DNR.
- The final draft clarifies that cost-share requirements do not prevent emergency action to mitigate the effects of a pollution discharge.
- The final draft clarifies that cost-sharing requirements apply to (water quality-related) farm conservation practices required by county or local ordinance, as well as conservation practices required by state rules.
- The final draft clarifies that a county may combine funds from any public or private source to make cost-share payments. Combined payments from DATCP and DNR funds may not exceed 70% (90% if there is an “economic hardship”). But these limits do not apply to grants from other sources.
- The final draft clarifies that a county may package cost-share payments in a variety of ways. For example, it may negotiate a single overall payment (sometimes called an “incentive payment”) with a farmer who voluntarily agrees to maintain a combination of annual practices (nutrient management, residue management and contour farming, for example) as part of an overall farm conservation plan. The county may pay the farmer to *continue* these practices, even though the farmer has followed the same practices in the past. The county is free to negotiate the cost-share amount (“incentive payment” amount) with the farmer, as long as the arrangement is voluntary.

- The final draft clarifies that the county has broad discretion to determine cost-share priorities, subject to the general requirements in this rule.
- The final draft clarifies cost-share contract procedures, and reconciles prior inconsistencies with DNR rules. DATCP must approve individual cost-share contracts over \$50,000, but need not be a party to the contract. A cost-share contract “runs with the land” and must be recorded with the register of deeds if it exceeds the following amount:
 - \$10,000 if the cost-share contract is signed prior to January 1, 2005.
 - \$12,000 if the cost-share contract is signed on or after January 1, 2005, but before January 1, 2010.
 - \$14,000 if the cost-share contract is signed on or after January 1, 2010.
- The final draft clarifies that a loan is not a cost-share grant.
- The final draft clarifies that farmland preservation tax credits do not count as cost-share grants. But a county may suspend a farmer’s eligibility for farmland preservation tax credits if the farmer fails to comply with conservation requirements, *regardless* of whether the county offers cost-sharing to the non-complying farmer.

Staffing Grants to Counties

- The final draft guarantees higher minimum staffing grants to counties, subject to the availability of funds. The final draft also guarantees continued funding for DNR priority watershed staffing. DATCP makes its annual grant awards in an *Annual Grant Allocation Plan* reviewed by the Land and Water Conservation Board. Under the final draft rule, DATCP will annually offer to each eligible county *at least the greater of the following*:
 - \$85,000.
 - The amount awarded to that county under the 2001 allocation plan for staffing related to DNR priority watershed projects, less any amount awarded to that county under the 2001 allocation plan for staffing related to priority watershed projects that have subsequently closed.
- The final draft provides that DATCP will make staffing grant *payments* on a *reimbursement* basis, consistent with other state and federal grant programs. Counties may claim reimbursement, at applicable statutory rates, up to the amount of their annual grant allocation. This will simplify accounting, increase accountability, and facilitate the administration of complex legislative reimbursement formulas. Because DATCP will make staffing grant payments on a reimbursement basis, counties will no longer be required to file annual financial reports with DATCP.

- The final draft clarifies the method for reimbursing county staff expenditures, and makes it easier for counties to receive the highest possible statutory reimbursement rate. The Legislature has specified higher reimbursement rates for staff working in DNR "priority watersheds." DATCP has construed this broadly, to include staff working on CREP or other programs in DNR priority watersheds (the geographic areas) – not just those working on the DNR "priority watershed" *program*.
- The final draft clarifies that counties may use staffing grants to pay for contract consultants, as well as regular county staff. The final draft also permits counties to claim reimbursement for more kinds of staff support costs.
- The final draft allows counties to redirect unused staffing grant funds for cost-share grants to farmers, with DATCP approval.
- The final draft combines all county staff funding (including staff funding for DNR's priority watershed program) into a single annual staffing grant, as contemplated by the Legislature. This change will not affect funding *amounts*, but will give counties more flexibility in their use of staffing funds.
- The final draft clarifies that, with DATCP's permission, a county may redirect *staffing* grant funds to a city, village, town, county drainage board, lake district or tribe operating in the county. A county may *not* redirect *cost-share* funds to a local entity, but may make cost-share grants to landowners to help them comply with local conservation requirements.

County and Local Ordinances

- The final draft clarifies that local livestock ordinances may not exceed state standards, unless DATCP or DNR approves the more stringent standards as being necessary for water quality. This clarification is based on a Justice Department opinion interpreting s. 92.15, Stats. The rule also spells out a process by which local governmental units may seek DATCP or DNR approval (DNR is proposing a similar rule).
- The final draft *deletes* provisions that would have required counties to submit *all* proposed farm conservation ordinances for DATCP review, and would have required all county and local ordinances to be consistent with state farm conservation standards. County and local governments strongly opposed these provisions. DATCP retains discretionary authority to review and comment on county and local ordinances, as necessary. Counties, in their land and water resource management plans, must identify ordinances that they plan to use to implement their plans.
- The final draft clarifies that cost-sharing requirements apply to (water quality-related) farm conservation requirements imposed by county and local ordinances, as well as for those imposed by state rules.

County Programs; General

- The final draft makes a number of drafting changes in response to county comments, to facilitate the administration of county programs.

Other Drafting Changes

- The final draft makes a number of other technical and drafting changes, including changes recommended by the Legislative Council Rules Clearinghouse (see below).

Response to Rules Clearinghouse Comments

DATCP submitted a hearing draft to the Legislative Council Rules Clearinghouse in February, 2000 (*Clearinghouse Rule 00-039*). DATCP submitted a second hearing draft in July, 2001 (*Clearinghouse Rule 01-090*). The Rules Clearinghouse prepared reports on both drafts. The reports were dated March 13, 2000 and August 23, 2001, respectively. The following summary describes DATCP's response to each Clearinghouse report.

First Clearinghouse Report (*Clearinghouse Rule 00-039*)

DATCP modified the final draft rule to address all of the Rules Clearinghouse comments, except as noted below. The following comments also respond to Rules Clearinghouse questions.

Comment 1.c. See s. 92.14(6)(k), Stats. Recording gives notice to subsequent landowners who may be required to maintain a cost-shared practice. The final draft rule requires recording of the following cost-share contracts:

- A contract over \$10,000 if the contract is signed prior to January 1, 2005.
- A contract over \$12,000 if the contract is signed on or after January 1, 2005, but before January 1, 2010.
- A contract over \$14,000 if the contract is signed on or after January 1, 2010.

Comment 1.e. ATCP 50.56 applies prospectively, so the 1983 date is not necessary.

Comment 4.b. DATCP believes that the general cross-reference is appropriate.

Comment 4.c. DATCP is adopting this rule in concert with DNR, so that the referenced DNR rule will be in effect by the time this rule takes effect.

Comment 4.e. DATCP has complied with s. 227.14(3), Stats. See NOTE.

Comment 4.h. DATCP believes that the current reference is appropriate, in light of s. 92.17, Stats.

Comment 5.a. The two statutory definitions are, in fact, slightly different. DATCP has nevertheless eliminated the NOTE, as implicitly suggested by the Clearinghouse.

Comment 5.m. DATCP agrees. ATCP 50.40(3)(a) merely provides some flexibility to approve additional conservation practices for cost-sharing pending completion of a lengthy rule amendment process.

Comment 5.n. DATCP believes that the current language is adequate.

Comment 5.p. An agreement under the referenced provision (now numbered ATCP 50.40(9)(L)) is a *restrictive covenant*. It does not necessarily have to be in the form of an *easement*. See, for comparison, s. 91.01(7), Stats.

Comment 5.r. DATCP prefers the word "disclose."

Comment 5.s. DATCP believes that the current language is appropriate. DATCP may approve an ordinance amendment under par. (c) without the submission of information under par. (a)1. to 3.

Comment 5.t. DATCP prefers the construction in the final draft rule.

Comment 5.u. DATCP does not believe that any clarification is necessary.

Comment 5.v. DATCP believes that the provision is adequate as written.

Comment 5.x. The rule draft accurately states DATCP's intent. A 10-year maintenance provision is generally required for "capital improvements" but not for annual cropping and tillage practices.

Second Clearinghouse Report (*Clearinghouse Rule 01-090*)

DATCP modified the final draft rule to address all of the Rules Clearinghouse comments, except as noted below. The following comments also respond to Rules Clearinghouse questions.

Comment 4.a. DATCP believes that the statutory references in this provision (now numbered ATCP 50.01(33)) are appropriate.

Comment 5.a. DATCP deleted this note, as implicitly suggested by the Rules Clearinghouse. The note was intended to point out a slight difference in the two statutory definitions.

Comment 5.b. A state-financed cost-share grant would normally pay part (not all) of the cost (see s. ATCP 50.42). But in some cases, a state-financed cost-share grant could

Honorable Fred Risser
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be combined with cost-share funds from other sources to pay the entire cost. A "cost-share grant" under s. ATCP 50.08, for example, could come from state, federal, local or private sources, or a combination of those sources.

Comment 5.c. DATCP intends this provision (now numbered ATCP 50.01(15)) to read as written.

Fiscal Estimate

This rule will have a fiscal effect on the department and counties. See final fiscal estimate, *Attachment 3*.

Small Business Analysis

This rule will have a substantial impact on farmers, many of whom are "small businesses." See small business analysis ("final regulatory flexibility analysis"), *Attachment 4*.

Environmental Assessment

This rule will have a positive effect on the environment. See final environmental assessment, *Attachment 5*.

Resolution

Request Legislative Audit of Soil and Water Resource Management Section of the State Department of Agriculture, Trade and Consumer Protection (DATCP)

WHEREAS, it is the intent of the Legislature that the State Department of Agriculture, Trade and Consumer Protection and the Counties through their Land Conservation Committee's work in a cooperative manner to implement State soil and water conservation programs at the local level, and

WHEREAS, this legislative intent is clearly stated and clarified in Sections 91 and 92 State Statutes as well as the ATCP 50 Administrative Rule, and

WHEREAS, over the last several years the cooperative working relationship between the soil and water resource management section of DATCP and the County Land Conservation Committee's has greatly deteriorated, and

WHEREAS, this deterioration in relationship has been accelerated due to the manner in which DATCP has promulgated its ATCP 50 Administrative Rule, and

WHEREAS, this deteriorating relationship has been clearly articulated by the Land Conservation Committee's through resolutions adopted by their State Association which request that leadership changes occur at DATCP in order to improve the working relationship, and

WHEREAS, the deterioration in the working relationship is further evidenced by the fact that of the 76 people representing the 38 countys, which presented testimony concerning DATCP's current revision to the ATCP 50 Administrative Rule, all counties testified in opposition to the Administrative Rule, and

WHEREAS, county concerns associated with the local implementation of the States CREP Program are attributable to this deteriorated relationship and the resultant mistrust.

THEREFORE, BE IT RESOLVED, that a letter be drafted and forwarded to the Co-Chairs of the Legislative Audit Committee requesting that a program audit of the Soil and Water Resource Management Section of DATCP be conducted in order to determine if the current revision to ATCP 50 and/or other programs administered by the Soil and Water Resource Management Section of DATCP comply with the intent of the Legislature.

Dated this 18th day of February, 2002, in Whitehall, Wisconsin.

Respectfully submitted,

Geraldine Van Tassel

Geraldine VanTassel

Richard Frey

Richard Frey

George Brandt

George Brandt

Gary Monson

Richard Kiekhoefer

Richard Kiekhoefer

Gerry Blaha

Jerome Blaha

David Quarne

Gene Marsolek

LAND CONSERVATION COMMITTEE

STATE OF WISCONSIN))SS
TREMPEALEAU COUNTY)

I, Paul L. Syverson, Trempealeau County Clerk, hereby certify that the attached resolution is a true and correct copy of the resolution adopted by the County Board of Supervisors of Trempealeau County on the 18th day of February, 2002.

Paul L. Syverson

Paul L. Syverson
Trempealeau County Clerk

DATE: February 25, 2002

TO: Beata Kalies

Committee on Agriculture

FROM: John Scocos, Assembly Chief Clerk

RE: Clearinghouse Rules Referral

The following Clearinghouse Rule has been referred to your committee.

CLEARINGHOUSE RULE 01-090

AN ORDER to amend ATCP 3.02 (1) (h); to repeal and recreate chapter ATCP 50; and to create ATCP 40.11, relating to soil and water resource management.

Submitted by **Department of Agriculture, Trade and Consumer Protection.**

Report received from Agency on **February 20, 2002.**

To committee on **Agriculture.**

Referred on **Monday, February 25, 2002.**

Last day for action - **Wednesday, March 27, 2002.**

Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs do so, you are not required to send a copy of the text of the rule to each member at this time. Your notice could state that members should contact you if they wish to receive a hard copy of the rule. **(Please note that the text of Clearinghouse Rules beginning with the prefix "01" is now available online in the Clearinghouse Rules infobase in FOLIO.)** Please put a copy of your official notification memo in the rule jacket.

Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Ken Stigler (6-2406) or your Legislative Council attorney. If you wish to learn more on this subject, read section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.

Kalies, Beata

From: Dave Appleyard [appled@tremplcounty.com]
Sent: Wednesday, February 27, 2002 2:21 PM
To: Rep.Ott@legis.state.wi.us
Cc: Dick Frey; Dick Kiekhoefer; Gerry Van Tassel; Rep.Ott@legis.state.wi.us
Subject: County Board Resolutions

Notice: The views contained within this communication may not necessarily represent the policies of the County of Trempealeau. This statement is being provided as an attachment to all electronic communications to ensure my compliance with the Trempealeau County Computer Use Policies and Procedures.

Resolution

Request Legislative Audit of Soil and Water Resource Management Section of the State Department of Agriculture, Trade and Consumer Protection (DATCP)

WHEREAS, it is the intent of the Legislature that the State Department of Agriculture, Trade and Consumer Protection and the Counties through their Land Conservation Committee's work in a cooperative manner to implement State soil and water conservation programs at the local level, and

WHEREAS, this legislative intent is clearly stated and clarified in Sections 91 and 92 State Statutes as well as the ATCP 50 Administrative Rule, and

WHEREAS, over the last several years the cooperative working relationship between the soil and water resource management section of DATCP and the County Land Conservation Committee's has greatly deteriorated, and

WHEREAS, this deterioration in relationship has been accelerated due to the manner in which DATCP has promulgated its ATCP 50 Administrative Rule, and

WHEREAS, this deteriorating relationship has been clearly articulated by the Land Conservation Committee's through resolutions adopted by their State Association which request that leadership changes occur at DATCP in order to improve the working relationship, and

WHEREAS, the deterioration in the working relationship is further evidenced by the fact that of the 76 people representing the 38 countys, which presented testimony concerning DATCP's current revision to the ATCP 50 Administrative Rule, all counties testified in opposition to the Administrative Rule, and

WHEREAS, county concerns associated with the local implementation of the States CREP Program are attributable to this deteriorated relationship and the resultant mistrust.

THEREFORE, BE IT RESOLVED, that a letter be drafted and forwarded to the Co-Chairs of the Legislative Audit Committee requesting that a program audit of the Soil and Water Resource Management Section of DATCP be conducted in order to determine if the current revision to ATCP 50 and/or other programs administered by the Soil and Water Resource Management Section of DATCP comply with the intent of the Legislature.

Dated this 18th day of February, 2002, in Whitehall, Wisconsin.

Respectfully submitted,

Geraldine VanTassel

Richard Frey

George Brandt

Gary Monson

Richard Kiekhoefer

Jerome Blaha

David Quarne

Gene Marsolek

LAND CONSERVATION COMMITTEE

RESOLUTION

Decline Offer to Implement the States Conservation Reserve Enhancement Program (CREP) within Trempealeau County

WHEREAS, the Department of Agriculture, Trade and Consumer Protection (DATCP) has offered a Conservation Reserve Enhancement Program (CREP) Contract to Trempealeau County, and

WHEREAS, the intent of CREP is to protect County surface water resources by encouraging county landowners to enroll up to 2700 acres of buffer strips into CREP 15 year contracts or perpetual easements, and

WHEREAS, the CREP Contract offered to Trempealeau County does not provide state funds to administer and implement the CREP Program, and

WHEREAS, the DATCP entered into a Contract with the United States Department of Agriculture (USDA) within which the DATCP offered \$133,522.00 as a County tax levy in kind contribution for staff without the knowledge or consent of Trempealeau County, and

WHEREAS, the CREP Contract offered to Trempealeau County by the DATCP, obligates the county to have continuing duties and enforce contracts without reimbursement for a minimum of seventeen (17) years, and

WHEREAS, based upon Contract concerns raised by the Counties Corporation Counsel, and the Wisconsin Counties Association, Land Conservation Staff and the County Corporation Counsel unsuccessfully attempted to negotiate a CREP Contract with DATCP which was not so financially and legally detrimental to Trempealeau County.

THEREFORE, BE IT RESOLVED, that the Trempealeau County Board of Supervisors shall not enter into a CREP Contract to implement the States CREP Program for the following reasons:

1. Lack of state funding support for the implementation and administration of the State's CREP Program.
2. Ambiguous immediate and long-term administrative, legal and financial obligations to the County.
3. The uncooperative and unproductive nature of DATCP's Contract negotiations with the county.
4. Financial uncertainties resulting from the Governor's proposed Budget Reform Bill.

BE IT FURTHER RESOLVED, that the Land Conservation Committee and its staff encourage DATCP by any means available, to implement the States CREP Program within Trempealeau County.

Dated this 18th day of February, 2002, at Whitehall, Wisconsin.

Respectfully submitted,

Geraldine VanTassel

Richard Frey

George Brandt

Gary Monson

Richard Kiekhoefer

Jerome Blaha

David Quarne

Gene Marsolek

LAND CONSERVATION COMMITTEE

Kalies, Beata

From: Dave Appleyard [appled@tremplounty.com]
Sent: Wednesday, February 27, 2002 2:31 PM
To: Rep.Ott@legis.state.wi.us
Cc: Dick Frey; Dick Kiekhoefer; Gerry Van Tassel; Jean Schomish; Troy Kuphal; Tom Sweeney; Pete Van Airsdale; Perry Lindquist; Jeff Hastings; Don Franke; 'Diane Hanson (E-mail)'; Dan Masterpole; 'Cathy Cooper (E-mail)'; Bill Schuster; Bill Hafs
Subject: Call for New Leadership in DATCP and
The WLWCA approved resolution.

Call for New Leadership in DATCP and More Collaboration with WLWCA

Whereas: By state statute, the Department of Agriculture, Trade and Consumer Protection (DATCP) serves as the lead state agency for soil and water conservation programs in Wisconsin, providing administrative guidance and grants for several program efforts, including farmland preservation, nonpoint source water pollution control, nutrient management, cropland erosion control, stream corridor management and others;

Whereas: Counties, through their Land Conservation Committees (LCC's) and Land Conservation Departments (LCD's), serve as the primary local delivery system for all state soil and water conservation programs, offering a wide array of services to local landowners and managers as described in their County Land and Water Resource Management Plans;

Whereas: For our soil and water conservation program efforts to be effective, the DATCP must work in partnership with counties, the Department of Natural Resources (DNR), the USDA -Natural Resources Conservation Service and many other agencies and organizations involved with these programs;

Whereas: Various actions by DATCP, over the past 5 years in particular, have caused this partnership to deteriorate to the point where counties and many of the other partners have little trust in the agency; and

Whereas: The major program redesign and administrative rule making that has been underway in DATCP and DNR for the past four years seems destined for failure unless some significant changes are made to improve upon the department's relationship with counties and the rest of the conservation partnership.

Therefore, Be It Resolved that the Western Area Land and Water Conservation Association hereby calls for the Secretary of DATCP to make significant changes in the department for the purpose of improving upon the department's relationship with counties and the rest of the conservation partnership in the state; and

Be It Further Resolved that the Western Area Land and Water Conservation Association asks the Secretary of DATCP to ensure that the department collaborates with the Wisconsin Land and Water Conservation Association (WLWCA) in the administrative rule making process so that counties can effectively and efficiently implement the new nonpoint performance standards through County Land and Water Resource Management Plans and state grants.

Introduced by the Trempealeau County Land Conservation Committee
Approved by the Western Area Land Conservation Association

Kalies, Beata

From: Dave Appleyard [appled@tremplounty.com]
Sent: Wednesday, February 27, 2002 2:15 PM
To: Rep.Ott@legis.state.wi.us
Cc: Dick Frey; Dick Kiekhoefer; Gerry Van Tassel; Jean Schomish; Troy Kuphal; Tom Sweeney; Pete Van Airsdale; Perry Lindquist; Jeff Hastings; Don Franke; 'Diane Hanson (E-mail)'; Dan Masterpole; 'Cathy Cooper (E-mail)'; Bill Schuster; Bill Hafs
Subject: Got your message
Follow Up Follow up
Flag:
Flag Flagged
Status:

Representative Ott,

Apparently you have been making a special effort to have word get to " some out spoken County Conservationists that they need to be more reflective of the positions of our County Boards". As an out spoken County Conservationist I assume that your message was in some part intended to be delivered to myself. I have heard your message. I have been hearing that same message for these past 25 years. Each time I have heard this message I have invited the person delivering the message to ask my committee if I speak for them or not. The answer delivered by my committee has always been the same. Yes, Appleyard does speak for the committee. I have always spoken for the committee and I always shall speak for the committee. Attached you will find two resolutions which were recently approved 21-0 by the Trempealeau County Board of Supervisors. I will be delivering these messages. Some may not like the messages but they are messages which I have been instructed by my LCC and County Board to deliver. Attached you will also find a resolution calling for a leadership change at DATCP which was approved by the LCC'S during this last falls WLWCA Conference. By passing this resolution, the LCC'S of the State intended to deliver a message. Some may find the message contained within the resolution to be harsh or coarse. However, this perception should not detract from the intent of the resolution as the truth is often harsh or coarse.

Representative Ott, there is immense frustration and distrust at the LCC level with certain individuals and the program delivery system of the SWRM section of DATCP. I think that a good example of this fact was clearly demonstrated during the most recent round of public hearings on ATCP-50. It is apparent to me and I would think nearly everyone else that a problem exists when 78 individuals representing 38 County's provide public testimony on a proposed administrative rule and all 78 persons testify in opposition to the rule. Blaming out spoken County Conservationists for this melt down in working relationship is not going to solve these real and demonstrated problems.

I am truly sorry if the messages which I have been instructed to deliver over these past 25 years have been messages which you have preferred not to hear.

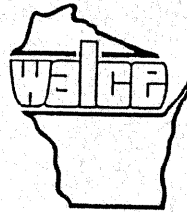
If I might be of any assistance please do not hesitate to contact me.

You will notice that I have provided a courtesy copy of this message to my committee members as well as the Legislative Committee of my WALCE organization. I am a firm believer in free and open dialogue. I hope that I have not offended you in doing so.

DAVID W. APPLEYARD
LCD ADMINISTRATOR



Wisconsin Land and Water
Conservation Association, Inc.



Wisconsin Association
of
Land Conservation Employees

* Meeting w/ on April 3rd *

March 14, 2002

Representative Alvin Ott
Assembly Agriculture Committee, Chair
318 North, State Capitol
Madison, WI 53707-7882

MAR 22 2002

Dear Representative Ott:

The Wisconsin Land and Water Conservation Association represents Wisconsin's County Land Conservation Committees and Departments. As the entities who are responsible for delivering conservation services in the counties and who would implement ATCP 50 if it becomes law, we respectfully request public hearings on these rules.

As you well know, Land Conservation Committees and Departments fully support the redesign of the state's nonpoint program. We have championed, among other things, the establishment of statewide performance standards and creation of a more efficient and effective means of abating Wisconsin's #1 water quality threat.

We appreciate that DATCP provided us so many opportunities to input on these proposed rules. We have provided extensive input on ATCP 50, both during public hearings and in meetings with department staff. Yet, despite the 4 years it took to develop the rule and all our input, DATCP received over 99% opposition to their rule at their last round of public hearings. Wisconsin Land and Water Conservation Association, representing all land conservation committees and the Wisconsin Association of Land Conservation Employees, along with thirty-six individual counties that formally submitted comment were unified in their opposition.

Counties were provided two additional opportunities to provide input. This time, our comments were provided directly to members of the ATCP Board. We found these meetings to be helpful and productive, and we appreciated the extra opportunity to talk with the Board. The draft rule that sits before the legislature contains many changes - several of them significant and several of them for the better. However, after having conducted an exhaustive review of the final draft, we find the rule still falls short of expectations.

ATCP 50 has the following major problems:

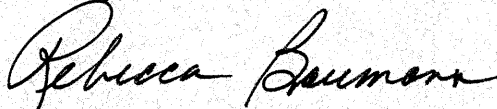
- 1) It establishes a negative incentive whereby increased cost sharing payments are only required for enforcement situations while less cost sharing may be negotiated for landowners who are willing to comply voluntarily.
- 2) It lacks critical measures for ensuring accountable use of nonpoint dollars.

- 3) It undermines local control by providing no criterion for land and water plan approval when funding is based on having an approved land and water plan.
- 4) It undermines local nonpoint program implementation efforts by expanding mandatory cost share payments in local ordinances.

As professionals experienced in the front line of nonpoint pollution abatement, we must express strong opposition to the rule in its current form and would appreciate the opportunity to participate in public hearings.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Baumann".

Rebecca Baumann, Executive Director

CC: Members of the Assembly Agriculture Committee

Representative Eugene Hahn
Representative John Ainsworth
Representative Jerry Petrowski
Representative Scott Suder
Representative Steve Kestell
Representative Gabe Loeffelholz
Representative Garey Bies
Representative Barbara Gronemus
Representative Joe Plouff
Representative Martin Reynolds
Representative John Steinbrink
Representative Julie Lassa
Representative Marlin Schneider
Representative Mary Hubler

WISCONSIN DEPARTMENT OF
REGULATION & LICENSING

Scott McCallum
Governor
Oscar Herrera
Secretary



1400 East Washington Avenue
PO Box 8935
Madison WI 53708-8935
Email: dorl@drl.state.wi.us
Voice: 608-266-2112
FAX: 608-267-0644
TTY: 608-267-2416

March 15, 2002

MAR 18 2002

The Honorable Alvin Ott,
Chair, Assembly Committee on Agriculture
Wisconsin State Assembly
318 North, State Capitol
PO Box 8953
Madison, WI 53708-8953

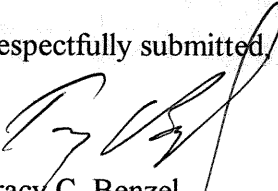
Dear Representative Ott:

The Soil Scientists Section of the Examining Board of Professional Geologists, Hydrologists, and Soil Scientists (GHSS) would like to voice its opposition to Clearinghouse Rule 01-90 and requests the opportunity to provide testimony.

As proposed, Clearinghouse Rule 01-90 lists five groups of nutrient management planners who are "presumptively qualified" by the Department of Agriculture, Trade, and Consumer Protection, to prepare nutrient management plans, and thereby qualify the farmer for cost sharing reimbursement. Nutrient management planning is a practice of soil science yet Professional Soil Scientists are not included in the list of qualified nutrient management planners. The Soil Scientist Section of GHSS believes Clearinghouse Rule 01-90 should include licensed professionals as presumptively qualified.

We respectfully request an opportunity to discuss the proposed rule in greater detail. Please contact me if you require further information or clarification.

Respectfully submitted,


Tracy C. Benzel
Chairperson
Soil Scientist Section
Examining Board of Professional Geologists, Hydrologists, and Soil Scientists
Phone: (715) 476-3845
tcbenzel@centurytel.net

cc: Oscar Herrera, Secretary
cc: Senator James Baumgart

Chairman:
Agriculture Committee



Member:
Conservation & Land Use
Consumer Affairs
Natural Resources
Utilities

Al Ott

State Representative • 3rd Assembly District

March 22, 2002

Tracy C. Benzel
Chairperson Soil Scientist Section
Examining Board of Professional Geologists, Hydrologists, and Soil Scientists
Wisconsin Department of Regulation & Licensing
P.O. Box 8953
Madison, WI 53708-8953

Dear Tracy C. Benzel:

Thank you for your recent letter opposing Clearinghouse Rule 01-090 and proposing inclusion of Professional Soil Scientists in the list of qualified nutrient management planners. I appreciate your request and hope that you will consider the resolution.

After discussing this issue with the Director of Land and Water Resources Bureau, it is evident that this particular section of the ATCP-50 has not been changed much since the initial writing, and the omission of Soil Scientists in the list of qualified Nutrient Management Planners was a simple oversight. Because this oversight has not surfaced during the numerous hearings and reviews or even during DATCP Board's deliberations, it may be best to wait and consider this change during the time other technical changes are made to the rule after legislative review.

In the meantime, as long as the person has the knowledge to do nutrient management planning and can show qualifications to DATCP, the person can provide nutrient management planning. The Soil Scientists are not excluded, what is needed right now is a letter supporting such knowledge.

If you feel a further discussion is needed, please call my office immediately as legislative review ends very soon and can not be extended.

Sincerely,

Al Ott
State Representative
Chair, Assembly Committee on Agriculture

ATCP-50

A qualified nutrient management planner must be knowledgeable and competent in all of the following areas:

- Using soil tests.
- Calculating nutrient needs.
- Crediting manure and other nutrient sources.
- State and federal standards related to nutrient management.
- Preparing nutrient management plans according to this rule.

A nutrient management planner is presumed to be qualified if at least one of the following applies:

- The planner is recognized as a certified professional crop consultant by the national alliance of independent crop consultants.
- The planner is recognized as a certified crop advisor by the American society of agronomy, Wisconsin certified crop advisors board.
- The planner is registered as a crop scientist, crop specialist, soil scientist, soil specialist or professional agronomist in the American registry of certified professionals in agronomy, crops and soils.
- The planner holds equivalent credentials recognized by DATCP. A farmer is presumptively qualified to prepare a nutrient management plan for his or her farm (but not for others) if all of the following apply:
 - The farmer has completed a DATCP-approved training course within the preceding 4 years.
 - The course instructor or another qualified nutrient management planner approves the farmer's initial plan.

No person may misrepresent that he or she is a qualified nutrient management planner. A nutrient management planner must keep, for at least 4 years, a record of all nutrient management plans that he or she prepares under this rule.

DATCP may issue a written notice disqualifying a nutrient management planner if the planner fails to prepare nutrient management plans according to this rule, or lacks other qualifications required under this rule. A nutrient management planner who receives a disqualification notice may request a formal hearing under ch. 227, Stats.

County Soil and Water Conservation Programs

General

This rule establishes standards for county soil and water resource management programs that receive funding from DATCP. Under this rule, a county program must include all of the following:

3/19/02 Call to David Director, Land & Water Resource Bureau
Johinski Datep

- Some people are specifically cited in the rule
others need to show
qualifications to Datep to be included.

- The Prof. Soil Scientists can still be included.

[can be included in technical changes
down the road
as long as have the "knowledge" ^{individual} - send to
Datep.

- they did not bring up this until nearly
late in the process, all hearings + Board
deliberation were done.

- difference is that Prof. Soil Scientists
don't have the short cut

- pure oversight, these sections of the
rules were not changed much...

ATCP 50-48 Nutrient Mgmt Planner document / Statutes
SS. 281.65, 281.66, Stats
(+ this
chapter)

American registry of certified professionals

Resolution to Oppose Proposed ATCP 50, Wisconsin Administrative Rule

WHEREAS, the Wisconsin Legislature, through 1997 Wisconsin Act 27 and 1999 Wisconsin Act 9, directed the Department of Natural Resources (DNR) and the Department of Agriculture, Trade and Consumer Protection (DATCP) to "redesign" the state's nonpoint source water pollution abatement programs, which was largely initiated and supported by counties;

WHEREAS, the legislative intent of the program redesign is clearly articulated in Chapters 92 and 281 State Statutes, following three guiding principles:

- Develop statewide nonpoint pollution performance standards and prohibitions that would help achieve clean water goals;
- Focus efforts to ensure compliance with these standards through locally developed county Land and Water Resource Management (LWRM) Plans;
- Streamline the states nonpoint program grants system and increase base allocations to counties to support the implementation of their LWRM plans.

WHEREAS, as part of the program redesign effort, DATCP has proposed major revisions to administrative rule ATCP 50, which contains key planning, administrative and grant requirements for the program redesign effort, and relies primarily on counties for implementation;

WHEREAS, proposed revisions to ATCP 50 have recently been forwarded to the legislature for promulgation despite overwhelming opposition by counties and failure of the rule to meet the legislative intent of the program redesign.

NOW THEREFORE BE IT RESOLVED that the Washington County Land Conservation Committee opposes the proposed revisions to administrative rule ATCP 50 in their current form; and requests state legislators representing Washington County to work with the appropriate state Assembly and Senate committees and the DATCP to make changes to the rule, as presented on Attachment "A".

BE IT FURTHER RESOLVED that the Land Conservation Committee requests said legislators to direct the DATCP to work with the leadership of the Wisconsin Land and Water Conservation Association (WLWCA) to develop and implement a Memorandum of Understanding which will improve the cooperative relationship between the agency and County Land Conservation Committees and Departments, with the ultimate goal of achieving more effective, accountable and locally-supported program rules and policies.

Adopted the 20th day of March, 2002.

Land Conservation Committee Members:

Maurice Strupp, Chairperson

David N. Radermacher, Vice-Chairperson

Robert W. Kratz, Secretary

Patricia A. Strachota

Daniel J. Rodenkirch

Mary A. Krumbiegel

Helmut Wagner

Allen Piel, (FSA Representative)

Requested Revisions for Draft Rule ATCP 50

AMEND § ATCP 50.32 to ensure that the top priority for county grants is to fund actual staff positions, consistent with legislative intent under Wis. Stats. § 92.14(6), and place reasonable limits on support.

Reason: Proposed ATCP 50 creates a funding system that circumvents the statutory intent under Wis. Stats. § 92.14(6). This statute directs the department to provide funding for "an average of three (3) staff persons per county", provided those counties supply specific matching amounts. The proposed system would simply increase minimum funding to every county by more than 600% without any consideration of whether or not this legislative directive it is being achieved. It actually allows NO local match by permitting unlimited use of funds for "support" items, which do not require a match. As a result, Washington County may need to lay off staff while the state pays for paper and computers in another. This is not what was intended to happen. Past programs have placed reasonable limitations on support costs (e.g \$5000/staff) to increase accountability and decrease abuse.

CLARIFY § ATCP 50.12(5) to ensure that DATCP's approval authority over county land and water resources management plans is based solely to the plan's compliance with statutory requirements under Wis Stats. § 92.10. Also **INCLUDE** a provision that requires the department, in its reviews under § 50.12(6) and any resulting action from such reviews, to take into account the level of state funding provided to the county.

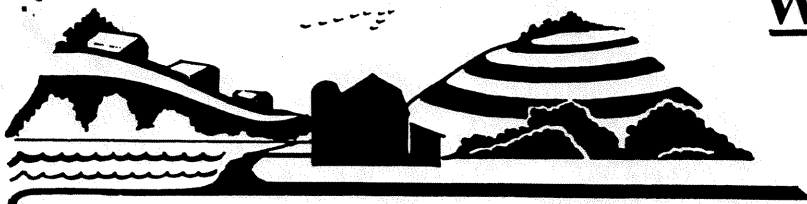
Reason: Land and Water Plans are mandatory for state funding. Proposed ATCP § 50.12(5) appears to leave the door open to discretionary approval, thus leading potentially to arbitrary disapproval by the Department. Local implementation methods, including ordinances, which are not favored by the department, could be used as a reason for non-approval, which would result in a loss of funding. Also, while counties are willing to take the "lead" role in implementing the state's nonpoint program through their local plans, counties cannot be practically expected to do more work than for which the state is willing to provide funding.

3. **ELIMINATE** provisions under § ATCP 50.12(5) that require unprecedented public cost-sharing when enforcement must be used to prevent landowners from polluting and which discourages voluntary compliance with the nonpoint performance standards.

Reason: The proposed rule redefines traditional "cost-sharing" to include mandated payments for long-term maintenance of conservation practices and perpetual "lost opportunity" payments for land taken out of production. These proposed costs would be in addition to the traditional public cost sharing for 70% of the cost of installing a conservation practice, but only required under enforcement situations. In a time of serious budget shortfalls and program cuts, these payments are unprecedented and will make nonpoint programs proceed at a much slower pace and cost much more. Any increased cost-sharing should be used to encourage voluntary compliance, not mandate increased public costs for enforcement action. Thousands of farmers have, over the course of the 50 years, implemented conservation practices with traditional cost sharing levels, or in many cases, with no cost sharing at all. Therefore, mandating increased cost sharing is also a slap in the face to most farmers. As written, the rule contradicts numerous statutory mandates for cost-effectiveness and will encourage landowners to wait to be regulated rather comply voluntarily, especially if state funding is not increased.

4. **AMEND § ATCP 50.54 and 50.60** to ensure that mandatory cost-sharing requirements will not apply to ordinances adopted under Chapter 59, State Stats, or other ordinances adopted before these rules were ever developed. There is no statutory authority for the rule to do this.

Reason: The full ramifications of the draft rule are unclear on this issue, although given the provisions under proposed ATCP § 50.54(2), it appears it will heavily undermine all local regulations, including those over which the agency has no statutory authority.



Washington County

Land Conservation Committee

333 E. Washington St., Suite 3200, West Bend, WI 53095-2585 Phone: (262)335-4800 Fax: (262)335-4171

Date: March 26, 2002

Honorable Representative Michael Lehman
State Capitol - Room 103 West
PO Box 8952
Madison WI 53708-8952

Subject: Concerns Regarding Proposed ATCP 50, Wisconsin Administrative Rule

Dear Representative Lehman:

I am writing on behalf of the Washington County Land Conservation Committee to seek your assistance.

In late February, the ATCP Board forwarded its proposed administrative rule, ATCP 50, to the legislature. This is the Department of Agriculture, Trade and Consumer Protection's rule that, in conjunction with the WDNR's proposed rules, governs the state's nonpoint program, which was redesigned through the 1997 and 1999 budget acts.

The legislature called for this redesign in response to a critical Legislative Audit Bureau report (*An evaluation of Surface Water Programs, 1994*) and a desire by multiple agencies and interest groups to implement a more efficient, cost effective and accountable program. We believe the proposed ATCP 50 fails to achieve these intended objectives, and neglects legislative intent under Wis Stats. § 92.02.

Based on these concerns and others, the Washington County Land Conservation Committee has adopted the attached resolution opposing the proposed ATCP 50. Also attached is a list of specific changes we, as stated in our resolution, are asking for your help to implement.

Many counties share similar concerns. At the last set of public hearings held last fall, counties were virtually unanimous in their opposition to the rule. Subsequent changes were made to the rule, but those changes did not entail some of our most critical concerns. Additionally, some very important provisions in the rule were never available for public comment and significant changes have been made since.

Of additional concern is the strain that has placed on the relationship between the DATCP and county land conservation committees, whom they rely on for implementing their rule. Counties

have felt cast as adversaries in this process rather than conservation partners. This very real concern prompted the Wisconsin Land and Water Conservation Association to write and adopt the enclosed resolution, which passed with a 46 to 1 margin. Our own resolution mirrors theirs by seeking your further assistance to improve DATCP's commitment to working more cooperatively with local land conservation officials.

I would appreciate an opportunity to personally meet with you on behalf of the Land Conservation Committee to explain our concerns and our proposed solutions in more detail. Please contact me at 335-4802 at your earliest convenience.

We look forward to your anticipated support. Thank you.

Sincerely,



Troy Kuphal

Cc: Land Conservation Committee of the Washington County Board:
Maurice Strupp, Chairperson
David N. Radermacher, Vice-Chairperson
Robert W. Kratz, Secretary
Mary A. Krumbiegel
Daniel J. Rodenkirch
Patricia A. Strachota
Helmut Wagner
Kenneth Miller, County Board Chair
Doug Johnson, Administrative Coordinator
Other State Legislators

Encl.

Requested Revisions for Draft Rule ATCP 50

1. **AMEND § ATCP 50.32** to ensure that the top priority for county grants is to fund actual staff positions, consistent with legislative intent under Wis. Stats. § 92.14(6), and place reasonable limits on support.

Reason: Proposed ATCP 50 creates a funding system that circumvents the statutory intent under Wis. Stats. § 92.14(6). This statute directs the department to provide funding for "an average of three (3) staff persons per county", provided those counties supply specific matching amounts. The proposed system would simply increase minimum funding to every county by more than 600% without any consideration of whether or not this legislative directive it is being achieved. It actually allows NO local match by permitting unlimited use of funds for "support" items, which do not require a match. As a result, Washington County may need to lay off staff while the state pays for paper and computers in another. This is not what was intended to happen. Past programs have placed reasonable limitations on support costs (e.g \$5000/staff) to increase accountability and decrease abuse.

2. **CLARIFY § ATCP 50.12(5)** to ensure that DATCP's approval authority over county land and water resources management plans is based solely to the plan's compliance with statutory requirements under Wis Stats. § 92.10. Also **INCLUDE** a provision that requires the department, in its reviews under § 50.12(6) and any resulting action from such reviews, to take into account the level of state funding provided to the county.

Reason: Land and Water Plans are mandatory for state funding. Proposed ATCP § 50.12(5) appears to leave the door open to discretionary approval, thus leading potentially to arbitrary disapproval by the Department. Local implementation methods, including ordinances, which are not favored by the department, could be used as a reason for non-approval, which would result in a loss of funding. Also, while counties are willing to take the "lead" role in implementing the state's nonpoint program through their local plans, counties cannot be practically expected to do more work than for which the state is willing to provide funding.

3. **ELIMINATE** provisions under § ATCP 50.12(5) that require unprecedented public cost-sharing when enforcement must be used to prevent landowners from polluting and which discourages voluntary compliance with the nonpoint performance standards.

Reason: The proposed rule redefines traditional "cost-sharing" to include mandated payments for long-term maintenance of conservation practices and perpetual "lost opportunity" payments for land taken out of production. These proposed costs would be in addition to the traditional public cost sharing for 70% of the cost of installing a conservation practice, but only required under enforcement situations. In a time of serious budget shortfalls and program cuts, these payments are unprecedented and will make nonpoint programs less cost-effective. Any increased cost-sharing should be used to encourage voluntary compliance, not mandate increased public costs for enforcement action. As written, the rule contradicts numerous statutory mandates for cost-effectiveness and will encourage landowners to wait to be regulated rather comply voluntarily, especially if state funding is not increased.

4. **AMEND § ATCP 50.54 and 50.60** to ensure that mandatory cost-sharing requirements will not apply to any pre-existing local ordinances or ordinances adopted under Chapter 59, State Stats. There is no statutory authority for the rule to do this.

Reason: The full ramifications of the draft rule are unclear on this issue, although given the provisions under proposed ATCP § 50.54(2), it appears it will heavily undermine all local regulations, including those over which the agency has no statutory authority.