

1                   **OPPOSE PROPOSED REVISIONS TO ADMINISTRATIVE RULE ATCP 50**  
2                   **AND REQUEST DATCP PROGRAM AUDIT**  
3  
4

5       WHEREAS, the Wisconsin Legislature, through 1997 Wisconsin Act 27 and 1999 Wisconsin  
6       Act 9, directed the Department of Natural Resources (DNR) and the Department of Agriculture,  
7       Trade and Consumer Protection (DATCP) to “redesign” the states nonpoint source water  
8       pollution abatement programs, which was largely initiated and supported by counties, and  
9

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

- 12           1.       Develop statewide nonpoint pollution performance standards and prohibitions that
- 13                    would help achieve clean water goals;
- 14           2.       Focus efforts to ensure compliance with these standards through locally
- 15                    developed county Land and Water Resource Management (LWRM) Plans;
- 16           3.       Streamline the states nonpoint program grants system and increase base
- 17                    allocations to counties to support the implementation of their LWRM plans, and
- 18

19       WHEREAS, as part of the program redesign effort, DATCP has proposed major revisions to  
20       administrative rule ATCP 50, which contains key planning, administrative and grant  
21       requirements for the program redesign effort, and relies primarily on counties for  
22       implementation, and  
23

24       WHEREAS, proposed revisions to ATCP 50 have recently been forwarded to the legislature for  
25       promulgation despite overwhelming opposition by counties and failure of the rule to meet the  
26       legislative intent of the program redesign.  
27

28       **NOW THEREFORE BE IT RESOLVED THAT THE WAUKESHA COUNTY BOARD OF**  
29       **SUPERVISORS opposes the proposed revisions to administrative rule ATCP 50 in their current**  
30       **form, and requests that the Department of Parks and Land Use advance recommendations for**  
31       **rule revisions to the DATCP.**  
32

33       **BE IT FURTHER RESOLVED** that the Waukesha County Board of Supervisors requests the  
34       Legislative Audit Committee to conduct a program audit of the DATCP Bureau of Land and  
35       Water Resources to: 1) determine where the proposed revisions to ATCP 50 do not meet the  
36       legislative intent of the program redesign; 2) determine where the proposed rule revisions do not  
37       address shortfalls in the nonpoint program identified in legislative audits conducted in 1992 and  
38       1994; and 3) identify and detail a methodology for meaningful county input into the rules so that  
39       program implementation can be effective.  
40

41       **BE IT FURTHER RESOLVED** that upon adoption the Waukesha County Clerk is hereby  
42       directed to forward a certified copy of this resolution and the departmental recommendations, on  
43       file with the County Clerk, to the members of the Waukesha County Legislative Delegation.

Senate 4/13/02

Members & hearing:

- Adl
  - Ainsworth
  - Hubler
  - Schneider
  - Hahn
- Only for a little while

Senate:

Hansen + Baumgart

Cowles + Scheutz → Staff

NR16

HTCP-50

Senate P.H.  
4-8-02

Ott  
Hahn - left early.  
Cussworth  
Hubler.  
Schneider

WCA's Speaking  
Jennifer Sunstrom  
Sec. Hersdorf  
Dave Jeleniski  
Jim Madson  
Rebecca Lauman

Supports Bill Pealstiker Trout Vn.  
Don Franke - La Crosse  
Robert Wendt Herlogast  
Paul Zimmerman Soc Sci Center

WCA's - Technical changes → Support

Hersdorf - copy of statement.

Support Carol Terrel  
Opposed to substantive changes  
concerns

Baumann - 2 Tier/Assn. (Co. Bd. ± Staff)  
4-22 - deadline by written staff.  
wants flexibility -  
wants accountability -  
rules need more work.

against Doug Cieslak  
Buffalo Co  
Perry Lindquist  
against Waukesha  
Troy Capelle  
against WACCS

- cost of program,  
- impact on local ordinances  
- concerned about B  
- ? approval of stricter ordinances  
- accountability >  
- criteria for approval of LSW plans.  
(criteria - needs to be clearer.)

Monitor how counties deal w/ LSW plans  
wants more use/co. support for buffers.

No. Schultz  
No. Cowles  
No. Wick

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**BUFFALO COUNTY  
LAND CONSERVATION DEPARTMENT  
County Courthouse  
P.O. Box 88, Alma, WI 54610  
Phone – 608-685-6260  
Fax – 608-685-6242**

**Public Testimony before the Senate Environmental Resources Committee  
April 18, 2002**

[Personal Introduction] I want to begin by thanking you for this opportunity to discuss the important issues concerning the proposed ATCP 50 and to bring good news from Buffalo County. In the true spirit of cooperation, producers, contractors, and my department had a record setting 2001 by installing more than 100 conservation practices and closing out a priority watershed project. I bring you this good news to contrast, what I believe, the future holds if ATCP 50 is not changed. I am only going to focus two primary issues, overall costs of rule and the preemption of locally led conservation efforts.


**Overall Costs**

DATCP has interpreted the enabling legislation to include lost opportunity payments to farmers. While we appreciate additional tools for funding conservation, we do not support paying producers lease or rent payments on top of the traditional cost share payment for the construction of a conservation practice. This type of payment is unprecedented. DATCP's interpretation comes from a simple omission in ch. 281 to define cost sharing. Historically cost sharing has only been for construction costs, and has never been used for lost opportunity payments. I am concerned that the state cannot afford this type of payment. It is also important to note that DATCP's fiscal estimate for the rule does not include the state cost for lost opportunity payments. I believe this extreme interpretation s. 281.16(3)(e) Wis. Stats will be detrimental to conservation efforts in Buffalo County in two very important ways; 1) cost share funds will be concentrated, resulting in fewer actual projects, and 2) the local implementation of this provision of the rule will shift our scarce staff resources from building conservation practices, which we are good at, to conducting more administrative or real estate type paperwork associated with these types of payments. With our scarce staffing resources, I am committed to minimizing our administrative efforts and maximizing our ability to provide the much needed technical assistance. It is also important to note that this provision in the rule will require additional deed instruments for our projects, which many of my producers have registered strong objections to. I too share DATCP's concern about the fiscal impact the performance standards will have on producers. Therefore, I would respectfully request DATCP or the legislature consider changes to the rule or statutes to adopt the concept of "reasonable and necessary costs" when considering cost share payments to landowners. This simple concept has been successful in holding down costs in the departments Agricultural Chemical Cleanup Program (ACCP) (ATCP 35) and has been endorsed by the agricultural industry.

### Preemption of Local Led Conservation Efforts

Again, DATCP's extreme interpretation of s. 281.16(3)(e) Wis. Stats has everyone thoroughly confused on the extent to which local conservation expectations can be enforced through local ordinances. It is unclear what impact their cost sharing interpretation has on existing conservation ordinances and those traditional zoning ordinances adopted under ch 59. I have surveyed producers on this issue and they overwhelmingly believe that these decisions should be made locally rather than by the state. Recent trends in local ordinances have provided protections to producers through the use of development setbacks from existing agricultural facilities. Wisconsin has a long and rich history of locally led conservation. I believe this rule will squash local solutions to local problems for fear of the unknown costs and legal implications to implement reasonable and necessary land use controls. Recently, an adhoc committee of county conservation administrators and state staff tried to develop model livestock ordinance guidance. Their efforts were minimized due to the complexities of conflicting statutory language within chs. 92, 281, 59 and others. If it is the state's intent to preempt local conservation efforts, I believe it should be the responsibility of the legislature, not state agencies, to define the degree and extent to which these locally led conservation efforts should be preempted.

In summary, I am hopeful DATCP could reconsider their rule and adopt a more mainstream view of cost sharing and instead insure actions required of producers and their associated cost be reasonable and necessary. Also, I would respectfully request this committee and the other appropriate legislative committees review and redraft the statutes to better define the role of ordinances in delivering locally led conservation. Thank You.

Presented by Doug Cieslak, Buffalo County Conservationist 

## For Consideration by the Environmental Resources Committee

As the local administrators responsible for implementing the proposed revisions to ATCP 50, we the undersigned respectfully wish to express the following general concerns:

- The total costs, including the cost for the state and county to implement the rule
- The effect on local authority and costs to implement ordinances
- Lack of well defined statewide strategy to implement and measure progress toward meeting the agricultural nonpoint performance standards

We offer these comments in the interest of successful implementation of the proposed DATCP and DNR nonpoint administrative rules.

Name	County Land Conservation Department
Thomas Sweeney	Rock County
Dale Olson	Sawyer County LWCD
Ronald C Ostrofski	SHAWANO County
Jeffrey J. Klesing	Vernon County
C. J. White	CHEPPENAW County
Thomas Ward	Mantowau County ?
Eugene J. McIwale	Adams County (P.O.) 849-1444
Marc Balthase	Dodge County
Bart Schuffer	Florence County
Angie M. Stuebe	Clark County
D. W. [unclear]	Burnett County
Jeff Brannon	Polk County SWRD
Dore Cieslak	BUFFALO County LCD
Don Fisher	McGone Co. DLC
W. E. [unclear]	DOOR Co. SWCD

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Name	County Land Conservation Department
<i>Ray M. Ludwig</i>	<i>Waushara County LCD</i>
<i>Bill Haf</i>	<i>Brown County LCD</i> <span style="float: right;">(920) 891-4620</span>
<i>Greg &amp; Clara</i>	<i>MARINETTE LWCD</i>
<i>Marie Straupner</i>	<i>Sanglade County LCD</i>
<i>Diane Daulton</i>	<i>Ashland, Bayfield, Douglas region LCD</i>
<i>Paula Carow</i>	<i>Rusk</i>
<i>Diane Hanson</i>	<i>Lincoln County LCD</i>
<i>Steve Obels</i>	<i>Taylor County</i>
<i>Bruce Bushweller</i>	<i>Waupaca Co. Land and water</i>
<i>Allen Hoff</i>	<i>Monroe County LCD</i>
<i>Brad Roboly</i>	<i>Winnebago County LWCD</i>
<i>Roy S. Burton</i>	<i>Outagamie County LCD</i>
<i>Kelley Heise</i>	<i>St. Croix County</i>
<i>John [unclear]</i>	<i>Washburn County LWCD</i>
<i>John [unclear]</i>	<i>Sauk County</i>
<i>D. W. [unclear]</i>	<i>TRIMPER [unclear]</i>

(920) 832-1950  
 (920) 727-8649  
 (920) 832-5073

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- Lack of well defined statewide strategy to implement and measure progress toward meeting the agricultural nonpoint performance standards

We offer these comments in the interest of successful implementation of the proposed DATCP and DNR nonpoint administrative rules.

Name	County Land Conservation Department
Gary Mick	Milwaukee County
Tom Millepser	Oconto County
Dale Hanson	Barron County
Cathy Cooper	Richland County
Baed Thompson	Grant County
Jane McCuller	Iowa County
Lisa K. Trumble	Lafayette County
Patrick E. Killney	MARQUETTE COUNTY
Jerry Stabe	Wood County
Robbey Webb	Peppin County
Chris Hoff	PIERCE COUNTY
Jerry P. Hoff	Washington County
Ken Conroy	Dane Co.
Frank Thies	Sheboygan Co.



State of Wisconsin  
Scott McCallum, Governor

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**Department of Agriculture, Trade and Consumer Protection**

James E. Harsdorf, Secretary

April 24, 2002  
Honorable Senator James Baumgart  
Chair, Senate Environmental Resources Committee  
Room 306 South  
State Capitol  
Madison, WI 53702

Dear Senator Baumgart:

**Re: Soil and Water Resource Management (*Clearinghouse Rule 01-090*)**

We received your cover letter and committee resolution, dated April 24, 2002 (today), in which the Senate Environmental Resources Committee asked the department to consider possible changes to the department's final draft rule related to Soil and Water Resource Management.

We agree to consider the items identified in the committee's request. This does not necessarily mean that we have agreed to change any rule provisions, but we will agree to consider the identified matters in consultation with the committee. Rule changes, if any, may require DATCP Board consultation or approval.

We understand that our agreement to consider the items identified by the committee extends the review jurisdiction of both the Senate and Assembly Committees until 10 days after the department gives the committee its final response, as provided in s. 227.19(4)(b)2. We hope to conclude this matter as quickly as possible.

Sincerely,

James E. Harsdorf,  
Secretary

April 24, 2002

James Harsdorf, Secretary  
Dept. of Agriculture, Trade & Consumer Protection  
2811 Agriculture Drive  
Madison, WI 53708

Dear Secretary Harsdorf:

The Senate Environmental Resources Committee took executive action on CR Rule 01-090, relating to the soil and water resource management. By a vote of 5 Ayes, 0 Noes & 0 Absent, the committee passed the following motion to request the Department of Natural Resources to consider modification of the rule.

1. The Senate Environmental Resources Committee recommends that the Department of Agriculture, Trade and Consumer Protection agree to consider modifying Clearinghouse Rule 01-090, under s. 227.19 (4) (b) 2., Stats., as follows:
  - a. Amend the definition of "local regulation" in s. ATCP 50.01 (18) to include Land Conservation Committee standards and specifications for management practices to control erosion, sedimentation and nonpoint source water pollution adopted under s. 92.07 (2), Stats.
  - b. Clarify, in determining the amounts of cost-sharing for a required conservation practice that results in a landowner taking or keeping land out of agricultural production under ss. ATCP 50.08 (3) (d) and (4) and 50.42 (1) (d), that the size of the affected acres used to determine the cost-sharing payments for taking or keeping land out of agricultural production shall exclude the amount of land occupied by any physical structure that the landowner constructs to comply with the practice, such as a manure storage facility, irrespective of the size of the structure.
  - c. Amend s. ATCP 50.12 (5) to require the Department to approve a county land and water resource management plan that complies with s. ATCP 50.12 and amend s. ATCP 50.12 to specify the criteria that the department will use to approve or disapprove a plan, including whether the plan contains the elements specified in s. 92.10 (6), Stats., and whether a county is adequately implementing its previously approved land and water resource management plan given the resources available to the county to implement its plan.

2. If the department does not agree to consider the modifications identified in item 1. in writing by April 24, 2002, the Senate Environmental Resources Committee objects under s. 227.19 (4) (d) 6., Stats., to Clearinghouse Rule 01-090 on the grounds that the rule is arbitrary and capricious and imposes an undue hardship on counties.

Sincerely,

A handwritten signature in cursive script that reads "Jim Baumgart".

Jim Baumgart, Chair  
Senate Environmental Resources Committee



**CORRESPONDENCE/MEMORANDUM** \_\_\_\_\_ **State of Wisconsin**

**DATE:** May 22, 2002

**TO:** Land and Water Conservation Board Members and Advisors

**FROM:** Dave Jelinski, DATCP  
Bureau of Land and Water Resources

**DRAFT**

**SUBJECT:** Agenda Item #7 Staffing Grant Options for 2003

**Recommended Action:** This is an action item. The Land and Water Conservation Board is being asked to make a preliminary decision regarding which funding formula to use for staffing grants with county land conservation departments in 2003.

**Summary:** Working with representatives of the Wisconsin Counties Association, the department has developed three separate alternatives for providing staffing grants to LCCs in 2003. The three options are:

1. Each county receives a base award of either \$85,000 or the amount of money the state paid for watershed staff in 2001, whichever is greater. The remaining funds will be divided among counties according to each county's proportionate contribution to LCD salary and fringe benefits during 2001. This is an option that was initially agreed to by WLWCA, WALCE and the department.
2. Each county receives a base award of either \$85,000 or the amount of money the state paid for watershed staff in 2001, whichever is greater. The remaining funds will be divided between those counties that have watersheds and lost their basic annual staffing grant when compared to the 2002 allocation. This option replaces the basic annual staffing grant as much as possible.
3. Each county receives a base award of either \$85,000 or the amount of money the state paid for watershed staff in 2001 plus \$20,000, whichever is greater. The remaining funds will be divided among all counties based on each county's proportionate contribution to LCD salary and fringe benefits during 2001. This option replaces the basic annual staffing grant up to \$20,000 and distributes the remaining funds proportionately to counties. It is a combination of the first two options.

**Materials Provided:** A table showing what each county would receive using each different option and a table showing available funding for 2003.

**Presenter:** Dave Jelinski, DATCP

**DATCP**  
 May 20, 2002 DRAFT

**DRAFT**

**Available 2003 Staff Funding (non-bond)**

2003 Appropriation	<b>9,847,000</b>
less gov. budg. reduc.	(540,000)
plus 2001 underspent	240,000
2003 staff fund available	<b>9,547,000</b>
other projects (windshed, WLWCA, Training, I & E)	(114,302)
<b>total staff \$ available</b>	<b>9,432,698</b>

**Balance available for proportionate share or BASG make-up**

balance available for staff	<b>9,432,698</b>
less base funding	(8,602,992)
balance available for proportion or BASG	<b>829,706</b>
amount needed for BASG make-up	1,352,380
difference between amt available & amt needed	522,674
percent of BASG projected to meet budget	<b>61.35</b>
percent reduction of BASG needed to meet budget	<b>38.65</b>

**Comparison to 2002 available funding**

2002 funds allocated for staff	<b>9,741,160</b>
2003 funds available for allocation	<b>9,432,698</b>
Difference in funding	<b>308,462</b>
Percent difference in funding	<b>3%</b>

DRAFT

Comparison of 2003 Staff Funding Options

County	2003 Total Projected Base Staffing Award	Additional Funding Request	2002 DATCP Staffing & Support Allocation	Projected Funding: Options 1., 2., and 3.			Difference Between 2003 Projected Funding and 2002 Allocation: Options 1., 2., and 3.		
				Option 1. 2003 Projected base funding + proportional to all	Option 2. 2003 Projected base funding + BASG Make-up	Option 3. WS + \$20,000 or \$85,000 + proportional	Option 1. 2003 Projected base funding + proportional to all: Difference	Option 2. 2003 Projected base funding + BASG Make-up: Difference	Option 3. WS + \$20,000 or \$85,000 + proportional: Difference
Adams*	85,000	79,228	131,472	94,269	85,000	87,249	(37,203)	(46,472)	(44,223)
Ashland	85,000	0	50,056	85,000	85,000	85,000	34,944	34,944	34,944
Barron	85,000	11,000	95,532	97,116	91,461	88,109	1,584	(4,071)	(7,423)
Bayfield	85,000	15,000	54,733	89,507	85,000	85,810	34,774	30,267	31,077
Brown*	290,638	320,127	590,885	300,504	334,260	313,067	(290,381)	(256,625)	(277,818)
Oneida Tribe	86,634	0	86,634	86,634	86,634	86,634	0	0	0
Buffalo	85,000	49,786	94,833	89,689	91,033	85,865	(5,144)	(3,800)	(8,968)
Burnett	85,000	0	75,352	85,000	85,000	85,000	9,648	9,648	9,648
Calumet	85,000	35,000	100,584	93,525	94,561	98,943	(7,059)	(6,023)	(1,641)
Chippewa	255,850	63,965	300,393	282,709	283,177	283,413	(17,684)	(17,216)	(16,980)
Clark	85,000	50,000	51,634	99,095	85,000	88,707	47,461	33,366	37,073
Columbia	85,000	68,297	153,297	96,523	126,900	106,055	(56,774)	(26,397)	(47,242)
Crawford	85,000	15,000	51,370	97,381	85,000	88,189	46,011	33,630	36,819
Dane	194,575	81,000	252,427	246,984	230,067	229,857	(5,443)	(22,360)	(22,570)
Dodge	212,297	90,628	258,861	224,968	240,864	235,574	(33,893)	(17,997)	(23,287)
Door	208,895	50,170	250,632	230,059	234,501	234,737	(20,573)	(16,131)	(15,895)
Douglas	85,000	0	70,463	85,000	85,000	85,000	14,537	14,537	14,537
Dunn	130,173	128,652	206,111	158,106	176,761	158,060	(48,005)	(29,350)	(48,051)
Eau Claire	85,000	53,694	81,821	101,412	85,000	89,407	19,591	3,179	7,586
Florence	85,000	0	48,373	85,000	85,000	85,000	36,627	36,627	36,627
Fond du Lac*	180,848	84,800	292,248	196,859	213,868	205,134	(95,389)	(78,380)	(87,114)
Forest	85,000	0	48,373	85,000	85,000	85,000	36,627	36,627	36,627
Grant*	85,000	67,300	171,685	102,774	85,000	89,818	(68,911)	(86,685)	(81,867)
Green*	85,000	30,000	73,361	95,187	85,000	87,526	21,826	11,639	14,165
Green Lake	85,000	30,000	58,697	105,821	85,000	90,739	47,124	26,303	32,042
Iowa	85,000	35,000	94,282	95,871	85,000	87,733	1,589	(9,282)	(6,549)
Iron	85,000	0	50,056	85,000	85,000	85,000	34,944	34,944	34,944
Jackson	103,240	25,000	119,833	110,167	113,420	124,781	(9,666)	(6,413)	4,948
Jefferson	85,000	83,500	82,424	106,557	85,000	90,961	24,133	2,576	8,537
Juneau	85,000	28,333	48,373	92,295	85,000	86,652	43,922	36,627	38,279
Kenosha	85,000	0	48,373	85,000	85,000	85,000	36,627	36,627	36,627
Kewaunee	85,000	0	84,548	85,000	85,000	85,000	452	452	452
LaCrosse	85,000	259,638	94,999	117,887	85,000	94,384	22,888	(9,999)	(615)
Lafayette	104,171	60,000	152,511	117,400	133,828	127,616	(35,111)	(18,683)	(24,895)
Langlade	85,000	0	63,677	85,000	85,000	85,000	21,323	21,323	21,323
Lincoln	85,000	30,000	70,481	94,667	85,000	87,369	24,186	14,519	16,888
Manitowoc	201,732	101,171	250,404	223,547	231,592	227,771	(26,857)	(18,812)	(22,633)
Marathon*	124,922	165,000	276,683	142,308	157,812	149,623	(134,375)	(118,871)	(127,060)
Marinette	106,940	33,196	122,557	122,624	116,521	131,127	67	(6,036)	8,570
Marquette	85,000	0	48,373	85,000	85,000	85,000	36,627	36,627	36,627
Menominee	85,000	2,000	48,373	86,967	85,000	85,043	38,594	36,627	36,670
Milwaukee	85,000	0	48,373	85,000	85,000	85,000	36,627	36,627	36,627
Monroe*	85,000	30,000	105,610	95,893	97,644	87,739	(9,717)	(7,966)	(17,871)
Oconto	85,967	25,557	102,823	98,352	96,308	109,157	(4,471)	(6,515)	6,334
Oneida	85,000	0	57,053	85,000	85,000	85,000	27,947	27,947	27,947
Outagamie	175,295	0	202,303	175,295	191,864	175,295	(27,008)	(10,439)	(27,008)
Ozaukee	131,186	36,000	164,478	143,502	151,611	154,355	(20,976)	(12,867)	(10,123)

**Comparison of 2003 Staff Funding Options**

County	2003 Total Projected Base Staffing Award	Additional Funding Request	2002 DATCP Staffing & Support Allocation	Projected Funding: Options 1., 2., and 3.			Difference Between 2003 Projected Funding and 2002 Allocation: Options 1., 2., and 3.		
				Option 1. 2003 Projected base funding + proportional to all	Option 2. 2003 Projected base funding + BASG Make-up	Option 3. WS + \$20,000 or \$85,000 + proportional	Option 1. 2003 Projected base funding + proportional to all: Difference	Option 2. 2003 Projected base funding + BASG Make-up: Difference	Option 3. WS + \$20,000 or \$85,000 + proportional: Difference
Pepin	85,000	15,000	68,003	94,087	85,000	87,194	26,084	16,997	19,191
Pierce	85,000	20,000	95,017	98,209	91,145	88,439	3,192	(3,872)	(6,578)
Polk	220,931	50,000	247,458	244,476	237,205	247,493	(2,982)	(10,253)	35
Portage	94,363	40,937	131,079	105,488	116,888	117,172	(25,591)	(14,191)	(13,907)
Price	85,000	10,000	58,888	90,030	85,000	85,968	31,142	26,112	27,080
Racine	85,000	22,500	56,308	93,217	85,000	86,931	36,909	28,692	30,623
Richland	85,000	12,000	82,543	92,775	85,000	86,797	10,232	2,457	4,254
Rock	85,000	35,000	87,153	96,251	86,321	87,848	9,098	(832)	695
Rusk	98,779	70,343	120,046	106,427	111,826	120,538	(13,619)	(8,220)	492
Saint Croix	185,480	60,000	229,648	214,608	212,577	213,729	(15,040)	(17,071)	(15,919)
Sauk	291,342	111,632	340,540	306,377	321,525	315,333	(34,163)	(19,015)	(25,207)
Sawyer	85,000	0	64,212	85,000	85,000	85,000	20,788	20,788	20,788
Shawano	85,000	20,000	74,745	93,697	85,000	87,076	18,952	10,255	12,331
Sheboygan	167,123	0	216,304	167,123	197,296	167,123	(49,181)	(19,008)	(49,181)
Taylor	85,000	45,114	65,052	91,147	85,000	86,306	26,095	19,948	21,254
Trempealeau	340,525	60,000	372,425	356,967	360,096	364,941	(15,458)	(12,329)	(7,484)
Vernon	203,052	20,000	245,149	222,610	228,879	223,052	(22,539)	(16,270)	(22,097)
Vilas	85,000	0	51,018	85,000	85,000	85,000	33,982	33,982	33,982
Walworth	111,937	61,000	166,937	133,200	145,680	138,361	(33,737)	(21,258)	(28,576)
Washburn	85,000	0	48,373	85,000	85,000	85,000	36,627	36,627	36,627
Washington	85,000	47,000	124,354	110,267	109,144	101,901	(14,087)	(15,210)	(22,453)
Waukesha	132,523	37,000	161,308	154,194	150,183	158,519	(7,114)	(11,125)	(2,789)
Waupaca	157,266	44,694	185,712	171,391	174,718	180,982	(14,321)	(10,994)	(4,730)
Waushara	85,000	48,363	133,363	100,240	114,671	108,229	(33,123)	(18,692)	(25,134)
Winnebago	162,200	60,000	202,386	188,660	186,854	189,643	(13,726)	(15,532)	(12,743)
Wood	104,108	20,000	126,725	113,803	117,984	124,108	(12,922)	(8,741)	(2,617)
<b>Totals:</b>	<b>8,602,992</b>	<b>3,148,625</b>	<b>9,741,160</b>	<b>9,432,698</b>	<b>9,432,677</b>	<b>9,395,181</b>			

\*Indicates a priority watershed project ended in the county in 2002, reducing funding amount for 2003.

**Counties with Watershed Projects Ending in 2002 and Amount of Staff Funding Allocated in 2002 (and Not Projected for 2003)**

County	Watershed Code	Amount
Adams	NEE	\$90,694
Brown	EAS	\$249,023
Fond du Lac	SHB	\$67,506
Grant	LGR	\$104,852
Green	LEP	\$51,103
Marathon	LBE	\$107,459
Monroe	LTM	\$37,861
		\$708,498

**Kalies, Beata**

**From:** Jelinski, Dave DATCP  
**Sent:** Monday, June 10, 2002 3:05 PM  
**To:** Kalies, Beata  
**Cc:** Moll, Keeley A DATCP  
**Subject:** FW: Proposed Changes to ATCP 50



Preliminary Proposal  
ATCP 50.d...

Beata: Just a note to let you know that we met with Pat Henderson and John Stolzenberg early this afternoon to discuss changes to ATCP 50 in response to Senator Baumgart's concerns. It was not clear from the meeting if these changes would be enough to move the rule ahead. Pat indicated he may be contacting you to see if these changes would be acceptable to Representative Ott. Let me know if you have any questions. Dave

-----Original Message-----

**From:** Jelinski, Dave DATCP  
**Sent:** Friday, June 07, 2002 11:29 AM  
**To:** Henderson, Patrick  
**Cc:** Stolzenberg, John; Matson, James K DATCP; Neher, Nicholas J DATCP  
**Subject:** Proposed Changes to ATCP 50

John: As per our phone call today, I am forwarding a copy of some proposed changes to ATCP 50 we put together in response to Senator Baumgart's request. Thanks for agreeing to meet on Monday to discuss this proposal. We are tentatively planning for a 1:00 pm meeting. At this point, we will plan to come to your office. If you have any questions or concerns, feel free to call me Monday morning. Dave

*Dave's call to mention this info is coming.  
Hope to have it done by end of week.  
Expect contact from Baumgart's office.*

**1. Modify s. ATCP 50.01(18)(b) as follows:**

ATCP 50.01(18)(b) An ordinance or regulation that a county adopts under s. 59.69, 59.692, 92.07(2), 92.11, 92.15, 92.16 or 92.17, Stats., or under other county authority.

**2. Modify s. ATCP 50.08(3)(d) as follows:**

ATCP 50.08(3)(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 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. This paragraph does not apply to land directly occupied by a facility or structure, such as a manure storage facility, that a landowner installs as part of the conservation practice.

**3. Create s. ATCP 50.08(4)(d) as follows:**

ATCP 50.08(4)(d) Paragraph (a) does not apply to land directly occupied by a facility or structure, such as a manure storage facility, that a landowner installs as part of the conservation practice.

**4. Create s. ATCP 50.12(2)(note) as follows:**

**NOTE:** The department and DNR will work with counties to develop more detailed guidelines and suggestions for county land and water resource management plans, but individual counties have some flexibility and discretion to propose plans that are appropriate for their local conditions.

**5. Modify s. ATCP 50.12(5) as follows:**

ATCP 50.12(5) The department shall ~~approve or disapprove~~ review a county land and water resource management plan, and shall ~~approve or disapprove the plan~~ after consulting with the LWCB. ~~The department may approve a plan that complies with this section.~~ The department shall review the plan based on the criteria identified in this section, s. ATCP 50.30(3) and s. 92.10(6), Stats. The secretary shall sign the order approving or disapproving the county plan. The department shall approve a plan for a specified period of time that shall not exceed 5 years, subject to conditions that the department specifies in the order. The department's approval does not take effect if the county board does not approve the county plan.





State of Wisconsin  
Scott McCallum, Governor

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

June 14, 2002

Senator James Baumgart  
306 South, State Capitol  
P. O. Box 7882  
Madison, WI 53707-7882

Dear Senator Baumgart:

**Re: Soil and Water Resource Management; Rule Modifications (*Clearinghouse Rule 00-03*)**

On April 24, 2002, your committee asked the Department of Agriculture, Trade and Consumer Protection to consider modifications to the department's proposed rule related to soil and water resource management (ATCP 50). Enclosed you will find proposed modifications that address the committee's concerns. We are including a summary of the changes, as well as a revised draft rule incorporating the changes (see shaded provisions).

### **County Plans**

I want to assure you that we are committed to fair treatment of the counties, our partners in conservation. Our commitment goes beyond the responsibilities spelled out in ATCP 50. An important part of this commitment is our support of county land and water resource management (LWRM) plans. We supported the Wisconsin Land and Water Conservation Association (WLWCA) when it first proposed the idea of LWRM plans, and backed the 1997 legislation that included this advance in locally led conservation.

When we started reviewing LWRM plans in 1999, we were motivated by a simple goal: an approved plan for every county. Without approved plans, we recognized that we could not carry out the most basic aspects of our land and water resources program. We engaged WLWCA in developing the guidelines for preparing LWRM plans that could serve as a blueprint for local conservation and qualify counties for many other grant programs. By 2001, we had succeeded in approving plans for all 72 counties.

In the next few years, we will continue this approach in working with counties to revise their LWRM plans. We anticipate greater levels of cooperation, as we involve DNR and counties in refining the guidelines. With the new nonpoint rules, we see an important role for LWRM plans in the implementation of new state agricultural performance standards. We look forward to the opportunity to help counties take LWRM plans to this next level.

### Standards Incorporated by Reference

In addition to the changes recommended by your committee, we have also made technical changes in the final draft rule to accommodate suggestions from the Department of Justice. As you know, the proposed rule incorporates a large number of technical standards by reference. DOJ and the Revisor of Statutes must grant permission to incorporate standards by reference, which avoids having to publish the standards in full in the rule.

In response to DOJ suggestions, we have identified the individual publication dates of all the individual standards incorporated by reference, and have added more notes explaining how readers may obtain copies. We have also added a new *Appendix G* that lists all of the primary and secondary references and explains how copies may be obtained. These non-substantive changes will simply provide more information to readers.

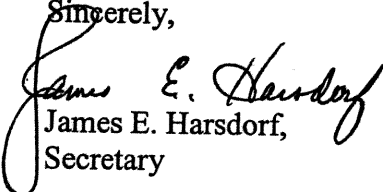
The original draft rule incorporated certain NRCS technical guide standards in effect on the effective date of the rule (see subchapter VIII and ATCP 50.01(27)). DOJ has suggested that the department should instead identify the *individual* publication dates of those standards. The department has made this non-substantive change, inserting individual publication dates (mainly in subchapter VIII) in lieu of the more general reference in ATCP 50.01(27). The result is the same: the final draft rule incorporates the same specifically defined set of standards. Future updates may be incorporated only through the rule amendment process.

We have deleted references to two NRCS standards recently eliminated by NRCS (see ATCP 50.73(3)(d) and ATCP 50.80(3)(a)). This is not a significant change, because the standards duplicated portions of other standards and because the proposed rule has never incorporated NRCS standards that were not in effect on the effective date of the rule (see ATCP 50.01(27), as originally proposed). We have also corrected two erroneous date references (ATCP 50.79(3)(a)3 and ATCP 50.84(5)(a)) which do not affect the rule substance.

### Conclusion

We trust that these changes address your committee's concerns, and improve the final draft rule. We hope to adopt this important rule as quickly as possible, so the state can proceed with the redesigned nonpoint pollution control program.

Sincerely,

  
James E. Harsdorf,  
Secretary

Cc: Representative Al Ott, Chair  
Assembly Committee on Agriculture

Enc.



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**PROPOSED ORDER OF THE STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION  
ADOPTING, AMENDING AND REPEALING RULES**

The department of agriculture, trade and consumer protection proposes the following order to amend ATCP 3.02(1)(h), to repeal and recreate ch. ATCP 50, and to create ATCP 40.11, relating to soil and water resource management.

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**Analysis Prepared by the Department of  
Agriculture, Trade and Consumer Protection**

Statutory authority: ss. 92.05(3)(c) and (k), 92.14(8), 92.15(3)(b), 92.16, 92.18(1), 93.07(1), and 281.16(3)(b) and (c), Stats.

Statutes interpreted: s. 91.80, ch. 92, and s. 281.16, Stats.

This rule repeals and recreates current rules related to Wisconsin's soil and water resource management program. The department of agriculture, trade and consumer protection ("DATCP") administers this program under ch. 92, Stats. The program is designed to conserve the state's soil and water resources, reduce soil erosion, prevent pollution runoff and enhance water quality. This rule spells out program standards and procedures. Among other things, this rule:

- Requires farm conservation practices, subject to cost-sharing.
- Creates a farm nutrient management program.
- Spells out standards for cost-shared practices.
- Spells out standards for county programs.
- Spells out standards and procedures for DATCP grants to counties.
- Spells out standards and procedures for county cost-share grants to landowners.
- Spells out standards for soil and water professionals (agricultural engineering practitioners, nutrient management planners and soil testing laboratories).
- Coordinates state and local regulation of farm conservation practices.

**Background**

**General**

DATCP administers Wisconsin's soil and water resource management program in cooperation with counties, the department of natural resources ("DNR"), the land and water conservation board ("LWCB"), the natural resource conservation service of the

U.S. department of agriculture ("NRCS") and other agencies. DATCP coordinates soil and water management efforts by these agencies. DATCP funds county soil and water conservation programs, and finances county cost-share grants to landowners to implement conservation practices. DNR administers a related program aimed at preventing nonpoint source pollution.

In 1997 Wis. Act 27 and 1999 Wis. Act 9, the Legislature mandated a comprehensive redesign of state programs related to nonpoint source pollution. Among other things, the Legislature directed DATCP and DNR to establish conservation standards and practices for farms. The Legislature also directed DATCP to adopt rules related to nutrient management on farms. This rule implements the redesigned nonpoint program.

### **County Programs**

Counties play a key role in Wisconsin's soil and water conservation program. Counties adopt land and water resource management plans, administer county ordinances, adopt conservation standards for farmers claiming farmland preservation tax credits, provide information and technical assistance, and make cost-share grants to landowners installing conservation practices. Counties may also take enforcement action to implement conservation requirements, subject to cost-sharing.

DATCP awards annual grants to counties. These grants reimburse county staff and support costs. They also reimburse county cost-share payments to landowners. DATCP makes county grant awards in an *annual grant allocation plan* reviewed by the LWCB. DATCP reimburses eligible county expenditures up to the amount of the county's annual grant award. Unspent funds remain with DATCP, for allocation in a subsequent grant year.

### **Soil and Water Conservation on Farms**

#### **Farm Conservation Practices**

DNR is primarily responsible for adopting farm performance standards to prevent pollution runoff. DATCP must prescribe conservation practices to implement the DNR standards. DATCP must also prescribe soil conservation and nutrient management practices. This rule requires the following practices, subject to cost-sharing (see below):

- *Pollution runoff.* Under this rule, every farm must comply with DNR runoff standards, including standards for barnyard runoff and manure handling. This rule cross-references, but does not restate or duplicate, these DNR standards.
- *Soil erosion.* Under this rule, a farmer must manage croplands and cropping practices so that soil erosion rates on cropped soils do not exceed a tolerable rate ("T"). For most soils, the tolerable rate ("T") is equivalent to 3 to 5 tons of soil loss per acre per year. DNR rules will establish equivalent cropland erosion standards. Soil erosion will be measured according to the RUSLE 2 equation published by NRCS.

- *Nutrient management.* This rule establishes nutrient management standards for farms. DNR rules will establish similar nutrient management standards. Under this rule:
  - A farmer applying manure or commercial fertilizer must have an annual nutrient management plan, and must follow that plan.
  - A qualified nutrient management planner (see below) must prepare each nutrient management plan. A farmer may prepare his or her own nutrient management plan if the farmer has completed a DATCP-approved training course within the preceding 4 years, or is otherwise qualified under this rule.
  - The nutrient management plan must be based on soil tests conducted at a laboratory certified by DATCP.
  - The nutrient management plan must comply with NRCS technical standard 590. This is currently a nitrogen-based standard. NRCS plans to adopt a phosphorus-based standard, and DATCP plans to incorporate that phosphorus-based standard in future rules (by 2005).
  - Nutrient applications may not exceed the amounts required to achieve applicable crop fertility levels recommended by the university of Wisconsin in *Soil Test Recommendations for Field, Vegetable and Fruit Crops*, UWEX publication A-2809 (1998), unless the nutrient management planner documents a special agronomic need for the deviation. *Appendix B* contains a convenient summary of the UW recommendations for selected crops.
  - A person selling bulk fertilizer to a farmer must record the name and address of the nutrient management planner who prepared the farmer's nutrient management plan (if the farmer has a plan).
  - DATCP and DNR nutrient management rules first apply on the following dates:
    - January 1, 2005 for existing cropland located in "outstanding resource" or "exceptional resource" watersheds that DNR designates in NR 102.
    - January 1, 2005 for existing cropland located in "impaired" watersheds that DNR identifies on its "303(d) list." See map, *Appendix A*.
    - January 1, 2005 for existing cropland located in "source water protection areas" that DNR designates under NR 243.
    - January 1, 2008 for existing cropland in other areas.
    - One year after the rule effective date for "new cropland" anywhere in the state. DNR rules define "new cropland."

A farmer may choose the best way to comply with this rule. A farmer may choose conservation practices that are appropriate for his or her farm, as long as those practices achieve compliance. DATCP, UW-extension, NRCS and the counties will provide information and recommendations.

### **Cost-Shared Conservation Practices**

DATCP provides cost-share funding to counties. A county may use DATCP funds to cost-share farm conservation practices identified in this rule. A county may cost-share practices that will be cost-effective in achieving conservation objectives on the recipient's farm.

A cost-share grant may pay a portion of the landowner's cost to install *and maintain* cost-shared practices. The county must enter into a cost-share contract with the landowner. The landowner must install and maintain the cost-shared practices according to this rule and the cost-share contract.

A county may decide how to allocate cost-share funding from DATCP, subject to this rule. The county selects cost-share recipients and cost-shared projects, and determines the amount of cost-sharing that it will offer for each project. But if a county *requires* a landowner to install a conservation practice, the county *must* meet minimum cost-share requirements under this rule (see below). Cost-share payments may not exceed the maximum rates or amounts specified in this rule (see below).

A county may use DATCP funds to cost-share any of the following conservation practices described in this rule (or other practices specifically approved by DATCP):

- Manure storage systems
- Manure storage system closure
- Barnyard runoff control systems
- Access roads and cattle crossings
- Animal trails and walkways
- Contour farming\*
- Cover and green manure crop\*
- Critical area stabilization
- Diversions
- Field windbreaks
- Filter strips
- Grade stabilization structures
- Heavy use area protection
- Livestock fencing
- Livestock watering facilities
- Milking center waste control systems
- Nutrient management\*

- Pesticide management\*
- Prescribed grazing
- Relocating or abandoning animal feeding operations
- Residue management\*
- Riparian buffers
- Roofs
- Roof runoff systems
- Sediment basins
- Sinkhole treatment
- Streambank and shoreline protection
- Strip-cropping\*
- Subsurface drains
- Terrace systems
- Underground outlets
- Waste transfer systems
- Wastewater treatment strips
- Water and sediment control basins
- Waterway systems (grassed waterways)
- Well decommissioning
- Wetland development or restoration

Except for the practices marked with an asterisk (\*), these conservation practices are considered “capital improvements.” Capital improvements, if cost-shared, must be maintained for at least 10 years. The county makes the cost-share payment when the capital improvement is installed. In return, the landowner agrees to maintain the capital improvement for the period specified in the cost-share contract. The contract may specify a maintenance period of more than 10 years, but not less than 10 years.

“Soft” conservation practices (those marked with an asterisk in the above list) are not considered “capital improvements.” There is no 10-year maintenance requirement for these practices, so the parties are free to negotiate a shorter maintenance period in the cost-share contract. The length of the maintenance period may depend on the size of the cost-share payment.

This rule spells out standards for the design and installation of cost-shared practices. DATCP reimburses county cost-share payments when the county certifies that the cost-shared practice has been properly installed and paid for. Some conservation practices must be designed and certified by a professional engineer, a certified agricultural engineering practitioner or a qualified nutrient planner (see below).

DATCP will not change these design or installation standards, except by rule. (The rulemaking process ensures public review and input.) DATCP will cooperate with the current Standards Oversight Council (SOC) in the development of technical standards for cost-shared practices, and will consider SOC recommendations. SOC is a voluntary, multi-agency committee that works to share technical information and coordinate state

and federal technical standards. SOC has no rulemaking authority. This rule does not change SOC's current role or operations.

### **Cost-Sharing Required**

A county may not *require* a landowner to install conservation practices that change "existing" agricultural facilities or practices unless the county offers the landowner at least 70% cost-sharing (90% if there is an "economic hardship"). DNR rules define "existing" agricultural facilities and practices, for cost-share purposes. Under this rule, a landowner's "cost" includes all the following:

- The landowner's reasonable and necessary expenditures 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 is *required* to take more than ½ acre of land out of agricultural production.
  - The cost to take land out of production is calculated at the time of the cost-share contract, based on annual costs projected over the maintenance period specified in the cost-share contract. Each year's cost equals the number of affected acres, multiplied by the relevant agricultural land rental rate in the county (as determined by USDA) on the date of the cost-share contract.
  - The cost-share payment for riparian land ordered out of production must be at least equal to the payment that would be offered under the state-federal conservation reserve enhancement program (CREP), regardless of whether the land is eligible for that program. To qualify for this CREP-equivalent payment, a landowner must agree to a 15-year maintenance period or a perpetual easement (just as under the CREP program). This CREP-equivalent payment does not apply to cost-share contracts signed after the CREP program expires.

If a county pays a landowner to take land out of agricultural production, the county may obtain an easement restricting agricultural production on that land. The duration of the easement corresponds to the duration of the cost-share agreement. The county must record the easement with the county register of deeds, so that subsequent landowners receive notice of the easement.

This rule clarifies that the 70% (90% hardship) minimum cost-share requirement does *not* apply to any of the following:

- “New” agricultural facilities or practices (as defined by DNR rules).
- Cost-share arrangements for the *voluntary* installation of cost-shared practices. In a voluntary agreement, the county is free to negotiate the cost-share amount (up to the *maximum* amount allowed by this rule). But if the county *requires* a landowner to change an “existing” agricultural practice (as defined by DNR), the county must meet applicable minimum cost-share requirements under this rule.
- A capital improvement if the landowner has already received cost-sharing to install and maintain that improvement for at least 10 years. *But a county must continue to provide cost-sharing for land out of production if the county requires a landowner to keep more than ½ acre of land out of agricultural production for more than 10 years.*
- A “soft” conservation practice (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. For example, if a county has *already paid* a landowner to implement nutrient management for at least 4 years, the county may require the landowner to comply with state nutrient management standards in subsequent years without further cost-sharing.
- Conservation practices or costs for which this rule prohibits cost-sharing.
- 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.

This rule clarifies that:

- Cost-share grants from any public or private source, or combination of sources, may be counted toward the 70% (90% hardship) cost-share offer.
- A loan is not a grant.
- The 70% (90% hardship) cost-sharing requirement also applies to comparable conservation practices that a landowner is *required* to install under a county or local ordinance.
- Cost-share requirements do not limit emergency action needed to mitigate imminent harm to waters of the state.



- A county may suspend a landowner's eligibility for farmland preservation tax credits if the landowner fails to comply with county conservation standards under the farmland preservation program (ch. 91, Stats.). The county may suspend the landowner's eligibility, *regardless* of whether the county offers cost-sharing to the non-complying landowner.

### **Economic Hardship**

Under this rule, there is an "economic hardship" if a CPA or accredited financial institution certifies, based on a review of a farm financial statement prepared according to generally accepted accounting principles, that the landowner is unable to make the normal 30% cost-share contribution. DATCP may review a questionable "economic hardship" finding, as necessary.

### **Maximum Cost-Share Rates**

A cost-share contract may reimburse a portion of the landowner's cost to install and maintain the cost-shared practice. The county must implement cost-containment procedures (such as competitive bidding or other procedures described in this rule) to ensure that costs are reasonable.

This rule limits cost-share rates as follows:

- Generally speaking, a county may not use DATCP funds to pay more than 70% of the cost of a conservation practice (see s. 92.14(6)(gm), Stats.).
- A county may pay up to 90% if there is an "economic hardship" (see above).
- A county land conservation committee may combine DATCP and DNR funds, up to the above limits.
- The cost-share limits in this rule do *not* apply to cost-share funds provided by non-state sources. A county may combine state funds with funds from other sources.
- A county may provide additional state cost-share funds to replace a cost-shared practice that is damaged or destroyed by natural causes. The same cost-share limits apply to the replacement funding.
- For installation of the following practices, the county may pay up to the maximum cost-share percentage or the following maximum amount, whichever is higher:
  - For contour farming, \$9 per acre.
  - For cover and green manure crop, \$25 per acre.
  - For strip-cropping, \$13.50 per acre.
  - For field strip-cropping, \$7.50 per acre.

- For high residue management systems, no-till systems, ridge till systems or mulch till systems, \$18.50 per acre.
- For conservation plantings in riparian buffers, \$100 per acre.
- For nutrient management or pesticide management, \$7.00 per acre.
- For riparian land taken out of production, the county may pay the CREP-equivalent amount (see above) if that amount is higher than the normal cost-share rate.
- No cost-share grant to relocate an animal feeding operation may exceed 70% of the estimated cost to install a manure management system or 70% of eligible relocation costs, whichever is less.

### **Cost-Share Contracts with Landowners**

A county land conservation committee must enter into a written contract with every landowner to whom the committee awards a cost-share grant financed by DATCP. The contract must include the following terms, among others:

- The location where the cost-shared practice will be installed, and a specific legal description if the cost-share grant exceeds the following applicable amount:
  - \$10,000 if the cost-share contract is signed prior to 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.
- Design specifications for the cost-shared practice. Cost-shared practices must be designed and installed according to this rule.
- The estimated cost of the practice.
- The rate and maximum amount of the cost-share grant.
- A construction timetable.
- A required maintenance period. The maintenance requirement runs with the land, and is binding on subsequent owners, if the cost-share grant is for more than the following applicable amount:
  - \$10,000 if the cost-share contract is signed prior to 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.
- A procedure for pre-approving material construction changes.

- A requirement that the landowner must properly install the cost-shared practice and make all payments for which the landowner is responsible before the county makes any cost-share payment to the landowner. The county may make partial payments for partial installations that have independent conservation benefits. Some cost-shared practices must be reviewed by a professional engineer, a certified agricultural engineering practitioner or a qualified nutrient management planner (see below).
- County remedies for breach of contract.

DATCP must approve a county cost-share grant to a landowner if the grant exceeds \$50,000. If the cost-share contract exceeds the following applicable amount, the county or landowner must record the contract with the county register of deeds:

- \$10,000 if the cost-share contract is signed prior to 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.

### Nutrient Management Program

#### **General**

This rule creates a nutrient management program, as required by 1997 Wis. Act 27. The program is designed to reduce excessive nutrient applications and nutrient runoff that may pollute surface water and groundwater. This program includes the following elements:

- *Annual nutrient management plan.* A farmer applying commercial fertilizer or manure must have an annual nutrient management plan (see above), and must follow that plan. For “existing croplands” (as defined by DNR), this requirement is contingent on cost-sharing for at least 4 years (see above).
- *Soil testing.* Nutrient management plans must be based on soil tests conducted at a laboratory certified by DATCP (see below).
- *Qualified nutrient planners.* A qualified nutrient management planner (see below) must prepare each nutrient management plan. A farmer may prepare his or her own plan if the farmer has completed a DATCP-approved training course within the preceding 4 years, or is otherwise qualified.
- *Nutrient application limits.* Nutrient applications may not exceed the amounts needed to achieve crop fertility levels recommended by the university of Wisconsin, unless the nutrient management planner documents that the deviation is justified by special agronomic needs (see above).

- *Cost-share grants for animal waste and nutrient management.* A county may award cost-share grants for animal waste and nutrient management practices installed by farmers. Cost-shared practices must comply with standards in this rule.

### **Soil Testing Laboratories**

Soil tests required by this rule must be performed by the university of Wisconsin or another soil testing laboratory certified by DATCP. To be certified, a laboratory must show that it is qualified and equipped to perform accurate soil tests. An out-of-state laboratory may be certified, if it complies with this rule.

If a certified laboratory recommends Wisconsin nutrient applications that exceed the amounts needed to achieve applicable crop fertility levels recommended by the university of Wisconsin, the laboratory must make the following disclosure:

#### **IMPORTANT NOTICE**

**Our recommended nutrient applications exceed the amounts required to achieve applicable crop fertility levels recommended by the University of Wisconsin. The amounts required to achieve the UW's recommended crop fertility levels are shown for comparison. Excessive nutrient applications may increase your costs, and may cause surface water and groundwater pollution. If you apply nutrients at the rates we recommend, you will not comply with state soil and water conservation standards. You may contact your county land conservation committee for more information.**

A certified laboratory must keep, for at least 4 years, copies of all its soil tests and nutrient recommendations. DATCP may deny, suspend or revoke a laboratory certification for cause. The affected laboratory may request a formal hearing under ch. 227, Stats.

DATCP or its agent may review the performance of a certified soil testing laboratory, to ensure that the laboratory performs accurate soil tests. DATCP or its agent may do any of the following, as necessary:

- Review laboratory facilities, procedures and records.
- Review the proficiency of laboratory analysts.
- Test laboratory proficiency in analyzing check samples prepared by DATCP or its agent.

### **Nutrient Management Planners**

A qualified nutrient management planner must prepare each nutrient management plan required under this rule. A farmer may prepare his or her own nutrient management plan if the farmer has completed a DATCP-approved training course within the preceding 4 years, or is otherwise qualified as a planner. A qualified nutrient management planner must prepare plans according to this rule.

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:

- A county land and water resource management plan, and a program to implement that plan.
- County conservation standards that implement state soil and water conservation requirements on farms.
- A program to apply for, receive, distribute and account for state soil and water resource management grants.
- A program for distributing cost-share grants to landowners. A county must ensure that cost-shared conservation practices are designed and installed according to this rule.
- A recordkeeping and reporting system. A county must file an annual report with DATCP. This rule simplifies the current annual reporting requirement.

### **Land and Water Resource Management Plans**

Under s. 92.10, Stats., every county must prepare a land and water resource management plan. DATCP must approve the county plan, for up to 5 years, after consulting with the LWCB. DATCP may not award soil and water conservation grants to a county that lacks an approved plan.

A county land and water resource management plan must, at a minimum, describe all of the following in reasonable detail:

- Water quality and soil erosion conditions throughout the county.
- State, county and local regulations that the county will use to implement the county plan. DATCP may require counties to submit copies of relevant county and local regulations, and may comment on those regulations.
- Water quality objectives for each water basin, priority watershed and priority lake. The county must consult with DNR when determining water quality objectives.
- Key water quality and soil erosion problem areas. The county must consult with DNR when determining key water quality problem areas.
- Conservation practices needed to address key water quality and soil erosion problems.
- A plan to identify priority farms in the county.
- Compliance procedures, including notice, enforcement and appeal procedures, which will apply if the county takes action against a landowner who fails to comply with applicable requirements.
- The county's multi-year workplan to achieve compliance with water quality objectives and implement farm conservation practices. The plan must identify priorities and expected costs.

- How the county will monitor and measure its progress.
- How the county will provide information and education to farmers, including information related to conservation practices and cost-share funding.
- How the county will coordinate its program with other agencies.

When preparing a land and water resource management plan, a county must do all of the following:

- Appoint and consult with a local advisory committee of interested persons.
- Assemble relevant data, including relevant data on land use, natural resources, water quality and soils.
- Consult with DNR.
- Assess resource conditions and identify problem areas.
- Establish and document priorities and objectives.
- Project available funding and resources.
- Establish and document a plan of action.
- Identify roles and responsibilities.

Before a county submits a land and water resource management plan for DATCP approval, the county must hold at least one public hearing on the plan. The county must also make a reasonable effort to notify farmers affected by county findings, and give them an opportunity to contest the findings.

DATCP may review a county's ongoing implementation of a DATCP-approved county plan. DATCP may consider information obtained in its review when it makes its annual grant allocations to counties.

### **County Ordinances**

A county may require conservation practices by ordinance. DATCP may review and comment on county ordinances. Conservation practices required under a county ordinance are subject to cost-sharing, to the same extent as under this rule.

Under this rule and s. 92.15, Stats., a county must obtain DATCP or DNR approval before it adopts a livestock ordinance that exceeds the standards under this rule. This rule establishes a procedure for DATCP review of livestock ordinances (see below). This rule also spells out standards for manure storage ordinances and agricultural shoreland management ordinances (see below).

### **Farmland Preservation; Conservation Standards**

Under current law, farmers must meet county conservation standards in order to claim tax credits under the state farmland preservation program. This rule requires every county to incorporate, in its standards, the farm conservation practices required under this rule (see

above). If a county fails to comply, farmers may be disqualified from claiming tax credits. DATCP may also deny soil and water conservation funding to a noncomplying county.

This rule spells out the procedure by which a county must adopt conservation standards for farms receiving farmland preservation tax credits. The county must hold a public hearing on the proposed standards. The county must also submit the proposed standards for LWCB approval, as required by s. 92.105, Stats.

A county may require a farmer to certify compliance on an annual or other periodic basis. A county must inspect a farmer's compliance at least once every 6 years (or on another basis approved by DATCP). The county must issue a notice of noncompliance if it finds that the farmer is not complying. If the farmer fails to comply by a deadline specified in the notice, the farmer may no longer claim farmland preservation tax credits. A county may disqualify a farmer from receiving tax credits, regardless of whether the county offers cost-sharing for the required conservation practices. The farmer may meet with the county land conservation committee to discuss or contest a disqualification notice.

A farmer who fails to meet county standards may continue to claim farmland preservation tax credits if the farmer implements a farm conservation plan that will achieve full compliance within 5 years. A farm conservation plan is a written agreement, between the farmer and county, in which the farmer agrees to install conservation practices by a specified date.

### **Annual Grant Application**

By April 15 of each calendar year, a county must file its funding application with DATCP for the next calendar year. The county may request any of the following:

- *An annual staffing grant.* DATCP awards annual staffing grants to eligible counties. A staffing grant may pay for county employees and independent contractors who work for the county land conservation committee. It may also pay for county employee training and support. With DATCP approval, a county may redirect unused staffing funds to pay for cost-share grants to landowners. In its annual funding request, a county must specify the amount of staff funding requested and the general activities that staff will perform. DATCP will reimburse county staffing costs at the rate specified in s. 92.14, Stats., up to the amount of the county's annual grant award.
- *Cost-share funding for farm conservation practices.* Each year, DATCP awards cost-share grant funding to eligible counties. Counties use these funds to finance cost-share grants to landowners. In its annual funding request, a county must specify the amount of cost-share funding requested and the general purposes for which the county will use that funding. DATCP distributes cost-share funding on a reimbursement basis, after the county certifies that the cost-shared practices are properly installed and paid for. DATCP reimburses county cost-share payments up to the amount of the county's annual grant award.



## **Annual Report**

By April 15 of each year, a county must file with DATCP a year-end report for the preceding calendar year. The report must describe the county's activities and accomplishments, including progress toward the objectives identified in the county land and water resource management plan (see above). This rule eliminates financial reporting requirements that are no longer needed.

## **Accounting and Recordkeeping**

Every county land conservation committee, in consultation with the county's chief financial officer, must establish and maintain an accounting and recordkeeping system that fully and clearly accounts for all soil and water conservation funds. The records must document compliance with applicable rules and contracts.

## **DATCP Review**

DATCP may review county activities under this rule, and may require the county to provide relevant records and information.

## **Training for County Staff**

DATCP may provide training, distribute training funds to counties (see below), make training recommendations, and take other action to ensure adequate training of county staff. Under this rule, DATCP must appoint a training advisory committee to advise DATCP on county staff training activities. The committee must include representatives of all of the following:

- DNR.
- NRCS.
- The university of Wisconsin-extension.
- The statewide association of land conservation committees.
- The statewide association of land conservation committee staff.

## **Grants to Counties**

DATCP awards soil and water conservation grants to counties. These grants finance county staff and support, as well as county cost-share grants to landowners. DATCP does not provide grants to local government. In certain limited cases, DATCP may authorize a county to reallocate county *staffing* grant funds to local governments or tribes.

DATCP may award grants (service contracts) to governmental or non-governmental entities for information, education, training and other services related to DATCP's administration of the soil and water conservation program. Under this rule, DATCP will no longer award cost-share grants directly to individual landowners.

## **Annual Grant Allocation Plan**

This rule requires DATCP to allocate soil and water conservation grants according to an annual grant allocation plan. The DATCP secretary signs the allocation plan after consulting with the LWCB. The plan must specify, for the next calendar year, all of the following:

- The total amount appropriated to DATCP for possible allocation under the plan, including the amounts derived from general purpose revenue (GPR), segregated revenue (SEG) and bond revenue sources.
- The total amount allocated under the plan, including the amounts allocated from GPR, SEG and bond revenue sources.
- The total amount allocated for annual staffing grants to counties, the total and subtotal amounts allocated to each county, and an explanation for any material difference in allocations between counties.
- The total amount allocated to counties for cost-share grants to landowners, the total and subtotal amounts allocated to each county, and an explanation for those allocations.
- The amounts allocated to non-county grant recipients, and an explanation for those allocations.

DATCP must prepare the annual grant allocation plan with DNR after reviewing county grant applications. DATCP will normally provide a draft plan to DNR, the LWCB and every county land conservation committee by August 1 of the year preceding the calendar year to which the plan applies.

DATCP must adopt an annual allocation plan by December 31 of the year preceding the calendar year to which the plan applies. The final draft plan may include changes recommended by the LWCB, as well as updated estimates of project costs. DATCP must provide copies of the plan to DNR, the LWCB and every county land conservation committee.

## **Revising the Allocation Plan**

DATCP may make certain revisions to an annual grant allocation plan after it adopts that plan. The DATCP secretary must sign each plan revision. A revision may do any of the following:

- Extend funding for landowner cost-share contracts that were signed by December 1 of the preceding year, but not completed during that year. Counties must apply by December 31 for contract funding extensions.

- Increase the total grant to any county. DATCP must give all counties notice and an equal opportunity to compete for funding increases (other than funding extensions for existing cost-share contracts).
- Reduce a grant award to any county.
- Reallocate a county's annual grant between grant categories, to the extent authorized by law and with the agreement of the county.

Before DATCP revises an annual grant allocation plan, it must do all of the following:

- Provide notice and a draft revision to DNR, the LWCB and every county land conservation committee. The notice must clearly identify and explain the proposed revision.
- Obtain LWCB recommendations on the proposed revision.

### **Grant Priorities**

Under this rule, DATCP must consider all of the following when preparing an annual grant allocation plan:

- *County staff and project continuity.* DATCP must give high priority to maintaining county staff and project continuity. DATCP must also consider priorities identified in the county grant application and in the county's approved land and water resource management plan.
- *Statewide priorities.* DATCP may give priority to county projects that address the following statewide priorities:
  - Farms discharging pollutants to waters that DNR has listed as "impaired waters" under 33 USC 1313.
  - Farms whose cropland erosion is more than twice T-value.
  - Farms discharging substantial pollution to waters of the state.
  - Farms claiming tax credits under the farmland preservation program.
- *Other factors.* DATCP may also consider the following factors, among others, when determining grant allocation priorities:
  - The strength of the county's plan and documentation.
  - A county's demonstrated commitment to adopt and implement the farm conservation practices required under this rule.
  - The likelihood that funded activities will address and resolve high priority problems identified in approved county land and water resource management plans.

- The relative severity and priority of the water quality and soil erosion problems addressed.
- The relative cost-effectiveness of funded activities in addressing and resolving high priority problems.
- The extent to which funded activities are part of a systematic and comprehensive approach to soil erosion and water quality problems.
- The timeliness of county grant applications and annual reports.
- The completeness of county grant applications and supporting data.
- The county's demonstrated ability, cooperation and commitment, including its commitment of staff and financial resources.
- The degree to which funded projects contribute to a coordinated soil and water resource management program and avoid duplication of effort.
- The degree to which funded projects meet county needs and state requirements.
- The degree to which county activities are consistent with the county's approved land and water resource management plan.

#### **Annual Staffing Grants to Counties**

DATCP must award an annual staffing grant to each eligible county. To receive the awarded funds, a county must enter into an annual grant contract with DATCP. With DATCP approval, the county may reallocate staffing grant funds to a local government or tribe. DATCP may not use bond revenue funds for county staffing grants.

A county must use an annual staffing grant in the year for which it is made. The county may use the grant for any of the following purposes, subject to the grant contract:

- Employee salaries, employee fringe benefits and contractor fees for county employees and independent contractors engaged in soil and water resource management activities on behalf of the county land conservation committee.
- Training for county employees and county land conservation committee members.
- Any of the following employee support costs identified in the grant application:
  - Mileage expenses at the state rate. A staffing grant may not be used to lease or purchase a vehicle.
  - Personal computers, software, printers and related devices.
  - A proportionate share of costs for required financial and compliance audits.
  - Costs for information and education materials, newsletters, office supplies, maps and plats, photocopying, printing and postage.
  - Other staff support costs that DATCP identifies, in the grant application form, as being reimbursable for all counties.

DATCP may award different staffing grant amounts to different counties, based on criteria identified in this rule (see above). Staffing grants may be based, in part, on the county's staffing contribution during the preceding year. Subject to the availability of funds, 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 watersheds, less any amount awarded to that county under the 2001 allocation plan for staffing related to priority watershed projects that have subsequently closed. *Appendix F* shows scheduled closing dates for priority watershed projects, determined as of October 6, 1998.

A county may redirect unused staffing grant funds for landowner cost-share grants if DATCP approves in writing. The county must use the redirected funds in the year for which they are allocated. DATCP will reimburse county cost-share payments according to normal cost-share procedures (see below).

To qualify for a staffing grant, a county must maintain its soil and water resource management effort at or above the amounts that the county expended in each of the years 1985 and 1986 (see s. 92.14(7), Stats.) A county may count, as part of its "maintenance of effort" contribution, expenditures for any county staff (employees and independent contractors) engaged in soil or water resource management work for the county land conservation committee. A county may not count capital improvement expenditures, expenditures for county staff not working for the land conservation committee, or the expenditure of grant revenues received from other governmental entities.

A county land conservation committee must keep records related to annual staffing grants. The records must document that the county used grant funds according to this rule and the grant contract. The county must retain the records for at least 3 years.

### **Paying Staffing Grants**

DATCP will make staffing grant payments on a reimbursement basis. DATCP will reimburse county expenditures, at the prescribed statutory rate, up to the amount of the county's annual staffing grant award. DATCP will reimburse costs that the county incurs during the grant year (and pays by January 31 of the following year). Unspent grant funds remain with DATCP, for allocation in future years.

A county may file 2 reimbursement requests for each grant year. A county may file its first reimbursement request on or after June 1 for costs incurred before June 1 of the grant year. A county may file a second reimbursement request for costs incurred on or after June 1 of the grant year. A county must file all of its requests by February 15 of the following year. DATCP will pay reimbursement within 30 days after a county submits a valid request.

The county must file its reimbursement request on a form provided by DATCP. In its reimbursement request, the county must identify the costs for which it seeks reimbursement. The reimbursement rate is based on a statutory formula. The rate depends on the number of staff in the county, and the extent to which those staff are working in DNR priority watersheds (not necessarily on the DNR priority watershed *program*). The county must provide information needed to determine the reimbursement rate.

If a county reallocates part of its staffing grant to a local government or tribe, the county must submit reimbursement requests on behalf of that local government or tribe. DATCP may then pay reimbursement directly to the local government or tribe.

### **Grants for Conservation Practices**

DATCP may award annual grants to counties, to fund county cost-share grants to landowners. To receive the awarded funds, a county must enter into an annual grant contract with DATCP. DATCP will reimburse county cost-share expenditures, up to the amount of the county's annual grant award. DATCP will reimburse the county after the landowner installs the cost-shared practice and the county does all of the following:

- Files with DATCP a copy of the county's cost-share contract with the landowner. The cost-share contract must comply with this rule (see above).
- Certifies the reimbursement amount due.
- Certifies, based on documentation filed in the county, that the cost-shared practice is properly designed, installed and paid for (see above).

Cost-share funds may be used to finance conservation practices identified in this rule (see above), except that bond revenues may not be used to finance any of the following "soft" practices (because they do not qualify as "capital improvements"):

- Contour farming.
- Cover and green manure crop
- Nutrient management.
- Pesticide management.
- Residue management.
- Strip-cropping.

DATCP may not use cost-share grant funds to reimburse a county for costs incurred after December 31 of the grant year (or paid after January 31 of the following year). Unspent funds remain with DATCP, for distribution under a future year's allocation plan. If a landowner signs a funded cost-share contract by December 1 of the initial grant year, but does not complete that contract in that grant year, DATCP may extend funding to the

next year. DATCP will normally extend funding if the county requests the extension by December 31. DATCP will not extend funding for more than one year.

A county land conservation committee must keep all of the following records related to cost-share grant funds received from DATCP:

- Copies of all county cost-share contracts with landowners.
- Documentation to support each county reimbursement request to DATCP (see above).
- Documentation showing all county receipts and disbursements of grant funds.
- Other records needed to document county compliance with this rule and the grant contract.

A county land conservation committee must retain cost-share records for at least 3 years after the committee makes its last cost-share payment to the landowner, or for the duration of the required maintenance period, whichever is longer. The committee must make the records available to DATCP and grant auditors upon request.

### **Agricultural Engineering Practitioners; Certification**

Under s. 92.18, Stats., DATCP must certify persons who design, review or approve cost-shared agricultural engineering practices. This rule identifies the agricultural engineering practices for which certification is required. This rule continues, without change, the certification program established under current rules. No certification is required for a professional engineer certified under ch. 443, Stats.

#### **Applying for Certification**

Under this rule, a person who wishes to be certified as an agricultural engineering practitioner must apply to DATCP or a county land conservation committee. A person may apply orally or in writing. DATCP or the committee must promptly refer the application to a DATCP field engineer. Within 30 days, the DATCP field engineer must rate the applicant and issue a decision granting or denying the application.

#### **Certification Rating**

The DATCP field engineer must rate an applicant using the rating form shown in *Appendix E* to this rule. The field engineer must rate the applicant based on the applicant's demonstrated knowledge, training, experience, and record of appropriately seeking assistance. For the purpose of rating an applicant, a field engineer may conduct interviews, perform inspections, and require answers and documentation from the applicant.

For each type of agricultural engineering practice, the rating form identifies 5 job classes requiring progressively more complex planning, design and construction. Under this rule, the field engineer must identify the most complex of the 5 job classes in which the

applicant is authorized to certify proper design and installation. A certified practitioner may not certify any agricultural engineering practice in a job class more complex than that for which the practitioner is certified.

### **Appealing a Certification Decision**

A field engineer must issue a certification decision in writing, and must include a complete rating form. An applicant may appeal a certification decision or rating by filing a written appeal with the field engineer. The field engineer must meet with the appellant in person or by telephone to discuss the matters at issue.

If the appeal is not resolved, DATCP must schedule an informal hearing before a qualified DATCP employee other than the field engineer. After the informal hearing, the presiding officer must issue a written decision that affirms, modifies or reverses the field engineer's action. If the applicant disputes the presiding officer's decision, the applicant may request a formal hearing under ch. 227, Stats.

### **Reviewing Certification Ratings**

Under this rule, a DATCP field engineer must review the certification rating of every agricultural engineering practitioner at least once every 3 years. A field engineer must also review a certification rating at the request of the person certified. A field engineer may not reduce a rating without good cause, and all reductions must be in writing.

### **Suspending or Revoking Certification**

Under this rule, DATCP may suspend or revoke a certification for cause. DATCP may summarily suspend a certification, without prior notice or hearing, if DATCP makes a written finding that the summary suspension is necessary to prevent an imminent threat to the public health, safety or welfare. The practitioner may request a formal hearing under ch. 227, Stats.

## **County and Local Ordinances**

### **General**

DATCP may review and comment on county and local ordinances that require farmers to install conservation practices. Conservation requirements under a county or local ordinance are subject to cost-sharing, to the same extent as under this rule. The LWCB must approve conservation requirements and zoning ordinances under the farmland preservation program (ch. 91, Stats.).



## **Livestock Ordinances**

According to s. 92.15, Stats., and this rule, no county or local ordinance may require conservation practices for livestock operations that are more restrictive than those required under this rule unless DATCP or DNR approves the more restrictive requirement. This rule spells out a procedure by which a county or local governmental unit may seek DATCP approval of a proposed ordinance. DNR will adopt similar rules.

This rule does not require a county or local governmental unit to repeal or amend an ordinance adopted prior to the effective date of this rule. But this rule does not limit a person's right to challenge that ordinance under s. 92.15, Stats.

## **Manure Storage Ordinances**

A county, city, village or town may enact a manure storage ordinance under s. 92.16, Stats. Current rules spell out standards for manure storage ordinances. This rule incorporates those standards without change. An ordinance must include the following provisions:

- A person constructing a manure storage system must obtain a permit.
- The person must have a nutrient management plan that complies with this rule.
- The manure storage system must comply with design and construction standards under this rule.

A manure storage ordinance may prohibit a person from abandoning a manure storage system unless that person submits an abandonment plan and obtains an abandonment permit. The rule spells out suggested abandonment requirements for those ordinances that regulate abandonment.

## **Agricultural Shoreland Management Ordinances**

A county, city, village or town may enact an agricultural shoreland management ordinance under s. 92.17, Stats. These ordinances must be approved by DATCP. Current rules spell out standards for agricultural shoreland management ordinances. This rule adopts the current rules without change. DATCP must seek DNR and LWCB recommendations before it approves an ordinance or amendment, except that DATCP may summarily approve an ordinance amendment that presents no significant legal or policy issues.

## **Waivers**

DATCP may grant a waiver from any standard or requirement under this rule if DATCP finds that the waiver is necessary to achieve the objectives of this rule. The DATCP secretary must sign the waiver. DATCP may not waive a statutory requirement.



**Al Ott**

State Representative • 3rd Assembly District

**Assembly Agriculture Committee**

**MEMO**

**TO: Members of the Assembly Agriculture Committee**

**FROM: Representative Al Ott, Chair**

**DATE: June 19, 2002**

**RE: Clearinghouse Rule 01-090 (Nonpoint)**

The Department of Agriculture, Trade and Consumer Protection has given the Senate Environmental Resources Committee a final response to the proposed changes for Clearinghouse Rule 01-090 relating to solid and water resource management (ATCP 50).

The review jurisdiction for the Assembly Agriculture Committee is now in its final stages. Enclosed please find a summary of the modifications. If you would like a copy of the entire revised rule, please contact Beata Kalies in my office (6-5831). Thank you.

**The deadline for action on this rule is end of June.**



# ATCP 50

## Overview, impacts and costs

### Overview

Revised ATCP 50 is part of an administrative rule package that represents the nation's most comprehensive standards to protect water quality from farm and urban runoff. The Department of Agriculture, Trade and Consumer Protection (DATCP) and Department of Natural Resources (DNR) revised their rules to meet a legislative mandate to redesign the state program to control nonpoint source pollution program.

Under the revised ATCP 50, DATCP will work with counties to help farmers comply with DNR's new pollution control standards. Farmers must comply by following conservation practices such as nutrient management planning. Required cost-sharing, including payments for land taken out of production, will minimize impacts on farmers.

DATCP's new rule offers more protection for the environment, supports the important role of counties in conservation, and is fair to farmers.

### Environmental Benefits

Farmers who follow the rule will apply nutrients (manure and fertilizer) more precisely, control soil erosion, reduce polluted farm runoff, and improve management of manure.

Annual benefits over ten-year implementation period	
Practice	Benefit
Develop nutrient management plans each year for 1 million new acres (Size of Marathon County)	<ul style="list-style-type: none"> <li>• Reduce phosphorous in rivers and lakes</li> <li>• Reduce nitrogen in groundwater</li> <li>• Promote more profitable use of on-farm and purchased nutrients</li> </ul>
Increase cropland meeting "T" each year by 160,000 new acres (Size of Kenosha County)	<ul style="list-style-type: none"> <li>• Reduce sediment loading in rivers and lakes</li> <li>• Promote fish habitat and water quality</li> <li>• Preserve most productive layer of soil</li> </ul>
Prevent feedlot runoff and other manure problems from livestock operations	<ul style="list-style-type: none"> <li>• Prevent overflow from manure storage facilities</li> <li>• Reduce unconfined manure piles in environmentally sensitive areas</li> <li>• Curb direct runoff from feedlots or facilities</li> <li>• Protect shoreland areas from overgrazing</li> <li>• Reduce nutrients, pathogens and organic matter in surface water</li> </ul>
Improve capacity to store manure for 10% of livestock operations in driftless areas.	<ul style="list-style-type: none"> <li>• Improve nutrient management by allowing timely application to benefit crops</li> <li>• Reduce manure runoff from frozen or wet ground</li> <li>• Protect quality of ground and surface water</li> </ul>

## County Support

ATCP 50 strengthens county conservation programs that help farmers become better stewards. The rule:

- Establishes procedures to fund county programs to effectively address local conservation priorities based on DATCP-approved land and water resource management plans.
- Guarantees higher grants for county conservation staff, subject to the availability of funds.
- Provides more flexibility in using DATCP funds, and simplifies paperwork and accounting through a new reimbursement system.
- Offers counties greater flexibility in setting up voluntary cost-sharing to implement conservation practices.
- Ensures more choices for counties to secure compliance, ranging from passage of ordinances to suspension of a farmer's farmland preservation tax credits for non-compliance with conservation standards.

## Fair to Farmers

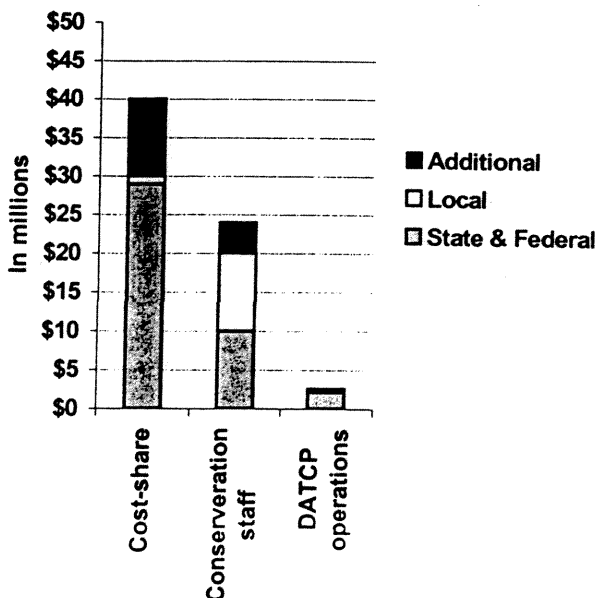
The rule fairly allocates responsibility for conservation practices between the farmer and the taxpayer. The rule:

- Ensures 90% cost-sharing for farmers facing economic hardship.
- Pays more in required cost-sharing to cover costs for maintenance and land out of production.
- Provides a higher flat cost-share rate for nutrient management.
- Ensures farmers 4 years of cost-share for nutrient management and other soft practices.
- Treats farmers equally by providing higher CREP payments for buffers.

## Fiscal Analysis

Based on a 10-year implementation period, DATCP estimates that it needs an additional \$11.4 million per year to provide cost-share grants, fund conservation staff and cover increased operation costs. The legislature may adjust appropriation levels to alter the rate of implementation.

**Annual public costs for implementation**



The following provides an analysis of the \$10 million shortfall for cost-share funding:

- Total costs are expected to range from \$37.3 to \$57.3 million for each of the 10 years.
- State and local government must cost-share at least 70% of the implementation costs for existing farms.
- At current appropriation rates, state and local government will have inadequate funds to pay their share of \$26.1 to 40.1 million.
- Federal programs, such as the Conservation Reserve Program, Environmental Quality Incentives Program, and Conservation Reserve Enhancement Program can contribute significant annual funding for farmer cost-sharing to meet state performance standards.
- Assuming level funding over 10 years, the combined available cost-share funds from federal, state and local sources total approximately \$30 million annually.

## Minimum Changes Recommended to Proposed ATCP 50 Rule Revisions

Waukesha County Department of Parks and Land Use

1. **ELIMINATE** rule provisions that require unprecedented public cost-sharing for enforcement efforts, which may discourage 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 annual 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. 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.*

2. **AMEND** the rule to establish a maximum period of time for which cost-sharing must be offered to landowners, consistent with DNR rules (NR 151.09 and 151.095).

*Reason: Establishing a deadline for how long cost-sharing must be made available will encourage voluntary cooperation and follows the 1993 statutory precedent for "critical sites" in priority watershed projects under Wisconsin Statutes § 281.65(7)(jm).*

3. **CLARIFY** rule provisions to include minimum standards for conducting, documenting and reporting performance standard implementation activities for all landowners, not just those that participate in the Farmland Preservation Program (consistent with DNR rules noted above).

*Reason: A primary impetus behind the program redesign effort was to improve the accountability of public funds spent on nonpoint pollution control efforts. The inability to adequately report progress with nonpoint efforts is a serious program shortfall recognized in previous legislative audits. To address this concern, the rule needs minimum standards for conducting, documenting and reporting systematic site evaluations, notification of landowner compliance and "bona fide" offers of cost-sharing. The current draft only contains adequate standards for tracking compliance for Farmland Preservation Program participants, but is ambiguous for all other landowners. This ambiguity will continue to make program evaluations difficult, thus threatening future legislative support for program funding.*

4. **CLARIFY** the rule to ensure that mandatory cost-sharing and state approval requirements will not apply to any pre-existing local ordinances or ordinances not adopted under Chapters 92 or 281.

*Reason: The full ramifications of the draft rule are unclear on this issue, although ATCP 50.54(2) and 50.60 appear to undermine all local ordinances (such as zoning). There is no statutory authority for rule provisions to apply to other local ordinances adopted under Chapter 59 State Statutes.*

5. **CLARIFY** the rule to ensure that DATCP's approval authority over county land and water resource management plans is limited solely to compliance with statutory requirements under Wis Stats. § 92.10. Also **ADD** a provision that requires the department to consider the level of state funding provided to the county in local program reviews and any resulting department actions under § 50.12(6).

*Reason: County land and water plans are mandatory for state funding and represent a significant effort locally. Proposed ATCP § 50.12(5) leaves the door open to discretionary DATCP approval of these plans, potentially leading to loss of state grant funds if DATCP does not favor local implementation methods (ordinances, etc.). The rule also should not allow DATCP to penalize counties for not completing planned activities if adequate state funding is not provided.*

6. **ADD** the criteria that DATCP will use to review local livestock ordinances under ATCP 50.60.

*Reason:* As with land and water plans, counties need to know the ordinance review criteria before they draft an ordinance. In accordance with Wis Stats. § 92.15, the rule should not allow for arbitrary disapprovals.

7. **CLARIFY** the rule to ensure that cost-sharing requirements **do not** apply to compliance activities not covered under state performance standards or prohibitions.

*Reason:* The current draft is unclear on this issue but appears to expand the cost-sharing requirements to all soil and water conservation activities under ATCP § 50.54(2). This was not the legislative intent under § 281.16(3)(e) Wis Stats.

8. **EXEMPT** all non-structural conservation practices from deed recording requirements for cost-share agreements under ATCP § 50.40(14).

*Reason:* For rented cropland, past program reviews have proven that deed-recording requirement discourage voluntary adoption of certain conservation practices (such as conservation tillage, nutrient and pest management). Not removing this requirement completely for these practices would further hinder voluntary compliance on over half of all cropland in many areas of the state.

9. **CLARIFY** the language for county grants under proposed ATCP 50.32 to make sure grant amounts are more predictable and to ensure consistency with the legislative intent under Wis. Stats. § 92.14(6).

*Reason:* The current rule provides little guidance to counties to predict future grant amounts. State statute directs the department (as a goal) to provide grant funding to support "an average of three staff persons per county", with specific grant matching requirements. However, the rule creates a base funding system that circumvents the statutory intent and leaves the future funding formula ambiguous.

10. **DELETE** provisions that require all farmers to have one specific type of nutrient management plan in order to comply with DNR's proposed nutrient management performance standard. **REPLACE** with provisions that target "high risk" activities such as manure spreading on frozen ground.

*Reason:* Current draft [ATCP 50.04(3)] reduces the state's "nutrient management program" to a mandate that all farmers must have one, specific type of plan to be in compliance. This is overly prescriptive and will create a bureaucratic morass. Many farmers are applying manure and fertilizer correctly with different types of plans. The state would be better served to establish what is not acceptable nutrient management, and only require compliance with specific technical standards as a condition of public cost-sharing. As written, the rule creates a "farming by permit" program.

# TREMPEALEAU COUNTY FARM BUREAU RESOLUTION

## RESOLUTION

WHEREAS, 1997 Wisconsin Act 27 mandates that the State Agencies of DNR and DATCP identify minimum performance standards for ag and non ag resource users to comply with in order to protect the water resources of the state of Wisconsin, and

WHEREAS, the State Farm Bureau, working with the State Legislature, DNR, DATCP and other agricultural special interest groups have now developed ag performance standards, and

WHEREAS, these performance standards define the base expectation for pollution control from current and future agricultural operations, and

WHEREAS, the majority of the farmers within Trempealeau County have made significant business investments to protect the quality of the environment upon lands which they control, and

WHEREAS, these farmers substantially comply with the proposed ag minimum performance standards and have done so with historic levels of public financial assistance or have done so entirely at their own expense, and

WHEREAS, the proposed ATCP 50 does in effect raise historical cost share rates from 70% to 90% as well as to provide previously unavailable payments for practice maintenance payments as well as lost opportunity costs, and

WHEREAS, existing operations that have made investments in conservation practices and are currently in compliance with the ag minimum performance standards are ineligible for these maintenance and lost opportunity payments yet must maintain compliance with ag minimum performance standards in perpetuity.

NOW THEREFORE, be it resolved, that the state shall maintain a level playing field in the states agricultural industry by assuring fair competition between producers that have previously invested in conservation and those that will invest in conservation.

BE IT FURTHER RESOLVED, that the state shall maintain a level playing field by insuring uniform compliance with minimum ag performance standards with public financial assistance being limited to historical levels without the additional payments for maintenance and lost opportunity proposed by ATCP 50.

**Member Organizations of the Clean Water Coalition:**

River Alliance of Wisconsin Todd L. Ambs, Executive Director	Coulee Region Trout Unlimited Nathan Barnhart, President
WISPIRG Kerry Schumann, Executive Director	Dane County Conservation League Don Hammes, Chair
Sierra Club, John Muir Chapter Caryl Terrell, Legislative Coordinator	Douglas County Association of Lakes and Streams Fred Anderson, President
Wisconsin Association of Lakes Donna Sefton, Executive Director	ECCOLA John Schwarzmann, Secretary Treasurer
Southern Wisconsin Trout Unlimited Bill Pielsticker, President	Family Farm Defenders John Kinsman, President
Wisconsin's Environmental Decade Keith Reopelle, Program Director	Fox River Trout Unlimited Ryan Hagen, President
Western Lakes Wildlife Center David Zaber	Fox-Wolf Basin 2000 Linda Stoll, Executive Director
1000 Friends of Wisconsin Dave Cieslewicz, Director	Frank Hornberg Trout Unlimited Jim Friedrich, President
Aldo Leopold Trout Unlimited Clinton Byrnes, President	Friends of Branch River Vickie Mayer
Antigo Trout Unlimited Scott Hendricks, President	Friends of the Jump River Don Retzlaff, Vice President
Audubon Council of Wisconsin Karen Etter Hale, First Vice President	Friends of Milwaukee Rivers Bob Boucher, Riverkeeper
Madison Audubon Society Karen Etter Hale, Executive Secretary	Harry and Laura Nohr Trout Unlimited Jeff Ware, President
Citizens for a Better Environment Dr. Jeff Foran, Executive Director	Great River Council Federation of Fly Fishers Phil Emmling, Vice President, Conservation
Citizens to Save Neenah Wetlands David Peck, President	Midwest Environmental Advocates Melissa Scanlan, Legal Director
Concerned Citizens of Newport Steve Argo, President	



Plover River Alliance  
George Rogers, President

Save Our Unique Lands  
Tom Kreager, President

Sierra Club, River Touring Section  
Patrick Wilson, Chair

Sustainable Racine  
Bonnie Prochaska, Interim Executive  
Director

Whitefish Lake Conservancy  
Fred Anderson, Director

Wisconsin Wetlands Association  
Charlie Luthin, Executive Director

Wolf River Resort Trout Unlimited  
Herb Buettner, President

Yahara Fishing Club  
Don Hammes, Chair

Follow up to Fri's Mtg.

2 Remaining issues:

①

WLWCA - has 9 items

clarify minimum standards

Rule

Datep

Stats

provide review level of state funding

Mr. Frank's issue

if give \$ = create that kind of plan

⇒ statutes tell to make the best plan

just start slowly

②

change statute to read shall instead of must.

Datep wants guidance to counties.

LWB approval needed. Datep needs to evaluate effectiveness

Doubt plan will be turned down.

Clarify cost share not apply to existing local ordinances.

Aq law says have to offer it.

Young could take over nonpoint.

"Cost share not apply to" ...

Datyp doesn't want to change rule, more  
in light of guidance.

Jennifer's argument: (WEA)

if you come up w/ something at county level beyond state,  
want rule to clarify that you don't have to cover cost  
share.

Datyp argues that cost share has to be provided.

if enforcement expected, cost share needs to be offered.

↳ there is a statutory requirement on cost share

DNR + Datyp team will monitor data...