

- 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 \$25,000.
- 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.

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. The requirement is contingent on cost-sharing for at least 3 years.
- *Nutrient management plan; preparation and contents.* A qualified nutrient management planner (see below) must prepare each nutrient management plan. A farmer may prepare his or her own plan if, within the preceding 4 years, the farmer has completed a DATCP-approved training course.
- Nutrient applications may not exceed 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 technical standards under 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. If a certified laboratory recommends 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.

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. 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. 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.

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 and local regulations that are relevant to the county plan. The plan must disclose whether local regulations will require farm conservation practices that differ materially from the practices required under this rule.
- 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, that may apply if a farmer 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 farm conservation practices by ordinance. DATCP must review, and may comment on, proposed ordinances that establish farm conservation requirements. DATCP will review agricultural shoreland management ordinances and other ordinances that regulate farm conservation practices. DATCP will assist DNR in reviewing general shoreland management ordinances adopted under s. 59.692, Stats., if those ordinances regulate farm conservation practices.

A county need not obtain DATCP approval to adopt an ordinance, except in certain cases prescribed by statute. This rule, like current rules, establishes specific standards for county and local ordinances related to manure storage and agricultural shoreland management (see below). Conservation practices required under a county ordinance are subject to the cost-sharing requirements in this rule (see above).

Farmland Preservation; Conservation Standards

Farmers who claim farmland preservation tax credits must currently meet county farm conservation standards. This rule requires every county to incorporate in its standards the farm conservation practices required under this rule (see above). In a county that 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 tax credits under the farmland preservation program. The county must hold a public hearing on the proposed standards. The county must

also submit the proposed standards for LWCB approval, as required under s. 92.105, Stats.

A farmer must comply with the county conservation standards in order to claim farmland preservation tax credits. A county may ask a farmer to certify compliance on an annual or other periodic basis, and must inspect a farmer's compliance at least once every 6 years. The county must issue a notice of noncompliance if the county finds that a farmer is not complying with the standards. If the farmer fails to comply by a deadline specified in the notice, the farmer may no longer claim farmland preservation tax credits. The farmer may meet with the county land conservation committee to discuss or contest a notice.

A farmer who fails to meet farmland preservation conservation standards may continue to claim tax credits if the farmer complies with 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 specified 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.* A staffing grant is used to finance county staff engaged in soil and water conservation programs (see below). Staff may include county employees and independent contractors who work for the county land conservation committee. A grant may include training and support for county employees. The grant application must identify the activities that the staff will perform, and the amount of funding requested. DATCP will reimburse county staff and employee support costs at the rate specified in s. 92.14, Stats., up to the amount of the annual staffing grant award.
- *Cost-share funding for farm conservation practices.* The county must identify the amount of cost-share funding requested, and the 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.

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).

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 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(d)(1)(A).
 - * 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 that makes a required commitment of county funds. DATCP may not use bond revenue funds for county staffing grants. DATCP must distribute an annual staffing grant according to an annual grant contract with the county. With DATCP permission, the county may reallocate staffing grant funds to a local government or tribe.

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.
 - * 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 statutory requirements and DATCP's assessment of funding needs and priorities. Subject to the availability of funds, DATCP will award at least \$50,000 to each county.

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. (See cost-share reimbursement procedures 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 government sources.

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 pay reimbursement, at the prescribed statutory rate, on costs identified in a valid county reimbursement request. Total payments may not exceed the total annual grant award to the county. 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 July 1 for costs incurred before July 1 of the grant year. A county may file a second reimbursement request for costs incurred on or after July 1 of the grant year. A county must file all of its requests by April 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 whether those staff are working 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 grants to eligible counties to finance cost-share grants to landowners. DATCP must enter into an annual contract with each county receiving cost-share funds. DATCP will pay the county on a reimbursement basis, 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 practices:

- Conservation tillage.
- Contour farming.
- Cropland cover (green manure).
- Intensive grazing management.
- Nutrient or pesticide 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 (e.g., because of bona fide construction delays), 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.

Priority Watershed Program; County Staffing Grants

As part of the legislative restructuring of the state's nonpoint source pollution abatement program, DNR is phasing out its priority watershed program under ch. NR 120. DNR will continue to provide cost-share funding for priority watershed projects established prior to July 1, 1998. But DNR will establish no new priority watershed projects, and has established no new projects since July 1, 1998. DNR will no longer provide funding for county and local government staff engaged in the priority watershed program.

DATCP currently provides grants to pay for county soil and water conservation staff (see above). Under the redesigned nonpoint source pollution abatement program, DATCP will also fund county and local staff who are still engaged in DNR's priority watershed program. Funding for these county staff will be added to, and included in, DATCP's annual staffing grants to counties.

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 for which the applicant is authorized to certify that the practice is properly designed

and installed. 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

Farm conservation requirements adopted by a county, city, village, town or local governmental unit must be reasonably consistent with this rule. DATCP must review, and may comment on, proposed county ordinances requiring farm conservation practices. DATCP will review agricultural shoreland management ordinances and other ordinances that regulate farm conservation practices. DATCP will assist DNR in reviewing general shoreland management ordinances adopted under s. 59.692, if those ordinances regulate farm conservation practices.

Counties must submit relevant ordinances for review. They need not obtain DATCP approval of their proposed ordinances, except in specific cases provided by statute. This rule, like current rules, establishes specific standards for county and local

ordinances related to manure storage and agricultural shoreland management (see below).

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.

Under this rule, a county or local manure storage ordinance adopted under s. 92.16, Stats., must require persons constructing manure storage systems to obtain a county or local permit. A person constructing a manure storage system must have a nutrient management plan that complies with this rule, and must comply with applicable design and construction standards.

A manure storage ordinance may prohibit any 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., with DATCP approval. 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.

Local Regulation of Livestock Operations

A local governmental unit may regulate livestock operations under s. 92.15, Stats., and other statutes. Local regulations must comply with s. 92.15, Stats., as applicable.

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.

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP has received permission from the attorney general and the revisor of statutes to incorporate by reference in this rule NRCS technical guide standards, ASAE engineering practice standards, DNR construction site erosion control standards, the UW- extension pollution control guide for milking

center waste water management, and the UW-extension guide on rotational grazing. Copies of these standards are on file with the department, the secretary of state and the revisor of statutes, but are not reproduced in this rule. Where technical standards have changed, DATCP is seeking permission from the attorney general and the revisor of statutes to incorporate by reference the modified standards.

NRCS technical guide nutrient management standard 590 is attached as *Appendix D* to this rule. *Appendix B* contains a summary of UWEX publication A-2809, *Soil Test Recommendations for Field, Vegetable and Fruit Crops (copyright 1998)*, for selected crops. The department is seeking permission from the attorney general and revisor of statutes to incorporate the complete UWEX publication by reference in this rule. The complete publication and the summary are available from UW-extension, and will be on file with the department, the secretary of state and the revisor of statutes.

Fiscal Estimate

The proposed rule establishes procedures and requirements for counties that prepare land and water resource management plans under s. 92.10, Stats. The initial plans were approved for two to three year periods. The next round of plans is expected primarily in 2002 and 2003. The department allocated an average of \$2 million per year in 1999, 2000 and 2001 to counties to implement their land and water resource management plans. The department also allocates about \$10.2 million annually (final allocation plan for 2001) to counties for annual staffing grants. The county's staff costs for preparing the county plans are eligible activities under these annual staffing grants.

The proposed rule establishes the procedures and standards that counties and other local governments must use to adopt local ordinances for manure storage systems (under s. 92.16, Stats.), shoreland management (under s. 92.17, Stats.), and for local regulation of livestock operations (s. 92.15, Stats.). The authority to adopt local regulations on livestock operations was established in 1997 Wisconsin Act 27. Local governments may adopt local ordinances, at their discretion. The department is required, under s. 92.05(3)(L), Stats., to review and comment on these ordinances and other ordinances adopted by local governments that regulate implementation of conservation practices.

As a result of the proposed rule, the department may be asked to increase the allocation of state funds to some county land conservation committees and some farmers. 1999 Wisconsin Act 9, the budget bill, included \$3.575 million in new bond revenue, funding for cost-share grants; and transferred about \$6.2 million from the Wisconsin DNR priority watershed program to the department in the second year of the biennium, fiscal year 2000-2001. The budget also directed the department to establish a goal of providing an average of three staff funded 100% for the first, 70% for the second, and 50% for the third staff person. The department is also directed to provide an average of \$100,000 grant per year per county for cost-share assistance to implement county land and water resource management plans. The department is

revising its allocation process to begin to phase in the new funding strategy for 2002. The proposed rule does not otherwise increase funding for the program; therefore any increases in grants to some counties must result in decreases in grants to other counties.

The department has estimated the cost to counties as a result of implementing the proposed performance standards and prohibitions included in the Department of Natural Resources' NR 151, and ATCP 50. The total staff costs to implement the agricultural performance standards and prohibitions are based on assumptions from the attached fiscal estimate worksheet. The total cost for staff to implement the performance standards and prohibitions are estimated at between about \$80 million and \$190 million over a ten year implementation period for low cost and high cost alternatives, respectively. Currently, there are about 400 county land conservation department staff, statewide. The department estimates that the average salary and fringe benefit for county staff is about \$45,000 per year. For this fiscal estimate, the department assumes that about 75% of the needed staff resources to complete the technical and administrative work related to implementing the performance standards and prohibitions could come from redirecting current staff. Counties currently implement a number of local, state and federal programs that support implementation of the performance standards and prohibitions. Using the 75% assumption, implementing the rule over an assumed ten-year implementation period would result in an unmet need of about 450 staff (45 staff per year), or about \$2 million per year for the low cost alternative. Assuming the high cost alternative, the department estimates that about 1,050 staff years would be needed over ten years, or about 105 staff per year, or about \$4.7 million per year. The table below illustrates the assumptions used for the fiscal estimate. Please refer to the totals at the bottom of Appendix B for the total staff needs over ten years to implement the agricultural performance standards and prohibitions.

	<u>Low Cost</u>	<u>High Cost</u>
Total Staff Needed Over Ten-year Implementation	1,786	4,218
Annual Staff Needs For Implementation	179	422
75% of Need From Redirecting Current Staff	134	317
Difference Which Estimates Annual Additional Staff Needs	45	105
Estimated Annual Cost (Assuming \$45,000 per staff per year)	\$ 2.0 million	\$ 4.7 million

A workload analysis prepared by the USDA Natural Resources Conservation Service, (with assistance from counties), shows an unmet staff need to implement current programs. If less than 75% of the needed staff to implement the performance standards and prohibitions were available from redirecting current staff, the staff costs would increase proportionately. The result of redirecting these current staff would result in fewer staff available to implement current programs. The programs affected under this scenario include those that do not directly or indirectly implement the agricultural performance standards and prohibitions. However, the department

believes the low cost estimate for this fiscal estimate is more accurate, because these estimates do not include the staffing contributions made by the federal government.

Impact of the Rule Revision to State Government

1999 Wisconsin Act 9, the biennial budget bill transferred \$170,000 in fiscal year 1999-2000 and \$190,000 in 2000-2001 from the Department of Natural Resources (DNR) to the department for three staff positions. These staff work on the new responsibilities resulting from the budget and the redesign of the state's nonpoint source programs. The department is assuming responsibilities to implement the agricultural component of DNR's nonpoint source program.

The department will have increased work associated with implementing a statewide nutrient management program. The proposed rule includes a process to certify soil-testing laboratories. The increased cost and work to administer the statewide nutrient management program and certify soil test laboratories will be done as a result of the new staff mentioned above and otherwise absorbed by the department.

The department will have increased work associated with reviewing ordinances proposed by local governments. Again, this activity will be included with the responsibilities of the new staff or otherwise absorbed by the department.

The department will have increased work associated with reviewing and approving county land and water resource management plans. The department previously had staff that assisted the Department of Natural Resources by developing portions of the priority watershed plans under DNR's nonpoint source pollution abatement program. The priority watershed program is being phased out and the department's staff that worked on the watershed plans will now be assigned to review and work with counties on land and water resource management plans.

The department also has new responsibility, under s. 281.16, Stats., to develop conservation practices and develop and disseminate technical standards to implement agricultural performance standards and prohibitions. The proposed rule establishes the procedures the department will use to accomplish this task. The department will utilize the new staff, or otherwise absorb this work activity.

Finally, the department will have increased work related to the grants issued to counties to implement land and water resource management plans and the agricultural performance standards and prohibitions in Department of Natural Resources NR 151 and ATCP 50. The department will utilize the new staff, or otherwise absorb this work activity into the current operating budget.

Initial Regulatory Flexibility Analysis

The proposed rule for the soil and water resource management program establishes the standards and requirements for soil erosion control, animal waste management,

nonpoint source water pollution abatement, and nutrient management for the soil and water resource management program in Wisconsin. Among other things, the proposed rule: requires farm conservation practices, creates a nutrient management program, sets guidelines for county land and water resource management plans, updates procedures for the allocation of grants, and establishes technical standards for conservation practices.

The proposed rule is closely tied to DNR's proposed rule, NR 151, which establishes seven agricultural performance standards that farmers are required to meet. Existing farming operations will be required to meet the performance standards if at least 70% cost sharing is made available to them. This proposed rule spells out the implementation strategy the department will follow to meet those performance standards. That strategy consists of having the department provide funds to implement county land and water resource management plans. By statute, the department must work toward funding an average of three staff positions in each county and an average of \$100,000 per year in cost-share funds.

The small businesses primarily affected by this rule are farmers. Other businesses affected to a lesser degree are private crop consultants, farm cooperatives and farm supply organizations that perform nutrient management planning and that sell fertilizers to farmers. A third type of business affected by the rule are contractors who install conservation practices.

Farmers

The proposed rule and DNR's proposed rule, NR 151, require farmers to meet seven agricultural performance standards. The department has conducted a fiscal estimate of the costs farmers might have to implement practices to come into compliance with the standards. The worksheet for that fiscal estimate is attached to the environmental analysis for this proposed rule.

The proposed rule will affect small to moderate sized livestock operations in Wisconsin. Large livestock operations, those with more than 1000 animal units, are regulated by the Department of Natural Resources and treated as potential point sources of pollution. This proposed rule will also affect all farmers who apply manure, sludge or commercial fertilizers to their fields. This proposed rule will also affect all farmers with cropland eroding at more than tolerable levels.

A summary of the fiscal impact of this rule on farmers is as follows for each proposed performance standard. These costs represent out-of-pocket costs to farmers and associated costs for maintaining practices, and lost opportunity costs. The estimates do not include anticipated financial benefits from the practices.

Proposed performance standard: All farmland must be cropped to achieve a soil erosion rate equal to, or less than, the 'tolerable' (T) rate established for that soil.

	<u>Ten-Year Low Cost</u>	<u>Ten-Year High Cost</u>
Farmers' costs	\$ 49,500,000	\$ 76,500,000
State's costs	\$115,500,000	\$178,500,000
Total	\$165,000,000	\$255,000,000

Proposed performance standard: Grass vegetation shall be established and maintained in concentrated flow channels within cropland areas where runoff would otherwise cause erosion or sediment delivery to navigable surface waters.

	<u>Ten-Year Low Cost</u>	<u>Ten-Year High Cost</u>
Farmers' costs	\$2,700,000	\$ 4,050,000
State's costs	\$6,300,000	\$ 9,450,000
Total	\$9,000,000	\$13,500,000

Proposed performance standard: All cropped fields, pastures or woodlots located within water quality management areas, not including sites defined under s. NR 151.01518(a) to (f), shall have a minimum water quality corridor that conforms to one of the following options: (1) a ten foot permanent vegetation cover corridor with 90 feet of cropland with at least 50% residual cover; (2) a 20 foot permanent vegetation cover corridor with 30 feet of cropland with 30% residual cover; (3) a 20 foot permanent vegetation cover corridor with 100 feet of cropland with no residual cover if the slope is less than 2%; and (4) a 35 foot permanent vegetation cover corridor with no residual cover on adjoining cropland.

	<u>Ten-Year Low Cost</u>	<u>Ten-Year High Cost</u>
Farmers' costs	\$ 42,000,000	\$63,900,000
State's costs	\$ 98,000,000	\$149,100,000
Total	\$140,000,000	\$213,000,000

Proposed performance standard: New or substantially altered existing manure storage facilities must be constructed to meet NRCS standard 313. Abandonment of manure storage facilities shall be completed according to NRCS standard 313 requirements.

This proposed standard does not require any farmer to construct or abandon facilities. It merely states that if they are going to construct or abandon manure storage facilities, they must do it safely and according to standards. Those farmers with unexpected costs associated with this standard are those livestock operations with manure storage facilities that are going out of business. Their estimated costs are as follows.

	<u>Ten-Year Low Cost</u>	<u>Ten-Year High Cost</u>
Farmers' costs	\$ 300,000	\$ 600,000
State's costs	\$ 700,000	\$1,400,000
Total	\$1,000,000	\$2,000,000

Proposed performance standard: Runoff shall be diverted away from contacting feedlot and barnyard areas within water quality management areas.

The cost estimates for diverting runoff from barnyards and feedlots are included in the cost estimates for performance standard number seven, the performance standard for the four Animal Waste Advisory Committee prohibitions.

Proposed performance standard: Any application of manure, sludge or commercial nitrogen and phosphorus fertilizer shall be done in conformance with a plan developed in accordance with NRCS standard 590.

Nutrient Management Planning

	<u>Ten-Year Low Cost</u>	<u>Ten-Year High Cost</u>
Farmers' costs	\$42,000,000	\$ 78,000,000
State's costs at	\$98,000,000	\$182,000,000
Total	\$140,000,000	\$260,000,000

Required Manure Storage

	<u>Ten-Year Low Cost</u>	<u>Ten-Year High Cost</u>
Farmers' costs	\$ 8,700,000	\$13,200,000
State's costs	\$20,300,000	\$30,800,000
Total	\$29,000,000	\$44,000,000

Proposed performance standard: A livestock operation shall have no overflow of manure storage facilities." "A livestock operation shall have no unconfined manure pile in a water quality management area." "A livestock operation shall have no direct runoff from a feedlot or stored manure into the waters of the state." "A livestock operation shall not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod cover.

	<u>Ten-Year Low Cost</u>	<u>Ten-Year High Cost</u>
Farmers' costs	\$24,000,000	\$ 31,800,000
State's costs	\$56,000,000	\$ 74,200,000
Total	\$80,000,000	\$106,000,000

Because the estimated costs are so large, much of the required work may not get done, or at least it may not get done in the immediate future. The law requires that at least 70% cost sharing must be provided before a farmer may be required to do work to meet a performance standard. Therefore, the governing factor determining what a farmer must do is the amount of cost-share dollars the state has available each year. DATCP currently has approximately \$3,000,000 to \$3,500,000 a year in cost-share funds. Added to the farmers' share, this will install about \$4,300,000 to \$5,000,000 worth of conservation practices each year. The average grant amount for a contract issued by the department is between \$15,000 and \$20,000. If the department's cost-share funding stays at approximately \$3 to \$3.5 million, the total number of farmers that we will be able to work with will be between 150 and 250 each year. In their land and water resource management plans, counties may find different ways to reach more people with the available cost-share dollars. In addition, counties could use money from other programs to help meet the performance standards, where applicable.

This proposed rule does require additional reporting and record-keeping activities from farmers. For farmers who have not been doing conservation or nutrient management work, these reporting and record-keeping activities will be new. It is anticipated that more cost-share dollars will be made available under this new program and, therefore, more farmers will have to do the reporting, record keeping and other requirements associated with receiving grants. The procedures required of these farmers includes preparing and following conservation or erosion control plans for cropland fields, preparing and following nutrient management plans for fields on which nutrients are applied, and agreeing to and following contracts as a condition for receiving cost-share funds. Farmers will have to keep track of plans and be able to document activities to demonstrate compliance with them. These rule requirements will mean that farmers must understand and keep records of soil types, nutrient requirements of various crops, nutrient content of various kinds and amounts of manure and planned schedules for applying nutrients and conservation practices.

Most farmers are aware of conservation and nutrient management plans and the factors that go into determining erosion rates and amounts of nutrients to be applied. County-based conservation professionals are available to assist farmers with making calculations, interpreting plans and reading designs and specifications. The requirement for all farmers to prepare and follow nutrient management plans may require some farmers to become more familiar with crop needs, soil types and nutrient levels in livestock manure. We can assume that most farmers have this knowledge and these skills, but they may have to be increased or refined to meet the nutrient management requirements, depending on the skill of the individual farmer involved.

Crop consultants, farm cooperatives, farm supply organizations, and manure-haulers

Those providing nutrient management planning services to farmers and those selling fertilizers to farmers will be affected by this rule. Nutrient management planners will have to be recognized by the department as being qualified to prepare plans. Their work will be reviewed periodically by the department.

More state and landowner funds will likely be spent on preparing nutrient management plans, thereby increasing business opportunities for this industry. All cropland acres to which nutrients are applied will be required to be following nutrient management plans. As many as nine to ten million cropland acres could require nutrient management plans at an average cost of between six and ten dollars an acre. On the other hand, the sale of commercial fertilizers will probably be reduced. In addition, those who sell fertilizers to farmers will have to keep records of who prepared nutrient management plans for those farmers purchasing the fertilizers. Those selling fertilizers will not be required to refuse sales if no nutrient management plan has been prepared, but they must make records available to department inspectors upon request.

Nutrient management planners will have to become familiar with the University of Wisconsin nutrient recommendations in the UW Extension publication number A2809. They will have to become familiar with, and follow, department guidelines and requirements for approvable nutrient management plans.

This proposed rule will result in an increased demand for manure-haulers throughout the state. As part of implementing their nutrient management plans, many farmers will have to rely on commercial manure-haulers to apply their manure on appropriate fields. This industry should see increased revenue and business from many farmers.

Construction contractors

Statewide, the impact of this proposed rule on construction contractors will differ from what it has been in the past. There will be no different professional skills required and no increase in reporting and record-keeping requirements. The main impact of this proposed rule on contractors will be the redistribution of projects across the state. This may not affect large contractors who are more mobile and can set up branch offices, but smaller, less mobile operations may see a negative impact.

Instead of having project concentrated in a relatively few priority areas in the state, under the new program each county will receive some funds for projects. This will result in projects being more evenly distributed across the state. This will benefit those contractors which are more mobile than those which are not. After about a one or two year period of adjustment, this change on the industry will likely stabilize.

Environmental Assessment

The department has prepared a preliminary environmental assessment for this administrative rule. The assessment finds that the proposed repeal and recreation of chapter ATCP 50 would have no significant adverse environmental impact and is not a major state action significantly affecting the quality of the human environment. It is expected that the proposed rule will have a positive impact on protecting soil resources and improving and protecting water quality. Alternatives to this proposed rule, discussed in the assessment, will not reach program goals as effectively as the proposed rule. No environmental impact statement is necessary under S. 1.11 (2), Stats.

You may obtain a free copy of the environmental assessment by contacting Bonnie Shebelski at the Wisconsin Department of Agriculture, Trade and Consumer Protection, Bureau of Land and Water Resources, 2811 Agricultural Drive, P.O. Box 8911, Madison, Wisconsin 53708-8911, telephone: 608/224-4620. Copies will also be available at the hearings.

Dated this 30th day of July, 2001

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By: James E. Harsdorf
James E. Harsdorf
Secretary