

Chapter ATCP 48

DRAINAGE DISTRICTS

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Note: This chapter is adopted under authority of ss. 88.11 and 93.07(1), Stats. Violations of this chapter may subject the violator to civil forfeitures under s. 88.11(8), Stats. Questions related to drainage districts and this chapter may be referred to the Wisconsin department of agriculture, trade and consumer protection; division of agricultural resource management; bureau of land and water resources.

Subchapter I — Definitions

ATCP 48.01 Definitions. In this chapter:

- (1) "Agricultural lands" means lands in agricultural use as provided under s. 91.01(1), Stats.
- (2) "Base flow" means the normal flow of water not associated with rainfall events.
- (3) "Confirmed assessment" means an assessment of costs or benefits that has been confirmed by a circuit court under ch. 88, Stats., or an assessment of costs or benefits ordered by a county drainage board after May 12, 1994.
- (4) "Construction costs" means costs incurred by a drainage district for a construction project. "Construction costs" includes damages awarded to landowners in a drainage district who are adversely affected by a construction project, but does not include maintenance, restoration or operating costs.
- (5) "Construction project" means the construction, enlargement, extension or removal of a district drain, but does not include the maintenance, repair or restoration of a district drain.
- (6) "County drainage board" means the board created and appointed under s. 88.17, Stats.
- (7) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.
- (8) "District corridor" means the access corridor and buffer strip established and maintained around a district ditch under s. ATCP 48.24.
- (9) "District ditch" means a drainage ditch, located within a drainage district, that is constructed or operated by a county drainage board. "District ditch" includes a main or lateral ditch.
- (10) "District drain" means a drain, located within a drainage district, that is constructed or operated by a county drainage board. "District drain" includes inlets to a district drain.

(11) "Drain" means any device or facility for draining water from land or for protecting land from water, including a ditch, tile, pipeline, pump, dike, dam or levee.

Note: "Ditch" is defined under sub. (13) as a surface channel.

(12) "Drainage district" means a drainage district that is subject to ch. 88, Stats., regardless of whether the drainage district was formed under ch. 88, Stats., former ch. 89, Stats., or any other law.

(13) "Drainage ditch" or "ditch" means a surface channel. "Ditch" includes the ditch bed, ditch banks, and any related structures such as culverts, bridges and inlets.

(14) "Maintenance costs" means costs for the maintenance and repair of district drains and corridors under subchap. IV.

(15) "Nonagricultural lands" means lands other than agricultural lands, including lands in residential, commercial, industrial and transportation use.

(16) "One hundred-year peak discharge" or "100-year peak discharge" means the maximum flow of water resulting from a 100-year 24-hour rainfall event.

(17) "Operating costs" means costs, other than construction, maintenance or restoration costs, that are lawfully incurred by a drainage district.

(18) "Parcel" means a tract of land, all of which is held by the same landowner or landowners.

(19) "Person" means any individual, partnership, corporation, firm, business trust, estate, trust, association, government, governmental subdivision or agency, or any other legal or commercial entity.

(20) "Private drain" means any drain other than a district drain. "Private drain" includes a drain operated by the state or by a county, town, village or city.

(21) "Restoration" or "restoration project" means dredging or other operations designed to bring the cross-section, grade profile or alignment of a district drain into closer conformity with the original, or most recently improved, cross-section, grade profile or alignment of that district drain.

(22) "Restoration costs" means costs incurred for the restoration of a district drain.

(23) "Stable" means resistant to erosion or deformation.

(24) "Ten-year peak discharge" or "10-year peak discharge" means the maximum flow of water resulting from a 10-year 24-hour rainfall event.

(25) "Wetlands" has the meaning given in s. 23.32, Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

Subchapter II — Assessing Drainage District Costs and Benefits

ATCP 48.02 Assessing costs against lands in a drainage district. (1) **GENERAL.** Pursuant to ch. 88, Stats., and this chapter, a county drainage board may, after public hearing, issue an order levying cost assessments against land in a drainage district to cover costs lawfully incurred by the drainage district, including construction, maintenance, restoration, legal and operating costs.

Note: See, e.g., ss. 88.23, 88.35, 88.45, 88.63, 88.70, 88.71, 88.72 and 88.78, Stats.

(2) **CONSTRUCTION COST ASSESSMENTS; LIMITATIONS.** (a) A county drainage board may not levy cost assessments to construct a new drainage district if the construction cost for that new district will exceed 75% of the total assessed benefits accruing to district landowners from the construction of that new district.

Note: See s. 88.36(6), Stats. Benefits are assessed to landowners according to s. ATCP 48.06.

(b) A county drainage board may not levy cost assessments to construct enlarged or supplemental drains unless the drainage board finds that the benefits from the enlarged or supplemental drains will exceed the cost of construction.

Note: See s. 88.71(1m), Stats. Benefits to landowners are assessed according to s. ATCP 48.06.

(c) A county drainage board may not, without obtaining the landowner's consent and sufficient security under s. 88.23(3), Stats., levy a construction cost assessment against any parcel of land if the amount of the assessment, when added to construction cost assessments previously assessed to that parcel of land, exceeds the last confirmed assessment of benefits for that parcel of land. This paragraph does not limit the assessment of maintenance, restoration or operating costs.

Note: See ss. 88.23(3) and 88.63, Stats. See definitions of "construction costs," "maintenance costs," "operating costs," and "restoration costs" under s. ATCP 48.01(4), (14), (17) and (22).

(3) **ALLOCATING COST ASSESSMENTS.** Except as provided under sub. (4), cost assessments shall be allocated among all of the parcels of land in a drainage district in proportion to the last confirmed assessment of benefits for each parcel.

Note: A county drainage board assesses benefits to land parcels in a drainage district according to s. ATCP 48.06.

(4) **CONSTRUCTION COSTS CAUSED BY INDIVIDUAL LANDOWNER.**

(a) Except as provided under par. (c), a county drainage board may assess, to a specified parcel of land in a drainage district, the full amount of any construction costs incurred by the drainage district as a direct result of any of the following:

1. A request by the landowner for drainage improvements that are solely of benefit to that land.

Note: Under s. 88.70, Stats., landowners who seek additional drainage for part of a drainage district may also petition the county drainage board to create a subdistrict for that purpose. The county drainage board may create a subdistrict, and may levy additional assessments against lands in the subdistrict to cover the costs of providing additional drainage for that subdistrict.

2. A land use change or other action by the landowner that alters the flow of water into or from a district drain.

3. A land use change or other action by the landowner that increases soil erosion or the movement of suspended solids to a district drain.

4. A failure by the landowner to maintain a private drain on that land in compliance with s. ATCP 48.30(5).

5. A failure by the landowner to implement necessary erosion control practices on that land, as required by the county drainage board under s. ATCP 48.30(6).

6. The landowner's extension of a private drain from the assessed land to land outside the district.

Note: If a private drain is extended or modified without approval, the county drainage board may also issue an order against the offending landowner or initiate an action for damages under s. 88.92, Stats. Alternatively, a county drainage board may annex the newly drained land under s. 88.78, Stats., and may assess the newly drained land according to s. 88.405, Stat.

(b) If, contrary to sub. (2)(c), a construction cost assessment under par. (a) will exceed the last confirmed assessment of benefits for the assessed parcel of land, the county drainage board may order a higher assessment of benefits for that land under s. ATCP 48.06(2). The assessment of benefits may be increased by the full amount needed to accommodate the construction cost assessment under par. (a).

(c) Paragraph (a) does not apply to any of the following:

1. Maintenance, restoration or operating costs.

2. Construction costs incurred by a drainage district because the county drainage board has failed to comply with this chapter.

(5) **ASSESSING COSTS TO STATE AND MUNICIPAL LANDS IN A DRAINAGE DISTRICT.** (a) A county drainage board may levy cost assessments against agricultural lands in a drainage district that are owned by the state of Wisconsin, but may not levy cost assessments against other lands owned by the state.

Note: See s. 88.50, Stats.

(b) A county drainage board may levy cost assessments against lands in a drainage district that are owned by a county, town, village or city.

Note: See s. 88.48, Stats. Under s. 88.01(11), Stats., "lands" include public streets and highways.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.04 Recovering costs from lands outside a drainage district. (1) **GENERAL.** Except as provided under subs.

(2) and (3), a county drainage board may not levy a cost assessment on behalf of a drainage district against lands located outside the drainage district, but may do any of the following:

(a) Refuse to permit the connection of a private drain to a district drain, except as provided under s. 88.93, Stats.

Note: See s. 88.92, Stats.

(b) Initiate an action at law to recover damages, authorized by law, that are sustained by a drainage district as a result of an action or omission by an owner of land located outside the district.

(c) Enter into an agreement with any person under which that person agrees to compensate the drainage district for costs incurred by the drainage district because that person's private drain is connected to a district drain.

(d) Order the annexation, to a drainage district, of lands outside the district that benefit from the operation of any district drain.

Note: See s. 88.78, Stats.

(2) **COST ASSESSMENTS AGAINST ANOTHER DRAINAGE DISTRICT.** A county drainage board may levy cost assessments against a drainage district for the benefit of another drainage district.

Note: See ss. 88.49 and 88.69, Stats.

(3) **ASSESSMENTS AGAINST MUNICIPALITIES FOR ENLARGEMENT OR MAINTENANCE OF DRAINS.** A county drainage board may levy cost assessments against a municipality with territory upstream from any drain for any costs of enlarging or maintaining the drain that are attributable to increased water flow from land within the municipality.

Note: See s. 88.64, Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.06 Assessing benefits to lands in a drainage district. (1) **INITIAL ASSESSMENT OF BENEFITS.** When a drainage district is created, a county drainage board shall assess the benefits accruing from the drainage district to each parcel of land in the drainage district. The county drainage board shall assess benefits according to ch. 88, Stats., and this section. The drainage board's assessment of benefits shall provide the basis for the drainage board's allocation of cost assessments under s. ATCP 48.02(3).

Note: See ss. 88.35 and 88.36, Stats.

(2) **REASSESSING BENEFITS.** (a) If a county drainage board determines that the last confirmed assessment of benefits for a drainage district no longer reflects the actual current benefits to parcels of land in that drainage district, the county drainage board may, after public hearing, issue an order reassessing benefits. A county drainage board may reassess benefits based on land use changes, the construction of new or modified district drains, the subdivision of lands, or other factors affecting the allocation of benefits to landowners.

Note: A reassessment under par. (a) should adjust all assessed benefits in the district, as necessary, to correct any inequities and injustices found by the board. The adjustment need not be proportional to the former confirmed benefits. See s. 88.46(2), Stats.

(b) A county drainage board may reassess benefits under par. (a) on its own motion, or in response to a petition from landowners under s. 88.46, Stats. A reassessment of benefits provides the basis for any subsequent allocation of cost assessments under s. ATCP 48.02(3).

Note: A landowner petition filed with the drainage board under s. 88.46, Stats., must be signed by at least 1/10 of the owners of land in a drainage district, or by the owners of at least 1/10 of the land in a drainage district.

(3) **METHOD OF ASSESSMENT OR REASSESSMENT.** (a) Except as provided under par. (b), a county drainage board shall assess benefits to agricultural lands according to s. ATCP 48.08, and shall assess benefits to nonagricultural lands according to s. ATCP 48.10.

(b) In lieu of an assessment method specified under s. ATCP 48.08 or 48.10, a county drainage board may adopt an equitable method of assessment which is approved by the owners of at least two-thirds of the assessed lands in the district. The landowners' approval shall be confirmed in a written agreement signed by the approving landowners.

(4) **PROTECTED WETLANDS EXCLUDED FROM ASSESSMENT.** A county drainage board may not assess benefits under this section to wetlands that are legally protected against drainage.

Note: For purposes of this subsection, "legally protected" wetlands means wetlands that are all of the following:

- (1) Located outside the district corridor.
- (2) Clearly described by means of a survey, map, aerial photograph or other document that indicates the size and location of the wetlands.
- (3) Formally protected from drainage by at least one of the following means:
 - (a) A deed restriction.
 - (b) Enrollment in the federal wetlands reserve program, the federal water bank program, or another federal, state or county program that clearly protects the wetlands from drainage for a term of at least 10 years.
 - (c) A recorded easement for a term of at least 10 years.
 - (d) A master plan, approved by the Wisconsin board of natural resources, covering land owned by the Wisconsin department of natural resources.

(5) **BENEFITS RELATED TO EXTENSION OF PRIVATE DRAIN.** When assessing benefits to a parcel of land in a drainage district, a county drainage board may include any benefits accruing to lands outside the district which drain to district drains because a private drain has been extended from the assessed parcel to those outside lands.

Note: See also s. ATCP 48.02(4)(a)6.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.08 Assessing benefits to agricultural lands.

(1) **FACTORS CONSIDERED.** When assessing benefits to agricultural lands in a drainage district, a county drainage board shall consider all of the following factors:

(a) The estimated increase in land value resulting from drainage. When estimating an increase in land value, a county drainage board may consider the potential uses of the land, taking into account any deed restrictions, easements, restrictive covenants, or other use limitations recorded with the county register of deeds. A potential use does not include a use that is prohibited by law.

(b) The type, depth, quality and character of surface soils and subsoils on the assessed land.

(c) The amount of drainage required by, or provided to the assessed land.

(d) The thoroughness and reliability of drainage provided.

(e) The amount and frequency of flooding on the assessed land.

(f) The difficulty of draining the assessed land.

(g) Any loss of acreage resulting from the construction of district drains or corridors, or from the deposition of materials excavated in connection with the construction or maintenance of district drains and corridors.

(h) Other factors which the county drainage board considers relevant.

Note: Information relevant to the assessment of benefits may be obtained from a variety of sources including soil survey reports, aerial photographs, topographic maps, cropping histories, wetland maps, maps of original benefitted acres, interviews with individual landowners and on-site investigations.

(2) **BENEFITS ASSESSED BY 40-ACRE PARCELS.** Benefits to agricultural lands shall be assessed parcel by parcel, with each parcel being not larger than 40 acres. If a landowner's parcel is larger than 40 acres, benefits shall be assessed for sub-parcels that are not larger than 40 acres each.

Note: See s. 88.35, Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.10 Assessing benefits to nonagricultural lands.

(1) **FACTORS CONSIDERED.** When assessing benefits to non-agricultural lands in a drainage district, a county drainage board may consider all the factors specified for agricultural lands under s. ATCP 48.08(1). The county drainage board may also consider the extent and frequency of additional discharges from the non-agricultural lands to district drains, and the drainage district's cost to accommodate those additional discharges. Additional discharges may include additional discharges of stormwater, wastewater, or precipitation runoff from impermeable surfaces.

Note: The county drainage board may also assess upstream municipalities for costs of enlarging or maintaining drains that are attributable to increased water flow from the municipality. See s. 88.64, Stats., and s. ATCP 48.04(3).

(2) **ALLOCATING ASSESSMENTS.** A county drainage board may assess benefits to nonagricultural lands, including rural subdivisions or individual rural residences, based on a flat amount per lot, per acre, or per building or residence.

Note: See s. 88.35, Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

Subchapter III — Inspecting drainage districts

ATCP 48.12 **Inspection authority.** (1) Pursuant to s. 88.13, Stats., a member of a county drainage board or an employe or other authorized agent of a county drainage board may enter any lands in a drainage district to perform an inspection under this subchapter, or to perform any other inspection of a district drain or corridor.

Note: A county drainage board may authorize a landowner in a drainage district to make an inspection as an agent of the board. See s. 88.63(1), Stats.

(2) Before a county drainage board or its agent performs an inspection on private lands, other than in a district corridor under s. ATCP 48.24, the county drainage board or its agent shall notify the landowner of the inspection. Notice may be given in person, by telephone, by mail or, if the landowner is not available, by posting notice at a conspicuous location at an entrance to the land. Notice under this section is adequate if given at any time prior to entry.

(3) A county drainage board may employ or contract with any person to perform an inspection on behalf of the county drainage board.

Note: Section 88.20, Stats., prohibits conflicts of interest by members of a county drainage board. See also s. 946.13, Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.14 **Annual inspection.** (1) **REQUIREMENT.** A county drainage board or its authorized employe or agent shall annually inspect every drainage district. The inspection shall include an inspection of all district drains and district corridors, and shall determine all of the following:

(a) Whether district drains are being maintained in compliance with this chapter.

(b) Whether a district corridor has been established and is being maintained around every district ditch in compliance with this chapter.

(c) Whether landowners are complying with applicable requirements under this chapter.

(d) Whether, and to what extent, sedimentation has occurred in district drains.

(e) Whether the cross-sections or grade profiles of district drains have changed significantly from the original, or most recently improved, cross-sections or grade profiles.

(f) Whether any drains should be restored, altered or improved to ensure proper drainage, to reduce soil erosion or sedimentation problems, or to comply with this chapter.

(g) Whether the district drainage system is operating effectively to achieve the goals which have been specified for the drainage district pursuant to s. 88.63, Stats., and s. ATCP 48.36(1)(f).

Note: A county drainage board may perform an annual inspection in stages during the year. Reports covering the various stages of the inspection may be combined in a single report under sub. (3).

(2) **LANDOWNER PARTICIPATION.** The county drainage board shall, by publishing a class 2 notice under ch. 985, Stats., notify the landowners in each drainage district of the inspection under sub. (1). The notice shall inform landowners and land users that they may accompany the inspection under sub. (1) of lands owned or used by them, and may submit comments related to the performance of the district drainage system.

(3) **INSPECTION REPORT.** A county drainage board shall, in conjunction with its annual report for each drainage district under s. 88.24, Stats., prepare an annual report summarizing the results of

its inspection under sub. (1), including any comments received under sub. (2). The county drainage board shall file a copy of its report with the county zoning administrator and with the department by December 1 of each year. Before filing the report under this subsection, the county drainage board shall present its report at a public meeting which is preceded by a class 2 notice under ch. 985, Stats. Notice of the meeting shall also be sent to all known landowners in the drainage district.

(4) **REPORT CONTENTS.** The county drainage board's annual inspection report under sub. (3) shall report the board's inspection findings related to each of the items listed under sub. (1). For each item, the report shall identify any problems, violations or deficiencies noted by the county drainage board. The report shall also specify how the county drainage board will address each problem, violation or deficiency.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.16 Inspection after major storm. (1) REQUIREMENT. Within 3 weeks after a drainage district is affected by a storm that exceeds a 25-year 24-hour rainfall event for that county, the county drainage board or its authorized employee or agent shall inspect the district drains and corridors affected by the storm. The county drainage board shall inspect the district drains and corridors to determine the nature and extent of any storm damage, and to determine whether repairs are necessary. A 25-year 24-hour rainfall event is the amount of rain received over a 24-hour period as shown in Table 1.

TABLE 1
Probable 24-hour Rainfall Events, In Inches of rain,
for counties in Wisconsin

	10-year	25-year			
Adams	4.1	4.7	Kewaunee	3.7	4.2
Ashland	3.9	4.3	LaCrosse	4.3	4.9
Barron	4.1	4.6	Lafayette	4.3	4.9
Bayfield	3.9	4.4	Langlade	3.8	4.3
Brown	3.7	4.3	Lincoln	3.9	4.4
Buffalo	4.3	4.8	Manitowoc	3.8	4.3
Burnett	4.0	4.6	Marathon	4.0	4.5
Calumet	3.8	4.4	Marquette	4.1	4.6
Chippewa	4.1	4.7	Menominee	3.7	4.3
Clark	4.1	4.7	Milwaukee	3.9	4.5
Columbia	4.1	4.7	Monroe	4.2	4.8
Crawford	4.3	5.0	Oconto	3.7	4.2
Dane	4.2	4.8	Oneida	3.8	4.3
Dodge	4.0	4.6	Outagamie	3.8	4.4
Door	3.6	4.1	Ozaukee	3.9	4.4
Douglas	3.9	4.4	Pepin	4.3	4.8
Dunn	4.2	4.7	Pierce	4.2	4.8
Eau Claire	4.2	4.7	Polk	4.1	4.7
Florence	3.6	4.1	Portage	4.0	4.5
Fond du Lac	3.9	4.5	Price	4.0	4.4
Forest	3.7	4.2	Racine	4.0	4.6
Grant	4.3	5.0	Richland	4.3	4.9
Green	4.2	4.8	Rock	4.1	4.7
Green Lake	4.0	4.6	Rusk	4.1	4.6
Iowa	4.3	4.9	St. Croix	4.2	4.7
Iron	3.8	4.3	Sauk	4.2	4.8
Jackson	4.2	4.8	Sawyer	4.0	4.5
Jefferson	4.0	4.6			
Juneau	4.1	4.7			
	10-year	25-year	Shawano	3.8	4.4
Kenosha	4.0	4.6	Sheboygan	3.8	4.4
			Taylor	4.1	4.6

Trempealeau	4.3	4.8
Vernon	4.3	4.9
Vilas	3.8	4.3
Walworth	4.1	4.6
Washburn	4.0	4.5
Washington	3.9	4.5
Waukesha	4.0	4.6
Waupaca	3.9	4.5
Waushara	4.0	4.6
Winnebago	3.9	4.5
Wood	4.1	4.6

Note: The data of table 1 were obtained by extrapolation from maps published by the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the United States".

(2) INSPECTION REPORT. A county drainage board shall prepare a report summarizing the results of its storm inspection under sub. (1). The report shall identify any significant storm damage identified in the inspection, and shall indicate how the board plans to repair the damage. The county drainage board shall file a copy of its storm inspection report with the department when the county drainage board files its annual report under s. ATCP 48.14.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.18 Department review and action. (1) The department shall review inspection reports submitted by county drainage boards under this subchapter.

(2) The department may do any of the following which the department considers necessary:

(a) Inspect and copy county drainage board records, or issue an order under s. ATCP 48.52 requiring a county drainage board to file with the department a copy of any record or report required under this chapter.

(b) Conduct inspections or other investigations to verify the findings made or reported by a county drainage board.

(c) Issue an order under s. ATCP 48.52 requiring a county drainage board to file a specific maintenance or repair plan. As part of the maintenance or repair plan, the department may require the county drainage board to include engineering specifications, specifications for the deposition of dredged materials, a financing plan and other relevant information.

(d) Issue an order under s. ATCP 48.52 which prohibits the construction or alteration of a district drain or corridor if the construction or alteration violates this chapter.

(e) Issue an order under s. ATCP 48.52 which requires a county drainage board to comply with applicable requirements under this chapter.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

Subchapter IV — District Drains and Corridors

ATCP 48.20 District drains; identification. (1) By December 31, 1995, every county drainage board shall file with the county zoning administrator and the department a map and description of every drainage district under the drainage board's jurisdiction. The map and description shall accurately specify all of the following:

(a) The boundaries of the drainage district, as last confirmed by the circuit court or ordered by the county drainage board.

(b) The location and extent of every district drain. If private drains are connected to district drains, the map and description shall clearly specify which drains, or portions of drains, are district drains. The criteria for determining what constitutes a district drain shall be uniformly applied throughout a drainage district.

(c) The location and width of the every district corridor required under s. ATCP 48.24.

Note: A "district drain" includes any drain, located within a drainage district, that a county drainage board constructs or is required to maintain under ch. 88, Stats. A

"district drain" includes a main ditch, a lateral ditch, or any other type of drain (e.g., an underground tile) that is constructed or operated by a county drainage board. A "district drain" is often located on private property. However, a "district drain" must be distinguished from a "private drain" which is a drain constructed and maintained by a private landowner, or by a government entity other than a county drainage board.

(2) A county drainage board may request the department's assistance in developing the map and description of a drainage district under sub. (1).

(3) Before a county drainage board files a map and description with the county zoning administrator and the department under sub. (1), the county drainage board shall do all of the following:

(a) Provide every known landowner in the drainage district with notice by mail announcing a public meeting at which a copy of the map and description shall be available for inspection. The county drainage board shall also publish a class 2 notice of the meeting under ch. 985, Stats.

(b) Give each landowner at least 30 days after the public meeting to file with the county drainage board written objections to the map or description. When the county drainage board files a map and description with the department under sub. (1), the county drainage board shall notify the department of any unresolved objections filed by landowners under this paragraph.

(4) This section does not authorize a county drainage board to do either of the following:

(a) Create any drainage district without court confirmation under ch. 88, Stats.

(b) Modify any drainage district boundaries except according to procedures specified under ss. 88.77 to 88.80, Stats.

Note: The map and description of each drainage district under sub. (1) must be based on the circuit court orders that created or modified that drainage district, or a county drainage board order annexing or removing land according to applicable procedures under ss. 88.77 to 88.80, Stats. If necessary, a county drainage board may clarify disputed boundaries or the status of disputed drains using appropriate procedures specified under ss. 88.77 to 88.80, Stats. (e.g., if prior court orders are not clear or if copies cannot be located).

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.22 Construction and maintenance; general.

(1) REQUIREMENT. A county drainage board shall design, construct, maintain, repair and restore district drains and corridors in compliance with this subchapter.

(2) COMPLIANCE PLAN AND SCHEDULE. (a) A county drainage board shall file with the department by December 31, 1996 a plan showing how the county drainage board intends to bring all district drains and corridors under its jurisdiction into compliance with this subchapter. The plan shall specify a schedule for bringing the district drains and corridors into compliance.

(b) All drainage districts shall comply with this subchapter by December 31, 1999 unless the department, in response to unusual or unavoidable circumstances, extends the compliance deadline in writing.

(3) EMPLOYEES AND AGENTS. A county drainage board may employ or contract with qualified persons to survey, design, construct, maintain, repair or restore district drains and corridors on behalf of the county drainage board.

Note: Under s. ATCP 48.34, construction projects requiring department approval under s. ATCP 48.34 must be designed by a qualified engineer. Sections 88.20 and 946.13, Stats., prohibit conflicts of interest by members of a county drainage board. Under s. 88.145, Stats., a county drainage board may authorize any owner of land within the district to undertake work approved by the drainage board. The liability of a landowner who does work with the approval of the county drainage board is limited by ss. 88.145, 893.80 and 895.46(8), Stats.

(4) AUTHORITY TO ENTER LANDS. A member of a county drainage board or an employe or other authorized agent of a county drainage board may do any of the following:

(a) Enter onto any lands in a drainage district in order to survey, design, construct, maintain, repair or restore a district drain or corridor.

(b) Perform survey, construction, maintenance, repair and restoration operations on a district drain or corridor, including operations requiring excavation or modification of private land.

Note: See s. 88.13, Stats.

(5) **NOTICE TO LANDOWNER.** Before a county drainage board or its agent performs any survey, design, construction, maintenance, repair or restoration operations on private land, other than in a district corridor under s. ATCP 48.24, the county drainage board or its agent shall notify the landowner. Notice may be given in person, by telephone, by mail or, if the landowner is not available, by posting notice at a conspicuous location at an entrance to the land. Notice under this section is adequate if given at any time prior to entry.

(6) **DEPARTMENT APPROVAL.** No county drainage board or its agent may proceed with a construction or restoration project for which department approval is required under s. ATCP 48.34 unless the county drainage board has obtained the department's written approval for that construction or restoration project under s. ATCP 48.38. No county drainage board or its agent may, without the department's written approval, deviate from the project plan and specifications approved by the department.

(7) **OTHER AGENCIES; APPROVAL.** Before starting any construction, maintenance, repair or restoration operation under this chapter, a county drainage board shall obtain from the appropriate government agencies all permits and approvals required for that operation.

Note: Certain construction, maintenance, repair and restoration operations in a drainage district may require permits or approvals from the army corps of engineers; the Wisconsin department of natural resources; the Wisconsin department of agriculture, trade and consumer protection or local zoning authorities.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.24 District corridors. (1) **CORRIDOR REQUIRED.** A county drainage board shall establish and maintain a district corridor around every district ditch. The county drainage board shall maintain the district corridor, in compliance with this subchapter, for all of the following purposes:

(a) To provide effective access for the county drainage board and its agents, and for their vehicles and equipment, over the entire length of the district ditch.

(b) To provide a buffer against land uses which may adversely affect water quality in the district ditch.

(2) **WIDTH OF CORRIDOR.** A district corridor shall extend for 20 feet from the top of the ditch bank on each side of a district ditch. A county drainage board may, by giving specific notice to landowners, establish a wider corridor if necessary to permit vehicle access or to protect water quality in the district ditch.

(3) **ACCESS TO CORRIDOR.** Except as provided under sub. (4), a member of a county drainage board or an employe or other authorized agent of a county drainage board may, without prior notice to a landowner, do any of the following:

(a) Enter a district corridor, and bring vehicles and equipment into a district corridor, for the purpose of inspecting, surveying, maintaining, repairing, restoring or improving a district drain or corridor.

(b) Perform operations in a district corridor related to the maintenance, repair, restoration or improvement of a district drain or corridor, including cutting, mowing, pesticide application, dredging, excavation and other operations.

(4) **NOTICE OF ACTIVITIES IN THE CORRIDOR.** Before a county drainage board or its agent does either of the following in a district corridor, the county drainage board or its agent shall notify the landowner by one of the methods specified under s. ATCP 48.22(5):

(a) Cutting trees that are more than 6 inches in diameter measured at breast height.

(b) Excavating or depositing materials in the district corridor.

(5) **ROW CROPPING PROHIBITED IN CORRIDOR.** Row cropping is prohibited in a district corridor.

Note: See s. ATCP 48.28 related to the control of woody vegetation in a district corridor.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.26 District drains; design, construction and maintenance. (1) **DRAINAGE CAPACITY.** Every district drain constructed after July 1, 1995 shall be designed and constructed so that it is capable of removing the volume of water from a 10-year 24-hour rainfall event within 48 hours after that rainfall event. For each county, a 10-year 24-hour rainfall event is the amount of rain shown in table 1 falling in 24 hours.

(2) **DITCH STABILITY.** (a) A county drainage board shall design and construct every district ditch, including the ditch bed, banks, and related structures such as culverts, bridges and inlets, so that the ditch will remain stable when subjected to a 10-year peak discharge under sub. (1). A district ditch is not required to contain the entire volume of water from the peak discharge. The stability standard under this paragraph does not apply to a district ditch or related structure constructed prior to July 1, 1995.

(b) A county drainage board shall repair and maintain every district ditch, as necessary, to restore and maintain the stability of that ditch.

(3) **DITCH CROSS-SECTION AND GRADE PROFILE.** A county drainage board shall repair and maintain every district ditch so that the cross-section and grade profile of the ditch are stable and conform, as nearly as practicable, to the cross-section and grade profile of the ditch as last constructed or reconstructed.

(4) **REMOVING OBSTRUCTIONS.** A county drainage board shall remove sediment dams, windfalls, deadfalls, sand bars, beaver dams and other obstructions from district ditches. The county drainage board shall remove the obstructions annually, or more frequently as necessary. The county drainage board shall also remove submerged vegetation from district ditches as necessary.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.28 Controlling woody vegetation. (1) **REQUIREMENT.** Except as provided under sub. (2), a county drainage board shall control the growth of woody vegetation in district ditches and corridors to ensure effective drainage and effective access for inspection, maintenance and repair. A county drainage board may control woody vegetation by one or more of the methods specified under sub. (3).

(2) **EXCEPTION.** A county drainage board may allow the growth of woody vegetation in portions of a district corridor, provided that the woody vegetation does not interfere with effective access to district drains. A county drainage board, when deciding whether to allow the growth of woody vegetation, shall consider how the woody vegetation may affect the cost of maintaining and cleaning district drains. Any portions of a corridor left in woody vegetation shall be maintained under a resource conservation plan developed in cooperation with the county land conservation department or the United States natural resources conservation service.

Note: In some parts of a district corridor, woody vegetation may have important value as wildlife habitat, or for controlling soil erosion. Ordinarily, ditches are not subject to local shoreland or wetland zoning ordinances. However, in a small number of situations, where ditches are considered natural navigable streams, local ordinances may limit the cutting of woody vegetation. See s. 144.26(2m), Stats., and chs. NR 115 and 117.

(3) **METHODS FOR CONTROLLING WOODY VEGETATION.** A county drainage board may use any of the following methods to control the growth of woody vegetation in a district ditch or corridor:

(a) **Mowing.** A county drainage board may mow a district ditch or corridor to control the growth of woody vegetation. Mowing may include hand cutting where necessary. If only mowing is used to control the growth of woody vegetation in a district ditch or corridor, the county drainage board shall mow the ditch or corridor at least once every 5 years, and more often if necessary.

(b) **Pesticide applications.** A county drainage board may apply pesticides to control the growth of woody vegetation in a district ditch or corridor. Pesticides shall be applied according to label directions, and in compliance with ch. ATCP 29 and other applicable state and federal laws and regulations.

(c) *Burning*. Subject to applicable local regulations, a county drainage board may use controlled burning to control the growth of woody vegetation in a district ditch or corridor.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.30 Controlling soil erosion and runoff. (1)

GENERAL. A county drainage board shall take appropriate measures to minimize soil erosion and the movement of suspended solids into district drains. A county drainage board may monitor water in district drains to determine the amounts and sources of suspended solids in the water.

(2) **CORRIDORS AND DRAINS.** A county drainage board shall design, construct and maintain district drains and corridors to minimize soil erosion and the movement of suspended solids into district drains.

Note: Erosion control methods are described in the "Wisconsin construction site best management practices handbook" which is available for viewing at the county land conservation department, or for purchase from the Wisconsin department of administration, document sale division, 202 South Thornton Avenue, Madison, WI.

(3) **VEGETATIVE COVER.** (a) A county drainage board shall maintain effective vegetative cover, or equally effective erosion control practices, in every district ditch and corridor. When ditch banks are planted with vegetation to stabilize those banks, the plant variety or seed mixture shall be one of those listed in the United States department of agriculture natural resources conservation service technical guide, critical area planting standard 342, 1985 edition, including supplements through 1988. The application rate shall also conform to critical area planting standard 342. If construction or maintenance activities disturb the vegetative cover in a district ditch or corridor, the drainage board shall promptly replant the disturbed area to restore an effective vegetative cover.

Note: The United States department of agriculture natural resource conservation service technical guide is on file with the department, the secretary of state and the revisor of statutes. Copies of individual standards may be obtained from the United States department of agriculture natural resources conservation service field offices and from county land conservation department offices.

(b) A county drainage board may permit land uses in district corridors that provide effective vegetative cover and erosion control.

(4) **INLETS TO DISTRICT DITCHES.** Inlets to district ditches, whether from private or district drains, shall be designed and maintained to prevent soil erosion. Surface drainage entering a district ditch shall be controlled by means of buffer strips, pipe inlets, drop spillways or other devices to prevent soil erosion and uncontrolled flow over ditch banks.

(5) **PRIVATE DRAINS.** (a) Private drains that transport water to district drains, whether from agricultural or nonagricultural lands, shall be designed, constructed and maintained to prevent soil erosion, and to minimize the movement of suspended solids into district drains. A county drainage board may require that private drains carrying water from nonagricultural lands be designed according to a stormwater management plan, and equipped with facilities such as settling ponds or detention basins to minimize excessive discharges of water or suspended solids into district drains.

(b) If a private drain does not comply with par. (a), the county drainage board may do any of the following:

1. Refuse to permit any connection between the private drain and the district drain.
2. Order that the private drain be modified to comply with par. (a).
3. Order that the private drain be disconnected from the district drain.

4. Pursuant to s. ATCP 48.02(4), assess the owner of the private drain for construction costs incurred by the drainage district because the private drain does not comply with par. (a).

Note: A county drainage board may also initiate a court action against the owner of the private drain. The county drainage board may ask the court to enjoin violations of par. (a), and may seek recovery of damages incurred by the drainage district because of those violations. A person violating par. (a) may also be subject to a civil forfeiture under s. 88.11(8), Stats.

(6) **EROSION CONTROL PRACTICES ON DRAINED LANDS.** (a) An owner of land in a drainage district shall implement appropriate erosion control practices on that land to minimize soil erosion and the movement of suspended solids into district drains. A county drainage board may require a landowner to implement erosion control practices recommended by the United States department of agriculture natural resources conservation service, the county land conservation department or an engineer approved by the department.

(b) If a landowner fails to implement erosion control practices required by a county drainage board under par. (a), the county drainage board may do any of the following:

1. Refuse to permit any connection between the landowner's private drain and the district drain.
2. Order the landowner to comply with par. (a).
3. Order that the landowner's private drain be disconnected from the district drain.
4. Pursuant to s. ATCP 48.02(4), assess the landowner for construction costs incurred by the drainage district because of the landowner's failure to implement erosion control practices required by the county drainage board under par. (a).

Note: A county drainage board may also initiate a court action against a landowner who violates par. (a). The county drainage board may ask the court to enjoin violations of par. (a), and may seek recovery of damages incurred by the drainage district because of those violations. A landowner violating par. (a) may also be subject to a civil forfeiture under s. 88.11(8), Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.32 Deposition of materials. (1) Materials dredged or excavated in connection with the construction, restoration, repair or maintenance of district drains may be spread on land or placed in piles according to this section. Berms, levees and other depositions in a district corridor shall comply with this section.

Note: The deposition of dredged or excavated material may be subject to additional restrictions under federal, state and local laws.

(2) The deposition of dredged or excavated materials, whether by land spreading or piling, shall conform as nearly as practicable to the American society of agricultural engineers engineering practice number 407.01, section 5, 1993 edition. Materials shall be spread or piled in a manner that ensures the long-term stability of the materials.

Note: Copies of ASAB EP 407.01, section 5 are on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from the department. A county drainage board may also contact the United States department of agriculture natural resources conservation service or the army corps of engineers for technical assistance related to the deposition of dredged or excavated materials.

(3) If dredged or excavated materials are spread on land, the materials shall be graded and smoothed to blend into cultivated lands. The surface slope of the spread materials shall not exceed a slope of 8:1. Spread materials may not be more than 2 feet deep at the top of a ditch bank.

Note: See Figure 1.

(4) No portion of a pile of dredged or excavated materials may be closer than 12 feet to the top of a ditch bank. Materials shall be piled at a stable angle of repose for those materials. No slope of any pile may exceed a slope of 2:1.

(5) No dredged or excavated material may be placed in a wetland except in compliance with applicable federal, state and local permit requirements.

Note: Figure 1, which is based on ASAB EP 407.01, section 5, illustrates the requirements of this section:

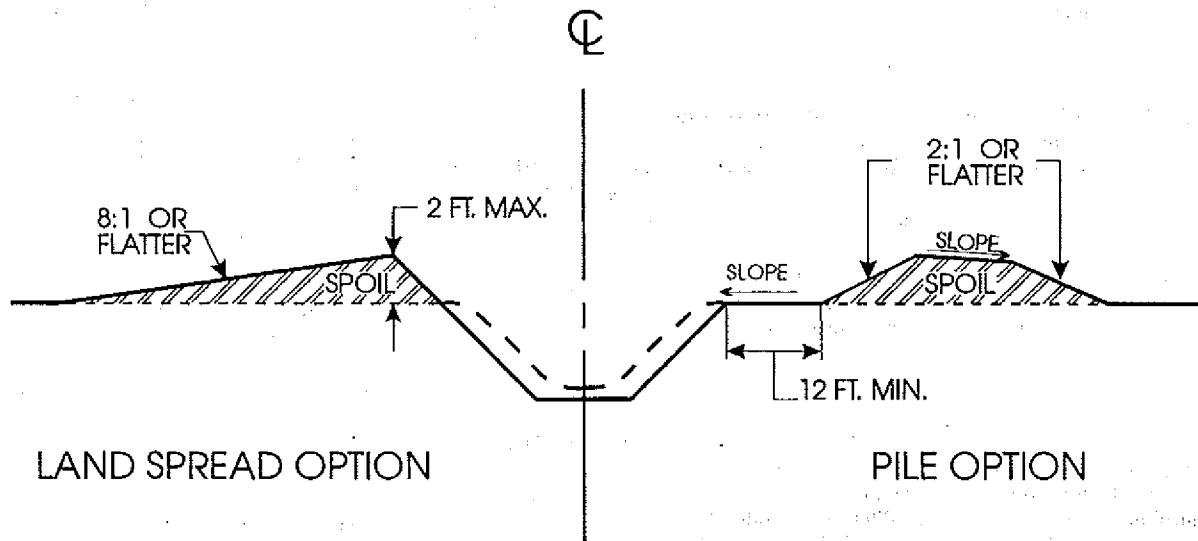


Figure 1. Methods of Material Disposal

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

Subchapter V — Department Approval of Construction or Restoration Projects

ATCP 48.34 Construction or restoration projects requiring department approval. Before a county drainage board approves either of the following projects in a drainage district, the county drainage board shall obtain the department's written approval for that project:

(1) A construction project.

(2) A restoration project involving the dredging or excavation of more than 3,000 cubic yards of material, unless the restoration area was legally dredged within 10 years prior to the start of the restoration project.

Note: A county drainage board may seek the department's advice or assistance regarding any proposed construction, repair, restoration or maintenance project, regardless of whether the project requires the department's approval under this section. A county drainage board is encouraged to consult with the department at the early planning stage of a project to facilitate timely assistance and, if necessary, timely review and approval of the project. A county drainage board should obtain the report and approval of the department before holding its hearing on a construction or restoration project under ch. 88, Stats. Any subsequent modifications in the construction or restoration project should also receive prior approval of the department.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.36 Request for approval. (1) **REQUIREMENT.** To obtain the department's approval for a proposed construction or restoration project under s. ATCP 48.34, a county drainage board shall file with the department a written request for approval. A request for approval shall include all of the following information, in detail commensurate with the scope of the project:

(a) *District name or number.* The name or number, or the proposed name or number of the drainage district.

(b) *Project description and purpose.* A statement describing the project, and indicating why the project is needed.

(c) *Estimated cost.* The estimated cost of the project, including any proposed damage awards to landowners in the drainage district who will be adversely affected by the project.

(d) *Benefit to landowners.* An assessment or reassessment of benefits to every parcel of land in the drainage district, including any change in benefits resulting from the construction or restoration project. The county drainage board shall specify the method

used by the county drainage board in its assessment or reassessment of benefits. Benefits to landowners shall be assessed according to s. ATCP 48.06(3).

Note: Under s. ATCP 48.06(2)(a), if a county drainage board determines that the last confirmed assessment of benefits for a drainage district no longer reflects actual current benefits to parcels of land in that drainage district, the county drainage board must order a reassessment of benefits. Landowners within a drainage district may also petition the drainage board for a reassessment under s. 88.46, Stats.

(e) *Financing plan.* The drainage board's plan for financing the project, including any proposed cost assessments to lands in the drainage district. Cost assessments shall comply with s. ATCP 48.02.

(f) *Drainage goals.* A statement of the drainage goals which the project is expected to achieve, including goals for new drainage or the improvement of current drainage. Drainage goals shall be specified in terms of drainage volume, the thoroughness of drainage and the geographic scope of drainage.

(g) *Design specifications and project plan.* The design specifications and a plan for the construction or restoration project. The design specifications and plan shall be prepared by an engineer who is qualified under s. 88.21(5), Stats., except that the design specifications and plan for a restoration project need not be prepared by an engineer unless required by the department. The design specifications and plan shall comply with applicable standards under subchap. IV. The design specifications and plan shall include all of the following:

1. A plan for controlling erosion at the project site.
2. An estimate of the amount of material that will be dredged or excavated in the course of the project, and a plan for the deposition of that material.
3. A feasibility analysis under sub. (2) if the project will create a new drainage district or subdistrict, or will substantially or materially alter the drainage system within an existing district.
4. A hydrology analysis under sub. (3) if the project will create a new drainage district or subdistrict, or will substantially or materially alter the drainage system within an existing district.

(h) *Lands and waters affected.* A map and description of the lands and waters affected by the project. The map and description shall indicate all of the following if relevant:

1. The location of the project in relation to the affected lands and waters.

2. The topography of the affected lands.

3. The location of any wetlands that may be affected by the project.

4. The identity and location of any navigable waterway noted on a federal or state map of public record, any stormwater management district or lake district, any priority watershed or lake under s. 144.25, Stats., or any wellhead protection area delineated under ch. NR 811 that may be affected by the project, and a description of how the project may affect that navigable waterway, stormwater management district, lake district, priority watershed, priority lake, or wellhead protection area.

5. Any transportation corridor or utility easement, and any building or facility that may be affected by the project, and a description of how the project may affect that corridor, easement, building or facility.

6. The current use and vegetative cover of the lands affected by the project, and any changes in use or vegetative cover that may occur because of the project.

(i) *Suspended solids in district drains.* An assessment of how the project may affect upstream and downstream suspended solids in district drains.

(j) *Surface waters of the state.* An assessment of how the project may affect surface waters of the state, including effects on surface water levels, surface water quality, surface water temperatures or wetlands.

(k) *Groundwater.* An assessment of how the project may affect groundwater, including effects on groundwater levels or groundwater quality.

(L) *Human and natural environment.* An assessment of how the project may affect fish habitat, wildlife habitat, scenic beauty and other aspects of the human and natural environment.

(m) *Alternatives.* An assessment of alternatives to the project, including the alternative of doing nothing. The assessment shall discuss the relative benefits, costs and environmental effects of the alternatives.

(n) *Copies filed with other agencies.* A statement that the county drainage board has filed copies of the request for approval under this subsection with other agencies, as required under sub. (4).

Note: A county drainage board is encouraged to contact the department as soon as possible before submitting a request for approval under this subsection. The department can guide and assist the county drainage board in preparing the request for approval.

(2) FEASIBILITY ANALYSIS. (a) *General.* If a construction or restoration project will create a new drainage district or subdistrict, or will substantially or materially alter the drainage system within an existing district, the county drainage board's request under sub. (1) shall include a feasibility analysis of the project. The feasibility analysis shall assess whether the design specifications and project plan are adequate to achieve the intended results, and whether they comply with applicable standards under subchapter IV.

(b) *Adequacy to achieve drainage goals.* If a construction or restoration project is designed to drain new lands, or to improve the current drainage of lands, the feasibility analysis under par. (a) shall assess whether the project will achieve the drainage goals stated under sub. (1)(f), whether the affected soils will drain as expected, and whether the drain will operate by gravity or will require pumping. If pumping is required, the analysis shall assess whether pumping capacity is adequate.

(3) HYDROLOGY ANALYSIS. If a construction or restoration project will create a new drainage district or subdistrict, or will substantially or materially alter the drainage system within an existing district, the county drainage board's request under sub. (1) shall include a hydrology analysis of the project. The hydrology analysis shall include all of the following:

(a) The predicted base flow in the drain.

(b) The predicted 10-year peak discharge to the drain.

(c) The predicted 100-year peak discharge to the drain.

(d) Predicted water surface profiles and flow velocities in the drain, based on the predicted base flow, a 10-year peak discharge and a 100-year peak discharge. The analysis shall describe the hydraulics model used to predict the water surface profiles and flow velocities, and shall specify the drain measurements and other data upon which the model's predictions are based.

(4) FILING COPIES WITH OTHER AGENCIES. Whenever a county drainage board files with the department a request under sub. (1) for approval of a construction or restoration project, the county drainage board shall simultaneously file copies of the request with the Wisconsin department of natural resources, the United States army corps of engineers, the county zoning administrator, the county land conservation committee, and every municipality affected by the project. The county drainage board shall also file a copy of the request with the county highway committee if the project may affect a public highway.

(5) ADDITIONAL INFORMATION. The department may require a county drainage board to file additional information, as necessary, before approving or disapproving a construction or restoration project.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.38 Department approval or disapproval. (1) DEADLINE FOR APPROVAL OR DISAPPROVAL. Within 45 days after the department receives a complete request under s. ATCP 48.36 for approval of a construction or restoration project, including any additional information required by the department under s. ATCP 48.36(5), the department shall issue a written notice granting or denying approval. The department may extend the deadline to a date specified by the department if an environmental impact statement is required under sub. (5).

Note: See ss. 88.32(3m) and 88.35(7), Stats.

(2) APPROVAL MAY BE CONDITIONAL. The department may approve a construction or restoration project contingent upon the county drainage board's compliance with conditions specified by the department.

(3) REASONS FOR DISAPPROVAL. If the department disapproves a construction or restoration project, the department shall provide written notification to the county drainage board substantiating the reasons for disapproval. The department may disapprove a project for any of the following reasons:

(a) The county drainage board has failed to provide information required by the department under s. ATCP 48.36.

(b) The project does not comply with this chapter.

(c) The project is not technically feasible, the project design is not technically sound, or the project design is not adequate to achieve the stated goals of the project.

(d) The reassessment of benefits under s. ATCP 48.36(1)(d) or the financing plan under s. ATCP 48.36(1)(e) does not comply with this chapter.

(e) The project will have a substantial adverse effect on water quality or the human or natural environment.

(4) ENVIRONMENTAL ASSESSMENT. (a) Before the department approves a construction or restoration project under this section, the department shall prepare an environmental assessment under s. ATCP 3.02 on the project if any of the following apply:

1. The project will drain more than 200 acres of land.

2. The project will drain more than 5 acres of wetlands.

3. The project will involve the dredging or excavation of more than 3,000 cubic yards of material, except that an environmental assessment is not required under this subdivision for the restoration of an area that was legally dredged within 10 years prior to the start of the restoration project.

4. The department determines that an environmental assessment is needed to determine whether an environmental impact statement is required under s. ATCP 3.03.

(b) An environmental assessment under par. (a) may incorporate an environmental assessment prepared by the state of Wisconsin department of natural resources or any other governmental agency.

Note: See also ss. NR 150.03(8)(f) and 150.20(1)(c).

(5) ENVIRONMENTAL IMPACT STATEMENT. Before the department approves a proposed construction or restoration project under this section, the department shall prepare an environmental impact statement under s. ATCP 3.03 on the project only if the department determines that an environmental impact statement is required under s. ATCP 3.03.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

Subchapter VI — Landowner Actions Affecting Drainage Districts

ATCP 48.40 Notice of landowner actions affecting drainage district. (1) REQUIREMENT. A landowner under sub. (2), including the state of Wisconsin or any county, town, village or city, shall notify the county drainage board before undertaking any action, including any change in land use, that will do any of the following:

- (a) Alter the flow of water into or from a district drain.
- (b) Increase the amount of soil erosion, or the movement of suspended solids to a district drain.
- (c) Affect the operation of the drainage district, or the costs incurred by the drainage district.

(2) APPLICATION. Subsection (1) applies to an owner of land that receives water from or discharges water to a drainage district, regardless of whether the land is included in the drainage district.

Note: A county drainage board may take various actions in response to landowner actions that adversely affect a drainage district. For example, see ss. ATCP 48.02(5), 48.04, 48.06(2) and 48.30. See also ss. 88.89 to 88.92, Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.42 Removing lands from drainage district. No landowner, including the state of Wisconsin or any county, town, village or city, may do either of the following:

(1) Remove lands from inclusion in a drainage district without obtaining the approval of the county drainage board under s. 88.80, Stats.

(2) Disconnect a private drain from a district drain, except with the approval of the county drainage board.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.44 Connecting private drains to district drains; extending private drains. No person may do either of the following without written approval from the county drainage board:

- (1) Connect a private drain to a district drain.
- (2) Extend a private drain that is currently connected to a district drain.

Note: Under s. 88.92(1), Stats., a county drainage board may approve the connection of private drains to district drains, or the extension of private drains from district drains, and may establish conditions for approval. Under s. 88.92(2), Stats., a person who connects or extends a private drain, or removes a spoil pile, without drainage board approval is liable for damages incurred by the drainage district as a result of that action. "Damages" include payments that the drainage district would have received during the time that the illegal connection or extension existed if the territory drained by the illegal connection or extension had been subject to assessment.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

Subchapter VII — Drainage District Records

ATCP 48.46 Records required. (1) ORDERS. A county drainage board secretary and the county zoning administrator shall maintain in perpetuity a copy of every order of the circuit court or the county drainage board that does any of the following:

(a) Creates, modifies, suspends or dissolves a drainage district. The record shall include maps or descriptions showing the district boundaries affected by the order.

(b) Approves the construction, enlargement, extension or modification of a district drain. The record shall include any information describing profiles and cross-sections of drains affected by the order.

(c) Confirms or orders an assessment, supplemental assessment or reassessment of benefits, damages or costs to landowners in a drainage district.

Note: Under s. 88.19(4) to (7), Stats., the department may determine the records required to be preserved regarding drainage districts.

(2) DRAINAGE DISTRICT BOUNDARIES. A county drainage board secretary and the county zoning administrator shall have on file, at all times, a map or description that clearly and accurately delineates the boundaries of every drainage district. The drainage district boundaries shall be those most recently confirmed by the circuit court, or ordered by the county drainage board.

Note: See s. ATCP 48.20 and s. 88.19(4), Stats.

(3) DRAIN SPECIFICATIONS. A county drainage board secretary and the county zoning administrator shall have on file, at all times, descriptions or drawings that clearly and accurately describe the location, cross-section, grade profile and other design specifications of every district drain, as last constructed or reconstructed with the approval of the circuit court or by order of the county drainage board.

Note: See s. ATCP 48.20 and s. 88.19(4), Stats.

(4) REPORTS. A county drainage board secretary shall keep, for at least 10 years, a copy of every inspection report filed with the department under subchapter III, and every annual report filed with the county zoning administrator under s. 88.24, Stats. A county zoning administrator shall keep, for at least 10 years, a copy of every annual report filed under s. 88.24, Stats.

(5) MINUTES OF MEETINGS. A county drainage board secretary shall prepare minutes of the following meetings, and shall keep those minutes for at least 10 years:

- (a) Every meeting of the county drainage board.
- (b) Every meeting of district landowners held under the auspices of the county drainage board.

Note: Under county law or policy, a county drainage board may be required to retain the minutes of meetings for more than 10 years.

(6) CONSTRUCTION AND RESTORATION RECORDS. A county drainage board secretary shall keep a copy of every request for approval filed with the department under s. ATCP 48.36, and every approval or disapproval issued by the department under s. ATCP 48.38. Records under this subsection pertaining to each drainage district shall be retained for at least the life of that drainage district.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.48 Care and inspection of records. (1) RECORDS ORGANIZED AND ACCESSIBLE. Records required under s. ATCP 48.46 shall be organized by drainage district, and shall be readily accessible for inspection.

(2) DESTRUCTION OF RECORDS; NOTICE. A county drainage board shall notify the department and the state historical society in writing at least 60 days before the county drainage board destroys any record identified under s. ATCP 48.46. The department or the state historical society may take custody of any records proposed for destruction.

Note: See s. 88.19(4)(d), Stats.

(3) DEPARTMENT MAY INSPECT RECORDS AND OBTAIN COPIES. The department may inspect and copy any drainage district record kept by a county drainage board, or by any person in this state, including any record required under s. ATCP 48.46. A county drainage board shall, at the department's request, allow the department to copy any drainage record kept by a county drainage board, including any record kept under s. ATCP 48.46. The department shall retain a copy of any record obtained under this subsection and shall deliver a copy to the county zoning administrator.

Note: See s. 88.19(5), Stats.

(4) FILING RECORDS WITH DEPARTMENT AND COUNTY ZONING ADMINISTRATOR. The secretary of the county drainage board shall provide a copy of drainage board records under s. ATCP 48.46(1)

to (4) that are created after July 1, 1995 to the department and the county zoning administrator.

Note: See s. 88.19(5) to (7), Stats.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

Subchapter VIII — Enforcement and Variances

Note: In addition to any other remedy specified under this chapter, the department may bring an action to recover a civil forfeiture under s. 88.11(8), Stats., from any person who violates this chapter.

ATCP 48.50 Investigations. The department may investigate violations of this chapter. The department may conduct a preliminary investigation under s. 93.16, Stats., and may exercise its authority under ss. 93.14 and 93.15, Stats., in support of any investigation. Pursuant to ss. 88.13 and 93.08, Stats., the department or its agent may enter onto lands to inspect for compliance with this chapter.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.52 Compliance orders. (1) AUTHORITY. The department may, without prior notice or hearing, issue an order which does any of the following:

(a) Prohibits the construction or modification of a district drain or corridor if the department finds that the construction or modification violates this chapter. An order under this paragraph shall specify the activity prohibited by the order, and shall specify why that activity violates this chapter.

(b) Requires a county drainage board to file with the department a specific maintenance and repair plan for a drainage district.

(c) Requires a county drainage board to file with the department a copy of any record or report required under this chapter.

(d) Requires a county drainage board to comply with applicable requirements under this chapter.

Note: See ss. 88.11(6) and (7), Stats.

(2) WHO MAY ISSUE. An order under sub. (1) may be issued by the administrator of the department's division of agricultural resource management, or by a person designated in writing by that division administrator.

(3) VIOLATIONS PROHIBITED. No person may violate an order issued by the department under sub. (1).

(4) FORM AND CONTENTS. An order under sub. (1) shall be issued in writing, and shall include all of the following:

(a) The name or number of the drainage district.

(b) The name of the person to whom the order is issued.

(c) Notice that persons adversely affected by the order may request a hearing to contest the order, or to demonstrate compliance with conditions specified for withdrawal of the order.

(5) SERVING THE ORDER. (a) An order under sub. (1) shall be served on the person to whom it is directed. An order may be served in person or by mail. If an order is directed to the county drainage board, the department shall serve the order on at least one member of the county drainage board. The department shall mail or deliver a copy of every order under sub. (1) to the county drainage board, regardless of whether the order is directed to the county drainage board.

Note: Any person, including but not limited to the county sheriff, may personally serve an order on behalf of the department. If necessary, the department may prove service by means of an affidavit of mailing, a certified mail return receipt, or an affidavit of service.

(b) An order under sub. (1) takes effect immediately after it is served on the person to whom it is directed.

(6) WITHDRAWING OR MODIFYING THE ORDER. A person adversely affected by an order under sub. (1) may request the department to withdraw or modify the order. A request under this subsection shall specify the reasons justifying the request. A request may be made orally, but the department may require the requester to confirm the request in writing. The department may withdraw or modify the order as appropriate.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.54 Hearing on compliance order. (1) REQUEST FOR HEARING. A person adversely affected by an order under s. ATCP 48.52 may request a hearing before the department to contest the order. A request may be made orally, but the department may require the requester to confirm the request in writing. A request for hearing does not automatically stay an order issued under s. ATCP 48.52.

(2) INFORMAL HEARING. (a) The department shall hold an informal hearing as soon as reasonably possible after it receives an oral or written hearing request under sub. (1), but not more than 10 days after it receives the request, unless the requester agrees to a later date for an informal hearing.

(b) The person presiding at an informal hearing under par. (a) shall be a department employee or official who was not personally involved in the investigation or decision to issue the order under s. ATCP 48.52, and who is authorized to withdraw or modify the order as necessary. The informal hearing shall be held by telephone or at a location determined by the department.

(c) Within 2 business days after the conclusion of the informal hearing, the presiding officer under par. (b) shall issue a brief written memorandum which summarizes the informal hearing, and any decision or action resulting from the informal hearing. A copy of the memorandum shall be provided to the person requesting the hearing. The memorandum shall include a notice of a person's right to request a formal contested case hearing under sub. (3).

(3) FORMAL HEARING. If a contest related to an order under s. ATCP 48.52 is not resolved after an informal hearing under sub. (2), the person adversely affected by the department's order may request a full contested case hearing on the order. The contested case proceeding shall comply with ch. 227, Stats., and ch. ATCP 1.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.

ATCP 48.56 Variances. The department may authorize a variance from any standard or requirement under this chapter if the department finds that the variance is consistent with the objectives of this chapter. A variance shall be issued in writing. A variance may be issued by the administrator of the department's division of agricultural resource management, or by a person designated in writing by that division administrator. The department may not grant variances from statutory requirements.

History: Cr. Register, June, 1995, No. 474, eff. 7-1-95.