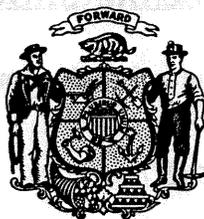


WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Terry C. Anderson, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-039

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

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

02-14-00 RECEIVED BY LEGISLATIVE COUNCIL.

03-13-00 REPORT SENT TO AGENCY.

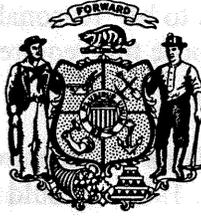
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WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Laura D. Rose,
Interim Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 00-039

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. The Department of Natural Resources (DNR) adopts performance standards and prohibitions under s. 281.16 (3) (a), Stats., and the department promulgates conservation practices and technical standards to implement the performance standards and prohibitions. However, some of the provisions in s. ATCP 50.04 appear to be performance standards or prohibitions. What is the department's statutory authority to adopt these provisions? How do these provisions compare with DNR standards in ch. NR 151?

b. Section 281.16 (3) (e), Stats., provides that an owner or operator of an agricultural facility or practice that is in existence before October 14, 1997, may not be required by the state or a municipality to comply with various performance standards, prohibitions, conservation practices or technical standards unless cost-sharing is available to the owner or operator. What authority exists for s. ATCP 50.06 (2) (a) which provides that a farmer need not have a nutrient management plan or discontinue or modify that part of an agricultural facility or practice that was constructed or begun prior to the effective date of the rule provision unless the farmer can discontinue or modify the practice without incurring significant out-of-pocket or opportunity costs? In other words, what statutory authority exists that requires the owner or operator of an agricultural facility or practice in existence before October 14, 1997 to alter the facility or practice simply because the alteration will require only insignificant costs?

c. Is there specific statutory authority that authorizes contracts described in s. ATCP 50.40 (13) to be recorded? See s. 59.43 (1) (a), Stats.

d. Section 92.05 (3) (L) authorizes the department to provide technical assistance to local units of government, which may include review to determine if draft ordinances “comply with applicable statutes and rules.” On its face, this authority of the department is advisory. Section ATCP 50.54 requires ordinances to be “reasonably consistent with” ch. ATCP 50. What is the authority for the department to impose this requirement? [See also ss. 92.15 (2) and 92.16, Stats.]

e. Under s. 92.16, Stats., standards for manure storage systems may apply to manure storage facilities constructed after July 2, 1983. Should this date be included in s. ATCP 50.56?

f. Section 92.16, Stats., requires the department to adopt rules for ordinances that set standards and criteria for construction of manure storage facilities. Is s. ATCP 50.56 (3) (c) an adequate response to this mandate? The Natural Resources Conservation Service (NRCS) technical guides only apply, under the rule, if “incorporated by reference in the ordinance.” A standard that only applies if incorporated by reference in the ordinance cannot be described as a standard of the department.

2. Form, Style and Placement in Administrative Code

a. The second sentence in s. ATCP 50.01 (2) creates an exception to the definition of “conservation practice.” It would be better drafting practice to omit that sentence, and define and use the term “best measurement practice” in s. ATCP 50.38.

b. The subsections in s. ATCP 50.54 should be numbered, not lettered.

4. Adequacy of References to Related Statutes, Rules and Forms

a. References to “other applicable law,” as used in s. ATCP 50.01 (14) (b), (c) and (d) should be avoided. Specific cross-references should be used, if possible. Also, the specific provisions of ch. 88, Stats., that are the source of regulatory authority should be identified in s. ATCP 50.01 (14) (d).

b. Can a more specific cross-reference to ch. 283 be provided in s. ATCP 50.01 (28)? [See also s. ATCP 50.40 (3) (c).]

c. A cross-reference to DNR rules is included in s. ATCP 50.12 (2) (h). However, this rule is not yet in effect. A note should be included to explain the current status of that rule. Also, the subchapter reference should be corrected.

d. In s. ATCP 50.12 (4) (b), the notation “subs.” should be replaced by the notation “sub.”

e. Section ATCP 50.18 (1) provides for a report to be filed on a form provided by the department. The department should comply with the requirements of s. 227.14 (3), Stats. [See also s. ATCP 50.26 (1) and other provisions of the rule.]

f. In s. ATCP 50.22 (4), the notation “s. NR” should be inserted before the cross-reference.

g. In s. ATCP 50.56 (3) (b), the notation “s.” should be inserted before the cross-reference.

h. Can the reference to “guidelines adopted by the department” in s. ATCP 50.58 (4) (d) be specified?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The note after s. ATCP 50.01 (1) suggests the comparison of the rule definition with two statutory definitions. It appears that the definition in the rule is the same as the statutes.

b. The definition of “cost-share grant” in s. ATCP 50.01 (4) refers to an “eligible” conservation practice identified in the grant. Is this word necessary? Will ineligible conservation practices be identified in the grant?

c. Can “controls,” as used in s. ATCP 50.01 (12) be made more specific? Does this refer to a lessee, a holder under a land contract, an occupant of land or an employe of a person who owns the land?

d. The term “municipal” is used in s. ATCP 50.01 (14) (c), but this term is not defined in the rule. The cross-referenced statutes in that provision also include authority for counties and certain special purpose districts to promulgate ordinances. The term “municipal” should be defined.

e. A cross-reference in s. ATCP 50.01 (24) (b) would be useful, by rewriting that provision as follows: “A farm nutrient plan prepared or approved for a farmer by a person who is a qualified nutrient management planner under s. ATCP 50.48.”

f. Section ATCP 50.04 (intro.) requires “every farm in this state” to implement conservation practices. The definition of “farm,” together with the definition of “agricultural practices,” does not appear to place any lower limit on the size of an agricultural operation that may be considered a farm, subject to the requirement to implement conservation practices. Is this the intent of the rule? Also, why is the requirement to implement conservation practices placed on a farm rather than on a farmer?

g. Section ATCP 50.04 (3) (a) and (b) could be combined, and “facility” should be added after “manure storage” in s. ATCP 50.04 (3) (a).

h. Are the terms “permeable soils” and “fractured bedrock” defined in the NRCS technical guide referenced in s. ATCP 50.04 (3) (c)?

i. Section ATCP 50.06 (1) (b) should be rewritten as: “December 31, 2010 for farms not described in par. (a).”

j. Can the "other program elements" referenced in s. ATCP 50.10 (1) (h) be specified?

k. The text of s. ATCP 50.26 (1) provides that a land conservation committee "shall apply" for funding but the note states that the department will "solicit" grant applications from land conservation committees. Is it intended that land conservation committees are required to apply for funding each year or is this optional?

l. Should counties be added to the list of entities that may receive grants from the land conservation committee in s. ATCP 50.34 (1) (b)? Also, can the rule specify the entities that are eligible as a "local governmental unit"? [See also s. ATCP 50.54 (2).]

m. Section ATCP 50.40 (3) (intro.) refers to other conservation practices that the department approves in writing. These practices, when known, should be promulgated as administrative rules under subch. VIII of ch. ATCP 50. [See also ss. ATCP 50.62 (7) (a) 7. and 50.67 (5) (b).]

n. Should s. ATCP 50.40 (3) (m) use current terminology from ch. 83, Stats., rather than "septic system"?

o. The colon at the end of s. ATCP 50.40 (7) should be changed to a period.

p. What is an "agreement" under s. ATCP 50.40 (8) (L)? If this is intended to "run with the land," must the agreement be in the form of an easement?

q. "Formal" in s. ATCP 50.46 (8) (c) and (d) is unnecessary. There is no informal contested case.

r. Would "include" be a better word than "disclose" in s. ATCP 50.50 (4) (intro.)?

s. Section ATCP 50.58 (4) (a) requires certain information to be submitted "except as provided in par. (c)." However, par. (c) does not relate to the submission of information.

t. The first two sentences of s. ATCP 50.62 (1) (c) should be combined: "Manure storage facility' means one or more manure structures and includes equipment used . . ."

u. Can "intercepts" in s. ATCP 50.63 (2) (b) be clarified?

v. Can the meaning of "adjacent to" in s. ATCP 50.75 (3) (c) be clarified?

w. In s. ATCP 50.77 (2) (intro.), the use of the word "currently" is vague. The phrase "that are currently contributing" should be replaced by the phrase "that contribute."

x. Many of the rule sections in subch. VIII of ch. ATCP 50 contain requirements that a farmer must agree to maintain a particular practice for 10 years unless farming operations on the affected land are discontinued. Other rule sections relating to practices do not contain such a provision. The department should ensure that the provision was not inadvertently excluded in those sections.

Hearing Draft

1/26/2000

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

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

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

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

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

This rule repeals and recreates current rules related to Wisconsin's soil and water resource management program. The department of agriculture, trade and consumer protection ("DATCP") administers this program under ch. 92, Stats. Among other things, this rule:

- Requires farm conservation practices.
- Creates a farm nutrient management program.
- Updates standards for county soil and water conservation programs, including county land and water resource management plans.
- Updates standards and procedures for DATCP grants to counties.
- Updates standards and procedures for county cost-share grants to landowners.
- Establishes technical standards for cost-shared conservation practices.
- Transfers some nonpoint source pollution abatement grant programs from DNR to DATCP, as directed by the Legislature.

Background

General

DATCP administers Wisconsin's soil and water resource management program under ch. 92, Stats. The program is designed to conserve the state's soil and water resources, reduce soil erosion, prevent nonpoint source pollution and enhance water quality. This rule spells out program standards and procedures.

DATCP administers this program in cooperation with county land conservation committees, the state land and water conservation board ("LWCB"), the department of natural resources ("DNR"), the natural resource conservation service of the U.S. department of agriculture ("NRCS") and other agencies. DATCP coordinates soil and water management efforts by these agencies. DATCP funds county soil and water conservation programs, and finances county cost-share grants to landowners to implement conservation practices. DNR administers a related cost-share program aimed at preventing nonpoint source pollution.

In 1997 Wis. Act 27, the Legislature mandated a comprehensive redesign of state programs related to nonpoint source pollution. Among other things, the Legislature directed DATCP and DNR to establish conservation standards and practices for farms. The Legislature also directed DATCP to adopt rules related to nutrient management on farms. DATCP and DNR held informational hearings and obtained recommendations from an outreach advisory committee. This rule implements many of those recommendations. This rule also implements statutory changes contained in 1999 Wis. Act 9 (biennial budget act).

County Programs

DATCP administers soil and water conservation programs in cooperation with county land conservation committees. Counties adopt land and water resource management plans, administer county ordinances, adopt conservation compliance standards for farmers claiming farmland preservation tax credits, provide information and technical assistance, and make cost-share grants to landowners installing conservation practices.

DATCP awards soil and water grants to counties. Grants pay for county staff and support, and reimburse counties for cost-share grants to landowners. DATCP reviews county grant applications and awards grants according to an annual grant allocation plan reviewed by the LWCB. Counties must ensure that cost-shared practices are installed according to state standards, and must account for all grant funds received.

Soil and Water Conservation on Farms

Farm Conservation Practices

DNR is primarily responsible for adopting farm performance standards to prevent nonpoint source pollution. DATCP must prescribe conservation practices to implement the DNR standards. DATCP must also establish soil conservation and farm nutrient management requirements. For ease of reference, this rule establishes a unified set of farm conservation practices that addresses nonpoint source pollution, soil conservation and nutrient management. Counties will take the lead role in implementing conservation practices on farms, with financial assistance from DATCP.

Under this rule (with limited exceptions discussed below), every farm in this state must implement the following conservation practices:

- *Soil erosion.* A farmer must manage croplands and cropping practices so that soil erosion rates on cropped soils do not exceed a tolerable rate ("T"). For most soils, the tolerable rate ("T") is equivalent to 3 to 5 tons of soil loss per acre per year. Soil erosion on cropped fields in water quality management areas may not exceed $\frac{1}{2}$ T. A farmer may implement this conservation practice in a variety of ways. Farmers in high priority watersheds (see map, *Appendix A*) must implement this practice by December 31, 2006. Other farmers must implement this practice by December 31, 2010.
- *Grass waterways in cropland areas.* A farmer must maintain grass cover in highly erodible intermittent waterways in cropland areas. Farmers in high priority watersheds (see map, *Appendix A*) must implement this practice by December 31, 2006. Other farmers must implement this practice by December 31, 2010.
- *Manure storage facilities.* A farmer must comply with standards in this rule if the farmer constructs, moves, enlarges, reconstructs or abandons a manure storage facility after the effective date of this rule.
- *Clean water diversion.* A farmer must divert clean water runoff from entering any feedlot or barnyard located in a water quality management area. Farmers in high priority watersheds (see map, *Appendix A*) must implement this practice by December 31, 2006. Other farmers must implement this practice by December 31, 2010.

- **Livestock operations.** A farmer must manage livestock operations so that none of the following occur (these practices are prohibited by current law):
 - * Overflows from manure storage facilities.
 - * Unconfined manure piles in water quality management areas.
 - * Unrestricted livestock access to waters of the state that prevents the maintenance of sod cover adjacent to those waters.
 - * Direct runoff from animal feeding operations, or from stored manure, to waters of the state.
- **Manure applications.** Beginning with the effective date of this rule, a farmer may not apply more than 75 lbs. of P₂O₅ per acre per year in the form of unincorporated manure or organic material. The following amounts of unincorporated manure are deemed to contain 75 lbs. of P₂O₅ unless a test shows that the manure contains a different concentration of P₂O₅:

Manure Type	Solid (tons)	Liquid (gallons)
Dairy	25	9,000
Beef	14	5,000
Swine	25	5,000
Poultry	5	2,000

- **Annual nutrient management plan.** A farmer applying manure or commercial fertilizer must have an annual nutrient management plan, and must follow that plan. Farmers in high priority watersheds (see map, *Appendix A*) must implement this practice by December 31, 2006. Other farmers must implement this practice by December 31, 2010.
- **Nutrient management plan; preparation.** A qualified nutrient management planner (see below) must prepare each nutrient management plan required under this rule. A farmer may prepare a nutrient management plan if the farmer is a qualified nutrient management planner. A person selling bulk fertilizer to a farmer, for application after December 31, 2006, must record the name and address of the nutrient management planner who prepared the farmer's nutrient management plan (if the farmer has a plan).
- **Nutrient management plan; contents.** A nutrient management plan must be based on soil tests, and must comply with standards under this rule. Nutrient applications may not exceed the amounts required to achieve applicable crop fertility levels recommended by the university of Wisconsin in UWEX publication A-2809, *Soil Test Recommendations for Field, Vegetable and Fruit Crops (copyright 1998)*, unless the nutrient management planner documents a special agronomic need for the deviation. *Appendix B* contains a convenient summary of the UW recommendations for selected crops.

Exemptions

To comply with this rule, a farmer may need to discontinue or modify certain agricultural facilities or practices. However, this rule does not require a farmer to have a nutrient management plan, or to discontinue or modify that part of an agricultural facility or practice that was constructed or begun prior to the effective date of this rule, unless one of the following applies:

- The farmer can comply without incurring significant out-of-pocket or opportunity costs. Opportunity costs may include, for example, losses in net income that occur when land is taken out of agricultural production or crop value is impaired because of the change.
- A federal, state or local governmental unit offers the farmer cost-share funding to cover at least 70% of the farmer's cost to comply.

County Implementation

Counties will take the lead role in implementing farm conservation practices under this rule (see below). Counties must adopt land and water resource management plans to implement the conservation practices on farms. DATCP must approve county plans, as provided in ch. 92, Stats. Counties must update conservation standards for farmers claiming farmland preservation tax credits, and may adopt ordinances requiring other farmers to implement conservation practices. With DATCP financial help, counties may also provide cost-share grants, technical assistance and information to farmers.

Installing Conservation Practices; Technical Standards

A farmer may implement the conservation practices under this rule in a variety of different ways. DATCP, UW-extension, NRCS and the counties will provide information and recommendations. If a landowner receives cost-share funding to install a conservation practice, the practice must comply with technical standards under this rule. The county must also determine that the funded practice is cost-effective. This rule specifies technical standards (including required maintenance periods) for the following cost-shared practices:

- Manure storage systems
- Manure storage system abandonment
- Barnyard runoff control systems
- Access roads and cattle crossings
- Animal trails and walkways
- Cattle mounds
- Conservation tillage
- Contour farming
- Critical area stabilization
- Cropland cover (green manure)

- Diversions
- Field windbreaks
- Filter strips
- Grade stabilization structures
- Heavy use area protection
- Intensive grazing management
- Livestock fencing
- Livestock watering facilities
- Milking center waste control systems
- Nutrient and pesticide management
- Relocating or abandoning animal feeding operations
- Riparian buffers
- Roofs
- Roof runoff systems
- Sediment basins
- Streambank and shoreline protection
- Strip-cropping
- Subsurface drains
- Terrace systems
- Underground outlets
- Waste transfer systems
- Water and sediment control basins
- Waterway systems
- Well decommissioning
- Wetland development or restoration

This rule does not change or eliminate any current technical standards, or add any new technical standards, except that it:

- Adds a standard for cropland cover (green manure).
- Adds a standard for riparian buffers (the new standard is similar to the existing standard for filter strips).
- Eliminates required maintenance periods for the following practices (a county may negotiate a maintenance period with the farmer, and may provide more cost-share funding in return for a longer maintenance period):
 - * Conservation tillage
 - * Contour farming
 - * Cropland cover (new standard)
 - * Intensive grazing management
 - * Nutrient or pesticide management
 - * Strip-cropping

This rule spells out a procedure by which DATCP may change technical standards in the future. DATCP will adopt future changes, if any, by rule (as it has in the past). The rulemaking process provides opportunity for public review and input. DATCP will make available complete copies of any technical standards that it incorporates by reference in a rule. DATCP will prepare a fiscal estimate and small business analysis on each proposed rule change, and may seek input from a DATCP advisory council.

DATCP will cooperate with the current Standards Oversight Council (SOC) in the development of technical standards. DATCP will consider SOC technical recommendations, but is not bound to adopt SOC recommendations as rules. SOC is a voluntary, multi-agency committee that works to share technical information and coordinate state and federal technical standards. SOC has no rulemaking authority. This rule does not change SOC's current role or operations. DATCP will encourage SOC to seek public input and cost information as SOC develops technical recommendations.

Cost-Share Funding for Conservation Practices

DATCP currently finances county cost-share grants to farmers who install soil and water conservation practices. DNR also provides cost-share funding under its nonpoint source pollution abatement program. This rule implements a legislative transfer of the rural nonpoint cost-share program from DNR to DATCP.

Under this rule, DATCP will finance county cost-share grants to farmers and rural landowners who install conservation practices – including practices designed to abate nonpoint source pollution. But DATCP will no longer finance cost-share grants to landowners who receive specific pollution discharge notices from DNR. Funding for that purpose is transferred to DNR. DNR will also continue to fund cost-share grants to urban landowners.

DATCP and DNR will jointly review county funding requests to determine the appropriate source of cost-share funding. Each county will determine its cost-share priorities based on the county land and water resource management plan. DATCP will allocate available cost-share dollars among the counties, based on state and county priorities.

DATCP will enter into an annual funding contract with each county receiving cost-share funds. The county, in turn, must enter into cost-share contracts with individual landowners. DATCP must be a party to a landowner cost-share contract if the contract is for more than \$25,000. This rule spells out requirements for county cost-share contracts with landowners (see below).

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

Maximum Cost-Share Rates

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

A county may determine the cost-share rate that it will pay under a cost-share contract with a landowner. The maximum cost-share rate is 70%, except that the maximum cost-share rate is 80% if DATCP makes an "economic hardship" finding. DATCP may make an "economic hardship" finding if it finds that the landowner has a debt-to-asset ratio of more than 60% and net assets of less than \$200,000, but will be able to pay the balance of the cost to install the cost-shared practice.

? see 92.14
281.16

Under this rule, cost-share payments for the following cropping practices may not exceed the following amounts:

- For contour farming, \$9 per acre.
- For cropland cover, \$25 per acre.
- For strip-cropping, \$13.50 per acre.
- For field strip-cropping, \$7.50 per acre.
- For high residue management systems, other than no-till, ridge till or mulch till systems, \$18.50 per acre.
- For no-till or ridge till systems, \$15 per acre.
- For mulch till systems, \$10 per acre.

This rule also limits cost-share grants in the following ways:

- No cost-share grant to relocate an animal feeding operation may exceed 70% of the estimated cost to install a manure management system or 70% of eligible relocation costs, whichever is less.
- Combined payments by all governmental units for a manure storage system may not exceed \$35,000 (\$45,000 if DATCP makes an "economic hardship" finding).

A cost-share grant under this rule may be combined with cost-share grants from other federal, state, local or private sources, provided that:

- The grants do not make duplicate payments for the same costs.
- Combined state-funded grants do not pay for more than 85% of project costs.

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If a county cost-share grant to a landowner exceeds \$25,000, DATCP must be a party to the cost-share contract (with the county and the landowner). DATCP must also record the contract with the county register of deeds.

conservation com?
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This rule does not require a farmer to discontinue or modify that part of an agricultural facility or practice that was constructed or begun prior to the effective date of this rule unless the farmer's cost is insignificant or the farmer receives at least 70% cost-share funding (see above), up to the maximum cost-share amounts allowed under this rule. *a.t.h.*

Cost-Share Contracts with Landowners

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

- The location where the cost-shared practice will be installed, and a specific legal description if the cost-share grant exceeds \$25,000.
- Design specifications for the cost-shared practice. Cost-shared practices must be designed and installed according to this rule.
- The estimated cost of the practice.
- The rate and maximum amount of the cost-share grant.
- A construction timetable.
- A required maintenance period. The maintenance requirement runs with the land, and is binding on subsequent owners, if the cost-share grant is for more than \$25,000. *covenant*
- 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:

- *Manure applications.* Beginning with the effective date of this rule, a farmer may not apply more than 75 lbs. of P₂O₅ per acre per year in the form of unincorporated manure or organic material (see above).
- *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. Farmers in high priority watersheds (see map, *Appendix A*) must implement this practice by December 31, 2006. Other farmers must implement this practice by December 31, 2010.
- *Nutrient management plan; preparation and contents.* A qualified nutrient management planner (see below) must prepare each nutrient management plan. A farmer may prepare a plan if the farmer is a qualified nutrient management planner. The plan may not recommend applications that exceed crop fertility levels recommended by the university of Wisconsin, unless the 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 application rates provided under this rule, 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 a nutrient management plan if the farmer is a qualified nutrient management planner. A qualified nutrient management planner must prepare plans according to this rule.

A qualified nutrient management planner must be knowledgeable and competent in all 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 successfully completes a training course presented or approved by DATCP.
- The planner holds equivalent credentials recognized by DATCP.

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 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. Among other things, a county must file an annual accomplishment report and an annual financial report.

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. Beginning on August 1, 2001, 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 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. *preemptive*
- 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 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 implement farm conservation requirements under this rule (see s. 92.05(3)(L), Stats.). 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 for an agricultural shoreland management ordinance (see s. 92.17, Stats.). This rule, like current rules, establishes specific standards for county and local ordinances related to manure storage and agricultural shoreland management (see below).

A county ordinance implementing this rule may not require a farmer to discontinue or modify that part of an agricultural facility or practice that was constructed or begun prior to the effective date of this rule unless the farmer's cost is insignificant, or the farmer receives at least 70% cost-share funding (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, by December 31, 2006, 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 3 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:

- *A basic annual staffing grant.* A staffing grant is used to finance county staff engaged in soil and water conservation programs (see below). A grant may include training and support for county staff. The county must match a portion of the staffing grant, as provided in this rule. The grant application must identify the activities that the staff will perform, the amount of staff time projected for those activities, and the amount of funding requested.
- *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 Reports

By April 15 of each year, a county must file with DATCP a year-end accomplishment 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).

By April 15 of each year, a county must also file with DATCP a year-end financial report for the preceding calendar year. The county must account for all soil and water conservation funds provided by DATCP. The report must include the county's opening balance, receipts, expenditures and closing balance in each relevant funding category. The county's chief financial officer must sign the report.

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 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 County and Local Government

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, except that DATCP may award staffing grants to local governments engaged in DNR priority watershed projects. In certain limited cases, DATCP may authorize a county to distribute cost-share funds to local governments to finance conservation practices required by local ordinances.

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 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 basic 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. ? training?

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 November 1 of the preceding year, but not completed during that year. Counties must apply by January 15 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 with the agreement of that 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 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 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 applying nutrients at more than twice the maximum rate specified under this rule.
 - * 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.

Basic Annual Staffing Grants to Counties

DATCP must award a basic 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 a basic annual staffing grant according to an annual grant contract with the county.

A county must use a basic annual staffing grant in the year for which it is made. The county may use the grant for any of the following purposes specified in the grant contract:

- Salaries, fringe benefits and training for county staff engaged in soil and water resource management activities.
- Training for county land conservation committee members.
- Any of the following staff support costs identified in the grant application:
 - * Travel expenses, including mileage charges, vehicle leases, meals, lodging and other necessary costs.
 - * Personal computers, software, printers and related devices.
 - * Office supplies, including paper, copies, printing and postage.
 - * Office equipment and furnishings, including desks, chairs, calculators, drafting equipment and file cabinets.
 - * Field equipment.
 - * A proportionate share of costs for required financial and compliance audits.
 - * Information and education supplies and services.
 - * Other staff support costs approved by DATCP.

DATCP may award different staffing grant amounts to different counties, based on DATCP's assessment of funding needs and priorities. Subject to staffing costs and the availability of funds, DATCP will attempt to provide salary and fringe benefit funding for an average of 3 staff persons per eligible county, with full funding for the first staff person, 70% funding for the second staff person and 50% funding for any additional staff persons.

Subject to the availability of funds, DATCP must award at least the following amounts to the following eligible counties:

- \$12,000 to a county that has a county conservationist operating according to an agreement with DATCP.
- \$7,000 to a county that does not have a county conservationist operating under an agreement with DATCP.

1 DATCP must pay the full amount of a basic annual staffing grant by April 15 of the grant year,
2 or within 30 days after DATCP and the county land conservation committee sign the grant
3 contract, whichever is later. DATCP may pay a portion of the grant at a later date if funding for
4 that portion is appropriated for distribution during the grant year, but is not yet available for
5 distribution on the normal distribution date. The department must pay that remaining portion
6 when the funding becomes available for distribution. All grant funds must be distributed
7 according to an annual grant allocation plan (see above).

8
In the county's annual financial report to DATCP, the county must report any unspent grant
funds remaining at the end of the grant year. DATCP must deduct the unspent amount from the
next year's basic annual staffing grant to the county.

In order to receive a basic annual staffing grant, a county must do all the following:

- If the basic annual staffing grant provides salary and fringe benefit funding for more than one county staff person, the county must provide funding equal to at least 30% of the salary and fringe benefit cost for the second staff person and 50% of the salary and fringe benefit cost for each additional staff person funded by the grant (see s. 92.14(5g), Stats.).
- The county must maintain its annual soil and water resource management expenditures 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 contribution, expenditures for any county staff engaged in soil or water resource management work, regardless of whether those staff work for the county land conservation committee. A county may not count capital improvement expenditures, or the expenditure of grant revenues received from any outside source.

A county land conservation committee must keep records related to basic 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.

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 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 use cost-share funds to reimburse a county for technical services that the county provides in connection with a cost-shared practice. Reimbursement for county technical services may not exceed 15% of project cost. Bond revenues may not be used to pay for technical services provided by the county.

DATCP may not use cost-share grant funds to reimburse a county for costs incurred after December 31 of the calendar year for which the funds are allocated. Unspent funds remain with DATCP, for distribution under a future year's allocation plan. If a landowner signs a funded cost-share contract by November 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 January 15 of that next year. DATCP will not extend funding for more than one year.

A county land conservation committee must keep all 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 and Local 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 basic annual staffing grants to counties. DATCP will provide separate grants to other governmental units engaged in priority watershed projects.

This rule spells out standards for priority watershed staffing grants. Staffing grants include support costs. A county is not required to provide matching funds for priority watershed staffing grants, as it is for other staffing grants. Within the limits of available funds transferred from DNR, DATCP will try to ensure continuity of staffing and support for continuing priority watershed projects. Staffing grants for priority watershed projects will be phased out as remaining projects are completed.

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 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 and local entities must submit relevant ordinances for review. They need not obtain DATCP approval of their proposed ordinances, except that DATCP must approve agricultural shoreland management ordinances (see s. 92.17, Stats.). 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. Local regulations must be consistent with this rule. A local regulation may not require a farmer to change or discontinue that part of a facility or practice that existed prior to the effective date of this rule unless the farmer's cost is insignificant or the farmer receives at least 70% cost-share funding.

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.

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.

1 **SECTION 1.** ATCP 3.02(1)(h) is amended to read:
2
3 ATCP 3.02(1)(h) *Soil and water resource management; grant allocation plan.* Approval
4 of an annual soil and water resource allocation plan under s. 92.14, Stats., and s. ATCP ~~50.30~~
5 50.28.

6 **SECTION 2.** ATCP 40.11 is created to read:

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1 SUBCHAPTER I

2
3 DEFINITIONS AND GENERAL PROVISIONS

4
5 ATCP 50.01 Definitions

6 ATCP 50.02 Waivers

7
8 **ATCP 50.01 Definitions.** In this chapter:

9 (1) "Agricultural practice" means beekeeping; commercial feedlots; dairying; egg
10 production; floriculture; fish or fur farming; grazing; livestock raising; orchards; poultry raising;
11 raising of grain, grass, mint or seed crops; raising of fruits, nuts or berries; sod farming; placing
12 land in federal programs in return for payments in kind; owning land, at least 35 acres of which
13 is enrolled in the conservation reserve program under 16 USC 3831 to 3836; or vegetable raising.

14 **NOTE:** Compare ss. 91.01(1) and 281.16(1)(b), Stats.

no thing to compare - appears to be same as...

15 (2) "Conservation practice" means a facility or practice that is designed to prevent or
16 reduce soil erosion, prevent or reduce nonpoint source water pollution, or achieve or maintain
17 compliance with soil and water conservation standards. For purposes of s. ATCP 50.38,
18 "conservation practice" means a "best management practice" as defined in s. NR 120.02(4).

why not just define "best management practice" in 50.38?

19 (3) "Cost-shared practice" means a conservation practice financed by a cost-share grant.

20 (4) "Cost-share grant" means a grant that reimburses a landowner for all or part of the
21 cost to install an eligible conservation practice identified in the grant.

not clear what this is - delete it? - must be identified in grant

22 (5) "County land conservation committee" means the committee created by a county
23 board under s. 92.06, Stats. "County land conservation committee" includes employees or agents
24 of a county land conservation committee who, with committee authorization, act on behalf of the
25 committee.

(6) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(7) "DNR" means the state of Wisconsin department of natural resources.

(8) "Farm" means a place at which a person conducts one or more agricultural practices.

(9) "Farmer" means a person who owns or controls a farm.

(10) "Farm conservation plan" means a written agreement, between a county land conservation committee and a farmer, in which the farmer agrees to take specific steps to bring a farm into compliance with applicable soil and water conservation standards.

(11) "Individual" means a natural person.

(12) "Landowner" means a person who owns or controls a parcel of land.

(13) "Livestock operation" means a feedlot or other facility or pasture where animals are fed, confined, maintained or stabled.

(14) "Local regulation" means any of the following regulations affecting soil and water conservation on farms:

(a) County soil and water conservation standards adopted under s. 92.105, Stats.

(b) A county ordinance adopted under s. 59.69, 59.692, 92.11, 92.15 or 92.17, Stats., or other applicable law.

(c) A town or municipal ordinance adopted under s. 92.11, 92.15 or 92.17, Stats., or other applicable law.

(d) A regulation that a drainage district or other local governmental unit adopts under ch. 88, Stats., s. 92.15, Stats., or other applicable law.

(15) "LWCB" means the state of Wisconsin land and water conservation board.

more specific land? occupant employee

met county - soil water prepared dist.

be more specific - what are the, what reg?

1 (16) "Manure" means livestock excreta and other materials such as bedding, rain or other
2 water, soil, hair, feathers, and other debris normally included in animal manure handling
3 operations.

4 (17) "Manure storage facility" has the meaning given in s. ATCP 50.62(1)(c).

5 (18) "Manure storage structure" has the meaning given in s. ATCP 50.62(1)(d).

6 (19) "Manure management system" has the meaning given in s. ATCP 50.62(1)(b).

7 (20) "Nonpoint source" has the meaning given in s. 281.16(1)(e), Stats.

8 (21) "Nonpoint source water pollution" has the meaning given in s. 281.16(1)(f), Stats.

9 (22) "NRCS" means the natural resources conservation service of the United States
10 department of agriculture.

11 (23) "NRCS technical guide" means the NRCS field office technical guide that is in
12 effect on [...revisor inserts effective date of this recreated chapter...].

13 **NOTE:** Copies of the NRCS technical guide are on file with the department, the
14 secretary of state and the revisor of statutes. Copies of individual standards
15 contained in the NRCS technical guide may be obtained from the county land
16 conservation committee or from an NRCS field office.

17 (24) "Nutrient management plan" means any of the following:

18 (a) A plan required under s. ATCP 50.04(7), 50.56(3)(b), 50.62(7)(a) or (f), or 50.81(2).

19 (b) A farm nutrient plan prepared or approved, for a farmer, by a person who purports to
20 be a qualified nutrient management planner *hand-determined § see 50.48*

21 **NOTE:** A nutrient management plan must comply with s. ATCP 50.04(8).

22 (25) "Nutrients" means plant nutrients derived from commercial fertilizers, manure,
23 organic wastes, soil reserves, legumes or other sources.

1 (26) "Person" means an individual, corporation, partnership, cooperative association,
2 limited liability company, trust, or other organization or entity.

3 (27) "Secretary" means the secretary of the department.

4 (28) "State regulation" means a state requirement or prohibition that may be enforced by
5 means of a DNR notice of intent or notice of discharge under s. 281.20 or ch. 283, Stats. *more specific*

6 (29) "Structural height" means the difference in elevation in feet between the point of
7 lowest elevation of the structure or embankment before overtopping and the lowest elevation of
8 the natural stream or lake bed at the downstream toe of the structure or embankment.

9 (30) "T-value" means the maximum average annual rate of soil erosion for each soil type
10 that will permit a high level of crop productivity to be sustained economically and indefinitely. *above*

11 (31) "Unconfined manure pile" means a quantity of manure, at least 175 cu. ft. in
12 volume, that covers the ground surface to a depth of at least 2 inches and is not confined within a
13 manure storage facility, livestock housing facility or barnyard runoff control facility.

14 **NOTE:** A typical 140 bushel manure spreader contains about 175 cu. ft. of manure.

15 (32) "Water quality management area" means any of the following areas: *Jack*
16 *state*

17 (a) The area within 1,000 ft. of the ordinary high-water mark of a navigable lake, pond or
18 flowage other than a glacial pothole lake.

19 (b) The area within 1,000 ft. of the high-water mark of a glacial pothole lake.

20 (c) The area within 300 ft. of the ordinary high-water mark of a navigable river or
21 stream.

22 (d) An area that is susceptible to groundwater contamination, or has the potential to be a
23 direct conduit for contamination to reach groundwater. This includes any area where the vertical

1 distance to groundwater or bedrock is less than 3 ft., and any area that is upgradient and within
2 1,000 ft. of a sinkhole or rockhole.

3 **NOTE:** See s. 281.16(1)(g), Stats.

4 (33) "Waters of the state" has the meaning given in s. 281.01(18), Stats.

5 **ATCP 50.02 Waivers.** The department may grant a written waiver from any provision
6 of this chapter if the department finds that the waiver is necessary to achieve the objectives of
7 this chapter. The secretary shall sign each waiver under this section. The department may not
8 waive a statutory requirement.

waiver

1 SUBCHAPTER II

2 SOIL AND WATER CONSERVATION ON FARMS

3
4 ATCP 50.04 Farm conservation practices

5 ATCP 50.06 Initial applicability

6 ATCP 50.08 Installing conservation practices
7

8 **NOTE:** Under s. 281.16, Stats., DNR is primarily responsible for adopting performance
9 standards to prevent nonpoint source pollution from farms. The department of
10 agriculture, trade and consumer protection must prescribe conservation practices
11 to implement the DNR performance standards. DATCP is also responsible for
12 establishing soil conservation and farm nutrient management requirements. For
13 ease of reference, this subchapter spells out a single set of farm conservation
14 practices that incorporates and is consistent with DNR performance standards
15 under such. I of ch. NR 151. Counties will take the lead role in implementing
16 conservation practices on farms (see subchapter III).
17

18 **ATCP 50.04 Farm conservation practices.** Except as provided in s. ATCP 50.06,
19 every farm in this state shall implement the following conservation practices:

20 (1) CROPLAND SOIL EROSION CONTROL. A farmer shall manage croplands and cropping
21 practices so that soil erosion rates on cropped soils do not exceed T-value, and do not exceed
22 1/2 T-value in water quality management areas. *here?*

23 **NOTE:** Soil erosion includes erosion caused by wind or water. For most soils, "T-
24 value" is equivalent to 3 to 5 tons of soil loss per acre per year.

25
26 (2) GRASS WATERWAYS IN CROPLAND AREAS. A farmer shall maintain grass cover in
27 intermittent cropland waterways that erode in excess of T-value or have a high potential for
28 sediment delivery. A farmer may cut hay and allow managed grazing in the intermittent
29 waterways, provided that the cutting and grazing do not destroy or impair the grass cover. A
30 farmer may not cultivate or conduct supplemental feeding in the intermittent waterways, except

1 for initial cultivation needed to establish grass cover. Grass cover may include grass, grass and
2 clover mixtures, or perennial vegetation that provides equally effective erosion control.

3 (3) MANURE STORAGE FACILITIES. (a) A farmer who constructs, moves, enlarges or
4 substantially reconstructs a manure storage ^{facility} shall comply with NRCS technical guide waste
5 storage structure standard 313.

6 (b) A farmer who abandons a manure storage facility shall comply with NRCS technical
7 guide waste storage structure standard 313.

8 (c) A farmer may not construct a manure storage facility in permeable soils or over
9 fractured bedrock without a liner designed to meet NRCS technical guide waste storage facility
10 standard 313.

11 (4) CLEAN WATER DIVERSION. A farmer shall effectively divert clean water runoff from
12 entering any feedlot or barnyard located in a water quality management area.

13 (5) LIVESTOCK OPERATIONS. A farmer engaged in livestock operations shall manage
14 those operations to prevent all the following:

15 (a) Overflows from manure storage facilities.

16 (b) Unconfined manure piles in water quality management areas.

17 (c) Livestock access to waters of the state that prevents the maintenance of sod cover
18 immediately adjacent to those waters.

19 (d) Direct runoff from animal feeding operations, or from stored manure, to waters of the
20 state. Direct runoff includes a discharge of a significant amount of pollutants to waters of the
21 state from any of the following practices:

22 1. Overflow or seepage from a manure storage facility.

are these in the 10/10/10?

*check
John
6/1
7/21/10
(2/10)*

1 2. Runoff from an animal lot that can be predicted to reach surface waters of the state
2 through a defined or channelized flow path.

3 3. Manure applications that exceed the amounts allowed under sub. (8).

4 4. Discharge of leachate from a manure pile.

5 (6) MANURE APPLICATIONS. A farmer may not apply more than 75 lbs. of P_2O_5 per acre
6 per year in the form of unincorporated manure or organic material. The following amounts of
7 unincorporated manure are deemed to contain 75 lbs. of P_2O_5 unless a test shows that the manure
8 contains a higher or lower concentration of P_2O_5 :

9 Manure Type	Solid (tons)	Liquid (gallons)
10 Dairy	25	9,000
11 Beef	14	5,000
12 Swine	25	5,000
13 Poultry	5	2,000

14
15 (a)
16 (7) ANNUAL NUTRIENT MANAGEMENT PLAN. A farmer applying nutrients to any field
17 shall have and follow an annual nutrient management plan that complies with sub. (8).

18 **NOTE:** Subsection (7) applies to commercial fertilizer as well as manure.

19
20 (b) (8) NUTRIENT MANAGEMENT PLAN; REQUIREMENTS. A nutrient management plan shall
21 comply with all the following:

22 1. (a) The plan shall include every field on which the farmer applies nutrients.

23 2. (b) A nutrient management planner qualified under s. ATCP 50.48 shall prepare or
24 approve the plan.

25 (c) The plan shall be based on soil nutrient tests conducted at a laboratory certified under
26 s. ATCP 50.50.

1 (d) The plan shall comply with NRCS technical guide nutrient management standard

2 590.

3 **NOTE:** The checklist in *Appendix C* may be used to gather information for a nutrient
4 management plan. NRCS technical guide nutrient management standard 590 is
5 reproduced in *Appendix D*.

6
7 (e) The plan may not recommend nutrient applications that exceed the amounts required
8 to achieve applicable crop fertility levels recommended by the university of Wisconsin in EX
9 publication A-2809, *Soil Test Recommendations for Field, Vegetable and Fruit Crops (copyright*
10 *1998)*, unless the nutrient management planner documents a special agronomic need for the
11 deviation.

12 **NOTE:** *Appendix B* contains a convenient summary of UWEX publication A-2809, for
13 selected crops. You may obtain the complete publication and the summary from
14 your county extension agent. The complete publication is also on file with the
15 department, the secretary of state and the revisor of statutes.

16
17 Under the NRCS technical guide nutrient management standard 590 (*Appendix D*)
18 and UWEX publication A2809 (summarized for selected crops in *Appendix B*) a
19 farmer may apply nutrients above normal recommended levels if the farmer's
20 nutrient management plan documents any of the following conditions justifying
21 the higher application:

- 22
23
- 24 • A soil or tissue test reveals a specific nutrient deficiency.
 - 25 • The excess nutrients result from an unforeseen change in the type of crop
26 planted.
 - 27 • The excess nutrients result from manure applications made before the plan
28 was developed.
 - 29 • Organic nutrients are the only nutrients applied to the field (N applications
30 may be increased by 20%).
 - 31 • Excess P and K from organic nutrient applications will be used later in the
32 planned crop rotation.
 - 33 • Corn after corn is conservation tilled with greater than 50% residue after
34 planting (the amount of N may be increased by up to 30 lbs. per acre).
 - 35 • Starter fertilizer is applied to row crops (starter may contain up to 20 lbs.
36 of N per acre).
 - 37 • The crop is irrigated (N may be increased by up to 80 lbs. per acre,
depending on organic matter).

1
2 Paragraph (e) permits additional deviations, beyond those described above, if the
3 nutrient management planner documents a special agronomic need for those
4 deviations.

5
6 (f) The plan shall be consistent with any nutrient management plan required under ch.
7 NR 113, NR 204 or NR 214 if the farmer applies septage, municipal sludge, industrial waste or
8 industrial byproducts to the land.

9 **ATCP 50.06 Initial applicability.** (1) Sections ATCP 50.04(1), (2), (4) and (7) first
10 apply to the following farms on the following dates:

11 (a) December 31, 2006 for farms located in watersheds draining to waters that DNR has
12 listed, pursuant to 33 USC 1313(d)(1)(A), on the effective date of this chapter [revisor inserts
13 **effective date of this chapter**].

14 **NOTE:** The list of waters under par. (a) is also known as the "303(d) list of impaired
15 waters." Appendix A contains a map showing watersheds that drain to the listed
16 waters. A copy of the DNR list is available from DNR.

17
18 (b) December 31, 2010 for other farms. *not for farms described in par. (a) X*

19 (2) Section ATCP 50.04 does not require a farmer to have a nutrient management plan,
20 or to discontinue or modify that part of an agricultural facility or practice that was constructed or
21 begun prior to the effective date of this chapter [revisor inserts **effective date of this chapter**],

22 unless one of the following applies:

23 (a) The farmer can discontinue or modify that practice without incurring significant out-
24 of-pocket or opportunity costs. *auth.*

25 **NOTE:** Opportunity costs may include, for example, losses in net income that occur
26 when land is taken out of agricultural production or crop value is impaired
27 because of the discontinuation or modification of a pre-existing practice.
28

1 (b) Government has offered the farmer at least the lesser of the following:

2 1. Cost-share funding to cover at least 70% of the farmer's cost to discontinue or modify

3 that practice, determined according to s. ATCP 50.40(15).

4 2. The maximum cost-share amount allowed under s. ATCP 50.42.

5 **NOTE:** See ss. 92.07(2), 92.105(1), 92.15, 281.20 and 281.91, Stats.

6
7 **ATCP 50.08 Installing conservation practices.** (1) GENERAL. A farmer may use any
8 of the following to comply with s. ATCP 50.04, unless s. ATCP 50.04 mandates a specific

9 practice:

10 (a) Conservation practices identified in subch. VIII or the NRCS technical guide.

11 (b) Other conservation practices that comply with s. ATCP 50.04.

12 (2) FUNDED PRACTICES. Conservation practices for which a landowner receives a cost-
13 share grant under this chapter shall comply with subch. VIII.

14 **NOTE:** Your county land conservation committee can provide you with a helpful
15 document called "Farmland Conservation Choices: A Guide to Environmentally
16 Sound Practices for Wisconsin Farmers." The committee can also recommend
17 conservation practices that are appropriate for your farm. Cost-share grants may
18 be available to help you install or implement recommended practices. Contact
19 your county land conservation committee to apply for cost-share grants. If you
20 receive a cost-share grant for a conservation practice, that practice must comply
21 with subch. VIII.
22

1 (e) A procedure to ensure that conservation practices funded under this chapter are
2 designed and installed according to this chapter.

3 (f) An accounting and recordkeeping system under s. ATCP 50.22.

4 (g) An information and education program to promote effective soil and water resource
5 management.

6 (h) Other program elements required under this chapter. *why not list all?*

7 (2) COORDINATION. A county land conservation committee shall, to the extent
8 practicable, coordinate the program elements under sub. (1) with each other and with all of the
9 following:

10 (a) The county's land information and modernization program under ss. 16.967 and
11 59.72(3), Stats.

12 (b) The related activities of NRCS, state agencies and local governmental units in that
13 county.

14 **ATCP 50.12 Land and water resource management plan. (1) REQUIREMENT.** A
15 county land conservation committee shall prepare and submit, for department approval, a land
16 and water resource management plan. The department shall approve the county plan before
17 allocating any funds to the county under subch. IV.

18 (2) PLAN CONTENTS. A land and water resource management plan shall describe all the
19 following in reasonable detail:

20 (a) Water quality and soil erosion conditions throughout the county. The plan shall
21 include water quality assessments available from DNR, if any.

1 (b) State and local regulations that are relevant to the county plan. The plan shall
2 disclose whether local regulations will require farm conservation practices that differ materially
3 from the practices required under this chapter.

4 (c) Water quality objectives for each water basin, priority watershed as defined in s.
5 281.65(2)(c), Stats., and priority lake as defined in s. 281.65(2)(be), Stats. The county shall
6 determine water quality objectives in consultation with DNR.

7 (d) Key water quality and soil erosion problem areas. The county land conservation
8 committee shall identify key water quality problem areas in consultation with DNR.

9 (e) Conservation practices needed to address key water quality and soil erosion
10 problems.

11 (f) A plan to identify priority farms in the county.

12 **NOTE:** The identification of priority farms may vary between counties, depending on
13 local conditions, strategies and information. A county might focus on identifying
14 or working with the following farms, or other categories of farms that the county
15 identifies in its plan:

- 16
- 17 • Farms located in watersheds draining to waters that DNR has listed pursuant
18 to 33 USC 1313(d)(1)(A). This is also known as the “303(d) list of impaired
19 waters.” *Appendix A* contains a map showing the watersheds that drain to
20 listed waters.
- 21
- 22 • Farms that have large numbers of livestock, or significant problems with
23 manure management.
- 24
- 25 • Farms making clearly excessive nutrient applications.
- 26
- 27 • Farms with clearly excessive rates of cropland erosion.
- 28

29 (g) Compliance procedures, including notice, enforcement and appeal procedures, that
30 may apply if a farmer fails to comply with applicable requirements.

1 (h) The county's multi-year workplan to implement the farm conservation practices
2 under s. ATCP 50.04, and achieve compliance with nonagricultural performance standards under
3 subch. III of NR 151. The plan shall identify priorities and expected costs. *check xref*

4 **NOTE:** The county workplan under par. (h) should be based on a reasonable assessment
5 of available funding and resources.

6 (i) How the county will monitor and measure its progress under par. (h).
7

8 (j) How the county will provide information and education related to land and water
9 conservation, including information related to farm conservation practices and cost-share
10 funding.

11 (k) How the county will coordinate its land and water conservation program with federal,
12 state and local agencies.

13 (3) PLAN DEVELOPMENT. A county land conservation committee, when preparing a land
14 and water resource management plan, shall do all the following:

15 (a) Appoint and consult with a local advisory committee of interested persons.

16 **NOTE:** A local advisory committee should reflect a broad spectrum of public interests
17 and perspectives. For example, it could include:

- 18 • Affected farmers, businesses and landowners.
- 19 • Agricultural, business, environmental, civic and recreational
- 20 organizations.
- 21 • Federal, state, local and tribal officials.
- 22 • The university of Wisconsin and other educational institutions.

23 (b) Assemble relevant data, including relevant land use, natural resource, water quality
24 and soil data.

25 (c) Consult with DNR.

26 **NOTE:** The county land conservation committee should normally consult with the
27 appropriate DNR basin team.
28
29