

1 subd. 2.

2 4. The county drainage board approves the structure or modification subject to
3 written conditions that reasonably protect the public interest and the interests of all
4 landowners in the drainage district.

5 NOTE: A county drainage board may not authorize a cranberry grower to
6 install a temporary structure under par. (d) for more than 14 days,
7 except that the board may extend a 14-day authorization for up to 7 more
8 days in response to a separate application from the cranberry grower
9 under par. (d)1. An authorization under par. (d) does not extend from
10 season to season, or from year to year.

11
12 A county drainage board might be able to resolve a landowner's
13 objection under par. (d)3., to the satisfaction of a landowner, by
14 imposing conditions under par. (d)4. which protect the interests of that
15 landowner.

16
17 **SECTION 27.** Ch. ATCP 48, subch. V (title) is repealed and recreated to
18 read:

19 **SUBCHAPTER V**
20 **CONSTRUCTION PROJECTS AND DRAINAGE ALTERATIONS;**
21 **DEPARTMENT APPROVAL**

22
23 **SECTION 28.** ATCP 48.34, 48.36 and 48.38 are repealed and recreated to

24 read:

25 **ATCP 48.34 CONSTRUCTION PROJECTS AND DRAINAGE**
26 **ALTERATIONS; DEPARTMENT APPROVAL REQUIRED.** (1)

27 **REQUIREMENT.** Except as provided in sub. (2), a county drainage board may not do
28 any of the following without the department's written approval:

1 (a) Construct or modify any district drain, or authorize any person to construct
2 or modify a district drain.

3 (b) Install or modify any structure in a district drain, or authorize any person to
4 install or modify any structure in a district drain.

5 (c) Authorize any person to connect a private drain to a district drain.

6 (d) Take any action under s. ATCP 48.20 or 48.21 that changes the formally
7 established cross-section, grade profile or alignment of a district drain, regardless of
8 whether that action involves any physical alteration to a district drain or structure.

9 (2) EXEMPTIONS. Subsection (1) does not apply to any of the following:

10 (a) Actions, such as routine maintenance or repair projects, that do not cause or
11 aggravate any deviation from the formally established cross-section, grade profile or
12 alignment of a district drain. An action is rebuttably presumed to cause or aggravate a
13 deviation from a formally established grade profile if it raises the water level in a
14 district drain or slows the runoff of water from lands in the drainage district.

15 (b) Restoration projects.

16 NOTE: A restoration project is exempt under par. (b) only to the extent that it
17 is confined within the formally established cross-section, grade profile
18 and alignment of a district drain, and does not go beyond those formally
19 established specifications. See definition of "restoration project" under
20 s. ATCP 48.01(21).
21

22 (c) Temporary structures or modifications that a county drainage board installs
23 or approves in compliance with s. ATCP 48.33(2).

24 NOTE: A county drainage board should consult with the department to
25 determine whether a particular county drainage board action requires
26 department approval under this section. A county drainage board may
27 seek the department's advice or assistance regarding any proposed

1 construction, repair, restoration or maintenance action, regardless of
2 whether the action requires the department's approval under this
3 section. A county drainage board should consult with the department at
4 the early planning stage to facilitate timely assistance and, if
5 necessary, timely approval. A county drainage board may not deviate
6 from approved project specifications without the department's approval.

7
8 A person may need to obtain a permit from the state of
9 Wisconsin department of natural resources before undertaking a
10 construction or restoration project in a district drain which has a
11 navigable stream history. See ss. 30.12, 30.18(2), 30.20, 31.02, 88.31
12 and 88.62(3), Stats. See also ch. 31, Stats.
13

14 **ATCP 48.36 APPLYING FOR APPROVAL. (1) APPLICATION**

15 **REQUIRED.** A county drainage board shall apply in writing for department approval
16 of a proposed action under s. ATCP 48.34. The application shall include all of the
17 following information, in detail commensurate with the proposed action:

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

20 (b) Proposed action. A statement describing the proposed action.

21 (c) Objectives. The objectives which the county drainage board expects to
22 achieve by taking the proposed action. If the county drainage board expects to improve
23 drainage, the county drainage board shall express its drainage objectives in terms of
24 drainage volume, thoroughness of drainage, geographic scope of drainage, or other
25 pertinent drainage measures.

26 (d) Persons requesting action. The persons, if any, who are asking the county
27 drainage board to take the proposed action.

1 (e) Estimated cost. The estimated cost of the proposed action, including any
2 damage awards to landowners who will be adversely affected.

3 (f) Design specifications. Design specifications for the proposed action,
4 prepared by an engineer who is qualified under s. 88.21(5), Stats. The design
5 specifications shall comply with applicable standards under subch. IV. The engineer
6 preparing the design specifications shall state whether, in the engineer's judgment, the
7 proposed action as designed will be effective in achieving the county drainage board's
8 stated objectives.

9 (g) Lands and waters affected. A map showing the location of the proposed
10 action, and the location of the lands and waters affected by the proposed action. The
11 map shall indicate all of the following if relevant:

- 12 1. The current and proposed use of the affected lands.
- 13 2. The topography of the affected lands.
- 14 3. The location of any affected wetlands.
- 15 4. The identity and location of any affected navigable waterway, stormwater
16 management district, lake district, priority watershed or lake under s. 144.25, Stats., or
17 wellhead protection area under ch. NR 811.
- 18 5. The identity and location of any affected building, transportation corridor or
19 utility easement.

20 (h) Hydrology analysis. A hydrology analysis, prepared by an engineer who is
21 qualified under s. 88.21(5), Stats. The hydrology analysis shall analyze the effect of
22 the proposed action, if any, on all of the following:

1 1. Water surface elevations in district drains at base flow. The hydrology
2 analysis shall use a method described in *Appendix A*, or another method approved by
3 the department, to estimate water surface elevations at base flow.

4 2. Peak water surface elevations in district drains in the event of a 10-year 24-
5 hour storm event. The hydrology analysis shall use the method described in *Appendix*
6 *A*, or another method approved by the department, to estimate peak water surface
7 elevations in the event of a 10-year 24-hour storm event.

8 3. Peak water surface elevations in district drains in the event of a 25-year 24-
9 hour storm event. The hydrology analysis shall use the method described in *Appendix*
10 *A*, or another method approved by the department, to estimate peak water surface
11 elevations in the event of a 25-year 24-hour storm event.

12 (i) Construction plan. A construction plan, if applicable, including all of the
13 following:

14 1. A plan for controlling construction site erosion.

15 2. The estimated amount of material, if any, that will be removed.

16 3. A plan for depositing removed material, if any, including the location and
17 configuration of any deposits.

18 (j) Notice and public hearing. A statement that the county drainage board has
19 complied with the notice and public hearing requirement under sub. (2).

20 (k) Formal changes to cross-section, grade profile or alignment. All of the
21 following information if the county drainage board proposes to change the formally
22 established cross-section, grade profile or alignment of a district drain:

1 1. The cross-section, grade profile or alignment which the county drainage
2 board proposes to change.

3 2. The new cross-section, grade profile or alignment proposed by the county
4 drainage board. The new specifications shall be prepared by an engineer who is
5 qualified under s. 88.21(5), Stats.

6 3. If the county drainage board proposes to change a formally established
7 alignment, a statement that the county drainage board has complied with s. ATCP
8 48.21(4)(a)1.

9 4. If the county drainage board proposes to change a formally established grade
10 profile, a statement that the county drainage board has complied with s. ATCP
11 48.21(5)(a)1. and 2.

12 (L) Assessment of benefits to landowners. A statement explaining how the
13 proposed action will affect the assessment of benefits to landowners under s. ATCP
14 48.06, if at all.

15 NOTE: See s. ATCP 48.06(2)(a) and s. 88.46, Stats.

16 (m) Financing plan. The drainage board's plan for financing the proposed
17 action, including any proposed cost assessments to lands in the drainage district.

18 NOTE: See s. ATCP 48.02.

19 (n) Environmental effects. An assessment of how the proposed action may
20 affect the human and natural environment, including effects on all of the following:

21 1. Lands and land uses identified under par. (g).

22 2. Surface water levels, quality and temperature.

1 3. Groundwater levels and quality.

2 (o) Alternatives. An assessment of alternatives to the proposed action,
3 including the alternative of doing nothing. The assessment shall discuss the relative
4 benefits, costs and environmental effects of the alternatives.

5 (2) COUNTY DRAINAGE BOARD; NOTICE AND HEARING ON
6 PROPOSED ACTION. Before a county drainage board submits an application to the
7 department under sub. (1), it shall do all of the following:

8 (a) Publish a hearing notice and hold a public hearing on the proposed action.
9 The notice and hearing shall comply with applicable requirements under s. 88.05 and
10 88.065, Stats. The hearing notice shall clearly describe the proposed action.

11 (b) Give members of the public at least 30 days, following the public hearing
12 under par. (a), to comment on the proposed action.

13 (3) COPIES FILED WITH OTHER AGENCIES. Whenever a county drainage
14 board files an application with the department under sub. (1), the county drainage
15 board shall simultaneously file copies of the application with all of the following:

16 (a) The Wisconsin department of natural resources.

17 (b) The United States army corps of engineers.

18 (c) The county zoning administrator.

19 (d) The county land conservation committee.

20 (e) Every municipality affected by the proposed action.

21 (f) The county highway committee if the proposed action may affect a public
22 highway.

1 (4) ADDITIONAL INFORMATION. The department may require a county
2 drainage board to file additional information, as necessary, before approving or
3 disapproving an application under sub. (1).

4 **ATCP 48.38 DEPARTMENT APPROVAL OR DISAPPROVAL.** (1)

5 APPROVING DRAINAGE ALTERATIONS. The department may approve,
6 disapprove, or conditionally approve an action under s. ATCP 48.34. The department
7 may not approve any action under s. ATCP 48.34 that causes the cross-section, grade
8 profile or alignment of a district drain to deviate from the cross-section, grade profile
9 or alignment formally established for that drain, but may do any of the following based
10 on the county drainage board's application under s. ATCP 48.36:

11 (a) Approve an action that formally reestablishes the cross-section of a district
12 drain.

13 (b) Approve an action that formally reestablishes the alignment of a district
14 drain if the department finds that the county drainage board has complied with
15 applicable requirements under s. ATCP 48.21(4)(a)1.

16 (c) Approve an action that formally reestablishes the grade profile of a district
17 drain if the department finds that the county drainage board has complied with s. ATCP
18 48.21(5)(a)1. and 2.

19 (2) DEADLINE FOR APPROVAL OR DISAPPROVAL. Within 45 days after
20 a county drainage board files a complete application under s. ATCP 48.36, including
21 any additional information which the department requests under s. ATCP 48.36(4), the
22 department shall issue a written notice approving or disapproving the county drainage

1 board's proposed action under s. ATCP 48.34. The department may, for good cause,
2 extend the deadline to a date specified by the department.

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

4 (3) **CONDITIONAL APPROVAL.** The department may approve a proposed
5 action under s. ATCP 48.34 subject to conditions specified by the department.

6 (4) **REASONS FOR DISAPPROVAL.** If the department disapproves a
7 proposed action under s. ATCP 48.34, the department shall give the county drainage
8 board written notice of the reasons. The department may disapprove a proposed action
9 for any of the following reasons:

10 (a) The county drainage board has failed to provide information required under
11 s. ATCP 48.36.

12 (b) The proposed action would violate this chapter or ch. 88, Stats.

13 (c) The requested approval would violate this chapter or ch. 88, Stats.

14 (d) The proposed action is not technically feasible, is not technically sound, or
15 is not adequately designed to achieve the county drainage board's stated objectives.

16 (e) The proposed action will have a substantial adverse effect on water quality,
17 or on the human or natural environment.

18 (5) **ENVIRONMENTAL ASSESSMENT.** (a) The department shall prepare
19 an environmental assessment under s. ATCP 3.02 before it approves a proposed action
20 under s. ATCP 48.34 if any of the following apply:

21 1. The proposed action will drain more than 200 acres of land not previously
22 drained, or will substantially alter drainage from more than 200 acres of land.

- 1 2. The proposed action will drain more than 5 acres of wetlands.
- 2 3. The proposed action involves the construction or modification of a dam in a
- 3 drain with a navigable stream history.
- 4 4. The proposed action involves a cold water fishery in a district drain with a
- 5 navigable stream history.
- 6 5. The proposed action will substantially affect the base flow in surface waters
- 7 of the state.
- 8 6. The department determines that an environmental assessment is needed to
- 9 determine whether an environmental impact statement is required under s. ATCP 3.03.

10 (6) ENVIRONMENTAL IMPACT STATEMENT. The department shall

11 prepare an environmental impact statement under s. ATCP 3.03 before approving a

12 proposed action under s. ATCP 48.34 only if the department determines that an

13 environmental impact statement is required under s. ATCP 3.03.

14 **SECTION 29.** Ch. ATCP 48, subch. VI (title) is repealed and recreated to

15 read:

16 SUBCHAPTER VI

17 LANDOWNER RIGHTS AND RESPONSIBILITIES

18 **SECTION 30.** ATCP 48.40(2)(note) is amended to read:

19 NOTE: A county drainage board may take various actions in response to

20 landowner actions that adversely affect a drainage district. For example,

21 see ss. ATCP 48.02(5), 48.04, 48.06(2) ~~and~~ 48.30 and 48.44(3). See

22 also ss. 88.89 to 88.92, Stats.

23

24 **SECTION 31.** ATCP 48.44 is renumbered 48.43.

1 **SECTION 32.** ATCP 48.44 and 48.45 are created to read:

2 **ATCP 48.44 OBSTRUCTING OR ALTERING DISTRICT DRAINS.** (1)

3 **PROHIBITION.** Except as provided under sub. (2), no person may obstruct or alter a
4 district drain without prior written approval from the county drainage board.

5 (2) **WITHDRAWING WATER; EXEMPTION.** An owner of land adjacent to
6 a district drain may, without prior approval from the county drainage board, withdraw
7 water from a district drain and place an obstruction in the district drain for that purpose
8 while withdrawing that water if all of the following apply:

9 (a) The landowner notifies the county drainage board under s. ATCP 48.40
10 before withdrawing the water or placing the obstruction in the district drain.

11 (b) The landowner obtains a permit from the department of natural resources
12 authorizing the withdrawal, if a permit is required under s. 30.18(2)(a)2., Stats.

13 (c) The obstruction does not elevate the water surface elevation in the district
14 drain, at the point of the obstruction, above the base flow elevation specified as part of
15 the formally established grade profile for that district drain.

16 (d) Neither the obstruction nor the withdrawal of water reduces the base flow,
17 in a district drain that has a navigable stream history, below the minimum base flow
18 which the state of Wisconsin department of natural resources has established for that
19 district drain under s. 88.31, Stats..

20 NOTE: A “formally established” grade profile is a grade profile established by
21 court order, or by the county drainage board under s. ATCP 48.20 or
22 48.21. A violation of par. (c) “materially defeats the purposes of
23 drainage” within the meaning of s. 88.93, Stats.
24

1 (e) The withdrawal does not injure any district drain, or make any district drain
2 more susceptible to injury. Injury to a district drain includes, for purposes of this
3 paragraph, any of the following:

- 4 1. Damage to any structure in a district drain.
- 5 2. The deposition of excavated materials in a district drain.
- 6 3. The weakening, undercutting or accelerated erosion of any side bank in a
7 district drain.

8 (3) DRAINAGE BOARD MAY REVIEW. A county drainage board may do
9 any of the following:

10 (a) Require a landowner to provide information showing that the landowner's
11 withdrawal of water complies with sub. (2).

12 (b) Prohibit a landowner from withdrawing water under sub. (2) if the drainage
13 board reasonably concludes that the withdrawal violates this chapter. The drainage
14 board shall document, in writing, the basis for its conclusion.

15 **ATCP 48.45 LANDOWNER RIGHTS.** (1) ACTION TO ENFORCE

16 COMPLIANCE. (a) An owner of land in a drainage district may file a written
17 petition with the county drainage board asking the county drainage board to do any of
18 the following:

- 19 1. Restore, repair, maintain or, if necessary, modify a district drain in order to
20 conform the drain to the cross-section, alignment or grade profile formally established
21 for that drain.

22 NOTE: Drain specifications are formally established by court order, or by
23 drainage board action under s. ATCP 48.20 or 48.21. Deviations from

1 formally established specifications may effectively deprive landowners of
2 drainage to which they are legally entitled.

3
4 2. Remove an obstruction placed in a district drain in violation of this chapter
5 or ch. 88, Stats.

6 3. Correct a violation of this chapter or ch. 88, Stats.

7 (b) A petition under par. (a) shall identify the grounds for the petition and the
8 action requested of the county drainage board. A county drainage board may require
9 the petitioner to provide further information which is reasonably necessary in order for
10 the board to properly evaluate the petition.

11 (c) Within 60 days after a landowner files a complete petition with the county
12 drainage board, the county drainage board shall provide the landowner with a written
13 response that does all of the following:

14 1. Describes and explains the action, if any, which the county drainage board
15 will take in response to the petition.

16 2. Explains the county drainage board's refusal to take action on the petition, if
17 the county drainage board refuses to take action.

18 (d) A petitioner under par. (a) may, after receiving a county drainage board's
19 response under par. (c), file a written petition with the department alleging that a
20 county drainage board has violated this chapter or ch. 88, Stats. The department may
21 conduct an investigation to determine whether the county drainage board has violated
22 this chapter or ch. 88, Stats. If the department finds that a county drainage board has
23 violated this chapter or ch. 88, Stats., the department shall issue an order under s.
24 ATCP 48.52 which directs the county drainage board to correct the violation.

1 NOTE: The remedies provided to a landowner under sub. (1) are in addition to
2 any other legal remedies which may be available to the landowner. A
3 landowner is not required to pursue any of the remedies under sub. (1)
4 before pursuing other legal remedies.
5

6 A landowner may challenge a county drainage board action that violates
7 this chapter or ch. 88, Stats., even if the department has approved that
8 action. (In some cases, the department may not be aware of facts
9 constituting a violation when it approves a county drainage board
10 action.)
11

12
13 (2) LAND OWNERSHIP CHANGE. A change of ownership does not relieve
14 or deprive a succeeding landowner of rights or responsibilities that run with the land
15 under ch. 88, Stats., or this chapter.

16 SECTION 33. ATCP 48.46(1)(b) is amended to read:

17 ATCP 48.46(1)(b) Approves the construction, enlargement, extension or
18 modification of a district drain. The record shall include any information describing
19 ~~profiles and cross-sections~~ cross-sections, grade profiles and alignments of drains
20 affected by the order.

21 SECTION 34. ATCP 48.46(1)(d) is created to read:

22 ATCP 48.46(1)(d) Formally establishes any drainage district specifications
23 under s. ATCP 48.20 or 48.21.

24 SECTION 35. ATCP 48.46(2) is repealed and recreated to read:

25 ATCP 48.46(2) DRAINAGE DISTRICT SPECIFICATIONS. A county
26 drainage board shall have on file, at all times, drainage district specifications
27 established by court order, or by the county drainage board under s. ATCP 48.20 or

1 48.21. Specifications shall include all existing specifications designating any of the
2 following:

3 (a) Drainage district boundaries, district drains and district corridors.

4 (b) Cross-sections, alignments and grade profiles of district drains.

5 **SECTION 36.** ATCP 48.46(3) is repealed.

6 **SECTION 37.** Appendix A to ch. ATCP 48 is created to read:

Appendix A

Estimating Water Surface Elevations

Water Surface Elevations; Base Flow

One may use any of the following methods to estimate the water surface elevation, at base flow, at any point along a district drain:

Base Flow Method 1

1. Identify the stream to which the district drain discharges. Select the data set from the corresponding drainage basin on pp. 25-401 of *Water Resources Data-Wisconsin Water Year 1997*.¹

2. Calculate the base flow rate by dividing the “90 percent exceeds” value for the period of record by the drainage area of the relevant drainage basin. The resulting value will be expressed in cubic feet per second per square mile (cfs/m).

3. Multiply the cfs/m value by the area of land (expressed in square miles) which is drained by the district drain to the relevant point along the drain. The resulting value is the base flow rate for the district drain at that point.

4. Calculate base flow depth (at the relevant point along the drain) using the base flow rate, the drain cross-sectional dimensions (at the relevant point along the drain), and Manning’s equation for open channel flow.

¹ *Water Resources Data-Wisconsin Water Year 1997*, by B.K. Holmstrum, D.L. Olson, and B.R. Ellefson; U.S. Geological Survey; Water-Data Report WI-97-1; 1998.

1 5. Add the base flow depth to the bottom elevation of the district drain at the
2 relevant point. The resulting value is the base flow elevation at that point.

3

4 Base Flow Method 2

5 Conduct a field survey to measure the dominant discharge elevation in the district
6 drain. The dominant discharge elevation is the lowest elevation at which vegetation is
7 present. If vegetation has been disturbed, the dominant discharge elevation is the
8 interface between unsaturated and saturated soils, as indicated by soil mottling.

9

10 **Peak Water Surface Elevations; 10-Year 24-Hour Storm Event**

11 One may use the following method to estimate the peak water surface elevation, at any
12 point along a district drain, in the event of a 10-year 24-hour storm event:

13 1. Determine, from *Flood Frequency Characteristics of Wisconsin Streams*,²
14 page 7, the flood-frequency area in which the district drain is located.

15 2. Calculate the peak flow rate from a 10-year 24-hour storm event using, from
16 *Flood Frequency Characteristics of Wisconsin Streams*, page 9, the Q_{10} equation for the
17 relevant flood-frequency area.

18 3. Calculate the peak flow depth (at the relevant point along the drain) using
19 this peak flow rate, the drain cross-sectional dimensions (at the relevant point along the
20 drain), and Manning's equation for open channel flow.

² *Flood Frequency Characteristics of Wisconsin Streams*, by William R. Krug, Duane H. Conger and Warren A. Gebert; U.S. Geological Survey; Water Resources Investigations Report 91-4128; Madison, Wisconsin, 1992.

1 4. Add this peak flow depth to the bottom elevation of the district drain at the
2 relevant point. The resulting value is the peak water surface elevation, at that point, in
3 the event of a 10-year 24-hour storm event.

4

5 **Peak Water Surface Elevations; 25-Year 24-Hour Storm Event**

6 One may use the following method to estimate the peak water surface elevation, at any
7 point along a district drain, in the event of a 25-year 24-hour storm event:

8 1. Determine, from *Flood Frequency Characteristics of Wisconsin Streams*,³
9 page 7, the flood-frequency area in which the district drain is located.

10 2. Calculate the peak flow rate from a 25-year 24-hour storm event using, from
11 *Flood Frequency Characteristics of Wisconsin Streams*, page 9, the Q_{25} equation for the
12 relevant flood-frequency area.

13 3. Calculate the peak flow depth (at the relevant point along the drain) using
14 this peak flow rate, the drain cross-sectional dimensions (at the relevant point along the
15 drain), and Manning's equation for open channel flow.

16 4. Add this peak flow depth to the bottom elevation of the district drain at the
17 relevant point. The resulting value is the peak water surface elevation, at that point, in
18 the event of a 25-year 24-hour storm event.

19

20

³ *Flood Frequency Characteristics of Wisconsin Streams*, by William R. Krug, Duane H. Conger and Warren A Gebert; U.S. Geological Survey; Water Resources Investigations Report 91-4128; Madison, Wisconsin, 1992.

1 **EFFECTIVE DATE.** The rules contained in this order shall take effect upon
2 the first day of the month following publication in the Wisconsin administrative
3 register, as provided in s. 227.22(2)(intro.), Stats.

4

5 Dated this _____ day of _____, 19_____.

6
7
8
9
10
11
12

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

Attachment 2

Public Hearing Summary, Proposed Revisions to ch. ATCP 48

**SUMMARY OF TESTIMONY
PROPOSED AMENDMENTS TO CHAPTER ATCP 48**

INTRODUCTION

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) held public hearings in Wisconsin Rapids, Appleton, Jefferson and Green Lake to receive oral testimony on proposed changes to Chapter ATCP 48, Wis. Adm. Code. (Wisconsin's Drainage District Rule). The public hearings were held from July 27 - 30, 1998. DATCP also accepted written testimony until August 7, 1998.

Each hearing session started with a 20-minute presentation during which DATCP staff explained the proposed changes and answered questions. Other informational materials available at each hearing included: copies of the proposed rule revisions, preliminary fiscal estimate, preliminary environmental assessment, other general reference materials.

A total of 98 people attended the public hearings. Of this number, 27 provided oral testimony. Thirty-one people submitted written testimony as part of the hearing process.

A summary of testimony received is shown in Table 1. A summary of the primary concerns about the proposed revisions to the drainage rule is presented in Table 2. A summary of each participant's oral or written testimony is also attached.

TESTIMONY SUMMARY

The majority of participants who provided testimony were opposed to some portion of the proposed changes to ch. ATCP 48. Most objected to costs associated with compliance with the rule.

The participants who supported the proposed changes to ch. ATCP 48 generally felt that the rule was fair and would adequately address problems with the current rule. Many individuals attended the hearings for informational purposes only.

TABLE 1. TESTIMONY SUMMARY

POSITION	PUBLIC HEARINGS (# participants)	WRITTEN TESTIMONY (# participants)	ALL TESTIMONY (# participants)
Support	15	12	26
Oppose	28	13	36
Neither/Other	55	6	60
Totals	98	31	122

**SUMMARY OF TESTIMONY
PROPOSED AMENDMENTS TO CHAPTER ATCP 48**

IN SUPPORT OF CHANGES TO CH. ATCP 48	<ul style="list-style-type: none">• Activities should be allowed in the corridors.• Projects which return the ditch to its original specifications should not require DATCP approval. Removal of the 3,000 cubic yard requirement for restoration projects is supported.• It is right to allow temporary modifications.• Landowners should have the ability to withdraw water.• Statewide standards for calculating assessments are needed.• Individuals should not be able to modify the district drain without approval of the drainage board.• Specifications are worth the expense because they identify an individual's right to drainage.
---	---

SUGGESTED MODIFICATIONS TO PROPOSED CH. ATCP 48

Several attendees made specific suggestions about how proposed ch. ATCP 48 language should be modified. These suggested modifications are listed below.

- Create a statewide standard for the issue of “materially defeating drainage.”
- Insert language into subchapter IV explaining that maps should clearly and accurately show location, dimensions, and elevations of every district dam, bulkhead, or grade control structure.
- Give drainage boards flexibility to allow temporary structures to be installed for longer than fourteen days.
- Provide financial assistance to drainage boards so that they may comply with specifications requirements (maps, cross-sections, grade profiles).
- Structure DNR and DATCP permit/approval processes so they coincide with one another and no longer require duplicative efforts by the drainage boards.

**SUMMARY OF TESTIMONY
PROPOSED AMENDMENTS TO CHAPTER ATCP 48**

TABLE 3. PUBLIC HEARING ATTENDANCE

POSITION	WISCONSIN RAPIDS 7/27/98		APPLETON 7/28/98		JEFFERSON 7/29/98		GREEN LAKE 7/30/98		ALL HEARINGS 1998	
	SPOKE	CARD ONLY	SPOKE	CARD ONLY	SPOKE	CARD ONLY	SPOKE	CARD ONLY	SPOKE	CARD ONLY
Support	7	1	0	3	0	1	3		10	5
Oppose	6	7	3	2	7	3	0	0	16	12
Neither/Other	1	9	0	21	0	15	0	9	1	54
Subtotal	14	17	3	26	7	19	3	9	27	71
	8 Support 13 Oppose 10 Neither/Other 31 Total Attendees	3 Support 5 Oppose 21 Neither/Other 29 Total Attendees	1 Support 10 Oppose 15 Neither/Other 26 Total Attendees	3 Support 0 Oppose 9 Neither/Other 12 Total Attendees	15 Support 28 Oppose 55 Neither/Other 98 Total Attendees					

SUMMARY OF ORAL TESTIMONY PROPOSED AMENDMENTS TO CHAPTER ATCP 48

Francis Podvin, Prairie Vista Cranberries, LLC - Prairie Vista Cranberries has worked cooperatively with the Adams County Drainage Board to set up an agreement which allows the company to maintain structures in the district drain. Based on this agreement, the company has spent thousands of dollars on land improvements and structures. These existing operations should be grandfathered in or catastrophic hardship would be caused to the cranberry growers. In addition, the rule should allow for more than 14 days for temporary access to water for cranberry operations. The profiles to be established under the rule should be those which presently exist. Existing cranberry operations should not be affected.

Dean Zuleger, Heartland Farms, Inc. - He believes the proposal provides equity. It authorizes oversight by DATCP, while maintaining local control. Oversight is needed so the local drainage boards are not taken to court over emotional landowner issues. Based on meetings of the Adams and Portage County Drainage Boards, fiscal concerns have the drainage boards deeply troubled. The state needs to be cognizant to the fact that creative financing is necessary. Heartland Farms is in support of the proposed revisions.

Mike Carter, Wisconsin Potato and Vegetable Grower's Association - He approves of DATCP oversight and landowner appeal process. This will help keep issues out of the court system. The proposed rule clearly lays out the responsibilities of county drainage boards and landowners, likely resulting in fewer disputes.

Bill Graumann, Wisconsin Association of Drainage Districts - The proposed rule revisions will place a financial burden on the districts and will further delay the submission of required information. He strongly recommends that DATCP offer financial assistance to complete maps, cross-sections, grade profiles and alignment requirements.

Edwin Wade, Portage County Drainage Board - There were problems with the existing rule and it's good to see DATCP involvement. There is a concern over the requirement for cross-sections. Portage County has only one drainage district, but it is one of the largest in the state. Records of original specifications are either non-existent or lost. It would be extremely costly to bring the district into compliance with the proposed rule's specifications requirements, especially in the timeframe given. He supports waiving DATCP approval of restoration projects. He would like to see DNR and DATCP permit processes coincide so there is no duplication. In some instances, a ditch doesn't need maintenance work for ten years. Given that agriculture has been struggling, and expenses add up, we need to look at what is practical to keep expenses down. In regard to the hearing process, notice requirements are sometimes unnecessary and costly.

**SUMMARY OF ORAL TESTIMONY
PROPOSED AMENDMENTS TO CHAPTER ATCP 48**

Appleton - July 28, 1998

Twenty-nine people attended the hearing in Appleton on proposed changes to ch. ATCP 48. Three of the attendees presented oral testimony.

Allison Blackmer, Town Chair, Town of Harrison, Calumet County - She has been working with the Town of Buchanan and the Village of Combined Locks for the past year to develop a joint stormwater detention facility. These efforts have focused on compliance with the Clean Water Act, Phase 2, stormwater management provisions. She believes that their cooperative efforts may be hindered if the county drainage board has the authority to go over their heads. She is opposed to the proposed revisions and wishes to prevent the expansion of such an outdated form of non-elected government. She believes it is unconstitutional to give a non-elected form of government taxing authority and does not approve of such decision-making authority in the hands of people who are not engineers. She does not believe county drainage boards have the ability to address the complex issues that they are being faced with, especially when it comes to municipal/rural conflicts.

John VerVoort, Outagamie County Drainage Board - This proposed rule should not be in place for legal drains. There is no good reason to go to all the expense of developing a profile, measuring the top and bottom heights of the ditch, and calculating the elevation of the water level, when the job of drainage boards is simply to clean and maintain the ditch. The landowners should not be responsible for the cost of these requirements.

Greg Baeten, landowner - He is concerned about the costs to the landowners that will result from implementation of the proposed revisions. He is skeptical that any resulting benefits will outweigh the initial costs. Information and education efforts directed toward residents of drainage districts could go a long way toward avoiding future conflicts and problems.

Eugene Anderson, Winnebago County Drainage Board - He supports the new standards for assessment of benefits, public notice, temporary modification, withdrawing water and landowner rights to drainage. He opposes specifications and thinks they should only be done when needed to reconstruct the ditch so that adequate drainage can be achieved. He opposes the corridors provision. He thinks that restoration projects should again only be done when needed to handle water for the drainage district members. The same holds true for drain specification changes. Under the landowner rights section, he believes we need to make it very clear to all members of a drainage district that the drainage board is a government entity, and all landowners who receive benefits are responsible for that district.

**SUMMARY OF ORAL TESTIMONY
PROPOSED AMENDMENTS TO CHAPTER ATCP 48**

Joe Grove, Jefferson County Drainage Board - He agrees with the change in the corridor requirements. He doesn't see that the specifications are necessary. There have been no problems in the past due to the current maps. It seems like maps should only be updated when needed. It looks like specifications only benefit the state. If that's the case, the state should be funding it. He doesn't see that the landowners can afford the costs of the specifications. If the drainage boards are forced to tell the landowners their assessments will be increased to pay for these new requirements, there will be a mass exodus of people who will want to get out of the drainage districts. He also agrees with most of Goetsch's comments.

Steve Querin-Schultz, Dane County Drainage Board - Base flow and ten-year peak discharge figures are very costly to determine. They require engineering assistance and are unnecessary in most districts. If the rule revisions are adopted, the deadline should be later because costs are so enormous. Landowners will need more time to pay for it.

Andrew Griggs, Jefferson County Drainage Board Attorney - He has been working with the county drainage board for the last ten years and sees a number of problems with the proposals. Specifications create a bureaucratic nightmare. The cost for Jefferson County to comply with these requirements would exceed \$100,000. None of their maps are in compliance right now. These costs would come at a time when farmers are struggling. More small family farms are going out of business. The benefit of tax relief the state has provided will be lost if the state will be taking it back with the other hand to pay for specifications. The proposed requirements will entail considerable work for county drainage board members and their attorneys. Drainage board members may resign in light of these new requirements. They already have a difficult time recruiting interested members. The proposals make service on the county drainage board even less appealing. When chapter 88 was revised, it was well directed at reducing circuit court involvement and allowing the vast majority of decisions to be made by those most familiar with those drains. He agrees with much of Rep. Goetsch's testimony. There are some improvements, however, in the proposed revisions. The change in the corridor requirement is appropriate. He suggests that specifications only be required if an objection arises within a district or if the district is dealing with a project of substantial magnitude.

Jeffrey Graber, Jefferson County Land and Water Conservation Department - In regard to the corridor, he is concerned about the nutrient and sediment loading that may occur if farmers are allowed to row-crop within the corridor. Twenty feet back from the top of the ditch may be too far, but there should be some kind of a setback. This change is in direct opposition to the Natural Resource Conservation Service's Conservation Reserve Program buffer initiative and the DNR nonpoint source program. There needs to be a minimum setback.

**SUMMARY OF ORAL TESTIMONY
PROPOSED AMENDMENTS TO CHAPTER ATCP 48**

not exist. This poses a real challenge to the drainage boards. There is a problem with recreational lands. The owners of those lands don't care if the acreage is drained or if the ditches are maintained. However, inaction by these landowners may have a negative impact on the upstream farmers, who are then not receiving sufficient drainage.

SUMMARY OF WRITTEN TESTIMONY PROPOSED AMENDMENTS TO CHAPTER ATCP 48

Ann Wasielski - She supports the proposed revisions to the rule as they currently read. Drainage is very important to her farming operation, however, over the years the drains have fallen into disrepair or have been altered. Those drains that have been altered make it seem that the base flow levels in the ditches are higher than the ones originally established by the courts. It is important to document base flow and profiles so it is clear how much drainage everyone can access. She opposes grandfathering in existing cranberry structures and opposes extending the 14 day harvest/winter freeze period.

Jeff Sommers, Sommers Farms - The proposed revisions should be adopted in their entirety. He is opposed to the request by the cranberry interests that drainage ditch profiles that have been altered to integrate the drainage ditches into cranberry operations to manipulate the water table be grandfathered and be declared the profile. He is also opposed to extending the 14-day harvest and winter freeze requirement for temporary modifications. It's time the cranberry industry be made to acknowledge the rights of others and amend their operations accordingly.

Robert Woyak, Woyak Farms, Inc. - He supports the proposed revisions to the rule as they currently read. Drainage is very important to his farming operation, however, over the years the drains have fallen into disrepair or have been altered. Those drains that have been altered make it seem that the base flow levels in the ditches are higher than the ones originally established by the courts. It is important to document base flow and profiles so it is clear how much drainage everyone is entitled to. He opposes grandfathering in existing cranberry structures and opposes extending the 14-day harvest/winter freeze period.

Ron Williams, Waukesha County Drainage Board - The Waukesha County Drainage Board, like many drainage boards in the state, is struggling with the mapping and specification requirements set forth in ch. ATCP 48. Financial assistance is needed in order to accomplish these tasks.

Michael Carter, Director, Government and Grower Relations, Wisconsin Potato and Vegetable Growers Association - (As an addition to oral and written testimony he presented at the hearing, he provided additional written comments further expressing his support of the proposed revisions to the rule.) Drainage is very important to the farmers represented by his organization, however, over the years the drains have fallen into disrepair or have been altered. Those drains that have been altered make it seem that the base flow levels in the ditches are higher than the ones originally established by the courts. It is important to document base flow and profiles so it is clear how much drainage everyone can access. He opposes grandfathering in existing cranberry structures and opposes extending the 14-day harvest/winter freeze period.

SUMMARY OF WRITTEN TESTIMONY PROPOSED AMENDMENTS TO CHAPTER ATCP 48

Wayne Propst - As a landowner in Dodge County Drainage District #74, he is opposing the proposed rule revisions for the single reason that it is too costly for the county drainage board, and ultimately the landowner, to provide drain specification information. He has been involved with this drainage district for a number of years and, during that time, has had three different drainage board chairs. It is difficult to find people to handle that type of position. He suggests that DNR and county soil maps have most of the necessary information at their disposal, except for the grades which could be obtained for each new project as it presents itself.

Andy Propst - He opposes the revision of ch. ATCP 48 because it will be too costly to the drainage boards and landowners.

Sheryl Paczwa, acting for Patricia Leavenworth, State Conservationist, USDA Natural Resources Conservation Service - NRCS would like to see additional language inserted into the proposed rule in Section 3. ATCP 48.01(6m) and Section 16. ATCP 48.20(1)(b) that explains that the cross-section should include a details of any in-channel structure such as culverts or bridges. The proposed definition of cross-section applies strictly to ditch drains. The definition should be expanded to include documentation requirement for district subsurface drainage conduits.

- In Section 5. ATCP 48.01 (13m) and Section 16. ATCP 48.20(1)(c), the grade profile should also include the elevations of any in-channel structures such as culverts or bridges. The definition should be expanded to include documentation requirements for subsurface drainage conduits. If the 10-year peak discharge elevation will continue to be required, it should be further clarified as the peak discharge from a 10-year frequency, 24-hour storm duration.
- Under Section 18. ATCP 48.22(2)(b), NRCS has commented that this section seems to assume the district drain is an aggrading ditch. The ditch could be degrading and dredging would not apply. The district drain could also be a subsurface conduit. Requirements for a restoration plan should include the proposed method of restoring noncomplying drains to formally established conditions. This general requirement should encompass all types and conditions of district drains.
- Regarding Section 18. ATCP 22(2)(d), the inclusion of a requirement for a plan to control erosion and runoff in the drainage district is excellent. Does the proposed rule require implementation of the plan?
- It seems counter-productive for the rule to require an erosion runoff control plan for the district, yet under Section 22. ATCP 48.24(5), allow row cropping in the district corridor. The corridor is an excellent opportunity to gain the effects of buffers adjacent to surface drains.

**SUMMARY OF WRITTEN TESTIMONY
PROPOSED AMENDMENTS TO CHAPTER ATCP 48**

James Burns, James Burns & Sons Farm, Inc. - He has specific complaints regarding cranberry growers in the Leola Drainage District in Adams County. Through what he believes to be arrogant and illegal actions, he claims that the cranberry growers have essentially shut down his drainage completely. After two years of ineffectual efforts to bring about a remedy, he gave up trying to restore his drainage.

Russell Rasmussen, Chief, Environmental Services Section, Department of Transportation Section ATCP 48.34 (Construction Projects and Drainage Alterations), should specifically exempt from DATCP approval all projects not initiated by the drainage district itself, or at a minimum, should specifically exempt highway departments. The requirement that DATCP approve the qualifications of DOT engineers preparing design plans for construction projects in a district drain should be deleted, as this requirement goes well beyond the intent of the statutes. It should also be noted that drainage boards have a responsibility to provide DOT information on their district boundaries and drain locations and elevations if effective cooperative efforts are to be achieved.

Justin Isherwood - Mr. Isherwood is an upland farmer in Plover. With the addition of the cranberry element, he has witnessed many conflicts over drainage rights. He believes what is necessary is a new and involved study of water management. What is fair land use? How can we more equitably share an extremely good quality water source, and protect it at the same time?

Attachment 3

Final Draft Environmental Assessment

DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

DRAFT FINAL ENVIRONMENTAL ASSESSMENT

Division Affected: Agricultural Resource Management

Rule Number: Chapter ATCP 48

HISTORY AND BACKGROUND

1. *Rule number and title:* Chapter ATCP 48, Drainage Districts

New Rule

Modification of Existing Rule

2. *Statutory Authority*

A. To adopt the proposed rule: Sections 88.11 and 93.07(1), Wis. Stats.

B. Statute(s) being interpreted by proposed rule: Chapter 88, Wis. Stats.

3. *Summarize the history of the proposed rule and the reason the rule was developed:*

Chapter ATCP 48 of the *Wisconsin Administrative Code* was originally promulgated in June of 1995. The department was directed by the Legislature to establish rules for performance standards in drainage districts, procedures for assessments and reassessments of properties benefited by drainage, and procedures for investigating whether a drainage district complies with existing state law.

The Department of Agriculture, Trade and Consumer Protection (department) is authorized to develop and implement this rule revision under section 88.11(i) of the *Wisconsin Statutes*. This section of the statute states that the department shall establish, by rule, performance standards for drainage district structures, ditches, maintenance and operations in order minimize adverse effects on water quality.

The department is proposing revisions to Chapter ATCP 48 because it has determined that the existing rule is inadequate to meet the objectives of the drainage district program. In order to address these inadequacies, the department assembled an advisory committee to address potential changes to the Chapter ATCP 48. As a result of the comments received from the advisory committee, the department is proposing to revise or repeal sections of Chapter ATCP 48.

4. *Description of the Proposed Rule*

A. *Objective of proposed rule (be specific and cite internal and external studies, reports, and other information or rationale used in establishing the objectives addressed by the proposed rule).*

The objectives of the proposed rule revisions are to clarify the legal obligations of county drainage boards, landowners within drainage districts, and the department. Proposed changes to the rule include the following:

- Requires that every county drainage board shall adopt by December 31, 2000, certain drainage map specifications, including a map showing district boundaries, the alignment

profile for each district drain. The information required in the compliance plan includes identification of the district drain(s) that require restoration, the amount of material to be removed or added to restore the drain(s), the schedule for restoration, and the cost of restoration. The proposed rule establishes procedures to change the specifications. In addition, the proposed rule streamlines the process by which construction projects, drainage modifications, and water withdrawal from a district drain are approved.

B. *Summarize the key assumptions on which the proposed rule is based:*

The current rule is based on the assumptions that some farmers need organized drainage districts to provide them with adequate agricultural drainage, that both county drainage boards and landowners in the district want to maintain their drainage districts in good operating condition, and that failure to control on-farm practices could result in severe degradation of water quality in ditches and downstream. Once drainage districts are created, all landowners in the district have the right to receive drainage as established by the profile for that district. This right runs with the land.

Another key assumption is that some drainage districts are in disrepair and that performance standards are needed to improve their operation. The proposed rule will assist drainage districts in achieving these goals by requiring county drainage boards to meet specifications such as defining drainage district boundaries, identifying district drains, and establishing the location and width of district corridors. County drainage boards will also need to identify the cross-section and grade profile of each district drain. We are assuming that by establishing standards, the proposed rule will reduce landowner conflicts and *ad hoc* decision-making by county drainage boards. Finally, we assume that by clarifying standards and extending deadlines, county drainage boards will comply with the requirements of the rule.

C. *Provide a summary of procedures required by the proposed rule.*

(1) Requirements the public and county drainage boards have to follow:

The proposed rule creates new procedures, and expands on procedures included in the existing rule, to be followed by county drainage boards and the public. The proposed rule will require every county drainage board to adopt a complete set of specifications for each district in its county by December 31, 2000. These specifications must be approved by the department. The proposed rule specifies the minimum information required to be included in the specifications that a county drainage board must submit to the department.

The current rule requires that a county drainage board include a map that identifies the district boundaries, the alignment of every district drain, and the location and width of every district corridor. Under the proposed rule, the county drainage board must provide additional specifications, including cross-sections and a grade profile of every district drain. The proposed rule includes a provision that modifications to the grade profile legitimately made under the county drainage board's actions prior to the effective date of the proposed rule may not be used as the formally established grade profile if the county drainage board did not resolve an objection of a landowner whose access to drainage was affected by that modification. Before a county drainage board can adopt the district specifications, it must notify the landowners by mail, announcing that a public meeting will be held and where copies of the specifications can be reviewed. It must also publish a class 2 notice of the meeting under ch. 985, Stats., and give landowners at least 30 days after the public meeting to provide written objections to the specifications.

(2) Requirements the department will have to follow:

The proposed rule identifies the process the department must follow when reviewing county drainage board proposals for a construction project or drainage alteration. Although the department may not approve any project that causes any deviation from the established cross-section, alignment, or profile, it may approve an action to reestablish a section of a district drain if certain conditions are met. These conditions include obtaining the consent of each owner of land that is newly included in the district corridor, and giving notice to each landowner in the drainage district whose right to drainage may be affected by the proposed changes in the established cross-section or profile.

D. *Identify and explain implicit or explicit exemptions to the proposed rule and explain why they are exempt (i.e., what similar activities or entities would not be affected).*

This rule contains no exemptions.

5. *Specifically identify those governmental units, industries, organizations, and other parties that would be affected by the proposed rule. Explain how each would be affected:*

County drainage boards, which are local governmental units, will be affected by the proposed rule because they will be responsible for submitting the required information, holding meetings and hearings, and resolving drainage disputes within the drainage district. A landowner may petition a county drainage board to comply with the requirements of the proposed rule.

Landowners in a drainage district will also be affected. The proposed rule will grant them certain rights and responsibilities under the proposed rule. Drainage rights are based on specifications initially established by the circuit court. A county drainage board cannot change these specifications without the department's approval. In addition, county drainage boards cannot change these specifications without complying with the procedures outlined in the rule that are designed to protect landowners' rights.

Residential, commercial, and industrial landowners who discharge stormwater, waste water or runoff into district drains will be affected, whether they are inside or outside of the boundary of a drainage district. All such landowners, including the state or a municipality, will be required to notify the county drainage board before undertaking any action, including any change in land use, that will alter the flow of water into or from a district drain, increase the amount of soil erosion, or affect the operation or costs of a district. Additionally, a county drainage board can enter into an agreement with any person under which that person agrees to compensate the drainage district for costs sustained.

Cranberry and vegetable growers will also be affected by the rule revisions. As owners of land within drainage districts, they would be required to comply with the plans and specifications contained adopted by the county drainage board and approved by the department. These standards will also benefit them by reducing landowner conflicts and minimizing *ad hoc* decisions by county drainage boards.

The Department of Natural Resources will be affected because it will be required to document the reasons for refusing to issue a clean-out permit for a district drain in a drainage district.

The department will be affected because its workload will increase significantly due to the proposed rule revisions. It will be required to review specifications, compliance plans, and county board proposals to install or modify construction projects; to evaluate proposals to change drainage district cross-sections or grade profiles; and to formally approve of county drainage board specifications. The department will also have to revise the County Drainage Board Handbook and perform training to county drainage boards.

(2) Impact on state and local economies:

The proposed rule revisions are expected to reduce landowner conflicts in drainage districts, thereby reducing litigation costs.

(3) Economic impact on individuals:

Landowners in drainage districts will be affected since the costs to the drainage districts will be assessed to them. Engineering consultants may also have increased business opportunities, as drainage district construction projects will now require engineering plans.

(4) Cost to the department:

Adoption of the proposed rule is expected to result in increased costs to the department for administration and enforcement of the rule. Once the rule is passed, significant staff time will be needed to inform and educate landowners and the county drainage boards on the requirements of the rule. The proposed rule requires the department to review county drainage board proposals for construction projects or drainage alterations in a district drain. The department would also be required to review county drainage board proposals to reestablish cross-sections and grade profiles of a drainage district.

C. Identify and briefly describe anticipated direct and indirect impacts on the social and cultural environment lifestyle of the parties affected by the proposal:

The proposed rule will improve water quality in drainage districts, which is beneficial to the landowners and the public. The proposed rule establishes new procedures and expands on existing procedures that the county drainage board and landowners in a drainage district must follow in order to effectively meet their water quality objectives. These include the minimum information required to be included in the district compliance plans, approval procedures for construction projects within drainage districts, and prohibiting the installation of certain structures in a district drain.

D. Impact on energy:

None anticipated at this time.

11. Identify which of the impacts are adverse impacts that cannot be avoided if the proposed rule is implemented.

The cost of implementing the rule revisions will be an unavoidable, adverse impact to county drainage boards, landowners, and the department.

12. Identify irreversible and irretrievable commitments of resources required or implied if the proposed rule is implemented.

County drainage boards, and indirectly landowners within the drainage district, will be required to allocate funds to establish district boundaries, the cross-sections and grade profiles of district drains, and the alignment and extent of district drains.

EVALUATION

14. *Evaluation: Discuss each category using additional sheets or pertinent information if necessary. Specifically identify those factors that may distinguish the proposed rule as a major action significantly affecting the quality of the human environment.*

A. *Secondary Effects: To what extent would the proposed rule result in other events or actions that may significantly affect the environment? Identify the parties affected by secondary effects in item 5.*

The proposed rule will result in maintenance and repair activities and possibly construction and restoration projects that will have an effect on the environment. However, implementing the standards contained in the proposed rule would be expected to have a positive impact on protecting water quality in drainage districts. Establishing and maintaining district corridors will improve bank stability and provide a buffer strip between land use practices and the district drain.

The requirements in the proposed rule, along with more compliance with the existing statutory requirements, may lead to the dissolution of some drainage districts. This would eventually result in a loss of farmland.

B. *New Environmental Effects: To what extent would the proposed rule result in new physical, biological, or socio-economic impacts?*

None are known at this time. Most of these drainage districts have been in place for more than 40 years. The proposed rule will improve their operation.

C. *Geographically Scarce Resources: To what extent would the proposed rule affect existing environmental features that are scarce, either locally or statewide?*

None are known at this time.

D. *Precedent: To what extent would the proposed rule establish a new precedent affecting future policy decisions?*

The proposed rule establishes procedures the department must follow regarding review and approval of drainage district projects. While the department review and approval of projects established by the rule formalizes new procedures, it also establishes a new relationship between the department and the county drainage boards.

E. *Consistency with Plans: To what extent is the proposed rule consistent or inconsistent with local, state, or national long-range plans or policies?*

The proposed rule is very consistent with the department's mission statement, which states in part "To assure the... efficient use of agricultural resources in a quality environment; and to promote the interests of agriculture."

F. *Exercise of Discretion: The law which authorizes or is interpreted by this proposed rule will provide for varying degrees of discretion to be used by the department in formulating the policies and procedures contained in the rule. In some cases, the department is bound by or limited to federal rules or regulations dealing with the same issues. To what extent is the proposed rule limited by Wisconsin or federal statutes or regulations?*

Attachment 4

Final Draft Fiscal Estimate

FISCAL ESTIMATE

DOA-2048 (R 10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No. / Adm. Rule No.
ch. ATCP 48

Amendment No. (If Applicable)
Not Applicable

Subject:

Drainage District Program

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Unit Affected:
- Towns Villages Cities
 Counties Others Drainage Bd.
 School Districts WTCS Districts

Fund Source Affected:

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations:
s. 20.115(7a) and (8a)

Assumptions Used in Arriving at Fiscal Estimate

NOTE: This fiscal estimate assumes that there are about 200 drainage districts in 30 Wisconsin counties which are required to comply with this rule. The proposed revisions to the rule further interpret ch. 88, Wis. Stats., and if adopted, will clarify the standards and procedures for the operation of drainage districts.

Impact of Rule Revision to State Government

Chapter ATCP 48 is administered by the Department of Agriculture, Trade and Consumer Protection. The proposed rule revisions clarify and, in some cases, add to the department's role in the implementation of drainage district statutory requirements. The department retains its responsibilities for review of drainage district annual reports and maintenance plans, for inspections and issuance of compliance orders, for managing and maintaining county drainage district records, and for training county drainage board members and their advisors in the requirements of the statutes and the rule. The proposed revisions give the department new responsibilities for the review and approval of technical specifications for each drainage district.

Existing staffing is insufficient to meet all requests and needs of the drainage boards. The department is not providing adequate support to the drainage boards. Adoption of the proposed revisions to ch. ATCP 48 is expected to result in increased costs to the department for administration and enforcement of the rule. The department estimates that two additional staff positions will be needed in the field, and a project position in the central office, if the department is to meet its responsibilities under the statute and the rule. All three positions will be engineering specialists; two would be located in field offices in the eastern part of Wisconsin where the largest concentration of counties with drainage districts are found.

The engineering specialists assigned to field offices would be the primary source of contact regarding implementation of the rule. These positions would assist county drainage boards in developing district maps (with

(continued on page 2)

Long - Range Fiscal Implications

Agency/prepared by: (Name & Phone No.)

DATCP
Dave Jelinski, ph. 608-224-4621

Authorized Signature/Telephone No.

Barbara Knapp
Barbara Knapp, ph. 608-224-4746

Date

2/22/99
2/10/99

Increased Technical Costs

A. Mapping Drainage District Cross-sections and Grade Profiles

Cross sections and profiles are the basis for the entire drainage district program. The "cross-section" and "grade profile" are important, because they determine drainage access and efficacy. Subsequent construction activity or neglect may cause a deviation from the "cross-section" or "grade profile" established by the circuit court. Over time, additional runoff from upstream development may also cause a deviation from the established "grade profile." These deviations may deprive landowners of drainage to which they are entitled, and may seriously affect land use and land values. In extreme cases, they may cause disastrous flooding.

Estimated cost for producing maps which show cross-sections and profiles for each drainage district:

Estimated district drain length = 10 miles

Estimated number of districts in Wisconsin = 200

Total number of district miles in Wisconsin = $200 \times 10 = 2,000$ drain miles

Estimated cost per mile to prepare adequate maps = \$2,500/mile

Total cost to prepare maps for all drainage district miles in Wisconsin = $2,000 \text{ miles} \times \$2,500/\text{mile} = \underline{\$5,000,000}$.

Average annual cost assuming three (3) year implementation cycle = \$1,666,667

B. Soil Core Sample Costs

In some cases, historical evidence would be needed to recreate the cross-section and grade profile of a district drain. This can be accomplished with soil core sampling. In addition, the DNR may require evidence provided by soil core samples before approving a permit for dredging. The cost of soil core samples would be in addition to the cost of creating maps with proper cross-sections and grade profiles.

Estimated cost for collecting and analyzing soil core samples necessary to prepare drainage district maps:

Total number of district miles in Wisconsin = 2,000 miles (see calculation above)

Number of samples needed per mile = 3

Total number of soil core samples needed in Wisconsin = $3 \times 2,000 = 6,000$ samples

Estimated cost per soil core sample = \$400/each

Total estimated cost for all soil core samples needed in Wisconsin = $\$400 \times 6,000 = \underline{\$2,400,000}$.

Average annual cost assuming three (3) year implementation cycle = \$800,000

Note: While it has not yet been determined whether any of the increased technical costs would be cost-shared by the state, the department may need an additional administrative position to process grants if a cost-share program is put into place.

Attachment 5

Final Draft Regulatory Flexibility Analysis

STATE OF WISCONSIN

DEPARTMENT OF AGRICULTURE, TRADE & CONSUMER PROTECTION

Draft Final Regulatory Flexibility Analysis

Proposed Revisions to Chapter ATPC 48, Wis. Adm. Code
(Drainage District)

Scope of the Rule

The proposed revision of Chapter ATPC 48, Wis. Adm. Code, does not present a significant change or impact to small businesses. The revisions mainly codify existing statutory procedures or requirements and accepted practices that are already in use in drainage districts. The revisions also clarify and expand existing rule requirements.

Businesses Affected

The small businesses affected by the rule revisions include farms and agricultural food processors whose lands lie within the boundaries of drainage districts. It is estimated that there are 200 drainage districts located in 30 Wisconsin counties. Currently, 26 counties have drainage boards in place.

Fiscal Impact

Small businesses in drainage districts will experience a minor fiscal impact from the rule revisions as drainage districts will have some additional costs as a result of the new rule. The new rule requires a higher level of detail on drainage district maps (specifically, cross-sections, grade profile and alignment) that was not specifically required by the old rule. Likewise, the new rule requires more information in the drainage district compliance plans than the old rule did. The cost for generating this additional information will be borne by landowners within drainage districts, some of whom are small businesses (farms). Under current law, each small business will be assessed a portion of the anticipated cost of providing this additional information.

Landowner Petitions to the County Drainage Board

This procedure will be beneficial to small businesses. The proposed rule establishes a procedure for landowners to file written petitions with the county drainage board asking the board to do any of the following:

- a) To restore, repair, maintain, and – if necessary – modify a district drain in order to conform the drain to the cross-section, grade profile, or alignment formally established for that drain.
- b) To remove an obstruction placed in a district drain in violation of this chapter or ch. 88, Wis. Stats.
- c) To correct a violation of this chapter or ch. 88, Wis. Stats.

This procedure provides small businesses (farms) with a means to receive adequate drainage for their land which may be crucial to maximum crop production.

Assessing Benefits to Landowners in Drainage District

The proposed rule revisions regarding the assessment of benefits will be beneficial to small business (farmers) for the following three reasons:

First, farmland that is in district corridors and not being cropped will not be assessed.

Second, the farmer may be assessed at a lower rate if the county drainage board decides to base their assessment on current use instead of potential use.

Third, the assessment of benefits will be more equitable for all landowners since the county drainage board must also consider the depth of the water table for future assessments.

Recordkeeping

The proposed rule revision will not impose any new recordkeeping requirements on small businesses.

Professional Skills Required to Comply

Small businesses will not need to acquire or retain additional professional skills or services to comply with the rule revisions.

Dated this 17th day of February, 1999.

By Nicholas J. Neher
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