



State of Wisconsin
Scott McCallum, Governor

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

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PUBLIC NOTICE

FINAL DRAFT RULE TO LEGISLATURE

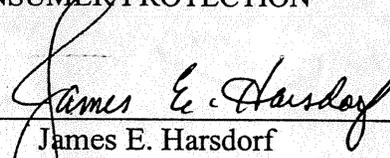
The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULE #: 00-039 and 01-090
SUBJECT: Soil and Water Resource Management
ADM. CODE REFERENCE: ATCP 50
DATCP DOCKET #: 98-R-7

Dated this 13 day of February, 2002

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION

✓ By


James E. Harsdorf
Secretary



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection

James E. Harsdorf, Secretary

DATE: February 13, 2002

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South, State Capitol
P.O. Box 7882
Madison 53707-7882

The Honorable Scott R. Jensen
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
P.O. Box 8952
Madison 53708-8952

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

SUBJECT: **Soil and Water Resource Management;**
Final Draft Rule (Clearinghouse Rules 00-039 and 01-090)

The Department of Agriculture, Trade and Consumer Protection is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. The department will publish a notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

Background

This rule is part of a comprehensive redesign of state nonpoint pollution control programs, mandated by the Legislature. The Department of Natural Resources (DNR) is proposing companion rules. The DNR rules establish performance standards to reduce pollution runoff from farms and other entities. The Department of Agriculture, Trade and Consumer Protection (DATCP) must adopt rules to implement the DNR performance standards. The Legislature has also directed DATCP to establish a nutrient management program and establish standards for certain soil and water professionals.

DATCP administers Wisconsin's soil and water conservation program under ch. 92, Stats. DATCP also administers the Conservation Reserve Enhancement Program (CREP), in cooperation with the U.S. Department of Agriculture. CREP is a temporary program that will fund long-term conservation practices (mainly shoreland buffer strips) on farms. CREP will provide up to \$40 million in state (bond revenue) funds to leverage up to \$200 million in federal funds for Wisconsin.

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DATCP works with counties to implement these programs. DATCP helps pay for county staff, and finances county cost-share payments to landowners. DNR administers related cost-share grant programs to prevent nonpoint source pollution. DATCP has worked with DNR to coordinate these programs and minimize inconsistencies.

This rule repeals and recreates DATCP's soil and water resource management rules under ch. ATCP 50, Wis. Adm Code. This rule does not apply to the CREP program, but is designed to be consistent with CREP. We are enclosing several *fact sheets* summarizing key aspects of the rule. The *summary analysis* accompanying the rule explains the entire rule in plain language. Among other things, this rule:

- Requires farm conservation practices, subject to cost-sharing. Conservation requirements are based on DNR performance standards.
- Creates a farm nutrient management program to reduce water pollution.
- Spells out standards for cost-shared practices, to ensure that state money is well spent.
- Spells out standards for county programs. Counties have substantial flexibility to determine local needs and priorities, subject to this rule. The rule provides accounting controls to ensure proper use of state tax dollars.
- Spells out standards and procedures for DATCP grants to counties. These procedures are "transparent," so that counties and others can see exactly how dollars are being allocated. DATCP allocates available funds in an *Annual Grant Allocation Plan*. DATCP prepares this plan in cooperation with DNR. The Land and Water Conservation Board reviews and comments on a draft plan, before the DATCP Secretary signs it. Counties and other interested parties may also comment on the draft plan.
- Spells out standards and procedures for county cost-share payments to landowners.
- Spells out standards for soil and water professionals (agricultural engineering practitioners, nutrient management planners and soil testing laboratories).
- Coordinates state, county and local regulation of farm conservation practices.

Cost-Share Requirements

It will be costly to implement DNR performance standards over the entire state. Costs will vary from farm to farm, but many individual farmers will incur substantial costs. *DATCP and DNR estimate that it will cost farmers between \$373 and \$573 million to achieve full statewide compliance with DNR pollution runoff standards over 10 years.* This does not include the cost of county staff providing assistance to farmers.

State funds will pay part of this cost. DATCP and DNR will provide cost-share funding to counties, subject to legislative appropriations. Counties will provide cost-share grants to farmers to help them comply. DATCP and DNR currently provide about \$18 million in cost-share funding to counties each year. That level of funding, if continued, would provide \$180 million in cost-share dollars over 10 years.

Assuming a 70% average cost-share rate, the current level of funding would install approximately \$26 million worth of conservation practices each year, or \$260 million over 10 years. The CREP program, which is not affected by this rule, will also provide funding for conservation practices (mainly riparian buffers).

Counties typically use cost-share grants to encourage *voluntary* installation of conservation practices. In a voluntary arrangement, the parties are free to negotiate the cost-share rate (up to the maximum allowed by this rule). But if a county or local government *forces* a farmer to change an *existing* farming operation, the county or local government *must* offer cost-sharing under this rule.

In a voluntary transaction, a county may cost-share *up to 70%* of a farmer's cost (up to 90% if there is an "economic hardship"). If a county or local government *forces* a farmer to change an *existing* farming operation (as defined by DNR), the county or local government must offer *at least 70%* cost-sharing (at least 90% if there is an "economic hardship").

DATCP has worked with DNR in an effort to clarify cost-sharing rules. Cost-sharing will facilitate compliance with new regulatory requirements, and will affect the pace at which conservation practices are implemented. It will also affect the allocation of costs between farmers and taxpayers. This has been an area of special concern to farmers, counties, environmental groups and others.

Program Accountability

DATCP provides staffing grant funds to help pay for county conservation staff. DATCP and DNR also provide cost-share funds to pay for county cost-share grants to landowners. There are many needs and limited resources. This rule spells out standards for county programs. It establishes transparent procedures for allocating scarce funds among competing counties. It establishes sound accounting controls to ensure proper use of state tax dollars. It also clarifies the relationship between state and local laws related to soil and water conservation.

Rule Changes after Public Hearings

DATCP held hearings on its initial draft rule in March and April, 2000 (see Hearing Summary, *Attachment 1*). DATCP revised the draft rule following those hearings. On August 28-30, 2001, DATCP held hearings on its revised draft rule (see Hearing Summary, *Attachment 2*). DATCP made further revisions following those hearings. The DATCP Board approved a final draft rule on February 12, 2002. The final draft rule includes the following changes from the first and second hearing drafts:

Conservation Practices

- The final draft deletes conservation requirements that restate or overlap DNR performance standards. Instead, the final draft cross-references DNR performance standards.
- The final draft adopts effective dates that are consistent with the effective dates of DNR performance standards.

- The final draft clarifies nutrient management standards. In the final draft:
 - Standards are based on nitrogen, not phosphorus. DATCP will initiate rulemaking to incorporate federal phosphorus standards by 2005 if the federal government adopts phosphorus standards by that date.
 - Farmers applying manure or chemical fertilizers must have an annual nutrient management plan, prepared by a qualified planner. Farmers may prepare their own plans if they are qualified to do so. Plans must be based on reliable soil tests performed at certified laboratories, and must comply with standards in this rule.
 - Nutrient management requirements are phased in, according to DNR rules. The requirements first apply on January 1, 2005 for "existing" cropland in areas of special water quality concern. The requirements first apply to other "existing" cropland in 2008. But the requirements first apply to "new" cropland one year after the rule effective date. DNR rules define "new" and "existing" cropland.
- The final draft modifies technical standards for cost-shared conservation practices, to ensure consistency with DNR. DNR rules will cross-reference (rather than duplicate) DATCP technical standards.
- The final draft clarifies that soil erosion will be measured by a single, uniform method (RUSLE II) used by the federal government.

- The final draft strengthens DATCP certification of laboratories doing soil tests for nutrient management plans. DATCP or its agent may evaluate lab proficiency in performing soil tests. DATCP will work with DNR, the University of Wisconsin and others to develop an effective certification program.
- The final draft updates technical standards for cost-shared conservation practices, and establishes standards for a new "wastewater treatment strip" practice.

Cost-Sharing

- The final draft clarifies that a landowner is not *required* to change an "existing" agricultural practice without an offer of 70% cost-sharing (90% if there is an "economic hardship"). DNR rules determine whether an agricultural practice qualifies as an "existing" practice.
- The final draft clarifies that a landowner's "cost" includes all the following:
 - Reasonable and necessary costs to install *and maintain* the conservation practice.
 - The reasonable value of necessary labor, equipment and supplies provided by the landowner.
 - The landowner's cost to take land out of agricultural production, if the landowner must take more than ½ acre out of production in order to install or maintain a conservation practice. The landowner's cost, determined on the date of the cost-share contract, is the sum of the annual costs that will be incurred over the maintenance period specified in the contract. A landowner may get a higher CREP-equivalent payment if the terms of the cost-share contract are equivalent to those under the CREP program, even if the land is not eligible for the CREP program. This CREP-equivalent payment does not apply to cost-share contracts signed after the CREP program expires.
- The final draft distinguishes between voluntary cost-sharing arrangements, and cost-sharing required for enforcement. In a *voluntary* arrangement, the parties are free to negotiate the cost-share rate (up to the maximum allowed by this rule). But if a county *requires* a farmer to change an "existing" agricultural practice, the county must offer at least 70% cost-sharing (90% if there is an "economic hardship").
- The final draft clarifies "economic hardship." A farmer qualifies for higher "economic hardship" cost-share payments if a bank or CPA certifies, based on a farm financial statement prepared according to generally accepted accounting principles, that the farmer is unable to make the normal 30% cost-share contribution. DATCP may review an "economic hardship" finding, as necessary.

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- The final draft clarifies that the 70% (90% hardship) minimum cost-share requirement does not apply to any of the following:
 - A capital improvement if the landowner has already received cost-sharing to install and maintain that capital improvement for at least 10 years. (Most cost-shared practices are considered capital improvements.) *But if a county requires a landowner to keep more than ½ acre out of agricultural production in order to maintain a capital improvement beyond 10 years, the county must continue to share the cost of keeping that land out of production.* Land is not considered to be “out of production” if the landowner is free to use it for the landowner’s choice of the following: pasture, hay, or cropping using conservation tillage.
 - Annual conservation practices (contour farming, cropland cover, nutrient management, pesticide management, residue management or strip-cropping) for which the landowner has already received 4 years’ worth of cost-share payments. These annual practices are not considered capital improvements.
 - Conservation practices or costs to correct a landowner’s criminal or grossly negligent pollution discharge.
 - Conservation practices required under a WPDES permit issued by DNR.
- The final draft clarifies that cost-share requirements do not prevent emergency action to mitigate the effects of a pollution discharge.
- The final draft clarifies that cost-sharing requirements apply to (water quality-related) farm conservation practices required by county or local ordinance, as well as conservation practices required by state rules.
- The final draft clarifies that a county may combine funds from any public or private source to make cost-share payments. Combined payments from DATCP and DNR funds may not exceed 70% (90% if there is an “economic hardship”). But these limits do not apply to grants from other sources.
- The final draft clarifies that a county may package cost-share payments in a variety of ways. For example, it may negotiate a single overall payment (sometimes called an “incentive payment”) with a farmer who voluntarily agrees to maintain a combination of annual practices (nutrient management, residue management and contour farming, for example) as part of an overall farm conservation plan. The county may pay the farmer to *continue* these practices, even though the farmer has followed the same practices in the past. The county is free to negotiate the cost-share amount (“incentive payment” amount) with the farmer, as long as the arrangement is voluntary.

- The final draft clarifies that the county has broad discretion to determine cost-share priorities, subject to the general requirements in this rule.
- The final draft clarifies cost-share contract procedures, and reconciles prior inconsistencies with DNR rules. DATCP must approve individual cost-share contracts over \$50,000, but need not be a party to the contract. A cost-share contract "runs with the land" and must be recorded with the register of deeds if it exceeds the following amount:
 - \$10,000 if the cost-share contract is signed prior to January 1, 2005.
 - \$12,000 if the cost-share contract is signed on or after January 1, 2005, but before January 1, 2010.
 - \$14,000 if the cost-share contract is signed on or after January 1, 2010.
- The final draft clarifies that a loan is not a cost-share grant.
- The final draft clarifies that farmland preservation tax credits do not count as cost-share grants. But a county may suspend a farmer's eligibility for farmland preservation tax credits if the farmer fails to comply with conservation requirements, *regardless* of whether the county offers cost-sharing to the non-complying farmer.

Staffing Grants to Counties

- The final draft guarantees higher minimum staffing grants to counties, subject to the availability of funds. The final draft also guarantees continued funding for DNR priority watershed staffing. DATCP makes its annual grant awards in an *Annual Grant Allocation Plan* reviewed by the Land and Water Conservation Board. Under the final draft rule, DATCP will annually offer to each eligible county *at least the greater of the following*:
 - \$85,000.
 - The amount awarded to that county under the 2001 allocation plan for staffing related to DNR priority watershed projects, less any amount awarded to that county under the 2001 allocation plan for staffing related to priority watershed projects that have subsequently closed.
- The final draft provides that DATCP will make staffing grant *payments on a reimbursement* basis, consistent with other state and federal grant programs. Counties may claim reimbursement, at applicable statutory rates, up to the amount of their annual grant allocation. This will simplify accounting, increase accountability, and facilitate the administration of complex legislative reimbursement formulas. Because DATCP will make staffing grant payments on a reimbursement basis, counties will no longer be required to file annual financial reports with DATCP.

- The final draft clarifies the method for reimbursing county staff expenditures, and makes it easier for counties to receive the highest possible statutory reimbursement rate. The Legislature has specified higher reimbursement rates for staff working in DNR "priority watersheds." DATCP has construed this broadly, to include staff working on CREP or other programs in DNR priority watersheds (the geographic areas) – not just those working on the DNR "priority watershed" *program*.
- The final draft clarifies that counties may use staffing grants to pay for contract consultants, as well as regular county staff. The final draft also permits counties to claim reimbursement for more kinds of staff support costs.
- The final draft allows counties to redirect unused staffing grant funds for cost-share grants to farmers, with DATCP approval.
- The final draft combines all county staff funding (including staff funding for DNR's priority watershed program) into a single annual staffing grant, as contemplated by the Legislature. This change will not affect funding *amounts*, but will give counties more flexibility in their use of staffing funds.
- The final draft clarifies that, with DATCP's permission, a county may redirect *staffing* grant funds to a city, village, town, county drainage board, lake district or tribe operating in the county. A county may *not* redirect *cost-share* funds to a local entity, but may make cost-share grants to landowners to help them comply with local conservation requirements.

County and Local Ordinances

- The final draft clarifies that local livestock ordinances may not exceed state standards, unless DATCP or DNR approves the more stringent standards as being necessary for water quality. This clarification is based on a Justice Department opinion interpreting s. 92.15, Stats. The rule also spells out a process by which local governmental units may seek DATCP or DNR approval (DNR is proposing a similar rule).
- The final draft *deletes* provisions that would have required counties to submit *all* proposed farm conservation ordinances for DATCP review, and would have required all county and local ordinances to be consistent with state farm conservation standards. County and local governments strongly opposed these provisions. DATCP retains discretionary authority to review and comment on county and local ordinances, as necessary. Counties, in their land and water resource management plans, must identify ordinances that they plan to use to implement their plans.
- The final draft clarifies that cost-sharing requirements apply to (water quality-related) farm conservation requirements imposed by county and local ordinances, as well as for those imposed by state rules.

County Programs; General

- The final draft makes a number of drafting changes in response to county comments, to facilitate the administration of county programs.

Other Drafting Changes

- The final draft makes a number of other technical and drafting changes, including changes recommended by the Legislative Council Rules Clearinghouse (see below).

Response to Rules Clearinghouse Comments

DATCP submitted a hearing draft to the Legislative Council Rules Clearinghouse in February, 2000 (*Clearinghouse Rule 00-039*). DATCP submitted a second hearing draft in July, 2001 (*Clearinghouse Rule 01-090*). The Rules Clearinghouse prepared reports on both drafts. The reports were dated March 13, 2000 and August 23, 2001, respectively. The following summary describes DATCP's response to each Clearinghouse report.

First Clearinghouse Report (*Clearinghouse Rule 00-039*)

DATCP modified the final draft rule to address all of the Rules Clearinghouse comments, except as noted below. The following comments also respond to Rules Clearinghouse questions.

Comment 1.c. See s. 92.14(6)(k), Stats. Recording gives notice to subsequent landowners who may be required to maintain a cost-shared practice. The final draft rule requires recording of the following cost-share contracts:

- A contract over \$10,000 if the contract is signed prior to January 1, 2005.
- A contract over \$12,000 if the contract is signed on or after January 1, 2005, but before January 1, 2010.
- A contract over \$14,000 if the contract is signed on or after January 1, 2010.

Comment 1.e. ATCP 50.56 applies prospectively, so the 1983 date is not necessary.

Comment 4.b. DATCP believes that the general cross-reference is appropriate.

Comment 4.c. DATCP is adopting this rule in concert with DNR, so that the referenced DNR rule will be in effect by the time this rule takes effect.

Comment 4.e. DATCP has complied with s. 227.14(3), Stats. See NOTE.

Comment 4.h. DATCP believes that the current reference is appropriate, in light of s. 92.17, Stats.

Comment 5.a. The two statutory definitions are, in fact, slightly different. DATCP has nevertheless eliminated the NOTE, as implicitly suggested by the Clearinghouse.

Comment 5.m. DATCP agrees. ATP 50.40(3)(a) merely provides some flexibility to approve additional conservation practices for cost-sharing pending completion of a lengthy rule amendment process.

Comment 5.n. DATCP believes that the current language is adequate.

Comment 5.p. An agreement under the referenced provision (now numbered ATP 50.40(9)(L)) is a *restrictive covenant*. It does not necessarily have to be in the form of an *easement*. See, for comparison, s. 91.01(7), Stats.

Comment 5.r. DATCP prefers the word "disclose."

Comment 5.s. DATCP believes that the current language is appropriate. DATCP may approve an ordinance amendment under par. (c) without the submission of information under par. (a)1. to 3.

Comment 5.t. DATCP prefers the construction in the final draft rule.

Comment 5.u. DATCP does not believe that any clarification is necessary.

Comment 5.v. DATCP believes that the provision is adequate as written.

Comment 5.x. The rule draft accurately states DATCP's intent. A 10-year maintenance provision is generally required for "capital improvements" but not for annual cropping and tillage practices.

Second Clearinghouse Report (*Clearinghouse Rule 01-090*)

DATCP modified the final draft rule to address all of the Rules Clearinghouse comments, except as noted below. The following comments also respond to Rules Clearinghouse questions.

Comment 4.a. DATCP believes that the statutory references in this provision (now numbered ATP 50.01(33)) are appropriate.

Comment 5.a. DATCP deleted this note, as implicitly suggested by the Rules Clearinghouse. The note was intended to point out a slight difference in the two statutory definitions.

Comment 5.b. A state-financed cost-share grant would normally pay part (not all) of the cost (see s. ATP 50.42). But in some cases, a state-financed cost-share grant could

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be combined with cost-share funds from other sources to pay the entire cost. A "cost-share grant" under s. ATCP 50.08, for example, could come from state, federal, local or private sources, or a combination of those sources.

Comment 5.c. DATCP intends this provision (now numbered ATCP 50.01(15)) to read as written.

Fiscal Estimate

This rule will have a fiscal effect on the department and counties. See final fiscal estimate, *Attachment 3*.

Small Business Analysis

This rule will have a substantial impact on farmers, many of whom are "small businesses." See small business analysis ("final regulatory flexibility analysis"), *Attachment 4*.

Environmental Assessment

This rule will have a positive effect on the environment. See final environmental assessment, *Attachment 5*.

FINAL DRAFT RULE

**Approved by the Board of Agriculture,
Trade and Consumer Protection**

February 12, 2002

**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.

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

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

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

Background

General

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

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

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

County Programs

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

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

Soil and Water Conservation on Farms

Farm Conservation Practices

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

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

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

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

Cost-Shared Conservation Practices

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

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

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

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

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

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

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

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

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

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

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

Cost-Sharing Required

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

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

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

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

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

This rule clarifies that:

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

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

Economic Hardship

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

Maximum Cost-Share Rates

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

This rule limits cost-share rates as follows:

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

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

Cost-Share Contracts with Landowners

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

- The location where the cost-shared practice will be installed, and a specific legal description if the cost-share grant exceeds the following applicable amount:
 - \$10,000 if the cost-share contract is signed prior to prior to January 1, 2005.
 - \$12,000 if the cost-share contract is signed on or after January 1, 2005, but before January 1, 2010.
 - \$14,000 if the cost-share contract is signed on or after January 1, 2010.
- Design specifications for the cost-shared practice. Cost-shared practices must be designed and installed according to this rule.
- The estimated cost of the practice.
- The rate and maximum amount of the cost-share grant.
- A construction timetable.
- A required maintenance period. The maintenance requirement runs with the land, and is binding on subsequent owners, if the cost-share grant is for more than the following applicable amount:
 - \$10,000 if the cost-share contract is signed prior to prior to January 1, 2005.
 - \$12,000 if the cost-share contract is signed on or after January 1, 2005, but before January 1, 2010.
 - \$14,000 if the cost-share contract is signed on or after January 1, 2010.
- A procedure for pre-approving material construction changes.

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

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

- \$10,000 if the cost-share contract is signed prior to prior to January 1, 2005.
- \$12,000 if the cost-share contract is signed on or after January 1, 2005, but before January 1, 2010.
- \$14,000 if the cost-share contract is signed on or after January 1, 2010.

Nutrient Management Program

General

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

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

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

Soil Testing Laboratories

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

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

IMPORTANT NOTICE

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

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

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

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

Nutrient Management Planners

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

A qualified nutrient management planner must be knowledgeable and competent in all of the following areas:

- Using soil tests.
- Calculating nutrient needs.
- Crediting manure and other nutrient sources.
- State and federal standards related to nutrient management.
- Preparing nutrient management plans according to this rule.

A nutrient management planner is presumed to be qualified if at least one of the following applies:

- The planner is recognized as a certified professional crop consultant by the national alliance of independent crop consultants.
- The planner is recognized as a certified crop advisor by the American society of agronomy, Wisconsin certified crop advisors board.
- The planner is registered as a crop scientist, crop specialist, soil scientist, soil specialist or professional agronomist in the American registry of certified professionals in agronomy, crops and soils.
- The planner holds equivalent credentials recognized by DATCP. A farmer is presumptively qualified to prepare a nutrient management plan for his or her farm (but not for others) if all of the following apply:
 - The farmer has completed a DATCP-approved training course within the preceding 4 years.
 - The course instructor or another qualified nutrient management planner approves the farmer's initial plan.

No person may misrepresent that he or she is a qualified nutrient management planner. A nutrient management planner must keep, for at least 4 years, a record of all nutrient management plans that he or she prepares under this rule.

DATCP may issue a written notice disqualifying a nutrient management planner if the planner fails to prepare nutrient management plans according to this rule, or lacks other qualifications required under this rule. A nutrient management planner who receives a disqualification notice may request a formal hearing under ch. 227, Stats.

County Soil and Water Conservation Programs

General

This rule establishes standards for county soil and water resource management programs that receive funding from DATCP. Under this rule, a county program must include all of the following:

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

Land and Water Resource Management Plans

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

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

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

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

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

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

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

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

County Ordinances

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

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

Farmland Preservation; Conservation Standards

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

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

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

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

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

Annual Grant Application

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

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

Annual Report

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

Accounting and Recordkeeping

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

DATCP Review

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

Training for County Staff

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

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

Grants to Counties

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

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

Annual Grant Allocation Plan

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

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

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

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

Revising the Allocation Plan

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

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

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

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

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

Grant Priorities

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

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

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

Annual Staffing Grants to Counties

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

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

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

DATCP may award different staffing grant amounts to different counties, based on criteria identified in this rule (see above). Staffing grants may be based, in part, on the county's staffing contribution during the preceding year. Subject to the availability of funds, DATCP will annually offer to each eligible county at least the greater of the following:

- \$85,000.
- The amount awarded to that county under the 2001 allocation plan for staffing related to DNR priority watersheds, less any amount awarded to that county under the 2001 allocation plan for staffing related to priority watershed projects that have subsequently closed. *Appendix F* shows scheduled closing dates for priority watershed projects, determined as of October 6, 1998.

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

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

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

Paying Staffing Grants

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

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

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

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

Grants for Conservation Practices

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

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

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

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

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

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

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

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

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

Agricultural Engineering Practitioners; Certification

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

Applying for Certification

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

Certification Rating

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

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

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

Appealing a Certification Decision

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

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

Reviewing Certification Ratings

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

Suspending or Revoking Certification

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

County and Local Ordinances

General

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

Livestock Ordinances

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

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

Manure Storage Ordinances

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

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

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

Agricultural Shoreland Management Ordinances

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

Waivers

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

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP has requested permission from the attorney general and the revisor of statutes to incorporate the following standards 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.
- The UW-extension guide on rotational grazing.
- UW-extension soil test recommendations.
- The RUSLE 2 version of the NRCS revised universal soil loss equation.

Copies of these standards are on file with DATCP, the secretary of state and the revisor of statutes. Copies are not reproduced in this rule, except that:

- NRCS technical guide nutrient management standard 590 (March, 1999) 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.

Land and Water Conservation Board

The land and water conservation board has reviewed this rule as required by s. 92.04(3)(a), Stats.

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.*

4 Approval of an annual soil and water resource management grant allocation plan under s.
5 92.14, Stats., and s. ATCP ~~50.30~~ 50.28.

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

7 **ATCP 40.11 Agricultural fertilizer sales; nutrient management plan.** (1) A

8 person who sells bulk agricultural fertilizer to a landowner shall record the name and

9 address of the nutrient management planner who prepared the landowner's nutrient

10 management plan, if the landowner has a nutrient management plan. The person may

1 record this information on the fertilizer invoice or statement required under s.
2 94.64(2)(b), Stats. The person shall keep the record for at least 24 months after the
3 person files the fertilizer tonnage report required under s. 94.64(5), Stats.

4 **NOTE:** See current invoice and recordkeeping requirements under ss.
5 94.64(2)(b) and (6), Stats.

6
7 (2) In this section, "landowner" has the meaning given in s. ATCP 50.01(15).

8 **SECTION 3.** Chapter ATCP 50 is repealed and recreated to read:

9 **CHAPTER ATCP 50**

10 **SOIL AND WATER RESOURCE MANAGEMENT**

11
12 **Subchapter I**

13 **Definitions and General Provisions**

14
15 ATCP 50.01 Definitions

16 ATCP 50.02 Waivers

17
18 **Subchapter II**

19 **Soil and Water Conservation on Farms**

20
21 ATCP 50.04 Farm conservation practices

22 ATCP 50.06 Installing conservation practices

23 ATCP 50.08 Cost-sharing required

24
25 **Subchapter III**

26 **County Soil and Water Program**

27
28 ATCP 50.10 County program; general

29 ATCP 50.12 Land and water resource management plan

30 ATCP 50.14 County ordinances

31 ATCP 50.16 Farmland preservation program; conservation standards

32 ATCP 50.18 Annual report

33 ATCP 50.20 Annual grant application

34 ATCP 50.22 Accounting and recordkeeping

35 ATCP 50.24 Department review

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Subchapter IV
Grants to Counties

- ATCP 50.26 Grant applications
- ATCP 50.28 Annual grant allocation plan
- ATCP 50.30 Grant priorities
- ATCP 50.32 Annual staffing grants to counties
- ATCP 50.34 Grants for conservation practices
- ATCP 50.36 Grant contracts

Subchapter V
Cost-Share Grants to Landowners

- ATCP 50.40 Cost-share grants to landowners
- ATCP 50.42 Maximum cost-share rates

Subchapter VI
Soil and Water Professionals

- ATCP 50.46 Agricultural engineering practitioners
- ATCP 50.48 Nutrient management planners
- ATCP 50.50 Soil testing laboratories
- ATCP 50.52 Training for county staff

Subchapter VII
Local Regulations

- ATCP 50.54 Local regulations; general
- ATCP 50.56 Manure storage systems; ordinance
- ATCP 50.58 Shoreland management; ordinance
- ATCP 50.60 Livestock operations; local regulation

Subchapter VIII
Standards for Cost-Shared Practices

- ATCP 50.61 General standards for cost-shared practices
- ATCP 50.62 Manure storage systems
- ATCP 50.63 Manure storage system closure
- ATCP 50.64 Barnyard runoff control systems
- ATCP 50.65 Access roads and cattle crossings
- ATCP 50.66 Animal trails and walkways
- ATCP 50.67 Contour farming
- ATCP 50.68 Cover and green manure crop
- ATCP 50.69 Critical area stabilization
- ATCP 50.70 Diversions
- ATCP 50.71 Field windbreaks

- 1 ATCP 50.72 Filter strips
- 2 ATCP 50.73 Grade stabilization structures
- 3 ATCP 50.74 Heavy use area protection
- 4 ATCP 50.75 Livestock fencing
- 5 ATCP 50.76 Livestock watering facilities
- 6 ATCP 50.77 Milking center waste control systems
- 7 ATCP 50.78 Nutrient management
- 8 ATCP 50.79 Pesticide management
- 9 ATCP 50.80 Prescribed grazing
- 10 ATCP 50.81 Relocating or abandoning animal feeding operations
- 11 ATCP 50.82 Residue management
- 12 ATCP 50.83 Riparian buffers
- 13 ATCP 50.84 Roofs
- 14 ATCP 50.85 Roof runoff systems
- 15 ATCP 50.86 Sediment basins
- 16 ATCP 50.87 Sinkhole treatment
- 17 ATCP 50.88 Streambank and shoreline protection
- 18 ATCP 50.89 Strip-cropping
- 19 ATCP 50.90 Subsurface drains
- 20 ATCP 50.91 Terrace systems
- 21 ATCP 50.92 Underground outlets
- 22 ATCP 50.93 Waste transfer systems
- 23 ATCP 50.94 Wastewater treatment strips
- 24 ATCP 50.95 Water and sediment control basins
- 25 ATCP 50.96 Waterway systems
- 26 ATCP 50.97 Well decommissioning
- 27 ATCP 50.98 Wetland development or restoration
- 28
- 29 *Appendix A Watersheds draining to impaired waters ("303(d) list")*
- 30 *Appendix B Summary of UWEX soil test recommendations (for selected crops)*
- 31 *Appendix C Nutrient management plan; checklist*
- 32 *Appendix D NRCS technical guide nutrient management standard 590 (March, 1999).*
- 33 *Appendix E Agricultural engineering practitioners; certification form*
- 34 *Appendix F Scheduled completion dates for priority watersheds, determined as of*
October 6, 1998.
- 35
- 36

1 employees or agents of a county land conservation committee who, with committee
2 authorization, act on behalf of the committee.

3 (7) "CREP program" means the combined state-federal conservation reserve
4 enhancement program under s. 93.70, Stats. and 16 USC 3834(f)(4).

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

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

8 (10) "Farm" means a parcel of land on which a landowner conducts one or more
9 agricultural practices.

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

14 (12) "Individual" means a natural person.

15 (13) "Lake district" means a public inland lake protection and rehabilitation
16 district created under subch. IV of ch. 33, Stats.

17 (14) "Land out of agricultural production" means acreage that the owner can no
18 longer use for normal crop or livestock production. Land is not taken "out of agricultural
19 production," for purposes of s. ATCP 50.08, if the landowner is free to use it for pasture,
20 hay production and cropping subject to residue management.

21 (15) "Landowner" means any of the following:

22 (a) A person who owns a parcel of land.

1 (b) A person who rents, controls or uses a parcel of land for agricultural
2 purposes.

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

5 (17) "Local governmental unit," as used in s. ATCP 50.60, has the meaning given
6 in s. 92.15(1)(b), Stats., and includes a county, town, city, village, lake district and county
7 drainage board.

8 (18) "Local regulation" means any of the following regulations that require
9 conservation practices on farms:

10 (a) Soil and water conservation standards that a county land conservation
11 committee adopts under s. 92.105, Stats.

12 (b) An ordinance or regulation that a county adopts under s. 59.69, 59.692, 92.11,
13 92.15, 92.16 or 92.17, Stats., or under other county authority.

14 (c) An ordinance or regulation that a town, city or village adopts under s. 92.11,
15 92.15, 92.16 or 92.17, Stats., or under other town, city or village authority.

16 (d) A regulation adopted by a county drainage board, a lake district or other
17 special purpose district, or a tribe.

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

19 (20) "Manure" means livestock excreta. "Manure" includes livestock bedding,
20 water, soil, hair, feathers, and other debris that becomes intermingled with livestock
21 excreta in normal manure handling operations.

22 (21) "Manure management system" has the meaning given in s. ATCP
23 50.62(1)(b).

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

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

3 (24) "Nonpoint source" has the meaning given in s. 281.65(2)(b), Stats.

4 **NOTE:** Section 281.65(2)(b), Stats., defines a "nonpoint source" as "a land
5 management activity which contributes to runoff, seepage or percolation
6 which adversely affects or threatens the quality of waters of this state and
7 which is not a point source as defined under s. 283.01(12)."

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

10 Stats.

11 **NOTE:** Section 281.16(1)(f), Stats., defines "nonpoint source water pollution" as
12 "pollution of the waters of the state that does not result from a point
13 source, as defined in s. 283.01(12)."

14
15 (26) "NRCS" means the natural resources conservation service of the United

16 States department of agriculture.

17 (27) "NRCS technical guide" means the NRCS field office technical guide that is
18 in effect on [*...revisor inserts effective date of this recreated chapter...*], except as
19 otherwise provided in ss. ATCP 50.04(3)(e), 50.62(3)(d), 50.77(4)(a)5. and 50.78(3)(a).

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

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

25 (a) A plan required under s. ATCP 50.04(3) or 50.62(5)(f).

26 (b) A farm nutrient plan prepared or approved, for a landowner, by a qualified
27 nutrient management planner.

28 **NOTE:** A nutrient management plan must comply with s. ATCP 50.04(3).

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

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

3 (31) "RUSLE 2 equation" means version 2 of the revised universal soil loss
4 equation (first edition, effective date December 31, 2001), published by NRCS.

5 (32) "Secretary" means the secretary of the department.

6 (33) "State regulation" means chs. 88, 92, 281 and 283, Stats., and rules
7 promulgated by the department or DNR under ch. 88, 92, 281 or 283, Stats.

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

12 (35) "Tribe" has the meaning given in s. 16.964(6)(a), Stats.

13 (36) "T-value" means the maximum average annual rate of soil erosion for each
14 soil type that will permit a high level of crop productivity to be sustained economically
15 and indefinitely.

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

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

22
23 (38) "Waters of the state" has the meaning given in s. 283.01(20), Stats.

1 (39) "Weighted average soil rental rate" means, for each county, the rate
2 determined by the United States department of agriculture, farm service agency, on form
3 CRP-2.

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