Assumptions Used in Arriving at Fiscal Estimate (continued from page 2)

Implementing these standards will require approximately 2.0 FTE for highly specialized technical assistance and support:

1. One position will provide engineering technical assistance to local conservation staff to install practices and structures according to technical standards. This senior engineering position will be assigned to serve areas inadequately served by existing staff. This position would assist in developing conservation practices and technical standards for implementation of the agricultural performance standards. This ongoing work effort will entail 2,080 hours per year. Salaries and fringes equal $59,488 (2,080 hours x $28.60/hr).
2. One position requires high-level computer skills to develop GIS products to assist the department and local conservation staff to plan, monitor, and evaluate implementation efforts. This ongoing work effort will entail 2,080 hours per year. Salaries and fringes equal $54,080 (2,080 hours x $26/hr).

Implementing these standards will require approximately 2.0 FTE to provide information, guidance, project planning and administration for voluntary compliance, and other technical assistance with a special focus on contract administration, and program and planning. One position will have primary responsibilities regarding the allocation and contract administration for reimbursement of department funds for cost share agreements and other contracts. The other position would provide assistance in program planning for voluntary methods to assist counties in planning and implementing county land and water resource management plans. Both positions would provide guidance to department and county staff on implementing agricultural performance standards and prohibitions, contracting for installing best management practices, and conduct outreach efforts to inform and educate governmental units, landowners and the public. This ongoing work effort will entail 2,080 hours per year for each position. Salaries and fringes for the contract specialist equal $42,848 (2,080 hours x $20.60/hr). Salaries and fringes for the program and planning position equal $50,024 (2,080 hours x $24.05/hr).

An additional 1.0 FTE will have a range of duties related to ordinances. This position will provide environmental analysis and technical assistance related to ordinance development. Responsibilities also include working with department staff to evaluate ordinances as part of the review process for land and water resource management plans. This position will assume significant responsibilities for reviewing local livestock operation ordinances that exceed the state performance standards and prohibitions. There will be a significant workload due to the number of local governments that can enact ordinances, and the fact that that these ordinances will be highly variable and involve significant policy decisions. The ongoing workload in this area will require about 2,080 hours per year. Salaries and fringes equal $50,024 (2,080 hours x $24.05/hr).

To support these new staff, the department would need $14,000 per position (total of $70,000) for supplies and services. This cost is reflected in the State Operations – Other Costs on the attached fiscal estimate worksheet.

The department will use existing staff to absorb additional workloads in these areas:

1. Implementation of a statewide nutrient management program. The proposed rule includes a process to certify soil-testing laboratories.
2. Review county land and water resource management plans and local ordinances. The department previously had staff that assisted the Department of Natural Resources by developing portions of the priority watershed plans under DNR's nonpoint source pollution abatement program. The priority watershed program is being phased out and the department's staff that worked on the watershed plans will now be assigned to review and work in these areas
3. The department also has new responsibility, under s. 281.16, Stats., to develop conservation practices and develop and disseminate technical standards to implement agricultural performance standards and prohibitions. The proposed rule establishes the procedures the department will use to accomplish this task. In addition to new staff needed to do this work, some of these duties will be absorbed by existing staff.
4. Grants issued to counties to implement land and water resource management plans and the agricultural performance standards and prohibitions in Department of Natural Resources NR 151 and ATCP 50. In addition to new staff needed to do this work, some of these duties will be absorbed by existing staff.

Justification for Fiscal Estimate Worksheet

This provides additional justification for the net change in costs of $11 million in the worksheet category of Aids to Localities, Individuals or Organizations. In particular, the analysis addresses that portion of costs ($10 million) related to farmer cost-sharing. A detailed justification for $1 million for staff grants is provided above.

Justification for Fiscal Estimate Worksheet (continued from page 3)

Over the ten-year implementation period, state government will provide farmer cost-sharing directly or indirectly funding to counties. Using the minimum cost-share rate of 70%, the state's annual share will range from $26 (70% of $37.3 million) to $40 (70% of $57.3 million). Subject to continued appropriation, funds for federal conservation programs are available for landowner cost-sharing. While these federal programs may reach as high as $53 million per year in potential cost-share funds ($48 million for CREP, $5 million for CRP and EQIP), only a portion of those funds can be applied to cost-share practices that are specifically targeted to meet state standards.

Assuming level funding over ten years, the department estimates the combined available funds from federal and state sources total approximately $30 million annually. There is a shortfall of $10 million dollars per year.

Consistent with existing legislation and policy, the department expects to assume full cost-sharing responsibility for implementation of the uniform agricultural performance standards in NR 151. Accordingly, the fiscal estimate reflects the need for the department to receive the entire $10 million per year.

Justification for State Operations – Other Costs

The department will need to track and verify progress in complying with the agricultural performance standards and prohibitions. To do that, the department will need to develop a database that is linked to a geographical information system (GIS) to spatially track compliance with the standards and prohibitions in various areas around the state. The department estimates that developing this database and GIS connection will cost about $50,000. In addition the department would need to purchase a scanner, computer, and computer software (estimated cost of $30,000) to set up a GIS workstation. The effort to verify progress toward meeting the agricultural performance standards and prohibitions will aide in the evaluation of the impact on this compliance on improving water quality, the ultimate goal of these standards and prohibitions. The other costs also include the $70,000 for supplies and services for the five new staff positions.

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2047 (R10/2000)

Fiscal Estimate Worksheet — 2001 Session

Detailed Estimate of Annual Fiscal Effect

☐ Original	☒ Updated	LRB Number	Amendment Number if Applicable
☐ Corrected	☐ Supplemental	Bill Number	Administrative Rule Number ATCP 3.02, 40.11, and 50

Subject
Soil and Water Resource Management Program

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
None

Annualized Costs:	Annualized Fiscal Impact on State Funds from: Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations — Salaries and Fringes	$ 256,500	$ -
(FTE Position Changes)	(5.00 FTE)	(- 0.00 FTE)
State Operations — Other Costs	150,000	-
Aids to Localities, Individuals or Organizations	11,000,000	-
Total State Costs by Category	$ 11, 406,500	$ -
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	$ 11, 406,500	$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
State Revenues — Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes	$	$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
Total State Revenues	$	$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	$ 11, 406,500	$ 12,000,000
Net Change in Revenues	$	$ 11,000,000

Prepared By:	Telephone No.	Agency
Dave Jelinski	608-224-4621	DATCP
Authorized Signature Barbara Knapp	Telephone No. 608-224-4746	Date (mm/dd/ccyy) 01/30/2002

DATCP Cost Analysis
for 10-Year Implementation of
Agricultural Performance Standards and Prohibitions

Performance Standard	Annual Cost Estimates (in millions) Low	High	Explanation of Cost Assumptions
Conservation Staff Needs	$2	$4	DATCP currently provides local assistance grants in excess of $8 million annually to help fund 246 county land conservation staff. DNR and DATCP have agreed that an additional $2 to $4 million dollars is needed to implement state standards. Counties have recommended higher staff funding at the rate of $1 for every $2 of landowner cost-sharing provided.
Standard Sheet and Rill Erosion	$6.4	$10.2	Currently 82% of WI is at "T". DNR and DATCP assume that 1.6 million acres additional will need to meet "T." The annual costs range from $10 to $16 per acre. Paid over a 4 -year period, these costs total $40 to $64 per acre. Based on 1.6 million acres, overall costs range from $64 to $102.2 million. Over ten years, this translates into annual costs of $6.4 to $10.2 million.
Nutrient Planning and Updating*	$18.0	$28.0	Costs average from $4.50 to $7 dollars per acre to plan, update and maintain nutrient management practices. Paid for the required four year period, these costs amount to $18 to $28 per acre. Ten million acres are targeted for planning and updating. Overall costs range from $180 to $280 million. Over ten years, this translates into annual costs of $18 to $28 million.
Manure Storage	$2.9	$4.4	Using 33,500 livestock operations in WI * 25% in driftless WI * 10% requiring storage because of nutrient management * $35,000 per facility = $29 million or annual cost of $2.9 million for the low cost. The high cost assumes 15% requiring storage. This assumes 10 year implementation period from the program and 70% cost-sharing to enforce agricultural ordinances.
Manure Storage Facilities Abandonment	$0.1	$0.2	These estimates reflect 40 to 100 facilities costing $1,000 to $5,000 each to abandon annually. This low cost estimate is 100 facilities @ $1,000 =$100,000. The high cost is 40 facilities @ $5,000=$200,000.
Manure Management Prohibitions**	$8.0	$10.6	DNR and DATCP started with the Animal Waste Advisory Committee's $123 million cost estimate from 1994 for the 59,000 livestock operations. Adjusting the old estimate to a low of 33,500 or a high of 44,000 operations for 1997. This is 56.8% to 74.5% of the 1994 operations. 56.8% of the $123 million is $70 million. 74.5% of the $123 million is $92 million. Using 15% for inflation, the adjusted totals range from $80.5 to $106 million or $8 to $10.6 million annually.
Land taken out of production	$1.9	$3.9	In certain cases, landowners can only meet agricultural performance standards by installing conservation practices that remove land from production. At a minimum, 19,350 acres will be taken out of production to meet erosion and manure management standards. Based on payments of $100 to $200 per acre, an annual costs range from $1.9 to $3.9 million.
Total Annual***	$39.3	$61.3	These estimates reflect a 10-year implementation period. These estimates are based on today's dollars and do not reflect inflation, except as otherwise noted.
Ten Year Total	$393	$613	

* Calculations assume voluntary compliance during the delayed implementation of the nutrient management standard.

** These estimates account for compliance through clean water diversion.

***Nominal costs for maintenance have not been included this total.

Attachment 4

SMALL BUSINESS ANALYSIS
(Final Regulatory Flexibility Analysis)

Wisconsin Department of Agriculture,
Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject:	Soil and Water Conservation
Adm. Code Reference:	ATCP 50
Rules Clearinghouse #:	00-039 and 01-090
DATCP Docket #:	98-R-7

Rule Description

General

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.

The Legislature has mandated a comprehensive redesign of state programs related to nonpoint source pollution. Among other things, the Legislature has directed DATCP and the Department of Natural Resources (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.

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:

- *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.

- *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 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 a federal standard adopted by the Natural Resource Conservation Service (NRCS) of the U.S. Department of Agriculture. 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 unless the nutrient management planner documents a special agronomic need for the deviation.

  - 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).

  - Farm nutrient management requirements first apply to "existing" cropland in 2008, except that they first apply in 2005 to "existing" cropland in outstanding or impaired watersheds. The requirements first apply to "new" cropland one year after this rule takes effect.

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.

Effects on Small Business

This rule will have a major impact on farmers, many of whom qualify as "small businesses." Other businesses may also be affected. Those businesses include nutrient management planners, soil testing laboratories, farm supply organizations, agricultural engineering practitioners, and contractors installing farm conservation practices.

Farmers

DNR rules establish pollution runoff standards for farms. This rule requires farmers to install conservation standards to comply with the DNR rules. It will be costly to implement the DNR requirements over the entire state. Costs will vary from farm to farm, but many farmers will incur substantial costs. *DATCP estimates that it will cost farmers between $373-$573 million to achieve full statewide compliance with DNR pollution runoff standards over 10 years.* This does not count the cost of county staff providing service 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, in turn, 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.

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 a bank or CPA certifies an "economic hardship"). If a county or local government *forces* a farmer to change an *existing* farm operation, the county or local must offer *at least* 70% cost-sharing (at least 90% if there is an "economic hardship"). If cost-share funding is not available, compliance may be delayed.

The following summary shows estimated annual and 10-year costs to achieve full statewide compliance with farm conservation practices required by the DNR and DATCP rules. The summary shows a *range* of cost estimates, focusing mainly on installation (not maintenance) costs. The allocation of costs (between farmers and taxpayers) depends on the applicable cost-share rate. The rate of implementation will also depend on the availability of cost-share funds. The summary does not consider offsetting financial benefits some farmers may realize.

Statewide Cost to Implement Required Farm Conservation Practices

Conservation Practices	Annual Cost (in millions)		Cost Assumptions
	Low	High	
Soil Erosion Control	$6.4	$10.2	Currently 82% of WI is at "T." DNR and DATCP assume that 1.6 million acres additional will need to meet "T." The annual costs range from $10 to $16 per acre. Paid over a 4 -year period, these costs total $40 to $64 per acre. Based on 1.6 million acres, overall costs range from $64 to $102.2 million. Over ten years, this translates into annual costs of $6.4 to $10.2 million.
Nutrient Management	$18.0	$28.0	Costs average from $4.50 to $7 dollars per acre to plan, update and maintain nutrient management practices. Paid for the required four year period, these costs amount to $18 to $28 per acre. Ten million acres are targeted for planning and updating. Overall costs range from $180 to $280 million. Over 10 years, this translates into annual costs of $18 to $28 million.
Manure Storage	$2.9	$4.4	(33,500 livestock operations in WI) × (25% in driftless WI) × (10% requiring storage because of nutrient management) × ($35,000 per facility) = $29 million for the low cost over 10 years, or $2.9 million low cost per year. The high cost assumes 15% requiring storage. Assumes 10 year implementation period and 70% cost-sharing to enforce agricultural ordinances.
Manure Storage Abandonment	$0.1	$0.2	These estimates reflect 40 to 100 facilities costing $1,000 to $5,000 each to abandon annually. This low cost estimate is 100 facilities @ $1,000 =$100,000. The high cost assumes 40 facilities @ $5,000=$200,000.
Manure Management Practices	$8.0	$10.6	DNR and DATCP started with the Animal Waste Advisory Committee's $123 million cost estimate from 1994 for the 59,000 livestock operations. Adjusting the old estimate to a low of 33,500 or a high of 44,000 operations for 1997. This is 56.8% to 74.5% of the 1994 operations. 56.8% of the $123 million is $70 million. 74.5% of the $123 million is $92 million. Using 15% for inflation, the adjusted totals range from $80.5 to $106 million or $8 to $10.6 million annually. Estimates account for compliance through clean water diversion.
Land taken out of production	$1.9	$3.9	In certain cases, farmers can only meet agricultural performance standards by installing conservation practices that remove land from production. At a minimum, 19,350 acres will be taken out of production to meet erosion and manure management standards. Based on payments of $100 to $200 per acre, an annual costs range from $1.9 to $3.9 million.
TOTAL ANNUAL COSTS	$37.3	$57.3	These estimates reflect a 10-year implementation period. These estimates are based on today's dollars and do not reflect inflation, except as otherwise noted. They do not include nominal costs for maintenance.
10-YEAR TOTAL COSTS	$373	$573	

DATCP and DNR provide approximately $18 million in cost-share funds each year. Added to the farmers' share, and assuming a 70% average cost-share rate, this will install about $26 million worth of conservation practices each year, or $260 million over 10 years. The state-federal Conservation Reserve Enhancement Program (CREP), which is not affected by this rule, may provide a similar amount of funding for conservation practices (mainly riparian buffers).

This rule does not impose additional reporting or record-keeping requirements on farmers, except those related to nutrient management. Farmers receiving cost-share grants must comply with grant contract terms. This may entail some reporting and record-keeping requirements. To comply with nutrient management requirements, farmers will need to:

- Prepare nutrient management plans. Farmers will need to hire qualified planners, or prepare their own plans if they are qualified to do so.

- Have soil tests conducted at a certified laboratory, if they are not already doing so.

- Understand and keep records of soil types, soil tests, crop nutrient requirements (including University of Wisconsin recommendations), nutrient applications, nutrient contents of manure, nutrient application scheduling and other matters related to nutrient management. Most farmers have knowledge in some or all of these areas, but some farmers may need to update or expand their knowledge.

Farmers will also need to be acquainted with conservation standards, and the application of those standards to their farms. Farmers installing conservation practices must comply with relevant construction standards. In some cases, they may need to hire engineering or construction professionals to plan and install the practices. County-based conservation professionals will help farmers to understand technical requirements, make calculations, and interpret plans and specifications. Engineering, design and construction costs related to conservation practices are generally eligible for cost-sharing.

Nutrient Management Planners and Crop Consultants

This rule will increase nutrient management planning, and the demand for professional nutrient management planners. As many as 10 million acres may require nutrient management plans, at an average cost of $6-10 per acre. Nutrient management planners who prepare plans for others must be qualified to do so. Planners holding certain professional credentials are presumed to be qualified. DATCP may disqualify planners who lack the required knowledge, or violate the law.

Nutrient management planners must know how to prepare nutrient management plans. They must understand and keep records of soil types, soil tests, crop nutrient requirements (including University of Wisconsin recommendations), nutrient

applications, nutrient contents of manure, nutrient application scheduling and other matters related to nutrient management.

Farm Supply and Farm Service Organizations

This rule will increase the demand for professional nutrient management planning and other services to farmers. Farm supply and farm service organizations may provide nutrient management planning services, crop consulting, conservation compliance and other services. They may also sponsor DATCP-approved training courses for farmers.

This rule will increase demand for manure hauling services. In order to implement their nutrient management plans, many farmers will have to hire commercial manure haulers to apply their manure on appropriate fields.

This rule may reduce sales of agricultural fertilizers, as farmers manage nutrients more carefully. Persons selling agricultural bulk fertilizer to farmers must record the name and address of the nutrient management planner (if any) who prepared the farmer's nutrient management plan. This rule does not prohibit the sale of fertilizer to a farmer who lacks a nutrient management plan.

Soil Testing Laboratories

This rule will increase demand for soil testing. Nutrient management plans must be based on soil tests conducted by certified laboratories. DATCP will certify laboratories. DATCP or its agent may audit laboratories to ensure accurate testing.

Construction Contractors

This rule will affect construction contractors who install farm conservation practices. This rule does not substantially alter construction standards, nor does it impose any new contractor reporting or record keeping requirements. But this rule may affect construction demand, and the distribution of projects across the state. This may not affect large contractors who are more mobile and can set up branch offices. But smaller, less mobile operations may be affected.

Agricultural Engineering Practitioners

This rule may increase demand for agricultural engineers and engineering practitioners. Certain conservation practices must be designed by licensed engineers or certified engineering practitioners, to ensure safety and effective performance. Engineering costs are eligible for cost-sharing under this rule.

Under this rule, as under prior rules, agricultural engineering practitioners must be certified by DATCP. This rule does not substantially alter current certification requirements or procedures.

Accommodation for Small Business

DATCP has worked extensively with farm representatives and DNR in order to minimize adverse effects on small business. DATCP held extensive consultations with advisory councils, held numerous public hearings throughout the state, prepared simplified information materials, and made extensive changes in its final draft rules to accommodate small business. Remaining requirements are needed to implement DNR pollution runoff requirements and farm conservation practices. DATCP has also worked extensively to clarify cost-sharing requirements, which are important for the successful implementation of conservation practices on farms.

Dated this 28th day of January, 2002

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Nicholas J. Neher
Nicholas J. Neher, Administrator,
Division of Agricultural Resource Management

Attachment 5

ENVIRONMENTAL ASSESSMENT

DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
FINAL ENVIRONMENTAL ASSESSMENT
January, 2002

Division Affected: Agricultural Resource Management

Rule Number: ATCP 50, Soil and Water Resource Management Program Clearinghouse Rule

Number: 96-002

HISTORY AND BACKGROUND

1. ***Rule number and title:*** ATCP 50, Soil and Water Resource Management

   [ ] New Rule

   [X] Modification of Existing Rule

2. ***Statutory Authority***

   A. To adopt the proposed rule: Sections 92.05(3)(c) and (k), 92.14(8), 92.15(3)(b), 92.16, 92.18(1), and 281.16(3)(b) and (c), Stats.

   B. Statute(s) being interpreted by proposed rule: Section 91.80, chapter 92, and section 281.16, Stats.

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

   The Department of Agriculture, Trade and Consumer Protection (the department) was directed to make changes in administrative rules as a result of changes to ch. 92, Stats., made by 1999 Wisconsin Act 9 and 1997 Wisconsin Act 27. Both of these acts made significant changes to the state's Soil and Water Resource Management Program and the related Nonpoint Source Water Pollution Abatement Program. Because the changes are significant and far-reaching, the department is proposing to repeal and recreate ch. ATCP 50 of the Wisconsin Administrative Code for the Soil and Water Resource Management Program.

   During the early stages of the development of this rule, the department worked closely with the Department of Natural Resources (DNR) and a citizens' advisory group called the "Outreach Advisory Committee." The Outreach Advisory Committee consisted of representatives from: the department and the DNR, co-chairs, Wisconsin Manufacturers and Commerce, the River Alliance of Wisconsin, the Oneida Tribe, the City of West

Allis, the Wisconsin Association of Lakes, the Department of Commerce, the Department of Transportation, the Wisconsin Builders Association, the Wisconsin County Code Administrators Association, the Wisconsin Land and Water Conservation Association, the Wisconsin Association of Land Conservation Employees, the University of Wisconsin-Extension, the Wisconsin Environmental Decade, Wisconsin Pork Producers, the Municipal Environmental Group, the U.S. Natural Resources Conservation Service, the Wisconsin Towns Association, the Wisconsin Farm Bureau Federation, and two agricultural producers.

The department and DNR initially took drafts of their revised rules to public hearings in March and April of 2000. After receiving considerable comments on their respective rules, both departments revised their rule packages. DNR took its revised rules to hearing again during March of 2001 and the department took their rule to hearing in August of 2001. In its rulemaking, the department is following the lead of DNR to ensure that ATCP 50 conforms to the state performance standards and prohibitions in NR 151. The two departments are working together to ensure that their rules are consistent.

Specifically, DNR is adopting these rules as part of the nonpoint redesign program: NR 120 is the rule for existing rural priority watershed projects; NR 151 is the rule that establishes agricultural and nonagricultural performance standards; NR 152 is the rule that establishes model ordinances as tools for municipalities to use to meet the standards; NR 153 is the rule that governs the new runoff management grant program; NR 154 is the rule that establishes DNR's cost-effective practices, technical standards and cost-share conditions; NR 216 is the rule that establishes the regulatory program for storm water management and which includes the standards; NR 243 is the rule for the regulatory animal waste program, including the applicable standards and the four prohibitions.

4. *Description of the Proposed Rule*

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

The overall objective of the current rule is to establish the requirements and technical standards for the soil erosion control, animal waste management, nonpoint source water pollution abatement, and nutrient management components of the soil and water resource management program.

One of the primary objectives of the proposed rule is to amend the current rule to conform to the provisions of 1997 Wisconsin Act 27 and 1999 Wisconsin Act 9. These acts require the department to:

- Establish conservation practices needed to meet state performance standards,
- Specify a process for the development and dissemination of technical standards for the practices needed to meet performance standards,

- Establish a statewide nutrient management program,
- Establish procedures for the preparation and implementation of county land and water resource management plans,
- Clarify the department's role in the regulation of livestock operations, and
- Establish a rural nonpoint source water pollution abatement program based on county land and water resource management plans.

The following objectives clarify these statutorily required objectives as well as other environmental, programmatic and administrative objectives that the department is adding to the proposed rule.

(1) Environmental Objectives

The overall objective of the current rule is to provide standards and guidelines for the installation of conservation practices to ensure that installed practices will provide the anticipated environmental protection and farm benefits.

In addition to this overall objective, the proposed rule incorporates these additional environmental objectives:

- To install conservation practices to achieve the state's nonpoint source water pollution abatement performance standards established under ss. NR 151.02 through NR 151.08.
- To install conservation practices to control cropland soil erosion.
- To have an annual nutrient management plan before applying nutrients to any field.
- To comply with all of the agricultural performance standards in NR 151.02 through NR 151.08 in order to receive farmland preservation tax credits.

(2) Programmatic/Administrative Objectives

The overall objective of the current rule is to establish standards and requirements for erosion control, animal waste management, nutrient management and rural nonpoint source water pollution abatement for the soil and water resource management program jointly administered by the department and county land conservation committees.

In addition to this overall objective, this proposed rule incorporates these additional programmatic and administrative objectives:

- Specifies the procedures the department will use to allocate funds to county land conservation committees under the annual staffing grant to handle the

rural nonpoint source water pollution abatement program as designed by the Legislature.

- Establishes procedures for counties to follow to account for the expenditure of state cost-share funds to meet state standards.

- Requires all cost-share grants from the state program to go to counties rather than directly to other local units of government.

- Sets priorities and strict guidelines for grants to counties for installing conservation practices and implementing this program.

- Establishes the programmatic requirements for what must be included in county land and water resource management plans and it establishes timelines counties must follow to prepare and revise these plans.

- Adds technical standards for cover and green manure crop, riparian buffers, pesticide management, prescribed grazing, residue management, sinkhole treatment, and wastewater treatment strips.

- Spells out a procedure for changing technical standards in the future.

- Establishes the procedures for providing cost-share funds to install conservation practices and sets maximum cost-share rates for practices.

- Modifies the definition of economic hardship, under which farmers may obtain higher cost-share rates.

- Creates a state nutrient management program, which requires farmers to conduct soil test and develop nutrient management plans prepared by qualified planner, and requires the department to certify nutrient management planners and soil-testing laboratories.

- Requires all participants in the farmland preservation program to meet all of the state's performance standards and conservation standards in order to receive tax credits.

- Sets priorities the department must follow in awarding grants to counties and lists other factors the department may also consider when awarding grants.

- Prescribes practices to meet the state's performance standards.

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

The proposed rule is based on a number of assumptions:

- The performance standards being proposed by DNR in NR 151 will be adopted.
- County land conservation departments will work cooperatively with the state to meet the state's performance standards.
- The performance standards adopted by the state are reasonable and that most farmers are capable of coming into compliance.
- Voluntary participation of farmers will be the primary mechanism to secure compliance, and will be aided by technical assistance and cost-sharing.
- County land conservation departments will establish a work schedule based on local priorities and needs consistent with overall state standards, and will target efforts to ensure maximum use of available funds.

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

(1) Requirements the public will have to follow:

The proposed rule requires farmers to implement conservation practices to meet performance standards in NR 151, reduce soil erosion to "T," and apply nutrients according to an annual nutrient management plan. For nutrient management, the proposed rule delays compliance requirements according this schedule: one year after the effective date of the rule for "new" cropland; 2005 for land located near outstanding or impaired waters, or within a source water protection area; 2008 for all other "existing" farming operations. The department will use the definition of "new" and "existing" farm operations in NR 151.

A farmer is normally entitled to cost-sharing if the farmer is *required* to install conservation practices that change an "existing" farm operation. The cost-share offer must cover at least 70% of the farmer's cost to *install* and *maintain* the required practice (at least 90% if there is an *economic hardship*). If a farmer is forced to take one half (½) acre or more of land out of production to install a conservation practice, the farmer is entitled cost-share payments for the land lost to production, and those payments must continue for as long as the land is taken out of production.

There are some limitations on this cost-sharing requirement:

- A farmer is not entitled to cost-sharing to make required management and other changes not eligible for cost-sharing.

- A farmer is no longer entitled *to cost-sharing after receiving:*
  - 10 years worth of cost-sharing (the normal cost-share maintenance period) for a capital improvement.
  - 4 years worth of cost-sharing for an annual practice such as nutrient management or contour farming.
- If a farming operation achieves compliance with a conservation requirement, but then falls out of compliance, the farmer must regain compliance at the farmer's expense.
- A county or local government need only make a bona fide *offer* of cost-sharing. If the farmer refuses the cost-share offer, the county or local government may require the farmer to comply without cost-sharing.
- A county or local government need not cost-share a nutrient management plan required under a permit for a manure storage system voluntarily constructed by a farmer.
- Cost-sharing is not required to correct a landowner's criminal or grossly negligent discharge of pollutants.

The proposed rule requires every participant in the farmland preservation program to meet new county standards that include all of the practices necessary to meet the performance standards in NR 151.

Nutrient management plans can only meet the standards in the proposed rule if qualified nutrient management planners prepare them. Farmers, consultants and others can demonstrate their qualifications in a number of ways. A nutrient management plan also must be based on soil tests conducted by the University of Wisconsin or another certified soil-testing laboratory. Soil testing laboratories must follow certain procedures to secure and maintain their certification.

Those selling bulk agricultural fertilizer to a farmer must record the name and address of the person who prepared the farmer's nutrient management plan, if any. But this rule does not prohibit sales to farmers who do not yet have plans.

(2) <u>Requirements counties and other local governments will have to follow</u>:

The proposed rule requires that all counties must prepare, adopt and frequently revise land and water resource management plans following the procedures specified in this rule and in guidelines prepared by the department. If a county does not prepare or revise a plan when specified by the department, soil and water resource management funds will not be made available to that county.
Rather than having the state determine cost-effective practices, the proposed rule requires counties to determine what practices are cost effective on a case-by-case basis. This will require counties to assess each set of practices for each project to determine which are cost effective.

This proposed rule will require counties to enter into contracts with landowners for the installation of practices. Under current rule, the department enters into most contracts with landowners for practices. While many counties will not have significant changes, this will require changes for some counties that have been used to letting the department do most of the contracting work.

The proposed rule establishes standards that counties and other local governments must use to adopt ordinances affecting livestock operations (under s. 92.15, Stats.), manure storage facilities (under s. 92.16, Stats.), and shoreland management (under s. 92.17, Stats.). For ordinances that do not require department review, counties and local governments may submit proposed ordinances to the department for review and comment. As part of the approval process for county land and water resource management plans, counties need to identify state and local regulations used to implement the plan, and the department may ask for copies of local regulations and make comments.

Under the proposed rule, each county must update farm conservation standards for participants in the farmland preservation program. The new farm conservation standards must be designed to meet the practices established in this rule and all participants in the program must meet these new conservation standards.

The proposed rule requires each county to establish and maintain an accounting and record-keeping system to track the expenditures of state funds. The current rule also requires this, so this requirement is not new. However, because funding sources and department procedures have changed, some counties will have to modify their procedures.

The proposed rule changes how counties receive department funding for landowner cost-sharing, and staff and support. The new reimbursement system will reduce paperwork, but will require adjustment. The new funding formula for allocating staffing grants will re-distribute funds among counties.

(3) Requirements the department will have to follow:

1997 Wisconsin Act 27 requires the department to prescribe practices to meet the state's performance standards adopted under NR 151 and to establish soil conservation and nutrient management requirements. The proposed rule establishes a unified set of conservation practices to address nonpoint source pollution, soil conservation and nutrient management.

Under the proposed rule, the department will have to certify soil-testing laboratories that will be performing soil tests for farmers applying nutrient to croplands. The department has responsibilities for disqualifying a nutrient management planner for a lack of qualifications or rule violations. The

department also must evaluate questionable economic hardship determinations and protect the confidentiality of farm financial records.

The proposed rule requires the department to review and approve county land and water resource management plans. The department will have to establish guidelines for reviewing, approving and rewriting county land and water resource management plans.

The proposed rule sets forth procedures for department review and in certain cases approval of ordinances adopted under ss. 92.15, 92.16 and 92.17, Stats. The department remains responsible for providing comments on proposed ordinances voluntarily submitted for review by counties and other local governments.

The department will have new responsibilities under 281.16, Stats. to develop conservation practices and technical standards.

The proposed rule requires the department to establish a procedure to provide basic annual staffing grants to counties. The department will reimburse the county, at a percentage rate prescribed by the Legislature, up to the total amount of the county's annual staffing grant award. The Legislature has specified higher reimbursement rates for staff working in DNR "priority watersheds."

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

Farmers with livestock operations are exempt from cost-sharing requirements for practices required under a WPDES permit. Federal law requires this exemption.

A county or local government may take emergency action to prevent immediate harm to water quality, without first making a cost-share offer. This exemption is needed to protect natural resources from harm.

In addition, the proposed rule continues a provision authorizing the department to grant a written waiver from the rule provisions if the department finds that the waiver is necessary to achieve the objectives of ATCP 50.

Cost-sharing requirements for implementation of farm conservation practices are not treated as exemptions to the proposed rule. However, the cost-sharing requirement means that owners and operators of existing farms will not be required to comply with conservation practices unless funding is provided or they install a practice voluntarily.

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

Farmers and other landowners. This group will be primary affected by requirements to implement conservation practices to meet performance standards in NR 151, reduce soil erosion to "T," and apply nutrients according to an annual nutrient management plan. Farmer will be subject to priorities and goals set in county land and water resource management plans. State and local conservation standards will be implemented primarily through voluntary approaches, including cost-sharing. Counties and local governments may adopt ordinances to require landowner compliance. If a farmer is *required* to install conservation practices that change an "existing" farm operation, the farmer is normally entitled to cost-sharing.

See 4.C.(1), above, for additional effects on farmers and landowners.

County land conservation committees and their staff. Department grant funding pays a portion of the land conservation department staff salaries and support costs. Provisions of the proposed rule will greatly modify the grants received for staff and staff support. Counties will also be required to prepare land and water resource management plans and will be eligible for grants from the department to help implement them.

See 4.C.(2), above, for additional effects on county land conservation committees and their staff.

Farm supply organizations, nutrient management planners and soil testing laboratories. Those who supply fertilizers and nutrient management planning services to farmers will be affected by this rule because farmers who apply nutrients to cropland will be required to have nutrient management plans. There will be increased business opportunities and workloads for them. For example, farmers may demand additional manure hauling services. But fertilizer sales may decline as farmers more efficiently manage nutrients. There should be an increase in demand for laboratories to conduct soil testing for nutrient management planning.

Construction contractors and other related services. These individuals and companies must follow the standards and specifications established for practices under the rule, as they do under current rule provisions. Additionally, more land and water implementation funding will be directed to all counties and more contracting jobs should be available to contractors and private vendors. Rather than having jobs concentrated in one watershed, they will be spread out more evenly among counties throughout the state. This rule may increase demand for engineering services to properly design and install structures and practices.

6. ***List agencies, groups, and individuals contacted regarding the proposed rule.***

The department looked to the Outreach Advisory Committee for guidance and for reaction to the preliminary version of the proposed rules. The Outreach Advisory Committee consisted of: representatives from: the department and the DNR, co-chairs, Wisconsin Manufacturers and Commerce, the River Alliance of Wisconsin, the Oneida Tribe, the City of West Allis, the Wisconsin Association of Lakes, the Department of Commerce, the Department of Transportation, the Wisconsin Builders Association, the Wisconsin County Code Administrators Association, the Wisconsin Land and Water Conservation Association, the Wisconsin Association of Land Conservation Employees, the University of Wisconsin-Extension, the Wisconsin Environmental Decade, Wisconsin Pork Producers, the Municipal Environmental Group, the U.S. Natural Resources Conservation Service, the Wisconsin Towns Association, the Wisconsin Farm Bureau Federation, and two agricultural producers.

In addition, the department consulted with the Wisconsin Potato and Vegetable Growers Association, the Cranberry Growers Association, the Fertilizer and Chemical Association, Wisconsin Federation of Cooperatives, and the Wisconsin Agribusiness Council.

This version of the draft rule also was be reviewed by WLWCA, WALCE and DNR.

7. ***List the existing administrative code (affected or replaced by the proposed rule):***

The existing ch. ATCP 50, Wis. Adm. Code, is repealed and recreated through the proposed rule.

8. ***List department directives and/or publications the proposed rule would affect. Specify changes necessary if the proposed rule is adopted.***

The department will have to revise its "Procedures Manual for the Soil and Water Resource Management Grant Program." The current procedures manual was prepared in May, 1999. The proposed rule will change the funding procedures the department follows in allocating funds to county land conservation committees, and the procedures a county must follow in handling department funds.

The proposed rule requires the department to review and approve county land and water resource management plans. The department will have to revise written guidelines for county land conservation departments.

The proposed rule sets forth procedures for department review and in certain cases approval of ordinances adopted under ss. 92.15, 92.16 and 92.17, Stats. The department may develop model ordinances for counties to include the new requirements of the statutes and this rule.

9. ***If a specific physical and/or biological setting would be directly affected by the proposed rule, briefly describe the type and extent to the affected area:***

This proposed rule is of statewide significance. In case of nutrient management planning, however, the rule phases in requirements earlier for impaired and exceptional waters, and source water protection areas. The rule primarily affects agricultural systems and operators. The proposed rule provides for financial and technical assistance, delivered at the local level by county land conservation committees and departments, with assistance from the department.

CONSEQUENCES

10. ***Beneficial and adverse environmental impacts of the proposed rule:***

A. ***Identify and briefly describe anticipated direct and indirect impacts on the physical and biological environment:***

The proposed rule will positively affect the physical and biological environment in the short- and long-term. Department financing of landowner cost-sharing will stimulate implementation of conservation practices consistent with local environmental priorities and needs. Department grants will support staff who provide information and technical assistance that will increase adoption of farm conservation practices. Farmers with new operations will incorporate required conservation practices into their business and operating plans. Farmers with existing operations will install conservation practices without cost-sharing. Farmers participating in the farmland preservation program will follow new conservation standards. As a result, farmers will reduce soil erosion, apply nutrients to cropland according to an annual nutrient management plan, and install other conservation measures. Through better management and improved pollution control, the proposed rules will reduce the type and amount of pollutants that reach waters of the state.

Under the proposed rule, water quality staff will be funded more equally around the state. In addition, all counties will be required to prepare land and water resource management plans and some implementation funds will be made available to all counties. Therefore, instead of focusing state funds on priority areas, state funds will be more evenly distributed throughout the state. The beneficial effects from the installation of conservation practices will be spread more evenly across the state, and increase the importance of meeting county goals to attain state goals.

Additional impacts of the nonpoint redesign program are described in the **Environmental Assessment for Department Administrative Rules Related to the Redesign of the Nonpoint Source Program,** a document completed by the DNR on or about October, 2001. Specifically, reference is made to the agricultural headings in Section VII, 1. Environmental Effects and Their Significance (pp. 11-21). This document is available at http://www.dnr.state.wi.us/org/water/wm/nps/admrules.html.

B. ***Identify and briefly describe anticipated direct and indirect economic impacts. Attach a copy of the administrative rule, fiscal estimate, and fiscal estimate worksheet.***

(1) Overview

There are two proposed rules that will cause farmers to spend money to come into compliance with new state requirements. The Department of Natural Resources' proposed rule, NR 151, establishes the agricultural performance standards which farmers must meet. The department's proposed rule, ATCP 50, lays out the mechanics of how farmers will comply with NR 151, and prescribes requirements for landowner cost sharing to achieve compliance. This environmental assessment describes the economic impact of complying with ATCP 50 and estimates the costs of installing all of the agricultural performance standards required under NR 151.

The state is proposing to adopt five agricultural performance standards. One of these, the one dealing with the four Animal Waste Advisory Committee prohibitions, is required by statute. In addition to these prohibitions, which are incorporated into NR 151.08, the DNR rule establishes performance standards for sheet, rill and wind erosion (NR 151.02), manure storage facilities (NR 151.05), clean water diversions (NR 151.06) and nutrient management (NR 151.07)

The estimated costs of implementing the agricultural performance standards statewide must be considered in the context of the total soil and water conservation program involving many different agencies and programs.

The department believes the total impact of this program on the farming community will be significant. Certainly there will be a portion of the farm community that install and maintain conservation practices without cost-sharing. For example, farmers with new cropland and livestock operations must incorporate required conservation practices into their business and operating plans. Because program implementation largely depends the availability of cost-sharing funds, however, it is most appropriate to analyze the impact by focusing on the amount of cost-share dollars available annually to farmers. The department's soil and water resource management program currently makes available approximately three and a half million dollars a year for cost sharing with farmers. The average state share of the costs for practices is 70 percent, with farmers paying the remaining 30 percent. Therefore, the state's $3.5 million buys approximately $5 million worth of conservation practices. This means that participating farmers will spend about $1.5 million each year to comply with the state's performance standards. These estimates do not include 90% cost-sharing that must be provided farmers who meet the test for economic hardship. The department cannot accurately determine variables for expanding projected costs to account for 90 percent cost-sharing.

In addition to this, there are many other soil and water conservation programs which, while not focusing specifically on implementing the state's performance standards, can be used to help achieve state conservation standards and practices. These programs are:

- The Conservation Reserve Program. This program makes payments to landowners in exchange for placing lands under contract and establishing vegetative cover on the land. In Wisconsin, this program involves about 600,000 acres and the Farm Services Agency spends approximately $40,000,000 annually.

- The Environmental Quality Incentives Program. This program provides cost sharing for animal manure management, soil erosion control and other conservation practices. During its first two years in Wisconsin, contracts totaling $7,211,392 were signed.

- The Conservation Reserve Enhancement Program. The state has a contract with U. S. Department of Agriculture for federal funds to add to state funds for the Conservation Reserve Enhancement Program. This program will provide funds for installing riparian buffers, filter strips, grassed waterways, and wetland and prairie restorations to improve water quality. The program provides $171,000,000 in federal funds and $46,000,000 in state funds over a 15-year period.

There are other federal, state and local programs that contribute considerably smaller amounts to reach the state's performance standards.

(2) Cost to local government operations:

The department estimates that implementation of the proposed rule will have some impact on local governments. The department estimates that an additional 45 county land conservation staff are needed to assist farmers in implementing practices needed to meet the agricultural performance standards proposed in NR 151. This equates to at least $2,000,000 more dollars a year to fund these staff. See the attached cost analysis for the proposed rule.

The proposed rule requires a shift from funding staff for priority watershed projects to a more equalized funding of staff statewide. The state will make funds available to all county land conservation committees for staff to work toward implementing practices to meet county goals. Some counties currently have many more than three staff funded with state funds, and when this rule is implemented, those counties will have funding reduced over time.

It is estimated that current state funding supports approximately 240 land

conservation department staff statewide. Assuming that counties will only receive matching funds at a rate of 100% for one position, 70% for the next position and 50% for a third position, they would receive funding for 3 staff positions in each county. If all counties hired three positions, there would 210 staff positions statewide. This represents a decrease statewide of about 30 land conservation department positions.

Under the proposed rule, each county will be required to prepare a land and water resource management plan in order to be eligible for continued funding from the department. Once a county has a plan, it will be eligible for plan implementation funding from the department. If the department makes $3,500,000 a year available for cost sharing, each county will receive an average of about $48,000.

In addition to equalizing the funds for staff, cost-share funds for landowners will be more evenly distributed. While a few county governments will have cost-share and staffing funds greatly reduced, other counties will see moderately increased amounts of state funds for cost sharing and staff. The whole shift in this approach is to make funds available for all counties, with the underlying assumption that the state will be in a position to meet overall soil and water conservation goals if counties are better able to meet their goals.

(3) Impact on state and local economies:

The proposed rule will have a minimal to moderate impact on local economies. There will be a shift from funding priority watershed projects to providing funds to all counties to meet their identified needs. This will mean fewer county land conservation department staff concentrated in counties with priority watershed projects, and more county land conservation department staff distributed statewide. This relatively small shift in the workforce, will have minimal impact on the local economies.

The availability of a small amount of cost-share dollars each year for each county will mean there will be a shift in work for construction contractors from a considerable amount of work concentrated in priority watersheds, to less concentrated amounts of work in each county. While the overall amount of funds available for landowners to install conservation practices will increase under the proposed rule, those funds will be distributed statewide. There will not be any large increase of spending in any one area, rather a small amount of increase will be available in all areas. This will have the effect of spreading the work for conservation practice construction contractors out over the entire state.

There will be a slight increase in bonding-revenue funds made available in the state. The state economy, however, will not be greatly affected by this proposed rule. The department's budget may increase with the increased bonding revenue funds.

(4) Economic impact on individuals:

(a) Cost analysis. Attached is a cost analysis prepared by the department, which contains the estimated number of acres and operations affected by the implementation of the state's performance standards and the estimated costs to implement the practices needed to come into compliance with the performance standards and conservation practices. The cost analysis makes estimates only for costs, not associated benefits and savings. The department recognizes that benefits exist, but we are not ready to assign dollar figures to them at this time. The department believes that the total costs for implementing the agricultural performance standards will be significant, totaling in the hundreds of millions of dollars over a ten-year period.

For example, costs for preparing nutrient management plans are $7 per acre to plan and update the plan annually. If cost sharing is provided for four years, the total cost per acre would be $28. Ten million cropland acres need plans for a total estimated cost of $280,000,000 over ten years, or $28,000,000 per year.

To implement the four prohibitions, the Animal Waste Advisory Committee (AWAC) estimated that it would cost $123,000,000 in 1994. Assuming the number of operations needing treatment is lower now than in 1994 because many of them already have been treated and adding for inflation, the department and DNR have agreed that the annual costs for implementing the prohibitions would range from $8,000,000 to $10,6000,000. The ten year costs would range from $80 million to $106 million.

(b) Requirements of the rule. The proposed rule requires farmers to implement conservation practices to meet performance standards in NR 151, reduce soil erosion to "T," and apply nutrients according to an annual nutrient management plan. For nutrient management, the proposed rule delays compliance requirements according this schedule: one year after the effective date of the rule for "new" cropland; 2005 for land located near outstanding or impaired waters, or within a source water protection area; 2008 for all other "existing" farming operations. The department will use the definition of "new" and "existing" farm operations in NR 151.

A farmer is normally entitled to cost-sharing if the farmer is *required* to install conservation practices that change an "existing" farm operation. The cost-share offer must cover at least 70% of the farmer's cost to *install* and *maintain* the required practice (at least 90% if there is an *economic hardship*). If a farmer is forced to take one half (½) acre or more of land out of production to install a conservation practice, the farmer is entitled cost-share payments for the land lost to production, and those payments must continue for as long as the land is taken out of production.

(c) Conclusions. Given the requirements of the rule presented above and the assumptions and estimates from the cost analysis, the following conclusions can be drawn:

The total costs for implementing the agricultural performance standards and conservation practices are significant, totaling in the hundreds of millions of dollars. Implementation will take place primarily on the county level through voluntary cost-sharing, information and technical assistance.

To try to make these costs more manageable, they could be broken down into multiyear schedules based on the department's current funding levels. The department currently makes available about $3,500,000 annually in bonding revenue funds for cost sharing conservation practices. In addition to bonding revenue funds, the department uses a small amount of the general purpose revenue funds for cost sharing. Under the state constitution, counties may *not* use bond revenues to pay for annual conservation practices such as nutrient management or contour farming. With the farmers' share, the total amount of conservation practices that can be installed in a year is about $5,000,000. Spread evenly among the 72 counties, that amounts to slightly under $70,000 per county for conservation practices.

The department is also directed by the legislature to work toward funding county land conservation staff at an average level of three staff per county and $100,000 per county in cost-share funds. The legislature has also set rates for staff funding, including a provision to account for priority watershed projects.

When the department is able to provide each county with $100,000 per year in cost-share funds, we would be spending a total of $7,200,000 statewide for cost sharing. If we were spending state funds at this level at an average of 70% of the total cost of practices, the farmers' input, at 30% of the total cost, would be about $2,800,000, for a total of about $10,000,000 in conservation practices.

Overall, more state funds will be available for implementing conservation practices. This will be beneficial to individual farmers who are putting in conservation practices. The source of the money (predominately bond revenue) will influence the type of practices installed. The availability of cost-share funds may stimulate a commitment from individuals to put their money into installing practices.

Counties may adopt ordinances that require individuals to install conservation practices. In most cases, cost-sharing funds must be made available if farmers are required to install conservation practices. Even if cost-share funds are afforded to secure compliance, individual farmers typically must still pay 30% of the

installation and maintenance costs. In counties with ordinances, this could represent a considerable cost to individual farmers.

Farmers will have to prepare and follow nutrient management plans. If the concepts are understood and the plans are followed, this requirement will have a beneficial economic impact on farmers. Using the nutrients in animal manure will result in less need for and use of commercial fertilizers. Farmer's costs for commercial fertilizers should be decreased, although other, offsetting costs, such as management costs, may slightly increase. For many farmers, the cost of preparing and following a nutrient management plan may be offset by the savings a farmer realizes in lower costs for purchased fertilizers.

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

This rule may positively affect the social and cultural environment of affected parties. The proposed rule will positively effect soil conservation and the protection of water quality. These efforts will have a long-term positive impact, of course, for citizen health and well-being and for water based recreation. Improved water quality may also result in improved social relationships between urban and rural residents, if they each perceive the other as doing the most possible to control their input to water quality problems.

D. Identify and briefly describe anticipated direct and indirect impacts on the availability and use of energy (s.1. 12, Stats.):

The proposed rule will not significantly impact the availability or use of energy. Funding some practices, such as intensive grazing management, nutrient management, and improved manure management, may reduce the use of fossil fuels and other chemical inputs used during farming operations.

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

The proposed rule requires the installation of farm conservation practices. If the rule is followed and if cost-share funds are available, farmers will be required to install many conservation practices and change their farm management behavior. While this requirement is environmentally beneficial, it may present concerns to farmers who must incorporate these practices into existing management systems. Farmers will be forced to resolve problems of incompatibility. Farmers must also deal with the economic impacts of making changes that range from out-of-pocket expenses to reduced profits from changes in management and production.

Despite changes to simplify economic hardship determinations, there may be individual farmers who deserve but cannot qualify for higher cost-sharing at 90 percent. These individuals, however, will continue to be eligible for grants at the normal cost-share rates

of the rule.

Under the proposed rule, counties will be required to include the state performance standards in their county standards and farmland preservation program participants will be required to meet these standards. Currently, people are dropping out of the farmland program about twice as fast as they are entering it. Participation has dropped steadily over the past several years. If remaining participants are required to meet these additional standards, it will negatively affect participation in the farmland preservation program. Participating farmers may receive voluntary cost-sharing from counties to come into compliance.

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

None anticipated at this time.

ALTERNATIVES

13. ***Identify and briefly describe and discuss the environmental and administrative impacts of alternatives to the proposed rule, including the following:***

A. ***Not promulgating the proposed rule (be specific in explaining environmental and programmatic impacts of doing nothing):***

Not promulgating the proposed rule would cause the department to be in violation of state statutes. The department is required by statute to establish by rule a nutrient management program [s.92.05(3)(k), Stats.]. The department is also required to promulgate rules prescribing conservation practices to meet performance standards and to specify a process for the development and distribution of technical standards for the practices [s.281.16(3)(b), Stats.]. The department is also required to promulgate rules specifying criteria for determining whether cost sharing is available under s.92.14, Stats., or any other source [s.281.16(3)(e)].

Provisions in Chapter 92 created by 1997 Wisconsin Act 27 and 1999 Wisconsin Act 9, require the department to assist land conservation departments in preparing land and water resource management plans and to review and approve or disapprove those plans [s.92.10(4)(c) and (d)]. Failure to promulgate a rule will leave unspecified how the department will assist land conservation departments and what is expected of them for the department to approve their plans.

DNR is proceeding with its rule establishing statewide performance standards. If the department did not proceed, county land conservation committees and farmers would be left with little guidance and direction for achieving the standards.

B. Legislative modification of existing statutes to accomplish the objective of the proposed rule:

Although this would be an alternative, it would add considerable length to ch. 92, Stats., and the Legislature has indicated its intention that these provisions be included in rules. Many of the proposed provisions of this rule are not the type of program administration detail included in statutes.

C. Modify the proposed rule (alternatives to the proposed rule to satisfy known or obvious concerns of interested parties and the impacts that would result):

Alternatives to the proposed rule could include:

Develop rules that provide block grants to counties. This alternative was suggested at listening sessions held by the department and DNR in conjunction with the proposals to redesign the state's nonpoint source water pollution abatement and soil and water conservation programs. This alternative would not be completely available under current statutes. Chapter 92, Stats., is specific about the funding priorities for each source of funds for the soil and water resource management program. Counties, by statute, have a number of requirements including filing grant applications, matching grants, and reporting to the department. While the funding proposals in this rule do not meet the definition of block grants, most of the funds to land conservation committees comes through the basic annual staff grant, which has the fewest restrictions and requirements attached to it.

Develop rules with a definitive state compliance program. Some county land conservation department staff have requested the state to develop a state compliance program that would force counties into establishing programs to make farmers comply with the performance standards. While this would establish an "even playing field" across the state for farmers, it would also require some regulatory component to the program. The state has never had a widespread regulatory component to its soil and water conservation program and would undoubtedly be resisted by some farm groups.

EVALUATION

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

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

The proposed NR 151 and ATCP 50 establish conservation standards and practices for

farms. In terms of implementation strategies, the department's rule focuses on county land and water resource management plans, while the DNR rule sets out implementation procedures, including non-compliance notices. In both rules, counties are the main emphasis of implementation strategies. County implementation efforts will follow local priorities and needs, subject to statewide requirements. County efforts will focus on compliance through voluntary cost-sharing, information, and technical assistance. Local conservation programming will produce environmental benefits targeted to a specific area. This will directly affect farmers and other rural landowners, county land conservation committees and departments, soil testing laboratories, nutrient management planners, the department, the land and water conservation board, cities, villages, towns, and contractors.

Because of the shift in the funding of the nonpoint source water pollution abatement program from concentrated, priority watersheds to broader funding for each county land and water resource management plan, contractors who install conservation practices will be affected by this rule. Work will not be concentrated in localized areas but will be spread more evenly throughout the state. While the overall impact on the environment will be beneficial, those benefits will not be concentrated in small areas, rather they will be spread throughout the state.

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

The proposed rule will not significantly increase new impacts.

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

Specific scarce resources that the proposed rule would affect are not known at this time. Improved water quality and soil resources may protect some scarce environmental resources, but we do not know which specific resources may be involved at this time. Counties may target protection efforts toward scarce local resources as part of their land and water management resource plans.

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

The proposed rule sets new precedent for minimum conservation standards for farms. The basic minimums establish a foundation on which to build future state programming consistent with evolving standards for environmental performance.

The proposed rule sets new precedent for the expenditure of state funds to reduce nonpoint source pollution. Funds for the program will now be distributed more or less evenly to all counties rather than having larger sums being distributed to smaller geographical areas. This new precedent will affect future policy decisions.

The proposed rule also sets new precedent for the expenditure of state funds on basic annual staffing grants to county land conservation committees and for the expenditure of state funds for cost-share grants to landowners.

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

The proposed rule is consistent with the legislative directives in ch. 92, Stats., and with the department's mission statement.

To the department's knowledge, the proposed rule is consistent with other plans and policies that have been proposed or adopted by local, state, and national agencies and groups. For example, the rule is consistent with emerging national policy on the management of nutrients, particularly with respect to phosphorous. The proposed rule does not significantly affect other plans or policies, except to promote the installation of conservation practices, which support ongoing state plans and statutory directives to protect soil resources and improve water quality.

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

The proposed rule is limited by chs. 91, 92 and 281, Stats., as well as provisions in chs. NR 120, NR 151, NR 152, NR 153, NR 154, NR 216, and NR 243, Wis. Adm. Code.

The proposed rule interprets ch. 92, Stats., for soil and water conservation and animal waste management.

Chapter 91, Stats., is the law governing the farmland preservation program. That program requires participants to meet soil and water conservation standards and, consequently, imposes limits on this proposed rule.

The department works with the Department of Natural Resources to coordinate this rule with the DNR rules for the nonpoint source water pollution abatement program and to maintain consistent provisions on conservation practices, cost- share rates, grant applications and reporting, as much as practicable. Their programs are governed by ch. 281, Stats., and the following administrative codes:

- NR 120, which is the rule for existing rural priority watershed projects.

- NR 151, which is the rule that establishes agricultural and nonagricultural performance standards.
- NR 152, which is the rule that establishes model ordinances as tools for municipalities to use to meet the standards.
- NR 153, which is the rule that governs the new runoff management grant program.
- NR 154, which is the rule that establishes DNR's cost-effective practices, technical standards and cost-share conditions.
- NR 216, which is the rule that establishes the regulatory program for storm water management and which includes the standards.
- NR 243, which is the rule for the regulatory animal waste program, including the applicable standards and the four prohibitions.

G. ***Other: Identify and describe (or cross-reference) other relevant factors which relate to the effects of the proposed rule on the quality of the human environment (e.g., foreclose future options, socio-cultural impacts, cumulative impacts to affect entities, visual impacts, and irreversible commitments of resources):***

The proposed rule is expected to encourage the implementation of best management practices to protect soil resources and improve water quality.

CONCLUSION

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

Signed this 25th day of January, 2002

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
BY

Nicholas J. Neher, Administrator
Agricultural Resource Management Division

December 17, 2001

ATCP 50 Revisions

Issue	Revision
Establish a single erosion model. **s. ATCP 50.04(2)** (Page 33)	• Use the same model for soil erosion, RUSLE 2, as DNR.
Include phosphorous (P) standard as part of nutrient management. **s. ATCP 50.04(3)** (Page 36) *References: DNR COMMENT, p. 2, WLWCA*	• Phase in P standard for nutrient management: a. DATCP and DNR use nitrogen-based standard for enforcement of performance standards; DNR to phase in use of P standard for impaired watersheds and outstanding waters. b. DATCP adds clarifying note that NRCS 590 standard is undergoing revision, and this may require revisiting standards. c. DATCP to initiate rulemaking to create a P standard before Jan 1, 2005. • DATCP will come up with tools to mange for P
Create uniform procedures for local implementation, compliance and enforcement of state standards. **ss. ATCP 50.06 NOTE, 50.08, 50.54(2)** (Pages 38-39, 111) *References: DNR COMMENT, pp. 3-4, WLWCA*	• Develop a consistent and common approach for implementation, compliance and enforcement. • DATCP incorporated DNR standards determination of "existing" farms for purpose of required cost-sharing. • Establish a DNR/DATCP/County team to build on local implementation guidance.
A landowner entitled to cost-sharing is not required to take action unless he or she receives cost-share grant. **s. 50.08(1)** (Page 39) *References: DNR COMMENT, 3-4; WLWCA COMMENT, p. 3*	• Added the phrase "an offer of " after the word "receives."

Issue	Revision
Define operations entitled to cost-sharing (new v. existing). **s. ATCP 50.08(1)** (Pages 39-40, 45-6) *Reference: ss. NR* 151.09 and 151.095, *Bethke, p. 1, Masterpole, , p 1*	• Incorporate DNR definitions for "existing" cropland and livestock operations into rule for purpose of determining cost-share entitlement.
Modify cost-sharing requirement for aggravated conduct, emergency pollution problems and other circumstances. **ss. ATCP 50.08, 50.54** (Pages 45, 111) *References: Key DATCP-DNR Issues memo, 9/13/01, p. 1*	• Establish exceptions to cost-share requirement for: a. Actions required to correct criminal or grossly negligent discharge of pollutants into waters of the state. b. WPDES permit holder. • Cost-sharing requirement does not limit emergency or interim action needed to prevent or mitigate imminent harm to waters of the state.
Paying maintenance as part of cost-share. **ss. ATCP 50.08(2), 50.40(3)** (Pages 41-42, 82) *References: DNR COMMENT, p. 4; WLWCA COMMENT, p. 1.*	• Revise cost-sharing requirement for maintenance to exclude costs for normal operating routines such as clean outs of barnyards, storage facilities, and gutters. • Limit payments for mowing to $10 per acre twice a year. • Delete "out of pocket" phrase from rule langauge.
Paying the land-out-of production costs as part of cost-share. **ss. ATCP 50.08(2), 50.40(17)** (Pages 38-39, 82) *References DNR COMMENT, 4; WLWCA COMMENT, p.1*	• Limit payments based on parcel size of 1/2 acre. • Require payment according to higher CREP equivalent formula if farmers agree similar conditions
Establish consistent minimum maintenance periods for nutrient management and other practices. **s. ATCP 50.08(3)** (Page 44) *References DNR COMMENT, p. 4*	• Use a 10-year maintenance period for capital improvements. • Use a 4-year period for nutrient management and other soft practices.

Issue	Revision
Allow nutrient management requirements to be tailored to meet county needs. **s. ATCP 50.12(2)(f)** (Page 49) *References: WLWCA MEETING*	• Counties can prioritize areas NM where needed. • Support education effort.
Ordinances must be reasonably consistent with ATCP 50. **ss. ATCP 50.12(2)(b), 50.54(1)** (Pages 48, 111) *References DNR COMMENT, p. 5; WLWCA*	• Delete requirement, and replace with requirement for submission of ordinances.
Eliminate suggestion that counties have option to develop compliance procedures in LWRM plans. **s. ATCP 50.12(2)(h)** (Page 50) *References: WLWCA MEETING*	• Revised to require compliance procedures that will apply
Specify criteria for the approval of a LWRM plan. **s. ATCP 50.12(5)** (Page 51) *References: WLWCA COMMENT, p. 3*	• Incorporate reference to require plan approval based on s. ATCP 50.12.
Maintain cross-compliance requirement for farmland preservation. **ss. ATCP 50.08(6), 50.16** (Page 45)	• Require that farmers participating in FPP meeting standard to retain eligibility for program.
Provide counties adequate opportunity for input on annual grant allocation plan. **s. ATCP 50.28(2)** (Page 64) *References WLWCA COMMENT, p 4*	• Provide a 30-day notice to counties and other interested parties before LWCB review.
Reflect joint nature of that annual grant allocation. **s. ATCP 50.28(2)** (Page 64) *References DNR COMMENT, p. 6*	• Revise this section to better reflect the role of DNR.

Issue	Revision
Incorporate funding recommendations for county staffing grants provided by advisory committee. **s. ATCP 50.32** (Pages 70-71) *References: WCA COMMENT, p. 4*	• Include three-part funding formula: 1. Maintain funding at levels that reflect watershed staff grants (only until closing date for watershed) 2. Increase, if needed, minimum amount to $85,000, subject to appropriation 3. Distribute remaining funds using a formula based on county contribution to support staff. County will need to supply annual update on county contribution.
Increase eligible staff support costs. **s. ATCP 50.32(4)** (Page 70) *References: WCA COMMENT, p. 5; Bethke, p. 2*	• Expand itemized list to include costs for information and education materials, newsletters, office supplies, maps and plats, photocopying, printing, and postage.
Use of bond revenue funds. **s. ATCP 50.34(4)** (Page 76)	• Ensure that DNR and DATCP apply same standard for using bond revenue funds, as determined by bond counsel.
Ordinance requirement for providing cost-sharing in a city and village **s. ATCP 50.40(2)** (Page 81) *References WLWCA COMMENT, p. 4*	• Eliminate this requirement as a condition for cost-sharing.
Redefine prohibited uses of cost-share grants. **s. ATCP 50.40(3)** (Page 83) *References: DNR COMMENT, p. 6*	• Modify the prohibition against payments for routine cropping and livestock practices to allow payment for no-till, contour stripping and other specified conservation practices, or in the alternative, delete this prohibition.

Issue	Revision
Third party signature of DATCP on cost-share contracts over $50,000. **s. ATCP 50.40(8))** (Page 85) *References: WLWCA COMMENT, p. 4*	• Retain dollar threshold and ensure that DNR requirements are consistent. • Follow DNR procedure for approval: receive contract, issue approval letter.
Dollar amount triggering requirement to record cost-share contracts. **s. ATCP 50.40(9)**(Pages 85, 87) *References: DNR COMMENT, p. 7*	• Lower trigger to $10,000 consistent with DNR rules. • Include inflation factor: raise trigger to $12,000 in 2005, and $14,000 in 2010.
Restrictions on use of funds for providing cost-sharing. **s. ATCP 50.42(2)** (Page 93) *References: DNR COMMENT, p. 7*	• No change needed, adequately addressed at s. 50.40(16) (Page 80) that restricts funds from programs under chapters 92 and 281, Stats., from being combined to exceed 70% cost-sharing (90% for economic hardship).
Tighten standards for qualifying for economic hardship. **s. ATCP 50.42(4) & (5)** (Page 94-5) *Reference: DNR COMMENT, p. 7; WLWCA COMMENT, p. 4*	• Make revision requiring that a CPA or bank provide certification to the county land conservation committee, based on a financial statement prepared according to generally accepted accounting principles. • Create option for DATCP or DNR to review the certification method; agency providing cost-share funds would have the review option.
Determine standards for certification of laboratories. **s. ATCP 50.50** (Pages 106-07) *References DNR COMMENT, p. 8*	• Revise rule to include standards for soil tests, test methods and nitrogen estimation. • Establish procedures for laboratory evaluation.

Issue	Revision
As part of voluntary permit programs, cost-sharing must be offered for local regulations that require landowners to submit nutrient management plans or comply with other requirements as part of manure storage ordinance. **ss. ATCP 50.54(2), 50.08(2)** (Pages 111) *References: WLWCA COMMENT, p. 2*	• Create an exception to the cost-sharing requirement for nutrient management for local regulation that establishes a voluntary permit program for manure storage facilities adopted under s. 92.16 or 92.17, Wis. Stats. • Insure that existing operations are not required to obtain a permit as a condition to continue operating.
DATCP review of proposed county ordinances. **s. ATCP 50.54(3)** (Page 111-112) *References: WLWCA COMMENT, p. 2*	• Eliminate mandatory submission of all proposed county ordinances for review.
Establish procedures for review and approval of local livestock regulation. **s. ATCP 50.60** (Page 117) *References: WLWCA*	• Use of the same standards as DNR for ordinance approval under s. 92.15, Stats., subject to AG's opinion. • Include specific language that requires local government to show why more stringent regulation is needed to achieve compliance with water quality standards and why less stringent provisions could not achieve compliance.
Establish DATCP as lead agency for technical standards. **ATCP 50, Subchapter VIII (s. ATCP 50.61 et seq)** (Page 108)	• Made the changes recommended by DNR to the following rule sections: 50.62(3)(h), 50.63(2), 50.63(4) and 50.72(2).
Establish non-rulemaking procedures for adopting technical standards. **s. ATCP 50.61(2)** (Page 121) *References: DNR COMMENT, p. 9; WLWCA COMMENT p. 4*	• Clarified procedures used for adoption of standards described in note.