

Washington County

01-0910-D102 50
Land Conservation Committee
333 E. Washington Street
West Bend, WI 53095
Phone: (262) 335-4302
FAX: (262) 335-4171

Resolution to Oppose Proposed ATCP 50, Wisconsin Administrative Rule

WHEREAS, the Wisconsin Legislature, through 1997 Wisconsin Act 27 and 1999 Wisconsin Act 9, directed the Department of Natural Resources (DNR) and the Department of Agriculture, Trade and Consumer Protection (DATCP) to "redesign" the state's nonpoint source water pollution abatement programs, which was largely initiated and supported by counties;

WHEREAS, the legislative intent of the program redesign is clearly articulated in Chapters 92 and 281 State Statutes, following three guiding principles:

- Develop statewide nonpoint pollution performance standards and prohibitions that would help achieve clean water goals;
- Focus efforts to ensure compliance with these standards through locally developed county Land and Water Resource Management (LWRM) Plans;
- Streamline the states nonpoint program grants system and increase base allocations to counties to support the implementation of their LWRM plans.

WHEREAS, as part of the program redesign effort, DATCP has proposed major revisions to administrative rule ATCP 50, which contains key planning, administrative and grant requirements for the program redesign effort, and relies primarily on counties for implementation;

WHEREAS, proposed revisions to ATCP 50 have recently been forwarded to the legislature for promulgation despite overwhelming opposition by counties and failure of the rule to meet the legislative intent of the program redesign.

NOW THEREFORE BE IT RESOLVED that the Washington County Land Conservation Committee opposes the proposed revisions to administrative rule ATCP 50 in their current form; and requests state legislators representing Washington County to work with the appropriate state Assembly and Senate committees and the DATCP to make changes to the rule, as presented on Attachment "A".

BE IT FURTHER RESOLVED that the Land Conservation Committee requests said legislators to direct the DATCP to work with the leadership of the Wisconsin Land and Water Conservation Association (WLWCA) to develop and implement a Memorandum of Understanding which will improve the cooperative relationship between the agency and County Land Conservation Committees and Departments, with the ultimate goal of achieving more effective, accountable and locally-supported program rules and policies.

Adopted the 20th day of March, 2002.

Land Conservation Committee Members:

Maurice Strupp, Chairperson
David N. Radermacher, Vice-Chairperson
Robert W. Kratz, Secretary
Patricia A. Strachota

Daniel J. Rodenkirch
Mary A. Krumbiegel
Helmut Wagner
Allen Piel, (FSA Representative)



Wisconsin Land and Water
Conservation Association, Inc.

RESOLUTION #4

MEMORANDUM OF UNDERSTANDING WITH WDATCP AND WDNR

WHEREAS, the Wisconsin Department of Agriculture, Trade and Consumer Protection (WDATCP) is the lead agency for state sponsored soil and water conservation programs in Wisconsin, providing administrative guidance and grants for farmland preservation, nonpoint source water pollution control, nutrient management, cropland erosion control, stream corridor management and other programs; and

WHEREAS, counties, through their Land Conservation Committees (LCC's), under the leadership of the Wisconsin Land and Water Conservation Association (WLWCA), serve as the primary local delivery system for all state sponsored soil and water conservation programs, offering a wide array of services to local landowners and managers as described in their County Land and Water Resource Management Plans; and

WHEREAS, for these soil and water conservation program efforts to be effective, the DATCP must work in partnership with WLWCA and the WDNR; and

NOW, THEREFORE BE IT RESOLVED, that WLWCA calls on the leaders in state government to take the necessary actions to insure the will of the legislature is upheld. These actions should include, though not be limited to, requiring the DNR, DATCP and WLWCA to enter into a Memorandum of Understanding (MOU) negotiated between the agencies and the counties through their leadership in the WLWCA.

BE IT FURTHER RESOLVED that this MOU should clearly identify the cooperative process for developing state conservation programs including a dispute resolution process.

Marathon/Polk moved to accept. Passed with 46 yes and 1 no.

Adopted the 7th day of December, 2001



**SHEBOYGAN COUNTY
LAND & WATER CONSERVATION DEPARTMENT
650 FOREST AVENUE
SHEBOYGAN FALLS, WI 53085**

March 27, 2002

Senator James Baumgart
306 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

Dear Senator Baumgart:

As you know the Sheboygan County Land and Water Conservation Department is responsible for delivering conservation services in Sheboygan County, and would be responsible for implementing ATCP 50 if it becomes law. The legislative intent of the program redesign is clearly articulated in Chapters 92 and 281, State Statutes, following three guiding principles:

- * Develop statewide nonpoint pollution performance standards and prohibitions that help achieve clean water goals;
- * Focus efforts to ensure compliance with these standards through locally developed county Land and Water Resource Management Plans;
- * Streamline the states nonpoint program grants system and increase base allocations to counties to support the implementation of their LWRM plans.

We have supported the redesign of the state's nonpoint program, including establishment of statewide performance standards and creation of a more efficient means of abating Wisconsin's #1 water quality threat. We also took the opportunity from DATCP to provide input on the proposed rules on ATCP 50.

Currently the draft rule sits before the legislature which contain many changes-several of them significant and several of them for the better. However, after reviewing the final draft, we feel the rule still falls short of expectations. We are requesting the following nine changes be made to the final draft of ATCP 50.

1. Change rule provisions so that new and higher cost share payments are used as incentives to encourage voluntary cooperation and compliance with performance standards.
2. Clarify the rule to ensure that a reasonable, but finite period exists for the length of time cost sharing can be offered, consistent with DNR's proposed NR 151.09 and 151.095.
3. Clarify the rule to ensure minimum standards for documentation of compliance activities.

4. Clarify the rule to ensure that mandatory cost sharing requirements will not apply to pre-existing local ordinances or ordinances adopted under Chapter 59, State Stats.
5. Clarify the rule to ensure that DATCP's approval authority over county land and resource management plans is limited solely to compliance with statutory requirements under Wis. Stats. 92.10.
6. Add, under proposed S 50.60, all criteria that the Department will use to review local livestock ordinances under Wis. Stats. 92.15.
7. Clarify the rule to ensure that cost-sharing requirements do not apply to compliance activities not covered under the state performance standards or provisions.
8. Exempt, under proposed ATCP 50.40(14), all non-structural conservation practices from deed recording requirements for cost-share agreements.
9. Delete provisions that require all farmers to have one specific type of nutrient management plan in order to comply with DNR's proposed nutrient management performance standard.

We also request and believe that the legislature should fully review ATCP 50, and consider incorporating the above changes to ATCP 50 which will be consistent with the needs of the counties and good environmental stewardship. Should you have questions please contact me at (920) 467-5747. Thank you.

Sincerely,



Patrick Miles, County Conservationist
Sheboygan County Land and Water Conservation Department

cc: Representative Joseph Leibham
Representative Steve Kestell
Representative Glenn Grothman
Sheboygan County Land Conservation Committee
Adam Payne, Administrative Coordinator
Senator Mary Panzer

Chairman:
Agriculture Committee



Member:
Conservation & Land Use
Consumer Affairs
Natural Resources
Utilities

Al Ott

State Representative • 3rd Assembly District

Assembly Agriculture Committee
MEMO

TO: Members of the Assembly Agriculture Committee
FROM: Representative Al Ott, Chair
DATE: April 2, 2001

The following Clearinghouse Rule has been referred to the Assembly Agriculture Committee for a 30-day review period.

Clearinghouse Rule 01-090

An order to amend ATCP 3.02(1)(h); to repeal and recreate chapter ATCP 50; and to create ATCP 40.11, relating to soil and water resource management. These are the Nonpoint source pollution standards. Submitted by the Department of Agriculture, Trade & Consumer Protection.

The deadline for action on this rule is **Wednesday, March 27th, 2002.** A brief summary is enclosed. If you would like a copy of the rule in its entirety (hundreds of pages), please contact my office or check out the Clearinghouse Rules database in FOLIO. We are hoping to have a joint informational hearing scheduled soon so that DATCP and DNR can explain the rule and answer any specific questions. Questions may be directed to Beata Kalies in my office via email or 6-5831. Thank you!



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection

James E. Harsdorf, Secretary

April 3, 2002

Representative Alvin Ott
Assembly Agriculture Committee, Chair
318 North, State Capitol
Madison, WI 53707-7882

Dear Representative Ott: *al*

At your request, I would like to offer a written response to the March 14, 2002 letter from the Wisconsin Land and Water Conservation Association (WLWCA) concerning the final draft of ATCP 50.

Prior to addressing the four issues raised by WLWCA, it is critical to note that DATCP has gone beyond its rulemaking responsibilities to provide informal and formal opportunities for the counties to be heard. WLWCA acknowledges that the department has provided "many opportunities" for county input. This additional effort has produced valuable results. By WLWCA's own admission, this draft rule has "many changes" and is "better" than earlier drafts. It also explains why in less than six months the list of county issues has narrowed from over 30 to just four.

Following a restatement of each rule comment from WLWCA, I offer these responses:

- 1) **WLWCA Comment:** It establishes a negative incentive whereby increased cost sharing payments are only required for enforcement situations while less cost sharing may be negotiated for landowners who are willing to comply voluntarily.

DATCP Response: The Legislature has directed counties to offer farmers at least 70% cost-sharing (90% for economic hardship) if a county *forces* a farmer to change an *existing operation* to comply with a performance standard. ATCP 50 merely implements this legislative mandate. Under ATCP 50, a farmer's "cost" includes construction and foreseeable maintenance costs, including the cost of taking land out of production (if more than ½ acre). These are actual costs that farmers will incur. WLWCA has acknowledged the fairness of including these costs: "Counties can support these additional costs but would hope that they could be used in a way that encourages landowners to want voluntary comply."

Under ATCP 50, counties also are free to negotiate *voluntary* cost-share agreements with farmers. In a *voluntary* agreement, the parties are free to negotiate the cost-share amount. While counties may offer less than 70% (90% for economic hardship), they also may offer more if they combine state funds with funds from other sources. Most farmers want to comply voluntarily. Many farmers will enter into voluntary cost-share agreements, on terms acceptable to the farmer and the county, without being *forced* into compliance.

- 2) **WLWCA Comment:** It lacks critical measures for ensuring accountable use of nonpoint dollars.

DATCP Response: ATCP 50 strengthens accountability for the use of state nonpoint dollars:

- It gives counties more flexibility in the use of funds, but requires more accountability. Each county must adopt a land and water resource management plan. DATCP must approve the plan after consulting with the Land and Water Conservation Board. Counties must identify their conservation priorities and cost-effective strategies. Counties must develop their plans in consultation with DNR and local stakeholders.
 - It establishes standards to ensure that counties are making progress in meeting priorities and properly using state tax dollars. ATCP 50.12(2)(j) imposes "monitor and measure" requirements to determine county progress in meeting conservation objectives. ATCP 50.18 requires an annual report on county progress. Rule provisions set up a clear annual accounting system, clarify record keeping and reporting requirements, and eliminate unnecessary paperwork.
 - It spells out standards and procedures for DATCP grants to counties. These procedures are "transparent," so that counties and others can see exactly how dollars are being allocated. DATCP allocates available funds in an *Annual Grant Allocation Plan*. DATCP prepares this plan in cooperation with DNR. The Land and Water Conservation Board reviews and comments on a draft plan, before the DATCP Secretary signs it. Counties and other interested parties may also comment on the draft plan.
 - It sets clear standards for cost-shared practices, to ensure that state money is well spent.
 - It spells out clear standards and procedures for county cost-share payments to landowners.
- 3) **WLWCA Comment:** It undermines local control by providing no criterion for land and water plan approval when funding is based on having an approved land and water plan.

DATCP Response: ATCP 50 requires each county to adopt a land and water conservation plan, as mandated by the Legislature. The plan must meet standards specified in s. ATCP 50.12. The standards give counties enough flexibility to adapt to varying local conditions and priorities. The rule provides checks to ensure fair treatment. Counties must determine water quality objectives in consultation with DNR. DATCP must consult with the Land and Water Conservation Board before approving or rejecting a county plan. DATCP has already approved interim county plans for all counties, and will work with the counties and DNR to develop suggested guidelines for future plans. Guidelines are the most appropriate vehicle to handle these issues because of the changing nature of conservation priorities and new program demands. The rule indicates in a note that county work plans should be based on a reasonable assessment of available funding and resources.

- 4) **WLWCA Comment:** It undermines local nonpoint program implementation efforts by expanding mandatory cost share payments in local ordinances.

DATCP Response The Legislature has directed counties to offer farmers at least 70% cost-sharing (90% for economic hardship) if a county *forces* a farmer to change an *existing operation*

Representative Ott

April 3, 2002

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to comply with a performance standard (see ss. 92.07(2), 92.105(1), 92.15(4) and 281.16(3)(e), Stats.). ATCP 50 merely implements this legislative mandate. If counties could avoid this state cost-sharing requirement by proceeding under a county ordinance, the cost-sharing requirement would be meaningless. DATCP believes that the Legislature intended a consistent statewide approach. ATCP 50 reflects this consistent approach.

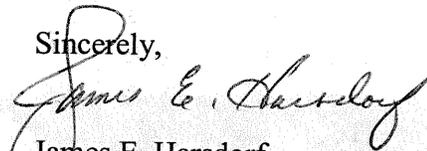
DATCP is justified in interpreting local regulations to include ordinances adopted under ch. 59, Stats. This interpretation is consistent with AG's informal opinion that subjects local regulations adopted under ch. 59 to the requirements of s. 92.15, Stats.

The rule strikes a balance between local interest in regulation and a farmer's right to cost-sharing. For example, cost-sharing requirements do not apply to a nutrient management plan required under a permit for a manure storage system voluntarily constructed by a landowner. Also these requirements do not preclude emergency or interim action taken in response to a pollution discharge, to prevent or mitigate imminent harm to waters of the state.

In an addendum to this letter, DATCP has provided responses to other WLWCA comments.

Thank you for the opportunity to respond to these comments. I trust that this letter has addressed these issues to your satisfaction. DATCP staff will be available to answer your questions or concerns at the informational hearing.

Sincerely,



James E. Harsdorf
Secretary

JEH/rmc

c: Members of the Assembly Agriculture Committee
Representative Eugene Hahn
Representative John Ainsworth
Representative Jerry Petrowski
Representative Scott Suder
Representative Steve Kestell
Representative Gabe Loeffelholz
Representative Garey Bies
Representative Barbara Gronemus
Representative Joe Plouff
Representative Martin Reynolds
Representative John Steinbrink
Representative Julie Lassa
Representative Marlin Schneider
Representative Mary Hubler

Response to additional WLWCA comments on ATCP 50 Addendum to April 3, 2002 letter from DATCP

Duration of Cost-Share Offer

A note to s. ATCP 50.08 states: "A county may impose a reasonable deadline by which a landowner must accept or reject the county's bona fide cost-sharing offer." If a farmer fails to accept the offer within a *reasonable* time period specified by the county, the county has satisfied its obligation to make a cost-share offer.

Cost-Sharing Linked to Performance Standards

Under ATCP 50 (and state statutes), a county must offer cost-sharing to a farmer if the county *forces* the farmer to change an *existing operation* to comply with a performance standard. DNR rules define what constitutes an *existing operation*. A non-complying operation will normally qualify if it exists on the effective date of the performance standard. But if the operation is later brought into compliance, it will no longer be eligible for cost-sharing.

Review of Local Livestock Regulations

ATCP 50.60 spells out standards and procedures for reviewing local livestock regulations. DNR proposes essentially identical rules under NR 151.096. Consistent with s. 92.15, Stats., a county must obtain DATCP *or* DNR approval before adopting local livestock regulations that exceed state standards. DATCP may approve more stringent regulations if DATCP finds that the local regulations are necessary to achieve compliance with water quality standards under s. 281.15, Stats., and that compliance cannot reasonably be achieved by less restrictive means.

This standard provides adequate procedures to ensure fair application of the review standards. Before DATCP grants or denies the application, it must solicit a recommendation from DNR. DATCP must reduce its decision to writing, and include the reasons for its decision. DNR has independent approval authority.

Nutrient Management

The Legislature has directed DATCP to implement a statewide nutrient management program. DATCP must require nutrient management plans to comply with DNR's performance standard for nutrient management (NR 151.07). DATCP believes that the proposed nutrient planning requirement under ATCP 50.04(3) is reasonable and appropriate. Without planning, practices such as soil testing have limited benefits. Planning is the minimum practice needed to achieve the conservation objective of sound nutrient management. Planning is practical and can be incorporated into routine farming activities.

Recording Cost-Share Agreements

Cost-share maintenance obligations cannot be effectively enforced against subsequent landowners unless the cost-share agreement is recorded with the Register of Deeds. ATCP 50.40(14) requires recording of cost-share agreements over \$10,000 (the amount increases in later years). When the state invests this much money in a single cost-share agreement, this is a reasonable precaution to ensure that the cost-shared practice is effectively maintained for the duration of the cost-share contract (typically 10 years). Cost-share agreements for "soft" annual practices will typically fall under this dollar threshold, and will thus be exempt from recording in most cases.



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Scott McCallum, Governor
Darrell Bazzell, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY 608-267-6897

April 3, 2002

Honorable Alvin Ott, Chairman
Assembly Agriculture Committee
Room 318 North, State Capitol
Madison, WI 53708

Honorable James Baumgart, Chair
Senate Environment Committee
Room 306 South, State Capitol
Madison, WI 53707

Subject: ATCP 50 Rule

Dear Representative *al* Ott and Senator *Jim* Baumgart:

I am writing to express my support of ATCP 50, the rule being brought before you on April 4, 2002 at your joint information meeting.

As you know, ATCP 50 is the companion rule to the Department of Natural Resources (DNR) nonpoint source performance standards rule package. It establishes the critical technical standards needed by farmers to implement DNR rules and has evolved in parallel with the DNR rules. I know the Department of Agriculture, Trade and Consumer Protection has worked diligently over the past four years with a wide variety of affected parties to develop the soundest rule package possible. As did the DNR in its rule-making effort, DATCP had to grapple with many difficult issues in completing its work on ATCP 50. I am confident that DATCP staff, Secretary Harsdorf and the Agriculture Board have forwarded a rule that both protects the environment and is workable for agriculture in Wisconsin.

Thank you for the opportunity to express my position on the proposed ATCP 50 rule.

Sincerely,

Darrell
Darrell Bazzell
Secretary

Cc: Secretary James Harsdorf
Representative DuWayne Johnsrud

4/2/52 ~~30416~~

Land Conservation People + Dates

Conservation Association Board answers Counties Board.

- Dave Jelski, Dir. Land + Water Resources Bureau
- Rich, (works at Dave)
- Mike Dummer, ^{Boone} Datep Chairman
- Nick Neher, Adm. Div. of Ag. Resource Mgmt
- Rip Off,
- Rebecca Bauman, Exec. Dir. WL+WCA
- Curt Pawlitz, (works at Rebecca)

- Al is upset & how conservation people have been dealing w/ Datep
- She has talked to Mr. Applegate (Frank, Linguist)
they do not represent the association...
... who have seen problems ...

- There is dissatisfaction in the group with the Department
But the revolution was unfair & you don't do it that way.

- majority of employees are workers with supervisors
- Lack of direction, not knowing how the work will need to operate
=> Lack of trust of Datep, Creates Fear

Mike - Rule has been purposely left un-prescriptive
so there would be flexibility...

Mike - consistency for ag producers, consistency for state
very important...

- Conservation association people
are of people + conservation people,
they will defer in some areas

= AG opinion on Statute requirement ^{on scope +} for cost sharing +
local ordinances - Curt wants copy of
opinion -

Rutep + DMC legal counsel struggled w/ drafting +
followed AG's opinion very closely ...

- Argument is scope of rule re: local ordinance

= Heart of the problem for counties, in five years
what have I gained
cost share with practice scope broader
but funds are reduced

AI -

"Rebecca Baumann" <wlwca3@execpc.com>
04/04/02 06:11 PM

To: "Gina" <wlwca@execpc.com>
cc:
Subject: ATCP 50 Update

Attached is a long memo explaining a recent meeting with Representative Ott, the ATCP 50 hearing, and Senate action to move the DATCP land and water division to DNR and UW Extension. Please read it carefully and keep me posted on any thoughts and actions. I apologize in advance for any errors and the length. There was not time for a more concise version. I thought it was more important to get information to you so that you could decide about taking action.

In the next e-mail I will send DATCP's response to Rep. Ott concerning the WLWCA request for hearings. I am sending it separately as it is a scanned document and may be slow to load.

I will not be in the office tomorrow as I will be working all day Saturday. Sorry for the inconvenience, but leave a message and I will talk to you as soon as possible.

Thanks.

Rebecca Baumann, Executive Director
Wisconsin Land and Water Conservation Association
Phone: 608-833-1833
Fax: 608-833-7179
WLWCA Homepage: www.execpc.com/~wlwca

To: Land Conservation Committee Supervisors and County Conservationists
From: Rebecca Baumann
Date: April 4, 2002
RE: ATCP 50 Update

Immediate Action is needed if you are interested in public hearings. Please read carefully, as I believe the best action is narrowly directed and should be short and to the point.

I am reporting on three events. One, a meeting with Representative Ott yesterday; secondly, the hearing today by the joint committees reviewing ATCP 50 (This hearing was not a public hearing and only those asked could address the committee.); and finally the Senate's action to move the Water Resource Bureau out of DATCP and into DNR and UW Extension

The Meeting, April 3, 2002

I had requested a meeting with Representative Ott a while ago because he had asked very pointed questions on three public occasions concerning WLWCA and WALCE and also our difference from Wisconsin Counties Association. In the meantime, ATCP 50 went to his committee, the Assembly Agriculture Committee, for review. (The rule also went to the Senate Environmental Committee chaired by Senator Baumgart.) Curt Pawlish, our attorney had helped set up the meeting and was with me. When we arrive, we were surprised to see also in attendance was Nick Neher, Dave Jelinski, and Richard Castelnuovo (all from DATCP) along with Mike Dummer, DATCP Board Chair. Representative Ott said, "I assume you are here to talk about ATCP 50." I said, "No, but I would be glad to discuss it with you if you like."

A little background: A couple weeks ago when I had called Representative Ott's office to ask about whether there would be a public hearing on ATCP 50, I was told that none had been scheduled because no one had requested one. His office staff said if I was interested that a flood of letters was not necessary, but I could put the request into writing. I did that, copied all members of both the Senate and Assembly committees and also sent a copy by e-mail to every county conservation office. (I also sent a copy to Dave, Mike Dummer and Jennifer Sunstrom.) Representative Ott said to me on Wednesday and again this morning at the hearing both, that he was "disappointed and surprised to receive my letter requesting a hearing. He was disappointed that I said the rule fell short of expectation. The reasons listed in that letter are the following:

- 1) It establishes a negative incentive whereby increased cost sharing payments are only required for enforcement situations while less cost sharing may be negotiated for landowners who are willing to comply voluntarily.
- 2) It lacks critical measures for ensuring accountable use of nonpoint dollars.
- 3) It undermines local control by providing no criterion for land and water plan approval when funding is based on having an approved land and water plan.

4) Undermines local nonpoint program implementation efforts by expanding mandatory cost share payments in local ordinances.

Most of the next hour and a half was spent discussing these points, but also two other critical matters.

One is that there is the belief, at least by Representative Ott that a few vocal county conservationists are setting the policy for both WALC and WLWCA, and in particular causing dissatisfaction with ATCP 50. He also questioned whether the county supervisor voice was being heard, or whether the county conservationists were making decisions. I told him that the dissent on ATCP 50 was not 100%, but that it was a majority voice; and that supervisors, while being dependent on their county staff for information, particularly information concerning a rule of this complexity, had continually voiced to me that they both trusted their staff opinions and depended on them for direction.

I am attaching the WLWCA letter to Rep. Ott again with this e-mail. I am sending in another e-mail, DATCP's written response to my letter. I did not see a copy of their response until yesterday in Rep. Ott's office. Most of their answers I had refuted or explained in conversation before seeing what is printed. DATCP's response was also distributed today to both committees. I will be submitting a written response to Rep. Ott, but I wanted to get this general information to all of you first.

Today's Hearing on ATCP 50, April 4

Repeating-- the hearing today was before the joint committees reviewing ATCP 50. This hearing was not a public hearing and only those asked could address the committee.

Mike Dummer, Dave Jelinski, Nick Neher did almost all of the speaking. Russ Rasmussen, DNR, answered a few questions.

The bottom line is that Rep. Ott does not want to have hearings on ATCP 50. He would like for it to become law as submitted. He was concerned that I had sent the letter, and he was bothered that WLWCA and WALCE were not supporting ATCP 50. He was directing his committee to DATCP's response as explanation of our problems with the rule.

Highlights from Dave Jelinski's power point presentation and comments and questions from the committees.

1. ***The county land and water committees and departments were clearly identified as the local implementation agents.*** I believe we should focus on this as the reason the committees should hear from us at a public hearing. It is important for them to recognize that more than three counties are concerned and that there are major problems with the rule. Even if everyone else except the land conservation departments is satisfied with the rule, and even if some counties are ok with the rule, this rule must be implemented by all counties. If even 30 counties have problems, those problems or concerns should be addressed because we must implement the rule and have such a major role.

In DATCP's power point presentation they gave the numbers of those attending public hearings, but once again did not accurately report that the majority of people speaking at the public hearings were county conservation people opposing the rule.

2. In the process of explaining that much public input and local conservation input was provided in the writing, a big emphasis was placed on the 15 *Advisory Outreach* meetings. If I am correct, a number of you were on that committee, and I believe issues that we still have were raised at that time or decisions/consensus was reached, then were later changed. It is important to let the committee members know that the number of meetings and holding meetings is not equal to working with us, addressing concerns, and coming up with a workable solution.
3. The following is a rather difficult situation that I believe requires careful thought and wording when responding. I have heard the comment from many of you that this rule won't help us at all. We gain nothing that we can't already do. Rather it makes your job more difficult and ties your hands more with extra cost share requirements and restrictions on your local ordinances.

The argument that DATCP is repeatedly stating is that this *rule gives you maximum flexibility*; that counties are free to decide and that your land and water plans are the basis for many decisions. It appears we are arguing for less local decision-making and more state control. I can't give you the answer on this, but this is what DATCP is arguing.

DATCP says, "The counties have considerable latitude and opportunity to achieve water quality goals."

4. Cost Share payments. As we know, cost share payments are required by statute. A big deal is being made of this, and we both accept and agree with this idea that there should be cost share payments. As I argued in Ott's office yesterday, it is the new and wider scope of the cost share that is of concern, especially with so few cost share dollars available. We are concerned that cost share payments are now being required for more practices where were previously not required, i.e. in zoning ordinances, and also that cost share will now be required before we can enforce any of other local ordinances that might contain a conservation practice. It is important to emphasize our support for the agriculture community for both fair and generous cost share payments. I do not know if this is even a major point that needs to be argued, as it has many negative implications for us. Some of you that work closely with the farmers and believe that they see this differently might want to comment. We haven't really addressed that one of the factors DATCP is using to determine the amount of payment is CREP, which is a really high and unusual payment. Think about it.

Rep. Petrowki asked "What is fair and just compensation?" He received the answer that it meant rental rates and CREP payment amounts. He also asked about where we would get the dollars for this costly program?

5. About Staffing Grants. (This is really an aside, but a good time to give you some information. I believe there is a big enough hole in ATCP 50 that we should not argue the staffing grants again here, or at least not during this appeal for hearings. It appears to be too self-serving on our part.) The rule reads that the watershed amounts will be paid or \$85,000 to each county. The remaining funds are discretionary for the Secretary of Agriculture. The staffing grants committee did not realize that DATCP was recommending that BASG amounts should be totally eliminated. This became very clear at the Land and Water Board meeting on Wednesday and was confirmed by Russell Brock, Jennifer Sunstrom, Troy and me. There should be enough money to bring all counties previously below \$85,000 up to that amount, keep other counties at their 2002 level, and work with the dollars that are freed up from 2001 closed watersheds to have an allocation on the county match formula. Rather than have this included in the rule, it can be argued, and I think possibly won, at the Land and Water Board. Nick has confirmed that we are trying to avoid the yo-yo effect in grant funding as the watersheds close. I recommend not arguing this here, but rather I will be offering a recommendation that we discuss this with all of the Land and Water Board members soon, and in preparation for the June meeting and that we try to get a commitment from them to address this issue to our satisfaction.

6. Fiscal Estimate and the cost of the program

There was quite a bit of discussion here. Everyone knows that we have a billion dollar deficit, and someone said to look for another billion-dollar deficit next year. DATCP clearly said that the beauty of this rule is that if there isn't money for the rule, then it will be slow in being implemented. If there is more money, then it will be faster. That is to reassure farmers that without cost share dollars, they won't be required to do anything. DATCP also sang the praises that federal and county dollars or other creative ways of getting funding could be used to further the nonpoint program faster. Representative Schneider asked a most interesting question near the end and is requesting a written comment from DATCP in return. He asked, "How much will it cost if we do nothing?" Russ answered that we would need to address such things as impaired water quality affecting drinking water, tourism, and the higher cost of clean-up - to name a few (and on the spur of the moment). I think that we might also address the question, what is the cost if we can't implement this rule faster!

DATCP estimates that the 10 year cost of implementing the rules is \$40 million and that \$30 million is currently available through federal, state, local, and other funding (i.e. environmental groups). The other \$10 million needed will either be up to the creative powers of the county or will mean that the program is implemented slower.

Nick said, "Counties can be very innovative. Landowners can go to their land conservation office, and they will provide free soil testing. LCD's do that every day." I'm not sure that exactly addresses this issue, but I thought it was a comment worth noting, especially noting the dependency on LCD's.

Senator Baumgart praised his own Sheboygan County for their county cost share program.

Other comments/questions:

Representative Suder asked about who would oversee implementation of the rule? Dave Jelinski answered that DATCP had administrative oversight.

Immediate Action is needed!

If there is a public hearing, it must be held soon. I believe April 15 or 18 is the deadline. I do not know the feelings of the senate committee, but Rep. Ott is seeking support from his committee not to hold hearings. Especially **if one of your representatives is on the Agriculture Committee**, please call them and talk to them about the rules and our desire for a hearing. If you have a Senator on the Environmental committee, it would probably be a good idea to check in with them as well to see whether they will call for a hearing. I believe that overloading all of the Representatives or Senators might have a negative effect. But **local counties contacting their own representatives** to let them know that we have tried hard to work with the department, that we still have questions and problems and that we would like an opportunity for a public hearing would be appropriate. Please do not overwhelm the legislators. They are working on the budget, and it is not time to give them all your specific comments on the rule. Listen to their opinion first. If they already think we need hearings, then wait to give them more details at the hearing. Their time is short, and they will appreciate your being brief and to the point. At the same time, take time to answer questions and talk to them. If you don't have an answer, get back to them later after you have more information.

Please do not try to cover too many points. I believe our first and foremost message is requesting a fair chance to be heard.

Senate Action to move the Water Bureau out of DATC

Attached is a press release from DATCP explaining that the Senate Democratic Caucus proposed moving the Land and Water Resource Bureau from DATCP and to DNR and University of Wisconsin Extension. WLWCA was not aware of this action nor did we have any action in recommending it. I would suggest that we take no particular action as an association on this item. I welcome any comments or additional information you might have.

Please call if you have questions or need more information. Also, please keep the WLWCA office informed about all calls and letters to legislators so we know who has been contacted and what information has been provided. Your contact, especially the supervisors, is very important.

ATCP 50--

Soil and Water

Resource Management

Presentation for the informational hearing
before Senate Environmental Resources
and Assembly Agriculture Committees

April 4, 2002

Rule history

- 1997 Act 27, and 1999 Act 9
- 1998-1999 Preliminary input
 - 18 listening sessions
 - 15 meetings of outreach advisory committee
 - numerous work group meetings
- 1999-2001 Board meetings
 - over 13 meetings of ARMC committee

Rule history

- March-April 2000 hearings (first draft)
 - 12 hearing sites
 - 850 attended; 400 filed appearance cards; 115 testified
 - 1,600 comments from individuals or organizations
- August 2001 hearings (second draft)
 - 5 regional hearing sites
 - 170 attended; 110 filed appearance cards; 50 testified
 - 1,200 comments from individuals or organizations
- October-December 2001 meetings
 - County conservation staff and ARMC committee

2001 comments

- Costs
 - 70% cost-share is not adequate
 - Cost-share provisions are too expensive
 - Cost estimates must accurately reflect true costs
- Nutrient management
 - Strengthen phosphorous standard
- County
 - Increase participation in rule design and implementation
 - Increase funding for conservation staff

2001 comments

- Ordinances
 - Burdens farmers with regulation
 - Cost-sharing provisions undermine permit programs and other regulations
 - Unnecessary state oversight of local regulation
- Consistency
 - Coordinate with DNR rules

Rule milestones

September-December
2001

Revisions to rule based on
hearings and feedback

December 2001

ATCP Board committee
recommends approval

February 2002

LWCB recommends
approval

February 2002

ATCP Board review and
approval

ATCP Board hearing on final draft

--Comments in support of the rule

- Dairy Business Association
- Jennie-O Turkey Store
- Wisconsin Farmers Union
- Wisconsin Farm Bureau

- DNR
- The Clean Water Coalition
- Sierra Club-John Muir Chapter
- Wisconsin Trout Unlimited

--No comments in opposition to the rule

ATCP Board action on final draft

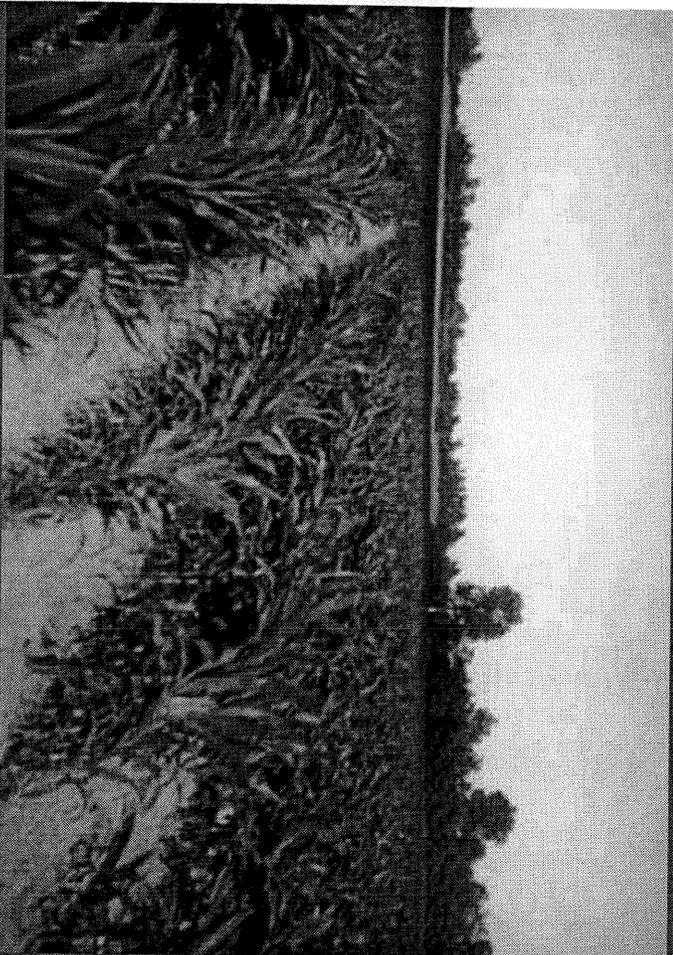
- Approved with two minor changes:
 - Eliminated the 3% present value discount applied to the rental formula used to calculate the cost of land taken out production. ATCP 50.08(3)(d)
 - Allowed counties two options to monitor compliance of farmland in the Farmland Preservation Program: inspection once every six years or on another basis approved by DATCP. ATCP 50.16(5)
- The latest draft also corrects RUSLE II to RUSLE 2

CHAPTER ATCP 50

SOIL AND WATER RESOURCE MANAGEMENT

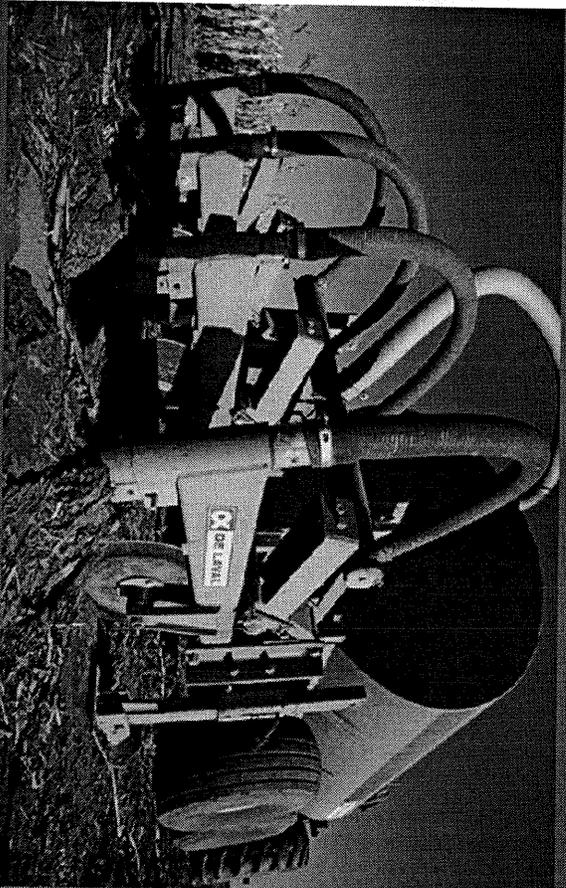
- Subchapter I Definitions and General Provisions
- Subchapter II Soil and Water Conservation on Farms
- Subchapter III County Soil and Water Program
- Subchapter IV Grants to Counties
- Subchapter V Cost-Share Grants to Landowners
- Subchapter VI Soil and Water Professionals
- Subchapter VII Local Regulations
- Subchapter VIII Standards for Cost-Shared Practices

Cropland soil erosion



- Manage to “T”
- Measure by RUSLE II
- Assemble county team to ensure uniform implementation

Nutrient management



- Require annual NM plans by
 - 2003 for new cropland
 - 2005 for cropland near impaired watersheds and outstanding waters
 - 2008 for other existing cropland
- Require qualified planner to develop NM plans
 - Allow farmers to prepare own plans

Nutrient management



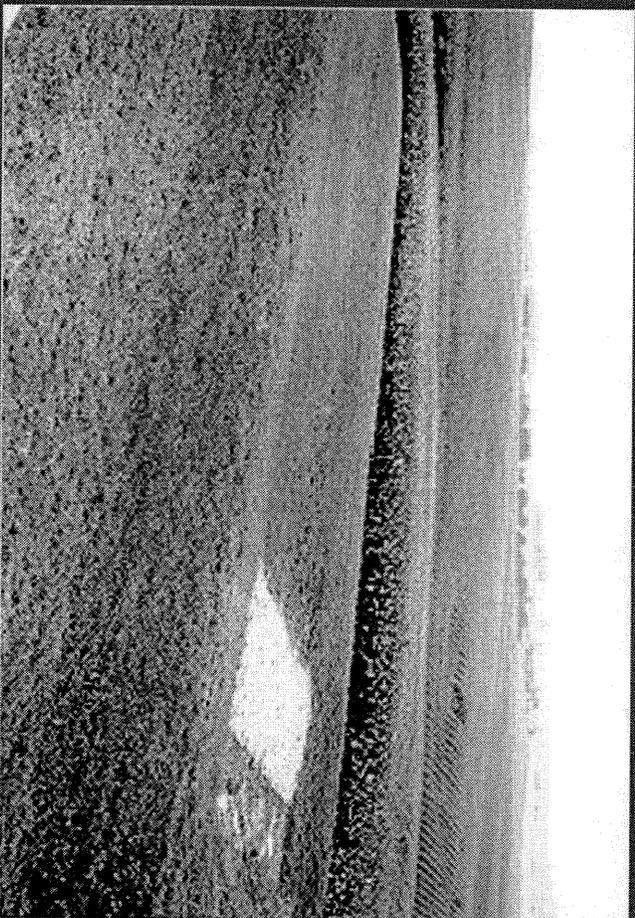
- Maintain current NRCS 590 standard based on nitrogen for incorporated manure
- Evaluate NRCS 590 revision for new phosphorus-based standard
- Agree to develop phosphorus management tools in future rule

Certification of soil test laboratories



- Strengthen DATCP certification process
 - laboratories must demonstrate competency to perform basic tests (e.g. Phosphorus, OM)
 - DATCP or its agent may check records, facilities, and proficiency in performing tests

Technical standards



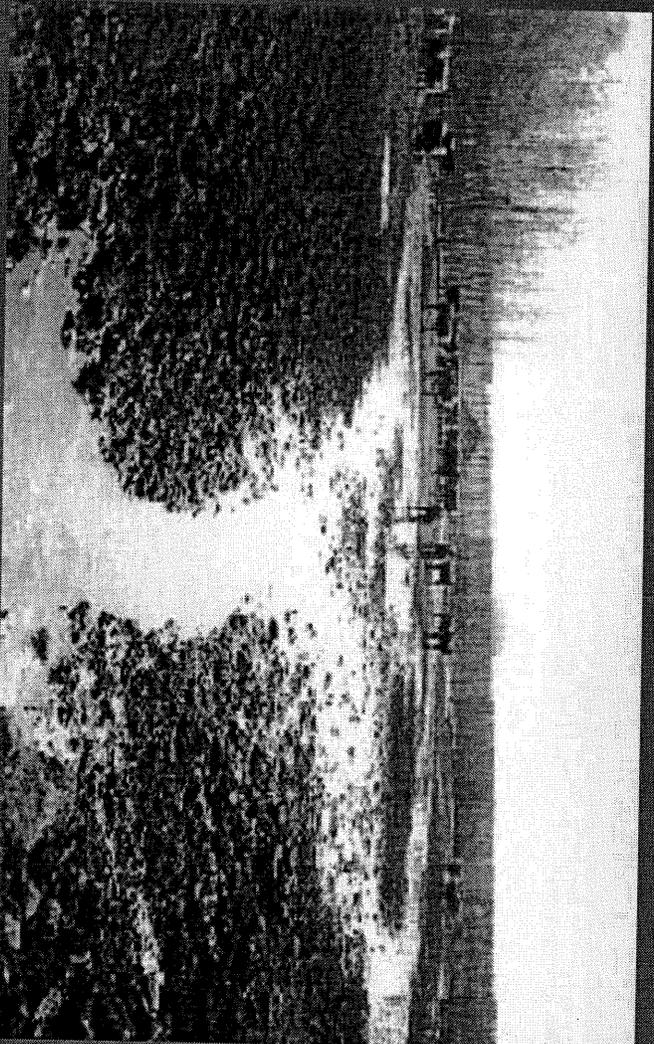
- Update technical standards for cost-shared conservation practices
- Add standard for a new “wastewater treatment strip” practice

Cost-sharing and voluntary implementation



- Provide for voluntary cost-sharing to meet local priorities
- Allow flexibility in contracting
 - pay any amount (subject to limits on use of state cost-share dollars)
 - pay to install but not maintain a practice
 - piggy-back related practices
 - incentive payments for continuing “soft” practices

Cost-sharing for enforcement



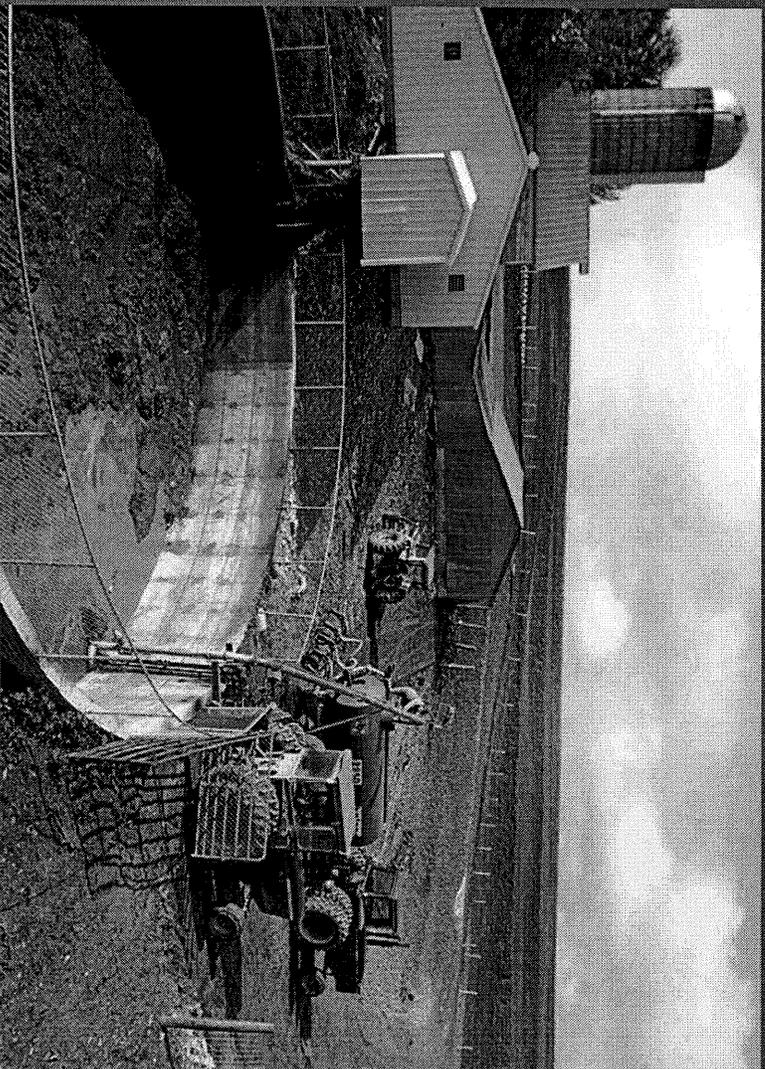
- Required if farmer must install conservation practices that change existing operation
- Define “existing” using DNR rules
- Provide a minimum of 70% cost-sharing (90% for economic hardship)

Simplify economic hardship test



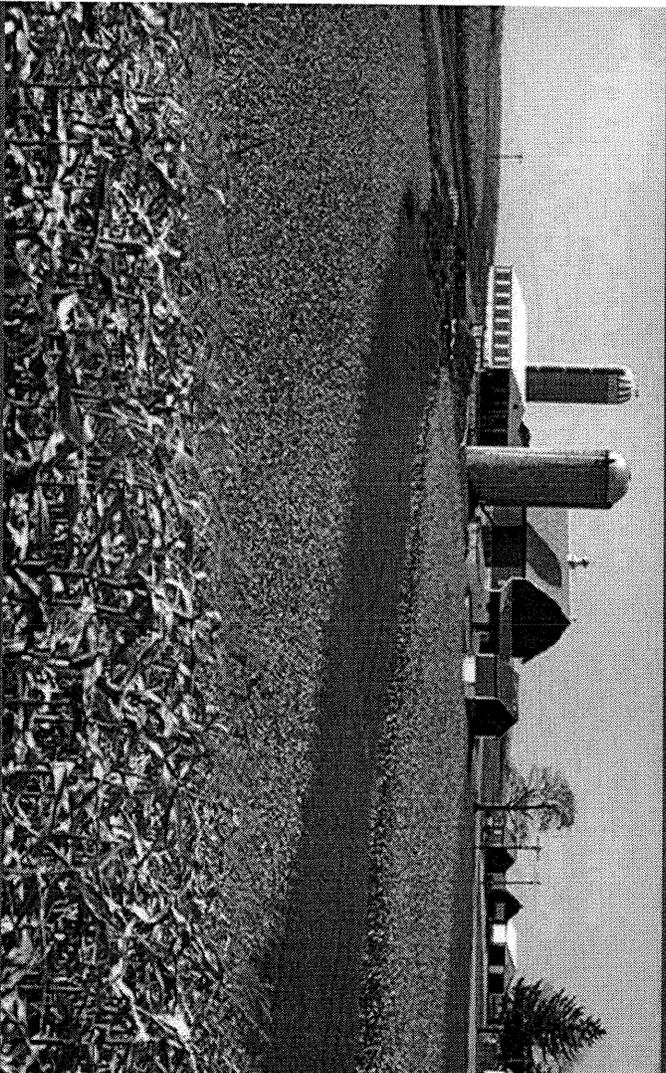
- CPA or bank certifies that farmer cannot pay 30% of costs
- Certification based on a farm financial statement prepared according to GAAP
- Farmer certifies that financial condition fully disclosed to CPA or bank
- DATCP may exercise review

Required cost-sharing



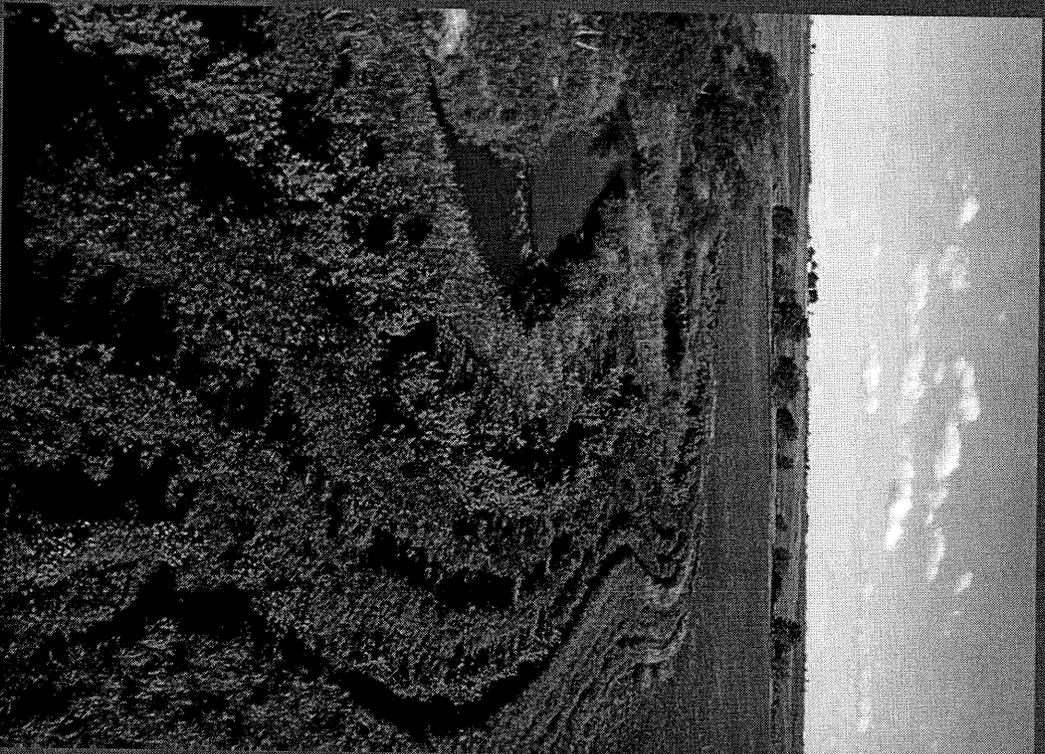
- Installation and maintenance costs
- Reasonable value of necessary farmer's labor, equipment, and supplies
- Cost for land taken out of production
 - Required for as long as land forced out of production

Maintenance costs



- Clarify maintenance costs
 - Exclude barn clean outs and other routine maintenance
 - Cover mowing (if required) at \$10/acre up to twice per year

Cost for land taken out of production



- Not eligible if land used for pasture, hay, or cropping under conservation tillage
- Pay rate based on county rental rates, multiplied by years out of production
- For life of CREP, pay higher CREP rate if cost-share contract has CREP-like terms

Cost-sharing is not required



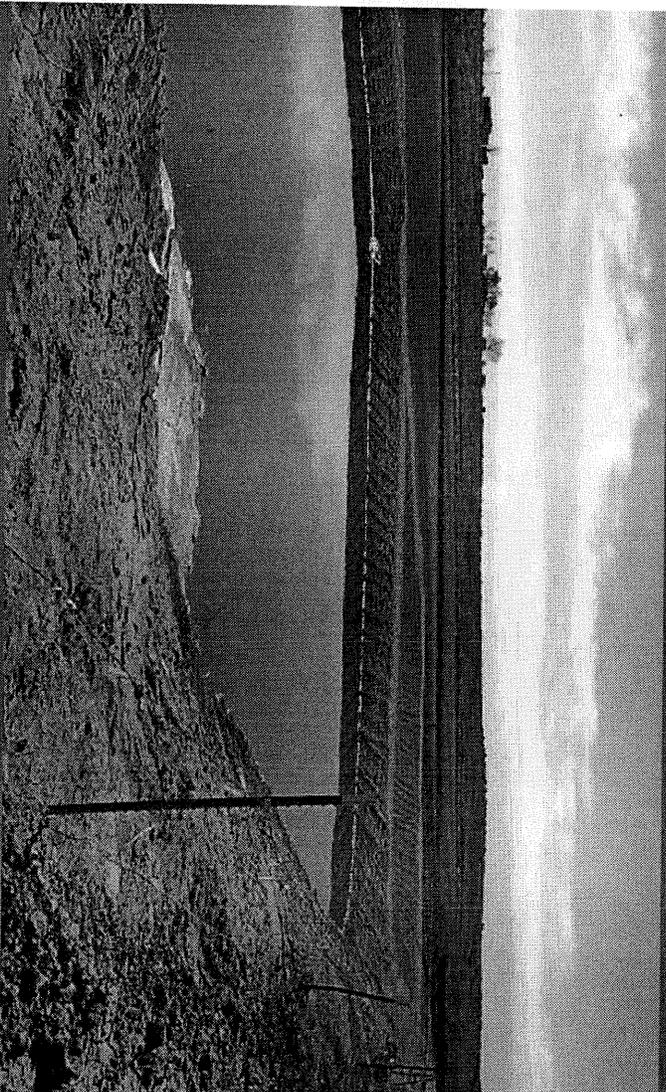
- After 10-year payment to install and maintain capital improvement
- After 4-year payment for nutrient management, conservation tillage and cropping practices
- For practices to correct criminal or grossly negligent discharge
- For practices to meet WPPDES permit requirements
- Before taking emergency action

Farmland preservation tax credit



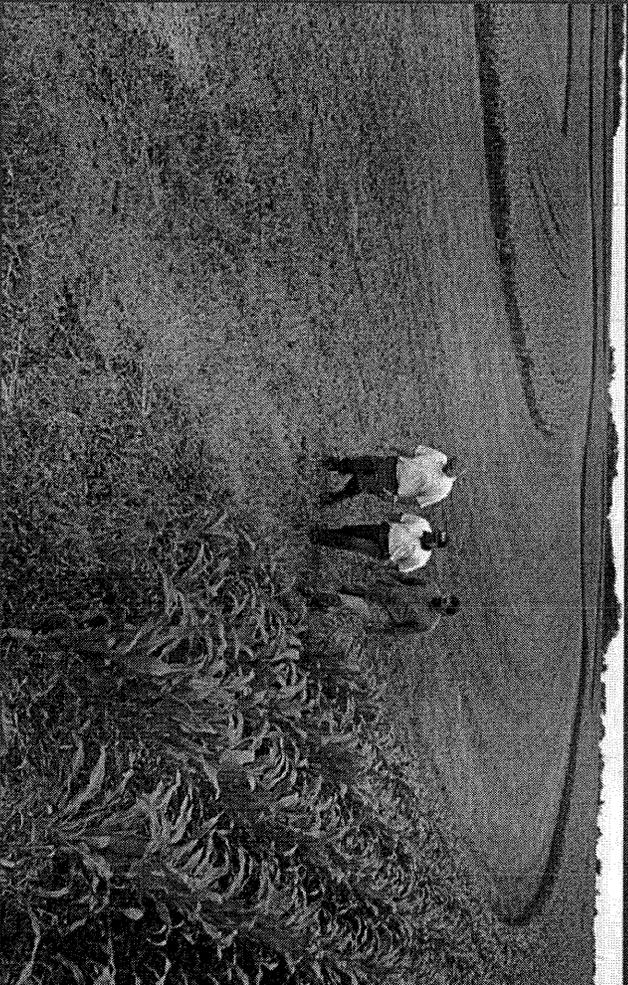
- Does not count as cost-sharing
- Can be suspended if farmers fail to comply with conservation requirements, even if the farmer has not received cost-sharing to comply

Cost-share contracts



- Record with Register of Deeds if contract over
 - \$10,000 (before 2005)
 - \$12,000 (2005-2010)
 - \$14,000 (after 2010)
- Over \$50,000, require DATCP approval by letter
- Parallel treatment with DNR rules

Facilitate county program administration



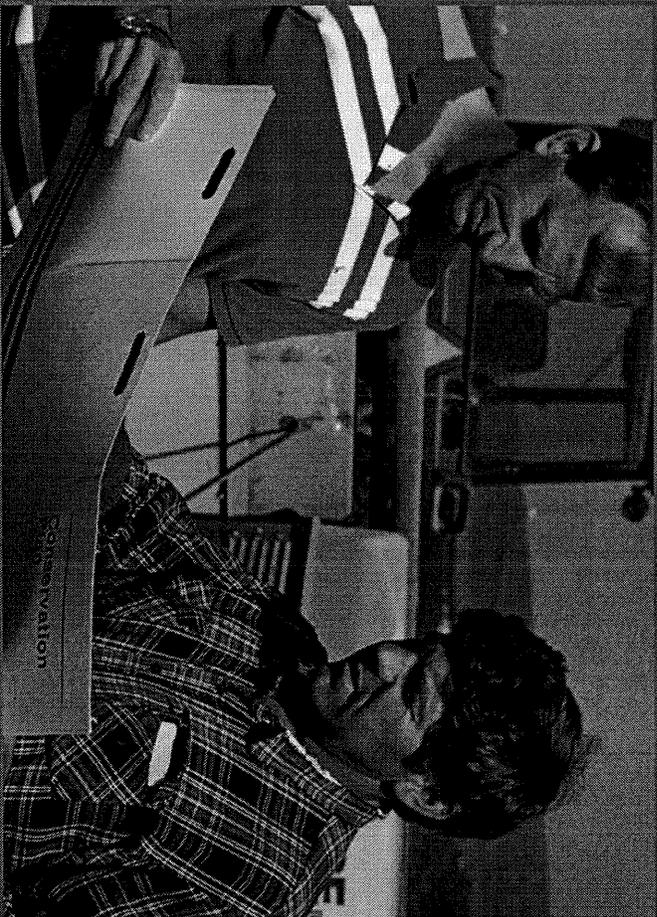
- Clarify that counties have broad discretion to set cost-share priorities
- Eliminate restriction on landowner cost-sharing in cities and villages
- Provide advance notice to comment on annual allocations

County staffing grants



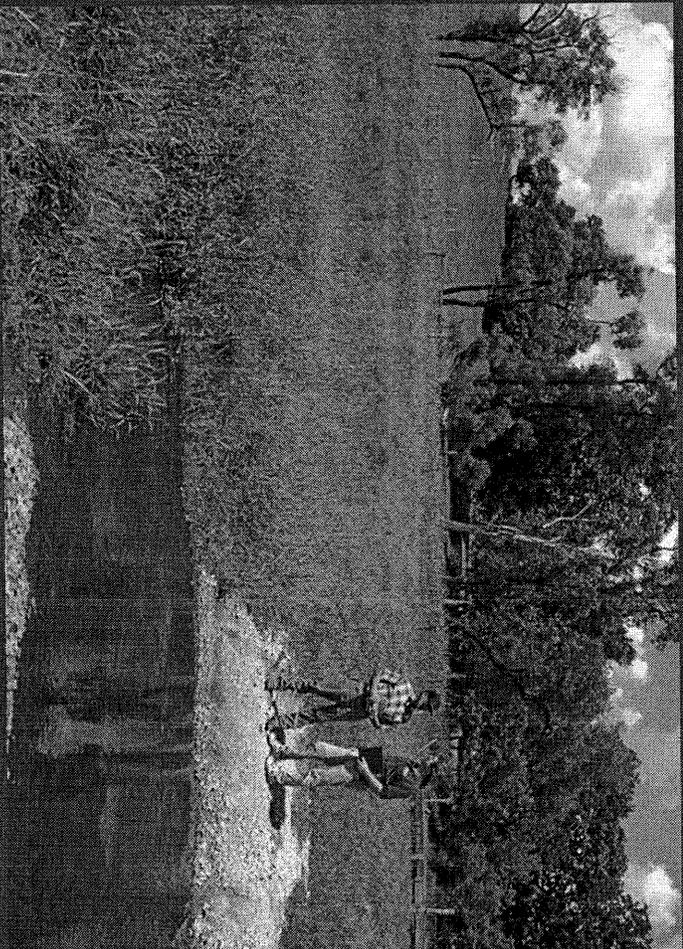
- Provide higher minimum staffing grants (subject to appropriation)
 - Set \$85,000 floor
 - Continue funding DNR watershed staff
- Reimburse at these rates (up to grant amount):
 - 100% for 1st staff person; 70% for 2nd, and 50% for subsequent
 - 90% for staff working in DNR watersheds (includes staff working on CREP or other programs)

County staffing grants



- Clarify reimbursement methods and simplify reimbursement at maximum rates
- Allow payments for consultants
- Expand support costs (e.g. education materials, newsletters, maps)

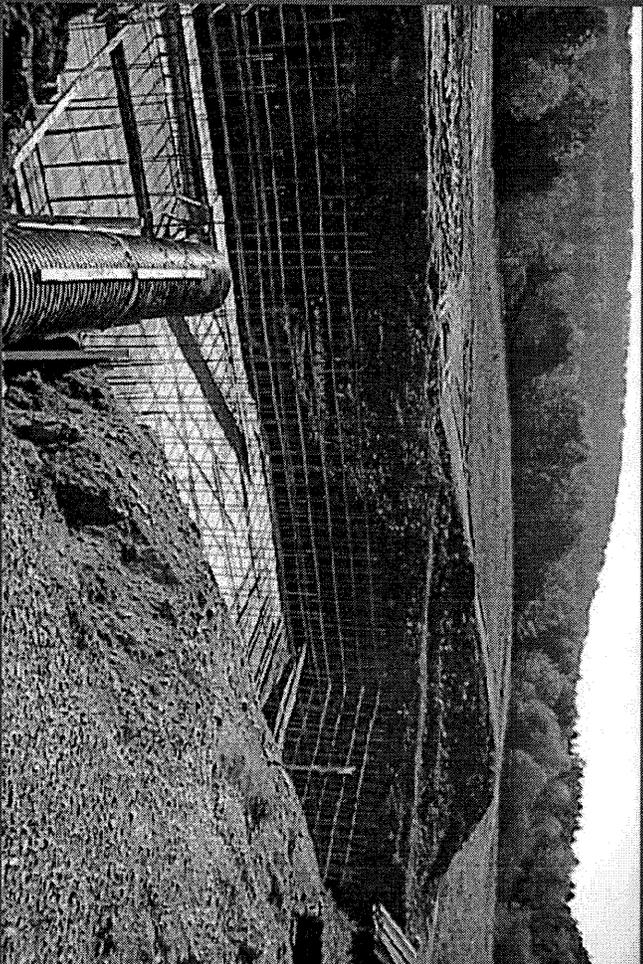
County staffing grants



With DATCP approval,

- Can re-direct funds to a city, village, town, county drainage board, lake district or tribe
- Can re-direct funds to landowner cost-sharing

Review and consistency of local regulation



- Eliminate reasonable consistency requirement
- Eliminate mandatory review of proposed county ordinances
- Provide for DATCP review and comment as part of LWRM plan review

Local livestock regulation



- DATCP or DNR must approve local livestock regulation that exceeds state standards
- Board chairs and heads of local government decide when to seek agency review and must follow procedures prescribed in rule
- Farmers may challenge non-complying ordinances in court

How ATCP 50 differs from NR 151

- Ensures 90% cost-share for economic hardship
- Pays more in required cost-sharing (maintenance, land out of production)
- Provides higher flat rate of cost-share for nutrient management
- Ensures farmers 4 years of cost-share for soft practices
- Treats farmers equally by providing higher CREP payments for buffers

Annual low/high estimates (in millions) for 10-year implementation of standards

Standards	Range
Standard Sheet and Rill Erosion	\$6.4-10.2
Nutrient Planning and Updating	\$18.0-28.0
Manure Storage	\$2.9-4.4
Manure Storage Facilities Abandonment	\$0.1-.02
Manure Management Prohibitions (includes clean water diversion)	\$8.0-10.6
Land taken out of production	\$1.9-3.9
Total Annual Cost*	\$37.3-57.3

*Excludes costs for conservation staff

Estimate of state share of implementation costs (in millions)

Standards	70% state share
Standard Sheet and Rill Erosion	\$4.5-7.1
Nutrient Planning and Updating	\$12.6-19.6
Manure Storage	\$2.0-3.1
Manure Storage Facilities Abandonment	\$0.07-0.14
Manure Management Prohibitions (includes clean water diversion)	\$5.6-7.4
Land taken out of production	\$1.3-\$2.7
Total Annual Cost*	\$26.1-40.1

*Does not account for federal and local funds available for implementation