

# Projected funding sources

(in millions)

Funds for practice implementation

\$16.0 in Bonding  
\$1.0 in Cash

State

Funds for conservation staff

\$10 in Cash

\$3 from EQIP  
\$7 from CREP  
\$2 from 319 Grant

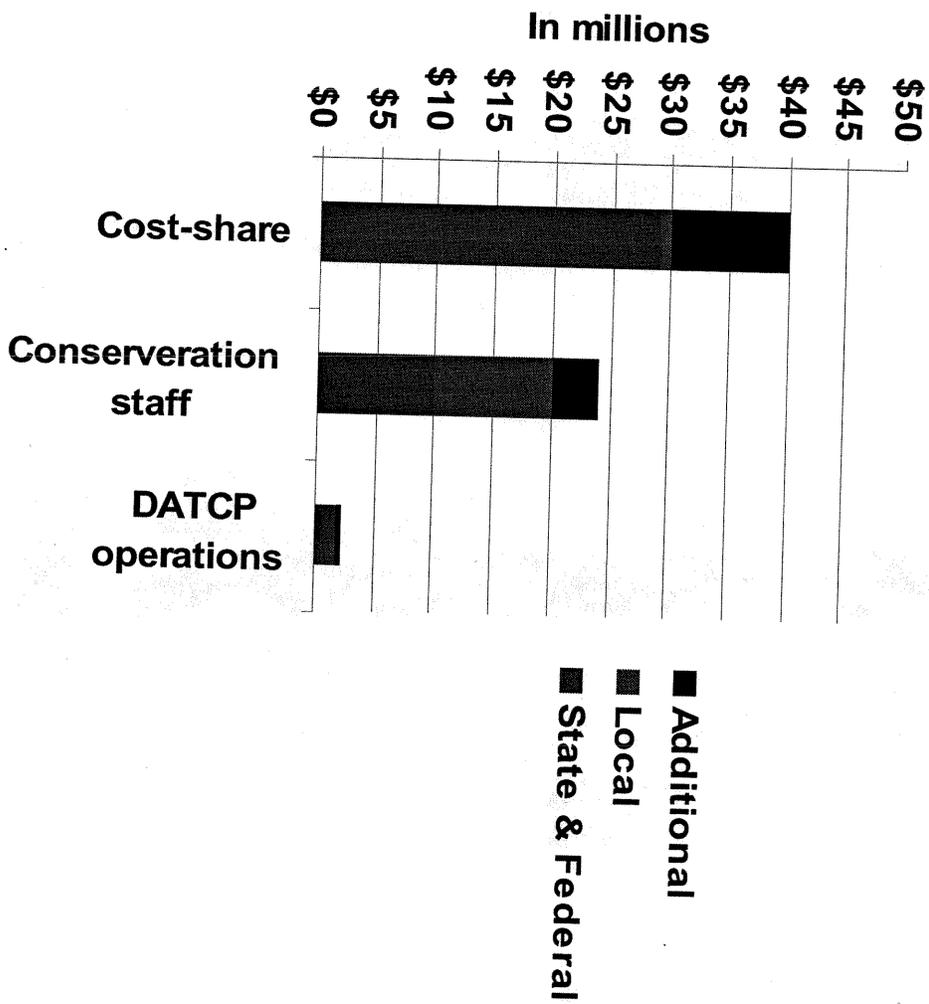
Federal

\$1.0 from county sponsored grant/  
incentive programs

Local

\$10.5 from county contribution to conservation staff

# Estimated public costs for implementation





## For more information

- Examine the rule
- Review approved fact sheets
  - Nutrient Management
  - Local Implementation of Farm Conservation Practices
  - Cost-Sharing and County Funding
- Contact DATCP staff
  - Dave Jelinski, 608-224-4621

The End

4/4/02

## NOWPOINT INFO HEARING AG COMMITTEE + SEN. ENVIRONMENT

- Counties will have latitude to do what works best for each.
- Nutrient Management training has been addressed in the disamen farms initiative + curriculum for farmers to learn how to do this themselves.

5 items farmers have to do:

- Make sure members get copies of rules + the DATCP presentation ...

Cost of doing Nothing  
Reps. Sued against

- March 27<sup>th</sup> - sentenced for 30 days with heavy  
fines - deadline on rule ...

**Kalies, Beata**

**From:** Hafs\_BC [Hafs\_BC@co.brown.wi.us]  
**Sent:** Tuesday, April 09, 2002 4:37 PM  
**To:** Rep AL Ott (E-mail)  
**Subject:** FW: Need for Senate Public Hearing on ATCP 50

-----Original Message-----

**From:** Hafs\_BC  
**Sent:** Tuesday, April 09, 2002 9:28 AM  
**To:** Robert Cowles (E-mail); Senator Dave Hansen (E-mail); Rich Schuster (E-mail)  
 Page\_ME  
**Subject:** Need for Senate Public Hearing on ATCP 50

To: Senator Robert Cowles, Senator Dave Hansen,

March 5, 2002, I testified before the Senate Environmental Resources Committee on N.R.151 and Buffer Strips. ATCP 50, which is the companion administrative rule to NR151 is now being considered. I recently have heard concerns raised that ATCP 50 could be approved without Senate Committee review. Please consider the following:

Over 1250 persons provided public testimony during this past fall's ATCP-50 public hearings with 99% of those providing testimony testifying in opposition to the Administrative Rule. 78 persons representing 38 County Land Conservation Committee's and Departments provided testimony concerning ATCP-50. All 78 persons testified in opposition to the ATCP-50 Administrative Rule. Please be aware that the County's are expected to implement ATCP-50.

At this time of State Budget shortfall, I think it would be wise for a Senate Committee to review ATCP 50 and especially the associated costs. It is estimated to cost \$64 Million Dollars per year.

**My major concerns with ATCP 50 are :**

- 1.) Where will the money come from ? (\$64 Million/year + County staffing costs?)
- 2.) ATCP 50 would pre-empt existing County Ordinances and force Counties to provide Cost-Share Dollars before regulation of pollution problems under County Ordinances could begin. (can we really afford this?)
- 3.) How will the State pay for the (County) staffing of these rules? (will DATCP propose to staff ATCP 50 the same way they proposed to staff CREP?)

I am writing to ask you to please consider holding Senate Public Hearings on ATCP 50. Thank you for your consideration.

Respectfully submitted,  
 Bill Hafs  
 Brown County Land Conservation Department

*Hearing on ATCP 50:*  
*Support of ATCP 50 = \$ support of ATCP 50*

04/10/2002

**Kalies, Beata**

---

**From:** Voight, Eric  
**Sent:** Tuesday, April 09, 2002 3:37 PM  
**To:** Kalies, Beata  
**Subject:** rule 50

Beata,

Just talked to your boss regarding this contact at our office. This is the only contact we have had. I could not remember the exact wording of the email when I talked to Al, but just found it.

Eric

-----Original Message-----

**From:** SCHUSTER, BILL [mailto:WSchuste@co.door.wi.us]  
**Sent:** Friday, April 05, 2002 3:42 PM  
**To:** 'Rep.Bies@legis.state.wi.us'  
**Cc:** 'wlwca3@execpc.com'  
**Subject:**

Garey,

Recently the Assembly Agriculture Committee reviewed the proposed revised ATCP 50 which concerns conservation and water quality programs which address agricultural sources.. It is my understanding that the Chair of the committee Representative Ott does not want to have a hearing on ATCP 50. The reluctance to hold a hearing and receive input concerns me. I fail to understand what the potential harm could be by providing the Assembly Agriculture Committee with additional information.

What's your thoughts on this? Do you feel fully informed on the positive and shortcomings of the proposed ATCP 50? Have you decided to ask for a public hearing to receive additional input?

My colleagues, the professional associations I belong to and I have some concerns we would like to share with the Agriculture Committee in hearing. In addition are there any questions you have regarding the proposed ATCP 50 that I may be of assistance to answer.

Please reply at your earliest convenience; however I believe the opportunity/deadline for a hearing is rapidly approaching.

Thanks.

(Also, thanks **very much** for your assistance on the Spike Horn beach issues. We are still waiting for DNR to discuss/schedule the promised public hearings on that topic. I think they are ignoring us and hoping we go away.)

Bill Schuster



**STATE OF WISCONSIN  
OFFICE OF STATE REPRESENTATIVE BARBARA GRONEMUS**

P.O. BOX 8952  
MADISON, WISCONSIN 53708-8952  
608-266-7015  
TOLL-FREE 1-888-534-0091  
FAX: 608-282-3691  
E-MAIL: rep.gronemus@legis.state.wi.us

DISTRICT ADDRESS:  
P.O. BOX 676  
WHITEHALL, WI 54773-0676  
715-538-4130  
FAX: 715-538-2119

APR 10 2002

April 10, 2002

Representative Al Ott  
Chairman – Assembly Committee on Agriculture  
Room 318 North, State Capitol  
Madison, WI 53708

Mr. Chairman and Dear Al:

You, as well as all members of the Assembly Committee on Agriculture, should be in receipt of a copy of a letter sent to me by Buffalo County Supervisor Larry Balk on behalf of the Buffalo County Land Conservation Department requesting a public hearing by our committee on the presently presented revision of ATCP 50 by the Department of Agriculture, Trade and Consumer Protection. In case you are not in possession of this letter, I am enclosing a copy for your review and consideration.

I am aware that the Assembly Committee on Agriculture has held Informational Hearings on this DATCP proposed rule, and I am confident in stating that each committee member has many questions and reservations in its regard. I am also confident that the general public and land conservation departments throughout our state have the same questions and reservations, some as noted in the letter of Mr. Balk.

With these concerns and thoughts in mind, as the Ranking Member of the Assembly Committee on Agriculture, I request that a public hearing be held in accordance with the request of Mr. Balk and additional said request from the Wisconsin Counties Association.

Sincerely,

BARBARA GRONEMUS  
State Representative – 91<sup>st</sup> Assembly District  
Ranking Member – Committee on Agriculture

BG/wrc  
C: Assembly Committee on Agriculture members  
Mr. Larry Balk

**BUFFALO COUNTY  
LAND CONSERVATION DEPARTMENT  
County Courthouse  
P.O. Box 88, Alma, WI 54610  
Phone – 608-685-6260  
Fax – 608-685-6242**

April 8, 2002

Representative Barbara Gronemus  
Wisconsin 91st Assembly District  
Room 114 North  
State Capitol  
P.O. Box 8952  
Madison, WI 53708-8952

Subject: **Request for a Public Hearing on ATCP 50, Wis. Adm. Code**

Dear Rep. Gronemus,

The purpose of this letter is ask for a public hearing before your Assembly Agriculture Committee on the proposed redraft of ATCP 50, Wis. Adm. Code. The issues addressed under this rule are of the utmost importance to the agricultural producers of Buffalo County and the region. It is this primary reason why we wish to provide testimony to your committee.

Our Land Conservation Committee (LCC) has held numerous public meetings with producers and others regarding concerns on this proposed rule. We have provided written and oral testimony to DATCP on the rule. The following represents a summary of some of our concerns.

1. The proposed rule places too much emphasis on cost sharing and enforcement with too few state funds. The LCC's is deeply concerned about the Land Conservation Department's (LCD's) inability to assist landowners when state cost share funds are not available. Under this proposed rule, LCD's must implement a program to insure landowners are complying with the state agricultural performance standards and prohibitions. However, there is no mechanism for the LCD's to certify such compliance unless the practice used to comply is designed, constructed, and implemented in accordance with state and federal technical construction standards. These engineered practices are often too cost prohibitive when state cost share funds are not available. With fewer cost share funds available in the county, more producers will find themselves out of compliance with the state's performance standards and prohibitions under this proposed rule.
2. DATCP has interpreted the enabling legislation to include lost opportunity payments to farmers. While we appreciate additional tools for funding conservation, we do not support paying producers lease or rent payments on top of the traditional cost-share payment for the construction of the practice. This is unprecedented and likely not the intent of the legislature. DATCP's interpretation comes from a simple omission in ch.

Rep. Gronemus  
April 8, 2002  
Page 2

281 to define cost sharing. However, historically cost-sharing has only been for construction costs, and has never been for lost opportunity payments. It is important to note that DATCP's fiscal estimate for the rule does not include the state cost for lost opportunity payments.

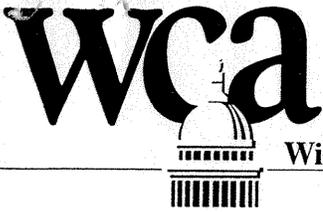
3. The final draft of this rule was not available to us with enough time for a thorough review and local meetings on the rule. In the future, DATCP should endeavor to allow counties, producers and the public at least two months to review the rules before going to public hearing.

Again, we are hopeful you can schedule a public hearing so that we have a fair chance to discuss this very important rule with your committee. Please contact our Land Conservation Department with the details of your hearing.

Sincerely,

Larry Balk  
Buffalo County Supervisor

c. Assembly Agriculture Committee



Wisconsin Counties Association

MEMORANDUM

TO: Honorable Members of the Assembly Committee on Agriculture and the Senate Committee on Environmental Resources

FROM: Craig Thompson, Legislative Director

DATE: April 8, 2002

RE: Request for Public Hearing on ATCP 50

The Wisconsin Counties Association (WCA) formally requests that the Assembly Committee on Agriculture and the Senate Committee on Environmental Resources conduct a legislative hearing on administrative rule ATCP 50.

The Department of Agriculture, Trade and Consumer Protection (DATCP) has put forth significant time and effort to meet with representatives of county government throughout the rule-making process. The collaboration between the agency and our association has resulted in many significant changes to the rule. However, several issues still remain of concern to county government.

Given the complexity of the rule and the significant number of people affected by the rule, WCA believes that it is imperative to give stakeholders a final opportunity to come before the Legislature to vocalize any remaining concerns or issues. The legislative hearing process on administrative rules is as much about informing the Legislature of the implications of certain policies before adopting them as it is about evoking change.

WCA would greatly appreciate your support in allowing for this final step in the rule making process.



WISCONSIN STATE ASSEMBLY

**MARTY REYNOLDS**  
STATE REPRESENTATIVE

APR 11 2002

April 10, 2002

Representative Al Ott, Chairman  
Assembly Committee on Agriculture  
State Capitol, Room 318N  
Madison, WI 53714

Dear Representative Ott:

We request that you, as Chair of the Assembly Committee on Agriculture, schedule a public hearing on Clearinghouse Rule 01-090, which amends ATCP Chapter 50 (relating to soil and water resource management).

As you are aware, CHR 01-090 represents a comprehensive redesign of the state nonpoint pollution control program. These amended rules, which are being proposed in conjunction with companion DNR rules, establish performance standards to reduce pollution runoff.

First of all, CHR 01-090 makes dramatic changes to these rules in order to implement these performance standards and streamline the grants system. Such changes should not be adopted without giving the citizens and organizations of our state the ability to share with us their opinion of these changes.

Secondly, although these are very comprehensive rules, there are some questions left unanswered. For example, is DATCP's approval authority over county land and resource management limited to Chapter 92? If it does not extend to Chapter 59, this should be clarified. In addition, there are no clear criteria for a DATCP/DNR review of county ordinances. These should be set forth to ensure uniformity to this regulation.

OFFICE: P.O. BOX 8953, MADISON WISCONSIN 53708 • 608-266-7506  
TOLL-FREE: 1-888-534-0087 • E-MAIL: Rep.Reynolds@legis.state.wi.us

HOME: 219 WEST 2ND STREET NORTH, LADYSMITH, WISCONSIN 54848 • 715-532-7798

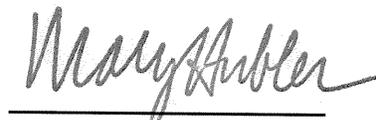
Nonpoint  
4/10/2002  
Page 2

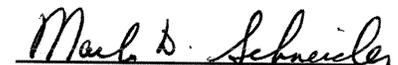
Finally, and most basically, a public hearing on these rules would be a vital part of a complete and comprehensive review of CHR 01-090 by our Committee. To do otherwise would skirt our legislative duty and deny citizens their right to be heard.

So, in conclusion, we reiterate our desire to hold a public hearing on this proposed rule and ask that you take immediate action to schedule such a hearing.

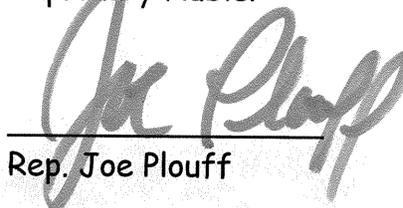
Sincerely,

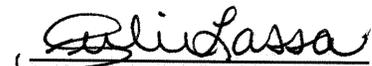
  
Rep. Marty Reynolds

  
Rep. Mary Hubler

  
Rep. Marlin Schneider

  
Rep. Barb Gronemus

  
Rep. Joe Plouff

  
Rep. Julie Lassa

  
Rep. John Steinbrink

**Kalies, Beata**

---

**From:** Kalies, Beata  
**Sent:** Wednesday, April 10, 2002 9:25 AM  
**To:** Kalies, Beata  
**Subject:** FW: Need for Senate Public Hearing on ATCP 50

-----Original Message-----

**From:** Hafs\_BC [mailto:Hafs\_BC@co.brown.wi.us]  
**Sent:** Tuesday, April 09, 2002 4:37 PM  
**To:** Rep AL Ott (E-mail)  
**Subject:** FW: Need for Senate Public Hearing on ATCP 50

-----Original Message-----

**From:** Hafs\_BC  
**Sent:** Tuesday, April 09, 2002 9:28 AM  
**To:** Robert Cowles (E-mail); Senator Dave Hansen (E-mail); Rich Schuster (E-mail)  
Pagel\_ME  
**Subject:** Need for Senate Public Hearing on ATCP 50

To: Senator Robert Cowles, Senator Dave Hansen,

March 5, 2002, I testified before the Senate Environmental Resources Committee on N.R.151 and Buffer Strips. ATCP 50, which is the companion administrative rule to NR151 is now being considered. I recently have heard concerns raised that ATCP 50 could be approved without Senate Committee review. Please consider the following:

Over 1250 persons provided public testimony during this past falls ATCP-50 public hearings with 99% of those providing testimony testifying in opposition to the Administrative Rule. 78 persons representing 38 County Land Conservation Committee's and Departments provided testimony concerning ATCP-50. All 78 persons testified in opposition to the ATCP-50 Administrative Rule. Please be aware that the County's are expected to implement ATCP-50.

At this time of State Budget shortfall, I think it would be wise for a Senate Committee to review ATCP 50 and especially the associated costs. It is estimated to cost \$64 Million Dollars per year.

**My major concerns with ATCP 50 are :**

- 1.) Where will the money come from ? (\$64 Million/year + County staffing costs?)
- 2.) ATCP 50 would pre-empt existing County Ordinances and force Counties to provide Cost-Share Dollars before regulation of pollution problems under County Ordinances could begin. (**can we really afford this?**)
- 3.) How will the State pay for the (County) staffing of these rules? (will DATCP propose to staff ATCP 50 the same way they proposed to staff CREP?)

I am writing to ask you to please consider holding Senate Public Hearings on ATCP 50. Thank you for your consideration.

Respectfully submitted,  
Bill Hafs  
Brown County Land Conservation Department



Michael (Mickey)  
**Lehman**

State Representative  
58th Assembly District

Committee Chair: Ways and Means

---

April 11, 2002

Representative Al Ott, Chairman  
Assembly Agriculture Committee  
State Capitol – 318 North  
Madison, Wisconsin 53702

Dear Al:

I am enclosing, herewith, for your information and review, a copy of a letter from Troy Kuphal, Washington County Land Conservation Committee, dated March 26, 2002, along with enclosures, regarding Administrative Rule ATCP 50 that has been referred to your Committee. This Administrative Rule governs the state's nonpoint program.

The Washington County Land Conservation Committee is in opposition to ATCP 50. I thought Washington County's *Resolution to Oppose Proposed ATCP 50, Wisconsin Administrative Rule and Requested Revisions for Draft Rule ATCP 50* would be of interest to you. If you wish, please feel free to forward this information on to the members of the Committee.

Thank you for taking the time to evaluate possible changes to ATCP Administrative Rule 50. In the event you need further information from the Washington County Land Conservation Committee, please do not hesitate to contact them directly and/or call me.

Respectfully,

MICHAEL "Mickey" LEHMAN  
State Representative  
58th Assembly District

ML:mk

Enclosure



# Washington County

## Land Conservation Committee

333 E. Washington St., Suite 3200, West Bend, WI 53095-2585 Phone: (262)335-4800 Fax: (262)335-4171

Date: March 26, 2002

Honorable Representative Michael Lehman  
State Capitol - Room 103 West  
PO Box 8952  
Madison WI 53708-8952

**Subject: Concerns Regarding Proposed ATCP 50, Wisconsin Administrative Rule**

Dear Representative Lehman:

I am writing on behalf of the Washington County Land Conservation Committee to seek your assistance.

In late February, the ATCP Board forwarded its proposed administrative rule, ATCP 50, to the legislature. This is the Department of Agriculture, Trade and Consumer Protection's rule that, in conjunction with the WDNR's proposed rules, governs the state's nonpoint program, which was redesigned through the 1997 and 1999 budget acts.

The legislature called for this redesign in response to a critical Legislative Audit Bureau report (*An evaluation of Surface Water Programs, 1994*) and a desire by multiple agencies and interest groups to implement a more efficient, cost effective and accountable program. We believe the proposed ATCP 50 fails to achieve these intended objectives, and neglects legislative intent under Wis Stats. § 92.02.

Based on these concerns and others, the Washington County Land Conservation Committee has adopted the attached resolution opposing the proposed ATCP 50. Also attached is a list of specific changes we, as stated in our resolution, are asking for your help to implement.

Many counties share similar concerns. At the last set of public hearings held last fall, counties were virtually unanimous in their opposition to the rule. Subsequent changes were made to the rule, but those changes did not entail some of our most critical concerns. Additionally, some very important provisions in the rule were never available for public comment and significant changes have been made since.

Of additional concern is the strain that has placed on the relationship between the DATCP and county land conservation committees, whom they rely on for implementing their rule. Counties

have felt cast as adversaries in this process rather than conservation partners. This very real concern prompted the Wisconsin Land and Water Conservation Association to write and adopt the enclosed resolution, which passed with a 46 to 1 margin. Our own resolution mirrors theirs by seeking your further assistance to improve DATCP's commitment to working more cooperatively with local land conservation officials.

I would appreciate an opportunity to personally meet with you on behalf of the Land Conservation Committee to explain our concerns and our proposed solutions in more detail. Please contact me at 335-4802 at your earliest convenience.

We look forward to your anticipated support. Thank you.

Sincerely,



Troy Kuphal

Cc: Land Conservation Committee of the Washington County Board:  
Maurice Strupp, Chairperson  
David N. Radermacher, Vice-Chairperson  
Robert W. Kratz, Secretary  
Mary A. Krumbiegel  
Daniel J. Rodenkirch  
Patricia A. Strachota  
Helmut Wagner  
Kenneth Miller, County Board Chair  
Doug Johnson, Administrative Coordinator  
Other State Legislators

Encl.

## Requested Revisions for Draft Rule ATCP 50

1. **AMEND § ATCP 50.32** to ensure that the top priority for county grants is to fund actual staff positions, consistent with legislative intent under Wis. Stats. § 92.14(6), and place reasonable limits on support.

*Reason: Proposed ATCP 50 creates a funding system that circumvents the statutory intent under Wis. Stats. § 92.14(6). This statute directs the department to provide funding for "an average of three (3) staff persons per county", provided those counties supply specific matching amounts. The proposed system would simply increase minimum funding to every county by more than 600% without any consideration of whether or not this legislative directive it is being achieved. It actually allows NO local match by permitting unlimited use of funds for "support" items, which do not require a match. As a result, Washington County may need to lay off staff while the state pays for paper and computers in another. This is not what was intended to happen. Past programs have placed reasonable limitations on support costs (e.g \$5000/staff) to increase accountability and decrease abuse.*

2. **CLARIFY § ATCP 50.12(5)** to ensure that DATCP's approval authority over county land and water resources management plans is based solely to the plan's compliance with statutory requirements under Wis Stats. § 92.10. Also **INCLUDE** a provision that requires the department, in its reviews under § 50.12(6) and any resulting action from such reviews, to take into account the level of state funding provided to the county.

*Reason: Land and Water Plans are mandatory for state funding. Proposed ATCP § 50.12(5) appears to leave the door open to discretionary approval, thus leading potentially to arbitrary disapproval by the Department. Local implementation methods, including ordinances, which are not favored by the department, could be used as a reason for non-approval, which would result in a loss of funding. Also, while counties are willing to take the "lead" role in implementing the state's nonpoint program through their local plans, counties cannot be practically expected to do more work than for which the state is willing to provide funding.*

3. **ELIMINATE** provisions under § ATCP 50.12(5) that require unprecedented public cost-sharing when enforcement must be used to prevent landowners from polluting and which discourages voluntary compliance with the nonpoint performance standards.

*Reason: The proposed rule redefines traditional "cost-sharing" to include mandated payments for long-term maintenance of conservation practices and perpetual "lost opportunity" payments for land taken out of production. These proposed costs would be in addition to the traditional public cost sharing for 70% of the cost of installing a conservation practice, but only required under enforcement situations. In a time of serious budget shortfalls and program cuts, these payments are unprecedented and will make nonpoint programs less cost-effective. Any increased cost-sharing should be used to encourage voluntary compliance, not mandate increased public costs for enforcement action. As written, the rule contradicts numerous statutory mandates for cost-effectiveness and will encourage landowners to wait to be regulated rather comply voluntarily, especially if state funding is not increased.*

4. **AMEND § ATCP 50.54 and 50.60** to ensure that mandatory cost-sharing requirements will not apply to any pre-existing local ordinances or ordinances adopted under Chapter 59, State Stats. There is no statutory authority for the rule to do this.

*Reason: The full ramifications of the draft rule are unclear on this issue, although given the provisions under proposed ATCP § 50.54(2), it appears it will heavily undermine all local regulations, including those over which the agency has no statutory authority.*

## 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 20<sup>th</sup> 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 7<sup>th</sup> day of December, 2001



State of Wisconsin  
Scott McCallum, Governor

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

April 11, 2002

Senator James Baumgart  
306 South, State Capitol  
P. O. Box 7882  
Madison, WI 53707-7882

Dear Senator Baumgart:

Thank you for the opportunity to appear before your committee last week to explain ATCP 50. We appreciate the opportunity to answer questions from your committee and the Assembly Agriculture Committee.

This letter responds to the March 27, 2002 letter from the Sheboygan County Land and Water Conservation Department, which you forwarded to us. I am also enclosing a copy of an April 3, 2002 letter from Secretary Harsdorf to your committee. That letter provides additional information responding to the points raised by Sheboygan County.

We offer the following responses to the issues raised in the Sheboygan County letter:

1. **Sheboygan County Issue:** Change rule provisions so that new and higher cost share payments are used as incentives to encourage voluntary cooperation and compliance with performance standards.

**DATCP Response:** By statute, the state share is limited to 70% cost sharing or up to 90% in cases of economic hardship. But the rule (ATCP 50.40(17)) specifically allows counties to combine state funds with funds from other sources to exceed 70% cost-sharing (in the case of economic hardship, 90% cost-sharing). ATCP 50 gives counties broad discretion to determine cost-share amounts in voluntary cost-share transactions.

2. **Sheboygan County Issue:** 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.

**DATCP Response:** If a county *forces* a farmer to change an existing agricultural facility or practice, the statutes require the county to *offer* cost sharing. ATCP 50.08(note) 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. If the parties enter into a cost-share contract, the county makes the cost-share payment when the farmer installs the cost-shared practice according to the contract. The farmer must maintain the practice for the period of time specified in the contract (under ATCP 50, *capital improvements* must be maintained for at least 10 years).

Under ATCP 50, if a county has already cost-shared a 10-year *capital improvement*, or has cost-shared an annual practice (such as nutrient or residue management) for at least 4 years, the county may require the farmer to maintain compliance without further cost-sharing. But if the county requires the farmer to keep more than ½ acre of land out of production, the county must continue to share the cost of taking that land out of production.

3. **Sheboygan County Issue:** Clarify the rule to ensure minimum standards for documentation of compliance activities.

**DATCP Response:** Under ATCP 50.12, a county land and water resource management plan must describe the county's compliance procedures, including notice, hearing, enforcement, and appeal procedures. DATCP will be working with DNR and the counties to develop guidelines, but counties have some discretion to determine compliance procedures that are appropriate for local conditions. The county land conservation committee must consult with local stakeholders, and the county board must approve the plan. The DATCP Secretary must also approve the plan after obtaining the recommendation of the Land and Water Conservation Board.

4. **Sheboygan County Issue:** Clarify the rule to ensure that mandatory cost sharing requirements will not apply to pre-existing local ordinances or ordinances adopted under Chapter 59, Stats.

**DATCP Response:** Before a county *forces* a farmer to change an *existing* agricultural facility or practice, the statutes require the county to *offer* cost sharing. ATCP 50 merely implements this statutory requirement. It does not matter whether the county takes its enforcement action under a state rule or a local ordinance; nor does it matter when, or under what authority, the local ordinance was adopted. DNR rules determine when an agricultural facility or practice qualifies as an *existing* facility or practice (ATCP 50 merely incorporates the DNR rules by reference). ATCP 50 makes some exemptions. For example, it exempts nutrient management plans required under permits for manure storage systems voluntarily constructed by landowners. It also permits a county to terminate a noncomplying farmer's eligibility for farmland preservation tax credits, *regardless* of whether the county offers cost sharing.

5. **Sheboygan County Issue:** Clarify the rule to ensure that DATCP's approval authority over county land and water resource management plans is limited solely to compliance with statutory requirements under s. 92.10, Wis. Stats.

**DATCP Response:** ATCP 50 is fully consistent with s.92.10, Stats. At the request of counties, DATCP modified the final draft rule to clarify approval procedures and to link plan approval to the criteria spelled out in s. ATCP 50.12.

6. **Sheboygan County Issue:** Add, under proposed ATCP 50.60, all criteria DATCP will use to review local livestock ordinances under Wis. Stats. s. 92.15.

**DATCP Response:** 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. 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.

7. **Sheboygan County Issue:** Clarify the rule to ensure that cost-sharing requirements do not apply to compliance activities not covered under the state performance standards or provisions.

**DATCP response:** Under ATCP 50.08 and the state statutes, a county must offer cost sharing cost-sharing before it *forces* a farmer to change an *existing operation* to comply with a state performance standard (see response #2 above). ATCP 50.54 provides that a county must follow the basic state cost-sharing requirement if it acts under local authority such as an ordinance. If a county enforces comparable (or even more stringent) conservation requirements under local authority, the county should offer cost sharing. This cost-sharing requirement applies only to *conservation practices* as defined in ATCP 50.01(2) -- not things like odor control. And it applies only if the county *forces* the farmer to change an *existing operation* (as defined by DNR).

8. **Sheboygan County Issue:** Exempt, under proposed ATCP 50.40(14), all non-structural conservation practices from deed recording requirements for cost-share agreements.

**DATCP Response:** 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). 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) when the state invests this much money in a single cost-share agreement. Cost-share agreements for non-structural conservation practices will typically fall under this dollar threshold, and will thus be exempt from recording in most cases. As currently drafted, ATCP 50 is consistent with DNR's rule on this issue.

9. **Sheboygan County Issue:** 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.

Senator James Baumgart

April 11, 2002

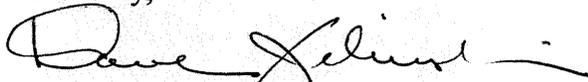
Page 4

**DATCP Response:** The rule does not require all farmers to have the same type of plan. While farmers must meet certain core requirements for developing a plan, they may have individual plans that are customized to meet their needs. For example, a farmer's nutrient management plan may provide for nutrient applications that differ from the recommendations of the University of Wisconsin-Extension if different application rates are needed to meet special circumstances faced by the farmer (ATCP 50.04(3)(f)).

I want to emphasize that we have taken great pains to address county concerns in this final draft rule. For example, county representatives objected to an early version of ATCP 50.54 that required (1) reasonable consistency between local regulations and ATCP 50, and (2) mandatory DATCP review of all proposed ordinances implementing conservation practices. DATCP removed both of these restrictions, and has made many other changes in response to county comments.

Thanks again for the opportunity to respond to these issues. We will be happy to answer any other questions that you or your committee members may have.

Sincerely,



David Jelinski, Director  
Land and Water Resources Bureau  
Agricultural Resource Management Division  
608-224-4621

cc: Members of the Senate Environmental Resources Committee  
Members of the Assembly Agricultural Committee ✓  
Representative Joseph Leibham  
Representative Steve Kestell  
Representative Glenn Grothman  
Sheboygan County Land Conservation Committee  
Adam Payne, Administrative Coordinator  
Senator Mary Panzer

4-16-2002 7:41AM

FROM WI LAND/H2O CONSSASN 608 833 7179

P. 2

To: The Land and Water Board  
From: Rebecca Baumann, Executive Director  
Wisconsin Land and Water Conservation Association  
Date: April 15, 2002  
RE: Land and Water Board Resolution

I would urge you **not to support the Land and Water Conservation Board Resolution** as written because of the language in the fifth statement that reads:

**"WHEREAS, the legislative approval of ATCP 50 should not be delayed because of recent county comments on ATCP 50. These comments are resolvable either through administrative guidance, through correct interpretation of the rule provisions, or in some cases can only be accomplished through statutory changes."**

As acknowledged by DATCP, the county conservation committees and departments are the entities that will implement these rules at the local level. This statement discounts the valuable, practical, and thought-out comments from us. It discounts our written comments, comments from the public hearings, and special meetings we have had to discuss the rule where we have voiced continued concern over such issues as expanded cost share, criteria for our Land and Water Plans, and local control of our county ordinances.

At the last round of public hearings over 1250 people provided testimony and 99% of those provided testimony in opposition to the administrative rule. 78 people representing 38 County Land Conservation Committees and Departments provided testimony, and ALL 78 persons testified in opposition to the ATCP 50 rules. DATCP reports only numbers, not the substance of comments. Our most recent analysis reveals that we have presented to DATCP nearly 25 serious concerns with the rule over the last year and a half. **ONLY 6 HAVE BEEN ADDRESSED TO OUR SATISFACTION** - and most of those were minor. Given these statistics, this attempt by DATCP to negate any comments we might have at the upcoming public hearing, even before they are stated, is not acceptable. This is, unfortunately, another example of DATCP not working with us as partners, rather as trying to say that our opinions either don't exist, should be over looked, or are simply unimportant.

The arguments put forward by DATCP regarding our concerns has not been convincing in the past year. To discount broadly all "county comments," should not be tolerated, and to say they can be addressed by administrative guidance, correct interpretation of the rule provisions, or in some instances only through statutory changes is not correct. This resolution shows lack of support and cooperation from DATCP, our administrative agency.

Please support accurate reporting and the rights of the Land Conservation Committees and Departments to have a voice by arguing strongly against this resolution. Any confirmation of support for ATCP 50 should reflect the reservation that has been voiced about ATCP 50 all along—issues that have not been entirely resolved.



State of Wisconsin  
Scott McCallum, Governor

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

### FAX COVER SHEET

DATE:	4-17-02
TO:	AI OH
FROM:	Nick Neher
SUBJECT:	
PHONE NUMBER OF SENDER:	224-4567
# OF PAGES (including cover page):	2

WI Dept. of Agriculture, Trade & Consumer Protection  
Agricultural Resource Management Division  
Phone Number: (608) 224-4500  
FAX Number: (608) 224-4656

If any pages need to be resent, please call the sender at the above number. Otherwise, we will assume this transmittal has been completely received.

Thank you.

MESSAGE:

---

---

---

---

---

---

---

---

---

---



Al Ott

State Representative • 3rd Assembly District

April 15, 2002

Dear Assembly Agriculture Committee Members,

As you are well aware, the Agriculture Committee is already in an extended period for legislative review of Clearinghouse Rule 01-090, which redrafts DATCP's nonpoint pollution rule ATCP-50. Our action must be completed before April 27th.

Many modifications have been made throughout the five years of the redesign process. The concerns of the Wisconsin Counties Association, County Land Conservation Committees, and their employees, which represent all remaining issues, have been discussed during a stakeholders meeting April 12. I hope that few problems still exist.

In light of the timeline and the fact that most questions have been dealt with, I raised the question during the stakeholders meeting, whether one hearing would be adequate for the resolution of the remaining issues and the response was affirmative.

Senator Baumgart, Chairman of the Senate Environment committee is holding a public hearing this Thursday, April 18<sup>th</sup> and has agreed to host Assembly Agriculture Committee Members as guests and participants during this hearing.

This is not a joint hearing or a public hearing for the Assembly Committee on Agriculture. However, this hearing is an opportunity for Assembly Agriculture Committee Members to raise their concerns and exercise their legislative duty.

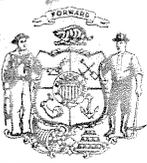
This is my response to the members' requests for a public hearing: please attend the Senate public hearing on Thursday. My intention at this time is not to have a public hearing. I understand this is not the most desirable way to handle things.

The Senators have expressed a more deliberate desire to hold a public hearing, whereas the Representatives have not.

If Senator Baumgart cannot make sufficient modifications during his hearing, I as chair of the Assembly Committee on Agriculture remain open to a discussion with individual members and may consider a written request for modifications to DATCP.

Sincerely,

Al Ott, Chair  
Assembly Committee on Agriculture



STATE OF WISCONSIN  
OFFICE OF STATE REPRESENTATIVE BARBARA GRONEMUS

P.O. BOX 8952  
MADISON, WISCONSIN 53708-8952  
608-266-7015  
TOLL-FREE 1-888-534-0091  
FAX: 608-282-3691  
E-MAIL: rep.gronemus@legis.state.wi.us

DISTRICT ADDRESS:  
P.O. BOX 676  
WHITEHALL, WI 54773-0676  
715-538-4130  
FAX: 715-538-2119

April 16, 2002

Representative Al Ott  
Chairman – Assembly Committee on Agriculture  
Room 318 North, State Capitol  
Madison, WI 53708

Mr. Chairman and Dear Al:

To say the least, **I am very disappointed** with the manner in which you have decided to address the request from myself and other Assembly Committee on Agriculture members for a Public Hearing on the proposed ATPC 50. You are most correct when you stated in your letter that, “I understand this is not the most desirable way to handle things” in suggesting that committee members attend the Senate hearing this Thursday!

In your letter, you gave the impression, that while not a Joint Hearing, Assembly members could be “..guests and participants during the hearing.” NOW, based on the Letter of Invitation from Senator Baumgart and your “Notice” sent to committee members this morning, if members of the Assembly Committee on Agriculture attend the Senate hearing we will be “listeners” only – a far cry from being participants! **I strongly urge you to do the proper legislative procedure and hold a Public Hearing, rather than relegate your own committee members to mere “listeners”!**

If you still adhere to your present position on this matter, enclosed is a list of items relating to ATPC 50 of great concern to me and just about every county Land Conservationist in our state, and **I would expect that if not addressed by modifications of satisfaction to these individuals by the Senate committee you will keep your word** and “..remain open to a discussion with individual members and may consider a written request for modifications to ATPC”.

Sincerely,

BARBARA GRONEMUS  
State Representative – 91<sup>st</sup> Assembly District  
Ranking Member – Committee on Agriculture

BG/wrc  
C: Committee Members

**DRAFT - SUMMARY AND STATUS OF PAST AND CURRENT ATCP 50 ISSUES**

APRIL 15, 2002

NO	ISSUE	CONCERN	Addressed?	DATCP ACTION
1	<b>No firm criteria for LWRM Plan Approval</b>	<ul style="list-style-type: none"> <li>The rule does not define the criteria DATCP will be held to when approving county LWRM plans</li> <li>Leaves the plan approval process and local grants open to arbitrary agency decisions.</li> <li>May withhold funding if they dislike any implementation strategy or ordinance – regardless of whether or not they comply with state requirements and considered reasonable by the county</li> </ul>	No	
2	<b>Pre-emption of local ordinance</b>	<ul style="list-style-type: none"> <li>Mandated local ordinance consistency with ATCP 50</li> <li>Required county to submit local ordinances and to disclose (in their LWRM plan) whether they differ from ATCP 50.</li> <li>A county could not require nutrient management (as condition of manure storage permit) unless cost sharing is offered.</li> <li>Threatens to withhold grant funds to counties with that do not require cost-sharing ordinances (including pre-existing and Chapter 59 ordinances)</li> <li>92.11 already requires referendum before ordinance can be adopted</li> </ul>	Partially	<ul style="list-style-type: none"> <li>Eliminated requirement of consistency with rule</li> <li>Eliminated threat to withhold funding for not “submitting” ordinances</li> <li>Exempts manure storage ordinances (NM) from cost sharing requirements</li> <li>Still threatens to withhold funding if cost sharing is not offered when enforcing ordinances</li> </ul>
3	<b>No criteria for review/approval of livestock ordinances</b>	<ul style="list-style-type: none"> <li>Does not contain review criteria that DATCP will use to approve or reject local livestock regulations that exceed state performance standards.</li> </ul>	No	
4	<b>Accountability</b>	<ul style="list-style-type: none"> <li>Does not improve program accountability in terms of establishing program goals, identifying standards for performing and documenting critical implementation activities or measuring progress on a statewide basis.</li> <li>Lacks minimum standards and incentives to ensure systematic implementation of performance standards, as required under s.s. 92.10(6) WI Stats.</li> <li>Ignores existing mechanisms such as critical sites and FPP “notice of noncompliance” to ensure compliance – implying that ensuring compliance is optional</li> <li>Redesigned program will essentially have no beginning or end as there will be no way to report to the legislature, for sure, how much has been achieved and how much more needs to be done</li> <li>Nonpoint program will continue to subject to legislative criticism and funding problems in the future</li> </ul>	No	
5	<b>Higher program costs</b>	<ul style="list-style-type: none"> <li>Requires cost sharing for maintenance and lost opportunity</li> <li>Ignores financial benefits of conservation and shared responsibilities</li> <li>Undermines conservation ethic and insults farmers who’ve cooperated for the past 50 years</li> <li>Increases program costs thus reduces speed and amount of nonpoint control that is accomplished</li> </ul>	Partially	<ul style="list-style-type: none"> <li>Clarified maintenance does not apply to routine activities (e.g. barnyard clean-out)</li> <li>Places \$10/acre limit on mowing</li> <li>Limit lost opportunity to ½ acre or greater</li> <li>BUT...removed 3% discount (making it impossible to calculate a “bona-fide” offer of CS for buffers and waterways)</li> </ul>

**DRAFT - SUMMARY AND STATUS OF PAST AND CURRENT ATCP 50 ISSUES**  
**APRIL 15, 2002**

NO	ISSUE	CONCERN	Addressed?	DATE/TCP ACTION
6	<b>Perverse incentive to be regulated</b>	<ul style="list-style-type: none"> <li>Increased cost sharing is only "required" for enforcement, thus creating a perverse incentive for landowners to wait to be regulated</li> <li>Can offer "less" cost sharing if the landowner voluntarily agrees and cooperates</li> <li>Rewards bad actors with most cost-sharing benefits to those who hold out the longest</li> </ul>	No	
7	<b>Technical Standards Development Process</b>	<ul style="list-style-type: none"> <li>Does not define "technical standards"</li> <li>Does not specify a process for the development and dissemination of technical standards as required under s.s. 281.16(3)(b) State Stats.</li> <li>Invites inconsistencies, conflict and political influence on conservation practice technical standards among agencies.</li> <li>Disassociates department from Wisconsin (SOC) - refers to it only in a note.</li> </ul>	No	<ul style="list-style-type: none"> <li>Made matters worse by removing "technical" from all terms referring to technical standards, thus blurring the lines between standards and practices even more</li> </ul>
8	<b>Overly prescriptive requirements for nutrient management</b>	<ul style="list-style-type: none"> <li>Mandates that all producers have a 590 nutrient management plan</li> <li>Suggests that farmers are guilty polluters simply because they don't have a 590 plan.</li> <li>Relies on the premise that "a county does not have to enforce nutrient management" to alleviate the philosophical dilemma that the rule poses - namely, tags all farmers without a plan as "violators of state law" regardless of whether or not they are doing anything wrong.</li> <li>Rule needs a variance provision that allow county or state to allow the use of alternative plans provided that 1) the alternative plan will not yield an increased environmental pollution (compared to 590) and 2) certain minimum practices are followed (soil testing, manure management/application rates, applying fertilizer to crop needs, simple record keeping, etc.)</li> </ul>	No	
9	<b>No time limits on how long cost-sharing must be offered</b>	<ul style="list-style-type: none"> <li>Landowner may have avoided taking action by continuously refusing offer</li> <li>Was inconsistent with DNR rules</li> </ul>	?	<ul style="list-style-type: none"> <li>Added note that county may impose reasonable deadline</li> </ul>
10	<b>Staffing Grants</b>	<ul style="list-style-type: none"> <li>Decreases commitment to maintaining staff and program continuity (changed from "highest" priority to "high" priority)</li> <li>Penalizes counties with nonpoint programs (cuts their BASG funding)</li> <li>Was not supported by majority on Staffing grants committee</li> <li>Was not available to public comment (added after the hearing)</li> <li>Eliminated certain costs eligible for reimbursement (e.g. lodging and meal costs associated with training, field equipment and information and education supplies and services)</li> <li>No limit on how much can be used for non-staffing purposes (support and cost sharing)</li> <li>Allowed grant amount determinations to change based on department's own "assessment" of funding needs versus on list of codified priorities</li> <li>Requires reporting of time spent on individual programs</li> </ul>	No	<p>Exceptions:</p> <ul style="list-style-type: none"> <li>Restored education materials as eligible costs, but NOT field equipment or meals and lodging</li> <li>Removed language "...based on the departments assessment of funding needs and priorities..." under 50.32(5)(a) and replaced with a cross-reference to 50.30 (grant priorities list)</li> </ul>

**DRAFT - SUMMARY AND STATUS OF PAST AND CURRENT ATCP 50 ISSUES**  
 APRIL 15, 2002

NO	ISSUE	CONCERN	Addressed?	DATCP ACTION
11	Cost-sharing required for practices other than performance standards	<ul style="list-style-type: none"> <li>The rule expands cost-sharing requirements to all conservation practices versus just those needed to meet state performance standards.</li> <li>Exceeds department authority and the intent of program redesign.</li> <li>Further undermines local control and ordinance development to protect soil and water resources.</li> <li>Further strains an already financially strapped program</li> </ul>	No	
12	Deed recording for management (soft) practices	<ul style="list-style-type: none"> <li>Deed-recording discourages voluntary adoption of certain practices (such as conservation tillage, nutrient and pest management) on rented cropland</li> <li>Further hinders voluntary compliance - especially where cropland is rented.</li> </ul>	No	<ul style="list-style-type: none"> <li>Made matters worse by decreasing the dollar amount that triggers recording on deed (\$25,000 to \$10,000)</li> </ul>
13	Wet Detention Basin	<ul style="list-style-type: none"> <li>Listed in Subchapter VI for staff certification, but is not included on list of conservation practices that may be cost-shared under Subchapter VIII</li> <li>Practice is often used for reducing sediment from cropland runoff and is commonly used in lake watersheds to reduce phosphorous loads</li> </ul>	No	
14	Perpetual cost-sharing requirements	<ul style="list-style-type: none"> <li>Cost share requirement were based on whether or not landowner had previously received cost sharing versus whether or not land was in compliance</li> <li>Required cost sharing for every subsequent landowner regardless of status of land - even if noncompliance was self-created</li> <li>Was inconsistent with DNR rules</li> </ul>	Partial	<ul style="list-style-type: none"> <li>Mirrored DNR cost share requirements. (Once in compliance - or if previously cost shared - no cost sharing is required.)</li> <li>Still requires perpetual lost opportunity payments for land taken out of production</li> </ul>
15	Loose definition for Economic Hardship	<ul style="list-style-type: none"> <li>Proposed rule lacked accountability and may have invited abuse.</li> <li>Conflicted with draft DNR administrative rule NR 151.</li> <li>Further threatened program finances, thus resulting in less conservation on the land.</li> </ul>	Yes	<ul style="list-style-type: none"> <li>Tightened up</li> </ul>
16	Inaccuracy of Fiscal Estimate	<ul style="list-style-type: none"> <li>Fiscal estimate does not include increased costs associated with maintenance and lost opportunity</li> <li>Suggests that the ratio of cost share dollars to staff dollars is 11:1 versus 2 or 3:1, which is more realistic</li> </ul>	?	
17	Cost Sharing "Received" vs. "Offered"	<ul style="list-style-type: none"> <li>Required that cost sharing be "received" by a landowner before enforcement can occur</li> <li>Landowner could avoid compliance by refusing to accept cost-sharing</li> </ul>	Yes	<ul style="list-style-type: none"> <li>Clarified that cost sharing must be offered</li> </ul>
18	Cost-Sharing in cities and villages	<ul style="list-style-type: none"> <li>Cost-sharing could not be provided for cropland within the boundaries of a city or village unless the community has an ordinance</li> </ul>	Yes	
19	Three-Party Cost-Share Agreements	<ul style="list-style-type: none"> <li>Required DATCP to be a third party to cost share agreements over \$50,000</li> <li>Would have resulted in unnecessary delays for landowners, especially for cost-share agreement amendments</li> </ul>	Yes	<ul style="list-style-type: none"> <li>Changed to require department approval versus being party to contract</li> </ul>

**DRAFT - SUMMARY AND STATUS OF PAST AND CURRENT ATCP 50 ISSUES**  
 APRIL 15, 2002

NO	ISSUE	CONCERN	Addressed?	DATE/TCP ACTION
20	<b>Advance notice of Preliminary Allocation Plans</b>	<ul style="list-style-type: none"> <li>Eligibility criteria, costs containment procedures and cost share limits are already covered in the rule</li> <li>The rule does not specify any minimum advance notice to counties when a draft grant allocation plan is sent to the LWCB for their review, which may inhibit local input on the proposal.</li> <li>Counties should be given ample opportunity to review and comment on the draft allocation plan prior to the LWCB meeting so that changes can be considered by the LWCB.</li> </ul>	Yes	<ul style="list-style-type: none"> <li>Inserted 30-day advance notice requirement</li> </ul>
21	<b>Soil loss prediction tool</b>	<ul style="list-style-type: none"> <li>Required that all counties use RUSLE II to determine soil loss</li> <li>Counties should have flexibility to determine which model works best for their county</li> </ul>	No	
22	<b>Rewriting performance standards</b>	<ul style="list-style-type: none"> <li>Wrote (and made changes to) DNR's performance standards in their rule</li> <li>Referred to them as farm conservation practices</li> </ul>	Yes	<ul style="list-style-type: none"> <li>Removed inconsistencies although still uses same terminology</li> </ul>
23	<b>Cost-sharing for new and expanding Livestock Operations</b>	<ul style="list-style-type: none"> <li>Since no regulation requires a landowner to expand or start a new farm, cost-sharing for compliance with performance standards should not be required in these situations</li> <li>Responsibility for controlling pollution should be assumed by the new or expanding operation - as is the case in other industries - versus public</li> </ul>	No	<ul style="list-style-type: none"> <li>Note: ATCP 50 does now mirror DNR rules where this issue resides. (Cost sharing requirement are based on status of land at time rule is adopted, regardless of expansion or change-over to a new type of operation.)</li> </ul>
24	<b>Confusing and distorted terminology</b>	<ul style="list-style-type: none"> <li>Uses the term "landowner" universally (versus distinguishing between "operator", "renter" and "cost share recipient")</li> <li>Difficult to determine responsibilities of the landowner, vis-a-vis the renter, in meeting the performance standards. Also difficult to determine cost sharing and practice maintenance responsibilities</li> <li>Misuses (and uses interchangeably) the terms conservation practice, performance standard and technical standards, thus blurring the real differences that exist between them</li> </ul>	No	

NOTES:

## Kalies, Beata

---

**From:** Reineking, Carol  
**Sent:** Tuesday, April 16, 2002 1:43 PM  
**To:** Kalies, Beata  
**Subject:** RE: Hearing Notice

Well, as you say, yes and no.  
Marty is down here Thursday, but has other appointments..  
so I'm not sure if he'll be able to attend.  
If he can rearrange his schedule, I'm sure he'd want to  
be free to ask questions.

Otherwise...they're just like anyone else who can attend  
a hearing and listen.

-----Original Message-----

**From:** Kalies, Beata  
**Sent:** Tuesday, April 16, 2002 1:08 PM  
**To:** Reineking, Carol  
**Subject:** RE: Hearing Notice

Hey Carol!

The answer is yes and no. We were hoping for more participation and Sen. Baumgart is focusing more on the listening end of it. It really depends on how many of our members show up. Sen. Baumgart would like to exercise his discretion. He would prefer that his committee members get first dibs especially since our committee is so large. We could very easily take up all their time, as this is what happened at the joint info session. Sen. Baumgart's office informs me, that the preference would be for Assembly members to work through our office as much as possible so we may coordinate the questions and ask at one time. If the answers are not obtained at the hearing, we would do a follow up with those offices through leg. council or DATCP or whoever has the answers. I will be there on the side and would be happy to make sure all questions by our committee are fully addressed. Does this help?

-----Original Message-----

**From:** Reineking, Carol  
**Sent:** Tuesday, April 16, 2002 12:23 PM  
**To:** Kalies, Beata  
**Subject:** RE: Hearing Notice

Beata-

I have a questions about the hearing.

Can the Assembly Ag members participate in the hearing, such as by asking questions. Or are they just being invited to listen to the testimony?

Carol  
Rep. Reynolds' office

-----Original Message-----

**From:** Kalies, Beata  
**Sent:** Tuesday, April 16, 2002 9:59 AM  
**To:** Nussbaum, Jody; Stigler, Ken; Krieser, Steve; Karius, Bob;  
\*Legislative All Assembly; \*Legislative All Senate; Hauser, Matt;

Wischnewski, Marne; Moll, Keeley A DATCP; Jelinski, Dave DATCP  
Cc: 'Wisconsin Public Network fax'; Castelnovo, Richard M DATCP; 'Jim  
Massey / Country Today fax'; 'Joan Sanstadt / Agri-View fax'; 'Carla  
Gunst / Wisconsin State Farmer Fax'  
Subject: Hearing Notice

# SUMMARY AND STATUS OF PAST AND CURRENT ATCP 50 ISSUES – WLWCA AND WALCE

County Conservationist Meeting, April 17<sup>th</sup>, 2002  
 APRIL 15, 2002

NO	ISSUE	CONCERN	Addressed?	DATCP ACTION
1	No firm criteria for LWRM Plan Approval	<ul style="list-style-type: none"> <li>The rule does not define the criteria DATCP will hold to when approving county LWRM plans</li> <li>Leaves the plan approval process and local grants open to arbitrary agency decisions</li> <li>May withhold funding if they dislike any implementation strategy or ordinance – regardless of whether or not they comply with state requirements and considered reasonable by the county</li> </ul>	No	
2	Pre-emption of local ordinance	<ul style="list-style-type: none"> <li>Mandated local ordinance consistency with ATCP 50</li> <li>Required county to submit local ordinances and to disclose (in their LWRM plan) whether they differ from ATCP 50.</li> <li>A county could not require nutrient management (as condition of manure storage permit) unless cost sharing is offered.</li> <li>Threatens to withhold grant funds to counties with that do not require cost-sharing ordinances (including pre-existing and Chapter 59 ordinances)</li> <li>92.11 already requires referendum before ordinance can be adopted</li> </ul>	Partially	<ul style="list-style-type: none"> <li>Eliminated requirement of consistency with rule</li> <li>Eliminated threat to withhold funding for not “submitting” ordinances</li> <li>Exempts manure storage ordinances (NM) from cost sharing requirements</li> <li>Still threatens to withhold funding if cost sharing is not offered through local ordinances</li> </ul>
3	No criteria for review/approval of livestock ordinances	<ul style="list-style-type: none"> <li>Does not contain review criteria that DATCP will use to approve or reject local livestock regulations that exceed state performance standards.</li> </ul>	No	
4	Accountability	<ul style="list-style-type: none"> <li>Does not improve program accountability in terms of establishing program goals, identifying standards for performing and documenting critical implementation activities or measuring progress on a statewide basis.</li> <li>Lacks minimum standards and incentives to ensure systematic implementation of performance standards, as required under s.s. 92.10(6) WI Stats.</li> <li>Ignores existing mechanisms such as critical sites and FPP “notice of noncompliance” to ensure compliance – implying that ensuring compliance is optional</li> <li>Redesigned program will essentially have no beginning or end as there will be no way to report to the legislature, for sure, how much has been achieved and how much more needs to be done</li> <li>Nonpoint program will continue to subject to legislative criticism and funding problems in the future</li> </ul>	No	
5	Higher program costs	<ul style="list-style-type: none"> <li>Requires cost sharing for maintenance and lost opportunity</li> <li>Ignores financial benefits of conservation and shared responsibilities</li> <li>Undermines conservation ethic and insults farmers who’ve cooperated for the past 50 years</li> <li>Increases program costs thus reduces speed and amount of nonpoint control that is accomplished</li> </ul>	Partially	<ul style="list-style-type: none"> <li>Clarified maintenance does not apply to routine activities (e.g. barnyard clean-out)</li> <li>Places \$10/acre limit on mowing</li> <li>Limit lost opportunity to ½ acre or greater</li> <li>BUT...removed 3% discount (making it impossible to calculate a “bona-fide” offer of CS for perpetual buffers and waterways)</li> </ul>
6	Perverse incentive to be regulated	<ul style="list-style-type: none"> <li>Increased cost sharing is only “required” for enforcement, thus creating a perverse incentive for landowners to wait to be regulated</li> <li>Can offer “less” cost sharing if the landowner voluntarily agrees and cooperates</li> <li>Rewards bad actors with most cost-sharing benefits to those who hold out the longest</li> </ul>	No	
7	Technical Standards Development Process	<ul style="list-style-type: none"> <li>Does not define “technical standards”</li> <li>Does not specify a process for the development and dissemination of technical standards as required under s.s. 281.16(3)(b) State Stats.</li> <li>Invites inconsistencies, conflict and political influence on conservation practice technical standards among agencies.</li> <li>Disassociates department from Wisconsin (SOC) – refers to it only in a note.</li> </ul>	No	<ul style="list-style-type: none"> <li>Made matters worse by removing “technical” from all terms referring to technical standards, thus blurring the lines between standards and practices even more</li> </ul>

**SUMMARY AND STATUS OF PAST AND CURRENT ATPC 50 ISSUES – WLWCA AND WALCE**  
 County Conservationist Meeting, April 17<sup>th</sup>, 2002  
 APRIL 15, 2002

NO.	ISSUE	CONCERN	Addressed?	DATCP ACTION
8	Overly prescriptive requirements for nutrient management	<ul style="list-style-type: none"> <li>Mandates that all producers have a 590 nutrient management plan</li> <li>Suggests that farmers are guilty polluters simply because they don't have a 590 plan.</li> <li>Relies on the premise that "a county does not have to enforce nutrient management" to alleviate the philosophical dilemma that the rule poses - namely, tags all farmers without a plan as "violators of state law" regardless of whether or not they are doing anything wrong.</li> <li>Rule needs a variance provision that allow county or state to allow the use of alternative plans provided that 1) the alternative plan will not yield an increased environmental pollution (compared to 590) and 2) certain minimum practices are followed (soil testing, manure management/application rates, applying fertilizer to crop needs, simple record keeping, etc.)</li> </ul>	No	
9	No time limits on how long cost-sharing must be offered	<ul style="list-style-type: none"> <li>Landowner may have avoided taking action by continuously refusing offer</li> <li>Was inconsistent with DNR rules</li> </ul>	?	<ul style="list-style-type: none"> <li>Added note that county may impose reasonable deadline</li> </ul>
10	Staffing Grants	<ul style="list-style-type: none"> <li>Decreases commitment to maintaining staff and program continuity (changed from "highest" priority to "high" priority)</li> <li>Penalizes counties with nonpoint programs (cuts their BASG funding)</li> <li>Was not supported by majority on Staffing grants committee</li> <li>Was not available to public comment (added after the hearing)</li> <li>Eliminated certain costs eligible for reimbursement (e.g. lodging and meal costs associated with training, field equipment and information and education supplies and services)</li> <li>No limit on how much can be used for non-staffing purposes (support and cost sharing)</li> <li>Allowed grant amount determinations to change based on department's own "assessment" of funding needs versus on list of codified priorities</li> <li>Requires reporting of time spent on individual programs</li> </ul>	No	Exceptions: <ul style="list-style-type: none"> <li>Restored education materials as eligible costs, but NOT field equipment or meals and lodging</li> <li>Removed language "... based on the departments assessment of funding needs and priorities..." under 50.32(5)(a) and replaced with a cross-reference to 50.30 (grant priorities list)</li> </ul>
11	Cost-sharing required for practices other than performance standards	<ul style="list-style-type: none"> <li>The rule expands cost-sharing requirements to all conservation practices versus just those needed to meet state performance standards.</li> <li>Exceeds department authority and the intent of program redesign.</li> <li>Further undermines local control and ordinance development to protect soil and water resources.</li> <li>Further strains an already financially strapped program</li> </ul>	No	
12	Deed recording for management (soft) practices	<ul style="list-style-type: none"> <li>Deed-recording discourages voluntary adoption of certain practices (such as conservation tillage, nutrient and pest management) on rented cropland</li> <li>Further hinders voluntary compliance - especially where cropland is rented.</li> </ul>	No	<ul style="list-style-type: none"> <li>Made matters worse by decreasing the dollar amount that triggers recording on deed (\$25,000 to \$10,000)</li> </ul>
13	Wet Detention Basin	<ul style="list-style-type: none"> <li>Listed in Subchapter VI for staff certification, but is not included on list of conservation practices that may be cost-shared under Subchapter VIII</li> <li>Practice is often used for reducing sediment from cropland runoff and is commonly used in lake watersheds to reduce phosphorous loads</li> </ul>	No	
14	Perpetual cost-sharing requirements	<ul style="list-style-type: none"> <li>Cost share requirement were based on whether or not landowner had previously received cost sharing versus whether or not land was in compliance</li> <li>Required cost sharing for every subsequent landowner regardless of status of land - even if noncompliance was self-created</li> </ul>	Partial	<ul style="list-style-type: none"> <li>Mirrored DNR cost share requirements. (Once in compliance - or if previously cost shared - no cost sharing is required.)</li> <li>Still requires perpetual lost opportunity</li> </ul>

**SUMMARY AND STATUS OF PAST AND CURRENT ATCP 50 ISSUES – WLWCA AND WALCE**  
 County Conservationist Meeting, April 17<sup>th</sup>, 2002  
 APRIL 15, 2002

NO.	ISSUE	CONCERN	Addressed?	DATCP ACTION
		<ul style="list-style-type: none"> <li>Was inconsistent with DNR rules</li> </ul>		payments for land taken out of production
15	Loose definition for Economic Hardship	<ul style="list-style-type: none"> <li>Proposed rule lacked accountability and may have invited abuse.</li> <li>Conflicted with draft DNR administrative rule NR 151.</li> <li>Further threatened program finances, thus resulting in less conservation on the land.</li> </ul>	Yes	<ul style="list-style-type: none"> <li>Tightened up</li> </ul>
16	Inaccuracy of Fiscal Estimate	<ul style="list-style-type: none"> <li>Fiscal estimate does not include increased costs associated with maintenance and lost opportunity</li> <li>Suggests that the ratio of cost share dollars to staff dollars is 1:1 versus 2 or 3:1, which is more realistic</li> </ul>	?	
17	Cost Sharing "Received" vs. "Offered"	<ul style="list-style-type: none"> <li>Required that cost sharing be "received" by a landowner before enforcement can occur</li> <li>Landowner could avoid compliance by refusing to accept cost-sharing</li> </ul>	Yes	<ul style="list-style-type: none"> <li>Clarified that cost sharing must be offered</li> </ul>
18	Cost-Sharing in cities and villages	<ul style="list-style-type: none"> <li>Cost-sharing could not be provided for cropland within the boundaries of a city or village unless the community has an ordinance</li> </ul>	Yes	
19	Three-Party Cost-Share Agreements	<ul style="list-style-type: none"> <li>Required DATCP to be a third party to cost share agreements over \$50,000</li> <li>Would have resulted in unnecessary delays for landowners, especially for cost-share agreement amendments</li> <li>Eligibility criteria, costs containment procedures and cost share limits are already covered in the rule</li> </ul>	Yes	<ul style="list-style-type: none"> <li>Changed to require department approval versus being party to contract</li> </ul>
20	Advance notice of Preliminary Allocation Plans	<ul style="list-style-type: none"> <li>The rule does not specify any minimum advance notice to counties when a draft grant allocation plan is sent to the LWCB for their review, which may inhibit local input on the proposal.</li> <li>Counties should be given ample opportunity to review and comment on the draft allocation plan prior to the LWCB meeting so that changes can be considered by the LWCB.</li> </ul>	Yes	<ul style="list-style-type: none"> <li>Inserted 30-day advance notice requirement</li> </ul>
21	Soil loss prediction tool	<ul style="list-style-type: none"> <li>Required that all counties use RUSLE II to determine soil loss</li> <li>Counties should have flexibility to determine which model works best for their county</li> </ul>	No	
22	Rewriting performance standards	<ul style="list-style-type: none"> <li>Wrote (and made changes to) DNR's performance standards in their rule</li> <li>Referred to them as farm conservation practices</li> </ul>	Yes	<ul style="list-style-type: none"> <li>Removed inconsistencies although still uses same terminology</li> </ul>
23	Cost-sharing for new and expanding Livestock Operations	<ul style="list-style-type: none"> <li>Since no regulation requires a landowner to expand or start a new farm, cost-sharing for compliance with performance standards should not be required in these situations</li> <li>Responsibility for controlling pollution should be assumed by the new or expanding operation - as is the case in other industries - versus public</li> </ul>	No	<ul style="list-style-type: none"> <li>Note: ATCP 50 does now mirror DNR rules where this issue resides. (Cost sharing requirement are based on status of land at time rule is adopted, regardless of expansion or change-over to a new type of operation.)</li> </ul>
24	Confusing and distorted terminology	<ul style="list-style-type: none"> <li>Uses the term "landowner" universally (versus distinguishing between "operator", "renter" and "cost share recipient")</li> <li>Difficult to determine responsibilities of the landowner, vis-a-vis the renter, in meeting the performance standards . Also difficult to determine cost sharing and practice maintenance responsibilities</li> <li>Misuses (and uses interchangeably) the terms conservation practice, performance standard and technical standards, thus blurring the real differences that exist between them</li> </ul>	No	

## MEMORANDUM

Date: April 18, 2002  
To: Senator Jim Baumgart, Chairperson  
Environmental Resources Committee  
From: Troy Kuphal, Washington County Conservationist   
Re: Proposed Rule ATCP 50

Greetings. My name is Troy Kuphal. I work for Washington County where I am the administrator of that county's Land Conservation Department. I am also President of the WALCE. This is the Association that represent the county land conservation folks who you'll be relying to implement this program.

I'm here to express my opposition to the proposed revised ATCP 50 . We, meaning my county as well as the people I represent as WALCE President, feel this rule is seriously flawed and will create a program that we cannot in good faith-nor successfully-implement. Allow me to apologize in advance for not sounding too positive. I understand that the frustration of county LCD administrators has created consternation in some halls of the legislature. I wish I could sit before you with pleasant news, but unfortunately that's not the case.

I can summarize our most critical concerns into three general categories:

- One, it creates a more expensive program by expanding amount and number of instances that public funding must be used to pay polluters to clean up and the cost of increased administrative bureaucracy; (e.g. *amending ordinances, administering complicated cost share contracts that go on in perpetuity, to name a few*)
- Two, it undermines or restricts us from being able to use the tools which we have found to successfully balance both environmental issues and agriculture concerns; And
- Three, the rule lacks accountability as it contains no systematic implementation strategy, no standards to measure achievement and no identification of who has to do what by when.

Yesterday I held a meeting that was attended by almost 70% of all LCD administrators in the state. Again these are the people you will be asking to administer this rule.

We meticulously combed though a list that summarized all the concerns our Association has raised over the course of the past year and a half. There were 24 items on that list. Despite other claims by the department, only 6 of our main concerns were sufficiently addressed in addition to a few others that were only partially addressed.

I posed two very simple questions to this group of individuals:

- 1) Is there anything about this proposed rule that anyone in this room would consider an improvement to the rule we are currently working under? And,
- 2) What is in this rule that we cannot already do?

We had one response to the first question and no responses for the second. Remember, these are the people you will be asking to administer this rule.

The fact is this rule does more to prevent the effective and accelerated implementation of nonpoint pollution control in Wisconsin than to advance it. Let me reiterate the reasons why:

- First, because it will be more costly, we certainly cannot control nonpoint pollution more quickly than we already are, unless of course the state is willing to match the increased program costs. Simply put, we'll be applying higher levels of public funding to fewer practices that prevent pollution. At the same time, we'll be required to make offers of public funds in many more instances.
- Second, it pulls the carpet out from under Counties' ability to effectively deal with environmental issues. As such, it is completely inconsistent with the intent under section 92.02 State Stats., which states specifically "Enable the regulation of harmful land use and land management practices by county ordinance where necessary to achieve the purposes of this chapter". Throughout the rule-making process, Counties were treated more as threats to landowners rather than as the responsible partners in conservation that we have been historically.
- Finally, it creates a program that is no more accountable than the day the Legislative Audit Bureau completed their critical review of the program in 1993. Let me offer an example. LCD Administrators recently put together a comprehensive list of the tasks it will talk to implement the performance standards. When we compared it to the rule, we found that very basic yet critical elements on that list were not even in the rule. There is no goal or clear expectations for systematic evaluations (inventory) to be conducted. Likewise, there is no clear standard for the type of reporting that will be necessary to update you on our progress. In a nut shell, despite the millions and millions of dollars you will dedicate to this proposed program, we will not be able to report to you in 5 - or ten years for that matter - with any degree of certainty - where standards are and are not being met. Nor will we be able to tell you how much of a workload it will be or how long it's going to take to finish the job. We see these as fatal flaws and are why we have affectionately come to refer to this as the "pointless non-design" program with no beginning and no end.

DATCP indicates this will all be solved in a "Guidance" document. While this may be the right place for much of the implementation strategy, I am here to tell you there are a few key components that are way too critical to leave out of the rule, and we would be willing to work with the department on identifying what those are.

By the way, there is one other very real problem with this rule that my LCC chairman, other farmers in my county and I have. It deals with Nutrient Management. Namely, for some very perplexing reason the rule states that all farmers must have and follow a nutrient management plan. I am not opposed to that except that they are requiring all farmers to have one very specific type of plan. It's called a 590 plan. By being this prescriptive, they will overnight be turning honest, hard-working farmers into lawbreakers simply for not having that state mandated 590

plan. Now we are told a county can avoid making these farmers criminals by simply deciding not to enforce this law. Well, in my view, there is something just philosophically immoral with that argument and with what this rule does. How would you like to be a farmer having to live year by year wondering if someone, one year, is going to show up on your farm to tell you that the plan you've used up 'til now is no longer adequate? Or, that you will no longer be able to hire the consultant with whom you've entrusted your crops with for years? And, on top of that, being told that you must have a plan that the government tells you is right for you. This rule must, I repeat must, give those farmers an option to demonstrate that by following their own plan, they are not doing anything to threaten the environment any more than if they had a plan dictated by the government. Or better yet, the onus should be on the government to prove that the farmer is more of a polluter because of doing so. Or perhaps a county should have the flexibility to grant variances where they feel it would be appropriate.

*376 discont / buffers*

I am submitting with my comments several documents I ask that you review before deciding on the actions you will take on this rule:

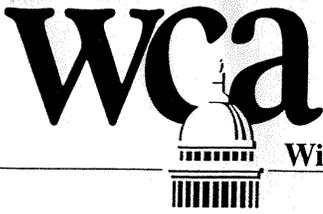
- One is a resolution passed by our County Land Conservation Committee taking an official stand in opposition to the rule
- The second is our list of top issues that remain to be resolved before we feel we can administer the program effectively and accountably
- The third is that list of 24 issues we as an Association have raised over the past 1 ½ (it includes the status of those concerns)
- And fourth, a list of signatures from all 45 LCD Administrators who attended our meeting yesterday, testifying to the fact that this rule has very real and serious flaws which need to be worked out.

Given my testimony and these supporting documents, I believe it would be entirely appropriate to send this rule back to the Department, and that they be given clear direction to work with the people who are being asked to administer it.

We are the experienced professionals, and we are willing and able to provide the knowledge and expertise to make this redesign program successful. We have not seen, nor are we the least bit confident that the latest changes DATCP is proposing to make as a result of their recent negotiations with a few non-administrative individuals will result in the type of changes we feel are necessary.

Unlike nonmetallic mining, we have an existing rule under which we can and will operate as we work to get this rule right. The citizens of the state of Wisconsin, its farmers and everyone who wishes to enjoy this state's great natural resources deserve nothing less.

Thank you for allowing me the opportunity to express my concerns and comments.



**MEMORANDUM**

TO: Honorable Members of the Senate Committee on Environmental Resources

FROM: Jennifer Sunstrom, Legislative Associate

DATE: April 18, 2002

RE: Administrative Rule ATCP 50

The Wisconsin Counties Association (WCA) would like to thank the committee for holding a hearing on this rule and for granting us the opportunity to comment on how ATCP 50 will impact counties and their conservation programs. The Department of Agriculture, Trade and Consumer Protection (DATCP) has worked with WCA throughout the redesign process and has addressed many of the issues that we have previously raised. There are several technical changes that must be made as well as underlying issues that should be given full consideration before the rules are adopted.

**FISCAL IMPLICATIONS**

WCA would like to commend the Department of Natural Resources (DNR) and DATCP for the tremendous amount of work and effort that they have made over the last four years to develop the rule package to redesign Wisconsin's Nonpoint Pollution Abatement Program. Both agencies have spent a tremendous amount of time working with stakeholders, holding public hearings and providing information and education, which has resulted in a program that, puts Wisconsin in the forefront of conservation work in the country. However, just as we had concerns regarding the fiscal cost of implementing the standards outlined in DNR's rules, WCA also has concerns regarding the fiscal implications regarding the level of cost-sharing required in DATCP's rule. Although our association has not taken a position to oppose the cost-sharing requirements as outlined in the rule, we believe that it is important that the legislature fully understand the implications the rule changes could potentially have on conservation efforts.

Statutes require that a minimum of 70% cost-sharing be offered to farmers who are required to implement any of the agricultural standards outlined in the NR 151. Both agencies have made the distinction between a "new" versus "existing" facility to determine when cost-sharing requirements apply. In addition, ATCP 50 includes maintenance payments and lost opportunity payments for land taken out of production for which 70% cost sharing must be offered.

Page 2  
WCA Memo  
April 18, 2002

Given the fact that cost-sharing must only be offered to those facilities that are not in compliance on the effective date of the rule, many conservation departments are concerned that the rule will create an incentive for landowners to wait to be regulated rather than coming into compliance voluntarily. In addition, because funding for cost-sharing is limited, counties will often have to choose between using funds to encourage voluntary compliance over a large number of landowners or targeting the money to a limited number of properties in order to stop severe pollution problems.

The department testified at the informational hearing that there is going to be approximately a \$10 million gap between the level of funding currently provided and the estimated cost to implement the rule. Although implementation of the agricultural standards could potentially be phased-in based on the amount of money that counties are able to offer for cost sharing to landowners, the transfer of funding from priority watersheds to the new performance standards will be very slow. In addition, conservation departments will face a long waiting period to receive adequate staffing dollars to provide technical and educational assistance in counties without priority watersheds. WCA is concerned that the shortfall in funding that is needed to implement this rule will result in another program in which the state creates an immediate expectation of service without the necessary funding.

A key component to successful implementation is adequate and consistent financial assistance to county land and water conservation departments for both cost sharing and staff support. The uncertainty of state funding from fiscal year to fiscal year severely impedes the ability of counties to adequately plan for and prioritize workloads. In addition, the gap between funding and expectations put on counties continues to widen. Although many members of the legislature and the state agencies continue to request additional funds for these programs, current budget shortfalls will make it difficult to even maintain current allocations. **Therefore, WCA requests that the legislature, state departments and interested stakeholders make a concerted effort to educate the public that counties will only be able to implement these new conservation standards in small increments given current funding conditions.**

WCA is committed to working with a renewed spirit of cooperation with all parties including the agricultural community, environmentalists, landowners and state agencies to leverage additional dollars and strengthen conservation programs. However, this effort can be thwarted when expectation, funding and accountability are not clearly defined. A prime example of this is the recent implementation of the Conservation Reserve Enhancement Program (CREP). This program leveraged \$200 million in federal funds to provide a significant opportunity to improve the soil and water resources of the state. However, because additional administrative funding was not appropriated, counties were

put in a very difficult position, which has created yet another rift between counties, DATCP and the farming community.

### **IMPLEMENTATION**

Like many other interested parties, WCA has some concerns regarding implementation. County Land and Water Resource Management Plans will create a framework of how the county intends on meeting local goals and initiatives, and provide landowners with technical, educational and financial assistance. However, many county conservation departments are concerned about how implementation activities, including site evaluations, notification of landowners, voluntary compliance and enforcement activity will be documented. WCA agrees that the tracking and recording of this data is necessary to demonstrate program success and the accountable use of state funds. Most counties already have internal records that contain this type of information; however, there is not an adequate mechanism to readily compile and summarize this information comprehensively.

Both DNR and DATCP intend to work with counties to develop an "implementation guidance document" which will result in an intergovernmental strategy to outline implementation and enforcement standards. In order to facilitate the progress of the rule WCA is not requesting specific language within any of the rules to address our concerns of data tracking and recording. **However, we ask for the legislature's support in using the guidance document to outline a mechanism by which the state agencies will coordinate information gathered by counties and produce a formal record demonstrating the conservation activities implemented throughout the state.**

### **REQUESTED CHANGES**

- 1. Include language within the rule that the department will take into consideration the level of state funding available to counties in its review and approval of county land and water resource management plans.** There should be formal recognition that the ability of counties to implement the state standards and the success of conservation plans is highly related to the level of funding available.
- 2. Under 50.12 (5) Plan Approval - change the language to state that the department will approve a plan that complies with the requirements of county conservation plans rather than "may" approve.** The rule must ensure that DATCP's approval authority over county land and water resources management plans is based solely on compliance with statutory requirements under Wis. Stats. 92.10. Due to the fact that land and water management plans are necessary for state

funding; the ability of the department to arbitrarily disapprove plans must be eliminated.

3. **Add language which requires the department to receive the recommendation of the Land and Water Conservation Board (LWCB) when there is disagreement between the department and a county over whether a county requirement is a "new" conservation standard or an existing state standard.** Ideally, WCA believes that the LWCB should be able to make the final decision in resolving the disagreement, but would be willing to compromise to at least give counties a third party to appeal to if potential disagreements arise which cannot be addressed.
4. **Add language that states that the department, in conjunction with the DNR, will outline the criteria to be used to approve or disapprove local livestock and agricultural shoreline ordinances that are stricter than state standards in a separate rule.** WCA has consistently opposed agency review or approval of any county ordinance that is enacted outside of state regulations contained in chapters 92 and 281 pertaining to water quality and erosion control regulations. However, a recent letter from the Attorney General's office concludes that s.92.15 gives DNR and DATCP review authority over local regulations affecting livestock operations whether those regulations are enacted under s. 92.11. s. 92.17 or under other statutes such as ch. 59 or ch.66. Ultimately, all local regulations are subject to approval if they affect livestock operations. Each local ordinance would have to be submitted for review on a case-by-case basis. DATCP has indicated that they will be working very closely with DNR in reviewing county ordinances because approval of more stringent standards by local governments will have to be justified based on the need to protect water quality. However, the agencies have not developed a set of criteria, a guidance document, or a summary of expectations that local government can use to determine what information they must provide to the departments to meet the burden of proof necessary to be allowed to be more stringent than state standards. WCA remains opposed to usurping local zoning authority. However, we respectfully request the department be required to outline the criteria that will be used to determine approval of ordinances to ensure that this is a passive review by the state agencies rather than a subjective review. WCA believes that these criteria can be developed in a subsequent rule; however, both agencies must be directed to do so within this rule to guarantee that this objective is met.

Given the complexity of the rules surrounding the Nonpoint Pollution Redesign, it will be imperative that the state agencies and counties continue to communicate and work cooperatively as we begin to implement the rules so that problems can be effectively addressed as they arise. As with all types of administrative rules, it is almost a certainty

Page 5  
WCA Memo  
April 18, 2002

that adjustments to the rules will need to be made in the future which will require the assistance and support of the state agencies as well as the legislature.

Thank you for considering our comments. If you have any questions, please do not hesitate to contact the WCA office.

## COUNTY LAND AND WATER MANAGEMENT PLAN CONTENTS

- (a) Water quality and soil erosion conditions throughout the county.
- (b) State and local regulations that the county will use to implement the county plan.
- (c) Water quality objectives for each water basin, priority watersheds and priority lakes.
- (d) Key water quality and soil erosion problem areas.
- (e) Conservation practices needed to address key water quality and soil erosion problem areas.
- (f) A plan to identify priority farms in the county.
- (g) County strategy to encourage voluntary implementation of conservation practices.
- (h) **Compliance procedures, including notice, hearing, enforcement and appeal procedures, that will apply if the county takes action against a landowner for failure to implement conservation practices required under this chapter, NR 151 or related local regulations.**
- (i) The county's multi-year workplan to implement the farm conservation practices and achieve compliance with performance standards under NR 151.
- (j) How the county will monitor and measure its progress.
- (k) How the county will provide information and education related to land and water conservation, including information related to farm conservation practices and cost-share funding.
- (l) How the county will coordinate its land and water conservation program with federal, state and local agencies.

All of these elements must be created in consultation with DNR and other affected stakeholders such as farmers, business owners, landowners, environmental groups, tribes, recreational organizations and the University.

**DNR**

**Priority Watersheds**

- Cost sharing

**TRM**

- Cost sharing



**DATCP**

**Priority Watersheds**

- County staff

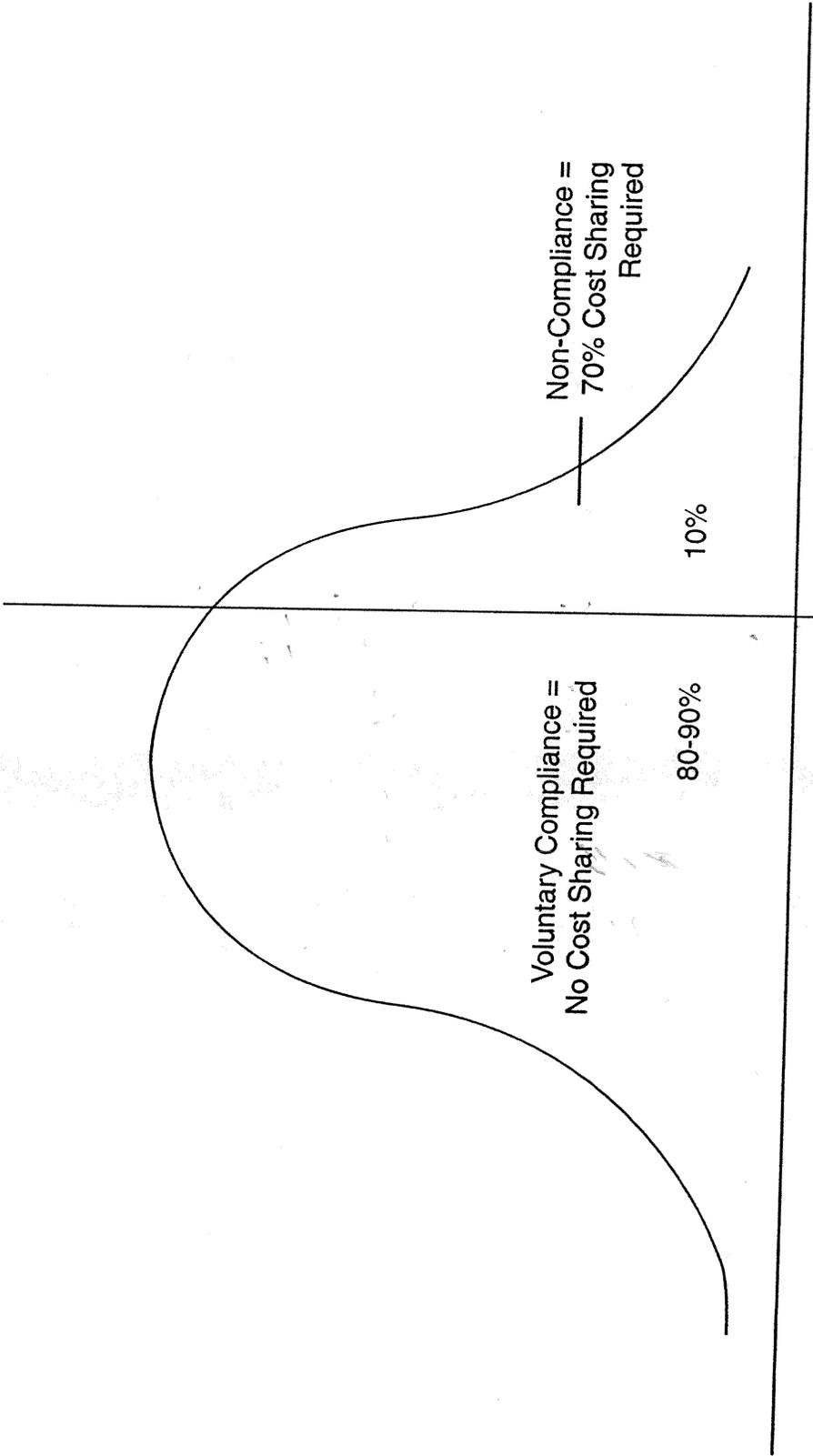
**TRM**

- County staff

**LWRM Plans**

- Cost sharing
- County staff

**CREP**



Voluntary Compliance =  
No Cost Sharing Required

80-90%

Non-Compliance =  
70% Cost Sharing  
Required

10%

*Handwritten notes:*  
11/19/11  
2008  
2009  
2010  
2011

# STATE OF WISCONSIN



## Statement of the SOIL SCIENTISTS SECTION OF THE EXAMINING BOARD OF PROFESSIONAL GEOLOGISTS, HYDROLOGISTS AND SOIL SCIENTISTS

Before the  
Senate Committee on  
Environmental Resources, Senator Jim Baumgart, Chair

Statement of Robert Wendt, Professional Board Member  
representing the Professional Soil Scientists Section  
concerning Senate Clearinghouse Rule 01-090,  
relating to soil and water resource management

300 Southeast, State Capitol  
Thursday, April 18, 2002, 9:00 A.M.

Good morning, Chairman Baumgart and members of the committee.

I am Robert Wendt, a professional board member of the Soil Scientists Section of the Examining Board of Professional Geologists, Hydrologists, and Soil Scientists. On behalf of the Soil Scientists Section, thank you for the opportunity to testify before you regarding Senate Clearinghouse Rule 01-090. The other section members join me in expressing our opposition to this rule, as currently drafted.

As proposed, Clearinghouse Rule 01-090 lists five groups of nutrient management planners who are "presumptively qualified" by the Department of Agriculture, Trade, and Consumer Protection, to prepare nutrient management plans, and thereby qualify the farmer for cost sharing reimbursement.

Under Wisconsin statutes, (Wis. Stats. section 470.01 (9)), a licensed professional soil scientist is specifically defined as qualified to perform work dealing with the investigation and collection of data concerning soils. Professional soil scientists have been licensed in Wisconsin since 1997.

The Soil Scientists Section is concerned that this rule fences out a class of professional license holders previously created by the state, who by definition, meet the qualification requirements

Senate Committee on Environmental Resources  
Testimony on Senate Clearinghouse Rule 01-090  
Examining Board of Professional Geologists, Hydrologists and  
Soil Scientists  
Page 2

being sought. We believe Clearinghouse Rule 01-090 should include licensed Professional Soil Scientists as presumptively qualified.

I appreciate the opportunity to provide this testimony and welcome your questions.