

STATE OF WISCONSIN)
) SS
DEPARTMENT OF AGRICULTURE,)
TRADE AND CONSUMER PROTECTION)

I, Nicholas J. Neher, Administrator of the Agricultural Resource Management Division, Wisconsin Department of Agriculture, Trade and Consumer Protection and custodian of the official records, certify that the annexed rules, relating to soil and water resource management programs, were duly approved and adopted by this department on September 22, 1989.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Agriculture, Trade and Consumer Protection at 801 W. Badger Road in the city of Madison, this 22nd day of September, 1989.

Nicholas J. Neher
Nicholas J. Neher, Administrator
Agricultural Resource Management
Division, Wisconsin Department of
Agriculture, Trade and Consumer
Protection

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ORDER
OF THE STATE OF WISCONSIN DEPARTMENT OF
AGRICULTURE, TRADE AND CONSUMER PROTECTION

The Wisconsin department of agriculture, trade and consumer protection adopts an order to repeal Ag 160 and 165 and to create Ag 166, relating to soil and water resource management programs.

Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection

Statutory authority: ss. 92.14 (8) and 92.16, Stats.
Statute interpreted: ss. 92.14, 92.16 and 144.25, Stats.

Background Legislation

1987 Wisconsin Act 27 reorganized department of agriculture, trade and consumer protection ("department") programs relating to animal waste storage, soil erosion control, farmland preservation and other programs affecting water quality by creating a soil and water resource management program for the department to administer, in conjunction with the department of natural resources' nonpoint source water pollution abatement program. The soil and water resource management ("SWRM") program was established to protect arable soil and the waters of the state by promoting conservation activities through financial and technical assistance at the state and local levels.

State law requires the department to help counties meet administrative operating costs and otherwise fund a variety of county soil and water resource management projects. The department must establish a priority list of funding needs, which it uses to create an annual grant allocation plan in cooperation with the department of natural resources ("DNR"). The allocation plan is based on the cost-effectiveness of proposed projects, the extent to which the proposals will remedy soil erosion or water pollution, the comprehensiveness of a proposal's planning, the degree of cooperation and commitment to a proposal from other sources and the need for staff and project continuity. Before adopting an annual allocation plan, the department and DNR submit it to the land conservation board for review.

County land conservation committees and their staff administer the bulk of the SWRM program. Counties must develop projects and apply to the department for funding. If the department funds a county's SWRM project, a conservation grant is issued to pay for county services and to fund best management practices on

private lands with soil erosion or nonpoint source water pollution problems. County land conservation department staff then sign conservation agreements with landowners or land users who, by agreeing to install and maintain a structure (such as a runoff control collection basin) or a management practice (such as strip-cropping), receive conservation funds to defray a portion of the costs involved.

State law also requires departmental involvement in DNR's nonpoint source water pollution abatement program. The department must participate in choosing which watershed proposals will receive priority for funding under DNR's program, must determine agricultural best management practices to reduce nonpoint source water pollution from agricultural areas and must assist in training county personnel who administer the program.

Contents of the Rule

Purpose of the SWRM Program

The purpose of this rule is to establish consistent procedures for joint administration of the SWRM program by the department, DNR and counties. The rule identifies the SWRM program's goals as: protecting state soil and water resources; providing financial and technical assistance for SWRM projects; promoting cost-effective conservation practices; promoting the farmland preservation program; encouraging innovative conservation strategies; preparing comprehensive agricultural management plans that include best management practices for nutrient and pesticide use; and promoting environmentally and agronomically sound sustainable agriculture practices.

Department Participation in DNR Nonpoint Source Program

The rule describes the department's involvement in DNR's priority watershed program. The department will review and comment on DNR's overall, 5-year funding strategy for its nonpoint source water pollution abatement program, advising DNR as to the significance of specific watershed- basin plans in relation to the SWRM program. The department will analyze specific priority watershed project proposals; the secretaries of each department will jointly decide which projects will be approved for funding.

Once priority watershed projects are selected, the department will assist DNR and the local governmental unit sponsoring a project in analyzing data about soil erosion and water pollution and otherwise preparing priority watershed plans. The department will help establish proper management strategies for agricultural nonpoint sources of water pollution, including identifying best management practices and determining which landowners and land users will be eligible for cost sharing and conservation grants.

To help implement priority watershed plans and the soil and water resource management program, the department will develop training programs for land conservation department staff and will act as a clearinghouse for information about agricultural best management practices. The department will also assist counties in integrating conservation compliance requirements into the nonpoint source water pollution abatement program and help counties prepare the workload analyses they submit to justify their grant requests. The department and DNR will jointly staff a committee to develop a data management system for implementing SWRM programs.

Soil Erosion Control Program

This rule incorporates current rules on the department's soil erosion control program. The rule continues the goal that Wisconsin reach "T by 2000", i.e., that no individual cropland field in the state will have a soil erosion rate exceeding "T-value" (the maximum soil erosion rate that continues to sustain indefinitely a high level of crop productivity) by the year 2000.

The rule specifies that the department may require a land conservation committee to adopt, maintain or amend a soil erosion control plan. Such plans may, with the department's approval, cover less than an entire county. The rule sets out the required contents of soil erosion control plans: a data base, consisting of a land inventory and estimate of soil erosion rates; a ranking of priority areas; and an evaluation of proposed soil erosion control practices. The rule continues the requirement in current rules that a land conservation committee hold a public hearing on its proposed plan before sending it to the department and the land conservation board for their review and approval. The rule also sets out a method by which plans can be amended: with the department's permission, a land conservation committee can amend its soil erosion control plan when better data become available or when the plan's recommended practices become outdated.

SWRM Funding

The rule describes the department's grant management system. It specifies that a basic allocation will be provided to each county to meet a portion of county technical assistance, project administration and personnel costs. Up to 50% of a county's land conservation department staff salaries and fringe benefits will be funded through the basic allocation, subject to maximum payments of \$12,000 per year to a county employing a county conservationist and \$7,000 per year to other counties.

After distribution of the basic allocations, the rule authorizes payment of remaining funds by awarding SWRM grants to counties in order to pay for other costs, such as technical assistance, salaries and data processing expenses, and to provide conservation grants to pay for SWRM projects on specific parcels of land. A county must request funding for conservation grants

in its annual application for funds; these grants may cover cost-sharing, conservation easements, conservation credits and other financial incentives to induce landowners and land users to install best management practices. The department determines whether to fund a county's proposed conservation grants based on the nature of the problem being addressed, the comprehensiveness of the solution, cost effectiveness, the solution's adherence to principles of sustainable agriculture, the amount of wildlife habitat protection and restoration involved and other criteria the department considers relevant. Remaining SWRM funds may also be distributed to pay for innovative strategies a county proposes.

The rule indicates that the department will make payments to counties in two installments. The first payment will be made after the grant contract is signed and the second will be made after the department accepts a county's first two project management reports. The rule requires counties to provide project management reports quarterly; if a county is late in delivering these reports by more than 30 days, the department can reduce the following year's allocation by up to 10%. If a county fails to deliver these reports the rule prohibits the department from paying further SWRM funds to the county.

Applications for SWRM Funds

Counties must submit to the department a grant application and an analysis of the expected workload resulting from their SWRM projects in order to be eligible for SWRM funds. The grant application must include all funding requests, including any funds a county is seeking for its basic allocation, SWRM projects, soil erosion control plan amendments, information and education activities, personnel and technical assistance. County workload analyses must be submitted annually, regardless of whether the county is requesting funds that year. Counties must also develop individual training plans for their personnel and an information and education strategy, incorporating agricultural best management practices, conservation compliance requirements, the county conservation program and methods for contacting landowners and land users.

The rule provides that the department will submit its annual grant allocation plan to the land conservation board for review and comment, after the department and DNR have jointly solicited county funding applications for SWRM and nonpoint source water pollution abatement projects. The department will review county applications and allocate SWRM funds based on its plan. Similar to the department's ability to review DNR funding priorities for the nonpoint source water pollution program, DNR will review and advise the department regarding the department's grant allocation plan priority list. The plan must identify the total SWRM funds allocated, the amount of money allotted to each county and the basis for the allocation.

Allocation criteria for SWRM funds are specified in the statutes. The rule indicates that the department must give priority to projects it finds eligible for funding in the following order: first to basic allocation grants, then to technical assistance and project administration, cost-sharing grants to persons receiving notices of discharge or notices of intent from DNR (regarding nonpoint source water pollution discharges) and other conservation grants. No SWRM funds will be designated for animal waste management projects unless the county adopts an animal waste management ordinance, an animal waste management plan is agreed upon, or the owner or operator of the animal feeding operation has received a notice of discharge or notice of intent from DNR. The rule prohibits allocating SWRM funds for soil erosion control projects if the county has no soil erosion control plan and establishes certain criteria for determining whether to fund county farmland preservation projects: the number and complexity of plans the land conservation department must write; the level of coordination with the soil conservation service; and the need to keep funding ongoing projects for continuity.

Contracts and Conservation Agreements

With counties, the department will prepare grant contracts for the distribution of SWRM funds. These contracts must be in writing and must specify how much money will be spent for particular projects. The contracts must also spell out all deadlines and penalties for noncompliance.

County conservation agreements with landowners or land users must also be in writing. The agreements must be recorded with the register of deeds and must include a description of the SWRM practices that will be implemented on the land, the percentage of the project's cost being paid by governmental sources, deadlines for completion, a soil and water conservation plan, a method for certifying compliance with the plan, an agreement that the landowner or land user will undertake land management practices in substantial compliance with the plan and maintain the SWRM practices for their normal expected life, and other requirements the land conservation committee may impose.

To owners or operators of animal feeding operations who have received notices of discharge from DNR, and to others who have received notices of intent from DNR regarding nonpoint source water pollution problems, the department may directly issue a cost-sharing grant. The rule lists situations in which a recipient of such a notice would not be eligible for a direct cost-sharing grant: if the recipient initiated a discharge of pollutants in order to get a cost-sharing grant; if better management, at a nominal cost, could prevent the pollution discharge; if the discharge could have been prevented simply by complying with a previously agreed-upon operation and maintenance plan; if a grant would not be expected to result in predictable water quality benefits; if the landowner or land user has received a Wisconsin

pollution discharge elimination system permit from DNR; or if the notice of discharge or notice of intent has expired. The rule indicates the department will work with DNR in reviewing animal waste utilization plans for large animal feeding operations, monitoring the level of compliance with these plans and sponsoring informational workshops on nonpoint source pollution.

Distributing Conservation Funds

The rule authorizes counties to enter into conservation agreements with landowners and land users, providing conservation funds to pay for best management practices and the construction of structures necessary to further SWRM goals. A conservation agreement must contain the following provisions: funds will not be paid for a project until a qualified technician or registered professional engineer certifies it complies with the rule; the project must be cost effective, with predictable benefits; and to the extent practicable, the project must be based on the principles of sustainable agriculture. The rule allows counties to sign conservation agreements for nutrient and pesticide management projects, conservation easements, conservation credits and other financial incentives, wetlands protection, conservation compliance, protection of wildlife habitat and other innovative approaches approved by the department. The rule also sets out maximum payment rates for specific types of projects, imposing a general requirement that agreements involving more than \$25,000 must be approved by the department in advance. The rule also requires landowners or land users to restore any habitat destroyed under a conservation agreement, at their own expense, and to comply with technical standards for implementing a management practice.

The rule incorporates provisions in current rules regarding eligibility for funding of certain projects. For animal waste storage, runoff control and soil erosion control projects, the rule describes what types of practices are eligible for conservation funding, what technical standards apply and how long the project must be maintained.

Accounting

Counties must maintain accounting records on SWRM projects for at least 3 years after their completion or until the end of the project maintenance period, whichever is longer. Counties must separately account for their SWRM funds, submitting reports quarterly to the department. The rule requires counties to impose certain cost containment procedures, such as establishing maximum installation costs, requiring landowners or land users to engage in competitive bidding or requiring the use of Wisconsin conservation corps personnel to install a practice. The rule authorizes the department to engage in project reviews to determine compliance with SWRM requirements.

Enforcement

To enforce conservation agreements, a land conservation committee can issue stop work orders and suspend payments if it finds a landowner or land user has breached the terms of an agreement. A land conservation committee can also terminate a conservation agreement entirely for substantial nonperformance without good cause, or if the agreement was based on fraud or misinformation. If the agreement is terminated, the landowner or land user must refund uncommitted funds.

The department can enforce county obligations by refusing to pay for county costs if a land conservation committee fails to perform its responsibilities under the rule. If a land conservation committee does not meet deadlines, the department can withhold up to 10% of amounts due. The department can also require a county to refund any SWRM money it improperly used.

Variances and Ordinances

The rule allows the department to issue variances to its rule, on written request, if it determines a variance is essential to achieve program objectives. The rule also includes, as required by s. 92.16, Stats., certain procedures a county must use to adopt a manure storage ordinance and required provisions of these ordinances.

SECTION 1. Chapter Ag 160 is repealed.

SECTION 2. Chapter Ag 165 is repealed.

SECTION 3. Chapter Ag 166 is created to read:

CHAPTER Ag 166

SOIL AND WATER RESOURCE MANAGEMENT PROGRAM

SUBCHAPTER I

PURPOSE OF THE PROGRAM; DEFINITIONS

Ag 166.01 PURPOSE. This chapter is intended to implement the soil and water resource management program according to the goals and intent expressed in ss. 92.02, 92.025, 92.14 (2), 144.25 and 147.01, Stats. This chapter is also intended to

establish consistent procedures for state administration of the program, conducted jointly by the Wisconsin department of agriculture, trade and consumer protection and by the Wisconsin department of natural resources, and for county administration of the program. This chapter regulates the interaction between state agencies, counties, landowners and land users in order to further the following program goals:

- (1) Protecting surface water and groundwater resources.
- (2) Controlling soil erosion.
- (3) Providing financial and technical assistance for soil and water conservation projects.
- (4) Promoting cost-effective conservation practices.
- (5) Promoting coordination and compliance with farmland preservation requirements under ch. 91, Stats.
- (6) Encouraging innovative local strategies for soil and water conservation.
- (7) Increasing local technical assistance for soil and water resource management.
- (8) Making federal, state and county soil and water resource management program elements compatible.
- (9) Promoting environmentally and agronomically sound, sustainable agricultural practices.
- (10) Incorporating nutrient and pesticide management practices into comprehensive management plans.

Ag 166.10 DEFINITIONS. In this chapter:

- (1) "Alternative best management practice" means a practice not covered by a technical guide but that the department deter-

mines to be an effective, practicable means of preventing or reducing soil erosion or pollution from agricultural nonpoint sources to a level compatible with soil and water resource management objectives.

(2) "Animal feeding operation" has the meaning specified in s. NR 243.04 (2).

(3) "Best management practice" means a practice the department determines to be the most effective, practicable means of preventing or reducing soil erosion or pollution from agricultural nonpoint sources to a level compatible with soil and water resource objectives.

(4) "Conservation agreement" means an agreement by a land conservation committee or by the department to provide a financial incentive, such as a cost-sharing agreement, to a landowner or land user to comply with identified soil and water resource management objectives.

(5) "Conservation tillage" means the preparation of land surfaces for the planting and culture of crop plants using methods that result in a rough land surface covered in varying degrees by vegetative residues of a previous crop, so as to provide a significant degree of resistance to soil erosion by raindrop impact, surface water runoff or wind; or the planting of crop seeds in a narrow slot or a narrow strip of tilled soil, so as to maintain residue cover and not disturb or roughen the entire soil surface.

(6) "Contour farming" means plowing, preparing, planting and cultivating sloping land on the contour, including following established grades of terraces or diversions.

(7) "County conservationist" means the land conservation department employee named by the county in an annual agreement between the land conservation committee and the department of agriculture, trade and consumer protection.

(8) "Critical area stabilization" means the planting of suitable vegetation on highly erodible areas such as steep slopes, gullies and roadsides, so as to reduce soil erosion or pollution from agricultural nonpoint sources.

(9) "Cropland" means land used for the growing and harvesting of grains, legumes, grasses, fruits or vegetables. "Cropland" includes land used for such purposes even if the land is also occasionally used for livestock pasture.

(10) "Department" means the Wisconsin department of agriculture, trade and consumer protection.

(11) "Diversions" means structures installed to divert excess surface runoff water to areas where it can be used, transported or discharged without causing excessive soil erosion. "Diversions" includes systems which employ a channel with a supporting earthen ridge on the lower side, constructed across the slope with a self-discharging and non-erosive gradient.

(12) "DNR" means the Wisconsin department of natural resources.

(13) "Earthen manure storage facility" means an excavated or earthen impoundment for temporary storage of animal waste.

(14) "Erosion control practices" means land management practices identified in s. Ag 166.84.

(15) "Field windbreak" means a strip or belt of trees, shrubs or grasses established or restored within or adjacent to a field, so as to control soil erosion by reducing wind velocities at the land surface.

(16) "Governmental unit" has the meaning specified in s. 144.25 (2) (am), Stats.

(17) "Grade stabilization structures" means structures used to stabilize the grade in a channel, so as to protect the channel from erosion or to prevent the formation or advance of gullies.

(18) "Land conservation committee" means a committee created by a county board under s. 92.06, Stats.

(19) "Landowner" has the meaning specified in s. 92.03 (4), Stats.

(20) "Land user" has the meaning specified in s. 92.03 (5), Stats.

(21) "Nutrient management" means controlling the amount, source, form, location and timing of application of plant nutrients, including organic wastes, commercial fertilizers, soil reserves and legumes, for the purpose of providing plant nutrients and minimizing the entry of nutrients to surface water and groundwater.

(22) "Pesticide management" means controlling the handling, disposal, type, amount, location and timing of application of pesticides used in crop production in order to minimize contamination of water, air and nontarget organisms. "Pesticide management" also includes practices that reduce or eliminate the use of pesticides to meet crop production goals.

(23) "Priority watershed" has the meaning specified in s. 144.25 (2) (c), Stats.

(24) "Runoff control systems" means structures, facilities or practices used to control, divert or retard surface runoff water.

(25) "Soil and water conservation plan" means a written record of agricultural management decisions and conservation practices to be implemented, as provided in s. 92.104, Stats.

(26) "Soil erosion control plan" means a plan developed under s. 92.10, Stats., by a land conservation committee with the assistance of the department.

(27) "Stream bank and shoreline protection" means using vegetation or structures to stabilize and protect banks of streams, lakes, estuaries or excavated channels against scour and erosion.

(28) "Strip-cropping" means the growing of crops in a systematic strip arrangement, with strips of grass, legumes or other close growing crops being alternated with strips of clean tilled crops or fallow, all of which are established on the contour, or across a slope, so as to reduce water or wind erosion.

(29) "Sustainable agriculture" means agricultural techniques that use and maintain local renewable resources to minimize purchased inputs.

(30) "Technical guide" means the soil conservation service field office technical guide, published by the soil conservation service of the U.S. department of agriculture, that is in effect on the effective date of these rules (revisor to insert date).

NOTE: Copies of technical guides may be inspected at the central offices of the Department of Agriculture, Trade and Consumer Protection, the Secretary of State and the Revisor of Statutes. Copies of technical guides may also be obtained from the Department of Agriculture, Trade and Consumer Protection and are commonly available in Soil Conservation Service offices throughout the state.

(31) "Terrace system" means a system of ridges and channels constructed on the contour with a nonerosive grade at a suitable spacing.

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

(33) "Waste storage facility" means a concrete, steel or otherwise fabricated structure or an excavated or earthen impoundment used for storage of animal waste.

(34) "Waste treatment facility" means an earthen lagoon or a concrete, steel or other fabricated structure, used for biological treatment of animal waste.

(35) "Waterway" means a natural or constructed watercourse or outlet that is shaped, graded and covered with a suitable vegetative cover, or other stabilized surface as needed, to prevent erosion by runoff waters.

(36) "Workload analysis" means a county's annual report estimating the hours needed to accomplish all land conservation department project tasks for a given year and assigning hours by activity for each land conservation department staff position or contractor.

SUBCHAPTER II

JOINT RESPONSIBILITIES OF THE DEPARTMENT AND DNR;
DEPARTMENT PARTICIPATION IN PRIORITY WATERSHED PROJECT
SELECTION, PLANNING AND IMPLEMENTATION

Ag 165.20 SELECTING PRIORITY WATERSHED PROJECTS. (1)

OVERALL DNR FUNDING STRATEGY. The department may review and comment on DNR's 5-year, statewide funding strategy for the nonpoint source water pollution abatement program. In reviewing and commenting on the funding strategy, the department may consider the need for both large-scale and small-scale watersheds, available resource management data and other relevant matters.

(2) AREAWIDE WATER QUALITY MANAGEMENT PLANS. As the DNR prepares plans for individual watershed basins, the department shall review and comment on these plans, seeking comment from counties about the plans. The department shall recommend how to rank each watershed according to its significance to the soil and water resource management program and to conservation compliance activities under s. 92.105, Stats.

(3) PRIORITY WATERSHED PROJECT SELECTION. (a) The department may review proposals prepared by land conservation committees and other local governmental units for priority watershed projects under s. 144.25, Stats., and ch. NR 120. The department shall review and comment on DNR proposals to administer and fund priority watershed projects for each DNR district. It shall recommend which projects should be selected as state priorities and receive funding, assessing each project's importance for protecting water resources and land resources. The department

shall analyze proposed priority watershed projects according to the following criteria: project size and duration; landowner participation; cost-effectiveness of best management practices; resource management objectives; public endorsement; and the capability of land conservation department staff to carry out technical and administrative responsibilities. To the extent practicable, the department shall standardize its analysis process so it can be used for all project proposals.

(b) The DNR and the department shall jointly determine how to allocate priority watershed project funds and shall jointly approve the selection of each priority watershed project.

NOTE: See s. NR 120.07 for more information about DNR priority watershed project selection.

Ag 156.21 PRIORITY WATERSHED PLANS. (1) INVENTORY. Each county required to collect data regarding existing agricultural sources of nonpoint water pollution as part of a priority watershed project shall integrate its data collection with the soil erosion control data base approved by the department. The department shall collect these data from the counties and provide them to the DNR.

(2) DATA ANALYSIS AND ESTABLISHMENT OF WATER RESOURCE OBJECTIVES. The department shall assist the DNR and the governmental unit sponsoring a priority watershed project in analyzing data under sub. (1), agricultural nonpoint source pollution data, water resources data and other pollution source data. The department shall also assist the DNR and the governmental unit sponsoring a priority watershed project in setting water resource objectives for the watershed, based on these data.

NOTE: See DNR rules, such as chs. NR 102 and 140, regarding water quality standards and water resource management.

(3) ESTABLISHING PRIORITY WATERSHED MANAGEMENT STRATEGIES.

The governmental unit administering a priority watershed project, the department and the DNR shall jointly develop a management strategy for a watershed, including the following functions:

(a) Setting pollutant reduction goals for agricultural nonpoint sources of water pollution.

(b) Ranking agricultural nonpoint sources of water pollution in the order of severity.

(c) Determining whether landowners and land users are eligible to participate in projects that abate agricultural nonpoint sources of water pollution.

(d) Establishing a midcourse review of the watershed management strategy, to determine if revisions are necessary to achieve project goals.

(4) AGRICULTURAL IMPLEMENTATION STRATEGIES. After the development of management strategies under sub. (3), the department, with the assistance of DNR and the governmental unit sponsoring the priority watershed project, shall develop a strategy for implementing a priority watershed plan in agricultural areas. The agricultural implementation strategy shall identify the level of activity for each of the following areas:

(a) Developing a strategy for determining the appropriate best management practices to be utilized, on a site-specific basis.

(b) Integrating conservation compliance policies and activities with other planned remedial measures.

(c) Analyzing the workload necessary to implement a priority watershed plan.

(d) Developing a project budget, including the cost of technical assistance, training, project management, information and education activities and installing best management practices.

(e) Designing and installing best management practices.

(f) Preparing cost share agreements.

(g) Identifying the number of landowner and land user contacts to be made, the number of soil and water conservation plans to be developed, the type of information and education projects to be utilized and any other project management activities the department determines to be relevant to the implementation strategy.

(h) Preparing a schedule for implementation activities, including adoption of construction site or manure storage ordinances identified in the priority watershed plan.

(5) COUNTY ORDINANCES. If the DNR determines as part of a priority watershed project that a county must adopt a manure storage ordinance under s. 92.16, Stats., or if a county decides to adopt a manure storage ordinance under s. 59.07 (51), Stats., the department shall review proposed ordinances and recommend improvements. Such ordinances shall comply with s. Ag 165.98.

Ag 165.22 IMPLEMENTING PRIORITY WATERSHED PLANS. In addition to other functions listed elsewhere in this chapter, the

department has the following duties relating to implementing priority watershed plans:

(1) TRAINING. The department shall develop and maintain a statewide training program for land conservation department personnel involved in implementing priority watershed plans, as provided in s. Ag 166.51.

(2) INFORMATION AND EDUCATION STRATEGY. The department shall act as a clearinghouse for information related to best management practices, assisting land conservation committees in preparing an information and education strategy, as provided in s. Ag 166.52.

(3) INTEGRATING CONSERVATION COMPLIANCE INTO PRIORITY WATERSHED PROJECTS. For the purpose of coordinating soil and water resource management goals with those of other programs, the department shall assist counties in identifying whether participants in priority watershed projects are subject to state or federal conservation compliance requirements. The county, in consultation with the department, shall set a schedule for conservation compliance planning purposes, describe the conservation compliance planning standards and procedures to be used in administering the priority watershed project and evaluate staffing and funding needed to carry out the projected conservation compliance planning workload.

NOTE: 16 USC 3801 to 3823 and 7 CFR Part 12 cover federal conservation compliance programs.

(4) COUNTY PREPARATION OF WORKLOAD ANALYSES. The department shall coordinate county preparation of workload analyses, as provided in s. Ag 166.53, and shall assist counties in completing their workload analyses for priority watershed projects.

Ag 166.23 JOINT RESPONSIBILITIES OF THE DEPARTMENT AND DNR.

(1) TECHNICAL STANDARDS FOR BEST MANAGEMENT PRACTICES. (a)

The department shall participate, with DNR and other agencies, in developing and updating best management practices for soil and water resource management projects and for implementing priority watershed plans. Jointly with DNR and land conservation committees, the department shall develop guidelines for selecting best management practices at specific sites. The department shall evaluate existing interagency arrangements in memoranda of understanding regarding best management practice issues and agricultural nonpoint source pollution abatement and identify modifications to these arrangements as needed to carry out responsibilities under this chapter.

(b) The department shall, in cooperation with participating agencies, public interest groups and other organizations, create a process for:

1. Developing and evaluating best management practices that protect groundwater, fish and wildlife habitat and wetlands.

2. Maintaining nutrient and pesticide management practices.

3. Establishing technical standards for developing and maintaining cover crops on lands dedicated to conservation easements or buffer strips.

4. Establishing other best management practice improvements, as needed, to meet soil and water resource objectives identified by the department.

(2) DATA MANAGEMENT SYSTEMS. The department shall create a data management committee whose primary objective is to develop an integrated data management system for effective soil and water resource management at the county, state and federal levels. The department shall request the DNR, soil conservation service, land conservation committees, the university of Wisconsin-extension and other interested parties to participate in the committee. The department shall staff, in cooperation with DNR, the data management committee. To the extent feasible, the department shall adopt and implement policies developed by the committee on issues such as consolidating data management systems, data consistency, computer equipment procurement and maintenance, identifying data management responsibilities, data management training and integrating a geographic information system into the automated aspects of the soil and water resource management program.

SUBCHAPTER III

SOIL EROSION CONTROL PLANS

Ag 165.30 COUNTY SOIL EROSION CONTROL PLANS. (1) EROSION CONTROL GOALS. The soil erosion control goals under ch. 92, Stats., and this chapter are as follows:

(a) By January 1, 2000, no individual cropland field in the state will have a soil erosion rate which exceeds T-value.

(b) By July 1, 1990, no county will have an average annual cropland soil erosion rate which exceeds 1.5 times T-value. By July 1, 1995, no county will have an average annual cropland soil erosion rate which exceeds T-value.

(c) By July 1, 1990, no individual cropland field in the state will have a soil erosion rate which exceeds 3 times T-value. By July 1, 1995, no individual cropland field in the state will have a soil erosion rate which exceeds 2 times T-value.

(d) By July 1, 1990, no individual cropland field of a farm owned by the University of Wisconsin system or any other department or agency of state government will have a soil erosion rate which exceeds T-value, excluding plots used for soil erosion research.

(2) GENERAL PLAN REQUIREMENTS. (a) The department may require a land conservation committee to prepare, adopt, amend and maintain a soil erosion control plan that conforms to the requirements of s. 92.10 (6), Stats., and this chapter as a condition to the county's receipt of soil and water resource management funds under s. Ag 166.40 (2). The department may approve a soil erosion control plan covering less than an entire county. The land conservation committee shall invite and allow the following agencies to participate in preparing the soil erosion control plan:

1. The U.S. department of agriculture soil conservation service.

2. The agricultural stabilization and conservation service of the U.S. department of agriculture.

3. The DNR.

4. The department.

5. The cooperative extension service of the university of Wisconsin.

6. Other persons the land conservation committee considers appropriate.

(b) During the preparation of the soil erosion control plan, the land conservation committee shall hold at least one public meeting to discuss the purpose of the plan, review inventory results, discuss implementation strategy and solicit comments.

(3) PRELIMINARY DESCRIPTION; LAND INVENTORY AND RATES OF EROSION. To provide a factual basis for the information required under this section and s. 92.10 (6), Stats., every soil erosion control plan shall include a data base establishing a land inventory and current estimate of soil erosion rates within the planning area. The land inventory and estimate of soil erosion rates shall conform to the following requirements:

(a) Every soil erosion control plan shall contain a general inventory of the soil erosion rates within the planning area for cropland and other categories of land designated by the land conservation committee. The land inventory shall describe:

1. Major soil types and their geographical distribution.
2. Surface topography and the geographical distribution of major topographical features or characteristics.
3. Watershed areas, including their geographical boundaries.
4. Land use categories and their distribution.

(b) Every soil erosion control plan shall include current estimates of soil erosion caused by wind and water within the entire county. Estimated rates of soil erosion shall be included

for the county as a whole and for each of the land use categories under par. (a). The soil erosion control plan shall identify and describe localized areas within each land use category having especially high soil erosion rates. With respect to cropland, soil erosion estimates shall be separately calculated for each watershed or other appropriate cropland area identified by the land conservation committee. To estimate current rates of soil erosion, the land conservation committee shall use methods approved by the department.

(4) ACCEPTABLE RATES OF EROSION. Every soil erosion control plan shall establish acceptable rates of erosion applicable to individual parcels of land. Acceptable cropland erosion rates shall, at a minimum, meet the statewide T-value goals set forth in sub. (1).

(5) PRIORITY AREAS FOR EROSION CONTROL. In its soil erosion control plan, the land conservation committee shall rank areas where the rate of soil erosion exceeds the acceptable rate according to their relative order of priority for erosion control. Priorities shall be based on: the amount of erosion; the extent to which erosion rates exceed the acceptable rate; the off-site damages caused by the erosion, including water quality degradation; the extent to which the erosion is preventable; the relative cost of erosion prevention; the existence and applicability of resource management projects; and other factors the land conservation committee considers relevant. The committee shall set forth in the soil erosion control plan the factors it uses in establishing priorities.

(6) PROPOSED EROSION CONTROL PROJECTS. The soil erosion control plan shall identify and evaluate proposed erosion control projects to reduce soil erosion in areas ranked under sub. (5) to acceptable rates. These projects shall emphasize erosion control practices and land-use changes that are likely to be cost-effective in achieving erosion control. Each soil erosion control plan shall estimate the cost of attaining erosion control goals and shall describe funding alternatives.

(7) NOTICE OF PRIORITY AREAS. After the land conservation committee has determined the priority areas for erosion control under sub. (5), the land conservation committee shall notify landowners and land users in each priority area. Notice shall include:

(a) The estimated erosion rate for the priority area.

(b) The estimated erosion rate for the landowner's or land user's individual parcel, if known.

(c) Recommended practices which may be adopted by landowners or land users to reduce soil erosion.

(d) An invitation to the landowner or land user to present information at the public hearing under sub. (8) concerning the accuracy of the soil erosion rates estimated by the land conservation committee.

(e) Other information considered appropriate by the land conservation committee.

(8) PUBLIC HEARING. After a proposed soil erosion control plan has been prepared in writing, or after an existing soil erosion control plan has been substantially amended under sub.

(11), but before it is submitted to the department for approval, the land conservation committee shall hold at least one public hearing on the plan. The public hearing shall be preceded by public notice. The plan shall document its compliance with this section.

(9) PUBLIC AGENCY PARTICIPATION. (a) Upon completing a soil erosion control plan, the land conservation committee shall annually meet with the agencies specified in sub. (2) (a) 1 to 6 in order to perform the following:

1. Update inventory data from the plan, to maintain the data base according to current conditions.

2. Monitor the plan's implementation, so as to determine county progress toward the goals specified in sub. (1) and toward any other goals specified in the plan.

3. Develop an effective information and education strategy.

4. Consider the need for amending the plan.

5. Prepare a workload analysis.

(b) The land conservation committee shall include in its workload analysis any work elements proposed at the meeting held under par. (a).

(10) SOIL EROSION CONTROL PLAN REVIEW AND APPROVAL. Each proposed soil erosion control plan and each proposed amendment to a plan shall be submitted to the land conservation board and the department for review and approval. The department shall obtain the land conservation board's recommendations before approving or disapproving, in writing, the proposed plan or amendment.

(11) AMENDING SOIL EROSION CONTROL PLANS. The land conservation committee may, with the department's written authorization, amend its soil erosion control plan if:

(a) The original erosion control plan was based on information that can be replaced by more reliable data.

(b) The original plan was based on a partial inventory and the land conservation committee decides to perform a complete inventory of cropland or other land uses designated under sub. (3).

(c) The land conservation committee needs to update the original inventory data in order to maintain a resource data base system.

(d) Implementation activities of the plan need to change because original strategies have become outdated or inappropriate.

SUBCHAPTER IV

SOIL AND WATER RESOURCE MANAGEMENT FUNDING

Ag 166.40 ALLOCATIONS. (1) BASIC ALLOCATION GRANTS. (a) As a basic allocation the department shall, based on a department-approved workload analysis, annually provide each county with funds to meet a portion of the county's technical and administrative personnel costs under the soil and water resource management program, in accordance with s. 92.14 (3), Stats.

(b) 1. In its annual allocation plan, the department may fund up to 50% of land conservation department personnel salaries and fringe benefits. Funding under this subsection is subject to available funds and is limited to the following maximum amounts:

a. For a county with a county conservationist operating under an annual agreement between the department and the land conservation committee, the maximum annual funding under this subsection is \$12,000.

b. For a county without a county conservationist operating under an annual agreement between the department and the land conservation committee, the maximum annual funding under this subsection is \$7,000.

2. The department shall specify professional qualification standards and job duties for county conservationists in the annual agreements it signs with land conservation committees that certify eligibility for funds under subd. 1. a.

(2) SOIL AND WATER RESOURCE MANAGEMENT GRANTS. (a) The department may award other soil and water resource management grants after providing counties with funds under sub. (1), in accordance with s. 92.14 (4), Stats.

(b) 1. The department may include funding for staff support costs in grants under this subsection. If a county proposes to have staff support costs jointly paid by both the department and DNR, the county shall indicate in its application to the department how much it is requesting the department to pay.

2. The following staff support costs are eligible for full funding under this paragraph, if the costs are included in a

county's annual grant application under s. Ag 166.50 and have been approved by the department:

a. Land conservation department staff salaries and fringe benefits, according to the county's approved annual workload analysis.

b. Professional services contracts.

c. Information and education activities.

d. Land conservation department staff training.

e. The soil and water resource management program's share of costs for performing the single financial compliance audit.

f. Travel expenses, including mileage charges, vehicle leases or purchases, meals, lodging and other necessary costs.

g. Fees for recording conservation agreements, as required in s. Ag 165.71 (1).

3. The following staff support costs for equipment are eligible for 70% funding under this paragraph, if the costs are included in a county's annual grant application under s. Ag 166.50 and have been approved by the department:

a. Computers, software, printers and other peripheral devices.

b. Office supplies, including paper, copies, printing and postage.

c. Office equipment and furnishings, including desks, chairs, calculators, drafting equipment, copy machines and file cabinets.

d. Field equipment.

(c) The department may provide conservation grants to counties for conservation agreements. These agreements may provide conservation funds for cost sharing, conservation easements, conservation credits, innovative strategies addressing soil and water resource management goals and other soil and water resource management incentives, if the costs are included in a county's annual grant application under s. Ag 166.50 and have been approved by the department. Funding for cost sharing is subject to the limitations specified in s. Ag 166.80 (2). The department may fund a percentage of the cost of projects specified in this paragraph, other than cost sharing, based on:

1. The nature of the identified resource management problem.
2. The extent to which the project establishes a comprehensive solution to the problem.
3. The incorporation of nutrient and pesticide management principles.
4. Adherence to the principles of sustainable agriculture.
5. The projected impact of the project on wildlife, fisheries, forestry, plant communities, endangered species, wetland and other related resources.
6. Cost effectiveness.
7. Other criteria the department may establish.

(3) GRANT PAYMENTS. (a) The department shall pay amounts due each county for grants under subs. (1) and (2) in two installments. Each installment shall equal 50% of the total grant award. The department shall pay the first installment immediate-

ly following the approval of its annual allocation plan under s. Ag 165.60 and receipt of the county's signed grant contract. The department shall pay the second installment after it accepts the county land conservation department's first two quarterly project management reports for the year covered by the grants.

(b) Each county shall place funds it receives for conservation agreements in an interest bearing account, using the interest it calculates these funds have accrued to further the goals of the soil and water resource management program.

(c) 1. Except as provided in subd. 2, if a county does not spend all the money specified in its grant contract for any year the department shall apply the county's unspent money as a credit against the following year's working budget, reducing the following year's allocation to the county by the amount of unspent funds from the previous year.

2. If the department finds extenuating circumstances, it may add a county's unspent money from one year to the following year's allocation.

(4) QUARTERLY PROJECT MANAGEMENT REPORTS. Each land conservation committee receiving funds under this chapter shall report quarterly on its performance of soil and water resource management activities. These reports shall include an accounting of financial expenditures, staff time reports, accomplishment reports and other information related to the grant contracts the department may require. The department shall use these reports in its annual reviews of county projects for fiscal accountability. The quarterly reports are due April 15, July 15, October 15

and January 15. If a land conservation committee is late in submitting one or more of the quarterly reports and the total number of days late in any year exceeds 30 days, the department may reduce the county's next annual allocation as provided in s. Ag 166.96. The county may appeal this reduction under ch. 227, Stats. The department may not pay amounts due under this chapter unless it has received all the county's required quarterly reports.

SUBCHAPTER V

COUNTY APPLICATIONS FOR SOIL AND WATER

RESOURCE MANAGEMENT FUNDS

Ag 166.50 GENERAL FUNDING APPLICATION REQUIREMENTS. Each county seeking funding for soil and water resource management projects shall submit a workload analysis under s. Ag 166.50 and a grant application, including in its grant application the county's request for basic allocation funds and funds for project proposals, amendments to soil erosion control plans, personnel training, information and education, technical assistance, project administration and any other soil and water resource management activities. Each land conservation committee shall annually submit a workload analysis to the department, documenting its staff needs based on tasks scheduled for completion during the year and on tasks anticipated for the next year.

Ag 166.51 TRAINING COUNTY PERSONNEL. (1) LAND CONSERVATION COMMITTEE RESPONSIBILITIES. The land conservation committee shall develop individual training plans for its land conservation department employees and may submit a funding request for the

training to the department with the county grant application. The department shall fund a share of the training plans it approves. The department may only approve training plans that meet criteria established in its statewide training program.

(2) DEPARTMENT RESPONSIBILITIES. The department shall develop and maintain a statewide training program for land conservation department personnel involved in implementing soil and water resource management projects and DNR priority watershed plans. The department shall organize and provide staffing for the state interagency training committee. The committee shall determine statewide training needs by coordinating, interpreting and implementing training plans for land conservation department employees. These training plans shall be designed to help land conservation department employees identify elements of jobs or areas of work in which training may be needed, levels of performance in these areas of work and courses that are offered to help employees perform at the expected levels.

Ag 166.52 INFORMATION AND EDUCATION MATERIALS. (1) COUNTY INFORMATION AND EDUCATION STRATEGY. The land conservation committee, with the assistance of the department and others as necessary, shall develop a strategy for informing and educating landowners, land users and other members of the public about soil and water resource management and nonpoint source water pollution abatement. This strategy may include descriptions of best management practices and their application, conservation compliance requirements and other aspects of the soil and water resource management program. The strategy may include such techniques as

personal contacts, landowner and land user surveys, brochures, public service announcements, news releases, tours, newsletters and public notices. The land conservation committee shall include its plans for this information and education strategy with the county grant application, and shall incorporate workload associated with the information and education strategy in its annual workload analysis.

(2) DEPARTMENTAL ASSISTANCE. The department shall act as a clearinghouse for information related to best management practices and shall assist land conservation committees in preparing information and education strategies regarding sustainable agriculture, nutrient and pesticide management and other practices related to soil and water resource management or priority watershed plans. Each information and education strategy shall be developed to achieve at least the following goals:

(a) The strategy shall focus both on specific information and education materials and on methods of delivering these materials.

(b) The strategy shall acknowledge the roles and responsibilities of the various agencies, public interest groups and other organizations involved in the priority watershed project.

(c) The strategy shall identify levels of support and the primary delivery system necessary to carry out an effective information and education effort by the counties involved in the priority watershed project.

Ag 165.53 WORKLOAD ANALYSES. (1) ANNUAL PREPARATION.

Each land conservation committee shall annually prepare for its

county a workload analysis, which shall constitute the workload allocation plan required under s. 92.08, Stats. The workload analysis shall describe the soil and water resource activities to be undertaken by the county in the subsequent year. It shall also provide an accounting of the time required for personnel in the land conservation department to administer and implement the following activities:

- (a) General land conservation department activities.
- (b) The soil and water resource management program.
- (c) The nonpoint source water pollution abatement program under s. 144.25, Stats.

(2) DEPARTMENT REVIEW. Each land conservation committee shall submit its workload analysis to the department for review and modification, approval or disapproval. If the land conservation committee is applying for a soil and water resource management grant, it shall submit its workload analysis to the department with the grant application. The department shall deliver to DNR data from the workload analyses and grant applications related to DNR's nonpoint source water pollution abatement program.

SUBCHAPTER VI

DEPARTMENTAL REVIEW OF COUNTY APPLICATIONS FOR

SOIL AND WATER RESOURCE MANAGEMENT FUNDS

Ag 166.60 METHOD OF REVIEW. (1) GENERAL. The department shall allocate funds to land conservation committees, as provided in ss. 92.14 (3) and (4), Stats., according to the annual grant allocation plan it prepares and submits to the land conservation board for review and recommendations. The grant allocation plan is also subject to review and comment by the DNR.

(2) DEPARTMENTAL ALLOCATION PLAN. (a) The department and the DNR shall jointly solicit funding applications from all eligible land conservation committees annually. Land conservation committees shall submit funding applications on or before a deadline date the departments jointly establish.

(b) For each annual grant allocation the department, with the advice of the DNR, shall prepare a priority list of funding needs, based on a review of county funding applications and the allocation criteria specified in sub. (3).

(c) Allocation plans established under this section shall identify:

1. The total amount of funds to be allocated to all land conservation committees.

2. Each county that will receive funds and the amounts allocated. The amounts allocated to a county, being based on county estimates made earlier in the year, are subject to departmental adjustment to reflect updated figures. The department may also adjust allocated amounts based on comments received on its proposed grant allocation plan.

3. The basis for the allocation of funds, using the allocation criteria specified in sub. (3).

(3) ALLOCATION CRITERIA. (a) The overall allocation of funds shall be based upon the criteria specified in s. 92.14 (6), Stats. The department shall allocate funds to the following categories, granting priority in allocation according to the order listed:

1. Basic allocation grants under s. Ag 166.40 (1).

2. Soil and water resource management grants for technical assistance and project administration.

3. Cost-sharing grants made to persons who have received notices of discharge or notices of intent, as provided in s. Ag 166.72.

4. Other conservation grants.

(b) No land conservation committee may receive soil and water resource management cost-sharing funds for animal waste management projects unless the department has approved and the county has in effect an animal waste management plan under s. 92.15, 1985 Stats., and an animal waste management ordinance, except as provided in s. Ag 166.72.

(c) No land conservation committee may receive conservation grants for soil erosion control projects unless the county has prepared a soil erosion plan in accordance with subch. III. In determining the allocation of soil and water resource management funds for proposed soil erosion control projects, the department shall consider:

1. The severity of cropland erosion in the proposed implementation area. The severity of cropland erosion depends on the degree to which cropland erosion rates exceed T-value, and on the number and agricultural value of cropland acres affected.

2. The likelihood that the projects will succeed in reducing soil erosion to T-value in the affected area, as evidenced by landowner and land user interest and participation.

3. The probable cost-effectiveness of the proposed projects in reducing soil erosion. Cost-effectiveness shall be determined

by calculating the combined total cost of the proposed projects to landowners, land users and the public, and by comparing that cost with the predicted reduction in soil erosion which will result from completion of the proposals.

4. The demonstrated ability of the land conservation committee to implement the proposed projects.

5. The degree to which the proposed projects complement and coordinate with the farmland preservation program under ch. 91, Stats.; the DNR nonpoint source water pollution abatement program; the public inland lake protection and rehabilitation program created under ch. 33, Stats.; the Wisconsin conservation corps program created under s. 16.20, Stats.; the agricultural conservation program administered by the agricultural stabilization and conservation service of the U.S. department of agriculture; federal programs administered by the soil conservation service of the U.S. department of agriculture; and other programs the department deems appropriate.

6. The projected reduction in off-site damages or water quality benefits of the proposed projects.

7. The willingness of the county to commit existing educational, technical and administrative staff resources to the proposed projects.

(d) In determining the allocation of soil and water resource management funds for proposed farmland preservation conservation compliance activities, the department shall use county workload analyses in considering:

1. The number and complexity of conservation farm plans an applicant county must prepare.

2. The degree to which the county's farmland preservation activities complement and coordinate with federal programs administered by the soil conservation service of the U.S. department of agriculture.

3. The need to maintain the continuity of existing farmland preservation activities.

SUBCHAPTER VII

GRANT CONTRACTS AND CONSERVATION AGREEMENTS

Ag 155.70 GRANT CONTRACTS WITH COUNTIES. (1) WRITTEN ANNUAL CONTRACTS REQUIRED. No funds may be allocated or released to a land conservation committee under this chapter except under a written annual grant contract between the department and the land conservation committee.

(2) REQUIRED PROVISIONS. Each contract shall set forth:

(a) The projects and purpose for which the funds are allocated and all terms and conditions for the receipt of funds. The contract shall describe each soil and water resource management project for which funds are allocated and estimate total costs for each project.

(b) The amount of funds allocated to the county and the amount allocated for each soil and water resource management project.

(c) The respective responsibilities of the department and of the land conservation committee.

(d) Deadlines for implementing the contract.

(e) 1. That any soil and water resource management funds repaid to the county under s. Ag 166.71 (1) (g) shall be credited against funding other approved soil and water resource management projects in the next year.

2. That any soil and water resource management funds not used by the county may be credited against funding other approved soil and water resource management projects in the next year, as provided in s. Ag 166.40 (3) (c).

(f) That the department may withhold or terminate funding for failure to meet the contract's terms and conditions.

(g) That the county is required to maintain its expenditures under s. 92.14 (7), Stats., and s. Ag 166.86 (7).

Ag 166.71 COUNTY CONSERVATION AGREEMENTS WITH LANDOWNERS AND LAND USERS. (1) AGREEMENTS REQUIRED. Every land conservation committee shall enter into a written conservation agreement with every person to whom the committee provides conservation funds to implement soil and water resource management projects. The land conservation committee shall record conservation agreements and amendments in the office of the register of deeds for each county in which the property is located, within 30 days after the conservation agreement is signed. Each agreement shall include:

(a) The name and address of the applicant and the legal description of the land where the project will be implemented. If the applicant is a land user other than the landowner, the agreement shall include the name of the landowner and be signed by the landowner.

(b) The specific best management practices to be implemented.

(c) The estimated costs of implementing the project and the percentage of the cost to be paid by each governmental source under any conservation agreement.

(d) Time deadlines for implementing the project.

(e) A plan for operating and maintaining the project.

(f) A method for certifying that the soil and water resource management practices have been implemented and maintained.

(g) An agreement by the recipient of conservation funds to:

1. Maintain the funded soil and water resource management practice for its normal expected life or replace it with an equally effective soil and water resource management practice. If the recipient fails to maintain or replace the soil and water resource management practice, the agreement shall require the recipient to repay to the land conservation committee all conservation funds received under the agreement. Repayment of conservation funds is not required if a structure, facility or practice is rendered ineffective during the required maintenance period due to circumstances beyond the control of the owner or operator.

2. Undertake land management practices in substantial compliance with a soil and water conservation plan, if the land management practices are for the purpose of soil erosion control. The plan shall be developed in cooperation with the landowner or land user and approved by the land conservation committee. If the recipient fails to maintain compliance with the soil and

water conservation plan, the agreement shall require the recipient to repay to the land conservation committee all conservation funds received under the agreement.

(h) A requirement that the owner or operator of an animal feeding operation comply with this chapter and operate the funded structures, facilities or practices in such a manner as to avoid water quality problems. Animal waste storage and treatment facilities shall be operated so as to prevent spills or leakage from the facility.

(i) A procedure by which the agreement may be amended.

(j) A statement that the agreement runs with the land and will apply to any subsequent landowner or land user, if title to the land is transferred.

(2) ADDITIONAL RESTRICTIONS IN AGREEMENTS. The land conservation committee may include more restrictive conditions in an agreement than those required under this section, as authorized by s. 92.07 (13), Stats., or other applicable law.

Ag 165.72 STATE COST-SHARING AGREEMENTS DUE TO ISSUANCE OF A NOTICE OF DISCHARGE OR NOTICE OF INTENT. (1) DIRECT PAYMENTS TO RECIPIENT OF NOTICE. (a) Pursuant to ss. 92.14 (4) (c) and (5) (h) 2, Stats., the department may make cost-sharing grants directly to owners or operators of animal feeding operations who have received a notice of discharge related to animal waste under ch. 147, Stats., or to other landowners or land users who have received a notice of intent relating to agricultural sources of nonpoint source water pollution under s. 144.025, Stats. The department may make these direct cost-sharing grants to

owners or operators of animal feeding operations whether or not the county in which the animal feeding operation is located has an approved animal waste management plan or an approved animal waste management ordinance. The department may also fund soil erosion control projects under this section even if the county has no soil erosion control plan or if the erosion causing the nonpoint source pollution is not from cropland.

(b) Direct grants under this section are subject to the provisions of ss. Ag 166.60, 166.71, 166.80 to 166.82 and 166.86 (1). For purposes of a direct grant under this section, the department shall assume the administrative responsibilities of a land conservation committee under ss. Ag 166.71 and 166.86 (1).

(2) DEPARTMENT INVOLVEMENT. In addition to other functions listed elsewhere in this chapter, the department has the following duties relating to DNR's animal waste regulatory program under ch. NR 243:

(a) The department shall submit written comments to DNR on waste management plans and Wisconsin pollution discharge elimination system permits developed for large animal feeding operations.

(b) The department shall assist DNR in investigating livestock operations conducted in accordance with ch. NR 243. Following the investigation, the department shall report to DNR, summarizing the results of the investigations and proposing, if applicable, one or more corrective measures for improving the waste management practices and facilities of the livestock operation.

(c) The department shall assist DNR in establishing a timetable for implementing corrective measures.

(d) After DNR has issued a notice of discharge, the department shall notify the recipient of financial assistance that may be available under this section and assist the recipient in procuring technical and financial assistance.

(e) The department shall maintain a project status tracking system for livestock operations that have been issued notices of discharge and have requested technical or financial assistance from the department. The department shall report to DNR on the status of these operations, upon their completion of corrective measures.

(f) If a notice of discharge recipient is eligible for financial assistance under this section, at least 30 days before the notice expires the department shall inform the recipient that its eligibility for financial assistance will cease when the notice expires. If the recipient has failed to implement corrective measures while the notice was in effect, the department shall inform DNR and make available a record of the assistance the department, the land conservation committee and the soil conservation service of the U.S. department of agriculture offered to the recipient to implement the corrective measures.

(g) Acting jointly with DNR, the department shall sponsor local workshops, provide informational material to counties and otherwise encourage land conservation committees to assist landowners and land users who have received notices of discharge or intent. Acting jointly with DNR and the university of Wisconsin-

extension, the department shall develop informational materials for recipients of these notices of discharge or intent describing animal waste and other nonpoint source water pollution problems, solutions and projects. The department shall coordinate distribution of these materials.

(3) COUNTY INVOLVEMENT. The department may enter into a written agreement with a land conservation committee under which the county assumes certain responsibilities of the department under this section. The department shall reimburse a land conservation committee for technical assistance and project administration expenses incurred under this subsection, as provided in s. Ag 166.81 (5). Responsibilities assumed by a county on behalf of the department may include:

(a) Determining necessary corrective measures, providing technical assistance and preparing agreements with owners and operators of animal feeding operations, as provided in sub. (2) and s. Ag 166.71.

(b) Certifying that waste storage and treatment facilities and runoff control systems meet the requirements of this chapter.

(4) CONDITIONS OF INELIGIBILITY. The department may determine that a landowner or land user identified under sub. (1) is not eligible for a cost-sharing grant if the department finds any of the following:

(a) The landowner or land user initiated a discharge of pollutants for the purpose of obtaining a cost-sharing grant.

(b) The landowner or land user could prevent the discharge of pollutants through improved management practices at nominal cost.

(c) The landowner or land user could have prevented the discharge of pollutants by complying with a previously agreed upon operations and maintenance plan.

(d) The cost-sharing grant will achieve no predictable water quality benefits. The department shall consult with DNR regarding the water quality benefits associated with the grant.

(e) The landowner or land user has received a Wisconsin pollution discharge elimination system permit from the DNR under s. 147.02, Stats.

(f) The landowner or land user's notice has expired or been terminated. Eligibility for conservation assistance may be restored to a landowner or land user with an expired notice of discharge if the department, DNR, the land conservation committee and the landowner or land user agree to extend the notice.

SUBCHAPTER VIII

DISTRIBUTION OF CONSERVATION FUNDS

Ag 166.80 USE OF FUNDS FOR SOIL AND WATER RESOURCE MANAGEMENT PROJECTS. A land conservation committee receiving a conservation grant for soil and water resource management projects under s. Ag 166.60 shall distribute the funds to individual landowners and land users in compliance with agreements under s. Ag 166.71 and with the contract between the department and the land conservation committee under s. Ag 166.70. Recipients shall use these funds to meet soil and water resource management objectives. A land conservation committee may allocate conservation funds only for soil and water resource management projects that meet the following requirements:

(1) COST-EFFECTIVE SOIL AND WATER RESOURCE BENEFITS. The amount of conservation funds to individual landowners and land users shall be based on the cost of projects that have predictable soil and water resource benefits and that are cost-effective in comparison to other measures available to the landowner or land user. The land conservation committee shall determine the cost-effectiveness of a proposed project. In determining the cost-effectiveness of a proposed project, the land conservation committee shall, in consultation with the department, consider the predicted soil and water resource benefits of the project, the cost of the project amortized over its expected useful life and the practical effects of the project on the agricultural operation.

(2) MAXIMUM GRANT RATES. (a) The amount paid to a landowner or land user under a conservation agreement shall be based on the cost of the proposed project, as determined by the land conservation committee. The cost-sharing rate for the design and construction of a project shall equal the percentages specified as follows:

PROJECT	PAYMENT RATE
1. Animal waste storage	70%
2. Runoff control systems	70%
3. Strip-cropping	50%
4. Diversions	70%
5. Terraces	70%
6. Waterways	70%
7. Critical area stabilization	70%

8. Grade stabilization structures	70%
9. Conservation tillage	50%
10. Field windbreaks	70%
11. Contour farming	50%
12. Streambank and shoreline protection	70%
13. Filter strips	70%
14. Livestock exclusion	50%
15. Nutrient management	50%
16. Pesticide management	50%

(b) The cost-sharing rate for the design and construction of a project not listed under par. (a) shall be established by the land conservation committee and approved by the department.

(c) In lieu of the payment rates specified in par. (a), a land conservation committee may use the following rates to pay for the design and construction costs of certain projects:

1. \$5 per acre for contour cropping.
2. \$12 per acre for strip-cropping.
3. \$10 per acre for field strip-cropping.
4. \$45 per acre, over 3 years, for reduced tillage on continuous row croplands.
5. \$15 per acre, for one year only, for reduced tillage on crop rotations involving hay.

(d) The maximum combined grant from all governmental sources for the construction of animal waste storage facilities may not exceed \$10,000. This \$10,000 limitation does not apply to any structure, facility or practice, the principal purpose of which is to control or prevent barnyard runoff.

(3) INNOVATIVE APPROACHES TO SOIL AND WATER RESOURCE MANAGEMENT. Funding under this section may be provided to counties to develop and implement innovative strategies for addressing resource management goals, established by a land conservation committee. Land conservation committees shall evaluate project proposals based on these strategies according to the criteria specified in s. Ag 166.40 (2) (c) 1 to 7:

(4) ADHERENCE TO PRINCIPLES OF SUSTAINABLE AGRICULTURE. To the extent practicable, soil and water resource management projects shall be based on principles of sustainable agriculture.

Ag 166.81 GENERAL RESTRICTIONS ON THE USE OF FUNDS. (1)
USE OF FUNDS FOR DIRECT PERSONAL BENEFIT. No land conservation committee may distribute funds under this chapter, and no person may use funds distributed under this chapter, for work or equipment personally benefiting the recipient and not conforming to the purposes of the soil and water resource management program.

(2) MAXIMUM CONSERVATION AMOUNTS WITHOUT DEPARTMENTAL APPROVAL. Unless the department gives its prior written approval or is a party to a conservation agreement, no county may enter into a conservation agreement or other contract involving soil and water resource management funds whose cost exceeds \$25,000. In a contract signed under s. Ag 166.70, the department may reduce this cost figure to a lesser amount. All conservation agreements prepared under s. Ag 166.72 shall be reviewed by the department, regardless of the cost of the agreement.

(3) DESTRUCTION OF WILDLIFE HABITAT AND WETLANDS. Soil and water resource management projects funded under this chapter may

only remove wildlife habitat that the land conservation committee or DNR finds to be significant, if the habitat is replaced at the landowner or land user's expense. The land conservation committee shall request DNR to determine the significance of habitat whose importance to wildlife is not immediately apparent. Soil and water resource management projects funded under this chapter may not damage wetlands.

(4) COMPLIANCE WITH TECHNICAL STANDARDS. (a) Except as provided in par. (b), no land conservation committee may fund soil and water conservation practices that fail to comply with technical guide specifications.

(b) A land conservation committee may fund a soil and water conservation practice the department determines, in consultation with DNR, to be an alternative best management practice. Sediment generated from the construction of a project receiving conservation funds shall be controlled in accordance with the Wisconsin construction site best management practice handbook, published by DNR in October, 1988.

NOTE: Copies of the Wisconsin construction site BMP handbook may be inspected at the central offices of the Department of Natural Resources, the Department of Agriculture, Trade and Consumer Protection, the Secretary of State and the Revisor of Statutes. Copies of this handbook may also be obtained from the Department of Natural Resources or the Department of Agriculture, Trade and Consumer Protection.

(5) DIRECT GRANT PAYMENTS; PARTIAL PAYMENTS. (a) A land conservation committee shall pay for soil and water conservation practices by issuing funds directly to the landowner or land user; no land conservation committee may issue a two-party pay-

ment for a soil and water resource management practice without the approval of the landowner or land user.

(b) 1. Except as provided in subd. 2, land conservation committees may only make payments under this section after a qualified technician or registered professional engineer certifies that the practice, facility or structure has been completed in compliance with this chapter.

2. A land conservation committee may pay for components of a soil and water resource management practice, facility or structure before the entire practice, facility or structure is completed, if a qualified technician or registered professional engineer certifies that the component is completed and independently provides soil and water resource management benefits. No more than 75% of the conservation funds under a conservation agreement may be used under this subdivision.

(6) TECHNICAL ASSISTANCE AND PROJECT ADMINISTRATION. The department may reimburse a land conservation committee for technical assistance and project administration services provided by or for the land conservation committee, if the department approves the services as being necessary to implement soil and water resource management practices and if the services are part of an approved project under s. Ag 166.72 or s. 92.15, 1985 Stats. Technical assistance and project administration services are not eligible for reimbursement under this subsection if the land conservation committee is being reimbursed for these services under s. Ag 166.40 (2) (b) 2. a or ch. NR 120. Total reimbursement under this subsection may not exceed 15% of the cost-

sharing grants issued to fund the associated soil and water resource management practices or the actual cost of the technical assistance and project administration services, whichever is less.

(7) FUNDING ENGINEERING DESIGN SERVICES. The department may reimburse a landowner or land user for the cost of engineering services, if it approves the services as being necessary to implement soil and water resource management practices, subject to the following conditions:

(a) The services, including project certification, are provided by a registered professional engineer.

(b) The total reimbursement under this subsection may not exceed 15% of the amount paid as part of a conservation agreement under s. Ag 166.80 (2), or the actual cost of the services, whichever is less. The total reimbursement under this subsection shall be in addition to the amount paid under s. Ag 166.80 (2).

Ag 166.82 USE OF FUNDS FOR ANIMAL WASTE STORAGE. Cost-sharing grants for animal waste storage or treatment facilities are subject to the restrictions listed in this section:

(1) REIMBURSABLE EXPENSES. Cost-sharing grants for animal waste storage or treatment facilities may include payments for:

- (a) Design or construction of the facility.
- (b) Repair or reconstruction of existing facilities.
- (c) Permanent fencing needed to protect the facility.
- (d) Permanently installed equipment needed to transport animal waste to the facility as part of an animal waste management plan.

(e) Relocating livestock facilities, as provided in s. Ag 166.83 (1) (e).

(f) Treating milkhouse wastes.

(2) NONREIMBURSABLE EXPENSES. - Cost-sharing grants for animal waste storage or treatment facilities may not include payments for:

(a) Portable pumps or other portable equipment.

(b) Buildings or modifications to buildings, unless modifications to buildings are essential for installation of an animal waste storage facility.

(c) Equipment for spreading animal waste onto land, or incorporating animal waste into land.

(d) 1. Except as provided in subd. 2, cost-sharing grants may not be used to finance the design or construction of animal waste storage facilities if, in the absence of the facilities, the waste from the animal feeding operation can feasibly be applied to land, in compliance with technical guide specifications 633, without causing or aggravating a water quality problem. The feasibility of a land application under this paragraph shall be determined in light of existing topographic, climatological and management factors.

2. Even if the waste from an animal feeding operation can feasibly be applied to land, the landowner or land user may nevertheless receive a cost-sharing grant to repair or modify existing storage or treatment facilities if all of the following conditions are met:

a. The repair or modification is needed to meet water quality objectives.

b. The facilities are operational except for the components in need of repair or modification.

c. The landowner or land user has made a substantial investment in the facility that will be effectively lost if the facility is not repaired or modified.

(3) DESIGN AND MAINTENANCE REQUIREMENTS. Animal waste storage and treatment facilities shall be of sufficient capacity to store the normal accumulation of animal waste which may be produced by the animal feeding operation over a period of at least 30 days. Facilities shall be designed and constructed in compliance with the well location requirements specified in s. NR 112.07. Facilities shall also be designed and constructed in compliance with technical guide specifications 312, 313, 358, 359, 382 and 425, or other standards and specifications approved by the department. Facilities shall be maintained for at least 10 years, or until the animal feeding operation is discontinued.

Ag 165.83 USE OF FUNDS FOR RUNOFF CONTROL. Cost-sharing grants for runoff control systems are subject to the restrictions listed in this section:

(1) REIMBURSABLE EXPENSES. Cost-sharing grants for runoff control systems may include payments for structures, facilities or practices such as:

(a) Diversions, gutters, downspouts, dams, picket dams, dikes, settling basins, collection basins, filter strips, filter walls, infiltration areas, buffer strips, waterways, terraces,

outlet structures, conduits and land shaping needed to manage runoff from the animal feeding operation or runoff from the land application site.

(b) Permanent fencing needed to protect the runoff control systems.

(c) Establishing permanent vegetative cover, including mulch, fertilizer and other necessary materials. A temporary seeding may be funded if permanent cover is ultimately established.

(d) Runoff control practices necessary to meet identified water quality objectives.

(e) Relocating livestock facilities, if relocation is the most practical and cost-effective means of achieving water quality objectives. A grant award for relocating livestock facilities may not exceed 70% of the estimated cost of installing an animal waste management system at the existing site or 70% of the actual eligible cost of relocating the livestock facilities, whichever is less. Plans for relocating livestock facilities are subject to approval by the department. Grant awards under this paragraph may only be made if the grant recipient agrees to abandon the existing site permanently for livestock feeding purposes and records this agreement in the office of the register of deeds for each county in which the property is located. Costs eligible for reimbursement for relocating livestock facilities include:

1. Installing animal waste management structures, facilities and practices.

2. Practices necessary for properly abandoning the existing site, such as the removal of concrete paving, fencing and other obstructions.

3. Site rehabilitation and establishing permanent vegetation.

4. Livestock exclusion.

5. Abandoning wells.

6. Moving buildings or other structures.

7. Transporting livestock. Reimbursement under this subdivision is limited to \$5,000 and is only available for relocation to a site in Wisconsin, other than on the existing farm.

(2) DESIGN AND MAINTENANCE REQUIREMENTS. Runoff control systems shall be installed in compliance with technical guide specifications 312, 342, 350, 362, 382, 393, 412, 468, 558, 561 and 620. The runoff control systems shall be maintained for at least 10 years, or until the animal feeding operation is discontinued.

Ag 166.84 RESTRICTIONS ON THE USE OF FUNDS FOR SOIL EROSION CONTROL PROJECTS. (1) COUNTY DISTRIBUTION OF CONSERVATION FUNDS. A land conservation committee receiving a conservation grant for soil erosion control projects under s. Ag 166.60 shall distribute the funds to landowners and land users in compliance with agreements under s. Ag 166.71 and with the contract between the department and land conservation committee under s. Ag 166.70.

(2) GENERAL PROJECT REQUIREMENTS. The department may allocate conservation grants only for soil erosion control

projects that are needed to abate a nonpoint source water pollution problem, identified by a notice of intent under s. Ag 166.72, or that meet each of the following requirements:

(a) The project's best management practices are identified under s. Ag 166.845, except that other erosion control practices may be part of a conservation agreement if they are specifically described and approved by the land conservation committee and the department as part of a funding grant under s. Ag 166.70.

(b) The project is implemented on land parcels whose average annual rate of soil erosion exceeds the acceptable rate established under s. Ag 166.30 (4), or on land parcels where soil erosion creates a significant water quality problem.

(c) The project complies with relevant standards, specifications, and design criteria set forth in the technical guide. Other erosion control practices may be part of a conservation agreement if they provide equivalent levels of erosion control, and are specifically described and approved by the land conservation committee and the department as part of a funding grant under s. Ag 166.70.

(3) COUNTY RELEASE OF FUNDS. Conservation grants allocated to a land conservation committee under s. Ag 166.60 may not be released by the committee until the committee has determined that the soil erosion control practices have been completed by the landowner or land user in compliance with the agreement under s. Ag 166.71.

Ag 166.845 TYPES OF SOIL EROSION CONTROL PRACTICES. Conservation funds for soil erosion control practices are subject to the following conditions:

(1) STRIP-CROPPING. (a) Conservation funds for strip-cropping practices may be used only to establish the strip-cropping system, and, if necessary, to remove obstacles or install subsurface drains.

(b) All cultural strip-cropping operations shall be performed as nearly as practicable on the contour.

(c) The strip-cropping system shall be maintained for at least 10 years.

(d) The strip-cropping system shall be established in compliance with technical guide specifications 500, 585, 586, 589 and 606.

(2) DIVERSIONS. (a) Conservation funds for diversion practices may be used only for:

1. Diversions, outlets, dikes or subsurface drains. Conservation funds may be used for subsurface drains only if the drains are installed on sloping land where groundwater seeps to the surface and causes the land, or land cover, to lose its stability.

2. Installing structures such as pipes, underground outlets or other outlets needed to ensure proper transport and disposal of water to a ditch or dike, to promote a more even flow of water or to protect outlets from erosion.

3. Leveling and filling operations needed for the installation of an effective diversion system.

4. Removing obstructions as necessary to install an effective diversion system.

5. Establishing permanent vegetative cover, including seed, mulch, fertilizer and other necessary materials. A temporary seeding may be funded if permanent cover is ultimately established.

6. Fencing as necessary to protect a diversion from cattle.

(b) Conservation funds may not be used to install ditches or dikes that are designed to impound water for later use, or that will be a part of a regular irrigation system.

(c) Diversion practices shall:

1. Include an adequate outlet.

2. Be maintained for at least 10 years.

3. Be installed in compliance with technical guide specifications 342, 356, 362, 382, 412, 468, 500, 606 and 620.

(3) TERRACES. (a) Conservation funds for terrace systems may be used only for:

1. Constructing terraces.

2. Leveling and filling operations needed to install an effective terrace system.

3. Removing obstructions as needed to install an effective terrace system.

4. Installing underground pipe outlets and other mechanical outlets as needed for an effective terrace system, including materials.

5. Converting an existing terrace system to a new system, if the existing system is not serving its intended erosion control purpose. Conservation funds may not be used to convert an old terrace system to a new terrace system if the sole purpose of

the conversion is to accommodate changes in cropping patterns or equipment used by the farmer.

6. Establishing permanent vegetative cover, including seed, mulch, fertilizer and other necessary materials. A temporary seeding may be funded if permanent cover is ultimately established.

(b) Terrace systems shall:

1. Include a stable outlet or waterway of adequate capacity.

2. Be maintained for at least 10 years.

3. Be installed in compliance with technical guide specifications 342, 412, 468, 500, 600, 606, 620 and 638.

(4) WATERWAYS. (a) Conservation funds for waterways may be used only for:

1. Site preparation, grading, shaping and filling.

2. Establishing permanent vegetative cover, including seed, mulch, fertilizer and other necessary materials. A temporary seeding may be funded if permanent cover is ultimately established.

3. Removing obstructions, installing subsurface drains and installing machinery crossings, as needed for proper functioning of the waterway.

(b) Waterway systems shall be:

1. Permanently covered by vegetation, to provide adequate protection from erosion. Close-sown small grains, annual grasses or mulches may be used for temporary protection if followed by an appropriate permanent vegetative cover.

2. Maintained for at least 10 years.

3. Installed in compliance with technical guide specifications 342, 382, 412, 484 and 606.

(5) CRITICAL AREA STABILIZATION. (a) Conservation funds for critical area stabilization may be used only for:

1. Permanent fencing to protect the site.

2. Establishing permanent vegetative cover, including seed, mulch, fertilizer and other necessary materials. A temporary seeding may be funded if permanent cover is ultimately established. Trees planted for critical area stabilization may not be used commercially for Christmas trees.

3. Shaping and smoothing operations performed prior to the installation of protective structures or plantings.

(b) Critical area stabilization practices shall be:

1. Maintained for at least 10 years.

2. Established in compliance with technical guide specifications 342, 382, 386, 472, 484 and 612.

(6) GRADE STABILIZATION STRUCTURES. (a) Conservation funds for grade stabilization structures may be used only for:

1. Channel linings, chutes, drop spillways and pipe drops to discharge excess water.

2. Fencing.

3. Establishing permanent vegetative cover, including seed, mulch, fertilizer and other necessary materials. A temporary seeding may be funded if permanent cover is ultimately established.

4. Leveling and filling operations needed to install the structure.

5. Detention or retention structures, including dams, desilting reservoirs, sediment basins and debris basins.

(b) Conservation funds may be used for a grade stabilization structure with an embankment of 15 to 25 feet in height or with an impoundment capacity of 15 to 50 acre-feet only with the department's prior written approval. No conservation funds may be used for a grade stabilization structure with an embankment exceeding 25 feet in height or with an impoundment capacity exceeding 50 acre-feet. No conservation funds may be used for a grade stabilization structure on a navigable stream or stream supporting a fishery without DNR's prior written approval.

(c) Grade stabilization structures shall be:

1. Maintained for at least 10 years.

2. Installed in compliance with technical guide specifications 342, 348, 350, 356, 382, 404, 410, 412, 468, 484, 606, 620 and 638.

(7) CONSERVATION TILLAGE. (a) Conservation funds for conservation tillage may be used only for:

1. No-till practices.

2. Chisel plowing.

3. Disking.

4. Till-planting practices.

5. Other, similar practices.

(b) Conservation funds may be allocated to a landowner or land user to finance conservation tillage operations for up to 3

years. In determining the amount to be allocated, the land conservation committee shall determine the cost of the proposed project according to the prevailing price that would be charged for performing the conservation tillage operations on a custom basis.

(c) Conservation funds may not be allocated to a landowner or land user who is already using a satisfactory conservation tillage system.

(d) Conservation tillage practices shall conform to the following requirements:

1. Land subject to conservation tillage shall be protected from erosion from the time of harvest until after the next planting. Protection may be provided by a cover crop residue or temporary cover, or by the application of other approved management methods designed to protect against erosion. After planting, at least 30% of the land shall be protected.

2. On moderately or steeply sloping land all tillage and planting operations shall be performed as nearly as practicable on the contour, or parallel to terraces.

3. The conservation tillage system shall be maintained, or the land shall be protected by close-growing crops such as grasses or legumes, for at least 5 years.

4. Conservation tillage shall be performed in compliance with technical guide specification 329.

(8) FIELD WINDBREAKS. (a) Conservation funds for the establishment or restoration of a field windbreak may be used only for the planting of trees, shrubs or grasses, as necessary

for the control of soil erosion. Trees planted to establish or restore a field windbreak may not be used commercially for Christmas trees.

(b) Field windbreaks shall be:

1. Protected from destructive grazing.
2. Maintained for at least 10 years.
3. Established or restored in compliance with technical guide specifications 332, 392 and 472.

(9) CONTOUR FARMING. (a) Conservation funds may be allocated to a landowner or land user as an incentive for contour farming and, as needed, installing subsurface drains and removing obstacles. Conservation funds may be allocated only during the first year to establish the system and may not exceed \$8 per acre.

(b) Conservation funds may not be allocated to a landowner or land user to be used on lands that are already being contour farmed.

(c) Contour farming practices shall conform to the following requirements:

1. Contour farming shall be maintained for at least 5 years, or 10 years if subsurface drainage is involved. Close growing crops such as grasses or legumes may be used in lieu of contouring during the maintenance period.

2. Contour farming systems shall be performed in compliance with technical guide specifications 330, 500 and 606.

(10) STREAM BANK AND SHORELINE PROTECTION. (a) Conservation funds for stream bank and shoreline protection may be used only for:

1. Permanent fencing to protect stream banks and shorelines from damage by livestock.

2. Installing rock riprap. Wood chunks, unsorted demolition material, brick, plaster, blacktop and any other material that may produce leachates may not be used as riprap. Any installation creating banks greater than 6 feet high, measured from the stream or lake bed, shall be approved by DNR in writing prior to design.

3. Shaping stream banks or shorelines before installing protective plantings or structures.

4. Stream crossings.

5. Establishing permanent vegetative cover, including seed, mulch, fertilizer and other necessary materials. A temporary seeding may be funded if permanent cover is ultimately established.

6. Water pumps and other methods of delivering water to livestock, so the animals can be prevented from entering surface waters.

(b) Stream bank and shoreline protection practices shall be:

1. Maintained for at least 10 years.

2. Installed in compliance with technical guide specification 342, 382, 580 and 612.

(11) FILTER STRIPS. (a) Conservation funds for filter strips may be used only for:

1. Permanent fencing to protect the site.

2. Establishing permanent vegetative cover, including seed, mulch, fertilizer and other necessary materials. A temporary seeding may be funded if permanent cover is ultimately established.

3. Shaping, smoothing and other site preparation operations performed prior to establishing vegetation.

(b) Filter strip practices shall be:

1. Maintained for at least 10 years.

2. Established in compliance with technical guide specifications 342, 382, 386, 393, 472 and 484.

Ag 166.85 USE OF FUNDS FOR NUTRIENT AND PESTICIDE MANAGEMENT. Conservation grants for nutrient and pesticide management are subject to the restrictions listed in this section:

(1) REIMBURSABLE EXPENSES. Conservation grants for nutrient and pesticide management may include payments for:

(a) Soil testing, including residual nitrogen analysis.

(b) Manure and other organic waste nutrient analysis.

(c) Spill control basins and related facilities for pesticide handling areas.

(d) Integrated pest management scouting, for up to 3 years.

(2) DESIGN AND MAINTENANCE REQUIREMENTS. Nutrient and pesticide management practices shall be designed and maintained in compliance with the nutrient and pesticide management technical bulletin, issued by the department and by DNR in January, 1989. Facilities or structures funded under this section shall be maintained for at least 10 years.

NOTE: Copies of the nutrient and pesticide management technical bulletin may be inspected at the

central offices of the Department of Agriculture, Trade and Consumer Protection, the Department of Natural Resources, the Secretary of State and the Revisor of Statutes. Copies of the technical bulletin may also be obtained either from the Department of Agriculture, Trade and Consumer Protection or from the Department of Natural Resources.

Ag 166.86 OTHER RESPONSIBILITIES OF THE COUNTY. (1)

ACCOUNTING AND RECORD KEEPING. Each land conservation committee shall establish and maintain a complete accounting and record keeping system. The land conservation committee shall maintain soil and water resource management project records for 3 years after the project's completion or for the duration of the project's maintenance period, whichever is longer. The land conservation committee's record keeping system shall include:

(a) Separately accounting for all soil and water resource management funds, from whatever source, including a record of all receipts, expenditures and account balances.

(b) A complete file prepared for each agreement under which soil and water resource management funds are paid or committed. The file shall include:

1. The application for conservation funds or technical assistance.

2. A record of approval, if the agreement is approved by the county. A record of approval shall be filed before the agreement is signed.

3. The original copy of the agreement, signed by the parties.

4. A record of technical referral and certification by a qualified technician or registered professional engineer that any

facility or structure has been completed according to the agreement. Certification shall be filed prior to payment.

5. Authorization by the land conservation committee for the release of conservation or technical assistance payments. A record of the authorization shall be filed prior to payment.

(2) ACCOUNTINGS OF EXPENDITURES SUBMITTED TO THE DEPARTMENT. Each land conservation committee shall submit quarterly accountings of expenditures to the department. With its fourth quarterly project management report the land conservation committee shall also submit an annual summary of expenditures under its basic allocation and of expenditures for training, soil erosion control projects, animal waste runoff control projects, animal waste storage projects and all other soil and water resource management projects. The land conservation committee shall submit a final accounting to the department of expenditures for soil erosion control, animal waste runoff control, animal waste storage and any other soil and water resource management projects, within 30 days after a project's completion date.

(3) COST CONTAINMENT PROCEDURES. (a) A land conservation committee that receives a soil and water resource management grant under this chapter shall identify in its grant application and shall use one or more of the following cost containment procedures for each best management practice being funded:

1. Based on past cost information, the land conservation committee may determine an average cost per unit of materials and labor for installing the best management practice. This average cost may not be exceeded.

2. Based on past cost information, the land conservation committee may establish a cost range for installing the best management practice. This cost range may not be exceeded.

3. The land conservation committee may require the landowner or land user to request bids from contractors for installing a best management practice and to accept the low bid.

4. The land conservation committee may establish a maximum payment rate, subject to the restrictions specified in s. Ag 156.80 (2), for installing a best management practice.

5. The land conservation committee may hire or assign its employees to install a best management practice, if the employees perform the work more economically than others.

6. The land conservation committee may use the Wisconsin conservation corps to install a best management practice.

7. The land conservation committee may, with the department's approval, use other cost containment procedures it determines to be more effective than those specified in this paragraph.

(b) In exceptional circumstances the land conservation committee may pay for best management practices whose costs exceed the maximum amounts specified under par. (a), if the land conservation committee documents in writing the circumstances involved, submits a copy of this documentation to the department and receives the department's approval prior to payment.

(4) CONTRACTS. The land conservation committee may contract for the performance of specified administrative and technical tasks.

(5) ANNUAL REVIEW MEETINGS. The department may, to the extent possible, require a land conservation committee to meet annually with it to discuss projects and progress on specific landowner and land user contacts, practice design and installation, staffing, county conservation agreement files, fiscal records, adherence to required procedures and preparation for fiscal audits.

(6) PROGRAM AND PROJECT REVIEWS. (a) The department may conduct program reviews and prepare interim and final reports on any funded project, as needed. Project reviews may include a physical inspection of structures, facilities or practices financed with state funds, as necessary to determine consistency with program goals and standards.

(b) The county shall include its soil and water resource management fiscal activities in its single financial and compliance audit.

(7) MAINTENANCE OF EFFORT. A county can meet its maintenance of effort requirement under s. 92.14 (7), Stats., by maintaining its own ongoing expenditures at or above a base level determined by averaging expenditures in 1985 and 1986 for land conservation department personnel who were involved in soil and water resource management projects. County funds for capital expenditures and revenues from sources other than the county do not count toward reducing the county's base level of expenditures.

SUBCHAPTER IX

EVALUATION SYSTEMS

Ag 166.90 EVALUATING LOCAL IMPLEMENTATION. (1) CRITERIA USED. To determine whether a land conservation committee receiving soil and water resource management funds under this chapter is adequately performing its functions, the following shall serve as evaluation criteria:

(a) The land conservation committee's performance of specific soil and water resource management projects identified in the grant application and workload analysis approved by the department and DNR.

(b) The land conservation committee's delivery of technical assistance, including:

1. The number of landowners and land users it has contacted.

2. Its development of soil and water conservation plans, conservation agreements and farmland preservation contracts.

3. Its designing and installing practices.

4. Its field checks of installed practices.

5. Its ordinance development.

6. Its information and education strategy.

(c) The effectiveness of the county's use of training funds to improve personnel performance.

(d) Whether the county's projects have succeeded in reducing soil erosion to T-value or otherwise conforming to soil and water resource management program goals.

(e) Other criteria the department finds relevant.

(2) ANNUAL RESOURCE MANAGEMENT REPORT. Each land conservation committee shall, in conjunction with its annual summary of nonpoint source water pollution improvements under s. NR 120.04 (1) (k), indicate its progress on soil and water resource management projects by submitting to the department an annual resource management report. The department shall, to the extent practicable, automate reporting systems used by each county receiving soil and water resource management funds to produce this report. This report shall serve as background information for developing the land conservation committee's next grant application and workload analysis. The department may require the land conservation committee to meet with it for an evaluation of the committee's progress.

Ag 166.91 ANNUAL REPORT. (1) CRITERIA USED. Pursuant to ss. 92.14 (12) and 144.25 (4) (o), Stats., the department and DNR shall jointly develop and submit to the land conservation board an annual report evaluating program and resource management, using the following criteria:

(a) Changes in land management. The annual report shall include:

1. Land management changes, including acres of soil brought to T-value, acres planned and managed for farmland preservation and anticipated pollution reduction due to installing practices under conservation agreements.

2. Information from project tracking systems.

(b) Changes in water quality, for priority watershed projects funded under s. 144.25, Stats., and for other projects the

department identifies under this chapter. The annual report shall include water quality criteria included in priority watershed plans, annual work plans or other related activities.

(2) PROCEDURES USED. (a) With its January 15 quarterly project management report to the department, each land conservation committee shall summarize the tracking data it collects under sub. (1) (a). The land conservation committee shall, to the extent practicable, periodically summarize information about the location and significance of landowners not meeting program objectives and transmit this information to the appropriate state water resources field staff so it can determine the need to adjust its water resources evaluation strategy.

(b) The land conservation committee and the department may review and recommend to DNR appropriate methods of monitoring changes in water quality.

(3) EVALUATING PROGRAM MANAGEMENT. The department and DNR shall use the results of the annual report to review periodically technical and policy issues that may affect both state agencies' programs, in order to meet soil and water resource management objectives or to simplify or otherwise improve the programs.

SUBCHAPTER X

ENFORCEMENT

Ag 166.95 ENFORCING CONSERVATION AGREEMENTS. (1) SUSPENDING CONSERVATION PAYMENTS. (a) The land conservation committee may refuse to pay for work done under a conservation agreement after issuing a stop work order under this subsection.

(b) The land conservation committee may issue a written stop work order if a landowner or land user breaches any term of a conservation agreement. Prior to issuing a stop work order, the land conservation committee shall notify the landowner or land user of the reasons for its action. Stop work orders shall describe the work to be suspended, instruct the landowner or land user as to the acquisition of materials or services and as to performance on contracts, and provide any other directions for minimizing costs.

(c) A land conservation committee may issue an order requiring that work under a conservation agreement cease for up to 45 days after delivery of the stop work order, or for a longer period if the landowner or land user agrees. Upon receipt of a stop work order, the landowner or land user shall comply with its terms by taking all reasonable steps to minimize incurring costs covered by the order. Within the suspension period the land conservation committee shall either cancel the stop work order in full or in part or terminate the conservation agreement for work covered by the order.

(d) If a stop work order is canceled or expires, the landowner or land user shall promptly resume all suspended work upon notification by the land conservation committee. The land conservation committee may adjust the terms of the conservation agreement regarding the length of the grant period, as needed. The land conservation committee may adjust the conservation grant amount only if both of the following occur:

1. The stop work order increases the time required for completing agreed-upon practices or increases the cost of performing under the agreement.

2. The landowner or land user requests an adjustment in writing within 60 days after cancellation or expiration of the stop work order.

(e) Costs relating to work that should have ceased under a stop work order are not eligible for reimbursement under a conservation agreement.

(2) TERMINATING A CONSERVATION AGREEMENT. (a) A land conservation committee may terminate a conservation agreement in whole or in part, in accordance with this subsection.

(b) Parties to a conservation agreement may agree to terminate the agreement at any time. Such an agreement shall establish the effective date of termination, the basis for settling termination costs and the amount and date of payment of funds due either party.

(c) A land conservation committee may unilaterally terminate a conservation agreement, giving the landowner or land user 10 days written notice of termination date and of the reasons for termination, if:

1. The land conservation committee finds substantial non-performance under a conservation agreement without good cause.

2. The land conservation committee finds substantial evidence the conservation agreement was based on fraud or false information.

(d) Upon termination, the landowner or land user shall refund to the land conservation committee that portion of the grant funds paid to the landowner or land user and allocable to the terminated project, except the amount necessary to meet commitments entered into prior to the termination.

(3) TERMINATION SETTLEMENT COSTS. The land conservation committee shall pay reasonable costs resulting from a termination order, including reasonable costs associated with a stop work order prior to the termination order.

Ag 165.96 ENFORCING COUNTY RESPONSIBILITIES. The department may refuse to pay soil and water resource management costs directly related to noncompliance with county responsibilities and may suspend all soil and water resource management work in the county, if a land conservation committee fails to perform its responsibilities under a conservation agreement, this chapter or s. 92.14, Stats. The department may refuse to pay up to 10% of amounts otherwise due if a land conservation committee fails to file reports or otherwise meet deadlines. The department may also recover soil and water resource management funds improperly used by a land conservation committee and impose other administrative or judicial remedies, as appropriate. A county may appeal administrative enforcement remedies imposed under this section in accordance with ch. 227, Stats.

SUBCHAPTER XI

COUNTY ORDINANCES; VARIANCES

Ag 166.98 COUNTY ORDINANCES. (1) REQUIRED PROVISIONS.

County manure storage ordinances adopted under s. Ag 166.21 (5)

or under s. 92.15, Stats., shall include the following provisions:

- (a) The county authority to adopt the ordinance.
 - (b) The findings that prompted the need for the ordinance.
 - (c) The ordinance's applicability, severability and effective date.
 - (d) A list of definitions used in the ordinance.
 - (e) The activities subject to regulation and the requirements for compliance with the ordinance.
 - (f) The minimum standards for constructing manure storage systems and for waste utilization plans, according to technical guide specifications 425 and 633 and, if the county desires, according to technical guide specifications 313. If DNR imposes additional requirements in order to meet water quality objectives identified in the priority watershed planning effort, the county ordinance shall also include these requirements.
 - (g) The permit procedure for receiving county permission to perform the regulated activity. Any manure storage ordinance shall require landowners to develop waste utilization plans prior to receiving permits to construct storage facilities and to implement these plans upon receiving the necessary permits.
 - (h) Inspection, enforcement and other administrative policies and procedures.
 - (i) Appeal procedures.
- (2) REVIEW PROCEDURES. (a) The land conservation committee shall submit to the county board any county manure storage ordinance prepared under s. Ag 166.21 (5) or under s. 92.15,

Stats., for referral to the county agency on zoning or other appropriate committee.

(b) County manure storage ordinances prepared under s. Ag 166.21 (5) or under s. 92.16, Stats., shall be submitted to the land conservation board for review, along with a statement as to which county committees reviewed the ordinance. The board shall advise the department as to the ordinance's compliance with this section. The ordinances shall also be submitted to the DNR to determine if they meet the needs of DNR's priority watershed project. If the department disapproves a county ordinance, the department shall provide the county with a written explanation of the reasons for disapproval. The county may amend a disapproved ordinance and resubmit it to the department for review and approval.

Ag 166.99 VARIANCES. The department may approve in writing a written request for a variance from a requirement of this chapter, if the department determines specific circumstances make a variance essential to program objectives. Before approving a variance, the department shall take into account such factors as good cause, circumstances beyond the control of the land conservation committee and financial hardship. The department may not grant variances from statutory requirements.

SECTION 4. EFFECTIVE DATE. The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Dated this 22nd day of Sept, 1989.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

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

Ag.166.9/22/89