

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF AGRICULTURE,)
TRADE AND CONSUMER PROTECTION)

Clearinghouse Rule
No. 93-176

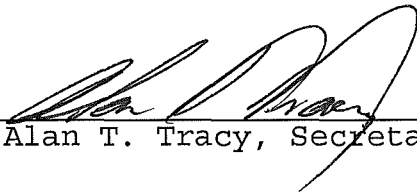
CERTIFICATION:

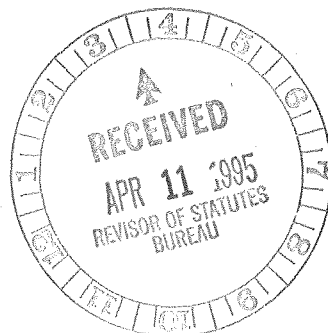
I, Alan T. Tracy, Secretary of the Wisconsin Department of Agriculture, Trade and Consumer Protection and custodian of the department's official records, hereby certify that the attached rulemaking order relating to drainage districts was signed and adopted by the Department on April 7, 1995.

I further certify that I have compared the attached copy to the original on file in the department, and that the attached copy is a complete and accurate copy of the original.

Signed and sealed this 7th day of April, 1995.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Alan T. Tracy, Secretary



7-1-95

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

1 The state of Wisconsin department of agriculture, trade and
2 consumer protection amends ATCP 1.03(1)(a)2; and creates ATCP
3 3.02(1)(t) and chapter ATCP 48, relating to drainage districts.

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

Statutory authority: ss. 88.11 and 93.07(1), Stats.
Statute interpreted: ch. 88, Stats.

1. BACKGROUND

General

This rule interprets ch. 88, Stats., (Drainage of Lands), as modified by 1991 Wis. Act 309 and 1993 Wis. Act 456. Under ch. 88, Stats., landowners may petition a circuit court to create a drainage district. Lands in a drainage district are drained by a common drainage system, and landowners in the district must pay mandatory assessments to construct and maintain the system.

Under ch. 88, Stats., all drainage districts within a county are supervised by the county drainage board, which is appointed by the circuit court. Prior to the enactment of 1993 Wis. Act 456, most county drainage board decisions required circuit court approval. However, 1993 Wis. Act 456 limited the supervisory role of the circuit court, and gave the county drainage board final responsibility for most management decisions affecting a district.

Under ch. 88, Stats., as modified by 1991 Wis. Act 309, the department of agriculture, trade and consumer protection ("DATCP") must establish, by rule, standards and procedures for the operation of drainage districts.

Local Drainage Districts

Currently, under ch. 88, Stats., a group of landowners may file a petition in circuit court to create a local drainage district. Within an approved drainage district, lands are drained for agricultural or other purposes by means of common drains that cross individual property boundaries. The drainage district encompasses lands affected by the construction and operation of the drainage system. Landowners in the drainage district who benefit from the drainage system must pay mandatory assessments to cover the costs of constructing, maintaining and repairing the system.

A circuit court may approve the creation of a drainage district, notwithstanding the objections of individual landowners. If necessary, the county drainage board may then condemn private lands under ch. 32, Stats., for the construction of common drains. Landowners injured by the construction of drains, or by the operation of a drainage system, are entitled to damage payments. Damage payments are financed by assessments against benefitting landowners.

County Drainage Board

Under current law, all of the local drainage districts within a county are supervised by a single county drainage board. The county drainage board normally includes 3 members. However, the county drainage board may, by rule, increase its membership to 5.

The circuit court appoints all members of the county drainage board. Members are appointed for staggered 3-year terms. The court must appoint drainage board members from among persons recommended by either of the following:

- The agriculture committee of the county board. (The agriculture committee must recommend at least 3 persons for each vacant position.)
- A group of 3 or more landowners in any drainage district supervised by the board.

Under current law, the county drainage board must do all of the following:

- Review all petitions for the creation of local drainage districts, and report its recommendations to the circuit court.
- Design, construct, and maintain local drainage systems according to ch. 88, Stats.
- Identify lands to be included in a drainage district.
- Determine the benefits and costs of drainage.
- Plan, construct, repair and maintain drainage facilities.
- Condemn land, as necessary, for the construction of drainage

facilities.

- Levy assessments against landowners to cover the costs of construction, repair and maintenance.
- Award damages to landowners injured by the drainage of lands.
- Borrow money, as necessary, for the construction of drainage facilities. A drainage board may issue notes and bonds backed by anticipated revenues from assessments against land.

Meetings of a county drainage board are subject to the state open meetings law under subch. V of ch. 19, Stats. However, the open meetings law does not apply when the board is engaged in the following field activities, provided that the board reports those activities at its next meeting:

- Observing, supervising or undertaking the construction, maintenance or improvement of drains.
- Observing, supervising or undertaking the construction or maintenance of highways, railroads, bridges, utilities or other similar structures that may affect drains in any drainage district.
- Collecting information by observation, survey or measurement or by discussions with an affected landowner at the site of a drainage ditch or a proposed drainage ditch.
- Responding to natural disasters affecting a drain.

Currently, under ch. 88, Stats., a drainage board must also keep minutes of its meetings, and must keep records related to each local drainage district under its supervision. Records must be kept on file with the secretary of the drainage board and with the county zoning administrator. Records must include a record of the current benefits and costs assessed against each parcel of land in the drainage district. Records must show the cost assessments paid on each parcel, as well as unpaid and overdue cost assessments. The following records must be maintained in perpetuity:

- Orders creating or altering the boundaries of a district.
- Maps or descriptions of drainage district boundaries.
- Profiles and cross sections of district drains.
- Orders levying original or supplemental cost assessments.

Under current law, a county drainage board may sue and be sued, may hire or contract with an engineer approved by the department of agriculture, trade and consumer protection (DATCP), may hold drainage district meetings, may receive federal water conservation funds, may receive state soil and water conservation funds, and may enter into agreements with other government

entities.

Under current law, a person affected by an order of the county drainage board may, within 30 days after the order is issued, petition the circuit court to review the order. A drainage board order is not automatically stayed pending the review. However, the court may stay the order pending review.

Receipt and Custody of Drainage District Funds

Under current law, the county treasurer has custody of all funds received in connection with a local drainage district. Landowner assessments are paid to the county treasury for the benefit of the drainage district. The county drainage board may appoint a treasurer to act as the deputy of the county treasurer, and may assign the deputy part or all of the county treasurer's duties related to drainage districts.

Under current law, a county drainage board may authorize payments from a drainage district account for the benefit of the drainage district. By December 1 of each year, the county drainage board must file a verified report with the department of agriculture, trade & consumer protection and the county zoning administrator, covering each drainage district under the board's jurisdiction for the latest year ending August 1. The report must contain all of the following:

- A financial statement.
- A statement of all bonds paid or issued during the year.
- A statement of all work done during the year, including the location and cost of that work.

Creating a Drainage District

Under current law, either of the following groups may petition a circuit court to create a drainage district:

- The owners of at least 1/2 of the total land area included in the proposed drainage district (excluding lands owned by the state).
- A majority of the landowners in the proposed drainage district, provided they own at least 1/3 of the land area in the proposed district (excluding lands owned by the state).

Under current law, the petitioners must include all of the following information in their petition:

- A map and description of the lands proposed for inclusion in the district, and a description of how those lands will be improved by drainage.
- A proposed name or number for the drainage district.
- Information showing that the construction cost for the

drainage system (exclusive of maintenance costs) will not exceed 75% of the appraised benefits from the system. If construction costs may exceed 75% of appraised benefits, the petitioners must agree to pay any excess costs and must post bond for those costs.

- The names and addresses of all owners and mortgage holders of lands in the proposed district, insofar as those names and addresses can be determined by the petitioners.

Under current law, after a circuit court receives a petition to create a drainage district, the circuit court must refer the petition to the county drainage board for a report and recommendation. The county drainage board, with the help of a qualified engineer approved by DATCP, must do all of the following:

- Examine the lands proposed for inclusion in the drainage district, and any other lands that would benefit or be damaged by the proposed drainage system.
- If the proposal may affect navigable waters, apply for a permit from the department of natural resources (DNR).
- Hold a public hearing on the proposal.
- Determine the merits of the proposal.

Under current law, the drainage board must file a report and recommendation with the circuit court within 30 days after it holds a public hearing on the proposal. The report must indicate whether the petition has the required number of signers, whether the described lands will be improved by drainage, whether other lands will also need to be drained, whether drainage is feasible, whether the benefits of drainage exceed the costs of construction by the required amount, and whether the proposed drainage system will benefit the public health and welfare. In assessing the effect on public health and welfare, the drainage board must consider potential impacts on surface water temperature, surface and groundwater levels, and other factors.

Under current law, if a proposed drainage district will include more than 200 acres, the drainage board must file its report with DATCP before filing it with the court. Within 45 days after DATCP receives the drainage board's report, DATCP submit its own report and recommendation to the circuit court.

The circuit court, after holding a public hearing on the drainage board's report, may issue an order creating a drainage district if all of the following apply:

- The petition has the required number of signers.
- The described lands will be improved by drainage.
- Construction costs will not exceed 75% of benefits (unless the petitioners file a bond for any excess costs).
- The drainage district will promote the public health and

welfare.

- The proposed drainage system will not materially injure or impair fish habitat, wildlife habitat, scenic beauty, the conservation of natural resources, or other public rights or interests.

Under current law, if any of the above conditions is not met, the court must reject the petition and charge costs to the petitioners. In response to a proposal to create a drainage district, the court may also consolidate or modify existing drainage districts as it deems appropriate.

Drainage Plan; Assessment of Benefits and Costs

Under current law, if a court issues an order creating a drainage district, the county drainage board must do all of the following with the help of a qualified engineer approved by DATCP:

- Lay out drains of sufficient depth to drain the included lands. The drainage board must prepare grade profiles and maps showing the included lands and the location of all drains. The drainage board may modify the petitioners' drainage plans or the district boundaries specified in the court order creating the district, as necessary. To modify district boundaries, the board must formally annex or withdraw lands from the district.
- Assess the benefits, if any, that will accrue to each parcel of land in the drainage district.
- Assess the damages, if any, that will accrue to each parcel of land in the drainage district.
- Estimate the cost of constructing the drainage system.
- Levy cost assessments against benefitted lands to cover the costs of construction. The drainage board must apportion cost assessments between parcels based on the benefits assessed to those parcels. Damage awards, if any, must be offset against cost assessments. If a damage award exceeds the cost assessment for any parcel of land, the excess damage amount must be paid from cost assessments against other lands.
- Estimate the annual cost to operate and maintain the drainage system. The drainage board may levy additional cost assessments to cover ongoing costs for maintenance, repair, restoration and district operations.
- If drainage district construction will occur in navigable waters, obtain a permit from the Department of Natural Resources (DNR) before starting construction.

Under current law, the drainage board must include all of the above information in a report, and must hold a public hearing on that report. If the local drainage district encompasses more than 200 acres, the drainage board must submit the report for approval by DATCP.

Board Hearing; Implementing the Plan

Under current law, the county drainage board must hold a public hearing on its report, and may modify or amend the report as it deems appropriate. The county drainage board may issue an order confirming the benefit assessments, cost assessments and damage awards assigned to the various parcels of land in the drainage district. The drainage board may not implement its drainage plan if construction costs (exclusive of ongoing maintenance costs) exceed 75% of confirmed benefits.

Cost Assessments to Landowners

Under current law, a county drainage board may levy cost assessments against lands in a drainage district to cover any of the following:

- Costs to construct a drainage system for the district.
- Ongoing costs to maintain and repair the district's drainage system.
- Any other costs lawfully incurred in relation to a drainage district.

Under current law, assessments must be apportioned on the basis of confirmed benefits. Total construction costs assessed to any parcel of land may not exceed the last confirmed benefit assessment for that parcel of land unless the landowner agrees to pay the additional construction cost assessment. (This limitation on construction cost assessments does not apply to maintenance or operating costs.) If a parcel of land is subdivided, cost assessments must be equitably apportioned among the smaller parcels.

Under current law, assessments are not effective until confirmed by the order of the county drainage board after public hearing. An affected person may request a rehearing before the drainage board to contest the validity of any assessment of benefits or costs. If the affected person is still aggrieved after rehearing, the affected person may appeal the board order to the circuit court.

Under current law, a county drainage board may levy cost assessments against lands within a drainage district which are owned by a county, town, village or city, just as it may levy assessments against private lands. If a drainage district includes a subdistrict or overlapping district, the drainage district may also assess that subdistrict or overlapping district for the cost of district drains that benefit the subdistrict or overlapping district.

Under current law, when a new drain is connected to an existing district drain, a county drainage board may assess a portion of

the cost of the existing drain against the newly drained land. If the newly drained land is not in the district, the drainage board may assess costs against the newly drained land if it annexes that land to the drainage district.

Under current law, a county drainage board may levy cost assessments against state agricultural lands located within a drainage district, but may not levy assessments against other state lands located within a drainage district. No drain may be constructed on state land without state permission, but the state must grant permission unless the drain adversely affects the use of the land. No drain may be constructed on federal land, and no assessment may be charged against federal land, except under an agreement between the drainage board and the federal government.

Under current law, a county drainage board may levy assessments against an upstream municipality for costs of enlarging or maintaining district drains, to the extent that those costs are attributable to increased water flow from land within that municipality. The county drainage board may assess those costs against an upstream municipality regardless of whether the municipality is located in the drainage district. The drainage board must base the assessment on a report from a professional engineer and must hold a public hearing on the matter. A municipality may ask the state drainage engineer to review the drainage board's report and order, and issue a recommendation within 120 days. The drainage board must amend or modify its order, if necessary, based on the recommendation of the state drainage engineer. The municipality must pay the costs of the review by the state drainage engineer.

Collecting Assessments

Under current law, cost assessments are payable to the county treasurer for the benefit of the drainage district. Assessments are due and payable at once unless the drainage board provides that they are payable in installments. Installment payments are subject to specified conditions, and must include interest at the rate of 6% except as ordered by the drainage board.

Under current law, when the county drainage board orders cost assessments against lands in a drainage district, the drainage board must record the assessments with the county register of deeds. From the time the assessments are recorded, there is a first priority lien on each parcel of land for the full amount of the cost assessment on that land, and for any interest accrued on the unpaid assessment. This lien takes priority over every other lien or mortgage on the land, other than a general tax lien, regardless of when the other lien or mortgage was recorded.

Under current law, the secretary of the county drainage board must annually certify all unpaid overdue cost assessments to the

clerk of the town, village or city in which the delinquent lands are located. The clerk must place the overdue assessments on the tax roll. Overdue assessments are then subject to collection in the same manner as unpaid general taxes, except that property and lands other than the delinquent lands may not be seized and sold to pay assessments.

Maintaining and Repairing Drains

Under current law, a county drainage board is responsible for keeping drains in good condition, and repairing drains as necessary. The board must have all drains inspected annually. The board must pay inspection, maintenance and repair costs out of cost assessments levied for that purpose. The board may hire an inspector, authorize one or more landowners in the district to make inspections, or perform inspections itself.

Under current law, a county drainage board must establish a fund to maintain and repair drains in each drainage district. Whenever the fund falls below 5% of the last confirmed assessment of benefits for the drainage district, the board must levy an additional cost assessment for maintenance and repair. Cost assessments are apportioned on the basis of the benefits last confirmed for land parcels in the drainage district. Total cost assessments for maintenance and repair are not limited, however, by the amount of assessed benefits.

Under current law, the county drainage board may use funds collected for maintenance and repair to pay for the costs of undertaking or defending lawsuits involving the drainage board, a drainage district, a board member or a landowner in a district. Under current law, a person who performs work in a drainage district with the approval of the county drainage board is protected by the liability limitations and claims procedures provided for public officials or entities under s. 893.80, Stats.

Annexation of Adjacent Lands

Under current law, lands outside a drainage district that benefit from a district's drainage system may be annexed into the drainage district. Any landowner within a drainage district may petition the drainage board to order the annexation of adjacent lands. The petition must describe the lands proposed for annexation, and the benefits accruing to those lands. The drainage board must hold a hearing on the proposed annexation, and must order the annexation of lands if the drainage board finds that those lands benefit from the district drainage system. The county drainage board must prepare a report which establishes benefit assessments, cost assessments and damage awards for the annexed land parcels.

Under current law, owners of land adjacent to a drainage district

may also petition the county drainage board to have lands annexed to the drainage district. The petition must be signed by the owners of more than 1/2 of the land in the proposed annex, or by more than 1/2 of the persons owning land in the annex provided they own at least 1/3 of the land in the proposed annex. If the land to be annexed exceeds 200 acres, the drainage board must seek DATCP approval for the annexation. The drainage board must hold a hearing on the annexation petition and must order the annexation of the lands if the board finds all of the following:

- That the petition has sufficient signers.
- That the lands described in the petition, together with any additional lands recommended by the board for drainage, will be improved by the proposed annexation.
- That the public health or welfare will be promoted by the annexation.
- That the cost of construction will not exceed 75% of the benefits to be derived from the proposed work. If the costs exceed 75%, the drainage board must still order annexation if the owners provide sufficient sureties.
- That the proposed work will not materially injure or impair fish or wildlife habitat, scenic beauty, the conservation of natural resources or other public rights or interests.

Benefits and Damages to Lands Outside the Drainage District

Under current law, a drainage district is liable for any damages to lands outside the district resulting from drainage operations within the district. An upstream drainage district is liable to a downstream drainage district if drain construction in the upstream district results in increased costs for the downstream district (e.g., because of increased flow or sediment in a downstream drain to which the upstream drain is connected).

Under current law, private drains may not be connected with district drains except with the approval of the county drainage board. If a private drain is currently connected to a district drain, that private drain may not be extended or modified without board approval. The drainage board may order the removal or modification of any drain connected or extended without board approval. A person who connects, extends or modifies a drain without board approval is liable for any damages caused by that connection, extension or modification.

Under current law, the owner of land within or adjacent to a drainage district may withdraw water from a district drain if the withdrawal does not cause damage or impair drainage. The withdrawal may also be subject to certain permit requirements.

Modification of Drainage District

Under current law, whenever the owners of land in part of a

drainage district seek additional or modified drainage, those owners may petition the county drainage board to create a subdistrict. The owners of at least 1/10 of the lands in a drainage district may also petition the county drainage board to enlarge existing drains within the district, or construct new drains.

The county drainage board may approve the creation of a subdistrict, the expansion of existing drains, or the construction of new drains if it determines that the public health or welfare will be promoted, and that the benefits of drainage will exceed the cost of construction. If a new drainage facility affects more than 200 acres, DATCP must also submit a report to the drainage board (see below).

Under current law, a circuit court may order the consolidation of drainage districts which are in the process of organizing. The court may order the consolidation based on the court's own motion, a recommendation from the county drainage board, or a petition from at least 1/10 of the landowners in each of the districts proposed for consolidation. The county drainage board may, after public hearing but without court approval, order the consolidation of two or more existing drainage districts based on a petition from persons owning at least 10% of the lands in each district.

Under current law, if a drainage district is located within a city or village, the county drainage board may transfer control of the drainage district to the city or village in response to a petition from the city or village, or in response to a petition from landowners owning more than 1/2 of the land in the district.

Dissolution of Drainage District; Withdrawal of Land

Under current law, any owner of land within a drainage district, except a state agency, may petition the circuit court to suspend district operations or dissolve the drainage district. The circuit court may dissolve an entire drainage district, but may not dissolve only part of a drainage district.

If a dissolution petition is filed within 2 years after the district is formed, it must be signed by the owners of lands receiving at least 90% of the benefits from the district. If a petition is filed more than 2 years after formation of the district, but less than 20 years after the drainage board last assessed costs to landowners in the district, it must be signed by owners of lands receiving at least 67% of the benefits from the district. If a petition is filed at least 20 years after the drainage board last assessed costs to landowners in the district, it need only be signed by one landowner in the district (other than a state agency), regardless of the benefits received by that landowner. The county board of supervisors may also file a

petition to dissolve a drainage district when all land in the district has been incorporated in cities or villages.

Under current law, a person owning land within a drainage district may withdraw that land from the drainage district if all assessments against that land have been paid, if the lands will receive no continuing benefit from the drainage district, and if the drainage district will not be materially injured by the withdrawal. A proposed withdrawal must be approved by the county drainage board.

2. ROLE OF THE DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

Under s. 88.11, Stats., which was substantially modified by 1991 Wis. Act 309 and 1993 Wis. Act 456, the department of agriculture, trade and consumer protection ("DATCP") oversees and assists certain operations of county drainage boards and local drainage districts. Under s. 88.11, Stats., DATCP must:

- Inspect drainage districts.
- Review and approve drainage plans, and monitor the construction and maintenance of drainage facilities, for compliance with applicable DATCP standards related to water quality. (Standards must be consistent with DNR water quality standards.)
- Assist drainage boards and professional engineers in developing drainage plans, and provide other technical assistance upon request.
- Coordinate drainage district activities with the department of natural resources, and assist county drainage boards in applying for DNR permits for drainage activities affecting navigable waters.
- File a report with the circuit court on every new drainage district, and file a report with the county drainage board on every drainage project or annexation of land in an existing district that involves more than 200 acres of land. The report must include a description of the land to be drained; comments on the design, feasibility and cost of the proposed drain; a description of any additional drainage needed; information on soils and crops (compiled by the UW-Madison college of agriculture and life sciences); and a comparison of benefits for different parts of the district. DATCP may require the county drainage board to provide information for the report.

Under s. 88.11(1m), Stats., DATCP may perform any other functions related to drainage districts that the department considers appropriate. In order to carry out its oversight functions, the department may adopt rules under s. 93.07(1) and s. 88.11, Stats. Under ss. 88.11 and 88.19(4)(a), Stats., DATCP must, at a minimum, adopt rules related to the following:

- Procedures used by drainage boards to determine assessments and reassessments.
- Performance standards for the construction, maintenance and operation of drainage district facilities, to minimize adverse impacts on water quality.
- Procedures for investigating compliance with DATCP requirements.
- Standards for records retention, records distribution and records destruction.

Under s. 88.17(1) and (2d), Stats., the department may petition the circuit court to appoint a county drainage board in any county that has a drainage district, and may petition the court to fill any position on a drainage board which has been vacant for more than 6 months.

Under s. 88.64(6), Stats., at the request of a municipality, the department must review a drainage board's final report and order assessing costs against that municipality. Within 120 days of the request, the department must issue its own report recommending that the drainage board affirm, modify or reverse its order.

Under s. 88.11, Stats., as amended by 1991 Wis. Act 309, a person violating DATCP requirements is subject to a civil forfeiture of up to \$500 per violation. Each day of continued violation constitutes a separate offense. DATCP may also issue a special order prohibiting further work on a drainage project until the project complies with DATCP requirements.

3. CONTENTS OF THIS RULE

This rule establishes standards and procedures related to drainage district assessments, inspection of drainage districts, construction and maintenance of district drains and corridors, department approval of construction and restoration projects, land use changes affecting drainage districts, drainage district records, and enforcement of drainage district standards by the department.

Assessing Costs Against Lands in Drainage Districts

Under this rule, as under current law, a county drainage board may levy assessments against lands in a drainage district to cover construction, maintenance, restoration and operating costs. A county drainage board must hold a hearing on a proposed cost assessment before it orders the assessment. Construction costs include costs to construct, enlarge, expand or remove a district drain. Maintenance costs include costs for routine maintenance and repair. Restoration costs include costs for dredging and cleanout designed to restore the cross-section or grade profile of an existing drain. Operating costs include any other costs

lawfully incurred by a drainage district.

Consistent with current law, this rule prohibits a county drainage board from constructing a new drainage district if the costs to construct the district will exceed 75% of the total assessed benefits accruing to district landowners. This rule also prohibits a county drainage board from levying a construction cost assessment against any parcel of land if the amount of the assessment, when added to prior construction cost assessments, exceeds the last confirmed assessment of benefits for that parcel of land. These limitations on construction costs do not apply to maintenance, restoration or operating costs.

Normally, cost assessments are allocated among all parcels of land in a drainage district based on the last confirmed assessment of benefits for each parcel of land. However, this rule provides that a county drainage board may assess the entire cost of a construction project to a specified parcel of land if the construction project becomes necessary as a direct result of any of the following:

- A request by the landowner for drainage improvements which are solely of benefit to that land.
- A land use change or other action by the landowner that increases the flow of water to or from a district drain, or that increases the amount of soil erosion to district drains.
- A failure by a landowner to implement erosion control practices or to maintain a private drain to prevent excessive soil erosion to district drains.
- A landowner's extension of a private drain from the assessed land to land outside the drainage district.

Consistent with current law, this rule authorizes a county drainage board to assess costs to state lands in a drainage district if the state lands are agricultural lands as defined in this rule. Other lands owned by the state are not subject to assessment. Under this rule, as under current law, a county drainage board may assess costs to county or municipal lands in a drainage district, and may assess costs to municipalities upstream from the drainage district (see below).

Recovering Costs from Lands Outside a Drainage District

Under this rule, as under current law, a drainage district may levy cost assessments against an upstream drainage district or municipality for costs incurred because of drainage from lands located in that drainage district or municipality. A county drainage board may not levy costs against other lands located outside a drainage district, but may do any of the following:

- Refuse to permit the connection of a private drain to a

district drain.

- Initiate an action at law for damages sustained by a drainage district because of an action or omission by an owner of land outside the district.
- Enter into an agreement with a landowner outside the district, under which the landowner agrees to compensate the district for costs incurred because that person's private drain is connected to a district drain.
- Order an annexation, to a drainage district, of lands outside the district that benefit from the operation of any district drain.

Assessing Benefits to Lands in a Drainage District

Under this rule, as under current law, a county drainage board must assess benefits to lands in a drainage district when the district is initially established. The county drainage board must hold a public hearing on its proposed assessment of benefits. The assessment of benefits provides the basis for the drainage board's allocation of cost assessments to land parcels in the district.

Under this rule, if a county drainage board determines that the last confirmed assessment of benefits no longer reflects the current allocation of benefits to landowners, the drainage board must order a reassessment of benefits. Any landowner in a drainage district may petition a county drainage board to reassess benefits in the drainage district. A reassessment may be based on land use changes, the construction of new or modified district drains, the subdivision of lands, or other factors affecting the allocation of benefits to landowners.

When assessing or reassessing benefits to land, a county drainage board may consider all of the following:

- The estimated increase in land value resulting from drainage, based on potential land use.
- The type, depth, quality and character of soils.
- The amount of drainage required or provided.
- The thoroughness and reliability of drainage.
- The amount and frequency of flooding on the assessed land.
- The difficulty of draining the assessed land.
- Any loss of acreage resulting from the construction of district drains, or from the deposition of dredged or excavated materials.
- The extent and frequency of additional discharges from nonagricultural lands to district drains, including additional discharges of stormwater, wastewater, and precipitation runoff from impermeable surfaces.
- Other factors which the county drainage board considers relevant.

Benefits may not be assessed to wetlands that are legally protected against drainage. If a private drain is extended from district lands to lands outside the district, so that the outside lands drain into district drains, the benefits to those outside lands may be included in the assessment to the district lands.

Benefits to agricultural lands must be assessed in parcels not larger than 40 acres. Benefits to nonagricultural lands, including rural subdivisions or individual rural residences, may be assessed on the basis of a flat amount per lot, per acre, or per building or residence.

In lieu of any other method of assessment, a county drainage board may adopt an equitable method of assessment which has the assent of the owners of at least 2/3 of the assessed lands in a drainage district. Assent must be confirmed in a written agreement signed by the assenting landowners.

Inspecting Drainage Districts

Under this rule, a county drainage board or its agent must annually inspect every drainage district, and must prepare an inspection report summarizing the results of its inspection. The county drainage board must notify the landowners of the inspection, must allow the landowners to participate in the inspection, and must present its inspection report to a meeting of landowners in the drainage district. By December 1 of each year, the county drainage board must file a copy of its annual inspection report with the department and the county zoning administrator. The inspection report must accompany the annual report currently required under s. 88.24, Stats., and must address all of the following items:

- Whether district drains are maintained in compliance with this rule.
- Whether a district corridor is established and maintained around each district ditch in compliance with this rule.
- Whether landowners in the drainage district are complying with applicable requirements under this rule.
- Whether, and to what extent, sedimentation has occurred in district drains.
- Whether the cross-sections or grade profiles of district drains have changed significantly from the original, or most recently improved, cross-sections or grade profiles.
- Whether any district drains should be restored, altered or improved to ensure proper drainage, to reduce soil erosion or sedimentation problems, or to comply with this rule.
- Whether the district drainage system is operating effectively to achieve the goals of the drainage district.

Under this rule, a county drainage board or its agent must also inspect district drains affected by a storm exceeding that

county's 25-year storm (generally, more than 4 inches of rainfall in a 24-hour period). The county drainage board must inspect the affected drains within 3 weeks after the storm, and must prepare a storm inspection report identifying any significant storm damage to district drains and corridors. A copy of the storm inspection report must be include with the county drainage board's annual report to the department.

If, in any of its inspection reports under this rule, a county drainage board identifies significant problems or violations of this rule, the inspection report must also identify the drainage board's plan for addressing those problems or violations. If necessary, the department may require a drainage board to file with the department a specific maintenance or repair plan, including design specifications and a financing plan.

District Drains; Identification

This rule requires every county drainage board to file with the department, by December 31, 1995, a map and description of every drainage district under that board's jurisdiction. A county drainage board may request the department's assistance in developing the map and description. The map and description must accurately specify all of the following:

- The boundaries of the drainage district, as last confirmed by the circuit court or ordered by the county drainage board.
- The location and extent of every district drain. If private drains are connected to district drains, the map and description must clearly specify which drains, or portions of drains, are district drains. The criteria for determining what constitutes a district drain must be uniformly applied throughout a drainage district.
- The location and width of every district corridor.

Before a county drainage board files a map and description with the department, the county drainage board must provide every landowner in the drainage district with notice of a public meeting at which a copy of the map and description must be available for inspection, and must give each landowner at least 30 days after the meeting to file objections. The county drainage board must notify the department of any unresolved objections. This rule does not authorize a county drainage board to create or modify any drainage district boundaries, except as authorized under ch. 88, Stats.

District Corridors

Under this rule, a county drainage board must establish a district corridor around every district ditch to provide access for vehicles and equipment and to provide a buffer against land

uses that may adversely affect water quality in the district ditch. The corridor must extend for 20 feet from the top of the ditch bank on each side of the ditch. Row cropping is prohibited in a district corridor.

Under current law, the county drainage board or its agent may enter private lands for the purpose of inspecting, maintaining, repairing, restoring or improving a district drain or corridor. Under this rule, a county drainage board or its agent may enter a district corridor for these purposes without prior notice to the landowners. The county drainage board or its agent must notify a landowner before cutting trees more than 6 inches in diameter, or excavating or depositing materials on private land in a district corridor.

District Drains; Construction and Maintenance

Under this rule, a district drain must be capable of removing the peak discharge from a 10-year 24-hour rainfall event (as defined in the rule) within 48 hours after that rainfall event. A district ditch must remain stable when subjected to a 10-year peak discharge, although it is not required to contain the entire volume of that discharge.

This rule requires a county drainage board to file a plan with the department by December 31, 1996 showing how the county drainage board intends to bring all district drains and corridors under its jurisdiction into compliance with this rule by December 31, 1999. The plan must include a schedule for compliance.

A county drainage board must remove obstructions from district drains, and must repair and maintain district drains to maintain, as nearly as practicable, the original cross-sections and grade profiles of those drains. Subject to other applicable regulations, this rule specifies standards for the deposition of materials dredged or excavated during the construction, restoration, maintenance or repair of district drains.

A county drainage board or its agent must control the growth of woody vegetation in district drains and corridors to ensure effective drainage and access. A county drainage board may allow the growth of woody vegetation in portions of a district corridor (e.g., to provide wildlife habitat or erosion control) if the woody vegetation does not interfere with effective access to district drains. In deciding whether to allow the growth of woody vegetation, a county drainage board must consider how that vegetation will affect the cost of cleaning and maintaining district drains. If woody vegetation is left in any portion of a corridor, it must be maintained under a resource conservation plan.

Under this rule, as under current law, a county drainage board or

its agent may enter private lands in a drainage district for the purpose of inspecting, constructing, maintaining, restoring or repairing district drains. If the affected lands are outside the district corridor, this rule requires the drainage board or its agent to give prior notice to the landowner.

Controlling Soil Erosion

Under this rule, a county drainage board must take appropriate action to minimize soil erosion and the movement of suspended solids into district drains. District drains, corridors and inlets must be designed, constructed and maintained to minimize erosion. An effective vegetative cover, or equally effective erosion control practices, must be maintained in every district ditch and corridor.

Under this rule, drains that transport water to district drains must be designed, constructed and maintained to prevent soil erosion and minimize the movement of suspended solids into district drains. Landowners in a drainage district must also implement effective erosion control practices on their land to minimize soil erosion to district drains. Where necessary, a county drainage board may require a landowner to implement specified erosion control practices.

Under this rule, if a landowner fails to implement erosion control practices, or fails to maintain a private drain to minimize soil erosion to district drains, a county drainage board may initiate court action or do any of the following:

- Prohibit any connection between the private drain and the district drain, or order the landowner to modify or disconnect the private drain.
- Assess the landowner for the entire cost of constructing district facilities made necessary as a direct result of the landowner's failure.

Department Approval of Construction or Restoration Projects

Under this rule, a county drainage board must obtain the department's approval before doing any of the following:

- Constructing, enlarging, extending or removing a district drain.
- Dredging or excavating more than 3,000 cubic yards of material to restore a district drain, unless the restored area was legally dredged within 10 years prior to the start of the restoration project.

Prior approval is not required for routine repair or maintenance of a district drain, or for restoration involving the dredging or excavating of less than 3000 cubic yards of material.

To obtain department approval for a construction or restoration project, a county drainage board must submit a written request to the department. The request must include the following information, in detail commensurate with the scope of the project:

- The name or number of the drainage district.
- A statement describing the construction or restoration project, and the need for the project.
- The estimated cost of the project.
- An assessment or reassessment of benefits to every parcel of land in the drainage district, including any change in the last confirmed assessment resulting from the construction or restoration project. The county drainage board must specify the method used in its assessment or reassessment of benefits.
- A financing plan, including any assessment of costs to landowners.
- The drainage goals of the project.
- Design specifications and a project plan, including a plan for controlling erosion at the project site and an estimate of the amount of material that will be excavated. If the project will create a new drainage district or subdistrict, or will substantially and materially alter the system of drainage within an existing district, the plan must also include an engineer's feasibility and hydrology analysis.
- A map and description of the lands and waters affected by the project, indicating location, topography, affected wetlands and navigable waterways, affected transportation corridors and utility easements, the current and proposed use of affected lands, and the current and proposed vegetative cover on affected lands.
- Potential effects on surface water and groundwater.
- Potential effects on the environment, including fish and wildlife habitat.
- An assessment of potential alternatives to the project.

A county drainage board must file copies of its request with other state and local agencies specified in the rule. The department may require the county drainage board to file additional information, as necessary. The department must prepare an environmental assessment on the project if the project will drain more than 200 acres of land, or more than 5 acres of wetlands. The department must also prepare an environmental assessment if the project will involve the dredging or excavation of more than 3,000 cubic yards of material unless the affected area was legally dredged within 10 years prior to the start of the project.

The department must approve or disapprove a construction or restoration project within 45 days after the department receives a complete request for approval, including any additional

information required by the department. The department may approve a construction or restoration project contingent upon the county drainage board's compliance with specified conditions. If the department disapproves a construction or restoration project, the department must substantiate its reasons for disapproval. The department may disapprove a project for any of the following reasons:

- The county drainage board has failed to provide information required by the department.
- The project does not comply with standards under this rule.
- The project is not technically sound or feasible, or the design of the project is not adequate to achieve its stated goals.
- The proposed benefit assessments or cost assessments to landowners do not comply with this rule or ch. 88, Stats.
- The project will have a substantial adverse impact on the environment.

Landowner Actions Affecting Drainage District

Under this rule, a landowner must notify the county drainage board before undertaking any action, including any change in land use, that will do any of the following:

- Alter the flow of water into or from a district drain.
- Increase the amount of soil erosion into district drains.
- Affect the operation of the drainage district, or the costs incurred by the drainage district.

Under this rule, no person may do either of the following:

- Remove lands from a drainage district without the approval of the county drainage board.
- Disconnect a private drain from a district drain, except with the approval of the county drainage board.

Drainage District Records

Under this rule, a county drainage board must keep specified records including the following:

- Court orders affecting a drainage district.
- An accurate record of drainage district boundaries, as confirmed by the circuit court or ordered by the county drainage board.
- Engineering specifications and location of all district drains.
- All reports required to be filed with the department or the county zoning administrator.
- Minutes of county drainage board meetings and drainage district meetings.

Records must be organized by drainage district, and made available for inspection and copying by the department upon request. Some records must be kept in perpetuity. Others may be destroyed after 10 years, upon 60 days prior notice to the department and the state historical society, if destruction is allowed under county law and policy.

Enforcement

The department may investigate violations of this rule, and may exercise its current statutory authority in support of its investigation. The department or its agent may enter onto lands to inspect for compliance with this rule.

Under this rule, the department may issue an order, without prior notice or hearing, which does any of the following:

- Prohibits the construction or modification of a district drain or corridor if the construction or modification violates this chapter.
- Requires a county drainage board to file a specific maintenance and repair plan for a drainage district.
- Requires a county drainage board to file with the department a copy of any record or report required under this rule.
- Requires a county drainage board to comply with applicable requirements under this rule.

A person adversely affected by a department order may request a hearing on the order. In response to a hearing request, the department must hold an informal hearing within 10 days. If the matter is not resolved at the informal hearing, the department must hold a formal contested case hearing under ch. 227, Stats. The department may, at any time, withdraw or modify an order as appropriate.

In addition to any enforcement remedy provided under this rule, the department may initiate a court action under s. 88.11(8), Stats., to recover a civil forfeiture from any person who violates this rule.

Variances

The department may grant a variance from any standard or requirement under this rule if the department finds that the variance is consistent with the objectives of this rule. The variance must be issued in writing, based on a written request.

Incorporation by Reference

The department has obtained permission from the attorney general and the revisor of statutes to incorporate USDA NRCS technical standards and ASAE engineering practice standards by reference in this rule, pursuant to s. 227.21, Stats.

SECTION 1. Section ATCP 1.03(1)(a)2 is amended to read:

ATCP 1.03(1)(a)2 An administrative injunction, including any order issued under s. 88.11(7), 94.645(4), 94.71(3)(c), 97.12(3)(a), 100.03(18), 100.19(3), 100.20(3), 100.201(9)(b), 100.21(4), 100.22(4)(a), 100.30(5)(a), or 127.17(1), Stats.

SECTION 2. Section ATCP 3.02(1)(t) is created to read:

ATCP 3.02(1)(t) Drainage district construction or restoration projects; approval. The approval of a drainage district construction or restoration project if the department is required to prepare an environmental assessment on that approval under s. ATCP 48.38(4).

SECTION 3. Chapter ATCP 48 is created to read:

CHAPTER ATCP 48

DRAINAGE DISTRICTS

NOTE: This chapter is adopted under authority of ss. 88.11 and 93.07(1), Stats. Violations of this chapter may subject the violator to civil forfeitures under s. 88.11(8), Stats. Questions related to drainage districts and this chapter may be referred to the Wisconsin department of agriculture, trade and consumer protection; division of agricultural resource management; bureau of land and water resources.

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Definitions

ATCP 48.01 Definitions

Subchapter II
Assessing Drainage District
Costs and Benefits

ATCP 48.02 Assessing costs against lands in a drainage district
ATCP 48.04 Recovering costs from lands outside a drainage district
ATCP 48.06 Assessing benefits to lands in a drainage district
ATCP 48.08 Assessing benefits to agricultural lands
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Subchapter III
Inspecting Drainage Districts

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Subchapter IV
District Drains and Corridors;

ATCP 48.20 District drains; identification
ATCP 48.22 Construction and maintenance; general
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ATCP 48.28 Controlling woody vegetation
ATCP 48.30 Controlling soil erosion and runoff
ATCP 48.32 Deposition of materials

Subchapter V
Department Approval of Construction
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ATCP 48.34 Construction or restoration projects requiring department approval
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Subchapter VI
Landowner Actions Affecting Drainage Districts

ATCP 48.40 Notice of landowner actions affecting drainage district
ATCP 48.42 Removing lands from drainage district

ATCP 48.44 Connecting private drains to district drains;
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Subchapter VII
Drainage District Records

ATCP 48.46 Records required
ATCP 48.48 Care and inspection of records

Subchapter VIII
Enforcement and Variances

ATCP 48.50 Investigations
ATCP 48.52 Compliance orders
ATCP 48.54 Hearing on compliance order
ATCP 48.56 Variances

1 SUBCHAPTER I

2 DEFINITIONS

3 **ATCP 48.01 DEFINITIONS.** In this chapter:

1 (1) "Agricultural lands" means lands in agricultural use as
2 provided under s. 91.01(1), Stats.

3 (2) "Base flow" means the normal flow of water not
4 associated with rainfall events.

5 (3) "Confirmed assessment" means an assessment of costs or
6 benefits that has been confirmed by a circuit court under ch. 88,
7 Stats., or an assessment of costs or benefits ordered by a county
8 drainage board after May 12, 1994.

9 (4) "Construction costs" means costs incurred by a drainage
10 district for a construction project. "Construction costs"
11 includes damages awarded to landowners in a drainage district who
12 are adversely affected by a construction project, but does not
13 include maintenance, restoration or operating costs.

14 (5) "Construction project" means the construction,

1 enlargement, extension or removal of a district drain, but does
2
3 not include the maintenance, repair or restoration of a district
4 drain.

5 (6) "County drainage board" means the board created and
6 appointed under s. 88.17, Stats.

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

9 (8) "District corridor" means the access corridor and
10 buffer strip established and maintained around a district ditch
11 under s. ATCP 48.24.

12 (9) "District ditch" means a drainage ditch, located within
13 a drainage district, that is constructed or operated by a county
14 drainage board. "District ditch" includes a main or lateral
15 ditch.

16 (10) "District drain" means a drain, located within a
17 drainage district, that is constructed or operated by a county
18 drainage board. "District drain" includes inlets to a district
19 drain.

20 (11) "Drain" means any device or facility for draining
21 water from land or for protecting land from water, including a
22 ditch, tile, pipeline, pump, dike, dam or levee.

23 NOTE: "Ditch" is defined under sub. (13) as a surface
24 channel.

25 (12) "Drainage district" means a drainage district that is
26 subject to ch. 88, Stats., regardless of whether the drainage
27 district was formed under ch. 88, Stats., former ch. 89, Stats.,

1 or any other law.

2 (13) "Drainage ditch" or "ditch" means a surface channel.
3 "Ditch" includes the ditch bed, ditch banks, and any related
4 structures such as culverts, bridges and inlets.

5 (14) "Maintenance costs" means costs for the maintenance
6 and repair of district drains and corridors under subchapter IV.

7 (15) "Nonagricultural lands" means lands other than
8 agricultural lands, including lands in residential, commercial,
9 industrial and transportation use.

10 (16) "One hundred-year peak discharge" or "100-year peak
11 discharge" means the maximum flow of water resulting from a 100-
12 year 24-hour rainfall event.

13 (17) "Operating costs" means costs, other than
14 construction, maintenance or restoration costs, that are lawfully
15 incurred by a drainage district.

16 (18) "Parcel" means a tract of land, all of which is held
17 by the same landowner or landowners.

18 (19) "Person" means any individual, partnership,
19 corporation, firm, business trust, estate, trust, association,
20 government, governmental subdivision or agency, or any other
21 legal or commercial entity.

22 (20) "Private drain" means any drain other than a district
23 drain. "Private drain" includes a drain operated by the state or
24 by a county, town, village or city.

25 (21) "Restoration" or "restoration project" means dredging
26 or other operations designed to bring the cross-section, grade

1 profile or alignment of a district drain into closer conformity
2 with the original, or most recently improved, cross-section,
3 grade profile or alignment of that district drain.

4 (22) "Restoration costs" means costs incurred for the
5 restoration of a district drain.

6 (23) "Stable" means resistant to erosion or deformation.

7 (24) "Ten-year peak discharge" or "10-year peak discharge"
8 means the maximum flow of water resulting from a 10-year 24-hour
9 rainfall event.

10 (25) "Wetlands" has the meaning given in s. 23.32, Stats.
11

12 SUBCHAPTER II

13 ASSESSING DRAINAGE DISTRICT COSTS AND BENEFITS

14 ATCP 48.02 ASSESSING COSTS AGAINST LANDS IN A DRAINAGE

15 DISTRICT. (1) GENERAL. Pursuant to ch. 88, Stats., and this
16 chapter, a county drainage board may ,after public hearing, issue
17 an order levying cost assessments against land in a drainage
18 district to cover costs lawfully incurred by the drainage
19 district, including construction, maintenance, restoration, legal
20 and operating costs.

21 NOTE: See, e.g., ss. 88.23, 88.35, 88.45, 88.63, 88.70,
22 88.71, 88.72 and 88.78, Stats.

23 (2) CONSTRUCTION COST ASSESSMENTS; LIMITATIONS. (a) A
24 county drainage board may not levy cost assessments to construct
25 a new drainage district if the construction cost for that new
26 district will exceed 75 percent of the total assessed benefits
27 accruing to district landowners from the construction of that new

1 district.

2 NOTE: See s. 88.36(6), Stats. Benefits are assessed to
3 landowners according to s. ATCP 48.06.

4 (b) A county drainage board may not levy cost assessments
5 to construct enlarged or supplemental drains unless the drainage
6 board finds that the benefits from the enlarged or supplemental
7 drains will exceed the cost of construction.

8 NOTE: See s. 88.71(1m), Stats. Benefits to landowners are
9 assessed according to s. ATCP 48.06.

10 (c) A county drainage board may not, without obtaining the
11 landowner's consent and sufficient security under s. 88.23(3),
12 Stats., levy a construction cost assessment against any parcel of
13 land if the amount of the assessment, when added to construction
14 cost assessments previously assessed to that parcel of land,
15 exceeds the last confirmed assessment of benefits for that parcel
16 of land. This paragraph does not limit the assessment of
17 maintenance, restoration or operating costs.

18 NOTE: See ss. 88.23(3) and 88.63, Stats. See definitions of
19 "construction costs," "maintenance costs," "operating
20 costs," and "restoration costs" under s. ATCP 48.01(4),
21 (14), (17) and (22).

22 (3) ALLOCATING COST ASSESSMENTS. Except as provided under
23 sub. (4), cost assessments shall be allocated among all of the
24 parcels of land in a drainage district in proportion to the last
25 confirmed assessment of benefits for each parcel.

26 NOTE: A county drainage board assesses benefits to land
27 parcels in a drainage district according to s. ATCP
28 48.06.

29 (4) CONSTRUCTION COSTS CAUSED BY INDIVIDUAL LANDOWNER. (a)
30 Except as provided under par. (c), a county drainage board may

1 assess, to a specified parcel of land in a drainage district, the
2 full amount of any construction costs incurred by the drainage
3 district as a direct result of any of the following:

4 1. A request by the landowner for drainage improvements
5 that are solely of benefit to that land.

6 NOTE: Under s. 88.70, Stats., landowners who seek
7 additional drainage for part of a drainage district may
8 also petition the county drainage board to create a
9 subdistrict for that purpose. The county drainage
10 board may create a subdistrict, and may levy additional
11 assessments against lands in the subdistrict to cover
12 the costs of providing additional drainage for that
13 subdistrict.

14 2. A land use change or other action by the landowner that
15 alters the flow of water into or from a district drain.

16 3. A land use change or other action by the landowner that
17 increases soil erosion or the movement of suspended solids to a
18 district drain.

19 4. A failure by the landowner to maintain a private drain
20 on that land in compliance with s. ATCP 48.30(5).

21 5. A failure by the landowner to implement necessary
22 erosion control practices on that land, as required by the county
23 drainage board under s. ATCP 48.30(6).

24 6. The landowner's extension of a private drain from the
25 assessed land to land outside the district.

26 NOTE: If a private drain is extended or modified without
27 approval, the county drainage board may also issue an
28 order against the offending landowner or initiate an
29 action for damages under s. 88.92, Stats.
30 Alternatively, a county drainage board may annex the
31 newly drained land under s. 88.78, Stats., and may
32 assess the newly drained land according to s. 88.405,
33 Stat.

1 (b) If, contrary to sub. (2)(c), a construction cost
2 assessment under par. (a) will exceed the last confirmed
3 assessment of benefits for the assessed parcel of land, the
4 county drainage board may order a higher assessment of benefits
5 for that land under s. ATCP 48.06(2). The assessment of benefits
6 may be increased by the full amount needed to accommodate the
7 construction cost assessment under par. (a).

8 (c) Par. (a) does not apply to any of the following:

9 1. Maintenance, restoration or operating costs.

10 2. Construction costs incurred by a drainage district
11 because the county drainage board has failed to comply with this
12 chapter.

13 (5) ASSESSING COSTS TO STATE AND MUNICIPAL LANDS IN A
14 DRAINAGE DISTRICT. (a) A county drainage board may levy cost
15 assessments against agricultural lands in a drainage district
16 that are owned by the state of Wisconsin, but may not levy cost
17 assessments against other lands owned by the state.

18 NOTE: See s. 88.50, Stats.

19 (b) A county drainage board may levy cost assessments
20 against lands in a drainage district that are owned by a county,
21 town, village or city.

22 NOTE: See s. 88.48, Stats. Under s. 88.01(11), Stats.,
23 "lands" include public streets and highways.

24 **ATCP 48.04 RECOVERING COSTS FROM LANDS OUTSIDE A DRAINAGE**
25 **DISTRICT.** (1) GENERAL. Except as provided under sub. (2) and
26 (3), a county drainage board may not levy a cost assessment on
27 behalf of a drainage district against lands located outside the

1 drainage district, but may do any of the following:

2 (a) Refuse to permit the connection of a private drain to a
3 district drain, except as provided under s. 88.93, Stats.

4 NOTE: See s. 88.92, Stats.

5 (b) Initiate an action at law to recover damages,
6 authorized by law, that are sustained by a drainage district as a
7 result of an action or omission by an owner of land located
8 outside the district.

9 (c) Enter into an agreement with any person under which
10 that person agrees to compensate the drainage district for costs
11 incurred by the drainage district because that person's private
12 drain is connected to a district drain.

13 (d) Order the annexation, to a drainage district, of lands
14 outside the district that benefit from the operation of any
15 district drain.

16 NOTE: See s. 88.78, Stats.

17 (2) COST ASSESSMENTS AGAINST ANOTHER DRAINAGE DISTRICT. A
18 county drainage board may levy cost assessments against a
19 drainage district for the benefit of another drainage district.

20 NOTE: See ss. 88.49 and 88.69, Stats.

21 (3) ASSESSMENTS AGAINST MUNICIPALITIES FOR ENLARGEMENT OR
22 MAINTENANCE OF DRAINS. A county drainage board may levy cost
23 assessments against a municipality with territory upstream from
24 any drain for any costs of enlarging or maintaining the drain
25 that are attributable to increased water flow from land within
26 the municipality.

1 NOTE: See s. 88.64, Stats.

2 **ATCP 48.06 ASSESSING BENEFITS TO LANDS IN A DRAINAGE**

3 **DISTRICT.** (1) INITIAL ASSESSMENT OF BENEFITS. When a drainage
4 district is created, a county drainage board shall assess the
5 benefits accruing from the drainage district to each parcel of
6 land in the drainage district. The county drainage board shall
7 assess benefits according to ch. 88, Stats., and this section.
8 The drainage board's assessment of benefits shall provide the
9 basis for the drainage board's allocation of cost assessments
10 under s. ATCP 48.02(3).

11 NOTE: See ss. 88.35 and 88.36, Stats.

12 (2) REASSESSING BENEFITS. (a) If a county drainage board
13 determines that the last confirmed assessment of benefits for a
14 drainage district no longer reflects the actual current benefits
15 to parcels of land in that drainage district, the county drainage
16 board may, after public hearing, issue an order reassessing
17 benefits. A county drainage board may reassess benefits based on
18 land use changes, the construction of new or modified district
19 drains, the subdivision of lands, or other factors affecting the
20 allocation of benefits to landowners.

21 NOTE: A reassessment under par. (a) should adjust all
22 assessed benefits in the district, as necessary, to
23 correct any inequities and injustices found by the
24 board. The adjustment need not be proportional to the
25 former confirmed benefits. See s. 88.46(2), Stats.

26 (b) A county drainage board may reassess benefits under
27 par. (a) on its own motion, or in response to a petition from
28 landowners under s. 88.46, Stats. A reassessment of benefits

1 provides the basis for any subsequent allocation of cost
2 assessments under s. ATCP 48.02(3).

3 NOTE: A landowner petition filed with the drainage board
4 under s. 88.46, Stats., must be signed by at least 1/10
5 of the owners of land in a drainage district, or by the
6 owners of at least 1/10 of the land in a drainage
7 district.

8 (3) METHOD OF ASSESSMENT OR REASSESSMENT. (a) Except as
9 provided under par. (b), a county drainage board shall assess
10 benefits to agricultural lands according to s. ATCP 48.08, and
11 shall assess benefits to nonagricultural lands according to s.
12 ATCP 48.10.

13 (b) In lieu of an assessment method specified under s. ATCP
14 48.08 or 48.10, a county drainage board may adopt an equitable
15 method of assessment which is approved by the owners of at least
16 two-thirds of the assessed lands in the district. The
17 landowners' approval shall be confirmed in a written agreement
18 signed by the approving landowners.

19 (4) PROTECTED WETLANDS EXCLUDED FROM ASSESSMENT. A county
20 drainage board may not assess benefits under this section to
21 wetlands that are legally protected against drainage.

22 NOTE: For purposes of this subsection, "legally protected"
23 wetlands means wetlands that are all of the following:
24 (1) Located outside the district corridor.
25 (2) Clearly described by means of a survey, map,
26 aerial photograph or other document that indicates the
27 size and location of the wetlands.
28 (3) Formally protected from drainage by at least
29 one of the following means:
30 (a) A deed restriction.
31 (b) Enrollment in the federal wetlands reserve
32 program, the federal water bank program, or another
33 federal, state or county program that clearly protects
34 the wetlands from drainage for a term of at least 10
35 years.

1 (c) A recorded easement for a term of at least 10
2 years.

3 (d) A master plan, approved by the Wisconsin board
4 of natural resources, covering land owned by the
5 Wisconsin department of natural resources.

6 (5) BENEFITS RELATED TO EXTENSION OF PRIVATE DRAIN. When
7 assessing benefits to a parcel of land in a drainage district, a
8 county drainage board may include any benefits accruing to lands
9 outside the district which drain to district drains because a
10 private drain has been extended from the assessed parcel to those
11 outside lands.

12 NOTE: See also s. ATCP 48.02(4)(a)6.

13 **ATCP 48.08 ASSESSING BENEFITS TO AGRICULTURAL LANDS.** (1)

14 FACTORS CONSIDERED. When assessing benefits to agricultural
15 lands in a drainage district, a county drainage board shall
16 consider all of the following factors:

17 (a) The estimated increase in land value resulting from
18 drainage. When estimating an increase in land value, a county
19 drainage board may consider the potential uses of the land,
20 taking into account any deed restrictions, easements, restrictive
21 covenants, or other use limitations recorded with the county
22 register of deeds. A potential use does not include a use that
23 is prohibited by law.

24 (b) The type, depth, quality and character of surface soils
25 and subsoils on the assessed land.

26 (c) The amount of drainage required by, or provided to the
27 assessed land.

28 (d) The thoroughness and reliability of drainage provided.

1 (e) The amount and frequency of flooding on the assessed
2 land.

3 (f) The difficulty of draining the assessed land.

4 (g) Any loss of acreage resulting from the construction of
5 district drains or corridors, or from the deposition of materials
6 excavated in connection with the construction or maintenance of
7 district drains and corridors.

8 (h) Other factors which the county drainage board considers
9 relevant.

10 NOTE: Information relevant to the assessment of benefits
11 may be obtained from a variety of sources including
12 soil survey reports, aerial photographs, topographic
13 maps, cropping histories, wetland maps, maps of
14 original benefitted acres, interviews with individual
15 landowners and on-site investigations.

16 (2) BENEFITS ASSESSED BY 40-ACRE PARCELS. Benefits to
17 agricultural lands shall be assessed parcel by parcel, with each
18 parcel being not larger than 40 acres. If a landowner's parcel
19 is larger than 40 acres, benefits shall be assessed for sub-
20 parcels that are not larger than 40 acres each.

21 NOTE: See s. 88.35, Stats.

22 **ATCP 48.10 ASSESSING BENEFITS TO NONAGRICULTURAL LANDS.**

23 (1) FACTORS CONSIDERED. When assessing benefits to
24 nonagricultural lands in a drainage district, a county drainage
25 board may consider all the factors specified for agricultural
26 lands under s. ATCP 48.08(1). The county drainage board may also
27 consider the extent and frequency of additional discharges from
28 the nonagricultural lands to district drains, and the drainage
29 district's cost to accommodate those additional discharges.

1 Additional discharges may include additional discharges of
2 stormwater, wastewater, or precipitation runoff from impermeable
3 surfaces.

4 NOTE: The county drainage board may also assess upstream
5 municipalities for costs of enlarging or maintaining
6 drains that are attributable to increased water flow
7 from the municipality. See s. 88.64, Stats., and s.
8 ATCP 48.04(3).

9 (2) ALLOCATING ASSESSMENTS. A county drainage board may
10 assess benefits to nonagricultural lands, including rural
11 subdivisions or individual rural residences, based on a flat
12 amount per lot, per acre, or per building or residence.

13 NOTE: See s. 88.35, Stats.

14

15

SUBCHAPTER III

16

INSPECTING DRAINAGE DISTRICTS

17

ATCP 48.12 INSPECTION AUTHORITY. (1) Pursuant to s.

18 88.13, Stats., a member of a county drainage board or an employee
19 or other authorized agent of a county drainage board may enter
20 any lands in a drainage district to perform an inspection under
21 this subchapter, or to perform any other inspection of a district
22 drain or corridor.

23 NOTE: A county drainage board may authorize a landowner
24 in a drainage district to make an inspection as an
25 agent of the board. See s. 88.63(1), Stats.

26 (2) Before a county drainage board or its agent performs an
27 inspection on private lands, other than in a district corridor
28 under s. ATCP 48.24, the county drainage board or its agent shall
29 notify the landowner of the inspection. Notice may be given in

1 person, by telephone, by mail or, if the landowner is not
2 available, by posting notice at a conspicuous location at an
3 entrance to the land. Notice under this section is adequate if
4 given at any time prior to entry.

5 (3) A county drainage board may employ or contract with any
6 person to perform an inspection on behalf of the county drainage
7 board.

8 NOTE: Section 88.20, Stats., prohibits conflicts of
9 interest by members of a county drainage board. See
10 also s. 946.13, Stats.

11 **ATCP 48.14 ANNUAL INSPECTION.** (1) REQUIREMENT. A county
12 drainage board or its authorized employee or agent shall annually
13 inspect every drainage district. The inspection shall include an
14 inspection of all district drains and district corridors, and
15 shall determine all of the following:

16 (a) Whether district drains are being maintained in
17 compliance with this chapter.

18 (b) Whether a district corridor has been established and is
19 being maintained around every district ditch in compliance with
20 this chapter.

21 (c) Whether landowners are complying with applicable
22 requirements under this chapter.

23 (d) Whether, and to what extent, sedimentation has occurred
24 in district drains.

25 (e) Whether the cross-sections or grade profiles of
26 district drains have changed significantly from the original, or
27 most recently improved, cross-sections or grade profiles.

1 (f) Whether any drains should be restored, altered or
2 improved to ensure proper drainage, to reduce soil erosion or
3 sedimentation problems, or to comply with this chapter.

4 (g) Whether the district drainage system is operating
5 effectively to achieve the goals which have been specified for
6 the drainage district pursuant to s. 88.63, Stats., and s. ATCP
7 48.36(1)(f).

8 NOTE: A county drainage board may perform an annual
9 inspection in stages during the year. Reports covering
10 the various stages of the inspection may be combined in
11 a single report under sub. (3).

12 (2) LANDOWNER PARTICIPATION. The county drainage board
13 shall, by publishing a class 2 notice under ch. 985, Stats.,
14 notify the landowners in each drainage district of the inspection
15 under sub. (1). The notice shall inform landowners and land
16 users that they may accompany the inspection under sub. (1) of
17 lands owned or used by them, and may submit comments related to
18 the performance of the district drainage system.

19 (3) INSPECTION REPORT. A county drainage board shall, in
20 conjunction with its annual report for each drainage district
21 under s. 88.24, Stats., prepare an annual report summarizing the
22 results of its inspection under sub. (1), including any comments
23 received under sub. (2). The county drainage board shall file a
24 copy of its report with the county zoning administrator and with
25 the department by December 1 of each year. Before filing the
26 report under this subsection, the county drainage board shall
27 present its report at a public meeting which is preceded by a
28 class 2 notice under ch. 985, Stats. Notice of the meeting shall

1 also be sent to all known landowners in the drainage district.

2 (4) REPORT CONTENTS. The county drainage board's annual
3 inspection report under sub. (3) shall report the board's
4 inspection findings related to each of the items listed under
5 sub. (1). For each item, the report shall identify any problems,
6 violations or deficiencies noted by the county drainage board.
7 The report shall also specify how the county drainage board will
8 address each problem, violation or deficiency.

9 ATCP 48.16 INSPECTION AFTER MAJOR STORM. (1) REQUIREMENT.

10 Within 3 weeks after a drainage district is affected by a storm
11 that exceeds a 25-year 24-hour rainfall event for that county,
12 the county drainage board or its authorized employee or agent
13 shall inspect the district drains and corridors affected by the
14 storm. The county drainage board shall inspect the district
15 drains and corridors to determine the nature and extent of any
16 storm damage, and to determine whether repairs are necessary. A
17 25-year 24-hour rainfall event is the amount of rain received
18 over a 24-hour period as shown in Table 1.

19

TABLE 1

Probable 24-hour Rainfall Events, In Inches of rain,
for counties In Wisconsin

year	10-year	25-year	10-year	25-	
Adams	4.1	4.7	Marathon	4.0	4.5
Ashland	3.9	4.3	Marinette	3.6	4.1
Barron	4.1	4.6	Marquette	4.1	4.6
Bayfield	3.9	4.4	Menominee	3.7	4.3
Brown	3.7	4.3	Milwaukee	3.9	4.5
Buffalo	4.3	4.8	Monroe	4.2	4.8
Burnett	4.0	4.6	Oconto	3.7	4.2
Calumet	3.8	4.4	Oneida	3.8	4.3
Chippewa	4.1	4.7	Outagamie	3.8	4.4
Clark	4.1	4.7	Ozaukee	3.9	4.4
Columbia	4.1	4.7	Pepin	4.3	4.8
Crawford	4.3	5.0	Pierce	4.2	4.8
Dane	4.2	4.8	Polk	4.1	4.7
Dodge	4.0	4.6	Portage	4.0	4.5
Door	3.6	4.1	Price	4.0	4.4
Douglas	3.9	4.4	Racine	4.0	4.6
Dunn	4.2	4.7	Richland	4.3	4.9
Eau Claire	4.2	4.7	Rock	4.1	4.7
Florence	3.6	4.1	Rusk	4.1	4.6
Fond du Lac	3.9	4.5	St. Croix	4.2	4.7
Forest	3.7	4.2	Sauk	4.2	4.8
Grant	4.3	5.0	Sawyer	4.0	4.5
Green	4.2	4.8	Shawano	3.8	4.4
Green Lake	4.0	4.6	Sheboygan	3.8	4.4
Iowa	4.3	4.9	Taylor	4.1	4.6
Iron	3.8	4.3	Trempealeau	4.3	4.8
Jackson	4.2	4.8	Vernon	4.3	4.9
Jefferson	4.0	4.6	Vilas	3.8	4.3
Juneau	4.1	4.7	Walworth	4.1	4.6
Kenosha	4.0	4.6	Washburn	4.0	4.5
Kewaunee	3.7	4.2	Washington	3.9	4.5
LaCrosse	4.3	4.9	Waukesha	4.0	4.6
Lafayette	4.3	4.9	Waupaca	3.9	4.5
Langlade	3.8	4.3	Waushara	4.0	4.6
Lincoln	3.9	4.4	Winnebago	3.9	4.5
Manitowoc	3.8	4.3	Wood	4.1	4.6

NOTE: The data of table 1 were obtained by extrapolation from maps published by the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the United States".

(2) INSPECTION REPORT. A county drainage board shall prepare a report summarizing the results of its storm inspection under sub. (1). The report shall identify any significant storm damage identified in the inspection, and shall indicate how the board plans to repair the damage. The county drainage board

1 shall file a copy of its storm inspection report with the
2 department when the county drainage board files its annual report
3 under s. ATCP 48.14.

4 ATCP 48.18 DEPARTMENT REVIEW AND ACTION. (1) The
5 department shall review inspection reports submitted by county
6 drainage boards under this subchapter.

7 (2) The department may do any of the following which the
8 department considers necessary:

9 (a) Inspect and copy county drainage board records, or
10 issue an order under s. ATCP 48.52 requiring a county drainage
11 board to file with the department a copy of any record or report
12 required under this chapter.

13 (b) Conduct inspections or other investigations to verify
14 the findings made or reported by a county drainage board.

15 (c) Issue an order under s. ATCP 48.52 requiring a county
16 drainage board to file a specific maintenance or repair plan. As
17 part of the maintenance or repair plan, the department may
18 require the county drainage board to include engineering
19 specifications, specifications for the deposition of dredged
20 materials, a financing plan and other relevant information.

21 (d) Issue an order under s. ATCP 48.52 which prohibits the
22 construction or alteration of a district drain or corridor if the
23 construction or alteration violates this chapter.

24 (e) Issue an order under s. ATCP 48.52 which requires a
25 county drainage board to comply with applicable requirements
26 under this chapter.

1 SUBCHAPTER IV

2 DISTRICT DRAINS AND CORRIDORS

3 ATCP 48.20 DISTRICT DRAINS; IDENTIFICATION. (1) By

4 December 31, 1995, every county drainage board shall file with
5 the county zoning administrator and the department a map and
6 description of every drainage district under the drainage board's
7 jurisdiction. The map and description shall accurately specify
8 all of the following:

9 (a) The boundaries of the drainage district, as last
10 confirmed by the circuit court or ordered by the county drainage
11 board.

12 (b) The location and extent of every district drain. If
13 private drains are connected to district drains, the map and
14 description shall clearly specify which drains, or portions of
15 drains, are district drains. The criteria for determining what
16 constitutes a district drain shall be uniformly applied
17 throughout a drainage district.

18 (c) The location and width of the every district corridor
19 required under s. ATCP 48.24.

20 NOTE: A "district drain" includes any drain, located within
21 a drainage district, that a county drainage board
22 constructs or is required to maintain under ch. 88,
23 Stats. A "district drain" includes a main ditch, a
24 lateral ditch, or any other type of drain (e.g., an
25 underground tile) that is constructed or operated by a
26 county drainage board. A "district drain" is often
27 located on private property. However, a "district
28 drain" must be distinguished from a "private drain"
29 which is a drain constructed and maintained by a
30 private landowner, or by a government entity other than
31 a county drainage board.

32 (2) A county drainage board may request the department's

1 assistance in developing the map and description of a drainage
2 district under sub. (1).

3 (3) Before a county drainage board files a map and
4 description with the county zoning administrator and the
5 department under sub. (1), the county drainage board shall do all
6 of the following:

7 (a) Provide every known landowner in the drainage district
8 with notice by mail announcing a public meeting at which a copy
9 of the map and description shall be available for inspection.
10 The county drainage board shall also publish a class 2 notice of
11 the meeting under ch. 985, Stats.

12 (b) Give each landowner at least 30 days after the public
13 meeting to file with the county drainage board written objections
14 to the map or description. When the county drainage board files
15 a map and description with the department under sub. (1), the
16 county drainage board shall notify the department of any
17 unresolved objections filed by landowners under this paragraph.

18 (4) This section does not authorize a county drainage board
19 to do either of the following:

20 (a) Create any drainage district without court confirmation
21 under ch. 88, Stats.

22 (b) Modify any drainage district boundaries except
23 according to procedures specified under ss. 88.77 to 88.80,
24 Stats.

25 NOTE: The map and description of each drainage district
26 under sub. (1) must be based on the circuit court
27 orders that created or modified that drainage district,
28 or a county drainage board order annexing or removing

1 land according to applicable procedures under ss. 88.77
2 to 88.80, Stats. If necessary, a county drainage board
3 may clarify disputed boundaries or the status of
4 disputed drains using appropriate procedures specified
5 under ss. 88.77 to 88.80, Stats. (e.g., if prior court
6 orders are not clear or if copies cannot be located).

7 **ATCP 48.22 CONSTRUCTION AND MAINTENANCE; GENERAL.** (1)

8 REQUIREMENT. A county drainage board shall design, construct,
9 maintain, repair and restore district drains and corridors in
10 compliance with this subchapter.

11 (2) COMPLIANCE PLAN AND SCHEDULE. (a) A county drainage
12 board shall file with the department by December 31, 1996 a plan
13 showing how the county drainage board intends to bring all
14 district drains and corridors under its jurisdiction into
15 compliance with this subchapter. The plan shall specify a
16 schedule for bringing the district drains and corridors into
17 compliance.

18 (b) All drainage districts shall comply with this
19 subchapter by December 31, 1999 unless the department, in
20 response to unusual or unavoidable circumstances, extends the
21 compliance deadline in writing.

22 (3) EMPLOYEES AND AGENTS. A county drainage board may
23 employ or contract with qualified persons to survey, design,
24 construct, maintain, repair or restore district drains and
25 corridors on behalf of the county drainage board.

26 NOTE: Under s. ATCP 48.34, construction projects requiring
27 department approval under s. ATCP 48.34 must be
28 designed by a qualified engineer. Sections 88.20 and
29 946.13, Stats., prohibit conflicts of interest by
30 members of a county drainage board. Under s. 88.145,
31 Stats., a county drainage board may authorize any owner
32 of land within the district to undertake work approved

1 by the drainage board. The liability of a landowner
2 who does work with the approval of the county drainage
3 board is limited by ss. 88.145, 893.80 and 895.46(8),
4 Stats.

5 (4) AUTHORITY TO ENTER LANDS. A member of a county
6 drainage board or an employee or other authorized agent of a
7 county drainage board may do any of the following:

8 (a) Enter onto any lands in a drainage district in order to
9 survey, design, construct, maintain, repair or restore a district
10 drain or corridor.

11 (b) Perform survey, construction, maintenance, repair and
12 restoration operations on a district drain or corridor, including
13 operations requiring excavation or modification of private land.

14 NOTE: See s. 88.13, Stats.

15 (5) NOTICE TO LANDOWNER. Before a county drainage board or
16 its agent performs any survey, design, construction, maintenance,
17 repair or restoration operations on private land, other than in a
18 district corridor under s. ATCP 48.24, the county drainage board
19 or its agent shall notify the landowner. Notice may be given in
20 person, by telephone, by mail or, if the landowner is not
21 available, by posting notice at a conspicuous location at an
22 entrance to the land. Notice under this section is adequate if
23 given at any time prior to entry.

24 (6) DEPARTMENT APPROVAL. No county drainage board or its
25 agent may proceed with a construction or restoration project for
26 which department approval is required under s. ATCP 48.34 unless
27 the county drainage board has obtained the department's written
28 approval for that construction or restoration project under s.

1 ATCP 48.38. No county drainage board or its agent may, without
2 the department's written approval, deviate from the project plan
3 and specifications approved by the department.

4 (7) OTHER AGENCIES; APPROVAL. Before starting any
5 construction, maintenance, repair or restoration operation under
6 this chapter, a county drainage board shall obtain from the
7 appropriate government agencies all permits and approvals
8 required for that operation.

9 NOTE: Certain construction, maintenance, repair and
10 restoration operations in a drainage district may
11 require permits or approvals from the army corps of
12 engineers; the Wisconsin department of natural
13 resources; the Wisconsin department of agriculture,
14 trade and consumer protection or local zoning
15 authorities.

16 **ATCP 48.24 DISTRICT CORRIDORS.** (1) CORRIDOR REQUIRED. A
17 county drainage board shall establish and maintain a district
18 corridor around every district ditch. The county drainage board
19 shall maintain the district corridor, in compliance with this
20 subchapter, for all of the following purposes:

21 (a) To provide effective access for the county drainage
22 board and its agents, and for their vehicles and equipment, over
23 the entire length of the district ditch.

24 (b) To provide a buffer against land uses which may
25 adversely affect water quality in the district ditch.

26 (2) WIDTH OF CORRIDOR. A district corridor shall extend
27 for 20 feet from the top of the ditch bank on each side of a
28 district ditch. A county drainage board may, by giving specific
29 notice to landowners, establish a wider corridor if necessary to

1 permit vehicle access or to protect water quality in the district
2 ditch.

3 (3) ACCESS TO CORRIDOR. Except as provided under sub. (4),
4 a member of a county drainage board or an employee or other
5 authorized agent of a county drainage board may, without prior
6 notice to a landowner, do any of the following:

7 (a) Enter a district corridor, and bring vehicles and
8 equipment into a district corridor, for the purpose of
9 inspecting, surveying, maintaining, repairing, restoring or
10 improving a district drain or corridor.

11 (b) Perform operations in a district corridor related to
12 the maintenance, repair, restoration or improvement of a district
13 drain or corridor, including cutting, mowing, pesticide
14 application, dredging, excavation and other operations.

15 (4) NOTICE OF ACTIVITIES IN THE CORRIDOR. Before a county
16 drainage board or its agent does either of the following in a
17 district corridor, the county drainage board or its agent shall
18 notify the landowner by one of the methods specified under s.
19 ATCP 48.22(5):

20 (a) Cutting trees that are more than 6 inches in diameter
21 measured at breast height.

22 (b) Excavating or depositing materials in the district
23 corridor.

24 (5) ROW CROPPING PROHIBITED IN CORRIDOR. Row cropping is
25 prohibited in a district corridor.

26 NOTE: See s. ATCP 48.28 related to the control of woody
27 vegetation in a district corridor.

1 ATCP 48.26 DISTRICT DRAINS; DESIGN, CONSTRUCTION AND

2 MAINTENANCE. (1) DRAINAGE CAPACITY. Every district drain
3 constructed after the effective date of this chapter [...revisor
4 inserts date] shall be designed and constructed so that it is
5 capable of removing the volume of water from a 10-year 24-hour
6 rainfall event within 48 hours after that rainfall event. For
7 each county, a 10-year 24-hour rainfall event is the amount of
8 rain shown in table 1 falling in 24 hours.

9 (2) DITCH STABILITY. (a) A county drainage board shall
10 design and construct every district ditch, including the ditch
11 bed, banks, and related structures such as culverts, bridges and
12 inlets, so that the ditch will remain stable when subjected to a
13 10-year peak discharge under sub. (1). A district ditch is not
14 required to contain the entire volume of water from the peak
15 discharge. The stability standard under this paragraph does not
16 apply to a district ditch or related structure constructed prior
17 to the effective date of this chapter [...revisor inserts date].

18 (b) A county drainage board shall repair and maintain every
19 district ditch, as necessary, to restore and maintain the
20 stability of that ditch.

21 (3) DITCH CROSS-SECTION AND GRADE PROFILE. A county
22 drainage board shall repair and maintain every district ditch so
23 that the cross-section and grade profile of the ditch are stable
24 and conform, as nearly as practicable, to the cross-section and
25 grade profile of the ditch as last constructed or reconstructed.

26 (4) REMOVING OBSTRUCTIONS. A county drainage board shall

1 remove sediment dams, windfalls, deadfalls, sand bars, beaver
2 dams and other obstructions from district ditches. The county
3 drainage board shall remove the obstructions annually, or more
4 frequently as necessary. The county drainage board shall also
5 remove submerged vegetation from district ditches as necessary.

6 ATCP 48.28 CONTROLLING WOODY VEGETATION. (1) REQUIREMENT.

7 Except as provided under sub. (2), a county drainage board shall
8 control the growth of woody vegetation in district ditches and
9 corridors to ensure effective drainage and effective access for
10 inspection, maintenance and repair. A county drainage board may
11 control woody vegetation by one or more of the methods specified
12 under sub. (3).

13 (2) EXCEPTION. A county drainage board may allow the
14 growth of woody vegetation in portions of a district corridor,
15 provided that the woody vegetation does not interfere with
16 effective access to district drains. A county drainage board,
17 when deciding whether to allow the growth of woody vegetation,
18 shall consider how the woody vegetation may affect the cost of
19 maintaining and cleaning district drains. Any portions of a
20 corridor left in woody vegetation shall be maintained under a
21 resource conservation plan developed in cooperation with the
22 county land conservation department or the United States natural
23 resources conservation service.

24 NOTE: In some parts of a district corridor, woody
25 vegetation may have important value as wildlife
26 habitat, or for controlling soil erosion. Ordinarily,
27 ditches are not subject to local shoreland or wetland
28 zoning ordinances. However, in a small number of
29 situations, where ditches are considered natural

1 navigable streams, local ordinances may limit the
2 cutting of woody vegetation. See s. 144.26(2m),
3 Stats., and chs. NR 115 and NR 117.

4 (3) METHODS FOR CONTROLLING WOODY VEGETATION. A county
5 drainage board may use any of the following methods to control
6 the growth of woody vegetation in a district ditch or corridor:

7 (a) Mowing. A county drainage board may mow a district
8 ditch or corridor to control the growth of woody vegetation.
9 Mowing may include hand cutting where necessary. If only mowing
10 is used to control the growth of woody vegetation in a district
11 ditch or corridor, the county drainage board shall mow the ditch
12 or corridor at least once every 5 years, and more often if
13 necessary.

14 (b) Pesticide applications. A county drainage board may
15 apply pesticides to control the growth of woody vegetation in a
16 district ditch or corridor. Pesticides shall be applied
17 according to label directions, and in compliance with ch. ATCP 29
18 and other applicable state and federal laws and regulations.

19 (c) Burning. Subject to applicable local regulations, a
20 county drainage board may use controlled burning to control the
21 growth of woody vegetation in a district ditch or corridor.

22 **ATCP 48.30 CONTROLLING SOIL EROSION AND RUNOFF.** (1)

23 GENERAL. A county drainage board shall take appropriate
24 measures to minimize soil erosion and the movement of suspended
25 solids into district drains. A county drainage board may monitor
26 water in district drains to determine the amounts and sources of
27 suspended solids in the water.

1 (2) CORRIDORS AND DRAINS. A county drainage board shall
2 design, construct and maintain district drains and corridors to
3 minimize soil erosion and the movement of suspended solids into
4 district drains.

5 NOTE: Erosion control methods are described in the
6 "Wisconsin construction site best management practices
7 handbook" which is available for viewing at the county
8 land conservation department, or for purchase from the
9 Wisconsin department of administration, document sale
10 division, 202 South Thornton avenue, Madison, WI.

11 (3) VEGETATIVE COVER. (a) A county drainage board shall
12 maintain effective vegetative cover, or equally effective erosion
13 control practices, in every district ditch and corridor. When
14 ditch banks are planted with vegetation to stabilize those banks,
15 the plant variety or seed mixture shall be one of those listed in
16 the United States department of agriculture natural resources
17 conservation service technical guide, critical area planting
18 standard 342, 1985 edition, including supplements through 1988.
19 The application rate shall also conform to critical area planting
20 standard 342. If construction or maintenance activities disturb
21 the vegetative cover in a district ditch or corridor, the
22 drainage board shall promptly replant the disturbed area to
23 restore an effective vegetative cover.

24 NOTE: The United States department of agriculture natural
25 resources conservation service technical guide is on
26 file with the department, the secretary of state and
27 the revisor of statutes. Copies of individual
28 standards may be obtained from the United States
29 department of agriculture natural resources
30 conservation service field offices and from county land
31 conservation department offices.

32 (b) A county drainage board may permit land uses in

1 district corridors that provide effective vegetative cover and
2 erosion control.

3 (4) INLETS TO DISTRICT DITCHES. Inlets to district
4 ditches, whether from private or district drains, shall be
5 designed and maintained to prevent soil erosion. Surface
6 drainage entering a district ditch shall be controlled by means
7 of buffer strips, pipe inlets, drop spillways or other devices to
8 prevent soil erosion and uncontrolled flow over ditch banks.

9 (5) PRIVATE DRAINS. (a) Private drains that transport
10 water to district drains, whether from agricultural or
11 nonagricultural lands, shall be designed, constructed and
12 maintained to prevent soil erosion, and to minimize the movement
13 of suspended solids into district drains. A county drainage
14 board may require that private drains carrying water from
15 nonagricultural lands be designed according to a stormwater
16 management plan, and equipped with facilities such as settling
17 ponds or detention basins to minimize excessive discharges of
18 water or suspended solids into district drains.

19 (b) If a private drain does not comply with par. (a), the
20 county drainage board may do any of the following:

21 1. Refuse to permit any connection between the private
22 drain and the district drain.

23 2. Order that the private drain be modified to comply with
24 par. (a).

25 3. Order that the private drain be disconnected from the
26 district drain.

1 4. Pursuant to s. ATCP 48.02(4), assess the owner of the
2 private drain for construction costs incurred by the drainage
3 district because the private drain does not comply with par. (a).

4 NOTE: A county drainage board may also initiate a court
5 action against the owner of the private drain. The
6 county drainage board may ask the court to enjoin
7 violations of par. (a), and may seek recovery of
8 damages incurred by the drainage district because of
9 those violations. A person violating par. (a) may also
10 be subject to a civil forfeiture under s. 88.11(8),
11 Stats.

12 (6) EROSION CONTROL PRACTICES ON DRAINED LANDS. (a) An
13 owner of land in a drainage district shall implement appropriate
14 erosion control practices on that land to minimize soil erosion
15 and the movement of suspended solids into district drains. A
16 county drainage board may require a landowner to implement
17 erosion control practices recommended by the United States
18 department of agriculture natural resources conservation service,
19 the county land conservation department or an engineer approved
20 by the department.

21 (b) If a landowner fails to implement erosion control
22 practices required by a county drainage board under par. (a), the
23 county drainage board may do any of the following:

24 1. Refuse to permit any connection between the landowner's
25 private drain and the district drain.

26 2. Order the landowner to comply with par. (a).

27 3. Order that the landowner's private drain be disconnected
28 from the district drain.

29 4. Pursuant to s. ATCP 48.02(4), assess the landowner for
30 construction costs incurred by the drainage district because of

1 the landowner's failure to implement erosion control practices
2 required by the county drainage board under par. (a).

3 NOTE: A county drainage board may also initiate a court
4 action against a landowner who violates par. (a). The
5 county drainage board may ask the court to enjoin
6 violations of par. (a), and may seek recovery of
7 damages incurred by the drainage district because of
8 those violations. A landowner violating par. (a) may
9 also be subject to a civil forfeiture under s.
10 88.11(8), Stats.

11 **ATCP 48.32 DEPOSITION OF MATERIALS.** (1) Materials dredged
12 or excavated in connection with the construction, restoration,
13 repair or maintenance of district drains may be spread on land or
14 placed in piles according to this section. Berms, levees and
15 other depositions in a district corridor shall comply with this
16 section.

17 NOTE: The deposition of dredged or excavated material may
18 be subject to additional restrictions under federal,
19 state and local laws.

20 (2) The deposition of dredged or excavated materials,
21 whether by land spreading or piling, shall conform as nearly as
22 practicable to the american society of agricultural engineers
23 engineering practice number 407.01, section 5, 1993 edition.
24 Materials shall be spread or piled in a manner that ensures the
25 long-term stability of the materials.

26 NOTE: Copies of ASAE EP 407.01, section 5 are on file with
27 the department, the secretary of state and the revisor
28 of statutes. Copies may be obtained from the
29 department. A county drainage board may also contact
30 the United States department of agriculture natural
31 resources conservation service or the army corps of
32 engineers for technical assistance related to the
33 deposition of dredged or excavated materials.

34 (3) If dredged or excavated materials are spread on land,

1 the materials shall be graded and smoothed to blend into
2 cultivated lands. The surface slope of the spread materials
3 shall not exceed a slope of 8:1. Spread materials may not be
4 more than 2 feet deep at the top of a ditch bank.

5 NOTE: See Figure 1.

6 (4) No portion of a pile of dredged or excavated materials
7 may be closer than 12 feet to the top of a ditch bank. Materials
8 shall be piled at a stable angle of repose for those materials.
9 No slope of any pile may exceed a slope of 2:1.

10 (5) No dredged or excavated material may be placed in a
11 wetland except in compliance with applicable federal, state and
12 local permit requirements.

13 NOTE: Figure 1, which is based on ASAE EP 407.01, section
14 5, illustrates the requirements of this section:
15

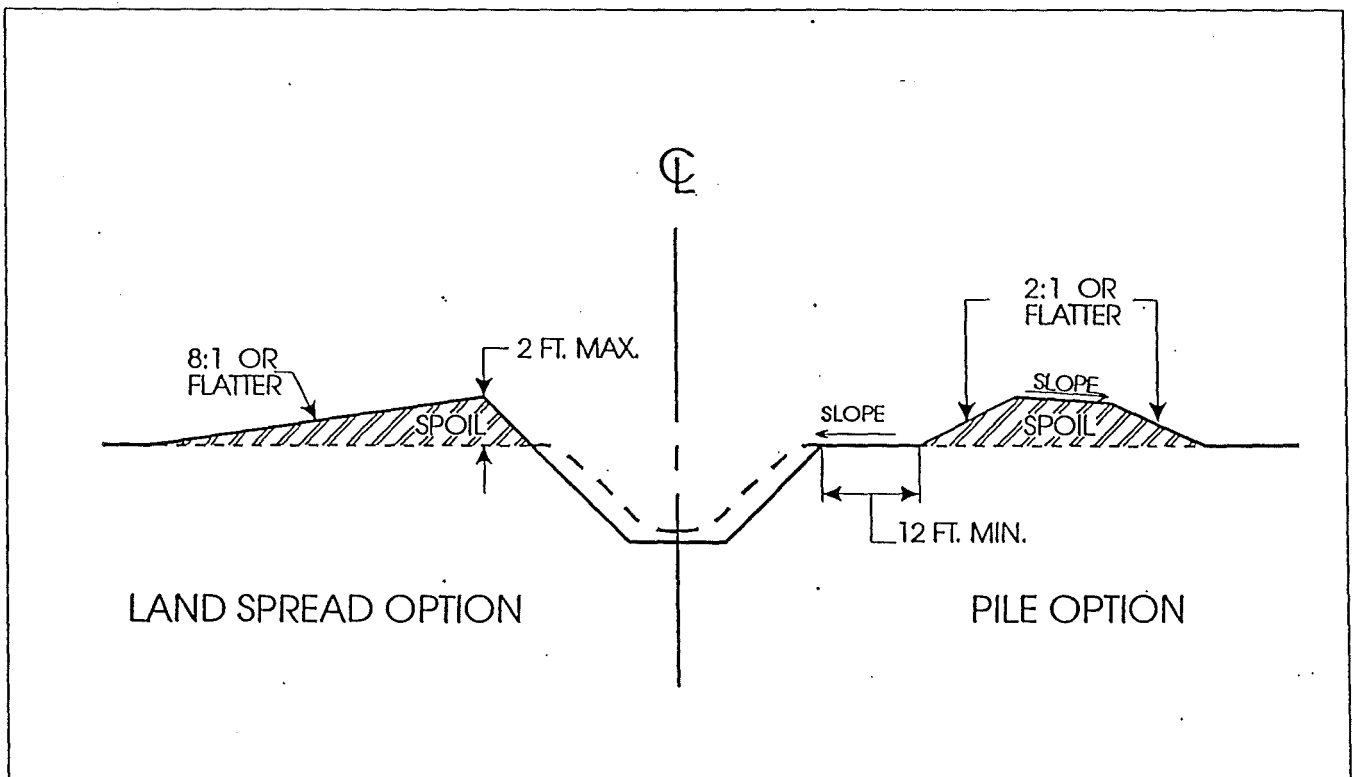


Figure 1. Methods of Material Disposal

1 information, in detail commensurate with the scope of the
2 project:

3 (a) District name or number. The name or number, or the
4 proposed name or number of the drainage district.

5 (b) Project description and purpose. A statement
6 describing the project, and indicating why the project is needed.

7 (c) Estimated cost. The estimated cost of the project,
8 including any proposed damage awards to landowners in the
9 drainage district who will be adversely affected by the project.

10 (d) Benefit to landowners. An assessment or reassessment
11 of benefits to every parcel of land in the drainage district,
12 including any change in benefits resulting from the construction
13 or restoration project. The county drainage board shall specify
14 the method used by the county drainage board in its assessment or
15 reassessment of benefits. Benefits to landowners shall be
16 assessed according to s. ATCP 48.06(3).

17 NOTE: Under s. ATCP 48.06(2)(a), if a county drainage board
18 determines that the last confirmed assessment of
19 benefits for a drainage district no longer reflects
20 actual current benefits to parcels of land in that
21 drainage district, the county drainage board must order
22 a reassessment of benefits. Landowners within a
23 drainage district may also petition the drainage board
24 for a reassessment under s. 88.46, Stats.

25 (e) Financing plan. The drainage board's plan for
26 financing the project, including any proposed cost assessments to
27 lands in the drainage district. Cost assessments shall comply
28 with s. ATCP 48.02.

29 (f) Drainage goals. A statement of the drainage goals
30 which the project is expected to achieve, including goals for new

1 drainage or the improvement of current drainage. Drainage goals
2 shall be specified in terms of drainage volume, the thoroughness
3 of drainage and the geographic scope of drainage.

4 (g) Design specifications and project plan. The design
5 specifications and a plan for the construction or restoration
6 project. The design specifications and plan shall be prepared by
7 an engineer who is qualified under s. 88.21(5), Stats., except
8 that the design specifications and plan for a restoration project
9 need not be prepared by an engineer unless required by the
10 department. The design specifications and plan shall comply with
11 applicable standards under subchapter IV. The design
12 specifications and plan shall include all of the following:

13 1. A plan for controlling erosion at the project site.

14 2. An estimate of the amount of material that will be
15 dredged or excavated in the course of the project, and a plan for
16 the deposition of that material.

17 3. A feasibility analysis under sub. (2) if the project
18 will create a new drainage district or subdistrict, or will
19 substantially or materially alter the drainage system within an
20 existing district.

21 4. A hydrology analysis under sub. (3) if the project will
22 create a new drainage district or subdistrict, or will
23 substantially or materially alter the drainage system within an
24 existing district.

25 (h) Lands and waters affected. A map and description of
26 the lands and waters affected by the project. The map and

1 description shall indicate all of the following if relevant:

2 1. The location of the project in relation to the affected
3 lands and waters.

4 2. The topography of the affected lands.

5 3. The location of any wetlands that may be affected by the
6 project.

7 4. The identity and location of any navigable waterway
8 noted on a federal or state map of public record, any stormwater
9 management district or lake district, any priority watershed or
10 lake under s. 144.25, Stats., or any wellhead protection area
11 delineated under chapter NR 811 that may be affected by the
12 project, and a description of how the project may affect that
13 navigable waterway, stormwater management district, lake
14 district, priority watershed, priority lake, or wellhead
15 protection area.

16 5. Any transportation corridor or utility easement, and any
17 building or facility that may be affected by the project, and a
18 description of how the project may affect that corridor,
19 easement, building or facility.

20 6. The current use and vegetative cover of the lands
21 affected by the project, and any changes in use or vegetative
22 cover that may occur because of the project.

23 (i) Suspended solids in district drains. An assessment of
24 how the project may affect upstream and downstream suspended
25 solids in district drains.

26 (j) Surface waters of the state. An assessment of how the

1 project may affect surface waters of the state, including effects
2 on surface water levels, surface water quality, surface water
3 temperatures or wetlands.

4 (k) Groundwater. An assessment of how the project may
5 affect groundwater, including effects on groundwater levels or
6 groundwater quality.

7 (l) Human and natural environment. An assessment of how
8 the project may affect fish habitat, wildlife habitat, scenic
9 beauty and other aspects of the human and natural environment.

10 (m) Alternatives. An assessment of alternatives to the
11 project, including the alternative of doing nothing. The
12 assessment shall discuss the relative benefits, costs and
13 environmental effects of the alternatives.

14 (n) Copies filed with other agencies. A statement that the
15 county drainage board has filed copies of the request for
16 approval under this subsection with other agencies, as required
17 under sub. (4).

18 NOTE: A county drainage board is encouraged to contact the
19 department as soon as possible before submitting a
20 request for approval under this subsection. The
21 department can guide and assist the county drainage
22 board in preparing the request for approval.

23 (2) FEASIBILITY ANALYSIS. (a) General. If a construction
24 or restoration project will create a new drainage district or
25 subdistrict, or will substantially or materially alter the
26 drainage system within an existing district, the county drainage
27 board's request under sub. (1) shall include a feasibility
28 analysis of the project. The feasibility analysis shall assess

1 whether the design specifications and project plan are adequate
2 to achieve the intended results, and whether they comply with
3 applicable standards under subchapter IV.

4 (b) Adequacy to achieve drainage goals. If a construction
5 or restoration project is designed to drain new lands, or to
6 improve the current drainage of lands, the feasibility analysis
7 under par. (a) shall assess whether the project will achieve the
8 drainage goals stated under sub. (1)(f); whether the affected
9 soils will drain as expected, and whether the drain will operate
10 by gravity or will require pumping. If pumping is required, the
11 analysis shall assess whether pumping capacity is adequate.

12 (3) HYDROLOGY ANALYSIS. If a construction or restoration
13 project will create a new drainage district or subdistrict, or
14 will substantially or materially alter the drainage system within
15 an existing district, the county drainage board's request under
16 sub. (1) shall include a hydrology analysis of the project. The
17 hydrology analysis shall include all of the following:

18 (a) The predicted base flow in the drain.

19 (b) The predicted 10-year peak discharge to the drain.

20 (c) The predicted 100-year peak discharge to the drain.

21 (d) Predicted water surface profiles and flow velocities in
22 the drain, based on the predicted base flow, a 10-year peak
23 discharge and a 100-year peak discharge. The analysis shall
24 describe the hydraulics model used to predict the water surface
25 profiles and flow velocities, and shall specify the drain
26 measurements and other data upon which the model's predictions

1 are based.

2 (4) FILING COPIES WITH OTHER AGENCIES. Whenever a county
3 drainage board files with the department a request under sub. (1)
4 for approval of a construction or restoration project, the county
5 drainage board shall simultaneously file copies of the request
6 with the Wisconsin department of natural resources, the United
7 States army corps of engineers, the county zoning administrator,
8 the county land conservation committee, and every municipality
9 affected by the project. The county drainage board shall also
10 file a copy of the request with the county highway committee if
11 the project may affect a public highway.

12 (5) ADDITIONAL INFORMATION. The department may require a
13 county drainage board to file additional information, as
14 necessary, before approving or disapproving a construction or
15 restoration project.

16 ATCP 48.38 DEPARTMENT APPROVAL OR DISAPPROVAL. (1)
17 DEADLINE FOR APPROVAL OR DISAPPROVAL. Within 45 days after the
18 department receives a complete request under s. ATCP 48.36 for
19 approval of a construction or restoration project, including any
20 additional information required by the department under s. ATCP
21 48.36(5), the department shall issue a written notice granting or
22 denying approval. The department may extend the deadline to a
23 date specified by the department if an environmental impact
24 statement is required under sub. (5).

25 NOTE: See ss. 88.32(3m) and 88.35(7), Stats.

26 (2) APPROVAL MAY BE CONDITIONAL. The department may

1 approve a construction or restoration project contingent upon the
2 county drainage board's compliance with conditions specified by
3 the department.

4 (3) REASONS FOR DISAPPROVAL. If the department disapproves
5 a construction or restoration project, the department shall
6 provide written notification to the county drainage board
7 substantiating the reasons for disapproval. The department may
8 disapprove a project for any of the following reasons:

9 (a) The county drainage board has failed to provide
10 information required by the department under s. ATCP 48.36.

11 (b) The project does not comply with this chapter.

12 (c) The project is not technically feasible, the project
13 design is not technically sound, or the project design is not
14 adequate to achieve the stated goals of the project.

15 (d) The reassessment of benefits under s. ATCP 48.36(1)(d)
16 or the financing plan under s. ATCP 48.36(1)(e) does not comply
17 with this chapter.

18 (e) The project will have a substantial adverse effect on
19 water quality or the human or natural environment.

20 (4) ENVIRONMENTAL ASSESSMENT. (a) Before the department
21 approves a construction or restoration project under this
22 section, the department shall prepare an environmental assessment
23 under s. ATCP 3.02 on the project if any of the following apply:

- 24 1. The project will drain more than 200 acres of land.
- 25 2. The project will drain more than 5 acres of wetlands.
- 26 3. The project will involve the dredging or excavation of

1 more than 3,000 cubic yards of material, except that an
2 environmental assessment is not required under this subdivision
3 for the restoration of an area that was legally dredged within 10
4 years prior to the start of the restoration project.

5 4. The department determines that an environmental
6 assessment is needed to determine whether an environmental impact
7 statement is required under s. ATCP 3.03.

8 (b) An environmental assessment under par. (a) may
9 incorporate an environmental assessment prepared by the state of
10 Wisconsin department of natural resources or any other
11 governmental agency.

12 NOTE: See also ss. NR 150.03(8)(f) and NR 150.20(1)(c).

13 (5) ENVIRONMENTAL IMPACT STATEMENT. Before the department
14 approves a proposed construction or restoration project under
15 this section, the department shall prepare an environmental
16 impact statement under s. ATCP 3.03 on the project only if the
17 department determines that an environmental impact statement is
18 required under s. ATCP 3.03.

20 SUBCHAPTER VI

21 LANDOWNER ACTIONS AFFECTING DRAINAGE DISTRICTS

22 ATCP 48.40 NOTICE OF LANDOWNER ACTIONS AFFECTING DRAINAGE
23 DISTRICT. (1) REQUIREMENT. A landowner under sub. (2),
24 including the state of Wisconsin or any county, town, village or
25 city, shall notify the county drainage board before undertaking
26 any action, including any change in land use, that will do any of

1 the following:

2 (a) Alter the flow of water into or from a district drain.

3 (b) Increase the amount of soil erosion, or the movement of
4 suspended solids to a district drain.

5 (c) Affect the operation of the drainage district, or the
6 costs incurred by the drainage district.

7 (2) APPLICATION. Subsection (1) applies to an owner of
8 land that receives water from or discharges water to a drainage
9 district, regardless of whether the land is included in the
10 drainage district.

11 NOTE: A county drainage board may take various actions in
12 response to landowner actions that adversely affect a
13 drainage district. For example, see ss. ATCP 48.02(5),
14 48.04, 48.06(2) and 48.30. See also ss. 88.89 to
15 88.92, Stats.

16 **ATCP 48.42 REMOVING LANDS FROM DRAINAGE DISTRICT.** No
17 landowner, including the state of Wisconsin or any county, town,
18 village or city, may do either of the following:

19 (1) Remove lands from inclusion in a drainage district
20 without obtaining the approval of the county drainage board under
21 s. 88.80, Stats.

22 (2) Disconnect a private drain from a district drain,
23 except with the approval of the county drainage board.

24 **ATCP 48.44 CONNECTING PRIVATE DRAINS TO DISTRICT DRAINS;**

25 **EXTENDING PRIVATE DRAINS.** No person may do either of the
26 following without written approval from the county drainage
27 board:

28 (1) Connect a private drain to a district drain.

1 (2) Extend a private drain that is currently connected to a
2 district drain.

3 NOTE: Under s. 88.92(1), Stats., a county drainage board
4 may approve the connection of private drains to
5 district drains, or the extension of private drains
6 from district drains, and may establish conditions for
7 approval. Under s. 88.92(2), Stats., a person who
8 connects or extends a private drain, or removes a spoil
9 pile, without drainage board approval is liable for
10 damages incurred by the drainage district as a result
11 of that action. "Damages" include payments that the
12 drainage district would have received during the time
13 that the illegal connection or extension existed if the
14 territory drained by the illegal connection or
15 extension had been subject to assessment.

16
17 **SUBCHAPTER VII**

18 **DRAINAGE DISTRICT RECORDS**

19 **ATCP 48.46 RECORDS REQUIRED.** (1) ORDERS. A county
20 drainage board secretary and the county zoning administrator
21 shall maintain in perpetuity a copy of every order of the circuit
22 court or the county drainage board that does any of the
23 following:

24 (a) Creates, modifies, suspends or dissolves a drainage
25 district. The record shall include maps or descriptions showing
26 the district boundaries affected by the order.

27 (b) Approves the construction, enlargement, extension or
28 modification of a district drain. The record shall include any
29 information describing profiles and cross-sections of drains
30 affected by the order.

31 (c) Confirms or orders an assessment, supplemental
32 assessment or reassessment of benefits, damages or costs to

1 landowners in a drainage district.

2 NOTE: Under s. 88.19(4) to (7), Stats., the department may
3 determine the records required to be preserved
4 regarding drainage districts.

5 (2) DRAINAGE DISTRICT BOUNDARIES. A county drainage board
6 secretary and the county zoning administrator shall have on file,
7 at all times, a map or description that clearly and accurately
8 delineates the boundaries of every drainage district. The
9 drainage district boundaries shall be those most recently
10 confirmed by the circuit court, or ordered by the county drainage
11 board.

12 NOTE: See s. ATPCP 48.20 and s. 88.19(4), Stats.

13 (3) DRAIN SPECIFICATIONS. A county drainage board
14 secretary and the county zoning administrator shall have on file,
15 at all times, descriptions or drawings that clearly and
16 accurately describe the location, cross-section, grade profile
17 and other design specifications of every district drain, as last
18 constructed or reconstructed with the approval of the circuit
19 court or by order of the county drainage board.

20 NOTE: See s. ATPCP 48.20 and s. 88.19(4), Stats.

21 (4) REPORTS. A county drainage board secretary shall keep,
22 for at least 10 years, a copy of every inspection report filed
23 with the department under subchapter III, and every annual report
24 filed with the county zoning administrator under s. 88.24, Stats.
25 A county zoning administrator shall keep, for at least 10 years,
26 a copy of every annual report filed under s. 88.24, Stats.

27 (5) MINUTES OF MEETINGS. A county drainage board secretary

1 shall prepare minutes of the following meetings, and shall keep
2 those minutes for at least 10 years:

3 (a) Every meeting of the county drainage board.

4 (b) Every meeting of district landowners held under the
5 auspices of the county drainage board.

6 NOTE: Under county law or policy, a county drainage board
7 may be required to retain the minutes of meetings for
8 more than 10 years.

9 (6) CONSTRUCTION AND RESTORATION RECORDS. A county
10 drainage board secretary shall keep a copy of every request for
11 approval filed with the department under s. ATCP 48.36, and every
12 approval or disapproval issued by the department under s. ATCP
13 48.38. Records under this subsection pertaining to each drainage
14 district shall be retained for at least the life of that drainage
15 district.

16 ATCP 48.48 CARE AND INSPECTION OF RECORDS. (1) RECORDS
17 ORGANIZED AND ACCESSIBLE. Records required under s. ATCP 48.46
18 shall be organized by drainage district, and shall be readily
19 accessible for inspection.

20 (2) DESTRUCTION OF RECORDS; NOTICE. A county drainage
21 board shall notify the department and the state historical
22 society in writing at least 60 days before the county drainage
23 board destroys any record identified under s. ATCP 48.46. The
24 department or the state historical society may take custody of
25 any records proposed for destruction.

26 NOTE: See s. 88.19(4)(d), Stats.

27 (3) DEPARTMENT MAY INSPECT RECORDS AND OBTAIN COPIES. The

1 department may inspect and copy any drainage district record kept
2 by a county drainage board, or by any person in this state,
3 including any record required under s. ATCP 48.46. A county
4 drainage board shall, at the department's request, allow the
5 department to copy any drainage record kept by a county drainage
6 board, including any record kept under s. ATCP 48.46. The
7 department shall retain a copy of any record obtained under this
8 subsection and shall deliver a copy to the county zoning
9 administrator.

10 NOTE: See s. 88.19(5), Stats.

11 (4) FILING RECORDS WITH DEPARTMENT AND COUNTY ZONING
12 ADMINISTRATOR. The secretary of the county drainage board shall
13 provide a copy of drainage board records under s. ATCP 48.46(1)
14 to (4) that are created after the effective date of this
15 subsection [...revisor inserts date] to the department and the
16 county zoning administrator.

17 NOTE: See s. 88.19(5) to (7), Stats.

18

19 SUBCHAPTER VIII

20 ENFORCEMENT AND VARIANCES

21 NOTE: In addition to any other remedy specified under this
22 chapter, the department may bring an action to recover
23 a civil forfeiture under s. 88.11(8), Stats., from any
24 person who violates this chapter.

25 ATCP 48.50 INVESTIGATIONS. The department may investigate
26 violations of this chapter. The department may conduct a
27 preliminary investigation under s. 93.16, Stats., and may
28 exercise its authority under ss. 93.14 and 93.15, Stats., in

1 support of any investigation. Pursuant to ss. 88.13 and 93.08,
2 Stats., the department or its agent may enter onto lands to
3 inspect for compliance with this chapter.

4 ATCP 48.52 COMPLIANCE ORDERS. (1) AUTHORITY. The
5 department may, without prior notice or hearing, issue an order
6 which does any of the following:

7 (a) Prohibits the construction or modification of a
8 district drain or corridor if the department finds that the
9 construction or modification violates this chapter. An order
10 under this paragraph shall specify the activity prohibited by the
11 order, and shall specify why that activity violates this chapter.

12 (b) Requires a county drainage board to file with the
13 department a specific maintenance and repair plan for a drainage
14 district.

15 (c) Requires a county drainage board to file with the
16 department a copy of any record or report required under this
17 chapter.

18 (d) Requires a county drainage board to comply with
19 applicable requirements under this chapter.

20 NOTE: See ss. 88.11(6) and (7), Stats.

21 (2) WHO MAY ISSUE. An order under sub. (1) may be issued
22 by the administrator of the department's division of agricultural
23 resource management, or by a person designated in writing by that
24 division administrator.

25 (3) VIOLATIONS PROHIBITED. No person may violate an order
26 issued by the department under sub. (1).

1 (4) FORM AND CONTENTS. An order under sub. (1) shall be
2 issued in writing, and shall include all of the following:

3 (a) The name or number of the drainage district.

4 (b) The name of the person to whom the order is issued.

5 (c) Notice that persons adversely affected by the order may
6 request a hearing to contest the order, or to demonstrate
7 compliance with conditions specified for withdrawal of the order.

8 (5) SERVING THE ORDER. (a) An order under sub. (1) shall
9 be served on the person to whom it is directed. An order may be
10 served in person or by mail. If an order is directed to the
11 county drainage board, the department shall serve the order on at
12 least one member of the county drainage board. The department
13 shall mail or deliver a copy of every order under sub. (1) to the
14 county drainage board, regardless of whether the order is
15 directed to the county drainage board.

16 NOTE: Any person, including but not limited to the county
17 sheriff, may personally serve an order on behalf of the
18 department. If necessary, the department may prove
19 service by means of an affidavit of mailing, a
20 certified mail return receipt, or an affidavit of
21 service.

22 (b) An order under sub. (1) takes effect immediately after
23 it is served on the person to whom it is directed.

24 (6) WITHDRAWING OR MODIFYING THE ORDER. A person adversely
25 affected by an order under sub. (1) may request the department to
26 withdraw or modify the order. A request under this subsection
27 shall specify the reasons justifying the request. A request may
28 be made orally, but the department may require the requester to
29 confirm the request in writing. The department may withdraw or

1 modify the order as appropriate.

2 ATCP 48.54 HEARING ON COMPLIANCE ORDER. (1) REQUEST FOR
3 HEARING. A person adversely affected by an order under s. ATCP
4 48.52 may request a hearing before the department to contest the
5 order. A request may be made orally, but the department may
6 require the requester to confirm the request in writing. A
7 request for hearing does not automatically stay an order issued
8 under s. ATCP 48.52.

9 (2) INFORMAL HEARING. (a) The department shall hold an
10 informal hearing as soon as reasonably possible after it receives
11 an oral or written hearing request under sub. (1), but not more
12 than 10 days after it receives the request, unless the requester
13 agrees to a later date for an informal hearing.

14 (b) The person presiding at an informal hearing under par.
15 (a) shall be a department employee or official who was not
16 personally involved in the investigation or decision to issue the
17 order under s. ATCP 48.52, and who is authorized to withdraw or
18 modify the order as necessary. The informal hearing shall be
19 held by telephone or at a location determined by the department.

20 (c) Within 2 business days after the conclusion of the
21 informal hearing, the presiding officer under par. (b) shall
22 issue a brief written memorandum which summarizes the informal
23 hearing, and any decision or action resulting from the informal
24 hearing. A copy of the memorandum shall be provided to the
25 person requesting the hearing. The memorandum shall include a
26 notice of a person's right to request a formal contested case

1 hearing under sub. (3).

2 (3) FORMAL HEARING. If a contest related to an order under
3 s. ATCP 48.52 is not resolved after an informal hearing under
4 sub. (2), the person adversely affected by the department's order
5 may request a full contested case hearing on the order. The
6 contested case proceeding shall comply with ch. 227, Stats., and
7 ch. ATCP 1.

8 **ATCP 48.56 VARIANCES.** The department may authorize a
9 variance from any standard or requirement under this chapter if
10 the department finds that the variance is consistent with the
11 objectives of this chapter. A variance shall be issued in
12 writing. A variance may be issued by the administrator of the
13 department's division of agricultural resource management, or by
14 a person designated in writing by that division administrator.
15 The department may not grant variances from statutory
16 requirements.

17 **SECTION 4.** The rules contained in this order shall take
18 effect on the first day of the month following publication in the
19 Wisconsin administrative register, as provided under s.
20 227.22(2)(intro.), Stats.

21
22 Dated this 7th day of April, 1995.

23
24
25 STATE OF WISCONSIN
26 DEPARTMENT OF AGRICULTURE,
27 TRADE AND CONSUMER PROTECTION

28
29
30 By 
31 Alan T. Tracy, Secretary