

## Report From Agency

DATCP Docket No. 11-R-01  
Clearinghouse Rule No. 13-016

Proposed Final Draft  
August 22, 2013

### PROPOSED ORDER OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION ADOPTING RULES

2 The Wisconsin department of agriculture, trade and consumer protection proposes the following  
3 permanent rule *to repeal* ATCP 50.01 (11) and (18) (a) (Note), 50.28 (5) (b) 1. (Note), 50.32 (5)  
4 (b) (Note) and (8) (c) 3., 50.40 (9) (c) 1. to 3., (L) 1. to 3., (14) (a), (b) and (c), 50.52 (2) (e),  
5 50.62 (5) (e) 6. (Note), 50.63 (5) (Note), 50.67 (3) (c) (Note), 50.68 (4) (a) (Note), 50.69 (4) (a)  
6 7. (Note), 50.70 (4) (b) 9. (Note), 50.71 (3) (b) 3. (Note), 50.72 (3) (a) 7. (Note), 50.73 (3) (d) 12.  
7 (Note), 50.74, 50.75 (4) (a) 2. (Note), 50.76 (5) (a) 5. (Note), 50.77 (4) (a) 5. (Note), 50.80 (3)  
8 (a) 9. (Note), 50.82 (4) (c) 3. (Note), 50.83 (3) (a) 9. (Note), 50.84 (5) (a) (Note), 50.85 (4) (a) 2.  
9 (Note), 50.86 (4) (b) 8. (second Note), 50.87 (4) (a) 3. (Note), 50.88 (2) (a), 50.88 (2) (d) and (f)  
10 and (3) (a) 5. (Note), 50.89 (3) (b) 3. and 4. and 4. (Note), 50.90 (3) (b) 2. (Note), 50.91 (3) (b) 8.  
11 (Note), 50.92 (3) (b) 2. (Note), 50.93 (4) (a) 2. (Note), 50.94 (3) (a) 5. (Note), 50.95 (3) (a) 4.  
12 (Note), 50.96 (3) (b) 7. (Note), 50.97 (3) (b) (Note), 50.98 (3) (a) (Note), Appendices A to G of  
13 ch. ATCP 50; *to renumber* ATCP 50.28 (5) (a) 1., 50.30 (3) (o), 50.62 (5) (e) 6., 50.88 (2) (c)  
14 and (e); *to renumber and amend* ATCP 50.28 (5) (a) 1. (Note), 50.40 (9) (c) (intro.) and (L)  
15 (intro.), and (14) (intro.), 50.46 (3) and (11), 50.66 (3) (a) 3. (Note), 50.88 (2) (b); *to amend*  
16 ATCP 50.01(17), (18) (a), (b) and (c), (20), (27) (Note), (31) (a) and (b) and (33), 50.04(1),  
17 50.04 (2) and (Note) and (3) (a), (b), (d), (dm) 1. (Note), (e) (Note), (f) (intro.) and 4. (Note) and

1 (h) (intro.), 50.08 (1) (intro.) and (a) (Note), (2) (Note) and (5) (a) (Note), 50.10 (1) (b) and  
2 (Note), 50.12 (2) (a), (b) (Note), (c), (f) (Note), (g), (i) and (j) and (3) (c) (Note), 50.16 (6) (a) 1.  
3 and 2., (b)1., (c) (intro.) and 2., and (d), 50.18 (1) (b), 50.26 (2) (a), 50.28 (1) (e) and (Note) and  
4 (5) (a) 2. and 3. and (b) (intro.), 50.30 (1), (2) (intro.), (b), (c) and (d), and (3) (b), (g), (h) and  
5 (m), 50.32 (3) (a) (Note) and (b), (5) (a) (Note), (7) (b) and (8) (b) and (c) 2. and 4., 50.34 (1)  
6 (b), (3) (a) and (Note), (c) (Note) and (d) and (6) (a) 3. and (b), 50.36 (1) and (2) (a), 50.40 (3)  
7 (a) (Note), (4), (7) (b), (9) (d), (j) (Note) and (n), (10) (b), (11) (b) (intro.), 2. and 3. and (17),  
8 50.42 (4) (intro.), 50.46 (title), (3) (title), (4) (a), (5) (a) and (Note), (6) (b), (7) (a), (9) (c) 2., (10)  
9 and (12), 50.50 (2) (intro.), (d) and (g) (Note), (4) (intro.) and (c) (Note), and (8) (b) (Note) and  
10 (c) (Note), 50.52 (1) (g) and (Note) and (2) (d), 50.54 (1) (Note) and (2) (b), 50.56 (2) (e) and (f),  
11 (4) (intro.), (a), (b), (c) and (Note) and (6), 50.60 (1) (a) (Note), 50.61 (title) and (1), 50.62 (1)  
12 (e) 1. and 3., (3) (d) (Note) and (5) (e) 1. to 5. and (f), 50.63 (5), 50.64 (1) (a), (b) and (e) and (5)  
13 (a) and (b), 50.65 (title), (1), (2), (3) (intro.), (a) and (Note) and (b), 50.66 (title), (1), (2) (3)  
14 (intro.), (a) and (b), 50.67 (3) (a), (b) and (c), 50.68 (4) (a), 50.69 (1) and (4) (a) 1. to 7. and (b),  
15 50.70 (4) (b) 1. to 9., 50.71 (1) and (3) (b) 1. to 3., 50.72 (3) (a) 1. to 3. and 5. to 7., 50.73 (3) (d)  
16 1. to 12., 50.75 (4) (a) 1. and 2., 50.76 (5) (a) 2. to 4., 50.77 (4) (a) 1. and (Note) and 2. to 4.,  
17 50.78 (3) (a) (Note), 50.79 (2) (intro.) and (3) (a) 1. and (b), 50.80 (3) (a) 1. to 6., 7. (Note) and  
18 8., 50.82 (4) (c) 1. to 3., 50.83 (3) (a) 1. to 3., 5. to 7. and 9., 50.84 (5) (a), 50.85 (4) (a) 1. and 2.,  
19 50.86 (4) (b) 1. to 8. and (first Note), 50.87 (4) (a) 1. to 3., 50.88 (title), (1), (2) (intro.) and (3)  
20 (a) 1. to 5. and (c), 50.89 (3) (b) 1. and 2, 50.90 (3) (b)1. and 2., 50.91 (3) (b) 1. to 8., 50.92 (3)  
21 (b) 1. and 2., 50.93 (4) (a) 1. and 2., 50.94 (3) (a) 1. to 5., 50.95 (3) (a) 1. to 4., 50.96 (3) (b) 1. to  
22 7., 50.97 (3) (a); **to repeal and recreate** ATCP 50.16 (title), (1), (2), (3), (4) and (5), 50.26 (2) (a)  
23 (Note), 50.32 (5) (b) and (7) (c) 4. and (Note), 50.34 (1 ) (b) (Note), 50.40 (10 ) (b) (Note), 50.46

1 (1) and (2), 50.56 (3), 50.88 (3) (b); and *to create* ATCP 50.01(2m) and (Note), (15m) and  
2 (Note) and (29m), 50.04 (1) (Note), (3) (a) (Note), (b) (Note), (de) and (gm) and (4) and (Note),  
3 50.12 (2) (jm), 50.16 (6) (a) 5. and (Note), (b) 3. (Note) and (d) (Note), 50.18 (1) (b) (Note),  
4 50.22 (5) and (Note), 50.28 (5) (a) 1. b. and 5. and (c), 50.30 (2) (e) and (f) and (Note), and (3)  
5 (o) and (p), 50.32 (3m) and (7) (a) (Note), 50.34 (1) (d), (5m) and (Note) and (6) (a) 3. (Note),  
6 50.35, 50.36 (1) (Note), 50.40 (2) (d) and (Note), (3) (b) 12. to 14., (14) (b), (c) and (d) and  
7 (Note), 50.42 (1) (a) (Note), (bm), (dg) and (dr) and (Note), 50.46 (2m) and (Note), (3) (b) and  
8 (Note) and (11) (b), 50.48 (2) (a) 4. (Note), 50.50 (2) (d) 5. (Note) and (g) (second Note), 50.54  
9 (2) (b) 1. and 2., 50.56 (4) (a) (Note), subch. VIII (Note) of ch. ATCP 50, 50.61 (3) and (4) and  
10 (Note), 50.62 (1) (b) 6. and (e) 5., (5) (e) 6. to 8., (em) and (f) (Note), 50.64 (1) (v) (Note) and  
11 (5) (c) and (second Note), 50.65 (2) (Note) and (2m), 50.66 (3) (a) 4., 50.705, 50.71 (3) (b) 4.,  
12 50.76 (5) (a) 6. and 7., 50.77 (4) (a) 6. and 7., 50.82 (4) (c) 4., 50.88 (1) (a) to (h), (2) (c) (Note)  
13 and (2m), 50.885, 50.96 (3) (b) 8.; *relating to* soil and water resource management and affecting  
14 small business.

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

This rule modifies ch. ATCP 50, Wis. Admin. Code, related to Wisconsin’s soil and water resource management (“SWRM”) program. The department of agriculture, trade and consumer protection (“DATCP” or “department”) administers the SWRM program under ch. 92, Stats. The SWRM program is designed to conserve the state’s soil and water resources, reduce soil erosion, prevent pollution runoff and enhance water quality.

***Statutes Interpreted***

Statutes interpreted: ss. 71.57 to 71.61, 71.613 (3), 91.80 and 91.82, ch. 92, and s. 281.16, Stats.

### *Statutory Authority*

Statutory authority: ss. 91.82(3), 92.05 (3) (c) and (k), 92.14 (8), 92.15 (3) (b), 92.16, 92.18 (1), 93.07 (1), and 281.16 (3) (b) and (c).

### *Explanation of Agency Authority*

DATCP has responsibilities imposed by statute for implementing the state's nonpoint source pollution control program. Section 281.16, Stats., requires that DATCP develop rules to implement department of natural resources ("DNR") farm runoff standards, also known as the agricultural performance standards adopted in ch. NR 151, Wis. Admin. Code ("NR 151"). Chapter 92, Stats., establishes the framework for DATCP to operate a statewide program that includes implementation of farm conservation practices, approval of county land and water resource management plans, administration of soil and water resource management grants, oversight of manure storage and other local regulations covering livestock operations, provision of training and engineering practitioner certification, and standards for cost-shared practices. Through ch. ATCP 50, Wis. Admin. Code ("ATCP 50"), DATCP carries out these responsibilities. Among other things, ATCP 50 ensures that implementation of the farm runoff standards is contingent on cost-share requirements (see s. ATCP 50.08).

### *Related Statutes and Rules*

As explained above, this rule is related to s. 281.16, Stats., and NR 151. Chapter 92, Stats., establishes the framework for DATCP to operate a statewide soil and water resource management program. This rule also implements the soil and water conservation requirements in subch. V of ch. 91, Stats.

### *Plain Language Analysis*

#### **Background**

ATCP 50 is being revised primarily to implement the new and modified farm runoff control standards adopted by the DNR in 2011. These new and modified DNR standards (the "2011 DNR standards") require farmers to improve pasture management, maintain a tillage setback, control discharges of process wastewater, meet Phosphorus Index targets for nutrient management, and meet targeted performance standards for Total Maximum Daily Loads ("TMDLs"). Under state law, DATCP is responsible for developing conservation practices and other methods to implement performance standards for farms. In most cases, farmers are not required to implement new and modified performance standards unless they receive an offer of 70 percent cost-sharing.

Other changes in the rule are designed to improve administration of the SWRM program, including grants management, cost-sharing and establishing qualifications for engineering practitioners certified under the program.

## **Rule Content**

Among other things, this rule will:

- Update the farm conservation standards in subch. II of ch. ATCP 50, and related definitions, including updates to the RUSLE 2 definition.
- Define a method for determining the distance (between 5 and 20 feet) for a tillage setback.
- Revise the soil erosion control standard to include pastures.
- Modify nutrient management planning requirements for pastures, creating a soil testing alternative and threshold for certain livestock stocking rates.
- Clarify the conservation compliance requirements for the farmland preservation program, including a phase-in for the farm runoff standards updated in NR 151.
- Simplify the manner by which engineering practitioners are certified.
- Update the technical and other standards for practices using state cost-share funds.
- Better support implementation of state performance standards on farms.

The following provides more detailed analysis by subchapter.

## **Soil and Water Conservation on Farms**

### **Farm Conservation Practices**

To implement the 2011 DNR standards, this rule modifies the farm conservation practices as follows:

- *Soil Erosion Control.* This rule requires farmers to manage pastures as well as cropland so that soil erosion rates do not exceed a tolerable rate (“T”). For most soils, the tolerable rate (“T”) is equivalent to 2 to 5 tons of soil loss per acre per year. The rule also clarifies how soil erosion is calculated in the case of wind erosion. The RUSLE 2 equation, as defined in the rule, must be used to measure sheet and rill erosion, and the Natural Resource Conservation Service (“NRCS”) Wind Erosion Prediction System (“WEPS”) model is used to measure wind erosion.
- *Nutrient Management and Phosphorus Index.* This rule clarifies the process for annual review of all nutrient management plans to ensure that updates are prepared when needed. It also defines how nutrient management planning will be implemented for pastures by identifying circumstances in which alternatives for soil testing may be used, and establishing animal stocking rates that would be exempt from nutrient management planning requirements.

- *Tillage Setback.* This rule defines the method for determining a setback over 5 feet but less than or equal to 20 feet, and requires that landowners receive written documentation in support of requiring setbacks over 5 feet in width.
- *Process Wastewater.* This rule implements this new performance standard by adding a standard for cost-sharing in subch. VIII.

Subject to the cost-share requirements in this rule, which remain unchanged, landowners must implement these new farm conservation practices to achieve compliance with the 2011 DNR standards. As part of this rule revision, however, DATCP plans to phase-in compliance with the 2011 DNR standards for landowners who claim Farmland Preservation Program (“FPP”) tax credits. This phase-in will enable farmers to plan in advance for necessary changes in conservation practices on their farms, and allow an orderly transition for counties from a system focused on implementation of the original performance standards (adopted by DNR in 2002) to the new standards (adopted by DNR in 2011).

This rule continues to allow farmers to choose the best way to comply with this rule. A farmer may choose among conservation practices that are appropriate for his or her farm, as long as those practices achieve compliance. In creating a cost-share standard for feed storage runoff control systems, this rule includes a note that explains the options to pursue low-cost approaches to address a feed storage discharge, pointing out that farmers’ choices may be affected by whether they receive state and other cost-share funds intended to achieve long-term prevention and other conservation objectives. Farmers continue to have access to a range of resources such as DATCP, UW-Extension, NRCS and the county land and water conservation departments to secure technical assistance.

### **Cost-Sharing Required**

DATCP has not changed the requirement for cost-share availability when a landowner is required to install conservation practices that change “existing” agricultural facilities or practices. However, the DNR rule revision in 2011 changed the definition of “existing” and “new” agricultural facilities and practices for cost-share purposes. DNR’s rule changed cost-share requirements in certain cases where landowners must close unused manure storage structures. This rule also changes the cost-share provisions for landowners installing conservation practices in non-farm settings and on land owned by local governments.

### **County Soil and Water Conservation Programs**

#### **Land and Water Resource Management Plans**

This rule modifies the required content of county plans to increase accountability, facilitate coordination with DNR, and support incorporation of elements that satisfy planning requirements under Section 319 of the Clean Water Act.

#### **Farmland Preservation; Conservation Standards**

In addition to addressing 2011 DNR standards, this rule incorporates changes to the conservation compliance requirements for FPP to reflect the passage of the Working Lands Initiative in 2009 Act 28, the state's 2009-2011 biennial budget (codified primarily in ch. 91, Stats.). The key changes are as follows:

- This rule ensures that a farmer's eligibility for a Farmland Preservation Program tax credit is based on meeting state conservation standards that mirror DNR performance standards and prohibitions, except that this rule phases in implementation of the 2011 DNR standards for FPP participants, making them effective as of 2016.
- Landowners with pre-2009 agreements are only required to meet the conservation requirements specified in their agreements, as under prior laws.
- The concept of compliance is defined. Landowners must comply with state standards on the entire farm, as defined in this rule, not just the land for which they are claiming a tax credit. However, landowners can remain in compliance with the nutrient management standard when they add or convert land as long they update their plans in a timely manner. To streamline county recordkeeping for DATCP monitoring purposes, the rule establishes minimum requirements for documenting county compliance determinations.
- FPP participants may continue to claim tax credits if they enter into performance schedules (previously "compliance schedules") with the county and make reasonable progress in implementing farm conservation practices identified in the schedule. Schedules may provide landowners with as many as five years to achieve compliance. Landowners must be notified that they are responsible for determining their eligibility to receive a FPP tax credit independent of their commitment to implement a performance schedule.
- Counties have expanded responsibilities related to compliance monitoring, including more detailed standards for entering into performance schedules with farmers. County authority is clarified to include farm inspections. Counties must review a farmer's compliance at least once every 4 years, not 6 years as previously required.
- Counties must issue certificates of compliance to enable farmers to fulfill the documentation requirements in the tax law, and may issue certificates to create a record of compliance.
- As in the past, a county may issue a notice of noncompliance if it finds that a program participant is not complying. Counties now have the option to issue a notice if the landowner wishes to "refrain from collecting a tax credit," in addition to notices issued based on a failure to meet program requirements. This rule explains the need for counties to exercise sound judgment in handling the critical aspects related to monitoring conservation compliance on farms, including treatment of non-compliance and the issuance of notices of non-compliance.

### **Grants to Counties**

Currently, DATCP must follow an annual allocation process to award grants to counties, including extensive procedures for revising the allocation plan. Allocation decisions are made according to priorities and other criteria, which are slightly changed by this rule to place greater emphasis on statewide priorities involving agriculture. DATCP may work with DNR and other funders to identify sources of financial support to address locally identified priorities not related

to agriculture. This rule also simplifies the process for revising the allocation plan related to transfers and reallocations as noted below.

### **Annual Staffing Grants to Counties**

This rule codifies a past decision by DATCP to waive the minimum staffing grant of \$85,000 per county, ensuring that DATCP funding is used to support the county's actual costs for staff. To ensure that counties spend most of their allocation on staffing costs, this rule caps reimbursements for support costs at 10 percent of a county's annual grant. This rule also modifies the criteria DATCP uses to set priorities for making grant awards. Reflecting the end of the priority watershed program, obsolete procedures and references to that program have been removed.

### **Grants for Conservation Practices**

This rule codifies a past decision by DATCP (through a rule waiver) to reinstate cost-sharing to resolve notices of discharge and notices of intent issued to farmers by DNR for discharges from livestock operations. It also formalizes procedures for the voluntary transfer of cost-share funds between two counties, or the award of grants from a reserve established in the original allocation plan. In regard to requests for extensions of projects, this rule simplifies the process for making requests and allows DATCP to accept "late" requests for extensions received before February 15<sup>th</sup> of the subsequent grant year if good cause is demonstrated. Consistent with past waivers issued by DATCP, this rule allows extended cost-share funds to be pooled and used for any extended project in the county.

### **Cost-Share Grants to Landowners**

This rule makes changes to support improved compliance with farm conservation practices by focusing the use of cost-share funds. Specifically, it sets a 50 percent cost-share rate for cost-shared practices on land owned by local governments and for certain practices that are not required to implement performance standards and prohibitions on farms. To conserve limited cost-share funds, it also clarifies that economic hardship is not available to non-farm landowners.

This rule adds details to the procedures for recording cost-share contracts, including the timing for recording, the use of department grant funds to cover recording costs, procedures for submitting reimbursement requests and related documentation, and elimination of the requirement to record contracts involving nutrient management and other soft practices.

### **Grants to "Cooperators"**

This rule spells out the procedures for awarding grant funds to a cooperator (a person or entity under a contract with DATCP) for projects or other activities authorized under s. 92.14 (10), Wis. Stats., for requiring grant contracts for payment of funds, for authorizing a one-year extension of funded projects or activities, and for imposing specific requirements on counties that receive funding, as cooperators, to ensure accountability and appropriate use of department funds.



## **Soil and Water Professionals**

### **Conservation Engineering Practitioners**

Under s. 92.18, Stats., the department is directed to establish, to the extent possible, requirements for certification in conformance with the federal engineering approval system. This rule creates a more flexible and responsive framework for certifying engineering practitioners that better matches the federal system, and ultimately maximizes statewide capacity of conservation staff qualified to design and install farm and other conservation practices. In place of a certification form incorporated directly into the current rule, this rule allows DATCP to grant certification for any practice authorized by NRCS and DNR as long as DATCP uses the application requirements specified in the rule.

To improve coordination of the evaluation and rating of applicants, this rule allows DATCP to designate a state soil and water conservation engineer, to function similarly to the NRCS state engineer. Under this revamped framework, certification will likely include some non-agricultural practices, and, accordingly, the certification designation has been changed from “agricultural” to “conservation” engineering practitioner.

This rule also imposes restrictions on the use of a person’s certification authority to sign engineering documents, conforming to NRCS restrictions that define the review and approval process for designs for engineered practices.

### **Nutrient Management Planners**

This rule recognizes that DATCP may develop minimum standards for department-approved training courses for farmers who develop their own nutrient management plans.

## **County and Local Ordinances**

This rule adds provisions to ensure compliance with the requirements of the livestock facility siting law (“siting law”). See s. 93.90, Stats., and ch. ATCP 51, Wis. Admin. Code. It makes clear that counties can enforce water quality standards in a siting permit even if cost-sharing is not provided. Consistent with the siting law, a county cannot require a permit under its manure storage ordinance if it also requires a facility to obtain a permit under a siting ordinance. This rule also describes the requirements, mandated under the siting law, when local ordinances impose more stringent regulations.

The standards for manure storage ordinances have been updated to reflect changes in the management of manure, including the storage for non-manure wastes such as feed leachate and milking center waste, and revisions of applicable technical standards to reflect those changes. The rule also creates new oversight responsibilities for DATCP, allowing the department to mandate manure storage application forms for local use, or to conduct selective review of manure storage ordinances.

Regarding more stringent local regulation, this rule describes requirements imposed under the siting law to implement local ordinances with these additional provisions.

### **Standards for Cost-Shared Practices**

This rule adds these general provisions that apply to all cost-shared practices:

- Expansion of the concept of voluntary use of updated technical standards, an option first adopted in ATCP 50 in 2007 in connection with the nutrient management performance standard. Under this procedure, a landowner or grant recipient may agree to use updated NRCS or DNR standards as a part of cost-shared project if certain conditions are satisfied (e.g., the newer standard is at least as protective of the environment as the referenced standard codified in the rule).
- A process that allows DATCP to require advance approval of a practice design in special cases before any county can receive a cost-share reimbursement for installation of the practice.

In addition to updating NRCS and other technical standards incorporated into this subchapter, this rule:

- Creates a standard for systems to control discharges of feed storage leachate to complement the cost-share standard that addresses discharges of milkhouse wastewater (see s. ATCP 50.77).
- Clarifies the responsibility of a landowner to maintain the storage capacity of the original storage facility built with DATCP cost-share funds, if animal units are added during the maintenance period of the manure storage cost-share contract.
- Establishes conditions for requiring nutrient management plans as part of a cost-shared project involving barnyard or feed storage runoff control.
- Recognizes the use of a limited set of practices such as access roads and streambank and shoreline protection in non-farm contexts, but imposes restrictions to prevent misuse of limited state cost-share funds (e.g., access roads cannot be used to pay for road building for public use).
- Separates cattle crossings from access roads as a cost-shared practice and creates a new standard for “stream crossing.”
- Eliminates heavy use area protection as a separate cost-shared practice and allows this practice only as a component of other practices such as barnyard runoff control systems.
- Gives more flexibility to provide cost-share funds for pesticide spill control structures without the requirement of a pesticide management plan in all cases.
- Better defines structural and bioengineering treatments that are cost-shared under the streambank or shoreline protection standard, and makes other changes to that standard.

### **Standards Incorporated by Reference**

Pursuant to s. 227.21, Stats., DATCP has received permission from the attorney general to incorporate the following standards by reference in this rule:

- NRCS technical guide standards and related documentation.
- ASCE and other private sector-developed engineering practice standards.
- State agency (DNR, Department of Transportation) erosion control standards for construction sites and stormwater management.
- UW-Extension publications including milking center waste water management, rotational grazing, and soil and manure testing.
- NRCS standards for determining soil erosion (RUSLE 2, WEPS).

Many of the standards are available electronically. Copies of these standards will be on file with DATCP and the legislative reference bureau. DATCP has discontinued the practice of including key documents on standards as appendices and will utilize its website to indicate where documents may be obtained.

### **Waivers**

Under current rule, DATCP may grant a waiver from any standard or requirement under this rule if DATCP finds that the waiver is necessary to achieve the objectives of this rule. The DATCP secretary must sign the waiver. DATCP may not waive a statutory requirement.

### **Land and Water Conservation Board**

The land and water conservation board has reviewed this rule as required by s. 92.04(3) (a), Stats.

### ***Summary of, and Comparison with, Existing or Proposed Federal statutes and Regulations***

NRCS has adopted standards for conservation practices cost-shared by NRCS. Current DATCP rules incorporate many NRCS standards by reference. In most cases, the standards apply only to conservation practices cost-shared with DATCP funds. But in some cases (such as nutrient management), DATCP rules incorporate the NRCS standards as mandatory pollution control standards. Enforcement of these mandatory standards is generally contingent on cost-sharing (there are limited exceptions).

While NRCS sets national standards, standards vary, to some extent, among states. NRCS coordinates its Wisconsin standard-setting process with DATCP, DNR and others. For purposes of Wisconsin's soil and water conservation program, DATCP may incorporate NRCS standards as written or may modify the standards as appropriate. This rule modifies current DATCP rules that incorporate NRCS standards by reference. This rule incorporates updated NRCS standards, or modifies NRCS standards to make them more clear or workable in Wisconsin's soil and water conservation program, as appropriate. It allows landowners receiving cost-sharing to voluntarily take advantage of new NRCS standards not yet incorporated into rule, thereby ensuring that they get the most value for their investment in conservation practices.

NRCS certifies engineering practitioners who design, install or approve conservation engineering practices cost-shared by NRCS. DATCP certifies practitioners who perform similar functions

under DATCP rules. As noted above, this rule makes changes to better match the state and federal programs, which ultimately will benefit the landowners who rely on technical services from engineering practitioners.

The United States Department of Agriculture administers a number of federal programs that offer voluntary conservation incentives to farmers. The Environmental Quality Incentives Program (“EQIP”) is a key program offering cost-sharing for conservation improvements, including nutrient management plans, manure storage improvements and other conservation practices. As a result of confidentiality requirements, federal cost-sharing provided to landowners through this and other NRCS cost-share programs cannot be publicly disclosed. Without accurate historical data about past use of NRCS cost-sharing to implement state conservation standards, it is difficult to account for the role these funds may play in the future.

Other programs, such as the Conservation Reserve Program (“CRP”) and the Conservation Reserve Enhancement Program (“CREP”) also provide cost-sharing and other incentives for conservation practices. DATCP attempts to coordinate state programs for conservation funding with relevant federal programs.

### *Comparison with Rules in Adjacent States*

This comparison examines how surrounding states are addressing issues related to the 2011 DNR standards, with particular focus on the implementation of such standards through farmland preservation activities. In general, the adjacent states do not use statewide performance standards specifically designed to address polluted runoff from agricultural sources. However, these states have various regulations and procedures in place to address many of the polluted runoff sources that these rule revisions address. All four states use the Phosphorus Index in some form but none use it in the same manner as NR 151 provides. For example, phosphorus management strategies in Michigan are implemented as part of the state’s Generally Accepted Agricultural and Management Practices (GAAMPs). Wisconsin’s approach differs from the programs in adjacent states in that it has more detail in its Phosphorus Index, is more quantitative and has more research to validate it. Also, in Wisconsin, pursuant to s. 281.16, Stats., cost-sharing must be made available to existing agricultural operations before the state may require compliance with the standards. Cost-sharing is often tied to compliance responsibilities in adjacent states, but there are instances where farmers must meet standards other than the Phosphorus Index as part of regulatory programs.

### **Illinois**

Using a different framework and programming, Illinois implements several standards similar to those adopted in Wisconsin. In addition to implementing a Phosphorus Index for large livestock operations, Illinois encourages the equivalent of a tillage setback for croplands through a property tax incentive related to the construction of livestock waste management facilities. This incentive applies to the installation of vegetative filter strips in cropland that is surrounding a surface-water or groundwater conduit. Illinois law does not allow raw materials, by-products

and products of livestock management facilities, including milkhouse waste, silage leachate, and other similar products to be discharged to waters of the state.

While Illinois has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

### **Iowa**

Like Illinois, Iowa requires that nutrient management plans for livestock operations of 500 or more animal units be based on the Phosphorus Index. Iowa does not require a separation distance between tillage activities and waterbodies. Iowa prohibits discharges to waters of the state, polluting waters of the state and discharge to road ditches. Medium-sized livestock operations are required to install runoff controls to eliminate discharges of process wastewater into waters of the state. See Iowa's website at:

[http://www.iowadnr.gov/portals/idnr/uploads/afo/fs\\_desncriteria\\_medcafo.pdf](http://www.iowadnr.gov/portals/idnr/uploads/afo/fs_desncriteria_medcafo.pdf)

While Iowa operates a county-based statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

### **Michigan**

Michigan relies on GAAMPs [see *Generally Accepted Agricultural and Management Practices for Manure Management and Utilization* (January 2012)] to support the Michigan Agriculture Environmental Assurance Program ("MAEAP"), which includes a compliance verification process that ensures nuisance protection to farmers under Michigan's Right to Farm law. GAAMPs cover standards similar to those in Wisconsin, including standards for process wastewater and pasture management. These standards are implemented as part of the state's right to farm law and its complaint investigation program. The state assesses problems identified through complaints, and farmers must take corrective action to earn nuisance protection under the right to farm law.

Michigan does not require a separation distance between tillage activities and waterbodies. The state's regulatory requirements regarding process wastewater only apply to permitted concentrated animal feeding operations, but discharges from smaller farms are generally prohibited as a violation of water quality standards.

While Michigan has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements

### **Minnesota**

Minnesota implements a variation of a tillage setback in limited settings, requiring a 16.5 foot (one rod) grass strip along certain public drainage ditches as well as vegetated strips, restored

wetlands, and other voluntary set-aside lands through federal, state and local programs. For process wastewater, Minnesota rules place a limit of less than 25 mg/l BOD5 (biological oxygen demand) that can be released to surface water and, if released to a leach field, the threshold is less than 200 mg/l BOD5. State and local officials work with pasture owners to prevent and abate water quality violations (Minn. R. ch. 7050 and 7060) that may be created by sediment or nutrient runoff from poorly managed pastures.

Under its feedlot program, Minnesota imposes mandatory requirements on about 25,000 registered feedlots. This program requires feedlot owners, ranging in size from small farms to large-scale commercial livestock operations, to “register with the MPCA, and meet the requirements for runoff discharge, manure application and storage, and processed wastewater.”

While Minnesota has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

### ***Summary of Factual Data and Analytical Methodologies***

To develop this rule, DATCP participated in the DNR advisory group convened as part of the revision of NR 151, worked with DNR to achieve a revision of NR 151 consistent with the statutory framework and the interests of regulated groups and other stakeholders, informally worked with interest groups including organizations representing farm groups, environmental groups, and government entities such as county land and water conservation departments, conducted listening sessions with affected parties to secure input, and prepared an assessment of the business impacts using DNR’s assessment and a methodology similar to the one used for the 2002 nonpoint rule revision.

### ***Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis***

In preparing its analysis and supporting documentation, the department consulted with stakeholder groups, reviewed rule documents developed by DNR related to the adoption of the 2011 DNR standards including revised fiscal estimate and final rule order, and estimated costs using a methodology similar to the one used for the 2002 nonpoint rule revision.

### ***Effects on Small Business***

Most impacts of this rule will be on farmers, a great majority of whom qualify as “small businesses.” The analysis of the impacts on farms takes into consideration the following factors:

- The proposed rule does not add standards for farms (which were created by DNR in 2011), but focuses on implementation of DNR’s standards. DNR’s analysis of the 2011 standards was consulted.
- In its implementation of the 2011 DNR standards, this rule includes measures intended to minimize the financial impacts on farmers, including accommodations to limit the burdens of nutrient management planning for pastures, and limitations on increasing the tillable setback over 5 feet.
- Most farmers will be insulated from some of the costs of implementation by the state’s cost-share requirement and the limited state funding available to provide cost-sharing.
- For farmers receiving farmland preservation program tax credits, this rule provides farmers flexibility to minimize the financial impacts related to compliance (which range from \$8 to \$12 million state-wide), including a delay in the effective date for compliance with the 2011 DNR standards, the use of performance schedules, pursuit of cost-sharing for which they are eligible, use of a tax credit to offset some implementation costs, or if needed, withdrawal from the farmland preservation program to avoid unmanageable costs.

The proposed rule changes will have small, but positive impacts on businesses other than farmers. Those businesses include nutrient management planners, soil testing laboratories, farm supply organizations, conservation engineering practitioners, and contractors installing farm conservation practices. The *Final Regulatory Flexibility Analysis*, which will be filed with this rule, provides a more complete analysis of this issue.

***DATCP Contact***

Questions and comments related to this rule may be directed to:

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- 1           **SECTION 1.** ATCP 50.01 (2m) and (Note) are created to read:
- 2           ATCP 50.01 (2m) “Contaminated runoff” means drainage that has come through or
- 3 across a feed storage or manure storage area. “Contaminated runoff” includes the liquid and any
- 4 sediment, manure, feed or other material carried in the liquid.

1           **Note:** “Contaminated runoff” contains lower concentrations of contaminants than  
2           leachate from feed or manure.

3  
4           **SECTION 2.** ATCP 50.01 (11) is repealed.

5           **SECTION 3.** ATCP 50.01 (15m) and (Note) are created to read:

6           ATCP 50.01 (15m) “Leachate” means the concentrated liquid which has percolated  
7 through or drained from animal feed or manure storage areas.

8           **Note:** “Leachate” contains much higher concentrations of contaminants than  
9           contaminated runoff.

10  
11           **SECTION 4.** ATCP 50.01 (17) and (18) (a) are amended to read:

12           ATCP 50.01 (17) “Local governmental unit;” ~~as used in s. ATCP 50.60,~~ has the meaning  
13 given in s. 92.15 (1) (b), Stats., and includes a county, town, city, village, lake district and county  
14 drainage board.

15           (18) (a) Soil and water conservation standards that a county land conservation committee  
16 adopts under s. ~~92.105~~92.07(2), Stats.

17           **SECTION 5.** ATCP 50.01 (18) (a) (Note) is repealed.

18           **SECTION 6.** ATCP 50.01 (18) (b) and (c), (20) and (27) (Note) are amended to read:

19           ATCP 50.01 (18) (b) An ordinance or regulation that a county adopts under s. 59.69,  
20 59.692, 92.07 (2), 92.11, 92.15, 92.16-~~or~~, 92.17 or 93.90, Stats., or under other county authority.

21           (c) An ordinance or regulation that a town, city or village adopts under s. 92.11, 92.15,  
22 92.16-~~or~~, 92.17 or 93.90, Stats., or under other town, city or village authority.

23           (20) “Manure” means livestock excreta. “Manure” includes ~~livestock~~ the following  
24 when intermingled with excreta in normal farming operations: debris including bedding, water,  
25 soil, hair, and feathers; processing derivatives including separated sand, separated manure  
26 solids, precipitated manure sludges, supernatants, digested liquids, composted biosolids and



1 ~~process water; and other debris that becomes intermingled with livestock excreta in normal~~  
2 ~~manure handling operations~~ runoff collected from barnyards, animal lots and feed storage areas.

3 (27) **Note:** Copies of the NRCS technical guide are on file with the department and the  
4 legislative reference bureau. Copies of individual standards contained in the  
5 NRCS technical guide may be obtained from ~~the a~~ county land conservation  
6 ~~committee or from department,~~ an NRCS field office. ~~This chapter incorporates,~~  
7 ~~by reference, various NRCS technical guide standards. See Appendix G, the~~  
8 national NRCS website at: <http://www.nrcs.usda.gov/>, or Wisconsin NRCS  
9 website at: <http://www.wi.nrcs.usda.gov/>.

10  
11 **SECTION 7.** ATCP 50.01 (29m) is created to read:

12 ATCP 50.01 (29m) “Pasture” has the meaning given in s. NR 151.015 (15m).

13 **SECTION 8.** ATCP 50.01 (31) (a) and (b) and (33) are amended to read:

14 ATCP 50.01 (31) (a) Except as provided in par. (b), the release that was in effect on  
15 ~~November 14, 2006~~ the effective date of this section...[LRB inserts date].

16 (b) For purposes of a compliance determination under ch. NR 151 or this chapter made  
17 prior to ~~November 14, 2006~~ the effective date of this section...[LRB inserts date], the release  
18 that was in effect on the date of the compliance determination.

19 (33) “State regulation” means ~~chs. ch.~~ 88, 91, 92, 93, 281 and/or 283, Stats., and rules  
20 promulgated by the department or DNR under ch. 88, 91, 92, 93, 281 or 283, Stats.

21 **SECTION 9.** ATCP 50.04 (1) is amended to read:

22 ATCP 50.04 (1) NONPOINT SOURCE POLLUTION CONTROL. A landowner shall implement  
23 conservation practices that achieve compliance with DNR performance standards under ss. NR  
24 151.02 to 151.08, in effect on the effective date of this section...[LRB inserts date].

25 **SECTION 10.** ATCP 50.04 (1) (Note) is created to read:

26 ATCP 50.04 (1) **Note:** Landowners who claim farmland preservation tax credits must  
27 comply with conservation standards as required under s. 91.80, Stats.  
28

29 **SECTION 11.** ATCP 50.04 (2) and (Note) and (3) (a) are amended to read:

1 ATCP 50.04 (2) ~~CROPLAND SOIL~~ SOIL EROSION CONTROL. A landowner shall manage  
2 ~~croplands, all fields including pastures, and cropping-related field practices~~ so that soil erosion  
3 rates on cropped and pastured soils, ~~determined according to RUSLE 2 equation,~~ do not exceed  
4 T-value.

5 **Note:** See s. 92.025 (1), Stats., and s. NR 151.02. Soil erosion includes erosion caused  
6 by wind or water. For most soils, “T-value” is equivalent to 2 to 5 tons of soil  
7 loss per acre per year.  
8

9 ~~The~~ Sheet and rill soil erosion from water is calculated according to the RUSLE 2  
10 equation is, published by NRCS, and is available from NRCS. Wind erosion is  
11 calculated according to the NRCS Wind Erosion Prediction System (WEPS)  
12 model. Copies of RUSLE 2 and the NRCS WEPS model are on file with the  
13 department and the legislative reference bureau. Copies of both models may also  
14 be obtained from the NRCS website at: <http://www.wi.nrcs.usda.gov/technical/>.  
15

16 (3) (a) A landowner shall have and follow an annual nutrient management plan when  
17 applying nutrients to any field, including pastures, after the date specified in par. (h). A nutrient  
18 management plan shall comply with this subsection.

19 **SECTION 12.** ATCP 50.04 (3) (a) (Note) is created to read:

20 ATCP 50.04 (3) (a) **Note:** A nutrient management plan developed in accordance with s.  
21 ATCP 50.04 (3) that includes a phosphorus index (PI) calculation value can be  
22 used to demonstrate compliance with s. NR 151.04. Additional guidance related  
23 to the PI can be found in the notes to s. NR 151.04 (2) (b).  
24

25 **SECTION 13.** ATCP 50.04 (3) (b) is amended to read:

26 ATCP 50.04 (3) (b) The plan shall include every field on which ~~the landowner~~  
27 ~~mechanically applies~~ nutrients are applied, including pastures, and pastures stocked at an average  
28 rate of more than one animal unit per acre during the grazing season. Pastures are not required to  
29 be included in the plan if all of the following requirements are met:

30 1. The pastures are stocked at an average stocking rate of one animal unit per acre or less  
31 at all times during the grazing season.

1           2. The pastures do not receive mechanical applications of nutrients.

2           **SECTION 14.** ATCP 50.04 (3) (b) (Note) is created to read:

3           ATCP 50.04 (3) (b) **Note:** The grazing season includes the months of the year when  
4           pasture vegetation is actively growing.

5  
6           **SECTION 15.** ATCP 50.04 (3) (d) is amended to read:

7           ATCP 50.04 (3) (d) The plan shall be based on soil nutrient tests conducted at a  
8           laboratory certified under s. ATCP 50.50 to conduct those tests. Soil tests are not required on  
9           pastures that do not receive mechanical applications of nutrients if either of the following  
10          applies:

11           1. The pastures are stocked at an average stocking rate of one animal unit per acre or less  
12          at all times during the grazing season.

13           2. The pastures are stocked at an average stocking rate of more than one animal unit per  
14          acre during the grazing season, and a nutrient management plan for the pastures complies with s.  
15          NR 151.04 (2), using an assumed soil test phosphorus level of 150 parts per million and organic  
16          matter content of 6%.

17           **SECTION 16.** ATCP 50.04 (3) (de) is created to read:

18           ATCP 50.04 (3) (de) A landowner may be required to provide documentation to the  
19           county land conservation committee that animal stocking rate and soil test values for pastures do  
20           not exceed the levels in par. (b) 1. and (d) 2., respectively.

21           **SECTION 17.** ATCP 50.04 (3) (dm) 1. (Note), (e) (Note), (f) (intro.) and 4. (Note)  
22           are amended to read:

23           ATCP 50.04 (3) (dm) 1. **Note:** The NRCS technical guide standard 590 (September,  
24           2005) and Wisconsin conservation planning technical note WI-1-is are on file  
25           with the department and the legislative reference bureau. Copies are available  
26           from your a county land conservation office or the following web address:  
27           <http://datep.state.wi.us/arm/agriculture/land-water/conservation/nutrient>

1 [mngmnt/planning.jsp](#) The NRCS technical guide standard 590 (September, 2005)  
2 is reproduced, without the companion technical note, in Appendix D department,  
3 a NRCS field office, the national NRCS website at: <http://www.wi.nrcs.usda.gov>,  
4 the Wisconsin NRCS website at: <http://wi.nrcs.usda.gov/>, or the department  
5 website at: <http://datcp.wi.gov/ATCP50>.

6  
7 (e) ~~Note: The A person may obtain a checklist in Appendix C may be used to gather~~  
8 ~~information for a nutrient management plan. NRCS technical guide nutrient~~  
9 ~~management standard 590 (September, 2005) is reproduced in Appendix D. The~~  
10 ~~Wisconsin conservation planning technical note WI-1 (September, 2007) is not~~  
11 ~~reproduced in Appendix D but is on file with the department and the legislative~~  
12 ~~reference bureau. Copies are available from your county land conservation office~~  
13 ~~or the following web address:~~   
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37 ~~[http://learningstore.uwex.edu/](http://www.datcp.state.wi.us/arm/agriculture/land-</a></del><br/><br/>26 <del>4. Note: Appendix B contains a convenient summary of The 2006 and subsequent</del><br/>27 <del>editions of the UWEX publication A-2809A2809, for selected crops. You may</del><br/>28 <del>obtain the complete publication and the summary are available from your a</del><br/>29 <del>county extension agent. The complete publication is 2006 and 2012 editions are</del><br/>30 <del>also on file with the department and the legislative reference bureau. The latest</del><br/>31 <del>edition of A2809 is available from the UWEX website at:</del><br/>32 <del><a href=). Copies are also available from your county land~~  
33 ~~conservation office or the following web address department website at:~~  
34   
36   
  
SECTION 18. ATCP 50.04 (3)(gm) is created to read:

1           ATCP 50.04 (3) (gm) A landowner or nutrient management planner qualified under s.  
2   ATCP 50.48(2) shall annually review a nutrient management plan to determine whether the plan  
3   accurately reflects the planned cropping, tolerable soil loss, nutrient application rates and  
4   application methods. The plan shall be updated, by a nutrient management planner qualified  
5   under s. ATCP 50.48, when necessary to reflect changes in those planned activities.

6           **SECTION 19.** ATCP 50.04 (3) (h) (intro.) is amended to read:

7           ATCP 50.04 (3) (h) (intro.) Paragraph (a) first applies on the following dates for the  
8   following nonpasture lands:

9           **SECTION 20.** ATCP 50.04 (4) and (Note) are created to read:

10          ATCP 50.04 (4) TILLAGE SETBACK. (a) A landowner shall manage cropland to achieve  
11   compliance with the DNR performance standard for tillage setback under s. NR 151.03.

12          (b) A landowner is not required to establish a tillage setback distance greater than 5 feet  
13   unless all of the following conditions are met:

14           1. The 5-foot setback distance is increased by the smallest increment necessary to  
15   achieve the purposes of s. NR 151.03, but in no case greater than a total setback distance of 20  
16   feet.

17           2. In determining whether to increase the setback distance, county or other conservation  
18   professionals shall do all of the following:

19           a. Consider bank materials, height, slope, cause of bank erosion, soil type and other  
20   factors that affect bank integrity.

21           b. Use best professional judgment, based on the latest technical standards and practices  
22   required under this chapter.

1 c. Follow a consistent approach in making determinations for increased setback distances  
2 by consulting with NRCS or department engineering specialists.

3 d. Provide the landowner with a written statement documenting the findings and  
4 conclusions in support of the increased setback distance.

5 **Note:** Conservation practices such as critical area stabilization, grade stabilization and  
6 shoreland protection should be installed if necessary to stabilize the bank and  
7 protect its integrity. Determinations regarding compliance with this standard may  
8 be appealed as authorized under s. 227.42, Stats., or other provisions of law.  
9 Landowners may achieve compliance with this standard by enrolling riparian land  
10 in the CREP program or other federal set-aside programs.

11  
12 **SECTION 21.** ATCP 50.08 (1) (intro.), (a) (Note), (2) (Note) and (5) (a) (Note) are  
13 amended to read:

14 ATCP 50.08 (1) (intro.) A landowner engaged in agricultural practices in this state is not  
15 required to do any of the following, under s. ATCP 50.04, unless the landowner receives a bona  
16 fide offer of cost-sharing:

17 (a) **Note:** Under DNR rules, a landowner is normally entitled to cost-sharing if the  
18 landowner is required to discontinue or modify cropping practices on “existing  
19 cropland” in order to comply with a DNR performance standard. Other cropland  
20 must comply with relevant DNR performance standards, regardless of the  
21 availability of cost-sharing. Under DNR rules:

- 22
- 23 • Land qualifies as “existing cropland” if it was being cropped on the effective  
24 date of the relevant DNR performance standard, and has never complied with  
25 that performance standard since that date.
- 26 • If cropland *complies* with a DNR performance standard after that standard  
27 takes effect, it no longer qualifies as “existing cropland” for cost-share  
28 purposes under that performance standard. If the cropland later falls out of  
29 compliance with the performance standard, the landowner must restore  
30 compliance regardless of the availability of cost-sharing.
- 31 • Land not cropped on the effective date of a DNR performance standard, but  
32 returned to cropping at a later date, may qualify as “existing cropland” if it is  
33 returned to cropping within 10 years after cropping was halted.
- 34 • Cropland enrolled in a federal conservation program on October 1, 2002  
35 qualifies as “existing cropland” when it comes out of the federal program  
36 unless the cropland is re-enrolled.  
37

1 A landowner may be *eligible* for cost-sharing, even if the landowner is not  
2 *entitled* to cost-sharing under par. (a). A county has considerable discretion in its  
3 use of DATCP cost-share funds, subject to this chapter. See subch. V of this  
4 chapter.  
5

6 (2) **Note:** See ss. 92.07 (2), 92.15 (4) and 281.16 (3) (e), Stats. Subsection (1) requires a  
7 bona fide offer of cost-sharing, not necessarily an acceptance. A county may  
8 impose a reasonable deadline by which a landowner must accept or reject the  
9 county's bona fide ~~cost-sharing~~ cost-share offer under sub. (1). See s. ATCP 50.54  
10 (2) related to cost-sharing for conservation practices required under a county or  
11 local ordinance.  
12

13 The minimum cost-share requirement under subs. (1) and (2) does *not* apply if a  
14 landowner *voluntarily* installs a cost-shared practice. In a voluntary transaction,  
15 the county is free to negotiate a grant amount with a landowner (up to the  
16 *maximum* amounts provided in s. ATCP 50.42). But if a county *requires* a  
17 landowner to install a conservation practice, the county must comply with  
18 applicable cost-share requirements under subs. (1) and (2). The cost-share grant  
19 may come from one or more sources, as provided under sub. (7).  
20

21 If the practice is not being installed to achieve compliance with an agricultural  
22 performance standard, the minimum cost-share requirement also does *not* apply.  
23 See s. ATCP 50.42 (1).  
24

25 (5) (a) **Note:** For example, if a county has already paid a landowner to install and  
26 maintain a manure storage system for at least 10 years (see s. ATCP 50.62 (5) (f)),  
27 the county may require the landowner to maintain the facility in subsequent years  
28 without further cost-sharing. The county has the burden of showing that it has  
29 already paid the landowner.  
30

31 The rule is different if the county requires a landowner to take more than ½ acre  
32 of land out of agricultural production in order to install or maintain a conservation  
33 practice. Even if a county has *already paid* a landowner to install and maintain  
34 that conservation practice for at least 10 years, the county must *continue* to  
35 provide cost-share funds for lost production if the county *requires* the landowner  
36 to keep the land out of production in subsequent years. Land is not taken “out of  
37 agricultural production”, for ~~cost-sharing~~ cost-share purposes, if the landowner is  
38 free to use it for pasture, hay production *and* cropping subject to residue  
39 management (see s. ATCP 50.01 (14)).  
40

41 **SECTION 22.** ATCP 50.10 (1) (b) and (Note) are amended to read:

42 ATCP 50.10 (1) (b) ~~County soil and water conservation standards, and a A~~ program to  
43 implement those soil and water conservation standards.

1 **Note:** A county's land and water resource management plan under s. ATCP 50.12  
2 should identify the county's strategy to implement the farm conservation practices  
3 required under s. ATCP 50.04. See Under s. ATCP 50.16 related to, a county is  
4 required to monitor and ensure compliance with conservation standards for lands  
5 covered by the farmland preservation program under ch. 91, Stats. See s. ATCP  
6 50.14 and subch. VII related to county ordinances.  
7

8 **SECTION 23.** ATCP 50.12 (2) (a), (b) (Note), (c), (f) (Note), (g), (i) and (j) and (3) (c)

9 (Note) are amended to read:

10 ATCP 50.12 (2) (a) Water quality and soil erosion conditions throughout the county,  
11 including identification of the causes of water quality impairment and pollutant sources. The  
12 plan shall include water quality assessments for each watershed in the county available from  
13 DNR, if any.

14 (b) **Note:** See state rules under chs. ATCP 48, ATCP 50, ~~NR 120~~, NR 151 and NR 243.

15 (c) Water quality objectives for each ~~water basin, priority watershed as defined in s.~~  
16 ~~281.65 (2) (c), Stats., and priority lake as defined in s. 281.65 (2) (be), Stats~~ watershed, including  
17 any available pollutant load reduction targets, consistent with conditions identified in par. (a).

18 The county shall consult with DNR to determine water quality objectives in consultation with  
19 ~~DNR~~ and to identify pollutant load reduction targets.

20 (f) **Note:** The identification of priority farms may vary between counties, depending on  
21 local conditions, strategies and information. A county should focus on identifying  
22 or working with the following farms, or other categories of farms that the county  
23 identifies in its plan:

- 24 ~~• Critical sites that DNR designates under s. 281.65 (4) (g) 8. am., Stats.~~
- 25 • Farms subject to a DNR notice of intent under s. 281.20, Stats., or notice of  
26 discharge under ch. 283, Stats.
- 27 • Farms located in watersheds draining to waters that DNR has listed pursuant to 33  
28 USC 1313. This is also known as the "303(d) list of impaired waters."
- 29 • Farms that have large numbers of livestock, or significant problems with manure  
30 management.
- 31 • Farms making clearly excessive nutrient applications.
- 32 • Farms with clearly excessive rates of cropland erosion.
- 33



1 (g) County strategies to encourage voluntary implementation of conservation practices  
2 under s. ATCP 50.04. ~~County strategies may include~~ A county shall estimate the amount of  
3 information and education, cost-sharing, and other financial assistance and technical assistance  
4 ~~and other strategies needed to implement its plan.~~

5 (i) The county's multi-year workplan to implement the farm conservation practices  
6 under s. ATCP 50.04, and achieve compliance with performance standards under ch. NR 151.  
7 The plan shall identify priorities, benchmarks for performance and expected costs, including an  
8 estimate of costs to implement conservation practices to achieve the objectives identified in par.  
9 (c).

10 (j) ~~How~~ The measurable annual and multi-year benchmarks the county will utilize to  
11 periodically monitor and measure its progress in meeting performance targets and achieving plan  
12 goals and objectives under the workplan in par. (i).

13 (3) (c) **Note:** The county land conservation committee should normally consult with the  
14 appropriate DNR ~~basin team~~ staff to obtain needed planning information,  
15 effectively address resource management concerns, and ensure that its plan  
16 incorporates elements that satisfy planning requirements under section 319 of the  
17 Clean Water Act.

18  
19 **SECTION 24.** ATCP 50.12 (2) (jm) is created to read:

20 ATCP 50.12 (2) (jm) How a county will meet its responsibilities for monitoring  
21 conservation compliance of landowners claiming farmland preservation tax credits.

22 **SECTION 25.** ATCP 50.16 (title), (1), (2), (3), (4) and (5) are repealed and recreated to  
23 read:

24 ATCP 50.16 **Farmland preservation program; conservation standards compliance.**

25 (1) COMPLIANCE WITH STANDARDS REQUIRED. (a) Except as provided in par. (d) and sub. (2), a

1 landowner claiming farmland preservation tax credits shall comply with the standards and  
2 practices in s. ATCP 50.04.

3 **Note:** The soil and water conservation standards are promulgated by the department  
4 under ss. 92.05 (3) (c) and (k), 92.14 (8), and 281.16 (3) (b) and (c), Stats. See  
5 also s. 91.80, Stats. A county land conservation committee or its designee  
6 determines whether a landowner is in compliance with conservation standards. A  
7 determination of compliance is one component of the requirements a landowner  
8 must satisfy to claim a farmland preservation tax credit. Landowners are  
9 responsible to determine whether they meet all the eligibility requirements to  
10 claim the benefits of compliance.

11  
12 (b) In determining landowner compliance under this section, the land conservation  
13 committee shall base its determination on all of the following:

14 1. Whether the entire farm operation owned by the landowner is in compliance with all  
15 the applicable conservation standards.

16 2. Whether a review of available documentation at the county demonstrates the entire  
17 farm operation owned by the landowner has no significant discharge from an animal lot, feed  
18 storage, manure storage, or other livestock structure on the farm.

19 3. Whether a review of available documentation at the county demonstrates the entire  
20 farm operation owned by the landowner has implemented a nutrient management plan in  
21 compliance with the nutrient management standard in s. ATCP 50.04 (3) for all land where a  
22 plan is required on the farm.

23 (c) Once determined to be in compliance with the nutrient management standard in s.  
24 ATCP 50.04 (3), a landowner shall remain in compliance with the nutrient management standard  
25 on the entire farm operation owned by the landowner. If a landowner increases acres of cropland  
26 or pasture by acquiring new land or converting acres to these uses, the landowner remains in  
27 compliance by updating the farm's nutrient management plan within one year to incorporate the  
28 additional cropland or pasture acres.

1 (d) A landowner claiming farmland preservation tax credits shall comply with the  
2 pasture requirement in ss. NR 151.02, 151.03, 151.04 and 151.055, beginning on January 1,  
3 2016.

4 (2) EXCEPTIONS; FARMLAND PRESERVATION AGREEMENTS. (a) Except as required under  
5 par. (b), sub. (1) does not apply to landowners under a farmland preservation agreement entered  
6 into prior to July 1, 2009. Landowners with these agreements claiming farmland preservation  
7 tax credits under ss. 71.57 to 71.61, Stats., shall comply with the standards, specified in the  
8 agreement, on the land specified in the agreement, as required in ss. 92.104 and 92.105, 2007  
9 Stats.

10 (b) Landowners who entered into, or modified, a farmland preservation agreement  
11 between July 1, 2009, and the effective date of this section ... [LRB inserts date], pursuant to the  
12 provisions in s. 91.60 (1) or (3) (c), Stats., shall comply with the soil and water conservation  
13 standards in effect at the time the agreement was entered into or modified.

14 (c) Landowners who enter into, or modify, a farmland preservation agreement after the  
15 effective date of this section ... [LRB inserts date] shall comply with the soil and water  
16 conservation standards in effect at the time the agreement was entered into or modified, and shall  
17 be required, under the terms of that agreement, to comply with the pasture requirement in s. NR  
18 151.02, and ss. NR 151.03, 151.04 and 151.055 beginning January 1, 2016.

19 (3) PERFORMANCE SCHEDULE. (a) A county land conservation committee may enter into  
20 a written performance schedule with a landowner if all of the following apply:

21 1. The performance schedule, including amendments or extensions, does not allow the  
22 landowner more than 5 years, from the time the landowner is informed of their compliance  
23 obligations, to achieve compliance with all applicable conservation standards.

1           2. The landowner agrees in writing to specific farm conservation practices needed to  
2 achieve compliance with the standards required under sub. (1) according to a specific schedule  
3 for completing the work.

4           3. Every performance schedule shall include a notice that landowners are responsible for  
5 determining their eligibility to receive a farmland preservation tax credit independent of the  
6 landowner's commitment to implement the conservation practices set forth in the performance  
7 schedule.

8           **Note:** While a performance schedule may establish a landowner's compliance under this  
9 section, a landowner may not meet other program requirements necessary to  
10 receive benefits such as farmland preservation tax credits. These other program  
11 requirements may include residency, minimum farm income, and continuity of  
12 claiming farmland preservation program tax credits.

13  
14           4. The land conservation committee approves the performance schedule, including the  
15 proposed practices and the time allowed to achieve compliance. The land conservation  
16 committee may establish shorter periods to achieve compliance than the 5 year maximum  
17 allowed under this subsection.

18           **Note:** A county should exercise sound judgment at critical junctures in its monitoring of  
19 a farmer's conservation compliance, including its decision on the length of a  
20 performance schedule, and its decision on how and when to respond to changes in  
21 farmer compliance with applicable standards. The county may consider the  
22 following in exercising its discretion: extenuating circumstances, such as adverse  
23 weather conditions, that may affect a landowner's ability to comply; the nature  
24 and seriousness of the landowner's non-compliance; the degree to which the  
25 landowner has cooperated or taken actions to address concerns; the availability of  
26 technical or other assistance; and the consistency of treatment among farmers in  
27 the area. Before taking any compliance action, a county shall afford the  
28 landowner notice and a reasonable opportunity to demonstrate compliance.

29  
30           (b) A landowner demonstrates compliance with the conservation standards under sub. (1)  
31 if the landowner does either of the following:

1 1. Complies with all soil and water conservation standards as required under s. 91.80,  
2 Stats.

3 2. Implements a performance schedule that will achieve full compliance with those  
4 standards within the period authorized under par. (a).

5 **Note:** A landowner is implementing a performance schedule if the landowner is making  
6 reasonable progress in installing farm conservation practices, and taking other  
7 appropriate actions in the time frame identified in the schedule as necessary to  
8 achieve compliance.  
9

10 (4) CERTIFICATE OF COMPLIANCE. (a) The county land conservation committee shall  
11 issue a certificate of compliance to a landowner claiming tax credits under s. 71.613, Stats., if the  
12 landowner meets the soil and water conservation standards as required by s. 91.80, Stats., and  
13 this section. The certificate shall be issued on a form approved by the department.

14 **Note:** The county may obtain approval of its form by contacting the department at:  
15 [DATCPWorkingLands@wisconsin.gov](mailto:DATCPWorkingLands@wisconsin.gov).

16  
17 The county may also issue certificates of compliance with soil and water  
18 conservation standards in other situations if authorized by law.  
19

20 (b) A certificate establishing a landowner's compliance with s. 91.80, Stats., and this  
21 section remains in effect and valid until the county land conservation committee issues a notice  
22 of noncompliance under sub. (6).

23 **Note:** A landowner who is issued a certificate of compliance may fall out of compliance  
24 with a standard or fail to meet a standard applicable after the certification was  
25 initially issued. A county, after reviewing the changes in the landowner's  
26 compliance status, may consider issuing a notice of non-compliance. See Note  
27 under sub. (3) (a) 4.  
28

29 (c) A certificate of compliance may be amended or modified to reflect changes in a  
30 landowner's status.

1 (5) MONITORING COMPLIANCE. (a) A county land conservation committee shall monitor  
2 a landowner's compliance with applicable conservation standards promulgated by the  
3 department under ss. 92.05 (3) (c) and (k), 92.14 (8) and 281.16 (3) (b) and (c), Stats.

4 (b) A county land conservation committee shall inspect at least once every 4 years each  
5 farm for which the owner claims farmland preservation tax credits. At a minimum, an inspection  
6 shall include all of the following:

7 1. A site visit or other reliable assessment method to determine whether the entire farm  
8 owned by the landowner has significant discharges from an animal lot, feed storage, manure  
9 storage, or other livestock structure on the farm.

10 2. A review of the owner's records to determine whether the farmer is implementing a  
11 nutrient management plan in compliance with s. ATCP 50.04 (2) and (3).

12 (c) A county land conservation committee may conduct other activities the committee  
13 deems appropriate for monitoring compliance, including any of the following:

14 1. A county land conservation committee may ask a landowner to certify, on an annual  
15 or less frequent basis, that the landowner is complying with the applicable conservation  
16 standards under sub. (1) or (2) and any performance schedule under sub. (3). A landowner shall  
17 certify compliance on a form provided by the committee.

18 2. A county land conservation committee may inspect farm sites and review documents  
19 and records to determine compliance with applicable land and water conservation standards.

20 **Note:** For example, farm records on nutrient management may include various items  
21 showing compliance such as current nutrient management checklists, soil test  
22 results conducted by a department-certified laboratory within the last 4 years,  
23 nutrient application restriction maps, nutrient applications planned over the  
24 rotation schedule, and documentation of no visible signs of gully erosion.  
25

1 (d) A land conservation committee shall maintain adequate documentation of county  
2 monitoring efforts and inspection activities, on a form or set of forms provided by the land  
3 conservation committee, to enable the department to perform the review required under s. 91.82  
4 (1) (d), Stats., of the county land conservation committee's monitoring required under this  
5 subsection.

6 **Note:** This subsection describes the minimum documentation that a county must  
7 maintain regarding farms subject to monitoring requirements and is intended to  
8 facilitate department monitoring of the counties. Counties are encouraged to  
9 supplement documentation using their own systems including geographic  
10 information systems tracking.

11  
12 **SECTION 26.** ATCP 50.16 (6) (a) 1. and 2. are amended to read:

13 ATCP 50.16 (6) (a) 1. Failed to comply with applicable standards under sub. (1) or (2).

14 2. Failed to comply with a ~~farm conservation plan~~ performance schedule under sub.

15 ~~(4)~~(3).

16 **SECTION 27.** ATCP 50.16 (6) (a) 5. and (Note) are created to read:

17 ATCP 50.16 (6) (a) 5. Stated an intent to voluntarily refrain from collecting tax credits  
18 under subch. IX of ch. 71, Stats., and to waive the right to a hearing and farm inspection.

19 **Note:** Landowners with a farmland preservation agreement claiming the farmland  
20 preservation tax credits under ss. 71.57 to 71.61, Stats., are required, under the  
21 terms of that agreement, to comply with the applicable land and water  
22 conservation standards.

23  
24 **SECTION 28.** ATCP 50.16 (6) (b) 1. is amended to read:

25 ATCP 50.16 (6) (b) 1. The nature of the violation, ~~and a deadline date for curing the~~  
26 ~~violation.~~

27 **SECTION 29.** ATCP 50.16 (6) (b) 3. (Note) is created to read:

28 ATCP 50.16 (6) (b) 3. **Note:** A county should exercise sound judgment in deciding  
29 whether to take compliance action under par. (b). See sub. (3) (a) 4. (Note).

30

1           **SECTION 30.** ATCP 50.16 (6) (c) (intro.) and 2., and (d) are amended to read:

2           ATCP 50.16 (6) (c) (intro.) ~~If a landowner receiving a notice under par. (a) fails to cure~~  
3 ~~the violation by the deadline date specified in the notice, the~~ The county land conservation  
4 committee shall issue a copy of ~~the a~~ notice under par. (a) to all of the following:

5           2. The county planning and zoning committee if the land is covered by ~~an exclusive~~  
6 ~~agricultural~~ a farmland preservation zoning ordinance.

7           (d) A county land conservation committee may, at any time, withdraw a notice of  
8 noncompliance issued under par. (a). The committee shall issue a notice of withdrawal on a form  
9 approved by the department. The committee shall give notice of the withdrawal to any agency  
10 under par. (c) that received a copy of the notice of noncompliance.

11           **SECTION 31.** ATCP 50.16 (6) (d) (Note) is created to read:

12           ATCP 50.16 (6) (d) **Note:** The county may obtain a copy of the notice of noncompliance  
13 by contacting the department at: <http://datcp.wi.gov/ATCP50> or calling (608)  
14 224-4622. The county may obtain approval of its notice of withdrawal of  
15 noncompliance by contacting the department at:  
16 [DATCPWorkingLands@wisconsin.gov](mailto:DATCPWorkingLands@wisconsin.gov) or by calling (608) 224-4622.  
17

18           **SECTION 32.** ATCP 50.18 (1) (b) is amended to read:

19           ATCP 50.18 (1) (b) The county's progress toward the objectives identified in the county  
20 land and water resource management plan under s. ATCP 50.12, including whether the county's  
21 annual and multi-year benchmarks have been met. The report shall identify key areas of  
22 improvement, key compliance activities and key remaining problem areas.

23           **SECTION 33.** ATCP 50.18 (1) (b) (Note) is created to read:

24           ATCP 50.18 (1) (b) **Note:** Section ATCP 50.12(2)(j) and s. 92.10(6)(a)6., Stats., require  
25 the county to have a system to monitor the progress in achieving the performance  
26 targets and outcomes stated in its plan.  
27

28           **SECTION 34.** ATCP 50.22 (5) and (Note) are created to read:



1           ATCP 50.22 (5) Except as provided in this subchapter, retain originals of documents and  
2 forms submitted to the department, and other records related to the grant award and its  
3 administration including subcontracts and receipts, for a minimum of 3 years after the end of the  
4 year of the grant award.

5           **Note:** See s. ATCP 50.34 (7) for additional guidance.

6  
7           **SECTION 35.** ATCP 50.26 (2) (a) is amended to read:

8           ATCP 50.26 (2) (a) The activities for which the county seeks funding. These may include  
9 activities under this chapter, ch. 91, Stats., and s. 93.90, Stats., CREP program activities, and  
10 ~~priority watershed activities previously funded under ch. NR-120 and projects funded by DNR~~  
11 under ss. 281.65 and 281.66, Stats.

12           **SECTION 36.** ATCP 50.26 (2) (a) (Note) is repealed and recreated to read:

13           ATCP 50.26 (2) (a) **Note:** The department establishes priorities for funding based on the  
14 criteria in s. ATCP 50.30.

15  
16           **SECTION 37.** ATCP 50.28 (1) (e) and (Note) are amended to read:

17           ATCP 50.28 (1) (e) The amount allocated to each ~~non-county~~ grant recipient under s.  
18 92.14 (10), Stats., if any, and an explanation for each allocation. ~~A person applying for a grant~~  
19 ~~under s. 92.14 (10), Stats., shall file a written grant application by April 15 of the year preceding~~  
20 ~~the year for which the department awards the grant. The grant application shall include a~~  
21 ~~proposed budget and supporting documentation. The department may require a grant applicant~~  
22 ~~to apply on a form provided by the department.~~

23           **Note:** The department normally awards grants under this chapter only to counties. But  
24 under s. 92.14 (10), Stats., the department may also award grants to other persons  
25 for information, education, training and other services related to the  
26 administration of this chapter. See s. ATCP 50.35 (2) for the application process.

27  
28           **SECTION 38.** ATCP 50.28 (5) (a) 1. is renumbered ATCP 50.28 (5) (a) 1. a.

1           **SECTION 39.** ATCP 50.28 (5) (a) 1. a. (Note) is renumbered ATCP 50.28 (5) (a) 1. b.

2 (Note) and amended to read:

3           ATCP 50.28 (5) (a) 1. b. **Note:** The department will normally grant funding extensions  
4           under subd. 1. by April 30 of each grant year, based on ~~county~~ extension requests  
5           filed by December 31 of the preceding grant year. See s. ATCP 50.34 (6).  
6           Staffing grants may not be extended into the next calendar year.

7  
8           **SECTION 40.** ATCP 50.28 (5) (a) 1. b. is created to read:

9           ATCP 50.28 (5) (a) 1. b. Extend any grant contracts, except staffing grants under s.  
10          ATCP 50.32, funded but not completed in the preceding grant year, provided that the grant  
11          recipient requests the extension by December 31 of the preceding grant year and the department  
12          has not previously extended funding for the same contract from one grant year to another grant  
13          year. Extensions of projects funded under s. 92.14 (10), Stats., shall comply with s. ATCP 50.35  
14          (3).

15           **SECTION 41.** ATCP 50.28 (5) (a) 2. and 3. are amended to read:

16           ATCP 50.28 (5) (a) 2. Increase the total grant to any county. The department shall give  
17          all counties notice and equal opportunity to compete for funding increases other than increases  
18          due to extensions under subd. 1., voluntary transfers of cost-share funds from one county to  
19          another county under subd. 5., and re-allocations of cost-share funds by the department under  
20          subd. 5. from a reserve established in the annual allocation plan. The department shall make any  
21          revisions in compliance with the requirements in par. (b).

22           3. Reduce a grant award to any county. The department shall give all counties notice and  
23          an opportunity to comment for funding decreases other than those resulting from the voluntary  
24          transfer of funds from one county to another county. The department shall make any revisions in  
25          compliance with the requirements in par. (b).

26           **SECTION 42.** ATCP 50.28 (5) (a) 5. is created to read:

1 ATCP 50.28 (5) (a) 5. Approve the voluntary transfers of cost-share funds from one  
2 county to another county, or re-allocations of funds by the department from a reserve established  
3 in the annual allocation plan. Inter-county transfers shall comply with s. ATCP 50.34 (5m).

4 **SECTION 43.** ATCP 50.28 (5) (b) (intro.) is amended to read:

5 ATCP 50.28 (5) (b) (intro.) The department shall do all of the following before it revises  
6 an annual grant allocation plan, if required under par. (a):

7 **SECTION 44.** ATCP 50.28 (5) (b) 1. (Note) is repealed.

8 **SECTION 45.** ATCP 50.28 (5) (c) is created to read:

9 ATCP 50.28 (5) (c) The department shall notify the LWCB, no later than April 15 of the  
10 following year, of revisions made to the allocation plan based on transfers under par. (a) 5., re-  
11 allocations under par. (a) 4., and extensions of funds under par. (a) 1. The department shall keep  
12 records regarding the disposition of each transfer, reallocation and extension requested.

13 **SECTION 46.** ATCP 50.30 (1), (2) (intro.), (b), (c) and (d) are amended to read:

14 ATCP 50.30 (1) COUNTY PRIORITIES. The department shall give high priority to  
15 maintaining county staff and project continuity. The department shall consider county priorities  
16 identified in the county grant application under s. ATCP 50.26 and in the county's approved land  
17 and water resource management plan under s. ATCP 50.12, and shall balance funding these  
18 priorities with those in sub. (2).

19 (2) (intro.) STATEWIDE PRIORITIES. The department ~~may~~ shall give priority to county or  
20 non-county projects that address statewide priorities identified by the department and DNR.

21 These priorities may include:

1 (b) Farms ~~for which the rate of cropland erosion is more than twice T value~~ that pose  
2 significant environmental risks based on failure to comply with nutrient management and other  
3 farm conservation standards.

4 (c) Farms discharging substantial pollution to waters of the state, including farms issued  
5 a DNR notice of intent under s. 281.20, Stats., or a DNR notice of discharge under ch. NR 243.

6 (d) Farms claiming farmland preservation tax credits under subch. IX of ch. 71, Stats.,  
7 and subject to the soil and water conservation requirements under subch. V of ch. 91, Stats.

8 **SECTION 47.** ATCP 50.30 (2) (e) and (f) and (Note) are created to read:

9 ATCP 50.30 (2) (e) Projects related to the control of soil erosion and nonpoint source  
10 pollution in which funding is based on the contribution of the activity to the overall pollution  
11 problem.

12 (f) Projects in which funding is coordinated among state agencies to maximize impacts  
13 in targeted areas.

14 **Note:** The department may work with the DNR and other funding entities to identify  
15 sources of financial support to address locally-identified priorities that may not be  
16 adequately funded based on statewide priorities in sub. (2). The department may,  
17 for example, pursue grant priorities that do not adequately support installment of  
18 conservation practices on non-farm or forested land or the control of invasive  
19 species.  
20

21 **SECTION 48.** ATCP 50.30 (3) (b), (g), (h) and (m) are amended to read:

22 ATCP 50.30 (3) (b) A county's demonstrated commitment and capacity to implementing  
23 implement and maintain the farm conservation practices required under s. ATCP 50.04.

24 (g) The timeliness and completeness of ~~county grant~~ plans, applications and ~~annual~~  
25 reports.

26 (h) The ~~completeness of county grant~~ degree to which plans, applications and supporting  
27 data reports meet applicable criteria, including the adequacy of performance measures.

1 (m) The degree to which county activities ~~are consistent with~~ implement the county's  
2 approved land and water resource management plan.

3 **SECTION 49.** ATCP 50.30 (3) (o) is renumbered (3) (r).

4 **SECTION 50.** ATCP 50.30 (3) (o) and (p) are created to read:

5 ATCP 50.30 (3) (o) The need for award caps or other cost control measures to maximize  
6 funding available to meet conservation priorities or needs on agricultural lands.

7 (p) A county's commitment to meet department targets implementing the conservation  
8 practices established in the annual grant application.

9 **SECTION 51.** ATCP 50.32 (3) (a) (Note) and (b) are amended to read:

10 ATCP 50.32 (3) (a) **Note:** Soil and water resource management activities may include  
11 activities under this chapter ~~and, ch. 91, Stats., and s. 93.90, Stats.,~~ the CREP  
12 program, activities ~~related to "priority watersheds" under ch. NR 120 and projects~~  
13 funded by DNR under ss. 281.65 and 281.66, Stats., and activities related to DNR  
14 notices of discharge under ch. NR 243.

15  
16 A county may contract with engineers, nutrient management planners, computer  
17 specialists, information and education specialists, consultants and other  
18 independent contractors to work on behalf of the county land conservation  
19 committee. A county may use annual staffing grant funds to pay for the services  
20 of these independent contractors.

21  
22 (b) Training for county employees and land conservation committee members to the  
23 extent authorized under sub. (3m).

24 **SECTION 52.** ATCP 50.32 (3m) is created to read:

25 ATCP 50.32 (3m) TRAINING COSTS. An annual staffing grant may pay for any of the  
26 following county employee and land conservation committee member training costs, including  
27 registration fees, travel and materials:

28 (a) Training in conservation planning and management, technical standards  
29 implementation, clerical assistance, computer usage, and communications.

1 (b) Courses building skills to perform current responsibilities or develop professionally  
2 in the field of soil and water management.

3 (c) Other training costs identified in the grant application for the grant year in which the  
4 funds are to be expended.

5 **SECTION 53.** ATCP 50.32 (5) (a) (Note) is amended to read:

6 ATCP 50.32 (5) (a) **Note:** Subject to the availability of funds, the department ~~will~~  
7 normally may offer each county at least the a minimum staffing grant amount  
8 required in par. (b). Additional staffing grant amounts, if any, may be based on  
9 the county's annual financial contribution as last reported under s. ATCP 50.18  
10 (1)(c). But the department may also consider other factors under specified in the  
11 annual grant application. See s. ATCP 50.26. In lieu of offering a minimum  
12 grant award, or in addition to such an award, the department may base awards on  
13 the grant priorities in s. ATCP 50.30. The department has legal discretion to  
14 adjust grant awards from year to year, based on any of those factors.  
15

16 **SECTION 54.** ATCP 50.32 (5) (b) is repealed and recreated to read:

17 ATCP 50.32 (5) (b) The total grant amount reimbursed to a county for training and  
18 support costs may not exceed 10% of a county's annual grant allocation.

19 **SECTION 55.** ATCP 50.32 (5) (b) (Note) is repealed.

20 **SECTION 56.** ATCP 50.32 (7) (a) (Note) is created to read:

21 ATCP 50.32 (7) (a) **Note:** The department does not provide paper copies of its grant  
22 forms. To obtain the most current program grant forms, including the form to  
23 request reimbursement from the department, counties should refer to the  
24 program's working manual on the department website at:  
25 <http://datcp.wi.gov/ATCP50>.  
26

27 **SECTION 57.** ATCP 50.32 (7) (b) is amended to read:

28 ATCP 50.32 (7) (b) ~~The county's chief financial officer~~ An authorized county  
29 representative shall sign each reimbursement request. The request shall certify that the county  
30 has fully paid the costs for which the county seeks reimbursement, and that those costs are  
31 eligible for reimbursement under this chapter and the grant contract.

1           **SECTION 58.** ATCP 50.32 (7) (c) 4. and (Note) are repealed and recreated to read:

2           ATCP 50.32 (7) (c) 4. The amount of applicable matching funds provided to cover the  
3 county portion of salary and fringe benefits.

4           **Note:** Counties can use various funding sources to meet their match requirement,  
5           including county levy, permit fees, private grants, federal grants, state funds other  
6           than those under chs. 92, 281 and 283, Stats., or any other qualifying source.  
7

8           **SECTION 59.** ATCP 50.32 (8) (b) and (c) 2. are amended to read:

9           ATCP 50.32 (8) (b) The department may reimburse eligible county employee training  
10 and support costs at 100%, subject to sub. (5) (b).

11           (c) 2. The department may reimburse eligible costs for the county's first designated staff  
12 person at 100%, ~~regardless of whether that person is a priority watershed staff person.~~

13           **SECTION 60.** ATCP 50.32 (8) (c) 3. is repealed.

14           **SECTION 61.** ATCP 50.32 (8) (c) 4. is amended to read:

15           ATCP 50.32 (8) (c) 4. Except as provided under subd. 2. ~~or 3.~~, the department may  
16 reimburse eligible staffing costs at the rate prescribed in s. 92.14 (5g) (a), Stats.

17           **SECTION 62.** ATCP 50.34 (1) (b) is amended to read:

18           ATCP 50.34 (1) (b) State or local regulations identified in the county's land and water  
19 resource management plan under s. ATCP 50.12 (2) (b). ~~The committee may not use funds under  
20 this chapter to award cost share grants for practices needed to comply with a DNR notice of  
21 intent or notice of discharge under s. 281.20 or ch. 283, Stats.~~

22           **SECTION 63.** ATCP 50.34 (1) (b) (Note) is repealed and recreated to read:

23           ATCP 50.34 (1) (b) **Note:** The committee may use funds for recording fees and other  
24           related costs allowed under this chapter, but may not award funds under this  
25           chapter to cover state or local permit fees.  
26

27           **SECTION 64.** ATCP 50.34 (1) (d) is created to read:

1 ATCP 50.34 (1) (d) Any applicable requirements or provisions in ch. 92, Stats.

2 **SECTION 65.** ATCP 50.34 (3) (a) and (Note), (c) (Note) and (d) are amended to read:

3 ATCP 50.34 (3) (a) File with the department a copy of the county's cost-share contract  
4 with the landowner and the supporting documentation specified in department forms to be  
5 submitted to obtain reimbursement. The cost-share contract shall comply with s. ATCP 50.40  
6 (8) and (9).

7 **Note:** The department must approve any cost-share contract that exceeds \$50,000. See s.  
8 ATCP 50.40 (8).  
9

10 (c) **Note:** ~~The department~~ Department forms will provide forms that counties must use to  
11 certify the information under sub. (3) specify the documentation a county must  
12 provide under par. (a) with its reimbursement request , or in lieu of  
13 documentation, the information the county must certify under par. (c). ~~A~~ When a  
14 county land conservation committee need-is not required to submit documentation  
15 supporting-and provides, instead, its certification under par. (c), but it must keep  
16 that supporting documentation on file as required by sub. (7). The committee  
17 must make the documentation available to the department and grant auditors upon  
18 request.  
19

20 (d) File all reimbursement requests, required cost-share contracts and supporting  
21 documentation by February 15 of the year following the grant year.

22 **SECTION 66.** ATCP 50.34 (5m) and (Note) are created to read:

23 ATCP 50.34 (5m) INTER-COUNTY TRANSFERS. The department may approve an  
24 agreement between counties to transfer uncommitted bond revenue or other cost-share funds if  
25 all of the following apply:

26 (a) The grant funds subject to the transfer were not previously extended by the  
27 transferring county.

28 (b) The county transferring the cost-share funds certifies to the department that it has an  
29 uncommitted portion of its cost-share allocation equal to or greater than the transfer amount, and  
30 has approval of its land conservation committee to make these funds available for transfer.



1 (c) The county receiving the cost-share funds has made a commitment to use the  
2 transferred funds on one or more specific projects, and has the approval of its land conservation  
3 committee to accept the transferred funds for cost-sharing on the specific projects.

4 (d) The counties apply for the transfer of cost-share funds on a form provided by the  
5 department. The department may require any information on the form reasonably necessary for  
6 the department to approve the transfer of funds.

7 **Note:** Transferred funds may be extended by the receiving county into the subsequent  
8 grant year for the same project, subject to sub. (6).

9  
10 **SECTION 67.** ATCP 50.34 (6) (a) 3. is amended to read:

11 ATCP 50.34 (6) (a) 3. The county land conservation committee files with the  
12 department, by December 31 of the initial grant year, a written request ~~and justification for the~~  
13 funding extension that identifies the cost-shared projects for which the extended funds will be  
14 used, and the total funds to be extended. The department may, for good cause, accept an  
15 extension request filed between December 31 of the initial grant year and February 15 of the  
16 subsequent grant year.

17 **SECTION 68.** ATCP 50.34(6) (a) 3. (Note) is created to read:

18 ATCP 50.34 (6) (a) 3. **Note:** Good cause may include the long-term absence or loss of  
19 critical staff, or the damage or destruction of records.

20  
21 **SECTION 69.** ATCP 50.34 (6) (b) is amended to read:

22 ATCP 50.34 (6) (b) A county may ~~not~~ transfer a funding extension under par. (a) from  
23 one landowner cost-share contract to another provided that the department approves an extension  
24 of both projects. Extended funds may not be used on new cost-share contracts. Extended  
25 funding, if not spent for the designated cost-share contract in the year of the extension, remains  
26 with the department for distribution under a future year's allocation plan.

1           **SECTION 70.** ATCP 50.35 is created to read:

2           ATCP 50.35 **Grants for other services** . (1) Under s. 92.14 (10), Stats., the department  
3 may award a grant identified in the annual allocation plan to any person for services and  
4 activities including information, education and training. The department shall enter into a grant  
5 contract with the grant recipient for the payment of these grant funds. The contract shall include  
6 relevant terms required under this section and ss. ATCP 50.34 and 50.36, and appropriate  
7 restrictions on reimbursement of costs.

8           (2) A person applying for a grant under s. 92.14 (10), Stats., shall file a written grant  
9 application by April 15 of the year preceding the year for which the department awards the  
10 grant. The grant application shall include a proposed budget and supporting documentation.  
11 The department may require a grant applicant to apply on a form provided by the department.

12           (3) Contracts under this section may be extended for a period of one year if all of the  
13 following apply:

14           (a) The grant recipient submits a written extension request by December 31 of the initial  
15 grant year, and identifies how the unspent funds will be used in the subsequent grant year. The  
16 department may, for good cause, accept an extension request filed between December 31 of the  
17 initial grant year and February 15 of the subsequent grant year.

18           (b) The grant is funded under s. 20.115 (7) (qf), Stats., or other provisions authorizing  
19 department expenditure of funds for grants other than the county staffing and support grants  
20 under s. ATCP 50.32.

21           (4) If a county is awarded a grant under this section, it shall do all of the following:

22           (a) Use the grant funds only for work specified in the grant contract required under sub. (1) and  
23 not for any work the county is authorized to perform under s. 92.14 (3) (a) through (f), Stats.

1 (b) Develop and implement county procedures to ensure that the county seeks  
2 reimbursement under this grant contract only for work authorized under this grant contract under  
3 sub. (1), and does not seek reimbursement under this grant contract for work performed under  
4 any other grant contract.

5 (5) Except as provided in this subchapter, a grant recipient under this section shall retain  
6 all records and forms related to the grant award and its administration, including original  
7 subcontracts, if any, and receipts for disbursements for a minimum of 3 years after the end of the  
8 year of the grant award.

9 **SECTION 71.** ATCP 50.36 (1) is amended to read:

10 ATCP 50.36 (1) COUNTY GRANT CONTRACTS. The department shall enter into an  
11 annual grant contract with a county land conservation committee for the payment of grant funds  
12 awarded to the county. The county land conservation committee shall approve the terms of the  
13 grant contract and any amendment before the grant contract or amendment is signed on behalf of  
14 the county. The contract shall include relevant terms required under this section and ss. ATCP  
15 50.32, ~~and 50.34~~ and, if applicable, 50.35.

16 **SECTION 72.** ATCP 50.36 (1) (Note) is created to read:

17 ATCP 50.36 (1) **Note:** The department may request that a county provide proof of the  
18 authority of the signatory to sign a grant contract or amendment under this chapter  
19 on behalf of the county.  
20

21 **SECTION 73.** ATCP 50.36 (2) (a) is amended to read:

22 ATCP 50.36 (2) OTHER GRANT CONTRACTS. (a) The department shall enter into a  
23 grant contract with every ~~non-county~~ grant recipient awarded a grant under this chapter s. 92.14  
24 (10), Stats.

25 **SECTION 74.** ATCP 50.40 (2) (d) and (Note) are created to read:

1 ATCP 50.40 (2) (d) Paragraph (a) does not apply to requirements imposed on a livestock  
2 facility operator in connection with a local approval or permit issued pursuant to s. 93.90, Stats.,  
3 and ch. ATCP 51.

4 **Note:** To secure a local approval or permit, an operator must meet the required  
5 standards, regardless of whether the applicant receives cost-sharing (see s. 93.90,  
6 Stats.). However, a political subdivision may choose to provide cost-sharing to  
7 the operator.  
8

9 **SECTION 75.** ATCP 50.40 (3) (a) (Note) is amended to read:

10  
11 ATCP 50.40 (3) (a) **Note:** A county may package cost-share payments in a variety of  
12 ways. For example, a county might choose to negotiate a single overall payment  
13 (sometimes called an “incentive” payment) with a landowner who voluntarily  
14 agrees to maintain a combination of “soft” practices ~~(such as nutrient~~  
15 ~~management, residue management and contour farming, for example) as part of~~  
16 ~~an overall farm conservation plan.~~ The county may pay the landowner to  
17 continue these practices, even though the landowner has followed the same  
18 practices in the past. In some cases, counties may be limited, by the terms of prior  
19 department cost-share grants to landowners, in making payments to landowners to  
20 continue compliance with performance standards. The county is free to negotiate  
21 the cost-share amount (“incentive” payment amount) with the landowner, as long  
22 as the arrangement is voluntary.  
23

24 **SECTION 76.** ATCP 50.40 (3) (b) 12. to 14. are created to read

25 ATCP 50.40 (3) (b) 12. Pay for the installation of a practice on land owned by the state of  
26 Wisconsin.

27 13. Bring a landowner into compliance with standards required under the landowner’s  
28 WPDES permit under chs. 281 and 283, Stats.

29 14. Pay for any state or local administrative permit fees.

30 **SECTION 77.** ATCP 50.40 (4) and (7) (b) are amended to read:

31 ATCP 50.40 (4) ELIGIBLE COSTS. A cost-share grant may pay for relevant costs identified  
32 in s. ATCP 50.08 (3) and (4), regardless of whether cost-sharing is required under sub. (2) or s.  
33 ATCP 50.08. A cost-share grant may pay for the costs incurred by a county or landowner in

1 recording, with the county register of deeds, any cost-share contract, whether or not recording is  
2 required under s. ATCP 50.40 (14). A cost-share grant may not pay for ineligible costs  
3 identified under sub. (3) (b) or subch. VIII.

4 (7) (b) A cost-share grant may reimburse the cost of engineering services under par. (a)  
5 provided by a professional engineer registered under ch. 443, Stats, or ~~an agricultural a~~  
6 conservation engineering practitioner certified at the applicable rating under s. ATCP 50.46. A  
7 cost-share grant may not reimburse the cost of engineering services provided by the county land  
8 conservation committee or its agent.

9 **SECTION 78.** ATCP 50.40 (9) (c) (intro.) is renumbered ATCP 50.40 (9) (c) and  
10 amended to read:

11 ATCP 50.40 (9) (c) The location of the land on which the cost-shared practice is to be  
12 installed, and a specific legal description of the land if cost-share payments may exceed ~~the~~  
13 following applicable amount: \$14,000.

14 **SECTION 79.** ATCP 50.40 (9) (c) 1. to 3. are repealed.

15 **SECTION 80.** ATCP 50.40 (9) (d) and (j) (Note) are amended to read:

16 ATCP 50.40 (9) (d) Specifications for the cost-shared practice, including engineering  
17 specifications for any ~~agricultural~~ conservation engineering practice identified under s. ATCP  
18 50.46 (2).

19 (j) **Note:** Subchapter VIII specifies a minimum maintenance period of 10 years for most  
20 conservation practices. But it does not specify a minimum maintenance period  
21 for the following “soft” practices:

- 22 • Contour farming (s. ATCP 50.67).
- 23 • Cover crop (s. ATCP 50.68).
- 24 • Nutrient management (s. ATCP 50.78).
- 25 • Pesticide management planning (s. ATCP 50.79).
- 26 • Residue management (s. ATCP 50.82).
- 27 • Stripcropping (s. ATCP 50.89).
- 28

1           **SECTION 81.** ATCP 50.40 (9) (L) (intro.) is renumbered ATCP 50.40 (9) (L) and  
2 amended to read:

3           ATCP 50.40 (9) (L) If the contract provides for a cost-share grant that exceeds ~~the~~  
4 ~~following applicable amount~~ \$14,000, an agreement that the contract runs with the land and is  
5 binding on subsequent owners or users of the land for the period of time required under subch.  
6 VIII.;

7           **SECTION 82.** ATCP 50.40 (9) (L) 1. to 3. are repealed.

8           **SECTION 83.** ATCP 50.40 (9) (n) and (10) (b) are amended to read:

9           ATCP 50.40 (9) (n) ~~An agreement that the~~ Appropriate county land conservation  
10 ~~committee must pre approve, according to a procedure specified in the contract, pre-approval~~  
11 procedures for making any construction changes that may affect the terms or amount of the cost-  
12 share grant.

13           (10) (b) Installed in compliance with applicable construction site erosion control  
14 standards contained in the DNR ~~Wisconsin construction site best management practice~~  
15 ~~handbook, DNR Pub. WR 222 (April 1994)~~ Storm Water Construction Technical Standards, in  
16 effect on the effective date of this section ...[LRB inserts date].

17           **SECTION 84.** ATCP 50.40 (10) (b) (Note) is repealed and recreated to read:

18           ATCP 50.40 (10) (b) **Note:** A copy of these technical standards can be found at the DNR  
19 website at: <http://dnr.wi.gov/topic/stormwater/standards/index.html>. Copies of  
20 these technical standards are also on file with the department and the legislative  
21 reference bureau.  
22

23           **SECTION 85.** ATCP 50.40 (11) (b) (intro.), 2. and 3., are amended to read:

24           ATCP 50.40 (11) (b) (intro.) That the cost-shared practice is designed and installed  
25 according to sub. (10). If the cost-shared practice is ~~an agricultural~~ a conservation engineering

1 practice identified under s. ATCP 50.46 (2), one of the following shall certify in writing that the  
2 practice complies with sub. (10):

3 2. ~~An agricultural~~ A conservation engineering practitioner certified under s. ATCP  
4 50.46.

5 3. A well driller or pump installer registered under s. 280.15, Stats., if the ~~agricultural~~  
6 conservation engineering practice consists of well construction or decommissioning.

7 **SECTION 86.** ATCP 50.40 (14) (a), (b) and (c) are repealed.

8 **SECTION 87.** ATCP 50.40 (14) (intro.) is renumbered (14) (a) and amended to read:

9 ATCP 50.40 (14) (a) If a county contract with a landowner exceeds ~~the following~~  
10 ~~applicable amount~~ \$14,000, the county or the landowner shall record the contract with the county  
11 register of deeds before the county makes any cost-share payment to the landowner;.

12 **SECTION 88.** ATCP 50.40 (14) (b), (c) and (d) and (Note) are created to read:

13 ATCP 50.40 (14) (b) If recording is required under this subsection, the county shall  
14 record the cost-share contract before making any reimbursement payments to the landowner or  
15 grant recipient.

16 (c) Recording a contract which exceeds the amount in par. (a) is not required if the  
17 contract is only for conservation practices listed in s. ATCP 50.08 (5) (b).

18 (d) A county may choose to voluntarily record any contract in which cost-share  
19 payments under this chapter were awarded.

20 **Note:** Cost-share funds can be used to record any contract authorized under this chapter.

21 **SECTION 89.** ATCP 50.40 (17) is amended to read:

22 ATCP 50.40 (17) COMBINED GRANTS. Cost-share grants under this chapter may be  
23 combined with grants from other federal, state, local and private sources. ~~Department~~ Except as  
24

1 restricted under s. ATCP 50.42 (1), department funds allocated under this chapter may be  
2 combined with DNR funds allocated under s. 281.65 or 281.66, Stats., to finance up to 70% of  
3 the total cost of a project, or up to 90% in cases of economic hardship under s. ATCP 50.42 (4).  
4 This subsection does not limit the use of cost-share funds from other sources. A cost-share grant  
5 under this chapter may not reimburse a landowner for any costs that another governmental entity  
6 is also reimbursing.

7 **SECTION 90.** ATCP 50.42 (1) (a) (Note), (bm), (dg) and (dr) and (Note) are created to  
8 read:

9 ATCP 50.42 (1) (a) **Note:** The maximum cost-share rates in this section and other  
10 sections were established to meet the requirements of s. 281.16 (3) (e), Stats.,  
11 which provides that an owner or operator of an agricultural facility may not be  
12 required by the state or a municipality to comply with the performance standards,  
13 prohibitions, conservation practices or technical standards unless cost-sharing is  
14 available for at least 70% of the cost of compliance, or is 70% to 90% of the cost  
15 of compliance in cases of economic hardship. These maximum cost-share rates  
16 are not required for the practices specified in s. ATCP 50.42 (1) (dg) and (dr).  
17

18 (bm) The economic hardship provision under sub. (4) is available to owners and grant  
19 recipients who operate farms and is not available to non-farmers.

20 (dg) The cost-share payments for the following conservation practices may not exceed  
21 50% of the total eligible costs to install and maintain the practice unless the landowner is  
22 required to install the practice to achieve compliance with an agricultural performance standard  
23 on cropland, pastures or a livestock operation:

- 24 1. Access roads under s. ATCP 50.65.
- 25 2. Roof runoff systems under s. ATCP 50.85.
- 26 3. Streambank or shoreline protection under s. ATCP 50.88.
- 27 4. Stream crossing under s. ATCP 50.885.
- 28 5. Wetland development or restoration under s. ATCP 50.98.



1 (dr) The cost-share payments for any conservation practice installed on land owned by a  
2 local governmental unit may not exceed 50% of the total eligible costs to install and maintain the  
3 practice.

4 **Note:** County employees and land conservation committee members are subject to the  
5 conflict of interest provisions of s. ATCP 50.40 (19) when providing cost-sharing  
6 to the local governmental units with which they are affiliated.  
7

8 **SECTION 91.** ATCP 50.42 (4) (intro.) is amended to read:

9 ATCP 50.42 (4) (intro.) ECONOMIC HARDSHIP. A landowner of a farm operation  
10 qualifies for economic hardship treatment if all the following apply:

11 **SECTION 92.** ATCP 50.46 (title) is amended to read:

12 ATCP 50.46 (title) **Agricultural Conservation engineering practitioners.**

13 **SECTION 93.** ATCP 50.46 (1) and (2) are repealed and recreated to read:

14 ATCP 50.46 (1) GENERAL. (a) A conservation engineering practitioner certified under  
15 this section, or approved under a parallel federal program identified in par. (b), may implement  
16 the agricultural or other conservation engineering practices in ch. 92, Stats., or s. 281.65, Stats.,  
17 and perform any of the following activities consistent with the person's level of certification  
18 under this section:

19 1. Certify the design specifications for a conservation engineering practice under sub.

20 (2).

21 **Note:** A design certification typically involves the preparation or approval of a design  
22 document that prescribes the installation of a conservation engineering practice.  
23 The process typically requires the application of engineering principles and  
24 methods, and may include several planning and design components. For  
25 example, a practitioner may conduct a site inventory to gather data for the design  
26 process, may identify or confirm particular water quality problems on the site, and  
27 may evaluate the adequacy of the proposed practices to address those problems.  
28

1           2. Certify that a conservation engineering practice under sub. (2) has been installed  
2 according to an approved design, and according to applicable standards and specifications.

3           3. Engage in planning review and other engineering functions related to the installation  
4 of engineered conservation practices under sub. (2).

5           (b) The department shall operate its certification program under this section, to the extent  
6 possible, in conformance with the NRCS, or any other applicable federal agency system of  
7 engineering job approval authority.

8           **Note:** To fulfill its responsibility for providing technical assistance under 7 CFR Part  
9 610, NRCS currently administers a system of engineering job approval authority  
10 (JAA) that assigns individuals appropriate job approval based on the person's  
11 training, experience and demonstrated competency to perform engineering  
12 activities.

13  
14           (c) For funding purposes under this chapter or ch. NR 120, no person, other than a  
15 conservation engineering practitioner certified under this section or a professional engineer  
16 registered under ch. 443, Stats., may certify that conservation practices were properly designed  
17 or installed in compliance with standards under this chapter or s. 281.65, Stats.

18           **Note:** See ss. 92.18 and 443.14 (10), Stats. A state or county employee certified under  
19 this section is exempt from the professional engineering registration requirements  
20 of ch. 443, Stats., when engaged in state or county activities under ch. 92, Stats.,  
21 or s. 281.65, Stats., regardless of whether the activities are funded under this  
22 chapter.

23  
24           (d) Notwithstanding par. (c), a well driller or pump installer registered under s. 280.15,  
25 Stats., may certify a well construction or decommissioning under sub. (1).

26           (2) CONSERVATION ENGINEERING PRACTICES. For purposes of this section, a  
27 conservation engineering practice includes any of those practices identified in subch. VIII,  
28 authorized by the department under s. ATCP 50.40 (3), allowed under s. 281.65, Stats., or

1 approved and published, as part of the NRCS technical guide or as a formal technical standard by  
2 the DNR.

3 **Note:** The DNR publishes its technical standards on its website at, for example:  
4 <http://dnr.wi.gov/topic/stormwater/standards/index.html>.

5  
6 **SECTION 94.** ATCP 50.46 (2m) and (Note) are created to read:

7 ATCP 50.46 (2m) STATE SOIL AND WATER CONSERVATION ENGINEER. The department  
8 may designate an employee as the state soil and water conservation engineer. The designated  
9 person shall be a professional engineer registered under ch. 443, Stats., and demonstrate  
10 sufficient training and experience to carry out the functions of the position. The state soil and  
11 water conservation engineer shall do all of the following:

12 (a) Oversee the work of the field engineers who are responsible for certifying  
13 conservation engineering practitioners under this section.

14 (b) Conduct engineering activities requiring job approval authority ratings higher than  
15 those authorized under this section including job class ratings of V and above.

16 **Note:** The rating system used for certification under this section is based on the NRCS  
17 engineering JAA framework. Engineering practices in job classes I through V  
18 must be of low hazard potential. Projects that involve practices above job class V  
19 must be performed under the authority of the state soil and water conservation  
20 engineer.

21  
22 **SECTION 95.** ATCP 50.46 (3) (title) is amended to read:

23 ATCP 50.46 (3) (title) ~~AGRICULTURAL~~ CONSERVATION ENGINEERING PRACTITIONER;  
24 CERTIFICATION.

25 **SECTION 96.** ATCP 50.46 (3) is renumbered (3) (title) and (a) and amended to read:

26 ATCP 50.46 (3) (title) ~~AGRICULTURAL~~ ENGINEERING PRACTITIONER; CERTIFICATION. (a)

27 A person who wishes to be certified as ~~an agricultural~~ a conservation engineering practitioner  
28 shall apply to the department or a county land conservation committee. ~~An applicant may apply~~

1 orally or in writing. The department or the county land conservation committee shall promptly  
2 refer the application to the department's designated field engineer. The field engineer shall  
3 evaluate the applicant and issue a decision granting or denying the request.

4 **SECTION 97.** ATCP 50.46 (3) (b) and (Note) are created to read:

5 ATCP 50.46 (3) (b) Applicants for certification shall apply on a form provided by the  
6 department. The application form shall include all of the following:

7 1. The name and affiliation of the person applying for certification, and the name and  
8 affiliation of each DATCP, NRCS or other agency personnel authorized to grant certification to  
9 the applicant.

10 2. The practices for which certification may be granted, including specific practice types  
11 and applicable references to the NRCS technical guide and other formal technical standards  
12 authorized under this section.

13 3. The controlling factor used to distinguish different classes of certification within each  
14 practice, and the specific application of the factor to the 5 levels for which certification can be  
15 obtained.

16 4. A maximum certification rating level in the 3 areas of competency for each practice  
17 that the applicant is qualified to perform, as specified in sub. (5).

18 5. Any other information the department determines to be reasonably necessary for  
19 certification purposes including certification for practice standards approved by entities other  
20 than NRCS.

21 **Note:** A person may obtain a certification form by calling (608) 224-4622, by visiting  
22 the department website at: <http://datcp.wi.gov/ATCP50>, or by writing to the  
23 following address:

24 Wisconsin Department of Agriculture, Trade and Consumer Protection  
25 Division of Agricultural Resource Management  
26

1 P.O. Box 8911  
2 Madison, WI 53708-8911

3  
4 **SECTION 98.** ATCP 50.46 (4) (a), (5) (a) and (Note), (6) (b), (7) (a), (9) (c) 2. and (10)

5 are amended to read:

6 ATCP 50.46 (4) (a) To evaluate an applicant under sub. (3), the department's field  
7 engineer shall complete ~~the~~ a department certification form shown in Appendix E. The field  
8 engineer shall rate the applicant under sub. (5) based on the applicant's demonstrated knowledge,  
9 training, experience and record of appropriately seeking assistance. Evaluations shall be fair and  
10 consistent.

11 (5) (a) For each type of agricultural or other conservation engineering practice identified  
12 in ~~Appendix E~~ the required certification form, the department's field engineer shall identify the  
13 most complex of the 5 job classes in ~~Appendix E~~ the practice for which the applicant is  
14 authorized to do each of the following:

15 1. Conduct planning activities, including site inventory and evaluation functions to  
16 define alternative engineering solutions.

17 2. Certify that design specifications for jobs in that class comply with standards under  
18 this chapter or those identified in subch. VIII, authorized by the department under s. ATCP 50.40  
19 (3), allowed by s. 281.65, Stats., or approved and published, as part of the NRCS technical guide  
20 or as a formal technical standard by the DNR.

21 23. Certify that jobs in that class have been installed according to the approved design,  
22 and according to any applicable standards and specifications.

23 **Note:** ~~The rating system under par. (a) is designed to be reasonably consistent with the~~  
24 ~~system used by NRCS under 7 CFR 610.1 to 610.5. Appendix E is similar to the~~  
25 ~~NRCS job approval delegation form. It identifies the controlling factors used to~~  
26 ~~determine the relative difficulty of job classes, as well as the NRCS standard that~~  
27 ~~applies. In cases where department field engineers may be required to provide a~~

1            job certification approval at a level higher than their own, they should consult with  
2            a person who has appropriate certification in the areas being rated. A person who  
3            is certified at a job level under par. (a) may certify his or her own work at that level  
4            for any purpose including funding purposes authorized under this chapter.  
5

6            (6) (b) Whenever the department's field engineer certifies ~~an agricultural~~ a conservation  
7            engineering practitioner, the field engineer shall issue a written certification ~~in~~ on the  
8            department's certification form ~~shown in Appendix E.~~ The certification becomes effective when  
9            signed by all of the following:

10            (7) (a) A department field engineer shall review each certification rating under sub. (5) at  
11            least once every 3 years, and may review a rating at any time. A field engineer shall review a  
12            rating whenever a certified ~~agricultural~~ conservation engineering practitioner requests that  
13            review.

14            (9) (c) 2. State and federal agencies that provide cost-share funds for ~~agricultural~~  
15            conservation engineering practices.

16            (10) CERTIFICATION GUIDELINES. The department may publish guidelines for the  
17            certification of ~~agricultural~~ conservation engineering practitioners under this section. The  
18            guidelines may include suggested or required courses, training activities, and types of knowledge  
19            and experience that may help applicants qualify for certification at specified rating levels, or be  
20            required in order to retain certification at certain rating levels.

21            **SECTION 99.** ATCP 50.46 (11) is renumbered (11) (title) and (a) and amended to read:

22            ATCP 50.46 (11) SIGNATURE AND DATE REQUIRED; APPROVALS. (a) Whenever a person  
23            certified under this section approves or submits for approval any document related to the design  
24            or construction of ~~an agricultural~~ a conservation engineering practice under sub. (2), that person  
25            shall sign and date that document.

26            **SECTION 100.** ATCP 50.46 (11) (b) is created to read:

1           ATCP 50.46 (11) (b) Any engineered practice designed by a person certified under this  
2 section shall include project documentation establishing that the practice was designed according  
3 to applicable standards, and that the design was reviewed and approved for compliance with  
4 those standards. Any person approving a design shall have job approval authority at the level  
5 required by the engineered practice. For practices requiring a job class authority of III or higher,  
6 at least one person other than the practice designer shall review and approve the design. For  
7 practices requiring job class authority of I or II, the person preparing the design may also review  
8 and approve the design.

9           **SECTION 101.** ATCP 50.46 (12) is amended to read:

10           ATCP 50.46 (12) SCOPE OF CERTIFICATION. No certified ~~agricultural~~ conservation  
11 engineering practitioner may, for any purpose, including funding purposes under this chapter or  
12 s. 281.65, Stats., certify any matter under sub. (5) (a) in a job class more complex than that for  
13 which the practitioner is authorized under sub. (5) (a). In the event a practitioner exceeds the  
14 authority authorized for certifying conservation practices, the department shall review the matter  
15 and may take action under sub. (7) or (9).

16           **SECTION 102.** ATCP 50.48 (2) (a) 4. (Note) is created to read:

17           ATCP 50.48 (2) (a) 4. **Note:** The department may develop minimum standards for a  
18           department-approved training course for farmers who develop their own nutrient  
19           management plans.

20  
21           **SECTION 103.** ATCP 50.50 (2) (intro.) and (d) are amended to read:

22           ATCP 50.50 (2) (intro.) APPLYING FOR CERTIFICATION. A laboratory operator may apply  
23 to the department for certification under sub. (1). An operator shall submit a separate  
24 application, ~~using the form shown in Appendix A~~ on a form provided by the department, for each

1 laboratory for which the operator seeks certification. The application shall include all of the  
2 following:

3 (d) The soil tests, test methods, and nitrogen estimation methods used by the laboratory.  
4 The laboratory shall be capable of performing the following tests according to methods  
5 prescribed by the University of Wisconsin-Extension in *Nutrient application guidelines for field,*  
6 *vegetable, and fruit crops in Wisconsin*, UWEX Publication A2809 (~~2006~~2012), and by the  
7 University of Wisconsin-Madison soil science department in *Wisconsin Procedures for Soil*  
8 *Testing, Plant Analysis and Feed & Forage Analysis*, Soil Fertility Series (~~December, 2007~~)  
9 (March, 2012), and shall be capable of estimating nitrogen levels based on those tests:

10 **SECTION 104.** ATCP 50.50 (2) (d) 5. (Note) is created to read:

11 ATCP 50.50 (2) (d) 5. **Note:** Copies of the *Nutrient application guidelines for field,*  
12 *vegetable, and fruit crops in Wisconsin*, UWEX Publication A2809 (2012) and  
13 the *Wisconsin Procedures for Soil Testing, Plant Analysis and Feed & Forage*  
14 *Analysis, Soil Fertility Series* (March, 2012) are on file at the department and  
15 legislative reference bureau. To obtain a copy of A2809, see s. ATCP 50.04 (3)  
16 (f) 4. (Note). Copies of the Wisconsin Procedures publication are available at the  
17 University of Wisconsin website at: <http://uwlab.soils.wisc.edu/lab-procedures/>.  
18

19 **SECTION 105.** ATCP 50.50 (2) (g) (Note) is amended to read:

20 ATCP 50.50 (2) (g) **Note:** A list of approved soil testing laboratories can be found at the  
21 following web address: ~~<http://www.datcp.state.wi.us/arm/agriculture/land->~~  
22 ~~[water/conservation/nutrient-mngmt/planning.jsp](http://www.datcp.state.wi.us/arm/agriculture/land-water/conservation/nutrient-mngmt/planning.jsp)~~ <http://datcp.wi.gov/ATCP50> or  
23 by calling (608) 224-4622.  
24

25 **SECTION 106.** ATCP 50.50 (2) (g) (second Note) is created to read:

26 ATCP 50.50 (2) (g) (**second**) **Note:** A person may obtain a copy of the soil test  
27 laboratory certification form by visiting the department website at:  
28 <http://datcp.wi.gov/ATCP50> or by calling (608) 224-4622.  
29

30 **SECTION 107.** ATCP 50.50 (4) (intro.), (c) (Note), (8) (b) (Note) and (c) (Note) are  
31 amended to read:



1 ATCP 50.50 (4) (intro.) NUTRIENT RECOMMENDATIONS. If a certified laboratory  
2 recommends nutrient applications to a landowner that exceed the amounts required to achieve  
3 applicable crop fertility levels recommended by the University of Wisconsin Extension in ~~Soil~~  
4 ~~Test Recommendations~~ Nutrient application guidelines for Field, Vegetable and Fruit Crops in  
5 Wisconsin, UWEX publication A-2809/A2809 (1998/2012), the laboratory shall make those  
6 recommendations in writing and shall disclose all of the following in the same document:

7 (c) ~~Note: Appendix B contains a convenient summary of UWEX publication A2809, for~~  
8 ~~selected crops. You may obtain the complete publication and the summary from~~  
9 ~~your county extension agent. The complete publication is also on file with the~~  
10 ~~department and the legislative reference bureau. For further information, see~~  
11 ~~Appendix G. To obtain a copy of A2809, see s. ATCP 50.04 (3) (f) 4. (Note).~~

12  
13 (8) (b) **Note:** The University of Wisconsin-Extension publication, *Recommended*  
14 *Methods of Manure Analysis*, UWEX publication A3769 (2003), is on file with  
15 the department and legislative reference bureau. Copies may be obtained ~~from the~~  
16 ~~University of Wisconsin Extension at the following address: University of~~  
17 ~~Wisconsin Madison, Department of Soil Science, 1525 Observatory Drive,~~  
18 ~~Madison, WI 53706-1299 by visiting the UWEX website at:~~  
19 <http://learningstore.uwex.edu>.

20  
21 (c) ~~Note: The To obtain copies of the NRCS technical guide nutrient management~~  
22 ~~standard 590 (September, 2005) is reproduced in Appendix D. The and the~~  
23 ~~Wisconsin conservation planning technical note WI-1 is not reproduced in~~  
24 ~~Appendix D but is on file with the department and the legislative reference~~  
25 ~~bureau. Copies may be obtained from your county land conservation office or at~~  
26 ~~the following web address: <http://www.datcp.state.wi.us/arm/agriculture/land->~~  
27 ~~[water/conservation/nutrient\\_mngmt/planning.jsp](http://www.datcp.state.wi.us/arm/agriculture/land-), see s. ATCP 50.04 (3) (dm) 1.~~  
28 ~~(Note).~~

29  
30 **SECTION 108.** ATCP 50.52 (1) (g) and (Note) and (2) (d) are amended to read:

31 ATCP 50.52 (1) (g) Issue training guidelines and requirements for certified agricultural  
32 conservation engineering practitioners under s. ATCP 50.46 (10).

33 **Note:** The department guidelines may include suggested or required courses, training  
34 activities, and the types of knowledge and experience that may help applicants  
35 qualify for certification at specified rating levels, or be required in order to  
36 maintain certification at certain rating levels.  
37

1 (2) (d) The statewide association of representing land conservation committees and their  
2 staffs.

3 **SECTION 109.** ATCP 50.52 (2) (e) is repealed.

4 **SECTION 110.** ATCP 50.54 (1) (Note) and (2) (b) are amended to read:

5 ATCP 50.54 (1) **Note:** “Local regulations” are defined in s. ATCP 50.01(18). Local  
6 conservation requirements should be consistent with this chapter (see ss. 92.05  
7 (1), (3) (c) and (L), 92.07 (2), 92.11, 92.15 (2) to (4), 92.16, 92.17, 93.90 and  
8 281.16 (3), Stats.). The department may review and comment on local  
9 regulations, as it deems necessary. See specific requirements related to manure  
10 storage ordinances (s. ATCP 50.56), agricultural shoreland management  
11 ordinances (s. ATCP 50.58) and livestock ordinances (s. ATCP 50.60). A local  
12 regulation may not require a livestock operator to obtain a license or permit for a  
13 new or expanding livestock operation, except as specifically authorized under s.  
14 93.90, Stats., and ch. ATCP 51. When exercising their approval authority under  
15 the livestock facility siting law, political subdivisions are limited in their  
16 application of local manure storage ordinances adopted under s. 92.16, Stats., and  
17 s. ATCP 50.56. (See s. ATCP 51.18 (6) (Note)).

18  
19 (2) (b) Paragraph (a) does not apply to a nutrient management plan required under ~~a~~  
20 ~~permit for a manure storage system voluntarily constructed by a landowner.~~ any of the following:

21 **SECTION 111.** ATCP 50.54 (2) (b) 1. and 2. are created to read:

22 ATCP 50.54 (2) (b) 1. A permit for a manure storage system voluntarily constructed by a  
23 landowner.

24 2. A permit required for a new or expanding livestock facility operation regulated under  
25 ch. ATCP 51.

26 **SECTION 112.** ATCP 50.56 (2) (e) and (f) are amended to read:

27 ATCP 50.56 (2) (e) ~~Abandonment~~ Closure provisions under sub. (4), if any.

28 (f) Conditions, if any, under which the county, city, village or town may require the  
29 ~~abandonment~~ closure of a manure storage system.

1           **SECTION 113.** ATCP 50.56 (3) is repealed and recreated to read:

2           ATCP 50.56 (3) CONSTRUCTION PROVISIONS. (a) An ordinance adopted under s. 92.16,  
3 Stats., shall establish requirements for constructing a new or modified manure storage system  
4 including storage and transfer components to handle manure.

5           **Note:** See s. ATCP 50.01 (20).

6  
7           (b) An ordinance adopted under s. 92.16, Stats., shall include provisions that do all of the  
8 following:

9           1. Prohibit construction of any part of a manure storage system without a permit from the  
10 county, city, village or town that adopts the ordinance.

11           **Note:** A local governmental unit may not require a manure storage permit for livestock  
12 facilities if it also requires the livestock facility to obtain a permit under the  
13 livestock siting law (s. 93.90, Stats.) for a new or expanded livestock facility. (See  
14 s. ATCP 50.54 (1) (Note)).  
15

16           2. Require submission of a construction plan, a drawing reflecting design changes made  
17 during construction and documentation certifying that the system was installed in accordance  
18 with technical standards.

19           **Note:** Unless the ordinance specifies otherwise, a permit would cover activities related to  
20 the construction of a facility, and not its operation and use.  
21

22           **Note:** Ordinances should provide sufficient time for the local governmental unit to  
23 review engineering plans and specifications submitted by applicants. The  
24 timelines in s. NR 243.15 (1) (b) and s. ATCP 51.32 are designed to enable permit  
25 issuers to thoroughly review today's complex systems for completeness and  
26 conformance with applicable standards. Local governmental units should make  
27 every effort to coordinate their permit reviews with other government programs  
28 conducting similar reviews.  
29

30           3. Require a nutrient management plan that complies with s. ATCP 50.04 (3).

31           **Note:** A nutrient management plan, demonstrating that manure can be properly utilized,  
32 should be included with a permit application under par. (a). If the county, city,  
33 village or town wants to monitor compliance with the nutrient management plan,  
34 its ordinance may include monitoring provisions under sub. (2) (g).

1  
2 4. Require consistency with state performance standards and prohibitions, and require  
3 construction in accordance with technical standards including all of the following:

- 4 a. NRCS technical guide waste storage facility standard 313 (June, 2013).  
5 b. NRCS technical guide manure transfer standard 634 (September, 2012).  
6 c. Other applicable NRCS technical guide standards.  
7 d. Applicable DNR requirements under s. 281.65 (4) (g) 5., Stats.

8 **SECTION 114.** ATCP 50.56 (4) (intro.) and (a) are amended to read:

9 ATCP 50.56 (4) (intro.) ~~ABANDONMENT~~ CLOSURE PROVISIONS. An ordinance adopted  
10 under s. 92.16, Stats., may prohibit any person from ~~abandoning~~ closing a manure storage system  
11 unless that person does all of the following:

12 (a) Submits ~~an abandonment~~ a closure plan for approval by the county, city, village or  
13 town. The ~~abandonment~~ closure plan shall comply with the waste facility closure provisions  
14 contained in the NRCS technical guide, closure of waste impoundments standard 360  
15 (~~November, 2006~~) (March, 2013).

16 **SECTION 115.** ATCP 50.56 (4) (a) (Note) is created to read:

17 ATCP 50.56 (4) (a) **Note:** The NRCS technical guide standard 360 is on file with the  
18 department and the legislative reference bureau.

19  
20 **SECTION 116.** ATCP 50.56 (4) (b), (c) and (Note) and (6) are amended to read:

21 ATCP 50.56 (4) (b) Obtains a permit for the ~~abandonment~~ closure.

22 (c) Complies with the approved ~~abandonment~~ closure plan under par. (a).

23 **Note:** An ordinance may apply the ~~abandonment~~ closure requirements under sub. (4) to  
24 any manure storage system, regardless of when that system was installed.

25  
26 ~~For information on how to obtain~~ Copies of NRCS technical guide standards,  
27 including any secondary standards incorporated by reference in those standards,

1 see Appendix G can be obtained by visiting the department website at:  
2 <http://datcp.wi.gov/ATCP50> or by calling (608) 224-4622.  
3

4 (6) DEPARTMENT REVIEW OVERSIGHT. ~~Before~~ The department may require a county, city,  
5 village or town ~~adopts or amends~~ to do either of the following in connection with the  
6 administration of an ordinance under s. 92.16, Stats., ~~the county, city, village or town shall~~  
7 ~~submit the:~~

8 (a) Use a department-approved application for permitting the construction or closure of a  
9 manure storage system or structure.

10 (b) Submit a proposed or adopted ordinance to the department. ~~The department shall for~~  
11 ~~review the ordinance for~~ to determine consistency with this chapter. The department may ask the  
12 county, city, village or town for information that it needs to perform the review.

13 **SECTION 117.** ATCP 50.60 (1) (a) (Note) is amended to read:

14 ATCP 50.60 (1) (a) **Note:** See s. 92.15, Stats. A person adversely affected by a local  
15 livestock regulation may oppose its adoption at the local level. The person may  
16 also challenge a local regulation in court if the person believes that the local  
17 governmental unit has violated par. (a) or s. 92.15, Stats. A local governmental  
18 unit is responsible for analyzing the legal adequacy of its regulations, and may  
19 exercise its own legal judgment in deciding whether to seek state approval under  
20 this section.

21  
22 A local permit requirement does not, *by itself*, violate par. (a). But permit  
23 *conditions* codified in a local regulation must comply with par. (a). In the case of  
24 local permit conditions for new and expanding livestock operations, local  
25 governmental units must codify more stringent regulation and meet other  
26 requirements of s. ATCP 51.10 (3). If a local governmental unit routinely requires  
27 permit holders to comply with *uncodified* conservation requirements that exceed  
28 state standards, those uncodified requirements may be subject to court challenge  
29 under s. 92.15, Stats., and par. (a) as *de facto* regulatory enactments. A local  
30 governmental unit may forestall a legal challenge by codifying standard permit  
31 conditions and obtaining any necessary state approval under this section. The  
32 department will review codified regulations under sub. (2), but will not review  
33 individual permits or uncodified permit conditions.  
34

35 **SECTION 118.** Subchapter VIII (Note) of ch. ATCP 50 is created to read:  
36

1 ATCP 50, Subch. VIII **Note:** For information on how to obtain NRCS technical guide  
2 standards and any other standards required under this subchapter, including any  
3 secondary standards incorporated by reference in those standards, a person may  
4 visit the department website at: <http://datcp.wi.gov/ATCP50>, or contact the  
5 department in writing at the following address:  
6

7 Wisconsin Department of Agriculture, Trade and Consumer Protection  
8 Division of Agricultural Resource Management  
9 P.O. Box 8911  
10 Madison, WI 53708-8911  
11

12 **SECTION 119.** ATCP 50.61 (title) and (1) are amended to read:

13 ATCP 50.61(title) **General standards for cost-shared practices; pre-approval of cost-**  
14 **shared practices.** (1) COST-SHARED PRACTICES MUST COMPLY. ~~Cost-shared~~ Except as  
15 authorized under sub. (3), cost-shared practices under this chapter shall comply with applicable  
16 standards under this subchapter.

17 **SECTION 120.** ATCP 50.61 (3) and (4) and (Note) are created to read:

18 ATCP 50.61 (3) VOLUNTARY USE OF UPDATED TECHNICAL STANDARDS. The department  
19 may authorize a county to provide a cost-share grant for a conservation practice to be  
20 implemented under the updated version of a technical standard listed in this subchapter. The  
21 county may provide a cost-share grant for the conservation practice using the updated technical  
22 standard if all of the following apply:

23 (a) The updated technical standard provides conservation benefits at least as beneficial as  
24 the version listed in this subchapter.

25 (b) The updated technical standard has been adopted by NRCS, DNR or the applicable  
26 technical standards entity listed in this subchapter.

27 (c) The landowner voluntarily agrees, in writing, to the use of the updated standard to  
28 implement the conservation practice.

1 (4) PRE-APPROVAL OF COST-SHARED PRACTICES. The department may, at any time,  
2 require advance approval of any practice cost-shared under this chapter. The department shall  
3 provide written notice to affected parties of the cost-shared practices requiring pre-approval by  
4 the department and an opportunity for the affected parties to comment on the listed practices.

5 The department shall do all of the following:

6 (a) Identify the practice for which pre-approval is required.

7 (b) Establish the conditions under which pre-approval is required and the process for  
8 securing the pre-approval.

9 (c) Provide at least 30 calendar days written notice to each county and other affected  
10 grant recipients before requiring pre-approval of the listed cost-shared practice.

11 **Note:** The approval authorized under this subsection is in addition to the approval  
12 required under s. ATCP 50.40(8) for contracts exceeding \$50,000 in cost-share  
13 payments.

14 The department may provide notice by email or by posting the information on its  
15 website.  
16

17 **SECTION 121.** ATCP 50.62 (1) (b) 6. is created to read:  
18

19 ATCP 50.62 (1) (b) 6. A waste transfer system as defined in s. ATCP 50.93 (1).

20 **SECTION 122.** ATCP 50.62 (1) (e) 1. and 3. are amended to read:

21 ATCP 50.62 (1) (e) 1. A milking center waste control system, except for the system  
22 component used to transfer the waste to manure storage.

23 3. A barnyard runoff control system as defined in s. ATCP 50.64 (1), except for the  
24 system component used to transfer the waste to manure storage.

25 **SECTION 123.** ATCP 50.62 (1) (e) 5. is created to read:

26 ATCP 50.62 (1) (e) 5. A feed storage system, except for the system component used to  
27 transfer leachate and contaminated runoff to manure storage.

1           **SECTION 124.** ATCP 50.62 (3) (d) (Note) and (5) (e) 1. to 5. are amended to read:

2           ATCP 50.62 (3) (d) **Note:** The NRCS technical guide ~~nutrient management~~ standard 590  
3           ~~(September, 2005) is reproduced in Appendix D~~ is on file with the department  
4           and the legislative reference bureau. Copies can be obtained by visiting the  
5           department website at: <http://datcp.wi.gov/ATCP50> or by calling (608) 224-4622.  
6           The feasibility of applying manure to land under par. (d) will be determined in  
7           light of existing topographic, climatological and management factors.

8  
9           (5) (e) 1. NRCS technical guide waste storage facility standard 313 ~~(December, 2005)~~  
10          (June, 2013).

11           2. NRCS technical guide ~~manure~~ waste transfer standard 634 ~~(February, 2007)~~  
12          (September, 2012).

13           3. NRCS technical guide water well decommissioning standard 351 ~~(May, 2008)~~ (June,  
14          2011).

15           4. NRCS technical guide ~~fencing~~ fence standard 382 ~~(November, 1999)~~ (September,  
16          2010).

17           5. NRCS technical guide heavy use area protection standard 561 ~~(October, 2007)~~  
18          (January, 2011).

19           **SECTION 125.** ATCP 50.62 (5) (e) 6. is renumbered ATCP 50.62 (5) (e) 9.

20           **SECTION 126.** ATCP 50.62 (5) (e) 6. (Note) is repealed.

21           **SECTION 127.** ATCP 50.62 (5) (e) 6. to 8. are created to read:

22           ATCP 50.62 (5) (e) 6. NRCS technical guide pond sealing or lining – flexible membrane  
23          standard 521A (September, 2012).

24           7. NRCS technical guide pond sealing or lining-bentonite sealant standard 521C  
25          (January, 2011).

26           8. NRCS technical guide pond sealing or lining – compacted clay treatment standard  
27          521D (September, 2012)



1           **SECTION 128.** ATCP 50.62 (5) (em) is created to read:

2           ATCP 50.62 (5) (em) The landowner agrees, in writing, to maintain the original storage  
3 capacity, measured in days per year, of the cost-shared practice for the 10 year maintenance  
4 period of the cost-share contract. If more animals are added during the 10 year maintenance  
5 period, all of the following provisions apply:

6           1. The landowner is responsible, at his or her own cost, for construction of any additional  
7 storage necessary to maintain the same number of days of storage capacity if the landowner's  
8 nutrient management plan cannot be modified to allow for land spreading of the additional  
9 manure from the expanded livestock operation.

10          2. The landowner may be required to add manure storage capacity without an offer of  
11 cost-sharing, notwithstanding s. ATCP 50.08.

12           **SECTION 129.** ATCP 50.62 (5) (f) is amended to read:

13           ATCP 50.62 (5) (f) The landowner establishes a nutrient management plan, and agrees to  
14 comply with that plan and maintain the manure storage system for 10 years unless the landowner  
15 discontinues the animal feeding operation ~~is discontinued~~.

16           **SECTION 130.** ATCP 50.62 (5) (f) (Note) is created to read:

17           ATCP 50.62 (5) (f) **Note:** The landowner must provide to the county a completed  
18 nutrient management checklist to receive cost-share payment for this practice and  
19 must provide an updated checklist for each year of the maintenance period. A  
20 person may obtain a copy of the checklist from the county conservation office or  
21 by visiting the department website at: <http://datcp.wi.gov/ATCP50>, or by  
22 contacting the department in writing at:

23  
24                   Wisconsin Department of Agriculture, Trade and Consumer Protection  
25                   Division of Agricultural Resource Management  
26                   P.O. Box 8911  
27                   Madison, WI 53708-8911  
28                   Email: [datcpnutrientmanagement@wisconsin.gov](mailto:datcpnutrientmanagement@wisconsin.gov)  
29

30           **SECTION 131.** ATCP 50.63 (5) is amended to read:

1 ATCP 50.63 (5) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under  
2 s. ATCP 50.40 may not reimburse any costs related to the closure of a manure storage system  
3 unless the closure plan complies with NRCS ~~closure of waste impoundments~~facility closure  
4 standard 360 ~~(November, 2006)~~(March, 2013).

5 **SECTION 132.** ATCP 50.63 (5) (Note) is repealed.

6 **SECTION 133.** ATCP 50.64 (1) (a), (b) and (e) are amended to read:

7 ATCP 50.64 (1) (a) Access ~~roads or cattle crossings~~ road under s. ATCP 50.65.

8 (b) ~~Animal trails~~ Trails and walkways under s. ATCP 50.66.

9 (e) Heavy use area protection ~~under s. ATCP 50.74~~ described in NRCS technical guide  
10 heavy use area protection standard 561 (January, 2011).

11 **SECTION 134.** ATCP 50.64 (1) (v) (Note) is created to read:

12 ATCP 50.64 (1) (v) **Note:** The NRCS technical guide standard 561 is on file with the  
13 department and the legislative reference bureau. Copies can be obtained by  
14 visiting the department website at: <http://datcp.wi.gov/ATCP50> or by calling  
15 (608) 224-4622.

16  
17 **SECTION 135.** ATCP 50.64 (5) (a) and (b) are amended to read:

18 ATCP 50.64 (5) (a) The system complies with applicable design, construction and  
19 maintenance standards under this subchapter and NRCS technical guide heavy use area  
20 protection standard 561 (January, 2011).

21 (b) The landowner agrees to ~~maintain~~ a 10 year maintenance period for the barnyard  
22 runoff control system, and ~~the~~ any nutrient management plan if required under par. (c), for 10  
23 years unless the landowner discontinues the animal feeding operation is discontinued.

24 **SECTION 136.** ATCP 50.64 (5) (c) and (second Note) are created to read:

1 ATCP 50.64 (5) (c) The landowner agrees to maintain a nutrient management plan for 10  
2 years if the landowner receives more than \$25,000 in DATCP cost-share payments for the runoff  
3 control system.

4 **(second) Note:** The NRCS technical guide standard 561 is on file with the department  
5 and the legislative reference bureau. Copies can be obtained by visiting the  
6 department website at: <http://datcp.wi.gov/ATCP50> or by calling (608) 224-4622.  
7

8 **SECTION 137.** ATCP 50.65 (title), (1) and (2) are amended to read:

9 ATCP 50.65 (title) ~~Access roads and cattle crossings~~ **road.** (1) DEFINITION. In this  
10 section, “access road ~~or cattle crossing~~” means a road or pathway ~~which~~ that confines or directs  
11 the movement of livestock ~~or~~, farm equipment or vehicular traffic, and ~~which~~ that is designed  
12 and installed to control surface water runoff, to protect an installed practice, ~~to control livestock~~  
13 ~~access to a stream or waterway, to stabilize a stream crossing,~~ or to prevent erosion.

14 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the cost of  
15 ~~establishing~~ installing conservation practices necessary to prevent water quality impairment that  
16 may result from the construction of an access road ~~or cattle crossing~~ if the access road ~~or cattle~~  
17 ~~crossing~~ is needed to comply with applicable state or local regulations.

18 **SECTION 138.** ATCP 50.65 (2) (Note) and (2m) are created to read:

19 ATCP 50.65 (2) **Note:** An eligible practice could be a culvert.  
20

21 (2m) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not be used to  
22 cover the costs for road surfacing and other road construction activities beyond the area  
23 necessary to address the soil and water resource problem for which the practice was installed.

24 **SECTION 139.** ATCP 50.65 (3) (intro.), (a) and (Note) and (b) are amended to read:

25 ATCP 50.65 (3) (intro.) DESIGN, CONSTRUCTION AND MAINTENANCE STANDARDS. A cost-  
26 share grant under s. ATCP 50.40 may not reimburse the cost of establishing water quality

1 practices associated with an access road or cattle crossing unless all of the following conditions  
2 are met:

3 (a) The access road ~~or cattle crossing~~ complies with all of the following that apply:

4 1. NRCS technical guide access road standard 560 (~~August, 2006~~)(September, 2010).

5 2. NRCS technical guide streambank and shoreline protection standard 580 (~~December,~~  
6 ~~2005~~)(November, 2009).

7 ~~3. NRCS technical guide fence standard 382 (November 1999).~~

8 **Note:** ~~For information on how to obtain NRCS technical guide standards, including any~~  
9 ~~secondary standards incorporated by reference in those standards, When an access~~  
10 ~~road crosses a stream, see Appendix Gs. ATCP 50.885.~~

11 (b) The landowner agrees to maintain the access road ~~or cattle crossing~~ practice for 10  
12 years unless farming operations on the affected land are discontinued or the practice is no longer  
13 required to prevent the soil and water resource problem for which the practice was installed.

14 **SECTION 140.** ATCP 50.66 (title), (1), (2), (3) (intro.) and (a) are amended to read:

15 ATCP 50.66 (title) ~~Animal trails~~ **Trails and walkways.** (1) DEFINITION. In this section,  
16 “~~animal~~ trail or walkway” means a travel lane to facilitate movement of livestock or people.

17 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the cost of  
18 establishing ~~an animal~~ a trail or walkway when necessary to comply with state or local  
19 regulations.

20 (3) (intro.) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s.  
21 ATCP 50.40 may not reimburse the cost of establishing ~~an animal~~ a trail or walkway unless all  
22 of the following conditions are met:

23 (a) The ~~animal~~ trail or walkway complies with all of the following that apply:

1 1. NRCS technical guide animal trails and walkways standard 575 (~~August,~~  
2 ~~2006~~)(November, 2012).

3 2. NRCS technical guide streambank and shoreline protection standard 580 (~~December,~~  
4 ~~2005~~)(November, 2009).

5 3. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

6 **SECTION 141.** ATCP 50.66 (3) (a) 3. (Note) is renumbered ATCP 50.66 (3) (a) 4. (Note)  
7 and amended to read:

8 ATCP 50.66 (3) (a) 4. **Note:** ~~For information on how to obtain~~ When an access road  
9 crosses a stream, see s. ATCP 50.885.

10 ~~NRCS technical guide standards, including any secondary standards incorporated~~  
11 ~~by reference in those standards see Appendix G.~~

12  
13  
14 **SECTION 142.** ATCP 50.66 (3) (a) 4. is created to read:

15 ATCP 50.66 (3) (a) 4. NRCS technical guide trails and walkways standard 568  
16 (December, 2010).

17 **SECTION 143.** ATCP 50.66 (3) (b) is amended to read:

18 ATCP 50.66 (3) (b) The landowner agrees to maintain the ~~animal~~ trail or walkway for 10  
19 years unless farming operations on the affected land are discontinued or the practice is no longer  
20 required to prevent the soil and water resource problem for which the practice was installed.

21 **SECTION 144.** ATCP 50.67 (3) (a), (b) and (c) are amended to read:

22 ATCP 50.67 (3) (a) NRCS technical guide contour farming standard 330 (~~May,~~  
23 ~~2002~~)(November, 2008).

24 (b) NRCS technical guide obstruction removal standard 500 (~~May, 2002~~)(December,  
25 2010).

1 (c) NRCS technical guide ~~standard-wildlife~~ upland wildlife habitat management standard  
2 645 (~~July, 2000~~)(January, 2013), if habitat management is used to mitigate the loss of habitat  
3 resulting from the installation of contour farming.

4 **SECTION 145.** ATCP 50.67 (3) (c) (Note) is repealed.

5 **SECTION 146.** ATCP 50.68 (4) (a) is amended to read:

6 ATCP 50.68 (4) (a) The cropland cover meets NRCS technical guide cover crop standard  
7 340 (~~June, 2002~~)(February, 2012).

8 **SECTION 147.** ATCP 50.68 (4) (a) (Note) is repealed.

9 **SECTION 148.** ATCP 50.69 (1) and (4) (a) 1. to 7. are amended to read:

10 ATCP 50.69 (1) DEFINITION. In this section, “critical area stabilization” means planting  
11 suitable vegetation on erodible areas such as steep slopes; and gullies ~~and roadsides~~, so as to  
12 reduce soil erosion or pollution from agricultural nonpoint sources. “Critical area stabilization”  
13 may also include treating areas that drain into bedrock crevices, openings or sinkholes.

14 (4) (a) 1. NRCS technical guide critical area planting standard 342 (~~June, 2002~~)(January,  
15 2013).

16 2. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

17 3. NRCS technical guide field border standard 386 (~~May, 2002~~)(November, 2009).

18 4. NRCS technical guide ~~use-exclusion~~ access control standard 472 (~~June,~~  
19 2002)(October, 2008).

20 5. NRCS technical guide mulching standard 484 (~~June, 2002~~)(March, 2013).

21 6. NRCS technical guide tree/shrub establishment standard 612 (~~April, 2003~~)(July,  
22 2011).

1           7. NRCS technical guide karst sinkhole treatment standard 725527 (~~March,~~  
2 ~~2000~~)(December, 2010).

3           **SECTION 149.** ATCP 50.69 (4) (a) 7. (Note) is repealed.

4           **SECTION 150.** ATCP 50.69 (4) (b) is amended to read:

5           ATCP 50.69 (4) (b) The landowner agrees to maintain the critical area stabilization  
6 practice for 10 years unless farming operations on the affected land are discontinued or the  
7 practice is no longer required to prevent the soil and water resource problem for which the  
8 practice was installed.

9           **SECTION 151.** ATCP 50.70 (4) (b) 1. to 9. are amended to read:

10           ATCP 50.70 (4) (b) 1. NRCS technical guide critical area planting standard 342 (~~June,~~  
11 ~~2002~~)(January, 2013).

12           2. NRCS technical guide diversion standard 362 (~~August, 2006~~)(December, 2010).

13           3. NRCS technical guide fence standard 382 (~~November, 1999~~) (September, 2010).

14           4. NRCS technical guide grassed waterway standard 412 (~~June, 2008~~) (January, 2011).

15           5. NRCS technical guide lined waterway or outlet standard 468 (~~August, 2006~~)(March,  
16 2013).

17           6. NRCS technical guide obstruction removal standard 500 (~~May, 2002~~) (December,  
18 2010).

19           7. NRCS technical guide subsurface drain standard 606 (~~June, 2002~~) (October, 2012).

20           8. NRCS technical guide underground outlet standard 620 (~~May, 2002~~) (January, 2011).

21           9. NRCS technical guide ~~wildlife~~ upland wildlife habitat management standard 645  
22 (~~July, 2000~~)(January, 2013).

23           **SECTION 152.** ATCP 50.70 (4) (b) 9. (Note) is repealed.

1           **SECTION 153.** ATCP 50.705 is created to read:

2           ATCP 50.705 **Feed storage runoff control systems.** (1) DEFINITIONS. In this section:

3           (a) “Feed storage area” means an area used to store livestock feed including corn silage,  
4           haylage, and industrial by-products including distillers grain, brewers grain, candy, pizza crust,  
5           bakery waste, cotton seed, soybean meal, animal fats, blood meal, fish meal, cannery waste, beet  
6           pulp, citrus pulp, soy hulls, corn middlings, whey, potatoes, and grocery store vegetables. The  
7           feed storage area includes the area up to the outside edge of the surface on which the feed is  
8           stored and any apron area.

9           (b) “Feed storage runoff control system” means a system of facilities or practices to  
10          contain, divert, retard, treat or otherwise control the discharge of leachate and contaminated  
11          runoff from livestock feed storage areas.

12          (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse any of the  
13          following costs related to a feed storage runoff control system:

14               (a) Costs for diversion of clean water from the storage area.

15               (b) Costs for conduits, permanent pumps and related equipment required to collect,  
16               transfer and store discharges of leachate and contaminated runoff including subsurface and  
17               surface discharges.

18               (c) Costs for preparation of a site for a runoff treatment area and establishment of  
19               permanent vegetative cover.

20          (3) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not reimburse any  
21          of the following costs related to a feed storage runoff control system:

22               (a) Costs for any system, component or practice that is not required to correct an  
23               identified water pollution hazard.



1 (b) Buildings or modifications to buildings.

2 (c) Portable equipment to pump or spread feed storage runoff onto land or to incorporate  
3 those wastes into land.

4 (d) A non-permanent storage area allowed under NRCS technical guide waste treatment  
5 standard 629 (March, 2013).

6 (e) Areas used to store feeds considered dry, at 40% moisture or less, if the storage areas  
7 are protected from precipitation.

8 (4) FEED STORAGE RUNOFF CONTROL SYSTEMS; GRANT DISQUALIFICATION. A county land  
9 conservation committee may not award a cost-share grant for a feed storage runoff control  
10 system if any of the following apply:

11 (a) The landowner intentionally aggravated a pollution discharge from the animal  
12 feeding operation.

13 (b) The landowner could have prevented the discharge of pollutants through improved  
14 management practices at nominal cost.

15 (c) The landowner holds, or is required to apply for, a Wisconsin pollution discharge  
16 elimination system permit for the animal feeding operation under s. 283.31, Stats.

17 (d) The landowner could have prevented the discharge of pollutants by complying with  
18 an operations and maintenance plan previously agreed upon by the landowner and one of the  
19 following:

20 1. The department.

21 2. The county land conservation committee.

22 3. DNR.

23 4. NRCS.

1 (5) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant may not reimburse  
2 any costs related to a feed storage runoff control system unless all of the following conditions are  
3 met:

4 (a) The system complies with all of the following that apply:

- 5 1. NRCS technical guide waste storage facility standard 313 (June, 2013).
- 6 2. NRCS technical guide waste treatment standard 629 (March, 2013).
- 7 3. NRCS technical guide waste transfer standard 634 (September, 2012).
- 8 4. NRCS technical guide vegetated treatment area standard 635 (September, 2012).
- 9 5. NRCS technical guide wetland restoration standard 657 (September, 2000).
- 10 6. NRCS technical guide nutrient management standard 590 (September, 2005).
- 11 7. NRCS technical guide diversion standard 362 (December, 2010).
- 12 8. Other standards specified by the department.

13 **Note:** Additional regulatory requirements may apply for runoff control systems  
14 including s. NR 213.13 requirements for sweet corn silage stacks of greater than  
15 150 tons, and s. ATCP 51.20 (3) requirements for livestock facilities required to  
16 obtain a siting permit.

17  
18 (b) The landowner agrees to a 10 year maintenance period for a feed storage runoff  
19 control system, and a nutrient management plan, if runoff is collected from a feed storage area  
20 over 1 acre in size and the runoff is not transferred to a manure storage system. The maintenance  
21 period does not apply if the animal feeding operation is discontinued.

22 **Note:** To comply with the process wastewater performance standard in s. NR 151.055  
23 for feed storage, landowners may install conservation practices or make  
24 management changes, without making significant structural changes, as long as  
25 the landowner reduces the level of discharge below the “significant” threshold, as  
26 determined in s. NR 151.055 (3). However, when state cost-share funds are  
27 available, landowners should be provided cost-sharing to install the suite of  
28 practices that both correct and prevent discharges, ensuring adequate protection of  
29 groundwater and surface water. Farms with small storage areas have lower cost  
30 options to meet the technical standards.

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**SECTION 154.** ATCP 50.71 (1) and (3) (b) 1. to 3. are amended to read:

ATCP 50.71 (1) DEFINITION. In this section, “field windbreak” means a strip or belt of trees, shrubs or grasses established or ~~restored~~renovated within or adjacent to a field, so as to control soil erosion by reducing wind velocities at the land surface.

(3) (b) 1. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

2. NRCS technical guide ~~windbreak/shelterbreak~~ windbreak/shelterbelt establishment standard 380 (~~June, 2002~~)(November, 2011).

3. NRCS technical guide ~~use-exclusion~~ access control standard 472 (~~June, 2002~~)(October, 2008).

**SECTION 155.** ATCP 50.71 (3) (b) 3. (Note) is repealed.

**SECTION 156.** ATCP 50.71 (3) (b) 4. is created to read:

ATCP 50.71 (3) (b) 4. NRCS technical guide windbreak/shelterbelt renovation standard 650 (January, 2013).

**SECTION 157.** ATCP 50.72 (3) (a) 1. to 3., and 5. to 7. are amended to read:

ATCP 50.72 (3) (a) 1. NRCS technical guide critical area planting standard 342 (~~June, 2002~~)(January, 2013).

2. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

3. NRCS technical guide field border standard 386 (~~May, 2002~~)(November, 2009).

5. NRCS technical guide ~~use-exclusion~~ access control standard 472 (~~June, 2002~~)(October, 2008).

6. NRCS technical guide mulching standard 484 (~~June, 2002~~)(March, 2013).

1 7. NRCS technical guide riparian forest buffer standard 391 (~~January, 2001~~)(January,  
2 2013).

3 **SECTION 158.** ATCP 50.72 (3) (a) 7. (Note) is repealed.

4 **SECTION 159.** ATCP 50.73 (3) (d) 1. to 12. are amended to read:

5 ATCP 50.73 (3) (d) 1. NRCS technical guide critical area planting standard 342 (~~June,~~  
6 ~~2002~~)(January, 2013).

7 2. NRCS technical guide sediment basin standard 350 (~~August, 2008~~)(December, 2010).

8 3. NRCS technical guide diversion standard 362 (~~August, 2006~~)(December, 2010).

9 4. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

10 5. NRCS technical guide obstruction removal standard 500 (~~May, 2002~~)(December,  
11 2010).

12 6. NRCS technical guide grade stabilization structure standard 410 (~~July, 2001~~)(January,  
13 2010).

14 7. NRCS technical guide grassed waterway standard 412 (~~June, 2008~~)(January, 2011).

15 8. NRCS technical guide lined waterway or outlet standard 468 (~~August, 2006~~)(March,  
16 2013).

17 9. NRCS technical guide mulching standard 484 (~~June, 2002~~)(March, 2013).

18 10. NRCS technical guide subsurface drain standard 606 (~~June, 2002~~)(October, 2012).

19 11. NRCS technical guide underground outlet standard 620 (~~May, 2002~~)(January,  
20 2011).

21 12. NRCS technical guide water and sediment control basin standard 638 (~~July, 2001~~)  
22 (January, 2011).

23 **SECTION 160.** ATCP 50.73 (3) (d) 12. (Note) is repealed.

1           **SECTION 161.** ATCP 50.74 is repealed.

2           **SECTION 162.** ATCP 50.75 (4) (a) 1. and 2. are amended to read:

3           ATCP 50.75 (4) (a) 1. NRCS technical guide fence standard 382 (~~November,~~  
4 ~~1999~~)(September, 2010).

5           2. NRCS technical guide ~~use exclusion~~ access control standard 472 (~~June,~~  
6 ~~2002~~)(October, 2008).

7           **SECTION 163.** ATCP 50.75 (4) (a) 2. (Note) is repealed.

8           **SECTION 164.** ATCP 50.76 (5) (a) 2. to 4. are amended to read:

9           ATCP 50.76 (5) (a) 2. NRCS technical guide watering facility standard 614 (~~April,~~  
10 ~~2002~~)(May, 2011).

11           3. NRCS technical guide water well standard 642 (~~May, 2005~~)(April, 2011).

12           4. NRCS technical guide livestock pipeline standard 516 (~~April, 2002~~)(October, 2012).

13           **SECTION 165.** ATCP 50.76 (5) (a) 5. (Note) is repealed.

14           **SECTION 166.** ATCP 50.76 (5) (a) 6. and 7. are created to read:

15           ATCP 50.76 (5) (a) 6. NRCS technical guide heavy use area protection standard 561  
16 (January, 2011).

17           7. NRCS technical guide pumping plant standard 533 (July, 2011).

18           **SECTION 167.** ATCP 50.77 (4) (a) 1. and (Note), and 2. to 4. are amended to read:

19           ATCP 50.77 (4) (a) 1. ~~The University of Wisconsin Extension pollution control guide~~  
20 ~~for milking~~ Milking center waste water management, UWEX publication A3592 (July, 1994)  
21 wastewater guidelines, a companion document to Wisconsin NRCS standard 629 (June, 2009).

22           **Note:** ~~The UW extension pollution control guide for~~ Copies of milking center waste  
23 ~~water management wastewater guidelines, a companion document to Wisconsin~~  
24 NRCS standard 629 (June, 2009) is are on file with the department and the  
25 ~~legislative reference bureau. Copies may be purchased from the department or the~~

1 University of Wisconsin Extension (UWEX Pub. No. A3592). For further  
2 information, see Appendix G and can be obtained by visiting the department  
3 website at: <http://datcp.wi.gov/ATCP50> or by calling (608) 224-4622. For printed  
4 copies contact the Wisconsin state NRCS office at (608) 662-4422.  
5

6 2. NRCS technical guide waste treatment standard 629 (~~August, 2008~~)(March, 2013)

7 3. NRCS technical guide waste storage facility standard 313 (~~December, 2005~~)(June,  
8 2013).

9 4. NRCS technical guide ~~manure~~ waste transfer standard 634 (~~February, 2007~~)  
10 (September, 2012).

11 **SECTION 168.** ATCP 50.77 (4) (a) 5. (Note) is repealed.

12 **SECTION 169.** ATCP 50.77 (4) (a) 6. and 7. are created to read:

13 ATCP 50.77 (4) (a) 6. NRCS technical guide vegetated treatment area standard 635  
14 (September, 2012).

15 7. NRCS technical guide constructed wetland standard 656 (September, 2012).

16 **SECTION 170.** ATCP 50.78 (3) (a) (Note) is amended to read:

17 ATCP 50.78 (3) (a) **Note:** The NRCS technical guide nutrient management standard 590  
18 (September, 2005) ~~is reproduced in Appendix D~~ can be obtained by visiting the  
19 department website at: <http://datcp.wi.gov/ATCP50> or by calling (608) 224-4622.  
20

21 **SECTION 171.** ATCP 50.79 (2) (intro.) and (3) (a) 1., and (b) are amended to read:

22 ATCP 50.79 (2) (intro.) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may  
23 reimburse costs for pesticide management described in a pesticide management plan, if required,  
24 or described in the plan for the design of a pesticide structure. A cost-share grant may reimburse  
25 any of the following costs related to pesticide management:

26 (3) (a) 1. NRCS technical guide integrated pest management standard 595 (~~June,~~  
27 ~~2003~~)(January, 2013).

1 (b) The landowner agrees to maintain the pesticide management ~~practice plan, if~~  
2 ~~required, for each cropping season for which cost sharing is provided~~ the duration specified in  
3 the cost-share contract, and to maintain any structures for 10 years unless farming operations on  
4 the affected land are discontinued.

5 **SECTION 172.** ATCP 50.80 (3) (a) 1. to 6., 7. (Note) and 8. are amended to read:

6 ATCP 50.80 (3) (a) 1. NRCS technical guide critical area planting standard 342 (~~June,~~  
7 ~~2002~~)(January, 2013).

8 2. NRCS technical guide ~~pasture and hayland~~ forage and biomass planting standard 512  
9 (~~June, 2002~~)(January, 2013).

10 3. NRCS technical guide ~~use exclusion~~ access control standard 472 (~~June, 2002~~)  
11 (October, 2008).

12 4. NRCS technical guide streambank and shoreline protection standard 580 (~~December,~~  
13 ~~2005~~)(November, 2009).

14 5. NRCS technical guide heavy use area protection standard 561 (~~August,~~  
15 ~~2008~~)(January, 2011).

16 6. NRCS technical guide prescribed grazing standard (managed grazing-Wisconsin) 528  
17 (~~December, 2005~~)(December, 2008).

18 7. **Note:** Copies of “Pastures for profit: a guide to rotational grazing” are on file with the  
19 department and the legislative reference bureau. Copies may be ~~purchased from~~  
20 ~~the department or~~ obtained from the University of Wisconsin-Extension (UWEX  
21 Pub. No. A3529). ~~For further information, see Appendix G.~~  
22

23 8. NRCS technical guide animal trails and walkways standard 575 (~~August,~~  
24 ~~2006~~)(November, 2012).

25 **SECTION 173.** ATCP 50.80 (3) (a) 9. (Note) is repealed.

26 **SECTION 174.** ATCP 50.82 (4) (c) 1. to 3. are amended to read:

1           ATCP 50.82 (4) (c) 1. NRCS technical guide residue and tillage management-no till/strip  
2 till/direct seed standard 329 (~~October, 2006~~)(January, 2012).

3           2. NRCS technical guide residue and tillage management-mulch till standard 345  
4 (~~October, 2006~~)(January, 2012).

5           3. NRCS technical guide residue management-seasonal standard 344 (~~October, 2006~~)  
6 (January, 2012).

7           **SECTION 175.** ATCP 50.82 (4) (c) 3. (Note) is repealed.

8           **SECTION 176.** ATCP 50.82 (4) (c) 4. is created to read:

9           ATCP 50.82 (4) (c) 4. NRCS technical guide residue and tillage management-ridge till  
10 standard 346 (January, 2012).

11           **SECTION 177.** ATCP 50.83 (3) (a) 1. to 3., 5. to 7. and 9. are amended to read:

12           ATCP 50.83 (3) (a) 1. NRCS technical guide critical area planting standard 342 (~~June,~~  
13 ~~2002~~)(January, 2013).

14           2. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

15           3. NRCS technical guide field border standard 386 (~~May, 2002~~)(November, 2009).

16           5. NRCS technical guide ~~use exclusion~~ access control standard 472 (~~June, 2002~~)  
17 (October, 2008).

18           6. NRCS technical guide mulching standard 484 (~~June, 2002~~)(March, 2013).

19           7. NRCS technical guide riparian forest buffer standard 391 (~~January, 2004~~)(January,  
20 2013).

21           9. NRCS technical guide ~~wildlife~~ upland wildlife habitat management standard 645  
22 (~~July, 2000~~)(January, 2013).

23           **SECTION 178.** ATCP 50.83 (3) (a) 9. (Note) is repealed.



1           **SECTION 179.** ATCP 50.84 (5) (a) is amended to read:

2           ATCP 50.84 (5) (a) The roof complies with ~~the American Society of Civil Engineers,~~  
3           ~~“Minimum Design Loads for Buildings and Other Structures,” ASCE/SEI 7-05 (2006)~~ NRCS  
4           technical guide roofs and covers standard 367 (October, 2011).

5           **SECTION 180.** ATCP 50.84 (5) (a) (Note) is repealed.

6           **SECTION 181.** ATCP 50.85 (4) (a) 1. and 2. are amended to read:

7           ATCP 50.85 (4) (a) 1. NRCS technical guide roof runoff structure standard 558 ~~(January,~~  
8           ~~2008)~~(September, 2010).

9           2. NRCS technical guide underground outlet standard 620 ~~(May, 2002)~~(January, 2011).

10          **SECTION 182.** ATCP 50.85 (4) (a) 2. (Note) is repealed.

11          **SECTION 183.** ATCP 50.86 (4) (b) 1. to 8. and (first Note) are amended to read:

12          ATCP 50.86 (4) (b) 1. NRCS technical guide critical area planting standard 342 ~~(June,~~  
13          ~~2002)~~(January, 2013).

14          2. NRCS technical guide sediment basin standard 350 ~~(August, 2008)~~(December, 2010).

15          3. NRCS technical guide ~~manure-waste~~ transfer standard 634 ~~(February,~~  
16          ~~2007)~~(September, 2012).

17          4. NRCS technical guide fence standard 382 ~~(November, 1999)~~(September, 2010).

18          5. NRCS technical guide vegetated treatment area standard 635 ~~(August, 2008)~~  
19          (September, 2012).

20          6. NRCS technical guide heavy use area protection standard 561 ~~(August, 2008)~~  
21          (January, 2011).

22          7. NRCS technical guide underground outlet standard 620 ~~(May, 2002)~~(January, 2011).

1 8. Wisconsin DNR conservation practice standard 1001, wet detention basin (~~June,~~  
2 ~~1999~~)(October, 2007).

3 (first) **Note:** Copies of the DNR conservation practice standard 1001 are on file with the  
4 department and the legislative reference bureau. Copies may be obtained ~~from~~  
5 ~~DNR or the department. For more information, see Appendix G by visiting the~~  
6 DNR website at: <http://dnr.wi.gov/topic/stormwater/standards/index.html>.  
7

8 **SECTION 184.** ATCP 50.86 (4) (b) 8. (second Note) is repealed.

9 **SECTION 185.** ATCP 50.87 (4) (a) 1. to 3. are amended to read:

10 ATCP 50.87 (4) (a) 1. NRCS technical guide karst sinkhole treatment standard 725  
11 ~~(March, 2000)~~(December, 2010).

12 2. NRCS technical guide diversion standard 362 ~~(August, 2006)~~(December, 2010).

13 3. NRCS technical guide grassed waterway standard 412 ~~(June, 2008)~~(January, 2011).

14 **SECTION 186.** ATCP 50.87 (4) (a) 3. (Note) is repealed.

15 **SECTION 187.** ATCP 50.88 (title) and (1) are amended to read:

16 ATCP 50.88 (title) **Streambank andor shoreline protection.** (1) DEFINITION. In this  
17 section, “streambank-~~and~~or shoreline protection” means ~~using vegetation or structures~~  
18 waterbody-specific treatments used to stabilize and protect the eroding banks of streams or  
19 constructed channels, and shorelines of lakes, reservoirs or estuaries, ~~or excavated channels~~  
20 ~~against scour and erosion, or to~~The practice is designed and installed to provide water quality  
21 benefits or control soil erosion including degradation from livestock and may protect fish habitat  
22 ~~and water quality from degradation due to livestock access as an incidental benefit.~~ Streambank  
23 or shoreline protection may include any of the following components:

24 **SECTION 188.** ATCP 50.88 (1) (a) to (h) are created to read:

25 ATCP 50.88 (1) (a) Critical area stabilization under s. ATCP 50.69.

26 (b) Diversions under s. ATCP 50.70.

- 1 (c) Grade stabilization under s. ATCP 50.73.
- 2 (d) Riparian buffers under s. ATCP 50.83.
- 3 (e) Roof runoff systems under s. ATCP 50.85.
- 4 (f) Subsurface drain under s. ATCP 50.90.
- 5 (g) Underground outlet under s. ATCP 50.92.
- 6 (h) Wetland development or restoration under s. ATCP 50.98.

7 **SECTION 189.** ATCP 50.88 (2) (intro.) is amended to read:

8 ATCP 50.88 (2) (intro.) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may  
9 reimburse any of the following costs related to streambank ~~and~~ or shoreline protection:

10 **SECTION 190.** ATCP 50.88 (2) (a) is repealed.

11 **SECTION 191.** ATCP 50.88 (2) (b) is renumbered ATCP 50.88 (2) (a) and amended to  
12 read:

13 ATCP 50.88 (2) (a) Costs to install new soil bioengineering and structural treatments  
14 including rock riprap. Wood chunks, unsorted demolition material, brick, plaster, blacktop and  
15 other materials that may produce leachates may not be used as riprap. A cost-share grant may  
16 reimburse costs for rock and timber riprap used to establish fish habitat, in combination with the  
17 restoration of a riparian buffer and as part of a streambank ~~and~~ or shoreline protection scheme,  
18 provided that reimbursement for fish habitat does not exceed 25% of the cost-share grant.

19 **SECTION 192.** ATCP 50.88 (2) (c) is renumbered ATCP 50.88 (2) (b).

20 **SECTION 193.** ATCP 50.88 (2) (c) (Note) is created to read:

21 ATCP 50.88 (2) (c) **Note:** Additional cost-shared practices may be combined with this  
22 practice to fully address the environmental problems at the site and protect the  
23 natural resource. Where appropriate, additional practices may include fencing (s.  
24 ATCP 50.75) to exclude livestock, water pumps or other facilities (s. ATCP  
25 50.76) if this is the most cost-effective way to deliver water to livestock excluded

1 from access to surface water, or stream crossings (s. ATCP 50.885) to minimize  
2 disturbance at points of entry to a stream.

3  
4 **SECTION 194.** ATCP 50.88 (2) (d) is repealed.

5 **SECTION 195.** ATCP 50.88 (2) (e) is renumbered ATCP 50.88 (2) (c).

6 **SECTION 196.** ATCP 50.88 (2) (f) is repealed:

7 **SECTION 197.** ATCP 50.88 (2m) is created to read:

8 ATCP 50.88 (2m) INELIGIBLE COSTS. Except for violations of this chapter or ch. NR  
9 151, a cost-share grant under s. ATCP 50.40 may not reimburse costs related to mitigation or  
10 correction of a violation of state or local laws.

11 **SECTION 198.** ATCP 50.88 (3) (a) 1. to 5. are amended to read:

12 ATCP 50.88 (3) (a) 1. NRCS technical guide critical area planting standard 342 (~~June,~~  
13 ~~2002~~)(January, 2013).

14 2. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

15 3. NRCS technical guide streambank and shoreline protection standard 580 (~~December,~~  
16 ~~2005~~)(November, 2009).

17 4. NRCS technical guide tree/shrub establishment standard 612 (~~April, 2003~~)(July,  
18 2011).

19 5. NRCS technical guide heavy use area protection standard 561 (~~August,~~  
20 ~~2008~~)(January, 2011).

21 **SECTION 199.** ATCP 50.88 (3) (a) 5. (Note) is repealed.

22 **SECTION 200.** ATCP 50.88 (3) (b) is repealed and recreated to read:

23 ATCP 50.88 (3) (b) Cost-share recipients shall obtain all required DNR permits before  
24 installing any practices. The department may require documentation that permits have been  
25 obtained before it makes reimbursements under this chapter.

1           **SECTION 201.** ATCP 50.88 (3) (c) is amended to read:

2           ATCP 50.88 (3) (c) The landowner agrees to maintain the streambank or shoreline  
3 protection for 10 years unless ~~farming operations on the affected land are discontinued~~the  
4 practice is no longer required to prevent the soil and water resource problem for which the  
5 practice was installed.

6           **SECTION 202.** ATCP 50.885 is created to read:

7           ATCP 50.885 **Stream Crossing.** (1) DEFINITION. In this section, “stream crossing”  
8 means a road or pathway which confines or directs the movement of livestock, farm equipment  
9 or vehicular traffic over a stream, and which is designed and installed to improve water quality,  
10 reduce erosion, protect an installed practice or control livestock access to a stream.

11           (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse any of the  
12 following costs related to a stream crossing:

13           (a) The costs of constructing a culvert, ford or other allowed stream crossing structure  
14 other than a bridge.

15           (b) The costs of installing conservation practices necessary to limit water quality  
16 impairment from a stream crossing.

17           (3) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not reimburse for  
18 the costs of a stream crossing if the traffic can be re-directed along another route that would not  
19 result in the same water quality impairment.

20           (4) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40  
21 may not reimburse the cost of establishing a stream crossing unless all of the following  
22 conditions are met:

23           (a) The stream crossing complies with all of the following that apply:

- 1 1. NRCS technical guide access road standard 560 (September, 2010).
- 2 2. NRCS technical guide streambank and shoreline protection standard 580 (November,
- 3 2009).
- 4 3. NRCS technical guide fence standard 382 (September, 2010).
- 5 4. NRCS technical guide stream crossing standard 578 (March, 2013).

6 (b) The landowner agrees to maintain the stream crossing for 10 years unless the farming

7 operations on the affected land are discontinued or the practice is no longer required to prevent

8 the soil and water resource problem for which the practice was installed.

9 **SECTION 203.** ATCP 50.89 (3) (b) 1. and 2. are amended to read:

10 ATCP 50.89 (3) (b) 1. NRCS technical guide obstruction removal standard 500 (~~May,~~

11 ~~2002~~)(December, 2010).

12 2. NRCS technical guide stripcropping standard 585 (~~June, 2002~~)(April, 2009).

13 **SECTION 204.** ATCP 50.89 (3) (b) 3., 4. and 4. (Note) are repealed.

14 **SECTION 205.** ATCP 50.90 (3) (b) 1. and 2. are amended to read:

15 ATCP 50.90 (3) (b) 1. NRCS technical guide subsurface drain standard 606 (~~June,~~

16 ~~2002~~)(October, 2012).

17 2. NRCS technical guide underground outlet standard 620 (~~May, 2002~~)(January, 2011).

18 **SECTION 206.** ATCP 50.90 (3) (b) 2. (Note) is repealed.

19 **SECTION 207.** ATCP 50.91 (3) (b) 1. to 8. are amended to read:

20 ATCP 50.91 (3) (b) 1. NRCS technical guide critical area planting standard 342 (~~June,~~

21 ~~2002~~)(January, 2013).

22 2. NRCS technical guide grassed waterway standard 412 (~~June, 2008~~)(January, 2011).

1 3. NRCS technical guide lined waterway or outlet standard 468 (~~August, 2006~~)(March,  
2 2013).

3 4. NRCS technical guide obstruction removal standard 500 (~~May, 2002~~)(December,  
4 2010).

5 5. NRCS technical guide terrace standard 600 (~~June, 2002~~)(December, 2010).

6 6. NRCS technical guide subsurface drain standard 606 (~~June, 2002~~)(October, 2012).

7 7. NRCS technical guide underground outlet standard 620 (~~May, 2002~~)(January, 2011).

8 8. NRCS technical guide water and sediment control basin standard 638 (~~July,~~  
9 ~~2001~~)(January, 2011).

10 **SECTION 208.** ATCP 50.91 (3) (b) 8. (Note) is repealed.

11 **SECTION 209.** ATCP 50.92 (3) (b) 1. and 2. are amended to read:

12 ATCP 50.92 (3) (b) 1. NRCS technical guide subsurface drain standard 606 (~~June,~~  
13 ~~2002~~)(October, 2012).

14 2. NRCS technical guide underground outlet standard 620 (~~May, 2002~~)(January, 2011).

15 **SECTION 210.** ATCP 50.92 (3) (b)2. (Note) is repealed.

16 **SECTION 211.** ATCP 50.93 (4) (a) 1. and 2. are amended to read:

17 ATCP 50.93 (4) (a) 1. NRCS technical guide ~~manure~~waste transfer standard 634  
18 (~~February, 2007~~)(September, 2012).

19 2. NRCS technical guide underground outlet standard 620 (~~May, 2002~~)(January, 2011).

20 **SECTION 212.** ATCP 50.93 (4) (a) 2. (Note) is repealed.

21 **SECTION 213.** ATCP 50.94 (3) (a) 1. to 5. are amended to read:

22 ATCP 50.94 (3) (a) 1. NRCS technical guide critical area planting standard 342 (~~June,~~  
23 ~~2002~~)(January, 2013).

- 1           2. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).
- 2           3. NRCS technical guide ~~use exclusion~~ access control standard 472 (~~June,~~
- 3 ~~2002~~)(October, 2008).
- 4           4. NRCS technical guide mulching standard 484 (~~June, 2002~~)(March, 2013).
- 5           5. NRCS technical guide vegetated treatment area standard 635 (~~August,~~
- 6 ~~2008~~)(September, 2012).
- 7           **SECTION 214.** ATCP 50.94 (3) (a) 5. (Note) is repealed.
- 8           **SECTION 215.** ATCP 50.95 (3) (a) 1. to 4. are amended to read:
- 9           ATCP 50.95 (3) (a) 1. NRCS technical guide critical area planting standard 342 (~~June,~~
- 10 ~~2002~~)(January, 2013).
- 11           2. NRCS technical guide fence standard 382 (~~November, 1999~~)
- 12 (September, 2010).
- 13           3. NRCS technical guide water and sediment control basin standard 638 (~~July,~~
- 14 ~~2001~~)(January, 2011).
- 15           4. NRCS technical guide underground outlet standard 620 (~~May, 2002~~)(January, 2011).
- 16           **SECTION 216.** ATCP 50.95 (3) (a) 4. (Note) is repealed.
- 17           **SECTION 217.** ATCP 50.96 (3) (b) 1. to 7. are amended to read:
- 18           ATCP 50.96 (3) (b) 1. NRCS technical guide critical area planting standard 342 (~~June,~~
- 19 ~~2002~~)(January, 2013).
- 20           2. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).
- 21           3. NRCS technical guide grassed waterway standard 412 (~~June, 2008~~)(January, 2011).
- 22           4. NRCS technical guide mulching standard 484 (~~June, 2002~~)(March, 2013).



1 5. NRCS technical guide obstruction removal standard 500 (~~May, 2002~~)(December,  
2 2010).

3 6. NRCS technical guide subsurface drain standard 606 (~~June, 2002~~)(October, 2012).

4 7. NRCS technical guide underground outlet standard 620 (~~May, 2002~~)(January, 2011).

5 **SECTION 218.** ATCP 50.96 (3) (b) 7. (Note) is repealed.

6 **SECTION 219.** ATCP 50.96 (3) (b) 8. is created to read:

7 ATCP 50.96 (3) (b) 8. NRCS technical guide lined waterway or outlet standard 468  
8 (March, 2013).

9 **SECTION 220.** ATCP 50.97 (3) (a) is amended to read:

10 ATCP 50.97 (3) (a) NRCS technical guide water well decommissioning standard 351  
11 (~~May, 2008~~)(June, 2011).

12 **SECTION 221.** ATCP 50.97 (3) (b) (Note) is repealed.

13 **SECTION 222.** ATCP 50.98 (3) (a) (Note) is repealed.

14 **SECTION 223.** Ch. ATCP 50, Appendices A to G are repealed.

15 **SECTION 224. EFFECTIVE DATE AND INITIAL APPLICABILITY.** This rule takes effect on  
16 the first day of the third month following publication in the Wisconsin administrative register, as  
17 provided under s. 227.22 (2), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By: \_\_\_\_\_  
Ben Brancel  
Secretary