



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: October 9, 2013

TO: The Honorable Mike Ellis
President, Wisconsin State Senate
Room 220 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable Robin Vos
Speaker, Wisconsin State Assembly
Room 211, West, State Capitol
PO Box 8952
Madison, WI 53708-895

FROM: Ben Brancel, Secretary
Department of Agriculture, Trade and Consumer Protection

**SUBJECT: Wisconsin Soil and Water Resource Management Program
(Clearinghouse Rule #13-016)**

Introduction

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is transmitting this rule for legislative committee review, as provided in s. 227.19 (2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19 (2), Stats.

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.

Agriculture generates \$59 billion for Wisconsin

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • Wisconsin.gov

An equal opportunity employer

Other changes in the rule are designed to improve administration of the Soil and Water Resource Management (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 full 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 could issue a notice of noncompliance if it found that a program participant was 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 15th 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 better implement farm conservation practices through 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 entities 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 of 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 part of a 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.

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.

Public Hearings

DATCP held five public hearings on the hearing draft rule as listed below:

- March 26, 2013, in Eau Claire
- March 27, 2013, in Appleton
- March 28, 2013, in Tomahawk
- April 3, 2013 in Platteville
- April 4, 2013 in Madison

DATCP accepted written comments until April 30, 2013. A total of 56 people attended and registered at the public hearings, and 49 people submitted written comments. The department received both general comments related to the rule as a whole and specific comments related to certain provisions within the rule. The general comments were largely supportive of the rule revisions. Specific comments ranged from requests for modification of rule provisions to opposition to a proposed change. A summary of public hearing attendance and comments received can be found in Appendix A.

DATCP's Rule Changes in Response to Public Hearings and Rules Clearinghouse Comments

DATCP made changes in response to comments received through public hearings, Legislative Council Rules Clearinghouse and consultation with Wisconsin Department of Natural Resources (DNR). The key changes are listed in order based on the rule provisions affected:

Phosphorus Index (PI): The initial department rule proposal incorporated NR 151.04 (the PI standard) by reference as described in ATCP 50.04 (1). Comments focused on the lack of a new subparagraph under ATCP 50.04 to specifically address the PI standard in NR 151.04. The practices needed to achieve the PI levels stated in NR 151.04 are incorporated as options when developing a nutrient management plan in accordance with ATCP 50.04(3). However to address the concern, the final rule includes a note specifying that nutrient management plans developed in accordance with ATCP 50.04(3), which include a PI calculation value, can be used to demonstrate compliance with s. NR 151.04 and that additional guidance related to the PI can be found in s. NR 151.04(1)(b) Note.

Pastures: Comments focused on the requirement that pastures have nutrient management (NM) plans in order to demonstrate compliance with the PI and tolerable soil loss levels. Issues related to use-value assessment, soil testing costs, woodlot pasturing practices, pastures with low animal densities, and concerns regarding calculations of soil loss and PI on pastures were all noted. The department considered the public comments and proposes to address those concerns by creating alternatives for certain low-input pasture systems. ATCP 50.04 (3) modifies nutrient management planning requirements for pastures, including a soil testing alternative and thresholds for certain livestock stocking rates.

Reference to A2809: Comments opposed the inclusion of the outdated 1998 version of the A2809 Nutrient Application Guidelines for Field, Vegetable and Fruit Crops in WI. The department removes references to the 1998 version of A2809 in ATCP 50.04 (3)(f)4.Note and elsewhere, and instead references the 2006 version of A2809 or latest version of that publication as agreed to by the landowner. Keeping the 2006 version of A2809 is important since many agronomists will need time to update their nutrient management plan development process to recognize new fertilizer recommendations.

Tillage Setback Clarifications: Comments received from the Clearinghouse and the public focused on modification of the tillage setback standard [ATCP 50.04 (4)] to clarify responsibilities, considerations and methods for achieving compliance. Because a technical standard does not currently exist that provides guidance for effective, consistent application of a tillage setback for the purpose of maintaining streambank stability and integrity, the department made modifications to address the concerns by including consideration of the cause of bank erosion and soil type, and providing for consultation with NRCS or department engineering specialists to ensure a consistent approach when making determinations for increased setback distances. .

Farmland Preservation Program (FPP) Changes: Comments included opposition to the definition of “farm” that would only include contiguous tax parcels, requests for clarification on timelines in meeting performance standards, roles for monitoring compliance and the

potential consequences of requiring FPP claimants to meet the 2011 DNR standards. The department revision to ATCP 50.16 modifies the definition of a farm to include all land owned by the landowner when making conservation compliance determinations. The department also clarifies language regarding the timeframes for meeting the conservation standards through the use of a performance schedule and the length of time to achieve compliance via a performance schedule.

Land and Water Resource Management (“LWRM”) Planning Benchmarks: In addition to support for increased accountability, comments from the Clearinghouse and several counties stressed the need to clarify the benchmarking concept used in relation to planning and reporting. The department clarified this by changing ATCP 50.12 (2) (j) to specify that the county use measurable annual and multi-year benchmarks to periodically monitor and measure its progress in meeting performance targets and achieving plan goals and objectives under a workplan.

Additional LWRM Elements: In consultation with DNR, DATCP was encouraged to ensure that LWRM plans incorporate elements required by federal and other grant programs. The department worked with DNR to modify to ATCP 50.12 (2)(a), (b)(Note), (c), (f)(Note), (g), (i) and (3) (c) (Note) to address this issue. .

Increased Agricultural Emphasis: Individual counties and Wisconsin Land and Water Conservation Association (WLWCLA) opposed DATCP’s heightened focus on agriculture in making funding decisions (ATCP 50.30), emphasizing the need for DATCP to fund LWRM plans equally, and the benefits of non-farm cost-sharing to protect natural resources. The department retained the rule’s agricultural focus based on the original reasons for its inclusion, including making more resources available to meet the statutory requirement for cost-sharing to implement conservation practices on farms and maximizing cost-share funds needed to implement the expanded number of performance standards on farms. However, the final rule includes language that the department will work with DNR and other funders to identify sources of financial support to address locally-identified priorities that may not be accorded the same weight as farm-based statewide priorities.

Cost-Sharing on Government-Owned Land: Comments primarily from counties and towns opposed the proposed provision in ATCP 50.40 (3) (b), which eliminated cost-sharing on government-owned land. Comments focused on the limited financial resources available to towns in particular for conservation, the benefits of cost-sharing to protect natural resources, and the unintended consequences of eliminating cost-sharing for farmland owned by local governments. After consideration of these comments, the department revised the proposed rule provision to allow cost-sharing at a maximum rate of 50 percent on government-owned land. This change responds to concerns raised by public comments while addressing the department’s main objective of focusing cost-share funds to implement the expanded number of performance standards on privately-owned farms.

Engineering Certification Requirements: Several comments fully supported aligning the certification requirements of the department system of certifying conservation engineering practitioners with the NRCS job approval system. A critical piece of this alignment requires the removal of the certification form from the rule, which the department initially accomplished through rule waiver. The Legislative Council Rules Clearinghouse asked DATCP to ensure that it was following the legal requirements for excluding a form from a rule. The department revised ATCP 50.46 (3) (b) to allow the agency to grant certification for any practice authorized by NRCS and DNR without incorporating the certification form into the rule as long as the department uses the procedures prescribed in the rule for developing a form.

Engineering Approvals: Several comments focused on ensuring that the process for checking project documents paralleled NRCS's procedures under its job approval authority. The department redrafted ATCP 50.46 (11) (b) to require that on any project approval documentation, the person approving designs or construction plans is responsible for insuring that the documents have been checked, and may discharge this responsibility by checking the work or accepting another's check of the work. For practices requiring job class I and II, the same person preparing the design may perform the check. For all other job classes, the check must be performed by a third party with appropriate certification.

Local Ordinance Review: Individual farmers and groups commented on the need for oversight of local regulation and opposed the change in ATCP 50.56 (6) regarding review requirements for manure storage ordinances. The final draft rule authorizes the department to require a county, city, village or town to use a department approved application for permitting the construction or closure of a manure storage system or structure, or to submit a proposed or adopted ordinance for review upon request of the department. The department will review and comment on the consistency of the ordinance with statutory requirements. A department review generally would be triggered by a request or complaint, but the department could initiate a review for other reasons.

Process Wastewater Standard: Farm groups supported the department implementation of the process wastewater performance standards but wanted assurances that the rule does not mandate costly containment systems and allows for flexibility in determining the best approach to manage wastewater. The department made a minor change in the note for ATCP 50.705(b) to clarify that landowners are not necessarily required to make significant structural changes to address discharge, as long as they reduce the level of discharge below the "significant" threshold, as determined in s. NR 151.055 (3). The note also states that, when state cost-sharing funds are available, landowners should be provided cost-sharing to install the suite of practices that both correct and prevent discharges, therefore ensuring adequate protection of groundwater and surface water. Farms with small storage areas and minor discharges have lower cost options available to meet the technical standards.

Nutrient Management Requirements for Barnyards: Internal review of the cost-sharing standards for barnyard runoff control pointed out a need to clarify the requirements related to

nutrient management plans. The department clarified ATCP 50.64 (5) (c) by requiring a nutrient management plan only if the landowner receives more than \$25,000 in DATCP cost-share payments for the runoff control system.

The Rules Clearinghouse made a number of additional technical comments and DATCP made the necessary changes to the proposed rule to incorporate the Clearinghouse suggestions.

Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not issue a report on this rule.

Effect 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 is filed with this rule, provides a more complete analysis of this issue.

Environmental Impact

This rule will have a positive effect on the environment. See the attached final environmental assessment.

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

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

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.