

July 3, 2002

**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING AND REPEALING RULES**

The department of agriculture, trade and consumer protection adopts the following order to amend ATCP 3.02(1)(h), to repeal and recreate ch. ATCP 50, and to create ATCP 40.11, relating to soil and water resource management.

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

Statutory authority: ss. 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), Stats.

Statutes interpreted: s. 91.80, ch. 92, and s. 281.16, Stats.

This rule repeals and recreates current rules related to Wisconsin's soil and water resource management program. The department of agriculture, trade and consumer protection ("DATCP") administers this program under ch. 92, Stats. The program is designed to conserve the state's soil and water resources, reduce soil erosion, prevent pollution runoff and enhance water quality. This rule spells out program standards and procedures. Among other things, this rule:

- Requires farm conservation practices, subject to cost-sharing.
- Creates a farm nutrient management program.
- Spells out standards for cost-shared practices.
- Spells out standards for county programs.
- Spells out standards and procedures for DATCP grants to counties.
- Spells out standards and procedures for county cost-share grants to landowners.
- Spells out standards for soil and water professionals (agricultural engineering practitioners, nutrient management planners and soil testing laboratories).
- Coordinates state and local regulation of farm conservation practices.

Background

General

DATCP administers Wisconsin's soil and water resource management program in cooperation with counties, the department of natural resources ("DNR"), the land and water conservation board ("LWCB"), the natural resource conservation service of the U.S. department of agriculture

(“NRCS”) and other agencies. DATCP coordinates soil and water management efforts by these agencies. DATCP funds county soil and water conservation programs, and finances county cost-share grants to landowners to implement conservation practices. DNR administers a related program aimed at preventing nonpoint source pollution.

In 1997 Wis. Act 27 and 1999 Wis. Act 9, the Legislature mandated a comprehensive redesign of state programs related to nonpoint source pollution. Among other things, the Legislature directed DATCP and DNR to establish conservation standards and practices for farms. The Legislature also directed DATCP to adopt rules related to nutrient management on farms. This rule implements the redesigned nonpoint program.

County Programs

Counties play a key role in Wisconsin’s soil and water conservation program. Counties adopt land and water resource management plans, administer county ordinances, adopt conservation standards for farmers claiming farmland preservation tax credits, provide information and technical assistance, and make cost-share grants to landowners installing conservation practices. Counties may also take enforcement action to implement conservation requirements, subject to cost-sharing.

DATCP awards annual grants to counties. These grants reimburse county staff and support costs. They also reimburse county cost-share payments to landowners. DATCP makes county grant awards in an *annual grant allocation plan* reviewed by the LWCB. DATCP reimburses eligible county expenditures up to the amount of the county’s annual grant award. Unspent funds remain with DATCP, for allocation in a subsequent grant year.

Soil and Water Conservation on Farms

Farm Conservation Practices

DNR is primarily responsible for adopting farm performance standards to prevent pollution runoff. DATCP must prescribe conservation practices to implement the DNR standards. DATCP must also prescribe soil conservation and nutrient management practices. This rule requires the following practices, subject to cost-sharing (see below):

- *Pollution runoff.* Under this rule, every farm must comply with DNR runoff standards, including standards for barnyard runoff and manure handling. This rule cross-references, but does not restate or duplicate, these DNR standards.
- *Soil erosion.* Under this rule, a farmer must manage croplands and cropping practices so that soil erosion rates on cropped soils do not exceed a tolerable rate (“T”). For most soils, the tolerable rate (“T”) is equivalent to 3 to 5 tons of soil loss per acre per year. DNR rules will establish equivalent cropland erosion standards. Soil erosion will be measured according to the RUSLE 2 equation published by NRCS.

- *Nutrient management.* This rule establishes nutrient management standards for farms. DNR rules will establish similar nutrient management standards. Under this rule:
 - A farmer applying manure or commercial fertilizer must have an annual nutrient management plan, and must follow that plan.
 - A qualified nutrient management planner (see below) must prepare each nutrient management plan. A farmer may prepare his or her own nutrient management plan if the farmer has completed a DATCP-approved training course within the preceding 4 years, or is otherwise qualified under this rule.
 - The nutrient management plan must be based on soil tests conducted at a laboratory certified by DATCP.
 - The nutrient management plan must comply with NRCS technical standard 590. This is currently a nitrogen-based standard. NRCS plans to adopt a phosphorus-based standard, and DATCP plans to incorporate that phosphorus-based standard in future rules (by 2005).
 - Nutrient applications may not exceed the amounts required to achieve applicable crop fertility levels recommended by the university of Wisconsin in *Soil Test Recommendations for Field, Vegetable and Fruit Crops*, UWEX publication A-2809 (1998), unless the nutrient management planner documents a special agronomic need for the deviation. *Appendix B* contains a convenient summary of the UW recommendations for selected crops.
 - A person selling bulk fertilizer to a farmer must record the name and address of the nutrient management planner who prepared the farmer's nutrient management plan (if the farmer has a plan).
 - DATCP and DNR nutrient management rules first apply on the following dates:
 - January 1, 2005 for existing cropland located in "outstanding resource" or "exceptional resource" watersheds that DNR designates in NR 102.
 - January 1, 2005 for existing cropland located in "impaired" watersheds that DNR identifies on its "303(d) list." See map, *Appendix A*.
 - January 1, 2005 for existing cropland located in "source water protection areas" that DNR designates under NR 243.
 - January 1, 2008 for existing cropland in other areas.
 - One year after the rule effective date for "new cropland" anywhere in the state. DNR rules define "new cropland."

A farmer may choose the best way to comply with this rule. A farmer may choose conservation practices that are appropriate for his or her farm, as long as those practices achieve compliance. DATCP, UW-extension, NRCS and the counties will provide information and recommendations.

Cost-Shared Conservation Practices

DATCP provides cost-share funding to counties. A county may use DATCP funds to cost-share farm conservation practices identified in this rule. A county may cost-share practices that will be cost-effective in achieving conservation objectives on the recipient's farm.

A cost-share grant may pay a portion of the landowner's cost to install *and maintain* cost-shared practices. The county must enter into a cost-share contract with the landowner. The landowner must install and maintain the cost-shared practices according to this rule and the cost-share contract.

A county may decide how to allocate cost-share funding from DATCP, subject to this rule. The county selects cost-share recipients and cost-shared projects, and determines the amount of cost-sharing that it will offer for each project. But if a county *requires* a landowner to install a conservation practice, the county *must* meet minimum cost-share requirements under this rule (see below). Cost-share payments may not exceed the maximum rates or amounts specified in this rule (see below).

A county may use DATCP funds to cost-share any of the following conservation practices described in this rule (or other practices specifically approved by DATCP):

- Manure storage systems
- Manure storage system closure
- Barnyard runoff control systems
- Access roads and cattle crossings
- Animal trails and walkways
- Contour farming*
- Cover and green manure crop*
- Critical area stabilization
- Diversions
- Field windbreaks
- Filter strips
- Grade stabilization structures
- Heavy use area protection
- Livestock fencing
- Livestock watering facilities
- Milking center waste control systems
- Nutrient management*
- Pesticide management*
- Prescribed grazing
- Relocating or abandoning animal feeding operations

- Residue management*
- Riparian buffers
- Roofs
- Roof runoff systems
- Sediment basins
- Sinkhole treatment
- Streambank and shoreline protection
- Strip-cropping*
- Subsurface drains
- Terrace systems
- Underground outlets
- Waste transfer systems
- Wastewater treatment strips
- Water and sediment control basins
- Waterway systems (grassed waterways)
- Well decommissioning
- Wetland development or restoration

Except for the practices marked with an asterisk (*), these conservation practices are considered “capital improvements.” Capital improvements, if cost-shared, must be maintained for at least 10 years. The county makes the cost-share payment when the capital improvement is installed. In return, the landowner agrees to maintain the capital improvement for the period specified in the cost-share contract. The contract may specify a maintenance period of more than 10 years, but not less than 10 years.

“Soft” conservation practices (those marked with an asterisk in the above list) are not considered “capital improvements.” There is no 10-year maintenance requirement for these practices, so the parties are free to negotiate a shorter maintenance period in the cost-share contract. The length of the maintenance period may depend on the size of the cost-share payment.

This rule spells out standards for the design and installation of cost-shared practices. DATCP reimburses county cost-share payments when the county certifies that the cost-shared practice has been properly installed and paid for. Some conservation practices must be designed and certified by a professional engineer, a certified agricultural engineering practitioner or a qualified nutrient planner (see below).

DATCP will not change these design or installation standards, except by rule. (The rulemaking process ensures public review and input.) DATCP will cooperate with the current Standards Oversight Council (SOC) in the development of technical standards for cost-shared practices, and will consider SOC recommendations. SOC is a voluntary, multi-agency committee that works to share technical information and coordinate state and federal technical standards. SOC has no rulemaking authority. This rule does not change SOC’s current role or operations.

Cost-Sharing Required

A county may not *require* a landowner to install conservation practices that change “existing” agricultural facilities or practices unless the county offers the landowner at least 70% cost-sharing (90% if there is an “economic hardship”). DNR rules define “existing” agricultural facilities and practices, for cost-share purposes. Under this rule, a landowner’s “cost” includes all the following:

- The landowner’s reasonable and necessary expenditures to install and maintain the conservation practice.
- The reasonable value of necessary labor, equipment and supplies provided by the landowner.
- The landowner’s cost to take land out of agricultural production, if the landowner is *required* to take more than ½ acre of land out of agricultural production.
 - The cost to take land out of production is calculated at the time of the cost-share contract, based on annual costs projected over the maintenance period specified in the cost-share contract. Each year’s cost equals the number of affected acres, multiplied by the relevant agricultural land rental rate in the county (as determined by USDA) on the date of the cost-share contract.
 - The cost-share payment for riparian land ordered out of production must be at least equal to the payment that would be offered under the state-federal conservation reserve enhancement program (CREP), regardless of whether the land is eligible for that program. To qualify for this CREP-equivalent payment, a landowner must agree to a 15-year maintenance period or a perpetual easement (just as under the CREP program). This CREP-equivalent payment does not apply to cost-share contracts signed after the CREP program expires.

If a county pays a landowner to take land out of agricultural production, the county may obtain an easement restricting agricultural production on that land. The duration of the easement corresponds to the duration of the cost-share agreement. The county must record the easement with the county register of deeds, so that subsequent landowners receive notice of the easement.

This rule clarifies that the 70% (90% hardship) minimum cost-share requirement does *not* apply to any of the following:

- “New” agricultural facilities or practices (as defined by DNR rules).
- Cost-share arrangements for the *voluntary* installation of cost-shared practices. In a voluntary agreement, the county is free to negotiate the cost-share amount (up to the

maximum amount allowed by this rule). But if the county *requires* a landowner to change an “existing” agricultural practice (as defined by DNR), the county must meet applicable minimum cost-share requirements under this rule.

- A capital improvement if the landowner has already received cost-sharing to install and maintain that improvement for at least 10 years. *But a county must continue to provide cost-sharing for land out of production if the county requires a landowner to keep more than 1/2 acre of land out of agricultural production for more than 10 years.*
- A “soft” conservation practice (contour farming, cropland cover, nutrient management, pesticide management, residue management or strip-cropping) for which the landowner has already received 4 years’ worth of cost-share payments. For example, if a county has *already paid* a landowner to implement nutrient management for at least 4 years, the county may require the landowner to comply with state nutrient management standards in subsequent years without further cost-sharing.
- Conservation practices or costs for which this rule prohibits cost-sharing.
- Conservation practices or costs to correct a landowner’s criminal or grossly negligent pollution discharge.
- Conservation practices required under a WPDES permit issued by DNR.

This rule clarifies that:

- Cost-share grants from any public or private source, or combination of sources, may be counted toward the 70% (90% hardship) cost-share offer.
- A loan is not a grant.
- The 70% (90% hardship) cost-sharing requirement also applies to comparable conservation practices that a landowner is *required* to install under a county or local ordinance.
- Cost-share requirements do not limit emergency action needed to mitigate imminent harm to waters of the state.
- A county may suspend a landowner’s eligibility for farmland preservation tax credits if the landowner fails to comply with county conservation standards under the farmland preservation program (ch. 91, Stats.). The county may suspend the landowner’s eligibility, *regardless* of whether the county offers cost-sharing to the non-complying landowner.

Economic Hardship

Under this rule, there is an “economic hardship” if a CPA or accredited financial institution certifies, based on a review of a farm financial statement prepared according to generally

accepted accounting principles, that the landowner is unable to make the normal 30% cost-share contribution. DATCP may review a questionable “economic hardship” finding, as necessary.

Maximum Cost-Share Rates

A cost-share contract may reimburse a portion of the landowner’s cost to install and maintain the cost-shared practice. The county must implement cost-containment procedures (such as competitive bidding or other procedures described in this rule) to ensure that costs are reasonable.

This rule limits cost-share rates as follows:

- Generally speaking, a county may not use DATCP funds to pay more than 70% of the cost of a conservation practice (see s. 92.14(6)(gm), Stats.).
- A county may pay up to 90% if there is an “economic hardship” (see above).
- A county land conservation committee may combine DATCP and DNR funds, up to the above limits.
- The cost-share limits in this rule do *not* apply to cost-share funds provided by non-state sources. A county may combine state funds with funds from other sources.
- A county may provide additional state cost-share funds to replace a cost-shared practice that is damaged or destroyed by natural causes. The same cost-share limits apply to the replacement funding.
- For installation of the following practices, the county may pay up to the maximum cost-share percentage or the following maximum amount, whichever is higher:
 - For contour farming, \$9 per acre.
 - For cover and green manure crop, \$25 per acre.
 - For strip-cropping, \$13.50 per acre.
 - For field strip-cropping, \$7.50 per acre.
 - For high residue management systems, no-till systems, ridge till systems or mulch till systems, \$18.50 per acre.
 - For conservation plantings in riparian buffers, \$100 per acre.
 - For nutrient management or pesticide management, \$7.00 per acre.
- For riparian land taken out of production, the county may pay the CREP-equivalent amount (see above) if that amount is higher than the normal cost-share rate.
- No cost-share grant to relocate an animal feeding operation may exceed 70% of the estimated cost to install a manure management system or 70% of eligible relocation costs, whichever is less.

Cost-Share Contracts with Landowners

A county land conservation committee must enter into a written contract with every landowner to whom the committee awards a cost-share grant financed by DATCP. The contract must include the following terms, among others:

- The location where the cost-shared practice will be installed, and a specific legal description if the cost-share grant exceeds the following applicable amount:
 - \$10,000 if the cost-share contract is signed prior to prior to January 1, 2005.
 - \$12,000 if the cost-share contract is signed on or after January 1, 2005, but before January 1, 2010.
 - \$14,000 if the cost-share contract is signed on or after January 1, 2010.
- Design specifications for the cost-shared practice. Cost-shared practices must be designed and installed according to this rule.
- The estimated cost of the practice.
- The rate and maximum amount of the cost-share grant.
- A construction timetable.
- A required maintenance period. The maintenance requirement runs with the land, and is binding on subsequent owners, if the cost-share grant is for more than the following applicable amount:
 - \$10,000 if the cost-share contract is signed prior to prior to January 1, 2005.
 - \$12,000 if the cost-share contract is signed on or after January 1, 2005, but before January 1, 2010.
 - \$14,000 if the cost-share contract is signed on or after January 1, 2010.
- A procedure for pre-approving material construction changes.
- A requirement that the landowner must properly install the cost-shared practice and make all payments for which the landowner is responsible before the county makes any cost-share payment to the landowner. The county may make partial payments for partial installations that have independent conservation benefits. Some cost-shared practices must be reviewed by a professional engineer, a certified agricultural engineering practitioner or a qualified nutrient management planner (see below).
- County remedies for breach of contract.

DATCP must approve a county cost-share grant to a landowner if the grant exceeds \$50,000. If the cost-share contract exceeds the following applicable amount, the county or landowner must record the contract with the county register of deeds:

- \$10,000 if the cost-share contract is signed prior to prior to January 1, 2005.
- \$12,000 if the cost-share contract is signed on or after January 1, 2005, but before January 1, 2010.
- \$14,000 if the cost-share contract is signed on or after January 1, 2010.

Nutrient Management Program

General

This rule creates a nutrient management program, as required by 1997 Wis. Act 27. The program is designed to reduce excessive nutrient applications and nutrient runoff that may pollute surface water and groundwater. This program includes the following elements:

- *Annual nutrient management plan.* A farmer applying commercial fertilizer or manure must have an annual nutrient management plan (see above), and must follow that plan. For “existing croplands” (as defined by DNR), this requirement is contingent on cost-sharing for at least 4 years (see above).
- *Soil testing.* Nutrient management plans must be based on soil tests conducted at a laboratory certified by DATCP (see below).
- *Qualified nutrient planners.* A qualified nutrient management planner (see below) must prepare each nutrient management plan. A farmer may prepare his or her own plan if the farmer has completed a DATCP-approved training course within the preceding 4 years, or is otherwise qualified.
- *Nutrient application limits.* Nutrient applications may not exceed the amounts needed to achieve crop fertility levels recommended by the university of Wisconsin, unless the nutrient management planner documents that the deviation is justified by special agronomic needs (see above).
- *Cost-share grants for animal waste and nutrient management.* A county may award cost-share grants for animal waste and nutrient management practices installed by farmers. Cost-shared practices must comply with standards in this rule.

Soil Testing Laboratories

Soil tests required by this rule must be performed by the university of Wisconsin or another soil testing laboratory certified by DATCP. To be certified, a laboratory must show that it is qualified and equipped to perform accurate soil tests. An out-of-state laboratory may be certified, if it complies with this rule.

If a certified laboratory recommends Wisconsin nutrient applications that exceed the amounts needed to achieve applicable crop fertility levels recommended by the university of Wisconsin, the laboratory must make the following disclosure:

IMPORTANT NOTICE

Our recommended nutrient applications exceed the amounts required to achieve applicable crop fertility levels recommended by the University of Wisconsin. The amounts required to achieve the UW's recommended crop fertility levels are shown for comparison. Excessive nutrient applications may increase your costs, and may cause surface water and groundwater pollution. If you apply nutrients at the rates we recommend, you will not comply with state soil and water conservation standards. You may contact your county land conservation committee for more information.

A certified laboratory must keep, for at least 4 years, copies of all its soil tests and nutrient recommendations. DATCP may deny, suspend or revoke a laboratory certification for cause. The affected laboratory may request a formal hearing under ch. 227, Stats.

DATCP or its agent may review the performance of a certified soil testing laboratory, to ensure that the laboratory performs accurate soil tests. DATCP or its agent may do any of the following, as necessary:

- Review laboratory facilities, procedures and records.
- Review the proficiency of laboratory analysts.
- Test laboratory proficiency in analyzing check samples prepared by DATCP or its agent.

Nutrient Management Planners

A qualified nutrient management planner must prepare each nutrient management plan required under this rule. A farmer may prepare his or her own nutrient management plan if the farmer has completed a DATCP-approved training course within the preceding 4 years, or is otherwise qualified as a planner. A qualified nutrient management planner must prepare plans according to this rule.

A qualified nutrient management planner must be knowledgeable and competent in all of the following areas:

- Using soil tests.
- Calculating nutrient needs.
- Crediting manure and other nutrient sources.
- State and federal standards related to nutrient management.
- Preparing nutrient management plans according to this rule.

A nutrient management planner is presumed to be qualified if at least one of the following applies:

- The planner is recognized as a certified professional crop consultant by the national alliance of independent crop consultants.
- The planner is recognized as a certified crop advisor by the American society of agronomy, Wisconsin certified crop advisors board.

- The planner is registered as a crop scientist, crop specialist, soil scientist, soil specialist or professional agronomist in the American registry of certified professionals in agronomy, crops and soils.
- The planner holds equivalent credentials recognized by DATCP. A farmer is presumptively qualified to prepare a nutrient management plan for his or her farm (but not for others) if all of the following apply:
 - The farmer has completed a DATCP-approved training course within the preceding 4 years.
 - The course instructor or another qualified nutrient management planner approves the farmer's initial plan.

No person may misrepresent that he or she is a qualified nutrient management planner. A nutrient management planner must keep, for at least 4 years, a record of all nutrient management plans that he or she prepares under this rule.

DATCP may issue a written notice disqualifying a nutrient management planner if the planner fails to prepare nutrient management plans according to this rule, or lacks other qualifications required under this rule. A nutrient management planner who receives a disqualification notice may request a formal hearing under ch. 227, Stats.

County Soil and Water Conservation Programs

General

This rule establishes standards for county soil and water resource management programs that receive funding from DATCP. Under this rule, a county program must include all of the following:

- A county land and water resource management plan, and a program to implement that plan.
- County conservation standards that implement state soil and water conservation requirements on farms.
- A program to apply for, receive, distribute and account for state soil and water resource management grants.
- A program for distributing cost-share grants to landowners. A county must ensure that cost-shared conservation practices are designed and installed according to this rule.
- A recordkeeping and reporting system. A county must file an annual report with DATCP. This rule simplifies the current annual reporting requirement.

Land and Water Resource Management Plans

Under s. 92.10, Stats., every county must prepare a land and water resource management plan. DATCP must approve the county plan, for up to 5 years, after consulting with the LWCB. DATCP may not award soil and water conservation grants to a county that lacks an approved plan.

A county land and water resource management plan must, at a minimum, describe all of the following in reasonable detail:

- Water quality and soil erosion conditions throughout the county.
- State, county and local regulations that the county will use to implement the county plan. DATCP may require counties to submit copies of relevant county and local regulations, and may comment on those regulations.
- Water quality objectives for each water basin, priority watershed and priority lake. The county must consult with DNR when determining water quality objectives.
- Key water quality and soil erosion problem areas. The county must consult with DNR when determining key water quality problem areas.
- Conservation practices needed to address key water quality and soil erosion problems.
- A plan to identify priority farms in the county.
- Compliance procedures, including notice, enforcement and appeal procedures, which will apply if the county takes action against a landowner who fails to comply with applicable requirements.
- The county's multi-year workplan to achieve compliance with water quality objectives and implement farm conservation practices. The plan must identify priorities and expected costs.
- How the county will monitor and measure its progress.
- How the county will provide information and education to farmers, including information related to conservation practices and cost-share funding.
- How the county will coordinate its program with other agencies.

When preparing a land and water resource management plan, a county must do all of the following:

- Appoint and consult with a local advisory committee of interested persons.
- Assemble relevant data, including relevant data on land use, natural resources, water quality and soils.
- Consult with DNR.
- Assess resource conditions and identify problem areas.
- Establish and document priorities and objectives.
- Project available funding and resources.
- Establish and document a plan of action.
- Identify roles and responsibilities.

Before a county submits a land and water resource management plan for DATCP approval, the county must hold at least one public hearing on the plan. The county must also make a reasonable effort to notify farmers affected by county findings, and give them an opportunity to contest the findings.

DATCP may review a county's ongoing implementation of a DATCP-approved county plan. DATCP may consider information obtained in its review when it makes its annual grant allocations to counties.

County Ordinances

A county may require conservation practices by ordinance. DATCP may review and comment on county ordinances. Conservation practices required under a county ordinance are subject to cost-sharing, to the same extent as under this rule.

Under this rule and s. 92.15, Stats., a county must obtain DATCP or DNR approval before it adopts a livestock ordinance that exceeds the standards under this rule. This rule establishes a procedure for DATCP review of livestock ordinances (see below). This rule also spells out standards for manure storage ordinances and agricultural shoreland management ordinances (see below).

Farmland Preservation; Conservation Standards

Under current law, farmers must meet county conservation standards in order to claim tax credits under the state farmland preservation program. This rule requires every county to incorporate, in its standards, the farm conservation practices required under this rule (see above). If a county fails to comply, farmers may be disqualified from claiming tax credits. DATCP may also deny soil and water conservation funding to a noncomplying county.

This rule spells out the procedure by which a county must adopt conservation standards for farms receiving farmland preservation tax credits. The county must hold a public hearing on the proposed standards. The county must also submit the proposed standards for LWCB approval, as required by s. 92.105, Stats.

A county may require a farmer to certify compliance on an annual or other periodic basis. A county must inspect a farmer's compliance at least once every 6 years (or on another basis approved by DATCP). The county must issue a notice of noncompliance if it finds that the farmer is not complying. If the farmer fails to comply by a deadline specified in the notice, the farmer may no longer claim farmland preservation tax credits. A county may disqualify a farmer from receiving tax credits, regardless of whether the county offers cost-sharing for the required conservation practices. The farmer may meet with the county land conservation committee to discuss or contest a disqualification notice.

A farmer who fails to meet county standards may continue to claim farmland preservation tax credits if the farmer implements a farm conservation plan that will achieve full compliance

within 5 years. A farm conservation plan is a written agreement, between the farmer and county, in which the farmer agrees to install conservation practices by a specified date.

Annual Grant Application

By April 15 of each calendar year, a county must file its funding application with DATCP for the next calendar year. The county may request any of the following:

- *An annual staffing grant.* DATCP awards annual staffing grants to eligible counties. A staffing grant may pay for county employees and independent contractors who work for the county land conservation committee. It may also pay for county employee training and support. With DATCP approval, a county may redirect unused staffing funds to pay for cost-share grants to landowners. In its annual funding request, a county must specify the amount of staff funding requested and the general activities that staff will perform. DATCP will reimburse county staffing costs at the rate specified in s. 92.14, Stats., up to the amount of the county's annual grant award.
- *Cost-share funding for farm conservation practices.* Each year, DATCP awards cost-share grant funding to eligible counties. Counties use these funds to finance cost-share grants to landowners. In its annual funding request, a county must specify the amount of cost-share funding requested and the general purposes for which the county will use that funding. DATCP distributes cost-share funding on a reimbursement basis, after the county certifies that the cost-shared practices are properly installed and paid for. DATCP reimburses county cost-share payments up to the amount of the county's annual grant award.

Annual Report

By April 15 of each year, a county must file with DATCP a year-end report for the preceding calendar year. The report must describe the county's activities and accomplishments, including progress toward the objectives identified in the county land and water resource management plan (see above). This rule eliminates financial reporting requirements that are no longer needed.

Accounting and Recordkeeping

Every county land conservation committee, in consultation with the county's chief financial officer, must establish and maintain an accounting and recordkeeping system that fully and clearly accounts for all soil and water conservation funds. The records must document compliance with applicable rules and contracts.

DATCP Review

DATCP may review county activities under this rule, and may require the county to provide relevant records and information.

Training for County Staff

DATCP may provide training, distribute training funds to counties (see below), make training recommendations, and take other action to ensure adequate training of county staff. Under this rule, DATCP must appoint a training advisory committee to advise DATCP on county staff training activities. The committee must include representatives of all of the following:

- DNR.
- NRCS.
- The university of Wisconsin-extension.
- The statewide association of land conservation committees.
- The statewide association of land conservation committee staff.

Grants to Counties

DATCP awards soil and water conservation grants to counties. These grants finance county staff and support, as well as county cost-share grants to landowners. DATCP does not provide grants to local government. In certain limited cases, DATCP may authorize a county to reallocate county *staffing* grant funds to local governments or tribes.

DATCP may award grants (service contracts) to governmental or non-governmental entities for information, education, training and other services related to DATCP's administration of the soil and water conservation program. Under this rule, DATCP will no longer award cost-share grants directly to individual landowners.

Annual Grant Allocation Plan

This rule requires DATCP to allocate soil and water conservation grants according to an annual grant allocation plan. The DATCP secretary signs the allocation plan after consulting with the LWCB. The plan must specify, for the next calendar year, all of the following:

- The total amount appropriated to DATCP for possible allocation under the plan, including the amounts derived from general purpose revenue (GPR), segregated revenue (SEG) and bond revenue sources.
- The total amount allocated under the plan, including the amounts allocated from GPR, SEG and bond revenue sources.
- The total amount allocated for annual staffing grants to counties, the total and subtotal amounts allocated to each county, and an explanation for any material difference in allocations between counties.
- The total amount allocated to counties for cost-share grants to landowners, the total and subtotal amounts allocated to each county, and an explanation for those allocations.
- The amounts allocated to non-county grant recipients, and an explanation for those allocations.

DATCP must prepare the annual grant allocation plan with DNR after reviewing county grant applications. DATCP will normally provide a draft plan to DNR, the LWCB and every county land conservation committee by August 1 of the year preceding the calendar year to which the plan applies.

DATCP must adopt an annual allocation plan by December 31 of the year preceding the calendar year to which the plan applies. The final draft plan may include changes recommended by the LWCB, as well as updated estimates of project costs. DATCP must provide copies of the plan to DNR, the LWCB and every county land conservation committee.

Revising the Allocation Plan

DATCP may make certain revisions to an annual grant allocation plan after it adopts that plan. The DATCP secretary must sign each plan revision. A revision may do any of the following:

- Extend funding for landowner cost-share contracts that were signed by December 1 of the preceding year, but not completed during that year. Counties must apply by December 31 for contract funding extensions.
- Increase the total grant to any county. DATCP must give all counties notice and an equal opportunity to compete for funding increases (other than funding extensions for existing cost-share contracts).
- Reduce a grant award to any county.
- Reallocate a county's annual grant between grant categories, to the extent authorized by law and with the agreement of the county.

Before DATCP revises an annual grant allocation plan, it must do all of the following:

- Provide notice and a draft revision to DNR, the LWCB and every county land conservation committee. The notice must clearly identify and explain the proposed revision.
- Obtain LWCB recommendations on the proposed revision.

Grant Priorities

Under this rule, DATCP must consider all of the following when preparing an annual grant allocation plan:

- *County staff and project continuity.* DATCP must give high priority to maintaining county staff and project continuity. DATCP must also consider priorities identified in the county grant application and in the county's approved land and water resource management plan.
- *Statewide priorities.* DATCP may give priority to county projects that address the following statewide priorities:

- Farms discharging pollutants to waters that DNR has listed as “impaired waters” under 33 USC 1313.
 - Farms whose cropland erosion is more than twice T-value.
 - Farms discharging substantial pollution to waters of the state.
 - Farms claiming tax credits under the farmland preservation program.
- *Other factors.* DATCP may also consider the following factors, among others, when determining grant allocation priorities:
 - The strength of the county’s plan and documentation.
 - A county’s demonstrated commitment to adopt and implement the farm conservation practices required under this rule.
 - The likelihood that funded activities will address and resolve high priority problems identified in approved county land and water resource management plans.
- The relative severity and priority of the water quality and soil erosion problems addressed.
 - The relative cost-effectiveness of funded activities in addressing and resolving high priority problems.
 - The extent to which funded activities are part of a systematic and comprehensive approach to soil erosion and water quality problems.
 - The timeliness of county grant applications and annual reports.
 - The completeness of county grant applications and supporting data.
 - The county’s demonstrated ability, cooperation and commitment, including its commitment of staff and financial resources.
 - The degree to which funded projects contribute to a coordinated soil and water resource management program and avoid duplication of effort.
 - The degree to which funded projects meet county needs and state requirements.
 - The degree to which county activities are consistent with the county’s approved land and water resource management plan.

Annual Staffing Grants to Counties

DATCP must award an annual staffing grant to each eligible county. To receive the awarded funds, a county must enter into an annual grant contract with DATCP. With DATCP approval, the county may reallocate staffing grant funds to a local government or tribe. DATCP may not use bond revenue funds for county staffing grants.

A county must use an annual staffing grant in the year for which it is made. The county may use the grant for any of the following purposes, subject to the grant contract:

- Employee salaries, employee fringe benefits and contractor fees for county employees and independent contractors engaged in soil and water resource management activities on behalf of the county land conservation committee.
- Training for county employees and county land conservation committee members.
- Any of the following employee support costs identified in the grant application:
 - Mileage expenses at the state rate. A staffing grant may not be used to lease or purchase a vehicle.
 - Personal computers, software, printers and related devices.
 - A proportionate share of costs for required financial and compliance audits.
 - Costs for information and education materials, newsletters, office supplies, maps and plats, photocopying, printing and postage.
 - Other staff support costs that DATCP identifies, in the grant application form, as being reimbursable for all counties.

DATCP may award different staffing grant amounts to different counties, based on criteria identified in this rule (see above). Staffing grants may be based, in part, on the *county's* staffing contribution during the preceding year. Subject to the availability of funds, DATCP will annually offer to each eligible county at least the greater of the following:

- \$85,000.
- The amount awarded to that county under the 2001 allocation plan for staffing related to DNR priority watersheds, less any amount awarded to that county under the 2001 allocation plan for staffing related to priority watershed projects that have subsequently closed. *Appendix F* shows scheduled closing dates for priority watershed projects, determined as of October 6, 1998.

A county may redirect unused staffing grant funds for landowner cost-share grants if DATCP approves in writing. The county must use the redirected funds in the year for which they are allocated. DATCP will reimburse county cost-share payments according to normal cost-share procedures (see below).

To qualify for a staffing grant, a county must maintain its soil and water resource management effort at or above the amounts that the county expended in each of the years 1985 and 1986 (see s. 92.14(7), Stats.) A county may count, as part of its “maintenance of effort” contribution, expenditures for any county staff (employees and independent contractors) engaged in soil or water resource management work for the county land conservation committee. A county may not count capital improvement expenditures, expenditures for county staff not working for the land conservation committee, or the expenditure of grant revenues received from other governmental entities.

A county land conservation committee must keep records related to annual staffing grants. The records must document that the county used grant funds according to this rule and the grant contract. The county must retain the records for at least 3 years.

Paying Staffing Grants

DATCP will make staffing grant payments on a reimbursement basis. DATCP will reimburse county expenditures, at the prescribed statutory rate, up to the amount of the county's annual staffing grant award. DATCP will reimburse costs that the county incurs during the grant year (and pays by January 31 of the following year). Unspent grant funds remain with DATCP, for allocation in future years.

A county may file 2 reimbursement requests for each grant year. A county may file its first reimbursement request on or after June 1 for costs incurred before June 1 of the grant year. A county may file a second reimbursement request for costs incurred on or after June 1 of the grant year. A county must file all of its requests by February 15 of the following year. DATCP will pay reimbursement within 30 days after a county submits a valid request.

The county must file its reimbursement request on a form provided by DATCP. In its reimbursement request, the county must identify the costs for which it seeks reimbursement. The reimbursement rate is based on a statutory formula. The rate depends on the number of staff in the county, and the extent to which those staff are working in DNR priority watersheds (not necessarily on the DNR priority watershed *program*). The county must provide information needed to determine the reimbursement rate.

If a county reallocates part of its staffing grant to a local government or tribe, the county must submit reimbursement requests on behalf of that local government or tribe. DATCP may then pay reimbursement directly to the local government or tribe.

Grants for Conservation Practices

DATCP may award annual grants to counties, to fund county cost-share grants to landowners. To receive the awarded funds, a county must enter into an annual grant contract with DATCP. DATCP will reimburse county cost-share expenditures, up to the amount of the county's annual grant award. DATCP will reimburse the county after the landowner installs the cost-shared practice and the county does all of the following:

- Files with DATCP a copy of the county's cost-share contract with the landowner. The cost-share contract must comply with this rule (see above).
- Certifies the reimbursement amount due.
- Certifies, based on documentation filed in the county, that the cost-shared practice is properly designed, installed and paid for (see above).

Cost-share funds may be used to finance conservation practices identified in this rule (see above), except that bond revenues may not be used to finance any of the following “soft” practices (because they do not qualify as “capital improvements”):

- Contour farming.
- Cover and green manure crop
- Nutrient management.
- Pesticide management.
- Residue management.
- Strip-cropping.

DATCP may not use cost-share grant funds to reimburse a county for costs incurred after December 31 of the grant year (or paid after January 31 of the following year). Unspent funds remain with DATCP, for distribution under a future year’s allocation plan. If a landowner signs a funded cost-share contract by December 1 of the initial grant year, but does not complete that contract in that grant year, DATCP may extend funding to the next year. DATCP will normally extend funding if the county requests the extension by December 31. DATCP will not extend funding for more than one year.

A county land conservation committee must keep all of the following records related to cost-share grant funds received from DATCP:

- Copies of all county cost-share contracts with landowners.
- Documentation to support each county reimbursement request to DATCP (see above).
- Documentation showing all county receipts and disbursements of grant funds.
- Other records needed to document county compliance with this rule and the grant contract.

A county land conservation committee must retain cost-share records for at least 3 years after the committee makes its last cost-share payment to the landowner, or for the duration of the required maintenance period, whichever is longer. The committee must make the records available to DATCP and grant auditors upon request.

Agricultural Engineering Practitioners; Certification

Under s. 92.18, Stats., DATCP must certify persons who design, review or approve cost-shared agricultural engineering practices. This rule identifies the agricultural engineering practices for which certification is required. This rule continues, without change, the certification program established under current rules. No certification is required for a professional engineer certified under ch. 443, Stats.

Applying for Certification

Under this rule, a person who wishes to be certified as an agricultural engineering practitioner must apply to DATCP or a county land conservation committee. A person may apply orally or in writing. DATCP or the committee must promptly refer the application to a DATCP field

engineer. Within 30 days, the DATCP field engineer must rate the applicant and issue a decision granting or denying the application.

Certification Rating

The DATCP field engineer must rate an applicant using the rating form shown in *Appendix E* to this rule. The field engineer must rate the applicant based on the applicant's demonstrated knowledge, training, experience, and record of appropriately seeking assistance. For the purpose of rating an applicant, a field engineer may conduct interviews, perform inspections, and require answers and documentation from the applicant.

For each type of agricultural engineering practice, the rating form identifies 5 job classes requiring progressively more complex planning, design and construction. Under this rule, the field engineer must identify the most complex of the 5 job classes in which the applicant is authorized to certify proper design and installation. A certified practitioner may not certify any agricultural engineering practice in a job class more complex than that for which the practitioner is certified.

Appealing a Certification Decision

A field engineer must issue a certification decision in writing, and must include a complete rating form. An applicant may appeal a certification decision or rating by filing a written appeal with the field engineer. The field engineer must meet with the appellant in person or by telephone to discuss the matters at issue.

If the appeal is not resolved, DATCP must schedule an informal hearing before a qualified DATCP employee other than the field engineer. After the informal hearing, the presiding officer must issue a written decision that affirms, modifies or reverses the field engineer's action. If the applicant disputes the presiding officer's decision, the applicant may request a formal hearing under ch. 227, Stats.

Reviewing Certification Ratings

Under this rule, a DATCP field engineer must review the certification rating of every agricultural engineering practitioner at least once every 3 years. A field engineer must also review a certification rating at the request of the person certified. A field engineer may not reduce a rating without good cause, and all reductions must be in writing.

Suspending or Revoking Certification

Under this rule, DATCP may suspend or revoke a certification for cause. DATCP may summarily suspend a certification, without prior notice or hearing, if DATCP makes a written finding that the summary suspension is necessary to prevent an imminent threat to the public health, safety or welfare. The practitioner may request a formal hearing under ch. 227, Stats.

County and Local Ordinances

General

DATCP may review and comment on county and local ordinances that require farmers to install conservation practices. Conservation requirements under a county or local ordinance are subject to cost-sharing, to the same extent as under this rule. The LWCB must approve conservation requirements and zoning ordinances under the farmland preservation program (ch. 91, Stats.).

Livestock Ordinances

According to s. 92.15, Stats., and this rule, no county or local ordinance may require conservation practices for livestock operations that are more restrictive than those required under this rule unless DATCP or DNR approves the more restrictive requirement. This rule spells out a procedure by which a county or local governmental unit may seek DATCP approval of a proposed ordinance. DNR will adopt similar rules.

This rule does not require a county or local governmental unit to repeal or amend an ordinance adopted prior to the effective date of this rule. But this rule does not limit a person's right to challenge that ordinance under s. 92.15, Stats.

Manure Storage Ordinances

A county, city, village or town may enact a manure storage ordinance under s. 92.16, Stats. Current rules spell out standards for manure storage ordinances. This rule incorporates those standards without change. An ordinance must include the following provisions:

- A person constructing a manure storage system must obtain a permit.
- The person must have a nutrient management plan that complies with this rule.
- The manure storage system must comply with design and construction standards under this rule.

A manure storage ordinance may prohibit a person from abandoning a manure storage system unless that person submits an abandonment plan and obtains an abandonment permit. The rule spells out suggested abandonment requirements for those ordinances that regulate abandonment.

Agricultural Shoreland Management Ordinances

A county, city, village or town may enact an agricultural shoreland management ordinance under s. 92.17, Stats. These ordinances must be approved by DATCP. Current rules spell out standards for agricultural shoreland management ordinances. This rule adopts the current rules without change. DATCP must seek DNR and LWCB recommendations before it approves an

ordinance or amendment, except that DATCP may summarily approve an ordinance amendment that presents no significant legal or policy issues.

Waivers

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.

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP has requested permission from the attorney general and the revisor of statutes to incorporate the standards by reference in this rule. These standards are listed in *Appendix G*, and are incorporated at appropriate locations throughout the rule. The standards include:

- NRCS technical guide standards.
- ASAE engineering practice standards.
- DNR construction site erosion control standards.
- The UW-extension pollution control guide for milking center waste water management.
- The UW-extension guide on rotational grazing.
- UW-extension soil test recommendations.
- The RUSLE 2 version of the NRCS revised universal soil loss equation.

Copies of these standards are on file with DATCP, the secretary of state and the revisor of statutes. Copies are not reproduced in this rule, except that:

- NRCS technical guide nutrient management standard 590 (March, 1999) is attached as *Appendix D* to this rule.
- *Appendix B* contains a summary of UWEX publication A-2809, *Soil Test Recommendations for Field, Vegetable and Fruit Crops (copyright 1998)*, for selected crops.

Land and Water Conservation Board

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

1 **SECTION 1.** ATCP 3.02(1)(h) is amended to read:
2
3 ATCP 3.02(1)(h) *Soil and water resource management; grant allocation plan.* Approval
4 of an annual soil and water resource management grant allocation plan under s. 92.14, Stats., and
5 s. ATCP ~~50.30~~ 50.28.

1 **SECTION 2.** ATCP 40.11 is created to read:

2 **ATCP 40.11 Agricultural fertilizer sales; nutrient management plan.** (1) A person
3 who sells bulk agricultural fertilizer to a landowner shall record the name and address of the
4 nutrient management planner who prepared the landowner’s nutrient management plan, if the
5 landowner has a nutrient management plan. The person may record this information on the
6 fertilizer invoice or statement required under s. 94.64(2)(b), Stats. The person shall keep the
7 record for at least 24 months after the person files the fertilizer tonnage report required under s.
8 94.64(5), Stats.

9 **NOTE:** See current invoice and recordkeeping requirements under ss. 94.64(2)(b) and
10 (6), Stats.

11
12 (2) In this section, “landowner” has the meaning given in s. ATCP 50.01(15).

13 **SECTION 3.** Chapter ATCP 50 is repealed and recreated to read:

14 **CHAPTER ATCP 50**

15 **SOIL AND WATER RESOURCE MANAGEMENT**

16
17 Subchapter I
18 Definitions and General Provisions

- 19
20 ATCP 50.01 Definitions
21 ATCP 50.02 Waivers

22
23 Subchapter II
24 Soil and Water Conservation on Farms

- 25
26 ATCP 50.04 Farm conservation practices
27 ATCP 50.06 Installing conservation practices
28 ATCP 50.08 Cost-sharing required

29
30 Subchapter III
31 County Soil and Water Program

- 32
33 ATCP 50.10 County program; general
34 ATCP 50.12 Land and water resource management plan
35 ATCP 50.14 County ordinances
36 ATCP 50.16 Farmland preservation program; conservation standards

- 1 ATCP 50.18 Annual report
- 2 ATCP 50.20 Annual grant application
- 3 ATCP 50.22 Accounting and recordkeeping
- 4 ATCP 50.24 Department review
- 5
- 6

1 Subchapter IV
2 Grants to Counties

- 3
4 ATCP 50.26 Grant applications
5 ATCP 50.28 Annual grant allocation plan
6 ATCP 50.30 Grant priorities
7 ATCP 50.32 Annual staffing grants to counties
8 ATCP 50.34 Grants for conservation practices
9 ATCP 50.36 Grant contracts

10
11 Subchapter V
12 Cost-Share Grants to Landowners

- 13
14 ATCP 50.40 Cost-share grants to landowners
15 ATCP 50.42 Maximum cost-share rates

16
17 Subchapter VI
18 Soil and Water Professionals

- 19
20 ATCP 50.46 Agricultural engineering practitioners
21 ATCP 50.48 Nutrient management planners
22 ATCP 50.50 Soil testing laboratories
23 ATCP 50.52 Training for county staff

24
25 Subchapter VII
26 Local Regulations

- 27
28 ATCP 50.54 Local regulations; general
29 ATCP 50.56 Manure storage systems; ordinance
30 ATCP 50.58 Shoreland management; ordinance
31 ATCP 50.60 Livestock operations; local regulation

32
33 Subchapter VIII
34 Standards for Cost-Shared Practices

- 35
36 ATCP 50.61 General standards for cost-shared practices
37 ATCP 50.62 Manure storage systems
38 ATCP 50.63 Manure storage system closure
39 ATCP 50.64 Barnyard runoff control systems
40 ATCP 50.65 Access roads and cattle crossings
41 ATCP 50.66 Animal trails and walkways
42 ATCP 50.67 Contour farming
43 ATCP 50.68 Cover and green manure crop
44 ATCP 50.69 Critical area stabilization
45 ATCP 50.70 Diversions
46 ATCP 50.71 Field windbreaks

- 1 ATCP 50.72 Filter strips
- 2 ATCP 50.73 Grade stabilization structures
- 3 ATCP 50.74 Heavy use area protection
- 4 ATCP 50.75 Livestock fencing
- 5 ATCP 50.76 Livestock watering facilities
- 6 ATCP 50.77 Milking center waste control systems
- 7 ATCP 50.78 Nutrient management
- 8 ATCP 50.79 Pesticide management
- 9 ATCP 50.80 Prescribed grazing
- 10 ATCP 50.81 Relocating or abandoning animal feeding operations
- 11 ATCP 50.82 Residue management
- 12 ATCP 50.83 Riparian buffers
- 13 ATCP 50.84 Roofs
- 14 ATCP 50.85 Roof runoff systems
- 15 ATCP 50.86 Sediment basins
- 16 ATCP 50.87 Sinkhole treatment
- 17 ATCP 50.88 Streambank and shoreline protection
- 18 ATCP 50.89 Strip-cropping
- 19 ATCP 50.90 Subsurface drains
- 20 ATCP 50.91 Terrace systems
- 21 ATCP 50.92 Underground outlets
- 22 ATCP 50.93 Waste transfer systems
- 23 ATCP 50.94 Wastewater treatment strips
- 24 ATCP 50.95 Water and sediment control basins
- 25 ATCP 50.96 Waterway systems
- 26 ATCP 50.97 Well decommissioning
- 27 ATCP 50.98 Wetland development or restoration
- 28
- 29 *Appendix A Watersheds draining to impaired waters (“303(d) list”)*
- 30 *Appendix B Summary of UWEX soil test recommendations (for selected crops)*
- 31 *Appendix C Nutrient management plan; checklist*
- 32 *Appendix D NRCS technical guide nutrient management standard 590 (March, 1999).*
- 33 *Appendix E Agricultural engineering practitioners; certification form*
- 34 *Appendix F Scheduled completion dates for priority watersheds, determined as of October 6,*
- 35 *1998.*
- 36 *Appendix G Technical standards incorporated by reference.*
- 37
- 38

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SUBCHAPTER I

DEFINITIONS AND GENERAL PROVISIONS

ATCP 50.01 Definitions

ATCP 50.02 Waivers

ATCP 50.01 Definitions. In this chapter:

(1) “Agricultural practice” means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; grazing; livestock raising; orchards; poultry raising; raising of grain, grass, mint or seed crops; raising of fruits, nuts or berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; or vegetable raising.

(2) “Conservation practice” means a facility or practice that is designed to prevent or reduce soil erosion, prevent or reduce nonpoint source water pollution, or achieve or maintain compliance with soil and water conservation standards. “Conservation practice” includes a nutrient management plan.

(3) “Cost-shared practice” means a conservation practice financed by a cost-share grant.

(4) “Cost-share grant” means a grant that reimburses a landowner for all or part of the cost to install or maintain a conservation practice identified in the grant.

NOTE: See s. ATCP 50.40.

(5) “County drainage board” means a board created and appointed under s. 88.17, Stats.

(6) “County land conservation committee” means the committee created by a county board under s. 92.06, Stats. “County land conservation committee” includes employees or agents of a county land conservation committee who, with committee authorization, act on behalf of the committee.

1 (7) “CREP program” means the combined state-federal conservation reserve
2 enhancement program under s. 93.70, Stats. and 16 USC 3834(f)(4).

3 (8) “Department” means the state of Wisconsin department of agriculture, trade and
4 consumer protection.

5 (9) “DNR” means the state of Wisconsin department of natural resources.

6 (10) “Farm” means a parcel of land on which a landowner conducts one or more
7 agricultural practices.

8 (11) “Farm conservation plan” means a written agreement, between a county land
9 conservation committee and a landowner, in which the landowner agrees to take specific steps to
10 bring a farm into compliance with applicable soil and water conservation standards.

11 (12) “Individual” means a natural person.

12 (13) “Lake district” means a public inland lake protection and rehabilitation district
13 created under subch. IV of ch. 33, Stats.

14 (14) “Land out of agricultural production” means acreage that the owner can no longer
15 use for normal crop or livestock production. Land is not taken “out of agricultural production,”
16 for purposes of s. ATCP 50.08, if the landowner is free to use it for pasture, hay production and
17 cropping subject to residue management.

18 (15) “Landowner” means any of the following:

19 . (a) A person who owns a parcel of land.

20 (b) A person who rents, controls or uses a parcel of land for agricultural purposes.

21 (16) “Livestock operation” means a feedlot or other facility or pasture where animals are
22 fed, confined, maintained or stabled.

1 (17) “Local governmental unit,” as used in s. ATCP 50.60, has the meaning given in s.
2 92.15(1)(b), Stats., and includes a county, town, city, village, lake district and county drainage
3 board.

4 (18) “Local regulation” means any of the following regulations that require conservation
5 practices on farms:

6 (a) Soil and water conservation standards that a county land conservation committee
7 adopts under s. 92.105, Stats.

8 (b) An ordinance or regulation that a county adopts under s. 59.69, 59.692, 92.07(2),
9 92.11, 92.15, 92.16 or 92.17, Stats., or under other county authority.

10 (c) An ordinance or regulation that a town, city or village adopts under s. 92.11, 92.15,
11 92.16 or 92.17, Stats., or under other town, city or village authority.

12 (d) A regulation adopted by a county drainage board, a lake district or other special
13 purpose district, or a tribe.

14 (19) “LWCB” means the state of Wisconsin land and water conservation board.

15 (20) “Manure” means livestock excreta. “Manure” includes livestock bedding, water,
16 soil, hair, feathers, and other debris that becomes intermingled with livestock excreta in normal
17 manure handling operations.

18 (21) “Manure management system” has the meaning given in s. ATCP 50.62(1)(b).

19 (22) “Manure storage facility” has the meaning given in s. ATCP 50.62(1)(c).

20 (23) “Manure storage structure” has the meaning given in s. ATCP 50.62(1)(d).

21 (24) “Nonpoint source” has the meaning given in s. 281.65(2)(b), Stats.

22 **NOTE:** Section 281.65(2)(b), Stats., defines a “nonpoint source” as “a land management
23 activity which contributes to runoff, seepage or percolation which adversely
24 affects or threatens the quality of waters of this state and which is not a point
25 source as defined under s. 283.01(12).”

1
2 (25) “Nonpoint source water pollution” has the meaning given in s. 281.16(1)(f), Stats.

3 **NOTE:** Section 281.16(1)(f), Stats., defines “nonpoint source water pollution” as
4 “pollution of the waters of the state that does not result from a point source, as
5 defined in s. 283.01(12).”
6

7 (26) “NRCS” means the natural resources conservation service of the United States
8 department of agriculture.

9 (27) “NRCS technical guide” means the NRCS field office technical guide.

10 **NOTE:** Copies of the NRCS technical guide are on file with the department, the
11 secretary of state and the revisor of statutes. Copies of individual standards
12 contained in the NRCS technical guide may be obtained from the county land
13 conservation committee or from an NRCS field office. This chapter incorporates,
14 by reference, various NRCS technical guide standards. See *Appendix G*.
15

16 (28) “Nutrient management plan” means any of the following:

17 (a) A plan required under s. ATP 50.04(3) or 50.62(5)(f).

18 (b) A farm nutrient plan prepared or approved, for a landowner, by a qualified nutrient
19 management planner.

20 **NOTE:** A nutrient management plan must comply with s. ATP 50.04(3).

21 (29) “Nutrients” means plant nutrients derived from commercial fertilizers, manure,
22 organic wastes, soil reserves, legumes or other sources.

23 (30) “Person” means an individual, corporation, partnership, cooperative association,
24 limited liability company, trust, or other legal organization or entity.

25 (31) “RUSLE 2 equation” means version 2 of the revised universal soil loss equation
26 (first edition, effective date December 31, 2001), published by NRCS.

27 (32) “Secretary” means the secretary of the department.

28 (33) “State regulation” means chs. 88, 92, 281 and 283, Stats., and rules promulgated by
29 the department or DNR under ch. 88, 92, 281 or 283, Stats.

1 (34) “Structural height” means the difference in elevation in feet between the point of
2 lowest elevation of the structure or embankment before overtopping and the lowest elevation of
3 the natural stream or lake bed at the downstream toe of the structure or embankment.

4 (35) “Tribe” has the meaning given in s. 16.964(6)(a), Stats.

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

7 (37) “Unconfined manure pile” means a quantity of manure, at least 175 cu. ft. in
8 volume, that covers the ground surface to a depth of at least 2 inches and is not confined within a
9 manure storage facility, livestock housing facility or barnyard runoff control facility.

10 *NOTE:* A typical 140 bushel manure spreader contains about 175 cu. ft. of manure.

11 (38) “Waters of the state” has the meaning given in s. 283.01(20), Stats.

12 (39) “Weighted average soil rental rate” means, for each county, the rate determined by
13 the United States department of agriculture, farm service agency, on form CRP-2.

14 **ATCP 50.02 Waivers.** The department may grant a written waiver from any provision
15 of this chapter if the department finds that the waiver is necessary to achieve the objectives of
16 this chapter. The secretary shall sign each waiver under this section. The department may not
17 waive a statutory requirement.
18
19

1 **SUBCHAPTER II**

2 **SOIL AND WATER CONSERVATION ON FARMS**

- 3
- 4 ATCP 50.04 Farm conservation practices
- 5 ATCP 50.06 Installing conservation practices
- 6 ATCP 50.08 Cost-sharing required
- 7

8 **NOTE:** Under s. 281.16, Stats., DNR is primarily responsible for adopting performance
9 standards to prevent pollution runoff from farms. The department of agriculture,
10 trade and consumer protection (“DATCP”) must prescribe conservation practices
11 to implement the DNR performance standards. DATCP must also establish soil
12 conservation and farm nutrient management requirements. This subchapter spells
13 out a single set of farm conservation practices that incorporates DNR performance
14 standards by reference. Counties play a major role in implementing conservation
15 practices on farms (see subchapter III of this chapter). Conservation requirements
16 are contingent on cost-sharing (see s. ATCP 50.08).
17

18 **ATCP 50.04 Farm conservation practices.** Except as provided in s. ATCP 50.08, a
19 landowner engaged in agricultural practices in this state shall implement the following
20 conservation practices:

21 (1) NONPOINT SOURCE POLLUTION CONTROL. A landowner shall implement conservation
22 practices that achieve compliance with DNR performance standards under ss. NR 151.02 to NR
23 151.08.

24 (2) CROPLAND SOIL EROSION CONTROL. A landowner shall manage croplands and
25 cropping practices so that soil erosion rates on cropped soils, determined according to RUSLE 2
26 equation, do not exceed T-value.

27 **NOTE:** See s. 92.025(1), Stats., and s. NR 151.02. Soil erosion includes erosion caused
28 by wind or water. For most soils, “T-value” is equivalent to 3 to 5 tons of soil
29 loss per acre per year.

30
31 The RUSLE 2 equation is published by NRCS, and is available from NRCS.
32 Copies are on file with the department, the secretary of state and the revisor of
33 statutes.
34

1 (3) NUTRIENT MANAGEMENT PLAN. (a) A landowner shall have and follow an annual
2 nutrient management plan when applying nutrients to any field after the date specified in par. (h).
3 A nutrient management plan shall comply with this subsection.

4 (b) The plan shall include every field on which the landowner mechanically applies
5 nutrients.

6 (c) A nutrient management planner qualified under s. ATCP 50.48 shall prepare or
7 approve the plan.

8 **NOTE:** A landowner who has the knowledge and skills described in s. ATCP 50.48(1)
9 may prepare his or her own nutrient management plan. ATCP 50.48 does not
10 require a planner to obtain a state certification, complete a training program or
11 hold specific professional credentials. Persons holding certain credentials are
12 presumed to be qualified, but other persons may also demonstrate their
13 qualifications by preparing sound nutrient management plans. A person may not
14 misrepresent himself or herself as a qualified nutrient management planner.
15

16 (d) The plan shall be based on soil nutrient tests conducted at a laboratory certified under
17 s. ATCP 50.50.

18 (e) The plan shall comply with the NRCS technical guide nutrient management standard
19 590 dated March, 1999.

20 **NOTE:** The checklist in *Appendix C* may be used to gather information for a nutrient
21 management plan. NRCS technical guide nutrient management standard 590
22 (March, 1999) is reproduced in *Appendix D*. That standard is a nitrogen-based
23 standard. However, NRCS is in the process of revising it to incorporate a
24 phosphorus-based standard. The department will initiate rulemaking to adopt the
25 NRCS phosphorus-based standard by January 1, 2005 if NRCS has adopted that
26 standard by that date.
27

28 (f) The plan may not recommend nutrient applications that exceed the amounts required
29 to achieve applicable crop fertility levels recommended by the university of Wisconsin-extension
30 in *Soil Test Recommendations for Field, Vegetable and Fruit Crops*, UWEX publication A-2809

1 (1998), unless the nutrient management planner can show that one or more of the following
2 circumstances justifies the recommended application:

- 3 1. A soil or tissue test reveals a specific nutrient deficiency.
- 4 2. Excess nutrients are the result of an unforeseen change in the type of crop planted.
- 5 3. Excess nutrients are the result of prior manure applications.
- 6 4. Organic nutrients are the only nutrients applied to the field.
- 7 5. Excess nutrients from organic nutrient applications will be used later in the planned
8 crop rotation.
- 9 6. Corn after corn is conservation tilled with greater than 50% residue after planting.
- 10 7. Starter fertilizer is properly applied to row crops.
- 11 8. The crop is irrigated.
- 12 9. Other special agronomic conditions documented by the planner.

13 **NOTE:** Appendix B contains a convenient summary of UWEX publication A-2809, for
14 selected crops. You may obtain the complete publication and the summary from
15 your county extension agent. The complete publication is also on file with the
16 department, the secretary of state and the revisor of statutes.

17
18 (g) The plan shall be consistent with any nutrient management plan required under ch.
19 NR 113, NR 204 or NR 214 if the landowner applies septage, municipal sludge, industrial waste
20 or industrial byproducts to the land. A landowner is not required to have a nutrient management
21 plan under this subsection if the landowner applies only septage, municipal sludge, industrial
22 waste or industrial byproducts according to ch. NR 113, NR 204 or NR 214.

23 (h) Paragraph (a) first applies on the following dates for the following lands:

- 24 1. January 1, 2005 for land located in watersheds draining to outstanding or exceptional
25 resource waters designated in NR 102.

1 2. January 1, 2005 for land located in watersheds draining to impaired waters that DNR
2 has listed pursuant to 33 USC 1313 and 40 CFR 130.7, if the impairment relates to excessive
3 nutrients.

4 **NOTE:** The list under subd. 2 is known as the “303(d) list of impaired waters.”
5 *Appendix A* contains a map showing the watersheds that drain to listed waters.
6

7 3. January 1, 2005 for land located in source water protection areas defined in s. NR
8 243.03.

9 4. January 1, 2008 for other lands, except that it first applies to new cropland as
10 described by NR 151.09(4)(b) on *[...revisor inserts date that is one year after the effective date*
11 *of this recreated chapter...]*.

12 **NOTE:** The delayed effective dates under par. (h) correspond to the delayed effective
13 dates under NR 151.07.
14

15 **ATCP 50.06 Installing conservation practices.** (1) GENERAL. A landowner may use
16 any of the following to comply with s. ATCP 50.04, unless s. ATCP 50.04 mandates a specific
17 practice:

18 (a) Conservation practices identified in subch. VIII or the NRCS technical guide.

19 (b) Other conservation practices that comply with s. ATCP 50.04.

20 (2) FUNDED PRACTICES. Conservation practices for which a landowner receives a cost-
21 share grant under this chapter shall comply with subch. VIII.

22 **NOTE:** A county land conservation committee can provide landowners with a helpful
23 document called “Farmland Conservation Choices: A Guide to Environmentally
24 Sound Practices for Wisconsin Farmers.” The committee can also recommend
25 conservation practices that are appropriate for the landowner’s farm. Cost-share
26 grants may be available to help landowners install or maintain recommended
27 practices. Landowners may contact their county land conservation committee to
28 apply for cost-share grants. If a landowner receives a cost-share grant for a
29 conservation practice, that practice must comply with subch. VIII.
30

1 Counties have land and water resource management plans to promote compliance
2 with farm conservation requirements (see s. ATCP 50.12). Counties will seek
3 voluntary compliance and will offer information, cost-sharing and technical
4 assistance to help landowners comply.

5
6 As a last resort, a county may seek enforcement action against a landowner who
7 refuses to implement required conservation practices. A county may not seek
8 enforcement action until it complies with applicable cost-sharing requirements
9 under s. ATCP 50.08. A county may pursue any of the following enforcement
10 options, as appropriate:

- 11
- 12 • The county may suspend a violator’s eligibility for farmland preservation
13 tax credits (see s. ATCP 50.16(6)).
- 14
- 15 • DNR may issue a notice of discharge, requiring a violator to obtain a
16 pollution discharge permit from DNR (see ch. NR 243).
- 17
- 18 • The department of justice or a district attorney may file a civil forfeiture
19 action against the violator (see s. 281.98, Stats.).
- 20
- 21 • The county may take action to enforce its own ordinance, if any.
- 22
- 23 • A town, city or village may take action to enforce its own ordinance, if
24 any.
- 25

26 County compliance procedures should be consistent with this chapter and ss. NR
27 151.09 and 151.095. A county should spell out compliance procedures in its land
28 and water resource management plan, as provided in s. ATCP 50.12(2). The
29 department and DNR will work with counties to develop suggested guidelines for
30 county compliance programs.

31
32 **ATCP 50.08 Cost-sharing required.** (1) GENERAL. A landowner is not required to do
33 any of the following, under s. ATCP 50.04, unless the landowner receives a bona fide offer of
34 cost-sharing:

35 (a) Discontinue or modify cropping practices on existing cropland. In this paragraph,
36 “existing cropland” has the meaning given in s. NR 151.09(4)(b).

37 **NOTE:** Under DNR rules, a landowner is normally *entitled* to cost-sharing if the
38 landowner is *required* to discontinue or modify cropping practices on “existing
39 cropland” in order to comply with a DNR performance standard. Other cropland
40 must comply with relevant DNR performance standards, *regardless* of the
41 availability of cost-sharing. Under DNR rules:

- Land qualifies as “existing cropland” if it was being cropped on the effective date of the relevant DNR performance standard, and has never complied with that performance standard since that date.
- If cropland *complies* with a DNR performance standard after that standard takes effect, it no longer qualifies as “existing cropland” for cost-share purposes under that performance standard. If the cropland later falls out of compliance with the performance standard, the landowner must restore compliance regardless of the availability of cost-sharing.
- Land not cropped on the effective date of a DNR performance standard, but returned to cropping at a later date, may qualify as “existing cropland” if it is returned to cropping within 10 years after cropping was halted.
- Cropland enrolled in a federal conservation program on *[...revisor inserts effective date of NR 151...]* qualifies as “existing cropland” when it comes out of the federal program.

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

(b) Discontinue or modify an existing livestock facility or operation. In this paragraph,

“existing livestock facility or operation” has the meaning given in NR 151.095(5)(b).

NOTE: Under DNR rules, a landowner is normally *entitled* to cost-sharing if the landowner is *required* to discontinue or modify an “existing” livestock facility or operation in order to comply with a DNR performance standard. Other livestock facilities and operations must comply with DNR performance standards, *regardless* of the availability of cost-sharing. Under DNR rules:

- A livestock facility or operation qualifies as an “existing” facility or operation if it existed on the effective date of the DNR performance standard, and has never complied with that performance standard since that date.
- If a livestock facility or operation *complies* with a DNR performance standard after that standard takes effect, it no longer qualifies as an “existing” facility or operation for cost-share purposes under that performance standard. If the facility or operation later falls out of compliance with the performance standard, the landowner must restore compliance regardless of the availability of cost-sharing.

- A livestock facility that existed but held no livestock on the effective date of a DNR performance standard may qualify as an “existing” facility if it is restocked within 5 years after livestock were last present.
- If a landowner voluntarily expands or alters a livestock facility after the effective date of a DNR performance standard, the newly constructed portion of the facility will not qualify as an “existing” facility for cost-share purposes under that performance standard. (There are limited exceptions.)

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

(2) COST-SHARE AMOUNT. A cost-share offer under sub. (1) shall cover at least 70% of the landowner’s cost to install and maintain each required conservation practice, or 90% of the landowner’s cost if there is an economic hardship under s. ATCP 50.42(4).

NOTE: See ss. 92.07(2), 92.105(1), 92.15(4) and 281.16(3)(e), Stats. Subsection (1) requires a bona fide *offer* of cost-sharing, not necessarily an acceptance. A county may impose a reasonable deadline by which a landowner must accept or reject the county’s bona fide cost-sharing offer under sub. (1). See s. ATCP 50.54(2) related to cost-sharing for conservation practices required under a county or local ordinance.

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

(3) LANDOWNER’S COST. A landowner’s cost to install and maintain a conservation practice includes all of the following that apply:

(a) The landowner’s reasonable and necessary expenditures to install and maintain the conservation practice. This includes eligible installation costs identified in subch. VIII, and costs for engineering services under s. ATCP 50.40(7).

1 (b) The reasonable value of necessary labor, equipment and supplies provided by the
2 landowner in the installation and maintenance of the conservation practice. This does not
3 include normal operating routines such as clean-outs of barnyards, storage facilities and gutters.

4 (c) The reasonable value of mowing provided by the landowner, up to a maximum of 2
5 mowings per year and \$10 per mowing, if that mowing is necessary to maintain the conservation
6 practice.

7 (d) The landowner's cost to take or keep land out of agricultural production, if the
8 landowner must take or keep more than ½ acre out of agricultural production in order to install or
9 maintain the conservation practice. The landowner's cost, determined on the date of the cost-
10 share contract, equals the sum of the annual costs that the landowner will incur over the
11 maintenance period specified in the cost-share contract. The landowner's annual cost, for each
12 year of the maintenance period, equals the number of affected acres multiplied by the per-acre
13 weighted average soil rental rate in the county on the date of the cost-share contract. This
14 paragraph does not apply to land directly occupied by a facility or structure, such as a manure
15 storage facility, that a landowner installs as part of the conservation practice.

16 **NOTE:** If a county *requires* a landowner to install a conservation practice that changes
17 an "existing" agricultural operation, the county must offer cost-sharing. If the
18 cost-shared practice is a capital improvement, the landowner must agree to
19 maintain it for at least 10 years. The cost-share contract must pay the required
20 minimum share of the landowner's cost under sub. (3). If the landowner must
21 take more than ½ acre out of production, the landowner's cost includes the cost of
22 taking that land out of production.

23
24 After the contract maintenance period has expired, the landowner may resume
25 production in the affected area unless the parties enter into a new cost-share
26 contract to keep the land out of production (see sub. (5)(a)). The parties may
27 negotiate the term of each contract, as long as each contract specifies a
28 maintenance term of at least 10 years. If the landowner wishes to take advantage
29 of the CREP-equivalent payment for riparian land under sub. (4), the landowner
30 must agree to keep the land out of production for at least 15 years, or in
31 perpetuity.

1
2 The United States department of agriculture, farm service agency, has determined
3 the weighted average soil rental rate for each county, on form CRP-2. See s.
4 ATCP 50.01(39).

5
6 Land is not taken “out of agricultural production,” for purposes of sub. (3), if the
7 landowner is free to use it for pasture, hay production *and* cropping subject to
8 residue management (see s. ATCP 50.01(14)).
9

10 (4) RIPARIAN LAND TAKEN OUT OF PRODUCTION; CREP-EQUIVALENT PAYMENT. (a) If a
11 landowner must take or keep more than ½ acre of riparian land out of agricultural production in
12 order to install or maintain a conservation practice, the cost-share offer under sub. (1) for that
13 conservation practice shall be at least equal to the amount that would be offered under the CREP
14 program if the affected lands were enrolled in that program, regardless of whether the lands are
15 actually eligible for the CREP program.

16 (b) Paragraph (a) does not apply unless the landowner agrees to keep the land out of
17 agricultural production for 15 years, or in perpetuity, under contract terms equivalent to those
18 that apply under the CREP program.

19 (c) Paragraph (a) does not apply to a cost-share offer made after the CREP program
20 expires.

21 **NOTE:** The CREP program is the combined state-federal conservation reserve
22 enhancement program administered by the department and the United States
23 department of agriculture (see ATCP 50.01(7)). Under the CREP program, lands
24 are enrolled for 15 years or in perpetuity. Lands enrolled in perpetuity are subject
25 to a permanent conservation easement.

26
27 Land is not taken “out of agricultural production,” for purposes of sub. (4) if the
28 landowner is free to use it for pasture, hay production and cropping subject to
29 residue management (see s. ATCP 50.01(14)).
30

31 (d) Paragraph (a) does not apply to land directly occupied by a facility or structure, such
32 as a manure storage facility, that a landowner installs as part of the conservation practice.

1 (5) EXEMPTIONS. The cost-sharing requirement under sub. (1) does not apply to any of
2 the following:

3 (a) A conservation practice that has already been cost-shared for at least 10 years. This
4 exemption does not apply to costs under sub. (3)(d).

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

10
11 The rule is different if the county requires a landowner to take more than ½ acre
12 of land out of agricultural production in order to install or maintain a conservation
13 practice. Even if a county has *already paid* a landowner to install and maintain
14 that conservation practice for at least 10 years, the county must *continue* to cost-
15 share lost production if the county *requires* the landowner to keep the land out of
16 production in subsequent years. Land is not taken “out of agricultural
17 production,” for cost-sharing purposes, if the landowner is free to use it for
18 pasture, hay production *and* cropping subject to residue management (see s.
19 ATCP 50.01(14)).
20

21 (b) The following conservation practices if those practices have already been cost-shared
22 for at least 4 years:

- 23 1. Contour farming as defined in s. ATCP 50.67(1).
- 24 2. Cropland cover as defined in s. ATCP 50.68(1).
- 25 3. Nutrient management as defined in s. ATCP 50.78(1).
- 26 4. Pesticide management as defined in s. ATCP 50.79(1).
- 27 5. Residue management as defined in s. ATCP 50.82(1).
- 28 6. Strip-cropping as defined in s. ATCP 50.89(1)

29 **NOTE:** For example, if a county has *already paid* a landowner to implement nutrient
30 management for at least 4 years, the county may require the landowner to comply
31 with state nutrient management standards in subsequent years without further
32 cost-sharing. The same holds true for other “soft” practices under par. (b) if those
33 practices are needed to meet the conservation standards under s. ATCP 50.04.

1 The county has the burden of showing that it has *already paid* the landowner to
2 maintain the conservation practice for at least 4 years.

3
4 (c) Conservation practices or costs for which cost-sharing is prohibited under s. ATCP
5 50.40(3)(b) or subch. VIII.

6 (d) Conservation practices or costs to correct a landowner's criminal or grossly negligent
7 discharge of pollutants to waters of the state.

8 (e) Conservation practices required by a WPDES permit issued under ch. NR 243.

9 (6) COMPLIANCE ACTIONS NOT AFFECTED. Subsection (1) does not limit any of the
10 following:

11 (a) An emergency or interim response to a pollution discharge, to prevent or mitigate
12 imminent harm to waters of the state.

13 (b) County action under s. ATCP 50.16(6) to suspend a landowner's eligibility for
14 farmland preservation tax credits, if the landowner fails to comply with conservation standards
15 under s. ATCP 50.16(1).

16 (c) Enforcement of an existing cost-share contract.

17 (7) COST-SHARE GRANT SOURCES. A grant from any public or private source, or
18 combination of sources, may be counted as part of a cost-share grant under sub. (1). A loan is
19 not a grant.

20

1 **SUBCHAPTER III**

2 **COUNTY SOIL AND WATER PROGRAM**

- 3 ATCP 50.10 County program; general
- 4 ATCP 50.12 Land and water resource management plan
- 5 ATCP 50.14 County ordinances
- 6 ATCP 50.16 Farmland preservation program; conservation standards
- 7 ATCP 50.18 Annual report
- 8 ATCP 50.20 Annual grant application
- 9 ATCP 50.22 Accounting and recordkeeping
- 10 ATCP 50.24 Department review

11

12 **ATCP 50.10 County program; general.** (1) PROGRAM ELEMENTS. Every county land
 13 conservation committee shall establish and maintain a county soil and water conservation
 14 program. The program shall include all of the following elements:

15 (a) A county land and water resource management plan under s. ATCP 50.12, and a
 16 program to implement that plan.

17 (b) County soil and water conservation standards, and a program to implement those
 18 standards.

19 **NOTE:** A county’s land and water resource management plan under s. ATCP 50.12
 20 should identify the county’s strategy to implement the farm conservation practices
 21 required under s. ATCP 50.04. See s. ATCP 50.16 related to county standards for
 22 lands covered by the farmland preservation program under ch. 91, Stats. See s.
 23 ATCP 50.14 and subch. VII related to county ordinances.

24

25 (c) A program to prepare and submit annual reports under s. ATCP 50.18 and annual
 26 grant applications under s. ATCP 50.20.

27 (d) A program to receive, distribute and account for soil and water resource management
 28 grants under this chapter.

29 (e) A procedure to ensure that conservation practices funded under this chapter are
 30 designed and installed according to this chapter.

31 (f) An accounting and recordkeeping system under s. ATCP 50.22.

1 (g) An information and education program to promote effective soil and water resource
2 management.

3 (h) Other program elements, if any, required under this chapter.

4 (2) COORDINATION. A county land conservation committee shall, to the extent
5 practicable, coordinate the program elements under sub. (1) with each other and with all of the
6 following:

7 (a) The county's land information and modernization program under ss. 16.967 and
8 59.72(3), Stats.

9 (b) The related activities of NRCS, state agencies and other governmental entities in that
10 county.

11 **ATCP 50.12 Land and water resource management plan.** (1) REQUIREMENT. A
12 county land conservation committee shall prepare and submit, for department approval, a land
13 and water resource management plan. The department shall approve the county plan before
14 allocating any funds to the county under subch. IV.

15 (2) PLAN CONTENTS. A land and water resource management plan shall describe all of
16 the following in reasonable detail:

17 (a) Water quality and soil erosion conditions throughout the county. The plan shall
18 include water quality assessments available from DNR, if any.

19 (b) State and local regulations that the county will use to implement the county plan.
20 The department may require the county to provide copies of relevant local regulations, as
21 necessary, and may comment on those regulations.

22 **NOTE:** See state rules under chs. ATCP 48, ATCP 50, NR 120, NR 151 and NR 243.
23

1 (c) Water quality objectives for each water basin, priority watershed as defined in s.
2 281.65(2)(c), Stats., and priority lake as defined in s. 281.65(2)(be), Stats. The county shall
3 determine water quality objectives in consultation with DNR.

4 (d) Key water quality and soil erosion problem areas. The county land conservation
5 committee shall identify key water quality problem areas in consultation with DNR.

6 (e) Conservation practices needed to address key water quality and soil erosion
7 problems.

8 (f) A plan to identify priority farms in the county.

9 **NOTE:** The identification of priority farms may vary between counties, depending on
10 local conditions, strategies and information. A county should focus on identifying
11 or working with the following farms, or other categories of farms that the county
12 identifies in its plan:

- 13
- 14 • Critical sites that DNR designates under s. 281.65(4)(g)8.am., Stats.
- 15
- 16 • Farms subject to a DNR notice of intent under s. 281.20 or notice of discharge
17 under ch. 283, Stats.
- 18
- 19 • Farms located in watersheds draining to waters that DNR has listed pursuant
20 to 33 USC 1313. This is also known as the “303(d) list of impaired waters.”
21 *Appendix A* contains a map showing the watersheds that drain to listed waters.
- 22
- 23 • Farms that have large numbers of livestock, or significant problems with
24 manure management.
- 25
- 26 • Farms making clearly excessive nutrient applications.
- 27
- 28 • Farms with clearly excessive rates of cropland erosion.
- 29

30 (g) County strategies to encourage voluntary implementation of conservation practices
31 under s. ATCP 50.04. County strategies may include information and education, cost-sharing,
32 technical assistance and other strategies.

33 (h) Compliance procedures, including notice, hearing, enforcement and appeal
34 procedures, that will apply if the county takes action against a landowner for failure to

1 implement conservation practices required under this chapter, NR 151 or related local
2 regulations.

3 **NOTE:** See ss. ATCP 50.04 to 50.08 and subch. VII.

4 (i) The county's multi-year workplan to implement the farm conservation practices under
5 s. ATCP 50.04, and achieve compliance with performance standards under ch. NR 151. The
6 plan shall identify priorities and expected costs.

7 **NOTE:** The county workplan under par. (i) should be based on a reasonable assessment
8 of available funding and resources.

9
10 (j) How the county will monitor and measure its progress under par. (i).

11 (k) How the county will provide information and education related to land and water
12 conservation, including information related to farm conservation practices and cost-share
13 funding.

14 (L) How the county will coordinate its land and water conservation program with
15 federal, state and local agencies.

16 **NOTE:** The department and DNR will work with counties to develop more detailed
17 guidelines and suggestions for county land and water resource management plans,
18 but individual counties have some flexibility and discretion to propose plans that
19 are appropriate for their local conditions.

20
21 (3) PLAN DEVELOPMENT. A county land conservation committee, when preparing a land
22 and water resource management plan, shall do all of the following:

23 (a) Appoint and consult with a local advisory committee of interested persons.

24 **NOTE:** A local advisory committee should reflect a broad spectrum of public interests
25 and perspectives. For example, it could include:

- 26 • Affected farmers, businesses and landowners.
- 27 • Agricultural, business, environmental, civic and recreational
28 organizations.
- 29 • Federal, state, local and tribal officials.
- 30 • The university of Wisconsin and other educational institutions.

31

1 (b) Assemble relevant data, including relevant land use, natural resource, water quality
2 and soil data.

3 (c) Consult with DNR.

4 **NOTE:** The county land conservation committee should normally consult with the
5 appropriate DNR basin team.

6
7 (d) Assess resource conditions and identify problem areas.

8
9 (e) Establish and document priorities and objectives.

10
11 (f) Project available funding and resources.

12
13 (g) Establish and document a plan of action.

14
15 (h) Identify roles and responsibilities.

16
17 (4) PUBLIC NOTICE AND HEARING. Before a county land conservation committee submits
18 a land and water resource management plan for department approval, the committee shall do all
19 of the following:

20 (a) Hold at least one public hearing on the plan.

21 (b) Make a reasonable effort to notify landowners affected by committee findings under
22 subs. (2)(d) and (e), and give them an opportunity to present information related to the accuracy
23 of the committee's findings.

24 **NOTE:** The county land conservation committee should consult with the department
25 before holding public hearings on a land and water resource management plan.

26
27 (5) PLAN APPROVAL. The department shall review a county land and water resource
28 management plan, and shall approve or disapprove the plan after consulting with the LWCB.
29 The department shall review the plan based on the criteria identified in this section, s. ATCP
30 50.30(3) and s. 92.10(6), Stats. The secretary shall sign the order approving or disapproving the
31 county plan. The department shall approve a plan for a specified period of time that shall not

1 exceed 5 years, subject to conditions that the department specifies in the order. The
2 department's approval does not take effect if the county board does not approve the county plan.

3 **NOTE:** The county board may approve the county land and water resource management
4 plan before or after the department approves the plan. The plan approved by the
5 county board must be the same plan approved by the department. If the
6 department requires changes to a plan previously approved by the county board,
7 the department's approval does not take effect until the county board approves the
8 modified plan.

9
10 (6) PLAN IMPLEMENTATION. The department may review county implementation of an
11 approved county land and water resource management plan. The department may consider
12 information obtained in its review when it makes annual grant allocations to counties under
13 subch. IV.

14 **ATCP 50.14 County ordinances.** A county may, by ordinance, require landowners to
15 implement conservation practices required under s. ATCP 50.04. A county shall comply with
16 applicable requirements under subch. VII.

17 **NOTE:** See county authority under ss. 59.69, 59.692, 92.11, 92.15, 92.16 and 92.17,
18 Stats. This section does not expand a county's statutory authority. A county
19 ordinance implementing conservation practices under s. ATCP 50.04 should be
20 reasonably consistent with s. ATCP 50.04. A county livestock ordinance must
21 comply with s. ATCP 50.60 and s. 92.15, Stats.- DATCP may review and
22 comment on a county ordinance (see ss. ATCP 50.12 and 50.54). Cost-sharing
23 under a local ordinance must be at least equivalent to cost-sharing under s. ATCP
24 50.08 (see s. ATCP 50.54).

25
26 **ATCP 50.16 Farmland preservation program; conservation standards. (1)**
27 **STANDARDS REQUIRED.** (a) A county land conservation committee shall adopt soil and water
28 conservation standards, under s. 92.105, Stats., for all lands for which landowners claim
29 farmland preservation tax credits under subch. IX of ch. 71, Stats. The standards shall
30 incorporate and be consistent with the farm conservation practices required under s. ATCP
31 50.04.

1 **NOTE:** See ss. 91.80 and 92.105, Stats. Under the farmland preservation program, an
2 “owner” of “eligible farmland” (as defined in ss. 91.01(9) and (6), Stats.) may
3 claim farmland preservation tax credits if the land is covered by a farmland
4 preservation agreement or exclusive agricultural zoning ordinance. (The LWCB
5 must certify the ordinance.) To claim the tax credits, the “owner” must comply
6 with county soil and water conservation standards approved by the LWCB.
7 Section ATCP 50.16 requires the county to incorporate, in the county’s standards,
8 the farm conservation practices required under s. ATCP 50.04. The county
9 standards must be consistent with s. ATCP 50.04.

10
11 (b) The LWCB may deny or withdraw certification, under s. 91.06, Stats., of an
12 exclusive agricultural zoning ordinance in a county that fails to comply with par. (a).

13 (c) The department may refuse to enter into farmland preservation agreements with
14 landowners in a county that fails to comply with par. (a). The department may also deny funding
15 under this chapter to any county that fails to comply with par. (a).

16 (2) PUBLIC HEARING. A county land conservation committee shall hold a public hearing
17 whenever the committee proposes to adopt or amend soil or water conservation standards under
18 sub. (1)(a).

19 **NOTE:** A county land conservation committee should consult with the department
20 before holding a public hearing on proposed soil or water conservation standards
21 or amendments.

22
23 (3) LWCB APPROVAL. (a) County soil and water conservation standards and
24 amendments under sub. (1) are not effective until approved by the LWCB.

25 (b) A county land conservation committee may submit a proposed standard or
26 amendment to the department, for approval by the LWCB. The department shall submit the
27 proposed standard or amendment to the LWCB and shall recommend approval, conditional
28 approval or disapproval. The department shall provide the LWCB with a proposed decision,
29 including proposed findings, proposed conclusions and a proposed order.

1 (c) The LWCB shall issue a written decision approving, conditionally approving or
2 disapproving a proposed standard or amendment under sub. (1). The LWCB may disapprove a
3 proposed standard or amendment for any of the following reasons:

4 1. The standard or amendment fails to comply with s. 92.105, Stats., or this chapter.

5 2. The standard or amendment does not reasonably conform to guidelines that the
6 LWCB has established under s. 92.105(2), Stats.

7 3. The standard or amendment is arbitrary or capricious.

8 4. The county land conservation committee has failed to provide the department or the
9 LWCB with requested information that is reasonably relevant to the LWCB's review of the
10 standard or amendment.

11 **NOTE:** Under s. 227.42, Stats., a county land conservation committee may request a
12 contested case hearing on an LWCB decision that is adverse to the committee. If
13 the LWCB grants the hearing request, it may ask the department to appoint an
14 impartial hearing examiner to conduct the hearing. The LWCB may affirm or
15 modify its decision based on the hearing record. A county land conservation
16 committee may also seek judicial review under ch. 227, Stats.

17
18 (4) FARM CONSERVATION PLANS. A county land conservation committee may enter into
19 a farm conservation plan with a landowner. A landowner meets the conservation standards
20 under sub. (1) if the landowner implements a farm conservation plan that will achieve full
21 compliance with those standards within 5 years.

22 (5) MONITORING COMPLIANCE. (a) A county land conservation committee may inspect a
23 landowner's compliance with the conservation standards under sub. (1) and any farm
24 conservation plan under sub. (4). A county land conservation committee shall inspect each
25 landowner's compliance with the conservation standards under sub. (1) at least once every 6
26 years, or on another basis that the secretary approves in writing after consulting the LWCB.

1 (b) A county land conservation committee may ask a landowner to certify, on an annual
2 or other periodic basis, that the landowner is complying with the conservation standards under
3 sub. (1) and any farm conservation plan under sub. (4). A landowner shall certify compliance on
4 a form provided by the committee.

5 (6) NOTICE OF NONCOMPLIANCE. (a) A county land conservation committee shall issue a
6 written notice of noncompliance to a landowner if the committee finds that the landowner has
7 done any of the following:

- 8 1. Failed to comply with applicable standards under sub. (1).
- 9 2. Failed to comply with a farm conservation plan under sub. (4).
- 10 3. Failed to permit a reasonable inspection under sub. (5)(a).
- 11 4. Failed to certify compliance in response to a committee request under sub. (5)(b).

12 (b) A county land conservation committee shall issue a notice of noncompliance under
13 par. (a) on a form provided by the department. The notice shall disclose all of the following:

- 14 1. The nature of the violation, and a deadline date for curing the violation.
- 15 2. That the landowner may not claim farmland preservation tax credits under subch. IX
16 of ch. 71, Stats., unless the landowner corrects the violation.
- 17 3. That the landowner may meet with the county land conservation committee to contest
18 or discuss the violation.

19 (c) If a landowner receiving a notice under par. (a) fails to cure the violation by the
20 deadline date specified in the notice, the county land conservation committee shall issue a copy
21 of the notice to all of the following:

- 22 1. The state of Wisconsin department of revenue.

1 2. The county planning and zoning committee if the land is covered by an exclusive
2 agricultural zoning ordinance.

3 (d) A county land conservation committee may, at any time, withdraw a notice of
4 noncompliance under par. (a). The committee shall give notice of the withdrawal to any agency
5 under par. (c) that received a copy of the notice of noncompliance.

6 **ATCP 50.18 Annual report.** (1) ANNUAL REPORT. By April 15 of each year, a county
7 land conservation committee shall file with the department a year-end report for the preceding
8 calendar year. The committee shall file the report on a form provided by the department. The
9 report shall identify all of the following:

10 (a) The county's activities and accomplishments related to soil and water resource
11 management during the preceding calendar year, including activities required or funded under
12 this chapter.

13 (b) The county's progress toward the objectives identified in the county land and water
14 resource management plan under s. ATCP 50.12. The report shall identify key areas of
15 improvement, key compliance activities and key remaining problem areas.

16 (c) The county's financial contribution toward staffing the activities of the county land
17 conservation committee in the preceding calendar year. The county may include contributions
18 for employee salaries and fringe benefits, employee support costs, independent contractor fees,
19 and training for employees and land conservation committee members. A county may not
20 include capital expenditures, or expenditures reimbursed from other governmental entities.

21 (2) FAILURE TO FILE ANNUAL REPORT. The department may withhold funding under this
22 chapter from a county land conservation committee that fails to file a timely annual report under
23 sub. (1).

1 **ATCP 50.20 Annual grant application.** By April 15 of each year, a county land
2 conservation committee shall file with the department its application for funding under this
3 chapter for the next calendar year. The application shall comply with s. ATCP 50.26.

4 **NOTE:** The department awards grants to counties according to subch. IV.

5 **ATCP 50.22 Accounting and recordkeeping.** A county land conservation committee,
6 in consultation with the county’s chief financial officer, shall establish and maintain an
7 accounting and recordkeeping system. The accounting and recordkeeping system shall do all of
8 the following:

9 (1) Fully and clearly account for the receipt, handling and disposition of all funds that
10 the committee receives under s. 92.14, Stats., and this chapter.

11 (2) Document county compliance with s. 92.14, Stats., and this chapter, and each grant
12 contract under this chapter.

13 (3) Include records required under s. ATCP 50.32(9) related to annual staffing grants.

14 (4) Include records required under s. ATCP 50.34(7) related to cost-share grants for
15 conservation practices.

16 **ATCP 50.24 Department review.** The department may review the activities of a
17 county land conservation committee under this chapter. The department may do any of the
18 following in connection with its review:

19 (1) Require the committee to provide relevant information requested by the department,
20 including information from the county’s annual financial and compliance audit.

21 **NOTE:** A county is currently required to have an annual, organization-wide financial
22 and compliance audit that complies with the *State Single Audit Guidelines* issued
23 by the Wisconsin department of administration. This “single audit” currently
24 includes an audit of the county’s use of funds awarded to the county under this
25 chapter. The audit must comply with *Audit Guidelines for the Soil and Water*
26 *Resource Management Grant Program*, issued annually by the Wisconsin

1 department of agriculture, trade and consumer protection. The department of
2 agriculture, trade and consumer protection may conduct additional audits, as it
3 deems necessary. The county may use funds provided under s. ATCP 50.32 to
4 pay a proportionate share of the county's costs for annual financial and
5 compliance audits.
6

7 (2) Require the committee to discuss, with the department, county compliance with this
8 chapter.

9 (3) Inspect and copy relevant county records.

10 (4) Inspect activities and practices funded under this chapter.
11
12

1 **SUBCHAPTER IV**

2 **GRANTS TO COUNTIES**

- 3 ATCP 50.26 Grant applications
- 4 ATCP 50.28 Annual grant allocation plan
- 5 ATCP 50.30 Grant priorities
- 6 ATCP 50.32 Annual staffing grants to counties
- 7 ATCP 50.34 Grants for conservation practices
- 8 ATCP 50.36 Grant contracts

9
10 **ATCP 50.26 Grant applications.** (1) ANNUAL APPLICATION. A county land
11 conservation committee shall apply by April 15 of each year to obtain funding under this chapter
12 for the next calendar year. The committee shall apply to the department on a form provided by
13 the department. The application shall comply with this section.

14 *NOTE:* The department and DNR will jointly solicit grant applications from county land
15 conservation committees under ss. 92.14, 281.65, and 281.66, Stats. The
16 department and DNR will distribute grant application forms as soon as possible
17 prior to January 31 of each year, for return by April 15 of that year. The
18 department and DNR will prepare a joint allocation plan after reviewing county
19 grant applications. The department and DNR will make annual grant allocations
20 after obtaining LWCB recommendations on their draft allocation plan.

21
22 Before it distributes grant application forms to the counties, the department will
23 consult with county representatives regarding the department’s potential funding
24 priorities. The department will then give notice to all counties of its potential
25 priorities when it distributes grant applications to the counties. The department
26 may modify its potential priorities based on the actual grant applications that the
27 counties submit.

28
29 (2) ANNUAL STAFFING GRANT. A county land conservation committee may request
30 funding for county staff and support, including funding for employees and independent
31 contractors who work for the county land conservation committee. The request shall identify all
32 of the following:

1 (a) The activities for which the county seeks funding. These may include activities
2 under this chapter, CREP program activities, and priority watershed activities previously funded
3 under ch. NR 120.

4 **NOTE:** The Wisconsin legislature restructured the state's nonpoint source pollution
5 abatement program in 1997 and 1999. As part of that restructuring, DNR is
6 phasing out its priority watershed program under ch. NR 120.

7
8 DNR will continue to provide cost-share funding for projects in priority
9 watersheds established prior to July 1, 1998. But DNR will establish no new
10 priority watershed projects, and has established no new projects since July 1,
11 1998. DNR will no longer provide funding for county and local government staff
12 engaged in the priority watershed program.

13
14 The department of agriculture, trade and consumer protection provides grants to
15 pay for county soil and water conservation staff. Under the redesigned nonpoint
16 source pollution abatement program, the department will also fund county staff
17 who undertake projects funded through s. 281.65, Stats., formerly DNR's priority
18 watershed program. Funding for county staff will be included in the department's
19 annual staffing grants to counties.

20
21 Within the limits of available funds, the department will attempt to ensure
22 continuity of staffing for priority watershed projects. See s. ATCP 50.32(5)(b).
23 Staffing grants for priority watershed projects will be phased out as those projects
24 are completed. A schedule of priority watershed completion dates is shown in
25 *Appendix F*.

26
27 With the department's permission, a county may reallocate staff funds to local
28 governments or tribes within the county. See s. ATCP 50.32(1).

29
30 (b) The amount of funding requested for activities under par. (a), including staff salaries
31 and fringe benefits, contractor fees, training and eligible support costs.

32 **NOTE:** See s. ATCP 50.32 related to annual staffing grants. Contractor fees include
33 costs to hire independent contractors such as engineers, nutrient management
34 planners, computer specialists, information and education specialists and other
35 consultants who work for the county land conservation committee but are not
36 county employees.
37

1 (3) FUNDING FOR CONSERVATION PRACTICES. A county land conservation committee
2 may request funding for cost-share grants to install conservation practices. The request shall
3 include all of the following:

4 (a) The purposes for which the county proposes to award cost-share grants to
5 landowners.

6 (b) The amount of funding requested for cost-share grants to landowners.

7 **NOTE:** See s. ATCP 50.34 related to funding for conservation practices.

8 (4) OTHER INFORMATION. A county land conservation committee may include, with its
9 grant application under sub. (1), any other information that the committee wishes to provide in
10 support of its grant application. The department may ask the committee to provide additional
11 information as necessary.

12 **NOTE:** Under s. 92.14(10), Stats., the department may award a grant to any person (not
13 just a county) for information, education, training and other services related to the
14 administration of this chapter. Grant applicants must apply by April 15 of each
15 year for funding in the next calendar year. See s. ATCP 50.36.

16
17 **ATCP 50.28 Annual grant allocation plan.** (1) PLAN REQUIRED. The department
18 shall allocate grants under this chapter according to an annual grant allocation plan. The
19 secretary shall approve the grant allocation plan. The plan shall specify, for the next calendar
20 year, all of the following:

21 (a) The total amount available to the department for possible allocation under the plan,
22 including the subtotal amount from each of the following sources:

- 23 1. General purpose revenues appropriated under s. 20.115(7)(c), Stats.
- 24 2. Segregated fund revenues appropriated under s. 20.115(7)(qd), Stats.
- 25 3. Bond revenues appropriated under s. 20.866(2)(we), Stats.
- 26 4. Other legislative appropriations.

1 5. Gifts and grants accepted under s. 92.05(2)(a), Stats.

2 (b) The total amount allocated under the plan, and the subtotal amount allocated from
3 each of the sources identified under par. (a).

4 (c) The amounts allocated to counties for annual staffing grants under s. ATCP 50.32.

5 This shall include all of the following:

6 1. The total amount allocated to counties under s. ATCP 50.32, and the subtotal amount
7 allocated from each relevant fund source under par. (a).

8 2. The total amount allocated to each county, and the subtotal amount allocated to that
9 county from each relevant fund source under par. (a).

10 3. An explanation for the allocations, including any material differences in allocations
11 between counties.

12 **NOTE:** The department must prepare an environmental assessment on its annual grant
13 allocation plan, and may explain grant allocations in the environmental
14 assessment. See s. ATCP 3.02(1)(h).

15
16 (d) The amounts allocated to counties under s. ATCP 50.34 to fund conservation
17 practices by landowners. This shall include all of the following:

18 1. The total amount allocated to counties under s. ATCP 50.34, and the subtotal amount
19 allocated from each relevant fund source under par. (a).

20 2. The total amount allocated to each county, and the subtotal amount allocated to that
21 county from each relevant fund source under par. (a).

22 3. An explanation for the allocations, including any material differences in allocations
23 between counties.

24 **NOTE:** The department may explain its allocations in the environmental assessment that
25 accompanies the allocation plan. See s. ATCP 3.02(1)(h).

26

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

7 **NOTE:** The department normally awards grants under this chapter only to counties. But
8 under s. 92.14(10), Stats., the department may also award grants to other persons
9 for information, education, training and other services related to the
10 administration of this chapter.

11
12 (2) PREPARING THE PLAN. (a) The department shall prepare an annual grant allocation
13 plan under sub. (1) for each calendar year. The department shall prepare the plan with DNR
14 after reviewing county grant applications under s. ATCP 50.26.

15 **NOTE:** The department and DNR must prepare a joint grant allocation plan under ss.
16 92.14, 281.65 and 281.66, Stats. DATCP will prepare its portion of the joint
17 allocation plan according to this section. DATCP and DNR will jointly submit
18 their portions of the annual grant allocation plan to the LWCB for its
19 recommendations. The DATCP and DNR secretaries will then approve their
20 agencies' respective portions of the joint plan. Although neither agency is legally
21 empowered to veto or modify the other agency's portion of the plan, the agencies
22 will strive for agreement on the joint plan.

23
24 (b) The department shall do all of the following before the department adopts an annual
25 grant allocation plan:

26 1. Provide a preliminary draft plan to DNR, the LWCB and every county land
27 conservation committee.

28 **NOTE:** The department will normally provide a preliminary draft plan to DNR, the
29 LWCB and the county land conservation committees by August 1 of the year
30 preceding the calendar year to which the plan applies.

31

1 2. Obtain LWCB recommendations on the annual grant allocation plan, as required
2 under s. 92.14(6)(b) and (d), Stats. At least 30 days before the department obtains the LWCB's
3 final recommendations, the department shall provide to DNR, the LWCB and every county land
4 conservation committee a copy of the draft plan on which the department seeks the LWCB's
5 final recommendations.

6 **NOTE:** If the department makes material revisions to the preliminary draft plan before
7 seeking final LWCB recommendations, the department will re-issue the revised
8 draft at least 30 days before the LWCB makes its recommendations.
9

10 (c) The department shall adopt an annual grant allocation plan by December 31 of the
11 year preceding the calendar year to which the plan applies. The final plan may include changes
12 recommended by the LWCB, as well as updated estimates of project costs. The department shall
13 provide copies of the allocation plan to DNR, the LWCB and every county land conservation
14 committee. The department shall report to the LWCB any changes that the department makes to
15 the allocation plan recommended by the LWCB.

16 (3) INELIGIBLE COUNTIES. The department may not award a county grant under this
17 chapter if any of the following apply:

18 (a) The county has failed to adopt a county land and water resource management plan
19 under s. ATCP 50.12(1), or lacks current department approval for that plan under s. ATCP
20 50.12(5).

21 (b) The county has failed to submit an annual grant application required under s. ATCP
22 50.26.

23 **NOTE:** The department may reduce or withhold funding to counties that fail to file
24 timely grant applications or reports, or fail to comply with other requirements
25 under this chapter. See ss. ATCP 50.18(2), 50.30(3) and 50.36(3).
26

1 (4) GRANT PRIORITIES. When preparing an annual grant allocation plan under sub. (1),
2 the department shall consider the grant priorities under s. ATCP 50.30.

3 (5) REVISING AN ALLOCATION PLAN. (a) The department may revise an annual grant
4 allocation plan after it adopts that plan under sub. (1). The secretary shall approve every plan
5 revision. A revision may do any of the following:

6 1. Extend county funding for landowner cost-share contracts funded but not completed in
7 the preceding grant year, provided that the cost-share contracts were signed by December 1 of
8 the preceding grant year. Extensions shall comply with s. ATCP 50.34(6).

9 **NOTE:** The department will normally grant funding extensions under subd. 1. by April
10 30 of each grant year, based on county extension requests filed by December 31
11 of the preceding grant year. See s. ATCP 50.34(6). Staffing grants may not be
12 extended into the next calendar year.

13
14 2. Increase the total grant to any county. The department shall give all counties notice
15 and equal opportunity to compete for funding increases other than extensions under subd. 1.

16 3. Reduce a grant award to any county.

17 4. Reallocate a county's annual grant between grant categories, to the extent authorized
18 by law and with the county's agreement.

19 **NOTE:** The department will not prepare an environmental assessment on a plan revision
20 unless the revision materially alters the original environmental assessment. The
21 department will not ordinarily prepare an environmental assessment on a plan
22 revision consisting solely of contract funding extensions under par. (a)1.

23
24 (b) The department shall do all of the following before it revises an annual grant
25 allocation plan under par. (a):

26 1. Give written notice, and a copy of the proposed revision, to the LWCB, DNR and
27 every county land conservation committee. The notice shall clearly identify and explain the
28 proposed revision.

1 **NOTE:** For funding extensions under par. (a)1., the department’s notice will indicate the
2 total number and dollar value of extensions requested and granted, by county and
3 for the state as a whole. If the department plans to deny any extension requests,
4 the department will explain why. The department will keep a record identifying
5 each uncompleted landowner contract for which funding is extended, and the
6 amount of funding extended for each specified contract, but will not publish that
7 record with its notice.
8

9 2. Obtain LWCB recommendations as required under s. 92.14(6)(b) and (d), Stats.

10 (6) DISTRIBUTING GRANT FUNDS. The department shall enter into a grant contract under
11 s. ATCP 50.36 with each grant recipient identified in the grant allocation plan. The contract
12 shall conform to the allocation plan signed by the secretary. The department shall pay out grant
13 funds according to this chapter and the grant contract.

14 **ATCP 50.30 Grant priorities.** When preparing an annual grant allocation plan under s.
15 ATCP 50.28, the department shall consider all of the following:

16 (1) COUNTY PRIORITIES. The department shall give high priority to maintaining county
17 staff and project continuity. The department shall consider county priorities identified in the
18 county grant application under s. ATCP 50.26 and in the county’s approved land and water
19 resource management plan under s. ATCP 50.12.

20 (2) STATEWIDE PRIORITIES. The department may give priority to county projects that
21 address statewide priorities identified by the department and DNR. These may include:

22 (a) Farms that discharge pollutants to waters that DNR has listed pursuant to 33 USC
23 1313 and 40 CFR 130.7

24 **NOTE:** The list of waters under par. (a) is also known as the “303(d) list of impaired
25 waters.” *Appendix A* contains a map showing watersheds that drain to the listed
26 waters.

27
28 (b) Farms for which the rate of cropland erosion is more than twice T-value.

29 (c) Farms discharging substantial pollution to waters of the state.

1 (d) Farms claiming farmland preservation tax credits subch. IX of ch. 71, Stats.

2 (3) OTHER FACTORS. The department may consider the following factors when
3 determining grant allocation priorities:

4 (a) A county's demonstrated commitment to implementing the approved land and water
5 resource management plan under s. ATCP 50.12, and the strength of the documentation
6 supporting that plan.

7 (b) A county's demonstrated commitment to implementing the farm conservation
8 practices required under s. ATCP 50.04.

9 (c) The likelihood that funded activities will address and resolve high priority problems
10 identified in approved county land and water resource management plans.

11 (d) The relative severity and priority of the soil erosion and water quality problems
12 addressed.

13 (e) The relative cost-effectiveness of funded activities in addressing and resolving high
14 priority problems.

15 (f) The extent to which funded activities are part of a systematic and comprehensive
16 approach to soil erosion and water quality problems.

17 (g) The timeliness of county grant applications and annual reports.

18 (h) The completeness of county grant applications and supporting data.

19 (i) A county's demonstrated cooperation and commitment, including its commitment of
20 staff and financial resources.

21 (j) A county's demonstrated ability to manage and implement funded projects.

22 (k) The degree to which funded projects contribute to a coordinated soil and water
23 resource management program and avoid duplication of effort.

1 (L) The degree to which funded projects meet county soil and water resource
2 management needs and state program requirements.

3 (m) The degree to which county activities are consistent with the county's approved land
4 and water resource management plan.

5 (n) The county's annual financial contribution for soil and water resource management
6 programs, as last reported under s. ATCP 50.18(1)(c).

7 (o) Other factors relevant to the administration of this chapter.

8 **ATCP 50.32 Annual staffing grants to counties.** (1) GENERAL. The department shall
9 award an annual staffing grant to the county land conservation committee in each eligible
10 county. With the department's written permission, a county conservation committee may
11 reallocate staffing grant funds to another agency of the county, or to a city, village, town, county
12 drainage board, lake district or tribe operating in the county.

13 **NOTE:** The department may award annual staffing grants from applicable
14 appropriations under s. 20.115(7), Stats. The department may not use bond
15 revenue funds for county staffing grants.
16

17 (2) GRANT CONTRACT. The department shall distribute an annual staffing grant under
18 sub. (1) according to an annual grant contract with the county. The contract shall comply with s.
19 ATCP 50.36 and shall include all of the following:

20 (a) The total grant amount under sub. (1).

21 (b) The subtotal amount allocated from each relevant fund source under s. ATCP
22 50.28(1)(a).

23 (c) Grant terms and conditions, including conditions required under this section.

24 **NOTE:** Grant contracts, including grant amounts and fund sources, must conform to the
25 grant allocation plan under s. ATCP 50.28. Bond revenues may not be used for
26 staffing grants.
27

1 (3) USE OF ANNUAL STAFFING GRANTS; GENERAL. A county may use an annual staffing
2 grant under sub. (1) in the year for which the grant is made. The county may use the grant for
3 any of the following purposes, subject to the terms of the grant contract:

4 (a) Employee salaries, employee fringe benefits and contractor fees for county
5 employees and independent contractors performing soil and water resource management
6 activities for the county land conservation committee.

7 **NOTE:** Soil and water resource management activities may include activities under this
8 chapter and the CREP program, activities related to “priority watersheds” under
9 ch. NR 120, and activities related to DNR notices of discharge under ch. NR 243.

10
11 A county may contract with engineers, nutrient management planners, computer
12 specialists, information and education specialists, consultants and other
13 independent contractors to work on behalf of the county land conservation
14 committee. A county may use annual staffing grant funds to pay for the services
15 of these independent contractors.
16

17 (b) Training for county employees and land conservation committee members.

18 (c) County employee support costs under sub. (4).

19 (d) Landowner cost-share grants, to the extent authorized under sub. (11).

20 (4) STAFF SUPPORT COSTS. An annual staffing grant may pay for any of the following
21 county employee support costs identified in the grant application:

22 (a) Mileage expenses at the state rate. A staffing grant may not be used to lease or
23 purchase a vehicle.

24 (b) Personal computers, software, printers and related devices.

25 (c) A proportionate share of the costs for required financial and compliance audits.

26 (d) Costs for information and education materials, newsletters, office supplies, maps and
27 plats, photocopying, printing and postage. This does not include rent or capital expenditures.

1 (e) Other staff support costs that the department identifies, in the grant application form,
2 as being reimbursable for all counties.

3 (5) GRANT AMOUNTS. (a) The department may award different grant amounts to
4 different counties under sub. (1), based on a consideration of factors identified in s. ATCP 50.30.

5 **NOTE:** Subject to the availability of funds, the department will normally offer each
6 county at least the minimum staffing grant amount required in par. (b).
7 Additional staffing grant amounts, if any, may be based on the county's annual
8 financial contribution as last reported under s. ATCP 50.18(1)(c). But the
9 department may also consider other factors under s. ATCP 50.30. The
10 department has legal discretion to adjust grant awards from year to year, based on
11 any of those factors.

12
13 (b) Subject to the availability of funds, the department shall annually offer to each
14 eligible county at least the greater of the following:

15 1. \$85,000.

16 2. The amount awarded to that county under the 2001 allocation plan for staffing related
17 to DNR priority watershed projects under NR 120, less any amounts awarded to that county
18 under the 2001 allocation plan for staffing related to priority watershed projects that have
19 subsequently closed.

20 **NOTE:** See *Appendix F* for scheduled closing dates of priority watershed projects,
21 determined as of October 6, 1998.

22
23 (6) GRANT PAYMENTS. (a) The department shall make grant payments under sub. (1) on
24 a reimbursement basis. The department shall pay reimbursement within 30 days after the county
25 land conservation committee files a valid reimbursement request under sub. (7). The department
26 shall pay reimbursement, at the rate provided under sub. (8), on reimbursable expenditures
27 identified in the reimbursement request. Total payments may not exceed the total grant award
28 under sub. (1).

1 (b) The department may reimburse eligible costs that are incurred during the grant year
2 and paid by January 31 of the year following the grant year. The department may not reimburse
3 any costs incurred after December 31 of the grant year, or paid after January 31 of the following
4 year. Unspent funds remain with the department, for distribution under a future annual
5 allocation plan.

6 (c) If a county redirects the unused portion of an annual staffing grant for cost-share
7 payments to landowners, as provided in sub. (11), the department shall reimburse county cost-
8 share payments to landowners according to s. ATCP 50.34.

9 (7) REIMBURSEMENT REQUESTS. (a) To obtain a reimbursement payment under sub.
10 (6)(a), a county land conservation committee shall file a reimbursement request on a form
11 provided by the department. A county may file a reimbursement request on or after June 1 for
12 costs incurred before June 1. A county may file a second reimbursement request for costs
13 incurred on or after June 1. A county may file no more than 2 reimbursement requests, and shall
14 file all reimbursement requests by February 15 of the year following the grant year.

15 (b) The county's chief financial officer shall sign each reimbursement request. The
16 request shall certify that the county has fully paid the costs for which the county seeks
17 reimbursement, and that those costs are eligible for reimbursement under this chapter and the
18 grant contract.

19 (c) A reimbursement request shall specify the nature and amount of costs on which the
20 county seeks reimbursement. If the county seeks reimbursement of employee salaries, employee
21 fringe benefits or independent contractor fees, the request shall specify all of the following for
22 that employee or independent contractor:

1 1. The position number of the employee, or the contract number of the independent
2 contractor.

3 2. The total amount of salaries and fringe benefits, or the total amount of contractor fees,
4 on which the county seeks reimbursement.

5 3. Whether the employee or independent contractor is a first, second or subsequent
6 position for purposes of s. 92.14(3) and (5g), Stats.

7 4. The share of the employee or independent contractor costs that are attributable to
8 conservation activities in priority watersheds identified under ch. NR 120, regardless of whether
9 those activities are directly related to the DNR priority watershed program under NR 120.

10 **NOTE:** Under s. 92.14(5g)(b), Stats., the department may pay a higher reimbursement
11 rate for “priority watershed staff” than for other staff. The department has
12 interpreted “priority watershed staff” to include any staff engaged in conservation
13 activities related to DNR priority watersheds (the geographic areas), regardless of
14 whether those staff are working on the DNR priority watershed program. For
15 example, staff working on the CREP program in priority watersheds may be
16 claimed as “priority watershed staff.”

17
18 5. The share of the employee or independent contractor costs that are attributable to other
19 land and water resource management activities.

20 (d) If a county reallocates grant funds to a local government or tribe under sub. (1), the
21 county shall submit reimbursement requests on behalf of that local government or tribe. The
22 county shall submit and certify each reimbursement request according to this subsection, based
23 on information that the local government or tribe certifies to the county. The department may
24 reimburse the local government or tribe based on a valid county request under this paragraph.

25 **NOTE:** A county land conservation committee need not submit documentation
26 supporting its certification under sub. (7), but must keep that documentation on
27 file as required by sub. (9). The committee must make the documentation
28 available to the department and grant auditors upon request.
29

1 (8) REIMBURSEMENT RATE. (a) The department shall reimburse eligible county costs for
2 employee salaries, employee fringe benefits and independent contractor fees at the rate provided
3 under s. 92.14, Stats.

4 (b) The department may reimburse eligible county employee training and support costs
5 at 100 percent.

6 (c) For the purpose of determining reimbursement rates under s. 92.14, Stats.:

7 1. A county may choose which employees or independent contractors are considered the
8 county's first, second and subsequent staff persons.

9 2. The department may reimburse eligible costs for the county's first designated staff
10 person at 100%, regardless of whether that person is a priority watershed staff person.

11 3. Except as provided under subd. 2., the department may reimburse eligible costs for
12 priority watershed staff identified under sub. (7)(c)4. at the rate of 90%. This reimbursement rate
13 does not apply to staff working in a priority watershed after the termination date specified as of
14 October 6, 1998 for the DNR priority watershed project in that watershed.

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

17 (d) A county receiving an annual staffing grant under this chapter shall maintain its
18 annual soil and water resource management expenditures at or above the average annual amount
19 that the county expended in the years 1985 and 1986, as required by s. 92.14(7), Stats. A county
20 may count, as part of its contributions under this paragraph, county expenditures for employees
21 and independent contractors who work for the county land conservation committee. A county
22 may not count capital improvement expenditures, or the expenditure of grant revenues that the
23 county receives from other governmental entities.

1 (9) RECORDS. (a) A county land conservation committee shall keep records related to
2 annual staffing grants under this section. The records shall document that the county used grant
3 funds according to this chapter and the grant contract. The county shall retain the records for at
4 least 3 years after the end of the grant year.

5 (b) If a county reallocates grant funds to a local government or tribe, that local
6 government or tribe shall also keep records under par. (a).

7 (10) BOND REVENUES MAY NOT BE USED FOR COUNTY STAFFING. Bond revenue funds
8 may not be used for an annual staffing grant under sub. (1).

9 **NOTE:** Bond revenues are those appropriated under s. 20.866(2)(we), Stats. The
10 Wisconsin constitution limits the use of bond revenues.

11 (11) REDIRECTING STAFFING GRANTS FOR COST-SHARE PAYMENTS TO LANDOWNERS. A
12 county may redirect a portion of its annual staffing grant to fund cost-share grants to landowners
13 under s. ATCP 50.34 if all of the following apply:

14 (a) The department approves, in writing, the total staffing grant amount that the county
15 may redirect.

16 (b) The county uses the redirected funds in the year for which the funds are allocated.

17 **NOTE:** The department will pay approved cost-share reimbursements according to the
18 procedure in s. ATCP 50.34.

19 **ATCP 50.34 Grants for conservation practices.** (1) GENERAL. The department may
20 award an annual grant to each eligible county to finance county cost-share grants to landowners.
21 The department shall award the grant to the county land conservation committee. The committee
22 may make cost-share grants to landowners for conservation practices needed to comply with any
23 of the following:
24 of the following:

25 (a) Section ATCP 50.04.

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

5 **NOTE:** DNR may provide cost-share funding for practices needed to comply with a
6 DNR notice of intent under s. 281.20 or notice of discharge under s. 283, Stats.

7
8 (c) Objectives identified in the county land and water resource management plan under s.
9 ATCP 50.12.

10 **NOTE:** The department may award grants under sub. (1) from applicable appropriations
11 under ss. 20.115(7), Stats., or from the bond revenue appropriation under s.
12 20.866(2)(we), Stats. Bond revenue grants may only be used for the purposes
13 identified in sub. (4).

14
15 (2) GRANT CONTRACT. The department shall make grant payments under sub. (1)
16 according to an annual grant contract with the county. The contract shall comply with s. ATCP
17 50.36, and shall include all of the following:

18 (a) The total amount awarded under sub. (1).

19 (b) The subtotal amount awarded from each relevant fund source under s. ATCP
20 50.28(1)(a).

21 **NOTE:** Grant contracts, including grant amounts, grant purposes and fund sources, must
22 conform to the grant allocation plan under s. ATCP 50.28. Grant contracts may
23 specify the use of funds, as necessary, to implement the terms of the grant
24 allocation plan. Bond revenues may only be used for purposes identified in sub.
25 (4).

26
27 (c) Project funding extensions under sub. (6), if any.

28 (d) Grant terms and conditions, including terms and conditions required under this
29 section.

1 (3) GRANT PAYMENTS. The department shall make grant payments under sub. (1) on a
2 reimbursement basis. The department shall reimburse the county after the county certifies that
3 the cost-shared practice has been properly installed and paid for. To obtain reimbursement for a
4 cost-shared practice, a county land conservation committee shall do all of the following on forms
5 provided by the department:

6 (a) File with the department a copy of the county's cost-share contract with the
7 landowner. The cost-share contract shall comply with s. ATCP 50.40(8) and (9).

8 **NOTE:** The department must approve any cost-share contract that exceeds \$50,000.

9
10 (b) Certify the amount of reimbursement due.

11 (c) Certify, based on documentation possessed by the county, that all applicable
12 conditions in s. ATCP 50.40(10) to (12) and (14) are met.

13 **NOTE:** The department will provide forms that counties must use to certify the
14 information under sub. (3). A county land conservation committee need not
15 submit documentation supporting its certification under par. (c), but must keep
16 that documentation on file as required by sub. (7). The committee must make the
17 documentation available to the department and grant auditors upon request.

18
19 (d) File all reimbursement requests by February 15 of the year following the grant year.

20 (4) USE OF BOND REVENUES. (a) Bond revenue funds awarded under sub. (1) may be
21 used for the following purposes, subject to par. (b) and the grant contract:

22 1. To finance cost-shared practices identified in subch. VIII, except that bond revenue
23 funds may not be used to finance practices identified in s. ATCP 50.67, 50.68, 50.78, 50.79,
24 50.82 or 50.89.

25 2. To finance engineering services provided in connection with a cost-shared practice for
26 which bond revenues may be used under subd. 1.

27 **NOTE:** See s. ATCP 50.40(7).

1 (b) The department may not use bond revenue funds to reimburse a county for services
2 provided by county employees, or by independent contractors working for the county.

3 **NOTE:** Bond revenue funds are those appropriated under s. 20.866(2)(we), Stats. The
4 Wisconsin constitution limits the use of bond revenue funds. Bond revenue funds
5 must be used to finance capital improvements, not short-term practices. Bond
6 revenue funds may not be used to finance county operations. The grant contract
7 between the department and the county will identify the purposes for which grant
8 funds may be used.
9

10 (5) UNSPENT FUNDS. The department may not use grant funds awarded to a county under
11 sub. (1) to reimburse the county for costs that the county incurs after December 31 of the grant
12 year, or pays after January 31 of the following year. Unspent funds remain with the department,
13 for distribution under a future year's allocation plan.

14 (6) EXTENSIONS. (a) If a grant under sub. (1) funds a landowner cost-share contract that
15 is signed by December 1 of the grant year but not completed by December 31 of that year, the
16 department may extend funding for that contract in the next year's grant allocation to the county
17 if all of the following apply:

18 1. The county properly contracts with the landowner by December 1 of the initial grant
19 year.

20 2. The landowner has not taken any action in violation of the cost-share contract.

21 3. The county land conservation committee files with the department, by December 31 of
22 the initial grant year, a written request and justification for the funding extension.

23 4. The department has not previously extended funding for the same contract from one
24 grant year to another.

25 **NOTE:** The department will normally approve extensions by April 30 of each year, as a
26 supplement to the annual grant allocation plan for that year. See s. ATCP
27 50.28(5).
28

1 (b) A county may not transfer a funding extension under par. (a) from one landowner
2 cost-share contract to another. Extended funding, if not spent for the designated cost-share
3 contract in the year of the extension, remains with the department for distribution under a future
4 year's allocation plan.

5 **NOTE:** A county may make partial payments for completed portions of a cost-shared
6 practice, as provided in s. ATCP 50.40(12).
7

8 (7) COUNTY RECORDS. (a) A county land conservation committee shall keep all of the
9 following records related to grants under sub. (1):

10 1. Copies of all county cost-share contracts with landowners, including any provisions
11 related to operation and maintenance of installed practices.

12 2. Documentary proof of all information that the county land conservation committee
13 certifies to the department under this section.

14 3. Documentation of all county receipts and payments under this section.

15 4. Other records needed to document county compliance with this section and the grant
16 contract.

17 (b) A county land conservation committee shall retain cost-share records under par. (a)
18 for at least 3 years after the committee makes its last cost-share payment to the landowner, or for
19 the duration of the maintenance period required for the cost-shared practice under subch. VIII,
20 whichever is longer. The committee shall make the records available to the department and grant
21 auditors upon request.

22 **ATCP 50.36 Grant contracts.** (1) COUNTY GRANT CONTRACTS. The department shall
23 enter into an annual grant contract with a county land conservation committee for the payment of
24 grant funds awarded to the county. The contract shall include relevant terms required under this
25 section and ss. ATCP 50.32 and 50.34.

1 (2) OTHER GRANT CONTRACTS. (a) The department shall enter into a grant contract with
2 every non-county grant recipient under this chapter.

3 **NOTE:** See s. ATCP 50.28(1)(e). The department normally awards grants under this
4 chapter only to counties. But under s. 92.14(10), Stats., the department may also
5 award grants to other persons for information, education, training and other
6 services related to the administration of this chapter.

7
8 (b) A grant contract under par. (a) shall conform to the grant allocation plan under s.
9 ATCP 50.28. The contract shall specify grant terms and conditions, including terms required
10 under this chapter. The contract shall specify the products and services that the grant recipient is
11 expected to deliver.

12 (3) BREACH OF CONTRACT. The department may withhold or demand return of grant
13 payments if the department finds that the grant recipient has violated this chapter or breached its
14 grant contract with the department.

15 **NOTE:** The department may seek other administrative or judicial sanctions, as
16 appropriate. A grant recipient may appeal an administrative sanction under this
17 section, to the extent provided under ch. 227, Stats.

18 (4) CONTRACT CONTINGENT ON LEGISLATIVE APPROPRIATIONS. Grant payments to a
19 county land conservation committee or other grant recipient under this chapter are contingent on
20 the continued availability of legislative appropriations to fund those payments.

21

1 1. Require a conservation practice that discontinues or modifies cropping practices on
2 existing cropland. In this paragraph, “existing cropland” has the meaning given in NR
3 151.09(4)(b).

4 2. Require a conservation practice that discontinues or modifies an existing livestock
5 facility or operation. In this paragraph, “existing livestock facility or operation” has the meaning
6 given in NR 151.095(5)(b).

7 (b) Paragraph (a) does not apply to a nutrient management plan required under a permit
8 for a manure storage system voluntarily constructed by a landowner.

9 (c) Paragraph (a) does not limit any of the following:

10 1. An emergency or interim response to a pollution discharge, to prevent or mitigate
11 imminent harm to waters of the state.

12 2. County action under s. ATCP 50.16(6) to suspend a landowner’s eligibility for
13 farmland preservation tax credits, if the landowner fails to comply with conservation standards
14 under s. ATCP 50.16(1).

15 3. The enforcement of an existing cost-share contract.

16 (3) COST-SHARED PRACTICES. (a) A cost-share grant may fund conservation practices
17 identified under subch. VIII, or other conservation practices that the department approves in
18 writing, regardless of whether those conservation practices are required or voluntary.

19 **NOTE:** A county may package cost-share payments in a variety of ways. For example, a
20 county might choose to negotiate a single overall payment (sometimes called an
21 “incentive” payment) with a landowner who voluntarily agrees to maintain a
22 combination of “soft” practices (nutrient management, residue management and
23 contour farming, for example) as part of an overall farm conservation plan. The
24 county may pay the landowner to *continue* these practices, even though the
25 landowner has followed the same practices in the past. The county is free to
26 negotiate the cost-share amount (“incentive” payment amount) with the
27 landowner, as long as the arrangement is voluntary.
28

1 (b) A cost-share grant may not be used to do any of the following, except as specifically
2 authorized under subch. VIII:

3 1. Pay for the installation of a conservation practice if that installation occurred before
4 the landowner entered into the cost-share contract.

5 2. Correct overtopping of a manure storage facility.

6 3. Move a manure stack.

7 4. Drain wetlands, as defined in s. 23.32, Stats.

8 5. Increase drainage of land.

9 6. Dredge a harbor, lake, river or drainage ditch.

10 7. Prevent or clean up spills of pesticides, fertilizers or other agricultural chemicals from
11 commercial bulk storage facilities.

12 8. Grow or harvest trees.

13 9. Install, operate or repair a septic system.

14 10. Install or modify a flood control structure.

15 11. Destroy significant wildlife habitat, unless the landowner agrees to restore the habitat
16 at the landowner's expense.

17 (4) ELIGIBLE COSTS. A cost-share grant may pay for relevant costs identified in s. ATCP
18 50.08(3) and (4), regardless of whether cost-sharing is required under sub. (2) or s. ATCP 50.08.
19 A cost-share grant may not pay for ineligible costs identified under sub. (3)(b) or subch. VIII.

20 (5) COST-EFFECTIVE PRACTICES. A county land conservation committee shall consider
21 whether a cost-shared practice will be cost-effective. The committee shall consider all of the
22 following:

23 (a) The predicted conservation benefits of the practice.

- 1 (b) The minimum practice needed to achieve the conservation objective.
- 2 (c) The cost of the practice compared to feasible and effective alternatives.
- 3 (d) The practical effects of the practice on the agricultural operation.
- 4 (6) MAXIMUM COST-SHARE RATES AND AMOUNTS. Cost-share rates and amounts may not
5 exceed the maximum rates and amounts specified in s. ATCP 50.42.
- 6 (7) ENGINEERING SERVICES. (a) A cost-share grant may include funding for engineering
7 services needed to do any of the following:
- 8 1. Design a cost-shared practice.
- 9 2. Supervise the installation of a cost-shared practice.
- 10 3. Certify that a cost-shared practice has been properly installed.
- 11 (b) A cost-share grant may reimburse the cost of engineering services under par. (a)
12 provided by a professional engineer registered under ch. 443, Stats., or an agricultural
13 engineering practitioner certified at the applicable rating under s. ATCP 50.46. A cost-share
14 grant may not reimburse the cost of engineering services provided by the county land
15 conservation committee or its agent.
- 16 (c) Funding for engineering services under par. (a) may not exceed the lesser of the
17 following:
- 18 1. 70% of the actual cost of the engineering services.
- 19 2. 15% of the total eligible cost of the cost-shared practice, exclusive of engineering
20 costs.
- 21 (8) COST-SHARE CONTRACT. A county land conservation committee shall enter into a
22 written contract with every landowner to whom the committee awards a cost-share grant. The

1 department shall approve, in writing, any cost-share contract that provides for more than \$50,000
2 in cost-share payments.

3 (9) CONTRACT TERMS. A cost-share contract under sub. (8) shall include all of the
4 following:

5 (a) The landowner's name and address.

6 (b) The purpose for the cost-share grant.

7 (c) The location of the land on which the cost-shared practice is to be installed, and a
8 specific legal description of the land if cost-share payments may exceed the following applicable
9 amount:

10 1. \$10,000 if the cost-share contract is signed prior to prior to January 1, 2005.

11 2. \$12,000 if the cost-share contract is signed on or after January 1, 2005, but before
12 January 1, 2010.

13 3. \$14,000 if the cost-share contract is signed on or after January 1, 2010.

14 (d) Specifications for the cost-shared practice, including engineering specifications for
15 any agricultural engineering practice identified under s. ATCP 50.46(2).

16 (e) The total estimated cost of the cost-shared practice. The total cost may include the
17 cost to install the practice and the cost to maintain the practice for the period of time specified in
18 the contract. Costs may include any applicable costs under sub. (4). A county shall use
19 applicable cost containment procedures under sub. (16) when determining the estimated cost.

20 (f) The cost-share rate or amount. The cost-share rate or amount may not exceed the rate
21 or amount allowed under s. ATCP 50.42.

22 (g) The amount, if any, that the county land conservation committee will pay for
23 engineering services under sub. (7).

1 (h) A timetable for constructing and installing the cost-shared practice.

2 (i) Applicable conditions required under this section.

3 (j) The period of time for which the landowner agrees to maintain the cost-shared
4 practice in return for the cost-share grant. The landowner shall agree to maintain the cost-shared
5 practice for at least the period of time required under subch. VIII, or replace it with an equally
6 effective practice. The landowner shall refrain, during the maintenance period, from any action
7 that may reduce the effectiveness of the cost-shared practice.

8 **NOTE:** Subchapter VIII specifies a minimum maintenance period of 10 years for most
9 conservation practices. But it does *not* specify a minimum maintenance period
10 for the following “soft” practices:
11

- 12 • Contour farming (ATCP 50.67).
- 13 • Cover and green manure crop (ATCP 50.68).
- 14 • Nutrient management (ATCP 50.78).
- 15 • Pesticide management (ATCP 50.79).
- 16 • Residue management (ATCP 50.82).
- 17 • Strip-cropping (ATCP 50.89).

18
19 (k) An agreement that the landowner will repay the full amount of the cost-share grant
20 immediately, upon demand by the county land conservation committee, if the landowner fails to
21 operate and maintain the cost-shared practice according to the contract.

22 (L) If the contract provides for a cost-share grant that exceeds the following applicable
23 amount, an agreement that the contract runs with the land and is binding on subsequent owners
24 or users of the land for the period of time required under subch. VIII:

- 25 1. \$10,000 if the cost-share contract is signed prior to prior to January 1, 2005.
- 26 2. \$12,000 if the cost-share contract is signed on or after January 1, 2005, but before
27 January 1, 2010.
- 28 3. \$14,000 if the cost-share contract is signed on or after January 1, 2010.
- 29 .

1 **NOTE:** Subsection (14) requires the county or landowner to record, with the county
2 register of deeds, any cost-share contract over the applicable amount in par. (L).
3 The county may include, in the cost-share contract, a provision requiring the
4 landowner to record the cost-share contract with the register of deeds.
5

6 (m) Provisions authorizing the county land conservation committee to stop work or
7 withhold cost-share grant payments if the committee finds that the landowner has breached the
8 contract.

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

12 (o) Other terms or conditions specified by the county land conservation committee.

13 **NOTE:** The department will provide sample cost-share contracts to each county land
14 conservation committee. County land conservation committees are encouraged to
15 use the contract forms provided by the department.
16

17 (10) DESIGN AND INSTALLATION. A cost-shared practice shall be all of the following:

18 (a) Designed and installed according to subch. VIII and the cost-share contract.

19 (b) Installed in compliance with applicable construction site erosion control standards
20 contained in the DNR Wisconsin construction site best management practice handbook, DNR
21 Pub. WR-222 (April 1994).

22 **NOTE:** Copies of the DNR construction site best management practice handbook are on
23 file at the department, DNR, the secretary of state and the revisor of statutes. You
24 may purchase copies at the following address:
25

26 WI Department of Administration
27 Document Sales Unit
28 202 S Thornton Ave
29 PO Box 7840
30 Madison WI 53707-7840
31 Phone: 608-266-3358
32 E-mail: docsales@doa.state.wi.us.
33

1 (11) PAYMENT CONDITIONS MET. Before a county land conservation committee pays for
2 any cost-shared practice, or requests any cost-share reimbursement from the department under s.
3 ATCP 50.34(3), the committee shall document all of the following:

4 (a) That the landowner has made, for that cost-shared practice, all payments for which
5 the landowner is responsible under the cost-share contract.

6 (b) That the cost-shared practice is designed and installed according to sub. (10). If the
7 cost-shared practice is an agricultural engineering practice identified under s. ATCP 50.46(2),
8 one of the following shall certify in writing that the practice complies with sub. (10):

9 1. A professional engineer registered under ch. 443, Stats.

10 2. An agricultural engineering practitioner certified under s. ATCP 50.46.

11 3. A well driller or pump installer registered under s. 280.15, Stats., if the agricultural
12 engineering practice consists of well construction or decommissioning.

13 (c) That the landowner's nutrient management plan complies with s. ATCP 50.04(3), if
14 the cost-shared practice includes a nutrient management plan.

15 (12) PARTIAL PAYMENTS. A county land conservation committee may make partial
16 payments for completed portions of a cost-shared practice if all of the following apply:

17 (a) The committee documents, for that completed portion, the information required under
18 sub. (11).

19 (b) The completed portion provides independent conservation benefits.

20 (c) The committee distributes no more than 90 percent of the total cost-share grant in
21 partial payments.

22 (13) PAYMENT RECIPIENTS. A county land conservation committee shall make cost-share
23 payments to the contracting landowner, except that the committee may do any of the following:

1 (a) Make cost-share payments by multi-party check payable to the landowner and any
2 contractors who designed or installed a cost-shared practice for the landowner, if the landowner
3 or any of the contractors asks the committee to do so.

4 (b) Make a cost-share payment to an assignee whom the landowner designates in
5 writing.

6 (14) RECORDING CONTRACTS WITH REGISTER OF DEEDS. If a county contract with a
7 landowner exceeds the following applicable amount, the county or the landowner shall record the
8 contract with the county register of deeds before the county makes any cost-share payment to the
9 landowner:

10 (a) \$10,000 if the cost-share contract is signed prior to January 1, 2005.

11 (b) \$12,000 if the cost-share contract is signed on or after January 1, 2005, but before
12 January 1, 2010.

13 (c) \$14,000 if the cost-share contract is signed on or after January 1, 2010.

14 (15) LANDOWNER INSTALLATION AND MAINTENANCE. (a) With the approval of the
15 county land conservation committee, a landowner may personally install a cost-shared practice.
16 The committee may give its approval if all of the following apply:

17 1. The landowner is competent to install the practice.

18 2. The landowner can install the practice at least as cheaply as other available
19 contractors.

20 3. The landowner submits a qualified bid if the committee requires bidding under sub.

21 (16)(b).

1 (b) If the value of a landowner's installation or maintenance service is considered for
2 cost-sharing purposes, the landowner shall submit a detailed invoice or cost-estimate for those
3 services.

4 (16) COST CONTAINMENT. A county land conservation committee shall adopt one or
5 more of the following cost containment procedures, or other procedures that are equally
6 effective, when estimating and paying for a cost-shared practice:

7 (a) The committee may base cost-share grants on typical or maximum acceptable costs
8 for the conservation practice, even if actual costs are higher.

9 **NOTE:** A committee may estimate typical costs per completed practice, or per unit of
10 labor or materials. A committee may use its own experience, or information
11 obtained from the department or other sources, to estimate typical costs.
12

13 (b) The committee may require competitive bidding, and may determine a cost-share
14 grant amount based on low bid cost, regardless of whether the contracting landowner selects the
15 low bidder. The committee may specify bidding procedures that it considers appropriate. The
16 committee shall require competitive bidding if the cost-share contract may exceed \$25,000.

17 **NOTE:** The department suggests the following bidding procedures:
18

- 19 • The committee must show the proposed construction site to all prospective
20 bidders on the same day and at the same time.
- 21 • There must be at least 3 qualified bids.
- 22 • All bids must be sealed and delivered by a bid deadline to a location specified
23 by the committee.
- 24 • Bids must all be opened at the same time within 2 weeks after the bid
25 deadline.
- 26 • The amount of the cost-share grant is based on the lowest qualified bid.
- 27 • The landowner may select a higher bidding contractor only if the landowner
28 agrees to pay the difference.
- 29 • The landowner may not select a contractor who did not bid.
30

31 (c) The committee may use its own employees or agents to design, construct or install a
32 cost-shared practice if, by doing so, it can minimize public costs related to the practice. The

1 committee may charge the staff costs to its staffing grant award under s. ATCP 50.32, but not to
2 its cost-share grant award under s. ATCP 50.34. If a county reallocates staffing grant funds to a
3 city, village, town, county drainage board, lake district or tribe with the department's approval,
4 that local government or tribe may use those staffing grant funds in the same manner.

5 **NOTE:** A local government or tribe may contract with the Wisconsin conservation corps
6 or any other entity to install a cost-shared practice as the agent of the local
7 government or tribe.
8

9 (17) COMBINED GRANTS. Cost-share grants under this chapter may be combined with
10 grants from other federal, state, local and private sources. Department funds allocated under this
11 chapter may be combined with DNR funds allocated under s. 281.65 or 281.66, Stats., to finance
12 up to 70% of the total cost of a project, or up to 90% in cases of economic hardship under s.
13 ATCP 50.42(4). This subsection does not limit the use of cost-share funds from other sources. A
14 cost-share grant under this chapter may not reimburse a landowner for any costs that another
15 governmental entity is also reimbursing.

16 **NOTE:** A landowner may receive grants from 2 or more governmental entities related to
17 the same project, provided that the landowner does not receive duplicate
18 reimbursement of the same costs.
19

20 (18) LAND TAKEN OUT OF AGRICULTURAL PRODUCTION; EASEMENT. A cost-share contract
21 to take land out of agricultural production may provide for a recorded easement to implement the
22 contract. The easement shall be consistent with the cost-share contract, and the duration of the
23 easement shall be consistent with the maintenance term specified in the cost-share contract.
24 Before the landowner signs the cost-share contract, the county land conservation committee shall
25 provide the landowner with the document that the landowner would sign to create the proposed
26 easement. The county land conservation committee shall promptly record the easement
27 document with the county register of deeds after the landowner signs that document.

1 **NOTE:** For example, if a county land conservation committee pays a landowner to keep
2 a riparian buffer out of agricultural production for 15 years, the cost-share
3 contract may require the landowner to grant a recorded easement on that riparian
4 buffer for 15 years. If the landowner agrees to keep land out of production in
5 perpetuity (presumably in return for a higher cost-share payment), the contract
6 may require the landowner to grant a perpetual easement. The county land
7 conservation committee must give the landowner a copy of the proposed
8 easement document before the landowner signs the cost-share contract.
9

10 (19) CONFLICT OF INTEREST PROHIBITED. No county employee or land conservation

11 committee member may:

12 (a) Take any official action substantially affecting a matter which the individual, a
13 member of his or her immediate family, or an organization with which the individual is
14 associated has a substantial financial interest.

15 (b) Use his or her office or position in a way that produces or assists in the production of
16 substantial benefit, direct or indirect, for the individual, one or more members of the individual's
17 immediate family either separately or together, or an organization with which the individual is
18 associated.

19 **ATCP 50.42 Maximum cost-share rates.** (1) MAXIMUM COST-SHARE RATE. (a)
20 Except as provided under pars. (b) to (e), cost-share payments funded under this chapter may not
21 exceed 70% of the total eligible costs allowed under s. ATCP 50.40(4) to install and maintain the
22 conservation practice for the period specified in the cost-share contract. This paragraph does not
23 limit the use of cost-share funds from other sources.

24 (b) The maximum cost-share rate under par. (a) is 90% if there is an economic hardship
25 under sub. (4).

26 (c) For cropping practices identified in sub. (2), a county land conservation committee
27 may pay up to the amount authorized under this subsection or sub. (2), whichever is higher.

1 (d) For more than ½ acre of riparian land taken out of agricultural production to install a
2 conservation practice, a county land conservation committee may pay a qualified landowner up
3 to the CREP-equivalent amount authorized in s. ATCP 50.08(4) if that amount exceeds the
4 relevant amount authorized under this subsection.

5 (e) A county land conservation committee may provide cost-share funds, at the rate
6 authorized under this subsection, to replace a cost-shared conservation practice that is damaged
7 or destroyed by natural causes beyond the landowner’s control.

8 **NOTE:** See s. ATCP 50.08 and s. 92.14(6)(gm), Stats. Paragraphs (c) and (d) provide
9 “short-cut” alternatives for determining cost-share payments in some cases.
10 These methods do not require a case-by-case computation of “cost.” A county is
11 not *required* to use these alternative methods, except as provided in s. ATCP
12 50.08(4).
13

14 (2) CROPPING PRACTICES; MAXIMUM COST-SHARE AMOUNTS. A county land conservation
15 committee may pay up to the following amounts for the installation or maintenance of the
16 following cropping practices:

17 (a) For contour farming, \$9 per acre per year.

18 (b) For cover and green manure crop, \$25 per acre per year.

19 (c) For strip-cropping, \$13.50 per acre per year.

20 (d) For field strip-cropping, \$7.50 per acre per year.

21 (e) For high residue management systems, no-till systems, ridge till systems and mulch
22 till systems, \$18.50 per acre per year.

23 (f) For conservation plantings in riparian buffers, \$100 per acre per year.

24 (g) For nutrient management and pesticide management, \$7.00 per acre per year.

25 **NOTE:** For example, a cost-share contract might pay a farmer up to \$36 per acre to
26 install and maintain a contour farming system for 4 years (\$9 per year). The
27 county would pay the full contract amount when the contour system was installed,

1 and the farmer would have a contract obligation to maintain the system for at least
2 4 years.

3
4 (3) MAXIMUM GRANT TO RELOCATE ANIMAL FEEDING OPERATION. No cost-share grant to
5 relocate an animal feeding operation may exceed 70% of the estimated cost to install a manure
6 management system or related practices needed to resolve or prevent water quality problems at
7 the abandoned site, or 70% of the eligible relocation costs at the new site, whichever site cost is
8 less. Not more than \$5,000 of the cost-share grant may be used to transport livestock from the
9 abandoned site to the new site.

10 (4) ECONOMIC HARDSHIP. A landowner qualifies for economic hardship treatment if all
11 the following apply:

12 (a) A certified public accountant or accredited financial institution certifies all the
13 following to the county land conservation committee, based on a farm financial statement
14 prepared according to generally accepted accounting principles:

15 1. The landowner is unable to make the cost-share contribution normally required of a
16 landowner under sub. (1).

17 2. The landowner will be able to pay the balance of the cost to install the cost-shared
18 practice if the landowner receives cost-sharing at the economic hardship rate.

19 (b) The landowner certifies, in a sworn affidavit to the county land conservation
20 committee, that the landowner has provided to the certified public accountant or accredited
21 financial institution under par. (a) a full and true disclosure of the landowner's financial
22 condition, including a copy of the landowner's latest federal tax return. The landowner shall
23 make the affidavit on a form provided by the department.

24 (5) REVIEW OF ECONOMIC HARDSHIP DETERMINATION. The department may review of an
25 economic hardship determination under sub. (4). The landowner and the person certifying the

1 economic hardship shall make available for department inspection or copying, at the
2 department's request, documents used to support the economic hardship determination. The
3 department may invalidate a determination that fails to comply with standards under sub. (4).

4 **NOTE:** The department will not copy records inspected under sub. (5) unless the
5 department contests the validity of a determination under sub. (4) based on those
6 records. If it becomes necessary for the department to copy records under sub.
7 (5), the department will seek to protect those records from public disclosure.

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SUBCHAPTER VI

SOIL AND WATER PROFESSIONALS

- ATCP 50.46 Agricultural engineering practitioners
- ATCP 50.48 Nutrient management planners
- ATCP 50.50 Soil testing laboratories
- ATCP 50.52 Training for county staff

ATCP 50.46 Agricultural engineering practitioners. (1) **GENERAL.** No person, other than an agricultural engineering practitioner certified under this section or a professional engineer registered under ch. 443, Stats., may certify any of the following for funding purposes under this chapter or ch. NR 120:

(a) That design specifications for an agricultural engineering practice under sub. (2) comply with standards under this chapter or s. 281.65, Stats.

NOTE: A design certification under par. (a) typically involves the preparation or approval of a design document that prescribes the installation of an agricultural engineering practice. The process typically requires the application of engineering principles and methods, and may include several planning and design components. For example, a practitioner may conduct a site inventory to gather data for the design process, may identify or confirm particular water quality problems on the site, and may evaluate the adequacy of the proposed practices to address those problems.

(b) That an agricultural engineering practice under sub. (2) has been installed according to an approved design, and according to applicable standards and specifications.

NOTE: See ss. 92.18 and 443.14(10), Stats. Registered professional engineers, persons working under the direct supervision of registered professional engineers, and employees of the NRCS may also seek certification under this section. A state or county employee certified under this section is exempt from the professional engineering registration requirements of ch. 443, Stats., when engaged in state or county activities under ch. 92 or s. 281.65, Stats., regardless of whether the activities are funded under this chapter.

(2) **AGRICULTURAL ENGINEERING PRACTICES.** For purposes of this section, an agricultural engineering practice includes any of the following:

- 1 (a) Access road.
- 2 (b) Animal trail or walkway.
- 3 (c) Crevice and sinkhole treatment.
- 4 (d) Closure of waste impoundments
- 5 (e) Dam.
- 6 (f) Diversion.
- 7 (g) Grade stabilization structure.
- 8 (h) Grassed waterway.
- 9 (i) Heavy use area protection.
- 10 (j) Lined waterway or outlet.
- 11 (k) Manure transfer system.
- 12 (L) Open channel.
- 13 (m) Pesticide and fertilizer mixing and loading facilities.
- 14 (n) Pipeline for livestock water supply.
- 15 (o) Pond.
- 16 (p) Pond sealing or lining.
- 17 (q) Roof runoff management.
- 18 (r) Sediment basin.
- 19 (s) Spring development.
- 20 (t) Stream channel stabilization.
- 21 (u) Streambank or shoreline protection.
- 22 (v) Subsurface drain.
- 23 (w) Surface drain; field ditch, main or lateral.

- 1 (x) Terrace.
- 2 (y) Trough or tank.
- 3 (z) Underground outlet.
- 4 (za) Waste storage facility.
- 5 (zb) Wastewater treatment strip or buffer.
- 6 (zc) Water and sediment control basin.
- 7 (zd) Water control structure.
- 8 (ze) Well construction or decommissioning. Notwithstanding sub. (1)(intro.), a well
9 driller or pump installer registered under s. 280.15, Stats., may certify a well construction or
10 decommissioning under sub. (1).

11 (zf) Wet detention basin.

12 (zg) Wetland restoration.

13 (3) AGRICULTURAL ENGINEERING PRACTITIONER; CERTIFICATION. A person who wishes
14 to be certified as an agricultural engineering practitioner shall apply to the department or a
15 county land conservation committee. An applicant may apply orally or in writing. The
16 department or the county land conservation committee shall promptly refer the application to the
17 department's designated field engineer. The field engineer shall evaluate the applicant and issue
18 a decision granting or denying the request.

19 **NOTE:** An applicant for certification need not apply to the department's offices in
20 Madison, but may apply directly to one of the department's field engineers. An
21 applicant's supervisor may also forward an application to the department's field
22 engineer.
23

24 (4) EVALUATING APPLICANTS FOR CERTIFICATION. (a) To evaluate an applicant under
25 sub. (3), the department's field engineer shall complete the certification form shown in *Appendix*
26 *E*. The field engineer shall rate the applicant under sub. (5) based on the applicant's

1 demonstrated knowledge, training, experience and record of appropriately seeking assistance.
2 Evaluations shall be fair and consistent.

3 (b) To evaluate an applicant, the department's field engineer may conduct interviews,
4 perform inspections, and require answers and documentation from the applicant. The field
5 engineer may ask engineering staff from NRCS to help evaluate an applicant.

6 (5) CERTIFICATION RATING. (a) For each type of agricultural engineering practice
7 identified in *Appendix E*, the department's field engineer shall identify the most complex of the 5
8 job classes in *Appendix E* for which the applicant is authorized to do each of the following:

9 1. Certify that design specifications for jobs in that class comply with standards under
10 this chapter or s. 281.65, Stats.

11 2. Certify that jobs in that class have been installed according to the approved design,
12 and according to any applicable standards and specifications.

13 **NOTE:** The rating system under par. (a) is designed to be reasonably consistent with the
14 system used by NRCS under 7 CFR 610.1 to 610.5. *Appendix E* is similar to the
15 NRCS job approval delegation form, and identifies the controlling factors used to
16 determine the relative difficulty of job classes. A person who is certified at a job
17 level under par. (a) may certify his or her own work at that level for funding
18 purposes under this chapter.

19 (b) If NRCS has previously rated an applicant under 7 CFR 610.1 to 610.5, the
20 department's field engineer shall give that applicant the same initial rating. Within 18 months
21 after the field engineer makes the initial rating, the department's field engineer shall review that
22 rating under sub. (7).
23

24 (6) CERTIFICATION DECISION. (a) The department's field engineer shall act on a
25 certification application under sub. (3) within 30 days after the field engineer receives that
26 application, provided that the applicant promptly submits relevant information and
27 documentation requested by the field engineer.

1 **NOTE:** When recertifying an applicant who was previously certified by the department
2 or NRCS, the department's field engineer may raise one or more rating levels,
3 lower one or more rating levels, or reaffirm one or more rating levels.
4

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

- 8 1. The field engineer.
- 9 2. The practitioner certified.
- 10 3. The practitioner's supervisor if any.

11 (c) Whenever the department's field engineer denies a request under sub. (3) for a
12 specific certification rating, the field engineer shall issue the denial in writing and shall specify
13 the reasons for the denial.

14 (d) The department's field engineer shall retain a copy of each certification under par.
15 (b), each denial under par. (c), and any other documentation received or compiled in connection
16 with an application under sub. (3).

17 (7) REVIEWING CERTIFICATION RATINGS. (a) A department field engineer shall review
18 each certification rating under sub. (5) at least once every 3 years, and may review a rating at any
19 time. A field engineer shall review a rating whenever a certified agricultural engineering
20 practitioner requests that review.

21 (b) Based on a review under par. (a), a department field engineer shall issue a new
22 certification rating which reaffirms or modifies the prior rating under sub. (5). The field
23 engineer shall provide a copy of each new rating to the person rated. The field engineer may not
24 reduce a rating except for good cause.

1 (c) A field engineer shall document, in writing, his or her reasons for reducing a
2 certification rating under sub. (5), or for refusing to make a requested rating change. The field
3 engineer shall provide that documentation to the person rated, and to that person's supervisor if
4 any.

5 (8) APPEALS. (a) An affected person may appeal a field engineer's action under sub.
6 (5), (6) or (7). The affected person shall file his or her appeal in writing, with the field engineer,
7 within 10 business days after the applicant receives notice of the field engineer's action. The
8 appeal shall identify the specific matters in dispute and the specific basis for the appeal.

9 (b) Within 15 business days after the department's field engineer receives an appeal
10 under par. (a), the field engineer shall hold an informal meeting with the appellant. The meeting
11 may include a representative of the county land conservation committee. The field engineer may
12 hold the informal meeting in person or by telephone.

13 (c) If an appeal cannot be resolved after an informal meeting under par. (b), the field
14 engineer shall forward the appeal to a department reviewer designated by the administrator of the
15 department's agricultural resource management division. The reviewer shall hold an informal
16 hearing on the appeal within 10 business days after the reviewer receives the appeal, unless the
17 applicant agrees to a later date for the informal hearing. The reviewer shall hold the informal
18 hearing by telephone or at a location determined by the reviewer. Within 10 business days after
19 the conclusion of the informal hearing, the reviewer shall issue a written decision which affirms,
20 reverses or modifies the field engineer's action. The reviewer shall provide a copy of his or her
21 written decision to the applicant. The decision shall include a notice of the applicant's right to
22 request a contested case hearing under par. (d).

1 (d) If an applicant disputes the reviewer's decision under par. (c), the applicant may file
2 a request with the department under s. 227.42, Stats., for a contested case hearing under ch. 227,
3 Stats., and ch. ATCP 1.

4 (9) SUSPENDING OR REVOKING CERTIFICATION. (a) The department may, for cause,
5 suspend or revoke a certification under this section. The department may summarily suspend a
6 certification, without prior notice or hearing, if the department makes a written finding that the
7 summary suspension is necessary to prevent an imminent threat to the public health, safety or
8 welfare.

9 (b) An order suspending or revoking a certification shall be signed by the secretary or the
10 secretary's designee. Proceedings to suspend or revoke a certificate shall be conducted
11 according to ch. 227, Stats., and ch. ATCP 1.

12 **NOTE:** See ss. 92.18(6) and 93.06(7), Stats.

13 (c) The department shall notify all of the following persons of any suspension or
14 revocation under this subsection:

15 1. Any land conservation committee or state agency that employs the individual whose
16 certification is suspended or revoked.

17 2. State and federal agencies that provide cost-share funds for agricultural engineering
18 practices.

19 (d) The reduction of a certification rating under sub. (7) does not constitute a suspension
20 or revocation under this subsection.

21 (10) CERTIFICATION GUIDELINES. The department may publish guidelines for the
22 certification of agricultural engineering practitioners under this section. The guidelines may

1 include suggested courses, training activities, and types of knowledge and experience that may
2 help applicants qualify for certification at specified rating levels.

3 (11) SIGNATURE AND DATE REQUIRED. Whenever a person certified under this section
4 approves or submits for approval any document related to the design or construction of an
5 agricultural engineering practice under sub. (2), that person shall sign and date that document.

6 (12) SCOPE OF CERTIFICATION. No certified agricultural engineering practitioner may,
7 for funding purposes under this chapter or s. 281.65, Stats., certify any matter under sub. (5)(a) in
8 a job class more complex than that for which the practitioner is authorized under sub. (5)(a).

9 **ATCP 50.48 Nutrient management planners.** (1) QUALIFICATIONS. To be qualified
10 under ss. 281.65, 281.66, Stats., and this chapter, a nutrient management planner shall be
11 knowledgeable and competent in all of the following areas:

12 (a) Compliance with the NRCS technical guide.

13 (b) Soil testing.

14 (c) Calculating nutrient needs on a field-by-field basis.

15 (d) Crediting manure, residual legume nitrogen and other nutrient sources on a field-by-
16 field basis.

17 (e) Using conservation plans.

18 (f) Relevant laws related to nutrient management.

19 (g) Preparing nutrient management plans according to s. ATCP 50.04(3).

20 (2) PLANNERS PRESUMPTIVELY QUALIFIED. An individual is considered a qualified
21 nutrient planner under sub. (1), without any action by the department, if all of the following
22 apply:

23 (a) The individual is at least one of the following:

1 1. Recognized as a certified professional crop consultant by the national alliance of
2 independent crop consultants.

3 2. Recognized as a certified crop advisor by the American society of agronomy,
4 Wisconsin certified crop advisors board.

5 3. Registered as a crop scientist, crop specialist, soil scientist, soil specialist or
6 professional agronomist in the American registry of certified professionals in agronomy, crops
7 and soils.

8 4. The holder of other credentials that the department deems equivalent to those
9 specified under subds. 1. to 3. A landowner is presumptively qualified to prepare a nutrient
10 management plan for his or her farm, but not for others, if the landowner completes a
11 department-approved training course and the course instructor approves the landowner's first
12 annual plan. The landowner shall complete a department-approved training course at least once
13 every 4 years to maintain his or her presumptive qualification.

14 (b) The nutrient management planner complies with sub. (3).

15 (c) The department has not disqualified the nutrient management planner under sub. (4).

16 **NOTE:** The department does not affirmatively certify nutrient management planners. A
17 nutrient management planner who meets all of the requirements under sub. (2)
18 may represent himself or herself as a qualified nutrient planner, without any
19 certificate from the department. A person qualified only to prepare his or her own
20 nutrient management plan under sub. (2)(a)4. may not misrepresent that he or she
21 is qualified to prepare nutrient management plans for others.

22
23 (3) NUTRIENT MANAGEMENT PLANS. (a) A qualified nutrient management planner shall
24 prepare nutrient management plans according to s. ATCP 50.04(3).

25 (b) A qualified nutrient management planner may not approve a nutrient management
26 plan that fails to comply with s. ATCP 50.04(3).

1 (4) DISQUALIFICATION. The department may issue a written notice to an individual,
2 declaring that the individual is not a qualified nutrient management planner under this section.
3 The notice shall specify the basis for the department's declaration. The department may
4 disqualify a nutrient management planner if the planner violates sub. (3) or lacks qualifications
5 required under sub. (1).

6 **NOTE:** A person who is named in a disqualification notice under sub. (4) may request a
7 contested case hearing under s. 227.42, Stats., and ch. ATCP 1.
8

9 (5) MISREPRESENTING QUALIFICATION. No person may do any of the following, directly
10 or by implication:

11 (a) Misrepresent that an individual is a qualified nutrient management planner under this
12 section.

13 (b) Represent, contrary to a valid written notice under sub. (4), that an individual is a
14 qualified nutrient management planner under this section.

15 (c) Misrepresent that a person is qualified to perform nutrient management plans for
16 others, if that is not the case.

17 (6) RECORDS. A qualified nutrient management planner shall keep copies of all nutrient
18 management plans that the planner prepares or approves for funding under s. 281.65 or 281.66,
19 Stats., or this chapter. The planner shall retain the records for at least 4 years, and shall make
20 them available for inspection and copying by the department upon request.

21 **ATCP 50.50 Soil testing laboratories.** (1) CERTIFIED LABORATORY. A nutrient
22 management plan shall be based on soil tests conducted at the university of Wisconsin or another
23 soil testing laboratory certified by the department. The department may certify a laboratory
24 according to this section.

1 **NOTE:** Subsection (1) does not prohibit an uncertified laboratory from performing soil
2 tests. However, a nutrient management plan does not comply with this chapter if
3 it is based on soil tests performed by an uncertified laboratory.
4

5 (2) APPLYING FOR CERTIFICATION. A laboratory operator may apply to the department
6 for certification under sub. (1). The operator shall apply on a form provided by the department.

7 The application shall include all of the following:

8 (a) The name of the laboratory operator.

9 (b) The address of every laboratory in this state for which the operator seeks
10 certification.

11 (c) The name and telephone number of the individual who is responsible for on-site
12 administration of each laboratory under par. (b).

13 (d) The soil tests, test methods, and nitrogen estimation methods used by the laboratory.

14 The laboratory shall be capable of performing the following tests according to methods
15 prescribed by the university of Wisconsin-extension in *Soil Test Recommendations for Field,*
16 *Vegetable and Fruit Crops*, UWEX Publication A2809 (1998), and shall be capable of
17 estimating nitrogen levels based on those tests:

18 1. Soil pH.

19 2. Buffer pH (SMP).

20 3. Phosphorus (P).

21 4. Potassium (K).

22 5. Organic matter (OM).

23 (e) Documentation showing that the laboratory is qualified and equipped to perform
24 accurate soil tests and nitrogen estimates under par. (d).

25 (f) An agreement to comply with subs. (4) to (6).

1 (g) Other relevant information required by the department.

2 (3) ACTION ON CERTIFICATION REQUEST. The department shall grant or deny a
3 certification request under sub. (2) within 30 days after the department receives a complete
4 request. The department may grant a certification request based on information provided under
5 sub. (2). A certification is nontransferable. A certification remains in effect until withdrawn by
6 the department.

7 (4) NUTRIENT RECOMMENDATIONS. If a certified laboratory recommends nutrient
8 applications to a landowner that exceed the amounts required to achieve applicable crop fertility
9 levels recommended by the university of Wisconsin-extension in *Soil Test Recommendations for*
10 *Field, Vegetable and Fruit Crops*, UWEX publication A-2809 (1998), the laboratory shall make
11 those recommendations in writing and shall disclose all of the following in the same document:

12 (a) The landowner's name and address.

13 (b) The nutrient application amounts required to achieve applicable crop fertility levels
14 recommended by the university of Wisconsin-extension. The laboratory shall disclose these
15 amounts so the landowner can easily compare them with the laboratory's recommended
16 amounts.

17 (c) The following statement, clearly and conspicuously printed adjacent to the
18 laboratory's recommended nutrient applications:

19 **IMPORTANT NOTICE**

20 **Our recommended nutrient applications exceed the amounts required to achieve applicable**
21 **crop fertility levels recommended by the University of Wisconsin. The amounts required to**
22 **achieve the UW's recommended crop fertility levels are shown for comparison. Excessive**
23 **nutrient applications may increase your costs, and may cause surface water and**
24 **groundwater pollution. If you apply nutrients at the rates we recommend, you will not**
25 **comply with state soil and water conservation standards. You may contact your county**
26 **land conservation committee for more information.**
27

1 **NOTE:** *Appendix B* contains a convenient summary of UWEX publication A-2809, for
2 selected crops. You may obtain the complete publication and the summary from
3 your county extension agent. The complete publication is also on file with the
4 department, the secretary of state and the revisor of statutes. For further
5 information, see *Appendix G*.
6

7 (5) RECORDS. A certified soil testing laboratory shall keep records of all of the following
8 for at least 4 years, and shall make those records available for inspection and copying by the
9 department upon request:

10 (a) Records of all soil tests conducted at the laboratory.

11 (b) Copies of all nutrient application recommendations made by the laboratory.

12 (6) LABORATORY EVALUATION. (a) The department or its agent may review the
13 performance of a soil testing laboratory certified under this section. The department or its agent
14 may do any of the following as part of its review:

15 1. Review relevant laboratory records.

16 2. Evaluate laboratory facilities and methods.

17 3. Evaluate the proficiency of laboratory analysts.

18 4. Evaluate the laboratory's proficiency in testing check samples provided by the
19 department or its agent.

20 (b) A laboratory operator shall cooperate with a reasonable review under par. (a).

21 (7) DENYING OR WITHDRAWING CERTIFICATION. (a) The department may deny, suspend,
22 revoke or impose conditions on a certification under this section if the department finds that the
23 laboratory has done any of the following:

24 1. Failed to submit a complete application under sub. (2).

25 2. Failed to perform soil tests with reasonable accuracy.

26 3. Failed to comply with applicable requirements under this section.

1 4. Falsified relevant information.

2 (b) If the department denies, suspends, revokes or imposes conditions on a laboratory
3 certification, the department shall give the laboratory operator written notice of the department's
4 reasons for that action.

5 **NOTE:** A laboratory operator may request a hearing, pursuant to s. 227.42, Stats., and
6 ch. ATCP 1, on the department's action under sub. (7).

7
8 **ATCP 50.52 Training for county staff.** (1) ROLE OF THE DEPARTMENT. The
9 department, in consultation with the county land conservation committees and the training
10 advisory committee appointed under sub. (2), may do any of the following to ensure adequate
11 training of county land conservation committee staff who administer programs under this chapter
12 or s. 281.65, Stats.:

13 (a) Determine training needs and priorities.

14 (b) Identify training opportunities and resources.

15 (c) Make training recommendations.

16 (d) Approve training programs funded under this chapter.

17 (e) Coordinate the delivery of training.

18 (f) Provide training and assess fees to cover training costs.

19 **NOTE:** The department may exempt county land conservation committee staff from fees
20 that the department charges for training programs provided by the department.

21
22 (g) Issue training guidelines for certified agricultural engineering practitioners under s.
23 ATCP 50.46(10).

24 **NOTE:** The department guidelines may include suggested courses, training activities, and
25 the types of knowledge and experience that may help applicants qualify for
26 certification at specified rating levels.

27
28 (h) Distribute training funds to counties under s. ATCP 50.32.

1 (2) TRAINING ADVISORY COMMITTEE. The department shall appoint a training advisory
2 committee to advise the department on training activities under sub. (1). The committee shall
3 include representatives of all of the following:

4 (a) DNR.

5 (b) NRCS.

6 (c) The university of Wisconsin-extension.

7 (d) The statewide association of land conservation committees.

8 (e) The statewide association of land conservation committee staff.

9

10

1 1. Emergency or interim action taken in response to a pollution discharge, to prevent or
2 mitigate imminent harm to waters of the state.

3 2. County action under s. ATCP 50.16(6) to suspend a landowner's eligibility for
4 farmland preservation tax credits, if the landowner fails to comply with conservation standards
5 under s. ATCP 50.16(1).

6 3. Enforcement of an existing cost-share contract.

7 **ATCP 50.56 Manure storage systems; ordinance.** (1) GENERAL. A county, city,
8 village or town may adopt an ordinance under s. 92.16, Stats., that establishes standards for
9 manure storage systems.

10 (2) CONTENTS. An ordinance adopted under s. 92.16, Stats., shall include all of the
11 following:

12 (a) The authority of the county, city, village or town to adopt the ordinance.

13 (b) The purpose for the ordinance, and the findings that prompted the county, city,
14 village or town to adopt the ordinance.

15 (c) Definitions of significant terms used in the ordinance.

16 **NOTE:** Section ATCP 50.62(1) includes relevant definitions that may be used in a
17 manure storage ordinance.

18 (d) Construction provisions under sub. (3).

19 (e) Abandonment provisions under sub. (4), if any.

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

22 (g) Provisions, if any, for monitoring the adequacy of manure storage systems, including
23 the adequacy of related nutrient management practices.
24

1 **NOTE:** The monitoring system may be applied to all manure storage systems, regardless
2 of when those systems were installed.

3
4 (h) Provisions related to ordinance administration, including inspection and enforcement
5 authority, appeal procedures, and penalties for violating the ordinance.

6 (i) Provisions, if any, related to the initial applicability and severability of the ordinance.

7 (j) The effective date of the ordinance.

8 (3) CONSTRUCTION PROVISIONS. An ordinance adopted under s. 92.16, Stats., shall
9 prohibit any person from constructing a manure storage system unless that person does all of the
10 following:

11 (a) Obtains a permit from the county, city, village or town that adopts the ordinance.

12 (b) Develops a nutrient management plan that complies with s. ATCP 50.04(3).

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

18
19 (c) Complies with all of the following standards:

20 1. NRCS technical guide waste storage facility standard 313 (June, 2001).

21 2. NRCS technical guide manure transfer standard 634 (January, 2002).

22 3. Applicable DNR requirements under s. 281.65(4)(g)5., Stats.

23 **NOTE:** For information on how to obtain NRCS technical guide standards, including
24 any secondary standards incorporated by reference in those standards, see
25 *Appendix G*.

26
27 (4) ABANDONMENT PROVISIONS. An ordinance adopted under s. 92.16, Stats., may
28 prohibit any person from abandoning a manure storage system unless that person does all of the
29 following:

1 (a) Submits an abandonment plan for approval by the county, city, village or town. The
2 abandonment plan shall comply with the waste facility closure provisions contained in the NRCS
3 technical guide, closure of waste impoundments standard 360 (June 2001).

4 (b) Obtains a permit for the abandonment.

5 (c) Complies with the approved abandonment plan under par. (a).

6 **NOTE:** An ordinance may apply the abandonment requirements under sub. (4) to any
7 manure storage system, regardless of when that system was installed.

8
9 For information on how to obtain NRCS technical guide standards, including any
10 secondary standards incorporated by reference in those standards, see *Appendix*
11 *G*.

12
13 (5) COUNTY REVIEW. Before a county, city, village or town adopts or amends a manure
14 storage ordinance under s. 92.16, Stats., the county, city, village or town shall refer the proposed
15 ordinance or amendment to the county land conservation committee and the county planning and
16 zoning agency for review and comment.

17 (6) DEPARTMENT REVIEW. Before a county, city, village or town adopts or amends an
18 ordinance under s. 92.16, Stats., the county, city, village or town shall submit the ordinance to
19 the department. The department shall review the ordinance for consistency with this chapter.
20 The department may ask the county, city, village or town for information that it needs to perform
21 the review.

22 **NOTE:** See s. 92.05(3)(L), Stats.

23 **ATCP 50.58 Shoreland management; ordinance.** (1) GENERAL. A county, city,
24 village or town may adopt or amend a shoreland management ordinance under s. 92.17, Stats.,
25 with department approval.

26 **NOTE:** This subsection does not limit the authority of a county, city, village or town to
27 adopt a shoreland management ordinance under other applicable law.
28

1 (2) CONTENTS. An ordinance adopted under s. 92.17, Stats., shall include all of the
2 following provisions:

3 (a) The authority of the county, city, village or town to adopt the ordinance.

4 (b) The purpose for the ordinance, and the findings that prompted the county, city,
5 village or town to adopt the ordinance.

6 (c) Definitions of significant terms used in the ordinance.

7 (d) A description of the activities and geographical areas regulated under the ordinance,
8 including maps of the areas at a scale of 1:24,000 (one inch per 2,000 feet) or larger.

9 (e) Soil and water resource management practices or compliance standards required
10 under the ordinance.

11 (f) Procedures for developing and approving conservation plans, if required under the
12 ordinance.

13 (g) Provisions related to ordinance administration, including inspection and enforcement
14 authority, appeal procedures, and penalties for violating the ordinance.

15 (h) Provisions, if any, related to the initial applicability and severability of the ordinance.

16 (i) The effective date of the ordinance.

17 (3) COUNTY REVIEW. Before a county, city, village or town adopts or amends a
18 shoreland management ordinance under 92.17, Stats., the county, city, village or town shall refer
19 the proposed ordinance or amendment to the county land conservation committee and the county
20 planning and zoning agency for review and comment.

21 (4) DEPARTMENT APPROVAL. (a) A county, city, village or town may submit a proposed
22 ordinance or amendment for department approval under sub. (1). Except as provided in par. (c),

1 the county, city, village or town shall submit all of the following with the proposed ordinance or
2 amendment:

3 1. County comments under sub. (3), if any.

4 2. A description of any public hearings held on the proposal, and a brief summary of
5 hearing comments if any.

6 3. A statement, by an attorney authorized to practice law in this state, saying that the
7 attorney has reviewed the ordinance or amendment for compliance with applicable law under
8 chs. 59 to 68, Stats.

9 (b) Except as provided in par. (c), the department shall consult with DNR and the LWCB
10 before approving a proposed ordinance or amendment under sub. (1). The department may
11 approve a proposed ordinance or amendment subject to conditions specified by the department.
12 If the department disapproves a proposed ordinance or amendment, it shall give written notice
13 specifying its reasons.

14 **NOTE:** DNR reviews shoreland management ordinances and amendments to determine
15 whether they conflict with shoreland and shoreland-wetland zoning rules
16 administered by the DNR under chs. NR 115 and 117.
17

18 (c) The department may approve a proposed ordinance amendment without consulting
19 DNR or the LWCB, and without reviewing any information under par. (a), if the department
20 finds that the amendment involves no significant legal or policy issues.

21 (d) The department may approve a shoreland management ordinance or amendment
22 proposed under s. 92.17, Stats., if the department finds that the ordinance or amendment is
23 consistent with this chapter and conforms to guidelines adopted by the department under s.
24 92.17, Stats.

1 (e) Whenever a county, city, village or town adopts a shoreland management ordinance
2 under s. 92.17, Stats., the county, city, village or town shall file a certified copy of the adopted
3 ordinance with the department.

4 **ATCP 50.60 Livestock operations; local regulation.** (1) LOCAL REGULATIONS THAT
5 EXCEED STATE STANDARDS; APPROVAL REQUIRED. (a) Except as provided in par. (b), no local
6 regulation may require nutrient management or other conservation practices for livestock
7 operations that exceed the practices required under s. ATCP 50.04 unless the department or DNR
8 approves those requirements under this section or NR 151.096.

9 **NOTE:** See s. 92.15, Stats. A person adversely affected by a local livestock regulation
10 may oppose its adoption at the local level. The person may also challenge a local
11 regulation in court if the person believes that the local governmental unit has
12 violated par. (a) or s. 92.15, Stats. A local governmental unit is responsible for
13 analyzing the legal adequacy of its regulations, and may exercise its own legal
14 judgment in deciding whether to seek state approval under this section.

15
16 A local permit requirement does not, *by itself*, violate par. (a). But permit
17 *conditions* codified in a local regulation must comply with par. (a). If a local
18 governmental unit routinely requires permit holders to comply with *uncodified*
19 conservation requirements that exceed state standards, those uncodified
20 requirements may be subject to court challenge under s. 92.15, Stats., and par. (a)
21 as *de facto* regulatory enactments. A local governmental unit may forestall a legal
22 challenge by codifying standard permit conditions and obtaining any necessary
23 state approval under this section. The department will review codified regulations
24 under sub. (2), but will not review individual permits or uncodified permit
25 conditions.

26
27 (b) Paragraph (a) does not apply to any of the following:

28 1. Local regulation of cropping practices that are not directly related to a livestock
29 operation.

30 2. Local regulations enacted prior to *[...revisor inserts effective date of this recreated*
31 *chapter...]*. This does not limit the application of s. 92.15, Stats., to those local regulations.

1 (2) DEPARTMENT APPROVAL. (a) To obtain department approval under sub. (1)(a) for an
2 existing or proposed regulation, the head of the local governmental unit or the chair of the local
3 governmental unit's governing board shall do all the following:

4 1. Submit a copy of the regulation to the department and DNR.

5 2. Identify the provisions of the regulation for which the local governmental unit seeks
6 approval.

7 3. Submit documentation showing why the identified provisions are needed to achieve
8 compliance with water quality standards, and why compliance cannot be achieved by less
9 stringent provisions.

10 (b) Within 90 days after the department receives a complete application under par. (a),
11 the department shall grant or deny the requested approval. Before the department grants or
12 denies the application, the department shall solicit a recommendation from DNR. The
13 department shall issue its decision in writing, and shall state the reasons for its decision.

14 **NOTE:** The department may identify other concerns related to a proposed ordinance, but
15 will not formally approve or disapprove any ordinance provisions other than those
16 identified by the local governmental unit under par. (a)2. The department does
17 not assume responsibility for the affirmative review and approval of every
18 provision of every local regulation.

19
20 (c) The department may approve a provision identified under par. (a)2. if the department
21 finds that the provision is necessary to achieve compliance with water quality standards under s.
22 281.15, Stats., and that compliance cannot reasonably be achieved by less restrictive means.

23 (d) The department may not review or approve individual permits or permit conditions
24 under this subsection, except that the department may review standard permit conditions that are
25 codified in a local regulation. The department may approve those codified conditions if they
26 meet the standard for approval under par. (c).

1

2

1 **SUBCHAPTER VIII**

2 **STANDARDS FOR COST-SHARED PRACTICES**

- 3
- 4 ATCP 50.61 General standards for cost-shared practices
- 5 ATCP 50.62 Manure storage systems
- 6 ATCP 50.63 Manure storage system closure
- 7 ATCP 50.64 Barnyard runoff control systems
- 8 ATCP 50.65 Access roads and cattle crossings
- 9 ATCP 50.66 Animal trails and walkways
- 10 ATCP 50.67 Contour farming
- 11 ATCP 50.68 Cover and green manure crop
- 12 ATCP 50.69 Critical area stabilization
- 13 ATCP 50.70 Diversions
- 14 ATCP 50.71 Field windbreaks
- 15 ATCP 50.72 Filter strips
- 16 ATCP 50.73 Grade stabilization structures
- 17 ATCP 50.74 Heavy use area protection
- 18 ATCP 50.75 Livestock fencing
- 19 ATCP 50.76 Livestock watering facilities
- 20 ATCP 50.77 Milking center waste control systems
- 21 ATCP 50.78 Nutrient management
- 22 ATCP 50.79 Pesticide management
- 23 ATCP 50.80 Prescribed grazing
- 24 ATCP 50.81 Relocating or abandoning animal feeding operations
- 25 ATCP 50.82 Residue management
- 26 ATCP 50.83 Riparian buffers
- 27 ATCP 50.84 Roofs
- 28 ATCP 50.85 Roof runoff systems
- 29 ATCP 50.86 Sediment basins
- 30 ATCP 50.87 Sinkhole treatment
- 31 ATCP 50.88 Streambank and shoreline protection
- 32 ATCP 50.89 Strip-cropping
- 33 ATCP 50.90 Subsurface drains
- 34 ATCP 50.91 Terrace systems
- 35 ATCP 50.92 Underground outlets
- 36 ATCP 50.93 Waste transfer systems
- 37 ATCP 50.94 Wastewater treatment strips
- 38 ATCP 50.95 Water and sediment control basins
- 39 ATCP 50.96 Waterway systems
- 40 ATCP 50.97 Well decommissioning
- 41 ATCP 50.98 Wetland development or restoration

42

1 **ATCP 50.61 General standards for cost-shared practices.** (1) COST-SHARED

2 PRACTICES MUST COMPLY. Cost-shared practices under this chapter shall comply with applicable
3 standards under this subchapter.

4 (2) STANDARDS ADOPTED BY RULE. The department may not adopt, amend or repeal
5 standards under this subchapter, except by rule.

6 **NOTE:** Before the department adopts, amends or repeals a standard by rule, the
7 department will consider the recommendations of the standards oversight council,
8 a voluntary multi-agency council that works to share technical information and
9 coordinate technical standards among participating agencies. Before the
10 department adopts, amends or repeals a standard by rule, the department must
11 normally do all of the following (see s. 15.13, Stats., and ch. 227, Stats.):
12

- 13 • Submit proposed rules to the land and water conservation board for review
14 and comment.
- 15 • Hold public hearings.
- 16 • Obtain the approval of the board of agriculture, trade and consumer
17 protection.
- 18 • Submit the final draft rule for legislative committee review.
- 19 • Obtain the approval of the attorney general and the revisor of statutes, if
20 the department proposes to incorporate technical publications by reference
21 in the rule. The department must make copies of the technical
22 publications available for public inspection, and must file copies with the
23 attorney general, the revisor of statutes and the secretary of state.
- 24 • Prepare a fiscal estimate that discusses the financial impact of the rule on
25 state and local government.
- 26 • Prepare a small business analysis that discusses the impact of the rule on
27 small businesses (including farmers).
- 28 • File the rule with the secretary of state.
- 29 • File the rule with the revisor of statutes, for publication in the Wisconsin
30 administrative register and the Wisconsin administrative code.
31

32 **ATCP 50.62 Manure storage systems.** (1) DEFINITIONS. In this section:

33 (a) “Animal feeding operation” means a feedlot or facility, other than a pasture, where
34 animals are fed, confined, maintained or stabled for 45 days or more in any 12-month period.
35 Two or more animal feeding operations under common ownership or management constitute a
36 single animal feeding operation if any of the following apply:

- 1 1. The operations are adjacent.
- 2 2. The operations use common plans, acreage or systems to landspread manure or other
- 3 wastes.
- 4 3. Manure, barnyard runoff or other wastes are commingled in a common storage facility
- 5 prior to landspreading.

6 (b) “Manure management system” means a system of one or more practices, facilities,
7 techniques or measures used to prevent or reduce pollutants associated with manure. A “manure
8 management system” may include one or more of the following:

- 9 1. A manure storage system.
- 10 2. A barnyard runoff control system as defined in s. ATCP 50.64(1).
- 11 3. Nutrient management as defined in s. ATCP 50.78(1).
- 12 4. Manure storage system closure as defined in s. ATCP 50.63(1)(b).
- 13 5. Well abandonment as described in ch. NR 812.

14 (c) “Manure storage facility” means one or more manure storage structures. “Manure
15 storage facility” includes stationary equipment and piping used to load or unload a manure
16 storage structure if the equipment is specifically designed for that purpose and is an integral part
17 of the facility. “Manure storage facility” does not include equipment used to apply manure to
18 land.

19 (d) “Manure storage structure” means a manure storage impoundment made by
20 constructing embankments, excavating a pit or dugout, or fabricating a structure. “Manure
21 storage structure” does not include equipment used to apply manure to land.

1 (e) “Manure storage system” means a manure storage facility and related practices
2 needed for the environmentally safe storage of manure at that facility. A “manure storage
3 system” does not include any of the following:

- 4 1. A milking center waste control system.
- 5 2. Nutrient management as defined in s. ATCP 50.78(1).
- 6 3. A barnyard runoff control system as defined in s. ATCP 50.64(1).
- 7 4. Equipment used to apply manure to land.

8 (2) MANURE STORAGE SYSTEMS; ELIGIBLE COSTS. A cost-share grant under s. ATCP
9 50.40 may reimburse any of the following costs related to a manure storage system:

- 10 (a) Costs to design or construct the system.
- 11 (b) Costs to purchase and install permanent fencing needed to protect the system.
- 12 (c) Abandonment of the system if abandonment is required to meet water quality
13 objectives.
- 14 (d) Costs to repair, reconstruct or modify the system, or to abandon a related well, if all
15 of the following apply:
 - 16 1. The action is needed to meet water quality objectives.
 - 17 2. The remaining portions of the system are fully operational.
 - 18 3. The landowner has made a substantial investment in the system, and will lose that
19 investment if the system is not repaired or modified.

20 (3) MANURE STORAGE SYSTEMS; INELIGIBLE COSTS. A cost-share grant under s. ATCP
21 50.40 may not reimburse any of the following costs:

- 22 (a) Costs to design a manure storage system that is not installed.

1 (b) Costs to construct, modify or support a building. This paragraph does not apply to a
2 modification that is essential for the installation of a manure storage system, or to the
3 construction of a roof pursuant to s. ATCP 50.84.

4 (c) Costs for equipment used to apply manure to land, including manure spreaders,
5 portable pumps and other nonstationary equipment.

6 (d) Any manure storage system costs related to an animal feeding operation if all of the
7 manure from that operation could be applied to land according to the NRCS technical guide
8 nutrient management standard 590 dated March, 1999, without causing or aggravating
9 nonattainment of water quality standards.

10 **NOTE:** The NRCS technical guide nutrient management standard 590 (March, 1999) is
11 reproduced in *Appendix D*. The feasibility of applying manure to land under par.
12 (d) will be determined in light of existing topographic, climatological and
13 management factors.

14
15 (e) Costs of removing or spreading manure from the system.

16 (f) Costs for more than one manure storage system for an animal feeding operation.

17 (g) Costs for a manure storage system, to the extent that those costs exceed the cost of an
18 equally effective alternative.

19 (h) That portion of the system capacity needed to accommodate a significant increase in
20 the base livestock population size. If the landowner chooses a system with additional capacity,
21 the cost-share grant will be prorated based on the eligible capacity. The following criteria shall
22 be used in making the determinations under this paragraph, as applicable:

23 1. The criteria used in s. NR 151.095(5)(d)2.d. to determine the size of the base livestock
24 population.

25 2. The criteria used in s. NR 151.095(5)(d)2.d. to determine significant increases to the
26 base livestock population.

1 3. The calculation used in s. NR 243.11(2) to measure animal units.

2 (i) A system capacity needed for a livestock population size for which a WPDES permit
3 application is required under s. NR 243.12(1)(a) or (b). The size of the livestock population shall
4 be measured in animal units according to s. NR 243.11(2).

5 (4) MANURE STORAGE SYSTEMS; GRANT DISQUALIFICATION. A county land conservation
6 committee may not award a cost-share grant for a manure storage system if any of the following
7 apply:

8 (a) The landowner intentionally aggravated a pollution discharge from the animal
9 feeding operation.

10 (b) The landowner could prevent the discharge of pollutants through improved
11 management practices at nominal cost.

12 (c) The manure storage system will not achieve compliance with applicable state and
13 local regulations.

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

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

19 1. The department.

20 2. The county land conservation committee.

21 3. DNR.

22 4. NRCS.

1 (5) MANURE STORAGE SYSTEMS; DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-
2 share grant under s. ATCP 50.40 may not reimburse any costs related to a manure storage system
3 unless all of the following conditions are met:

4 (a) The system capacity is necessary to store the manure produced by the animal feeding
5 operation over a normal period of 30 to 365 days, as verified by a nutrient management plan or
6 an operation and maintenance plan.

7 (b) The system complies with well location requirements under s. NR 812.08.

8 (c) If the manure storage facility is designed to be emptied annually or semi-annually,
9 manure from the system is incorporated into the soil within 3 days after it is applied to land.

10 (d) No manure from the system is applied to frozen or saturated ground.

11 (e) The system complies with all of the following that apply:

12 1. NRCS technical guide waste storage facility standard 313 (June, 2001).

13 2. NRCS technical guide manure transfer standard 634 (January, 2002).

14 3. NRCS technical guide well decommissioning standard 351 (April, 1999).

15 4. NRCS technical guide fencing standard 382 (November, 1999).

16 5. NRCS technical guide heavy use area protection standard 561 (March, 2002).

17 6. Other standards specified by the department.

18 **NOTE:** For information on how to obtain NRCS technical guide standards, including
19 any secondary standards incorporated by reference in those standards, see
20 *Appendix G*.

21
22 (f) The landowner establishes a nutrient management plan, and agrees to comply with
23 that plan and maintain the manure storage system for 10 years unless the animal feeding
24 operation is discontinued.

25 **ATCP 50.63 Manure storage system closure.** (1) DEFINITIONS. In this section:

1 (a) “Manure storage system” has the meaning given in s. ATCP 50.62(1)(e).

2 (b) “Manure storage system closure” means permanently disabling and sealing a leaking
3 or improperly sited manure storage system.

4 (2) COST-SHARE ELIGIBILITY. A cost-share grant under s. ATCP 50.40 may reimburse
5 costs to close a manure storage system if any of the following conditions exist:

6 (a) Groundwater enters the manure storage system.

7 (b) The manure storage system is in contact with or intercepts bedrock.

8 (c) Manure has been discharged into surface or groundwater as a result of an irreparable
9 structural failure in the manure storage system.

10 (d) The county land conservation committee finds that continued use of the manure
11 storage system is likely to result in resource degradation.

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

14 (a) Costs to design and remove any constructed soil liner, concrete liner or membrane
15 liner.

16 (b) Costs to remove and dispose of soil saturated with manure.

17 (c) Costs for filling, shaping and seeding the site to provide surface drainage away from
18 the closed site.

19 (d) Costs to remove a manure transfer system, if any.

20 (4) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not reimburse the
21 costs of removing or spreading manure that can be removed using conventional equipment and
22 routine agricultural practices.

1 (5) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
2 may not reimburse any costs related to the closure of a manure storage system unless the closure
3 plan complies with NRCS closure of waste impoundments standard 360 (June 2001).

4 **NOTE:** For information on how to obtain NRCS technical guide standards, including
5 any secondary standards incorporated by reference in those standards, see
6 *Appendix G*.

7
8 **ATCP 50.64 Barnyard runoff control systems.** (1) DEFINITION. In this section,
9 “barnyard runoff control system” means a system of facilities or practices used to contain, divert,
10 retard, treat or otherwise control the discharge of runoff from outdoor areas of concentrated
11 livestock activity. A “barnyard runoff control system” may include any of the following
12 components which is necessary to contain, divert, retard, treat or control surface water runoff:

- 13 (a) Access roads or cattle crossings under s. ATCP 50.65.
14 (b) Animal trails and walkways under s. ATCP 50.66.
15 (c) Critical area stabilization under s. ATCP 50.69.
16 (d) Diversions under s. ATCP 50.70.
17 (e) Heavy use area protection under s. ATCP 50.74.
18 (f) Prescribed grazing under s. ATCP 50.80.
19 (g) Waterway systems under s. ATCP 50.96.
20 (h) Livestock fencing under s. ATCP 50.75.
21 (i) Livestock watering facilities under s. ATCP 50.76.
22 (j) Manure storage systems under s. ATCP 50.62 that are needed to collect and contain
23 barnyard runoff.
24 (k) Nutrient management under s. ATCP 50.78.
25 (L) Relocating or abandoning animal feeding operations under s. ATCP 50.81.

- 1 (m) Roofs under s. ATCP 50.84.
- 2 (n) Roof runoff systems under s. ATCP 50.85.
- 3 (o) Sediment basins under s. ATCP 50.86.
- 4 (p) Streambank and shoreline protection under s. ATCP 50.88.
- 5 (q) Subsurface drains under s. ATCP 50.90.
- 6 (r) Underground outlets under s. ATCP 50.92.
- 7 (s) Waste transfer systems under s. ATCP 50.93.
- 8 (t) Waste water treatment strip under s. ATCP 50.94.
- 9 (u) Water and sediment control basins under s. ATCP 50.95.
- 10 (v) Well decommissioning under s. ATCP 50.97.

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

- 13 (a) Costs for system components under sub. (1) that are eligible for reimbursement under
14 this subchapter.
- 15 (b) Costs to establish permanent vegetative cover, or to provide temporary cover pending
16 the establishment of permanent cover. This may include costs for mulch, fertilizer, seed and
17 other necessary materials.
- 18 (c) Costs for modification of a building that is essential for installation of the barnyard
19 runoff control system, or for construction of a roof pursuant to s. ATCP 50.84.

20 (3) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not reimburse any
21 of the following costs:

- 22 (a) Costs to design a barnyard runoff control system that is not installed.
- 23 (b) Costs to construct a building.

1 (c) Costs for equipment used to apply manure to land.

2 (d) Costs of a proposed practice, to the extent that those costs exceed the cost of an
3 equally effective alternative.

4 (e) Costs ineligible under s. ATCP 50.62(3)(g) or (h).

5 (4) BARNYARD RUNOFF CONTROL SYSTEMS; GRANT DISQUALIFICATION. A county land
6 conservation committee may not award a cost-share grant for a barnyard runoff control system if
7 any of the following apply:

8 (a) The landowner intentionally aggravated a pollution discharge from the animal
9 feeding operation.

10 (b) The landowner could prevent the discharge of pollutants through improved
11 management practices at nominal cost.

12 (c) The barnyard runoff control system will not be adequate to achieve compliance with
13 applicable state and local regulations.

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

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

19 1. The department.

20 2. The county land conservation committee.

21 3. DNR.

22 4. NRCS.

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

3 (a) The system complies with applicable design, construction and maintenance standards
4 under this subchapter.

5 (b) The landowner agrees to maintain the barnyard runoff control system, and the
6 nutrient management plan if required, for 10 years unless the animal feeding operation is
7 discontinued.

8 **NOTE:** A barnyard runoff control system may include one or more of the practices listed
9 in this section. Standards for the listed practices are contained in other sections of
10 this subchapter. Any of the listed practices may also be cost-shared in a project
11 which is not a barnyard runoff control project.
12

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

18 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the cost of
19 establishing an access road or cattle crossing if the access road or cattle crossing is needed to
20 comply with applicable state or local regulations.

21 (3) DESIGN, CONSTRUCTION AND MAINTENANCE STANDARDS. A cost-share grant under s.
22 ATCP 50.40 may not reimburse the cost of establishing an access road or cattle crossing unless
23 all of the following conditions are met:

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

25 1. NRCS technical guide access road standard 560 (March, 1989).

1 2. NRCS technical guide streambank and shoreline protection standard 580 (February,
2 1997).

3 3. NRCS technical guide fencing standard 382 (November, 1999).

4 **NOTE:** For information on how to obtain NRCS technical guide standards, including
5 any secondary standards incorporated by reference in those standards, see
6 *Appendix G.*

7
8 (b) The landowner agrees to maintain the access road or cattle crossing for 10 years
9 unless farming operations on the affected land are discontinued.

10 **ATCP 50.66 Animal trails and walkways.** (1) DEFINITION. In this section, “animal
11 trail or walkway” means a travel lane to facilitate movement of livestock.

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

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

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

18 1. NRCS technical guide animal trails and walkways standard 575 (April, 2002).

19 2. NRCS technical guide streambank and shoreline protection standard 580 (February,
20 1997).

21 3. NRCS technical guide fencing standard 382 (November, 1999).

22 **NOTE:** For information on how to obtain NRCS technical guide standards, including
23 any secondary standards incorporated by reference in those standards, see
24 *Appendix G.*

25
26 (b) The landowner agrees to maintain the animal trail or walkway for 10 years unless
27 farming operations on the affected land are discontinued.

1 **ATCP 50.67 Contour farming.** (1) DEFINITION. In this section, “contour farming”
2 means plowing, preparing, planting and cultivating sloping land on the contour and along
3 established grades of terraces or diversions.

4 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse costs to
5 establish a contour farming system, including necessary costs to remove obstacles.

6 (3) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
7 may not reimburse contour farming costs unless the contour farming system meets the following
8 applicable standards:

9 (a) NRCS technical guide contour farming standard 330 (May, 2002).

10 (b) NRCS technical guide obstruction removal standard 500 (May, 2002).

11 (c) NRCS technical guide standard wildlife upland habitat management standard 645
12 (July, 2000), if habitat management is used to mitigate the loss of habitat resulting from the
13 installation of contour farming.

14 **NOTE:** For information on how to obtain NRCS technical guide standards, including
15 any secondary standards incorporated by reference in those standards, see
16 *Appendix G.*
17

18 **ATCP 50.68 Cover and green manure crop.** (1) DEFINITION. In this section,
19 “cropland cover” means close-growing grasses, legumes or small grain grown for any of the
20 following purposes:

21 (a) To control erosion during periods when major crops do not furnish adequate cover.

22 (b) To add organic matter to the soil.

23 (c) To improve soil infiltration, aeration or tilth.

24 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse costs to
25 establish cropland cover on a field that contributes to water quality degradation when crop

1 harvesting during the growing season leaves the field without enough residue to provide
2 adequate surface runoff protection.

3 (3) INELIGIBLE COSTS. A county land conservation committee may not, without prior
4 department approval, provide cost-share grants under this section and s. ATCP 50.82 for the
5 same acreage for the same year.

6 (4) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
7 may not reimburse any costs to establish cropland cover unless all of the following apply:

8 (a) The cropland cover meets NRCS technical guide cover and green manure crop
9 standard 340 (May 1986).

10 *NOTE:* For information on how to obtain NRCS technical guide standards, including
11 any secondary standards incorporated by reference in those standards, see
12 *Appendix G.*
13

14 (b) The landowner agrees to maintain the cover and green manure crop in each cropping
15 season for which cost-sharing is provided.

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

21 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the
22 following critical area stabilization costs:

23 (a) Costs to purchase and install permanent fencing around the critical area.

1 (b) Costs to establish permanent vegetative cover, or to provide temporary cover until
2 permanent cover is established. This may include costs for mulch, fertilizer and other necessary
3 materials.

4 (c) Preparatory shaping and smoothing operations.

5 (3) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not reimburse for
6 the costs of planting trees intended for commercial harvest.

7 (4) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
8 may not reimburse critical area stabilization costs unless all of the following conditions are met:

9 (a) The critical area stabilization complies with all of the following that apply:

10 1. NRCS technical guide critical area planting standard 342 (May, 2000).

11 2. NRCS technical guide fencing standard 382 (November, 1999).

12 3. NRCS technical guide field border standard 386 (May, 2002).

13 4. NRCS technical guide livestock exclusion standard 472 (June, 1983).

14 5. NRCS technical guide mulching standard 484 (July, 1987).

15 6. NRCS technical guide tree and shrub establishment standard 612 (March, 2001).

16 7. NRCS technical guide sinkhole treatment standard 725 (March, 2000).

17 **NOTE:** For information on how to obtain NRCS technical guide standards, including
18 any secondary standards incorporated by reference in those standards, see
19 *Appendix G*.

20
21 (b) The landowner agrees to maintain the critical area stabilization practice for 10 years
22 unless farming operations on the affected land are discontinued.

23 **ATCP 50.70 Diversions.** (1) DEFINITION. In this section, “diversion” means a structure
24 installed to divert excess surface runoff water to an area where it can be used, transported or
25 discharged without causing excessive soil erosion. “Diversion” includes a channel with a

1 supporting earthen ridge on the lower side, installed across the slope with a self-discharging and
2 non-erosive gradient.

3 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse any of the
4 following costs to establish a diversion system:

5 (a) Costs to install a diversion, outlet, dike or subsurface drain. Costs to install a
6 subsurface drain may be reimbursed only if the drain is installed on sloping land where
7 groundwater seeps to the surface and causes the land or land cover to lose its stability.

8 (b) Costs to install pipes, underground outlets, or other structures needed to deliver water
9 to a ditch or dike, to promote a more even flow of water, or to protect outlets from erosion.

10 (c) Costs for leveling and filling needed to install an effective diversion system.

11 (d) Costs to remove obstructions, if necessary for the installation of an effective
12 diversion system.

13 (e) Costs to establish permanent vegetative cover, or to provide temporary cover until
14 permanent cover is established. This may include costs for mulch, fertilizer and other necessary
15 materials.

16 (f) Fencing needed to protect a diversion from livestock.

17 (3) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not be used to
18 install ditches or dikes that are designed to drain or impound water for later use, or that will be a
19 part of a regular irrigation system.

20 (4) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
21 may not reimburse any costs to establish a diversion system unless all of the following
22 conditions are met:

23 (a) The diversion includes an adequate outlet that prevents erosion.

1 (b) The diversion complies with all of the following that apply:

- 2 1. NRCS technical guide critical area planting standard 342 (May, 2000).
- 3 2. NRCS technical guide diversion standard 362 (May, 2002).
- 4 3. NRCS technical guide fencing standard 382 (November, 1999).
- 5 4. NRCS technical guide grassed waterway standard 412 (April, 2002).
- 6 5. NRCS technical guide lined waterway or outlet standard 468 (May, 2002).
- 7 6. NRCS technical guide obstruction removal standard 500 (May, 2002).
- 8 7. NRCS technical guide subsurface drain standard 606 (September, 1989).
- 9 8. NRCS technical guide underground outlet standard 620 (May, 2002).
- 10 9. NRCS technical guide wildlife upland habitat management standard 645 (July, 2000),

11 if habitat management is used to mitigate the loss of habitat resulting from installation of a
12 diversion.

13 **NOTE:** For information on how to obtain NRCS technical guide standards, including
14 any secondary standards incorporated by reference in those standards, see
15 *Appendix G*.

16
17 (c) The landowner agrees to maintain the diversion for 10 years unless farming
18 operations on the affected land are discontinued.

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

22 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the cost of
23 planting trees, shrubs or grasses to protect farm fields from wind erosion.

24 (3) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
25 may not reimburse field windbreak costs unless all of the following conditions are met:

1 (a) The windbreak is protected from destructive grazing.

2 (b) The windbreak complies with all of the following that apply:

3 1. NRCS technical guide fencing standard 382 (November, 1999).

4 2. NRCS technical guide field windbreaks standard 392 (May, 1990).

5 3. NRCS technical guide livestock exclusion standard 472 (June, 1983).

6 **NOTE:** For information on how to obtain NRCS technical guide standards, including
7 any secondary standards incorporated by reference in those standards, see
8 *Appendix G*.

9
10 (c) The landowner agrees to maintain the windbreak for 10 years unless farming
11 operations on the affected land are discontinued.

12 **ATCP 50.72 Filter strips.** (1) DEFINITION. In this section:

13 (a) “Filter strip” means an area of herbaceous vegetation that separates an
14 environmentally sensitive area from cropland, grazing land or disturbed land. “Filter strip” does
15 not include a wastewater treatment strip.

16 (b) “Wastewater treatment strip” has the meaning given in s. ATCP 50.94(1).

17 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the
18 following filter strip costs:

19 (a) Permanent fencing to protect the filter strip.

20 (b) Costs to establish permanent vegetative cover in the filter strip, or to provide
21 temporary cover until permanent cover is established. This may include costs for mulch,
22 fertilizer and other necessary materials.

23 (c) Costs to shape, smooth or prepare the filter strip before establishing a permanent
24 vegetative cover.

1 (3) DESIGN, CONSTRUCTION AND MAINTENANCE STANDARDS. A cost-share grant under s.
2 ATCP 50.40 may not reimburse filter strip costs unless all of the following conditions are met:

3 (a) The filter strip complies with all of the following that apply:

4 1. NRCS technical guide critical area planting standard 342 (May, 2000).

5 2. NRCS technical guide fencing standard 382 (November, 1999).

6 3. NRCS technical guide field border standard 386 (May, 2002).

7 4. NRCS technical guide filter strip standard 393 (January, 2001).

8 5. NRCS technical guide livestock exclusion standard 472 (June, 1983).

9 6. NRCS technical guide mulching standard 484 (July, 1987).

10 7. NRCS technical guide riparian forest buffer standard 391 (January, 2001).

11 **NOTE:** For information on how to obtain NRCS technical guide standards, including
12 any secondary standards incorporated by reference in those standards, see
13 *Appendix G*.

14 (b) The landowner agrees to maintain the filter strip for 10 years unless farming
15 operations on the affected land are discontinued.
16

17 **ATCP 50.73 Grade stabilization structures.** (1) DEFINITION. In this section, “grade
18 stabilization structure” means a structure which stabilizes the grade in a channel in order to
19 protect the channel from erosion, or to prevent gullies from forming or advancing. A “grade
20 stabilization structure” may include any of the following:

21 (a) Detention or retention structures such as dams, desilting reservoirs, sediment basins
22 and debris basins.

23 (b) Related structures such as channel linings, chutes, drop spillways or pipe drops.

24 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse any of the
25 following:

- 1 (a) Costs to design, construct, repair or modify a grade stabilization structure.
- 2 (b) Costs for leveling and filling needed to install the structure.
- 3 (c) Costs to establish permanent vegetative cover, or to provide temporary cover until
- 4 permanent cover is established. This may include costs for mulch, fertilizer, seed and other
- 5 necessary materials.
- 6 (d) Costs for fencing to protect the structure.

7 (3) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
8 may not reimburse any cost related to a grade stabilization structure unless all of the following
9 conditions are met:

10 (a) The department pre-approves the structure in writing if the embankment structural
11 height is 15 to 25 feet, or the maximum storage capacity is 15 to 50 acre-feet.

12 (b) The structural height does not exceed 25 feet, and the maximum storage capacity
13 does not exceed 50 acre-feet.

14 (c) DNR is notified and given the opportunity to conduct a feasibility study if the
15 structure is adjacent to a navigable stream or a stream supporting a fishery.

16 (d) The structure complies with all of the following that apply:

- 17 1. NRCS technical guide critical area planting standard 342 (May, 2000).
- 18 2. NRCS technical guide sediment basin standard 350 (September, 1990).
- 19 3. NRCS technical guide diversion standard 362 (May, 2002).
- 20 4. NRCS technical guide fencing standard 382 (November, 1999).
- 21 5. NRCS technical guide obstruction removal standard 500 (May, 2002).
- 22 6. NRCS technical guide grade stabilization structure standard 410 (July, 2001).
- 23 7. NRCS technical guide grassed waterway standard 412 (April, 2002).

- 1 8. NRCS technical guide lined waterway or outlet standard 468 (May, 2002).
- 2 9. NRCS technical guide mulching standard 484 (July, 1987).
- 3 10. NRCS technical guide subsurface drain standard 606 (September, 1989).
- 4 11. NRCS technical guide underground outlet standard 620 (May, 2002).
- 5 12. NRCS technical guide water and sediment control basin standard 638 (July, 2001).

6 **NOTE:** For information on how to obtain NRCS technical guide standards, including
7 any secondary standards incorporated by reference in those standards, see
8 *Appendix G*.

9
10 (e) The landowner agrees to maintain the grade stabilization structure for 10 years unless
11 farming operations on the affected land are discontinued.

12 **ATCP 50.74 Heavy use area protection.** (1) DEFINITION. In this section, “heavy use
13 area protection” means installation of surface material to control runoff and erosion in areas
14 subject to concentrated or frequent livestock activity. “Heavy use area protection” may include
15 establishing vegetative cover, or installing surfacing materials such as concrete, compacted stone
16 and stone fragments, or geotextiles.

17 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse any of the
18 following costs related to heavy use area protection:

19 (a) Costs for surfacing materials in a barnyard runoff control system, manure storage
20 system or prescribed grazing system if necessary to facilitate removal of manure or to protect
21 groundwater.

22 (b) Costs for installing a permanent vegetative cover, including costs for mulch,
23 fertilizer, seed and other necessary materials.

24 (c) Costs for excavation, fill, grading and compacting.

25 (d) Costs for fencing needed to contain livestock in any barnyard runoff control system.

1 (3) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
2 may not reimburse the cost of heavy use area protection unless all of the following conditions are
3 met:

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

- 5 1. NRCS technical guide critical area planting standard 342 (May, 2000).
- 6 2. NRCS technical guide fencing standard 382 (November, 1999).
- 7 3. NRCS technical guide heavy use area protection standard 561 (March, 2002).

8 **NOTE:** For information on how to obtain NRCS technical guide standards, including
9 any secondary standards incorporated by reference in those standards, see
10 *Appendix G*.

11 (b) The landowner agrees to maintain the heavy use area protection for 10 years unless
12 farming operations on the affected land are discontinued.

13 **ATCP 50.75 Livestock fencing.** (1) DEFINITION. In this section, “livestock fencing”
14 means either of the following:

15 (a) Excluding livestock, by fencing or other means, in order to protect an erodible area or
16 a practice under this subchapter.

17 (b) Restricting, by fencing or other means, human access to manure storage structures or
18 other practices under this subchapter which may pose a hazard to humans.

19 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse costs for
20 livestock fencing, including the cost of designing and installing permanent fencing, gates and
21 related devices that are necessary to protect a practice, or to prevent degradation of waters of the
22 state.

23 (3) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not reimburse the
24 costs for any of the following:
25

- 1 (a) Electric fence energizers.
- 2 (b) Portable fences and equipment used to contain or exclude livestock.
- 3 (c) Fencing, gates or other equipment used primarily for the purpose of segregating,
- 4 handling or feeding livestock, rather than protecting an erodible area or a practice under this
- 5 subchapter.

6 (4) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
7 may not reimburse livestock fencing costs unless all of the following conditions are met:

- 8 (a) The livestock fencing complies with all of the following that apply:
 - 9 1. NRCS technical guide fencing standard 382 (November, 1999).
 - 10 2. NRCS technical guide livestock exclusion standard 472 (June, 1983).

11 **NOTE:** For information on how to obtain NRCS technical guide standards, including
12 any secondary standards incorporated by reference in those standards, see
13 *Appendix G*.

- 14 (b) The landowner agrees to maintain the livestock fencing practice for 10 years unless
15 farming operations on the affected land are discontinued.

16 **ATCP 50.76 Livestock watering facilities.** (1) DEFINITION. In this section, “livestock
17 watering facility” means a trough, tank, pipe, conduit, spring development, pump, well, or other
18 device or combination of devices installed to deliver drinking water to livestock.

19 (2) COST-SHARE ELIGIBILITY. A cost-share grant under s. ATCP 50.40 may reimburse
20 costs to establish a livestock watering facility if the livestock watering facility is a necessary
21 component of a prescribed grazing system funded under s. ATCP 50.80, or if all of the following
22 conditions are met:

- 23 (a) The livestock watering facility will do one of the following:
24

1 1. Prevent nonpoint source water pollution by replacing livestock access to a stream or
2 other natural drinking water source.

3 2. Water livestock that are isolated from a natural drinking water source by another
4 conservation practice under this subchapter.

5 (b) The livestock watering facility is necessary to achieve water quality objectives.

6 (c) Installing the livestock watering facility is less expensive than providing
7 environmentally safe livestock access to a natural source of drinking water.

8 (3) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the cost of
9 designing and constructing a livestock watering facility.

10 (4) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not reimburse costs
11 for any of the following:

12 (a) More than one livestock watering facility when the need for more than one watering
13 facility is created by the segregation or handling of livestock within a manure management
14 system. This paragraph does not apply when the need for more than one livestock watering
15 facility is created by the segregation or handling of livestock within a prescribed grazing system.

16 (b) A water supply used for purposes other than providing drinking water to livestock.

17 (c) Installing a livestock watering facility if there is a less expensive way to water
18 livestock, consistent with soil and water conservation goals.

19 (5) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant may not reimburse
20 the cost of establishing a livestock watering facility unless all of the following conditions are
21 met:

22 (a) The livestock watering facility complies with all of the following that apply:

23 1. NRCS technical guide spring development standard 574 (May, 1987).

- 1 2. NRCS technical guide watering facility standard 614 (April, 2002).
- 2 3. NRCS technical guide well standard 642 (April, 1999).
- 3 4. NRCS technical guide pipeline standard 516 (April, 2002).
- 4 5. Chapter NR 812, related to well construction and pump installation.

5 **NOTE:** For information on how to obtain NRCS technical guide standards, including
6 any secondary standards incorporated by reference in those standards, see
7 *Appendix G*.

8
9 (b) The landowner agrees to maintain the livestock watering facility for 10 years unless
10 farming operations on the affected land are discontinued.

11 **ATCP 50.77 Milking center waste control systems.** (1) DEFINITIONS. In this section:

12 (a) “Milking center waste” means waste water, cleaning ingredients, waste milk or other
13 discharge from a milking parlor or milkhouse.

14 (b) “Milking center waste control system” means a system of facilities or equipment
15 designed to contain or control the discharge of milking center waste.

16 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse any of the
17 following costs related to a milking center waste control system:

18 (a) Costs to design, construct, repair or modify a milking center waste control system,
19 including costs for appropriate waste pretreatment, waste storage and land irrigation equipment.

20 (b) Costs for conduits, pumps and related equipment required to transfer milking center
21 wastes, provided that the equipment is designed and used for that sole purpose.

22 (c) Other milking center waste control measures, approved by the department, that are
23 needed to meet identified water quality objectives. These measures may include conservation
24 sinks, pre-cooler water utilization systems, manifold cleaning systems, air injection systems,
25 wastewater treatment strips used with appropriate waste pretreatment measures, recyclable water

1 storage and plumbing for automatic water and cleaning chemicals controls, flocculator systems,
2 waste milk diverter valves and booster pumps for parlor floor cleaning.

3 (3) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not reimburse any
4 of the following costs related to a milking center waste control system:

5 (a) Costs for any system, component or practice that is not needed to correct an
6 identified water pollution hazard.

7 (b) Buildings or modifications to buildings. This paragraph does not apply to building
8 modifications that are essential for the installation of a milking center waste control system.

9 (c) Portable equipment for spreading milking center wastes onto land or incorporating
10 those wastes into land.

11 (4) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant may not reimburse
12 any costs related to a milking center waste control system unless all of the following conditions
13 are met:

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

15 1. The university of Wisconsin-extension pollution control guide for milking center
16 waste water management (July 1994).

17 **NOTE:** The UW-extension pollution control guide for milking center waste water
18 management is on file with the department, the secretary of state and the revisor
19 of statutes. Copies may be purchased from the department or the university of
20 Wisconsin-extension (UWEX Pub. No. A3592). For further information, see
21 *Appendix G*.

22 2. NRCS technical guide wastewater treatment strip standard 635 (January, 2002).

23 3. NRCS technical guide waste storage facility standard 313 (June, 2001).

24 4. NRCS technical guide manure transfer standard 634 (January, 2002).

25 5. NRCS technical guide nutrient management standard 590 (March, 1999).

1 **NOTE:** The NRCS technical guide nutrient management standard 590 (March, 1999) is
2 reproduced in *Appendix D*. For information on how to obtain other NRCS
3 technical guide standards, including any secondary standards incorporated by
4 reference in those standards, see *Appendix G*.

5
6 (b) The landowner agrees to maintain the milking center waste control system for 10
7 years unless the milking operation is discontinued.

8 **ATCP 50.78 Nutrient management.** (1) DEFINITIONS. In this section, “nutrient
9 management” means controlling the amount, source, form, location and timing of plant nutrient
10 applications, including application of organic wastes, commercial fertilizers, soil reserves and
11 legumes, in order to provide plant nutrients while minimizing the movement of nutrients to
12 surface water and groundwater.

13 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse costs for
14 nutrient management prescribed in a nutrient management plan. A cost-share grant may
15 reimburse any of the following costs related to nutrient management:

16 (a) Costs for soil and plant nutrient testing, including residual nitrogen analysis.

17 (b) Costs for nutrient analysis of manure and other organic waste.

18 (c) Costs to develop or revise a nutrient management plan.

19 (3) DESIGN AND MAINTENANCE. A cost-share grant under s. ATCP 50.40 may not
20 reimburse nutrient management costs under this section unless all of the following conditions are
21 met:

22 (a) The nutrient management practice complies with NRCS technical guide nutrient
23 management standard 590 dated March, 1999.

24 **NOTE:** The NRCS technical guide nutrient management standard 590 (March, 1999) is
25 reproduced in *Appendix D*.

1 (b) The landowner agrees to maintain the nutrient management practice in each year for
2 which cost-sharing is provided.

3 **ATCP 50.79 Pesticide management.** (1) DEFINITION. In this section, “pesticide
4 management” means controlling the storage, handling, use and disposal of pesticides used in
5 crop production in order to minimize contamination of water, air and nontarget organisms.

6 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse costs for
7 pesticide management described in a pesticide management plan. A cost-share grant may
8 reimburse any of the following costs related to pesticide management:

9 (a) Costs for integrated pest management field scouting.

10 (b) Costs to develop or revise a pesticide management plan.

11 (c) Costs for spill control facilities, including any of the following facilities that are
12 needed:

13 1. A liquid-tight, reinforced concrete pad for a pesticide mixing area.

14 2. Water-tight walls or perimeter flow diversion structures to convey spills or
15 contaminated water from a pesticide mixing area to a sump.

16 3. Perimeter flow diversion structures needed to convey surface water away from a
17 pesticide mixing area.

18 4. A shallow sump collection area capable of storing spills, rinsate, washwater and
19 precipitation that may leak or fall on a pesticide mixing pad.

20 5. Roof structures and walls to protect a pesticide mixing area.

21 6. Pesticide mixing area approach ramps.

22 7. Water supply systems needed for a pesticide mixing area.

23 8. Sump pump alarm and recovery systems for a pesticide mixing area.

1 (3) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
2 may not reimburse pesticide management costs under this section unless all of the following
3 conditions are met:

4 (a) The cost-shared practice complies with all of the following that apply:

- 5 1. NRCS technical guide pest management standard 595 (January, 1991).
- 6 2. Pesticide mixing and loading standards under subch. VIII of ch. ATCP 29.
- 7 3. Standards specified by the midwest plan service in *Designing Facilities for Pesticide*
8 *and Fertilizer Containment, MWPS-37 (revised first edition, 1995).*

9 **NOTE:** For information on how to obtain technical standards incorporated by reference
10 in subd. 1. or 3., including any secondary standards incorporated by reference in
11 those standards, see *Appendix G*.

12
13 (b) The landowner agrees to maintain the pesticide management practice for each
14 cropping season for which cost-sharing is provided.

15 **ATCP 50.80 Prescribed grazing.** (1) DEFINITION. In this section, “prescribed
16 grazing” or “rotational grazing” means a grazing system which divides pastures into multiple
17 cells, each of which is grazed intensively for a short period and then protected from grazing until
18 its vegetative cover is restored.

19 **NOTE:** Prescribed grazing systems can prevent degradation resulting from other
20 pasturing practices. Prescribed grazing systems should replace summer dirt lots
21 when they result in water quality degradation.

22
23 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the cost of
24 replacing animal lots or pastures, or establishing a prescribed grazing system on croplands, that
25 contribute sediments, nutrients or pesticides to a water resource. This may include any of the
26 following costs:

1 (a) The cost to establish or repair livestock access lanes and stream crossings to prevent
2 instability and erosion.

3 (b) The cost to establish permanent boundary and main paddock fences. This may
4 include perimeter fencing, lane fencing, portable fencing and gates.

5 (c) The cost to establish good seeding stands for pasture and hayland planting.

6 (d) The cost to establish a livestock watering facility. This may include pipeline and
7 pasture watering systems, wells, spring developments, and portable watering systems such as
8 pumps, pipes and tanks.

9 (e) The costs for practices that would remediate streambank erosion and streambank
10 habitat degradation.

11 (f) The costs for practices that would exclude livestock from woodlands, sensitive
12 wildlife habitat and recreational lands.

13 (3) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
14 may not reimburse prescribed grazing costs unless all of the following conditions are met:

15 (a) The prescribed grazing practices comply with all of the following that apply:

16 1. NRCS technical guide critical area planting standard 342 (May, 2000).

17 2. NRCS technical guide pasture and hayland planting standard 512 (March, 1992).

18 3. NRCS technical guide livestock exclusion standard 472 (June, 1983).

19 4. NRCS technical guide streambank and shoreline protection standard 580 (February,
20 1997).

21 5. NRCS technical guide heavy use area protection standard 561 (March, 2002).

22 6. NRCS technical guide prescribed grazing standard 528A (April, 1998).

1 7. Guidelines specified in “pastures for profit: a guide to rotational grazing,” published
2 by the university of Wisconsin-extension, August 1994.

3 **NOTE:** Copies of “pastures for profit: a guide to rotational grazing” are on file with the
4 department, the secretary of state and the revisor of statutes. Copies may be
5 purchased from the department or from the university of Wisconsin-extension
6 (UWEX Pub. No. A3529). For further information, see *Appendix G*.

7 8. NRCS technical guide animal trails and walkways standard 575 (April, 2002).

8 9. Standards for livestock watering facilities specified under s. ATCP 50.76.

9 **NOTE:** For information on how to obtain NRCS technical guide standards, including
10 any secondary standards incorporated by reference in those standards, see
11 *Appendix G*.

12
13 (b) The landowner agrees to maintain the prescribed grazing system for 10 years unless
14 farming operations on the affected land are discontinued.

15 **ATCP 50.81 Relocating or abandoning animal feeding operations.** (1) DEFINITIONS.

16 In this section:

17 (a) “Abandonment” means discontinuing an animal feeding operation in order to prevent
18 surface water or groundwater pollution from that animal feeding operation.

19 (b) “Animal feeding operation” means a feedlot or facility, other than a pasture, where
20 animals are fed, confined, maintained or stabled for 45 days or more in any 12-month period.

21 Two or more animal feeding operations under common ownership or common management
22 constitute a single animal feeding operation if any of the following apply:

23 1. The operations are adjacent.

24 2. The operations use common plans, acreage or systems to landspread manure or other
25 wastes.

26 3. Manure, barnyard runoff or other wastes are commingled in a common storage facility
27 prior to landspreading.

1 (c) "Relocation" means discontinuing an animal feeding operation at one site and
2 commencing that operation at a suitable alternate site in order to minimize the amount of surface
3 water or groundwater pollution from that animal feeding operation.

4 (2) COST-SHARE ELIGIBILITY. A cost-share grant under s. ATCP 50.40 may reimburse
5 costs incurred for the permanent relocation or abandonment of an animal feeding operation if all
6 of the following conditions are met:

7 (a) The department or the county land conservation committee finds that relocation or
8 abandonment is the most practical and cost-effective way to achieve compliance with state or
9 local regulations.

10 (b) The department approves the relocation or abandonment plan.

11 (c) The landowner agrees, in a covenant that runs with the land, that no person may
12 reestablish an animal feeding operation at that site unless the department determines that the
13 reestablished operation complies with ATCP 50.04. The department may waive this requirement
14 if the department finds that the covenant is unnecessary.

15 (d) The covenant under par. (c) is recorded in the office of the register of deeds for each
16 county in which the property is located.

17 (3) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse any of the
18 following costs to relocate or abandon an animal feeding operation:

19 (a) Costs to install manure management systems and other conservation practices under
20 this subchapter at a new site, as authorized under this chapter.

21 (b) Costs to abandon and rehabilitate the current site, including costs for any of the
22 following:

1 1. Removing concrete paving, fencing, bunks, livestock housing structures, livestock
2 feeding structures and other obstructions.

3 2. Grading and establishing vegetation on the site.

4 3. Excluding livestock from the site.

5 4. Abandoning wells on the site.

6 (c) Costs to move buildings and other structures.

7 (d) Costs to transport animals to a site in this state that is not on the same farm, up to a
8 maximum of \$5,000.

9 (e) Costs for livestock buildings and associated facilities needed to maintain the
10 transferred livestock at the new site if all of the following apply:

11 1. The department determines that the relocation is necessary to comply with ATCP
12 50.04 and is cost-effective.

13 2. The cost-share grant does not exceed the appraised value of the buildings and
14 associated facilities at the current site, or 70% of the costs of the replacement buildings and
15 associated facilities, whichever is less.

16 3. The relocation will not cause a violation of ATCP 50.04.

17 **NOTE:** Cost-share grants under this section are subject to the limitations specified in s.
18 ATCP 50.42.

19
20 (4) **INELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may not reimburse any
21 costs to reestablish an animal feeding operation that has been abandoned under this section.

22 (5) **DESIGN, CONSTRUCTION AND MAINTENANCE.** A cost-share grant may not reimburse
23 the cost of relocating or abandoning an animal feeding operation unless all of the following
24 apply:

1 (a) The relocation or abandonment complies with the NRCS technical guide standards
2 for the conservation practices in this subchapter.

3 (b) The landowner agrees to maintain the relocated operation, if any, for 10 years unless
4 farming operations on the affected land are discontinued.

5 **ATCP 50.82 Residue management.** (1) DEFINITION. In this section, “residue
6 management” means any of the following:

7 (a) Preparing land surfaces for the planting and growing of crop plants using methods
8 that result in a rough land surface which is covered in varying degrees by vegetative residues of a
9 previous crop, and which provides a significant degree of resistance to soil erosion by raindrop
10 impact, surface water runoff or wind.

11 (b) Planting crop seeds in a narrow slot or a narrow strip of tilled soil, in order to
12 maintain residue cover and avoid disturbing the entire soil surface.

13 (2) ELIGIBLE COSTS. (a) A cost-share grant under s. ATCP 50.40 may reimburse costs
14 for any of the following residue management practices:

- 15 1. No-till practices.
- 16 2. Chisel plowing.
- 17 3. Disking.
- 18 4. Till-planting practices.
- 19 5. Other, similar practices.

20 (b) For cost-sharing purposes, the cost of residue management practices shall be based
21 on prevailing prices charged by providers of custom residue management services in the
22 surrounding area.

1 (3) INELIGIBLE COSTS. A cost-share grant may not reimburse costs for both this practice
2 and the cover and green manure crop practice for the same acreage in the same year, without
3 department approval.

4 (4) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP
5 50.40 may not reimburse residue management costs unless all of the following conditions are
6 met:

7 (a) Land subject to residue management is protected from erosion from the time of
8 harvest until after the next planting. Protection may be provided by a cover crop residue,
9 temporary cover or another approved practice. The residue, temporary cover or other approved
10 practice shall cover at least 30% of the land.

11 (b) On lands with slopes greater than 6%, all tillage and planting operations are
12 performed as nearly as practicable on the contour or parallel to terraces.

13 (c) The residue management complies with all of the following applicable standards:

14 1. NRCS technical guide residue management, no till and strip till standard 329A (May,
15 1998).

16 2. NRCS technical guide residue management, mulch till standard 329B (May, 1998).

17 3. NRCS technical guide residue management, seasonal standard 344 (May, 1998).

18 **NOTE:** For information on how to obtain NRCS technical guide standards, including
19 any secondary standards incorporated by reference in those standards, see
20 *Appendix G*.

21
22 (d) The landowner agrees to maintain the residue management practice for each cropping
23 season for which cost-sharing is provided.

24 **ATCP 50.83 Riparian buffers.** (1) DEFINITION. In this section, “riparian buffer”
25 means an area in which vegetation is enhanced or established to reduce or eliminate the

1 movement of sediment, nutrients and other nonpoint source pollutants to an adjacent surface
2 water resource or groundwater recharge area, to protect the banks of streams and lakes from
3 erosion, and to protect fish habitat.

4 (2) ELIGIBLE COSTS. A cost-share grant may reimburse any of the following costs:

5 (a) Permanent fencing to protect a riparian buffer.

6 (b) Costs to establish or enhance permanent vegetative cover in a riparian buffer, or to
7 provide temporary cover until permanent cover is established. This may include costs for mulch,
8 fertilizer, seed, seedling trees and other necessary materials.

9 (c) Costs to shape, smooth or prepare the riparian buffer before establishing a permanent
10 vegetative cover.

11 (d) Costs for land removed from agricultural production to install a riparian buffer.

12 (3) DESIGN, CONSTRUCTION AND MAINTENANCE STANDARDS. A cost-share grant may not
13 reimburse riparian buffer costs unless all of the following conditions are met:

14 (a) The riparian buffer system complies with all of the following that apply:

15 1. NRCS technical guide critical area planting standard 342 (May, 2000).

16 2. NRCS technical guide fencing standard 382 (November, 1999).

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

18 4. NRCS technical guide filter strip standard 393 (January, 2001).

19 5. NRCS technical guide livestock exclusion standard 472 (June, 1983).

20 6. NRCS technical guide mulching standard 484 (July, 1987).

21 7. NRCS technical guide riparian forest buffer standard 391 (January, 2001).

22 8. NRCS technical guide shoreland habitat standard 643A (July, 2001).

23 9. NRCS technical guide wildlife upland habitat management standard 645 (July, 2000).

1 **NOTE:** For information on how to obtain NRCS technical guide standards, including
2 any secondary standards incorporated by reference in those standards, see
3 *Appendix G.*
4

5 (b) The landowner agrees to maintain the riparian buffer for 10 years unless farming
6 operations on the affected land are discontinued.

7 **ATCP 50.84 Roofs.** (1) DEFINITIONS. In this section:

8 (a) “Roof” means a weather-proof covering that shields an animal lot or manure storage
9 structure from precipitation, and includes the structure supporting that weather-proof covering.

10 “Roof” does not include, except in the case of a manure storage structure, a covering over an
11 enclosed structure if the sum of the length of the walls of the structure exceeds 50 percent of the
12 perimeter of the covering. If a structure includes 2 or more square or rectangular areas, the ratio
13 of wall length to covering perimeter shall be separately calculated for each square or rectangular
14 area, excluding common sides.

15 (b) “Wall” means a vertical expanse in which more than 50 percent of the opening from
16 eave to floor or ground is composed of a solid building material. The building material need not
17 be rigid.

18 (2) COST-SHARE ELIGIBILITY. A cost-share grant under s. ATCP 50.40 may reimburse
19 the cost of constructing a roof if the county land conservation committee finds that the roof
20 construction is the most practical and cost-effective way to achieve compliance with state or
21 local regulations.

22 (3) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the cost of
23 designing and constructing a roof, over an existing or relocated animal lot or manure storage
24 structure, that is necessary to prevent barnyard runoff or discharges from a manure storage
25 structure.

1 (4) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not reimburse any
2 of the following:

3 (a) Costs to install walls or to enclose a roofed area.

4 (b) Costs to design or construct a building or structure other than a roof.

5 (c) Costs to install a roof over feed storage, machinery storage or animal housing areas,
6 except as provided in sub. (3).

7 (5) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
8 may not reimburse the cost of installing a roof unless all of the following conditions are met:

9 (a) The roof complies with the american society of agricultural engineers engineering
10 practice number 288.5, January 2001 edition.

11 **NOTE:** Copies of ASAE EP 288.5 (January, 2001) are on file with the department, the
12 secretary of state and the revisor of statutes. Copies may be obtained from the
13 department. For more information, see *Appendix G*.

14 (b) The roof structure has sufficient ventilation to protect farm operators, livestock and
15 the roof.

16 (c) The roof and supporting structure are constructed of materials with a life expectancy
17 of 10 years or more.

18 (d) The landowner agrees not to establish additional outdoor animal lots on the site for
19 the duration of the cost-share agreement maintenance period, except with adequate runoff control
20 practices approved by the department.

21 (e) The landowner agrees not to convert a roofed animal lot structure, cost-shared under
22 this chapter, for use other than as an animal lot.

23 (f) The landowner agrees to maintain the roof for 10 years unless farming operations on
24 the affected land are discontinued.
25

1 **ATCP 50.85 Roof runoff systems.** (1) DEFINITION. In this section, “roof runoff
2 system” means facilities for collecting, controlling, diverting, and disposing of precipitation from
3 roofs. A “roof runoff system” may include gutters, downspouts, erosion-resistant channels,
4 subsurface drains and trenches.

5 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the cost of
6 designing and constructing a roof runoff system as part of a barnyard runoff control system or
7 manure storage system if the roof runoff system is necessary to prevent roof runoff from flowing
8 across areas of concentrated manure.

9 (3) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not reimburse costs
10 for structures that divert water to areas not adequately protected from erosion.

11 (4) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
12 may not reimburse the cost of installing a roof runoff system unless all of the following
13 conditions are met:

14 (a) The roof runoff system complies with all of the following that apply:

15 1. NRCS technical guide roof runoff structure standard 558 (June, 2002).

16 2. NRCS technical guide underground outlet standard 620 (May, 2002).

17 **NOTE:** For information on how to obtain NRCS technical guide standards, including
18 any secondary standards incorporated by reference in those standards, see
19 *Appendix G.*
20

21 (b) The landowner agrees to maintain the roof runoff system for 10 years unless farming
22 operations on the affected land are discontinued.

23 **ATCP 50.86 Sediment basins.** (1) DEFINITION. In this section:

24 (a) “Sediment basins” means permanent basins that reduce the transport of waterborne
25 pollutants such as eroded soil sediment, debris and manure sediment. Sediment basins may

1 include containment walls or berms, pickets or screens to filter debris, orifices or weirs to control
2 discharge, and conduits to direct runoff to treatment or discharge areas.

3 (b) "Maximum storage capacity" means the volume of water, in acre-feet, capable of
4 being stored behind a dam at maximum water elevation without overtopping any part that is not
5 part of the spillway system.

6 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the cost of
7 designing and constructing a sediment basin, including costs for heavy use area protection,
8 livestock fencing, filter strips, waste transfer, underground outlets, and critical area plantings.

9 (3) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not reimburse the
10 costs for any of the following:

11 (a) Basins with a structural height of more than 25 feet or with a maximum storage
12 capacity of more than 50 acre-feet.

13 (b) Basins whose failure may endanger human life, or real or personal property.

14 (4) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
15 may not reimburse the cost of installing a sediment basin unless all of the following conditions
16 are met:

17 (a) Filter strips or buffers are used to filter any discharge from the sediment basin.

18 (b) The sediment basin complies with all of the following that apply:

19 1. NRCS technical guide critical area planting standard 342 (May, 2000).

20 2. NRCS technical guide sediment basin standard 350 (September, 1990).

21 3. NRCS technical guide manure transfer standard 634 (January, 2002).

22 4. NRCS technical guide fencing standard 382 (November, 1999).

23 5. NRCS technical guide wastewater treatment strip standard 635 (January, 2002).

- 1 6. NRCS technical guide heavy use area protection standard 561 (March, 2002).
- 2 7. NRCS technical guide underground outlet standard 620 (May, 2002).
- 3 8. Wisconsin DNR conservation practice standard 1001, wet detention basin, dated June
- 4 1999.

5 **NOTE:** Copies of the DNR conservation practice standard 1001 are on file with the
6 department, the secretary of state, and the revisor of statutes. Copies may be
7 obtained from DNR or the department. For more information, see *Appendix G*.

8
9 **NOTE:** For information on how to obtain NRCS technical guide standards, including
10 any secondary standards incorporated by reference in those standards, see
11 *Appendix G*.

12
13 (c) The landowner agrees to maintain the sediment basin for 10 years unless farming
14 operations on the affected land are discontinued.

15 **ATCP 50.87 Sinkhole treatment.** (1) DEFINITION. In this section, “sinkhole
16 treatment” means modifying a sinkhole, or the area around a sinkhole, to reduce erosion, prevent
17 expansion of the hole, and reduce pollution of water resources. Modifications may include the
18 diversion of runoff around a sinkhole, or the alteration of a sinkhole by excavation, cleanout,
19 filter treatment, sealing or refilling.

20 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse any of the
21 following costs related to sinkhole treatment:

22 (a) Costs for the design and construction of a grassed waterway or diversion to direct
23 surface runoff around a sinkhole.

24 (b) Costs for the design and construction of a grassed waterway or diversion to direct
25 surface runoff around a geologic depression to prevent the formation of a sinkhole.

26 (c) Costs for the design and construction of a modification to a sinkhole for the purpose
27 of protecting groundwater resources from contamination.

1 (3) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not reimburse costs
2 for any system, component or practice that is not needed to correct an identified water pollution
3 hazard.

4 (4) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
5 may not reimburse any costs related to sinkhole treatment unless all of the following conditions
6 are met:

7 (a) The treatment complies with all of the following that apply:

- 8 1. NRCS technical guide sinkhole treatment standard 725 (March, 2000).
- 9 2. NRCS technical guide diversion standard 362 (May, 2002).
- 10 3. NRCS technical guide grassed waterway standard 412 (April, 2002).

11 **NOTE:** For information on how to obtain NRCS technical guide standards, including
12 any secondary standards incorporated by reference in those standards, see
13 *Appendix G*.

14 (b) The landowner agrees to maintain the sinkhole treatment for 10 years unless farming
15 operations on the affected land are discontinued.

16 **ATCP 50.88 Streambank and shoreline protection.** (1) DEFINITION. In this section,
17 “streambank and shoreline protection” means using vegetation or structures to stabilize and
18 protect the banks of streams, lakes, estuaries or excavated channels against scour and erosion, or
19 to protect fish habitat and water quality from degradation due to livestock access.

20 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse any of the
21 following costs related to streambank and shoreline protection:

22 (a) Costs for permanent fencing to protect streambanks and shorelines from damage by
23 livestock.
24

1 (b) Costs to install rock riprap. Wood chunks, unsorted demolition material, brick,
2 plaster, blacktop and other materials that may produce leachates may not be used as riprap. A
3 cost-share grant may reimburse costs for rock and timber riprap used to establish fish habitat as
4 part of a streambank and shoreline protection scheme, provided that reimbursement for fish
5 habitat does not exceed 25% of the cost-share grant.

6 **NOTE:** Lunker structures, or rock and timber riprap, are sometimes used to create fish
7 habitat.
8

9 (c) Costs to shape streambanks or shorelines before installing protective plantings or
10 structures.

11 (d) Costs to construct or modify stream crossings that will minimize disturbance of the
12 stream channel and banks.

13 (e) Costs to establish permanent vegetative cover, or to provide temporary cover until
14 permanent cover is established. This may include costs for mulch, fertilizer and other necessary
15 materials.

16 (f) Costs for water pumps or other facilities that deliver water to livestock so that
17 livestock can be excluded from surface waters. Well construction costs may not be reimbursed
18 under a cost-share grant unless well construction is the most cost-effective way to deliver water
19 to livestock.

20 (3) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
21 may not reimburse costs for streambank or shoreline protection unless all of the following
22 conditions are met:

23 (a) The streambank or shoreline protection complies with all of the following that apply:

24 1. NRCS technical guide critical area planting standard 342 (May, 2000).

25 2. NRCS technical guide fencing standard 382 (November, 1999).

1 3. NRCS technical guide streambank and shoreline protection standard 580 (February,
2 1997).

3 4. NRCS technical guide tree and shrub establishment standard 612 (March, 2001).

4 5. NRCS technical guide heavy use area protection standard 561 (March, 2002).

5 **NOTE:** For information on how to obtain NRCS technical guide standards, including
6 any secondary standards incorporated by reference in those standards, see
7 *Appendix G*.

8
9 (b) DNR pre-approves the streambank or shoreline protection project in writing if the
10 project will create banks higher than 15 feet, measured from the stream or lake bed.

11 (c) The landowner agrees to maintain the streambank or shoreline protection for 10 years
12 unless farming operations on the affected land are discontinued.

13 **ATCP 50.89 Strip-cropping.** (1) DEFINITION. In this section, “strip-cropping” means
14 growing crops in a systematic strip arrangement in which strips of grass, legumes or other close
15 growing crops are alternated with strips of clean tilled crops or fallow, and in which all of the
16 strips are established on the contour or across a slope to reduce water or wind erosion.

17 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the cost of
18 establishing a strip-cropping system, including costs for the necessary removal of obstructions.

19 (3) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
20 may not reimburse the cost of establishing a strip-cropping system unless all of the following
21 conditions are met:

22 (a) The strip-cropping operations are performed, to the maximum extent feasible, on the
23 contour.

24 (b) The strip-cropping system complies with all of the following that apply:

25 1. NRCS technical guide obstruction removal standard 500 (May, 2002).

1 2. NRCS technical guide stripcropping, contour standard 585 (July, 1987).

2 3. NRCS technical guide stripcropping, field standard 586 (August, 1983).

3 4. NRCS technical guide stripcropping, wind standard 589 (July, 1987).

4 **NOTE:** For information on how to obtain NRCS technical guide standards, including
5 any secondary standards incorporated by reference in those standards, see
6 *Appendix G*.

7
8 (c) The landowner agrees to maintain the strip-cropping for 10 years unless farming
9 operations on the affected land are discontinued.

10 **ATCP 50.90 Subsurface drains.** (1) DEFINITION. In this section, “subsurface drain”
11 means a conduit installed below the surface of the ground to collect drainage water and convey it
12 to a suitable outlet.

13 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the cost of
14 designing and constructing a subsurface drain as part of a manure storage system, barnyard
15 runoff control system, or erosion control system.

16 (3) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant may not reimburse
17 the cost of establishing a subsurface drain unless all of the following conditions are met:

18 (a) The subsurface drain is a necessary component of a manure storage system, barnyard
19 runoff control system or erosion control system.

20 (b) The subsurface drain complies with all of the following that apply:

21 1. NRCS technical guide subsurface drain standard 606 (September, 1989).

22 2. NRCS technical guide underground outlet standard 620 (May, 2002).

23 **NOTE:** For information on how to obtain NRCS technical guide standards, including
24 any secondary standards incorporated by reference in those standards, see
25 *Appendix G*.

1 (c) The landowner agrees to maintain the subsurface drain for 10 years unless farming
2 operations on the affected land are discontinued.

3 **ATCP 50.91 Terrace systems.** (1) DEFINITION. In this section, “terrace system” means
4 a system of ridges and channels installed on the contour with a non-erosive grade and suitable
5 spacing.

6 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse any of the
7 following costs related to a terrace system:

8 (a) Costs to install the system, including necessary costs for necessary leveling, filling
9 and obstruction removal.

10 (b) Costs to purchase and install necessary underground pipe outlets and other necessary
11 mechanical outlets.

12 (c) Costs to modify an ineffective system, unless the system has been rendered
13 ineffective because of changes in cropping patterns or equipment usage.

14 (d) Costs to establish permanent vegetative cover, or to provide temporary cover until
15 permanent cover is established. This may include costs for mulch, fertilizer and other necessary
16 materials.

17 (3) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant may not reimburse
18 terrace system costs unless all of the following conditions are met:

19 (a) The terrace system includes a stable outlet or waterway of adequate capacity.

20 (b) The terrace system complies with all of the following that apply:

21 1. NRCS technical guide critical area planting standard 342 (May, 2000).

22 2. NRCS technical guide grassed waterway standard 412 (April, 2002).

23 3. NRCS technical guide lined waterway or outlet standard 468 (May, 2002).

- 1 4. NRCS technical guide obstruction removal standard 500 (May, 2002).
- 2 5. NRCS technical guide terrace standard 600 (September, 1990).
- 3 6. NRCS technical guide subsurface drain standard 606 (September, 1989).
- 4 7. NRCS technical guide underground outlet standard 620 (May, 2002).
- 5 8. NRCS technical guide water and sediment control basin standard 638 (July, 2001).

6 **NOTE:** For information on how to obtain NRCS technical guide standards, including
7 any secondary standards incorporated by reference in those standards, see
8 *Appendix G*.

9
10 (c) The landowner agrees to maintain the terrace system for 10 years unless farming
11 operations on the affected land are discontinued.

12 **ATCP 50.92 Underground outlets.** (1) DEFINITION. In this section, “underground
13 outlet” means a conduit installed below the surface of the ground to collect surface water and
14 convey it to a suitable outlet.

15 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the cost of
16 designing and constructing an underground outlet as part of a manure storage system, barnyard
17 runoff control system, or erosion control system.

18 (3) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
19 may not reimburse the cost of establishing an underground outlet unless all of the following
20 conditions are met:

21 (a) The underground outlet is a necessary component of a manure storage system,
22 barnyard runoff control system or erosion control system.

23 (b) The underground outlet complies with all of the following that apply:

- 24 1. NRCS technical guide subsurface drain standard 606 (September, 1989).
- 25 2. NRCS technical guide underground outlet standard 620 (May, 2002).

1 **NOTE:** For information on how to obtain NRCS technical guide standards, including
2 any secondary standards incorporated by reference in those standards, see
3 *Appendix G.*
4

5 (c) The landowner agrees to maintain the underground outlet for 10 years unless farming
6 operations on the affected land are discontinued.

7 **ATCP 50.93 Waste transfer systems.** (1) DEFINITION. In this section, “waste transfer
8 system” means components such as pumps, pipes, conduits, valves, and other structures installed
9 to convey manure and milking center wastes from buildings and animal feeding operations to a
10 storage structure, loading area or treatment area.

11 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the cost of
12 designing and constructing a waste transfer system which is a necessary component of a manure
13 storage system, barnyard runoff control system or milking center waste system funded under this
14 chapter, provided that the waste transfer system is designed and used for that sole purpose.

15 (3) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not reimburse the
16 costs for any of the following:

17 (a) Portable equipment for spreading wastes on land or for incorporating wastes into
18 land.

19 (b) Buildings or modifications to buildings. This paragraph does not apply to building
20 modifications that are essential for the installation of a milking center waste control system.

21 (4) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
22 may not reimburse the cost of installing a waste transfer system unless all of the following
23 conditions are met:

24 (a) The waste transfer system complies with all of the following that apply:

25 1. NRCS technical guide manure transfer standard 634 (January, 2002).

1 2. NRCS technical guide underground outlet standard 620 (May, 2002).

2 **NOTE:** For information on how to obtain NRCS technical guide standards, including
3 any secondary standards incorporated by reference in those standards, see
4 *Appendix G*.

5
6 (b) The landowner agrees to maintain the waste transfer system for 10 years unless
7 farming operations on the affected land are discontinued.

8 **ATCP 50.94 Wastewater treatment strips.** (1) DEFINITION. In this section,
9 “wastewater treatment strip” means an area of herbaceous vegetation that is used as part of an
10 agricultural waste management system to remove pollutants from animal lot runoff or
11 wastewater, such as runoff or wastewater from a milking center.

12 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the
13 following wastewater treatment strip costs:

14 (a) Permanent fencing to protect the wastewater treatment strip.

15 (b) Costs to establish permanent vegetative cover in the wastewater treatment strip, or to
16 provide temporary cover until permanent cover is established. This may include costs for mulch,
17 fertilizer and other necessary materials.

18 (c) Costs to shape, smooth or prepare the wastewater treatment strip before establishing a
19 permanent vegetative cover.

20 (3) DESIGN, CONSTRUCTION AND MAINTENANCE STANDARDS. A cost-share grant under s.
21 ATCP 50.40 may not reimburse wastewater maintenance strip costs unless all the following
22 conditions are met:

23 (a) The wastewater treatment strip complies with all the following that apply:

24 1. NRCS technical guide critical area planting standard 342 (May, 2000).

25 2. NRCS technical guide fencing standard 382 (November, 1999).

1 3. NRCS technical guide livestock exclusion standard 472 (June, 1983).

2 4. NRCS technical guide mulching standard 484 (July, 1987).

3 5. NRCS technical guide wastewater treatment strip standard 635 (January, 2002).

4 **NOTE:** For information on how to obtain NRCS technical guide standards, including
5 any secondary standards incorporated by reference in those standards, see
6 *Appendix G*.

7
8 (b) The landowner agrees to maintain the wastewater treatment strip for 10 years unless
9 farming operations on the affected land are discontinued.

10 **ATCP 50.95 Water and sediment control basins.** (1) DEFINITIONS. In this section:

11 (a) “Manure storage facility” has the meaning given in s. ATCP 50.62(1)(c).

12 (b) “Water and sediment control basin” means an earthen embankment or a ridge and
13 channel combination which is installed across a slope or minor watercourse to trap or detain
14 runoff and sediment. “Water and sediment control basin” does not include a manure storage
15 facility or a structure designed to collect runoff and sediment from concentrated animal feedlots.

16 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the cost of
17 designing and constructing a water and sediment control basin, including practices necessary to
18 protect the basin from livestock.

19 (3) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant may not reimburse
20 the cost of installing a water and sediment control basin unless all of the following conditions are
21 met:

22 (a) The water and sediment control basin complies with all of the following that apply:

23 1. NRCS technical guide critical area planting standard 342 (May, 2000).

24 2. NRCS technical guide fencing standard 382 (November, 1999).

25 3. NRCS technical guide water and sediment control basin standard 638 (July, 2001).

1 4. NRCS technical guide underground outlet standard 620 (May, 2002).

2 **NOTE:** For information on how to obtain NRCS technical guide standards, including
3 any secondary standards incorporated by reference in those standards, see
4 *Appendix G*.

5
6 (b) The landowner agrees to maintain the water and sediment control basin for 10 years
7 unless farming operations on the affected land are discontinued.

8 **ATCP 50.96 Waterway systems.** (1) DEFINITION. In this section, “waterway system”
9 means a natural or constructed waterway or outlet that is shaped, graded and covered with a
10 vegetation or another suitable surface material to prevent erosion by runoff waters.

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

13 (a) Costs for site preparation, grading, shaping and filling.

14 (b) Costs to establish permanent vegetative cover, or to provide temporary cover until
15 permanent cover is established. This may include costs for mulch, fertilizer and other necessary
16 materials.

17 (c) Costs for the necessary removal of obstructions, the necessary installation of
18 subsurface drains and underground outlets, and the necessary installation of machinery crossings.

19 (3) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
20 may not reimburse costs for a waterway system unless all of the following conditions are met:

21 (a) Waterways are permanently covered by vegetation or other suitable surface materials
22 to prevent erosion. Close-sown small grains, annual grasses or mulches may be used for
23 temporary protection if followed by an appropriate permanent vegetative cover.

24 (b) The system complies with all of the following that apply:

25 1. NRCS technical guide critical area planting standard 342 (May, 2000).

- 1 2. NRCS technical guide fencing standard 382 (November, 1999).
- 2 3. NRCS technical guide grassed waterway standard 412 (April, 2002).
- 3 4. NRCS technical guide mulching standard 484 (July, 1987).
- 4 5. NRCS technical guide obstruction removal standard 500 (May, 2002).
- 5 6. NRCS technical guide subsurface drain standard 606 (September, 1989).
- 6 7. NRCS technical guide underground outlet standard 620 (May, 2002).

7 **NOTE:** For information on how to obtain NRCS technical guide standards, including
8 any secondary standards incorporated by reference in those standards, see
9 *Appendix G.*

10
11 (c) The landowner agrees to maintain the waterway system for 10 years unless farming
12 operations on the affected land are discontinued.

13 **ATCP 50.97 Well decommissioning.** (1) DEFINITION. In this section, “well
14 decommissioning” means permanently disabling and sealing a well to prevent contaminants from
15 reaching groundwater.

16 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse costs to
17 design and implement a well decommissioning, including costs to fill the well, seal the well, and
18 shape the land to protect the abandoned wellhead from precipitation and runoff.

19 (3) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
20 may not reimburse the cost of well decommissioning unless the well decommissioning complies
21 with all of the following that apply:

- 22 (a) NRCS technical guide well decommissioning standard 351 (April, 1999).
- 23 (b) Section NR 812.26, related to well and drillhole decommissioning.

24 **NOTE:** For information on how to obtain NRCS technical guide standards, including
25 any secondary standards incorporated by reference in those standards, see
26 *Appendix G.*

1 **ATCP 50.98 Wetland development or restoration.** (1) DEFINITION. In this section,
2 “wetland development or restoration” means the construction of berms, or the destruction of tile
3 line or drainage ditch functions, to create or restore conditions suitable for wetland vegetation.

4 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse any of the
5 following costs related to the development or restoration of wetlands:

6 (a) Costs for earth moving to construct or remove berms, levees or dikes.

7 (b) Costs for earth moving to fill in portions of drainage ditches.

8 (c) Costs to destroy portions of tile lines.

9 (d) Costs to establish vegetative cover to develop or restore wetlands, consistent with the
10 practice goals.

11 (3) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
12 may not reimburse wetland development or restoration costs unless all of the following
13 conditions are met:

14 (a) The wetland development or restoration complies with NRCS technical guide
15 wetland restoration standard 657 (September, 2002).

16 **NOTE:** For information on how to obtain NRCS technical guide standards, including
17 any secondary standards incorporated by reference in those standards, see
18 *Appendix G*.

19 (b) The landowner agrees to maintain the wetland restoration practice for at least 10
20 years.
21

22 **EFFECTIVE DATE.** Except as otherwise provided in this rule, this rule shall take effect on
23 the first day of the month following publication in the Wisconsin administrative register, as
24 provided under s. 227.22(2)(intro.), Stats.
25

1 Dated this _____ day of _____, _____.

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STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
James E. Harsdorf
Secretary