

Door County Soil and Water Conservation Standards for the Farmland Preservation Program

Section 1 General Requisites

- 1.01 Purpose
- 1.02 Definitions
- 1.03 Authority
- 1.04 Applicability

Section 2 Soil and Water Conservation Standards

- 2.01 ATCP 50 Requirements
- 2.02 County Ordinances
- 2.03 Other County Requirements

Section 3 Conservation Plans

- 3.01 Existing
- 3.02 Amendments
- 3.03 Development of New

Section 4 Inspection and Enforcement

- 4.01 Annual Certification
- 4.02 Monitoring of Compliance
- 4.03 Schedule of Compliance
- 4.04 Notice of Noncompliance

Section 5 Variances

- 5.01 Variances
- 5.02 Temporary Compliance Waiver

Section 6 Annual Reports

Section 7 Amendments

- 7.01 Public Hearing
- 7.02 LWCB Approval

Section 1 General Requisites

1.01 Purpose. The purpose of these standards are to update existing soil and water conservation standards based on law changes made by ch. ATCP 50, Wisconsin Administrative Code, effective October 1, 2002.

1.02 Definitions.

(1) "Agricultural Use" as defined in ch 91, Wis. Stats., means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and 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; participating in the milk production termination program under 7 USC 1446 (d); and vegetable raising.

(2) "Exclusive Agriculture" as defined in the Door County Zoning Ordinance is defined as a district that is intended to protect the agricultural industry from scattered nonagricultural development that may displace agricultural uses and is, therefore, not intended to accommodate future nonagricultural growth. This district is intended to help implement recommendations of the *Door County Farmland*

Preservation Plan-1982. Further, it is intended to meet the provisions of the Wisconsin Farmland Preservation Program, as specified in Ch. 91, Wis. Stats., and thereby establish eligibility for tax credits to farm owners as provided in s. 71.59, Wis. Stats. It is intended that this district apply to lands included in productive farm operations and which have historically exhibited good crop yields, or are capable of such yields; have demonstrated productivity for dairying, livestock raising, and grazing; have been used for production of specialty crops such as tree and plant materials, fruits, and vegetables; or have been integral parts of such farm operations. Lot sizes of at least 35 acres are required for new lots.

(3) "Farmland Preservation Agreement" as defined in ch 91, Wis. Stats., means a restrictive covenant, evidenced by an instrument whereby the owner and the state agree to hold jointly the right to develop the land except as may be expressly reserved in the instrument and which contains a covenant running with the land, for a term of years, not to develop except as expressly reserved in the instrument.

(4) "Land Conservation Committee" or "LCC" means the committee created by the Door County Board of Supervisors, under s. 92.06, Stats., which oversees the Soil and Water Conservation Department.

(5) "Land Owner" or "Owner" as defined in ch. 91, Wis. Stats., means a resident of this state owning land and

includes an individual, legal guardian, corporation incorporated in this state, business trust, estate, trust, limited liability company, partnership or association or 2 or more persons having a joint or common interest in the land.

(6) "New Farmland Preservation Agreement" means agreements that go into effect after the adoption of these standards. The "effective" date is as defined in 1.04.

(7) "Participant" means a landowner with an effective Farmland Preservation Agreement or with land in a district zoned as exclusive agriculture who claims tax credits under the provisions of subch. IX of ch. 71 Stats.

(8) "Soil and Water Conservation Department" or "SWCD" includes employees or agents of the Land Conservation Committee whom, with committee authorization, act on behalf of the committee.

1.03 Authority. This policy is promulgated by the Door County Land Conservation Committee as established in ss. 92.104, 92.105, Wis. Stats., ATCP 50.16, Wis. Adm. Code, following guidelines developed by the Wisconsin Land and Water Conservation Board established in ch. 92.105(2) Wis. Stats. Administration of this policy shall be performed by the Soil and Water Conservation Department as outlined in ch. 92.09 Wis. Stats.

1.04 Applicability. These soil and water conservation standards shall apply to landowners who are eligible to receive farmland preservation tax credits if their land is located in a district zoned as exclusive agriculture and landowners under new Farmland Preservation Agreements. The "effective" date for updated standards with regard to agreements is as follows: "In cases where the tax credits are based on the landowner participating under a farmland preservation agreement, the landowner is subject to the soil and water conservation standards in effect at the time the agreement application was submitted to the county clerk after being signed by the landowner, unless the landowner agrees to adopt the updated standards. These standards are effective when approved by the LWCB and adopted by the LCC." Conformance with these standards and procedures will be necessary for landowners to establish and maintain eligibility for farmland preservation tax credits under Subchapter IX of Chapter 71, and ss. 92.104 and 92.105, Wis. Stats.

Section 2

Soil and Water Conservation Standards

2.01 ATCP 50 requirements. Participants in the Farmland Preservation Program shall implement the conservation practices required under ATCP 50.04, Wis. Adm. Code.

2.02 County Ordinances. Participants in the Farmland Preservation Program shall comply with the requirements outlined in Subchapters III and IV of the Door County

Agricultural Performance Standards and Animal Waste Storage Ordinance, Door County Ordinance 2004-15.

2.03 Other County Requirements. Participants in the Farmland Preservation Program shall address all occurrences of gully erosion on all cropland. Surface water runoff shall be delivered to a legal outlet or a natural watercourse without creating gullies. Gully erosion rates shall be determined by the concentrated flow formula and conservation practices shall be based on the Technical Guide.

Section 3

Conservation Plans

3.01 Existing Conservation Plans. Participants with an effective Farmland Preservation Agreement shall follow the requirements of their existing conservation plan for the duration of the contract. Participants with land in a district zoned as Exclusive Agriculture shall amend their conservation plan based on a schedule of compliance set by the SWCD as outlined in Sections 3.02 and 4.03

3.02 Amendment of Conservation Plans. Participants with land in a district zoned as Exclusive Agriculture shall have their conservation plan amended to comply with the conservation practice requirements outlined in ATCP 50.04, Wis. Adm. Code. These amendments shall follow a schedule of compliance set by the SWCD as outlined in section 4.03.

3.03 Development of New Conservation Plans. Participants with new Farmland Preservation Agreements or participants with land in a district zoned as Exclusive Agriculture without an existing conservation plan shall work with the SWCD to develop a conservation plan that incorporates conservation practice requirements outlined in ATCP 50.04, Wis. Adm. Code.

Section 4

Inspection and Enforcement

4.01 Annual Certification. All participants shall annually certify their compliance with the soil and water conservation standards outlined in this document. Annual certification will consist of their signature on a form prepared by the SWCD that outlines the necessary elements for their compliance.

4.02 Monitoring of Compliance. The SWCD will monitor each participant's compliance through field inspections and in-office checks comprised of cropping histories and air photo interpretation. Determination of each participant's status of compliance shall be made, at a minimum, once every six years.

4.03 Schedule of Compliance. Participants that are found to be out of compliance with the soil and water conservation standards outlined in this document shall develop a schedule of compliance with the SWCD and

LCC to plan the necessary elements to establish compliance. The schedule of compliance shall be a maximum of five years. During the period of the schedule of compliance, participants must show significant annual progress to ensure that compliance with the soil and water conservation standards outlined in this document will be achieved by the end of the schedule determined by the participant, SWCD and LCC.

4.04 Notice of Noncompliance. A Notice of Noncompliance, as outlined in ATCP 50.16 (6), Wis. Adm. Code, may be issued to participants who:

- Fail to comply with the soil and water conservation standards outlined in this document.
- Fail to comply with an existing conservation plan.
- Fail to permit a reasonable inspection to determine compliance as outlined in section 4.02 of this document.
- Fail to certify compliance as outlined in section 4.01 of this document.

A Notice of Noncompliance will specify the following:

- The nature of the violation.
- The deadline for remediation of the violation based on a schedule of compliance determined by the participant, the SWCD and the LCC.
- The Notice of Noncompliance shall include the statement that *the participant may not claim farmland preservation tax credits unless the violation is corrected.*
- The Notice of Noncompliance shall include the necessary procedure for contacting the LCC to discuss or contest the notice.

In the event the participant does not correct a violation outlined in a Notice of Noncompliance, a copy shall be provided to the Wisconsin Department of Revenue. Notices of Noncompliance for participants with land in a district zoned as Exclusive Agriculture who have failed to correct a violation outlined in a Notice of Noncompliance shall also be referred to the Door County Planning Department.

Participants who fail to comply with an issued Notice of Noncompliance will no longer be eligible for farmland preservation tax credits.

A Notice of Noncompliance may be issued, suspending a participant's tax credit eligibility, without the offer of cost sharing to resolve the violation specified by the notice, as outlined in ATCP 50.08(6) Wis. Adm. Code.

A Notice of Noncompliance may be withdrawn upon compliance with the violation listed on the notice. Withdrawal of a Notice of Noncompliance must be requested by the participant and shall not occur without inspection of the operation by the SWCD. A Notice of Noncompliance may be withdrawn in the event that the notice is incorrect. Notice of a withdrawn Notice of Noncompliance will be forwarded to the participant and the Wisconsin Department of Revenue. A notice of a withdrawal of a Notice of Noncompliance for a participant

in a district zoned as Exclusive Agriculture will also be forwarded to the Door County Planning Department.

Section 5 Variances

5.01 Appeals. An appeal to the Land Conservation Department, acting under the authority of Chapter 68.09 (2), Wis. Stats., where it is thought that there is an error in the determination of compliance by the SWCD. In the event of an appeal; the rules, procedures, duties and powers of the Land Conservation Committee and Chapter 68, Wis. Stats. shall apply to the determinations made.

5.02 Temporary Compliance Waiver. The SWCD and LCC may issue a Temporary Compliance Waiver to a participant that is not in compliance with the soil and water conservation schedule of compliance in the event that the participant is unable to comply due to reasons beyond their control.

Section 6 Annual Report

6.01 Annual report. The SWCD shall file an annual report with DATCP as outlined in ATCP 50.18, Wis. Adm. Code, by April 15th of each year. This report will communicate the previous year's administration of these soil and water conservation standards as they apply to the Farmland Preservation Program.

Section 7 Amendments

7.01 Amendments. The soil and water conservation standards outlined in this document may be amended to remain consistent with requirements from the Wisconsin Land and Water Conservation Board and the Wisconsin Department of Agriculture, Trade and Consumer Protection.

7.02 Public Hearing. The LCC shall hold a public hearing, as required in ATCP 50.16 (2) Wis. Adm. Code, for proposed amendments to the soil and water conservation standards outlined in this document. A class 2 public notice shall be issued in the official county newspaper of general circulation prior to the meeting.

7.03 LWCB Approval. Amendments to the soil and water conservation standards outlined in this document must be approved by the Wisconsin Land and Water Conservation Board based on the requirements of ATCP 50.16 Wis. Adm. Code.