

SECTION 2.10

GUIDANCE FOR REQUIRED NOTICE OF CONTINUING COMPLIANCE

Mandatory use of notice

Since 2006, DATCP has imposed the following requirement related to cost-sharing nutrient management plans: Counties must provide DATCP cost-sharing for four years and landowners must agree to follow the ATCP 50.04 nutrient management standard after the end of their four-year cost-share contracts. By accepting these terms, landowner are agreeing to continuing compliance responsibilities that require current and future owners of the land to have and follow an updated nutrient management plan for as long as the affected land is farmed.

In 2015, DATCP adopted a policy to allow a county to spend no more than 25% of a county's annual SEG allocation to cost-share cover crop and other soft practices needed to implement a nutrient management plan, whether or not these soft practices are included in the same DATCP cost-share contract for the nutrient management plan. While soft practices may be cost-shared separately from the related nutrient management plan, they remain linked. Landowners must agree to maintain their nutrient management plan, as well as control soil erosion, on fields cost-shared with DATCP funds.

This guidance describes the content of a notice, as well as the procedures for providing and documenting the notice.

Optional use of a notice

Before 2002, a DATCP cost-share contract established the full extent of a landowner's responsibilities to install and maintain a cost-shared practice. With the advent of the state agricultural performance standards in NR 151, landowners paid to install a practice with state funds could take on continuing obligations to maintain the practice without receiving further cost-sharing. Sec. ATCP 50.08(5) identifies the exemptions to state cost-share requirements that enable a county to require a landowner to maintain a conservation practice without further cost-sharing so long as the conservation practice was adequately cost-shared.

While DATCP elected to require continuing compliance in the cost-share settings discussed above, counties may require continuing compliance with other cost-shared practices if the requirements of ATCP 50.08 have been satisfied. Counties may use notices of continuing compliance where DATCP bond revenue is used to cost-share a practice to secure compliance with a performance standard. For example, cost-sharing for a newly constructed storage facility may give rise to a continuing obligation to comply with the performance standard after the 10-year maintenance period. A notice is appropriate for cost-shared practices such as grassed waterways and riparian buffers only if the practice achieves compliance with a current state performance standard. For example, a notice would be appropriate if a grassed waterway was required to control nutrient runoff and achieve compliance with the NR 151 standard related to nutrient management. NR 151 may impose independent requirements for compliance, and counties may wish to include these in any notice they issue. For example, landowners who construct manure storage facilities after 2002 may be required to close facilities without cost-sharing if the facilities are unused.

GUIDELINES FOR DEVELOPING NOTICE OF CONTINUING COMPLIANCE

Content of a notice

At a minimum, the notice should identify the practices being installed, the amounts paid for the practices, the sources of cost-share payments, the performance standard(s) implicated by a cost-share payment, and a statement of continuing compliance responsibility. The full extent of the notice will depend on the practices being cost-shared and the amount of cost-sharing provided. Further guidance is provided below.

Procedures for providing and documenting notice

Whenever notice must be provided, the county should have all the parties acknowledge receipt of the notice by placing their initials on the cost-share contract at section 2.A.9. For example, when counties provide \$28 per acre for a nutrient management plan and no cost-sharing for soft practice, counties must notify landowners of their continuing responsibility to meet the nutrient management standard, and have them acknowledge this responsibility by correctly initially the cost-share contract.

In the following cases, there are additional documentation responsibilities regarding a notice. If less than \$28 per acre is provided for a nutrient management plan, the county must have the landowner sign a separate notice acknowledging continuing compliance with the nutrient management standard, and provide a copy of the signed notice to DATCP. When a soft practice is cost-shared to implement a nutrient management plan, the landowner must agree to comply with the soil erosion control standard, as well as the nutrient management standard, for as long as the field is farmed. The landowner must sign a written acknowledgement to this effect, which must be submitted to DATCP with the county's reimbursement request.

Counties should seek advice from their corporation counsel regarding the legal sufficiency of their landowner notices to ensure that they can pursue enforcement if required at a later date.

Possible elements of a full notice

You will need to select from the following based on the nature and extent of the cost-sharing provided.

1. You are being offered ____ dollars in cost-share funds to [have and follow a nutrient management plan for x acres] [or list other appropriate practices as provided in the contract] (strike all that do not apply not apply) located in _____. The specific funds and their sources are: xxxx dollars from DATCP, xxxx dollars from NRCS, xxxx dollars from DNR (strike as appropriate).
2. If a soft practice other than a nutrient management plan is cost-shared, the soft practice is needed to achieve compliance with the soil erosion requirements in a farm's nutrient management plan.
3. The conservation practices installed under this cost-share contract will result in compliance with the following performance standards: [NR 151.02 Sheet, rill and wind erosion] [NR 151.05 Manure storage facilities] [NR 151.03 Tillage setback] [NR 151.04 Phosphorus index] [NR 151.055 Process wastewater handling][NR 151.06 Clean water diversions] [NR 151.07 Nutrient management] [NR 151.08 Manure management prohibitions] (Strike all that do not apply).
4. If you voluntarily agree to accept this cost-share offer, you will be required to sign a cost-share contract, and acknowledge receipt of a notice that defines your rights and responsibilities. If you

are not the landowner, the landowner will also be required to sign the contract to ensure that continuing compliance responsibilities are met.

5. The cost-share contract specifies a maintenance period for each cost-shared practice. The maintenance period for practices such as manure storage is 10 years. “Soft” practices such as nutrient management have shorter maintenance periods; specifically, they must be maintained for each year cost-share funds are provided, as specified in Section 3 of the cost-share contract. Cost-sharing for nutrient management cannot exceed four years.

Skip paragraph 6 if no nutrient management plan is cost-shared.

6. You will be required to maintain your nutrient management plan beyond the term specified in the contract because: (Strike all that do not apply)
 - a. You received DATCP cost-sharing for a nutrient management plan required under ATCP 50.08 by accepting four years of payments at the flat rates identified in the ATCP 50.42(2), or a higher cost-share payment under ATCP 50.42(1) if this is applicable. The 4-years of cost-sharing meets the requirements of ATCP 50.08, and obligates you and subsequent landowners to maintain a nutrient management plan yond the term of the contract, without further cost-sharing, to meet the performance standard identified in 3 above.
 - i. For example, a landowner has a continuing compliance obligation if the contract provides for an upfront DATCP payment of at least \$28 per acre (\$7 per acre for four years), or a higher amount if warranted using calculations under ATCP 50.08 and 50.42.
 - b. You received DATCP cost-sharing for a nutrient management plan, combined with cost-share payments from other sources, equal to the amount required under ATCP 50.08; namely, four years of payments at the flat rates identified in the ATCP 50.42(2), or a higher cost-share payment under ATCP 50.42(1) if this is applicable. The combined cost-sharing is equal to the amounts required under ATCP 50.08, and obligates you and subsequent landowners to maintain a nutrient management plan yond the term of the contract, without further cost-sharing, to meet the performance standard identified in 3 above.
 - i. For example, if a landowner receives DATCP cost-sharing of \$21 per acre for nutrient management, the landowner would have a continuing obligation to meet the state nutrient management standard if the landowner also received a separate payment of \$7 per acre from the county, increasing the total payment under the contract to at least \$28 per acre (\$7 per acre for four years). Counties may need to have landowners waive confidentiality rights to identify non-DATCP cost-sharing.
 - c. You knowingly and voluntarily accepted less than the maximum rate authorized under ATCP 50.42(2) to install and maintain a nutrient management plan for a four-year period. The 4-years of cost-sharing negotiated for the nutrient management plan (regardless of the rates provided) meets the requirements of ATCP 50.08, and obligates you and subsequent landowners to maintain a nutrient management plan yond the term of the contract, without further cost-sharing, to meet the performance standard identified in 3 above.

Skip paragraph 7 if no “soft” practice other than nutrient management is cost-shared.

7. You will be required to control soil erosion and implement your nutrient management plan beyond the term specified in the contract because: (Strike all that do not apply)
- a. You knowingly and voluntarily agreed to receive a separate DATCP cost-sharing to install a soft practice to implement a nutrient management, also cost-shared with DATCP funds. This agreement (regardless of the practices cost-shared and rates provided) meets the requirements of ATCP 50.08, and obligates you and subsequent landowners to control soil erosion and maintain a nutrient management plan beyond the term of any cost-share contract, without further cost-sharing, to meet the performance standard identified in 3 above. This continuing compliance obligation remains in effect as long as the land is farmed.
 - b. You knowingly and voluntarily agreed to receive separate DATCP cost-sharing for a soft practice to implement a pre-existing nutrient management plan. You are making this agreement even though you may not have received separate cost-sharing for the nutrient management plan. This agreement (regardless of the practices cost-shared and rates provided) meets the requirements of ATCP 50.08, and obligates you and subsequent landowners to control soil erosion and maintain the nutrient management plan beyond the term of any cost-share contract, without further cost-sharing, to meet the performance standard identified in 3 above. This continuing compliance obligation remains in effect as long as the land is farmed.

Skip paragraph 8 if no "hard" practices are cost-shared.

8. You will be required to maintain the "hard" practice noted above, beyond the 10-year term specified in the contract because: (Strike all that do not apply)
- a. You received DATCP cost-share funds to install and maintain a practice for 10 years at the maximum level authorized under ATCP 50.42. This meets the requirements under ATCP 50.08.
 - b. You received DATCP cost-share funds combined with cost-share payments from other sources to install and maintain the practice for 10 years, and the combined payments equal the maximum level authorized under ATCP 50.42. This meets the requirements under ATCP 50.08.
 - c. You knowingly and voluntarily accepted cost-share payments less than the maximum amount authorized under ATCP 50.42 to install and maintain the practice for a 10-year period. The 10 years of cost-sharing negotiated for the practices listed above (regardless of the amounts provided) meets the requirements of ATCP 50.08, and obligates a landowner to maintain the practice beyond the term of the contract, without further cost-sharing, to meet the performance standard identified in 3 above.
9. You will be required to sign the cost-share contract and this notice to acknowledge that you have read and understand the obligations to maintain [nutrient management][other listed practice] (strike the one that does not apply) during and after the term of the cost-share contract.
10. As a part of your continuing compliance responsibilities, you may be asked to provide an annual update to your nutrient management plan to the county.