

SECTION 2

2.8 NUTRIENT MANAGEMENT COST-SHARING-FREQUENTLY ASKED QUESTIONS

1. What is the primary use of DATCP SEG cost-share funds?
 - A. DATCP awards counties grant funds from its annual SEG appropriation for the purpose of implementing nutrient management (NM). Counties should use these grant funds primarily to provide cost-sharing to farmers for nutrient management plans (“NMPs”). Some of the funds may be used to support nutrient management by cost-sharing other cropping practices to comply with or implement a nutrient management plan (“NMP”) if the following conditions are met: the supporting cropping practice is cost-shared in connection with a NMP, and the county certifies that the supporting practice is (1) required to meet “T” or other requirement of the NRCS 590 standard; and (2) the most cost-effective approach to meeting the requirement. SEG funds can never cost-share “hard” practices such as manure storage.

2. When can farmers be required to develop and follow a NMP without cost-sharing?
 - A. Farmers must prepare and follow a NMP if they:
 - Are offered adequate cost-sharing for nutrient management [When DATCP funds are used, the state requirement to cost-share 70% of eligible costs can be met by offering \$7 per acre (“/ac”) for 4 years, or \$28/ac].
 - Are regulated under a DNR Wisconsin pollution discharge elimination system (WPDES) permit.
 - Receive a tax credit through the farmland preservation program (except for farmers with older individual agreements).
 - Secure a local permit for a manure storage structure or livestock facility siting.
 - Required to respond to a grossly negligent discharge.

3. Are there instances when a farmer must prepare a NMP in order to receive cost-sharing for another conservation practice?
 - A. Yes. Farmers must submit a NMP, even if no additional cost-sharing is provided, if they receive:
 - Any DATCP cost-sharing for a *manure storage systems (ATCP 50.62)*.
 - \$25,000 or more in DATCP cost-share payments for a *barnyard runoff control system (ATCP 50.64)*.
 - DATCP cost-sharing for a *feed storage runoff control system (ATCP 50.705)* that will collect runoff from a feed storage area over 1 acre in size and that runoff is not transferred to a manure storage system.
 - DATCP cost-sharing for *manure storage system closure (ATCP 50.63)* and *milking center waste control systems (ATCP 50.77)*, and the land application of waste is a necessary component of the main cost-shared practice.

4. Should pastures be included in NMPs cost-shared with DATCP funds?
 - A. Farmers receiving DATCP cost-sharing for NMPs must include pastures stocked at an average animal unit density greater than one, and pastures that receive mechanically-applied manure or fertilizers. To receive payment, the NM checklist must include the cropland and pastured acres covered by the NMP.

5. Can a county provide an operator cost-sharing for a NMP without adding the owner of rented land to the cost-share contract?
 - A. No. Landowners must sign the cost-share contract to give permission for the practice to be installed on their land and also to acknowledge the obligation to continue compliance with the nutrient management requirements after the cost-share contract ends. Since an operator does not own the land where the NMP is implemented, the operator cannot consent to the practice nor make the long-term commitment to keep the land in compliance with the nutrient management performance standard.

6. May a county offer nutrient management cost-sharing without requiring continuing compliance from a landowner?
 - A. No. Landowners, including an operator who owns land, must agree to comply with nutrient management requirements after the four-year contract period. This compliance requirement continues as long as the land is farmed.

The county must provide written notice to each landowner (including the operator who owns land) concerning the nutrient management requirements that apply after the four-year contract. The county should follow DATCP guidelines in developing a notice, and may use actual notices developed by other counties as models, but should consult with their corporation counsel prior to using the notice. County staff should present the notice to landowners as part of a face-to-face meeting to answer questions from landowners. The county may choose to have the landowner sign the notice and retain the signed notice in the county file as a record that the landowner received it. When executing the cost-share contract with a landowner, the county must have the landowner initial the contract provision where the landowner acknowledges receipt of the continuing compliance notice.

7. Can a county sign one contract that includes one grant recipient and multiple landowners?
 - A. No, DATCP requires that a separate contract be signed with each landowner who has land covered by the NM plan. The operator and grant recipient must sign each contract using Exhibit A1.

8. What are the simplified notarization requirements for NM cost-share contracts?
 - A. For contracts signed by landowners only, the landowner's signature must be notarized. For contracts signed by both a landowner and grant recipient, only the grant recipient's signature must be notarized.

Since DATCP has eliminated the recording requirements for NM contracts, a county is not required to notarize all signatures on a contract unless it voluntarily elects to record the contract.

DATCP has developed a **Landowner/Grant Recipient Notarization Table** (Section 2.12) that explains the streamlined notarization requirements for all cost-share contracts.

9. How much nutrient management cost-sharing should a county offer?
 - A. The DATCP grant program requires that operators and/or landowners be provided cost-sharing that will result in continuing compliance with the nutrient management standard. DATCP recommends that continuing compliance be secured by providing cost-sharing of \$7/ac for four years. Cost-sharing should be provided for all acres where nutrients will be applied under a NMP. Once this amount is paid, according to DATCP's rule, the landowner is required to continue nutrient management without additional cost-sharing as long as the land is farmed.

10. Can a county provide a farmer less than \$7/ac for four years?
 - A. Yes; however, DATCP discourages this practice and recommends that landowners or operators receive the full amount of the cost-share payment to avoid any questions concerning their future compliance obligations. In the event that a county proceeds with an offer at a reduced rate, the county must follow additional steps to document acceptance of less than \$28/ac. In addition to initialing the acknowledgement in the cost-share contract, a landowner must sign a separate written notice in which the landowner specifically acknowledges the obligation of continuing compliance even though the landowner has received less than the legally-required cost-sharing. While counties may use notices from other county as templates, they should make sure that any notice conforms to DATCP guidelines set forth in **Section 2.10 Guidance For Required Notice of Continuing Compliance** of the SWRM Working Manual. A copy of the signed notice must be submitted to DATCP with the reimbursement request.

11. Can a county offer nutrient management cost-sharing for fewer than four years?
 - A. No. For example, a county cannot make three years of payments at \$7/ac. It must make four years of payments in a lump sum of \$28/ac to ensure future compliance with the state performance standard for nutrient management.

12. If a county's annual allocation does not provide sufficient SEG cost-sharing for nutrient management plan that covers all the acres on a farm, may a farmer prepare a NMP that only covers the cost-shared acres?
 - A. No, the farmer must develop a NMP that covers the entire farm including pastures (see No. 4 above). Counties may use future grant allocations to provide cost-sharing for the acres not cost-shared in the first contact.

13. In providing cost-share dollars for a NMP, can a county pay for acres located outside the county?
- A. Yes, the county may provide nutrient management cost-sharing for land in an adjoining county covered by a NMP. Before making such arrangements, the county should contact the neighboring county to establish if the land was previously cost-shared and determine if the neighboring county wants to use its own funds to pay for the acres located in that county. If a county elects to offer cost-sharing for a NMP that includes acres located outside the county, the county faces limitations regarding recording the cost-share contract and enforcing the cost-share contract.
14. If a county faces challenges in identifying farmers willing to accept cost-share dollars for NMPs, what can the county do?
- A. Counties should not apply for SEG funds if they do not have a demonstrated need, i.e., farmers ready to accept nutrient management cost-sharing. In lieu of seeking cost-sharing, counties may wish to apply for funds to provide nutrient management education to farmers. DATCP offers Nutrient Management Farmer Education (NMFE) grants annually to counties and other eligible grant recipients for this purpose. While most farmers who participate in training classes are expected to develop NMPs that meet the NRCS 590 standard, they are not obligated by participation in the class to continue compliance with their NMP.
15. May a county provide nutrient management cost-sharing to farmers participating in the Farmland Preservation Program?
- A. Yes. By offering cost-sharing, the county provides an incentive to help farmers comply with new conservation standards and remain eligible to receive tax credits.
16. May a county provide cost-sharing for nutrient management for farmers who are required to have a permit for manure storage or livestock facility siting?
- A. Yes. While cost-sharing is not required in these cases, a county may offer cost-sharing, but it should exercise great caution in making this decision. Once one farmer receives cost-sharing, all permit applicants may expect the same treatment. If a county decides to offer cost-sharing in this situation, it should establish clear and consistent eligibility criteria for providing funding to avoid creating future expectations that the county cannot meet.
17. Under ATCP 50, farmers have been historically required to develop and maintain NMPs for 10 years if they receive cost-sharing dollars for manure storage systems. How have new rules changed a farmer's responsibility if the farmer adds animals during the 10-year maintenance period of a cost-shared manure storage structure?
- A. To meet the new rule requirements, a farmer may need to expand the storage capacity of the structure to handle the greater volume of manure. As an alternative, the farmer can spread the additional manure as part of a revised NMP

that meets the NRCS 590 standard and demonstrates there is an adequate land base for the increased manure applications.

18. Can a county combine funding from different sources to provide the maximum cost-sharing of \$28/ac?
- A. Yes. The county may piggy-back funding from DATCP onto funding from other sources to provide cost-sharing at the rate of the \$28/ac, but the county must make sure that it meets the program requirements for each of the funding sources. For example, DATCP funds could be combined with federal EQIP dollars to provide \$28/ac, however, the grant recipient would need to voluntarily disclose to the county in writing that s/he has received EQIP nutrient management funds and that s/he acknowledges continuing compliance requirements if \$28/ac is provided. In no case should combined payments from multiple sources exceed \$28/ac unless the county can show that the payments cover actual planning-related costs (such as soil testing and plan development) incurred by a farmer.
19. When may a county make the lump sum payment for four years of nutrient management planning?
- A. Before any payment is made, the county must receive a completed and signed Nutrient Management Plan Checklist (“NMP Checklist”) that certifies that the NMP complies with the NRCS 590 standard. The NMP Checklist form is available at this DATCP website, http://datcp.wi.gov/Farms/Nutrient_Management/index.aspx. The county may require that the cost-share recipient provide a copy of the full NMP for the county’s review. The county may delay payment until a cost-share recipient and the nutrient management planner make changes to the NMP to meet applicable standards.
20. Can a county make a partial payment?
- A. No. Partial payments are not allowed for any reason. In particular, a partial payment cannot be made after soil tests are completed.
21. What can a county require of a grant recipient who receives four years of cost-sharing for nutrient management?
- A. Grant recipients must provide the county an updated NMP Checklist annually or demonstrate that they meet the following requirements from ATCP 50 and the 590 nutrient management standard:
- Follow a NMP that updated annually
 - Test soil through a DATCP certified laboratory
 - Control all soil erosion on land receiving nutrients (meet “T”, control ephemeral rills and gullies)
 - Keep annual records of manure and fertilizer applications in the NMP
 - Take manure and legume credits that comply with ATCP 50 and the 590 standard

22. How should a county monitor a grant recipient's performance during the four-year contract period?
- A. The county should request that the nutrient management planner or the landowner/operator submit a NMP Checklist each year to monitor compliance during the cost share contract and beyond. In addition, a copy of the NMP Checklist should be forwarded to Sue Porter at DATCP to help document annual progress statewide in implementing nutrient management.
23. What if a landowner does not update a NMP after receiving \$28/ac for four years of planning?
- A. The most realistic option may be working with the farmer to encourage participation in a training class so that the farmer can develop the knowledge and skills to write a plan on his or her own. This approach provides farmers with a pathway to achieve compliance, while avoiding the alternative of enforcement actions based on violations of the cost-share contract, ordinance, or state law. The prospect of enforcement may serve as a motivational tool, but counties may need to take additional actions. The enforcement options available to a county depend on number of factors including legal requirements in county ordinances, cooperation for DNR, and support from the corporation counsel.
24. How should a county describe and track the property covered by a NMP in the cost-share contract?
- A. A county should only provide a legal description of the acres cost-shared in the individual contract. The county should develop its own GIS or other system to track the specific parcels covered by cost-share contract. Tracking compliance on a parcel level is important for documenting FPP compliance and informing new landowners of their compliance responsibilities.
25. How does the 50% cost-share cap affect cost-sharing of NMPs on land owned by local governments?
- A. Counties cannot offer flat rate cost-sharing for NMPs developed for government-owned cropland, and may only provide cost-sharing to cover 50 percent of the costs incurred for one year. The local government is responsible for contributing 50% of the project costs, and cannot receive cost-sharing for more than year. Since counties are reimbursing local governments for actual costs incurred, they must collect copies of receipts documenting soil testing and other plan development costs.
26. Can SEG funds be used to cost-share cover crop and other soil erosion control practices to support a NMP?
- A. Yes, a county may use a limited portion of its SEG grant funding (cumulative expenditures may not exceed 25 percent of a county's annual cost-share allocation unless otherwise allowed in the allocation plan for that year) to cost-share soil erosion control practices that support a nutrient management

plan. The following conditions must be satisfied before DATCP will reimburse a county for this expenditure:

- 1) The landowner agrees to remain in compliance with the soil erosion control standard (NR 151.02) and the nutrient management standard (NR 151.08) for as long as the land is farmed;
- 2) The landowner submits a nutrient management plan checklist covering the cropland where the soft practice is installed; and
- 3) The county documents that cover crop or other cost-shared “soft” practice is required to meet “T” or other requirement of the NRCS 590 standard, and is the most cost-effective approach to meeting the NRCS 590 requirement.