

Wisconsin Department of Agriculture, Trade and Consumer Protection

Environmental Assessment

Rule Subject: Soil and Water Resource Management Program
Administrative Code Reference: ATCP 50
Rules Clearinghouse #: 13-016
DATCP Docket #: 11-R-01

This environmental assessment is required by s. ATCP 3.02, Wis. Adm. Code.

Nature and Purpose of Proposed Rule

Chapter ATCP 50 is being revised to implement new and modified farm runoff control standards adopted by the Department of Natural Resources (DNR) in 2011 (hereinafter referred to as “2011 DNR standards”). The 2011 DNR standards require farmers to improve pasture management, maintain a tillage setback, control discharges of process wastewater, meet Phosphorus Index targets for nutrient management, and meet targeted performance standards for Total Maximum Daily Loads (TMDL). Under state law, the Department of Agriculture, Trade and Consumer Protection (the department) is responsible for developing conservation practices and other components necessary to implement performance standards for farms. This rule will update farm conservation standards (Subch. II) and related definitions (including updates to the RUSLE 2 definition), revise the soil erosion standard to include pastures, modify nutrient management planning requirements for pastures, and provide a method for establishing the distance (between five and 20 feet) for a tillage setback.

This rule will improve the framework for the statewide soil and water resource and management (SWRM) program. This rule will clarify the conservation compliance requirements, including a phase-in of the farm runoff standards under ch. NR 151 in the farmland preservation program (FPP). This rule will improve the mechanism for the distribution of department grant funds to counties (Subch. IV), with a primary goal of facilitating farmer access to cost-share funds needed for extended implementation responsibilities, and specify a process for providing cost-share dollars that is more efficient and customer friendly. Also, changes in the rule will simplify the manner in which engineering practitioners are certified.

In most cases, farmers are not required to implement new and modified performance standards unless they receive an offer of 70 percent cost-sharing. This rule will update technical and other standards for practices cost-shared with state funds (Subch. VIII).

Foreseeable Environmental Effects

The environmental effects of this rule are positive. This rule will supply key components to ensure implementation of new and modified farm runoff control standards designed to protect water quality and prevent soil loss by:

- Controlling discharges of process wastewater from livestock operations.
- Reducing soil erosion from pastures.
- Expanding nutrient management plan requirements to include pastures.
- Documenting compliance with nutrient management plans through the phosphorus index.

The addition of new requirements ensures a more comprehensive approach to managing runoff from farms, and enables farmers to take actions that better protect natural resources. Provisions in this rule are designed to reduce unintended consequences from the installation of conservation practices. For practices which are paid for with department funds, cost-share recipients must take actions to mitigate impacts from excavation and other installation activities including measures to manage sediment runoff from construction sites. This rule specifically updates the standards used to mitigate runoff during and after construction of conservation practices.

Through improvements in the Soil and Water Resource Management (SWRM) Program framework, this rule will facilitate farmer access to cost-sharing for conservation practices designed to protect water quality and reduce erosion. This rule will update and expand standards for cost-shared practices, allowing counties to provide cost-share funds for feed storage runoff control and other practices needed to achieve compliance with the 2011 DNR performance standards. By improving the process for certifying engineering practitioners, this rule ensures that county conservation staff and other conservation engineering personnel are better qualified to assist farmers and other landowners with the design and installation of engineered conservation practices.

A number of factors will determine the degree to which farmers implement new and modified standards that will produce increased environmental benefits. The availability of cost-sharing is the most important factor in implementation. Most farmers must receive an offer of cost-sharing to secure compliance. Some farmers may voluntarily choose to comply with the new standards. A small group of farmers may be required to implement these new standards without cost-sharing. Farmers may need to comply to meet local and state permits as a condition for collecting FPP tax credits. Over time, the level of state and federal cost-share funds will be the critical factor in determining the extent to which the 2011 DNR standards are implemented on farms, and the degree of environmental benefits attained.

Based on changes in cost-sharing provided in non-farm settings, there may be less implementation of streambank and shoreline protection and other certain conservation practices using department funds. As noted below, non-farm landowners may have reduced cost-share funds. However, any reduced benefits on the non-farm front will be offset by increased cost-share dollars available to install conservation practices on farms.

Persons or Groups That May Be Affected by the Rule

Farmers: This rule modifies conservation standards that apply to all farms. Most farmers are not required to implement these standards unless they receive an offer of cost-sharing of at least 70 percent (90 percent in the case of economic hardship). This rule will update conservation compliance requirements for FPP participants and the standards for cost-shared practices.

Non-Farm Landowners: This rule modifies standards used to provide cost-share funds for non-farm practices such as streambank and shoreline protection, and projects on land owned by government entities. This rule also restricts the availability of cost-share funds for certain practices.

County Conservation Programs and Cooperators: This rule makes changes to the SWRM program that will impact county conservation programs and cooperators that receive department funding. Counties are primarily responsible for implementation of farm conservation standards and practices including the 2011 DNR standards. This rule clarifies the state standards and practices, such as the tillage setback, that counties implement through conservation programs, clarifies conservation compliance requirements under FPP, and clarifies the manner in which counties use department funds for cost-shared practices.

Conservation- and Farm-Related Businesses: Changes in the rule will provide slight benefits based on increased business opportunities to farm supply organizations, nutrient management planners, soil testing laboratories, engineers, and construction contractors who provide goods and services purchased by landowners who receive cost-sharing.

Rural Residents: Rural residents benefit from activities supported by the rule, including county resource management planning, farmland preservation, technical assistance, and installation of conservation practices. Those neighboring landowners with properties located "downstream" of lands with nutrient and sediment delivery runoff problems also stand to benefit. Certain measures, such as feed storage runoff controls, will protect water quality and assist in safeguarding drinking water wells that serve neighboring landowners and communities.

General Public: The general public will benefit from this rule as a result of increases in farm-focused natural resource protection. Cleaner water has a number of benefits including improved public health and recreational opportunities.

Significant Economic, Social or Cultural Effects

Economic Effects

The economic impact of the proposed rule is moderate. This assessment accounts for the group most significantly impacted by the rule, farmers, and takes into consideration the implications of the 2011 DNR standards for farmers participating in FPP and potential benefits such as liability protection in this rule. This rule is expected to have a minimal but positive effect on businesses that work with farmers such as nutrient management planners, and engineering firms. The *Final Regulatory Flexibility Analysis* contains a detailed analysis of these considerations.

Conservation practices contribute to cleaner surface and ground water, which produces tangible economic benefits. Among other benefits, improvements in water quality protect property

values of waterfront homeowners, reduce treatment costs for drinking water, and enhance recreational opportunities and protect the scenic rural landscape, both of which are essential to tourism.

Social and Cultural Effects

On balance, the proposed rule will produce positive social effects. Through the increased adoption of conservation measures, farmers take positive actions to protect water quality and reduce soil erosion. These actions enhance public acceptance of farming, and strengthen farmers' credibility as environmental stewards. In rural communities, these actions are appreciated by farm neighbors who are concerned about protecting groundwater used as a source of drinking water. Systematic efforts to install conservation practices minimize some of the concerns of the public in urban areas who worry that farmers are not doing their part to protect the environment.

In conjunction with this rulemaking effort, the department has improved its process for assessing the potential impacts of cost-shared projects on cultural resources. These improvements will ensure cultural resources are protected when conservation practices are installed.

Controversial Public Issues

The department has not encountered any major public controversies related to this rule, and does not anticipate such controversies going forward. Chapter NR 151 addressed high profile issues related to the new and modified standards for that rule. In particular, DNR worked out resolutions to standards related to the tillage setback, phosphorus index, and implementation of targeted performance standards in TMDL. DNR took various actions to identify and respond to issues, including feedback from members of advisory committees that included small business owners and stakeholder organizations. Thus, major controversies regarding the performance standards have already been settled.

During the extensive hearing and comment process regarding this draft rule, the department received public feedback on the *implementation* of the new and modified performance standards and other topics such as changes to refocus department funding on farm practices. The department made changes to the final rule to address public concerns. These changes include: refining the tillage setback standard to clarify responsibilities, considerations and methods for achieving compliance; defining nutrient management requirements for pastures to include an animal stocking rate threshold for implementation and soil testing alternatives; allowing 50 percent cost-sharing for projects on land owned by local governments; modifying the definition of "farm" in making FPP compliance determinations; and providing greater oversight in regard to local manure storage ordinances.

Alternatives to this Rule

No Action

Not promulgating the proposed rule would cause the department to be in violation of state statutes. The department is required to promulgate rules prescribing conservation practices to meet performance standards and to specify a process for the development and distribution of technical standards for the practices (s. 281.16 (3) (b), Stats.). The department is also required to promulgate rules related to cost-sharing (s. 281.16 (3) (e), Stats.). If no action is taken, the most recent changes to NR 151 will be implemented using the current version of ch. ATCP 50. Should this occur, some of 2011 DNR standards could be implemented while others may not be implemented, absent the clarification provided by this rule. Unless the department takes action, farmers will not have options to receive cost-share funds for practices such as feed storage leachate runoff control required to meet the 2011 standards, nor will they benefit from other accommodations designed to ease implementation of 2011 DNR standards. Without an update to ATCP 50, counties, farmers and other landowners will be required to follow outdated rule provisions including technical standards that do not provide improved environmental benefits, and may not adequately address stakeholder needs. Failure to update technical standards will result in inconsistent treatment of farmers who must follow one standard for one program and another standard for a different program.

The department must develop applicable land and water conservation standards for owners claiming farmland preservation tax credits (s. 91.80, Stats.). This rule will ensure that the department has in effect the most current standards for conservation compliance.

The department is required to establish, by rule, a nutrient management program (see s. 92.05 (3) (k), Stats.). This rule will enable farmers to use nutrient management planning to implement the phosphorus index on pastures.

The department is required by statute (s. 92.18 (2) (b), Stats.) to develop and maintain requirements of a certification program for the design and installation of conservation practices in conformance with the engineering approval system used by the Natural Resources Conservation Service (NRCS). Without rule changes, the department cannot maintain a conservation engineering program that is consistent with NRCS's parallel program. Failure to update ch. ATCP 50 on this issue would hinder current and future coordination of federal, state and local conservation programs.

Finally, the environmental and other benefits of the 2011 DNR standards will not be realized without the department's rule changes.

Modify Rule Provisions

The department could modify the proposed rule provisions. However, the department developed this rule in consultation with government agencies, organizations and industry groups that have

supported implementation of the 2011 DNR standards and other provisions of this rule. This rule includes specific accommodations to address the needs of the most impacted groups, and represents a fair balance between the business concerns and the need for natural resource protection. The final version of the rule also responds to feedback received during public hearings, as noted above.

Additional Measures to Mitigate Adverse Environmental Effects

The department does not anticipate any adverse environmental effects as a result of this rule. Therefore, no additional measures will be needed to mitigate any adverse environmental effects.

Conclusion

This rule will implement the 2011 DNR standards and make improvements in department programs that will facilitate implementation of these standards. Overall, this rule will have a positive effect on the environment. However, implementation of conservation practices will depend on available cost-sharing. There are no preferable alternatives to this rule. This rule is not a “major action significantly affecting the quality of the environment,” for purposes of s. 1.11, Stats. No environmental impact statement is required under s. 1.11, Stats., or ch. ATCP 3.

Signed this _____ day of _____, 2013.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
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Division of Agricultural Resource Management