

Report From Agency

REPORT TO LEGISLATURE

NR 151, Wis. Adm. Code

Board Order No. WT-15-16
Clearinghouse Rule No. 17-062

Basis and Purpose of the Proposed Rule

Section NR 151.004, Wis. Adm. Code, authorizes the department to promulgate targeted performance standards if statewide performance standards and prohibitions are insufficient to achieve surface water and groundwater quality standards in the defined targeted areas and targeted performance standards would attain surface water and groundwater quality standards in those areas.

The department has found that in Silurian bedrock areas of Wisconsin, water quality standards or groundwater standards will not be attained using statewide performance standards and prohibitions but the implementation of targeted performance standards would attain water quality standards or groundwater standards. The proposed rule contains targeted performance standards.

Summary of Public Comments

The majority of the comments received are related to the following issues:

- Request for the rule to be more restrictive by increasing setback distances, increasing prohibitions, and increasing the area of the state that the rule applies to.
- Methods and map information for locating Silurian bedrock depth to know where the rule applies.
- Pre-tillage requirements and exemptions related to no-till systems, cover crops, and manure application rates.
- Impacts on small farms where most of their land base is restricted from receiving manure.
- Definitions and some sections of the proposed rule are broad and need clarification to better understand compliance requirements related to closed depressions, defined channels, soil texture, application rates and exemptions.

Modifications Made

Based on the public comments received, the following modifications were made to the rule:

- Silurian bedrock map information can be used to determine bedrock depth prior to manure applications.
- In areas with 2-5 feet of soil over Silurian bedrock, surface application of manure on cropland or pastures that meet long term no-till or have a perennial or established crop must not exceed 6,750 gallons per acre for each application.
- In areas with 5-20 feet of soil over Silurian bedrock, surface application of manure on cropland or pastures that meet long term no-till or have a perennial or established crop must not exceed 10,000 gallons per acre for each application.
- Sections of the rule related to infield bedrock verification, manure type, Silurian bedrock map information, and concentrated flow channel were revised for requested clarification.
- The definitions for closed depression, concentrated flow channel, infield bedrock verification, liquid manure, mechanical application, Silurian bedrock, soil texture, and solid manure were added or revised for requested clarification

Appearances at the Public Hearing

The department conducted hearings in Green Bay and Madison on September 15, 2017. Most of the attendees were the general public indicating support of rules to protect groundwater. There were approximately 60

attendees at the Green Bay location and 25 attendees in Madison. Approximately half of the meeting attendees provided testimony.

The Dairy Business Association attended and provided comments to support the protection of groundwater, but requested updated bedrock mapping resources and more consistency with setbacks. The River Alliance and Clean Wisconsin attended and provided supporting comments and recommendations to clarify sections of the rule.

Changes to Rule Analysis and Fiscal Estimate

No changes were made to the rule analysis and fiscal estimate based on the comments received.

Response to Legislative Council Rules Clearinghouse Report

All clearinghouse comments were related to form, style, placement, punctuation, or language clarity and were incorporated into the rule as suggested.

The language in (13)(d) was revised to identify the setback applies to defined channels that lead to private well, community wells, and direct conduits to groundwater, not to the setback distance of private wells, community wells, and direct conduits to groundwater.

Final Regulatory Flexibility Analysis

The department's draft Economic Impact Analysis includes information on the effect on small business. In discussions with the Technical Advisory Committee, the department considered how the impact on small business could be reduced. The proposed rules allow flexibility for farmers and options for achieving compliance with the targeted performance standards. Where cost shareable practices are identified in technical standards, cost sharing of these practices is required for compliance with this rule. Some cost-share dollars will be available to cover 70 percent of the costs associated with implementing the new targeted performance standards through state grant programs. There is also a section in ch. NR 151.097 that addresses a variance to any performance standard in the rule. This section would also apply to performance standards developed under s. NR 151.004. The section identifies what conditions must be met to apply for and for the department to grant a variance.