

Wisconsin Department of Agriculture, Trade and Consumer Protection
Preliminary Environmental Assessment

Rule Subject: Soil and Water Resource Management Program

Administrative Code Reference: ATCP 50

Rules Clearinghouse #:

DATCP Docket #: 15-R-13

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

Nature and Purpose of Proposed Rule

This proposed rule modifies the Soil and Water Resource Management (SWRM) Program under Chapter ATCP 50, for the primary purposes of incorporating the changes to the United States Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS) 2015 version of the 590 Nutrient Management Standard (2015-590 NM Standard) and implementing ch. NR 151 adopted by the Department of Natural Resources (DNR) in 2011 (2011 DNR standards).¹ The agricultural conservation standards for nutrient management (NM) in Subchapter II, clarification of requirements for farmland preservation conservation compliance in Subchapter III, a cost share rate adjustment in Subchapter V, NM requirements in local regulations in Subchapter VII, and the NM technical and other standards for practices cost shared with state funds in Subchapter VIII most directly impact this Environmental Assessment. Farmers and others may benefit from various rule changes intended to improve NM implementation and resource protection.

¹DNR's final rulemaking order of September 24, 2010, Administrative Rule Number WT-14-08, as well as the revised fiscal estimate is available at <https://health.wisconsin.gov/admrules/public/Rmo?nRmoId=1703>

Foreseeable Environmental Effects

The environmental effects of this rule revision are positive. By incorporating the 2015 version of the NRCS 590 Nutrient Management Standard, this rule will supply additional provisions for soil and water conservation and protection, including:

- Prohibiting nutrient applications within 50' of all direct conduits to groundwater (previously only applied to wells) where only grazing and a limited amount of corn starter fertilizer may be applied.
- Prohibiting applications of manure within 100' of a non-community well, which includes schools, restaurants, churches, and within 1000' of a community well, unless the manure is treated to reduce pathogen content.
- Prohibiting winter nutrient applications within 300' of all direct conduits to groundwater, unless manure is directly deposited by gleaning or pasturing animals. This setback increased from the 200' setback in the 2005-590 NM Standard.
- Prohibiting liquid manure application in February or March on DNR Well Compensation Areas, or on fields with Silurian Dolomite bedrock within 5' of the surface.

- Limiting manure nitrogen (N) applications in late summer or fall using the lower application rate of either the current 2012 version of UW Pub. A2809 or 2015-590 NM Standard available N per acre rate for the situation on sites vulnerable to N leaching high permeability (P) soils, or rock (R) soils with < 20 inches to bedrock, or wet (W) soils with < 12 inches to apparent water table (PRW Soils).
- Limiting winter manure applications when frozen or snow-covered soils prevent effective incorporation. The NM plan must limit these applications when slopes are > 6% and if fields have concentrated flow areas using two crop management practices listed in the winter application section of the 2015-590 NM Standard.
- Prohibiting manure applications to areas locally delineated by a Land Conservation Committee as areas contributing runoff to direct conduits to groundwater, unless manure is substantially buried within 24 hours of application.
- Late summer or fall commercial N fertilizer applications are limited in regard to areas within 1,000 feet of a community well, 5 feet or less over bedrock, sites vulnerable to N leaching high permeability (P) soils, rock (R) soils with < 20 inches to bedrock, or wet (W) soils with < 12 inches to apparent water table; rates needed for establishment of fall seeded crops or to meet UWEX Pub. A2809 with a blended fertilizer. The fall N rate was increased from 30 to 36 lbs. of N per acre to match common blended fertilizers if other nutrients are needed.

Other provisions in the rule were adjusted to clarify processes or procedures for implementing the nutrient management program. In particular, a rule revision clarifying that the alternative related to s. NR 151.04, the phosphorus index (PI), is a nutrient management plan developed in accordance with the nutrient management provisions in s. ATCP 50.04(3). Meaning, the 2005 and 2015-590 NM Standard provided the PI alternative with the soil test P management strategy.

The proposed rule revisions increase the flat-rate cost-share rate for nutrient management from \$7 to \$10 per acre per year due to additional costs associated with soil tests and new spreading restrictions. Most farmers must receive an offer of cost-sharing to secure compliance. Some farmers may voluntarily choose to comply with the new standards. Some farmers may be required to implement these new standards without cost-sharing to meet local and state permits or as a condition for collecting Farmland Preservation Program (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 performance standards are implemented on farms, and the degree of environmental benefits attained.

Persons or Groups That May Be Affected by the Rule

Farmers: This rule updates the nutrient management standard that applies 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 cost-shared rate provided for this practice.

Non-Farm Landowners: This rule revision does not impact non-farm landowners as the revisions address on-farm nutrient management activities and related programming.

County Conservation Programs and Cooperators: This rule makes changes to the SWRM program, which will impact county conservation programs and cooperators that receive department funding. Counties are

primarily responsible for implementation of farm conservation standards and practices including nutrient management. This rule updates the State nutrient management standard and the cost share rate associated with this conservation practice. In Wisconsin, a NM plan may be required if the landowner is subject to a county or local ordinance such as ordinances for manure storage or livestock siting. The Department's proposed rule revision clarifies that a NM plan, and subsequent annual submissions for local regulation, mean NM plans to be developed according to s. ATCP 50.04(3). Therefore, should this rule revision be adopted, all NM plans developed for county or local ordinances must comply with the 2015-590 NM Standard after the effective date of this rule.

Conservation and Farm Related Businesses: Changes in the rule will marginally increase the demand for entities that provide services to farmers. Farm supply and service organizations may provide nutrient management planning services, crop consulting, fertilizer sales, soil testing, engineering, and other services purchased by landowners.

Rural Residents: Rural residents benefit from updating the nutrient management standard and the nutrient application requirements. Neighboring landowners with properties located "downstream" of lands with nutrient and sediment delivery runoff problems stand to benefit. Certain measures contained in the 2015-590 NM Standard 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 the consumer, human health and environmental protections offered through proper use of crop nutrients. It will help ensure that manure, an important crop nutrient, is applied in a cost effective and environmentally sound manner. It will help limit long-term nutrient management costs. It will reduce fish kill and well contamination risks.

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 2015-590 NM Standard for farmers participating in cost share programs and the Farmland Preservation Program. This rule is expected to have a minimal, but positive, effect on businesses that work with farmers such as nutrient management planners. The Initial Regulatory Flexibility Analysis contains a detailed analysis of these considerations.

Implementing a nutrient management plan that complies with all aspects of the 2015-590 NM Standard contributes to cleaner surface and ground water, which produces tangible economic benefits. Among other benefits, improvements in water quality protect the property values of waterfront homeowners, reduce treatment costs for drinking water, enhance recreational opportunities, and protect the scenic rural landscape, all of which are essential to tourism.

Social and Cultural Effects

On balance, the proposed rule will produce positive social effects. Through the adoption of nutrient management, 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 who worry that farmers are not doing their part to protect the environment.

Controversial Public Issues

The Department has not encountered any major public controversies related to this rule, and does not anticipate such controversies going forward. The 2015-590 NM Standard was revised through an intensive, two-year long process. In 2013 a revision team was formed by NRCS to provide their technical expertise regarding needed revisions to the 2005 version of the NRCS 590 Nutrient Management Standard. A draft copy of the proposed 2015-590 NM Standard revision was released twice for public comment in 2015. Numerous comments were received and the team considered each one individually and made adjustments. Thus, the Department presumes that any controversies regarding the 2015-590 NM Standard have already been settled.

During the hearing and comments process, the Department anticipates receiving additional public feedback on provisions of the 2015-590 NM Standard, changes in the cost-sharing rate, and record submission for nutrient management plans.

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 in Chapter ATCP 50 prescribing conservation practices to meet Chapter NR 151 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 required to establish, by rule, a nutrient management program coordinating with state and federal agencies (see s. 92.05 (3) (k), Stats.). The Department must develop applicable land and water conservation standards for owners claiming farmland preservation tax credits (s. 91.80, Stats.).

This rule is designed to clarify and modernize existing rules and ensure regulatory consistency between the state and federal standard. If the Department does not adopt this rule, there will continue to be inconsistencies between nutrient planning requirements leading to confusion. In addition, changes being proposed to clarify existing requirements and provide options for more flexibility will not be enacted. Provisions being established to protect human health and the environment, such as new mechanical manure application requirements creating a 50 foot setback in spring, summer, fall, and 300 foot setbacks in winter, around conduits to groundwater will not be enacted, which could lead to unsafe drinking water. Implementing the rule will benefit business, the general public, and the environment.

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 performance 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 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 performance standards and make improvements in Department programs, which 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.