

Capitol LINK

CURRENT ISSUES AFFECTING WISCONSIN AGRICULTURE & AGRI-BUSINESS

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Proposed Revisions to Nonpoint Source Pollution Rule - NR 151

By Jordan Lamb, DeWitt Ross & Stevens

The Department of Natural Resources (DNR) has released its proposed revisions to Wis. Admin. Code § NR 151, which establish the performance standards for Wisconsin's nonpoint source pollution program. If approved by the NR Board, the DNR will take this new nonpoint source pollution rule around the State for public comment very shortly. The following are among some of the proposed changes that may be of interest to Wisconsin farmers:

Creation of a TMDL Performance Standard

This rule creates the requirement that “an owner or operator of a nonpoint source subject to this chapter shall implement BMPs designed to meet the load allocation in a USEPA and state-approved TMDL.” A TMDL is the “total maximum daily load” the amount of a pollutant a waterbody can receive and still meet water quality standards. A TMDL establishes the amount of pollutant reduction needed from each source to meet water quality goals. TMDLs are required on impaired waterbodies by the federal Clean Water Act. A list of impaired waters in Wisconsin is available on the DNR's web site

<http://dnr.wi.gov/org/water/wm/wqs/303d/2008/2008Updates.htm>.

It appears that if a TMDL is established for a particular waterbody and if that TMDL requires a lower nutrient load than another performance standard within the proposed rule, then the owner or operator must abide by the TMDL allocation.

Amendment to Sheet, Rill and Wind Erosion Performance Standard

The revised sheet, rill and wind erosion standard now applies to “pastures” as well as cropland. This performance standard requires that cropland and pasture be managed to achieve a soil erosion rate equal to or less than “T” (“tolerable”) for that soil.

New Tillage Setback Performance Standard

This new performance standard prohibits tillage within 20 feet of the top of the channel of a waterbody. Harvesting self-sustaining vegetation is allowed.

New Phosphorus Index Performance Standard

This proposed rule establishes a new phosphorus index (PI) performance standard for croplands, pastures and winter grazing areas. The standard specifies a maximum average PI of 6 with a cap of 10 on any individual year. It will be calculated over a 7 year accounting period. This proposed standard prohibits *mechanical* application of nutrients or manure to surface waters. Note that in areas where a TMDL is established, a lower than 6 PI could be required.

Amended Manure Storage Facilities Performance Standard

The amended manure storage performance standard has been updated to be consistent with the recent revisions to NR 243. It prohibits materials in any storage facilities from exceeding the “margin of safety level.”

New Process Wastewater Performance Standard

This new performance standard prohibits “significant discharges” of process wastewater to waters of the state. (Process wastewater means wastewater from the production area directly or indirectly used in the operation of animal feeding operation that results from any or all of the following: (a) spillage or overflow from animal or poultry watering systems; (b) washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities; (c) direct contact swimming, washing, or spray cooling of animals or dust control; and (d) water that comes into contact with any raw materials or animal byproducts including manure, feed, milk, eggs or bedding.) This performance standard applies to “all livestock producers” (i.e., it includes non-permitted livestock operations) and includes feed storage leachate and milkhouse waste.

Amended Nutrient Management Performance Standard

The amended nutrient management (NM) performance standard applies to all crop producers and all livestock producers that apply manure, commercial fertilizer or other nutrients directly or through contract to agricultural fields. This standard requires manure, commercial fertilizer and other nutrients to be applied in conformance with a NM plan that is “designed to minimize the discharge of nutrients to waters of the state for the purpose of complying with state surface and ground water quality standards.” This appears to be a change from the current standard, which is calculated primarily based on crop needs.

For croplands in watersheds that contain impaired waters or in watersheds that contain outstanding or exceptional resource waters, there are specific NM criteria established. Except, if a TMDL is established for that watershed, then the TMDL NM standards will apply.

More Information

The revised rule must be approved by the Natural Resources Board before public hearings can be held. It is expected that the Board will make its decision regarding public hearing for these revisions on October 21, 2009. If you are interested in reviewing the proposed rule, a copy is available on the DNR’s web site at: <http://www.dnr.state.wi.us/org/nrboard/2009/October/10-09-3A3.pdf>. Once a public hearing schedule has been established, it will be posted on the DNR’s web site.

Groundwater Workgroup Continues Work

By Jordan Lamb, DeWitt Ross & Stevens

The chair of the Assembly Natural Resources Committee, Representative Spencer Black (D-Madison), and the chair of the Senate Environment Committee, Senator Mark Miller (D-Monona), have formed a Groundwater Workgroup, made up of seven legislators, that is charged with making recommendations for changes to Wisconsin’s groundwater laws (and perhaps some surface water laws).

The newly formed legislative Groundwater Workgroup has established the goal of establishing “... a statewide water management policy that protects Wisconsin’s water quantity and quality on a sustainable basis for the benefit of Wisconsin’s residents and economy.” The policy is intended to “establish a vision and priorities for the long-term management of the state’s groundwater and surface water resources.”

The Workgroup has met three times this fall and has scheduled an additional meeting in both October and November. The Workgroup has taken invited testimony on the current law in Wisconsin; the recommendations from the DNR’s Groundwater Advisory Committee; the status of groundwater regulation in neighboring states; and recommendations with regard to changes to the state’s high capacity well regulation program, regional water

planning and designation of groundwater management and protection areas. The following are several issues that were discussed that might be of interest to Wisconsin farmers:

High Capacity Wells

Under current law, DNR is required to conduct an environmental review for the following proposed high capacity wells: (1) a high capacity well proposed in a “groundwater protection area” (an area within 1,200 feet of an outstanding or exceptional resource water or any class I, II, or III trout stream as designated by DNR, but excluding trout streams that consist of a farm drainage ditch with no prior stream history); (2) a high capacity well that may have a significant environmental impact on a spring (an area of groundwater discharge at the land’s surface that results in a flow of at least one cubic foot per second for at least 80% of the time); and (3) a high capacity well where more than 95% of the amount of water withdrawn will be diverted from the basin or consumed. DNR must impose conditions on the approval for any of these wells to ensure that these wells do not cause significant environmental impact. The Workgroup has discussed requiring an environmental review for a larger set of proposed high capacity wells. However, no specific proposals have been made.

Groundwater-Surface Water Connection

In addition, the Workgroup has discussed the groundwater-surface water connection. It is unclear what recommendations will be made to change or affect the regulation of water use statutorily to address this issue, but it is expected to be revisited by the Workgroup.

Karst Features

Finally, the Workgroup has also discussed the groundwater quality issues associated with karst features (*i.e.*, areas where the bedrock has been, or has the potential to be, easily dissolved by surface water or groundwater and may provide a conduit to groundwater). Again, no specific statutory changes have yet been presented, but it is expected that the Workgroup will consider a karst feature recommendation.

All meeting agendas and all of the materials are available on the Workgroup’s web site at:
<http://www.legis.wi.gov/senate/sen16/news/Issues/GroundwaterWorkgroup.asp> .

CropLife Will Seek Supreme Court Review of Pesticide Discharge Permit Ruling

By Jordan Lamb, DeWitt Ross & Stevens

CropLife America, the pesticide industry association, indicated during a recent EPA meeting that it will ask the United States Supreme Court to review the January 2009 decision by the 6th Circuit Court of Appeals, which overturned an EPA rule that exempted certain applications of pesticides from the requirement to get a Clean Water Act pollution discharge permit.

The January decision by the U.S. Court of Appeals for the 6th Circuit requires anyone who applies pesticides in, over or near “waters of the United States” to get an NPDES permit. As USDA Secretary Vilsak has stated, this ruling “...will have profound implications for American farmers.” The Court’s view is essentially that the Clean Water Act overrides the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), which is the law that EPA has used to regulate the application of pesticides to agricultural fields. If the Court’s ruling stands, the application of pesticides to fields that are wet or contain wetlands could require a National Pollution Discharge Elimination permit. (In Wisconsin, these permits are Wisconsin Pollution Discharge Elimination (WPDES) permits.)

In June, the court denied the National Cotton Council’s request for review of the decision by the full court and stayed the ruling until April 9, 2011, to give the EPA time to develop a general and individual permitting program.

We will update you when the Supreme Court decides whether to accept the case.

Six Working Lands Workshops Set

By Casey Langan, Wisconsin Farm Bureau Federation

Farmers, town officials, planning commission members and other interested parties are invited to participate in one of six workshops scheduled for the last week of October and the first week of November to learn more about Wisconsin's new tools to preserve agricultural land. Wisconsin's Working Lands Initiative is the focus of each day-long workshop.

Topics to be covered include the changes to the existing Farmland Preservation Program, purchase of agricultural conservation easements, agricultural enterprise areas and claiming farmland preservation tax credits. The workshops are organized by the Wisconsin Towns Association and the Wisconsin Department of Agriculture, Trade and Consumer Protection. Each workshop begins at 8:30 a.m. with registration and continues until 3 p.m. with a break for lunch which will be provided. The cost is \$35 per person. Registration and payment should be received by the Wisconsin Towns Association at least seven days before the workshop. Walk-in registrations will be accepted for an additional \$10 fee.

Wisconsin Dells: Tuesday, Oct. 27, Antiqua Bay, 655 Frontage Rd.

Eau Claire: Wednesday, Oct. 28, Sleep Inn & Conference Center, 5872 33rd Ave.

Marathon: Thursday, Oct. 29, Rib River Ballroom, 33237 St. Hwy 29.

Fond du Lac: Tuesday, Nov. 3, Holiday Inn, 625 W. Rolling Meadows Dr.

De Pere: Wednesday, Nov. 4, Apple Creek Inn, 3177 French Rd.

Janesville: Thursday, Nov. 5, Holiday Inn & Janesville Conference Center, 3100 Wellington Place.

To register, contact the Wisconsin Towns Association at (715) 526-3157 or visit their web site at <http://www.wisctowns.com/> for more information or to download the registration form.

Capitol Link Details

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