

Wisconsin's Green Fire Comments to Wisconsin Department of Natural Resources (DNR) on Scope Statement 077-19 for proposed revisions to rule no. WT-19-19: Targeted Performance Standards and Prohibitions to Abate Pollution of Groundwater by Nitrate in Sensitive Areas (NR 151)

November 8, 2019

Wisconsin's Green Fire believes that revisions to NR 151, Wisconsin Administrative Code, can spur improved agricultural nitrate management in key areas and start to address the most pervasive cause of unsafe drinking water in Wisconsin. Wisconsin farm producers, conservationists, and community leaders have the skills and willingness to help solve this challenging environmental problem. State government needs to provide the administrative and financial resources to allow them to meet that challenge. With direct input from the agricultural community, the NR151 revisions can provide the policy changes needed to both improve water quality and ensure a thriving farm economy.

We support the Scope Statement but offer the following specific comments with the hope of better realizing the objectives of the proposed rule.

Under Item 2. of the Scope Statement, Detailed description of the objective of the proposed rule:

- We believe the primary objective of the proposed rule should be to attain nitrate groundwater standards, and that designation of "sensitive areas" is a policy procedure to help achieve the objective. Please consider the listing of potential factors for identifying "sensitive areas" (e.g., soil permeability) under Item 3. of "new policies" in the statement to avoid unnecessarily limiting policy options.
- Available data clearly show that certain areas of the state already demonstrate the inadequacies of existing performance standards to address nitrate contamination. The first adopted targeted performance standard, related to pathogen contamination of groundwater, is in the Silurian Dolomite area of Northeast Wisconsin where well owners have pathogen contamination problems associated with manure applications despite very high rates of compliance with current nutrient management standards. In the same area, nitrate contamination of groundwater is also significant, thus demonstrating the need for a rule revision to develop effective nitrate performance standards.

Additionally, several groundwater monitoring studies down-gradient of crop fields in the Central Sands and elsewhere in the state, have shown nitrate levels exceeding the enforcement standard by as much as 3 times or more, despite compliance with current nutrient management requirements.

- We note that performance standards may include practice modifications to address both groundwater and surface water standards for nitrate. Currently, nitrate standards for groundwater exist in NR 140 but there are no surface water criteria for nitrate. The scope statement should clarify the intent of the rule with regard to groundwater and surface water.

Under Item 3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

- Wisconsin's drinking water standards, groundwater quality law, and rules adopted pursuant to it, are clearly policies relevant to the nitrate problem overall and to targeting improved management practices, and should be acknowledged in this scope statement. Without improved management of agricultural nitrogen, these standards will be difficult and costly, if not impossible, for communities and businesses to meet. These policies are relevant and were in part the basis for adoption of the targeted standard for Silurian dolomite.
- As drafted, the scope statement focuses heavily on soil permeability. While soil permeability is an important factor affecting nitrogen loss to groundwater, in areas of the state with heavier (less permeable) soils such as Rock County, over 30% of wells tested exceed the maximum contaminant level of 10 mg/l. Nothing in Ch 281 or NR115.004 limits the factors that can be used for targeting. The draft scope statement acknowledges other factors and may not be technically limiting. However, to encourage creative input during the rule process – and to avoid the potential for later revisions to the scope statement - additional categories of factors that affect the occurrence of nitrate in groundwater should be listed. Additional categories of factors that could be used to determine sensitive areas include but are not limited to: existing groundwater quality, health risk, nature and intensity of agriculture, and water end uses (drinking water sources, irrigation, etc.). Consideration of a broader range of factors will in particular allow use of the most easily recognized and readily mapped scientific information, making compliance easier and less costly for affected producers.
- In surface waters, nitrogen is a key factor in hypoxia (oxygen-starved areas that cannot support aquatic life) as well as in shifting algal communities to favor toxin producers. However, consider whether these concerns may require establishment of surface water criteria for nitrogen and related compounds.

- The scope statement lists some types of management practices that might be part of implementing targeted nitrate reductions. Again, to avoid limiting effective options, consider listing additional tools and specifying that the listing is not limiting. Available technical tools, such as a simple nitrogen mass balance checkbook as well as nitrogen "speedometer" tools currently under development should be considered. In addition, the scope statement should acknowledge the value of existing models for rule implementation, such as ATCP 30, which has successfully improved groundwater quality related to atrazine use by engaging and regulating all the sectors of agriculture involved in the sale, distribution, and application of atrazine to farm fields.

Under Item 4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The Department should consider whether all relevant statutory authorities have been cited in the scope statement.

- Wisconsin's groundwater quality law, chapter 160 Wisconsin Statutes, requires all agency administrative rules affecting relevant activities to set requirements so that groundwater quality standards are met. It also requires rule revisions when groundwater preventive action limits or enforcement standards are exceeded at a point of standards application by a regulated activity. In parts of Kewaunee County as well as in other agricultural settings where monitoring has been conducted, groundwater standards have been exceeded despite application of current nutrient management standards.

Under Item 6. List with description of all entities that may be affected by the proposed rules:

- The scope statement should mention entities that will be positively impacted by implementation of the rule, specifically schools as well as small businesses such as restaurants, motels, resorts, offices and manufacturing facilities that rely on wells and are required to provide safe drinking water. These entities will benefit from rule implementation through safer water and avoided costs of new wells, alternative water supplies, and loss of customer confidence where public posting of unsafe water condition is required.
- The scope statement should clarify "Users[...]." The "users" are families, including infants, children and adults who drink and cook with household water supplies. The scope statement should not only acknowledge the avoided health risk and cost of water supply remedies but also the potential for reduced property value where private wells cannot provide safe water.

Item 8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

- The scope statement should be modified to reflect not only the cost of compliance but also the positive economic impacts on households, communities and small businesses (restaurants, resorts, offices, manufacturing plants that are public water systems) currently and projected to be affected by high nitrate levels in the source of their drinking water. Impacts would include avoided water testing, treatment or well replacement costs and reduced health care costs. Small businesses currently or projected to be affected by nitrates could avoid posting negative signs about contaminated water or purchase bottled water for customers.

Wisconsin's Green Fire asks that the DNR, along with DATCP, constructively work with the agricultural community to garner the support needed to develop an effective and practical rule that will be as fully implemented as possible. As noted in the Scope Statement, farmers will need assistance to adopt the needed agricultural practices. That will include local county staffing expertise and sufficient cost-sharing funds for farmers to have a significant and positive impact on water quality. Wisconsin's Green Fire is committed to the application of the best science and policy to improving water quality and will assist the agency to advance an effective rule.

If you have any questions feel free to contact:

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