

After Scott Walker's office alerts farm lobby, clean water regulations scaled back

STEVEN VERBURG

Wisconsin State Journal August 1, 2016



The DNR has rolled back proposed rules restricting spraying liquid manure and other agricultural practices that can affect public health. Above, one type of manure involves a single nozzle system such as this one.

Responding to strong complaints from Wisconsin's dairy industry, the state Department of Natural Resources quietly narrowed the scope of rules it is writing to reduce health hazards from hundreds of millions of gallons of manure spread on farm fields each year.

An industry representative said the DNR's initial plan for rule-making would have been much too costly, in part because it would have generally reduced the amount of manure that could be applied per acre, requiring dairy operators to obtain more land.

But conservationists said the narrowed rule-making plan delayed indefinitely the consideration of public health and water resources protections that were identified through lengthy scientific study and extensive public discussion.

And they said the changes exposed the way a 2011 state law has allowed Gov. Scott Walker and the DNR to give industry opportunities to sharply limit crucial administrative rules before the public even knows they are under consideration.

"I'm concerned that they don't give equal consideration to all the communities impacted by problems with drinking water and other water quality issues," said Amber Meyer Smith, government relations director for Clean Wisconsin.

The DNR's rolled-back rule-making plan is set for approval on Wednesday by the Natural Resources Board.

"We're talking about probably a much narrower set of recommendations for practices, and a more narrow geographic area that's being impacted," said John Holevoet, director of government affairs for the Wisconsin Dairy Business Association.

Originally, the DNR proposed rewriting rules for manure-spreading by concentrated animal feeding operations statewide, with special restrictions for sensitive areas, along with new regulations on airborne spraying of manure and public notifications when manure-spreading plans are significantly changed.

The plans going to the NRB are for rules that would apply only to sensitive areas, which have yet to be defined. Regulators won't consider revisions to rules on airborne spraying or public notification, and won't make revisions to bring rules in line with new state and federal regulations.

Control of rules

The dispute revolves around state administrative rules, which have the authority of law. They are written by state agencies to provide details on how state laws are implemented, and then approved by lawmakers.

In the area of natural resources, DNR scientists and attorneys provide detail on matters involving complex issues such as the way manure can be carried away by rainwater and affect the chemistry of water.

Since Republicans took over state government in 2011, Walker and the Legislature have insisted that administrative rule-making power belongs more firmly in the hands of elected officials.

Act 21 of 2011 prohibited state agencies from writing rules with provisions not specifically included in statutes, and it added a number of steps to the rule-making process, including a requirement that the governor review initial scope statements and approve them before rule-making proceeds.

Last month, the DNR completed scope statements designed to update manure-spreading rules in light of widespread drinking water contamination in Kewaunee County, UW-Madison-led research on airborne hazards of spraying manure and other related state and federal rules.

The plans laid out reasons for changing standards for when, where and how manure could be spread by concentrated animal feeding operations. They also called for defining sensitive areas where shallow soil and porous bedrock leave groundwater especially vulnerable and extra precautions would be required.

On June 15, the DNR submitted the plans to Walker's office, which distributed them to farm industry groups.

The Dairy Business Association then met with the DNR to express its concerns.

On July 13, the DNR submitted a more limited scope statement to Walker and he approved it the same day. That's the plan the DNR's policy board will consider Wednesday.

One conservation group, Midwest Environmental Advocates, is asking the NRB to direct the department to restore the original plans.

Any revised scope statement would be submitted to Walker for approval.

DNR authority

Typically, scope statements don't become known to the public until after the governor's review when they are placed on the NRB agenda.

But environmental groups saw these rules as especially important and asked for the original scope statements. When state officials declined, the groups filed a request under the state open records law. After the groups received the documents, they shared them with reporters.

“This is just another example of DNR’s authority being cut back,” Clean Wisconsin attorney Elizabeth Wheeler said. “They really need to have all their tools available to them to perform the core function of protecting water quality.”

DNR policy and public outreach manager Russ Rasmussen said the department narrowed the plans in the hope that remaining rule changes may be adopted sooner with fewer objections.

“It could add years to the process,” Rasmussen said of opposition to the original rule package. “Rather than do that, the decision was made to separate them out. That doesn’t mean we won’t do the manure (spray) irrigation later.”

If there are no delays or sustained objections, the remaining rule-making could be done in time for consideration by the Legislature as early as 2018, Rasmussen said.

Holevoet said it won’t be clear if the Dairy Business Association opposes the rules until details are known.

Fast track suggested

Environmental advocates said they were also disappointed that the DNR wasn’t using its emergency rule-making powers to move more quickly in recognition of the urgency of drinking water contamination problems.

“This is and has been a drinking water emergency for some time now,” said Sarah Geers, an attorney for Midwest Environmental Advocates. “They should recognize that it’s the emergency that it is.”

In Kewaunee County, voluntary water testing dating back to 2004 has found 30 percent or more of tested wells with unsafe levels of hazardous materials associated with animal waste.

The DNR has used the faster emergency rules process for changes that were friendly to industry, Geers said.

In this case, Rasmussen said, the department isn’t using emergency powers because that would require reapproval by legislators and the governor every six months until the permanent rule was adopted, and there’s no guarantee reapproval would be granted.

And if there was opposition to using the faster track, the whole process could be stalled before it started, Rasmussen said.

“You can draw your own conclusions on how the Dairy Business Association would weigh in,” Rasmussen said.

Rasmussen said farmers and operators of large animal feedlots in Kewaunee County have been asked to voluntarily adopt new spreading standards while the rule is being written.

Some farmers have disputed whether cows were the source of tainted well water. But many other possible sources have been eliminated and a new round of random testing last year suggested manure is the source.

In 2014, six organizations petitioned the U.S. Environmental Protection Agency for emergency action to ensure safe drinking water for Kewaunee County. Last year, the DNR and EPA convened work groups. In June, the groups made a series of recommendations, including tighter restrictions on manure-spreading.

Those recommendations are referenced in the scope statement approved by Walker, but not a statement about their urgency that was included in the original version.

The original scope statements also called for rules aimed at preventing people from being infected by pathogens in liquid manure that is sprayed onto fields. Regulations on equipment and setbacks from homes were to be based on a first-of-its kind study completed in April by a group led by UW-Madison scientists.

The governor's office shared the scope statements with representatives for the state Dairy Business Association, Farm Bureau, Independent Business Association, and industry associations for cattlemen, pork producers, and growers of soybeans, cranberries and potatoes and vegetables, Walker spokesman Tom Evenson said.

"When scope statements come to the office of the governor, staff will share these with the regulated entities to get feedback as part of the rulemaking process," Evenson said.

Act 21 calls for affected groups to be notified after the governor approves scope statements, but nothing in the statute prevents the governor from seeking input sooner, said Scott Grosz of the Legislative Council.