STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Chapter ATCP 50, Wis. Adm. Code (existing)

Relating to: Soil and Water Resource Management

Rule Type: Permanent

1. Description of the objective of the rule:

The Wisconsin Natural Resources Conservation Service (NRCS) recently adopted a revised NRCS 590 nutrient management standard. This rule may determine which aspects of the revised NRCS nutrient management standard to apply and not apply in ch. ATCP 50. The revised standard includes the following:

- Additional winter spreading restrictions, including a new risk assessment tool and planning requirements, a prohibition on nutrient applications on frozen- and snow-covered fields locally identified as areas contributing direct runoff to surface and ground water, and a prohibition on liquid manure applications during February and March in DNR Well Compensation areas or on shallow Silurian dolomite soils.
- Expanded nitrogen (N) application restrictions and prohibitions related to bedrock depth, soil types, and/or timing.
- Enhanced nutrient application setbacks including a restriction on spreading untreated manure in areas locally identified as contributing direct runoff to groundwater conduits unless the manure is substantially buried within 24 hours of application.
- Additional restrictions related to N recommendations and rates, including restrictions on late summer and fall applications of commercial N in sensitive fields (e.g. within 5 feet of bedrock).
- Increased phosphorus (P) management (Phosphorus Index and Soil Test P limits and resulting restrictions).
- Greater focus on erosion control.

This rule may update current nutrient management standards for farms, and make other clarifications and updates as necessary.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

History and background. Under ss. 92.05(3)(k) and 281.16(3), Stats., DATCP must adopt rules related to agricultural nutrient management. DATCP has adopted nutrient management rules

under ch. ATCP 50, Wis. Adm. Code to reduce excessive nutrient applications and minimize nutrient runoff that may pollute surface water and groundwater.

Under current rules, farmers must apply manure and other nutrients according to nutrient management plans complying with the nutrient-based NRCS nutrient management standard 590 dated September, 2005. NRCS is currently revising its standard to increase protections for water quality and soil health. NRCS expects to adopt the revised standard in October 2015 and begin offering cost-sharing for this practice standard under its Environmental Quality Incentives Program (EQIP).

Under ch. ATCP 50, the current rule addresses soil and water conservation on farms, county soil and water programs, grants to counties, cost-share grants to landowners, standards for soil and water professionals, local regulation, and standards for cost-shared practices. Most recently in 2014, DATCP adopted rules modifying the soil and water resource management program under ATCP 50, primarily for the purpose of incorporating the changes in ch. NR 151, Wis. Adm. Code, adopted in 2011 by the Department of Natural Resources.

DATCP is seeking to incorporate the revised NRCS 590 nutrient management standard in ch. ATCP 50.

Proposed policies. This proposed rule revision will modify DATCP's soil and water resource management program under ch. ATCP 50 for the following purpose:

- To ensure that the water quality standards (including related NRCS technical standards) in ATCP 50 are consistent with NR 151 (runoff management rule) and ATCP 51 (livestock siting rule). DATCP will incorporate the revised NRCS nutrient management 590 technical standard into ATCP 50, determining which aspects of the standard to apply and not apply (see ATCP 50.04, Wis. Adm. Code).
- To determine the timing of implementation of the new NRCS 590 technical standard into DATCP soil and water programs and the Farmland Preservation Program (see ATCP 50.16 and 50.78, Wis. Adm. Code).

Policy alternatives. If DATCP takes no action, current nutrient management rules will remain in effect. By proceeding with rulemaking, DATCP may address the following:

- The current rules will soon be outdated and will not adequately address nonpoint pollution concerns related to nitrogen, phosphorus, and soil erosion.
- State and federal standards will not be consistent.
- State standards making up the nonpoint runoff rules (ATCP 50 and NR 151) will not be consistent.
- Out-dated standards in the rule may not adequately address stakeholder needs.
- Current nutrient management rule provisions may hinder effective future coordination of federal, state, and local conservation programs.

3. Statutory authority for the rule (including the statutory citation and language):

DATCP proposes to adopt this rule under authority of ss. 92.05(3)(k), 281.16(3), 92.14(8), 92.15(3), and 93.07(1), Stats.:

92.05(3)(k) Nutrient management rules.
The department shall promulgate rules to improve agricultural nutrient management in this state. The rules shall be consistent with rules promulgated under s. 281.16 (3) and shall include incentives, educational and outreach provisions and compliance requirements.

281.16(3) Nonpoint sources that are agricultural.

(a) The department of natural resources, in consultation with the department of agriculture, trade and consumer protection, shall promulgate rules prescribing performance standards and prohibitions for agricultural facilities and agricultural practices that are nonpoint sources. The performance standards and prohibitions shall be designed to achieve water quality standards by limiting nonpoint source water pollution. At a minimum, the prohibitions shall include all of the following:

1. That a livestock operation may have no overflow of manure storage structures.
2. That a livestock operation may have no unconfined manure pile in a water quality management area.
3. That a livestock operation may have no direct runoff from a feedlot or stored manure into the waters of the state.
4. That a livestock operation may not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod cover.

(b) The department of agriculture, trade and consumer protection, in consultation with the department of natural resources, shall promulgate rules prescribing conservation practices to implement the performance standards and prohibitions under par. (a) and specifying a process for the development and dissemination of technical standards to implement the performance standards and prohibitions under par. (a).

(c) Using the process specified under par. (b), the department of agriculture, trade and consumer protection shall develop and disseminate technical standards to implement the performance standards and prohibitions under par. (a). The department of agriculture, trade and consumer protection shall disseminate alternative technical standards for situations in which more than one method exists to implement the performance standards and prohibitions.

(d) The conservation practices and technical standards under pars. (b) and (c) shall at a minimum cover animal waste management, nutrients applied to the soil and cropland sediment delivery.

(e) An owner or operator of an agricultural facility or practice that is in existence before October 14, 1997, may not be required by this state or a municipality to comply with the performance standards, prohibitions, conservation practices or technical standards under this subsection unless cost-sharing is available, under s. 92.14 or 281.65 or from any other source, to the owner or operator. For the purposes of this paragraph, sub. (4) and ss. 92.07 (2), 92.15 (4) and 823.08 (3) (c) 2., the department of natural resources shall promulgate rules that specify criteria for determining whether cost-sharing is available under s. 281.65 and the department of agriculture, trade and consumer protection shall promulgate rules that specify criteria for determining whether cost-sharing is available under s. 92.14 or from any other source. The rules may not allow a determination that cost-sharing is available to meet local regulations under s. 92.07 (2) or 92.15 that are consistent with or that exceed the performance standards, prohibitions, conservation practices or technical standards under this subsection unless the cost-sharing is at least 70% of the cost of compliance or is from 70% to 90% of the cost of compliance in cases of economic hardship, as defined in the rules.

92.14(8) Rules.

In consultation with the department of natural resources, the department shall promulgate rules to administer this section and the department's duties under s. 281.65.

92.15(3) Local regulation of livestock operations.

(a) Notwithstanding ss. 92.11 and 92.17, a local governmental unit may enact regulations of livestock operations that exceed the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 (3) only if the local governmental unit demonstrates to the satisfaction of the department of agriculture, trade and consumer protection or the department of natural resources that the regulations are necessary to achieve water quality standards under s. 281.15.

(b) The department of agriculture, trade and consumer protection and the department of natural resources shall, by rule, specify procedures for review and approval of proposed local governmental unit regulations under par. (a).

93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

DATCP estimates that it will use approximately 0.25 FTE to develop this rule over a projected time period of 18 to 24 months. This includes planning and preliminary activities, evaluating recommendations of the NRCS 590 revision team meetings, drafting rules and related documents, holding public hearings, analyzing and responding to hearing comments, presenting proposed rules to the DATCP Board and other government entities, and communicating with stakeholders. DATCP will use existing staff to develop this rule. The estimated staff time reflects the complex and sensitive subject matter of the rule, the intensity of interest among stakeholders, and the complex interaction with state and local regulatory programs.

5. Description of all entities that may be impacted by the rule:

The proposed rule may affect agricultural landowners, qualified nutrient management planners, nutrient applicators, county land conservation department staff, and state and federal agency conservation staff.

6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

Under the federal Clean Water Act, certain concentrated animal feeding operations are subject to federal regulation as water pollution "point sources." The Wisconsin Department of Natural Resources (DNR) regulates these operations by permit, under authority delegated from the United States Environmental Protection Agency (EPA). DNR has adopted rules under ch. NR 243, Wis. Adm. Code, to regulate water pollution discharges from livestock facilities. Under NR 243, livestock facilities with over 1,000 animal units must obtain a Wisconsin Pollution Discharge Elimination System (WPDES) permit from the DNR, which includes requirements contained in the NRCS 590 nutrient management standard, as well as more restrictive requirements and prohibitions unique for large concentrated animal feeding operations.

Although NRCS has adopted a nutrient management standards (NRCS 590) for agricultural operations, NRCS does not enforce the standards as mandatory, except for operations that receive cost-share funding from NRCS. EPA and the Wisconsin DNR incorporate NRCS 590 as a mandatory standard for animal feeding operations requiring a WPDES permit under the federal Clean Water Act. NRCS expects to adopt the revised standard in October 2015.

7. Anticipated economic impact

DATCP expects the proposed rule to have minimal economic impact statewide and locally. Many farmers affected by this rule qualify as "small businesses."

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Date Signed