



VIA EMAIL TO: laurie.ross@wisconsin.gov

September 20, 2019

Members of the Natural Resource Board
Laurie J. Ross, Board Liaison
Office of the Secretary
PO Box 7921
Madison WI 53707-7921

RE: Comments on September 25, 2019 Natural Resources Board Agenda Item 2.E., *Request that the Board authorize a preliminary public hearing and comment period for the Statement of Scope for Board Order WT-19-19, proposed rules affecting chapters NR 151 and 243, related to targeted performance standards and prohibitions to abate pollution of groundwater by nitrate in sensitive areas*

Dear Natural Resources Board Members:

On behalf of each of the undersigned Wisconsin farm and agribusiness organizations, we write to ask that the Natural Resources Board (Board) send the proposed Scope Statement for Board Order WT-19-19, proposed rules affecting chapters NR 151 and 243, related to targeted performance standards and prohibitions to abate pollution of groundwater by nitrate in sensitive areas, back to the Department of Natural Resources (Department) for further review. We ask that the Board deny the Department's request for a public hearing on this Scope Statement.

First, this scope statement fails to meet the statutory criteria to open Wis. Admin. Code. s. NR 151 in order to promulgate a targeted performance standard. The Department has failed to define a waterbody, waterbodies, or particular region where there has been substantial implementation of statewide water quality standards and, despite that implementation, either surface water or groundwater water quality standards are not being met. *See* NR 151.004. The Department has failed to show, through the presentation of any actual data, monitoring or modeling that substantial implementation of the current statewide standards will fail to meet groundwater or surface water quality standards. *See* NR 151.004. Until and unless this is clearly established by the Department, the statutory trigger for reopening NR 151 has not been met and this rulemaking cannot commence.

Second, the Department has not met its own precedent for the type of stakeholder outreach and scientific analysis that has been the basis of the development of a previous Scope Statement leading to targeted performance standard for agricultural nonpoint sources. Interestingly, in this Scope Statement, the Department points to the 2018 revision of NR 151 as a precedent for this proposed rule revision. However, when the Scope Statement for the 2018 targeted performance standard to address the application of liquid manure over Silurian dolomite bedrock in a specific region in Wisconsin was originally put forth, the Department had already spent *years* meeting with stakeholders, gathering data and reviewing scientific recommendations related to the problem. Specifically, in the 2016 Scope Statement for Board Order WT-15-16, the Department writes,

“The department has been meeting in work groups with stakeholders and federal, state and local agencies to address these concerns since August 2015. The work groups have developed a series of recommendations regarding policies and practices for targeted areas to better address these concerns. In addition, the department has been conducting a research study of the wells in Kewaunee county to obtain additional scientific information and data that will assist in the development of recommendations and proposed practices.”

In contrast and to our knowledge, the Department has not met with one agricultural or farm stakeholder group; has not attempted to address nitrate concerns in either surface water or groundwater using implementation of existing standards; has not conducted and is not conducting a research study in any wells (groundwater) or waterbodies (surface waters) in any particular region or regions of the state related to nitrates; and, therefore, the Department has not obtained any concrete scientific information that would assist the Department with the development of this targeted performance standard. Rather, it appears that the Department has concluded that a new agricultural performance standard is needed but is neither sure *whether* it is needed for surface water or for groundwater, nor is the Department clear *where* it might be needed.

Finally, by moving to the development and implementation of a targeted performance standard for nitrates for groundwater OR surface water, as the Scope Statement suggests, the Department is abandoning the original intent of the statutes and rules that comprise Wisconsin’s nonpoint source pollution program. More directly, the State of Wisconsin needs to focus on implementing the current standards on Wisconsin farms *before* suggesting that new standards are needed. We believe that more direct, tangible improvements to surface and groundwater quality in Wisconsin could be achieved if the significant time, money and other resources estimated by the Department to be required to develop this new regulation were instead devoted to the implementation of nonpoint source pollution abatement practices on more Wisconsin farms.

Despite our legal and procedural concerns with the Scope Statement, please understand that every farm and agribusiness group listed below is committed to working to ensure that clean drinking water and clean surface water are available across the State of Wisconsin. Our farmers live, raise their families, raise their animals and make a living on the farms that you are targeting for additional regulation. We arguably have the most at stake in any discussion about water quality in Wisconsin. As such, we would appreciate the opportunity to work with the Department on the substantial implementation of the existing standards across Wisconsin and on further scientific study of waterbodies or regions where the implementation of existing standards appears to be

falling short. At this time, it is not clear that Wisconsin needs a new regulation. It is clear that we need a commitment from the State to substantially implement the existing nonpoint standards.

Thank you for considering our comments.

Sincerely,

Dairy Business Association
Wisconsin Association of Professional Agricultural Consultants
Wisconsin Cattlemen's Association
Wisconsin Corn Growers Association
Wisconsin Dairy Alliance
Wisconsin Farm Bureau
Wisconsin Pork Association
Wisconsin Potato & Vegetable Growers Association
Wisconsin Soybean Association