

Midwest Environmental ADVOCATES

pro bono publico

March 5, 2002

Senate Environmental Resources Committee

Hon. Jim Baumgart, Chair
Room 306 South
State Capitol
P.O. Box 7882
Madison 53707-7882

Hon. Robert Cowles
Room 123 South
State Capitol
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Hon. Dave Hansen
Room 319 South
State Capitol
P.O. Box 7882
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Hon. Dale Schultz
Room 310 South
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Hon. Robert Wirch
Room 316 South
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**RE: SENATE ENVIRONMENTAL RESOURCES COMMITTEE REVIEW
OF NONPOINT REGULATIONS, CH. NR 151.**

Dear Committee Members:

Midwest Environmental Advocates, Inc. (MEA) is a 501(c)(3) nonprofit environmental law center that serves as a legal and technical resource center for community groups working for environmental justice in the Western Great Lakes region. MEA represents statewide family farm and environmental groups and local communities adversely impacted by large animal feeding operations.

MEA is pleased to provide the following comments on the administrative rule revisions of Ch. NR 151. Our comments focus exclusively on the need to require mandatory buffers along agricultural lands to prevent the entry of fertilizer, animal waste, and sediment erosion into Wisconsin's waters.

Overall, we strongly support these revised regulations and hope that the Committee will approve them expeditiously. The revisions to NR 151 are the product of a long and thorough administrative process that involved farmers, environmentalists, community members, and county and state agency officials. This process took over five years of careful analysis, public meetings, and lengthy negotiations. We commend all of the participants in this process for completing the rule revisions.

However, the rules fall short in one important area: a last minute deletion by the Department of Natural Resources (DNR) of the mandatory vegetative buffer requirement for agricultural lands. The use of natural vegetative buffers is a key component to stopping contaminated runoff, animal waste and excess sediment from reaching lakes, rivers and streams, moderating stream temperatures and creating habitat for wildlife.

We understand that there was a consensus-based agreement of the Agricultural Performance Standards workgroup in 2000 that called for mandatory buffers of 10 feet with 90 feet of 50% vegetative cover, or 20 feet with 30 feet of 50% vegetative cover, or 35 foot buffers. However, the rule package before the Legislature today only asks farmers to voluntarily comply with buffer standards. We understand that the initial buffer requirements in the proposed rule were originally the product of an agreement between conservationists, counties, farm organizations, and environmentalists. The current draft of the rules does not reflect that original agreement.

Even despite the workgroup's agreement, the mandatory nature of the buffer requirement is important because the state has officially recognized that voluntary measures have proved inadequate to clean up Wisconsin's waters. A 1994 Legislative Audit Bureau report on Wisconsin's Surface Water Quality Programs stated that the "past effectiveness of the nonpoint Priority Watershed program has been limited by DNR's reluctance to use its regulatory authority to address animal waste problems."¹ This reluctance has cost Wisconsin taxpayers dearly. In FY 1992-93, the DNR spent \$29,932,267

¹ WISCONSIN LEGISLATIVE AUDIT BUREAU, AN EVALUATION OF SURFACE WATER PROGRAMS, 94-8, 4 (1994).

on nonpoint source pollution problems.² Previous years showed the DNR spending similar amounts on nonpoint source pollution.³

It is now almost ten years since that report was issued, and Wisconsin faces the same agricultural runoff problems, a heavy cost bill, and no promise of any measurable progress towards cleaning up our state's waters for the public. Without mandatory buffers, we have largely the same voluntary program that the Legislative Audit Bureau concluded was costly and ineffective in 1994.

There appeared to be promise in this most recent effort to reform Wisconsin's nonpoint regulations. Until December of 2001, just over two months ago, the mandatory buffer requirement had been a mainstay of revised Ch. NR 151. However, the DNR removed the requirement from the rules because it claimed mandatory buffers jeopardized the state's eligibility for federal funding under the Conservation Reserve Enhancement Program (CREP).

We now know that eligibility for CREP funding is not a barrier to imposing mandatory vegetative buffers on agricultural lands. There does not have to be a choice between federal funds and mandatory vegetative stream buffers. Wisconsin can remain eligible for CREP funds while ensuring that Wisconsin's waterways are being restored and protected for future generations.

To ensure eligibility for CREP funds, the DNR can delay the effective date of a mandatory buffer provision until CREP funds are depleted. At that time, the mandatory buffer provision would take effect to ensure that buffers that have been put in place by landowners using CREP funds will remain in place indefinitely.

As an example, Brown County has adopted a mandatory vegetative buffer ordinance, and also has entered into a CREP contract with the state.⁴ Over 60 landowners have already signed up for CREP in Brown County. To ensure its eligibility for CREP funding, Brown County placed a moratorium on its buffer ordinance until CREP funds are depleted.⁵ Because of Brown County's foresight, a mandatory buffer ordinance is available after CREP funding ends, ensuring clean and safe water for future generations of Brown County

² *Id.* at 15.

³ *Id.* at 16.

⁴ Brown County Agricultural Shoreland Management Ordinance, §10.04, Brown County, Wisconsin (2000).

⁵ Brown County Resolution Regarding Brown County Participation in Conservation Reserve Enhancement Program (CREP) (2001) (attached).

residents. The Farm Service Agency has sent a letter to Brown County officially recognizing this solution.

The solution we offer is significant because CREP funds will pay for only 3,700 miles of buffers on agricultural lands in Wisconsin. Other lands will need buffers, too. If buffers are required after the CREP Program ends, counties can slowly prioritize money toward buffers (often the most efficient cost effective practice) as the money is available. We note that newly developed urban areas must create buffers without cost-share funding, but agricultural operations have 70% of the cost of the buffers paid for by the public. Cost share funding climbs to 90% where operations can show economic hardship.

We also note that, because of the cost share funding availability and the flexibility granted to county conservationists in implementing the requirement, a mandatory buffer requirement is not an unfunded mandate. Instead, it is a tool for prioritizing the most effective practices first. If a county conservationist thinks another practice is more effective for a certain property, a buffer would not necessarily be required and therefore cost share funding will not be offered.

We urge you to adopt the attached "Resolution to Consider Reinsertion of the Water Quality Corridor Provision," which would amend NR 151.04 to include a 35 foot mandatory vegetative buffer. Under the proposed language, the buffer would become effective after January 1, 2006 or the termination of CREP funds.

CONCLUSION

The state of Wisconsin has an opportunity to follow Brown County's example and ensure an effective and affordable clean water program for Wisconsin citizens. We hope the Legislature will take this simple step by requiring mandatory vegetative buffers in Ch. NR 151 and adopting the attached language.

Sincerely,

Andrew C. Hanson, Attorney
Midwest Environmental Advocates, Inc.