



April 1, 2021

Mr. Jim Zellmer, Deputy Division Administrator  
Environmental Management Division  
Wisconsin Department of Natural Resources  
*Sent via Email.*

[James.zellmer@wisconsin.gov](mailto:James.zellmer@wisconsin.gov)

RE: Comments Regarding Incorporating Land Approvals into Land Management Plans

Dear Deputy Division Administrator Zellmer:

As we have previously discussed, the Wisconsin Paper Council has significant concerns regarding the Department's recent pronouncement and implementation of a new requirement to include all site approvals into land application management plans. I am writing this letter to reiterate those concerns.

DNR began calling some permit holders and some contractors to inform them of this new mandate on or about March 1, 2021. DNR also informed them that this requirement was effective as of that date. Moreover, DNR has in fact implemented this mandate. In a site approval form dated March 10, 2021, DNR included the following language: "The management plan must be amended and approved to include DNR approval forms and maps prior to landspreading."

In response to concerns and questions raised regarding this matter, DNR held a meeting on March 16, 2021. At that meeting, DNR indicated that it was continuing to move forward with implementation, despite the concerns that were raised by the participating industries. DNR indicated it would provide certain information, such as the list of site conditions that it is using, potential template language for land application management plans, and a framework for the site approval "living appendix" the DNR expects permittees to incorporate into their land application management plans. To date, nothing has been provided.

DNR has indicated that it is taking this action to ensure it can enforce the restrictions it includes in site approvals. As an initial matter, we continue to question the need to take this action, given that NR 214.18(6)(c) requires owners or operators to submit a land application management plan, and to follow a DNR approved plan. This provision also requires that the plan contain "information on" several topics, such as application rates, site limitations, storage, and vegetative cover. Nothing in this provision, however, requires the land application management plan to have the level of specificity that is contained in each individual land approval.

In addition, DNR has been operating the land application program for years without incorporating site approvals into land application management plans. Wis. Stat. § 227.10(1) provides: “Each agency shall promulgate as a rule each such statement of general policy and each interpretation of a statute it specifically adopts to govern its enforcement or administration of that statute.” This change to require incorporation of site approvals is a statement of general policy, as well as a change in interpretation of DNR’s authority regarding enforcement under existing statutes and rules. As such, DNR is required to go through rulemaking to implement this change.

In addition to the issues mentioned above, we have significant concerns with DNR’s implementation of this effort. **DNR provided no specific written document explaining why DNR was taking this action, how this was to be implemented, or to whom this new policy applied. There was also no opportunity for input regarding this new policy, nor how the policy would be implemented.** Announcing a major change in policy orally left permittees confused and uncertain as to what was happening, and certainly increased the likelihood of the regulated community receiving different messages as to what DNR was doing.

Furthermore, it is unclear who DNR contacted to alert them of this change. Apparently, DNR reached out to some consultants/contractors and some permit holders. **Thus, DNR did not contact all permit holders impacted by the change, and who are legally responsible for the land application management plans.** One of our member companies first found out about these changes from their land application contractor.

Moreover, DNR informed those contacted that the change was effective immediately. As mentioned above, DNR site approvals have already included language requiring amendments to the land application plan prior to the site approval becoming effective. **Thus, DNR has implemented this requirement without informing anyone how to comply with the requirement it has imposed, nor providing any time to modify land application management plans to incorporate site approvals prior to imposing the requirement.**

As mentioned above, this change should be implemented through rulemaking. If DNR moves forward regardless of this requirement, we request the following.

1. DNR should explain its authority to make a general policy change and change to its longstanding interpretation of its statutes and rules without going through rulemaking.
2. Develop and take public input on a guidance document explaining the need for this change, detailing such items as to whom this policy applies, and how and when will be implemented.
3. DNR should stay application of its new policy until after it provides guidance as to what is expected from permittees. Furthermore, permittees should be provided with adequate time to obtain approval of amendments to their land application

management plans prior to the implementation of the site approval incorporation requirement.

4. DNR should develop simple, standard, pre-approved land approval language that could be included into land application management plans. This would help expediate the DNR approval process.
5. During the March 16<sup>th</sup> meeting, DNR seemed to indicate that in addition to incorporating site approvals to address a perceived legal issue, DNR was going to review some site approvals for modification. DNR should not combine these efforts because it has the potential delay approvals. DNR should address its perceived legal/administrative issue as suggested above, and deal with any other perceived issues separately.

Thank you for consideration of these comments. WPC would welcome the opportunity to work with DNR to incorporate site approvals into land application management plans as outlined above.

Sincerely,

*/s/ Patrick Stevens*

Patrick Stevens  
Vice President  
Environment & Regulatory Affairs  
General Counsel