

STATE ENVIRONMENTAL REGULATION

Expert Analysis

Pesticide Pollution Prevention Program For Long Island Is on the Horizon

The idea for a pesticide use plan for Long Island arose almost 20 years ago, as a result of a 1996 proposed federal rule that would have indirectly required states to develop state management plans to address potential contamination from the application of certain pesticides. The federal rule was not adopted, but, in 1998, the New York State Department of Environmental Conservation (DEC) issued an annual report under the state's pesticide reporting law¹ that included a recommendation that it develop a Long Island pesticides management plan.

It took until 2009 for the DEC to distribute a draft of a pesticides-management plan for Long Island to stakeholders for their review and comment. It then took until October 2011 for another version to be made available.

Now, however, it appears that the DEC may be on the verge of finalizing a pesticide pollution prevention program for Long Island. Earlier this year, the DEC released a 122-page draft strategy for that very purpose.² With the comment period having expired on April 30, it would appear that the DEC soon will move to finalize the draft.

The Goals

At the least, the draft strategy in its current form should help to focus attention on the use of pesticides on Long Island. Whether it will be able to reach its twin goals of preventing adverse effects on human health and the environment by protecting Long Island's groundwater and surface water resources from pesticide-related contamination and, concurrently, continuing to meet the pest management needs of agricultural,

residential, commercial, industrial, and institutional sectors remains to be seen.

Trying to balance the two goals requires that the DEC carefully walk a tightrope. On the one hand, the perceived need for a pesticide pollution prevention program for Long Island stems from Long Island's reliance on a sole source aquifer to supply drinking water for its 2.8 million residents. The DEC pointed out in the draft strategy that pesticides have been among a number of contaminants detected in Long Island groundwater, albeit typically at low or trace levels that did not contravene water quality or public drinking water standards.³

On the other hand, as the Environmental Conservation Law acknowledges, pesticides, when properly used, are "valuable, important and necessary to the welfare, health, economic well-being and productive and industrial capabilities of the people of this state."⁴ The DEC recognized, in the draft strategy, the "important and beneficial role" played by pesticides in managing pests on Long Island, yielding "substantial benefits" for horticultural, agricultural, and vineyard products.⁵

In particular, the DEC observed, as of June 2012, there were 13,688 pesticides registered in the state, 361 pesticides were prohibited from use, and 145 were registered for use on Long Island only when certain conditions were met. The DEC also pointed out that there were 4,733 certified pesticide applicators and technicians on Long Island as of 2012, and that 5.3 million

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pounds and 407,000 gallons of pesticides were applied on Long Island in 2005, the most recent year for which statistics were available.⁶

The Details

The draft strategy is divided into chapters that highlight its goal, philosophy, and purpose; provide an overview of groundwater and pesticide use on Long Island; explain pesticide registration in New York and existing pollution prevention programs and activities; and set forth the legal authority for the DEC to act. There are three appendices that, among other things, describe pesticide-related chemicals detected in Long Island's groundwater from 1996-2010 and that summarize Long Island water quality monitoring data for three specific chemicals: metalaxyl (a fungicide), atrazine (a herbicide), and imidacloprid (an insecticide).

The heart of the draft strategy is what the DEC refers to as its "blueprint" for action. This blueprint explains how the DEC, in consultation with stakeholders, would evaluate pesticide usage on Long Island, identify pesticides that have the greatest potential to cause adverse impacts, and work with partners to reduce or eliminate such usage or to find alternatives that do not present such impacts. The draft strategy sets forth five main components of the blueprint:

- The DEC would conduct initial assessments of specific active ingredients (AI) and related pesticide pollution prevention needs;
- The DEC would form, convene, and chair pesticide pollution prevention workgroups, which would consider various matters regarding specified AIs and related pollution prevention and advise the DEC;
- The DEC would identify and prioritize pesticide pollution prevention measures and partners with which to collaborate to implement pollution prevention measures;
- The DEC would track pesticide pollution

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prevention results and assess the need for pollution prevention modifications; and

- The DEC would maximize its use of water quality monitoring for pesticides.

Initial Assessments

The initial assessments contemplated by the first component provide that the DEC would review water quality monitoring results for Long Island groundwater and identify AIs detected as well as factors such as location, number, frequency, and concentration of detections and the potential for human exposure and associated health risks. The DEC then would review AI-related standards, use and product information, and water quality standards and benchmarks.

Additionally, the DEC would identify AIs for which pollution prevention measures potentially need to be taken. The DEC also would identify the types of additional information it would need to be able to act.

It should be noted that the DEC stated in the draft strategy that it anticipated that the first group of AIs to be considered for assessment would be three chemicals that have been detected by Suffolk County at multiple groundwater monitoring locations: metalaxyl, atrazine, and imidacloprid.⁷ (Hence, as noted above, the draft strategy contains an appendix with information on these specific chemicals.)

Workgroups

The DEC refers to the principal workgroup to be formed as a Technical Review and Advisory Committee (TRAC). At the request of the DEC, the TRAC would consider AIs specified by the DEC and advise on factors such as AI use and critical needs, potential for human exposure, human health risks, effective alternatives for AI, aquifer vulnerability, potential pesticide pollution prevention measures, pollution prevention implementation partners, and other considerations to provide the DEC with background information to support its decisions regarding AIs and related pollution prevention actions and implementation.

The draft strategy contemplates the creation of additional workgroups to “ensure broad representation of involved entities” in consideration of AIs and pollution prevention measures (e.g., entities with direct involvement in pest management, pesticide use, and water quality on Long Island as well as academia). According to the Draft Strategy, these workgroups might consider AIs specified by the DEC, provide the DEC with requested information on particular subject areas (e.g., human health implications, water quality concerns, and effective alternatives), and suggest feasible pollution prevention measures and implementation partners.

Prevention Measures

The blueprint’s third component provides that the DEC would consider the workgroups’ information and determine the scope and priority of pesticide pollution prevention measures appropriate for each AI to be addressed.

In addition, the DEC would develop and disseminate best management practices and track their use; research alternative products and practices and provide related outreach and education; conduct outreach and education on use pattern-specific integrated pest management; encourage “voluntary label revisions” through registrants and the U.S. Environmental Protection Agency processes; restrict products to certified applicator use; and identify partners to collaborate with to implement pesticide pollution prevention measures, such as product registrants, user groups, academic entities, and state and local agencies.

The perceived need for a pesticide pollution prevention program for Long Island stems from Long Island’s reliance on a sole source aquifer to supply drinking water for its 2.8 million residents.

Track Results

The draft strategy recognizes the importance of tracking pesticide pollution prevention results and of assessing the need for pollution prevention modifications, or regulatory measures. Accordingly, the fourth component of the draft strategy has the DEC, with, as needed, the assistance of pesticide pollution prevention partners, monitoring the results of pollution prevention implementation and determining what additional monitoring and measures, if any, would be necessary for effective pest management and water quality protection.

In addition, the draft strategy provides that the DEC might consider certain regulatory measures to manage use of a specific AI, if pollution prevention actions were to prove insufficient and if the DEC and the New York Department of Health were to determine that detections of a pesticide-related chemical in water quality monitoring data indicated that significant public health or environmental impacts may occur. Under these circumstances, the draft strategy continues, the DEC might “reassess the registration status of products containing the target AI by reviewing the product registrations associated with the AI and, if

necessary, take regulatory action to prohibit use on Long Island.”⁸

Monitoring

Monitoring underlies all actions in the blueprint, according to the DEC, because water quality monitoring results would be essential to conducting the work under each component. Toward that end, the last component emphasizes monitoring, indicating that the DEC would adjust the monitoring as needed, and within available resources and flexibility, to meet its information needs for Long Island. In particular, it might alter the AIs it focuses on to capture information and observe new trends in particular pesticide use settings, such as greenhouses, turf, and vineyards, as well as to monitor pollution prevention results.

Conclusion

Unlike other DEC proposals that impose specific requirements on industry and other parties upon enactment, if the DEC adopts the draft strategy as proposed or adopts it with minor adjustments, the policy seems to be more in the nature of the beginning of a process rather than a final regulatory enactment. It is, however, something that is worth tracking by businesspeople, local officials, and Long Island residents because of the underlying importance to all parties of Long Island’s water supply and the continuing use of pesticides for significant commercial and residential purposes.



1. Environmental Conservation Law (ECL) Art. 33, Title 12.
2. http://www.dec.ny.gov/docs/materials_minerals_pdf/draftstrategy.pdf.
3. “Data obtained from Suffolk County indicates that 117 pesticide-related chemicals were detected in the groundwater at a number of locations on Long Island at various points in time since 1997.” Draft Strategy at ES-2.
4. ECL §33-0301.
5. Draft Strategy at ES-1.
6. Id. at ES-8.
7. Id. at 8.
8. Id. at 16.