

Appendix M

**2010 Letter from Secretary Nilsestuen to the DATCP Board regarding
ATCP 51 4-Year Review**



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

DATE: April 28, 2010

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Rod Nilsestuen, Secretary
Kathy F. Pielsticker, Administrator
Division of Agricultural Resource Management

SUBJECT: Livestock Facility Siting Report

PRESENTED BY: Kathy Pielsticker, Richard Castelnuovo, and Michael Murray

RECOMMENDATION:

The department requests Board accept this report on implementation of the Livestock Facility Siting Law ("siting law"), and consider this report as part of the actions necessary to complete the four year review required by the siting law.

SUMMARY / BACKGROUND:

This is the department's fourth annual report concerning statewide implementation of the livestock facility siting statute (s. 93.90 Wis. Stats.) and rule (ch. ATCP 51 Wis. Admin. Code). The report also serves to meet the requirement of s. 93.90 (2) (c), Stats, which mandate that DATCP review the livestock facility siting standards under ATCP 51 at least once every 4 years. For this report, the evaluation component included a broad public participation process in addition to usual DATCP evaluation procedures. The report sets the stage for future discussion and actions that may result in improvements to better achieve the purposes of the siting law.

For perspective, the first section of the report summarizes implementation of the siting rule since its inception in 2006. The second section discusses the review requirements and standards for conducting the review. The third section summarizes DATCP's review of the rule during the first four years of implementation of the siting law. The next section is devoted to the public comments received at listening sessions and by mail. Within the fifth and sixth sections, the report highlights key issues identified as part of DATCP's review and public comments. These two sections organize key issues based on their relationship to the siting rule. The final section includes a limited analysis of the issues and recommendations for future actions.

ATTACHMENTS: Four Year Evaluation Report on Implementation of the Livestock Facility Siting Rule, ch. ATCP 51 Wis. Admin. Code; Selected comments from the Public Listening Session.

Agriculture generates \$51.5 billion for Wisconsin

Four Year Evaluation Report on Implementation of the Livestock Facility Siting Rule ch. ATCP 51 Wis. Admin. Code

This is the Department of Agriculture Trade, and Consumer Protection's (DATCP) fourth annual report concerning statewide implementation of the livestock facility siting statute (s. 93.90 Wis. Stats.) and rule (ch. ATCP 51 Wis. Admin. Code), collectively referred to as the siting law. This report also serves to meet the requirement of s. 93.90(2)(c), Stats, which mandate that DATCP review the livestock facility siting standards under ATCP 51 at least once every four years. For this report, the evaluation component included a broad public participation process in addition to usual DATCP evaluation procedures. This report sets the stage for future discussion and actions that may result in improvements to better achieve the purposes of the siting law.

For perspective, Section I summarizes implementation of the siting rule since its inception in 2006. Section II discusses the requirements and standards for conducting the rule review. DATCP's review of the rule during the first four years of implementation of the siting law is summarized in Section III. Section IV is devoted to the public comments received at listening sessions and by mail. The report highlights key issues identified as part of DATCP's review and public comments within Sections V and VI. Here key issues are organized based on their relationship to the siting rule. Section VII includes a limited analysis of the issues and recommendations for future actions. Appendices A, B and C provide additional details.

I. Background of the livestock facility siting law

The siting legislation was the product of compromise reflecting an attempt to balance local control, community oversight, environmental protection and the need for a predictable process. When adopted in 2004, section 93.90, Wis. Stats. established a statewide framework for local regulation of livestock facilities, including limitations on the exclusion of livestock facilities in agricultural zones and requirements for issuing conditional use or other permits for siting livestock facilities. It also created the Livestock Facility Siting Review Board (LFSRB) to hear appeals concerning local permit decisions. Implementation of the law was delayed until DATCP developed rules. As part of rulemaking, the department was required to balance competing factors (listed on p. 3) in developing state standards to implement the law. The new rule ATCP 51 became effective on May 1, 2006.

Under the siting law, local jurisdictions are not required to adopt regulation for siting livestock facilities; however, if a local government elects to require permits the requirements of the siting rule for approving new or expanding livestock facilities must be followed. Local ordinances can require a zoning or licensing permit. Licensing was a new option offered to allow permitting in un-zoned areas. Most local ordinances require permits for facilities that exceed 500 animal units (AU) of cattle, swine, poultry, sheep or goats. Fourteen local governments grandfathered smaller existing permit thresholds, and three governments enacted permit thresholds above 500 AU.

Farmers must use the application worksheets in the rule and demonstrate that their facility meets state standards for: property line and road setbacks, odor management, waste and nutrient management, manure storage facilities and runoff management. Local governments must follow specific timelines and requirements for making permit decisions based on the siting standards.

During the initial years of implementation, DATCP focused its efforts on assisting local governments and producers make the transition to the new permitting system by offering general outreach, training and technical assistance on compliance with the rule. In the last two years, DATCP's efforts focused more on helping farmers and local governments meet the legal requirements related individual permit applications.

Through March 2010, 61 ordinances have been adopted: 23 by counties, 37 by towns and one by a city (see Appendix A for details). Just under half of the siting regulations are licensing ordinances. During this time period 55 siting permits were issued: 44 by counties and 11 by towns. Permits appear to be issued largely without significant dispute at the local level, although a few high profile cases have engendered controversy and prolonged legal battles.

| Animal units kept at facility | Number of facilities |
|--------------------------------------|-----------------------------|
| Less than 499 | 2 |
| 500 to 899 | 15 |
| 900 to 999 | 12 |
| 1000 to 3999 | 21 |
| More than 4000 | 5 |

The LFSRB has heard seven appeals concerning five facilities: four local decisions to approve livestock siting applications were upheld, one local approval was reversed and the LFSRB did not have jurisdiction to hear two appeals. The Wisconsin Court of Appeals District 4 has not yet ruled on an appeal of a LFSRB decision.

During the four years of implementation, the siting standards and process have created a uniform and predictable framework for permitting new and expanding livestock facilities in jurisdictions that have adopted siting ordinances. Local officials have gained greater certainty about managing environmental impacts of large livestock operations. Farmers also understand the technical requirements necessary to legally expand their operations. At this global level, it is fair to say the siting law has achieved its purpose. For more detailed discussion of implementation, refer to the DATCP reports completed through 2009 available at http://www.datcp.state.wi.us/arm/agriculture/land-water/livestock_siting/reports.jsp

However, as noted below, key implementation issues have emerged that deserve greater scrutiny. In particular, the public is concerned about changing livestock agricultural practices and resulting impacts to the future of rural communities. Evaluating these concerns is complicated in light of the strong conviction of farmers and their trade groups in the benefits of the siting law, including the law's positive impact on industry growth. The divided views over the siting law go beyond the requirements of the siting rule and raise important policy questions that may require legislative action.

II. Requirements and Standards for Review

Extensive review requirements are built into the siting law. DATCP is required to collect information about locally adopted ordinances and local decisions regarding permit applications (see ATCP 51.10(4) and 51.34(5)). In addition, the siting rule provided for department review of the standards at least annually during the first four years of rule implementation. During the first year after adoption DATCP complied with reporting requirements in ATCP 51 by providing monthly reports regarding implementation of the siting law. DATCP also developed three annual reports on implementation of the rule. Section 93.90 (2) (c), Stats. requires that DATCP review the standards under siting rule at least once every four years.

Evaluation of the siting law is guided by the statute's overall purpose; namely, "an enactment of statewide concern for the purpose of providing uniform regulation of livestock facilities" s. 93.90(1). Section 93.90(2)(b), Stats, provides specific benchmarks for evaluating standards adopted under the rule. Standards should be:

- Protective of public health or safety
- Practical and workable
- Cost-effective
- Objective
- Based on available scientific information that has been subjected to peer review
- Designed to promote the growth and viability of animal agriculture in this state
- Designed to balance the economic viability of farm operations with protecting natural resources and other community interests
- Usable by officials of political subdivisions.

In the absence of other legislative direction, these factors are useful and relevant for assessing the other aspects of the law. For example, they can be considered in addressing broader statutory and policy questions highlighted during this review. DATCP reports to the Board of Agriculture, Trade and Consumer Protection (ATCP Board) have directly or implicitly relied on these measures as the basis for its evaluation of the program issues. In certain cases, these measures come in conflict, and must be balanced to properly achieve the purpose of the law. For this four year review, DATCP is recommending that these same measures of performance be applied.

III. DATCP review of implementation

In four years, DATCP has gained considerable knowledge and understanding about local implementation of the siting law. For purposes of effective reporting, DATCP developed systems to track and evaluate implementation of the rule. DATCP gathered a wide range of implementation information in the course of performing required responsibilities related to education, outreach and technical assistance. In addition to daily contacts with stakeholders, and tracking of ordinances and permit applications, DATCP has used targeted surveys of stakeholders and public listening sessions to expand its understanding of issues.

DATCP has shared its knowledge and insights regarding implementation in monthly and annual reports submitted to the ATCP Board. Each report documents new issues as well as reinforcing existing issues. Over time, some issues such as moratoria have faded or resolved themselves, while others persist. DATCP staff have compiled and updated the list of program issues identified in Appendix B. This compilation identifies a range of issues from highly technical considerations to broad policy questions. It covers the majority of issue raised by the public during the comment period. Each of the 29 topics in Appendix B includes a brief discussion of the issue, as well rule and statutory references.

IV. Summary of public comments

DATCP understood the need to more formally include the public during the four year evaluation process. To accomplish this goal, listening sessions were held in Dodgeville, Eau Claire, Oshkosh and Wausau, and written comments were accepted during a 45 day period. A description of the key issues related to the state standards and program implementation was made available to the public. Gathering feedback in this manner was expected to generate data useful for evaluating the rule, and other potential actions.

Approximately 860 comments were received by the March 10, 2009 deadline, including additional written comments sent by people who spoke at a listening session. The department heard from 127 of the approximately 400 people that attended one or more of the four listening sessions held between Feb. 18 and March 3, 2010.

| Location | Attendance | People that spoke |
|------------------------|-------------------|--------------------------|
| Dodgeville – afternoon | 75 | 21 |
| Dodgeville – evening | 40 | 14 |
| Eau Claire | 65 | 21 |
| Oshkosh | 145 | 41 |
| Wausau | 80 | 30 |
| Totals | 405 | 127 |

Roughly 20% of the comments were provided by organizations, advocacy groups, or businesses. Citizens, farmers and non-farmers alike, provided the majority of comments; including many based on talking points generated by organized groups. Thirteen farms regulated under livestock siting permits sent their thoughts, yet few local governments provided substantial input on the rule.

Public input highlighted the same concerns expressed over the past four years by local governments, organizations and citizens. The majority of comments specific to the rule requested some level of adjustment. The range of comments spanned complete repeal of the law to minor modifications of the permitting process. The major topics were: farm location, setback distances, restricted local control, the need for a predictable process, odor, nutrient management, perceptions that the standards either reduce environmental impacts or are inadequate, difficulties adopting more stringent local standards, the ability

of local government to enforce permit requirements, and the need to keep protective and consistent statewide rules.

The public expressed an array of concerns about the impact of large livestock farms. Considering future actions, it became clear that issues related to the siting rule and program had to be separated from broader concerns. While appropriate to acknowledge these issues, the possibility to address broader concerns beyond the scope of the siting rule is limited. The department can only clarify statutory requirements within the scope of the rule, it cannot change state law. Resolving expansive issues related to livestock agriculture must be considered in light of other existing state and local regulations and programs, and the appropriate regulatory venue or combination of actions may be needed to fully address specific concerns. A more detailed discussion and a breakdown of comments are provided as Appendix C.

V. Major issues that are within the scope of the siting rule

In identifying major implementation issues in this category, DATCP benefited from the significant overlap in the issues identified through its internal review and those that emerged during the public comment process. This is not to discount the differences in focus, content and perspectives between DATCP staff assessment and comments received during listening session. These differences can be appreciated by reviewing Appendices B and C. In some cases, these differences shed new light on issues previously identified by DATCP staff. However, the strong correspondence in issues enabled us to develop a composite summary of major issues in this category.

The issues raised in each of following topics can be directly dealt with or could be considered for inclusion in the rule. Based on department review and public comments, these major items deserve further consideration:

- Consider revisions to the application process and worksheets to improve the quality of applications, and to clarify legal requirements. Experienced consultants have failed to supply all the required application materials, and local officials have used the completeness determination to hold up projects. The siting standards and process can be used to focus decisions and bring resolution, or to delay action.
- Evaluate potential changes to keep the siting standards current, including upgrades necessary to address new technologies. Requirements in the rule should be evaluated in light of new models for evaluating animal lot runoff and recently revised NRCS technical standards, e.g. feed storage leachate control.
- Is it appropriate to require actions to mitigate impacts based on farm size, and/or proximity to neighbors? Reconsider the setback distances for livestock structures. With or without zoning restrictions neighbors often believe large facilities belong elsewhere, or are too big to locate near residences.
- Consider adjustments to the odor standard and model taking into account experience over the past four years, and new research. Review exemptions from

the odor standard. Odors from land spreading of liquid manure irritate neighbors yet are not considered by the rule.

- Does the current approach to nutrient management reflect the complexity of the issue and challenges in administration? Should the full nutrient management plan be required with an application? How should specific components of a plan be documented? e.g. identifying the land base available for manure spreading, liquid manure restrictions, and compliance requirements.
- Should the department provide guidance for how to document that more stringent local siting standards are necessary and defensible? The siting law requires that local siting standards be based on public health and safety reasons validated by scientific findings of fact. Many think this is too difficult to do.
- How do the siting standards impact public health and safety considerations?
- Does the application fee cover the necessary expenses to administer a local siting program? Costs for technical expertise can be significant.
- Should the rule clarify the authority to monitor and enforce permit requirements? This authority currently exists, yet is not clearly defined in the code, e.g. prohibit construction without approval or impose a penalty for a permit violation.

VI. Major issues outside the scope of the siting rule

Public comment in particular presented a host of issues that are beyond the scope of rule review. These issues either reflect policy choices in the statute or implicate state and local programs outside the siting law. Properly evaluating and developing solutions to these matters entails consideration of many laws and regulatory programs outside of the scope of ATCP 51. They cannot be addressed through rule changes. The following is a list of major issues in this category:

- Where can large farms locate, and how big can they be? The importance of integrating the siting law and rule requirements with local planning and zoning efforts cannot be stressed enough; local communities are responsible to act.
- Social acceptance of large livestock farms and their economic impacts. A range of issues from the loss of small family farms, antibiotic resistance, neighborhood decline and animal health concerns fall under this category. A new common ground recognizing modern agricultural practices and related impacts on our quality of life is needed.
- Facts and science are not enough to resolve community concerns. Negative perceptions of large farms are often fueled by fear and anxiety over change.
- The public is often confused by the multiple regulations enforced through different state and local programs. Municipalities can choose not to require siting permits, reducing the effectiveness of uniform siting standards. DNR is usually not involved if farms house less than 1000 AU. County, town, DNR and DATCP involvement is not always consistent or coordinated.

- Groundwater quantity. Animals use a lot of water, yet so do irrigation, municipal, industrial, commercial, and private uses. Appropriately, the legislature is currently discussing changes to DNR regulation of high capacity wells.
- Options to mitigate impacts of hazardous air emissions from livestock farms are currently being considered for inclusion into the DNR rule ch. NR 445 Wis. Admin. Code, control of hazardous air pollutants. DNR has convened an advisory committee to provide recommendations for air emission standards and practices.

VII. Next steps in evaluation process

This report provides an overview of the major issues that merit further deliberation and consideration. Section II of this report describes benchmarks that should be applied in the evaluation of these issues. However, we face challenges in proceeding with an evaluation based on the broad scope of the issues ranging from significant policy considerations to technical rule updates.

We may need to follow multiple approaches to effectively respond. Policy questions may be best managed through deliberations with all stakeholders in more open-ended forums. An expert advisory group may be the best mechanism to handle technical changes to the rule. In fact, the siting law requires that an expert group be convened to advise DATCP on technical changes to the standards in the siting rule. Other options may be effective in addressing these issues, and should be considered before a final course of action is adopted.

It will be critical to coordinate different approaches to properly evaluate our future direction. As different as policy and technical issues appear to be, they are related in significant ways. For example, we might re-focus policy deliberations concerning the impacts of larger operations if we receive technical recommendations to scale up standards for larger operations, e.g., increased setbacks or new requirements for manure management. This relationship may affect the timing of certain review activities. It makes sense to stage the review process, convening the technical group first so their recommendations can be considered in any future policy discussions. Further complicating matters is the need to coordinate our efforts with recommendations of the advisory committee regarding air emission practices under NR 445, and outcome of the proposed revision to nonpoint standards under NR 151.

DATCP will work with the ATCP Board in establishing a framework for identifying the next evaluation steps. At this point, DATCP is prepared to offer recommendations regarding one piece of the evaluation puzzle. The DATCP Secretary should appoint a committee comprised of technical experts to provide advice on the manure, odor management and other standards in the siting rule. Not only is an expert committee mandated by the siting law, a technical committee has the capacity to address major issues identified in Section V. This committee should be composed of the members that represent the same areas of expertise as those represented by members of original committee convened when the siting rule was first adopted. This original committee included experts from government and the private sector, but did not include non-expert

representatives from farm or environmental groups. For a broader perspective, a state health official and a local planning and zoning administrator should be added to the committee.

Department staff will work in conjunction with the expert committee to evaluate options for revising the siting rule. An attempt will be made to coordinate work with related efforts. For example, the DNR is revising state rules governing agricultural non-point source pollution, and also deciding how to include agricultural air emission requirements into their toxic air emissions rule.

In addition, department staff will work with the ATCP Board to integrate this element of the evaluation into the larger framework.

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Livestock Siting Ordinances

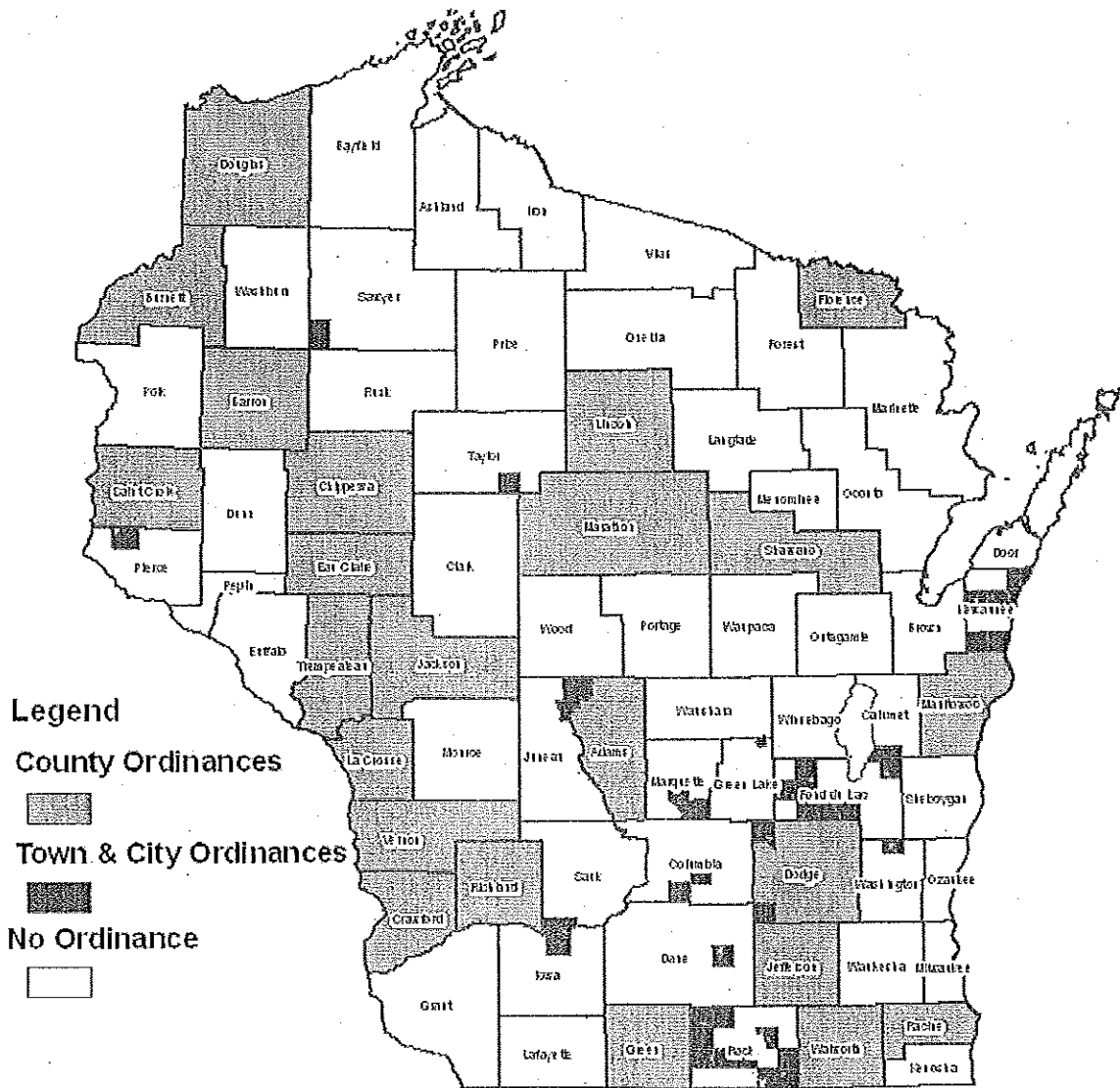


Table 3. Local livestock siting ordinances

| County | Jackson | Vernon | Carlton | Luxemburg | Rock |
|------------|-------------|-----------|---------------|-------------|----------------|
| Adams | Jefferson | Walworth | Casco | Magnolia | Rosendale |
| Barron | La Crosse | | Clinton | Marshfield | Spring Green |
| Burnett | Lincoln | Town | Cottage Grove | Metomen | Spring Valley |
| Chippewa | Manitowoc | Anhapee | Edgewater | Oakfield | Springvale |
| Crawford | Marathon | Arlington | Fox Lake | Packwaukee | Turtle |
| Dodge | Racine | Armenia | Franklin | Pierce | Union |
| Douglas | Richland | Bradford | Harmony | Plymouth | Wyoming |
| Eau Claire | Shawano | Buffalo | Kewaskum | Porter | |
| Florence | St. Croix | Byron | Little Black | Portland | City |
| Green | Trempealeau | Calumet | Lowville | River Falls | City of Berlin |

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DATCP Assessment of Implementation Issues

DATCP staff developed the following list of key issues related to the state standards and program implementation based on the past four years experience with the siting rule. The issues below are categorized into items within the scope of the siting standards, and other issues related to implementation of the rule. The department analysis of each issue is provided along with statutory and rule references. A shortened version of this list was made available during the four year evaluation public comment period.

Issues related to the siting standards

1. **Issue:** The siting law limits the authority of local government to make permit decisions involving new and expanded livestock operations outside the scope of the siting standards, for example to avoid incompatible uses.

Legal Authority: Statute: 93.90(3); Rule: 51.10

Discussion: The law was intended to address a statewide concern by “providing uniform regulation of livestock facilities.” To establish uniformity, it was necessary to limit local authority. Other laws provide local options to manage land use conflicts through zoning and planning. s. 93.90 allows local officials to impose more stringent standards to address public health and safety concerns in a community.

It appears that farmers and a majority of towns and counties have adjusted to this framework. As first step in this process, local governments made the choice to adopt a siting ordinance or not regulate livestock siting. However, some local governments remain concerned that these options do not meet their needs for local regulation. They believe that greater authority in issuing permits to protect public health, safety and welfare is necessary. This aspect of the law cannot be changed by rule; legislative action would be necessary.

2. **Issue:** The siting law limits the requirements and conditions a local government can impose on a permit for a new or expanding livestock operation.

Legal Authority: Statute: 93.90(3)(a); Rule: 51.10(1), (2), (3), 51.34

Discussion: To achieve uniformity of regulation, the siting law restricts the requirements that can be enforced through a permit. As interpreted by the department, local governments are limited to enforcing state standards for water quality and odor, and may impose more stringent local standards only if they meet the requirements of the siting law. Local regulators can use separate ordinances and mechanisms to require farms meet different environmental and other standards, but cannot enforce these other requirements through a siting permit.

A number of groups are challenging this interpretation in the District 4 Court of Appeals (John Adams v. State of Wisconsin, Appeal Number 2009AP000608). The case is a continuation of an appeal of a local decision heard by the Livestock Facility Siting Review Board. The final ruling will establish the scope of local authority to impose conditions, and may result in a different interpretation of the law recognizing more local authority. Until there is a final decision, no rule change can be adopted.

3. **Issue:** Legal requirements for adopting more stringent local siting standards.

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Legal Authority: Statute: 93.90(3)(ar), (b), (c), [92.15]; Rule: 51.10(3), [ATCP 50.60, NR 151.096]

Discussion: There are generalized concerns that the procedure to adopt more stringent standards is too demanding. Underlying issues are not clear and it is possible to interpret these results as lack of real need on the part of local governments to adopt more stringent standards. This aspect of the law cannot be changed by rule; legislative action would be necessary.

To the best of DATCP's knowledge, no local government has adopted more stringent regulation as required by the siting law. A few ordinances filed with the department include standards that are more stringent than the basic standards. The additional requirements range from increased setbacks to prohibitions against certain manure management systems. Sufficient justification related to public health and safety in the ordinance materials submitted to DATCP is lacking. It is not clear whether these provisions were properly enacted or if they have been enforced.

4. **Issue:** Authority to monitor and enforce permit requirements.

Legal Authority: Statute: 93.90(3); Rule: 51.02, 51.10(1), (2), (3) & 51.34 (4)

Discussion: The ability for a facility to operate is conditioned upon compliance with the siting standards. Violations are enforceable. ATCP 51 provides authority, but little guidance, for how local governments can monitor and document compliance, including recuperating associated costs. Local governments have authority to:

- Restrict construction of a proposed facility until a siting permit has been issued, including halting construction when permit conditions are not being satisfied.
- Inspect and certify that structures comply with standards before the facility is populated.
- Impose penalties and require that violations be brought into compliance.

Local governments have not always restricted applicants from starting construction before a permit is issued. There are also concerns that local governments do not have the resources or willpower to effectively monitor compliance and enforce violations.

5. **Issue:** Uniform implementation of the siting standards and rule.

Legal Authority: Statute: 93.90(1), (3), (4); Rule: 51.02, 51.34

Discussion: Locally implementing the livestock siting rule is not mandated by state law. The law requires that local approvals of new and expanding livestock facilities be made according to the requirements of the siting rule; however municipalities do not have to require local approval. Some municipalities have adopted siting regulations while others have not. The result is that compliance with the siting standards is not being required of all farms in Wisconsin. Variations between local siting programs also exist. Each municipality has a different level of technical manure management expertise, and political will, that influence the local decision making process. In short, some regulators do a better job than others.

6. **Issue:** The process to determine the completeness of an application has not consistently functioned as anticipated in the rule.

Legal Authority: Statute: 93.90(4)(a); Rule: 51.30(5)

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Discussion: A completeness determination is a critical step in the application process that creates important rights for the applicant; namely, a presumption of compliance with the siting standards. Applicants are entitled to a determination within the specified time period based on the submission of required materials that are credible and internally consistent. In a number of cases, permitting authorities have required applicants to supplement their submission beyond what is required for a completeness determination. Local governments may seek additional materials to simplify the process by making one determination for both completeness and compliance. An applicant appealed a town's failure to issue a completeness determination, however the LFSRB ruled that it did not have authority to review the action, see *Larson Acres, Inc. v. Town of Magnolia*, Docket No. 06-L-01. Many farms require multiple submissions before their application is complete. Even when parties are cooperating, compiling the necessary information can be a lengthy process.

7. **Issue:** Maximum \$1000 application fee.

Legal Authority: Statute: none; Rule: 51.30(4)

Discussion: The rule limits the application fee to \$1000 which may not be sufficient to cover costs to review an application for compliance with the standards. Local governments may not receive many applications, yet it can be significant workload to run a local program. Other benefits of an ordinance may offset program administration costs. With siting, local governments have a better standing to influence conservation decisions on farms of all sizes. Unlike the state runoff rules, local governments do not have to offer cost share dollars to enforce the water quality standards in ATCP 51. As of 11-11-09, 41 municipalities have a \$1000 fee, 6 have fees ranging from \$150 to \$750, and 14 did not report fees to the department.

8. **Issue:** Setback distances for livestock structures.

Legal Authority: Statute: 93.90(2)(a), 93.90(3)(am); Rule: 51.12

Discussion: The siting rule establishes maximum setback distances for livestock structures from roads and property lines, while also referencing setbacks in other laws for navigable waters and wetlands, floodplains and wells. Except for a 350 foot setback for manure storage, the maximum setbacks are less than 200 feet, and vary depending on the size of the proposed livestock operation. Seven siting ordinances have enacted setbacks from property lines and roads less than 100 feet, while setbacks for manure storage structures less than 350 feet were enacted by 13 local governments. Only one municipality enacted setbacks larger than those in ATCP 51. Local governments have both granted and denied variances under their siting ordinances to accommodate requests to reduce setback distances.

The majority of manure storage and zoning ordinances adopted by Wisconsin counties and towns have smaller setbacks than those in ATCP 51. Setback requirements for CAFOs in adjoining states are different as are the farming conditions. Compliance with the odor standard can supplement the setback requirements (see discussion below). Even though the setback requirements do not consider adjoining land uses, the type and density of residential neighbors (e.g. high use building such as schools) are considered by the odor standard.

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9. **Issue:** Linking concerns about toxic air emission to the odor standard.
Legal Authority: Statute: 93.90(2)(a); Rule: 51.14, Appendix A Worksheet 2
Discussion: Emission of hydrogen sulfide, ammonia and other pollutants are getting more attention by citizens and regulatory authorities. More research to correlate the relationship between odors and air emissions is needed. ATCP 51 does not regulate air emissions however; the note in ATCP 51.14(1) discusses joint development of emission research. As part of rule making under ch. NR 445 Wis. Admin. Code., the DNR has convened an advisory committee whose finding may be useful in addressing air emissions from livestock farms.

10. **Issue:** New facilities under 500 animal units, expansions under 1000 animal units and facilities that do not have neighboring residences within 2500 feet are exempt from the odor standard.
Legal Authority: Statute: 93.90(2)(a); Rule: 51.14(2)
Discussion: The odor standard was the first attempt at regulating livestock odors in Wisconsin. The exemptions established during the initial rulemaking benefit smaller facilities. The setback distances in the siting rule reduce some negative odor impacts. When an odor score is not filed uncertainty is injected into the application process, particularly when a high density of residential structures is nearby. 19 of 55 permitted facilities did not file an odor score.

11. **Issue:** Odor control practice credits
Legal Authority: Statute: 93.90(2)(a); Rule: 51.14(4)&(5), Appendix A Worksheet 2
Discussion: The department understands that facilities passing the odor score continue to emit odors. The intent of the standard is not to eliminate odors but to utilize a standardized tool for evaluating odor impacts. Regulators have used the odor model for four years and are gaining experience relating odor scores to actual conditions. In addition, the joint DNR-DATCP Conservation Innovation Grant study of odor and air emissions supports some odor credits and calls into questions others.

12. **Issue:** Odor from field application of manure are not considered by the rule
Legal Authority: Statute: 93.90(2)(a); Rule: 51.14(5)
Discussion: During development of the siting rule it was decided not to include a field spreading component in the odor standard. This left local governments free to adopt local odor restrictions applicable to all farms. While concerns and complaints are gaining, particularly in regard to mega operations, no local protections have been adopted.

13. **Issue:** A nutrient management plan (NMP) is not required with an application
Legal Authority: Statute: 93.90(2)(e); Rule: 51.16(1)(a), (b) & (c)
Discussion: ATCP 51 only requires submission of the nutrient management checklist and restriction maps. A NMP must be filed with a DNR CAFO permit application. In practice many applicants are filing a NMP, often as an annual NMP update. Usually this is because a farm was already complying with other local or state nutrient management rules. Local governments typically request the NMP when it is not filed with an application, then review the NMP for compliance with the standard. Conversely, by not requiring a complete NMP an applicant gains more time to develop a NMP. However, approving an application without evaluating the

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underlying NMP documentation for compliance with the NRCS 590 standard is in direct conflict with outcomes of three LFSRB cases.

14. **Issue:** Facilities under 500 AU do not have to file the nutrient management checklist or a NMP with a permit application.

Legal Authority: Statute: 93.90(2)(e); Rule: 51.16(1)(c)

Discussion: This requirement was intended to simplify the process for smaller facilities. Not needing to provide a checklist or NMP makes the application process simpler, but meeting an acre to animal unit ratio does not prove that the farmer is properly managing their manure. Regulators can request the checklist and NMP.

15. **Issue:** Documenting components of a nutrient management plan.

Statute: 93.90(2)(e); Rule: 51.16(1)

Discussion: Farmers and their planners must develop nutrient management plans to account for the maximum amount of manure to be generated when the facility is fully populated. In addition to the NMP, other documentation such as soil test results, manure nutrient analysis and evidence that the land base is available to receive manure must support the NMP. Local regulators can request this documentation when evaluating submittals for compliance with the standard. Verifying assumptions in a plan provides more certainty for permit decisions. On the other hand, farmers with different assumptions about the data may question regulatory decisions causing delayed permit action until an agreement is reached.

16. **Issue:** Establishing more stringent manure spreading criteria above those in the NRCS 590 standard must be done according to the more stringent standard requirements under s. 93.90, and the state runoff rules s. 92.15.

Legal Authority: Statute: 93.90(3)(ar), (b) & (c) [92.15]; Rule: 51.10(3) & 51.16(1)(a) [ATCP 50.04(4)(3)(e)]

Discussion: Meeting the NRCS Standard 590 Nutrient Management is required by ATCP 51 and the state non-point rules for all sized livestock farms; except that ATCP 51 does not allow locally identified areas documented in an LCC approved conservation plan to be required, unless the additional requirements are enacted in a local siting ordinance. Existing restrictions in the 590 standard are not well understood by the general public despite an increasing focus on nutrient management, particularly in relationship to karst topography and winter applications of manure. Local effort and collaboration is needed to create science based criteria more restrictive than the 590 standard.

There is a growing concern that the 590 standard is not adequate to protect surface and groundwater from contamination. An alternative to adopting local nutrient management standards is to request that the NRCS revise the 590 standard with more protective criteria. An advantage to this approach is that a revised 590 standard could be referenced by state and local rules applicable to all farms. Revisions to incorporate new science into NRCS standards are considered approximately every five years.

17. **Issue:** While most facilities subject to siting regulation have storage, including CAFOs, the rule does not require manure storage facilities, nor does it mandate a length of storage.

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Legal Authority: Statute: 93.90(2)(a); Rule: 51.18, 51.18(5)

Discussion: Manure storage is an option farmers can utilize when making manure management choices. A farm that stores manure must reflect the storage type and duration in their nutrient management plan. This approach is consistent with the state agricultural performance standards in NR 151. Facilities over 1000 animal units are required to have six months of manure storage under terms of a DNR WPDES permit.

18. **Issue:** Animal lot runoff must be evaluated with the BARNY model.

Legal Authority: Statute: 93.90(2)(e); Rule: 51.20(2)

Discussion: By requiring one model, the rule establishes a consistent measure for animal lot runoff that can document changes over the life of a permit. Different tools to evaluate animal lot runoff are accepted by other resource agencies and consultants (BERT, BCALM). Outputs from these models may be difficult to correlate to the limits established in the rule that are based on the use of BARNY.

19. **Issue:** The rule requirements for feed storage leachate runoff control do not reference a current NRCS technical standard.

Legal Authority: Statute: 93.90(2)(e); Rule: 51.20(3)

Discussion: Controlling leachate from feed storage is an evolving field. After ATCP 51 was promulgated, a Standards Oversight Council work team developed the feed storage leachate control criteria adopted into the NRCS technical standard 629 Waste Treatment. Engineers are using the criteria in NRCS Standard 629 as the basis for designs, including plans and specs to meet WPDES permit requirements. The siting rule however has different requirements for this practice.

20. **Issue:** NRCS technical standard referenced in the rule have been or are being revised.

Legal Authority: Statute: 93.90(2)(a); Rule: 51.18(2), 51.18(3), 51.20(1), [ATCP 50.62, 50.94]

Discussion: Designers will use the most recent NRCS standards, and local and state governments periodically update codes to reference the revised standards. NRCS Standard 313 Waste Storage Facility and Standard 634 Manure Transfer are currently being updated. NRCS Standard 635 Wastewater Treatment Facility was revised in 2008. References to NRCS standards must be kept current.

21. **Issue:** The application does not require a narrative describing the facility, how components of the farm systems work, or adjacent land use.

Legal Authority: Statute: 93.90(2)(e)(1), (4); Rule: 51.30, Appendix A

Discussion: Depending on the details provided in an application, a clear description of manure management systems, or specific enough details to describe a facility may be lacking. Correlating waste storage facilities, feed storage leachate control systems and animal lots may be difficult. Local government may not understand how certain aspects of a facility are intended to meet state standards. The LFSRB may have difficulty deciphering interrelationships in a poorly developed record if understandings between local officials and the applicant are not clearly documented.

22. **Issue:** Some consultants and regulators have reservations about signing off on certain application worksheets.

Legal Authority: Statute: 93.90(2)(e); Rule: 51.30, Appendix A

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Discussion: Conflict of interest concerns have made some county officials reluctant to assist town government review a siting application, particularly when the county has assisted the applicant design conservation practices that will be regulated under town regulations. Worksheet 5 covers a mixture of engineering and management certification of animal lots, feed storage leachate, and non-point pollution requirements. Some consultants do not want to sign Worksheet 5 if they are only responsible for some of the components covered by the worksheet.

23. **Issue:** Area maps must have topographic lines at 10 foot elevation intervals.
Legal Authority: Statute: 93.90(2)(e); Rule: 51.30(1), Appendix A p. 390-17 #9
Discussion: The area map(s) provide details about the land lying within two miles of the livestock structures. Topography is only one of the requirements. Many USGS maps are only detailed to the 20 foot elevation interval; therefore their use is excluded by this requirement. It is burdensome on applicants to complete a land survey to obtain 10 foot elevation intervals, particularly when the much of the topographic information may not be relevant to the standards. In practice many local governments accept the most recent USGS map.

Other Implementation Issues

24. **Issue:** Coordination of multiple water quality standards enforced through different state and local permit requirements.
Legal Authority: Statute: 93.90(2)(e) [92.16]; Rule: 51.16(4), 51.18(7), 51.20(10), 51.34, [ATCP 50.54, 50.56, NR 243]
Discussion: Applicants must comply with the most restrictive water quality standard contained in applicable local livestock siting ordinance, local manure storage or livestock siting ordinance or NR 243 permit requirement. The same structure could be regulated differently under town, county and DNR permit requirements: A DNR WPDES permit can be substituted for the livestock siting application Worksheets 3, 4 and 5; however facilities proposing structures that are not approved in their current WPDES permit cannot rely on this permit substitution. Other local approvals of nutrient management plans, waste storage facilities, or runoff management practices cannot be substituted for the worksheets. For example, county manure storage permits or farmland preservation program compliance certification.

There is confusion and delay when counties, towns and state regulators draw different conclusions about the same application materials, or want another regulator to make the first decision. For example, a town government may want assurances that county ordinance requirements have been met, and meanwhile county government may disagree with the DNR about the adequacy of specific plan components. Many local governments do not verify that NR 243 requirements are met prior to granting local approval. After local approval is granted, landowners may need to modify designs and have their local approval amended to meet additional requirements imposed by the DNR during the WPDES permitting process. Similarly, county manure storage permit approvals do not recognize the need to meet town odor regulation under siting.

25. **Issue:** Regulators are uncertain about the pre-expansion size of many facilities.
Legal Authority: Statute: 93.90(3)(e); Rule: 51.06(2)(b)

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Discussion: There is much uncertainty about the size of facilities that are not covered by an existing permit. Governments rely on farmers to self-certify animal numbers and seek siting approvals appropriately. Compounding this dilemma, the siting law allows existing facilities to expand by 20% before a siting permit can be required, unless a preexisting permit limit exists. This requirement is biased towards large farms. For example, a 2500 AU farm can add up to 500 AU without needing a permit, while a 450 AU farm can only add 90 AU before it must apply for a permit. The 20% rule does provide facilities additional time to adjust to new local regulations, and allows some room for internal growth.

26. **Issue:** The siting law uses the definition of “animal units” used in s. NR 243.03 (3) as it existed on April 27, 2004 (the date on which the livestock facility siting law, 2003 Wis. Act 235, was published).

Legal Authority: Statute: 93.90(2)(a), (e); Rule: ATCP51.01(4)

Discussion: The revision of ch. NR 243 Wis. Admin. Code resulted in a few inconsistencies between the mixed AU conversion factors used by both codes highlighted in the comparison chart. NR 243 also incorporated newly developed individual AU conversion factors that did not exist when the siting rule was created, and are not reflected in ATCP 51.

| Differences in Mixed AU Conversion Factors | | |
|--|-------------------------|----------------------|
| Livestock Type | ATCP 51 | NR 243 |
| Beef, Steers or Cows | 1.0 (600 lbs to market) | 1.0 (400 lbs to Mkt) |
| Beef, Calves | 0.5 (under 600 lbs) | 0.5 (under 400 lbs) |
| Veal Calf | Not in chart | 0.5 |
| Poultry, Broilers - continuous overflow watering | 0.01 | Not in chart |
| Goats | 0.1 | Not in chart |
| Horses | Does not apply | 2.0 |

27. **Issue:** The siting rule does not require an environmental assessment (EA).

Legal Authority: Statute: none; Rule: none

Discussion: The scope of the siting rule is limited to manure and odor management. Compliance with the standards is intended to protect the public. Other impacts, e.g. social ramifications, are not directly dealt with by the siting rule. An EA may provide additional information, however it may not be relevant to compliance with the siting standards. Land use objectives enforced with zoning can restrict the location of facilities, but may not address broader public concerns about where large farms belong, nor influence how a facility is operated. Neither applicants nor local governments are required to summarize practicable alternatives, technical advantages/disadvantages of proposed facilities, or describe impacts to neighbors. Under DNR rules an EA is required for new WPDES permit applicants.

28. **Issue:** Public notification of a permit application.

Legal Authority: Statute: none; Rule: 51.30(6)

Discussion: The rule’s minimum public notice to adjacent property owners may not be adequate in every case. For example, in a rural subdivision the homeowners whose property abuts a facility will be notified while other homeowners in the subdivision whose property does not touch the farmstead do not need to be notified. In practice, some governments do not want to exceed the minimum public notification requirement, while others provide additional public notice such as newspaper

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announcements or hold public hearings. Local officials can provide broader notification if it is deemed necessary.

29. **Issue:** Local variations for modifying a siting permit.

Legal Authority: Statute: 93.90(3)(ae); Rule: 51.34(4), 51.06

Discussion: A facility must apply for a permit when it adds animals above the limit in an existing permit. Less clear, is the process for amending an existing permit to reflect changes in management, or alterations to existing structures that maintain compliance with the standard. For example, annually updating a nutrient management plan for compliance with the permit is different than proposed changes to a manure management structure. Local program administrators will use their judgment to determine what constitutes an existing permit modification, versus changes that require a permitted facility to apply for a new permit

Appendix C

Summary of Public Comments

The chart below summarizes written comments sent to the department and comments provided at the listening sessions. A total of 863 individual comments were submitted to the department. Many of the issues articulated overlap multiple topics. The chart below is our attempt to categorize the number of comments related to each issues expressed.

| | |
|---|-----|
| Commenting in Support of the Siting Rule | 432 |
| Strengths of the Rule: | |
| Provides a predictable permitting process | 166 |
| Protects the environment | 102 |
| Protects public health and safety | 17 |
| Based on uniform standards | 93 |
| Odor standard is working | 51 |
| NMPs are working | 68 |
| Permitting process is working | 154 |
| Allows for public input | 11 |
| Other | 143 |
| Areas that need Improving: | |
| Completeness determinations delayed | 52 |
| Need more options for odor control | 16 |
| Setback distances are too high | 15 |
| Fees are too high | 2 |
| Other | 46 |

| | |
|--|-----|
| Commenting Against the Siting Rule | 431 |
| Weaknesses in the Rule: | |
| Takes away local control | 230 |
| No control over farm location | 26 |
| No control over farm size | 54 |
| No control over zoning issues | 17 |
| Doesn't protect quality of life | 35 |
| Doesn't protect public health and safety | 70 |
| Doesn't protect property values | 23 |
| Favors CAFOs over local interests | 86 |
| The siting standards are too weak | 57 |
| More stringent standards too hard to pass | 66 |
| Doesn't protect the environment | 60 |
| Doesn't protect water quality/quantity | 261 |
| Doesn't protect air quality | 49 |
| Doesn't protect against odors | 191 |
| NMPs don't protect the environment | 42 |
| Doesn't protect Karst areas | 68 |
| Enforcement is inadequate | 175 |
| Timeline is inflexible | 14 |
| Should not allow building without a permit | 22 |
| Setback distances are too low | 37 |
| Fees are too low for proper administration | 171 |
| Other | 187 |

CORRESPONDENCE/MEMORANDUM _____ **State of Wisconsin**

DATE: April 26, 2010

TO: Kathy Pielsticker

FROM: Richard Castelnuovo

SUBJECT: Select Public Comments for Inclusion as part of Livestock Facility Siting Report

In addition to summarizing the 863 oral and written comments received during the public listening sessions, department staff identified a select group of written comments that might be shared with the ATCP Board and the public to provide greater insight into the concerns presented during the public listening sessions.

The attached 11 comments were selected using the following criteria:

1. Ensure a representative balance of comments from those in support of and opposition to the siting law.
2. Select comments that have one or more of the following special characteristics:
 - a. Provide unique or special insights into rule implementation not identified by staff analysis.
 - b. Provide detailed analysis of implementation issues that directly related to standards under review.
 - c. Provide views from representative organizations for key stakeholders.
3. Avoid form letters or more generic submissions.

Haker, Margaret A - DATCP

From: Francis Ferguson [ffergie32@yahoo.com]
Sent: Wednesday, February 17, 2010 8:39 AM
To: Murray, Michael R - DATCP
Subject: thoughts and concerns for ACT 51
Attachments: letter to legislators.doc; WATER QUALITY MTG OCT26.doc

Mike:

Attached are some of the thoughts and concerns that we have with ACT51. We don't have a problem with the permitting of these operations, only our limited ability to make good and sound decisions for the people who live in close proximity to these operations, and our concerns for the quality of our ground water in our Township. Also our inability to to charge a fee that would cover the true cost of processing these applications. Our Town Board will attend the meeting/hearing to be held in Oshkosh.

Francis Ferguson, Chairperson Town of Byron, Fond du Lac, County

TOWN OF BYRON

To: Michael Murray
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911, Madison WI 53078

Re: ATCP 51 and Water Quality Concerns

Our Town has incorporated ACTP 51 Livestock Siting Ordinance into our Zoning in October of 2006. However Zoning alone in our opinion does not give the Towns enough control over the many issues that are associated with the siting of large dairy expansions.

The water quality meeting that was held on October 26, 2009 at the Fond du Lac County Court House, illustrates the concerns that the whole county has in regards to water quality, and in particular the Town of Byron. As was shown on the many slides of the water quality in the Town of Byron we do have a major problem, with nitrates, and bacteria in our drinking water. Our Township has contracted with the U.W. Geological Survey to do mapping of our town so that we have an idea where these problems really exist in our Town. Preliminary maps show that this problem is spread over the whole Township, not just in one location.

There are many issues within ACTP 51, that we feel could be better addressed by the local Town Boards to protect our ground water quality.

Attached is a list of some of the things we feel could be better addressed on the local level. Land conservation officials from 5 Northeastern Wisconsin Counties that have the same Karst features as much of the Town of Byron, also expressed many of the same concerns and issues that we do.

We ask that you give back to the local Towns, a means to control what goes on our lands in our community. We do agree with many of the requirement that are covered in the permitting process, but once a permit is issued, If there is a series of serious violations, in our opinion, the damage is already been done. If you try to cancel the permit, is a judge going to require the operation to cease? And that the cattle should be sold and the facility dismantled? I don't really think so. In our opinion the potential for damage to our water quality is already there. It would seem to me that we as Town Officials know our community best.

Francis Ferguson, Chairperson Town of Byron

With an Attachment

TOWN OF BYRON

Some thoughts for the public hearing on possible rule changes for ATCP51

1. First priority for the Town, in my opinion would be in regard to ACTP 51 Livestock Sitting Rules. That the Town would have greater flexibility in setting standards for manure handling, storage and nutrient management planes, on areas that have shallow soils over bedrock with Karst features. I certainly don't think one rule should cover all types of soils all over the state. It would seem to me that we certainly don't want to stop expansion of dairying, that is not our intention, but rather to have means to protect the other citizens of the community water quality.
2. Our Town has contracted with U. W. Wisconsin Geologic Survey to do a study and mapping of all of our Township, at a cost to us of \$10,160.00, so that we have a sound basis for making decisions along with our Comprehensive Plan in regard to proper locations for, Residential Subdivision Development, Livestock Facilities that fall under ACTP 51 Sitting, Manure Storage facilities, and locations for proper application of the manure with a good Nutrient Management Plan.
3. Under ACTP 51 the Township is only allowed to set a fee of \$1000.00 dollars for the permit, I can tell you that this does not come close to covering the Townships cost to properly process the application and hold public hearings and have proper records of the hearings, that means we have to spend money from Town funds to make sure that we properly process the application. We as Town Board members are not qualified to make engineering and other technical decisions, so we have to rely on outside staff to make these decisions, which in most cases is not free. I don't think that this additional cost should be paid by anyone other than the applicant.
4. Any expansion in any sensitive ground water area, that would require a "Permit or License", the first issue that should be addressed would be **Manure Storage, the Nutrient Management Plan, and Odor problems.**
5. **The Application of Manure or agitation of storage facilities on week ends, should not be allowed, when many people plan family and social gatherings and would be subject to very strong odor, from manure storage facilities.** We as town board members and our permitting authority, need to be able to set rules so that our other residents of the Township, can be protected as much as possible
6. We need the help of our Law-makers to give to the Towns means to control what happens in our Towns concerning **Water Quality, and Odor Problems.**

WE LIVE HERE, PLEASE HELP US PRESERVE OUR QUALITY OF LIFE.

Francis Ferguson, Chairperson

Town of Byron, Fond du Lac County



Soil & Water Conservation Department

Jerry Halverson, Department Director

jerryhalverson@co.manitowoc.wi.us

Manitowoc County Office Complex • 4319 Expo Drive, P.O. Box 578 • Manitowoc WI 54220
Phone: 920.683.4183 • Fax: 920.683.5131 • TTY: 920.683.5168

February 26, 2010

To: Wisconsin Department of Agriculture Trade, Trade and Consumer Protection

From: Manitowoc County Soil & Water Conservation Department
Manitowoc County University of Wisconsin–Extension Dairy Agent

Re: Comments on Livestock Facility Siting Rule

In general the rule has worked well in Manitowoc County. The ability to site and expand livestock operations is essential to keep the county and state's agricultural economy sound. The siting regulations balance local control, environmental protection and the need for a predictable siting process.

We offer the following comments that we believe should be taken into consideration as you review the state standards during your evaluation of the rule.

Application for Local Approval:

9. Area Map of Livestock Facility

- The area lying within 2 miles of any of the livestock structures. Show all existing buildings, property lines, roadways, and navigable waters lying within that area.
Comment: We do not see a need to show all property lines within 2 miles.

10. Site Map of Livestock Facility

- Topographic lines, at 2 ft. elevation intervals, for the area within 300 feet of the livestock structure.
Comment: It is not always possible to survey the area within 300 feet due to property line boundaries.

Worksheet 2-Odor Management:

Step 3: Enter your management credits in Box 2 {maximum 100 points}. All applicants may enter 80 points for completing required incident response and employee training plans.
Comment: These plans do nothing to reduce odor from the site and credit for them should be removed.

A local government must approve a livestock facility with an odor score of 500 or more.
Comment: Is 500 the correct score to achieve the desired goal? This should be re-evaluated using knowledge gained from the two-year odor study recently completed by the WDATCP.

Chart 2: Odor Generation Numbers:

Comment: Add an odor generation number for sand settling lanes and top filling a manure storage structures.

Comment: Odor generation number 10 for alley flush to storage when using manure pit anaerobic waste water is significantly low and needs to be increased.

Chart 3: Odor Control Practices:

Comment: Based on the two year odor study the anaerobic digestion multiplier 0.2 should be more like 0.8.

Comment: Scientific evidence for chemical or biological additive effectiveness should be submitted to DATCP for approval.

Comment: Solids Separation and Reduction Multiplier 0.6 should be removed from the chart. Reduction of solids in the waste storage facility will not decrease odor but in fact will increase odor potential due to less solids available to form a natural crust.

Worksheet 3 - Waste and Nutrient Management:

Comment: Manure and wastewater storage during winter and early spring months are essential to protect surface and groundwater from contamination and should be required in this rule.

Comment: We recommend assembling a team to take a look at NR 243.14 nutrient management to determine which requirements should be incorporated into the Livestock Facility Siting standards.

Comment: The standard should better define requirements for manure export to non-owned land. We recommend that the applicant submit 5 year manure export agreements with landowners as part of the application if he or she does not own sufficient land to utilize the manure and waste water that will be generated from the A.U.s for which the applicant is requesting approval.

Worksheet 3, 4 and 5:

Comment: The statement that you are NOT required to complete this worksheet if you already hold a WPDES permit for the proposed livestock facility {for the same or greater number of animal units} should be removed from the worksheets. The WPDES permit does not require a maximum A.U. number for the permit to be valid. We also need the information required in the worksheets when we communicate with concerned neighbors during the comment period after we have a so called complete application. This should not be a hardship for the applicant if the required information has already been completed for the WPDES permit.

Worksheet 5 - Runoff Management:

Comment: Add a standard or prohibition for discharge of wastewater from the livestock production area.

Other comments for ATCP 51:

A statement should be included in the rule to clarify when construction of any proposed facility shall begin. We recommend that no construction of any proposed facility shall begin until 31 days after the application has been approved by the political subdivision or until the state board renders a decision if there is a challenge of the local decision.

ATCP 51.08 Duration of local approval:

{2} A political subdivision may withdraw a local approval granted under this chapter unless the livestock operator does all of the following within 2 years after a local approval is granted:

{a} Begin populating the approved livestock facility.

Comment: What does this mean? 1 additional A.U in a facility?

{b} Begins construction on every new or expanded livestock housing structure, and every new or expanded waste storage structure, proposed in the application for local approval.

Comment: For numerous reasons this is not always achievable and should be removed from the rule. The note proceeding 2 {b} that the operator must at least begin the expansion within 2 years is sufficient and reasonable.

We also recommend that the Technical Committee be reconvened to review the comments regarding the Livestock Facility Siting Rule.

Thank You for the opportunity to comment.

March 5, 2010

Michael Murray, Livestock Siting Program Manager
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
Madison, WI 53708-8911



Dear Mr. Murray,

Thank you for your inquiry on how our local permitting process went, and for the work that you and the Department do for dairy operations in the state.

Our dairy is a multi-generation family farm. With my parents starting it all, to my siblings and I to our children and 13 additional employees doing the daily tasks that need to be completed each day. We formed a Limited Liability Company and milk 950 cows. We are very involved in our church and various other organizations in our community. We are committed in complying with the environmental standards that the local and state government have in place.

First of all to answer your question on how our local permitting process went. We ended up going to four local and county meetings due to the new setbacks. The current setbacks for property lines and neighboring residence are compliable and should be maintained at their current status.

For the most part we had smooth going for what we needed to do for this expansion.

This last year has been another story. We've struggled with the county on our lagoon storage. We need to enlarge our lagoon for the six month storage requested by the DNR. The county is requiring us to abandon our current clean out tunnels prior to their approval of the added lagoon storage required by the DNR. We have used this system for ten plus years and now it is no good. Who is to pay for the retrofitting of these two tunnels? We are held between a rock and a hard spot.

The regulations that are in place are achievable with a good many farmers working to be in compliance with the new regulations. **The land and animals is our lively hood and we try to do the best we can.** Unfortunately all these regulation have a price connected to them. And when you have a cheap food policy as we do the farmer doesn't get his fair share. And yet need to spend a lot of money for these regulations. The public needs to be more understanding with that and thankful for the quality of the food supply we enjoy here in the USA.

Once again thank you for the work that you and the Department do for agriculture in the state.

Paul Schmidt - Schmidt's Ponderosa LLC

(715) 853-1217



February 18, 2010

TO: DATCP

RE: Review of Livestock Facility Siting Law

Thanks for the opportunity to speak tonight. My family and I make up a fifth generation family farm milking 1400 cows with over 90 years of history in Magnolia Township. I believe that the state siting law is crucial and beneficial for the dairy industry in the state of Wisconsin.

My family has firsthand experience in expansion permitting both before and after the siting law came into effect. The first time around siting was not in effect and our local government took five years to give us a legal conditional use permit. It took five months to receive our CUP for our next expansion after the livestock facility siting law was in place.

Because of our firsthand experiences we believe that the following procedural issues need to be revised:

- Local governments routinely delay completeness determinations of livestock facility siting applications, causing financing uncertainty, contract issues and construction scheduling delays. ATCP 51 should be revised to protect farmers against approval delays by providing that if a local unit of government fails to issue a completeness determination within the 45 day timeframe, or within 14 days after applicant submits additional information requested, then the application is deemed complete. Such a revision would be comparable to the Wis. Stat. sec. 281.41 statutory approval language for plans and specifications of reviewable facilities.
- Revise ATCP 51.10 to clarify that the only standards by which an application may be evaluated are those listed in Subchapter II and a municipality may only adopt more stringent criteria for those standards listed in Subchapter II.
- Revise ATCP 51.34(4) to clarify that a livestock facility siting approval may only be conditioned upon compliance with standards listed in Subchapter II.

Sincerely,

Mike Larson
Larson Acres Inc.

March 10, 2010

Department of Agriculture, Trade and Consumer Protection
Attn: Mike Murray
Livestock Facility Siting Program Manager
P.O. Box 8911
Madison, WI 53708-8911
Michael.Murray@datcp.state.wi.us

Re: Clean Wisconsin's comments on Wis. Adm. Code ch. ATCP 51

Dear Mr. Murray;

Thank you for the opportunity to comment on Wis. Adm. Code ch. ATCP 51; Clean Wisconsin appreciates your consideration of our spoken and written comments. Clean Wisconsin, an environmental advocacy organization, protects Wisconsin's clean water and air and advocates for clean energy by being an effective voice in the state legislature and by holding elected officials and polluters accountable. Founded in 1970 as Wisconsin's Environmental Decade, Clean Wisconsin exposes corporate polluters, makes sure existing environmental laws are enforced, and educates citizens and businesses. On behalf of its 10,000 members and its coalition partners, Clean Wisconsin protects the special places that make Wisconsin such a wonderful place to live, work and play.

Clean Wisconsin's comments pertain to the environmental and human health implications of Wis. Adm. Code ch. ATCP 51. As we stated in our verbal comments, agricultural pollution poses serious environmental and public health threats in Wisconsin. Again, and as we have stated, we realize problems arise when farms are managed improperly. Part of managing an operation is locating it where environmental and human health threats are eliminated or, at least, minimized. When we talk about agricultural pollution, please keep in mind that we are referring to the agricultural operations that are causing the pollution and not to agricultural operations as a category.

Pollution from livestock facilities poses threatens surface water, drinking water, and air quality; these environmental problems are directly linked to human health problems. In Wisconsin, nearly 50% of our assessed waterways are impaired from agricultural sources; overapplication of nutrients leads to dangerous blue-green algae blooms, like those seen in Tainter Lake, and contributes to the cladophora problems seen on our Lake Michigan beaches. These blooms create bacteria that are dangerous to human health, and people and animals around the state have become sick from them. Additionally, we learned from the New York Times last fall that pollution from a relatively small number of large dairy operations is responsible for contaminating many families' wells in Brown County with dangerous pathogens and nitrates. Furthermore, medium and large agricultural operations use large quantities of water; if sited without consideration for groundwater resources, irrigation can threaten to further drawdown groundwater resources in certain parts of the state. Finally, medium and large livestock operations emit air pollution from manure, livestock digestion, and feed that can threaten human and environmental health, including foul odors, airborne particles, greenhouse gases, and numerous toxic

chemicals. Because of the threats that medium and large livestock operations pose to human and environmental health, it is important they be sited in appropriate places.

Clean Wisconsin's comments are arranged per the state siting standards in Subchapter II, found at Wis. Stat. Ch. 93.90(2)(b), that are relevant to our work on environmental issues. In considering this ATCP 51, Clean Wisconsin considered the impacts of medium and large farms on local natural resources and public health.

I. Wis. Adm. Code ch. ATCP 51 is not protective of public health or safety

As stated above, medium and large livestock facilities can pose threats to environmental quality, which impacts human health and safety. When a livestock operation threatens to contaminate the air, surface water, or contaminate or deplete groundwater, human health and safety is at risk. When a new or expanded livestock facility is proposed, local officials should analyze whether public health and safety is threatened by potential impacts the proposed facility will have on air quality, surface water quality, or groundwater quality and quantity. Wis. Stat. 93.90 correctly requires ATCP 51 to be protective of public health and safety; unfortunately, ATCP 51 falls short of doing so. As drafted, ATCP 51 improperly limits local governments' authority and ability to protect public health or safety in the following ways.

ATCP 51 improperly and arbitrarily limits local governments from considering the public health and safety impacts of a subset of livestock facilities. ATCP 51.02 prevents local governments from considering the public health or safety impacts of proposed facilities less than 500 animal units, unless the local government set certain requirements in place prior to July 19, 2003. Livestock facilities less than 500 animal units can pose threats to environmental quality, and public health and safety. In Dane County's Lake Mendota watershed, for example, a significant amount of the sediment and phosphorus loading, which contributes to the dangerous algae blooms plaguing the Yahara chain of lakes, is from medium-size farms near this threshold. Preventing local governments from evaluating and regulating the environmental and public health or safety threats from proposed livestock facilities less than 500 animal units (with limited exceptions) demonstrates a failure to protect public and safety in these situations.

Comment: ATCP 51.02 should be modified to allow local governments to regulate the public health and safety impacts of all sizes of livestock facilities.

ATCP 51 improperly and arbitrarily exposes local governments that haven't opted into this program. ATCP 51.10(2) prevents local governments from denying a siting permit unless ATCP 51's standards and applications requirements have been adopted into local ordinance. This creates an opt-in program that exposes citizens in communities that haven't opted in to any public health or safety threats posed by livestock facilities. As of now, significantly less than half of Wisconsin communities have not adopted this program, and cannot regulate the public health and safety impacts posed by livestock facilities. According to verbal testimony at the listening sessions, many local officials find this rule inadequate or complicated to work with; these might be some of the reasons many have failed to adopt it into local ordinance. Given the threats livestock facilities can pose to human health and safety, a regulatory safety net should be automatic, with communities who don't want to regulate livestock facilities having the option to opt out. ATCP 51 is not in place in much of the state, which means it is failing to protect public health and safety in much of the state.

Comment: ATCP 51.10 should be modified to automatically cover communities, with the option for communities to opt out of the program.

The process under ATCP 51.10(3) for local governments to set standards protective of public health and safety is prohibitively difficult. It is not difficult to contemplate a situation where unique natural resources make public health and safety especially vulnerable to livestock facility pollution. In order to set standards that protect natural resources and public health and safety, they have a difficult process to accomplish. To set standards more protective than state standards, a community must make reasonable and scientifically defensible findings of fact that clearly show the proposed higher standard is needed to protect public health or safety. This is an unreasonable standard for three reasons; first, requiring scientifically-defensible findings of fact is vague and raises questions about how location-specific findings must be. Second, requiring that findings of fact “clearly” showing something is a high standard, and implies that the findings of fact show the proposed standard is, to a high degree of certainty, necessary. Compare this to the option of requiring findings of fact show that a proposed standard is, more likely than not, necessary. Furthermore, the final part of this requirement –that the proposed standard is “needed” –is also a high standard, and implies that part of this requirement is a showing that without this proposed standard, public health and safety will, to a high degree of certainty, be endangered. For example, a community in a karst area with shallow bedrock, as in Northeast Wisconsin, might be concerned that land spreading of manure poses a significant risk to groundwater resources, as evidenced by the fact that many families’ wells are contaminated with pathogens and nitrates. It would be difficult to decide on standards that protect the most vulnerable parts of a jurisdiction, without the potential that the standards would be called unnecessary for another part of the jurisdiction. Essentially, this prevents communities from setting standards any higher than necessary for the least vulnerable part of their jurisdiction, and leave the more vulnerable natural resources (and surrounding public health and safety) inadequately protected.

Comment: ATCP 51.30 should be modified to allow communities to more easily set standards to protect natural resources and public health and safety.

The applicable water quality standards under ATCP 51 fail to protect public health and safety. Unless the process for setting stricter standards outlined above is completed, ATCP 51 severely limits communities from requiring potential livestock facilities to meet the most basic water quality standards. Certainly, communities are prevented from requiring standards beyond the water quality standards in Wis. Stat. ch. 281 and 283 and corresponding rules, which are the statutes under which the Wisconsin DNR regulates CAFO livestock facilities. While the many standards of NR 243 are met through the performance standards in NRCS 590, communities are not allowed to hold proposed facilities to NRCS 590 updates after 2005; such a prohibition unreasonably limits communities from holding proposed facilities to scientific advances in manure management. The fact that surface and ground water contamination from agriculture is widespread across the state shows that these standards are not nearly adequate to protect water quality; if these standards were adequate, we would be achieving chemical, physical, and biological integrity of our waters. Protecting public health and safety requires going beyond our state’s inadequate standards. Furthermore, it is appropriate to require standards for livestock facilities in the siting process because it takes place prior to the operation being set up; at this point, and operation can more easily modify plans to protect water quality and public health.

Comment: In order to meet statutory requirements to protect public health and safety, ATCP 51 must be updated with proper water quality standards that protect public health and safety.

The failure to include groundwater protection standards fails to protect public health and safety. Currently, ATCP includes limits on feedlots, manure and feed storage structures that aim to minimize groundwater contamination from the production site, but does not set standards to protect groundwater from contamination through land spreading of manure. Groundwater contamination from agricultural operations comes from production sites and fields that have had manure overapplied. Without standards to protect groundwater from land spreading on fields, ATCP 51 fails to address one of the sources of groundwater contamination, and thereby fails to protect public health and safety.

Comment: ATCP should have adequate standards to prevent contamination of groundwater.

The odor standard in ATCP 51 is too low, and needs to be based on measures designed to protect public health and safety. Medium and large livestock facilities emit significant air pollution that endangers human health. ATCP 51 should require proposed facilities to meet odor and air pollution standards designed to protect public health and safety where people would be exposed to such pollution. The odor standard under ATCP 51 in Worksheet 2 is based on a variety of factors, none of which are based on what the levels of toxins and pollutants would be where humans would be exposed and potentially affected, including schools, homes, businesses, and recreational areas. Additionally, new facilities under 500 animal units (AU), expansions under 1000 AU and facilities that do not have neighboring residences within 2500 feet are exempt from the odor standard. There are many places people could be exposed to air pollution from livestock facilities, even if neighboring residences are more than 2,500 feet away. Without standards designed to prevent harmful toxin levels in places where people would be exposed, ATCP 51 fails to protect human health and safety from air pollution.

Comment: ATCP 51 should set odor and air pollution standards designed to protect public health and safety where people would be affected.

II. Wis. Adm. Code ch. ATCP 51 is not cost effective

The fee structure under Wis. Adm. Code ch. ATCP 51 is not cost effective for local communities. Wis. Adm. Code ATCP 51.30(4) caps fees that local communities can charge livestock siting applicants to \$1,000. This limit restricts communities from properly evaluating complicated proposals, especially when the community may need to contract for services in a relatively short time frame. Additionally, there is no allowance for modification of this fee to reflect inflation, which is unfair for communities into the future. Wis. Stat. ch. 66.0628, fees charged by local governments should bear a reasonable relationship to the service for which the fee is imposed. Livestock operations falling under this ordinance are often multi-million dollar operations, depend on using local natural resources, and pose risks to surrounding communities. If one of these operations has a manure spill or other environmental accident, it can cost taxpayers hundreds of thousands of dollars to cleanup. Given the risk the operations pose to local natural resources, and the cost of cleaning up contamination, a thorough review is required to protect local communities and natural resources. Communities should not be prevented from charging applicants for proper review of applications, and fees should reflect the true costs of thorough review of applications. When communities are prevented from charging applicants the true cost of processing applications, local taxpayers end up subsidizing applicants.

Comment: ATCP 51.30(4) should be modified to reflect the true costs of reviewing livestock siting applications.

III. Wis. Adm. Code ch. ATCP 51 is not objective

Wis. Adm. Code ch. ATCP 51.12(6) creates a presumption of compliance for livestock siting applicants that precludes the objectivity required by Wis. Stat. 93.90. The livestock siting law requires that the ATCP 51 standards are objective. Objectivity means something is based on facts, is unbiased, and is without prejudice. ATCP 51.12(6) establishes a presumption of compliance for applicants if the application is complete, credible, and internally consistent. Creating a presumption of compliance is prima facie opposite of objective. Essentially, as long as an application is filled out, could be true, and doesn't contradict itself, an applicant is presumed in compliance with applicable standards. Also, that's an unreasonably easy path to presumed compliance. In other parts of Wisconsin law, presumptions are created in situations of heightened importance with compelling dynamics. For example, under Wis. Stat. ch. 767.41(2)(b)(2)(c), the family law, any evidence of domestic abuse creates a rebuttable presumption that the parties cannot co-parent a child, and this can lead to one of the parents having sole decision-making authority over the child. The reason for this presumption is that how parent(s) make decisions for children affects their lives, and if parents cannot make decisions without fear of being abused, it affects the well-being of children. The presumption of compliance is not appropriate; it gives the potential polluter a serious advantage in what should be an objective process. **Comment: ATCP 51.12(6) should not have a presumption of compliance for applicants.**

Thank you for considering Clean Wisconsin's comments on ATCP 51. It was a pleasure to work with you and your colleagues at the listening sessions, and I look forward to working together in the future.

Sincerely,
CLEAN WISCONSIN

Melissa Malott
Water Program Director and Attorney



March 10, 2010

Mr. Michael Murray
Department of Agriculture, Trade
and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911

Re: Livestock Facility Siting Rule Review – Written Comments

Dear Mr. Murray:

Pursuant to Wis. Stat. § 93.90, the Department of Agriculture, Trade and Consumer Protection (DATCP or the Department) is required to review the statewide standards included in Wis. Admin. Code ch. ATCP 51 at least once every four years.

On behalf of the Dairy Business Association of Wisconsin (DBA), this letter provides public comment on the adequacy of the statewide livestock facility siting standards contained in ATCP 51, the implementing rules for the Livestock Facility Siting Act, Wis. Stat. § 93.90 (collectively, the Siting Law). DBA is a nonprofit trade association representing milk producers, processors, dairy professionals and associated vendors in Wisconsin. DBA's goal is to preserve Wisconsin as "America's Dairyland" and to stabilize and grow the dairy industry and infrastructure in the state.

The Siting Law is Working

Although the purpose of these comments is to discuss the statewide standards in ATCP 51, not Wis. Stat. § 93.90 itself, DBA would like to note that since the Siting Law was enacted in 2006, more than 55 livestock facility siting permits have been issued, and Wisconsin has seen an average annual increase in milk production of 600 million gallons (nearly 2 billion pounds since 2006). Even with that increase in domestic production, Wisconsin cheese makers still import milk to sustain their production goals, leaving Wisconsin dairy farmers with even more room to grow locally.

The Siting Law has provided Wisconsin dairy farmers with a predictable regulatory environment at the local level that allows them to make substantial investments in their businesses to improve cow comfort, animal care and operational efficiencies. Investment in local business means more local jobs, more local income and more local tax revenue that is essential to the economic prosperity of the state, especially in these tough economic times. Wisconsin's dairy industry now contributes \$26 billion to Wisconsin's economy each year, and is one of the only industries in the state to sustain positive economic growth through the recession of 2009, in large part due to the Siting Law.

DBA would also like to note that the Siting Law benefits farms of all sizes in Wisconsin. The vast majority of livestock facility siting permits have been issued to allow expansion of existing family farms. In fact, more than half of the siting permits issued have been for farms with fewer than 1,000 animal units. Without the Siting Law in place, those farms with fewer than 1,000 animal units would not have to comply with the statewide standards for design and construction of manure storage facilities, runoff controls or nutrient management planning. In other words, the Siting Law imposes more stringent standards on the majority of farms receiving siting permits and, as a result, provides increased environmental protection. The Siting Law accomplishes all of the above through the use of statewide standards, and does so without stripping local municipalities of their traditional police power authority.

Political Subdivisions Retain Authority to Regulate Pursuant to Police Powers

Although political subdivisions that wish to regulate livestock facilities must do so through the Siting Law procedure, that procedure provides municipalities with complete authority to plan ahead and enact more stringent standards if such standards are necessary for the protection of public health and safety. As provided in ATCP 51.10(3), if a political subdivision wishes to impose more stringent standards when regulating livestock facilities, it must do so in accordance with the Siting Law. The required procedures are not overly burdensome; they simply require a political subdivision to plan ahead and develop standards that are reasonable and scientifically defensible. DATCP is a valuable resource for local municipalities considering enacting livestock facility siting rules or wishing to implement more stringent standards. DBA recommends that DATCP provide more structured training sessions to allow local leadership to better understand its rights and obligations pursuant to the Siting Law.

Opponents of the Siting Law frequently claim that the law strips local government of its authority to regulate pursuant to traditional police power authority. The Siting Law does no such thing. In fact, outside the context of livestock siting, the Siting Law has no impact whatsoever on existing state or local law; all such laws remain in place and can be enforced by the state or local agency in accordance with the procedures included in those laws.

Similarly, the Siting Law does not regulate water quality, air quality, hazardous waste management, high capacity wells, road weight limits or the use of public rights of way – these issues, and all other issues regulated by state and local government, are left to the entities that have historically regulated them. Nothing in the Siting Law prohibits or prevents state or local government from implementing and enforcing other laws against a livestock facility, and nothing in the Siting Law exempts livestock facilities from compliance with such laws. The Siting Law simply excludes such considerations from the siting process and prevents a siting permit from being revoked based on violations of those other laws.

Existing Statewide Technical Standards are Adequate

The Siting Law was enacted for the purpose of providing uniform statewide standards for application and approval of livestock facilities in Wisconsin. The Siting Law has accomplished this by requiring political subdivisions to regulate livestock facilities, if at all, pursuant to the specific standards included in ATCP 51. Opponents of the Siting Law argue that political subdivisions should be allowed to evaluate livestock facilities based on site-specific concerns and impose conditions on a farm-by-farm basis. These arguments have no merit, as they are in direct conflict with the nature and legislative purpose of the Siting Law. The Siting Law has incorporated by reference a number of statewide technical standards that are used to regulate

livestock facilities in other contexts – these standards are the appropriate standards and they must remain in place and must not be modified.

The Natural Resources Conservation Service (NRCS) has developed a number of national technical standards that DATCP and the Wisconsin Department of Natural Resources (WDNR) have upgraded and adopted to suit specific resource conservation needs for Wisconsin; those standards include NRCS Codes 590, 313, 634 and 635. The standards in the Siting Law require applicants to develop and maintain nutrient management plans (NMP) that comply with NRCS 590; design and construct waste storage facilities that comply with NRCS 313; implement runoff management controls that comply with NRCS 634 and 635; and adhere to appropriate setbacks and odor management plans. These NRCS technical standards have been revised to meet Wisconsin's environmental conditions and are the same standards as those incorporated by reference into the WPDES CAFO rule (Wis. Admin. Code ch. NR 243).

Although NR 243 requires some more stringent criteria for large CAFOs with more than 1,000 animal units (AU), NRCS standards provide the technical basis upon which CAFO livestock facilities are regulated in Wisconsin. Large CAFOs are the most heavily regulated farms in Wisconsin and are required to construct and operate to a "zero discharge" standard. Smaller farms are not held to this same standard, but in effect, the Siting Law requires all livestock facilities subject to it, regardless of size or whether they require a WPDES permit, to comply with the upgraded statewide NRCS technical standards. Without the Siting Law, most farms with fewer than 1,000 AU would not be required to comply with those technical standards without state-funded cost sharing; this means that the Siting Law is actually resulting in more environmental protection, not less, and at a lower cost to the state.

Because livestock facilities are subject to several regulatory schemes in Wisconsin – some administered by DATCP and some by WDNR – it is imperative that the applicable technical standards are consistent across those regulatory schemes. Revising the livestock facility siting standards for nutrient management, waste storage and runoff management would result in inconsistencies between existing administrative rules, creating confusion within regulating agencies, the regulated community and the general public.

The uniform statewide technical standards included in ATCP 51 provide more stringent regulation than the majority of livestock facilities would otherwise be required to comply with. We are unaware of any professional peer-reviewed studies or science-based resource concerns to indicate that the statewide NRCS standards are inadequate; these standards are consistent with other standards imposed on livestock facilities and they should remain in place.

With limited exceptions, most applicants for livestock facility siting approval are required to complete an odor score calculation, and must score at least a 500 to obtain local approval (or 470 with special local approval). Estimated odors from animal housing, waste storage facilities and animal lots are based on specific criteria developed through the Minnesota Offset Model and appropriately account for impacts to the nearest neighbor. Odor mitigation best management practices (BMP) are based on practical, implementable on-farm solutions, and the existing odor score BMP point deductions encourage implementation of cutting edge manure management technologies such as digesters and water treatment facilities. The odor score methodology also encourages producers to develop and implement an incident response plan, employee training plan and odor management plan. The odor score exemption for facilities located at least 2,500 feet from the nearest affected neighbor is appropriate and should remain in place. Because very little scientific data has been generated about air emissions from farms, the Siting Law appropriately limits its standards to odor, and does not venture into the uncertain

and unproven area of regulating air emissions from farms. DBA supports the odor score methodology and it should remain in place.

The Siting Law allows a local municipality's existing ordinance requirements to determine setbacks for livestock structures, but within reasonable limits as outlined in ATCP 51.12. DBA supports the setbacks provided in the Siting Law as a reasonable compromise that involved countless discussions with stakeholders; these should remain in place and not be modified.

Evidentiary Standards are Necessary and Must Remain in Place

DBA is aware that some commenters at the public information sessions have objected to the evidentiary standards that local municipalities must meet in order to deny a siting permit or implement more stringent standards for livestock facilities. DBA disagrees with those comments and strongly believes it is essential to require a political subdivision to establish certain evidence prior to rejecting a siting application or implementing more stringent standards. The evidentiary standards do require political subdivisions to plan ahead and establish a good record, but most other regulatory bodies are required to substantiate a decision to reject a permit application and provide a scientific basis prior to implementing new laws; these are not unreasonable requirements.

Clear and Convincing Information

ATCP 51.34(2) allows a political subdivision to deny a livestock siting application if the application fails to meet the standard of approval in ATCP 51.34(1) or if "the political subdivision finds, based on other clear and convincing information in the record under ATCP 51.36, that the proposed livestock facility fails to comply with an applicable standard under Subchapter II" (emphasis added). The "clear and convincing" standard is a well-worn evidentiary standard in Wisconsin law, and it provides farmers protection against unreasonable and arbitrary decisions by local governments. Recall that the Siting Law was implemented to prevent political subdivisions from denying livestock facility siting permits based on the "not in my backyard" mentality. Without requiring clear and convincing evidence that a livestock facility has not complied with the Siting Law, political subdivisions would again be allowed to deny applications based on a fear of future noncompliance or the simple belief that a facility should not be allowed to operate. Such an outcome is in direct conflict with the intent and purpose of the Siting Law.

Reasonable and Scientifically Defensible Findings

Similarly, if a political subdivision attempts to implement more stringent livestock siting standards than those in the Siting Law, such standards must be based on "reasonable and scientifically defensible findings of fact" that "clearly show that the standards are needed to protect public health or safety." ATCP 51.10(3)(c)-(d). This standard is not overly burdensome; it simply requires a political subdivision to provide a *reasonable* and *scientific* basis for imposing more stringent standards. Like the requirement that a political subdivision provide *clear and convincing* information to demonstrate that a siting applicant does not meet the Siting Law standards, the purpose of this requirement is to protect a farmer from unreasonable and arbitrary standards that it may otherwise have to meet prior to receiving a permit under the Siting Law. The Siting Law protects farmers from a scenario where a local Town Board – consisting of a construction worker, a lawyer, an engineer, a retired nurse and a bus driver – can dream up, without any reasonable or scientific basis, more stringent standards that a livestock facility must adhere to.

Opponents have also argued that the language cited above removes local government's ability to protect the "welfare" of its citizens. The Siting Law does limit a municipality's welfare-based regulatory authority, but only in the context of a livestock siting permit, and only to ensure that standards that are more stringent than the uniform statewide standards are reasonable and based on science. A municipality can show reasonable and science-based risks to public health and safety through objective means such as air emission monitoring, surface and groundwater sampling, or other tangible evidence of health and safety impacts. Welfare-based standards are, by nature, amorphous, and there is simply no way to objectively demonstrate that a welfare-based standard has a reasonable and scientific basis. In enacting the Siting Law, the legislature intended to impose uniform statewide standards for livestock siting; to ensure that outcome, the legislature purposefully limited the implementation of any more stringent siting standards unless those standards were reasonable, based on science, and necessary for the protection of public health and safety.

The evidentiary standards in the Siting Law force political subdivisions to act rationally when faced with local land use issues that can quickly become very personal and could result in emotional decision making where reasoned decision making is necessary. These evidentiary standards are appropriate, they impose no more stringent standards than a court would impose on a municipality, and they must remain in place.

Livestock Siting Application Fee

The Siting Law requires applicants to submit a \$1,000 fee with a livestock facility siting application. This is a hefty fee for a local approval, and it is more than sufficient to provide political subdivisions with resources to conduct an unbiased review of the permit application. Although some commenters have complained that \$1,000 is not enough for a local government to complete a thorough review of an application, this complaint is without merit. In DBA's experience, it is only the hostile communities that believe the \$1,000 fee should be higher, and their interests lie in hiring "experts" to undermine the permit application and delay the process. We also note that DATCP is available to assist political subdivisions with both completeness determinations and reviews of the more substantive portions of siting applications, like the NMP. DATCP does not charge a fee for this assistance.

Procedural Issues of Concern

Although DBA believes that the Siting Law has proven its effectiveness through the continued growth of the dairy industry in Wisconsin and that some of the procedural aspects of the law are working as designed, there are some issues that are currently being litigated that should be resolved with fairly simple revisions to ATCP 51.

Subchapter III of ATCP 51 provides the procedural requirements for submittal, review and approval of a siting application. Although ATCP 51.30(5) requires a political subdivision to determine whether an application is complete within 45 days of receipt, if a political subdivision provides an initial incompleteness notification to the applicant, there is nothing in the rule to compel that political subdivision to timely continue the application review process. In fact, local governments routinely delay completeness determinations of livestock facility siting applications, causing financing uncertainty, contract issues and construction scheduling delays. ATCP 51 should be revised to protect farmers against ill-intentioned delays by providing that if a local unit of government fails to issue a completeness determination within the 45-day timeframe, or within 14 days after the applicant submits additional information requested in an incompleteness notification, then the application is deemed complete. Such a revision would be analogous to

the Wis. Stat. § 281.41 statutory approval language for plans and specifications of reviewable facilities.

Additionally, some language in ATCP 51.10 and 51.34 has been construed as ambiguous, and in fact two issues are currently being litigated at the great expense of the State of Wisconsin, a livestock siting applicant and a political subdivision that improperly included conditions in a siting permit that are beyond the scope of authority provided in ATCP 51. Specifically, ATCP 51.10(1) should be revised to clarify that the only standards by which a livestock siting application may be evaluated are those listed in Subchapter II. Further to that point, ATCP 51.10(3) should be revised to clarify that the universe of criteria to be applied to a livestock siting permit are those included in ATCP 51 Subchapter II, and a political subdivision may only adopt more stringent criteria for those ATCP 51 Subchapter II standards. Such revisions would no more exempt farmers from compliance with all other local ordinances than the rule currently does (see above discussion on police powers).

Similarly, ATCP 51.34(4) should be revised to clarify that a livestock facility siting approval may only be conditioned upon compliance with the standards listed in Subchapter II. These modifications will go a long way toward clarifying the limits of authority granted under the Siting Law, and will help facilitate implementation of the Siting Law as the legislature intended. The legislative history of the Siting Law is very clear that the legislature intended the Siting Law to implement uniform statewide standards for the siting of livestock facilities. Allowing a political subdivision to impose standards other than those specifically included in the Siting Law completely disregards the legislative intent in adopting the law in the first place.

The Siting Law appropriately balances state and local regulation with economic needs of the agriculture industry. Because agriculture is such a prominent industry in Wisconsin, this balance is essential; we simply cannot afford to allow the agriculture industry to wither away. The Siting Law is working as the legislature intended, the existing statewide standards are appropriate and, with the exception of the procedural revisions noted above, 93.90, Wis. Stats., and ATCP 51 must remain in place and must not be modified.

DBA appreciates the opportunity to comment on the livestock facility siting standards.

Sincerely,



Laurie Fischer, Executive Director
Dairy Business Association

Wisconsin Towns Association

Richard J. Stadelman, Executive Director

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March 10, 2010

DATCP

Attention Mike Murray

P.O. Box 8911

Madison, Wis. 53708-8911

Re: Review of Livestock Facility Siting Rule ATCP 51

To DATCP Board and Staff:

On behalf of the Wisconsin Towns Association I respectfully request that the DATCP Board direct the DATCP staff to open up a review of the standards and procedures established under ATCP 51. Our Association stands behind and supports the state livestock facility siting legislation as created in Sec. 93.90 of Wis. Statutes. This section is the result of compromises and give and take in attempting to give certainty and predictability to the siting of livestock facilities, while retaining local control by applying state standards for setbacks, odor, nutrient management, waste storage facilities, runoff management and procedures. A significant part of this agreement was that under Sec. 93.90(2)(c) the department "*shall review rules promulgated under subsection (a) of this at least once every 4 years.*" In our view it is important for DATCP to go through an open transparent process to review the standards and procedures established under ATCP 51. It is particularly important at this time because the initial rules were groundbreaking in many areas of the law and warrant review after the first 4 years of existence.

Some of the following implementation issues as identified by the DATCP staff over the first three years warrant particular attention in our opinion. First, the question of whether more stringent manure spreading criteria should be considered, particularly in areas of the state that have unique soil qualities such as "karst soil." While NRCS 590 was an improved standard over the former nitrogen based standards, the question still remains is public health or safety being protected and is the current rule protecting natural resources and other community interests? We would assert that a panel of experts should focus specifically on any new scientific information on possible standards for manure application in areas of unique soils, such as "karst soil."

Second, while the odor standards in ATCP 51 were ground tested only in a limited fashion when the rules were first proposed, we now have four more years of actual operation and factual history to review whether the ATCP 51 odor standards, which gave great deference to distance, are adequate? Also the question should be asked, whether other practices and best management tools should be included to ensure that odor emissions do not harm public health or safety and protect community interests? We believe that a panel of experts should consider more recent scientific information that has been developed in the past four years, including in neighboring states where odor issues have also been studied.

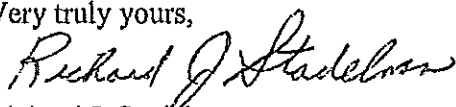
Third, we believe that clarification should be added to the ATCP 51 rule to ensure that local governments maintain their authority enforce other existing state requirements not addressed in the ATCP 51 standards. Sec. 93.90 of Wis. Statutes was not intended to eliminate any other existing water quality requirements for permitted facilities. Further, the law was not intended to limit the local government authority require permitted facilities to meet existing water quality requirements. We urge DATCP to clarify in ATCP 51 exactly how local governments can enforce these other water quality standards through monitoring and enforcement in relation to the facility siting permit. Clarification for all parties would add to the predictability of the law.

Fourth, while the overall procedural requirements and timelines of Sec. 93.90 of Wis. Statutes have worked fairly well over the first four years to carry out this process, we believe that there may be some refinements to the application form to ensure that permitted facilities are not harming natural resources and other community interests. Although the application is lengthy, some additional details may well provide needed comfort for both local officials and the neighboring community that the permitted facility as applied for will not be a detriment for the community and neighbors. One of the procedural limitations in ATCP 51 is the limit of \$1,000 maximum application fee that local governments may require. A modest increase in this fee will assure the local governments can obtain competent experts to review the applications and provide answers to both local officials and neighbors that the application meets the standards of ATCP 51. Having "competent expert review", which costs money, is a benefit to the applicant livestock facility owner. At the minimum the \$1,000 maximum should be adjusted for time since the initial rule was established.

In conclusion, we urge the DATCP board and staff to reconvene a panel of experts to address these issues and other issues that may have been raised during the listening sessions. The original state law contemplated this type of review every four years, and in particular after the first four years of implementation to assure the public as a whole that public health and safety are being protected, and that the standards balance the economic viability of farm operations while protecting natural resources and other community interests. An open and transparent review will reinforce the benefits of the give and take compromises that were intended in the original enactment of this law.

Thank you for your consideration in this matter.

Very truly yours,



Richard J. Stadelman
Executive Director

Haker, Margaret A - DATCP

From: drau tds.net [drau@tds.net]
Sent: Tuesday, March 09, 2010 10:51 PM
To: Murray, Michael R - DATCP
Subject: Siting comments

Hello,

My name is Richard Rau and along with my wife Peggy operate Dic-Wisco Farms in Dorchester. We operate a 1250 cow herd in the northeast corner of Clark County. Our families have been very active in the dairy industry and also local government. Positions include family on county boards, WMMB, Farm Credit, Local village board, four brothers coach at the high school level, church organizations, and we had the honor of being named Wisconsin Farm Family of the year in 1998. I feel I'm in a somewhat uncomfortable position as the proposed North Breeze operation would be only one and a half miles from our operation. I know the North Breeze people and they seem to be hard working honest people and I also know the Little Black people as we operate 1000 acres all around the proposed site. I will comment on what I think is good about siting and also a couple of concerns I might have.

1. We operate in 3 county's and in 6 townships so having uniform standards is something we see being quite important.
2. I believe the rules are important for the future of family farms that have the next generation that would like to join an organization and grow it so that it can meet there financial goals and there personal or family goals.
3. I believe the existing rules have us driving towards a better way. Such as systems to reduce odor, or methods of manure application so that it is of less nuisance to our neighbors. I would caution that to have more restrictive rules quite often puts money in alot of peoples pockets and reduces the actual amount of money we have left to spend on our operation to put improvements in place.
4. I believe the siting rules have actually helped keep Wisconsin's Ag Industry diverse.

My concerns

1. The amount of water that is available in our area is a legitimate concern. I am 54 years old, have farmed in this area for 33 years and know very few farms that have not experienced well issues at some point. In the case of our farm we have been self regulated. Each step of expansion has only occurred as we found more water. Our 1250 cow farm has a total of 8 wells.
2. The rules do allow investors to come into an area and capture the resources of an area that they have never contributed to. The end result seems to be divided communities, bitter neighbors, and a real concern for that next generation of sons and daughters that would like to dairy but don't have the ability to compete with investment groups.

I understand that writing rules is one of the most difficult jobs a person can take on. I appreciate the opportunity to make these comments.

sincerely

Richard Rau

-654-5962

4/28/2010

Haker, Margaret A - DATCP

From: Sarah Lloyd [sarah_lloyd@centurytel.net]
Sent: Wednesday, March 10, 2010 9:33 AM
To: Murray, Michael R - DATCP
Subject: Livestock Siting Comments

Dear Mr. Murray,

I appreciate this opportunity to comment on the Wisconsin Livestock Facility Siting Law.

I have great concerns about the impact that the Livestock Facility Siting Law (LFSL) has had on family farms, rural communities, and the environment. My husband and I dairy farm with his family. We milk 300 cows just outside Wisconsin Dells in Columbia County. I am the President of the Columbia County Farmers Union and currently represent the dairy farmers of Columbia and Dodge counties on the Wisconsin Milk Marketing Board. However, the comments in this email are my own and do not necessarily represent the official position of any organization.

I understand that the LFSL was a reaction to problems that expansions farms were having with local decision-making processes, but I feel that it represents an overcorrection that has completely circumvented local input in many cases and given unfair advantage to large-scale expansions. This overcorrection needs to be brought back into a more moderate position. I urge DATCP to conduct a full review of the LFSL and consider any legislative actions that might be necessary to improve this law and the process for reviewing proposed large-scale operations.

Large-scale animal operations pose great risks to the environment, the agricultural economy, and rural community vitality. Many people and groups are working on documenting the environmental impacts to the air, water, and the land. I want to use this opportunity to highlight the social and economic issues brought up by the LFSL. Currently the social and economic impacts of the proliferation of large-scale animal operations, as facilitated by the LFSL, are not well understood. It is my experience that large-scale operations in most cases work to the detriment of small and medium size farms.

I call on DATCP to develop a plan and process to shed light on the social and economic issues before any more large facilities are allowed to proceed. In this letter I am focusing on the situation in dairy farming, because that is what I know best, but the issues and concerns apply to all types of farms.

The following questions and issues should be included in a study of social and economic impacts:

What is the impact of large-scale animal operations on land sale prices and rental rates locally and regionally? Do large operations cause upward pressure on sale prices and rental rates, putting land out of reach of other, smaller farms?

How do large-scale farms impact local property taxes? For municipalities, does it make more sense to have 100 80-cow farms or 1 8000-cow farm? Is there an impact on land valuation for surrounding property owners?

Large farms, in the case of dairy, represent a higher volume of milk in one place. What does

this mean for milk routes and access to processors? Anecdotally I have heard cases where smaller farms have been dropped from milk routes in favor of larger farms down the road.

What impact do large-scale operation have on the larger agricultural economy? The vitality of the agricultural supply industry is very important. Using the same example as above, are the economics and jobs supported by the local and regional supply industry (i.e. technical services, crop inputs, feed, implement dealers, breeding/genetics companies, etc) better served by 100 80-cow farms or 1 8000-cow farm?

Wisconsin dairy farms employ many people directly on the farm, outside of family labor. We have seen an increase in the immigrant labor force on Wisconsin dairy farms. Larger farms are more dependent on immigrant labor. What does the increase in reliance on immigrant labor mean for the social and economic vitality of rural communities? What does it mean for the resilience of farms given potential changes in immigration policy at the federal level? Will this work force be available to Wisconsin farms in the future?

How does the increase in large-scale farms impact Wisconsin's "brand"? For example, Wisconsin dairy farmers have spent millions of dollars through the check-off dollars going to the Wisconsin Milk Marketing Board developing the Wisconsin cheese "brand." Wisconsin is known nationally and internationally for quality and artisanal cheese. As consumers are becoming increasingly interested in where their food comes from Wisconsin has an exciting and compelling story to tell about our wide and diverse distribution of farm sizes and farm systems. This growing market is a great opportunity for the vitality of the Wisconsin dairy industry. But if we allow the unchecked growth of large-scale operations at the expense of small and medium size farms, we stand to lose the very base that our "brand" stands on.

There seems to be a common viewpoint that we have to allow unchecked expansion of farm size because we need to make sure that we maintain (and increase) the volume of milk produced in Wisconsin to maintain our dairy infrastructure. I challenge that assumption. According to figures just released by the USDA Wisconsin produced just over 25 billion pounds of milk in 2009. And the average Wisconsin cow produced just over 20,000 pounds of milk a year. So to maintain this 25 billion pounds we need 1,250,000 cows. Here is an example of the different "ways" we can produce that 25 billion pounds of milk in Wisconsin:

+12,500 dairy farms with an average herd size of 100 cows (basically what we have now).

+2,500 dairy farms with an average herd size of 500 cows

+1,250 dairy farms with an average herd size of 1,000 cows

+250 dairy farms with an average herd size of 5,000 cows.

There are heavy implications for communities, the economy, people, and the land depending on what scenario Wisconsin chooses to set its sights on. Unchecked expansion is not the only solution and in fact may work to the detriment of the broader agricultural economy in the long-run. We need to work to produce the markets and the conditions that support small and medium size farms. I call on DATCP to work on this, taking the long view.

And on a final separate note I have concerns about how the effectiveness of the LFSL is being measured at this point. I have heard statements from DATCP representatives that use the logic that because there have been so few contested cases that the law is a success. I do not accept this logic. How many communities or citizens wanted to contest a proposed large-scale operation at the

local level or appeal a decision by the state board but looked at the process and decided that they did not have the resources (time, money, legal representation, local zoning or ordinances) to do this? Simply counting the number of contested cases is not sufficient.

Sincerely,

Sarah Lloyd
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sarah_lloyd@centurytel.net

Haker, Margaret A - DATCP

From: Severin Swanson [severinswanson@yahoo.com]
Sent: Wednesday, March 10, 2010 4:12 PM
To: Murray, Michael R - DATCP
Subject: Comment on LSL

My name is Severin Swanson living on 50 acres in Rosendale Township, about 1 mile, usually downwind, from the Rosendale Dairy. I am not involved in the dairy business. I would like to avoid repeating all the things you have already heard about the LSL but it is difficult to talk about it without mentioning its principal effect, that is, the legal force that makes industrial "farming" possible.

It is the tyrannical nature of the siting law to which I object, the power of the state to strip local authority of its ability to act in the name of the citizens to protect our vital interests: land, air and water. If we can't do it, we must rely on the DNR which seems to be unwilling or unable to carry out its mission. Under permitted assault and without defenses, rural Wisconsin vulnerable to anyone with enough money to exploit it regardless of effects on air and water quality or karst features. CAFOs are essentially self-monitoring, an arrangement thus making the folks in the dairy barn the new stewards of the environment. The LSL is defective in that it enriches the dairy business while it impoverishes the environment and the living conditions of the citizens. The siting law is antithetical to a clean and green Wisconsin because it reverses the reasons for the existence of the DNR and the DATCP whose protective role against pollution has been changed to facilitate industrial agriculture, a new role that also facilitates unavoidable degradation of the general welfare, WPDES and NMP permits notwithstanding.

The regulations contained in the permits that are intended to protect the environment are not equal to the task; the lack of adequate enforcement means that preventive restrictions do not match the threat. The proposal to inflict a generic LSL on society making it even easier to pollute seems to be based on the assumption that soil depth, water table and karst features are everywhere the same. This is a false notion and suggests that the DBA writes the laws favorable to its "bottom line", as if it were the only line, and expends considerable energy in convincing the population that the logic of precaution must be reversed.

I agree that there should be some reversal before the next 200 CAFOs are permitted. I have noticed certain events in the evolution of the Rosendale Dairy that makes me wonder about so many contradictory decisions. I have observed

- a) the concept of industrial-type agriculture is accepted before the consequences are clear,
- b) building a CAFO takes place before permits are issued,
- c) ground testing takes place after the building is constructed on it,
- d) the permitting agency takes no initiative; decisions are made by the permittee with statutory approval,
- e) the monopoly of CAFOs is encouraged in order to maintain diversity,
- f) the cost of environmental clean-ups is preferred to the cost of prevention,
- g) CAFOs are justified as job creators while they act to eliminate the jobs of numerous smaller producers,
- h) CAFOs are described as a boon to local economy but research says otherwise,
- i) CAFOs help townships by increasing the tax base but deteriorated living conditions depress property values,
- j) the DNR secretary, serving at the pleasure of the governor, is explained as being responsive to voters.

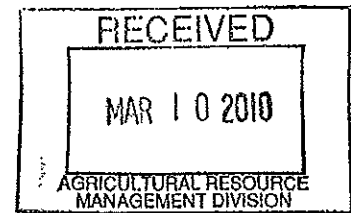
It would appear that a brave yet ironic new world is upon us. Must the environment be damaged before it can be conserved? Of course; our system is competitive; for every winner there must be a loser. Every CAFO assured by the LSL will be a win for the DBA and a loss of quality of life for residents. The LSL is about the economy; to think ecologically is fiscally stupid. However, the words of a far-thinking advocate for Wisconsin, Gaylord Nelson, are still germane: business is a subsidiary of the environment, not the reverse. I am sure that he would call the LSL a step backward in time and vision. He would echo Thoreau's questioning of the value of a balanced budget if the essentials of life are toxic and state uninhabitable. Carried to its logical conclusion, the LSL is taking us there. But who cares about logic when the pollution smells like money?

Administrative jargon likes to include the word "predictable". I close with a prediction made two years ago by a journalist which seems like the quintessential contradiction to me: in order to breathe new life into a small town, 8300 cows will come and 3500 surrounding acres will become spreading fields. Rosendale Township will become ground zero, with the distinction of being the largest CAFO and the manure capital of the state. Investors will profit handsomely; the rest of us will be dispossessed, victims of foul air and contaminated water, if there is any water left in the aquifer. Our houses will become walkaways.

The allusion to Hiroshima is not without relevance. A horrible bomb was necessary to do it there. In Wisconsin, all it took was a few strokes of the pen and an LSL. Now that's progress!

03/04/10

DATCP, Attention:
Mike Murray P.O. Box 8911
Madison WI 53708-8911.



To the Staff of the Livestock Siting Operations:

You are only doing your job by holding these listening sessions. When you get done with the sessions, I and many other individuals who are actively supporting change in the rules and law governing Livestock siting want you to do more than just tweak them. People have a natural tendency to not speak up when they should speak up, when it counts. Now when it is time to speak up some won't because they say they don't know enough, some will not speak up because of fear of intimidation, others because they fear for their livelihood. I know personally three individuals who fit the last two state of affairs. It is always difficult to legislate against an industry that provides you with your food.

When I first heard about the drive in the late 90's and the early two thousands to create a livestock siting law, I just knew that it would be a good thing. It would remove much of the conflict between farmers and their neighborhood during the farmers growth period. Was I ever wrong when I saw the rules and law that totally removed almost all control from local government in 2008. With the expose in the State Journal, it can be seen the manipulation behind the scenes of the development of the rules and law. What is legal is not always correct, what was passed just 6 short years ago is not correct. Legislation should not benefit private industry at the expense of public health and safety.

Sure there are the words in State Statute 93.07 (1) and 93.90 (2) and Chapter ATCP 51 that allow for more stringent local standards based on reasonable and scientifically defensible findings of fact, but to create and develop those more stringent findings is like squeezing a camel through the eye of a needle. To get those same standards approved by your staff with the pressure put on them by the special interest groups is again like squeezing that same camel through the eye of another needle.

So what scientific basis is there for having setbacks for livestock facilities set at 350 feet? I am sure that this is an arbitrary decision made by the drafters of the law and bill. Using a set back from property lines means that some other method must be used to prevent conflict between the neighborhood and factory farms.

That method is called the Predicted Odor Score from Livestock Structures. But first let us take a look at the proposed factory dairy that wants to build in our area. They want to put 4000 cows on 132 acres. If we would take our township and moved it to the great state of Iowa, were the minimum separation for a new confinement CAFO or expansion after March 1, 2003 is 3000 feet for lagoons and 2375 feet for livestock buildings for 3000 AU or more from a residence. Our township would have 35 residences in that buffer zone. In addition water use

permits are required for more than 25,000 gallons of water or more of daily use.

If we dropped our township into the show me state of Missouri, a 4000 cow Factory Farm falls into Class IB. There the buffer distance from residences is 2000 feet. There would be 17 residences within the buffer zone effectively preventing location of this CAFO in that state. In addition CAFOs there pay into an indemnity fund of 10 cents per animal unit. A year ago in Missouri a circuit judge's ruling in a lawsuit created a two-mile buffer around a historic site to keep it out of range of a proposed factory farm, when the DNR said that the property line was sufficient. What a bureaucratic department put into place, the people through the justice system changed. Currently the Missouri Attorney General is attempting to overturn that decision. His campaign fund received \$12,000 from the special interest groups supporting CAFOs.

What about Illinois, who modified their law last in 2007 and who has rejected almost ¼ of the applications for CAFOs compared to Wisconsin's proud record of none. Their rules provide for a graduated scale of setback distance from occupied residences. Using that scale 19 residences fall within the zone of no building a CAFO of 4000 cows.

The Gopher state allows the local government to set the rules for Livestock Siting. Even at the lowest county level of 1000 feet there would be 10 active residences within that buffer zone. Some of the Minnesota counties limit the number of AU in one location, which is good for many reasons, including environmental, economic and social reasons. The only setback that could be found for less than 1000 feet was in Fairbult county for 500 feet from cemeteries. It would be presumed that is because those people do not complain anymore. Some Minnesota counties will allow expansions within the buffer zone only if signed waivers are obtained. Some have different setbacks for expansions and for new construction. Goodhue county, its county seat is Red Wing, uses the UM Offset odor model for determining livestock setting of new or expansions and sets the distance at 99% odor free.

The heart and soul of the Wisconsin Livestock Siting rules and laws is the UM Offset odor model. In the abstract of the J Air Waste Manag Assoc. 2005 Sep;55(9):1306-14, the authors and developers of the UM Offset odor model say, "The observations additionally indicate that predicted distances to obtain 94 and 91% annoyance-free frequencies may be large enough for some farms, but for other farms, greater distances may be needed. At four sites, a significant difference was found (*between predicted and actual odor*), and at three of these the difference was considerable."

In the J. Dairy Sci. 90:2047-2051. Large-Scale Dairy Operations: Assessing Concerns of Neighbors About Quality-of-Life Issues, the authors Recommendations: Large-scale(600 cows) dairy operations should be located in areas where there are few, if any, current neighbors and where future residential development is least likely to occur.

Using the Odor Setback Guideline for Dairy Facilities from Purdue University for 4000 cows, using the best odor control technology, and the lowest citizen population, the recommendation is not to build any closer than 2312 feet to a residence, using what is actually in the original proposed Factory Farm application in our township, the recommendation jumps way more than 2 times that distance to 5066 feet.

When the most recent Offset Model from Minnesota is used for the proposed CAFO, the number it cranks out is almost 3000 feet at 2939 feet at the 91% level, which is the lowest fixed level in the program.

The Wisconsin Odor score calculation is the manipulation of three different areas. The first is the separation score found in table B. Certainly the amount of time a residence is going to be affected is directly related to distance from, direction from, and the size of the CAFO and its practices. What "scientific evidence" is there to use density to determine the odor score? How scientifically were the odor generation numbers developed? How scientifically were the multipliers developed? And how scientifically were these combined into the Wisconsin Odor Score Model? Al Gore's Inconvenient Truth is an example of how scientific evidence can be manipulated and used wrongly.

The Odor score calculation spreadsheet has been manipulated in its development to enable Factory Farms to be placed in areas where they have absolutely no business belonging. Using Wisconsin's Odor Control spreadsheet, it was possible to garner an Odor score with 6 or more neighbors living with 1100 feet of any building or manure lagoon to pass for the 4000 cow factory farm wanting to locate in our township, with minimal control practices. With only 5 neighbors, it could move 200 feet closer. The former distance is less than 2 blocks, and the latter is less than a block and half. The question then needs to be asked and answered, why does Wisconsin allow the siting of such mega factory farms in areas where those other states do not?

Another item that needs correcting is when the proposed CAFO does their mapping. They like to make all measurements from the CENTER of the facilities. The largest CAFOs sites approach 1/2 mile in distance. This would effectively reduce the various measurements they must make by 1/2 the diameter of the facility site. We consider ourselves in a city, or property when we are just past the boundary, not when we are in the center of that city or property.

When calculating the odor score, one very important structure is ignored. It is defined as a livestock structure. Table A is Predicted Odor from Livestock Structures. Throughout the rest of the application and law it is used in the form of "from livestock structures". So what is that structure? It can be found in the definitions 51.01(20), called feed storage facility. It is the only item not included in the odor score calculation.

From the Dairy Odor Management & Control Practices Bulletin University of Idaho: Odors from dairy originate from three primary sources: manure storage

working on farm operations. According to the Center of Disease Control, 19.9% of all work related asthma attacks are caused by air pollution, dust and molds. Those that work on CAFOs are exposed to this environment, but so also are those close neighbors and their family's.

This law has certainly led to a boom of CAFOs, when will the bust occur? When will it stop? It has been fueled in part by Dairy 2020, and the Dairy Farm Modernization and Expansion bill. Our memory is short because these same types of laws and incentives helped cause the farm crisis of 1980 and this same type of Federal legislation caused the recent mortgage meltdown. We have about 12,500 farms now producing with 1.25 million cows. For those on small farms, 1000 cow or less and support no change in the rules and law, should realize that it will only take 250 Factory Farms with 5000 cows each, like the one that wants to build in our township, to have that many cows. Will Wisconsin then continue to be the proud Dairy State, with California style farms and their problems or like New Mexico and Idaho with their California style problems? Will Wisconsin's Happy Cows make the Wisconsin type cheese that we all love ten years from now?

You, the staff of Livestock Siting, need to listen to the voices in Wisconsin and take precautions against listening only to an extremely small, but extremely powerful special interest group. The law and rules need more than just tweaking, you need to bring to the table more than a special interest group to improve this law and its rules. Ultimately you need to make recommendations on CHANGING the law legislatively.

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715- 678-6140

3 attachments

CC

DATCP Board
PO Box 8911
Madison, WI 53708-8911

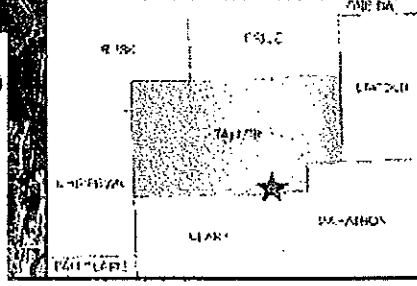
State Representative Mary Williams
Room 17 West
State Capitol
P.O. Box 8953
Madison, WI 53708

State Senator Russell Decker
Room 211 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882



Illinois Setbacks 5600 AU Low Population
 Less than 10 residents. 1/2 mile + 220 feet/1000
 AU over 1000 AU = 2332 feet

Illinois Setbacks 5600 AU High Population
 area more than 10 residents 1/2 mile + 440
 feet/1000 AU over 1000 AU = 4664 feet



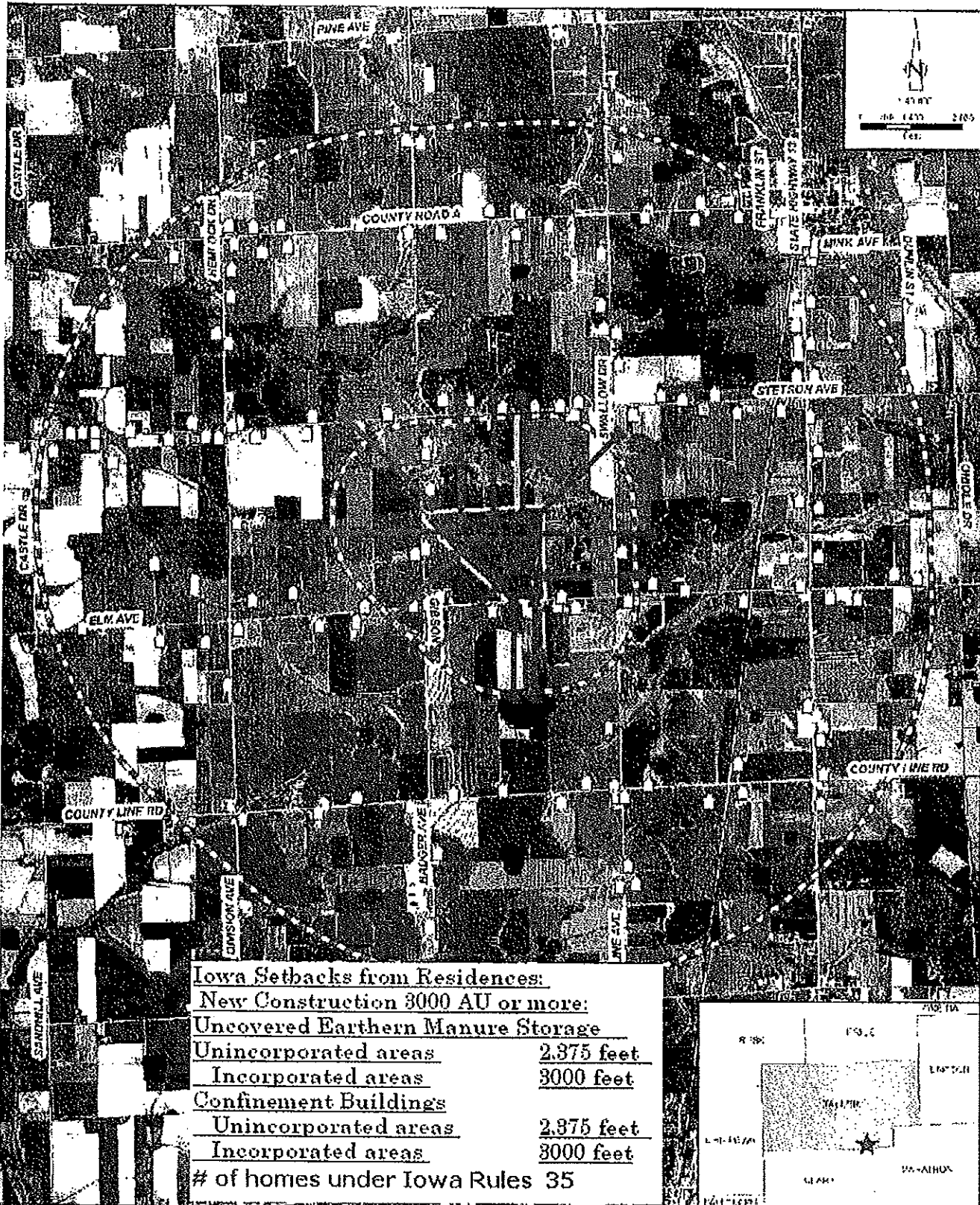
**# of Residence under Illinois
 Reg 19**

Legend

- House
- Farm Location
- Potential Stream
- Interim Stream
- Surface Water
- Proposed Permitted Features
- Proposed North Breeze Dairy Site Location
- 2500' Easement
- 2-Mile Radius

None of the buildings shown are owned by the applicant nor are any buildings excluded from odor score calculations

figure 1
 Aerial Photograph
 Proposed Site Location
 North Breeze Dairy
 Taylor County, Wisconsin



Source: USDA NRI PLU Zone 15H

Legend

- House
- Farm Location
- 2500-Foot Radius
- 2-Mile Radius
- Personal Stream
- Intentional Stream
- Surface Water
- Proposed Farmstead Features
- Proposed North Sleeze Dairy Site Location

None of the buildings shown are owned by the applicant and many buildings are excluded from water score calculations

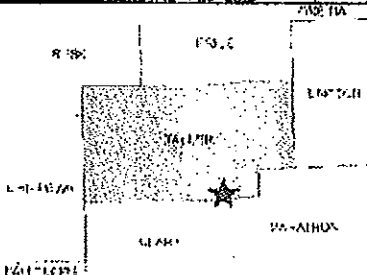


figure 1
Aerial Photograph
Proposed Site Location
North Breeze Dairy
Taylor County, Wisconsin



Source: USDA NMP L2M Zone 16N

Legend

- House
- Farm Location
- 2500 Foot Radius
- 2-1/2 Mile Radius
- Perennial Stream
- Intermittent Stream
- Surface Water
- Proposed Farmstead Features
- Proposed North Breeze Dairy Site Location

None of the buildings shown are owned by the applicant nor are any buildings included from other score calculations.

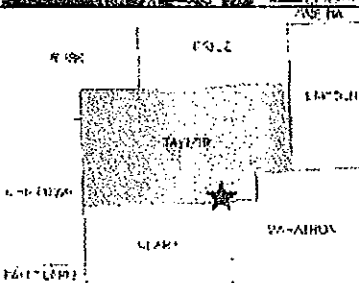


figure 1
Aerial Photograph
Proposed Site Location
North Breeze Dairy
Taylor County, Wisconsin