

Heaton-Amrhein, Jennifer A - DATCP

From: Jordanna Robinson <starrwool@gmail.com>
Sent: Tuesday, August 20, 2019 3:44 AM
To: DATCP Livestock Siting Comments
Categories: Green Category

Hi my name is Jordanna.

I read this article and I found it very annoying that people with treat farmers that way. In my opinion, that would be considered discrimination against the farmer. With God's help they feed our state and thats how people treat them. The smell how stupid! I get that some farms dont take care of their farms very well. They are the one that ruin it for everyone else. Thanks Jordanna of Camp Douglas Wi.

Heaton-Amrhein, Jennifer A - DATCP

From: Tony Betley <tbetley@icbk.com>
Sent: Friday, August 23, 2019 4:11 PM
To: DATCP Livestock Siting Comments
Subject: ATCP revisions comments-opposition to proposed changes

Categories: Green Category

8/19/2019

Tony Betley
4212 Talmadge Rd
Eau Claire, WI 54701

To Whom it may concern,

I am writing you in **opposition** of any proposed changes to the current being considered for Wisconsin's "Livestock Facility Siting Standards" or ATCP 51. My passion and career are in the dairy industry and in particular agricultural lending. My family of four live in Eau Claire County are concerned that the newly proposed changes could be detrimental to the family farms of Wisconsin and to my family personally. Those same farm have made this the best place to live in these United States. They are the very "fabric" that make up this state. While I understand the proposed changes are still in the public comment section I want to share some of my concerns:

FARMER INPUT

The proposed rule fails to incorporate farmers' feedback throughout the process. When similar changes were proposed in 2017, the state Department of Agriculture, Trade and Consumer Protection (DATCP) board decided not to move forward without more input. Although input was gathered, it has been ignored. Farmer input should have already been incorporated into the rule draft before the public hearing process.

ECONOMIC IMPACT

DATCP'S economic analysis undervalues the true cost of the rule's impact on farmers — most notably the chilling effect it would have on Wisconsin's dairy community. It would make it difficult, not impossible, for some farmers to grow their current farms and build new ones.

LEGISLATIVE INTENT

The proposed rule does not meet the legal requirements of the livestock siting law, which dictates that the rules must be, among other things, practical, cost-effective, science-based and objective. The intent of livestock siting is to create fair and uniform standards. The proposed changes run counter to this.

RULE-MAKING PROCESS

The proposed new rule also runs counter to a 2011 state law, Wisconsin Act 21, which requires all administrative rules and any other proposed farm standard to be grounded in clear statutory authority. Some of these changes are not.

ODOR MANAGEMENT

The proposed rule abandons the current odor management standard for an unproven and extreme setback-based system that would be completely unworkable in rural Wisconsin. New setback distances would be measured from property lines. Logically, the current system considers the location of someone who can actually perceive an odor on a continued basis.

RUNOFF MANAGEMENT

The rule change goes beyond DATCP's authority by coming close to establishing the zero-discharge standard enforced against confined animal feeding operations for farms covered by livestock siting. The authority to regulate CAFOs rests with state Department of Natural Resources. Blurring the lines between these two permits and categories of farms undermines the reasoning behind having a separate set of livestock siting regulations.

EXISTING RULES

Livestock farms are already heavily regulated by a host of state laws, administrative rules and a growing number of local regulations. Some of the newly proposed standards appear to be inconsistent with other existing regulations. Finding a consistent path through these regulatory layers is already one of the biggest challenges for farmers, who shouldn't have to deal with even more complexity. Enforcement of the existing rules is sufficient.

LOCAL CONTROL

Livestock siting came to be a decade ago when local governments were throwing up sporadic roadblocks to farmers. This made Wisconsin a patchwork of regulations, giving farmers little certainty and turning the process into emotional ordeals driven by uninformed opinions and local politics. Communities were divided and farmers' reputations were ruined. We cannot go back to that unproductive time.

Thank you for considering my wishes,

Tony Betley
715-572-8155



Tony J. Betley
Investors Community Bank
Vice President-Sr. Agricultural Banking Officer
C ~ 715.572.8155

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Heaton-Amrhein, Jennifer A - DATCP

From: Jim Smidel <jsmidel@icbk.com>
Sent: Wednesday, August 28, 2019 12:03 PM
To: DATCP Livestock Siting Comments
Subject: Concerned Dairy Farmer
Attachments: Jim Smidel - Concerned Wisconsin Dairy Farmer.docx

Categories: Green Category

Hi,
Please see attached letter regarding the siting rule changes.

Thank you for your time.



Jim Smidel
AVP- Ag Banking Officer
P ~ 920.686.5681
C ~ 920.609.8551
F ~ 920.686.5688

InvestorsCommunityBank.com

2400 S. 44th Street, P.O. Box 700, Manitowoc, WI 54221-0700

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Jim Smidel- Brothers Smidel Farms LLP
E1902 Hwy 29
Kewaunee, WI 54216

To Whom it may concern,

I am writing you in **opposition** to the proposed changes being considered to the current Wisconsin's "Livestock Facility Siting Standards" or ATCP 51. I have been a lifelong farmer in this state and I am proud of the advances in the dairy industry has made that make our state America's Dairyland. Our state agricultural infrastructure is the best in the nation and probably in the world.

I am in a partnership with my two brothers and we milk about 210 cows. We farm just like the large farms, with a free-stall barn, milking parlor and manure pit. Our farm will not survive if it is subjected to following your setback rules for manure storage. We would have to buy land just to build another manure pit if not grandfathered in. Purchasing land or building a new manure pit is not possible with our current equity and cash flow.

While I understand the proposed changes are still in the public comment section I want to share some of my concerns:

FARMER INPUT

The proposed rule fails to incorporate farmers' feedback throughout the process. When similar changes were proposed in 2017, the state Department of Agriculture, Trade and Consumer Protection (DATCP) board decided not to move forward without more input. Although input was gathered, it has been ignored. Farmer input should have already been incorporated into the rule draft before the public hearing process.

ECONOMIC IMPACT

If the proposed set backs are put into law, DATCP will be driving dairy farmers out of this state and the ag infrastructure will follow. One in four jobs in the state is related to Agriculture. Do you want to be responsible for the economics of this state going the wrong way?

I am also an Ag Lender with investors Community Bank in Manitowoc. I know the economic struggles of the dairy farmer because I analyze it every day for my customers and for my own farm. Most farmers are on the financial edge already and if you make regulations more difficult to comply with, they will give it up or move to another state.

Please listen to a farmer before you consider proposing law that may be detrimental to their livelihood and detrimental to our great State of Wisconsin.

Jim Smidel- Concerned Dairy Farmer

920-609-8551

Heaton-Amrhein, Jennifer A - DATCP

From: Tim Strobel <Tim@rosylane.com>
Sent: Wednesday, August 28, 2019 3:24 PM
To: DATCP Livestock Siting Comments
Subject: Rule ATCP 51 comments

Categories: Green Category

Hello. My name is Tim Strobel and I am a partner at Rosy-Lane Holsteins LLC. I have concerns about how the proposed rule changes might affect the future growth of our business. After all, dairying is a business like any other, and without growth opportunities many businesses fail. There are many aspects included in the proposed rule change that I do not agree with, but I will focus here on two items that particularly concern me. The current rule was written to protect the future of the dairy industry. This version looks to undermine that purpose.

The first one would be the setback regulation from property lines versus the traditional setback to residence. There are way too many different situations where this could come in to play to put a blanket policy in place. There might be a property line nearby, but no houses for miles. I struggle with the logic of the setback proposal. This would make any growth impossible for many farms including ours. We have worked tirelessly to build positive relations in our community without mandatory rules.

The second item of greatest concern to me is the proposal to eliminate VTA's. I am very sensitive to this topic already because in the last 15 years we have been forced to change our feed leachate system three times. I believe this last version, which works very well, is logical and effective at keeping our waterways clean. We are daily collecting the feed leachate and pumping it to the lagoon. This is concentrated fluid, but at low volumes. In the event of precipitation the first flush is caught and sent to the lagoon. This fluid contains some washed down leachate but is mostly rain water. The remaining precipitation is then sent to our VTA which was described as "the best I've seen" recently by an engineer out to shoot some grades. This is basically straight rain water which is all run through a grass filter. It seems like a total waste to me to put rain water in a lagoon, call it manure and pay to have it trucked out across our highway system to an even farther field than before because of the increased volume in the lagoon. Not to mention now the lagoon is probably too small for 180 day storage rule. All this to capture rain water off plastic, concrete and a limited amount of exposed feed seems like it's going too far for common sense.

Hopefully through this explanation and that of other producers in the state you will better understand the additional unnecessary challenges you would be placing on farm businesses with the proposed rule. Thank you for taking the time to read my input.

Heaton-Amrhein, Jennifer A - DATCP

From: Scott Schroeter <sschroeter@icbk.com>
Sent: Friday, August 30, 2019 4:15 PM
To: DATCP Livestock Siting Comments
Subject: ATCP revisions comments-opposition to proposed changes

Categories: Green Category

8/30/2019

Scott Schroeter
835 N 5th Street
Manitowoc, WI 54220

To Whom it may concern,

I am writing you in **opposition** of any proposed changes being considered to the current Wisconsin's "Livestock Facility Siting Standards" or ATCP 51. My passion and career are in the dairy industry and in particular agricultural lending. My family of three live in Manitowoc County. I am concerned the newly proposed changes could be detrimental to the family farms of Wisconsin and to my family personally. Those same farms have made this the best place to live in the United States. They are the very "fabric" that make up this state. While I understand the proposed changes are still in the public comment section I want to share some of my concerns:

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Thank you for considering my wishes,



Scott V. Schroeter
AVP - Ag Banking Officer
P ~ 920.686.5627
M ~ 920.918.7401
F ~ 920.686.5689

InvestorsCommunityBank.com

2400 S. 44th Street, PO Box 700 Manitowoc, WI 54220

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Heaton-Amrhein, Jennifer A - DATCP

From: David lee Schneider <davidleeschneider@yahoo.com>
Sent: Friday, August 30, 2019 6:34 PM
To: DATCP Livestock Siting Comments
Subject: ATCP 51

Categories: Green Category

DATCP, please do NOT impose the new changes to ATCP 51.

I am a farmer, and this negatively affects me and my farming operations.

David Lee Schneider

[Sent from Yahoo Mail on Android](#)

Heaton-Amrhein, Jennifer A - DATCP

From: Dale Wester <westdale@centurytel.net>
Sent: Saturday, August 31, 2019 9:41 AM
To: DATCP Livestock Siting Comments
Subject: Changes to ATCP 51

Categories: Green Category

To whom it may concern:

I would urge you not to implement the proposed changes to ATCP 51 . It is inconsistent with some current rules and not uniform in application for all sizes of operations. We must allow for flexibility in expansion projects and plans for economic, weather impact, and market impact . We now have a lot of non farming people proposing regulations on farming practices currently

being used to produce the safest and most abundant food supply in the world. We must protect this minority of farmers from having their hands tied by well intended but over reaching regulations.

Dale E. Wester

Heaton-Amrhein, Jennifer A - DATCP

From: Bri Brunclik <bbrunc9@gmail.com>
Sent: Tuesday, September 3, 2019 7:10 AM
To: DATCP Livestock Siting Comments
Subject: Revisions

Categories: Green Category

Please reconsider the revisions to the ATCP 51. Commodity prices have been hard enough on the hardworking farmer and these revisions will only continue to hurt farmers, of all sizes. Help the industry, dont hurt it.

Heaton-Amrhein, Jennifer A - DATCP

From: Chuck Bolte <cbolte@agsource.com>
Sent: Tuesday, September 3, 2019 7:12 AM
To: DATCP Livestock Siting Comments
Subject: Comments attached on Draft ATCP51
Attachments: ATCP51 Comments.docx

Categories: Green Category

Chuck Bolte
NMP-GPS Manager
AgSource Laboratories
715-490-1011
cbolte@agsource.com



September 3rd, 2019

Chris Clayton, livestock facility siting program manager
Bureau of Land and Water Resources
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

Re: Comments on the 2019 hearing draft of ATCP 51

Dear Mr. Clayton:

In 2017, a very similar draft was presented to the DATCP board for review. The board decided not to move that draft forward to a public hearing. Instead, members asked department staff to do two things: 1) gather more stakeholder input and 2) analyze the impact of proposed new setbacks on farms that were previously permitted under the livestock facility siting rule. The department has failed to follow the board's direction and it is very obvious that the department has staff that are trying to craft their own rules outside of direction of the board and the legislature.

In a recent letter to legislative leadership, Secretary-Designee Brad Pfaff highlighted the meetings that were held to gather additional stakeholder input. Although those meetings occurred, the department ignored it and the input from those meetings. Then, the department reconvened the previous Technical Expert Committee (TEC), which had no farmer participation and very little industry input, to review a handful of issues in an abbreviated fashion. Throughout this flawed process, the 2017 draft language was used as the starting point for discussion. Not surprisingly, at the end of this process the department forwarded a rule to the DATCP board that is very similar to the 2017 version. Department staff again did not follow instructions from the board or legislature.

The department's failure to test the impact of the proposed new setbacks is similarly disappointing. These setbacks would be a massive shift in the method used to site new and expanding livestock farms. If not well reasoned and tested, these setbacks could be an obstacle to the success of livestock agriculture in Wisconsin. Additional testing is imperative to ensure that we are not setting an unrealistic and unworkable standard to the detriment of animal agriculture in our state.

At the July 2019 board meeting, department staff acted as if it would be impossible to do this sort of analysis and, worse yet, that they had never been directed by the board to perform one. It is true that each individual farm project will be different, which would make testing all the previously approved projects a long and difficult process. Department staff failed to do their job.

The legislative intent of livestock siting is to create fair and uniform standards for siting new or expanding livestock farms across the state. The law requires the department to promulgate rules that are:

1. Protective of public health or safety
2. Practical and workable
3. Cost effective
4. Objective
5. Based on scientific information that has been subjected to peer review
6. Designed to promote the growth and viability of animal agriculture in this state
7. Designed to balance the economic viability of farm operations with protecting natural resources and other community interests
8. Usable by officials of political subdivisions — Wis. Stat. § 93.90(2)(b)

Additionally, the rules for livestock siting are supposed to be reviewed every four years. The legislative intent is to ensure that ATCP 51 keeps pace with changes in technology and agricultural practices. Moreover, changes in Wisconsin law rooted in 2011 Wisconsin Act 21, require all administrative rules to be grounded in clear statutory authority.

My areas of concern with the hearing draft:

Odor management and setbacks

The proposed rule would abandon the current odor management standard, which relies on an odor score along with setbacks, in favor of a new system that relies on drastically increased setbacks with the possibility of credits for certain odor control practices. This is the most significant change made in the hearing draft. It is noteworthy that the origin of this radical change was DATCP staff, not the farming community, public concerns or the TEC. The 2015 TEC Report made several specific recommendations on how to update and improve odor scoring. It did not recommend the wholesale abandonment of the system. This was done by staff and was included in the hearing draft they submitted to the DATCP board in 2017.

The threat the expanded setbacks pose to the growth of livestock agriculture is exacerbated by having distances measured from property lines, not from a person who can actually perceive an odor. The current odor scoring system is measured from the location of the nearest odor receptor, such as a neighboring residence, which makes perfect sense to preemptively address a concern.

Runoff management

Changes to the rules would come very close to establishing a de facto effluent limit for farms covered by livestock siting. Regardless of the arguments on either side of this shift in policy, livestock siting legislation was not meant to duplicate CAFO regulations. Blurring the lines between these two permits and categories of farms in this rule revision undermines the reasoning behind having a separate set of livestock siting regulations. There is also a legal consideration: DATCP lacks the authority to establish such a limit; this duty has been expressly delegated to DNR, and any attempt to undermine that delegation would be contrary to law.

Consistency with existing standards

There is a concern that some of the new standards proposed in the draft rule are inconsistent with the runoff standards already found in other parts of the administrative code (namely ATCP 50, NR 151 and NR 243). There are similar concerns about some of the provisions dealing with manure storage and, of course, the newly proposed setbacks. Without dwelling on all the inconsistencies, it is easier to emphasize the value of consistency.

Agricultural facilities are already heavily regulated by a host of state laws and administrative rules. Navigating these different layers of regulations can be one of the chief hurdles farmers face. Where possible, livestock siting should be consistent with other areas of regulation. ATCP 50 and NR 151 regulate runoff management and manure application. The state's permitted CAFOs are accountable to the standards found in NR 243 and the federal Clean Water Act. The DNR has existing standards meant to be protective of groundwater and surface water. Adding another layer of complexity to this already confusing and duplicative set of regulations would run counter to the siting law's legislative intent.

Broadened local control

Several changes in the hearing draft would expand local control. For example, we see new sections on monitoring compliance being added to ATCP 51.14, 51.16, 51.18, 51.20 and 51.34. First, increasing the opportunity for local governments to monitor compliance in each of these sections is duplicative and unnecessary. Second, expanding the local government's authority to do so is a potential powder keg leading to local hostility and reluctance by farmers to build or grow a farm in certain communities. Not only does the draft rule expand the opportunity for local government to make it difficult for a farmer, the draft gives an opportunity for disgruntled neighbors to push for an undefined, subjective action when they complain about odor. This expanded compliance monitoring role has been carved out even though the statute granting authority to promulgate ATCP 51 does not expressly provide for the delegation of monitoring permitted farms' compliance to local units of government.

Giving more authority over livestock siting to local governments might sound benign or even positive to some people. But it's neither. Most local governments, especially town governments, lack the technical expertise to develop, implement or enforce their own livestock siting standards. Instead, siting decisions would return to being emotional ordeals driven by uninformed opinions and based on local politics. Wisconsin has a livestock siting law because we wanted to avoid this outcome.

Local governments do have tools at their disposal if they want to be more involved in regulating farms through livestock siting and land use in general through zoning. For example, the siting law outlines a process for local governments to follow if they believe tougher area-specific standards are necessary. Tellingly, very few local governments make use of either tool until they are actively seeking more authority, almost always in response to a proposed new farm or expansion. Seeking to find anything to derail the project, they typically ignore the law, reason and commonsense. This explains the flurry of new CAFO moratoria enacted by towns and counties in clear violation of the livestock siting law. DATCP, which previously stood up for the livestock siting law against infringements such as these, is now mostly passive or even permissive. The siting law outlines a

clear statutory time for the review and approval or denial of siting applications. Any moratorium would clearly violate the mandatory timelines established by state law.

The current environment is one of local governments going rogue and DATCP abdicating its authority. No one involved in livestock agriculture would want to see additional authority ceded to local governments in this climate. Keep in mind, this is also the dysfunctional context in which DATCP is now proposing for farms that cannot meet the newly created setbacks. Those farmers would have to run the gauntlet to try to obtain a variance from a local government. It is completely unworkable and impractical.

At the same time, there are significant problems with the draft rule that make it impossible for most of the agricultural community to support. We hope the department will use our feedback to improve the rulemaking and TEC process. Improvements can be made to ATCP 51, but any draft rule with a chance of becoming published would need to be profoundly different than the current draft.

As I CCA (Certified Crop Advisor) I work with many farms and understand the implications this draft could have on the future of agriculture in Wisconsin. I strongly believe DATCP staff are out of touch with reality and the economic costs this draft could have. For the above reasons I **express my opposition to this Draft Version of ATCP51.**

Chuck Bolte
W10322 Koepenick Road
Deerbrook WI, 54424
CCA WI and MN

Heaton-Amrhein, Jennifer A - DATCP

From: DATCP Admin Rules
Sent: Wednesday, September 4, 2019 7:38 AM
To: Clayton, Christopher R - DATCP
Subject: FW: Public comment on CR 19-098

Categories: Green Category

-----Original Message-----

From: Software-Notification@legis.wisconsin.gov <Software-Notification@legis.wisconsin.gov>
Sent: Tuesday, September 3, 2019 5:36 PM
To: DATCP Admin Rules <datcpadminrules@wisconsin.gov>
Cc: levdairy@cltcomm.net
Subject: Public comment on CR 19-098

Name: Thomas Levendoski
Address: 966 3rd St SW, Clear Lake United States (1) 54005
Email: levdairy@cltcomm.net

Organization:

Comments: The Department expects the proposed rule to have minimal economic impact statewide and locally, with moderate impacts for some of the livestock facilities regulated under siting permits. Many farmers affected by this rule qualify as "small businesses." As you can tell, dairy farms are leaving the business in our state at a record pace. The rules are not conducive to growing a business slowly and are creating an environment that is unsustainable financially. To join the CAFO "club" will cost us millions in an already sketchy market. We have no plans to expand, even though all of the economics of the dairy "ripple effect" (\$23,000 per cow spent on labor and local inputs) show that having a dairy helps the community. I completely disagree with the opening statement, and apparently the people leaving the business feel the same way.

Heaton-Amrhein, Jennifer A - DATCP

From: Sandy Larson <sandy@larsonacres.com>
Sent: Thursday, September 5, 2019 6:55 PM
To: DATCP Livestock Siting Comments
Subject: Comments for livestock siting rule ATCP 51
Attachments: Livestock siting comments 8.20.19.docx

Categories: Green Category



September 5, 2019

DATCP-ARM
P.O. Box 8911
Madison, WI 53708
livestocksitingcomments@wisconsin.gov

RE: Speaking against the proposed rule changes to livestock siting rule ATCP 51

Larson Acres is extremely familiar with the Livestock Siting laws. The separation of communities and the fear of the unknown are still vivid memories we have. There are a few items in the proposed rule changes to livestock siting rule ATCP 51 we would like to address.

1. Farmers need and deserve a fair and predictable path in which to grow their farms as they plan for the next generation. Had this been in place for us years ago it would have helped both the farmer and the local government. This draft rule would break this apart. In addition, local governments lack the technical expertise to develop their own standards. Let's keep consistency throughout the state.
2. The proposed setbacks from property lines are completely unworkable. The current odor management standard is working. There have been no odor scoring issues. Don't fix something that is not broken.
3. This draft rule potentially has several adverse cost effects for farmers. Collecting rainwater from feed areas and VTA changes are very costly projects. Farmers cannot be continually facing increased costs, especially during low milk prices.

We appreciate you taking our comments against the proposed rule changes for livestock siting ATCP 51 and hope you consider the adverse effects this would have on the farmers of the State of Wisconsin.

Sincerely,

Sandy Larson

Sandy Larson

Ed Larson

Ed Larson

Michael Larson

Mike Larson

Sandy Larson



18218 W State Road 59
Evansville, WI 53536
Office: (608) 882-6662
Cell: (608) 290-5545
Fax: (608) 882-2320
www.larsonacres.com


Heaton-Amrhein, Jennifer A - DATCP

From: Dornacker Prairie Acres <dpacres@gmail.com>
Sent: Thursday, September 5, 2019 11:41 PM
To: DATCP Livestock Siting Comments
Subject: Nr 51 changes

Categories: Green Category

I strongly oppose the new changes in livestock siting. Our family farm recently built a new robotic milking facility and the town used the current state setbacks. If the new setbacks would have been in place we wouldn't have been able to put up our facility as we did. we tried to cash flow it on other parcel of land we own but there was too much additional costs. We have highlines and urban encroachment on the other side of our 170 acre home farm. The current 350 ' set back for a WSF barely gave us enough room. Im certain to say if these new rules were implemented went we were deciding modernise or get out we would Not have built and Wi would have yet one less small family farm!

--
Allen Dornacker
Dornacker Prairie Acres

 Virus-free. www.avast.com

Heaton-Amrhein, Jennifer A - DATCP

From: Jerry and Kim Delzer <ksdelzer@gmail.com>
Sent: Friday, September 6, 2019 9:12 AM
To: DATCP Livestock Siting Comments
Subject: Livestock Siting changes

Categories: Green Category

To whom it may concern,

Before changes to the current livestock siting rules are changed I would ask that the decisions be reviewed with the major farm organizations like Wi Farm Bureau and Wisconsin Pork Producers to have all the major parties affected be part of the discussion.

I am also concerned about siting decisions on a local level. It is hard to be compliant if it isn't consistent in the state. Exterior factors already steer livestock facilities(i.e. urban land values and nuisance concerns) without adding patchwork inconsistent red tape.

I hope before the DATCP makes a decision this viewpoint would be considered.

Jerry Delzer

Heaton-Amrhein, Jennifer A - DATCP

From: Robert J. Pofahl <bob@reaeng.com>
Sent: Friday, September 6, 2019 3:58 PM
To: DATCP Livestock Siting Comments
Subject: ATCP 51 Livestock Siting Revisions
Attachments: 190906datcpLet.pdf

Categories: Green Category

Attached are our comments regarding the revised ATCP 51 rules.
A hard copy will also be sent via USP.

Robert Pofahl, President
Resource Engineering Assoc., Inc
8510 Parmenter Street, Middleton, WI 53562
Cell 608-220-3800
Office 608-819-2773



3510 Parmenter Street
Suite 100
Middleton, WI 53562

Phone: 608-831-5522
Fax: 608-831-6564
Web: www.reaeng.com

September 6, 2019

DATCP-ARM
P.O. Box 8911M
Madison, WI 53708.

RE: ATCP 51 Livestock Siting Rule Revisions

Dear DATCP Board

Resource Engineering Associates, Inc. is an Engineering Company which has been very involved in designing animal facilities and have assisted with several Siting applications since inception of the rule. We have attended two recent Livestock Siting hearings, reviewed the proposed rule to absorb how the rule may function, and have been a participant of the last two Technical Expert Committees (2014-2015) and (2018-2019). Our experience is centered in Wisconsin, but we also have implemented projects in adjacent states. We understand that the Siting rule can use updating and improvement but believe removal of the odor score tool is a step backward.

Odor Score

The primary concern with the proposed changes is removal of the odor score and use of setbacks from property lines. The odor score considers proximity to residences and high use areas such that proposed site buildings and manure storage can be orientated based on near-by property uses. Based on Department comments, we understand they have concern that the odor score has not always provided what, in hindsight, would be adequate siting setbacks from residences due to insufficient available odor emission data and limited on-going research to improve the existing data base. We believe finding a way to develop additional data and improve the odor score process would be a more scientific approach to the concern.

We have planned animal facilities using the existing siting rule and believe the projects have proven to be compatible and are important assets to rural communities. If some existing facilities appear to be creating an odor problem, an effort should be made to determine what needs to be done to adjust the odor score, not eliminate the tool.

Property Line Setback Expansion

Using increased setbacks from property lines instead of using the odor score to account for set back from residences and high use areas doesn't provide the balance to select a functional building location while limiting odor impact to residences and high use areas. Setbacks should not be from property lines. The Livestock Siting Technical Committee as summarized in the February 15 and March 22 Committee notes extensively discussed the need for adjusting siting criteria to account for livestock facilities in growing urban areas and allow for less setback in rural areas. More evaluation and consideration need to be invested in this issue.



3510 Parmenter Street
Suite 100
Middleton, WI 53562

Phone: 608-831-5522
Fax: 608-831-6564
Web: www.reaeng.com

Our understanding of the rule would necessitate a theoretical cafo forty-acre farm site housing hogs, beef or poultry or most animal waste storage structures to have a buffer of eight-forty acre parcels surrounding the site to meet property line setbacks for livestock buildings and separate manure storage. Not many tracts of land of this size under one common owner likely exist in Wisconsin that would meet criteria needed to construct a modern animal facility. The property line setbacks reduce options for siting livestock buildings or waste storages within a site to meet environmental limitations such as floodplains, wetlands, or separation from ground water or bedrock. The proposed setbacks would dramatically increase capital costs for land if sites are practically available at all. The setbacks do not seem consistent with our observation of the performance of new environmentally sustainable animal agriculture projects. We believe these recent projects are consistent with the agricultural nature of our state..

The Livestock Siting Technical Committee meeting on December 21, 2018 included a comparison of manure storage setbacks in adjacent states. We have worked on projects in the adjacent states and have reviewed recent setback requirements in adjacent states. Our information indicates the setbacks are to residences and high use areas, not from property lines. Setbacks for odor considerations should not be from property lines.

We believe further scientific information is needed to move forward with changes to the setbacks and odor score approach and as such do not support the proposed rule as written.

Feel free to call us if you have questions.

Sincerely

A handwritten signature in black ink, appearing to read "Robert Pofahl", with a small "w" at the end of the signature.

Robert Pofahl President

Heaton-Amrhein, Jennifer A - DATCP

From: DATCP Admin Rules
Sent: Monday, September 9, 2019 7:23 AM
To: Clayton, Christopher R - DATCP
Subject: FW: Public comment on CR 19-098

Categories: Green Category

-----Original Message-----

From: Software-Notification@legis.wisconsin.gov <Software-Notification@legis.wisconsin.gov>
Sent: Saturday, September 7, 2019 11:27 AM
To: DATCP Admin Rules <datcpadminrules@wisconsin.gov>
Cc: hillanej@gmail.com
Subject: Public comment on CR 19-098

Name: Evan Hillan
Address: N3850 Davis Rd, Ladysmith Wisconsin 54848
Email: hillanej@gmail.com

Organization:

Comments: As a young dairy farmer I am alarmed at certain revisions that are proposed within ATCP-51. Certain changes do not follow the rules that they are required to be practical, cost effective, objective and based on scientific fact. I draw you to two of these proposed changes that fail to achieve these requirements. The first change is to the setbacks from point to property line. In the current rule is of point ie where there is a house or building on a neighbors property. Which is fair the set back should be far enough from where someone else lives so as not to impact them unduly. However this change to property line would cause many farms to fail in compliance. My farm included, my neighbor who lives a half a mile away from my family's farm property abuts my building site within a 1000 ft. Even though they don't live near me I would with these changes be out of compliance with this new rule. This proposed change creates an undue burden on any farm size that falls within these proposed changes. How can this rule meet the requirements listed above if it causes many farms to fall out of compliance that were in compliance with the current rule. The proposed change would cause many farms to move their building sites which does not fit the requirements that it would be cost effective, practical, objective and science based.

The other proposed change I would like to discuss is the handing the local governments the burden of insuring compliance with the CAFO status of farms that hold a WPEDS permit. It is an undue burden to place upon these local bodies. They do not have the ability to have the expertise that the current rule includes. As well as letting local politics into what should be a regulatory issue. It is unfair to any farmer that if they comply with the rules and apply for the permit that a hostile local official could derail the process even with full compliance through either ignorance of the process or hanging up the process in nit picking the application. We need to continue to have a fair impartial approval process and compliance oversight that the current rule provides.

In conclusion I ask that the current rule as it stands be maintained. The proposed changes fail to be as required by law to be practical, objective, cost effective and based on science and therefore the changes should be discarded.

Heaton-Amrhein, Jennifer A - DATCP

From: Chris Schneider <cschneider@icbk.com>
Sent: Tuesday, September 10, 2019 1:52 PM
To: DATCP Livestock Siting Comments
Subject: ATCP 51 comments

Categories: Green Category

Chris Schneider
N2007 Domain Dr
Kaukauna Wi 54130

To Whom it may concern,

I am writing you in **opposition** of any proposed changes to the current being considered for Wisconsin's "Livestock Facility Siting Standards" or ATCP 51. My passion and career are in the dairy industry and in particular agricultural lending. My family of four live in Eau Claire County are concerned that the newly proposed changes could be detrimental to the family farms of Wisconsin and to my family personally. Those same farm have made this the best place to live in these United States. They are the very "fabric" that make up this state. While I understand the proposed changes are still in the public comment section I want to share some of my concerns:

FARMER INPUT

The proposed rule fails to incorporate farmers' feedback throughout the process. When similar changes were proposed in 2017, the state Department of Agriculture, Trade and Consumer Protection (DATCP) board decided not to move forward without more input. Although input was gathered, it has been ignored. Farmer input should have already been incorporated into the rule draft before the public hearing process.

ECONOMIC IMPACT

DATCP'S economic analysis undervalues the true cost of the rule's impact on farmers — most notably the chilling effect it would have on Wisconsin's dairy community. It would make it difficult, not impossible, for some farmers to grow their current farms and build new ones.

LEGISLATIVE INTENT

The proposed rule does not meet the legal requirements of the livestock siting law, which dictates that the rules must be, among other things, practical, cost-effective, science-based and objective. The intent of livestock siting is to create fair and uniform standards. The proposed changes run counter to this.

RULE-MAKING PROCESS

The proposed new rule also runs counter to a 2011 state law, Wisconsin Act 21, which requires all administrative rules and any other proposed farm standard to be grounded in clear statutory authority. Some of these changes are not.

ODOR MANAGEMENT

The proposed rule abandons the current odor management standard for an unproven and extreme setback-based system that would be completely unworkable in rural Wisconsin. New setback distances would be measured from property lines. Logically, the current system considers the location of someone who can actually perceive an odor on a continued basis.

RUNOFF MANAGEMENT

The rule change goes beyond DATCP's authority by coming close to establishing the zero-discharge standard enforced against confined animal feeding operations for farms covered by livestock siting. The authority to

regulate CAFOs rests with state Department of Natural Resources. Blurring the lines between these two permits and categories of farms undermines the reasoning behind having a separate set of livestock siting regulations.

EXISTING RULES

Livestock farms are already heavily regulated by a host of state laws, administrative rules and a growing number of local regulations. Some of the newly proposed standards appear to be inconsistent with other existing regulations. Finding a consistent path through these regulatory layers is already one of the biggest challenges for farmers, who shouldn't have to deal with even more complexity. Enforcement of the existing rules is sufficient.

LOCAL CONTROL

Livestock siting came to be a decade ago when local governments were throwing up sporadic roadblocks to farmers. This made Wisconsin a patchwork of regulations, giving farmers little certainty and turning the process into emotional ordeals driven by uninformed opinions and local politics. Communities were divided and farmers' reputations were ruined. We cannot go back to that unproductive time.

Thank you for considering my wishes,

Chris Schneider
920-901-0977



Chris Schneider
VP, Agricultural Banking
P ~ 920.686.5637
F ~ 920.686.5688
C ~ 920.901.0977

InvestorsCommunityBank.com

2400 S 44th Street, PO Box 700 Manitowoc, WI 54221-0700

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Heaton-Amrhein, Jennifer A - DATCP

From: Kevin Beckard <kbeckard@agsource.com>
Sent: Tuesday, September 10, 2019 4:57 PM
To: DATCP Livestock Siting Comments
Subject: ATCP 51 Comments
Attachments: ATCP 51 comments 2019.doc.pdf

Categories: Green Category

Chris,
Attached are my comments regarding the proposed ATCP 51 Rule Revision.

Thank You,
Kevin Beckard

Date: September 10, 2019

From: Kevin Beckard, Nutrient Management Specialist

Re: Comments on Proposed Wisconsin Administrative Code ATCP 51 Revisions

Below are my comments on the proposed changes to ATCP 51. As the rule is currently written I oppose passage of this rule.

ATCP 51.12 (1) (a-d): This section is not real clear that these setbacks apply to all other livestock structures except for Category 1 and Category 2 livestock housing. This should be written more clearly so this fact is apparent or at least identify what structures this section should be applied to.

ATCP 51.12 (2) (a-d): This section has set forth a system of setbacks that are unrealistic. If these setbacks stand future expansion of livestock facilities in Wisconsin will be severely limited. Your analysis states that this rule revision will have a minimal effect on livestock operations. If this rule stands then in my opinion, I don't see why any local entity that wants to limit expansion in their jurisdiction would not adopt this rule. Below are things I think need to be added or considered in this section:

- Setback distances need to be re-evaluated; they are currently overly restrictive.
- Setback distances should be measured to existing structures or receptors, not property lines. Permits need to be issued based on current land use not what a future use may be that does not or may never exist.
- If distances need to be measured to a property line, then how the adjacent property is zoned should help dictate the setback that is required. A subdivision would likely need a longer setback than an agricultural field or wooded property that is zoned as agricultural. With current technology this should not be difficult to implement.
- Variance process - The rule essentially will let local ordinances set forth any variance procedures if they choose. ATCP 51 should set up the variance procedure that needs to be followed by local ordinances so that consistency will apply statewide where this rule is being adopted.

ATCP 51.14 Odor: This section sets forth odor control practices a farm may use to reduce setback requirements. Many of these reduction practices seem cost prohibitive and the reductions gained may not be enough to invest in the odor reductions. Also, the system for department determination of approval of odor control practices not listed should be reduced from 90 days to 45 days to make a determination if a practice is viable. In addition, a better explanation of what constitutes scientific evidence should be included.

Any local ordinance that is proposed to be adopted under the authority of ATCP 51 should need to be approved by DATCP before it can be adopted. This would ensure local ordinances are not exceeding the requirements of this rule. Just providing a model ordinance is not enough since there are current local siting ordinances that exceed current state standards. A farm should not have to bear the costs of fighting local ordinances that exceed state standards, the state should have oversight on these matters.

Thank you for the opportunity to comment on the draft rule.

RECEIVED SEP 11 2019



250 CAMELOT DRIVE, FOND DU LAC, WI 54935; TEL. 920-952-7200

Secretary-Designee Brad Pfaff
DATCP-ARM
P.O. Box 8911
Madison, WI 53708

September 9, 2019

RE: ATCP 51

Dear Secretary-Designee Pfaff:

In support of our dairy producer partners and with interest to maintaining a stable milk supply for dairy processors in the State of Wisconsin, Grande Cheese Company wishes to submit comments of concern regarding proposed revisions to ATCP 51. Specifically, we will outline issues related to implementation and economic impact.

Grande Cheese Company is a proprietary cheese processor manufacturing ... *"The finest Italian cheeses money can buy!"*³. We are located in Wisconsin, employing more than 1,000 Associates. We purchase billions of pounds of milk annually from farms many consider the finest in the country. Our cheeses are sold nationally, and our whey products are sold globally.

Grande Cheese Company is proud to be part of Wisconsin's dairy community, which contributes \$45.6 billion in industrial revenues to the state and supports 157,100 jobs and \$9 billion in labor income. Our industry continues to grow, but that is despite significant challenges posed by trade instability, a labor shortage, difficult weather, and consumer shifts. These challenges are responsible, at least in part, for the loss of 691 Wisconsin dairy farms in 2018. Currently, the state is on pace to lose another 735 dairy farms in 2019. Without question, low milk prices over the past five years have taken a financial and emotional toll on our farmer partners.

We ask for reconsideration of revision language related to increased setbacks. While the rule allows for credit to be applied and reduced setbacks granted, if additional odor control practices are installed and implemented, it does not consider the fact that many farmers are simply unable to make investments of that nature at this time. In effect, this change will simply reduce the value and use of a farmer's property, challenging their ability to operate and expand their businesses, and curtailing overall industry growth.

(Continued)

"Making fine cheese, like making fine wine, is indeed an art ... steeped in tradition and pride."


Page 2
ATCP 51

We also ask for reconsideration of the expansion of local control over livestock siting. In July, Burnett County approved a 12-month moratorium on concentrated animal feeding operations (CAFOs), and earlier this month, the Township of Marietta in Crawford County approved a similar measure. Other communities have discussed the possibility of moratoria. In granting additional authority at the local level, we believe ATCP 51 will result in further actions and a patchwork of conflicting livestock siting policies across Wisconsin, again challenging the growth of the dairy industry.

When ATCP 51 was first implemented, lawmakers intended that the rules be practical and cost-effective. We hope that any revisions will hold to that intent. Grande Cheese Company supports state regulations which balance business interests with the welfare of our shared state resources and bolster the growth and prosperity of dairy farming in Wisconsin.

Thank you for your consideration of our concerns, and please feel encouraged to contact us to discuss the matter in greater detail.

Sincerely,


Greg Siegenthaler
Vice President
Milk Marketing and Supply Chain

Heaton-Amrhein, Jennifer A - DATCP

From: Steven Orth <orthlanddairy@gmail.com>
Sent: Wednesday, September 11, 2019 1:05 PM
To: DATCP Livestock Siting Comments
Subject: ATCP 51 Letter
Attachments: 20190911_130423_CCF.pdf

Categories: Green Category

Hello,

Please see the attached letter on behalf of our family farm regarding ATCP 51 rule changes.

Thanks you

Steven Orth
Orthland Dairy Farm LLC
920-905-2575

September 10, 2019

Orthland Dairy Farm LLC

Steven Orth

14319 S. Union Rd.

Cleveland, WI 53015

State of Wisconsin DATCP

Attn: Chris Clayton and DATCP Board of Directors

PO Box 8911

Madison, WI 53708-8911

Dear Chris Clayton and DATCP Board of Directors,

My family owns and operates Orthland Dairy Farm LLC outside of Cleveland, WI and I want to express our family's concerns regarding the proposed rule changes to ATCP 51 livestock siting rules and the effect that these proposed rules will have on our family farm.

I want to point out the significance of the setback distances proposed for new construction of waste storage. These set back changes will directly affect the future of our farm because we would be unable to achieve the necessary distance of setback to a neighboring property for the future construction of a waste storage facility. With the proposed rules we would no longer be able to construct additional waste storage on our farm because we cannot possibly meet the proposed setbacks. This could be potentially hazardous to the environment because we would be unable to build the necessary waste storage facilities necessary to properly manage the nutrients produced by our farm.

We believe it would be more appropriate, practical, and fair to lower the proposed setback distance to neighboring properties. Instead of setbacks being measured to property lines, it should be measured to residences or homes as the rule currently stands. Additionally, the calculation of the odor score needs to be adjusted to take into consideration the merit of the management practices farms operate by. Finally, if a farm cannot meet the new setback distance, they should be allowed to have their neighbor sign off, if willing, to award a variance to their properties from setback distance requirements to reward farms for good management, stewardship, and building positive relationships with their neighbors in the community.

Water quality is essential to everyone, so forming realistic regulations that protect the environment, while simultaneously allowing the industry to operate, is of utmost importance for us all.

Sincerely,



Steven Orth

Orthlanddairy@gmail.com

920-905-2575

Heaton-Amrhein, Jennifer A - DATCP

From: richardwagner@centurytel.net
Sent: Wednesday, September 11, 2019 1:13 PM
To: DATCP Livestock Siting Comments
Cc: Kurt Duxbury; Josey Schmoltdt; Brandon Schmoltdt
Subject: Comments regarding siting legislation

Categories: Green Category

Dear Sir or Madame: My name is Richard Wagner from E5861 Clark Street Weyauwega, WI 54983 (richardwagner@centurytel.net) 715-281-7032. I am a dairy producer-Quantum Dairy with 3000 cows.

I was on the committee that studied potential changes to the siting regulation several years ago. At that time department people and some others were trying to satisfy every desire of the people who lived near a CAFO or near a planned CAFO. Those of us on the committee, who were dairy producers, had all we could do to direct the results toward workable, common sense changes. We were fortunate to end up with little change to the great siting regulation that has allowed our dairy industry in Wisconsin to thrive, and compete on the world stage. The current committee is at it again, and aims to shoot our dairy production industry in the foot. Here are my comments:

The current recommended setback language is arbitrary, onerous to those of us in the business, and not applicable in too many instances. This concept goes way beyond needed reform, and will throw a monkey wrench into even most of the non-problematic siting and expansion plans.

Incorporating by reference a new NRCS standard for vegetated treatment areas is much too costly and rigid and does not allow for the creativity dairy producers are known to exhibit.

Allowing local governments to get involved in the permitting and compliance monitoring of evolving highly technical dairy operations is an insane idea borne of the desire to placate anyone with any complaint, whether reasonable or not. Local government personnel definitely do not have the expertise on staff to take on such efforts. They, in turn, would have to outsource the work at much greater cost, inefficiency, and time delay.

Next time that the siting regulation is studied for possible upgrading, make sure there are more dairy producers on the study committee!

Thank you, sincerely, for this opportunity for written comments!

Richard Wagner

Heaton-Amrhein, Jennifer A - DATCP

From: Joe Rudolph <JLRx2@charter.net>
Sent: Thursday, September 12, 2019 7:10 AM
To: DATCP Livestock Siting Comments
Subject: keeping Wisconsin competitive

Categories: Green Category

Attn Chris Clayton

Long term competitiveness in any commodity industry is dependent on being able to adapt to the lowest cost production methods. The proposed changes to livestock siting certainly have in them the ability for government regulators to curtail the ability of Wisconsin's Dairy producers to keep their costs in line with the world market. It will take a few years for the full affects to be realized. Once they are it will be too late. The large scale milk processors and cheese plants will already have made the decision to invest in facilities closer to lower cost sources of milk. Once this happens Wisconsin's dairy producers will struggle to make a profit and after that it is only a matter of time before the tradition is gone.

I hope the long term ramification to this odor scoring system and it's subjective nature are realized by those writing the regulations. They are giving local regulators the ability to arbitrarily reduce Wisconsin's dairy industry. Those of us who work for and support the dairy industry here in Wisconsin will most certainly not survive the loss of our dairy customers.

Thank you for your time

Joe Rudolph

President

Merrill Equipment Company

Heaton-Amrhein, Jennifer A - DATCP

From: Faucon, Kristen <KFaucon@growmark.com>
Sent: Thursday, September 12, 2019 8:28 AM
To: DATCP Livestock Siting Comments
Cc: Bernstein, Naomi (Insight FS)
Subject: FS GROWMARK Comment Letter - ATCP 51
Attachments: ATCP51_commentletter_FINAL.pdf

Categories: Green Category

Good Morning,

Attached is a comment letter on the proposed revisions to ATCP 51.

Thank you,

Kristen Faucon | Issues Manager | [GROWMARK, Inc.](#) | Ph: 309-557-6345 | C: 217-502-1888 |
kfaucon@growmark.com | [@GMKGovtRel](#)

Follow GROWMARK on [Facebook](#) and [Twitter](#)!

This email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient, please notify the sender immediately.

September 12, 2019

Chris Clayton
Livestock Facility Siting Program Manager
Bureau of Land and Water Resources
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive, P.O. Box 8911
Madison, WI 53708-8911

Re: Comments on the 2019 Hearing Draft of ATCP 51

Dear Mr. Clayton,

We are writing in opposition to the proposed revisions to Wis. Admin. Code. s. ATCP 51. The proposed changes not only deviate from legislative intent but also lack feasibility and are inconsistent with other regulations. This proposal would have a significant negative impact on Wisconsin livestock producers – producers that are our customers and farmer owners. The following sections outline our areas of concern with the draft rule.

Setbacks

Section 36, ATCP 51.12 (1) and (2)

The most concerning revision in the proposal is the abandonment of the odor management standard and its replacement with larger setback distances. These setback distances from property lines are unworkable for most Wisconsin farms and would restrict livestock operations from expanding or adding waste storage systems, regardless of the proximity of individuals able to detect odor. This will have an environmental impact as the lack of ability to add waste storage will require farms to apply manure outside of preferred nutrient stewardship practices.

It is unclear if farms will be able to “earn back” part of these setbacks through implementation of the listed odor control measures. Economic analysis is needed on the cost to install a high vs medium odor control measure, and if some of these measures have been able to be successfully implemented in the state. While the odor scoring methodology is no longer the subject of ongoing study and improvement, it should not be replaced with a setback distance that does not consider feasibility, environmental or economic impacts.

NRCS Standard 313 10/17

Section 41, ATCP 51.18(4) Existing Facilities

The requirements listed in this section are more rigorous than what is currently required of farms who are going through the DNR WPDES permitting process for existing facility evaluations. The standard minimum life expectancy of a long-term waste storage facility

is 20-25 years. A visual inspection should be sufficient until a waste storage facility approaches the end of this life expectancy. There are also circumstances in which these facilities are not able to be completely emptied. This can occur in polylined waste storage facility and slurry stores. To completely empty these waste storage facilities could create more damage and compromise the liner. With under-barn waste storage facilities, the waste storage facilities will not be able to be emptied without significant cost to the operation including the cost of relocating the animals populating the facility.

Another area of concern is requiring existing facilities to be evaluated against the October 2017 NRCS 313 standards instead of the standards that were in place at the time of construction. The October 2017 revision added the requirement of a subliner below the liner of a waste storage facility. There are many effective manure basins constructed in the last decade that would not meet this subliner requirement. To meet this requirement would require hundreds of thousands of dollars in removal and reconstruction costs without significant environmental benefit.

Runoff Management

Section 42: ATCP 51.20

As it pertains to the revisions regarding runoff management, we have identified inconsistencies with existing standards:

- **Setback Requirements for Existing Animal Lots** – The setbacks proposed are significantly higher than those listed in NRCS 635. There is no scientific or data-based reasoning for these changes.
- **Process Wastewater** – The proposal states there should be no significant discharge of process wastewater to waters of the state. Not only is this already regulated by DNR, the agency with appropriate regulatory authority, but there is also no standard definition of what a significant discharge is considered. If this is to be included in the rule, significant must be defined using a scientific standard and not “as determined by local authorities.”
- **Feed Storage** – The rule defines a feed storage structure as any building, bunker or paved area used for feed storage or handling. This definition would include commodity sheds and mixing bays, which should not be included as there is no leachate generation occurring in these areas. An appropriate definition should match NRCS 629.

Timeframes for Implementation

Sections 29 & 30, ATCP 51.08

The timelines for implementation proposed in this rule pose unrealistic expectations. Six months is not enough time for a conservation practice to be completed to address an existing runoff issue unless under perfect conditions. This timeline does not allow for delays due to weather or other circumstances.

To begin populating the approved livestock facility and to begin construction on every new or expanded housing or waste storage structure within two years is also not feasible. Builders typically schedule projects six months to a year after a farmer obtains his or her permit. Depending on the magnitude of the project, and if a farm would like to do a gradual expansion, there may be multiple phases of construction. However, the proposed rule does not allow for this. These proposed timelines do not work with the construction process, nor do they take into consideration project financing. A farmer should not be penalized for choosing to construct in phases or to postpone construction due to poor economic conditions.

Application Worksheets

Appendix A

There are also issues present in the revised worksheets that must be completed with a permitting application. These concerns include:

- Worksheet 3, Waste & Nutrient Management – This worksheet only has locations for MWPS manure generation rates. MWPS specifically notes using actual data from the farm is better than book values, but there is no place to document the actual data on the worksheet.
- Worksheet 5, Runoff Management
 - The definition of feed storage in Part C should not include buildings or any structures storing covered feed with less than 40% moisture, as these do not generate leachate. By including these structures, high moisture corn, hay storage sheds, and commodities sheds would need unnecessary runoff collection.
 - The setback distances outlined in Parts A(3)(4) and Part C(3) are greater than the setback distances outlined in NRCS 629 and 635 – the technical standards with which these structures must comply. The setback distances should be consistent with technical standards, or evidence should be given as to why these setbacks would be more restrictive.

Local Control

Sections 51.14, 51.16, 51.18, 51.20 and 51.34

Lastly, it is important to note how this proposal would broaden local control by shifting monitoring compliance to local governments. Not only do local governments lack the technical expertise to monitor or enforce compliance, but this could also lead to increased conflict between local governments and livestock producers – conflict that the livestock siting law was enacted to prevent. Livestock producers and local governments need clear, practical, science-based regulations. The proposed revisions to this rule accomplish none of these objectives.

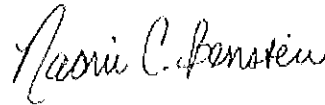
Thank you for the opportunity to provide comments on the proposed revisions. Due to the areas of concern outlined above, we ask that the Department not move forward with this

proposal until significant changes have been made. We appreciate your time and consideration.

Sincerely,



Kristen Faucon
Issues Manager
Government Relations
GROWMARK, Inc.



Naomi Bernstein, PE, CCA
Agricultural Engineer
NextGenAg
Insight FS

Insight FS is headquartered in Jefferson, Wis., serving patrons in Wisconsin and Michigan's Upper Peninsula. Insight FS is an agricultural cooperative with annual sales of \$270 million (FY 2018) providing agronomy, energy, feed, turf and agri-finance products and services, as well as grain marketing. Insight FS is a retail division of GROWMARK. More information is available at insightfs.com.

GROWMARK is an agricultural cooperative with annual sales of \$8.5 billion (FY 2018 data) providing agronomy, energy, facility planning, and logistics products and services, as well as grain marketing and risk management services throughout North America. Headquartered in Bloomington, Illinois, GROWMARK owns the FS trademark, which is used by affiliated member cooperatives. More information is available at www.growmark.com.

Heaton-Amrhein, Jennifer A - DATCP

From: Paul Braun <wolfgangdairy11812@gmail.com>
Sent: Thursday, September 12, 2019 8:42 AM
To: DATCP Livestock Siting Comments
Subject: Livestock Siting Rule

Categories: Green Category

We strongly object to this change that will needlessly harm dairy business

Sincerely

Paul Braun

Wolfgang Dairy

Heaton-Amrhein, Jennifer A - DATCP

From: Debi Towns <dtowns@wfbf.com>
Sent: Thursday, September 12, 2019 2:08 PM
To: DATCP Livestock Siting Comments
Cc: Debi Towns
Subject: Comments on ATCP 51 - Attn DATCP Board
Attachments: Letter to DATCP Board 091319 on letterhead.docx

Categories: Green Category

Please find our official submission of comments to the proposed revision of ATCP 51 attached.
I would appreciate confirmation of receipt.
Thank you. dt

Debi Towns

Sr. Director of Gov't Relations
WI Farm Bureau Federation
608-828-5712
dtowns@wfbf.com





1241 John Q. Hammons Drive

P.O. Box 5550, Madison, WI 53705

1.800.261.FARM (3276)

September 13, 2019

VIA EMAIL ONLY TO: livestocksitingcomments@wisconsin.gov

Chairperson Miranda Leis

Department of Agriculture, Trade and Consumer Protection Board

2811 Agriculture Drive

PO Box 8911

Madison WI 53708

Chairperson Leis and Board Members:

Wisconsin Farm Bureau Federation (WFBF) appreciates the time and expertise put into the proposed revision of ATCP 51 by the Department of Agriculture, Trade and Consumer Protection (DATCP). The Wisconsin Farm Bureau Federation (WFBF) generally supports periodic review of regulatory law to ensure relevancy and practical application.

However, while the currently proposed draft before the Board updates this rule, it is evident this proposal is more than an update. Rather, it appears to re-focus the original rule which provided a practical pathway for siting new and expanding livestock facilities. This proposal mandates a host of operational considerations, which are already addressed by other statutes and administrative rules. WFBF objects to portions of this rule revision, specifically the provisions providing new setbacks, inconsistent nutrient management standards and the undefined delegation of monitoring authority to local governments.

Of primary concern is that the proposed rule would abandon the current odor management standard, which relies on an odor score along with setbacks, in favor of a new system that relies on drastically increased setbacks with the possibility of credits for certain odor control practices. The argument for this shift is that the odor scoring methodology is no longer the subject of ongoing study and improvement. Yet, the new setback numbers themselves *are based on this very same body of knowledge*. There is no evidence that the proposed system is practical and workable, cost effective or objective, designed to promote the growth and viability of animal agriculture in this state or designed to balance the economic viability of farm operations with protecting natural resources and other community interests. This is the criteria set in statute for revising the rule and the Department has failed to show that it has been met.

It is disturbing to WFBF that DATCP has not researched the new proposal by applying it to already permitted facilities in order to gauge the impact on siting. Some testing has been accomplished by farmer advocacy groups, however. These results expose that even modest expansions to existing farms would struggle to be permitted without local government allowing a variance. Relying on local governments potentially granting a variance would result in patchwork regulation and an uncertainty to the industry, which

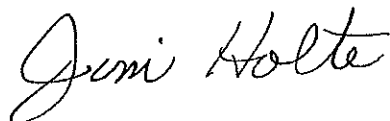
is precisely what the original enactment of the livestock facility siting statute and administrative rule was trying to avoid. It would likely inhibit growth. This runs incongruent to the foremost purpose for establishing the original Livestock Facility Siting law.

Secondly, WFBF has a concern that parts of the proposed nutrient runoff management rules in the draft rule are inconsistent with the runoff standards already found in other parts of the administrative code. Additionally, from a purely legal perspective, DATCP lacks the statutory authority to establish effluent limits. That duty has been expressly delegated to the Department of Natural Resources (DNR). Any attempt to undermine this delegation would be directly contrary to law. The proposed rule adopts a 2016 Natural Resources Conservation Service (NRCS) standard for vegetated treatment areas that is neither consistent with the Clean Water Act nor existing DNR practice. Compliance with this new standard will be impractically expensive for farms subject to siting. There is no acceptable reason to impose this additional layer of complex and inconsistent regulation. These issues are well-addressed by the DNR under their current standards.

Finally, the proposed rule revision would require local governments to monitor permitted livestock facilities using an approved checklist prepared by DATCP. However, the statute granting the authority to promulgate ATCP 51 gives *no* express authority for the delegation of monitoring permitted farms' compliance to local government. WFBF believes this change grossly exceeds the authority granted to DATCP in statute. Once again, allowing a patchwork of compliance monitoring would only serve to undermine consistency and stability in the industry.

For these reasons, WFBF asks the Board to return the proposed changes to ATCP 51 to DATCP for further research and editing. We appreciate the attention the Board is giving to this issue and we sincerely hope consideration is given to the concerns of our members who are greatly impacted by ATCP 51.

Thank you,

A handwritten signature in cursive script that reads "Jim Holte".

Jim Holte, Board President
Wisconsin Farm Bureau Federation

Heaton-Amrhein, Jennifer A - DATCP

From: Peter Kimball <pk1234@live.com>
Sent: Thursday, September 12, 2019 2:28 PM
To: DATCP Livestock Siting Comments
Subject: livestock siting rules comment
Attachments: DATCP livesotck siting.docx

Categories: Green Category

To whom it may concern. Attached is a letter of my concerns about the proposed rule changes to the current livestock siting rules

Sent from [Mail](#) for Windows 10

Dear DATCP,

My name is Peter Kimball, I farm with my wife, Leanne, in Pierce county. Together we milk 120 cows on our family farm. The reason I am writing you is that I am very concerned about the livestock siting rule change that has been proposed and the impact it will have on our farm. As I mentioned, we milk 120 cows on our family farm and we currently do not have a manure storage system in place. The lack of storage means we need to spread manure each week of the year regardless of the weather conditions or the time of year. We have been working with our local NRCS office to design a new manure pit which will allow us to manage the manure in an environmentally friendly way. This will allow us to timely apply it to our crop land when it will not be washing down stream and polluting the trout river that runs just two miles from our farm. However, if the new rules on setbacks from the property lines are approved, it is likely we will not be able to find a suitable location on our property to place a manure pit. If this happens, we will be forced to continue hauling manure weekly. With the current rules as they stand, we can move forward to better protect Wisconsin's ground water and riverways. Please reject the new livestock siting proposals.

Sincerely

Peter and Leanne Kimball

Heaton-Amrhein, Jennifer A - DATCP

From: Ross Mencke <rmencke@hanorusa.com>
Sent: Thursday, September 12, 2019 4:09 PM
To: DATCP Livestock Siting Comments
Subject: Comments Regarding the Livestock Facility Siting ATCP 51 Rewrite
Attachments: Livestock Facility Siting ATCP 51.pdf
Categories: Green Category

Hello,

I have attached comments from our VP of Operations regarding the Livestock Facility Siting ATCP 51 Rewrite.

I appreciate your attention to this matter.

Regards,
Ross Mencke
The Hanor Company
E4614 Highway 14 & 60
Spring Green, WI 53588
Office: 608-588-9629
Cell: 608-588-5884
rmencke@hanorusa.com

HANOR

September 12, 2019

VIA EMAIL TO livestocksitingcomments@wisconsin.gov

Mr. Chris Clayton
DATCP-ARM
P.O. Box 8911
Madison, WI 53708

RE: Comments regarding the Livestock Facility Siting ATCP 51 Rewrite

Dear Mr. Clayton,

First, I would like to understand the drafting of this law. Was there any animal agriculture representation on the committee during the writing of this proposed law? If not, then I don't understand that under our Democracy how our voice was heard.

ATCP 51.01 (42): I don't like to use the term "waste". We have lagoons and pits that store nutrients and are treated as such. It doesn't go to waste. The nutrients that are stored, are used for beneficial purposes of adding fertilizer and other organic compounds to the soils. It is not wasted! There is a fine line between nutrients and pollutants.

ATCP 51.12 (2): Category 1 and Category 2 livestock housing structures.

Why is there different setbacks from property lines for Category 1 and Category 2 structures? Do you have scientific evidence that states that there are different odor levels emitting from a Category 1 operation versus a Category 2?

How were the different waste handling systems determined? I don't understand how a pork gestation/farrowing and nursery over slatted floor can be considered Category 1 and dairy housing with alley flush system or beef housing over slatted floor be considered Category 2?

Shouldn't the setbacks be from the nearest occupied residence instead of property lines? It just doesn't seem reasonable to me that if the closest neighbor was ½ mile away, why would the same setbacks be in place as if someone was across the road from the facility.

ATCP 51.12 (2m): Simply confusing language

ATCP 51.01 (19m): Quite frankly, I believe that the criteria for Category 1 and Category 2 structures is discriminatory.

Mr. Chris Clayton
Page 2
September 12, 2019

ATCP 51.16: Nutrient Management and cropland standards

ATCP 51.16 (6) b.: Specific credentials should be listed for what is required to monitor compliance with a nutrient management plan. Most political subdivisions do not have the technical expertise to monitor an operator's compliance. An economic analysis of the cost to the political subdivisions for implementing monitoring programs should be completed and considered prior to implementing this component into law.

ATCP 51.18: Waste Storage Facilities

ATCP 51.18 (4) 2.: It is completely unreasonable to think that we can "empty" a waste storage facility of all nutrients for a visual inspection without damaging the integrity of the existing liner. This comes with a great deal of cost and actually puts a great deal of risk to damaging the liner, especially earthen or plastic/poly-lined storage facilities. Second, the draft law states that livestock facilities with under floor nutrient storage and cleaning must be completed for visual inspection. Now, we not only have to find a place for the stored nutrients, we now have to find a place for the livestock, hence incurring more cost for housing the livestock on a different site. This is an unnecessary economic hardship on farmers, as well as creating potential environmental concerns.

Sincerely,

THE HANOR COMPANY OF WISCONSIN, LLC



David Wade
Vice President Operations
Email: dwade@hanorusa.com
Cell Phone: 608-588-5409

Heaton-Amrhein, Jennifer A - DATCP

From: Katy Katzman <katzman@idcnet.com>
Sent: Friday, September 13, 2019 7:37 AM
To: DATCP Livestock Siting Comments
Subject: Comments - Thomas Katzman Jr - Katzman Farms Inc.
Attachments: COMMENTS - THOMAS KATZMAN JR.pdf

Categories: Green Category

Katy Katzman
Office Manager
Katzman Farms
W7889 Reliance Rd.
Whitewater, WI 53190
Phone: 262-903-6727

'Dedicated to Dairy's Future'

September 12, 2019

Chris Clayton
Livestock Facility Siting Program Manager
Bureau of Land and Water Resources
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Dr.
Box 8911
Madison, WI 53708

Re: Comments on the 2019 Hearing Draft of ATCP 51

Dear Mr. Clayton,

I am writing to you on behalf of Katzman Farms Inc. We are writing in opposition to the proposed revisions to Wis. Admin. Code. s. ATCP 51. We currently hold siting licenses on two facilities, in two different counties. Should the proposed changes be enacted, we would not be able to make any future changes or expansions to our facilities without unnecessary and significant costs. I believe our situation is not an unlike situations faced by other livestock producers in Wisconsin. The following sections outline our areas of concern with the draft rule.

Setbacks

Section 36, ATCP 51.12 (1) and (2)

We raise dairy animals and steers, with under barn waste storage facilities (proposed to be classified as a Category 1 facilities). By replacing the odor scoring with the proposed setback distances, we would likely not be able to expand in the future, due to placement of our existing facilities, which meet the current livestock siting law setbacks, but do not meet the proposed setbacks. The proposed law is not clear as to how this type of situation would be handled. While we do not anticipate the need to add manure storage at this time, we have three kids who may have an interest in taking over the farms some day, and the proposed law could severely limit their options.

For example: if the proposed law is implemented, and we decided to increase our waste storage capacity at our Walworth County farm, the setback distances would prohibit any additional waste storage from being constructed. Additional waste storage capacity would provide us with flexibility for manure application at optimal field conditions, as well as provide risk management for years (like 2019) where heavy spring rains prevented fieldwork from being completed in a timely manner. By including overly prohibitive setbacks, the state is creating unnecessary environmental risks.

Timeframes for Implementation

Sections 29 & 30, ATCP 51.08

The timelines for implementation proposed in this rule are unrealistic. To begin populating the approved livestock facilities and to begin construction on every new or expanded housing or waste storage structure within two years is also not feasible. It took us three years to complete construction at our facility after being approved for our livestock siting permit, as we built in two phases. These proposed timelines do not work with the construction process, nor do they take into consideration project financing. A farmer should not be penalized for choosing to construct in phases or to postpone construction due to poor economic conditions.

Existing Waste Storage Facility Evaluations

Section 41, ATCP 51.18(4) Existing Facilities

At our farms we have a concrete lined waste storage facilities and under barn waste storage facilities. The standard minimum life expectancy of a long-term waste storage facility is 20 to 25 years. A visual inspection should be sufficient until a waste storage facility approaches the end of this life expectancy (20 to 25 years) vs. the 15 years as listed in the proposed siting law. Our under barn waste storage facilities are not designed to be completely emptied. We would have to find housing for the animals that the barns house, as well as incur significant costs with trying to completely empty the waste storage. This would likely include hiring people to enter the waste storage facility (which is a safety concern even with proper breathing apparatuses) and finding the correct equipment to clean the bottom out. This would be a significant, unnecessary cost to our operation including the cost of relocating the animals populating the facility.

Runoff Management

Section 42: ATCP 51.20

Feed Storage – The rule defines a feed storage structure as any building, bunker or paved area used for feed storage or handling. This definition would include commodity sheds and mixing bays, as well as feed storage facilities which store feed at less than 40% moisture. The previously listed areas should not be included in the definition as there is no leachate generation occurring in these areas. This definition needs to be revisited and clarified. Our concerns with runoff management also applies to the application worksheet.

- Worksheet 5, Runoff Management
 - The definition of feed storage in Part C should not include buildings or any structures storing covered feed with less than 40% moisture, as these do not generate leachate. By including these structures, high moisture corn, hay storage sheds, and commodities sheds would need unnecessary runoff collection.
 - The setback distances outlined in Parts A(3)(4) and Part C(3) are greater than the setback distances outlined in NRCS 629 and 635 – the technical standards with which these structures must be in compliance. The setback distances should be consistent with technical standards, or evidence should be given as to why these setbacks would be more restrictive.

Thank you for the opportunity to provide comments on the proposed revisions. We ask that the Department not move forward with this proposal until significant changes have been made. Wisconsin livestock producers, and local governments, need clear, practical, science-based regulations. The proposed revisions to this rule do not appear to accomplish this. We appreciate your time and consideration.

Sincerely,



Thomas W. Katzman Jr.
Katzman Farms Inc.
W7889 Reliance Rd.
Whitewater, WI 53190

Heaton-Amrhein, Jennifer A - DATCP

From: Braley, Juanita K (24422) <JKBraley@michaelbest.com>
Sent: Friday, September 13, 2019 8:16 AM
To: DATCP Livestock Siting Comments
Cc: Crass, David A (22267)
Subject: Wisconsin Dairy Alliance
Attachments: Comments to DATCP re ATCP Proposed RULe Revisions 9-13-2019.pdf

Categories: Green Category

Mr. Clayton: On behalf of the Wisconsin Dairy Alliance, please see the attached correspondence. This is also being hand delivered to you today.

Regards,

Juanita K. Braley

Legal Assistant

E jkbraley@michaelbest.com

T 608.283.4422 | F 608.283.2275 | michaelbest.com

 **Michael Best** A LexMundi Member
Michael Best & Friedrich LLP

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*Advocating for Wisconsin's Large Environmental Permitted Operations
Who Comply with a Zero Discharge Standard*

September 13, 2019

**VIA E-MAIL (livestocksitingcomments@wisconsin.gov)
AND VIA HAND-DELIVERY**

DATCP-ARM
Attn: Christopher R. Clayton
2811 Agriculture Drive
Madison, WI 53718

Dear Mr. Clayton:

On behalf of the Wisconsin Dairy Alliance and its farmer members (WDA), please consider these comments concerning the Wisconsin Department of Agriculture, Trade and Consumer Protection's (DATCP or the Department) efforts to revise Ch. ATCP 51, Wis. Admin. Code, the state's livestock siting standards. WDA represents modern, regulated dairy farms throughout Wisconsin and works diligently to preserve Wisconsin's heritage as the Dairy State.

WDA has joined most all of the animal agriculture associations in the state in a letter of opposition to the proposed rule revisions. WDA is opposed to the 2019 public hearing draft of ATCP 51 and the process DATCP followed after the DATCP Board previously returned to staff in 2017 for further work essentially the same hearing draft now being considered. The proposed rule revisions violate the legislative mandates of the rule's authorizing statute and, if adopted, would be subject to legal challenge. The rulemaking process cannot serve as a referendum on the Livestock Siting Law, a bi-partisan measure adopted in 2004 and signed by Governor Doyle. If changes to the statutory directives of the law are to be made, they are to be made by the elected representatives of the state's voters, not agency staff.

Beginning earlier this year, WDA leadership was in direct contact with DATCP leadership, DATCP staff and the DATCP Board and articulated our concerns with the rule revisions' approach. Many of those concerns mirrored concerns that had been raised by Wisconsin's livestock industry representatives in 2017. WDA specifically asked that DATCP slow this revision process down so as to effectively work with the industry to pursue constructive changes prior to moving the proposed rule forward for public comments. Unfortunately, DATCP leadership choose to move forward without addressing any of the livestock industry stakeholders' suggestions.

WDA immediately began working with Assembly Speaker Robin Vos and Senate Majority Leader Scott Fitzgerald regarding DATCP's unwillingness to work with stakeholders to make improvements to the proposed rule revisions. DATCP failed to ground-test the impacts of the rule on actual dairy operations, in contravention to a direction the DATCP Board gave in 2017,



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resulting in likely significant impacts on the industry's ability to grow and monumental loss of economic generation to the state's \$46 billion dollar dairy industry. In response to these concerns, these legislative leaders sent a joint letter (copy attached) requesting Secretary Designee Pfaff not move the proposed rule forward until additional work with stakeholders was completed. Unfortunately, this request was also disregarded by DATCP.

Chapter 93.90 of the Wisconsin Statutes (the state's Livestock Siting Law) directs DATCP to adopt rules specifying standards for siting and expanding livestock facilities. DATCP adopted ATCP 51, Wis. Admin. Code in 2006 and the siting law has been working ever since. The statute also directs DATCP to review these rules at least once every four years. Nothing in the statute requires DATCP to *revise* the rules, particularly when the rules are working as intended upon initial adoption. Importantly, the legislature set forth mandates to DATCP to guide the adoption and revision of the siting rules. DATCP must only adopt rules or revisions that are "practical and workable," "cost effective," "objective," "based on peer reviewed science," "designed to promote the growth and viability of agriculture" and that "balance the economic viability of farm operations with protecting natural resources and other community interests." Sadly, these proposed revisions miss the mark in several respects and violate these legislative directives.

The process DATCP has followed to date utterly fails to appreciate the cost of these proposed revisions on farmers that want to gradually grow their business. Hidden from the cost impact analysis is the cost of lost opportunity. The farmers that decide *not* to pursue expansion because of the costly or overly restrictive provisions in this proposed revision is the true hidden cost of this latest example of "legislation by bureaucrat." If adopted unchanged, this revised rule would result in significant costs to operations that want to expand, resulting in a "chilling effect" on livestock industry growth. Unless changed, the rule will have a negative impact on future potential growth in the dairy industry. After five years of a very problematic farm economy, with farmers dealing with distressed milk prices, trade wars and historical weather events, more uncertainty could be devastating.

But it is not just the farmers to consider. Meat and milk processors move new investment (and the jobs that go with it) to where the supply is. Livestock producers are moving projects out of state as a result of more welcoming regulatory environments. Adoption of this rule without change will simply declare war on livestock expansion in the state, in direct contravention of the underlying legislative purpose of the Livestock Siting Law. Manufacturing jobs will be the "collateral damage" of such a declaration.

Much work is needed to be done to make this set of proposed revisions workable and cost effective. That work can only be accomplished with the cooperation of livestock industry representatives. This cooperation has been offered, but sadly to date rejected by DATCP.



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WDA has attached a list of its objections to specific items in the proposed revision. We remind the Department of its duty set forth in Wis. Stat. § 93.90, specifically.

(2)(b) In promulgating rules under par. (a), the department shall consider whether the proposed standards, other than those incorporated by cross-reference, are all of the following:

1. Protective of public health or safety.
 - 1m. Practical and workable.
2. Cost-effective.
3. Objective.
4. Based on available scientific information that has been subjected to peer review.
5. Designed to promote the growth and viability of animal agriculture in this state.
6. Designed to balance the economic viability of farm operations with protecting natural resources and other community interests.
7. Usable by officials of political subdivisions.

WDA respectfully requests that DATCP pull back the proposed revisions to ATCP 51 until all issues presented by stakeholders have been addressed to meet the requirements in WI Stats. 93.90.

Respectfully,

Cynthia Leitner

Cynthia Leitner
President



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WDA Specific Objections to ACTP 51 :

Local control:

The statute that authorizes this rule was clearly enacted as an “enactment of statewide concern.” This preemptive language was upheld by the Wisconsin Supreme Court to wrest approval or control over livestock siting from local units of government (with limited exceptions). Any livestock siting rule that seeks to expand the authority of local government flies in the face of the legislative intent of the authorizing statute and is therefore illegal. This proposed rule expands local control by allowing monitoring compliance. In the case of CAFOs, this is certainly unnecessary, since CAFO’s are already being monitored and enforced upon by the federal and state laws that protect natural resources. Local mischief on matters that have been fully delegated by the legislature to DATCP or DNR to enforce was one of the purposes of the livestock siting law in the first place!

Locals have asserted they have been shut out of the siting approval process. But this comment is disingenuous. Since the law was adopted 15 years ago, local governments have had the ability to adopt siting standards that are more stringent local standards provided that they follow the path outlined in the law. See, Wis. Stat. § 93.90(3)6. Local governments have by and large ignored this provision and pathway opting instead to attempt to “zone out” or adopt moratoria solely in response to a specific CAFO project or application.

This power of “compliance monitoring” will only creep. This will add many additional hurdles to expanding and will make it much more difficult for farmers. The proposed draft also allows neighbors the ability to file a formal odor complaint against the operation. Yet that right already exists and the DNR is the responding agency. See, NR 429, Wis. Admn. Code. Agency comity should prevail and not allow DATCP to direct this jurisdiction elsewhere. No additional oversight should be given to Local Government Units. The whole reason Siting was initiated and passed into law was because the local units of government were on a pathway to halt the expansion of Wisconsin’s critical dairy industry by simply adopting a “Not In My Backyard” approach to land use controls or otherwise “social engineering” the size of an individual’s business. The result was a Hodge podge of local regulations where a farmer’s right to expand was determined not by the efficacy of her business plan and technology but rather where her farm happened to sit locally. Towns and Counties do not have the technical expertise and should not be allowed any additional powers. Let’s avoid this step backward.

Set Backs for Manure Storage Structures:

DATCP staff have unilaterally decided to scrap the current approach to odor management in the siting rule and replace it with wholly unreasonable property line setbacks. Yet the track record of cases reviewed by the Livestock Siting Review Board does not support an assertion that the current approach to odor in the existing rule is not working. This is a classic bureaucratic “solution in search of a problem.” Worse still, the setbacks make no distinction between whether there are any receptors (a home, a school, a park) at the neighboring property. To DATCP, the same setback is required from a home as a corn field, which of course makes no sense. Shockingly, DATCP has wholly failed to “ground test” the impact of the new colossal proposed setback requirements for manure structures from property lines to truly judge the “on the ground” impact of this proposal across the state.



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These overburdensome setbacks are not practical and lack common sense. The rule's overly conservative approach has no rational basis when one considers that the adjoining land use is not considered. Setbacks must be determined from a receptor (neighbor home), not property lines. Some livestock operations will never be allowed to grow and expand based just on this flawed requirement.

Minimum Property Line Setbacks for New and Expanded Manure Storage Structures (+20%)
(*some road right of ways are considered property lines*)

Less than 1,000 AU's (700 cows) = 600' Property Line Setback

1,000 AU's (700 cows) to 2,500 AU's (1,800 cows) = 1,000' Property Line Setback

2,500 AU's (1,800 cows) to 4,000 AU's (2,900 cows) = 1,400' Property Line Setback

4,000 AU's (2,900 cows) = 1,700' + 200' for every 1,000 AU over 4,000 AU's; but no more than 2,500' from Property Line Setback

These outrageous setbacks are a not too subtle mechanism to simply shut down the growth of Wisconsin's dairy industry disguised as a "siting standard."

Odor Reduction BMP's to Reduce Setback's from Manure Storage Structures:

The proposed rule allows a CAFO to reduce its setbacks by use of Odor Mitigation Control Practices. The extreme setbacks can be mitigated by "earning back" setback through implementing odor control practices. We have no idea of the scientific basis for these practices, their scoring or the appropriateness of setback earned back. Many of the practices are cost-prohibitive to employ meaning it is a false promise to farmers to think they can "earn back" setback at all. The setbacks therefore become prohibitions. At a time when livestock operations are being courted by other states, this rule would constitute yet another hurdle for the industry in Wisconsin.

Control Practices allowed and are considered "High Effectiveness" in reducing setback distances include:

- Wastewater Treatment
- Impermeable cover
- Compost

Control Practices allowed and are considered "Medium Effectiveness" in reducing setback distances include:

- Natural crust
- Bio cover
- Geotextile cover
- Anaerobic digestion
- Manure Solids Separation and Reduction (Higher efficiency)



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You are allowed to combine (1) highly effective odor reduction practice with (1) medium odor reduction practice to reduce your setback requirement.

A Dairy is also allowed to propose an odor reduction practice not stated in the rule "if, in the department's opinion, there is adequate scientific evidence to show that under relevant conditions the practice will result in odor reduction commensurate with the approved credit." A reduction that will be essentially based on an opinion.

Regardless, even if you choose to use odor mitigation control practices to reduce your setback distance, your setback can never be reduced below:

350' for facilities under 1,000 AU's (700 cows)

500' for facilities 1,000 AU's (700 cows) to 2,500 AU's (1,800 cows)

750' for facilities over 2,500 AU's (1,800 cows)

A 2,500-foot setback from a manure storage structure to a property line is close to a ½ mile setback. Under this approach, a dairy farmer would need an 80-acre setback from a property line to locate and utilize a manure structure.

Feed Storage Run-Off Waste:

WDA's members employ the latest technology and engineering designs in managing feed storage run-off waste in Wisconsin.

If this is passed, compliance costs for medium sized farms would be astronomical by regulating most farms to collect all the rainwater that runs off their feed storage area. Many farms would need to add and or construct a new storage facility for the added volume and also have additional costs to upgrade their existing feed pads. This doesn't include the additional annual costs of hauling and land applying this additional volume of rainwater. The inclusion of this overburdensome requirement alone has the potential to put livestock operations out of business or force them to increase the size of their herds just to offset costs of compliance. The WI-NRCS standard on VTAs must be removed from this proposed rule.

Increased Setbacks for Livestock Housing

Existing livestock structures are allowed a 200' setback from a property line and 150' setback from a public road right-of-way. The proposed draft increases this setback for certain livestock facilities. The setback should be the same for all size operations and should remain as written in the existing rule.

Livestock Siting Must be Consistent with Other Areas of Regulation

CAFO's are already accountable to DNR standard NR243 and the federal Clean Water Act. These rules already address groundwater and surface water protections. There is no need for the proposed ATCP 51 rule to add more regulations since CAFO's are already mandated and are being enforced against if they don't comply. Another set of regulations is cost-prohibitive.



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Economic Impact of Proposed Rule

The economic impact of this rule as proposed without being reworked could be disastrous for the livestock industry. The setbacks are far expanded and extreme and would limit a farmer's ability to site or expand rather than assist it. Depending on the size of the facility and local land base, areas of the state will simply be off limits from any further livestock growth. This rule hasn't been "ground checked" yet to gauge its impacts on farmers. The economic impact of the rule revisions will not be truly understood until the indirect cost of its expansion "chilling effect" is accounted for. How many operations will be unable to expand or choose to move out of the state because of these overly restrictive setbacks and other problems identified with the rule revisions? That impact needs to be analyzed and added to the cost impact of the rule for it to have efficacy.



ROBIN J. VOS

SPEAKER OF THE WISCONSIN STATE ASSEMBLY

July 3, 2019

Secretary Brad Pfaff
Department of Ag, Trade & Consumer Protection
2811 Ag Drive
Madison, WI 53708

Dear Secretary Pfaff,

We are writing to encourage that you return the draft ATCP 51 revisions back to staff for further work and consultation with affected stakeholders prior to advancing the rule to the full DATCP Board for its consideration. As we understand matters, the revisions DATCP staff are recommending could add significant new costs to existing and expanding CAFO operations and have a chilling impact on any future potential growth in the dairy industry. This added uncertainty compounds an already problematic farm economy, which is struggling with low commodity prices and trade issues.

According to Ch. 93.90(2)(b), Wis. Stats. DATCP is required to promulgate rules "specifying standards for siting and expanding livestock facilities." Those rules must be, *inter alia* (i) "practicable and workable"; (ii) "cost effective"; and, (iii) "designed to promote the growth and viability of agriculture in this state." Unfortunately, the revisions under consideration by DATCP fail to meet these legislative charges and should not advance to the DATCP Board until it is reworked with stakeholder input.

Every four years, DATCP must review the siting rule, ATCP 51. However, DATCP does not have to revise the rule it adopted in 2006, which we understand has been working as it is written without any revisions in the previous four-year reviews.

The 2003 ACT 235, which created the Livestock Siting law, was a bipartisan compromise between legislative Republicans and Democrat Governor Jim Doyle. The final product included negotiated agreements between the Ag community, Wisconsin Towns' and Counties Associations. The Livestock Siting law struck a fair balance between Wisconsin's desire to maintain its' position as the dairy state while providing local governments the tools they needed to ensure CAFOs were operating in an environmentally safe manner to protect the health and safety of residents.

If local governments or neighbors were unhappy about some aspect of a CAFO operation, they could take their complaint to the Livestock Siting Review Board. The amount of traffic before the Livestock Siting Review Board is an indicator of whether the siting law is working as intended.

July 3, 2019

In recent years, the Review Board was largely inactive. These years coincided with significant expansion of the livestock industry in Wisconsin and yet the controversy was minimal as evidenced by the paucity of cases before the Review Board. That is a good thing. The cases that have appeared of late have not centered on the adequacy of setbacks or odor complaints; rather, these cases have largely focused on local units of government attempting to condition local approvals with "operational" restrictions, nothing whatsoever to do with the adequacy of ATCP 51.

The Livestock Siting law was intended to apply to the siting and expansion of livestock facilities and related structures, not to mandate a host of operational conditions that are already covered under other laws (i.e., NR 151, NR 243, ATCP 50, etc.). These revisions expand ATCP 51 to include "operational provisions" and would grant local officials' powers over operations that they do not currently have under state law. That was never the intent of 2003 ACT 235.

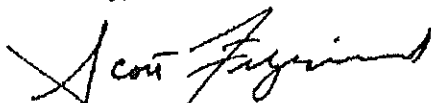
The rule proposes hugely expanded setbacks that would limit a farmer's ability to site or expand, rather than assist them. These extreme setbacks are not "designed to promote the growth and viability of animal agriculture in this state." Depending on the size of the facility and local land base, areas of the state will simply be off limits from any further livestock growth. This rule has not been adequately examined to gauge its impacts on farmers.

Setbacks in the revised rule are from property lines, not neighbors, or receptors. A livestock operation that abuts a third-party owned 100-acre cornfield with no residence, should not have to be set back nearly 1/4 of a mile, as if it were located next to an elementary school.

It appears your staff is creating a solution in search of a problem. The ATCP 51 revisions are not ready for a public hearing, the next stage of the process, and should be sent back to staff for further work with the affected stakeholders. We have asked Ag Committee Chairman Howard Marklein and Gary Tauchen to monitor this process and, if necessary, reject the current revisions and send them back to DATCP.

Thank you for your attention to this important matter.

Sincerely,



Scott Fitzgerald
Senate Majority Leader



Robin J. Vos
Assembly Speaker

Cc: Senator Howard Marklein
Representative Gary Tauchen

Heaton-Amrhein, Jennifer A - DATCP

From: Jordan K. Lamb <jkl@dewittllp.com>
Sent: Friday, September 13, 2019 9:14 AM
To: DATCP Livestock Siting Comments
Cc: Keri Retallick
Subject: ATCP 51 Comments - Wisconsin Pork Association
Attachments: WPA Comments on DATCP Proposed Revisions to ATCP 51, Sept. 13, 2019.docx.pdf

Categories: Green Category

Good morning. Attached please find comments on the hearing draft of ATCP 51 filed on behalf of the Wisconsin Pork Association.

Kind regards,
Jordan Lamb

Jordan K. Lamb

Attorney / Partner

Ph: 608.252.9358

F: 608.252.9243

ijkl@dewittllp.com

2 East Mifflin Street, Suite 600

Madison, Wisconsin 53703

DeWitt : Law
: Firm



www.dewittllp.com

September 13, 2019

VIA EMAIL TO livestocksitingcomments@wisconsin.gov

Mr. Chris Clayton
DATCP-ARM
P.O. Box 8911
Madison, WI 53708

RE: Wisconsin Pork Association Comments on Proposed Revisions to ATCP 51

Dear Mr. Clayton:

On behalf of the Wisconsin Pork Association (WPA), I am writing to express our **opposition** to the Department of Agriculture, Trade and Consumer Protection's (Department's) proposed changes to ATCP 51.

Please note, WPA has joined several other agricultural groups and has submitted written joint comments under separate a filing. The WPA's comments below supplement those joint written comments and provide additional specific concerns on behalf of Wisconsin's pork industry.

A. Draining Waste Structures for Inspection

Under proposed new section Wis. Admin. Code s. ATCP 51.18(4), waste storage structures would be required to be completely emptied in order to be inspected. This requirement would be triggered for structures that are more than 10 years old or for newer structures if "construction standards for the facility cannot be verified from reliable documentation." We oppose this new requirement because it is cost prohibitive, dangerous to animal health and the Department has failed to show that this requirement meets the statutory standards for triggering this revision. *See* Wis. Stat. s. 93.90(2)(b).

For hog under-barns, where waste is stored under the animal housing, completely emptying the waste storage structure would require the farmer to depopulate the barn (*i.e.*, send the entire herd to slaughter) and wash and remove all manure from the pit. These structures are not designed to be completely emptied for inspection. They are designed to be inspected while in use. The proposed emptying process risks potentially damaging the storage facilities with sludge removal and this requirement is both costly and unnecessary.

Mr. Chris Clayton, DATCP-ARM
September 13, 2019
Page 2

B. Category 1 vs. Category 2 Livestock Housing

The proposed revisions to ATCP 51 differentiate between animal housing types by classifying them either “Category 1” or “Category 2” livestock housing. *See proposed ATCP 51.01 (19m)*. The proposal states that housing structures are assigned to categories based on the odor generation numbers. *See note, ATCP 51.01 (19m)*.

WPA objects to the classification of deep pit hog barns as category 1 because they are deemed to generate more odor than other structures, such as an alley scrape dairy barn. We request to review the Department’s science and analysis that provides concrete scientific evidence that a deep pit hog barn should be categorized as Category 1 livestock housing and, therefore, subject to more stringent setbacks than Category 2 housing. We do not believe that the Department has met the statutory criteria to support this change. *See Wis. Stat. s. 93.90(2)(b)*.

C. Measurement of Setbacks

In addition to the science that determines the categorization of livestock housing structures described in the comment above, WPA objects to the proposed change to measure setback distances from the property line, rather than the nearest neighbor, which is current law. It seems illogical to require setbacks from open space when the nearest structure or neighbor could be miles away. Further, we do not believe that the Department has met the statutory criteria to support this change. *See Wis. Stat. s. 93.90(2)(b)*.

D. Wisconsin DHS Health Consultation – Wisconsin Hog Farm

In 2009, the Wisconsin Department of Health Services was asked to conduct a Health Consultation to investigate odor complaints related to manure odors near the AV Roth feeder pig facility in Wauzeka, WI (Crawford County). The Division of Public Health, in cooperation with the Agency for Toxic Substances and Disease Registry and the U.S. Environmental Protection Agency monitored air quality near the large-scale AV Roth feeder pig farm over two 2-week periods in late May to early July 2009. According to the report, “The objective was to obtain air concentration data for hydrogen sulfide in response to odor complaints and community health concerns, and to evaluate whether exposure to hydrogen sulfide is occurring at levels of health concern for the residents.” The conclusion, after the study and monitoring were complete, was that there was not hydrogen sulfide present in concentrations high enough to harm human health.

This study is important because it may be the only DHHS/EPA air study that has ever been conducted and reported on a Wisconsin livestock farm. Although farms may at times have detectable odors, we do not believe there is reliable science that suggests that Wisconsin

Mr. Chris Clayton, DATCP-ARM
September 13, 2019
Page 3

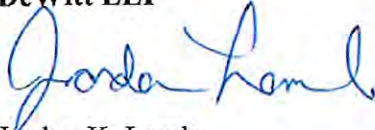
livestock farms are producing harmful hazardous air pollutants in concentrations that are a threat to public health. Did the Department take any such scientific air studies into account when categorizing livestock housing in this draft rule or when establishing setback distances? What actual air monitoring studies on farms did Department staff use to establish the setbacks and categories in this proposal?

In conclusion, the proposed rule revision lacks sufficient review and fails to meet the statutory standards governing implementation of an administrative rule to implement Wisconsin's livestock facility siting law. **The WPA objects to the proposed changes put forth by the Department in the hearing draft of ATCP 51 and we ask that the Board send the rule back to the Department for further review.**

If you have any questions regarding these comments, please contact me directly at (608) 252-9358 or jkl@dewittllp.com.

Sincerely,

DeWitt LLP



Jordan K. Lamb

JKL:jav

cc. Keri Retallick, Executive Vice President, Wisconsin Pork Association
Board of Directors, Wisconsin Pork Association

Heaton-Amrhein, Jennifer A - DATCP

From: Ashley Ambrosius <ArAmbrosius@baylandbuildings.com>
Sent: Friday, September 13, 2019 10:26 AM
To: DATCP Livestock Siting Comments
Subject: ATCP 51

Categories: Green Category

To Whom it may Concern,

The comments below are in response to the proposed changes to ATCP 51, the livestock facility siting rule. This rule and the associated statute have been working well for over a decade. Providing predictability and consistency for farmers that want to grow and expand in Wisconsin has helped keep our state's dairy community strong.

The proposed rule changes could undermine some of the progress we have made. I would ask that the DATCP board not move these changes forward to the legislature without addressing some of the most serious problems, which I've outlined below.

- **Unrealistic Setbacks:** The department staff has recommending abandoning the current odor management standard for an unproven and extreme setback-based system that would be completely unworkable in rural Wisconsin. These new setbacks will keep people from investing in new farms and will make it hard or impossible for existing farms to grow in place. New setback distances would be measured from property lines. Logically, the current system considers the location of someone who can actually perceive an odor on a continued basis.
- **Runoff management:** The change goes beyond DATCP's authority by coming close to establishing the zero-discharge standard enforced against confined animal feeding operations for farms covered by livestock siting. Incorporating standards such as 2016 NRCS 635 for vegetative treatment areas (VTAs) is one example. Keeping VTAs is entirely consistent with the "no substantial discharge" standard that farms covered by siting must meet. The authority to regulate CAFOs rests with state Department of Natural Resources. Blurring the lines between these two permits and categories of farms undermines the reasoning behind having a separate set of livestock siting regulations.
- **Local control:** Livestock siting came to be 13 years ago when local governments were throwing up sporadic roadblocks to farmers. This made Wisconsin a patchwork of regulations, giving farmers little certainty and turning the process into emotional ordeals driven by uninformed opinions and local politics. Communities were divided and farmers' reputations were ruined. We cannot go back to that time. The new setbacks will likely result in more decisions being made by local governments over whether an exception or variance can be made for a certain project. This is what livestock facility siting was meant to avoid.

DATCP'S economic analysis undervalues the true cost of the rule's impact on farmers. These changes would have a significant chilling effect on Wisconsin's dairy community and the businesses that support it. Livestock farms are already heavily regulated by a host of state laws, administrative rules and a growing number of local regulations. More regulations are not what our farmers need as they struggle to recover from years of depressed milk prices. Instead, we should go back to the drawing board and think about how to make smart, highly-focused changes to the rule to make sure that it works better for agriculture, local communities and rural residents.

Thank you,

Ashley Ambrosius
Bayland Buildings, Inc.
920.371.4770

Heaton-Amrhein, Jennifer A - DATCP

From: Danica Hay <Danica_Hay@hotmail.com>
Sent: Friday, September 13, 2019 10:45 AM
To: DATCP Livestock Siting Comments
Subject: Livestock Siting Rules

Categories: Green Category

Hello-

I know all of our rules and regulations need to be reviewed, edited, and sometimes deleted as time goes on. But I have yet to see anything in these revisions that won't hurt WI farmers. In a time where the farming industry is under so much pressure, from so many angles. Adding more restrictions and setting new standards is not the assistance we need from our government. Please, at minimum, slow down this process and allow more time for more public comment. But I would go one further and say there needs to be more evaluation of these proposed changes!!

Thanks-

Danica Hay-Skattum

Heaton-Amrhein, Jennifer A - DATCP

From: Scott Birrenkott <sbirrenkott@wisbank.com>
Sent: Friday, September 13, 2019 11:50 AM
To: DATCP Livestock Siting Comments
Subject: ATCP 51: Livestock Facility Siting Administrative Rule Revision
Attachments: ATCP 51 WBA Comments.pdf

Categories: Green Category

Greetings,

Please find attached the Wisconsin Banker's Association's comments regarding the Department of Agriculture, Trade and Consumer Protections proposed revisions to ATCP 51.

Thank you,

Scott Birrenkott

Assistant Director - Legal | Wisconsin Bankers Association | 608.441.1200, ext 244 | www.wisbank.com

The information contained in this electronic communication and any attached documentation is intended to be general information only and does not constitute legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship.

WBA Secur-I.T. Conference

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September 13, 2019

Submitted Electronically

Wisconsin Department of Agriculture, Trade and Consumer Protection Board
DATCP-ARM, P.O. Box 891
Madison, WI 53708

Re: ATCP 51: Livestock Facility Siting Administrative Rule Revision

Dear Chair Miranda Leis,

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 230 state and nationally chartered banks, savings and loan associations, and savings banks. WBA appreciates the opportunity to comment on the Wisconsin Department of Agriculture, Trade and Consumer Protection's (DATCP) livestock facility siting administrative rule revision (proposed rule).

Wisconsin banks play a large role in their local agricultural communities. Banks foster long lasting relationships with farmers on both a business and personal level. WBA member banks appreciate how vital farms are to Wisconsin and work with them as business and community partners. As such, Wisconsin banks have expressed concern with the proposed changes. Part of a lender's work means having a detailed understanding of farming operations, and agricultural lenders know what it takes to run a successful farm. As such, farmers and lenders alike are deeply troubled that the ATCP 51 changes have been drafted without any input from the farming community. While WBA appreciates the need to maintain a healthy environment in Wisconsin, such a goal must be achieved with the input of the farmers the rule affects. As such, WBA recommends that the proposed rule be returned to DATCP to be reworked with the input of farmers.

In 2017 the DATCP Board (Board) reviewed and rejected a draft of proposed revisions similar to the proposed rule. A component of that rejection was a need for farmer participation and industry input. This component has not been met and the proposed rule instead sets arbitrary lines. Wisconsin dairy is already under severe stress, and the proposed rule will further jeopardize the industry and future processing and jobs without sound, scientific cause. The proposed rule attempts to fix a model that is not broken by presenting impractical changes.

The most significant of those impracticalities are the new odor management standards and proposed setback revisions. Specifically, the proposed rule removes the current odor index and replaces it with a measurement of distances from property lines rather than buildings. Meaning, odor setbacks are not determined based upon distance from a person who can perceive the odor and could instead be set by distance from an empty field. WBA believes the proposed rule should maintain the current standard by measuring from the nearest odor receptor, such as a neighboring residence.

The ATCP 51 setback changes would force farmers to relocate or otherwise jeopardize farming operations by creating impossible scenarios, require additional funding, and generally stymie

growth. For example, the setback distances are not practicable given space constraints. In certain areas, such as north eastern Wisconsin, one Wisconsin bank works with farms where roads cross every mile of space. Here, where acres are divided into squares, the farm was not constructed in a way that could meet the new setback limits. Instead, the farm would have needed to be placed in the middle of the square mile to not reach anyone's property line. Farms are not currently set up this way and thus expansion is rendered impossible under ATCP 51.

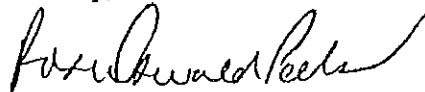
The impracticalities of ATCP 51 will impose hardship upon many lenders and their agricultural customers by imposing rule changes in the middle of long time loan relationships. It is WBA's understanding that ATCP 51 was intended to create a Statewide standard for livestock siting. Anytime such standards become subject to modification and permit local variation it imposes expenses and burdens upon lenders who must learn to understand and assist their customers in navigating unknowns and potential inconsistencies. The proposed rule opens the door for patchwork regulation and enforcement that will require the further expenditure of resources for agricultural lenders and ultimately, further burden Wisconsin farmers.

For example, a WBA member has an agricultural customer that just increased their concentrated animal feeding operation (CAFO) from 1,000 to 2,800. Currently, they are working with their lender on a start of 200 to 300 more, and have been approved. The proposed rule would inhibit that because the property lines will change, restricting the prior work they did to increase their CAFO. Under the proposed rule, the costs that went into the CAFO increase would be lost, and additional costs will be incurred in order to meet the new ATCP 51 restrictions.

In conclusion, while WBA supports enhanced environmental protections, such steps must be taken with the input of Wisconsin farmers. WBA recommends that the DATCP Board return the proposed rule for reconsideration with input from the agricultural community.

We appreciate your consideration of these comments.

Sincerely,



Rose Oswald Poels
President/CEO

Heaton-Amrhein, Jennifer A - DATCP

From: vgdairy <vgdairy@vandergeestdairy.com>
Sent: Friday, September 13, 2019 12:28 PM
To: DATCP Livestock Siting Comments
Cc: VDGdairy@vandergeestdairy.com
Subject: FW: ATCP51 comments
Attachments: Scan0008.pdf; Scan0009.pdf

Categories: Green Category

Thank you!

Lori Ziellow

Van Der Geest Dairy Cattle, Inc.

5555 Cty Hwy A

Merrill WI 54452

Ph #715-675-6043

Fax #715-675-7945

vgdairy@vandergeestdairy.com

www.vandergeestdairy.com

VAN DER GEEST



DAIRY CATTLE, INC.

Producing Quality Dairy Products

My name is Lee Van Der Geest representing Van Der Geest Dairy Cattle, Inc., a 3,000-cow family owned dairy located here in Marathon County.

I am speaking against the revisions of Wisconsin's livestock siting rule ATCP51 and why it is not a workable solution for dairies in Wisconsin. There are several problems with the draft rule which would alter how new or expanding farms can be sited. Farmers need to have a fair and workable framework in which to grow if they want to. The present livestock siting law does provide that framework, but with the new draft rule it would work against it. The draft rule would only add more stress to our farm economy.

Most local governments don't have the resources to manage a highly technical rule like DATCP is proposing. The Legislature crafted the livestock siting law for the benefit of farmers and local government. It gave farmers a process and set of standards when building or expanding their farms as well as providing local governments a useful tool to site and regulate larger farms. It makes no sense to undo this.

Livestock farms are already heavily regulated by several state laws, administrative rules and a growing number of local regulations. Finding a consistent path through these regulatory layers is already one hard job farmers must do. We need consistency in rules and shouldn't have to deal with even more complex rules.

Once again, I reiterate, I am against the proposed ATCP51 rule revision and want to thank the agency for its consideration.

A handwritten signature in black ink, appearing to read 'Lee Van Der Geest'. The signature is fluid and cursive, with a long horizontal stroke at the end.

5555 County Road A., Merrill, WI 54452

Phone: (715) 675-6043

Fax: (715) 675-7945

Website: www.vandergeestdairy.com

E-mail: vdgdairy@vandergeestdairy.com

Heaton-Amrhein, Jennifer A - DATCP

From: Jay & Cheryl Heeg <jcheeg@yahoo.com>
Sent: Friday, September 13, 2019 2:01 PM
To: DATCP Livestock Siting Comments
Subject: FW: Livestock siting comments
Attachments: Heeg Bros Dairy LLC-Livestock siting.pdf

Categories: Green Category

From: Jay & Cheryl Heeg [mailto:jcheeg@yahoo.com]
Sent: Friday, September 13, 2019 1:59 PM
To: 'livestocksitingcomments@wisconsin.gov.'
Subject: Livestock siting comments

I have attached a PDF file with my comments. Thank You

Jay Heeg

Chris Clayton, Livestock Facility Siting Program Manager
Bureau of Land and Water Resources
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

Re: Comments on the 2019 hearing draft of ATCP 51 Livestock Siting

Dear Mr. Clayton:

My name is Jay Heeg I am one of the members of Heeg Bros Dairy LLC from Colby, WI. In 1999 my brothers: Mark and Gary, and myself started Heeg Bros. Dairy LLC. Prior to that we milked cows on two separate farms and farmed separately. Our parents August and Joanne milked on one location in a stanchion barn and Mark and his family milked on another location. We decided to build one facility for milk cows and use other buildings for dry cows and heifers. By combining our resources we were able to best utilize each individual's abilities and skills. Currently, we milk 1,100 cows and raise 900 heifers. Last year we renewed our fourth WPDES (Wisconsin Pollutant Discharge Elimination System) permit. Our dad, August, was suppose to retire when we combined our farms, but today at 86 years old he is our milk truck driver and at the farm daily. We also have two nephews working at the farm. So we have three generations working together on our farm along with 20 employees. I feel we are deeply rooted in the dairy industry and care about the future of the dairy industry for the next generations.

Dairy and livestock agriculture generates tens of billions of dollars each year for our communities. Each dairy cow, for example, accounts for \$34,000 annually. Most of that money remains in the local community. Livestock farming also provides tens of thousands of jobs in our communities. In addition to on-the-farm employees, jobs are generated by a host of other related businesses — such as feed mills, veterinarians, equipment dealers, engineers, technicians, banks, custom operators and construction companies. Dairy processing generates even more jobs, at cheese plants, distribution companies and milk haulers.

Farmers need and deserve a fair and predictable framework in which to grow if and when they decide. The livestock siting law is supposed to provide that framework, but this draft rule would break it apart. Now is not the time to reconfigure one of the most influential regulations for Wisconsin's livestock farmers. The dairy and farm economy are still in a prolonged period of depressed market prices. Finances are tight regardless

of the size or type of farm. Bankruptcies are on the rise. The draft rule would only add to the difficulties. The decision to grow is never an easy one for a farmer to make. It's based on many factors, including what is best for the family. The draft rule would make it extremely difficult, if not impossible for growth. This affects all sizes of farms. Those that are seeking to surpass the livestock siting threshold would be hit particularly hard. The rule would put existing investments in buildings, equipment and other infrastructure in jeopardy.

In general, the draft phases out odor management to a setback distance for various types of structures. The distances significantly limit agricultural potential and compromises long-term planning and increases cost. I am concerned that our farm currently has an infrastructure in place and the proposed new rules could put our farm at risk of not being compliant.

Wisconsin's property system is based on a 40 acre parcel. A 40 acre parcel is typically 1,320' by 1,320'. Thus, the setback maximums could be 600' or 700' depending on facility type. The parcel would be non-buildable because there would only be a 120' buildable square in the middle of the parcel. This is further compounded because some farms have an entity that owns the farmstead and surrounding or tillable lands are owned by another entity or trust. The draft has no provisions to create setbacks from property lines that may be of different entities, but individual owners may be the same or associated.

Finally, new rules and laws can be workable by the majority, but they have to be written to remove the likelihood of interpretation. Subjective interpretations are opinions and allowing rule language to be interpreted, one voice speaking for the majority, I do not believe that is the intent of codes, laws, and rules. Similarly as stated above, the draft ATCP 51 allows interpretation by local authorities by not specifically stating how the rule will be facilitated. Similarly, utilizing conservation standards as a law has consequences. Standards are utilized to create uniformity from project to project and reduce the risk of technical issues because non-professionals use them as guides to put projects together. Standards should be utilized to create a standard basis of developing outcomes and allowing professionals like Professional Engineers (PE), Certified Crop Advisors (CCA) and others by their code of ethics to protect the environment.

Thank you very much for your time and appreciate you hearing my comments.

Sincerely,

Jay Heeg

Jay Heeg

Heaton-Amrhein, Jennifer A - DATCP

From: Collins Dairy <collinsdairy@hotmail.com>
Sent: Friday, September 13, 2019 2:02 PM
To: DATCP Livestock Siting Comments
Subject: comments for livestock siting
Attachments: Livestock Siting Rule letter.collinsdairy.docx

Categories: Green Category

Thank You
Kevin & Lisa Collins
Collins Dairy LLC

Livestock Siting Rule

I would like to give my thoughts and concerns to the livestock siting committee.

My Wife and I both grew up on dairy farms in Wisconsin. We started farming on our own in 1987 as tenants on a 40 cow dairy; from there we purchased a foreclosure farm with an old milking parlor on the property in 1993.

We presently are a CAFO operation milking 1300 cows with 1100 head of young stock and have 3000 acres of cropland owned and rented.

Our farm grew not because of wanting to be large or out of greed, but out of necessity in order to be profitable and survive in a tight margin industry. As we grew we stayed diligent with being good stewards of our land and environment.

We adopted a nutrient management plan to keep our fields correct on nutrient values. We have always incorporated our manure as it was applied and maintained sufficient land to apply our manure at correct levels. We also use cover crops to control erosion.

With our cattle we continually strive to lower our phosphorus levels in their feed to keep levels low in the manure. We monitor our water usage as not to add to our volume in the storage areas.

The list goes on with all the practices that good producers will use to be profitable and more importantly a good steward towards the environment and community.

I give you these points not to brag, but to let you know that our farm and the other good dairyman in this state are doing the same. Are there bad operations in our industry?? You bet there are, and we don't like it anymore than you do! Size doesn't matter either, just because you're a CAFO all regulations get pointed in that direction, yet some smaller non-CAFO operations, be it dairy, horses, goats, or beef will pile manure by a ditch, a creek, or a ravine and it's no big deal? Also municipal sewage plants in the case of storm events that can't handle the flow of rain waters can open the valve and dump raw sewage to the rivers and lakes? Where is the accountability there? Our environment is everyone's responsibility to maintain, not just one minority group that becomes an easy target.

The points to ponder are that a dairy that grows means that they are successful, driven, and have a faith in their industry, and want to feed the world.

Usually, they are leaders in the community, provide jobs that stimulate the economy by purchasing most of their needs locally. Bigger operations strive for efficient

and innovative practices. They want to make the best use of their land, cattle, and nutrients to better their operations.

The topic of odor management from property lines could eliminate dairy in Wisconsin. I live 20 miles from Kaukauna, Wisconsin and on the right day and wind I can smell the paper mill and its stinks! Should we shut down the paper mill industry? My daughter and son in law recently had a fire and lost the milking parlor and a free-stall barn, with the regulations you want to impose you would have been denying the next generation to continue in farming. We need common sense in regulations otherwise one of Wisconsin's major industries will be gone!

My wife is currently on a local zoning board and I was on town board for 8 years. Problem with local control of farm siting is that if there are no people on the board that have an agricultural background, there will be no understanding of what a good operation does. Dairy operations work at being compliant, and go above and beyond expectations to do what is right for a situation. If there isn't anyone with knowledge of agriculture on the board, pre-determined decisions and conclusions are already in place. One suggestion for setbacks distance is to look at an operation if it's close to an urban sprawl compared to an operation in a rural area. In our township and others, someone moving or building in the area signs an agreement that states they know that when you live here, there will be noises, smells and late night operations.

Siting rules that are made should be there to create a structure so the dairy can operate with reasonable and thought through regulations, and not rules that drive costs up that make it impossible to stay in business.

There are rules and regulations that come from all directions towards dairy farms. Any input and discussions on siting, should involve the producers to create a structure and rules that help everyone involved to be headed in the right direction of intended goals. Without the participation from all parties involved, it creates a bigger separation between knowledge and science based practices with that of perception and biased decisions.

Thank you for your time. We need to keep Wisconsin a great state and one of the spokes in the wheel is a strong and sustainable dairy industry.

K & L Collins

Wisconsin Dairy Producer

Heaton-Amrhein, Jennifer A - DATCP

From: John Holevoet <jholevoet@dairyforward.com>
Sent: Friday, September 13, 2019 2:28 PM
To: DATCP Livestock Siting Comments
Subject: Comments on ATCP 51
Attachments: ATCP51.joint.comments.final.4.pdf

Categories: Green Category

Chris,

Please find attached group comments from eleven different ag and business groups on the proposed ATCP 51 revisions.

Have a good weekend,

John

--

John Holevoet

Director of Government Affairs

[Dairy Business Association](#)

411 W. Main Street, Suite 206, Madison, WI 53703

(608) 358-3941

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September 13, 2019

Chris Clayton, Livestock Facility Siting Program Manager
Bureau of Land and Water Resources
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

Re: Joint Comments on the 2019 Hearing Draft of ATCP 51

Dear Mr. Clayton:

The undersigned agricultural groups offer these joint comments on the proposed revisions to Wis. Admin. Code. s. ATCP 51. Together, we represent nearly all of Wisconsin's livestock agriculture. Recently released data from 2017 reveals that the economic impact of agriculture in Wisconsin is stronger than ever. Total agricultural impact to our state's economy is \$104.8 billion with dairy alone accounting for nearly \$46 billion, contributing more than 150,000 jobs statewide. The negative impacts of the proposed rule revisions — which will without a doubt stymie further growth of livestock agriculture in Wisconsin — will be felt not just by livestock producers. All the allied industry partners that serve animal agriculture in the state, such as agricultural supply cooperatives, veterinarians, agricultural consultants and planners, milk and meat processors

and animal feed and health products manufacturers and distributors, will suffer. Left unchanged, this proposed rule could negatively affect hundreds of thousands of jobs in this state.

While each of these organizations reserves the right to separately submit written comments to highlight specific concerns unique to their respective sectors, we hope that by writing together we emphasize that agriculture is united in its strong opposition to the draft rule put forward by the Department.

Process Concerns.

In 2017, a very similar draft of proposed revisions to ATCP 51 was presented to the Department of Agriculture, Trade and Consumer Protection Board (Board) for review. The Board decided not to move that draft forward to a public hearing. Instead, Board members instructed Department staff to: (1) gather more stakeholder input and (2) analyze the impact that the proposed new setbacks would have on farms that were previously permitted under the livestock facility siting rule. The Department has not followed the Board's direction. The Department has not adequately responded to stakeholder input nor has an "on the ground" setback analysis been performed and presented to the Board.

Multiple meetings with agricultural stakeholders since 2017 did not result in any significant changes to the draft that was presented to the Board at its July 2019 meeting. Implicit in the Board's directive to seek more stakeholder input was the idea that the feedback would be used to improve the rule. This has not been done.

In December 2018, the Department reconvened the Technical Expert Committee (TEC) with no change to membership. The TEC had *no* farmer participation and very little industry input. From our view, the TEC reviewed a handful of issues in an abbreviated fashion and used the 2017 draft rule language as the starting point for discussion. Not surprisingly, at the end of this process the Department forwarded a rule to the DATCP Board that is very similar to the 2017 version.

The Department has not tested the impact of the proposed new setbacks on farms as the Board requested in 2017. Not only is moving to a setback-only model a major shift in policy, but if it is not well reasoned and tested, then these setbacks could also be an obstacle to the success of livestock agriculture in Wisconsin. In 2017, Dairy Business Association staff applied the new setbacks to two projects: a farm growing to CAFO size and another just growing beyond 500 animal units. Neither project could have fit within the parameters of the new setbacks. The proposed rule changes would have halted these family farms' plans or potential to grow their businesses, contrary to the legislative intent of the authorizing statute. Additional testing is imperative to ensure that we are not setting an unrealistic and unworkable standard to the detriment of animal agriculture in our state.

At the July 2019 Board meeting, Department staff suggested that it would be impossible to do this sort of analysis and that they had never been directed by the Board to perform one. It is true that each individual farm project will be different, which would make testing all the previously approved projects a long and difficult process. This is not what was expected. It is not unreasonable for the Department to test a representative sampling of projects in order to gauge the impact of their proposed changes. Our livestock industry groups stand ready to assist in providing representative farms on which to conduct this analysis.

The Department's authority to promulgate and revise this rule springs from and is limited by Wisconsin's Livestock Siting Law (Wis. Stat. § 93.90). The Legislature held that this law "...is an enactment of statewide concern for the purpose of providing uniform regulation of livestock facilities." The legislative intent underpinning the livestock siting statute is to create fair and uniform statewide standards for siting new or

expanding livestock farms across the state. Specifically, Wisconsin law requires the Department to promulgate rules that are:

1. Protective of public health or safety
2. Practical and workable
3. Cost effective
4. Objective
5. Based on scientific information that has been subjected to peer review
6. Designed to promote the growth and viability of animal agriculture in this state
7. Designed to balance the economic viability of farm operations with protecting natural resources and other community interests
8. Usable by officials of political subdivisions. *See Wis. Stat. § 93.90(2)(b).*

Additionally, the administrative rules used to implement the livestock siting statute must be reviewed every four years. The legislative intent behind this review is to ensure that ATCP 51 keeps pace with changes in technology and agricultural practices. The intent is not to make wholesale policy choices concerning the ability to expand; that is left to the Legislature. Moreover, changes in Wisconsin law, rooted in 2011 Wisconsin Act 21, require all administrative rules to be grounded in clear statutory authority. These proposed rule revisions fail to meet the legislative intent of the authorizing statute and are contrary to the Legislature's charge to develop a rule "designed to promote the growth and viability of animal agriculture in this state."

Odor Management and Setbacks.

Technical Expert Committee. The proposed rule would abandon the current odor management standard, which relies on an odor score along with setbacks, in favor of a new system that relies on drastically increased setbacks with the possibility of credits for certain odor control practices. This is the most significant and unworkable change made in the hearing draft. It is noteworthy that this stark policy shift originated from DATCP staff, not from the farming community, public concerns or the TEC. The 2015 TEC Report made several specific recommendations on how to update and improve odor scoring, but it did *not* recommend the wholesale abandonment of the system. Rather, this significant shift in policy was advanced by agency staff and was included in the hearing draft submitted to the DATCP Board in 2017 and then repeated in this draft.

Statutory Criteria. The argument made by Department staff for the new setback model is that the odor scoring methodology is no longer the subject of ongoing study and improvement. It is true the OFFSET model is no longer being updated by its developers. Yet, the new setback distances themselves are based on this same body of knowledge. Also, other states that rely on the OFFSET model have found a path forward that is different than the absolute setback approach that DATCP proposes. There is no evidence that the proposed system meets the statutory standard of being practical and workable, cost effective or objective, designed to promote the growth and viability of animal agriculture in this state, and designed to balance the economic viability of farm operations while protecting natural resources and other community interests. It appears that these statutory guideposts for the siting law have been largely ignored. Furthermore, the proposed setbacks appear to be a solution to a problem that does not exist. There have been very few challenges to the livestock siting process overall, and the odor scoring system has not been featured prominently in any.

Setback Measurements. The threat that expanded setbacks pose to the growth of livestock agriculture is exacerbated by having distances measured from property lines, as opposed to being measured from a person who can perceive an odor. The current odor scoring system is measured from the location of the nearest odor

receptor, such as a neighboring residence. This rule should maintain this standard. Measuring an odor's impact on unimproved forested land or a neighbor's corn field is inappropriate. By basing these setbacks on property lines, we would be disregarding the actual issue they are meant to address. The adoption of these increased distances in combination with being measured from property lines would make Wisconsin a regulatory outlier. Farmers have a choice of where to grow and expand their farms. The proposed changes would be one more reason for farmers to decide to grow their businesses elsewhere. Such a decision affects not just farmers. Our state's processing industries will direct their investments where the meat and milk are being produced.

Unclear Flexibility. Under the proposed changes, farms seeking a livestock siting permit could try to "earn back" part of the setback amount by implementing different odor mitigation strategies. This is positive, but it is unclear if the amount that farms could practically "earn back" would make the setbacks workable. Once again, the lack of effort by the Department in applying this new system to real-life examples leaves us without the information needed to evaluate it. This approach would need to be tested using real-life example farms before being adopted.

Local Variance. The only option for farmers who cannot meet the increased setbacks and "earn back" enough ground to fit into their existing or proposed footprint is to try to seek a local variance. The Department presents this as a helpful alternative, but it would basically return the livestock siting process to the whims of local officials. This is exactly what the livestock siting law was created to avoid; therefore, this rule revision fails to live up to the legislative intent of the authorizing statute.

Runoff Management.

Changes proposed in this draft regarding runoff management effectively establish a de facto effluent limit for farms covered by livestock siting. Livestock siting legislation was not meant to duplicate CAFO regulations. Blurring the lines between these two permits and categories of farms covered by this rule revision undermines the reasoning behind having a separate set of livestock siting regulations. There is also a legal consideration because we do not believe that DATCP has the authority to establish such a limit. Rather, this duty has been expressly delegated to the state Department of Natural Resources and any attempt to undermine that delegation would be contrary to law.

Requiring NRCS 635 Compliance is Inconsistent and Expensive. Additionally, the proposed rule would incorporate 2016 NRCS 635 by reference. 2016 NRCS 635 is the state-specific version of the federal technical standard on the construction of vegetated treatment areas (VTAs). It was created at a time when DNR was seeking to stop the use of VTAs. DNR had a strong hand in the creation of this new technical standard, and the result was a version of NRCS 635 that differs greatly from the federal version and the versions used by our neighboring states. The standard was less about how to build a VTA and more about discouraging farmers from building them.

The DNR's former plan to abandon all VTAs, regardless of their individual effectiveness, is not consistent with the federal Clean Water Act. It also runs contrary to 2011 Wisconsin Act 21. Ultimately, it took litigation to stop the DNR from moving forward. 2016 NRCS 635 is not consistent with current DNR practice for regulating VTAs on CAFOs and therefore should not be applied to CAFOs and smaller farms through the livestock siting rule. A larger conversation needs to be had about potential revisions to 2016 NRCS 635 to make this standard workable before it should be adopted by the Department in an administrative rule, which will transform a guidance document into Wisconsin law. These changes will also impact farms that have already been permitted and it is unfair to change the rules on them after the fact.

Additionally, compliance with 2016 NRCS 635 would be very expensive. The economic analysis performed in conjunction with the release of the hearing draft greatly underestimates the cost of compliance as well as the number of farms that would be affected. We understand that most farms faced with meeting 2016 NRCS 635 would opt to collect all the rainwater that runs off their feed storage area. For many, this would require the construction of a new storage facility for the added volume of liquid in addition to also upgrading their feed pad. For many farms, this will cost significantly more than \$210,000 estimated by the Department. Additionally, once the storage facility is built, the farm will face the annual cost of hauling and land applying this extra rainwater in perpetuity. This significant ongoing annual expense is not reflected in the economic analysis, rendering it faulty. Furthermore, the estimate that only 55 farms would be affected does not properly consider farms that desire to grow up to, or above, the livestock siting permit threshold. Requiring compliance with 2016 NRCS 635 both retroactively and prospectively is exactly the type of regulation that will halt growth plans, force farms out of business or require farmers to borrow heavily and likely grow their herd sizes to pay for the increased cost of compliance.

The true economic impact of abandoning VTAs is increased because that policy would escalate environmental risk. In many instances, VTAs can be an effective way to remove nutrients from rainwater that has contact with livestock feed. The nutrients are absorbed by the growing vegetation, which can later be mowed and harvested. The most likely alternative to a VTA is the collection of that water for later land application. In Wisconsin, our climate and growing season typically provide farmers with two narrow windows of time, in the fall and spring, during which to apply most of the nutrients to their fields. Dramatically increasing the volume of what would need to be hauled and applied during these two periods would only increase the likelihood of runoff events and nutrients leaching into groundwater. It would also result in significantly increased localized traffic and road impacts. The other management option is to irrigate the process wastewater. However, many local jurisdictions have banned just this type of activity, leaving farmers with little option but to attempt to thread the needle during the two application periods available.

Consistency with Existing State and Federal Standards is Needed.

Agricultural facilities are already heavily regulated by a host of state laws and administrative rules. Where possible, DATCP's livestock siting rule should be consistent with other state regulations including ATCP 50, NR 151 and NR 243. ATCP 50 and NR 151, which regulate runoff management and manure application. The state's permitted CAFOs are required to meet the standards found in NR 243 and the Clean Water Act. The DNR has enacted and enforces these existing standards to be protective of groundwater and surface water. Adding another layer of complexity to this already confusing regime and creating an inconsistent, yet duplicative, set of regulations would run counter to the livestock siting law's legislative intent and would not serve Wisconsin's water quality or farm community.

Broadened Local Control is Contrary to Legislative Intent.

Several changes in the hearing draft would expand local control, undermining the express intent of the statute. For example, there are new sections on monitoring compliance added to ATCP 51.14, 51.16, 51.18, 51.20 and 51.34. First, increasing the opportunity for local governments to monitor compliance in each of these sections is duplicative and unnecessary. Second, expanding the local government's authority to do so could potentially increase local conflict and discourage livestock farming in certain communities. These provisions will likely increase the type of local conflict that the livestock facility siting statute was meant to avoid. In addition, this expanded compliance monitoring role has been created without any statutory authority to promulgate a rule allowing for the delegation of compliance monitoring of permitted farms to local units of government. *See* Wis. Stat. § 227.11(2).

Giving more authority over livestock siting to local governments might sound benign or even positive to some people. But it's neither. Most local governments, especially town governments, lack the technical expertise to develop, implement or enforce their own livestock siting or operational standards.

Local governments do have tools at their disposal if they want to be more involved in regulating farms through livestock siting and land use, in general, through zoning. For example, the siting law outlines a process for local governments to follow if they believe tougher area-specific standards are necessary. Tellingly, very few local governments make use of either tool until they are actively seeking more authority, which is almost always in response to a proposed new farm or expansion. This explains the increase in new CAFO moratoria recently enacted by towns and counties — in clear violation of the livestock siting law. The siting law outlines a clear statutory time for the review and approval or denial of siting applications. Any moratorium would clearly violate the mandatory timelines established by state law and is impermissible under the siting statute.

We appreciate your time and attention to this matter. We also appreciate your work on the rule revisions. There are parts of the hearing draft that would be improvements. For example, the creation of an expedited and less costly permit modification process for some projects makes much sense. The permit modification would help some farms avoid costly construction to maintain compliance with the standards for a minor farm project or the addition of some livestock. It is a smart change that entirely stays within the statutory guideposts that DATCP was given to direct its rulemaking process.

However, there are significant problems with the draft rule that make it impossible for most of the agricultural community to support. We hope the Department will use our feedback to improve the rulemaking and TEC process. Improvements can be made to ATCP 51, but any draft rule that could be acceptable to Wisconsin farmers will need significant changes.

Regards,

Cooperative Network
Dairy Business Association
FS GROWMARK
Wisconsin Association of Professional Agricultural Consultants
Wisconsin Cattlemen's Association
Wisconsin Cheese Makers Association
Wisconsin Dairy Alliance
Wisconsin Dairy Products Association
Wisconsin Farm Bureau
Wisconsin Manufacturers & Commerce
Wisconsin Pork Association

Heaton-Amrhein, Jennifer A - DATCP

From: Erik Lietz <Erik@OakridgeEng.com>
Sent: Friday, September 13, 2019 2:45 PM
To: DATCP Livestock Siting Comments
Subject: Comments on ATCP 51 - Livestock Siting Rule Changes

Categories: Green Category

To Whom it May Concern:

These comments are on the proposed ATCP 51 changes from Oakridge Engineering, a civil and agricultural engineering firm that is heavily involved with agricultural engineering practices, including livestock siting & permitting efforts. I'm writing as the owner and principal engineer of Oakridge Engineering to express concern over the proposed changes to the livestock siting rule. My staff and I attended the evening public hearing in Eau Claire on August 19, 2019. My concerns lie in the mindset that agricultural producers looking to pursue fair and free enterprise are being squeezed with regulation beyond the original intent of Wis. Stat. 93.90. Original intent was for DATCP to develop rules for siting a livestock facility that are protective of public health and safety, practical and workable, objective, based on peer-review scientific information, designed to promote the growth/viability of animal agriculture, designed to balance the viability of farms with concern for natural resources and community interests and usable by local political subdivisions.

It should be noted that the individual citizens that provided negative commentary at the hearing were all located in Counties or Towns that have not adopted ATCP 51. These negative comments mainly revolved around objectionable odors or over application of animal wastes. Land application of animal wastes are regulated at the CAFO level by NR 243 and at the non-CAFO level by Counties through NRCS conservation practice standard 590 nutrient management plans. Over application of animal wastes is not livestock siting concerns. Objectionable odor is an extremely personal and subjective topic. What stinks to one person smells good to another person. As such, we think that the scientific approach currently used in ATCP 51 odor scores should not change. If someone builds a new residence close to an existing farm, they should accept that that farm was there first. I personally live in the country and accept animal waste smells as part of the country living experience. Please keep in mind that objectionable odors are not detrimental to public health, safety, or environmental protection. Engineering standards and the setbacks in those engineering standards (NR 243 and NRCS 313, 520, 521, 522) have appropriate setbacks to protect human health, safety, and the environment and those setbacks are already shorter than in the existing ATCP 51.

In summary, Oakridge Engineering has comments on the following:

1. odor and setback changes
2. clarification of "parcels"
3. objection of counting road right-of-way into the odor setback requirements
4. variance or exception for non-inhabited parcels (i.e. utility owned parcels)

Concerns:

1. Odor and setbacks are currently enforced independently. The existing rule requires an already aggressive setback for livestock housing and manure storage structures. These setbacks are typically much more stringent than zoning codes in counties that have not adopted ATCP 51. The proposed draft rule radically increases setback requirements and further based these setbacks on property lines. This appears to be an effort in

consolidating odor and setbacks by eliminating the odor score and increasing the setbacks. This would then take the scientific information and reasoning out of the equation creating an unwarranted generalization in treating a property line as a boundary that odor must be contained within. Increased setbacks prove to be neither practical nor workable (as in Wis. Stat. 93.90(2)(b)1m.) with many existing facilities looking to expand. The increased restrictions on setbacks do not prove to be objective (as in Wis. Stat. 93.90(2)(b)3.) since it restricts and burdens producers. Nor do they prove to be cost-effective (as in Wis. Stat. 93.90(2)(b)3.) since further restrictions and burdens to the producer include devaluation of land no longer eligible for expansion due to regulatory changes.

Promulgating the proposed changes found in the livestock siting rule is in direct opposition to Wis. Stat. 93.90(2)(b)5-6. The law states that the proposed standards must be "designed to promote the growth and viability of animal agriculture in this state." and must be "designed to balance the economic viability of farm operations with protecting natural resources and other community interests." The proposed changes will deter growth and cast in unbalanced financial and physical burden on producers of the state.

Many of the limitations proposed in the siting rule are restrictive beyond the original intent of ATCP 51. These restrictions make the pursuit of large viable livestock facilities very difficult to site, to the point where it might be considered discouraged rather than promoted as allowed by Wis. Stat. 93.90.

Case Example: Physical area necessary to site a hog gestation, farrowing and nursery facility with, say, 2,500 to 4,000 AU would require an area of about 900' x 900' for barns, feed storage, waste storage under barns, office, and ancillary buildings. With proposed setbacks, this would require a minimum (1,450' + 900') 2,350' x 2,350' parcel of agriculture zoned property. This is roughly a Quarter Section (2,640'x2,640' or 160 contiguous acres) of land with suitable topography, adequate groundwater depth, and free of wetlands, historical artifacts, and endangered species. Concerns over shallow bedrock or heavy clay often come with public concern over groundwater protection as well. Proximity to karst features or waters of the state also pose limitations on siting.

2. IF property parcels are used to define odor or further setbacks, the "parcel" definition must include language to state setbacks are to parcels not owned by the same individual, family, or applying entity or business. Parcels are often limited to 40-acres on county GIS sites and have individual parcel identification numbers at that 40-acre denomination. If an individual parcel as 40-acres were to remain, all of the proposed setback distances in the changes would preclude ANY development of ANY livestock structure.

3. Developing off of item #2, and again if odor setbacks do change to parcels, road right-of-way should not be a limitation for livestock siting as the traveling public can be subject to odor for a short period of time. Transient populations should not be a limitation for agricultural livestock development.

Case Example: A farm looking to expand is located 100 feet off of a town road with farm owned property on both sides of the road. There are no residences within 3/4 miles. This farm is in a county with adopted ATCP 51. Under the proposed changes, this farm would be precluded from expanding at their current site because of the road right-of-way limitation.

4. Regardless of proposed changes, a variance or exemption should be created for parcels that are not owned by the same individual, family, or applying entity that have non-human habitable structures, such as communications towers, power substations, gas valve stations, etc. This variance or exemption should eliminate these parcels from the setback requirements.

Thank you for the opportunity to review the ATCP 51 proposed changes and provide comments. It is imperative that the above comments and any additional comments from others are received and reviewed as well. Comments need to be reviewed objectively and carefully in consideration of the original intent of Wis. Stat.

93.90. If you have any questions on these comments or to further discussion, please feel free to contact me. I am requesting, if possible, a follow up from DATCP staff regarding these comments regardless if they do or do not become part of the proposed changes.

Respectfully,
Erik Lietz, PE

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Erik Lietz, PE, President and Principal Engineer

Oakridge Engineering, Inc.

Erik@OakridgeEng.com | 715.723.6777:O | 715.514.9393:M | www.OakridgeEng.com

Heaton-Amrhein, Jennifer A - DATCP

From: Linda White <linda@krdairy.com>
Sent: Friday, September 13, 2019 3:36 PM
To: DATCP Livestock Siting Comments
Subject: Siting comments

Categories: Green Category

Good afternoon!

We have a farm in Sauk county that has recently become a CAFO. Some of the changes you in your proposal will have clear positive economic benefit to Wisconsin farm owners. **Thank you for allowing filter strips for existing barnyards and feed areas.** Without it barnyards and lots built with NRCS cost sharing funds would be of no value to anyone who sold to a large farm. We have a barnyard that was costshared as part of the Crossman Creek Little Baraboo River watershed in 1986. It has served well in protecting the environment however, we were forced to empty it because it was deemed a runoff source under the CAFO rules. Using the new rules we will be able to update the lot and put cattle back in it. We will also be able to make our old feed facility comply and if needed put it back into use.

Please add a definition of "site" to the rules. We have had an "encounter" with the DNR. Because there is no definition of the size of a "site" the DNR is free to claim that nothing beyond the buildings is part of the site thus anything leaving the acreage is a discharge. In this case we had residue from rain runoffs dribbling out of a pipe-- they tried to call it a discharge even though it was a pipe connected to the storm water pond for the facility and a thousand feet from a property line. This means that even though we own hundreds of acres around us, it takes very little to be in non-compliance.

I am pleased to see the term "significant discharge" and a number attached to it. Everyone from consulting engineers to the DNR staff acknowledges that it is not possible to have "zero" discharge. Taken at an extreme even water running through the grass around the facility is a discharge. **Please tell the DNR that they need to come up with something measurable for determining discharge compliance.**

Please add something to the rules that would allow us to divert clean water from our feed areas away from our feed pit. We recently built a new DNR demanded \$1.4 million feed facility. It is about 2 acres in size. The rules, as read by the DNR, require us to collect every drop of water coming off the concrete. At what point is concrete clean? Last fall our cornsilage was dry so there was no leachate thus every drop of moisture in that pit is rainwater. At \$.02 per gallon for disposal, 1.5 million gallons of rain water will cost us \$30,000 to "spread" on the fields. I would appreciate some measurement that would allow us to divert clean rain water away from the leachate pit. Ironically, this is water that is cleaner than field runoff because it does not run through organic matter.

Thank you for looking at well setbacks from approved facilities. The idea that we need to be hundreds of feet from a newly designed runoff proof facility is unnecessary expense. It also makes no sense that one set of rules says 50 feet and another says 250 feet. Using 50 instead of 250 feet would have saved us thousands of dollars and reduced the amount of land taken out of production.

I am concerned about the extreme setbacks. If a 1000 animal unit farm is compliant with the setbacks and wants to add another barn, will the connected facility then be out of compliance? In many cases area crop farms join together and sell a piece of property for a dairy because they can then profit from providing feed. With the new

rules it would take at least 80 acres to have building site. Area farms may not be interested in selling a parcel with the shape needed to meet these requirements.

Thank you for considering my input.

Linda White

Kinnamon Ridge Dairy, LLC

S3175 White Road

Reedsburg, WI 53959

608-393-3985

Heaton-Amrhein, Jennifer A - DATCP

From: Steve Hoffman <steve.hoffman@indepthagronomy.com>
Sent: Friday, September 13, 2019 3:37 PM
To: DATCP Livestock Siting Comments
Subject: Livestock Siting Law
Attachments: Livestock Siting Comments - Hoffman.pdf

Categories: Green Category

Hello Chris -

I have attached my comments regarding the proposed changes to the Livestock Siting Law.

Steve Hoffman CPCC-I, CPAg
Managing Agronomist - InDepth Agronomy
8426 Borgwardt Lane- Manitowoc, WI 54220
Phone 920-323-3820 Fax 920-758-2987



Proud member of NAICC since 1990.

Date: 9-13-19

Chris Clayton, Livestock Facility Siting Program Manager
Bureau of Land and Water Resources
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

RE: Comments on the 2019 hearing draft of ATCP 51 Livestock Siting

I am writing to express my concerns about the proposed changes to the Livestock Siting Law.

Incorporating the 2017 NRCS 629 code into Livestock Siting would exacerbate the water quality challenges Wisconsin already has regarding liquid manure applications.

The 2017 NRCS 629 code requires affected dairy farms to collect and store feed area precipitation runoff. Unlike leachate, feed area runoff has the potential to have a very low nutrient content. This liquid waste falls under the same storage and application rules as liquid manure and process wastewater. Storage structures for this material are typically required to be of concrete construction. 180 days of storage is mandated if the farm is required to collect and store feed area precipitation runoff. There are stringent rules for irrigation of this liquid because it is classified the same as liquid manure and process wastewater. In most cases a farm would currently not be able to obtain a permit to discharge feed area runoff through an irrigation system because it is considered process wastewater.

It is not practical for dairy farms to keep this low nutrient content material segregated from other organic wastes because the application cost is the same as liquid manure. If kept segregated, a farmer could easily pay \$200 per acre to essentially apply water to the receiving field. To make this material practical to apply, it is almost always co-mingled with liquid manure and other process wastewater. Herein lies a problem that is quickly becoming a crisis in Wisconsin.

Typical dairy farm liquid manure currently has a dry matter content of 1.5% to 4.5% as applied. This is roughly 1/3 of the dry matter content of manure on dairy farms 25 years ago. There is an exponential relationship between dry matter content and viscosity of liquid dairy manure. Simply put – a small decrease in the dry matter content of dairy manure will have a proportionally larger decrease in the viscosity of the product. Applying liquid manure that has significantly lower viscosity increases the likelihood that this material will run off application sites and will flow preferentially through the soil profile to potentially reach groundwater. Research on preferential flow from The Ohio State University showed that liquid manure with a solids content above 5% is unlikely to flow through soil macropores.

If farmers had incentive to keep clean water "clean", they would no longer be forced to mix rain water with liquid manure. This strong incentive could be provided if Wisconsin creates a new class of liquid waste that allows for less stringent rules pertaining to storage and application.

The 2017 NRCS 629 standard appears to have been hastily revised to meet a political agenda. It does not offer real solutions to the water quality issues I described above.

Until Wisconsin creates a new class of liquid waste that provides incentive for keeping relatively clean water clean and revises the deeply flawed 2017 revision to NRCS 629, the standard should not become part of the Livestock Siting Law.

In addition, I have not seen printed material or heard evidence from the recorded hearings to show that WDATCP has sufficiently looked at real life examples of the proposed set back rules on actual farms that might need to obtain a Livestock Siting Permit.

For these reasons, I urge WDATCP to either keep the current Livestock Siting Law as-is or go back to the drawing board to propose changes that truly have the potential to be positive for Wisconsin's natural resources, its citizens and agriculture.

Respectfully submitted,

Steven A Hoffman
8430 Borgwardt Lane
Manitowoc, WI 54220

Heaton-Amrhein, Jennifer A - DATCP

From: Andy Skwor <Askwor@msa-ps.com>
Sent: Friday, September 13, 2019 3:57 PM
To: DATCP Livestock Siting Comments
Subject: ATCP 51 Comments
Attachments: FINAL ATCP 51 Comments 2019.09.13.pdf

Categories: Green Category

On behalf of MSA Professional Services, Inc. and WAPAC please find our attached comments in regards to draft rule ATCP 51.

Best Regards,



Andrew Skwor, PE | Agricultural Team Leader

Licensed in IA, IL, MI, MN, ND, SD, and WI

MSA Professional Services, Inc.

100% Employee Owned

+1 (608) 355-8936

+1 (608) 963-5211





September 13, 2019

Chris Clayton, Livestock Facility Siting Program Manager
Bureau of Land and Water Resources
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

Re: Comments on the 2019 Draft Rule of ATCP 51 Livestock Siting

Dear Mr. Clayton:

Thank you for considering my comments in regards to the new draft of administrative rule, ATCP 51 Livestock Siting. My comments are a representation of my experiences as a licensed Professional Engineer, the ethics and professional services I am associated with at MSA Professional Services, and as a board member of the Wisconsin Association of Professional Agricultural Consultants (WAPAC).

Secondly, thank you again for your efforts, Ms. Walling, Ms. Heaton-Armhein, and Ms. Cochart and willingness to sit down with the Public Policy group of PDPW to discuss the draft document. The meeting was very beneficial to understand the possible revisions and discuss the potential issues with the draft.

The list below summarizes the concerns discussed at the August 31st meeting, and also others we did not have time to discuss. The notation references document, "20190710DATCPBoardATCP51.pdf" and associated redlined ATCP 51 document.

- Page 1. Bullet 1. Do all structures need to meet the updated standards or can existing structures meet the standards at the time of construction?
- Page 2 – Duration of Local Approval. If the siting application is for maximum animal units, not all construction will be able to be completed within two years, especially for a greenfield site. For example, if a proposed structure is required to control discharge at an existing facility, requiring that structure within 6 months could prove to be problematic with the need to finalize design, secure funding and recognizing the relatively small window for construction in the Midwest.
- Page 3 – Does worksheet 3 allow for the use of annual hauling logs if they are available? The worksheet does not allow usage of actual applied nutrient data. MWPS specifically notes modifying manure and waste production based on actual data from the farm regardless of book values.
- Page 3 – State & Local Standards –Under ATCP 51.10 (2)(b) variances could not be granted based on non-compliance with state standards required under this drafted chapter because the standards stated

1230 South Boulevard
Baraboo, WI 53913

P (608) 356-2771
TF (800) 362-4505
F (608) 356-2770

www.msa-ps.com

Mr. Chris Clayton
Department of Agriculture, Trade, and Consumer Protection – ATCP 51 Comments
September 13, 2019

are the most current. The standard of care today is evaluating the facility based on the type of facility and the conservation practice at the time of construction. Example, a WSF built in 2013 to NRCS standard, June 2013 will be over 10 years old in 2023. As drafted, the rule would require a full evaluation of a facility that is only 10 years old. This is an unnecessary expense to the farmer. Another example of a potential variance request would be for adding a transfer line into a WSF that meets standards in 2016, but may not meet the subliner requirement within Standard 313, October 2017R. In my opinion, piping changes happen on a farm often and piping changes typically are small modifications to WSFs.

- Page 3, last paragraph. The word commingled could have several definitions. If manure from Cluster A is applied to the same field as manure from Cluster B, is it commingled? If the same equipment is used to haul manure, is it commingled? Or if manure from 2 or more clusters is stored in the same WSF, is it commingled?
- Page 4, paragraph 1. This paragraph specifically notes "limited expansion for manure storage and livestock housing structures within setback areas, as long as the expansion is away from the property line or public road right-of-way to which the local setbacks applies". One reason farms were sited where they are is for milk truck access. Locating those facilities close to main travel ways, reduces cost to build safe passages, and provides quicker time back to main travel routes. Reducing setbacks, for an expansion on an existing livestock facility will likely incur additional expense to the Owner to retrofit. Furthermore, that facility may have been compliant at the time of construction. Finally, when a farm is expanding and siting new facilities is associated to just crop land creates more issues. What if the land is no longer cropland? What if the land is prairie or woodland? If a farm and associated professionals do their due diligence with qualifying lands for various permits, the land should be eligible for development by the farm.
- Page 5, paragraph 5 – This clarification would allow broad, local control at the township level creating inconsistencies for farmers across the state counter to the siting law's intent. The intent of the siting law was to create uniformity of the expectations for farmers across the state.
- Page 5 – Existing Storage Facilities. Not all counties in Wisconsin have manure storage ordinances and associated permits, and not all counties with ordinances link to the same conservation standard. If a county does not have a manure storage ordinance and adopts livestock siting, how will this be addressed? It seems a manure storage ordinance certification would be hard to establish in this case. Furthermore, the term "effective" in describing an inspection is very subjective. Listing minimum requirements of what is expected would be a better basis of determining what an "effective" inspection when it comes to showing compliance. Facility operation should also be considered when developing the minimum requirements of an "effective" inspection since 100% emptying of a storage may cause damage or create significant costs. For example, if the storage may has a geomembrane liner, removing the weight of the contents could damage the integrity of the liner; an underbarn storage which requires equipment, time, and effort in a confined space to get to completely empty; or in operation using flushing, some water needs to remain in order for the farm to stay working efficiently. Lastly, the NRCS conservation standards are intended to design and construct facilities with a service life of 25 years.

Mr. Chris Clayton
Department of Agriculture, Trade, and Consumer Protection – ATCP 51 Comments
September 13, 2019

- Page 6 - Runoff Management, paragraph 1. Conservation Practice Standard 635 is not a design standard for animal lots and barnyards. Standard 635's purpose is to "Improve water quality by using vegetation to reduce the loading of nutrients, organics, pathogens, and other contaminants associated with livestock, poultry, and other agricultural operations".
- Page 6 - Runoff Management, paragraph 2. The setbacks for animal lots seem unsubstantiated and not consistent with Standard 635, September 2016R. The draft rule states 750 feet from a conduit to groundwater which is significantly greater than the 50' setbacks defined in NR 812, Well Construction and Pump Installation. In addition, the draft rule is greater than a reviewable facility per NR 243 requiring a setback of 250' from a private well.
- Page 6 – Runoff Management, Paragraph 5. "Significant discharge" is a subjective phrase unless defined. The phrase itself also falls under regulatory jurisdiction of the DNR as noted by the definition referring to NR 151. It would appear ATCP 51 draft would be duplicating efforts outside of their regulatory authority in regards to water quality with this paragraph and subsequent paragraphs through Page 7, paragraph 4.
- Page 7 – Runoff Management, Paragraph 1. "Initial runoff" is used in this paragraph and is not defined within the draft. Again a subjective phrase and does not necessarily mean the same as a common term as "first flush".
- Page 7 – CAFO Permit Substitutions. Creates additional confusion. A WPDES permit issued to a farm states the farm is a zero pollutant discharge farm. How can one agency regulate based on stating compliance with performance standards allowing five pounds of phosphorus or 15 pounds of phosphorus annually. The WPDES permit is the next level therefore the draft should include an exemption to farms holding a WPDES permit or moving forward on becoming a WPDES permit holder within 18 months.

The draft phases out odor management to a setback distance for various types of structures. The distances significantly limits agricultural potential, compromises predetermined long-term planning and increases cost. In general, Wisconsin's property system is based on 40-acre parcels. A 40-acre parcel is typically 1,320' by 1,320'. Thus, if setback distance are to be 600' or 700', depending on facility type. The parcel would be non-buildable because there would only be 120' buildable square in the middle. This is further compounded because some farms have an entity that owns the farmstead and surrounding or tillable lands are owned by another entity or trust. The draft has no provisions to create setbacks from property lines that may be of different entities, but individual owners may be the same or associated. I think there could be a more equitable solution if the distance was based on a closest in habited residence.

I understand the draft ATCP 51 rule proposed to provide more "control" over where new farm development projects (greenfield projects) to protect the public interest, however, they appear to further complicate existing farms and their ability to maintain viability. Many farms today would sit within the draft ATCP 51 setbacks and in order for those farms to continue to be successful, consideration should be given to a variance or exemption process, provided they can justify their reasoning. The draft rule gives local authorities the ability to determine whether or not to allow a variance, thus not creating uniformity and standard permitting

Page 4

Mr. Chris Clayton
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across the state for farmers. I think it would be of best interest to include variance and exemption language into the rule.

Finally, new rules and laws can be workable by the majority, but they have to be written to remove the likelihood of interpretation. Subjective interpretations are opinions and allowing rule language to be interpreted, one voice speaking for the majority, I do not believe that is the intent of codes, laws, and rules. Similarly as stated above, the draft ATCP 51 allows interpretation by local authorities by not specifically stating how the rule will be facilitated. Similarly, utilizing conservation standards as a law has consequences. Standards are utilized to create uniformity from project to project and reduce the risk of technical issues because non-professionals use them as guides to put projects together. Standards should be utilized to create a standard basis of developing outcomes and allowing professionals like Professional Engineers (PE), Certified Crop Advisors (CCA) and others by their code of ethics to protect the environment.

Sincerely,

MSA Professional Services, Inc.



Andrew R. Skwor, PE
Agricultural Team Leader
WAPAC Board Member

ARS

Heaton-Amrhein, Jennifer A - DATCP

From: Joan Pansier <joan.pansier@yahoo.com>
Sent: Friday, September 13, 2019 4:44 PM
To: DATCP Livestock Siting Comments
Subject: Livestok s
Attachments: letter to livestock tech board.docx

Categories: Green Category

Date: September 12, 2019

From Ledgeview Farms-Pansier Family

To Livestock Siting Comments Board,

Farmers were in better shape in 2006, than prior of Livestock Siting Board established, and we feel today the board could take the original intent of the rule in consideration, to allow farmers to survive.

With the proposals that are being mentioned, we see many problems arising, and will not be workable at all for farms in Wisconsin. Farmers are resilient, but when it gets impossible, they can't. Certainly, it is wrong time in a farmer's career, to be throwing more on their shoulders, when it isn't any changes how they are effected by income and trade, taking off milk for marketing, and daily they are living in fear for a future. As an owner of a dairy farm in Wisconsin, we have been already adversely impacted by a local government that has adopted a livestock siting ordinance, with setback exceeds state standards, in which they did not have lawful reason to do, but did it anyway to eliminate a farm, that was here for four generations, with needs to continue now, after investments. With town board and staff, so removed from any type of farming and dislike now, what they encouraged around a farm recently, since 2015. The town allowed housing to be less than 10 feet from our property line. The town, also, eliminates any building of any sort on this farm with simply change of zoning on over 200 acres where farm buildings are on or would be. This behavior will go across the state and eliminate farms, and wasn't considered by Livestock Siting. The Town is preventing us to do requirement of our WPDES Permit issued by the WI Dept. of Natural Resources. We cannot have local government with no understanding of where being spread to officiate. They are based by opinion. We followed the process and appealed to the livestock siting review board which ruled in our favor but would not overturn the town because they felt we lacked credibility. Never mind the fact we have been working since 2014 to get a WPDES permit from DNR, but as DNR stated nothing to do with the farm, but not issued until 2019. It is impossible to follow regulations, when ordinance change at town officials liking, and they have no understanding of what is a workable situation. It is obvious the implementation of the Livestock Facility Siting Law lacks state oversight and is being used by local governments to create barriers to livestock expansion when they find it convenient, after farm was investing much to follow regulations implied as needed for this farm. Based on our experience we feel any local ordinance that is proposed to be adopted under the authority of ATCP 51 should need to be approved by DATCP before it can be adopted. This would ensure local ordinances are not exceeding the requirements of this rule.

We also, oppose the proposed changes to ATCP 51 as the rule is currently written.

. The proposed rule enacts a system of setbacks that are overly restrictive and will eliminate livestock farm expansions in Wisconsin. Going to get a variance from town wouldn't be accepted, by officials. Boards that are out numbered of farm family, is not in the best interest of farmers.

.The proposed setback distances need to be re-evaluated and reduced. Odor score is now evaluated by a test, not by complaints without reason. There needs to be area, after a farm is operating for

generations, a space left for a setback you want to propose, for a farm cannot pick up and move, or overcome by cost.

.setback distances should be measured to the nearest affected receptor not a property line.

.Best Mgmt practices for odor mitigation are costly and do not provide enough setback relief to be worth implementing, stated by nutrient management officer.

Thank you, for allowing farmers voice stating that the law has to be workable for food, on the table, and for reevaluation of your thoughts to allow farmers to exist in Wisconsin.

Roy and Joan Pansier 3rd generation of farm in Wisconsin.

Heaton-Amrhein, Jennifer A - DATCP

From: Hickory Daniels <hickoryhilldairy@hotmail.com>
Sent: Friday, September 13, 2019 4:44 PM
To: DATCP Livestock Siting Comments; Clayton, Christopher R - DATCP
Subject: Livestock Siting Comments
Attachments: Draft Siting Law Comments.docx; Siting Maps with Setbacks.pdf; Siting Maps with Zoom Out.pdf

Categories: Green Category

Please note the attached comments and accompanying pdfs.

Thanks,

Hickory Daniels

September 9th, 2019

Chris Clayton, Livestock Facility Siting Program Manager
Bureau of Land and Water Resources
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

Dear Mr. Clayton:

I would like to start by thanking you, Ms. Walling, Ms. Cochart and Ms. Heaton-Armhein for taking time out of your busy schedules to meet with the PDPW Public Policy group to go over the ATCP 51 draft siting document. The meeting was extremely helpful to understand the changes and bring to light potential issues. I look forward to having more candid conversations like that in the future.

In order to reiterate my concerns and address additional concerns not discussed at that meeting I have created a bulleted list with page references to the draft hearing document 20190710DATCPBoardATCP51.pdf

- Page 2 Duration of Local Approval—Requiring all new or expanded livestock housing or waste storage structures to begin construction within 2 years of approval is just completely unworkable. I currently have a siting permit that was approved for 996.5 animal units in the fall of 2016. We are still growing our herd from within and paying down debt and hopefully will be able to begin construction of a heifer barn in the fall of 2020, and long-term manure storage in the summer of 2020—neither of which will change the number of animal units (currently at 820 AU). So only people with enough capital to build an entire facility at once will be able to have a siting permit under the new law? Or will I have to continually apply for permit modifications every time we pay down enough debt to add another livestock structure?
- Page 3-4 Property Line and Road Setbacks—If a livestock housing starts within a setback area and extends beyond the set back area is it still limited to a 20% expansion? Or can we expand as much as we would like as long as the expansion happens outside of the setbacks? Please look at my attached site plan and other site maps. This could be problematic from the point of most modern facilities being completely connected in order to keep cattle out of Wisconsin's winter weather and maximizing the efficiency of moving cattle.
- Page 4 Odor Management; Livestock structures. The new system of greater setbacks for high odor sources with the ability to earn credit and reduce those setbacks is extremely problematic. First off, my ability to locate a long-term manure storage structure on my site was difficult enough but under the proposed standard I would also have to employ some type of odor management in order to build the storage structure where it makes the most sense. Affording long term manure storage is difficult enough

but financing both manure storage and solids separation and reduction (the only odor management practice that works with my manure system) would make long term manure storage completely unaffordable for years to come. This leaves me with no other choice but continue to use my modified daily scrape and haul system which is not the best system for the environment or odor control. This proposed setback system also does not take into consideration the distance my facility sits away from my neighbors. Yes, there are close property lines but all the parcels that surround me are farmland—not peoples' residences. Please see the attached maps of my facilities with the current and proposed setbacks.

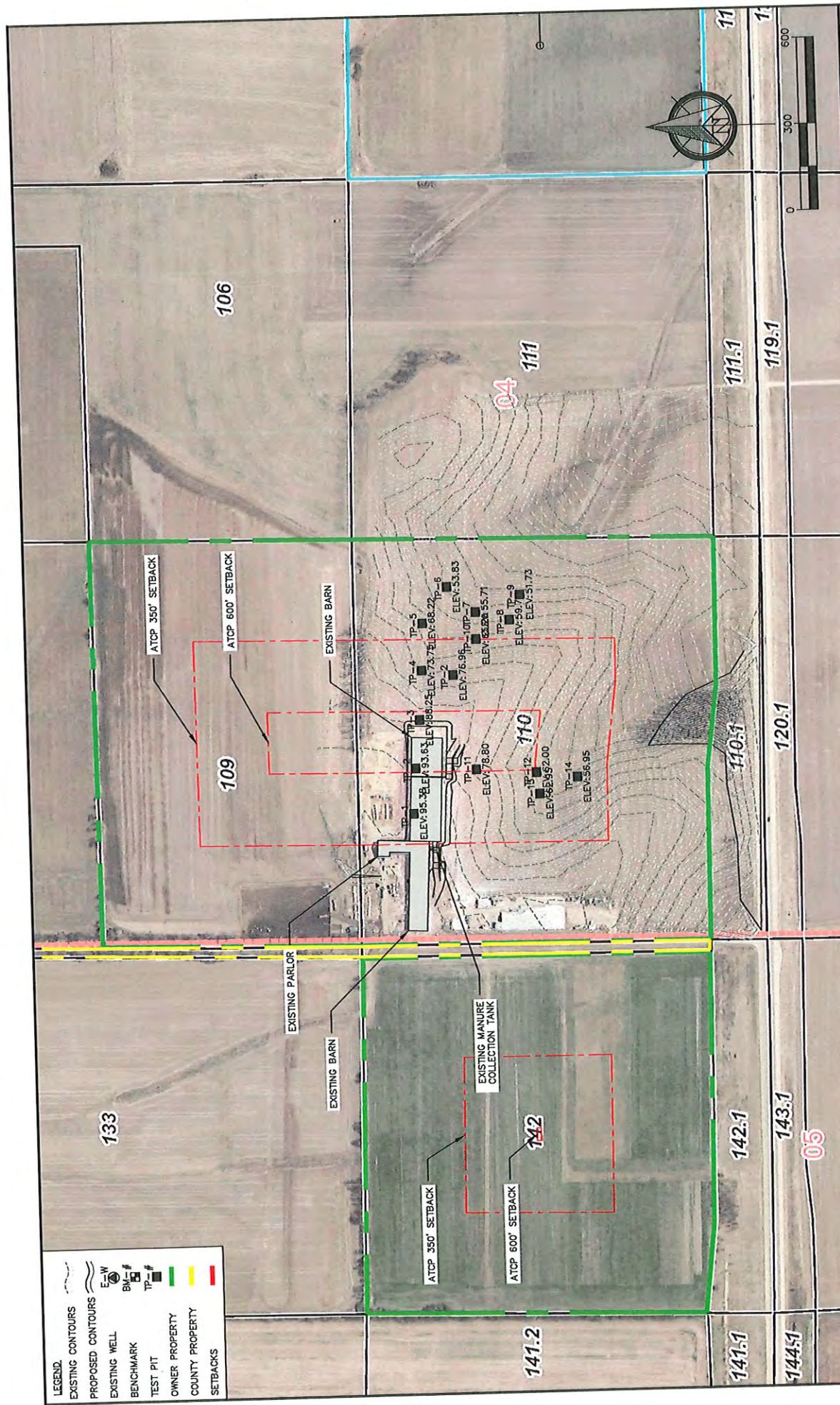
- Page 5 Waste Storage Facilities—Requiring full investigations of existing concrete waste facilities that are over 10 years old and were built to the existing standard at the time is a waste of time and waste of farmer's money. These structures were designed for a 25-year life and should not need more than a visual inspection. If I were to connect a transfer line into my existing manure storage would that be considered substantially altered? My existing manure storage facilities were built to the current standards in 2016 but do not meet the Oct 2017 313 standard.
- Page 6/7 Runoff Management—What if existing bunkers/paved areas don't meet any technical standards? Who decides if they are in "good repair?" Why try to achieve the EPA standard of "no discharge" when that is impossible in farming? Every farmer that has a conservation plan on record at the local Land Conservation office is technically in violation of the law because it is impossible to achieve a "0" T (tolerable soil loss). That soil is lost into our lakes, rivers and streams through erosion so doesn't that constitute a discharge?
- Page 8 Permit Modifications—In my case, if I construct a heifer barn next year I would have to apply for a \$500 siting permit modification if the proposed rule goes into effect plus the building permit fees from planning and zoning. If I then wanted to build a commodity shed two years down the road I would have to apply for another permit modification and another \$500 plus building permit. Expand the parlor--\$500 plus building permit. Build long term manure storage--\$500 plus the manure storage fee plus the building permit. All of these permit modifications would have to be submitted and paid for without ever changing the number of animal units. Farms are built over time in stages and the use of permit modifications seems like a way to collect more fees on an already existing permit. Plus, at the local conservation staff ready and willing to look and review all these permit modifications every time a farmer builds another livestock structure?

I would like to thank you for your time and consideration of my thoughts and concerns. If you have any further questions or would like to discuss the effects of this rule change on my operation please feel free to contact me. I can be reached at 608-214-9780 or through email at hickoryhilldairy@hotmail.com

Hickory Daniels

LEGEND.

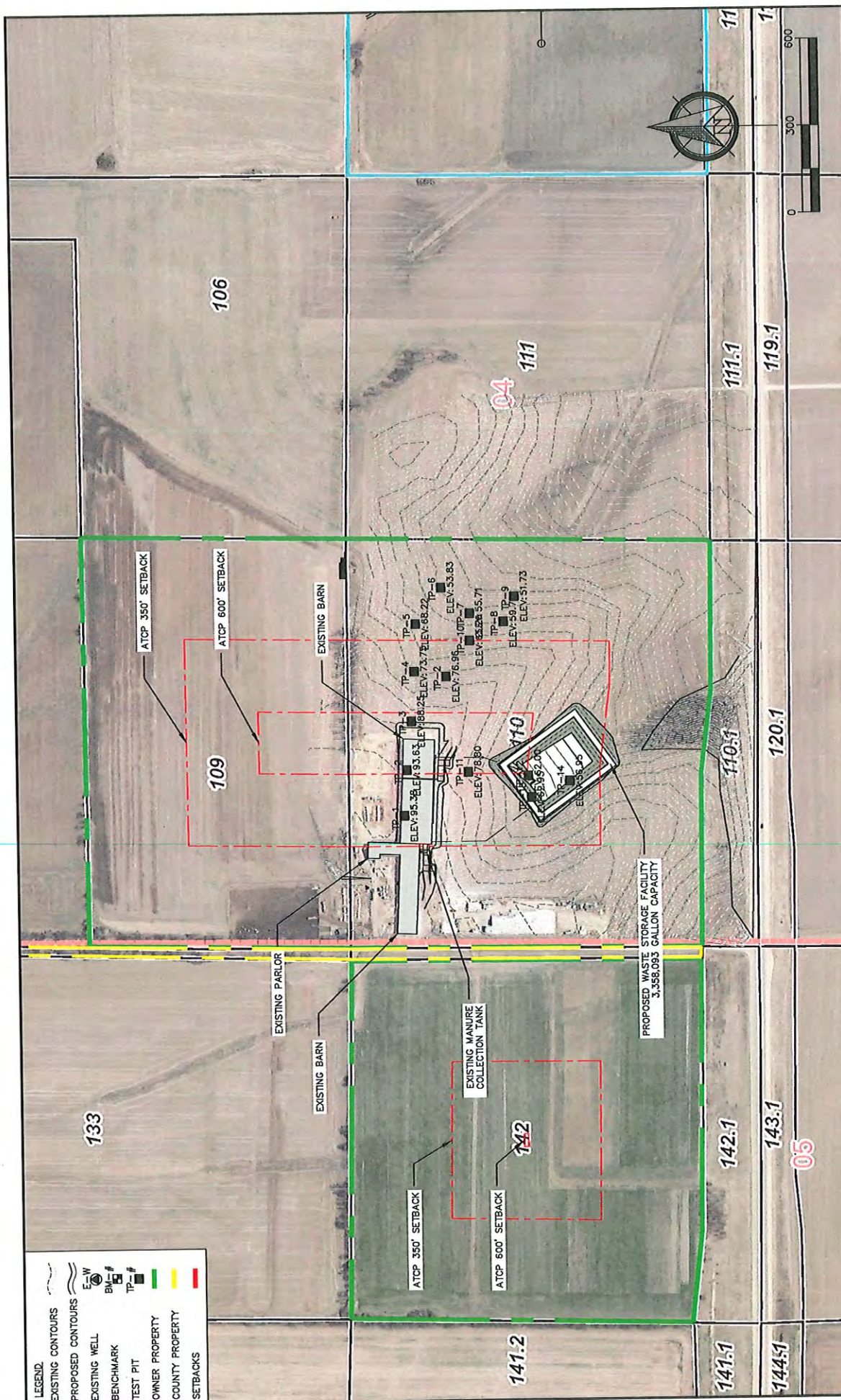
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TEST PIT	
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HICKORY HILL DAIRY, LLC W1702 STATE ROAD 11 JUDA, WI 53550		CHECKED EFFS/JOI PRODUCT	
CMH DRAWN		DESIGNED DATE 08/12/2019	
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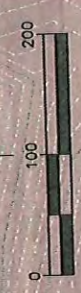
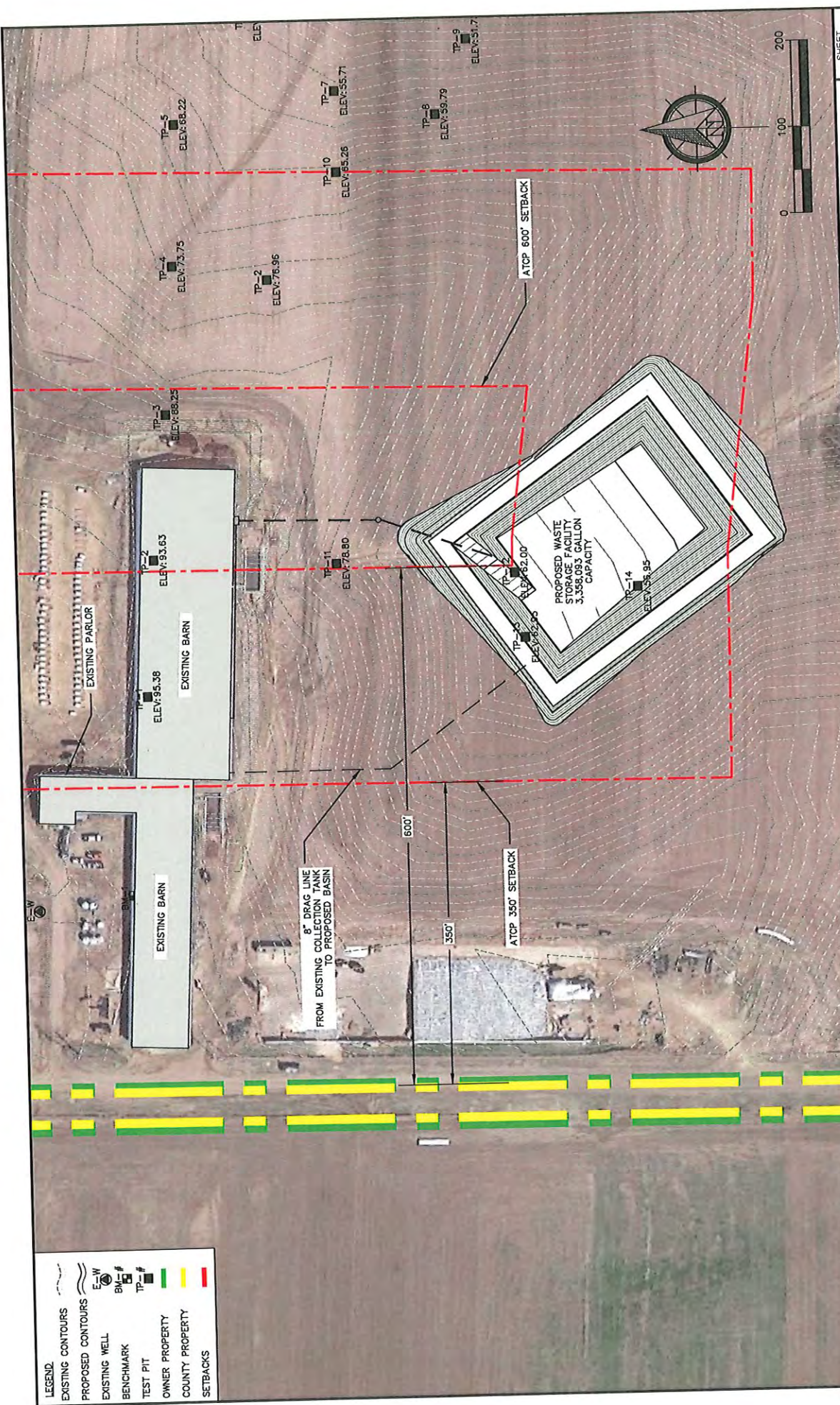
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205 S. PATTERSON ST. SUITE #200 MADISON, WI 53709 (608) 785-1100 WWW.BETTMUNDERBELL.COM	
EXISTING CONDITIONS DAIRY EXPANSION PLAN	
HICKORY HILL DAIRY, LLC W1702 STATE ROAD 11 JUDA, WI 53550	
CMH DRAWN	CHECKED FF1301 PROJECT
APPROVED	DESIGNED 08/17/2019 DATE
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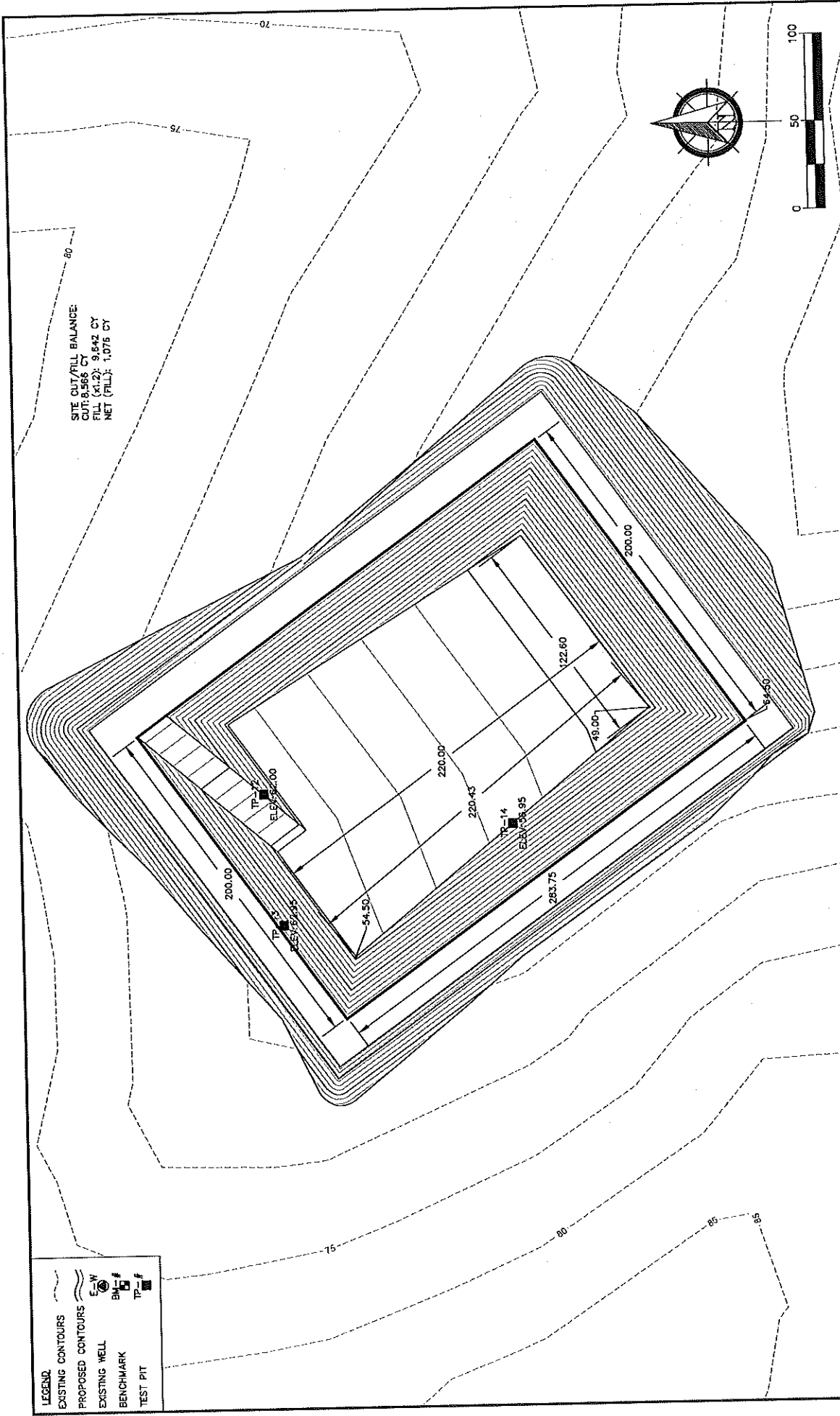
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COUNTY PROPERTY	
SETBACKS	



SHEET	C101b	SITE LAYOUT SITING	ATCP 51 LIVESTOCK SITING
INSIGHT FS - HICKORY HILL DAIRY, LLC W1698 STATE ROAD 11/81 JUDA, WI 53550			
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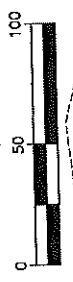
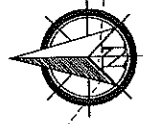
200 S. PATTERSON ST.
 SUITE #200
 MADISON, WI 53703
 WWW.DUTLANDENGINEERING.COM



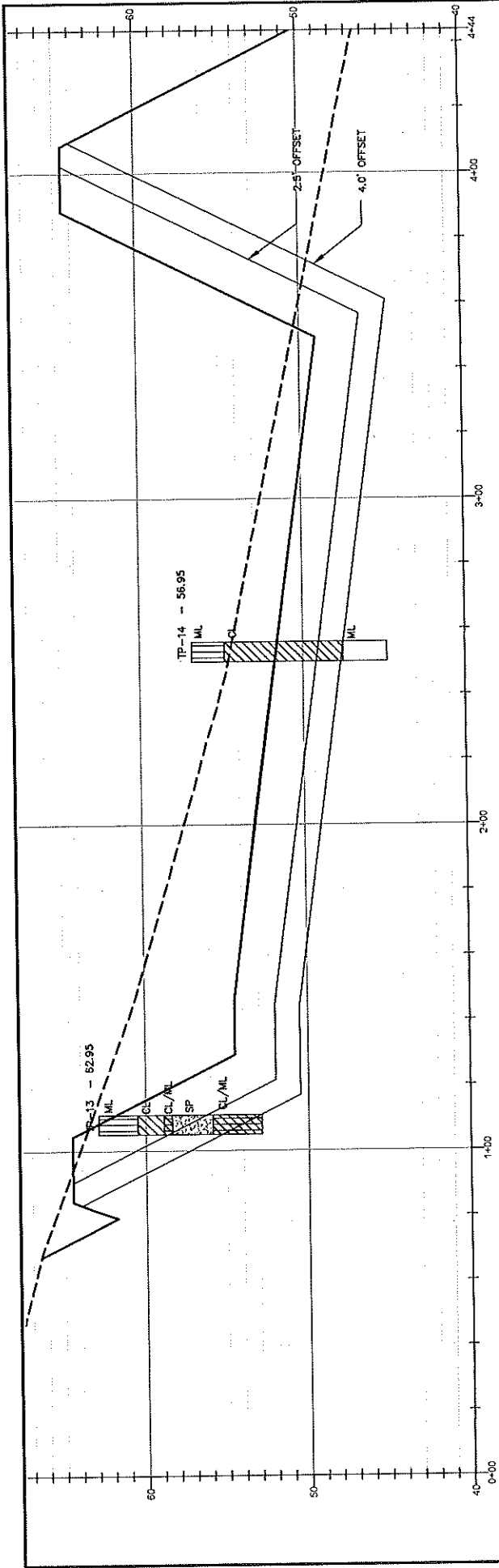
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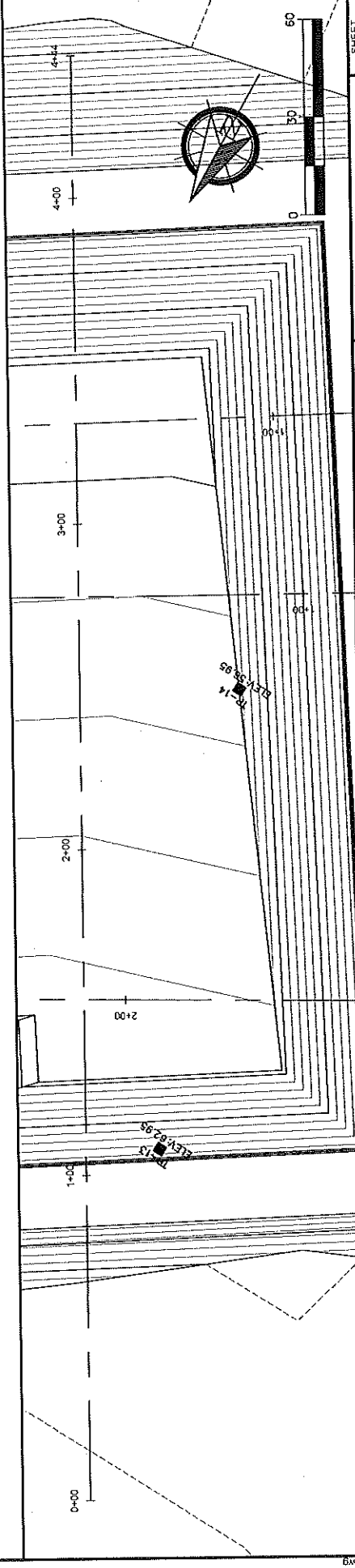
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 FILL (X1.2): 9,842 CY
 NET (FILL): 1,076 CY



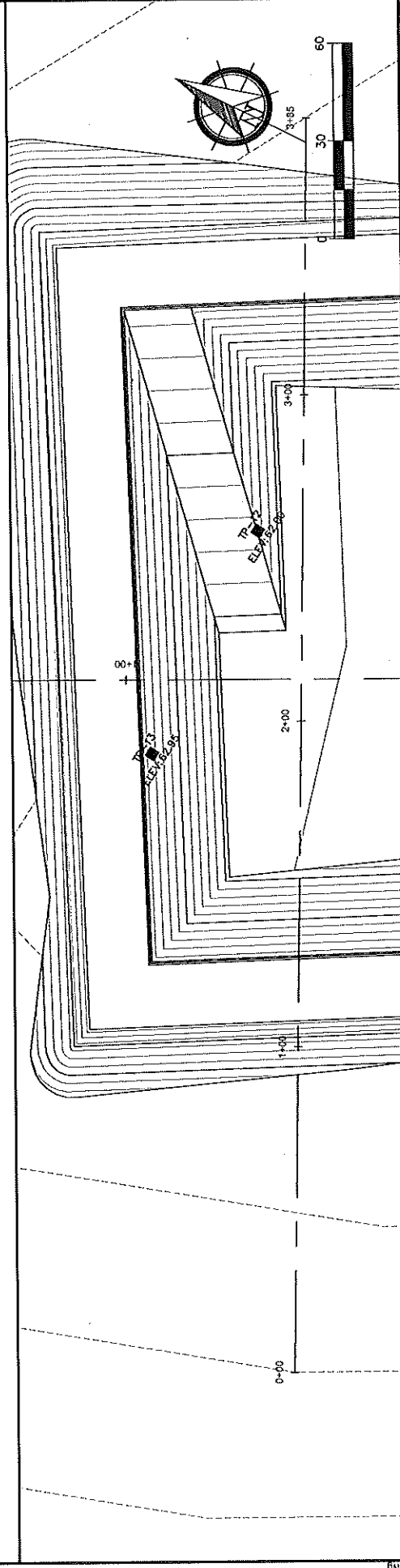
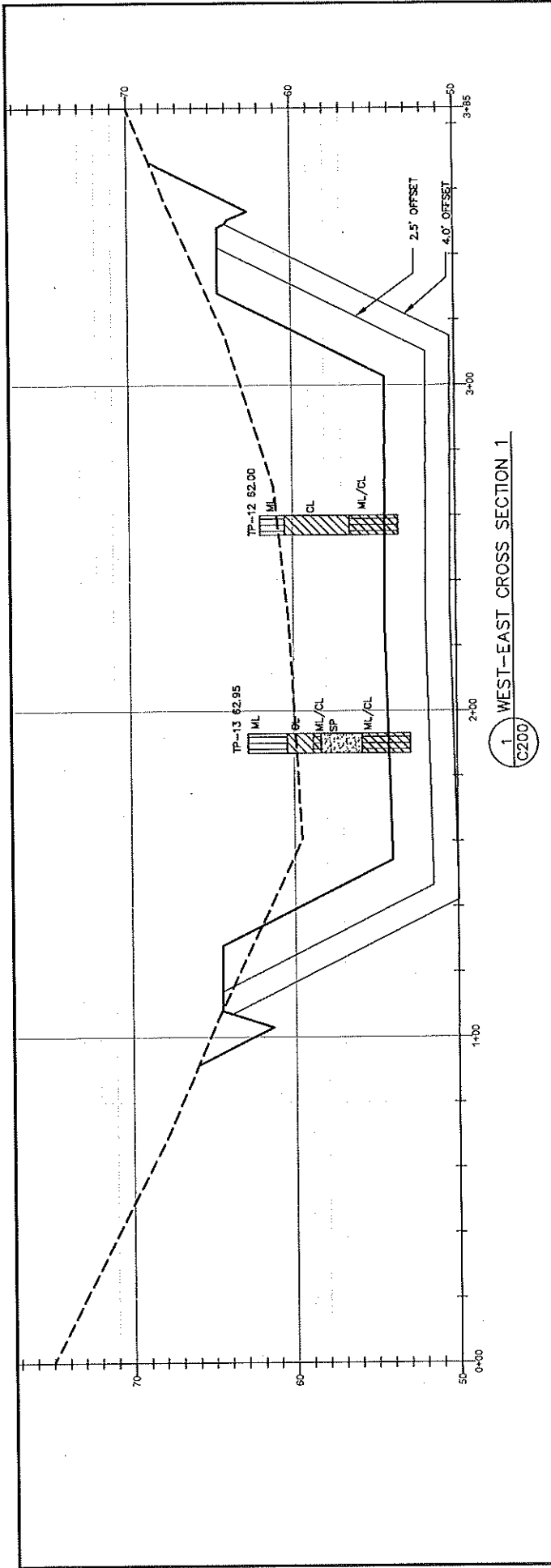
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1 NORTH-SOUTH CROSS SECTION
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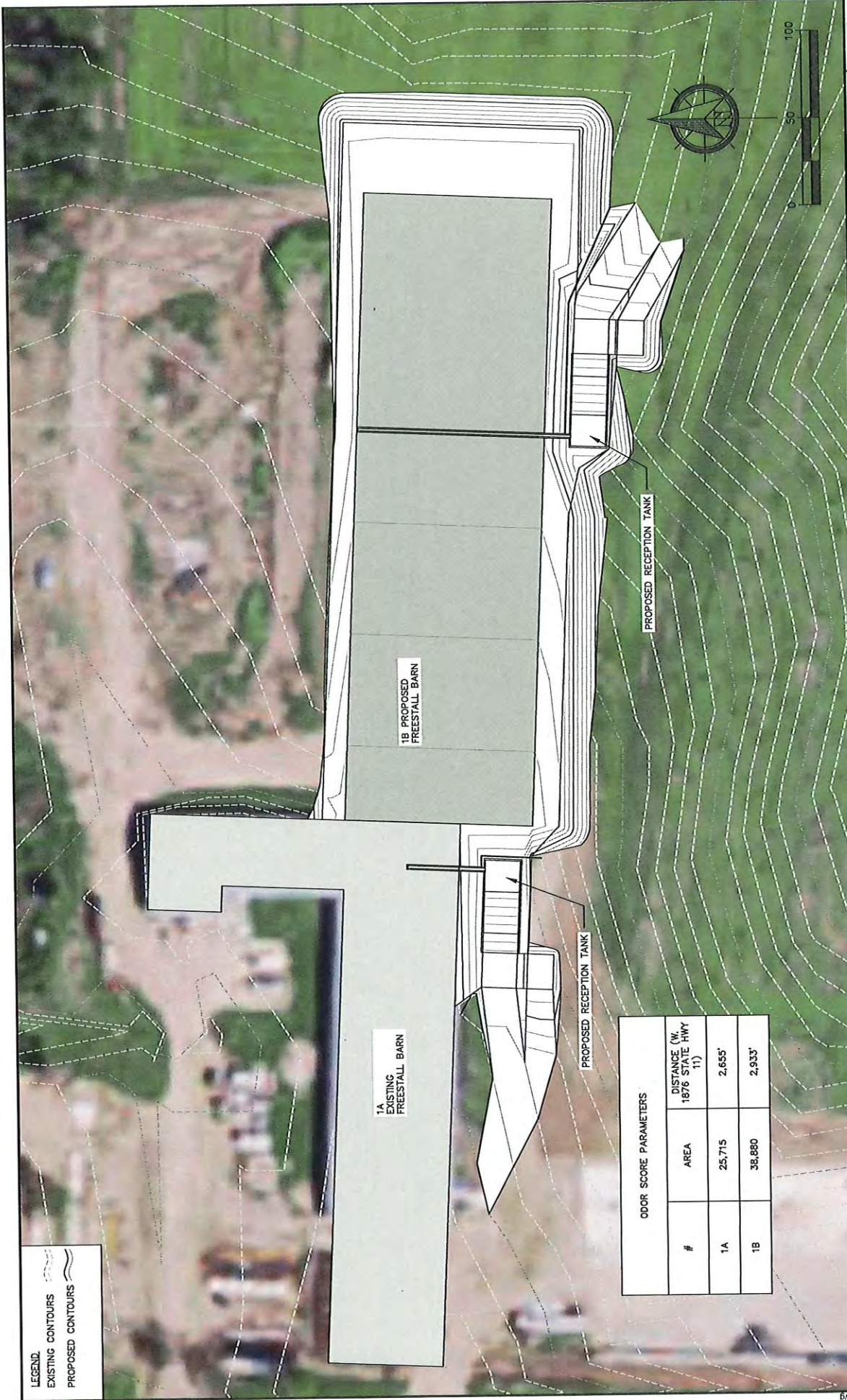


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200 B. PATTERSON ST. MADISON, WI 53703 (608) 439-3500 www.patersondesign.com							



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INSIGHT FS - HICKORY HILL DAIRY LLC W1898 STATE ROAD 11/81 JUDA, WI 53550				WEST-EAST CROSS SECTION 1 FACILITY DEVELOPMENT PLAN				200 B. PATTERSON ST. MADISON, WI 53703 (608) 452-2600 WWW.DUTLANDDESIGN.COM			

LEGEND
 --- EXISTING CONTOURS
 --- PROPOSED CONTOURS



ODOR SCORE PARAMETERS		
#	AREA	DISTANCE (W 1876 STATE HWY 11)
1A	25,715	2,655'
1B	38,880	2,933'

JOR DRAWN: _____ NB: _____ APPROVED: _____		JOR DESIGNED: _____ NB: 08/27/2016 DATE: _____		JOR CHECKED: _____ NB: FFS1301 PROJECT: _____		INSIGHT FS - HICKORY HILL DAIRY LLC W1698 STATE ROAD 11/81 JUDA, WI 53550		SITE MAP ATCP 51 LIVESTOCK SITING		SHEET C100	
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 PROPOSED CONTOURS

1000' OFFSET

NO.	DATE	REVISION/DESCRIPTION

JOB DRAWN	DATE	JOB NO.	PROJECT
NS	08/27/2016	FFS101	PROJECT
APPROVED	DATE	CHECKED	PROJECT

INSIGHT FS - HICKORY HILL DAIRY LLC
 W1698 STATE ROAD 11/81
 JUDA, WI 53550

SITE MAP - 1000' OFFSET
 ATCP 51 LIVESTOCK SITING

UTLANTA DESIGN

559 DODDERS DR, #17
 MADISON, WI 53703
 WWW.UTLANTADDESIGN.COM

SHEET
 C101



LEGEND.
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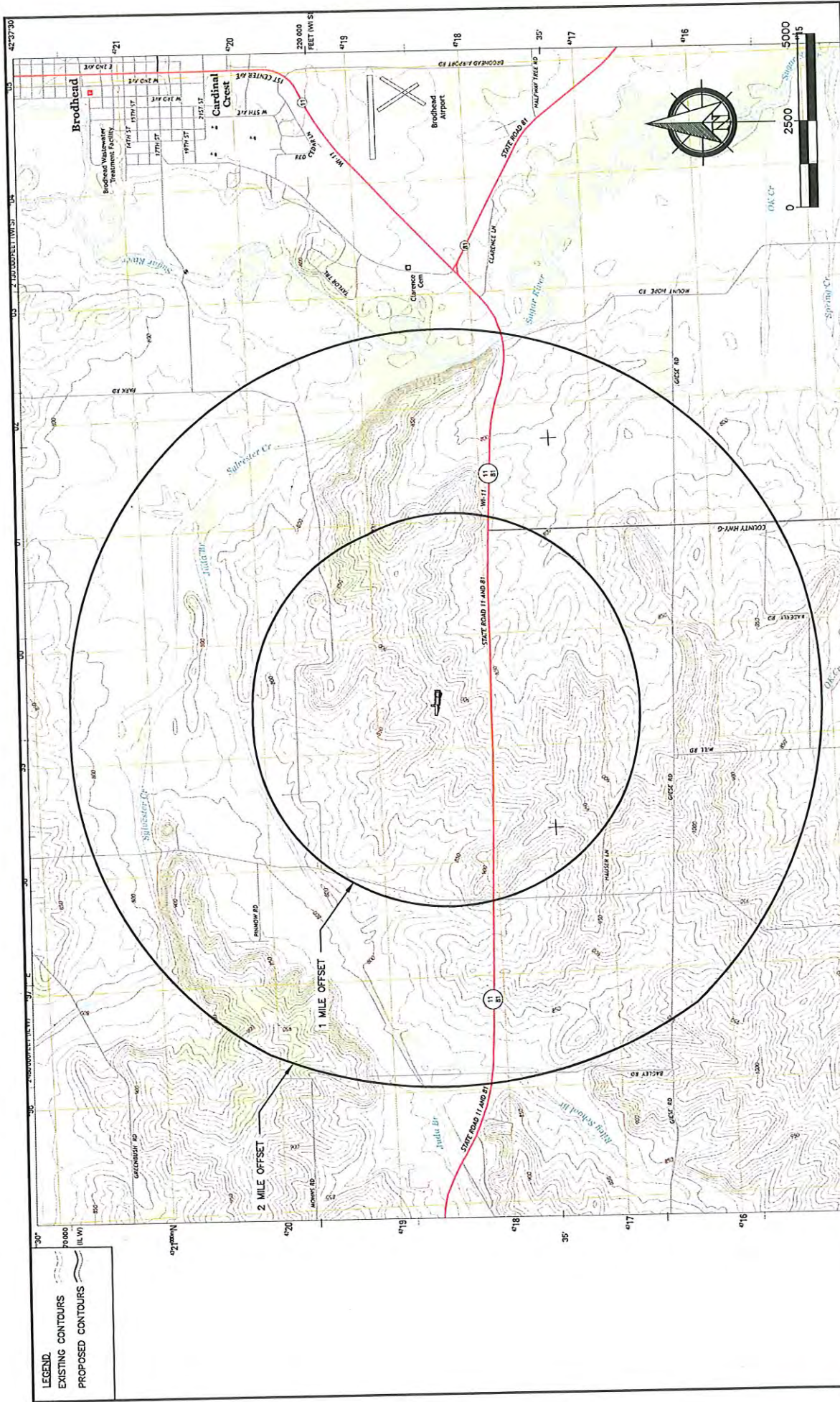
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JOB DRAWN	NB	DESIGNED	CHECKED	JOB PROJECT
NB	08/27/2016	FFS1301	FFS1301	FFS1301
APPROVED	DATE	PROJECT	PROJECT	PROJECT
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LEGEND
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INSIGHT FS - HICKORY HILL DAIRY LLC W1698 STATE ROAD 11/81 JUDA, WI 53550		AREA MAP - AERIAL ATCP 51 LIVESTOCK SITING		SHEET C103	
JOR	NB	JOR	NB	559 DENEPIC DR. #17 MADISON, WI 53704 (608) 438-3400 WWW.OUTLANDERIBUILDING.COM	
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AREA MAP - AERIAL ATCP 51 LIVESTOCK SITING	
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JOR DRAWN NB	JOR CHECKED NB
APPROVED NB	DATE 09/27/2016
PROJECT FFS1301	PROJECT
NO.	DATE

ATCP 51 Review

Ruedinger Farms Inc.
John Ruedinger
W7222 Cemetery Rd
Van Dyne, WI 54979

Today I am speaking against the draft rule on behalf of Ruedinger Farms Inc, WI Farm Bureau, and The Dairy Business Association.

The current rule's structure has been successful but the draft rule that DATCP is trying to move forward would undermine the success that ATCP 51 currently has with the livestock industry in Wisconsin. The draft rule would jeopardize the health of our rural communities and the state in general. As you know dairy and livestock agriculture generates tens of billions of dollars annually and adds tens of thousands of other industry related jobs. Our dairy works with more than 35 vendors monthly not counting all the other industry business that provide employment from the products we produce and sell.

Farmers need and deserve a fair and predictable framework in which to grow when they decide. The livestock siting law is supposed to provide that framework. The decision to grow is never easy and it is based on many factors including what is best for the family. The draft rule would make it extremely difficult, if not impossible for growth. We are fortunate that our daughter and son-in law decided to be the fourth-generation dairy producers on our Van Dyne WI dairy farm. The process is not an easy one for the next generation to be successful. Given the current and future world economic conditions, future generations of agriculture producers need to have predictable and reliable guidelines to operate within. We must provide that framework in order to have a viable agriculture industry here in Wisconsin. We need to have the ability for our state to attract and keep the industry's finest and brightest progressive producers

Creating stricter rules that cede more control to local governments might cause more local governments to choose not to adopt livestock siting. Most local governments don't have the resources to manage the highly technical rule that DATCP is proposing. They also lack the technical expertise to develop and implement or enforce their own livestock siting standards. There will be bias from some local officials toward those involved in agriculture within their communities. The draft rule also proposes a setback system where obtaining a variance, which by many standards is completely unworkable and impractical and farmers should not be forced into this situation. The current livestock siting rule is working even if some local governments say it is not. Under current law these governments have the necessary tools to work with all types of agriculture producers.

The draft rules abandonment of the current odor management standard for an unproven setback-based system is simply unacceptable. These proposed setback distances that would be measured from property lines are totally unworkable for rural Wisconsin. Our dairy would be affected by the draft rules and limit our ability to make minor adjustments to our current systems. There have been very few challenges to the livestock siting process overall and the odor scoring system has featured a workable solution so why over hall a system that is working. The draft rules setback system would make Wisconsin a regulatory outlier and who would want to invest, grow or expand here.

The draft rule for runoff management goes beyond DATCP's authority to regulate and establish an effluent limit for farms covered under livestock siting. DATCP lack the authority to establish such a limit for farms. The proposed rule changes would bring farms permitted under livestock siting much closer to the zero-discharge standard enforced against CAFOs. The livestock siting was not intended to duplicate CAFO regulations. Incorporating the 2016 NRCS 635 technical standard on Vegetative treatment areas in the draft rule would be a mistake. Wisconsin's state specific version is the result of a deeply flawed process. On our dairy we are required to make modifications to our VTA for thousands of dollars invested plus yearly operating costs estimated over \$20,000 in extra manure hauling cost. Our climate and growing season typically provide us with two narrow windows of time in the fall and spring to apply most of the nutrients to our fields. This proposal would dramatically increase the volume to be hauled in these two periods increasing the likelihood of runoff events. It makes no practical sense to encourage the enforcement of the new NRCS standard on VTA's.

Incorporating 2016 NRCS 635 in the draft rule is exactly the type of enforcement that will force even more farms out of business or must borrow heavily to comply, regardless of the environmental or economic impact and pay for the increased cost of compliance. The economic analysis fails to acknowledge the impact would have to farmers existing investments if they chose to grow or make modifications to their existing businesses. There has been a lot of money invested into livestock and storage facilities that wouldn't be able to meet the proposed setbacks to receive a new permit. This accounts for years of improvements and investments which cannot simply or cheaply be replaced.

Livestock farms are already heavily regulated by several state laws, administrative rules and a growing number of local regulations. Finding a consistent path through these regulatory layers is already one of the hardest tasks a farmer must do. Agriculture producers need consistency in rules and shouldn't have to deal with even more complexity.

As a third-generation dairy producer I am extremely proud to be a part of Wisconsin's agriculture industry. We are the best at providing food and fiber for the world demands. We can only do this if we have the right system and standards in which to operate.

I would like to conclude by restating that I am **against the proposed draft rules** affecting ATCP 51. Thank you for taking my testimony into consideration.

John Ruedinger
Ruedinger Farms Inc.

Good afternoon. My name is Lloyd Holterman representing Rosy-Lane Holsteins, a 4-partner dairy farm in Jefferson County. I'm speaking against the draft rule.

I would, however, like to start out and speak in favor of one aspect of the draft rule. Permit modification would allow dairy producers to add minor animal numbers without a major building project. If we opted to do this, it would allow us to milk more cows in buildings we currently raise heifers in. Even though we wouldn't be building anything new, our animal units on the farm site would go up. This would allow us to be more efficient with our labor by milking more cows in the same facility.

The current siting process gives us a predictable process and practical standards to abide by. Our farm was one that went through this process about 12 years ago and was approved.

As I see it, there are two major problems with the proposed draft rule: Odor and VTAs.

First, odor. The proposed rules dramatically increase setbacks using property lines requiring most operations to apply for variances from local townships or municipalities. I know this process from previously serving on our township plan commission. To obtain a variance, you must prove a "hardship" and we very rarely granted these as a hardship is hard to define or prove. I can't think of one site in our area that would comply with the proposed setback standards.

Second, vegetated treatment areas. The economic impact of possibly abandoning our VTA cannot be understated. We spent almost \$200,000 on a NRCS-designed system that is working great. To remove this infrastructure would be very expensive. I don't believe replacing this system would improve environmental performance on our dairy farm.

In summary, most changes proposed in this draft rule threaten our state's dairy industry and a farmer's ability to improve or grow their business. Let's not go down this path and weaken what makes agriculture in this state so strong.

19 August 2019

From: Bradley Boon

Member, Boon Farms LLC
N6634 State Highway 73
Greenwood, WI 54437
715-937-0983

To: DATCP Board, Agricultural Resource Management Division

To who it may concern regarding proposed rule revising ch. ATCP 51,
related to livestock facility siting:

My name is Brad Boon and my family and I dairy farm in Greenwood, WI in central Clark County. I would like DATCP staff for taking the time to listen the affected farmers of this proposed rule. I am speaking today against the draft rule ATCP 51.

Our farm takes care of approximately 300 milking cows. Our farm is unique in that we have already implemented one of the proposed changes in ATCP, and that is the 100% runoff collection from our feed storage pad. We built the leachate collection system in 2016 as part of the requirements for a grant to update our manure storage pit. All of the rain water that lands on the feed storage pad, mostly which is covered in plastic and concrete, is collected into to the new manure pit. This amounts to incredible amount of rain water being collected with the leachate runoff.

We do understand that collection of the leachate from feed storage is important, however, 100% collection of the storm water into a lagoon is just not feasible, both financially and from a conservation standpoint.

Financially the burden to land apply all of the collected rain water (about 1.7 mil gallons) equates to approximately \$20,000 per year using the average Wisconsin rainfall. Over 20 years this equates to approximately \$400,000. This is on top of the initial investment in the collection system.

The land conservation concerns are also great. This amount of rainwater along with the leachate must be land applied with heavy equipment during the fall and spring. This equipment causes ruts and compaction on a large amount acres. Finding a time window to apply the leachate in-between rains has become increasingly difficult. Incorporating the leachate can cause additional soil erosion.

In conclusion we feel that 100% collection of the storm water from a feed pad is unnecessary and not feasible for the long term. Imposing this rule on more farms across the state will cause more farmers to get out of the industry as well as cause additional damage to the soil and resources in the field. Thank you for your consideration.

Sincerely,

Bradley A. Boon

Member, Boon Farms LLC

Thank you for giving me the opportunity to speak against the draft rule of ATCP 51.

I am, Greg Tauchen, President of Tauchen Harmony Valley, Inc. THVI is a family farm owned by Herb, Marlys, Gary, Steve and Greg Tauchen. Together, we manage a 1200 cow dairy farm with 2400 acres of cropland. In addition, we have 18 full-time employees who are the primary wage earner for their families.

Like most livestock farmers, we have an obligation to our families and community to provide for them and preserve our environment and natural resources. My father worked 33 years for the Soil Conservation Service and instilled those principles in everyone he communicated with. We have an obligation to do the right things and use common sense while being economically viable.

I live on the home farm with my family and I want future generations to have that opportunity. My home is between a manure storage lagoon to the North and another to the SW. East of my house dry feed is stored, SE is a feed pad, and South is the leachate containment and vegetative treatment area for the feed storage. I have more at stake providing for clean air and water for my family than most, but the rule revision of ATCP 51 is not the answer.

Farmers need and deserve a fair, predictable and timely framework to grow. The livestock siting law is supposed to provide this framework, but this draft rule will break it apart. The rule would put existing investments in buildings, equipment and other infrastructure in jeopardy. THVI has millions of dollars invested in fixed assets and I am concerned that if we decide to modernize or expand, we will have to abandon our ageing assets and absorb that financial loss. Quite frankly, this will cripple the investment in the dairy industry which effects everyone who lives in Wisconsin.

Technology advancements are forcing all of our decisions to be made rapidly. Currently, it takes us several years to plan, engineer, find financing, approve zoning, CAFO permits and finally build a building. The legislature crafted the livestock siting law for the benefit of both local governments and farmers. It makes no sense to undo this structure. Local governments should be adopting livestock siting if they want to regulate larger farms. This draft rule would turn them away from it, creating uncertainty and opening the door for unfair,

irrational and even illegal actions by local governments to block new investments in our livestock industry.

As I mentioned earlier, our farm has a leachate containment and VTA associated with rain water off our feed pad that cost us over \$400,000. It works as designed and the spreading of the leachate is economical. It makes no sense to abandon that investment and spending double that to contain all rainfall off the feed pad. In addition, the extra cost of land applying all rainwater in perpetuity is unnecessary.

The draft rule's abandonment of the current odor standard for an unproven setback-based system is unacceptable. These proposed setback distances that would be measured from property lines are totally unworkable for rural Wisconsin. It would be nearly impossible to find a location for our farm to expand.

Livestock farms are already heavily regulated by a host of state laws, administrative rules and local regulations. Farmers need consistency in rules and shouldn't have to deal with even more complexity. I have a concern that some of the newly proposed standards are inconsistent with other regulations. For example, the draft rule revises and adds to what farm needs to comply with regard to runoff and manure management. And, the new standards go above and beyond our CAFO permit under NR 243.

Although I am against most of the draft rules, I support permit modification. The change could make for a standardized, faster and less costly path. Farms could avoid the extra construction costs needed to comply with the standards.

Thank you for allowing me to voice my concerns with the proposed draft rule of ATCP 51. I understand the need to protect the environment; however, the economic impact and sustainability of our livestock industry in Wisconsin must be considered and preserved.

Greg Tauchen
Tauchen Harmony Valley, Inc.
Bonduel, WI

Hello, my name is Heidi Fischer and my family and I own Fischer-Clark Dairy here in Marathon County. I am speaking against the draft rule as proposed.

The statute directs the department to write the standards found in ATCP 51 according to several factors, let me tell you how farmers view a few of those factors.

- **Protective of public health or safety;** *(every farmer agrees and wants this.)*
- **Practical and workable;** *(farmers are professionals when it comes to efficiency and doing what makes sense but flexibility is crucial. The proposed setback structure is not flexible nor practical or workable.)*
- **Cost effective;** *(Our last five years of milk prices should sum this up, balance sheets have been tightened, costs have been reviewed and re-reviewed, etc.)*
- **Based upon peer-reviewed science;** *(We want credible sources for some of the conclusions put forth, we can't make decisions based off anecdotal evidence.)*
- **Designed to promote the growth and viability of Wisconsin animal agriculture;** *(We want to be here for the coming generations – to not only keep a reliable, safe food source accessible, but to maintain a lifestyle and career option for our children and even grandchildren. Expanding our existing farms or building new farms is central to doing so.)*
- **Designed to balance the economic viability of farm operations with protecting natural resources and other community interests;** *(Farmers consider themselves the original stewards of the land, we have been practicing sustainable farming for many years however some of the practices mandated in the draft rule undervalue the economic hit farms will face to meet them.)*

One of the areas I am concerned about is the consistency with existing standards. As a CAFO farm, we are already heavily regulated by a number of state laws and administrative rules. Adding more layers and complexity would only create confusion, and possibly additional expense. Livestock siting should be consistent with other areas of regulation. We recently added to our feed pad and added a leachate collection facility – the engineering fees alone to ensure the plan was in accordance to the applicable regulations and codes, and would get DNR approval,

was just under \$25,000. I am concerned that by adding additional regulations would only add more engineering fees – perhaps even attorney fees – to decipher who has jurisdiction over particular standards and then the extra time dealing with another layer of compliance.

My next concern is the proposed setback system. Roadways serve as property lines which in a lot of scenarios it would be most beneficial to have a manure storage closer to the roadway than other property lines if someone lived on the other side of those fences and no one lived on the other side of the road.

Something the current odor scoring system accounts for. Also in many scenarios, placing the manure storage closer to the road adds increased efficiency in the handling and distribution of the manure – whether it is via semi-truck and trailer, tractor and tanker, or through a pumping-hose process.

Because of that fact, this system would dampen a farmer's ability to grow their farm according what is best for their individual farm layout and surrounding property uses. Basing setbacks from possible odor receptors (like neighbors) would at least be a step in the right direction to allow for more flexibility.

My last and final concern is the point of monitoring compliance: Section 51 of the proposed rule revisions would require local governments to monitor permitted livestock facilities using an approved checklist prepared by the department. I fear for our farm and others that could be subject to local governments without the background or know-how to regulate farms. My township is partially made up of a lake community – meaning we get new residents, mainly retirees, from very urban areas. Many of these people find involvement in local government a great past-time who don't know or understand modern farming practices. Our township board is split – we have people on the town board with ag background, and we have people that don't. Where I think some of their knowledge is strong and beneficial to our community (management of roads, finances, etc.) I would not hesitate to say that I believe their knowledge is less than par when it comes to modern farming practices. I take pride in educating people and giving tours to see what a modern, CAFO farm looks like – but giving the authority to a local government official to monitor my farm makes me very nervous. I feel that I would be spending a great amount of time and money producing documents of

proof that what I am doing is in accordance with the regulations – and it is being documented and monitored in our NMP.

After five years of continued depressed milk prices and the loss of more dairy farm operations in Wisconsin than any other state in the nation, our already struggling dairy industry can't afford another hit. Thank you.

August 22, 2019

My name is David Ward I live on a farm in Jefferson County near Fort Atkinson. I am opposed to the proposed changes to ACTP 51.

I am retired now but throughout my professional life I wore many different hats,

- Dairy Farmer
- Worked for a Dairy Genetics Cooperative
- Government Relations specialist
- Teacher
- State Legislator

In 2003 I was serving in the Wisconsin State Assembly and I was the author of 2003 Assembly Bill 868 (AB 868) which passed the legislature on a bi-partisan vote and was signed into law on April 13th, 2004 by Governor Doyle.

In this day of partisan politics I am proud of the fact that both Republicans and Democrats voted for AB 868 in a legislature that was controlled by Republicans and it was signed into law by Governor Doyle who was a Democrat. *SUPREMO COURT*

I am opposed to the removal of the odor score sheet and replacing it with the proposed setbacks. It should be noted that AB 868 was silent on the issue of odor. During the writing of the administrative rule ATCP 51 there was a divide on the issue of odor. Local government and DATCP wanted odor to be included several legislators and many farm organizations did not want odor to be part of ATCP 51. The odor score sheet was a compromise. One big reason why ATCP 51 was accepted by the opponents of including odor was the odor score sheet was field tested. We visited over 10 farms throughout Wisconsin and put the odor score sheet to the test and changes were made based on what was learned. Legislators, local government officials, DATCP Board members and DATCP specialists, the press and then DATCP Secretary Nilsestuen all participated in one or more of these visits to farms.

The odor score sheet was based on the concept that animal agriculture is going to have some odors that others will think are unpleasant. The score sheet gives out points to best management practices that can reduce the odor. - *SPR00M*

One of the compromises made was the five year review this was put into place to take into account any new technologies that are proven to reduce odor so they can be included in the odor score sheet. The five year review is in ATCP 51 to improve the rule. In my opinion the removal of the odor score sheet does the opposite. *SUPREMO COURT TEST*

David Ward
N3401 CR-G
Fort Atkinson, WI 53538
920-723-1211
palum76@yahoo.com

My name is Joe Bragger, I farm along with my family in Buffalo County. Bragger Family Dairy consists of 330 dairy cows located on three sites along with my wife Noel who operates a 32000 poultry barn. My Brother Dan is also a part of the Dairy and has his own poultry operation neighboring the dairy where he houses around 90,000 chickens. All of this is nestled in the challenging Driftless area of the state characterized by steep slopes and narrow streambed valleys.

We are proud to have been involved with the Discovery Farms Program as the first pilot farm and through this process learned which best management practices could be employed to protect water quality while maintaining the ability to maximize our farm. We have been recognized for environmental stewardship by several Ag and environmental organizations including receiving the Aldo Leopold Award. I also participated in the Special Oversight Committee to create the latest version of the NRC5 590 Nutrient Management Standard.

I have several concerns when it comes to the proposed setbacks,

- In the aforementioned Driftless area good building sites are hard to come by because of the topography. During the addition of my brother's second poultry barn he was faced with a 200 ft setback from the neighboring property. Following multiple attempts at designing the facility the only way to be able to build it due to excavation cost constraints was to move it closer to the neighboring parcel by 50ft. The proposed setbacks would cause extreme difficulty in siting expansions or improvements to many of our farms.
- In the creation of the current 590 Standards a lot of work went into creating clear and concise mitigation practices that would allow for limited spreading of manure in a safe way in winter. The ATCP 51 Rule Revision needs to have clear and accepted odor mitigation practices that will allow for safeguarding the public while maintaining the viability of Wisconsin Agriculture.
- There needs to be work done prior to the roll out of revisions to clearly identify the feasibility or impacts of proposed changes, farmers need to be involved and invited to the table. Farmers have and will use their expertise to develop sound policy that is protective of the environment and their neighbors.
- When mitigation practices and setbacks cannot be met the next step would be to seek a local variance, this would have the effect of inconsistent application of livestock siting and create a highly politicized situation that would eliminate the purpose of Livestock Siting.

The current Agricultural/Economic model that we farm under is based on the premise of lowest cost production that is driven by expansion to combat ever lowering margins provided to hard working farm families. Often times farmers and the public consider livestock siting to be a large or CAFO regulation while in actuality this revision could make all sized farms operate like large permitted farms. We are in the fifth year of an agricultural economic downturn, adding extreme burden to farm families and limiting their opportunities at this time without properly considering the economics would be inconsiderate at best.

While the intent of the revision is admirable, I have to speak in opposition to the revision due to the concerns listed. I would welcome the opportunity to help further highlight some of the challenges as well as help to identify opportunities.

Joe Bragger

W89 Pape Valley Rd. Independence, WI 54747 Cell 715-530-0466 Home 715-985-214

My name is Jack Herricks and I live in the Town of Jefferson near Cashton. My wife and I are the senior partners of a family dairy that includes our daughter and son and their spouses. During my career our dairy herd has grown from 34 to 620 cows. Dairy is our livelihood and I want to insure that my family has the ability to grow their ^{business} as they see fit. I also am chair of the Town of Jefferson.

I am speaking in opposition to the draft livestock siting rule – ATCP 51.

This rule is a result of recommendations from a Technical Expert Committee which convened to review the rule with reference to eight clear standards established in statute. These standards are very clear and concise. Any changes must consider:

There was no representation from the agriculture industry on this committee.

A very similar rule revision was drafted and presented to the DATCP Board in 2017. The Board rejected it and asked the Department to provide data on the impact these rule changes might have on siting new farms and expanding existing farms. The Department has failed to provide that data.

I believe this rule revision will negatively impact livestock farmers in Wisconsin, especially in the specific areas of increased setbacks, new runoff management standards, and reverting to local control.

Setbacks: The proposed rule changes provide no reason why the current system should be replaced. Rather, the rule starts off with the conclusion that the current rule which relies on an odor score and setbacks should be replaced by a new system with much more extreme setbacks (the OFFSET model) and possible opportunity to earn credits from odor control practices.

DATCP provides no primary research as to how the proposed new setbacks might impact future expansions or even how it might have affected currently sited farms. This is what the DATCP Board requested in the 2017 review of the proposal.

I have dealt with setbacks concerning wind towers and cell phone towers while serving on our town board. An area that initially seems to have a lot of open space and room, once you start measuring distances many times doesn't work.

There is a house here another property owner there and it becomes unexpectedly difficult to meet the setback requirements.

Runoff Management: The nutrient runoff management rules in the proposed draft are inconsistent with runoff standards found in other portions of the administrative code. The proposed rule adopts an NRCS standard that is not consistent with the Clean Water Act nor existing DNR practices.

This will create confusion, problems and added expense for producers who are trying to comply. The more confusing and difficult the rules are, the less likely they are to be followed or even enforced.

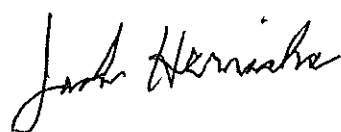
Monitoring compliance: The proposed rule requires local government to monitor permitted livestock facilities using a checklist provided by DATCP. Not only do the statutes not allow this delegation of authority, but it will lead to the very inconsistent application that the original Livestock Facility Siting law sought to eliminate.

This will lead to uncertainty for producers and lenders when it comes to regulatory law and will likely impede growth in the ag industries.

In conclusion, I would urge the DATCP Board to return this rule revision to the Department asking them to consider all eight of the required statutory standards.

I would also urge the Board to advise the Department to include direct input from producers in the revision.

Thank you for the opportunity to speak.

A handwritten signature in black ink, reading "Jack Hennrich". The signature is written in a cursive, flowing style.

Hello, Thank You for giving me this opportunity to speak. I am Robert Nigh and I live in Western Vernon County half way between Viroqua and Genoa where I farm in partnership with my brother, we are looking forward this fall to harvesting our 55th crop. I serve as a board member for the Wisconsin Farm Bureau Federation representing the six counties in the southwestern corner of Wisconsin.

Today I am speaking in opposition to various components of the draft livestock siting rule – ATCP 51.

This draft rule is a result of recommendations from a Technical Expert Committee which convened to review the rule with reference to eight clear standards established in statute. Of note, there was not representation from production agriculture on this committee. The eight standards are very clear and concise, stating that Any changes must consider:

- Protection of public health and safety
- Practicality and work ability
- Cost-effectiveness
- Objectiveness
- Scientific data that has been peer-reviewed
- Growth and viability of animal agriculture in WI
- Balance the economic viability of farm operations with protecting natural resources and community interests
- Usefulness to local government officials

A very similar rule revision was drafted and presented to the DATCP Board in 2017. The Board rejected it and asked the Department to provide data on the impact these rule changes might have on siting new farms and/or expanding existing farms. It is my understanding that the Department has failed to provide that data.

We have concern that this rule revision will negatively impact our members, especially in the specific areas of increased setbacks, new runoff management standards, and reverting to what I have concerns

about in equitable and consistent local control and the application of the standards.

Setbacks: The proposed rule changes the current system. The rule starts off with the conclusion that the current rule which relies on an odor score and setbacks should be replaced by a new system with significantly more extreme setbacks (the OFFSET model) and with the possible opportunity to earn credits from odor control practices that farmers might implement.

DATCP hasn't provided primary research as to how the proposed new setbacks might impact future expansions or even how it might have affected currently sited farms had the rule been in place previously. Again I remind you that in 2017, the DATCP Board requested a review of a very similar proposal.

Runoff Management: The nutrient runoff management rules in the proposed draft are inconsistent with runoff standards found in other portions of the administrative code. The proposed rule adopts a NRCS standard that is not consistent with the Clean Water Act nor existing DNR practices. This ultimately will create confusion, problems and added expense for producers who are trying to comply with the rules and another area where local officials interpretations may be inconsistent.

Monitoring compliance: The proposed rule requires local governments to monitor permitted livestock facilities using a checklist provided by DATCP. Not only do the statutes not allow this delegation of authority, but it will likely lead to the very inconsistent application of the standards that the original Livestock Facility Siting law sought to eliminate.

This will result in uncertainty for farmers and their lenders when it comes to regulatory law and will ultimately impede the growth and reduce the competitiveness of Wisconsin's Production Ag industry.

In conclusion, I would urge the DATCP Board to return this rule revision to the Department asking them to consider all eight of the required statutory standards and to please include direct input from farmers in these revisions.

Again Thank you for the opportunity to speak.

9-4-2019

Hello, I am Duane Chapman from Tomah, representing Chapman Farms-Dairy LLC. I am one of 5 family members on a fourth-generation dairy farm. I am speaking against the draft rule.

First of all, the siting rule has worked the way it was intended. It contains good things for all of us. It provides consistency for local governments and farmers alike. Local governments have a practical method to regulate larger farms and farmers need to have reassurance that we can continue our business and grow our business, if it makes sense to us. Putting more control back into local hands, with variances and increased monitoring, will only make things more difficult or impossible to deal with. Most township boards consist of 3 people and there are fewer and fewer agriculture people represented on these boards. Their decisions may be less science based and more emotion and personally based. We need a level and steady set of guidelines for our state, which is what we have now. Please don't disrupt this.

The odor control setback system proposed seems to be without merit. The present odor scoring system is working as intended. It allows farmers to implement odor mitigation practices given their surrounding land uses. To change it to a set distance from a property line, without consideration of what's beyond that line, be it crops, woodlands or people, is wrong and misguided. The present system helps address neighbors' concerns while giving farmers the flexibility to do what makes sense for their farm. Let's leave it alone.

Another concern of mine is the proposed VTA standard. We need to give farmers flexibility to address environmental concerns in a manner that is best for their farm site. Incorporating this standard would pose a lot of challenges for our farm when what we are doing may ultimately be a better environmental result. For us, the economic impact to comply with the standard would be huge! It far exceeds the costs estimated in the economic analysis which doesn't even include the calculation of the secondary costs of hauling this water every year. And hauling this extra water may be difficult to even accomplish in a safe and environmentally friendly manner given the wet springs and falls we've had recently. I am also concerned with the mosquito breeding grounds this might create. A separate pit or lagoon will not have the crust that forms on a manure pit, but instead will be an open pool of stagnant water. How can this be better? It seems like a very foolish waste of money to comply with a standard that may not even be the best for the environment. And that is money which we do NOT have now. You all must be aware of the plight of agriculture; especially dairy farming. There is not a dime of extra money in the checking account. The stress is unbelievable! Farmers going out of business or worse yet suicides. Wisconsin is hurting badly, and our farmers cannot afford this rule change. Moving this proposed rule forward will not allow us to heal and will push farmers closer to the edge of shutting their doors.

I am very concerned of the signal this draft rule sends to us dairy farmers in Wisconsin. Therefore, I am speaking AGAINST the proposal and thank you for letting me speak to you today.

Duane Chapman

Chapman Farms-Dairy LLC

21509 Gladeview Ave.

Tomah, Wisconsin 54660

Thank you for allowing me to testify on proposed changes to ATCP 51 before the DATCP Board today.

My name is Debi Towns. I live at 7930 N Eagle Rd., Janesville, WI. I would like to share how these proposed changes could impact my family's farming operation in Janesville, WI. I currently farm with my extended family. We have a mid-sized dairy and raise our own replacement heifers on different sites.

The proposed changes to setback distances in this revision to ATCP 51 could affect our ability to expand our operation. Plans to increase my herd size would greatly depend on whether I could meet the drastically increased setback rules in this proposal. Expansion would require a new free-stall barn. We placed the first barn to be well beyond the established setback at that time. When we built, and on the advice of the soil engineer we used, we laid all the underground piping for a second barn but were not ready to invest in the second structure or additional cows at that point. The footprint for this second barn is shy of 600' from the property line. So now we have made a significant capital investment based on law and regulation which this proposed rule could negate. According to the proposed rule, unless we receive a variance from our local town and county governments, we will not be able to access our invested asset. Even if we never build the second barn, this uncertainty will devalue our setup for a future owner.

I urge you to maintain current law and reject the proposed increased setback distances. Moderate setbacks in combination with the odor index scoring has worked well.

Our farm has worked hard to ensure that we are being good stewards of the land. We knife in the manure from the pit and spread dry manure from sheds following a NRCS 590 plan. This is to ensure that the amount of nutrients, the source, the method of application and the timing is appropriate and safe. The professional advice we pay for is expensive and the entire process of application is very expensive – often close to \$100,000/ann. Never-the-less, we want to do it correctly. This has been acceptable to DNR. For DATCP to establish and require compliance with yet another nutrient management standard would likely increase our costs. Not to mention, often the feds and state regulations are not well-coordinated and even contradict each other.

I oppose this change in ATCP 51 and urge you to ensure the rule is consistent with currently applicable DNR standards.

Our business is located in a very rural town. We have had a good relationship with our town government officials and have found them to be supportive of our business. But we also see a turnover in local government elected officials and the trend is that there are fewer individuals in these roles who have a direct understanding of production agriculture. We have observed in neighboring towns the extreme effort and expense that producers have had to struggle through to be allowed to grow their dairies. Some of these towns and counties have officials who do not wish to see agriculture grow in the same way – at least not in their area. Prior to the Livestock Facility Siting Law, this led to a patchwork of areas in the state that were willing to allow growth in livestock businesses. You were stuck if your farm was located in one of the towns or counties that didn't want farm growth. The uncertainty of being subject to local monitoring and inconsistent local regulation devalues the business because it generally relies on a handful of individuals to make decisions for the producer's business. Local governments are neither equipped, nor do they have the funding to monitor the construction or expansion of modern dairies. To provide consistency state-wide, this responsibility was given to DATCP in statute by the Legislature.

I would urge you to eliminate the section of the proposed rule that allows DATPC to delegate the monitoring of farm expansions to local government.

Thank you for listening to these concerns.

September 5, 2019

INSERT APPROPRIATE GREETING,

board member of WAPAC

My name is Andrew Skwor. I am an agricultural engineer, and Agricultural Service Team Leader with MSA Professional Services, Inc. I have over 20 years of experience working as an agricultural and construction management engineer, I hold my Professional Engineering License in 7 states including Wisconsin. I have completed 100s of project including but not limited to evaluations, farmstead planning, expansions, new farm developments, digesters, manure storage and transfer, composting, and feed storage of various sizes.

I am here today in opposition of the proposed revisions to ATCP 51 – the livestock facility siting rule. Today, I would like to address how the proposed setbacks, implementation timelines, and waste storage facility evaluations are impractical and inconsistent with existing regulations.

Setbacks

Section 36, ATCP 51.12 (1) and (2)

The proposed rule would replace the existing, practical, science-based odor management standard with an arbitrary setback distance. These proposed setback distances from property lines and right-of ways are unworkable for Wisconsin farms and would prevent existing facility expansion or new facilities from being constructed. Additionally, upsetting farms with a 10 year growth plan and the proposed rule will totally change the execution of that plan. There are environmental risks associated with these setbacks as well. To show how unsuitable this setback distance would be, I would like to share 2 points.

I have several clients today that ^{are} have an owner of the farmstead and the associated land around the farmstead being owned by a different entity, like a trust, which may include similar or the same ownership. The proposed rule does not address how those property lines are viewed for changes to that farm operation. Similarly, Wisconsin's zoning system is based on 40 acre parcels. A forty acre parcel measures 1,320' by 1,320'. Granted there is a lot of variety in parcel dimensions and sizes, but in this instance if a farm is required to uphold the 600' setback from a property line the owner has a 120'x120' space to complete a project. Regardless of the size of the farm because I serve farms with 50 animals and farms with 12,000 animals, the average lagoon size that has been designed by my team for 6 months of waste storage is 150' by 300'. Conservation expectations do not work with the proposed setbacks.

Timeframes for Implementation

Sections 29 & 30, ATCP 51.08

The timelines for implementation proposed in this rule pose unrealistic expectations. Six months is not enough time for a conservation practice to be completed to address an existing

runoff issue unless under perfect conditions. This timeline does not allow for delays due to weather or other circumstances.

To begin populating the approved livestock facility and to begin construction on every new or expanded housing or waste storage structure within two years is also not feasible. Builders typically schedule projects six months to a year after a farmer obtains his or her permit. Depending on the magnitude of the project, and if a farm would like to do a gradual expansion, there may be multiple phases of construction, however the proposed rule does not allow for this.

These proposed timelines do not work with the construction process, nor do they take into consideration project financing. A farmer should not be penalized for choosing to construct in phases or to postpone construction due to poor economic conditions.

Waste Storage Facilities

Section 41, ATCP 51.18(4) Existing Facilities

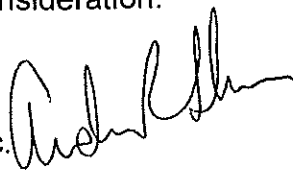
The requirements listed for waste storage facilities in this section are more rigorous than what is currently required of farms through the DNR WPDES permitting process for existing facility evaluations. While there are many issues with the revised requirements of this section, the area of greatest concern is requiring existing facilities to be evaluated against the October 2017 NRCS 313 standards instead of the standards that were in place at the time of construction. The October 2017 revision added the requirement of a subliner below the liner of a waste storage facility. There are many effective manure basins constructed in the last decade that would not meet this subliner requirement. To meet this requirement would require hundreds of thousands of dollars in removal and reconstruction costs without significant environmental benefit.

Summary

I would like to personally thank Sara Walling, Chris Clayton, and Lacey Cochart for their time and effort to help myself and organizations I am associated with understand the proposed revisions to ATCP 51, discuss issues with the proposal, and discuss how to make it an agreeable law. In brief, I have focused on the areas of greatest concern, but this does not fully address the numerous revisions that are not sound in science or practical in application, that are inconsistent with existing standards, and ultimately provide undue burden to Wisconsin farmers. I oppose this proposal and ask that DATCP not move forward until significant changes have been made.

Thank you for your time and consideration.

Andrew R. Skwor, PE
Agricultural Team Leader
MSA Professional Services, Inc.





16 North Carroll Street, Suite 900 | Madison, WI 53703-2721

phone 608.258.4400

fax 608.258.4407

www.cooperativenetwork.coop

September 13, 2019

Chris Clayton, Livestock Facility Siting Program Manager
Bureau of Land and Water Resources
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911
Via email: christopher.clayton@wisconsin.gov

Re: Opposition to Changing the Livestock Siting Rule, ATCP 51

On behalf of the three Farm Credit System associations serving and supporting agriculture and rural communities in Wisconsin (AgCountry Farm Credit Services, Compeer Financial, and GreenStone Farm Credit Services), we are submitting the following comments in opposition to the Wisconsin Department of Agriculture, Trade and Consumer Protection's (DATCP) proposed changes to Livestock Siting Rule ATCP 51. The Farm Credit System was established in 1916 by an act of the U.S. Congress, and given the mandate to support rural communities. Since inception, the Farm Credit System has supported agriculture by supplying reliable, consistent credit and financial services to farmers and ranchers, farmer-owned cooperatives, rural homebuyers, agribusinesses and rural infrastructure providers.

In Wisconsin, the Farm Credit System plays a vital role in providing agricultural financing and other services to farmers of all sizes, in all agricultural sectors, and in all economic conditions. With over 27,000 customers between our three farm credit associations, Farm Credit provided more than \$8 billion in agriculture related loans in 2018. As member owned cooperatives, the three Farm Credit institutions in Wisconsin returned more than \$73 million back to our customers in the form of patronage (cooperative dividends) in 2018. We've helped finance dairy and livestock operations that generate tens of billions of dollars each year in jobs and other economic activity for Wisconsin's economy. For example, each dairy cow accounts for \$34,000 in the economy, most of that remaining in the local community.

We believe that the proposed changes to ATCP 51 lack statutory authority, will add regulatory burden without environmental benefit, are duplicative of other regulations, and will bring uncertainty to the agriculture community in a time of already difficult economic realities. For these reasons, we oppose the proposed changes to ATCP 51.

FAILS LEGISLATIVE INTENT

As a legislator, David Ward was one of the key authors of the livestock siting law. Later, as Dairy Specialist with Cooperative Network and as a representative for the Wisconsin Farm Credit Service Legislative Committee, he was significantly involved in drafting ATCP 51. In his testimony on August 22, 2019 at the Madison public hearing on proposed changes to the Livestock Siting Rule, Mr. Ward shared that the legislative intent for requiring review of the rule every four years was to allow for improvements in agricultural management and technology. In other words, if new odor elimination technologies develop,

then ATCP 51 can be revised to allow for *smaller* setbacks and the siting of livestock closer to neighbors – because they would no longer be impacted by facility odors.

Further, the Department’s authority to promulgate and revise ATCP 51 springs from the legislative intent to create fair and uniform statewide standards for siting new or expanding livestock farms. These proposed rule revisions fail to meet the legislative intent of the authorizing statute and are contrary to the legislature’s charge to develop a rule “designed to promote the growth and viability of animal agriculture in this state.” We concur with Mr. Ward’s statements and share his concerns that DATCP’s proposed livestock siting rule fails to meet the legislative intent and is contrary to the authorizing statute.

CREATES UNCERTAINTY

Our farm credit associations were strongly in support of the original Livestock Siting legislation. We offered support because of the need to have a clearly defined livestock siting permitting process in Wisconsin that is fair to the local units of government, local residents, and applicants, while ensuring the process not stand as a significant barrier to responsible agricultural development.

In helping provide credit and other services, our primary interest is to have consistent and workable standards for our farmer customers looking to maintain or grow their dairy and livestock operations. This certainty is crucial if Wisconsin hopes to continue to keep and grow agriculture in the state. Certainty exists under the current ATCP 51, but will end if proposed changes to the rule are adopted.

For example, before the livestock siting legislation, local governments were forced to mediate conflict between farmers attempting to modernize their farm operations and citizens who didn’t want agriculture in their newly suburbanized back yard. This conflict had serious consequences. Several operations were denied the ability to modernize and expand. Some facilities closed because of the uncertainty about the future and return on investment. One of these casualties was the Land O’ Lakes cheese manufacturing facility in Greenwood, WI. **Perhaps worst of all, Wisconsin became a patchwork of different siting rules based on the make-up and attitude of different local governments.**

When the livestock siting legislation and the subsequent ATCP 51 rule brought consistency and certainty to the situation, producers felt comfortable investing in their operations. Of utmost importance, a farm operator understood that obtaining a permit under the new rule meant it would generally continue to benefit from this approval process even if ownership changes. This running of the permit with the land is extremely significant, follows the intent of Wisconsin’s “Right to Farm” law and allows agriculture to accurately assess opportunities for growth and expansion.

LOCAL GOVERNMENTS OFTEN LACK TECHNICAL EXPERTISE

The proposed ATCP 51 shifts monitoring compliance to local governments. This is contrary to the livestock siting law and beyond the authority of DATCP to change by rule. Additionally, local governments often lack the technical expertise to monitor or enforce compliance. This could lead to increased conflict between local governments and livestock producers – conflict that the livestock siting law was specifically enacted to prevent. Livestock producers, and local governments, need clear, practical, science-based regulations. The proposed revisions to this rule accomplish none of these objectives.

Moreover, local governments do have the option of zoning if they wish to regulate farms. The siting law outlines a process for local governments to follow if they believe tougher area-specific standards are necessary.

COMPREHENSIVE ENVIRONMENTAL STANDARDS ALREADY EXIST

The Livestock Siting Law essentially created five substantial standards that producers must meet:

- 1) Location of Livestock Structures (setbacks)
- 2) Odor and Air Emissions
- 3) Nutrient Management
- 4) Waste Storage Facilities
- 5) Runoff Management

These standards were created to be comprehensive and protective of the environment. These standards are in addition to the host of other state and federal laws and administrative rules regulating dairy and livestock farms. Simply put: agriculture is already heavily regulated. Therefore, every effort should be made to involve the regulated community in any proposed changes that will significantly alter existing practices, create new barriers for investment, or increase costs. The most practical reason for this is that the regulated community is best equipped to point out proposed changes that are inconsistent or duplicative of other existing regulations. The DATCP technical committee clearly did not take these inconsistencies into consideration.

Where possible, DATCP's livestock siting rule should be consistent with ATCP 50, NR 151 and NR 243. ATCP 50 and NR 151 regulate runoff management and manure application. NR 243 and the Clean Water Act establish water standards that CAFOs are required to meet in order to protect surface and groundwater. Unfortunately, the proposed changes in ATCP 51 add another layer of complexity to this already confusing regime. Adoption of these changes will create confusion. This is counter to the livestock siting law's legislative intent and would not serve Wisconsin's water quality or farm community.

ODOR SCORING SHOULD BE MAINTAINED

Perhaps the most significant change proposed in ATCP 51 is replacing the odor scorecard with strict setbacks. When the odor management standards were first proposed in 2006, we joined DATCP officials in a review of several dairy farms and analyzed how these farms would be permitted under the proposed "odor scorecard." Fortunately, this analysis showed the system works well. For example, farms are scored on a positive scoring system that recognizes and values additional odor control practices. Focus is placed on those areas that contribute to potential odor problems and discount those areas that do not, such as milking parlors and calf hutches. We also supported the original setbacks, viewing them as distance separations that protect the farm and, by doing so, reduce the conflicts that so often occur between agriculture and the new rural residential homeowners who have little or no experience being a neighbor to livestock operations.

By contrast, the new proposed changes have not been vetted. This is despite the fact that in 2017, when presented with a nearly identical rule draft, the DATCP board directed staff to analyze the impact the proposed new setbacks would have on farms that were previously permitted under the livestock facility siting rule.

Without this analysis, we do not know how replacement of the odor management standards with strict setbacks will affect existing farms, existing farms that want to expand, or new farms that want to begin production at a new location. As a consequence, we cannot agree with DATCP's conclusion in its public hearing request dated July 10, 2019 that "this rule will have no more than a moderate impact on farmers, including small businesses." Rather, we believe the proposed setbacks from property lines will be a massive shift in the way farms are sited and will be impossible for some to achieve, due to the amount, type and topography of land available.

CONCLUSION

Dairy and livestock farmers are currently dealing with a number of issues, such as weather and markets, which are out of their control. They are also competing in a global marketplace, and new rules that restrict or add costs have the potential of making Wisconsin an outlier compared with other states. Farmers need certainty and predictability from state government as they consider whether to modernize, expand, or simply maintain their operations.

We believe the livestock siting rule changes as proposed would make it extremely difficult, if not impossible, for new investments in animal agriculture, and would impact all sizes of dairy and livestock operations in Wisconsin. We support the ongoing efforts of our dairy and livestock farmer customers to protect the environment and be good neighbors. We're concerned the proposed rule changes may create more burden, while limiting innovation and flexibility for enhanced management practices.

The Farm Credit Associations of Wisconsin stand ready to work with DATCP to ensure Wisconsin livestock farms and the industries that rely on them continue to thrive while at the same time protecting our states' natural resources and quality of life. The livestock siting law plays a key role in this effort, which is why we are requesting the DATCP board oppose these proposed rule changes at this time and return them to staff for further research (including involvement of the regulated community) and editing.

September 3rd, 2019

Chris Clayton, livestock facility siting program manager
Bureau of Land and Water Resources
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

Re: Comments on the 2019 hearing draft of ATCP 51

Dear Mr. Clayton:

In 2017, a very similar draft was presented to the DATCP board for review. The board decided not to move that draft forward to a public hearing. Instead, members asked department staff to do two things: 1) gather more stakeholder input and 2) analyze the impact of proposed new setbacks on farms that were previously permitted under the livestock facility siting rule. The department has failed to follow the board's direction and it is very obvious that the department has staff that are trying to craft their own rules outside of direction of the board and the legislature.

In a recent letter to legislative leadership, Secretary-Designee Brad Pfaff highlighted the meetings that were held to gather additional stakeholder input. Although those meetings occurred, the department ignored it and the input from those meetings. Then, the department reconvened the previous Technical Expert Committee (TEC), which had no farmer participation and very little industry input, to review a handful of issues in an abbreviated fashion. Throughout this flawed process, the 2017 draft language was used as the starting point for discussion. Not surprisingly, at the end of this process the department forwarded a rule to the DATCP board that is very similar to the 2017 version. Department staff again did not follow instructions from the board or legislature.

The department's failure to test the impact of the proposed new setbacks is similarly disappointing. These setbacks would be a massive shift in the method used to site new and expanding livestock farms. If not well reasoned and tested, these setbacks could be an obstacle to the success of livestock agriculture in Wisconsin. Additional testing is imperative to ensure that we are not setting an unrealistic and unworkable standard to the detriment of animal agriculture in our state.

At the July 2019 board meeting, department staff acted as if it would be impossible to do this sort of analysis and, worse yet, that they had never been directed by the board to perform one. It is true that each individual farm project will be different, which would make testing all the previously approved projects a long and difficult process. Department staff failed to do their job.

The legislative intent of livestock siting is to create fair and uniform standards for siting new or expanding livestock farms across the state. The law requires the department to promulgate rules that are:

1. Protective of public health or safety
2. Practical and workable
3. Cost effective
4. Objective
5. Based on scientific information that has been subjected to peer review
6. Designed to promote the growth and viability of animal agriculture in this state
7. Designed to balance the economic viability of farm operations with protecting natural resources and other community interests
8. Usable by officials of political subdivisions — Wis. Stat. § 93.90(2)(b)

Additionally, the rules for livestock siting are supposed to be reviewed every four years. The legislative intent is to ensure that ATCP 51 keeps pace with changes in technology and agricultural practices. Moreover, changes in Wisconsin law rooted in 2011 Wisconsin Act 21, require all administrative rules to be grounded in clear statutory authority.

My areas of concern with the hearing draft:

Odor management and setbacks

The proposed rule would abandon the current odor management standard, which relies on an odor score along with setbacks, in favor of a new system that relies on drastically increased setbacks with the possibility of credits for certain odor control practices. This is the most significant change made in the hearing draft. It is noteworthy that the origin of this radical change was DATCP staff, not the farming community, public concerns or the TEC. The 2015 TEC Report made several specific recommendations on how to update and improve odor scoring. It did not recommend the wholesale abandonment of the system. This was done by staff and was included in the hearing draft they submitted to the DATCP board in 2017.

The threat the expanded setbacks pose to the growth of livestock agriculture is exacerbated by having distances measured from property lines, not from a person who can actually perceive an odor. The current odor scoring system is measured from the location of the nearest odor receptor, such as a neighboring residence, which makes perfect sense to preemptively address a concern.

Runoff management

Changes to the rules would come very close to establishing a de facto effluent limit for farms covered by livestock siting. Regardless of the arguments on either side of this shift in policy, livestock siting legislation was not meant to duplicate CAFO regulations. Blurring the lines between these two permits and categories of farms in this rule revision undermines the reasoning behind having a separate set of livestock siting regulations. There is also a legal consideration: DATCP lacks the authority to establish such a limit; this duty has been expressly delegated to DNR, and any attempt to undermine that delegation would be contrary to law.

Consistency with existing standards

There is a concern that some of the new standards proposed in the draft rule are inconsistent with the runoff standards already found in other parts of the administrative code (namely ATCP 50, NR 151 and NR 243). There are similar concerns about some of the provisions dealing with manure storage and, of course, the newly proposed setbacks. Without dwelling on all the inconsistencies, it is easier to emphasize the value of consistency.

Agricultural facilities are already heavily regulated by a host of state laws and administrative rules. Navigating these different layers of regulations can be one of the chief hurdles farmers face. Where possible, livestock siting should be consistent with other areas of regulation. ATCP 50 and NR 151 regulate runoff management and manure application. The state's permitted CAFOs are accountable to the standards found in NR 243 and the federal Clean Water Act. The DNR has existing standards meant to be protective of groundwater and surface water. Adding another layer of complexity to this already confusing and duplicative set of regulations would run counter to the siting law's legislative intent.

Broadened local control

Several changes in the hearing draft would expand local control. For example, we see new sections on monitoring compliance being added to ATCP 51.14, 51.16, 51.18, 51.20 and 51.34. First, increasing the opportunity for local governments to monitor compliance in each of these sections is duplicative and unnecessary. Second, expanding the local government's authority to do so is a potential powder keg leading to local hostility and reluctance by farmers to build or grow a farm in certain communities. Not only does the draft rule expand the opportunity for local government to make it difficult for a farmer, the draft gives an opportunity for disgruntled neighbors to push for an undefined, subjective action when they complain about odor. This expanded compliance monitoring role has been carved out even though the statute granting authority to promulgate ATCP 51 does not expressly provide for the delegation of monitoring permitted farms' compliance to local units of government.

Giving more authority over livestock siting to local governments might sound benign or even positive to some people. But it's neither. Most local governments, especially town governments, lack the technical expertise to develop, implement or enforce their own livestock siting standards. Instead, siting decisions would return to being emotional ordeals driven by uninformed opinions and based on local politics. Wisconsin has a livestock siting law because we wanted to avoid this outcome.

Local governments do have tools at their disposal if they want to be more involved in regulating farms through livestock siting and land use in general through zoning. For example, the siting law outlines a process for local governments to follow if they believe tougher area-specific standards are necessary. Tellingly, very few local governments make use of either tool until they are actively seeking more authority, almost always in response to a proposed new farm or expansion. Seeking to find anything to derail the project, they typically ignore the law, reason and commonsense. This explains the flurry of new CAFO moratoria enacted by towns and counties in clear violation of the livestock siting law. DATCP, which previously stood up for the livestock siting law against infringements such as these, is now mostly passive or even permissive. The siting law outlines a

clear statutory time for the review and approval or denial of siting applications. Any moratorium would clearly violate the mandatory timelines established by state law.

The current environment is one of local governments going rogue and DATCP abdicating its authority. No one involved in livestock agriculture would want to see additional authority ceded to local governments in this climate. Keep in mind, this is also the dysfunctional context in which DATCP is now proposing for farms that cannot meet the newly created setbacks. Those farmers would have to run the gauntlet to try to obtain a variance from a local government. It is completely unworkable and impractical.

At the same time, there are significant problems with the draft rule that make it impossible for most of the agricultural community to support. We hope the department will use our feedback to improve the rulemaking and TEC process. Improvements can be made to ATCP 51, but any draft rule with a chance of becoming published would need to be profoundly different than the current draft.

As I CCA (Certified Crop Advisor) I work with many farms and understand the implications this draft could have on the future of agriculture in Wisconsin. I strongly believe DATCP staff are out of touch with reality and the economic costs this draft could have. For the above reasons I **express my opposition to this Draft Version of ATCP51.**

Chuck Bolte
W10322 Koepenick Road
Deerbrook WI, 54424
CCA WI and MN



Soaring Eagle Dairy, LLC
10219 County Road F
Newton WI 53063
(920) 726-4890

August 27, 2019

Chris Clayton, livestock facility siting program manager
Bureau of Land and Water Resources
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

RE: Comments on the 2019 hearing draft of ATCP 51

Dear Mr. Clayton:

As a dairy farmer in Wisconsin, I am very concerned about the Draft of ATCP 51 and the rules and regulations it could bring. As a result, I am writing this letter to voice my **strong opposition to adoption of this rule.**

The legislative intent of livestock siting is to create fair and uniform standards for siting new or expanding livestock farms across the state. The law requires the department to promulgate rules that are:

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Additionally, the rules for livestock siting are supposed to be reviewed every four years. The legislative intent is to ensure that ATCP 51 keeps pace with changes in technology and agricultural practices. Moreover, changes in Wisconsin law rooted in 2011 Wisconsin Act 21, require all administrative rules to be grounded in clear statutory authority.

Here are my areas of concern with the hearing draft:

1. Odor Management, as written, it is basically impossible in the state of Wisconsin to meet the set-back distances. It is obvious DATCP staff wrote this with the intent to discourage any expansion of livestock operations.
2. The economic analysis of impact of this law is extremely flawed. DATCP staff are out of touch with the reality of the costs of meeting many of the requirements a farm would have to implement.
3. The consistency of rules is blurred even more with multiple layers of regulation being added by this draft.
4. The draft gives local government more authority and creates an uneven playing field. Most local governments, especially town governments, lack the technical expertise to develop, implement, and/or enforce their own livestock siting standards. Instead, siting decisions would return to being emotional ordeals, driven by uninformed opinions, and based on local politics. Wisconsin has a livestock siting law because we wanted to avoid this outcome.

Due to the above issues and complete lack of industry support I **strongly oppose** this Draft ATCP 51.

Sincerely,

A handwritten signature in cursive script that reads "Jim Fitzgerald". The signature is written in dark ink and is positioned above the typed name.

Jim Fitzgerald
Soaring Eagle Dairy
10219 County Road F
Newton WI 53063
920-374-0764



Soaring Eagle Dairy, LLC
10219 County Road F
Newton WI 53063
(920) 726-4890

August 27, 2019

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Sincerely,

A handwritten signature in cursive script that reads "Julie Maurer".

Julie Maurer
Soaring Eagle Dairy
10219 County Road F
Newton WI 53063
920-323-1698



Soaring Eagle Dairy, LLC
10219 County Road F
Newton WI 53063
(920) 726-4890

August 27, 2019

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Sincerely,

A handwritten signature in cursive script that reads "Kelly Goehring". The signature is written in black ink and is positioned below the word "Sincerely,".

Kelly Goehring
Soaring Eagle Dairy
10219 County Road F
Newton WI 53063
920-946-8024



Soaring Eagle Dairy, LLC
10219 County Road F
Newton WI 53063
(920) 726-4890

August 27, 2019

Chris Clayton, livestock facility siting program manager
Bureau of Land and Water Resources
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

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Sincerely,

Nick Fitzgerald
Soaring Eagle Dairy
10219 County Road F
Newton WI 53063
920-901-9207

Date: 9-3-2019

Chris Clayton, livestock facility siting program manager
Bureau of Land and Water Resources
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
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RE: Comments on the 2019 hearing draft of ATCP 51

Dear Mr. Clayton:

As a livestock farmer in Wisconsin, I am very concerned about the Draft of ATCP 51 and the rules and regulations it could bring. As a result, I am writing this letter to voice my **strong opposition to adoption of this rule.**

The legislative intent of livestock siting is to create fair and uniform standards for siting new or expanding livestock farms across the state. The law requires the department to promulgate rules that are:

1. Protective of public health or safety
2. Practical and workable
3. Cost effective
4. Objective
5. Based on scientific information that has been subjected to peer review
6. Designed to promote the growth and viability of animal agriculture in this state
7. Designed to balance the economic viability of farm operations with protecting natural resources and other community interests
8. Usable by officials of political subdivisions — Wis. Stat. § 93.90(2)(b)

Additionally, the rules for livestock siting are supposed to be reviewed every four years. The legislative intent is to ensure that ATCP 51 keeps pace with changes in technology and agricultural practices. Moreover, changes in Wisconsin law rooted in 2011 Wisconsin Act 21, require all administrative rules to be grounded in clear statutory authority.

Here are my areas of concern with the hearing draft:

1. Odor Management, as written, it is basically impossible in the state of Wisconsin to meet the set-back distances. It is obvious DATCP staff wrote this with the intent to discourage any expansion of livestock operations.
2. The economic analysis of impact of this law is extremely flawed. DATCP staff are out of touch with the reality of the costs of meeting many of the requirements a farm would have to implement.

3. The consistency of rules is blurred even more with multiple layers of regulation being added by this draft.
4. The draft gives local government more authority and creates an uneven playing field. Most local governments, especially town governments, lack the technical expertise to develop, implement, and/or enforce their own livestock siting standards. Instead, siting decisions would return to being emotional ordeals, driven by uninformed opinions, and based on local politics. Wisconsin has a livestock siting law because we wanted to avoid this outcome.

Due to the above issues and complete lack of industry support I **strongly oppose** this Draft ATCP 51.

Farm *Fitz Pine Dairy*

Robert Fitzgerald



Soaring Eagle Dairy, LLC
10219 County Road F
Newton WI 53063
(920) 726-4890

August 27, 2019

Chris Clayton, livestock facility siting program manager
Bureau of Land and Water Resources
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

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Sincerely,

Stacy Klotz
Soaring Eagle Dairy
10219 County Road F
Newton WI 53063
920-323-4558

Date: 9-13-19

Chris Clayton, Livestock Facility Siting Program Manager
Bureau of Land and Water Resources
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

RE: Comments on the 2019 hearing draft of ATCP 51 Livestock Siting

I am writing to express my concerns about the proposed changes to the Livestock Siting Law.

Incorporating the 2017 NRCS 629 code into Livestock Siting would exacerbate the water quality challenges Wisconsin already has regarding liquid manure applications.

The 2017 NRCS 629 code requires affected dairy farms to collect and store feed area precipitation runoff. Unlike leachate, feed area runoff has the potential to have a very low nutrient content. This liquid waste falls under the same storage and application rules as liquid manure and process wastewater. Storage structures for this material are typically required to be of concrete construction. 180 days of storage is mandated if the farm is required to collect and store feed area precipitation runoff. There are stringent rules for irrigation of this liquid because it is classified the same as liquid manure and process wastewater. In most cases a farm would currently not be able to obtain a permit to discharge feed area runoff through an irrigation system because it is considered process wastewater.

It is not practical for dairy farms to keep this low nutrient content material segregated from other organic wastes because the application cost is the same as liquid manure. If kept segregated, a farmer could easily pay \$200 per acre to essentially apply water to the receiving field. To make this material practical to apply, it is almost always co-mingled with liquid manure and other process wastewater. Herein lies a problem that is quickly becoming a crisis in Wisconsin.

Typical dairy farm liquid manure currently has a dry matter content of 1.5% to 4.5% as applied. This is roughly 1/3 of the dry matter content of manure on dairy farms 25 years ago. There is an exponential relationship between dry matter content and viscosity of liquid dairy manure. Simply put – a small decrease in the dry matter content of dairy manure will have a proportionally larger decrease in the viscosity of the product. Applying liquid manure that has significantly lower viscosity increases the likelihood that this material will run off application sites and will flow preferentially through the soil profile to potentially reach groundwater. Research on preferential flow from The Ohio State University showed that liquid manure with a solids content above 5% is unlikely to flow through soil macropores.

If farmers had incentive to keep clean water “clean”, they would no longer be forced to mix rain water with liquid manure. This strong incentive could be provided if Wisconsin creates a new class of liquid waste that allows for less stringent rules pertaining to storage and application.

The 2017 NRCS 629 standard appears to have been hastily revised to meet a political agenda. It does not offer real solutions to the water quality issues I described above.

Until Wisconsin creates a new class of liquid waste that provides incentive for keeping relatively clean water clean and revises the deeply flawed 2017 revision to NRCS 629, the standard should not become part of the Livestock Siting Law.

In addition, I have not seen printed material or heard evidence from the recorded hearings to show that WDATCP has sufficiently looked at real life examples of the proposed set back rules on actual farms that might need to obtain a Livestock Siting Permit.

For these reasons, I urge WDATCP to either keep the current Livestock Siting Law as-is or go back to the drawing board to propose changes that truly have the potential to be positive for Wisconsin’s natural resources, its citizens and agriculture.

Respectfully submitted,

Steven A Hoffman
8430 Borgwardt Lane
Manitowoc, WI 54220

September 10, 2019

Orthland Dairy Farm LLC

Steven Orth

14319 S. Union Rd.

Cleveland, WI 53015

State of Wisconsin DATCP

Attn: Chris Clayton and DATCP Board of Directors

PO Box 8911

Madison, WI 53708-8911

Dear Chris Clayton and DATCP Board of Directors,

My family owns and operates Orthland Dairy Farm LLC outside of Cleveland, WI and I want to express our family's concerns regarding the proposed rule changes to ATCP 51 livestock siting rules and the effect that these proposed rules will have on our family farm.

I want to point out the significance of the setback distances proposed for new construction of waste storage. These set back changes will directly affect the future of our farm because we would be unable to achieve the necessary distance of setback to a neighboring property for the future construction of a waste storage facility. With the proposed rules we would no longer be able to construct additional waste storage on our farm because we cannot possibly meet the proposed setbacks. This could be potentially hazardous to the environment because we would be unable to build the necessary waste storage facilities necessary to properly manage the nutrients produced by our farm.

We believe it would be more appropriate, practical, and fair to lower the proposed setback distance to neighboring properties. Instead of setbacks being measured to property lines, it should be measured to residences or homes as the rule currently stands. Additionally, the calculation of the odor score needs to be adjusted to take into consideration the merit of the management practices farms operate by. Finally, if a farm cannot meet the new setback distance, they should be allowed to have their neighbor sign off, if willing, to award a variance to their properties from setback distance requirements to reward farms for good management, stewardship, and building positive relationships with their neighbors in the community.

Water quality is essential to everyone, so forming realistic regulations that protect the environment, while simultaneously allowing the industry to operate, is of utmost importance for us all.

Sincerely,



Steven Orth

Orthlanddairy@gmail.com

920-905-2575