



**WISCONSIN TOWNS  
ASSOCIATION**

**Empowering Town Officials**

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Department of Agriculture, Trade and Consumer Protection Board  
2811 Agriculture Drive PO Box 8911  
Madison, WI 53708

RE: Wisconsin Livestock Facility Siting – Draft Rule ATCP 51

Dear Members of the Board,

Thank you for authorizing public comment on Draft Rule ATCP 51 and for allowing us to testify here today. The proposed rules bring consistency and clarity to the law and ensure that standards are based on current scientific research and findings. We applaud the Board for demonstrating a willingness to engage the public and for its efforts at serving the broad needs of all Wisconsinites.

**Setback Based Odor Management**

The WTA supports the draft rule's shift from a pass/fail odor score system to a more consistent and objective setback based system. Setbacks offer proven results and straightforward implementation, and the proposal continues to recognize the positive impact of other odor management practices.

We anticipate some testimony today that will express disapproval over what will be called larger, more restrictive setbacks. This is, however, a mischaracterization that fails to consider the new setbacks in the broader context of real world application. First, the new setback maximums represent a shift in the application of current standards - not an increase in the standards themselves. The new setback distances are derived from the same research and findings that gave us the current odor score, but apply those findings in a more reliable way. Second, the new setback distances represent the maximum allowable by any political subdivision - not the minimum setback distances. Actual setback distances may be much less because of lesser adopted setback requirements, farmer incorporated odor control practices, and the use of variances by local governments to address specific circumstances. Finally, a setback based system actually provides *more* flexibility for individual farmers. The odor score system requires the implementation of specific odor management practices in order to obtain a passing odor score. A facility either passes or fails - period. In contrast, the proposed setback system allows farmers the flexibility to determine how to manage their own facility. For example, under the proposed rules, farmers can decide to use setbacks without implementing odor control practices. Conversely, farmers may choose to decrease required setbacks by implementing some combination of odor control practices. Importantly, the proposed rule changes put farmers in the driver's seat for determining how to best manage their resources.

On top of that flexibility, the draft rule maintains a local government's ability to implement lesser setbacks where appropriate. Some communities will not require the maximum allowable setbacks and will implement lesser setback distances. Other communities will use variances to tailor setbacks to individual needs. Ultimately, the draft rule recognizes that some situations are different from others - allowing local decisions to benefit individual farmers and their communities.

### **Preservation of Private Property Rights**

The WTA appreciates the draft rule's preservation of individual property rights by applying setback standards to property lines rather than structure to structure. The setbacks in current law apply to property lines as well, but the current odor score calculations are based on distances from structure to structure rather than structure to property line - a system which erodes the personal property rights of those who have yet to build near their property line. For example, under the current odor score system, facilities pass or fail based in part by distances to a neighbor's closest structure. This current system diminishes that neighbor's property interest by ignoring their potential future use of the property and fixating on how the property is currently being used. Permit approvals based on structure to structure distances might effectively limit the neighbor's future use of his/her own property. The shift away from the odor score standard in favor of property line setbacks protects all property owners, including their unanticipated future uses of land. Property line setbacks reflect the well-reasoned principles of property law and a century's worth of zoning history rather than diminishing property rights based on which neighbor builds first.

### **Setback Reduction Complications**

Setback reductions allow farmers the flexibility to implement odor control practices in exchange for lesser setback requirements. The scale of setback reductions in the draft rule are disproportionate and problematic. To illustrate this problem, imagine manure storage structures on two separate facilities - one with 2,500 animal units and the other with 4,000 animal units. Assuming the maximum allowable setbacks are required for each facility, the 2,500 animal unit manure storage structure begins with a 1,400ft setback while the 4,000 animal unit manure storage structure begins with a 1,700ft setback. Now assume that both facilities apply the same Level 1 odor control practice and reduce their setbacks by 500ft and 1,000ft respectively (based on the draft rule's setback reduction distances). The 2,500 animal unit manure storage structure's setback is now 900ft while the 4,000 animal unit manure storage structure's setback is only 700ft. This demonstrates that the setback reduction distances for large facilities are disproportionately greater than those for small facilities, creating odd results. A large facility, with almost double the number of animal units, should not be able to implement the same odor control practices as a smaller facility and end up with lesser setback requirements. We request that the setback reduction distances for large facilities be diminished in order to make sense in relation to the draft rule's other setback and setback reduction distances.

### **Misinterpretation of Section 93.90, Wis. Stat.**

The WTA has major and significant concerns with the draft rule's interpretation of local zoning authority specifically as related to limited agricultural districts. The statutes do not allow local governments to prohibit new or expanded livestock facilities unless the proposed site is located

in a nonagricultural zoning district or the proposed site is located in an agricultural zoning district in which the livestock facilities are authorized to be prohibited. See s. 93.90(3)(a), Wis. Stat. The statutes give two circumstances when facilities may be prohibited from agricultural districts. First, livestock facilities may be prohibited from an agricultural zoning district based on the number of animal units if the political subdivision has another, unlimited agricultural zoning district. See s. 93.90(3)(b), Wis. Stat. Second, livestock facilities may be prohibited from an agricultural zoning district altogether if the political subdivision bases that prohibition on reasonable and scientifically defensible findings of fact showing that the prohibition is necessary to protect public health or safety. See s. 93.90(3)(c), Wis. Stat.

The draft rule offers an alternative misguided interpretation of s. 93.90, which would also require scientifically defensible health or safety reasons to simply use a local zoning ordinance to create both limited and unlimited zones based on the number of animal units. See Draft Rule ATCP 51 (intro)(Note). This is a fundamental misinterpretation of a. 93.90, in opposition to previous interpretations, and contrary to the legislative intent of the statute.

The contemporary misinterpretation likely stems from the use of the word “and” in s. 93.90(3)(a)2, Wis. Stat. when noting that local governments may prohibit new or expanded livestock facilities in agricultural districts “subject to pars. (b) *and* (c).” The use of the word “and” simply indicates that political subdivisions are allowed to prohibit facility siting or expansion in an agricultural zoning district subject to paragraph (b) and subject to paragraph (c).

Paragraph (b) allows the use of animal unit limited agricultural districts so long as there is also an unlimited district. Paragraph (c) allows for a complete prohibition of livestock facilities in an agricultural district if there is a showing of need based in scientifically defensible evidence. These two paragraphs operate independently from each other, each offering political subdivisions a completely separate regulatory option. In fact, paragraphs (b) and (c) cannot be read together because they are incompatible with each other. If paragraph (b) allows for an animal unit cap in an agricultural district, then some livestock facilities are necessarily allowed under that paragraph - those with animal unit numbers below the cap. It is therefore impossible to reconcile paragraph (b) with paragraph (c), which allows only for the complete prohibition of livestock facilities in an agricultural district. As such, the use of the word “and” in s. 93.90(3)(a)2 could not have intended that both paragraphs be used together, but rather that either paragraph may be used to limit livestock siting in an agricultural district.

Furthermore, the common sense application of the problematic interpretation results in local government’s having no ability to effectively use planning and zoning to create buffer zones around residential areas, accomplish gradual separation from tourist/recreational sites, etc. The only logical option under the current misinterpretation is to resort to completely zoning out agriculture altogether.

### **Fees Do Not Reflect Actual Costs**

The WTA is greatly concerned with the application fee limitations in current law and in the draft rule. Not only are the current fees consistently not covering the costs of permit administration, but the Department does not have the statutory authority to impose application fee limits in the first place. Section 93.90 of the Wisconsin Statutes requires the Department to “promulgate

rules specifying standards for siting and expanding livestock facilities.” See s. 93.90(2)(a), Wis. Stat. The statute does not discuss application fees or authorize the Department to impose limitations on application fee recovery. The Department may only promulgate livestock siting “standards” under 93.90, and fees are not livestock siting “standards.” As such, any fee limitations under ATCP 51 are without statutory support and outside the bounds of the Department’s legal authority.

It is important to note that the WTA is not advocating for unjustified or unreasonable application fees. In fact, we support quite the opposite. Like with many other local permits (e.g., subdivision developer fees), application fees should reflect the actual and necessary costs imposed on local governments. Farmers should not pay excessive fees, and local governments should not bear the burden of using property taxes to support permitting of a complex business that requires expert navigation.

Appropriately, current law already prohibits local governments from charging unreasonable fees. In fact, “any fee that is imposed by a political subdivision shall bear a reasonable relationship to the service for which the fee is imposed” and “may not exceed the political subdivision's reasonable direct costs.” See s. 66.0628(2), Wis. Stat.

The solution to the livestock siting fee problems is, therefore, exceedingly simple: delete all language regarding application fees from ATCP 51. As the Department has no statutory authority to limit livestock siting application fees anyway, removing the fee limitations from this rule will bring the Department back within its statutory grant of authority. Additionally, eliminating the rule’s fee limitations will allow local governments to collect reasonable fees that reflect the actual cost of processing an application under this rule.

### **Odor Management Plan**

The systematic change from an odor score standard to a setback driven standard will create an overlap between permits issued under vastly different requirements. The draft rule does a good job phasing out odor score permits while requiring that existing permit holders honor their odor score permit obligations. Additionally, the draft rule effectively addresses existing livestock housing and manure storage structures after issuance of a new, setback based permit. Specifically, requiring odor management plans that incorporate prior odor control practices is a good way of addressing existing structures within the new setbacks. The language of the draft rule should, however, be clarified to ensure that *all* prior odor control practices are incorporated to the same extent as required under the prior permit. As currently written, the draft rule only requires facilities to incorporate any prior odor control practice to some unspecified extent. Without specifying that all prior odor control practices be incorporated to the same extent as under the prior permit, this requirement will have little to no effect. Facility operators could simply implement one part of one prior odor control practice and maintain their existing structures within the new setbacks. Under the current language of the draft rule, existing structures may effectively become unregulated after issuance of a new permit.

Further, the draft rule allows for existing facilities to avoid implementation of any odor control practices with a showing of a financial or other justification. This is such a broad exemption that it will effectively exempt all existing structures from needing to implement odor management

practices. There is a cost related to every odor control practice - allowing facility operators to show a financial justification for not implementing any practices. Additionally, facility operators could conceivably indicate that they don't like an odor control practice as an "other justification" for discontinuance of that practice. These standards for allowing the discontinuance of odor control practices for existing structures need to be strengthened to ensure an adequate level of odor management.

### **Compliance with Waste Storage Facility Design, Construction, and Maintenance**

The WTA supports the additional compliance demonstration requirements in ATCP 51.18 as a means of ensuring that aging waste storage facilities were adequately constructed and maintained. The WTA would, however, like to see the rule prohibit all leakage from waste storage facilities, rather than just "significant" leakage. Waste leakage is waste leakage and should be prevented at all levels. Further, because "significant" is not defined in this section, it is unclear what level of waste leakage the Department has deemed appropriate. Instead, the standard should be simplified to prevent *all* leakage so that every leak is immediately addressed.

Another positive addition to the draft rule was the requirement for facility certification to demonstrate compliance with waste storage standards. In lieu of submitting such certification, a current WPDES permit might demonstrate compliance as well. The draft rule, however, doesn't actually require that WPDES permits be current or in compliance to be submitted in lieu of other certifications. Rather, the draft rule requires that applicants *certify* that their WPDES permit is current and in compliance. Allowing for certification instead of simply requiring that WPDES permits actually be current and in compliance promotes potential abuse by bad actors. The rule should be corrected to require that WPDES permits actually be current and in compliance rather than certified as current and in compliance.

### **Request vs. Require**

The draft rule specifically authorizes local governments to request additional documentation from livestock operators, including updated odor management plans and written reports documenting the methods used for evaluating compliance with the rules. These new authorizations, while well intentioned, have no substantive effect. A request is only as good as its response, and livestock operators may deny requests at will. Instead of authorizing requests, the draft rule should authorize local governments to *require* odor management plan updates and to *require* written reports documenting the methods used for evaluating compliance - similar to how the draft rule authorizes local governments to *require* updated nutrient management plans in s. 51.16(6)(a). Using the word "require" rather than "request" adds value to otherwise inadequate provisions.

### **Monitoring language**

The inclusion of language in the draft rule indicating that local governments may monitor compliance with the livestock siting rules might have unintentional implications on local authority. Notably, local governments do not need Department authorized authority to monitor permit compliance. Monitoring is inherent in all permitting authority. The limited use of monitoring language in the draft rule may, however, create the inference that monitoring is not allowed in sections without similar language. Such an inference would be contrary to actual

local authority. The use of broad monitoring language throughout the draft rule is completely unnecessary, confuses actual authority, and should be removed.

The draft rule also authorizes local governments to inspect waste storage facilities, animal lots, and feed storage structures. See ATCP draft rule ss. 51.18(8)(b)1 & 51.20(12)(b)1. The Department, however, has no statutory authority to authorize or limit local government inspections. Instead, the draft rule language should revert back to how the current rule addresses local inspections. Namely, the draft rule should reinstate the notes that were removed from ATCP ss. 51.18(6) & 51.20(9), which indicated that local governments may inspect waste storage facilities, animal lots, and feed storage structures “to verify that they are constructed according to specifications included in the application for local approval. This section does not require or prohibit local inspection...” See ATCP ss. 51.18(6)(Note) & 51.20(9)(Note). Reinstating these notes is the proper way for the Department to address local inspections—clearly indicating local government authority without seeming to require or prohibit local inspections.

### **Public Infrastructure Impacts**

ATCP 51 currently and as proposed utilizes 5 worksheets to implement the intent of s. 93.90 and guide the permit decision making process. The WTA feels strongly that a sixth worksheet must be added that at least considers: a) the transportation infrastructure needs associated with a new or expanded facility; b) the current state of the transportation infrastructure proposed to be used; c) the gap between needs and current status; d) a process for identifying both short term damage and long term physical degradation of infrastructure resulting from the operation; and, e) a method for the operation to fund road damage and life cycle costs accruing to the operation at the owner’s expense.

Such a worksheet would be straightforward and based on the simple physics of the vehicle and infrastructure data that are widely available from the engineers at the Wisconsin Transportation Information Center and WisDOT. For example, 700 cows produce about 7 million gallons of manure annually. Spreading 7 million gallons of manure requires that a John Deere 8230 combined with a legally loaded 2 axle Husky manure tanker make 2071 trips from the farming operation. It is a physical fact that this combination comes with a certain amount of Equivalent Single Axle Loads (ESALs), often referred to as damage units. Again, it is a physical fact that this vehicle combination moving 7 million gallons of manure annually will prematurely decrease the life of a road that witnesses every trip by 30 years of the original 50 year life, if the road was built with 3 inches of asphalt over 5 inches of gravel on fair base soils. Similarly, if the road is built with 5.5 inches of asphalt over 9 inches of gravel, this same combination would result in no premature aging of the road.

The worksheet can use the PSC Wind Energy Systems application associated with PSC 128 as a starting point. DATCP was required to promulgate ATCP 51 when local siting authority was limited in favor of statewide rules. Similarly, the PSC was required to promulgate PSC 128 to create state rules in lieu of locally led wind energy system regulation. PSC 128.30(2)(k)

importantly requires that a permit application include: *“Information regarding the planned use and modification of roads within the political subdivision during the construction, operation, and decommissioning of the wind energy system, including a process for assessing road damage caused by wind energy system activities and for conducting road repairs at the owner’s expense.”* The details of these requirements are further laid out in the application materials.

### **Implementation**

Finally, the draft rule proposes to take effect on the first day of the month following publication for everyone except small businesses. The rule would take effect on the first day of the third month after publication for small businesses. It is the explicit intention of the livestock siting law to create uniform, statewide regulations—not to provide different rules for different businesses. As such, this rule should take effect at the same time for all parties—small business or otherwise.

In conclusion, the WTA once again thanks the DATCP Board for allowing this draft rule to move forward to public comment. We are glad to see the rule’s shift toward setback driven odor management and its commitment to improved standards. Overall, the proposed rule changes will lead to improved, more flexible regulation of livestock facilities. The ATCP 51 standards must be updated to better reflect current research and to better facilitate responsible livestock facility operation.



# It's Simple Isaac Newton Physics...



← 700 of these equals  
A lot of benefits and 7,000,000 gallons of



← which requires 2071 trips of



**WHICH DECREASES THE LIFE OF A 20th Century ROAD BY 30 Years**  
or  
**A 21st Century Agriculture Road by Zero Years**

Pavement Life Reduction Fatigue Model "Fair Soils" - AASHTO A2,- 4 Clayey Sand Soils— 50 Year Design Life*				
Century	# of Cows	700	1400	1750
20th	Years of Road Life Lost with 3" of Blacktop over 6" of Gravel	<b>30 Years</b>	<b>38</b>	<b>40</b>
21st	Year of Road Life Lost with 5.5" of Blacktop over 9" of Gravel	<b>0 Years</b>	<b>7</b>	<b>14</b>

\* Analysis conducted by the UW Transportation Information Center





## Wisconsin Land+Water Conservation Association

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### **WI Land+Water Comments on the Proposed Revision to Livestock Facility Siting Rule ATCP 51**

*Comments delivered by executive director Matt Krueger on August 22, 2019*

WI Land+Water is a statewide non-profit membership organization that supports the efforts of 450 land conservation committee supervisors and 350 conservation department staff in counties across the state. Our members exhibit balanced leadership as they work with farmers, producers, and landowners to meet their land management objectives, while at the same time complying with baseline conservation expectations and standards.

If there is a conservation workforce in the state that is more professional, accountable, and credible than our members, I'm not aware of it. WI Land+Water's comments on the proposed rule revision draw from the lived, on-the-ground experiences of these professional conservationists as they have worked to implement the current livestock siting rule at the local level.

WI Land+Water is supportive of updating the rule, and there is good reason to do so. Importantly, it incorporates common-sense updates to the rule that haven't been made for 13 years. In doing so, it ensures consistency with other important rules and technical standards that have been updated since, such as NR 151 Runoff Management, ATCP 50 Soil and Water Resource Management, NRCS 590 Nutrient Management, and NRCS 313 Waste Storage. These standards are vital tools to ensuring farms are managed responsibly, and in ways that are protective of water quality—an obvious and growing concern in Wisconsin.

The revised rule also importantly accounts for an agricultural industry that has changed on a large scale, in ways that we could not have envisioned when approving the current rule, back in 2006. Large operations may now feature manure treatment infrastructure, such as digesters and compressed gasification facilities on-site, which are not considered in the current rule. In order to ensure that Wisconsin agriculture remains productive and viable, and lives up to the quality assurance processes built into the rule, some revisions need to be made.

#### **WI Land+Water supports the following provisions of the revised rule:**

- Eliminating selected odor-scoring provisions that weren't supported by science, such as providing credits for having a nutrient management plan.

- Requiring the evaluation of existing manure storage structures for leaks, integrity, and safety. (Worksheet 4 – Waste Storage Facilities)
- Requiring manure storage facilities to meet liner specifications defined in NRCS 313 standard if no documentation is available as to what standard it was built to.
- Requiring control of leachate runoff for <70% moisture feed storages, which is consistent with waste storage provisions (use, storage, compliance) in the current rule.

**There are several additional provisions that WI Land+Water recommends incorporating into the revised rule, which will improve its implementation at the local level:**

**1. Provide better assurances for annual license review at the town level**

There is limited capacity and expertise to review licenses at the town level. WI Land+Water recommends an annual self-certification requirement or onsite review that a farmer would be required to submit, to ensure towns are provided with up-to-date information on an annual basis.

**2. Require a license for herds larger than 500 animal units (AUs), without the grandfathering exemptions in the current rule**

Agriculture is currently trending toward consolidation of herds and facilities, and we should expect that trend to continue. WI Land+Water recommends requiring farms to get a license when they exceed or plan to exceed 500 AUs, and to stop grandfathering in facilities that were over 500 AUs prior to May 1, 2006.

From the practical viewpoint of implementing the rule locally, the grandfathering provision creates significant challenges. Namely, the further we get from 2006, the more difficult it is to track or prove what constitutes a 20% expansion from 2006 herd numbers. Facilities were not required to submit AU numbers to the county or the state to verify their facility’s livestock population, at the rule’s inception in 2006. Thirteen years later, accurately determining 2006 herd numbers is very difficult, without prior documentation by the facility owner and also with changeover in local conservation staff, and the related loss of institutional knowledge about specific facilities.

**3. Create an improved process for license modifications or updates**

There is a need to streamline and simplify the expansion process for facilities with an existing license. Under the current rule, farms may stay at the same number of AUs, but buildings, manure storage facilities and the like can expand without a mechanism that accounts for these expansions and provides, via the rule, the appropriate level of oversight.

Additionally, under the odor-scoring provisions of the current rule, a “satellite” manure facility can be considered a secondary “cluster” at time of a facility license application. However, adding satellite manure facilities under a modification scenario provides only limited guidance, and doesn’t require notification of adjacent neighbors, town clerk, etc., which is required under a new license

application. In these instances, WI Land+Water recommends requiring notification of adjacent landowners and town clerks during modification process.

4. Apply reasonable and fair license fee increases

License fees have not been increased since 2006, yet the time and expense it takes for local governments to sufficiently review license applications has increased in time, and in complexity. The current maximum fee under ATCP 51 is \$1,000. This amount is inadequate to cover staff time to complete application reviews, and covers only 20-30% of county and town costs to administer a license application or review. These local governments recognize that not all costs will be recoverable through a fee, but current fees are inadequate, and should be increased. A fee structure based on either herd size or facility square footage thresholds could be appropriate.

5. Incorporate annual monitoring requirements into licenses

The time and effort that is placed upon ensuring adequate licensing of livestock facilities is for naught, if compliance with the license is not ensured. WI Land+Water recommends at least annual monitoring to ensure compliance with the provisions of the license.

6. Consider whether the license threshold for farms should be lowered to 300 animal units

This would be consistent with federal National Pollutant Discharge Elimination Systems (NPDES) permitting requirements, and would make sense for Wisconsin DATCP and DNR to be in alignment with federal partners and regulations.

County conservation staff, the “boots on the ground” implementers of conservation programs, have observed and documented over the past two decades that smaller facilities (fewer than 500 AUs) can also be part of nuisance and use-conflict problems in some cases. It is to the benefit of local communities and to agricultural facilities to ensure that all farms with the potential to create these issues be held to a standard that allows them to operate in ways that are compatible with their surrounding community.

WI Land+Water appreciates the opportunity to provide input on this important matter, and looks forward to continuing to participate in the rule revision process.

## Wisconsin Livestock Facility Siting – Chapter ATCP 51 Hearing Draft Rule Comments 9.4.2019

Good Afternoon – My name is Gaylord E. Olson II, I am the County Conservationist for the Jackson County Land Conservation Department and have worked in the Department since 1984. Jackson County adopted an Animal Feedlot Ordinance in November 2001. The Animal Feedlot Ordinance was modified in 2006 to become the Livestock and Animal Facility Licensing Ordinance to conform with the current ATCP 51. As a part of my job duties I have been responsible for the administration and the field work associated with the feedlot and siting ordinances since their inception. My comments today are based on my observations and experiences dealing with pollution prevention and correction of livestock and animal sites in Jackson County.

I would ask the Board of Agriculture, Trade and Consumer Protection to consider these suggested modifications to the current draft rule:

1 – Allow the Towns and Counties to begin the licensing process at 300 Animal Units if they desire. The National Pollutant Discharge Elimination System (NPDES) permit requirements list 300-999 animal units as a medium Confined Animal Feeding Operation. Lowering the animal unit number for license siting would align with federal partners and regulations. More importantly all Wisconsin livestock producers of any size are to follow environmental standards for manure pollution prevention measures. A lower animal unit threshold for requiring a siting license would formalize the process to ensure a pollution prevention plan is in place for more livestock facilities. It would also provide for field reviews to make sure that the farms are meeting those environmental standards.

Agriculture pollution prevention is the major focus of ATCP 51 and the municipal livestock siting ordinances and zoning rules that are developed to implement the program. A livestock site with 300 animal units is the equivalent of about a 150 dairy cow herd with young stock, 300 steers over 600 pounds and 750 adult pigs. While these sites are not considered large by definition the amount of manure that these operations produce is not insignificant. Thousands of tons of waste are produced by these operations annually. Depending on the measure of potential pollutants; whether it is total solids, total phosphorous, total coliform bacteria, and total nitrogen the waste of 300 animal units are the equivalent to the waste of 3,000 to 5,000 humans. By requiring licenses of these farm business sites there would be a formal plan to design and operate facilities and waste management plans to prevent pollution from occurring. Proper implementation of pollution prevention measures will help decrease potential pollution from impacting adjacent neighbors. In Jackson County, our agriculture pollution causes problems, not only for adjacent landowners in our County, but in many cases it also pollutes the streams, rivers and lakes that our neighbors in adjacent counties and states such as Trempealeau County, La Crosse County, and beyond utilize.

If we truly want to promote and prioritize agriculture pollution prevention in our state it would be in the public's interest to consider developing a state-wide system requiring livestock sites of all sizes in all Wisconsin counties to have a formal pollution prevention plan based on current environmental standards.

2 – Allow the Towns and Counties to determine if they should require all operations of 500 animal units or greater to obtain a siting license to meet, at a minimum, the pollution prevention measures of the Livestock Siting rule. Currently, there are sites between 500-1000 animal units that would not be part of the licensing process unless they expand. If the sites reach 1000 animal units, they are required to obtain a Wisconsin Pollution Discharge Elimination System permit from the Wisconsin Department of Natural Resources. It is difficult to monitor farm sites for livestock and animal expansion. Having a

formal manure pollution prevention plan for all sites at or above 500 animal units in the municipality would be equitable for all farm businesses of that size while helping protect the environment.

3 – I believe towns and counties should be able to require a form of financial assurance, such as a bond or irrevocable letter of credit, for reclamation of manure storage structures should the farm business terminate without closing the manure storage structure. The cost of closing a manure storage structure is several thousand dollars for even a small farm manure storage structure. Currently, the public usually incurs the costs to close the site if financial assurance is not available or the manure storage structure remains. The closure of the discontinued storage sites is important for human and animal safety as well as ground water pollution prevention.

4 – Allow the Towns and Counties to increase the fees for a Livestock Siting application from the current \$1,000.00 maximum allowable charge. The amount of time and money to review the application can vary depending on a number of factors. The current license fee maximum has not been increased since the rule was finalized in 2006. A fee increase is not possible unless the rule is revised again. I would recommend that the maximum charge allowed for a siting application be increased to \$7,500.

Thank you for allowing me to provide these comments.

Gaylord E. Olson II, County Conservationist  
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22 August 2019

ATCP Committee

I am a Wisconsin farmer and elected town official. I appreciate this public hearing concerning the draft ATCP 51. I have read the letter sent to Mr. Palmby on behalf of various agricultural organizations, objecting to this public hearing. It is unfortunate that these organizations oppose the public's right to know and become involved. These efforts to impede transparency are an affront to every citizen in Wisconsin.

I wish to support several concepts in ATCP 51.

- a. Setbacks should be calculated based on property lines, not residences.
- b. Requiring permit applicants to have at the time of application, the land base necessary to implement a nutrient management plan for the maximum number of animal units requested in the application and **language should be added** providing proof of such land base, via proof of legal ownership or legal lease agreements for the lifespan of the facility.
- c. Requiring more frequent visual inspection of manure storage facilities.
- d. Creating a process for neighbors of a large livestock facility to initiate an odor complaint.

As a local governmental official, I would like to see the following:

- a. maximum allowable permit fee increased to allow recovery of reasonable and actual costs incurred by the political subdivision in the course of the permit review, modeled after the cost recovery provisions in the nonmetallic mining law.

b. Political subdivisions should be permitted to require large livestock facilities to post a bond or other financial security. The very letter I referred to above discusses the dire financial circumstances of the Dairy and Livestock industry. History has shown that when any industry ceases to be profitable that industry will finally fold. Wisconsin's rust belt is a prime example. Many of those abandoned facilities were left to the tax-payers to clean up. Wisconsin's citizens should not be burdened with the millions of dollars it will cost to clean up after these large livestock confinement facilities reach the end of their lives.

Again, thank you for this opportunity to allow transparency for this extremely important issue—an issue that affects every citizen of Wisconsin whether urban, rural, farmer, consumer of agricultural products, or old or young or somewhere in between. We all deserve a place to call home that we can enjoy—a place whose enjoyment is not encumbered by a hidden process of rule creation as certain agricultural groups have requested.

A handwritten signature in black ink, appearing to read "Weenonah Brattset". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Weenonah Brattset

N2437 Brattset Lane,

Jefferson, WI 53549

## DATCP Livestock Siting Comments August 15, 2019

Lee Luft – Kewaunee County Board Supervisor

Thank you for this opportunity to address the DATCP Board.

As a Kewaunee County Board member, chair of the former Kewaunee County Groundwater Task Force and a member of the DNR/Kewaunee County Work Groups that helped formulate the updated NR-151 Runoff regulations for areas with Karst geology, I have worked closely with members of our farm community and our residents who have been impacted by the significant changes in our local dairy operations.

While the concentration of large-scale farming operations in NE Wisconsin has had a number of adverse effects on our land and water quality that we are all working to address, there have also been negative impacts on those living near these CAFO operations. Our citizens implored the DNR not to grant the massive increases in cattle concentrations on lands that Dr. Maureen Muldoon of the University Wisconsin - Oshkosh Department of Geology described as “one of the last places you would want for large concentrations of cattle”, but to no avail. Every one of the CAFO applications for expansion was approved, even knowing the high vulnerability of our shallow soils and fractured bedrock.

While the impacts of large cattle expansions has had negative environmental impacts, there are other lesser discussed ramifications for our residents. As a Kewaunee County Board member, I receive the calls from citizens whose quality of life has been impacted by truck traffic, odors, unintended runoff, well contamination, loss of property values, and loss of use. These calls went from very few to far more numerous when smaller scale farms were permitted to expand to CAFO status (1,000 animal units or more) with little regard for the unintended consequences.

I can say that I have very little sympathy for those who move next to an airport and then complain about jet noise, but that is not what has happened here in NE Wisconsin. People who bought into an area years ago when smaller family operated farms were the norm, became unwitting neighbors to 24 hour per day operations that includes the necessary lights, noise, truck traffic, and multi-million gallon manure lagoons.

In the packets I have prepared for you will read about a Kewaunee County family that may have received the most objective measure yet of the impacts of an expanding industrial farm on their quality of life and their land values. The Wisconsin Department of Revenue has determined, and recently confirmed, the loss of property value for residents who reside near a farm that has expanded 25+ times its original size. You will read about a Door County family whose plans for the development of their own property has been dashed due to well contamination, and you will read about Green Bay area residents banding together to prevent a manure lagoon adjacent to their family homes.

It is past time to address the siting regulations of farms wishing to expand so greatly in areas already near to neighbors. I urge you to carefully consider all the consequences of these expansions on those already living there and update the siting regulations accordingly.

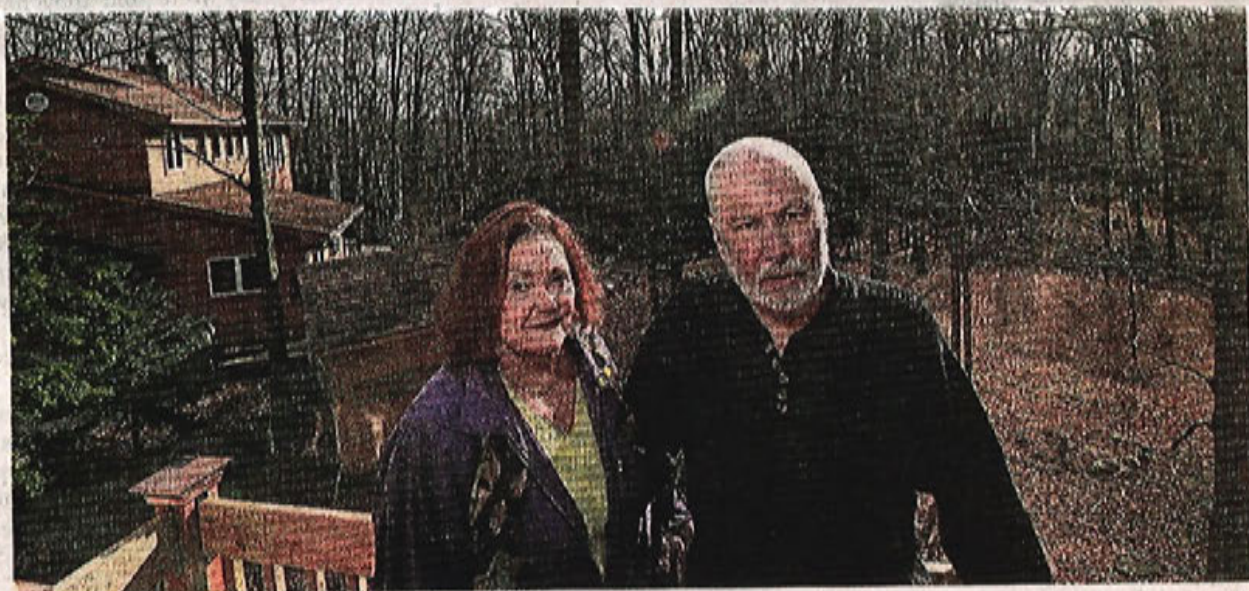
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# GREEN BAY PRESS-GAZETTE

MONDAY, NOVEMBER 27, 2017 ■ GREENBAYPRESSGAZETTE.COM

PART



Deb and Scott Kliment stand outside their home in the town of Pierce in Kewaunee County. The couple recently won a ruling from the state Department of Revenue that their proximity to a large dairy farm reduced the value of their property. PHOTOS BY ADAM WESLEY/USA TODAY NETWORK-WISCONSIN

## Huge implications

### DOR rules that living near CAFO reduces property value

**Paul Srubas** Green Bay Press-Gazette  
USA TODAY NETWORK - WISCONSIN

**TOWN OF PIERCE** — Living right next to the largest of large dairy farms will mean a tax break for a Kewaunee County couple, the state Department of Revenue has decided.

The ruling spells victory for Scott and Deborah Kliment, who have argued their dream home on a wooded lot in rural Algoma has been greatly reduced in value since the neighboring Ebert Dairy Enterprises developed into one of Kewaunee County's largest agriculture operations.

The ruling, the first of its kind in the state, could have implications well beyond the Kliments' 14.5 acres,



Ebert Dairy Enterprises farm buildings are seen from the driveway of Deb and Scott Kliment's property in the town of Pierce in Kewaunee County. The couple successfully argued that proximity to the large dairy farm has decreased the value of their home.

See CAFO, Page 2C

# CAFO

Continued from Page 1C

affecting much of the rest of cash-strapped Kewaunee County and possibly elsewhere in the state.

Kewaunee County Board chairman Robert Weidner said the Kliments' 13 percent tax reduction won't have a big impact on the county budget, but that could change if other homeowners follow their lead.

"If this would carry over to other challenges to assessments, so that numerous residents are appealing their taxes and the valuation of their property, it could get to be substantial," Weidner said.

The department's ruling concerns residences that are neighbors of large farms know as CAFOs, of concentrated animal feeding operations. A CAFO, by U.S. Department of Agriculture definition, is a farm operation consisting of at least 1,000 animal units. A unit is the equivalent of 1,000 pounds of living animal. A single chicken or even a calf is too small to make up an entire unit, but a full grown cow is roughly 1.4 units, so identifying a CAFO is more than doing a simple head count. A farm with 700 full grown cows would probably have to be licensed as a CAFO, which imposes a variety of environmental requirements on it.

In any case, the Department of Revenue's ruling pertains not to all CAFOs, just those with 4,000 or more animal units. And the department is quick to point out that, while its ruling recognizes that living next to a large CAFO might generally mean a reduction of property value, its estimates of that reduction are confined to Kewaunee County and specifically apply only to the Kliments' property.

## It started with smell

When the Kliments bought their property near the intersection of Counties D and K in 1995, the Ebert family farm across the road was perhaps larger than average but nowhere near CAFO-sized, and the term CAFO and the licensing process had not even been invented yet in those days.

"It was beautiful," Deborah Kliment said. "It was all beautiful, single-family dwellings, all farmettes. We

had an Amish family nearby. We should have taken the hint when the Amish moved out."

"We should have moved with them," Scott Kliment added.

Henry Ebert, a fifth-generation farmer, sold the operation to son Randy and his wife, Renee, and the two expanded the operation. Within about five years, the operation was a full-fledged CAFO and it grew from there.

"It amazes me how it snuck up on us so fast," Deborah Kliment said.

Unlike some property owners who live near CAFOs, the Kliments have experienced no contamination of their well water. But the presence of Ebert's operation has meant a steady stream of manure tankers parading past their house, sometimes at a rate of one every two minutes, Deborah Kliment said. There was increased noise from the trucks and construction of new outbuildings on the farm property, and an unbelievable stench.

"You can close the windows, turn on the A/C and spray Febreze, but it does no good," she said.

"Some days, even the dogs don't want to go out," Scott Kliment said.

## The road to a tax break

The Kliments thought about bailing out. They contacted two different realtors, both of whom suggested selling prices that were about the same, but were considerably lower than appraisals the Kliments had gotten five years earlier for refinancing purposes.

"It was greatly reduced, and they said be prepared to sit on it for at least two years," Deborah Kliment said.

The couple dropped the idea of selling, but last year, they noticed a good-sized hike in their property tax bill, and they got to wondering why. Yes, there was an overall property tax increase, they were told, but they might want to talk to the tax assessor.

They asked for a re-assessment, which revealed a few mistakes in the property's historical data, involving date of construction and overall square footage and the assessor adjusted their value downward. But the assessor declined to take the Ebert farm into account; that would have to go before the town's board of

# CAFO

Continued from Page 2C

review.

The Kliments did a little homework first. They learned the selling price of six area properties, all near the Ebert farm operation, and they compared those prices against the assessed values as listed on the county's website.

"The selling prices were way below the tax assessments," Scott Kliment said.

In general, those six properties sold for about 30 percent less than their assessed value, he said.

"So they were overtaxing us," he said.

Without help from lawyers, accountants or activist groups, the Kliments took that information before the Board of Review in June. They testified to the board about smell and noise and showed them the sale prices and assessments of the six residences in the neighborhood. But in the end, the board shrugged and admitted it didn't really know what authority it had to re-assess based on that information, so it ruled in favor of the assessor's original estimate.

But one of the board members told them, "I'd appeal, too," Deborah Kliment said.

The Kliments did. They were told they had the choice of whether to appeal to circuit court or the state Department of Revenue, and they chose the Department of Revenue. On Sept. 7, they sat before a panel of two Department of Revenue staffers in Green Bay; they and the town assessor made their case.

Early this month, the department issued its ruling in favor of the Kliments, who saw about a \$30,000 drop in their assessment from the ruling.

## The ruling

The department apparently was unmoved by the Kliments' complaints of smell and noise, nor was it swayed by their showing of the price-assessment comparisons of the neighboring six properties, the sales of which were too old to be useful.

But neither was the department impressed by the assessor's attempt to show a comparable sales grid, because the assessor used sales of properties that the department found were not reasonably comparable.

So the department did its own study of residential sales in the county in the past three years. It excluded residences in the county's two cities and two villages, and it excluded waterfront properties, all of which would be affected by different market forces.

It then graphed those properties by distance from a CAFO.

"The result of this study including all Kewaunee County CAFOs suggested the possibility of trends, but overall was inconclusive," according to the department's findings of fact document. "Therefore, the results of the study were further segregated by the size of the CAFO."

In the end, the department looked at 184 sales of properties measured against CAFOs of more than 4,000 animal units, which included Ebert Enterprises, Kinnard Farms, Pagels Ponderosa, Dairy Dreams, and Wakker Dairy all in Kewaunee County, and Dairyland Farm, which is just outside Kewaunee County in Brown County.

Comparing sales price to assessment at those properties showed a larger difference within one-third of a mile of the large CAFO, a small but still significant difference just outside that third of a mile, and no significant difference a mile or more from the farm. In short, the property devaluation or the over-assessment was greatest in the nearest proximity to the large CAFOs in the county and diminished as you move outward.

The department's conclusions: The value of property located more than a mile from a CAFO or within any distance from a CAFO smaller than 4,000 units is not impacted. The value of property located between a quarter mile and a mile of a large CAFO is reduced by 8 percent. The value of a property within a quarter mile of a large CAFO — namely, the Kliments' property — is reduced by 13 percent.

It's something of a moral victory for them, Deborah Kliment says.

"There are no winners here," she said.

People who have a reason to care are either pro-CAFO or anti-CAFO, and waging this battle over property values has alienated many of their friends and neighbors, Kliment said.

Also, a reduction in property taxes is certainly desirable, but a loss of property value isn't something to crow about.

"We would much prefer to have our home value back," she said.

See CAFO, Page 5C

**Not a blanket policy**

The ruling does not provide an automatic tax reduction to anyone living within a mile of a large CAFO, the department is quick to point out.

"DOR considers this study to be appropriately extensive for application across Kewaunee County only," the department's facts sheet says. "While trends may be useful to consider in nearby, similar counties, it is not appropriate to apply beyond the immediate area. Kewaunee County is somewhat unique in that there are a significant number of (large CAFOs) from which to gather data."

In a separate email to the Green Bay Press-Gazette, in answer to written questions, DOR spokeswoman Patty Mayers wrote, "This is not a statewide precedent. The study and decision were based on merits specific to this appeal."

She declined to speculate whether the ruling would generate similar appeals.

Others are happy to speculate.

"It has huge implications," said Lynn Utesch who, as a founding member of Kewaunee CARES (Citizens Advocating Responsible Stewardship), frequently finds himself serving as de facto spokesman for anti-CAFO factions. "This becomes the ground floor. The Kliments don't have a contaminated well; they just exist within that radius. So this really opens it up: If you live in that radius, you deserve 13 percent ... If you have a contaminated well, (your property assessment) should be lowered even more."

The DOR's study may be specific to Kewaunee County because of Kewaunee County's property values, but "this also provides other areas with the template for what is necessary to actually get that price reduction," Utesch said.

Even Randy Ebert sees the ruling as setting a precedent, and it irritates him.

"We have towns and counties that can't meet their budgets the way it is," Ebert said. "When you have people looking not to pay their share for whatever reason, you set a precedent, and for whatever reason, everybody will be challenging" their property assessments. "Today it's big farms, tomorrow, who knows?"

Ebert had not seen the DOR's findings of fact but questioned its validity.

"From the best of my knowledge, it's one man's opinion from the DOR," Ebert said. "Did he even come out here, or did he make his ruling from behind a desk somewhere?"

**In defense of CAFOs**

See CAFO, Page 7C

**CAFO**

Continued from Page 5C

The banking crisis of 10 years ago caused a lot of property values to plummet, Ebert said.

"Just because you can't sell something for what you paid for it, that doesn't always mean someone can be blamed for it," he said. "We can find people all over the world who either have bought at the right time or the wrong time and that, if they speculated at the wrong time, can't get the same amount out of it."

Ebert said he's proud of his farm, not just for its size but for its quality of operation, which helped make it the host farm for 2017

Wisconsin Farm Technology Days this summer.

Ebert acknowledges his operation generates truck traffic, though he said he's lucky enough to have mostly contiguous farmland, which allows him to reduce the amount of manure he'd otherwise be hauling. What traffic he generates is on public roads, and he says he confines it and other noise-generation to daylight hours. The smell his operation generates is worse at some times of the year than others, and just now, crews are "hauling all day out of the bottom of the pits, and that's not good smelling stuff, there's no denying that."

But "over 80 percent of the land in Pierce is zoned A-1 agricultural," he said. "We are performing agricultural practices on land that is zoned for agriculture. Now, does farming look the same way today as it did five years ago? Ten years ago? Fifty years ago? Absolutely not. We all know everything is changing."

# PULSE

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### LETTER SEARCH

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## Bad Well Cancels Family Plans

Our property is located at 3876 Fairview Road, Egg Harbor Township. Our well was contaminated and remains contaminated by the September spreading of liquid manure from Haberli Farms over a sinkhole.

That same weekend our son brought his family and four friends to stay at our home. Four days later, the first to get sick was our 3 1/2 month-old granddaughter, Lilly. Our son had mixed her powdered formula with our tap water, tap water that was clear and had no odor. Her doctor confirmed the bacteria as campylobacter and E.coli from a bovine source. We do not live on a farm; we do not have cows on our property. She had explosive diarrhea many times a day full of mucous and blood. Next, three out of four of their friends became sick. Next, my husband, Paul. Next our two German shepherds. Same symptoms. The older of the two dogs died four days ago.

In late 2013 we signed a contract with a Door County vacation rental company. Our water tested safe in 2013 and again in July of 2014. In 2014 we rented our home 40-some days, grossing more than \$30,000. We had to cancel a rental in October for \$2,400 and close to renters for the balance of 2014 until our water issue is resolved. We already have the month of July mostly rented in 2015. We cannot ever rent again unless our water is guaranteed safe, 100 percent of the time. We invested significantly in our home to set it up to be a rental.

We had to cancel a family gathering at our home for Thanksgiving. These occasions are the reason we built our home. Our daughter and family travelling 1,000 miles with five children, baby Lilly returning with her family from near Appleton, Uncle Mike and family from the Madison area. We so regretfully had to say it's not safe to come here. Our family has been affected, Door County tourism has begun to be affected.

Our 2-year-old grandson is coming to our house so his daddy can hunt. How do I bathe him in contaminated water? How do I even wash his precious chubby little hands? How can I explain?

We pay more than \$10,000 in property taxes based on a set value. Where's our property value at today after 70 days and counting of well contamination? What right does someone have to contaminate the water of others? Water is the very lifeblood of our existence on earth. What right does someone have to contaminate the water of others and just walk away?

Have you noticed the number of people in the grocery store buying water who have become used to the fact that sometimes their water is not OK? Or those who say, "Oh, I don't drink the water in the county." God help us all for such pathetic complacency.

Come on, folks. We're better than this. Remember what we were taught as children. If you make a mistake, if you do something wrong, admit it, extend your hand, say you're sorry, pay for the damages. Make a plan for the future so this won't happen again. Let's make Door County something we can proudly pass down to our children and make sure they understand this lesson of life.

Leona Lyne  
Egg Harbor, Wis.  
November 24, 2014

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# GREEN BAY PRESS-GAZETTE

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## Ledgeview residents say manure pit idea stinks

Homeowners seek to keep it away from their neighborhood

**DOUG SCHNEIDER**

USA TODAY NETWORK-WISCONSIN

**LEDGEVIEW** - They moved to custom homes in rural Brown County for peace, quiet and wide-open spaces.

They did not expect that a manure pit serving hundreds of cattle could be part of the bargain.

Residents of a development off Lime Kiln Road are scrambling

to find ways to keep a nearby dairy farm from building a manure-storage facility near their neighborhood of custom homes valued from \$440,000 to more than \$600,000.

Neighbors fear the farm could be allowed to store millions of gallons of manure and leachate at the site. Those concerns have galvanized a group that includes doctors, lawyers and the head coach of the Green Bay Packers. Some barely knew each other mere months ago.

They're worried that a structure for storing animal

waste threatens water quality, endangers children and will harm the values of the homes on Beachmont Road, Meadow Sound Drive and other streets constructed in recent years on land that formerly was agricultural.

"We all chose to live near a farm," said Melissa Cheslock, a resident. "But we didn't choose to live near this. We're not saying that the farmer shouldn't be able to do his job. We're just saying don't put it near our houses."

The permit is being sought by Ledgeview Farms LLC, a site at Dickinson and Lime

Kiln roads that the Pansier family of Ledgeview has farmed for decades.

Because the farm's owners have yet to file a completed permit application for the storage facility, a state Department of Natural Resources official couldn't say how much manure it would store. But she said it's possible for such a facility to store 10 million gallons of manure and leachate.

Farmer Jason "Jake" Pansier declined Monday night to discuss the proposal

**See MANURE, Page 8A**

# Manure

Continued from Page 1A

but said his family plans "to follow the rules" regarding permits and storage.

## 'Complex process'

One issue now challenging Ledgeview residents and the elected officials who serve them is a limited knowledge of regulations governing issues over who can regulate a manure-storage facility and how close one can be built to a residential area.

County officials said local ordinance now allows a manure-storage facility as close as 250 feet to a neighboring property.

Heidi Schmitt Marquez, a Howard-based agricultural runoff management specialist for the DNR, said large farms, known as concentrated animal feeding operations or CAFOs, must have storage for 180 days worth of animal manure and leachate from feed piles. She said the Pansier farm is a CAFO.

Once Ledgeview Farms files a complete application, she said, the DNR will conduct a review that includes a site visit and hold a public-comment session. Because every farm is different, she said, she could not predict how long the process would take.

"It's a complex process, and I know it can be frustrating for people," she said. "But it's still pretty early in the permitting process."

The challenge of balancing rural and suburban concerns was less of an issue in Brown County before housing developments began swallowing large swaths of agricultural land.

That's what's been happening lately in northern Ledgeview. Figures show the town in the past dec-

ade has seen the total value of its property grow by a best-in-the-county 47 percent, from \$551 million to \$809 million, thanks in part to streets like Beachmont Road.

## Good neighbor?

One of those residents is Green Bay Packers coach Mike McCarthy, an area resident who said he worries about potential health effects associated with storing large quantities of manure.

"I don't think this is an agricultural-residential issue," he said Monday afternoon as he chatted with neighbors in a cul-de-sac that abuts the farm. "I'm not sure Mr. Pansier is acting in the best interest of being a good neighbor."

Among other things, the farm's neighbors worry about water quality. Manure from farm runoff has contaminated certain wells in parts of Kewaunee County. Ledgeview residents also have expressed fears about gases from the manure pits and about pit walls potentially falling.

A number of residents on Monday took pains to say they aren't trying to prevent the Pansiers from addressing manure issues or to be anti-farming.

But several said any storage facility that is built needs to be a part of the farm that is far from houses.

## 'Two Ledgeviews'

Town Board President Phil Danen said officials have been "gathering as much information as we can" about the farm proposal, in part because such issues were rare in the past when Ledgeview was almost entirely rural. Now, though, a significant portion has become a bedroom community for Green Bay.

"Practically speaking," Danen said, "I have two Ledgeviews now."

Ledgeview officials

expect they'll need to address the issue in the future, Danen said, which is why they're researching it.

More than 20 town residents jammed a county supervisors' subcommittee meeting Monday night seeking to halt or slow the process by which the farm could get its permit.

"If this goes through, you're not only going to destroy millions and millions of dollars (in property value), you're going to affect the tax base," said Mark Forman of Marble Rock Circle. "It will stop development on the ledge."

Supervisors on the Land Conservation subcommittee considered recommending a temporary hold on projects like the proposed manure facility but decided that doing so could harm farmers elsewhere.

Officials discussed possibly changing rules governing how close a storage facility can be to a neighboring property, though their attorney, Deputy Corporation Counsel Greg Gerbers, said any changes would not affect applications that had already been filed.

And not all committee members agreed that a facility at the Pansier farm would have much impact on neighbors.

"It bothers me when people move to the country and expect not have to deal with country issues," said Dave Landwehr, a Hobart supervisor. "I'd ask you to reach out to the farmer and see if you can reach a resolution. Nobody likes change, nobody likes the potential threat, but don't think that it's going to ruin your neighborhood."

They ultimately decided the county should review ordinances governing how close a waste-storage facility can be to a residential neighborhood.

## CAFO EXPANSION HEARING

# Water quality issues worry area residents



LIZ WELTER/USA TODAY NETWORK-WISCONSIN

A crowd listens to speakers Thursday during permit hearing for S&S Jerseyland Dairy LLC, a concentrated animal feeding operation, at the Forestville Town Hall.

## Dairy wants to expand herd from 6,000-10,000

LIZ WELTER  
USA TODAY NETWORK-WISCONSIN

FORESTVILLE - A hearing about a CAFO, or concentrated animal feeding operation, brought an overflowing crowd to the Forestville Town Hall on Thursday morning.

About 140 people packed the building, with the overflow audience standing outside in the morning cold, to attend a hearing about a dairy farm permit that would allow S&S Jerseyland Dairy

LLC to increase its herd from 6,000 cows to more than 10,000. The farm formerly was known as S&S Ag Enterprises LLC.

Participants said expanding the permit for S&S Jerseyland Dairy endangers water quality, adds to pollution in the rivers and lake, and creates health hazards.

The Department of Natural Resources completed its review of the dairy's nutrient management plan and temporarily approved reissuing the pollutant discharge elimi-



LIZ WELTER/USA TODAY NETWORK-WISCONSIN

Jeff Frisque of Forestville talks about the permit for S&S Jerseyland Dairy LLC at a hearing Thursday.

nation permit.

The public hearing was held by the DNR to gather community feedback about the proposed permit. The comments will be

used during the final evaluation of the dairy's permit application.

"I hope your water isn't

See WATER, Page 2A



# Water

Continued from Page 1A

poisoned; mine is," said Jeff Frisque of Forestville, whose home is surrounded by farms.

Research and studies show the correlation between farm run-off, the use of nitrogen fertilizers and the number of cows on CAFOs with pollution of groundwater, local rivers and the lake, he said.

"I take my grandkids to the beach in the summer and it's closed because of E. coli (bacteria), and that didn't used to be there years ago. Their (manure trucks) are destroying the roads, and there's a dead zone in the Bay of Green Bay," Fris-



LIZ WELTER/USA TODAY NETWORK-WISCONSIN

Randy Schmidt, in red plaid shirt, one of the owners of S&S Jerseyland Dairy LLC, sits with family and supporters during the hearing about a permit for the farm on Thursday in Forestville.

que said. "But (S&S) will still get its permit."

The Ahnapee River watershed, which has been listed by the Environmental Protection Agency as impaired, is within the area affected by the dairy's operations, said Dick Swanson of Al-

goma, an opponent of the permit.

"What you do, S&S, affects me, my harbor, my river, my water," Swanson said. "The Ahnapee watershed is 86,700 acres, and 35,000 of that watershed is in Door County."

Door County has the same problem with CAFOs that Kewaunee County has, Swanson said. The soil is not deep enough for the amount of manure and processed wastewater generated by CAFOs, he said.

While the hearing was dominated by opposition to the permit, an employee of S&S said she is impressed with the dairy's dedication to the environment.

The farm uses all the available technology to

prevent erosion, minimize water consumption and reduce the spraying of manure on fields, said Elizabeth Schwalbach, the company's compliance manager.

"The concerns (opponents) have, I have, too," said Randy Schmidt, one of the farm's owners, after the hearing.



Schwalbach

"We're a fifth-generation family farm, and I have children, grandchildren and I want them to have good water, too. We pride ourselves on being good stewards of the land."

DNR agricultural run-

off specialist Brad Holtz will review the com-

ments, and a decision will be made in April, Holtz said after the meeting.

Schmidt

Comments about the permit can be mailed to Brad Holtz, Wisconsin Department of Natural Resources, Agricultural Run-off Management Specialist, 2984 Shawano Ave., Green Bay, 54313, or emailed to Holtz at [Bradley.Holtz@wisconsin.gov](mailto:Bradley.Holtz@wisconsin.gov).

Liz Welter: 920-743-3321, ext. 4114, or [liz.welter@doorcountyadvocate.com](mailto:liz.welter@doorcountyadvocate.com); on Twitter @welter\_liz.

# Star-News

KEWAUNEE COUNTY'S WEEKLY COMMUNITY NEWSPAPER

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Saturday, April 29, 2017

PART OF THE USA TODAY NETWORK

## Massive dairy operations, residents collide



RICK WOOD/MILWAUKEE JOURNAL SENTINEL

The Kinnard dairy farm operates efficiently, staging cows in long barns with a sand mixture for comfort and stability.

LEE BERGQUIST  
MILWAUKEE JOURNAL SENTINEL

### Farms and locals debate if manure from so many cattle can be spread safely

**TOWN OF LINCOLN** - Lee Kinnard's new barn stretches the length of six football fields. It's so big he once flew a drone inside to get a bird's eye view of all the cows.

The family farm milks 6,500 cows in Kewaunee County, where the cattle population has grown faster than anywhere in the state.

Since 1983, cattle numbers in the county have jumped by 62 percent to 97,000 at a time when the statewide cattle population has tumbled by 20 percent, according to the state agriculture department.

Dairying here is thriving.

But the size of dairy herds and managing cat-

tle waste have become increasingly contentious in northeastern Wisconsin and figure prominently in a larger debate over how best to address water problems tied to farming.

Tucked beneath Door County, Kewaunee County has emerged as the flash point in these tensions. At the heart of the debate: Can manure from so many cattle be safely spread on the land?

"Absolutely, I think that agriculture and the environment can go hand-in-hand," Kinnard said.

Kinnard, 48, speaks with a preacher's reverence for farming and believes technology and

good management can keep problems at bay.

#### 'Lifblood of soil'

He describes manure as "organic material, the lifblood of soil." Despite all the waste his cows produce, the manure he spreads supplies only half of the fertilizer for 13,000 acres.

The farm — owned by Lee, his brother, Rod, and Rod's wife, Maureen — has grown dramatically since 2000 when there were 350 milking cows.

But becoming one of the state's largest dairy farms has wounded relations with some neighbors and spurred a protracted

court fight. Also, by virtue of its size and the attention it receives, Kinnard Farms has helped fuel controversy over truck traffic, odors and pollution from farming when it is done on a grand scale.

"For people living on these roads their whole lives, it isn't what they are used to," said Nick Cochart, a neighbor of Kinnard's and superintendent of Algoma's public schools. Speeding trucks and farms that seem more like industrial sites have upended rural life, he said. "To be honest, it's beyond frustrating," he said.

Lee Luft, a retired ex-

ecutive and a member of the Kewaunee County Board, said farming and water pollution have become inextricably tied in local politics.

"There's simply too many cows," he said.

Kewaunee County ranks third with 16 megasized dairy farms. Neighboring Brown leads the state with 20 and Manitowoc follows with 18, according to Department of Natural Resources figures.

In Wisconsin, the number of concentrated animal feeding operations, or CAFOs, has grown by 400 percent from 50 in 2000 to 252 in 2016, agency figures show, and has played a key role in growing milk production as farm numbers are falling.

See CAFO, Page 4A

# CAFO

Continued from Page 1A

## Big farms trend

In a report, University of Wisconsin-Madison economists estimated that farms of 500 or more cows accounted for 40 percent of state milk production in 2013 compared to 22 percent in 2007.

Big farms' share of the milk supply has grown since then and the trend is expected to continue because of the advantage of scale in producing a basic commodity, said Mark Stephenson, director of dairy policy analysis at UW-Madison.

The challenge in Kewaunee County is the region's fractured bedrock can allow water and manure to seep into groundwater if there are no safeguards.

The county's three major rivers — the Ahmapee, East Twin and Kewaunee — all violate state standards for phosphorus pollution. Manure is a source of phosphorus. In excess, it promotes algae blooms. The rivers were placed on a state list of impaired waters in either 2014 or 2016.

Alarmed by reports of

polluted wells, Kewaunee County residents in 2015 voted overwhelming to support an ordinance restricting manure spreading in winter and early spring on fields with 20 feet or less of soil.

It was the first time a Wisconsin county took such action.

## Program under fire

The DNR's wastewater program, which includes CAFOs, came under fire by the independent Legislative Audit Bureau last year because of backlogs, staff turnover and other problems. Auditors noted CAFOs pay a single annual fee of \$345 — the DNR receives \$95 from it — while wastewater utilities pay thousands of dollars. The City of Waukesha, for example, paid about \$12,000 last year.

When the Natural Resources Board grilled DNR Secretary Cathy Stepp last June over the audit, board member Frederick Prehn of Wausau said the fee structure was out of whack. "That in all basis is not fair," he said. "It doesn't make any logical sense to the taxpayer."

CAFO critics wanted higher fees for big farms. But Republican Gov. Scott Walker did not boost the



From left, Amanda Hintz and Michelle Schmitt feed day-old calves at the Kinnard dairy farm in Kewaunee County.

RICK WOOD/MILWAUKEE JOURNAL SENTINEL

fees in his budget, which is now before lawmakers. Walker did propose a study that could turn over regulation of CAFOs to the state agriculture department — a measure pushed by a farm group; the Wisconsin Dairy Business Association and opposed by environmental groups.

## Initiatives to treat waste

In November, Walker traveled here and announced plans for private-sector initiatives to biologically treat animal waste and capture the methane to produce energy.

The administration is earmarking \$20 million in subsidies to rid pollutants from manure. Kewaunee County is expected to be a leading candidate for such a project.

It's a high-profile initiative for Walker at a time when those who want limits on spreading are criticizing his administration for inaction.

In 2014, six environmental groups petitioned the U.S. Environmental Protection Agency to investigate groundwater contamination in Kewaunee County, arguing the DNR had been slow to respond.

As a response, the DNR organized a task force on groundwater issues that met for a year and led to a series of recommendations including stricter controls on manure spreading.

But clean-water advocates had expected more. By the time the Natural Resources Board had approved plans in August for new rules on manure spreading, tougher measures and specific requirements on CAFOs had been removed after farm groups appealed to Walker and the DNR.

"We're not looking at the full package of rules the department put to-

## Polluted wells

With Kewaunee County's nearly 100,000 residents have been plagued by polluted wells. Blame has long been directed at farmers — not always justified.

In February, in most rigorous study date, manure and hurr waste were found to be sources of groundwater pollution.

Microbiologist M Borchart of the U.S. Department of Agriculture used DNA sequencing to tease out bacteria and viruses in tap water from wells. He found farms malfunctioning sewage systems both are culpable.

In one case, residents showed it was manure luring Erika and Rob. A farmer had been spreading manure in the door. Then it began to rain.

On the evening of 26, 2016, "I turned on sink faucet to brush teeth — it came brown," Erika Balza said. "Rob turned on the water in the shower to get

# CAFO

Continued from Page 4A

heated up. The water was a brownish black color and immediately smelled of manure."

The farmer was cited for illegally spreading manure and prohibited from spreading on the field again, according to DNR records.

His small farm is a far cry from Kinnard's sprawling operation.

"There is a broad painting of the brush that big is bad," Kinnard said. "I don't think that we are very good at communicating our story."

From Kinnard's conference room, visitors can watch cows being milked in an automated milking parlor that processes 650 cows an hour and operates virtually around the clock.

About a quarter of his 82 full-time employees has post-secondary education in agronomy, animal science or related fields. The CAFO allows him to invest in technologies that lighten the farm's impact, he said.

To ensure manure is applied optimally, Kinnard has mapped fields with sonar-like equipment that measures soil depth over bedrock. Any field with less than 3 feet of soil is avoided, he said.

But problems do occur.

## 'The system works'

DNR records show at least four infractions since 2010 after workers spread manure improperly — once near a stream and another time on land with sinkholes, which can have direct contact with groundwater. Kinnard acknowledged the mistakes.

"It shows you the system works," he said. "If something goes wrong, you make it right."

Kinnard and his farm drew statewide attention in 2014 when a state administrative law judge, in

a case with many twists and turns, approved his plans to increase by 2,000 cows to 6,500 cows.

But in doing so, Judge Jeffrey Boldt said polluted wells in the region were well-documented and that "more likely than not that some portion of this contamination is from CAFO land-spreading."

"The proliferation of contaminated wells represents a massive regulatory failure to protect groundwater in the Town of Lincoln," he wrote.

Kinnard's approval included conditions that set a limit on the number of cows and required groundwater monitoring to identify elevated levels of bacteria.

"That was a big win for the people of Kewaunee County," said Sarah Geers, an attorney for Midwest Environmental Advocates.

Kinnard appealed, which was denied by the DNR.

But eight months later, Stepp, a Walker appointee, sent a letter to the Department of Justice and asked whether the DNR had the authority to impose the conditions.

A day later, Republican Attorney General Brad Schimel's office said the DNR did not.

Environmentalists appealed the case, and won, and the case is now before the state court of appeals.

The expansion went ahead.

"The process has been very frustrating," Kinnard said. "It basically puts a family business into a position that they are guilty until proven innocent."

But Geers sees it differently.

"Once a farm like Kinnard becomes a large industrial facility with hazardous waste, we need to hold them accountable," she said.

*Kevin Crowe of the Journal Sentinel contributed to this story.*

# Neighbors ask for relief from lingering stench at Weld County biogas plant, commissioners punt

3 of 5 concerned about unintended consequences

BY: [Lance Hernandez](#)

POSTED: 12:35 AM, Nov 15, 2016

TAG: [weld county](#) | [stench](#) | [biogas](#) | [edf renewable energy](#) | [heartland](#)

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GREELEY, Colo. - Imagine the stench of a decaying animal tossed into your kitchen garbage can and left there for days.

That's the kind of smell that residents, who live near the Heartland Biogas plant in Weld County, say they deal with all too frequently.

On Monday, those residents asked Weld County Commissioners for relief.

"I want the plant shut down until they can figure how to take care of these odors," said Nancy Flippin.

Commissioners Barbara Kirkmeyer and Steve Moreno supported a move to suspend or revoke EDF Renewables' operating permit, but Commissioners Julie Cozad, Sean Conway and Mike Freeman weren't willing to go that far.

"I'm concerned about unintended consequences," Conway said.

The plant, owned by EDF Renewable Energy, converts manure from local dairies, organic waste from restaurant grease traps, spoiled grocery store products, cafeteria waste and food processing residuals into natural gas, in what's called an anaerobic digester.

Neighbors say the plant wasn't built according to the original plans.

Kathy Hoyland told Denver7 that AGPROfessionals, who assisted in the development of the facility, sent residents a letter in 2009 stating, "there will be no emission of noxious odors from the facility."

She said EDF Renewable Energy doesn't believe it has to live up to the letter written by AGPROfessionals.

"All of these issues were actually known back in 2010," said neighbor James Welch. "They had resolutions back in 2010 and rather than put them in place, and do the right thing when the facility was built, they removed all of them."

Welch was very graphic in describing what the stench smells like.

"Imagine putting a raw chicken into your waste can," he said, "and you leave it there for days and days and it heats up and it's just that raw, decaying disgusting odor."

Hoyland said the stench has taken away her hopes and dreams.

"We have a dream home that we built for my family to come for the holidays," she said, "and it's unbelievable that we've been put in this situation."

Denver7 tried to ask Plant Manager Jason Thomas what it will take to eliminate the odors, but he briskly walked away, without saying a word.

Thomas had earlier reminded commissioners, "This is a \$100-million facility"... and... "a recession proof plant."

He said, "This plant is good for Weld County on multiple levels."

Thomas told commissioners that the plant is in compliance, but homeowners question whether it really is.

They take issue with the nasal ranger readings, which show only one violation since the plant has been in operation.

Neighbors ask for relief from lingering stench at Weld County biogas plant, commissioner...

"I've never been in a room where somebody could say to me, 'this is an 8:1 smell,' but it would be interesting to flood this (Commissioner's) room with a 3:1 biogas odor and see how many of you could stay here," one homeowner said.

In arguing for suspension or revocation, Commissioner Kirkmeyer said, "We're just being a guinea pig and quite frankly, I feel I was duped as a County Commissioner when this was first put through."

Kirkmeyer said it wasn't sold as a solid waste facility, but that's what it is.

Commissioner Conway said he empathizes with the homeowners, but said there is a process that must be followed.

"I'm very wary of saying, 'let's just shut this down,'" he said.

The Commissioners instead voted to hold another "show cause" hearing on December 21 at 9 a.m.

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# Weld County officials to file injunction against Heartland Biogas, seeking a halt to company's operations

Tyler Silvytsilvy@greeleytribune.com

January 18, 2017

A federal judge denied a Heartland Biogas request for a temporary restraining order against Weld County, and county officials are still waiting for the company, whose operations they suspended in late December, to stop working.

The Board of Weld County Commissioners on Dec. 28 voted to suspend operations for Heartland Biogas (<http://www.greeleytribune.com/news/local/weld-county-commissioners-kick-of-hearing-on-heartland-biogas-waste-facility-near-lasalle-that-racked-up-more-than-600-odor-complaints/>), a renewable energy company southeast of Greeley near Weld County Road 49, citing the company's violation of 10 state and county rules.

In response, Heartland Biogas filed a lawsuit (<http://www.greeleytribune.com/news/local/lasalle-waste-processing-and-energy-production-facility-heartland-biogas-sues-weld-county-commissioners-over-permit-suspension/>) that is essentially an appeal of the board's decision. Heartland says the commissioners' decision was arbitrary and capricious, and the county did not give the company due process.

Along with the lawsuit, Heartland asked for a temporary restraining order that would allow it to operate until the rest of the case was settled. At \$30 million, the cost of shutting down is steep, the company argued. Company officials say it will cost \$3 million per day every day the company is shut down.

But a federal judge denied the temporary restraining order Jan. 9 and the company continues to operate.

Biogas Group Vice President Al Kurzenhauser said in a prepared statement the company knew it would be difficult to get a temporary restraining order.

"We made the attempt because the stakes are so high," Kurzenhauser said. :

Nearing a month of operations after commissioners voted to suspend it, Heartland Biogas may soon find itself facing further legal action.

"We will be filing an action in federal district court to go ahead and enforce against them," Weld County attorney Bruce Barker said. "The county will be asking for an injunction to stop them from operating."

Among the violations Heartland has racked up is a single documented odor violation — in April. Still, residents have called in more than 600 complaints about the company's smell (<http://www.greeleytribune.com/news/local/heartland-biogas-back-in-front-of-weld-county-officials-for-odor-complaints-near-lasalle/>), a result of the breakdown of cow manure and food waste that the company converts into natural gas.

Before the final decision, commissioners held a handful of hearings, starting in July, in which company officials, expert witnesses, county staffers and angry residents testified.

County officials have recently discovered another violation: the company's apparent lack of a certificate of designation.

A certificate of designation is required by the state for companies dealing with solid waste, and Heartland Biogas had apparently never gotten the certificate transferred or renewed after acquiring the operation from a similarly named company in 2013. The commissioners have the power to approve certificates of designations, and Barker on Wednesday said county officials didn't know Heartland Biogas didn't have one.

The county received a legal opinion letter Nov. 8 from the state attorney general saying the certificate doesn't automatically transfer when ownership transfers.

But the letter was one of the last things the county heard from the state regarding the certificate of designation, according to the letter itself on file with U.S. District Court.

County officials had numerous telephone conversations with state officials, and there was even an Oct. 20 conference call between county officials and state officials related to the certificate of designation.

Barker said the state contacted county officials first. In its letter, the state acknowledged it was made aware of the transfer of ownership and failed to notify Heartland Biogas of the need to apply for a new certificate of designation.

Just two days after the county received the state letter, Heartland Biogas signed an order of consent with the Air Pollution Control Division requiring Heartland to spend \$3 million to complete a variety of odor mitigation efforts with a variety of deadlines, including a complete analysis of its odor capture and control systems. The order was based on April 27 odor readings done by a county employee, and the timeline for completion of Heartland's various required mitigation efforts stretched into the summer of 2017.

Heartland argued in the lawsuit it had done everything required of it when it comes to dealing the odor problem. It claims county commissioners already had their minds made up about the company and that the county went beyond typical protocol in sending people to check up on the facility seven times in a 30-day period.

"We believe that we have met all the standards required of us by the state and county and are highly confident that our legal position is sound," Kurzenhauser said in his Wednesday statement. "The Board of County Commissioners set a bad precedent by voting to shut down a business in good standing and without due process."



## Heaton-Amrhein, Jennifer A - DATCP

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**From:** Lee Luft <leetluft@gmail.com>  
**Sent:** Sunday, August 18, 2019 2:17 PM  
**To:** Baeten, Joseph B - DNR  
**Cc:** Burton, Kyle - DNR; Jahns, Timothy R - DNR; paape.gerald@kewauneeeco.org; Charles Wagner; Clark Riemer; Aaron Augustian; Aaron Augustian; Davina Bonness; engels.travis@kewauneeeco.org; nelson.kate@kewauneeeco.org; DATCP Livestock Siting Comments  
**Subject:** FW: August 7 Manure "Incident" Chestnut Road Ahnapee Township - Kinnard Farm Spill Follow Up  
**Attachments:** Kinnard\_2019-8-9\_CAR\_RunoffComplaint\_Complete.pdf  
**Categories:** Green Category

Hello Joe,

Thank you for your update on the August 7<sup>th</sup> Kinnard spill in Ahnapee Township. I really appreciate your timely reply and I am glad to know the DNR was at the site of the spill to speak personally with the neighbors impacted by the spill and to review the clean-up process. The many photos in your attached report are very helpful in understanding the scope of the runoff.

Joe, it's so ironic that just this week a number of folks from Kewaunee County were testifying in Oshkosh before DATCP regarding the ATCP 51 Livestock siting rules. During the scheduled testimony, the DBA, Peninsula Pride Farms, and others spoke about the negative impacts that increasing setbacks would have on their members. Not one farm representative mentioned the negative impacts today's industrial farms can have on those living near to them.

Joe, we will look forward to learning more about what actions the DNR will take regarding this spill and in regard to the other active enforcement actions now under review by the DNR. Please keep us apprised as you gather more information. I have asked for this issue to be on our September Kewaunee County Land and Water Conservation Committee agenda and have copied the committee on this message.

Thanks again, Joe. Hope to hear from you soon.

Sincerely, Lee Luft

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**From:** Baeten, Joseph B - DNR [mailto:Joseph.Baeten@wisconsin.gov]  
**Sent:** Friday, August 16, 2019 11:54 AM  
**To:** Lee Luft  
**Cc:** Jahns, Timothy R - DNR; Burton, Kyle - DNR  
**Subject:** RE: August 7 Manure "Incident" Chestnut Road Ahnapee Township

Good Afternoon Lee:

I may better be able to answer your questions in your email.

Just for some clarifications on Mr. Rybski's email and time of events:

- The spill occurred the night of August 7<sup>th</sup>, DNR contact the farm that night to ensure the clean up process was moving forward

- At 6:45 am on August 8<sup>th</sup>, DNR arrived at the scene to observe the clean up and extent of the spill
- The morning of August 9<sup>th</sup>, DNR met with concerned neighbors (see the attached case activity report)

The department is waiting for Kinnard Farms to submit the report of noncompliance (due today) and once this information is received, the department will complete their report for this spill/runoff event. Kinnards Farm is currently in active enforcement and the department will review this case and determine what additional enforcement actions are needed (not yet determined).

Feel free to reach out to me with any additional questions.

Thank you,

**We are committed to service excellence.**

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

**Joe Baeten**

Phone: (920) 366-2072 (cell) / (920) 662-5196 (desk)

[Joseph.Baeten@Wisconsin.gov](mailto:Joseph.Baeten@Wisconsin.gov)

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**From:** Lee Luft <leetluft@gmail.com>

**Sent:** Friday, August 16, 2019 10:56 AM

**To:** Jahns, Timothy R - DNR <Timothy.Jahns@wisconsin.gov>; Baeten, Joseph B - DNR <Joseph.Baeten@wisconsin.gov>; Burton, Kyle - DNR <Kyle.Burton@wisconsin.gov>

**Cc:** Davina Bonness <bonness.davina@kewauneeco.org>; engels.travis@kewauneeco.org; nelson.kate@kewauneeco.org

**Subject:** FW: August 7 Manure "Incident" Chestnut Road Ahnapee Township

Dear Timothy Jahns,

This message (below) from Mr. John Rybski was sent to me yesterday afternoon but I did not see it until last night. I did forward Mr. Rybski's message to Davina Bonness, Travis Engels, and Kate Nelson of the Kewaunee County Land and Water Conservation Department and to each member of the Kewaunee County Land and Water Conservation Committee. I know Davina Bonness has been in contact with you regarding this spill and I have asked our Land and Water Conservation Committee Chair to consider placing this incident on our September agenda to understand what occurred and the DNR's follow-up.

Mr. Jahns, based on the conversations Mr. Rybski had with those who witnessed the spill, the spreading of manure continued even after the rains began and resulted in a significant spill with liquid manure potentially reaching waters of the state. Also, in just a few minutes, I will forward the photos that the witnesses have provided to us documenting the impacts of this spill.

I have indicated to Mr. Rybski that I would follow up on his e-mail message to me and I hoping you can provide some near term responses. Mr. Jahns, have you spoken with the Harding's, Sallie Marquart, Leo Vania, and Tom Stoller about the events leading up to this spill? If not, will you be speaking to them to determine what (if any) your next actions will be? If the spreading continued (as is being alleged) even after the rainfall began, this would be a more serious issue. Mr. Jahns have you determined how much liquid manure made its way into waters of the state? What if any measures will be employed by Kinnard's to avoid a reoccurrence? Your answers to these questions will assist me/us in responding to Mr. Rybski and the neighbors who witnessed the spill before we next meet as a full Land and Water Conservation Committee.

Thank you for your time and attention to this message. Photos to follow.

Sincerely, Lee Luft Kewaunee County Board Member

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**From:** John Rybski [<mailto:jmrybski@gmail.com>]  
**Sent:** Thursday, August 15, 2019 2:14 PM  
**To:** Lee Luft  
**Cc:** Thomas Cretney; Mimi Dobbins  
**Subject:** August 7 Manure "Incident" Chestnut Road Ahnapee Township

Lee,

As I am sure you know, on August 7 employees or agents of Kinnard Farms were spreading manure on a 12 acre parcel on Chestnut road. They were doing so on a day when the forecast predicted rainfall in the afternoon in excess of two inches. When the rain began, they continued to spread. These events were witnessed by Leo Vania, Tom Stoller, and Kim Harding. Harding's property shares a boundary with the field. The subsequent rainfall measured at 3.7 inches at Rankin and at Fred and Madonna Garbo's house between 54 and County S on County Road D. It swept across the field and - even though it had been chiseled in - carried manure-laden water across Harding's front yard at depths exceeding one foot. This manure-laden water traveled north through the road ditch system to Pheasant Road and then west to Rio Creek and thence to Silver Creek, the Ahnapee River, and Lake Michigan.

I had been out of state when this occurred and was advised of the event on Tuesday by Susie Vania, Leo Vania, and Joe Musial. I then took it upon myself to meet with the neighbors to get the story in their own words. I also spoke with Davina Bonness and Tom Stoller, my Town Board Supervisor. Based on those conversations, I drafted the attached letter to Gary Paape and the Ahnapee Town Board which was signed by twenty-one residents. I presented the letter to the Town Board at their regularly scheduled meeting on August 14. They declined to take any action and declined to place the item on their September Agenda.

I'd like to share with you some background not reported in the letter to the town board:

- Kim Harding first noticed the water flowing in two large streams into her yard. The manure-laden water reached a depth of 1.5 feet in her front yard and was traveling north over her driveway at a depth estimated at one foot. It was also coursing down the road ditch and behind her house into a wetland.
- She called her sister-in-law, Sallie Marquardt who lives at the intersection of Chestnut Road and Pheasant Road to ask her what to do.
- Sallie advised her to call Land and Water. She called Land and Water and was told to call the DNR.
- She called the DNR who said they would send someone. The DNR may have advised her to call the County Sheriff. The DNR representative showed up two days later.
- She called the County Sheriff. Upon arriving the officer observed "you can't fight mother nature" and "at least your yard has been fertilized," with a smile on his face. Kim Harding said did not find this comment amusing.
- She or Sallie Marquardt called Joe Musial and asked for help. He came over and brought tarps and attempted to block the culverts to keep the manure-laden water from entering the surrounding wetlands and Rio Creek.
- Musial called Kinnard's.
- Lee Kinnard showed up two hours later.
- Terry Marquardt took clean bottles and took samples from Harding's yard and at the culvert running under Chestnut Road and put them in his refrigerator.
- When a representative of the Kewaunee County Land and Water Department showed up one day later, Mr. Marquardt was told his samples could not be used and could only be collected by the DNR. He was also informed it was too late to take new samples and no money was available to test his well for contamination.
- When a representative of the DNR showed up two days later, they also refused his samples saying there was no evidence (video or live witness) to substantiate he took them where he said he took them.
- Kinnard arranged for a pumper and trucks and the manure-laden water was sucked off the Harding's front yard that evening and again the following morning.
- Joe Musial reports that later that evening someone in a pick-up truck drive through his yard and over a riding lawnmower and a barbecue. Apparently, no good deed goes unpunished.
- An e-coli advisory was issued for Crescent Beach on August 13.

Since this incident has been kicked down the road by the Ahnapee Town Board I'd like to emphasize a few thoughts and suggestions:

- Since Gary Paape stated "all protocols were followed" (and was present during the spill clean up) these protocols should be published in the local newspaper and posted on the County website so that people know who to call and what to expect in response when a manure spill occurs. This should include a FAQ section.

- If one does not exist, a Manure Spill Emergency Plan should be created for spills establishing at a minimum:
  - who is to call whom and for what purpose,
  - the roles of the Sheriff's department, the Land & Water staff, and the DNR,
  - training for Sheriff's Deputies and kits in all cruisers to allow for the collection of timely and usable samples of runoff for testing,
  - a process for notification of the County Health Department and a procedure by which they will evaluate risks to wells and advise potentially affected well-owners of the risk of contamination, safety measures to take, and how to get their well tested,
  - training and the provision of equipment for the DNR Warden and Health Department staff to take samples of run-off water,
  - a list of all the citizens in the county who have taken surface water testing training through the DNR Citizen Science, Lake Protection, and WAV (stream testing) programs who are qualified, have the equipment, and are willing to test spills,
  - a county trailer or trailers pre-loaded with sandbags and tarps to be immediately dispatched to spill sites to protect taxpayer's wells, residential property, sensitive ecosystems (wetlands), streams, and lakes from runoff,
  - arrangements with local excavators to deliver sand to block culverts at the direction of Land and Water staff, the County Warden, or DNR staff
  - a process by which units of government responsible for beaches possibly contaminated by a spill post immediate cautionary notices, take samples, and expedite testing to inform and protect the public.

I am sure there are many other good ideas to minimize the damage of these pollution events. I hope some of the ideas I have listed are already part of the "protocols."

I would hope you or some other member of the Land and Water Committee would request a discussion of these matters be placed on the committee's September agenda. I understand reports of the incident are being prepared by both our Land and Water Department staff and DNR staff. Those reports should provide a basis for improving citizen knowledge of what to do when a spill occurs near them as well as swift and professional action by county staff to minimize the damage done by these events. As long as we have a liquid manure system in the dairy industry, mistakes will be made, and spills will happen.

<b>Case Number</b> 2019-NEEE-Kinnard Farms Inc.	<b>Case Title</b> Kinnard Farms Inc.
<b>Activity</b> Runoff Complaint Site Visit	<b>Date of Activity</b> August 8-9, 2019

On August 8, 2019, Gruen was contacted via phone by Sally Marquardt ((920) 255-0999), property owner of E4902 Lincoln Road, Algoma, Kewaunee County, regarding a recent manure runoff event that had occurred due to a Kinnard Farms Inc. land application on August 7, 2019. Marquardt stated that she had collected several water samples during the runoff event. Gruen advised that DNR would likely not be able to use the samples as evidence for the runoff event, but would like to observe the color and odor of the samples and the locations where the samples were collected.

On August 8, 2019, Gruen was contacted by Travis Engels, Kewaunee County Land & Water Conservation Department, regarding the runoff event. Engels stated that he had been out at the site of the runoff event and met with the Marquardts, who had explained the flow path of the runoff. Engels stated that precipitation runoff within the ditches along Chestnut Drive still had a faint odor of manure. Gruen asked Engels if he would advise collection of this runoff based on his observations, and Engels stated that he would not.

On August 9, 2019, Gruen met with Sally and Terry Marquardt at their residence. Gruen observed the two water samples that were collected on August 7, 2019 at approximately 20:00. Samples had been refrigerated at the time of Gruen's visit. Both samples appeared turbid and brown with a strong manure odor. The Marquardts advised that one of the water samples was collected at the residence of Burt and Kim Harding, E7574 Chestnut Drive, Algoma, Kewaunee County, where the runoff event occurred, and the other downstream at the culvert that crosses under Chestnut Drive north of the Harding residence.

Gruen then observed the flow path from the west side of the Harding residence at Chestnut Drive, north through the road ditch on the east side of Chestnut Drive, through a road culvert to the west where it then traveled northwest to the road ditch along Pheasant/Lincoln Road. From there it continued to travel west, crossing under Pheasant/Lincoln Road through a culvert to the north before eventually discharging into Rio Creek. Water in the road ditches was clear at the time of the site visit and did not have a manure odor.

The Marquardts stated that they observed Kinnard Farms still applying manure on the field directly south of the Harding property at 16:00 on August 7, 2019, after the precipitation event had started. At approximately 17:50, the Marquardts were notified by the Hardings of the runoff event that had occurred on the Harding property. The Marquardts then contacted the Town Chairman, who contacted Lee Kinnard, owner of Kinnard Farms. At this time, several neighbors had already attempted to block the culverts beneath the driveway at the Harding residence so that no additional manure-laden runoff could flow from the front yard to the north to the mapped wetland complex, which eventually reaches Rio Creek. The Marquardts stated that when they informed Kinnard that manure-laden runoff had already crossed through culverts beneath the driveway at the Harding residence to the north, Kinnard stated that he "would worry about that later." The Marquardts also stated that they had asked Kinnard whether or not he was aware that manure applications were occurring on this field after the rainfall event had started, and Kinnard stated that he was not aware that manure applications were occurring at that time.

Figure 1 shows the approximate location of the field that received the manure application and flow paths of runoff.

A photo log that contains photos from the August 9, 2019 DNR site visit as well as those provided by Kim Harding is attached.

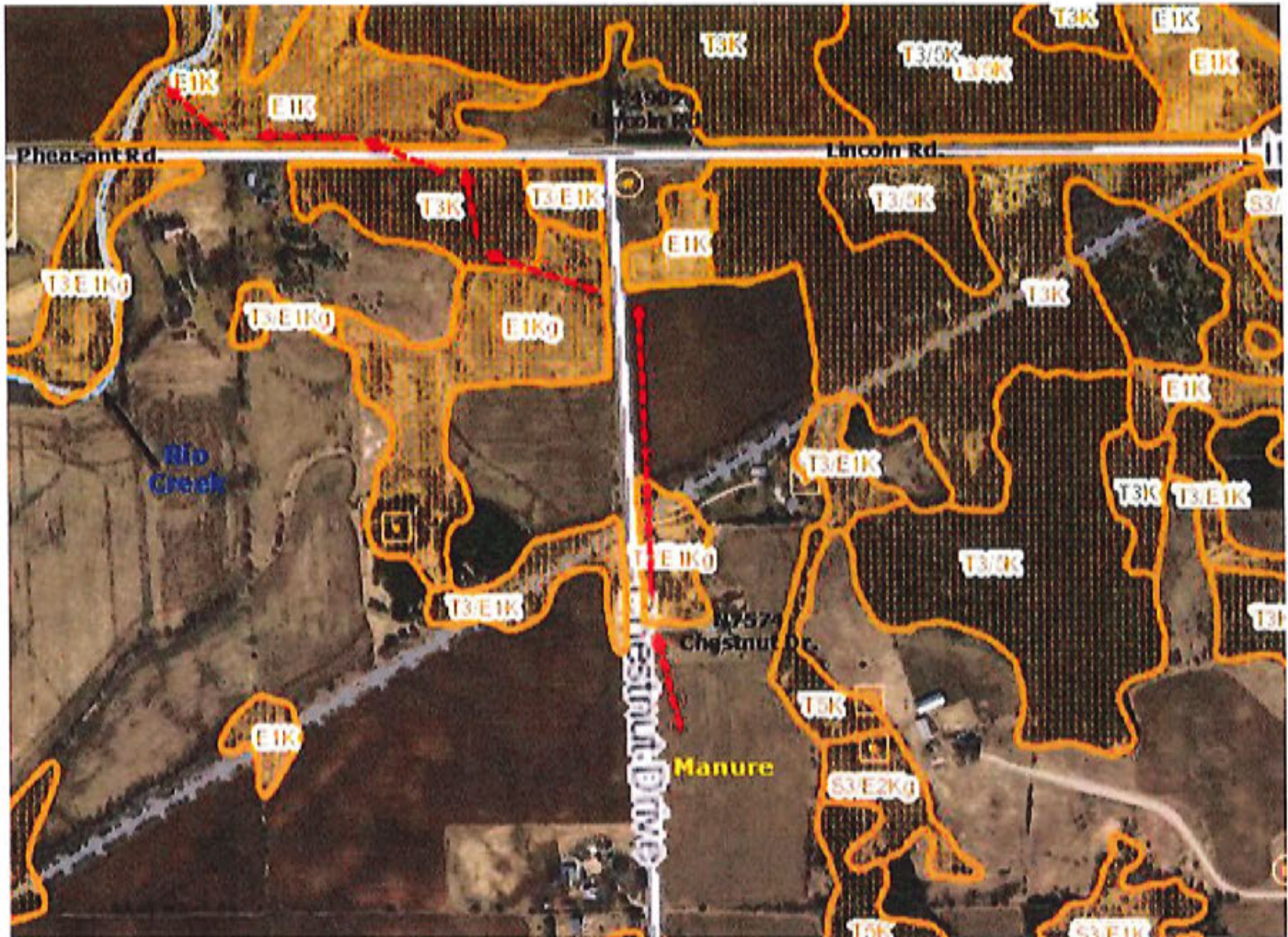


Figure 1 (above). Aerial image of the location where the manure runoff occurred and the flow path to surface waters (red arrows). Mapped wetland are shaded in orange. Image obtained from WI DNR Surface Water Data Viewer.

Enforcement Specialist Reporting	Date of Report	Exhibit Reference
Andrea Gruen	August 12, 2019	N/A

*This document was produced as a result of an official Law Enforcement investigation. Contents, in whole or part, are privileged by s. 905.09, Wis. Stats., and may not be used without express permission of the Wisconsin Warden service or appropriate prosecutor.*

Photo Log  
Kinnard Farms Inc.  
August 9, 2019



Photo 1 (left). Water sample collected by the Marquardts at N7574 Chestnut Drive on August 7, 2019.



Photo 2 (right). Water sample collected by the Marquardts at Chestnut Drive road culvert on August 7, 2019.

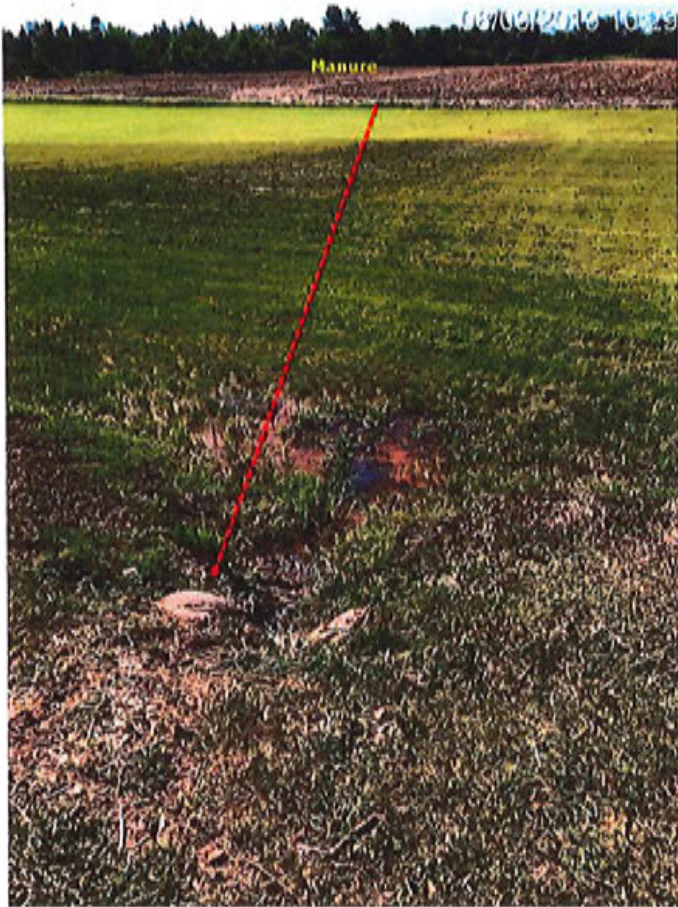


Photo 3 (left). N7574 Chestnut Drive (facing south from driveway). Field that received manure application by Kinnard Farms is indicated in background. Red arrow indicates the runoff flow path.

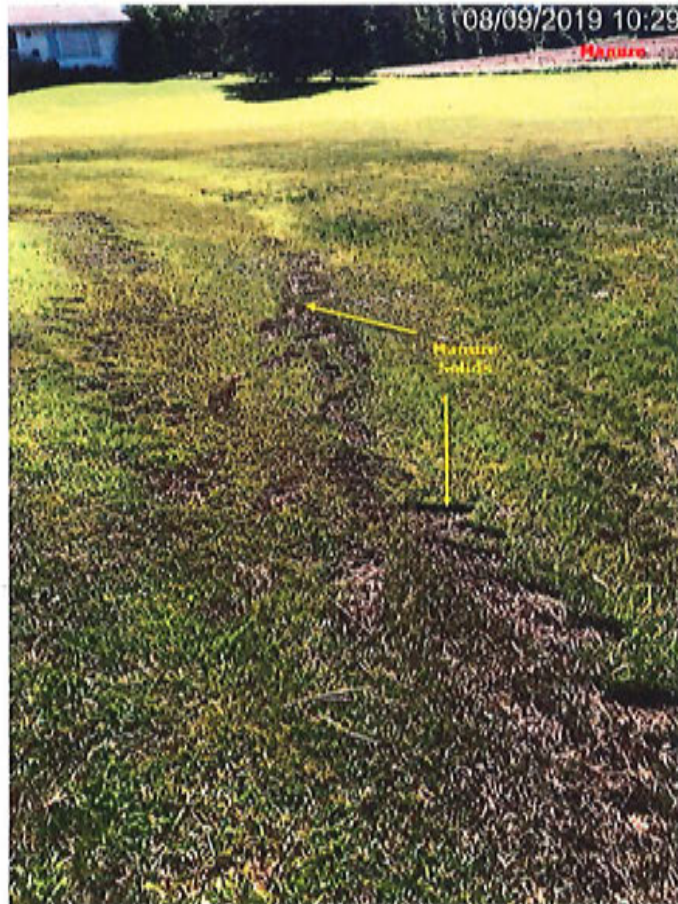


Photo 4 (left). N7574 Chestnut Drive (facing east). Manure solids were observed in grass. Field that received manure application is indicated in background.





**Photo 5 (left).** Road culvert on west side of Chestnut Drive, north of N7574 Chestnut Drive.



**Photo 6 (left).** Closeup of water in road culvert on west side of Chestnut Drive north of N7574 Chestnut Drive.



**Photo 7 (left).** West side of Chestnut Drive at road culvert (facing west). Blue arrow indicates the direction of flow from the road culvert.



**Photo 8 (left).** South side of Pheasant Road where channelized flow reaches road ditch and flows west (facing south). Blue arrows indicate the direction of flow.



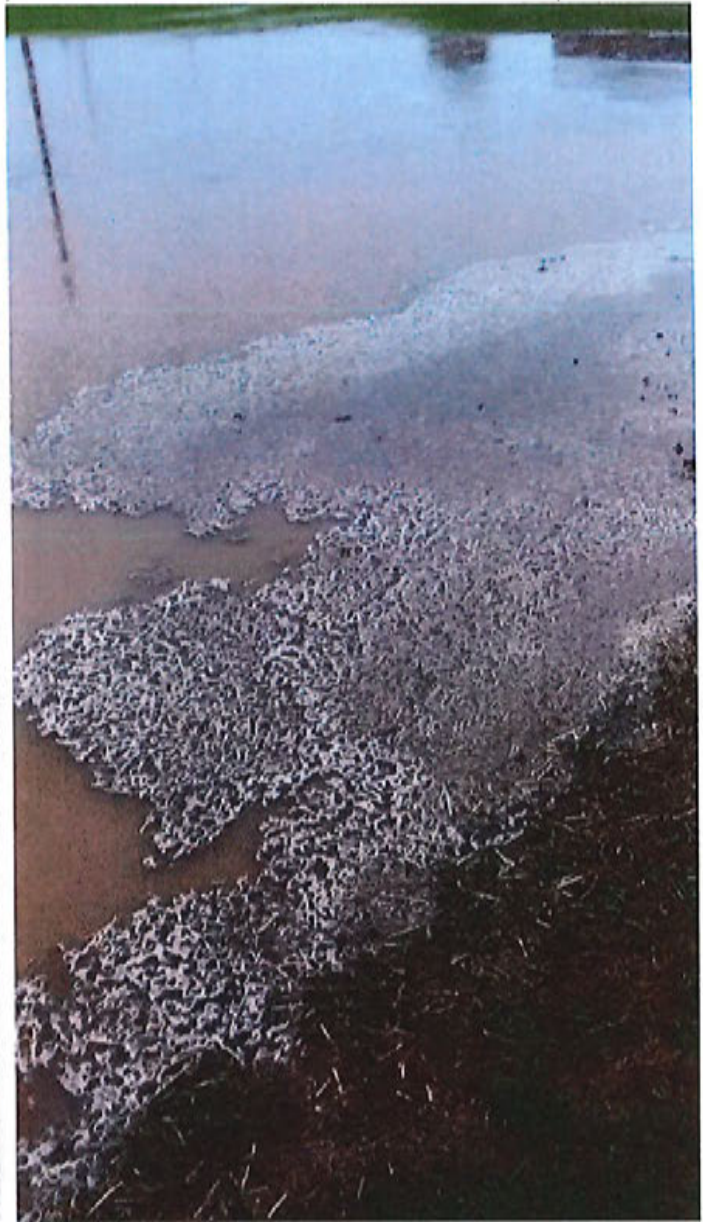
Photo 9 (left). Road culvert on north side of Pheasant Road (facing north). Blue arrows indicate the direction of runoff flow.



Photo 10 (left). Rio Creek on north side of Pheasant Road (facing north). Approximate location of flow path from Pheasant Road ditch to Rio Creek indicated with blue arrow.



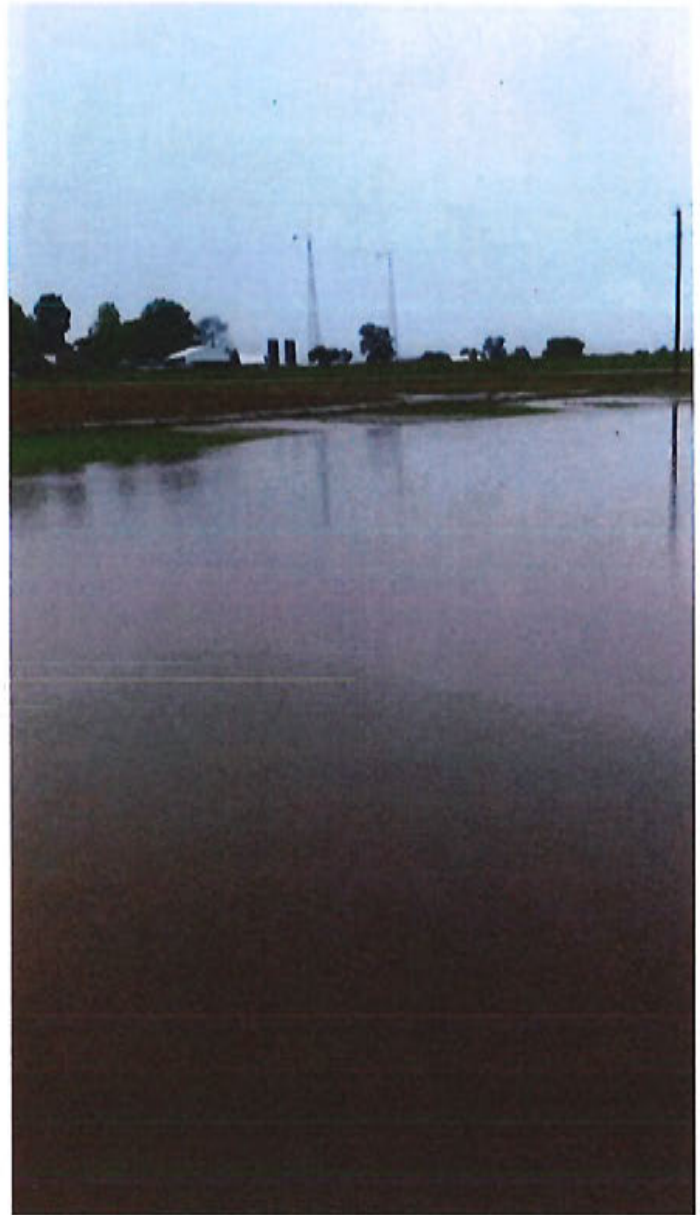
**Photo 11 (above).** N7574 Chestnut Drive on August 7, 2019 during runoff event. Photo submitted to DNR by Kim Harding on August 9, 2019.



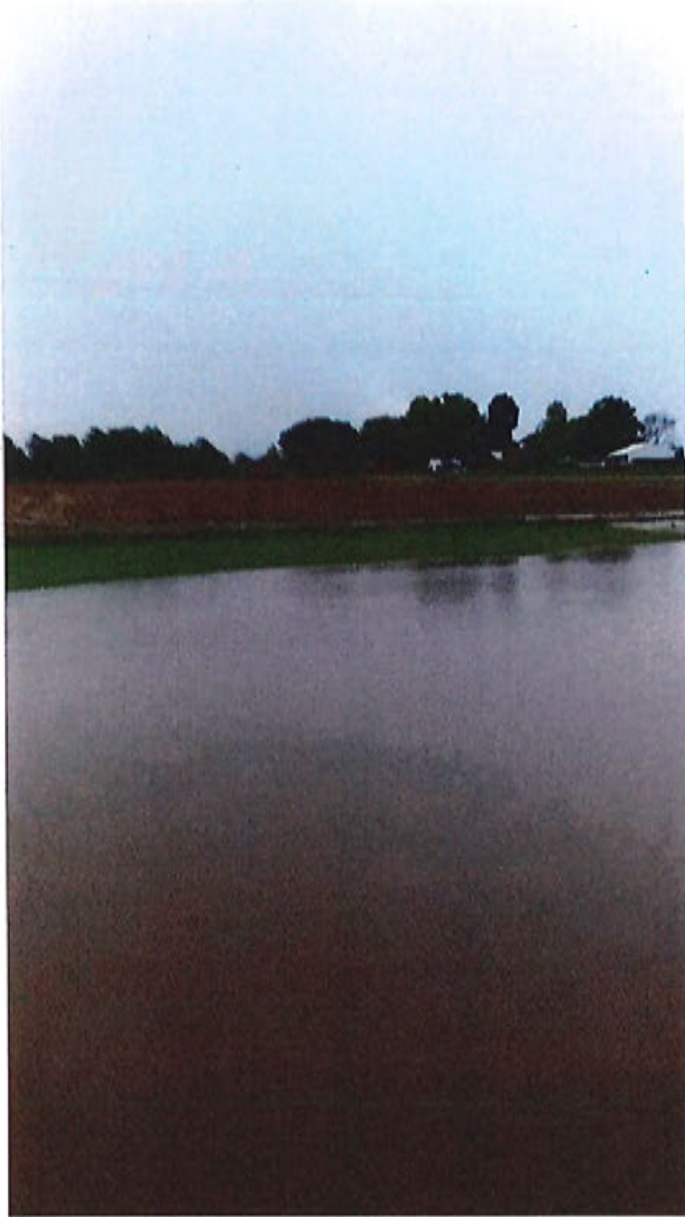
**Photo 12 (above).** N7574 Chestnut Drive on August 7, 2019 during runoff event. Photo submitted to DNR by Kim Harding on August 9, 2019.



**Photo 13 (above).** N7574 Chestnut Drive on August 7, 2019 during runoff event. Photo submitted to DNR by Kim Harding on August 9, 2019.



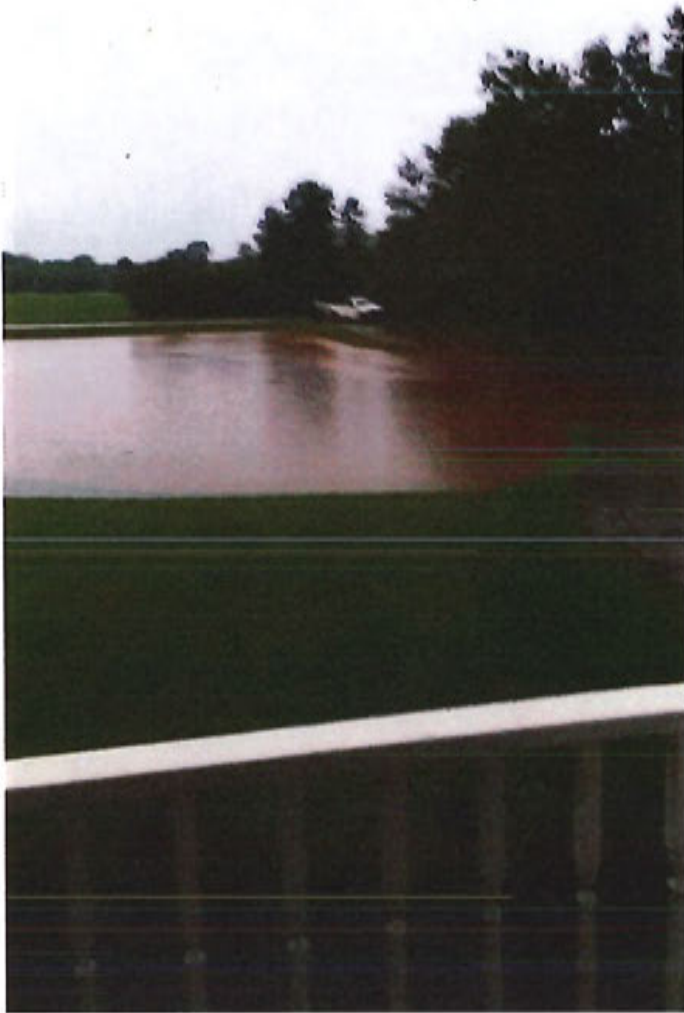
**Photo 14 (above).** N7574 Chestnut Drive on August 7, 2019 during runoff event. Photo submitted to DNR by Kim Harding on August 9, 2019.



**Photo 15 (above).** N7574 Chestnut Drive on August 7, 2019 during runoff event. Photo submitted to DNR by Kim Harding on August 9, 2019.



**Photo 16 (above).** N7574 Chestnut Drive on August 7, 2019 during runoff event. Photo submitted to DNR by Kim Harding on August 9, 2019.



**Photo 17 (above).** N7574 Chestnut Drive on August 7, 2019 during runoff event. Photo submitted to DNR by Kim Harding on August 9, 2019.



**Photo 18 (above).** N7574 Chestnut Drive on August 7, 2019 during runoff event. Photo submitted to DNR by Kim Harding on August 9, 2019.



Photo 19 (above). N7574 Chestnut Drive on August 7, 2019 during runoff event. Photo submitted to DNR by Kim Harding on August 9, 2019.



Photo 20 (above). N7574 Chestnut Drive on August 7, 2019 during runoff event. Photo submitted to DNR by Kim Harding on August 9, 2019.



## Heaton-Amrhein, Jennifer A - DATCP

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**From:** Ann Hansen <shansena@centurytel.net>  
**Sent:** Monday, September 2, 2019 3:09 PM  
**To:** DATCP Livestock Siting Comments  
**Subject:** comments regarding proposed changes to Livestock Facility Siting ATCP 51

**Categories:** Green Category

Good morning,

I am a Town Supervisor for the Town of Cleveland, Chippewa County. I am also a retired journalist, and was a reporter and regional editor for The Country Today, a Wisconsin weekly agricultural newspaper. I have raised cattle and hay for 27 years.

Last spring an 8,000-head sow operation applied for a permit to build in our town. Our town, due to high water tables, extensive wetlands, and density of population, is highly unsuitable for a CAFO. In the past year our Town board has discovered that, when dealing with a CAFO, state regulations make it very difficult for a local government to protect its air, water, and property values in any meaningful way. For this reason, I believe the proposed changes to ATCP 51 do not go far enough to ameliorate the issues created by CAFOs.

Let's face it: The reason so many people are upset about having CAFOs in their neighborhoods is that CAFOs make lousy neighbors. If they were good neighbors, we wouldn't be having these discussions.

First of all, CAFOs stink. I've been in and around CAFOs in the course of my reporting career, and there's no getting around the fact that they smell really bad, all the time.

Secondly, sooner or later many of them pollute surface or ground waters, whether it be through a manure spill, a leaking manure storage facility, over-application of manure to cropland, or application at the wrong season. This happens, and pretty often, despite strict regulations. Current regulation and enforcement is not working.

Third, CAFOs do not create a better local economy as is often claimed. They put smaller farms out of business, which means fewer families, fewer students in local schools, and less local purchasing. This is hard on small towns and rural neighborhoods.

I attended the DNR listening session in Eau Claire in August. Of the 12 speakers opposed to the changes in ATCP 51, all were either CAFO operators, ag bankers, or Farm Bureau representatives. All mentioned that times were hard right now, and further regulation would make them harder. All mentioned how beneficial CAFOs are to the economy. None, I repeat, none addressed the odor, water pollution, and decreased property values caused by CAFOs. I am sure they are aware that lawsuits are being won against CAFOs on these issues, but no one mentioned it.

On the other hand, the Executive Director of the Wisconsin Farmers Union, Tulee Bomar, pointed out that low commodity prices are caused primarily by over supply, for which CAFOs are largely responsible. Seemingly CAFOs are in many ways the author of their own economic problems.

I spoke as well, and reiterate here: The Wisconsin legislature has done a huge disservice to the citizens of this state by removing most local control over the siting of CAFOs. There's a lot to be said on this topic, but I think it was summarized best at the very boisterous town meeting we had in the spring of 2018, when the pig farm developers made a

presentation on the project to residents of our Town. The final speaker was a young daughter of one of the principals, who said, "This is the future of farming. This is my future."

A voice from the back of the room said, "We don't care about your future, We care about our future."

That about sums it up. Don't give away our quality of life.

Ann Larkin Hansen  
715-288-6817  
19351 165th St.  
Bloomer, WI 54724

## Heaton-Amrhein, Jennifer A - DATCP

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**From:** Mick Sagrillo <micksagrillo@yahoo.com>  
**Sent:** Thursday, September 5, 2019 11:05 AM  
**To:** DATCP Livestock Siting Comments  
**Subject:** Proposed revisions to ATCP 51, Livestock Siting Standards  
**Attachments:** Proposed revisions to ATCP 51.docx

**Categories:** Green Category

September 5, 2019

Department of Agriculture, Trade, and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708  
livestocksitingcomments@wisconsin.gov

### Proposed revisions to ATCP 51, Livestock Siting Standards

To whom it may concern:

I serve as the chair of the Plan Commission for Lincoln Township in Kewaunee County. We have three CAFOs in our township, one of which went through the livestock siting conditional use permitting process earlier this summer. I am submitting testimony about revisions to ATCP based on the experience of that process as well as experience going back to 2001, before the Livestock Siting Law was enacted and when the first CAFO applied for a building permit in our township. My comments and recommendations are as follows:

1 The current ATCP setbacks are woefully inadequate at best. DATCP's original "one size fits all" model from 2006 simply doesn't work. The rules should allow for local governments increasing setbacks based on local conditions. As an example, I'll use our own family's situation. We moved into our house in 1978. In 2001, Dairy Dreams applied for a building permit to build the first CAFO in our township. Completed in 2002, the CAFO began filling their 80,000,000 gallon manure and agricultural wastewater lagoon in 2003. Then our odor problems began. We live nine-tenths of a mile away from that lagoon, directly down wind, and also directly down wind of MGE's Rosaire Wind Farm. The smell of sulfur dioxide and ammonia was so strong at all times of the day and night that we had to install a \$3288 air conditioning system on our home. We had lived in our home for 25 years before Dairy Dreams began operation with absolutely no need for air conditioning, yet could not sleep on our property without it once they moved into our neighborhood. Below are spreadsheets of the days and nights in 2019 and 2018 when our lives were impacted by that lagoon, anywhere from 52% to 56% of the time. **The way we are able to use our home and property has been severely altered due to Dairy Dreams moving into the neighborhood 25 years after we had been living here.** And we are just one example of one family in the neighborhood sharing our experience with a CAFO that we had no choice but to permit.

2 The change to calculate setbacks from neighboring property lines (as opposed to residences and buildings and residences) is a critical improvement to the rules. An order by the Wisconsin Department of Revenue, Case #2017-81-01, from 2017, found a 13% loss of property values for homeowners living within one quarter mile of a CAFO in Kewaunee County, and an 8% loss if within one mile. Why? Primarily odors and well contamination. At the Speaker's Task Force on Water Quality in Green Bay last week, the representative from the Wisconsin Realtors Association said that he doesn't even take listings from Kewaunee County any longer. I pose the rhetorical question: with decreasing property values and agricultural land not required to ante up, who will bear the cost to keep townships afloat in the future?

3 The increased setbacks need to apply to expansions as well as new facilities. The all too often used crutch of "grandfathered in" is a very destructive tactic employed by the CAFO community and needs to be ended.

4 Having just permitted a CAFO early this summer, the current odor score spreadsheet that is used by DATCP is like a game of strategy played by CAFO consultants employed to complete the application for the farm. In addition, townships have no real means of contesting or challenging the odor score spreadsheet. Again, I use our family's home, nine-tenths of a mile away as described above, which could not be considered under the current system, as an example. Another CAFO in our township has an even larger manure and agricultural wastewater lagoon and the stench from that lagoon have impacted our community for miles around. At least a dozen and a half families have moved out, the homes bought up by the CAFO for their workers.

5 The current 20% expansion increase in animal units that triggers an application for a permit was ill conceived. Twenty percent of 500 animal units is only 100 whereas 20% of 4000 is 800. An expansion is an expansion; Any expansion should trigger an application process, just as it does for residential, commercial, or industrial situations. Why should agricultural be treated any differently.

6 The requirement that the permit runs with the land and not with the owner is complete unacceptable. Have you really thought this one through? Look at what's happened to poultry and hog operations in the Southeast part of the country where family operations were sold to corporate interests only to be later sold to foreign investors. Very lucrative for the sellers. The problem with this model is that local governments, to say nothing of state agencies, have no control over foreign interests when it comes to regulations, the inevitable clean up, and accountability. Our strong recommendation is that the permit run with the applicant/owner. When the facility is sold, a new permit can be applied for based on the new ownership.

Thank you for your consideration,

Mick Sagrillo  
 E3971 Bluebird Rd.  
 Forestville, WI 54213  
 (920) 366-0957  
 micksagrillo@yahoo.com

Sagrillo Stench Log 2019			
Date	Wind & direction	Time	Comments
5/23/2019	w, windy	start 10:30 am--all day	putrid lagoon stench--had to close up the house and greenhouse
25-May	w, breezy	8:10 PM	strong sulfur stench started, enough to burn our eyes; had to close up the house
5-31 to 6-3			out of state
10-Jun	w, light	6:45 PM	rain blowing in, terrible raw sewerage stench; had to close up the house
11-Jun	w, light	2:00 AM	awakened by lagoon stench; had to close up the house and try to get back to sleep
24-Jun	w, brisk	1:30 PM	rain came through and brought putrid lagoon stench; had to close up the house
26-Jun	w, light	10:50 PM	awakened by strong urine stench; had to close up the house and try to get back to sleep
6-28 to 7-1			out of state
1-Jul	w, light	5:30 PM	lagoon stench--had to close up the house and turn on the AC
10-Jul	w, breezy	6:00 PM	lagoon stench--had to close up the house and turn on the AC
11-Jul	nnw, light	7:50 AM	they're spreading putrid lagoon sludge on the field right across the road; our eyes burn had to close up the house and turn on the ac--can't get the smell out of the house!
12-Jul	w, light	2:55 AM	awakened by stench; had to close up house and try to get back to sleep
	n, light	11:25 PM	awakened by stench coming off the field; had to close up house and try to get back to sleep
13-Jul	n, light	7:05 AM	still terrible stench coming off the field--had to close up the house and turn on the ac
15-Jul	w, light	9:50 PM	lagoon stench--had to close up the house and turn on the AC
18-Jul	almost still	12:26 AM	awakened by lagoon stench; had to close up the house and try to get back to sleep
19-Jul	almost still	9:55 PM	t-storm coming in along with terrible lagoon stench
20-Jul	w, light	9:10 PM	lagoon stench--had to close up the house
22-Jul	w, light	all afternoon	blasts of lagoon stench all afternoon--had to close up the house
23-Jul	w, light	11:20 PM	awakened by lagoon stench; had to close up the house and try to get back to sleep
24-Jul	w, light	9:07 PM	lagoon stench--had to close up the house
27-Jul	w, brisk	4:04 AM	awakened by lagoon stench; had to close up the house and try to get back to sleep

	w, brisk	all day	lagoon stench--eyes are burning--had to close up the house and turn on the AC
28-Jul	w, light	7:35	began to rain and brought with it a strong lagoon stench--had to close up the house
29-Jul	w, light	all afternoon	lagoon stench--had to close up the house
		9:10 PM	terrible lagoon stench--our eyes are watering--had to close up the house
31-Jul	almost still	3:10 AM	awakened by lagoon stench; had to close up the house and try to get back to sleep
<b>July</b>	<b>16 out of 31 days</b>	<b>52%</b>	<b>of July our lives were disrupted in our home</b>
1-Aug	almost still	3:02 AM	awakened by lagoon stench; had to close up the house and try to get back to sleep
2-Aug	w, light	all day	spreading on KFI field on SW corner of Elm & Bluebird--had to keep house closed all day
	w, light	9:50 PM	horrendous stench--our eyes watering--had to keep the house closed
3-Aug	nw then w, light	all day	spreading on KFI field on SW corner of Elm & Bluebird--had to keep house closed all day
4-Aug	almost still	10:45 PM	awakened by strong urine stench--had to close up the house and try to get back to sleep
5-Aug	w, light	4:30 PM	after the rain this afternoon, the lagoon stench started--had to close up the house
6-Aug	w, light	3:30 AM	awakened by lagoon stench; had to close up the house and try to get back to sleep
8-Aug	w, light	11:56 PM	awakened by strong urine stench--had to close up the house and try to get back to sleep
9-Aug	w, light	8:24 PM	strong urine stench--had to close up the house
11-Aug	w, light	4:46 AM	awakened by strong urine stench--had to close up the house and try to get back to sleep
	almost still	10:53 PM	awakened by lagoon stench; had to close up the house and try to get back to sleep
12-Aug	almost still	9:27 PM	lagoon stench--had to close up the house
8-16 to 19			<b>out of state</b>
22-Aug	almost still	1:25 PM	lagoon stench--had to close up the house
23-Aug	almost still	12:28 AM	awakened by acrid lagoon stench; had to close up the house and try to get back to sleep
	almost still	7:30 AM	very acrid lagoon stench--had to close up the house
27-Aug	almost still	10:58 PM	awakened by strong urine stench--had to close up the house and try to get back to sleep
28-Aug	almost still	9:30 PM	urine stench--had to close up the house
30-Aug	almost still	9:00 PM	strong urine stench--had to close up the house
<b>August</b>	<b>15 out of 27 days</b>	<b>56%</b>	<b>of August our lives were disrupted in our home</b>
3-Sep	w, windy	3:30 PM	strong lagoon stench--had to close up the house
	w, light	7:50pm	horrendous putrid lagoon stench with ammonia; burned our eyes--had to close up the house
4-Sep	w, light	11:00 PM	awakened by lagoon stench--had to close up the house and try to get back to sleep
5-Sep	w, light	7:30 AM	strong lagoon stench still! 3 out of 5 days this month so far

Sagrillo Stench Log 2018			
Date	Wind & direction	Time	Comments
3/21/2018	w, light	9:30 PM	horrible lagoon stench all over the neighborhood
4/22/2018	w, light	9:30 AM	terrible sulfur odors all over the neighborhood
16-May	w, light	8:15 AM	lagoon stench across the neighborhood
28-May	w, light	5:44 AM	wakened by putrid lagoon stench--had to close up the house on a humid morning
31-May			out of state
1-Jun			out of state
2-Jun			out of state
3-Jun	w, windy	all day	putrid lagoon stench--had to close up the house and stay indoors
4-Jun	w, windy	all day	they're emptying the lagoon--terrible lagoon odors all day--had to keep the house closed and stay inside
	w, light	9:17 PM	putrid stench blast--had to close up the house again
13-Jun	w, windy	6:45 AM	terrible putrid lagoon stench--had to close up the house
		all day	can't work outside, eyes are burning--terrible stench!
	w, breezy	10:45 PM	awakened by fetid lagoon stench--had to close up the house and try to get back to sleep

16-Jun			out of state
17-Jun			out of state
27-Jun	w, light	9:40 PM	lagoon stench--had to close up the house
28-Jun	w, light	7:45 AM	lagoon stench again--had to close up the house on such a nice day
1-Jul	w, breezy	8:40 PM	wind shifted to the west and brought a putrid lagoon stench--had to come indoors and close up the house
4-Jul	w, breezy	6:05 PM	wind shifted to the west and brought a putrid lagoon stench--had to close up the house
5-Jul	w, light	5:00 AM	wakened by lagoon odor--had to close up the house
8-Jul	w, light	7:00 AM	lagoon stench--had to close up the house
9-Jul	w, light	1:20 AM	awakened by fetid lagoon stench-smells like old pee--had to close up the house and try to get back to sleep
	w, breezy	1:15 PM	wind shifted--lagoon stench--had to close up the house
10-Jul	very light	2:55 PM	putrid stench blast--eyes are watering from odors--had to close up the house
	w, light	8:00 PM	lagoon stench--had to close up the house again--had to keep house closed up over night
11-Jul	very light	7:55 PM	horrible lagoon stench-it's so strong our eyes are watering--had to close up the house again
12-Jul	very light	all night	<b>the putrid lagoon stench is so strong that it is coming right through our closed windows and doors!</b>
		2:30 AM	had to move to another room in the house to try to get some sleep
13-Jul	w, light	2:00 AM	awakened by lagoon stench--had to close up the house and try to get to sleep
	w, breezy	4:30 PM	rain and with it strong lagoon odors--had to close up the house
16-Jul	very light	2:15 AM	awakened by lagoon stench--had to close up the house and try to get to sleep
	w, breezy	5:50 PM	horrible lagoon stench, making our eyes water--had to come in and close up the house and turn the AC on
19-Jul	very light	8:05 PM	lagoon stench--had to close up the house
23-Jul	very light	11:35 PM	awakened by lagoon stench--had to close up the house and try to get to sleep
24-Jul	w, light	all day	and evening--lagoon stench--had to keep house closed up
26-Jul	w, light	10:00 PM	lagoon stench--had to close up the house
7-28 & 29			out of state
30-Jul	w, light	all day	lagoon stench--had to close up the house
31-Jul	w, light	all morning	lagoon stench--had to close up the house
July	16 out of 29 days		
		55%	of July our lives were disrupted in our home
8-Aug	w, light	7:40 PM	lagoon stench--had to close up the house
10-Aug	w, light	1:27 AM	awakened by lagoon stench--had to close up the house and try to get to sleep
14-Aug	w, light	8:00 PM	lagoon stench--had to close up the house
8-17 to 20			out of state
22-Aug	w, very light	4:00 PM	lagoon stench--had to close up the house
25-Aug	w, very light	9:05 PM	lagoon stench--had to close up the house
26-Aug	w, very light	7:55 AM	lagoon stench--had to close up the house
28-Aug	w, very light	3:30 PM	down pour, and with it came a terrible lagoon stench--had to close up the house

Mick Sagrillo  
E3971 Bluebird Rd.  
Forestville, WI 54213  
920-366-0957  
micksagrillo@yahoo.com

## Heaton-Amrhein, Jennifer A - DATCP

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**From:** Jerry Halverson <JerryHalverson@co.manitowoc.wi.us>  
**Sent:** Friday, September 6, 2019 11:26 AM  
**To:** DATCP Livestock Siting Comments  
**Subject:** ATCP 51 changes  
**Attachments:** Comments on ATCP 51 Proposed Changes.doc

**Categories:** Green Category

Attached please find comments on ATCP 51 proposed changes.

Thanks.

Jerry Halverson  
Department Director  
Manitowoc County Soil & Water Conservation Dept.  
4319 Expo Drive  
P.O. Box 935  
Manitowoc, WI 54221-0935  
920-683-4293

e-mail: [JerryHalverson@co.manitowoc.wi.us](mailto:JerryHalverson@co.manitowoc.wi.us)

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## Soil & Water Conservation Department

Jerry Halverson, Department Director

*jerryhalverson@co.manitowoc.wi.us*

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*Manitowoc County Office Complex • 4319 Expo Drive, P.O. Box 935 • Manitowoc WI 54221-0935  
Phone: 920.683.4183 • Fax: 920.683.5131 • TTY: 920.683.5168*

September 5, 2019

To: Wisconsin Department of Agriculture, Trade and Consumer Protection

From: Manitowoc County Soil & Water Conservation Department

Subject: Comments on Livestock Facility Siting WIS. Admin. Code CH. ATCP 51 Proposed Changes

We offer the following comments that we believe should be taken into consideration on proposed rule changes.

### **Consistent Standards**

ATCP 51 went into effect in 2006 and has not been updated. Since then many standards such as NRCS 313 Waste Storage Facility and 590 Nutrient Management, as well as other standards have been revised once or even twice. ATCP should be updated to include these standards to ensure consistent technical standards among related rules.

### **Procedure Modifications**

Proposed modifications to procedures that local governments must follow in issuing a siting permit including those used to determine completeness of siting applications, modifications to siting permits, the use of checklists, requiring an operator to certify on an annual basis, compliance with standards, and/or regular inspections of approved livestock facilities to monitor facility compliance will greatly improve continued compliance and statewide consistency with local implementation.

### **Odor and Setback Standards**

Using property line setbacks for manure storage structures and certain types of livestock housing is too restrictive in some cases and will not allow reasonable expansion of some livestock facilities. Instead of setbacks from property lines, measurement should be from such things as houses, schools, parks, churches, and areas zoned other than agriculture such as residential.

Proposed changes would allow livestock structures such as livestock housing (other than category 1 and category 2 housing), and feed storage structures to be constructed 100 feet from a property line and potentially houses, churches, schools, etc. Many farmers are now ventilating barns by use of many large fans that make a significant amount of noise 24 hours a day 365 days a year. Backup alarms on end loaders working in open feed storages, loading feed into mixers at all times of the day and night create significant noise. Crowd gates in parlor areas make significant noise



24 hours a day on some farms. 100 foot setbacks will cause more neighbor problems than we currently have.

Proposed changes for odor and setbacks needs a lot of work that will require time beyond the existing timeline of November 2019 presentation to DATCP Board, December 2019 Governor's written approval, and January 2020 final draft to legislature. We recommend requesting a one year extension to the timeline for submitting rule change proposals to the DATCP Board to allow time to assemble a team to discuss/study and make recommendations to DATCP on odor and setback standards. This issue is too important not to take time and effort to get it as close to right as possible.

#### **Demonstration of Compliance of Existing Waste Storage Facilities**

Evaluation requirements and definition of a full investigation for an existing waste storage facility older than 10 years constructed according to standards at the time or when construction standards cannot be verified may in some cases be more than is necessary to demonstrate compliance. To visually inspect an emptied facility will require equipment such as large high hoe, dragline and scrappers/bulldozers working in the facility to remove 2' to 3' of waste that normally stays in a pit after emptying by pump. This will be an expensive procedure. There are other less expensive ways to evaluate the facility such as soil borings around the existing pit to verify soils and to make sure that adequate bedrock and saturation distances are met, plus testing soils near the pit to make sure fines and PI's are adequate.

#### **Allowance for 20% higher Animal Units than Number Kept on 2006**

The farther out we get from the rule's original inception in 2006, the more difficult it is to track or prove what constitutes a 20% herd expansion from 2006 numbers. This gets even more difficult with changeover in staff, and loss of institutional knowledge. A livestock facility should be required to apply for a permit at 500 animal units without the grandfather exemptions in the current rule.

#### **Permit fees**

Fees have not been increased since 2006 and in most cases the current fee does not get close to covering time and expense for municipalities to sufficiently review applications and to monitor compliance. We recommend a sliding scale a fee schedule based on animal unit numbers applied for.

#### **Local Building, Electrical or Plumbing Codes**

This should be removed from ATCP 51 and the application for local approval. The municipality reviewing the application has no way to verify that these codes are met.

#### **Land Base to Implement a Nutrient Management Plan at Time of Application**

We support this proposed change.

Thank You for the opportunity to comment on the proposed changes to ATCP 51

Sincerely;  
Jerry Halverson

## Heaton-Amrhein, Jennifer A - DATCP

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**From:** Hope Oostdik <hoostdik@charter.net>  
**Sent:** Tuesday, September 10, 2019 12:08 PM  
**To:** DATCP Livestock Siting Comments  
**Subject:** Comments from Hope Oostdik/ Town of Lake Mills  
**Attachments:** DATCAPcomments9-19.docx

**Categories:** Green Category

Thank you for the opportunity to comment.

Wisconsin DATCAP

September 10, 2019

Mr. Chris Clayton

POBox 8911

Madison, WI 53708-8911

Comments on Livestock Siting ( ATCP Rule Revision51)

I testified before the DATCAP staff on August 22, 2019. I am enclosing some more comments with this letter to you for your consideration. Many thanks you and your staff for your time and for giving all a voice.

The Town of Lake Mills in Jefferson County has been working over the past 3 years with Daybreak Foods expansion to their poultry layer facility on Crossman Road. The Creekwood plant has been a long term resident of the Town of Lake Mills. The ownership has changed over the years and the facility is now owned by Daybreak Foods. The facility is a major producer of liquid egg produced from a huge flock of laying hens. It is the intention of Daybreak to create and update their facilities to allow for the production of "cage free" hens to produce a liquid egg product for the national and international market. No shell eggs are produced or packed at this site. Only liquid egg is broken, blended and shipped by tanker off site. Processing requires large amounts of water, specialized equipment and sanitary cleanup.

Siting of the new facility was difficult and 70 of land was purchased from a local resident, for 1.3 Million dollars to expand the facility. This purchase caused an uptick in land values and appraisals. The land purchased was not contiguous to the current facility, but across a Township road from the existing plant. Since the outbreak of avian influenza in Jefferson County in 2017, great care is being exercised by the industry to control bio-security in and around each facility. The egg industry is requiring the "cage free" methods of poultry handling and the old facility had totally reached capacity in numbers and technology. The corporation has changed its name to Wisconsin Cage Free.

Manure handling and shipment is another unique feature of the new facility. Manure is contained within the layer barns on a conveyor system which produces manure at 10% moisture content. Much drier and more easily transferred to trucks to be marketed as fertilizer. Most of the manure leaves the area entirely and is shipped by truck to Madison to a retailer. There is capacity in the new facility to store up to a one year accumulation of manure if a market is not readily available. Products from both ends of the chicken are transported by semi-truck daily on town and county roads to market. Birds are moved from pullet house to layer house by truck and corn and feed is delivered in season to the processing feed mill on site.

Because the property purchased for expansion was not contiguous to the current facility, I was approached early in the design process and asked how I felt about the possibility of a conveyor crossing the public roadway to bring feed to the new facility. I was totally caught off guard and did a volume of research to see if this was being done anywhere else in the state or country. I could not find an example

and continue to work with our Town Engineer to seek solutions to the problems created by the overhead conveyor.

Odor from the old facility has been a major complaint for many years by local residents and neighbors. The 'odor trail' moves from the plant and waste water lagoons, driven by southeasterly winds across the fields to the surface of Rock Lake and drifts directly into downtown Lake Mills. We refer to our "air-shed" here in Lake Mills. The smell is very offensive and changes daily. Many complaints have been raised by residents and directed to the WDNR. Permits are extended by WDNR despite complaints by residents. Residents have delved deeply into the production methods, manure handling details and many questions have arisen about how Daybreak deals with the mortality created by the large volume of birds present. Promises to clean up, to stop odors and to deal with the flock mortality issues have been made by Daybreak staff but the odors continue and the plant is still in operation until the new facility is complete.

The odor factor has been recognized by the Township and our Assessor and reductions of 15% of assessed value are granted to those property owners residents within a mile of the facility. As Town Chair, I question why we as a community should support a known source of odor and high levels of unsafe gases to be permeating our homes and businesses? I look to the improvements of technologies and the new facility to begin to solve the age old problems of this facility. This facility is very, very far from a FARM, as I define a farmstead.

With WI Livestock Siting laws as they stand, most local control has been removed. Yet we are the recipients of less taxable property, more stress on our residents, and less enjoyment of our lake and lands at the expense of this industry. I remain faithful, I that the new facility will be an improvement, will stop the emission of nasty odors and that the mortality created by the plant will be handled in a humane and ecological way. Recently as the new building begin operation, complaints have arisen from the noise of the large banks of fans used to control temperatures within the buildings have been filed. The sound although below the allowable decibel limits, is a new problem for locals to deal with. This factor too is very weather dependent.

I have been forced to place my trust in Jefferson County Zoning and Land Conservation staff to explain the details of the permit, to educate myself and the community at large in the development of the new plant. I am anxious to bring my experiences to your attention and to ask for changes in the Livestock siting rules in 2019. Please consider my story and change the existing rules.

I am in support of the setback requirements proposed to be revised. I agree with the position of the WI Towns Association. In my experience, any distance from property lines or dwellings will help provide some protection from odors present at this type of facility. I respect the fact that in some situations this creates a hardship for those wishing to expand their facilities but "good fences make good neighbors" as the old adage goes. Any distance from a large livestock facility will be beneficial to all. Odor knows no boundaries and this fact was clearly demonstrated by many testifying at the hearing I attended in Madison. Setbacks will help establish a buffer for some sites but the odor factor is not a consideration

in setbacks. Nothing can stop odors from following the wind and delivering smells to many located far from the setbacks.

I am in support of a change in the fee structure now in place. A fee of one thousand dollars does not cover the many hours of County staff time to review, analyze and confirm the details of a large livestock siting of this type. Fees do not reflect the actual costs to the taxpayer. I have been impressed by the Jefferson County staff, the dedication to detail and the time spent in education provided to me and others residents. The actual costs of this staff time should be paid by the producer and not by county residents. The permit fee as it stands is a very small price to pay by this producer to develop this multi-million dollar facility. I would like to see this fee changed to better reflect the effort required to approve this expanded development by the County staff. As a local elected official, I am not an expert and must rely on well thought out rules and education to make go local choices. These rules need a thorough review with local municipalities in mind. I strongly advocate for the suggestions made by multiple review committees and the WI Towns Association.

I am strongly advocating for a 6<sup>th</sup> worksheet to be included in the permit application. The 6<sup>th</sup> worksheet should examine the transportation needs associated with the new or expanded facility and should study the impact the facility will have on local roadways and infrastructure, now and in the future. This worksheet is essential to help discuss all aspects of the expansions proposed.

Funding for local roads is at best a juggling act for underfunded townships like the Town of Lake Mills. We are placed in a very uncomfortable spot; we are approving a mandated facility expansion under Livestock Siting regulations. The town is asked to upgrade a public roadway to support the facility and to give permission under WI Sate Statute 666.425 to grant the privilege of crossing our road right of way. We are on this date, still in negotiations with Daybreak Foods to allow the privilege of placement of the feed mill conveyor system. The system is partially installed and awaiting our approval for both underground and overhead placement. A 6<sup>th</sup> worksheet would have eliminated the controversy surrounding this overhead installation by making it truly a part of the planning and development of the permit. Assigning expectations more fairly and equitably during the permit process would allow the local control of our roadways we are seeking. Local taxpayers should not be burdened with roadway expenses to provide serve to one corporation.

Wisconsin cannot afford to place these industrial farms before the property rights of others. A revision of rules is in order now and I would advocate for future rule changes every decade. We learn from our past experiences and by careful study and evaluation of current processes. It is high time we listened to the people and the scientists, conservationists, zoning advisors and others who have been administering these rules. It is time to make these important rule changes. Our elected officials should not stand in the way of science or play partisan politics with the future of our communities.

Hope Oostdik

Town Chair/ TLM

W8357 Cedar Lane Lake Mills, WI 53551

## Heaton-Amrhein, Jennifer A - DATCP

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**From:** Scott Frank <Scott.Frank@co.shawano.wi.us>  
**Sent:** Thursday, September 12, 2019 1:31 PM  
**To:** DATCP Livestock Siting Comments  
**Cc:** Clayton, Christopher R - DATCP  
**Subject:** Comments on ATCP 51 Proposed Rule  
**Attachments:** Shawano County Recommendations on proposed ATCP 51 revision\_2019.pdf

**Categories:** Green Category

Hello:  
Please see our attached comments.  
Thank you,

**Scott Frank**

Conservationist  
Shawano County Land Conservation Department  
311 N. Main Street  
Shawano, WI 54166-2145  
(715) 526-4632  
[Scott.Frank@co.shawano.wi.us](mailto:Scott.Frank@co.shawano.wi.us)

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SHAWANO



COUNTY

**LAND CONSERVATION DEPARTMENT**

311 N MAIN STREET - COURTHOUSE  
SHAWANO, WI 54166-2145  
Phone (715) 526-6766 Fax (715) 526-6273  
[www.co.shawano.wi.us](http://www.co.shawano.wi.us)

September 12, 2019

DATCP-ARM  
ATTN: CHRIS CLAYTON  
P.O. BOX 8911  
MADISON, WI 53708

RE: ATCP 51: Livestock Facility Siting Administrative Rule Revision

Dear DATCP Staff:

On behalf of the Shawano County Land Conservation Committee and Department we appreciate the opportunity to provide comments on ATCP 51: Livestock Facility Siting Administrative Rule Revision. Shawano County was an early adopter of Livestock Facility Siting, incorporating it into our Livestock Waste Management Ordinance in October 2006 and recently adopting a separate Livestock Facilities Licensing Ordinance in March 2018.

Our first-hand experience of implementing requirements of Livestock Facility Siting is the basis for our recommendation that the current rule is in need of updating. We support the following areas of the proposed rule:

- 1) Updating to current technical standards for Nutrient Management, Waste Storage Facilities and Runoff Management which helps with consistency across other programs and regulations.
- 2) Eliminating some of the odor-scoring practices in the existing rule that didn't make sense or weren't supported by science.
- 3) Requiring more effective evaluations of existing waste storage facilities to ensure no structural failure or significant leakage or when closure is needed.
- 4) Electronic submittal of new or revised ordinances or permits and licenses.
- 5) Changes that create clarity and consistency in application and modification materials.
- 6) Changes in managing runoff related to animal lots, feed storage and milking center waste water.
- 7) Changes to better reflect to method for estimating the amount of manure generated that corresponds with nutrient management planning and incorporation of compliance with the NR 151 cropland performance standards (soil erosion, tillage setback and phosphorus index).
- 8) Establishing a framework to process permit/license modifications and a fee of \$500 or less.
- 9) Clarification of options a local government has to monitor compliance.

We recommend the following revisions to proposed rule:

- 1) Remove this portion of Section 1: The proposed livestock facility violates a local building, electrical or plumbing code that is consistent with the state building, electrical or plumbing code for that type of facility.

This has been a very confusing as to why it was ever included in the first place. It does not relate to any part of a Livestock Siting Application yet a local government has the ability to disapprove if it applies. Counties issue most of the Livestock Facility permits/licenses but are not the ones that oversee building and electrical codes.

- 2) Section 16. ATCP 51.01 (33) Property Line. This definition needs clarification on what is meant by different persons.

With farm ownership being what it is today from individuals, LLC's, Inc's, Trust's, etc. it has become difficult to interpret what should constitute different persons.

- 3) Section 45. ATCP 51.30 (4) Local Fees. "At a minimum the fee, not to exceed \$1,000" should be amended to \$2,000.

The current fee cap of \$1,000 covers less than 20% of staff costs to process an application from start to finish. There is also staff time for compliance monitoring as another reason for increasing the fee.

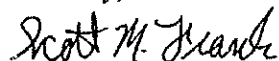
- 4) Section 46. ATCP 51.30 (4m) Pre-Approval Site Preparation. In the Summary Background under Terms of Approval it states "After a local government receives an application, the local government shall notify the applicant that prior to a final decision on the application construction activities at the livestock facility shall be limited to grading." In Section 46 it states "..... the political subdivision may notify the applicant that prior to ....."

If this is to remain, we recommend keeping it as "may" since all local governments do not have the same department oversee Livestock Facility and Zoning regulations.

After attending the DATCP Board meeting on July 10, 2019 and the ATCP 51 Public Hearing on August 20, 2019 we realize there is about an equal split of those for or against this proposed rule revision. The DATCP Board has indicated they will not support moving this rule revision forward if there is continued strong opposition. With that, we recommend DATCP staff make amendments to this rule revision that at a minimum has the best likelihood of getting approved including to provide consistent technical standards and improve the process for local implementation.

If you have any questions regarding our comments, please contact us.

Sincerely,



Scott M. Frank  
Conservationist  
715-526-4632  
[scott.frank@co.shawano.wi.us](mailto:scott.frank@co.shawano.wi.us)

John Ainsworth  
Land Conservation Committee – Chair



## Heaton-Amrhein, Jennifer A - DATCP

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**From:** Paul Daigle <Paul.Daigle@co.marathon.wi.us>  
**Sent:** Friday, September 13, 2019 3:27 PM  
**To:** Heaton-Amrhein, Jennifer A - DATCP; Smith, Katy A - DATCP  
**Subject:** FW: ATCP 51 Comments  
**Attachments:** ATCP51\_Comments\_\_091319.docx

**Categories:** Green Category

Please accept these comments. I received an auto reply from Mr. Clayton and wanted to provide comment to you two.

Thanks

Paul Daigle  
Land and Water Program Director  
Marathon County Conservation, Planning and Zoning Department  
Phone 715-261-6006  
cell 715-573-1435

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**From:** Paul Daigle  
**Sent:** Friday, September 13, 2019 1:44 PM  
**To:** 'Clayton, Christopher R - DATCP'  
**Cc:** Kurt Gibbs; Jacob Langenhahn; Craig McEwen; Ken Pozorski (Ken.Pozorski@co.marathon.wi.us); Rebecca Frisch; Cindy Kraeger  
**Subject:** ATCP 51 Comments

Mr. Clayton,

On behalf of Marathon County, please accept the attached comments in regards to ATCP 51.

Paul Daigle  
Land and Water Program Director  
Marathon County Conservation, Planning and Zoning Department  
210 River Drive  
Wausau WI 54403

Phone 715-261-6006  
Fax 715-261-6016  
cell 715-573-1435  
email [paul.daigle@co.marathon.wi.us](mailto:paul.daigle@co.marathon.wi.us)



<http://www.co.marathon.wi.us/Departments/ConservationPlanningZoning.aspx>

Conservation, Planning and Zoning Department: Protecting our community's land and environment...to ensure Marathon County has healthy people, a healthy economy, and healthy environment today and tomorrow.



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September 13, 2019

DATCP-ARM  
PO Box 8911  
Madison, WI 53708

Attn: Christopher Clayton

This letter is in regards to ATCP 51 rule revisions which propose changes to Livestock Facility Siting law in the State of Wisconsin. Marathon County recognizes the need for discussing the current application process and standards and is offering suggestions to help shape the revisions to the current administrative code. There are several issues Marathon County wants to comment on the rule in order to improve the siting process.

The primary issues are as follows:

***Needs to Recognize Current Standards, Technologies, and Improvements to Worksheet 4***

Marathon County supports updating the rule to incorporate new technical standards developed since 2006, such as NRCS 313 Waste Storage Facility, NRCS 590 Nutrient Management, as well as NR 151 Runoff Management. It is important to recognize the many new technologies that are featured within the manure treatment infrastructure, including reverse osmosis processes. The evaluation of existing manure storage facilities, especially those installed without any documentation, needs additional verification to protect the surface and groundwater from leaking or failing manure storage structures.

***Balancing Rural V.S. Urban Issues and Setbacks***

Marathon County is concerned about the proposed setbacks requirements. Consideration should be given to a process which allows the urban versus rural land use conflicts to be addressed at the local level with an opportunity for discussion, compromise, and resolution, including the ability to sign agreements, rather than implement setbacks, which are similar to zoning. The proposed setbacks could place additional hardships on the agricultural industry when expansion is necessary.

***Improving Process of Documenting Expansions***

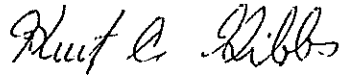
Marathon County would like an improved process of documenting existing farm's animal numbers in aiding in determining the 20% expansion rule. A process that includes and enhances the counties abilities to benchmark animal numbers from the May 1, 2006 ATCP 51 Rule enactment to present day status. This will insure that farm operations are licensed in a timely fashion, when required to do so, and provide regulatory certainty and fairness to all farm operators.

## Implementing Process for Modifications to Issued Licensed Holders

The current rule lacks guidance on how to treat modifications to licenses and does not provide a clear mechanism for accounting for changes through a license modification. The State should standardize a process for modifications when they are necessary, without requiring a full relicensing of the operation.

Based upon the above listed comments, Marathon County recognizes the need for some of the proposed rule changes. We ask that this correspondence be added to the official record of the Department of Agriculture, Trade, and Consumer Protection ATCP 51 Livestock Facility Siting Rule proposal.

Sincerely,



Kurt Gibbs  
County Board Chair

cc: Marathon County legislators  
Wisconsin Counties Association  
Wisconsin Towns Association  
Wisconsin Land and Water Conservation Association  
Marathon County Environmental Resources Committee

## Heaton-Amrhein, Jennifer A - DATCP

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**From:** Linda White <linda@krdairy.com>  
**Sent:** Friday, September 13, 2019 4:07 PM  
**To:** DATCP Livestock Siting Comments  
**Subject:** Comments from a Board of Adjustment Chair

**Categories:** Green Category

Good afternoon,

I am the chair of the Board of Adjustment for Sauk county. Over the past 13 years we have had several applicants come before us requesting variances from setbacks. These are area variances. The state requirements for area variances are that:

1. It does not harm the public interest.
2. The parcel is unique in a way that restricts the proposed facility.
3. The applicant has a hardship that is not of his own making.

These three requirements will make adjusting a setback for a facility extremely difficult to defend. Any existing facility that does not currently meet the listed setbacks is considered non-comforming. If that facility would chose to expand, any new construction attached to it could also be considered non-comforming. Non-comforming means illegal according to ordinances governing it. For example, a 500 cow dairy that wants to go to 1000 and use the existing facilities would have difficulty getting a variance under the above requirements. If they are required to meet the new setbacks it could be impractical or impossible to make their existing facility or manure pit part of a new system.

As farms are split to keep parcels affordable, I believe setbacks will become more of an issue. Will these new setback rules be required for farmers splitting buildings from land? Will the county need to deny a split that does not meet the new setbacks for existing facilities? Would sellers need variances for property splits? PUD housing laws (Planned unit development) allow farmers in exclusive ag to create housing lots by setting aside 35 acres as unbuildable. Can new lots be within the setbacks?

In Sauk county we want to give farmers the best chance we can for success especially those passing farms to future generations. Utilizing existing assets is very important to that effort. Setback rules will make this a complicated subject. Please consider the unintended consequences of you changes.

Linda White  
Chair  
Board of Adjustment, Sauk County  
S3175 White Road  
Reedsburg, WI 53959  
608-393-3985

## Heaton-Amrhein, Jennifer A - DATCP

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**From:** Rheineck, Bruce D - DNR  
**Sent:** Friday, September 13, 2019 6:27 PM  
**To:** DATCP Livestock Siting Comments  
**Cc:** Elmore, Steve B - DNR; Zellmer, James A - DNR  
**Subject:** DRAFT Chapter ATCP 51 Comments on Rule Revisions

**Categories:** Green Category

Dear Mr. Clayton:

Thank you for the opportunity to comment on rule revisions to chapter ATCP 51, Wis. Adm Code, Livestock Facility Siting. These comments are from the Groundwater Section of the Bureau of Drinking Water and Groundwater. DATCP is revising a regulation which establishes specific design and management criteria for regulated facilities and activities that can impact groundwater quality. Chapter ATCP 51, Wis. Adm. Code sets standards for Nutrient Management (ATPC 51.16), Waste Storage Facilities (ATCP 51.18), and Runoff Management (ATCP 51.20). Under subch 160.001 (4), Stats.:

“ [...] A regulatory agency may adopt regulations which establish specific design and management criteria for regulated facilities and activities, if the regulation will ensure that the regulated facilities and activities will not cause the concentration of a substance in groundwater affected by the facilities or activities to exceed the enforcement standards and preventive action limits under this chapter at a point of standards application.”

Under ch 160.001, state-wide numerical standards in ch NR 140, Wis Adm Code, are promulgated for the purpose of protecting public health and welfare. Chapter NR 140, Wis. Adm Code, established under ch. 160, Stats., applies to all facilities, practices, and activities regulated under ch. 93, Stats. and I recommend it be specifically referred to in ch ATCP 51 as per language provided below.

### References to Chapter NR 140, Wis. Adm Code

Comments are listed by pages and lines in the proposed hearing draft dated July 10, 2019.

Page 37, line 3: I suggest the following language: “Manure spreading restrictions in s. NR 151.075, NR 151.07 and other performance standards are based on reasonable and scientifically defensible findings of fact that clearly show that such requirements are necessary to protect public health and safety and prevent exceedance of groundwater standards in ch NR 140, Wis. Adm. Code.”

I suggest adding NR 151.07 and the reference to ch. NR 140 because both NR 151.07 and NR 151.075 refer to groundwater standards:

NR 151.07 (3): “Manure, commercial fertilizer and other nutrients shall be applied in conformance with a nutrient management plan. (a) The nutrient management plan shall be designed to limit or reduce the discharge of nutrients to waters of the state for the purpose of complying with state water quality standards and groundwater standards.”

And

NR 151.075 (c): “The plan must be designed and implemented consistent with this section to manage manure so as to reduce the risk of pathogen delivery to groundwater and prevent exceedances of groundwater water quality standards.”

Page 37, line 20: I suggest the following language: "All waste storage facilities for a livestock facility shall be designed, constructed and maintained to minimize the risk of structural failure, and to minimize the potential for waste discharge to surface water and to prevent an exceedance of groundwater quality standards in ch NR 140 Wis. Adm. Code."

Page 44, line 16: I suggest the following language: "(c) Animal lots shall have no direct runoff to surface waters of the state or to a direct conduit to groundwater and will be constructed to prevent exceedances of groundwater quality standards in ch NR 140, Wis. Adm. Code."

#### Additional Comments

Page 19, line 1: I suggest the following language: 19m "Livestock housing." Means a livestock structure with a roof and walls used to confine livestock. For the purposes of ss ATPC 51.12 and 51.14, livestock housing is classified as Category 1 or 2 based on estimated odor generation. Category 1 housing encompasses pork gestation/farrow/nursery with slatted floor, and pork finishing with slatted floor. Category 2 encompasses dairy housing with alley flush system; beef housing with slatted floor; pork finishing scrape systems to storage; pork pull plug to storage; and poultry (layers) and ducks." I recommend that calf hutches be included in the definition and that a standard for calf hutches be developed. I further suggest that a separate section for calf hutches and other livestock housing be created to specify the design, construction and maintenance of these structures. For example, most calf hutches are placed directly on the ground and there is a potential for groundwater contamination and runoff to surface water depending on site conditions. Calf hutches and other livestock housing should be constructed to prevent exceedances of groundwater quality standards in ch NR 140, Wis. Adm. Code.

Page 21, line 16: "Site that is susceptible to groundwater contamination" has the meaning given in s. NR 151.015 (18)." NR 151.015 (18) and the current ATPC 51.01 (39) differ slightly. NR 151 .015 (18) (d) reads: "A channel with a cross sectional area equal to or greater than 3 square feet that flows into a direct conduit to groundwater" while ATPC 51.01 (39) reads: "A channel with a cross sectional area equal to or greater than 3 square feet that flows into a karst feature." The definition for "Karst Feature (ATPC 51.01 (17) is not being repealed and there is no definition in either NR 151 or ATPC 51 for "direct conduit to groundwater." I suggest keeping the current language for both ATPC 51.01 (17) "Karst feature" and ATPC 51.01(39) "Site that is susceptible to groundwater contamination." If a definition for "direct conduit to groundwater" is created, it should include, but not be limited to, all the language from ATPC 51.01 (17): "Karst feature means an area of superficial geologic feature subject to bedrock dissolution so that it is likely to provide a direct conduit to groundwater. "Karst feature" may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets."

Page 35, line 11: I suggest the following language: "Note: The application of process wastewater and other industrial wastes is regulated under ch. NR 214. When land applied to fields, nutrients from these sources must be accounted for in a nutrient management plan developed in accordance with this section."

Page 40, line 11: I suggest the following language: "Note: A full investigation includes emptying facilities of their contents to allow for a complete inspection and evaluation. The full investigation of an emptied storage structure should determine the elevation of the floor of the structure, to the North American Vertical Datum, 1988, to verify that it corresponds with as-built plans, if any, and has adequate separation distance to groundwater. It also includes test pits, borings, and/or groundwater water table monitoring wells when there is no reliable documentation regarding a facilities separation distances to groundwater or bedrock."

Page 46, line 10: I suggest the following language: "2. Leachate and contaminated runoff from storage structures shall be collected and stored for future land application or treated in accordance with NRCS vegetated treatment area technical standard 635 (September 2016 R). Vegetated treatment areas should be designed and constructed to prevent exceedance of groundwater quality standards in ch NR 140, Wis. Adm. Code."

Page 48, line18: I suggest the following language: "(8) UNCONFINED MANURE PILES A livestock facility may not have any unconfined manure piles within 1,000 feet of a navigable lake or wetland, within 300 feet of a navigable stream or

designed drainage feature. Unconfined manure stacks may not cause contamination of wells and should be located to prevent exceedance of groundwater quality standards in ch NR 140, Wis. Adm. Code.”

Sincerely,

Bruce Rheineck

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**Bruce D. Rheineck**

Groundwater Section Chief – Bureau of Drinking Water and Groundwater

Wisconsin Department of Natural Resources

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