

Heaton-Amrhein, Jennifer A - DATCP

From: horsehappy@lakeland.ws
Sent: Monday, September 2, 2019 8:03 PM
To: Clayton, Christopher R - DATCP
Subject: attn: Christopher Clayton

Categories: Green Category

Sep. 2, 2019

Christopher Clayton, DATCP

P.O. Box 8911

Madison, WI 53708-8911

608-224-4630

christopher.clayton@wisconsin.gov

Greetings Mr. Clayton,

We understand that now is the time to submit our comments and concerns to address changes to the administrative rule, formerly referred to as ATCP 51. We appreciate that you are allowing public input to make sure the rules are balanced. It is our opinion that livestock operations approaching the size of 1000 animal units or more is outside the scope of the "family agricultural farm" and into a scope of Industrialized agriculture and thus requires more environmentally protective and preventative regulations. It should not be acceptable to put even one waterway, or groundwater aquifer at risk of potential contamination due to any industrial entity. It should also not be acceptable to put neighboring residents, or communities at risk of contaminated air, or expose them to harmful biological disease or health risks. We understand that agriculture is a necessity but, without protecting our environment and groundwater we will lose it all – our agriculture, our environment and our clean water. That risk is too great and regulations must be stringent on industrialized agricultural operations.

Here is our public input for helping to balance the rules:

- An industrial sized agricultural operation must not be self-regulated.
- We understand that there are currently many industrialized agriculture operations running with expired DNR runoff management CAFO permits. We recommend that you urge the Wisconsin Governor to issue a moratorium on all applications for siting of new or expanding industrial sized agriculture operations.
- Extend the requirement of a political subdivision to respond to a livestock siting application within 6 months (not 45 days), and a potential extension of 6 months in the event of extenuating circumstances such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met, or permittee is running under an expired permit.
- Any industrial sized agriculture operation seeking to expand in animal units. An applicant or permittee must have all documents in good standing for the previous 5 years with no expired permits or incidences during that time period.
- There is currently no cap on the size of animal units an industrial size agriculture operation can expand to which is dangerous to the health of animals and residents. Siting an industrial sized agriculture operation needs to be as custom as the environment it is be placed in. Applications should be submitted to local / county government, not to the state. This includes the WPDES permit and any other permits that may be required. Monitoring needs to be done locally and/or 3rd party monitoring, not by permittee.
- Siting is as unique as the environment that the industrial size agriculture operation is put in. Therefore, an applicant should be required to provide or pay for an independent environmental impact study for each proposed facility, as directed by the permitting authority.
- The current system of renewing permits every 5 years with inadequate oversight of the industrial agriculture operations needs to be updated to an annual permit renewal with higher fees for renewal to offset the cost of more 3rd party oversight personnel.
- Under a new nutrient management plan, all properties in the NMP and facility site should be required to have monitoring wells at a minimum depth to groundwater to provide for early warning of groundwater contamination monitored by local government or independent 3rd party.
- Allowing a limited liability corporation to establish an industrial agriculture operation is unacceptable due to potential of disastrous environmental impact. Any entity that is seeking a permit to establish an industrial agriculture operation, should be required to put forward a trust or bond, or have other means to rectify the worst-case scenario of an environmental impact incident.

- The “Right to Farm” act needs to be modified, or repealed in such a way that differentiates an established or “Grandfathered” industrial agriculture operation from a newly formed industrial agriculture operation or one that is expanding. For example, the “Right to Farm” laws should not apply to an entity seeking to site a new industrial agriculture operation or expand an existing one in or near any rural town or community.
- Any operation requiring any type of high capacity well should be required to install a water treatment facility to reclaim usable water for the purpose of groundwater conservation and minimize the discharge of contaminated water.
- The nutrient management plan of liquid manure should be injected with a coulter type system that provides light incorporation into the soil. Any spray of liquid manure such as the center pivot, or irrigation style of spreading should be prohibited.
- All open lagoon type manure storage should be prohibited. All existing open lagoon style storage should be upgraded to a closed or covered system.
- Nutrient management planning has historically focused more heavily on surface water quality and phosphorus and much less on groundwater quality and nitrates. Many of the nitrates application rates that are used are designed to produce the best economic yield and are not necessarily designed to be protective of groundwater. Recent studies have indicated that nutrient management plans are questionably effective at reducing nitrate levels to below the maximum contaminate level of 10 parts per million (Wisconsin groundwater coordinating council 2018). Therefore, the nutrient management plan needs to have greater acreage per animal unit.
- Nutrient waste storage capacity should be at least 18 months to mitigate issues with trying to spread manure on overly saturated fields in the spring time, or early freezing in the fall. Although the need for waste storage capacity could be greatly reduced with the incorporation of a waste water treatment facility.
- Any newly designed liquid waste storage tank should be of a double hull design to allow for early detection of any leakage into the secondary hull, which could then alert of impending spill. The requirement should be that the alarm is issued to the operator as well as a 3rd party, authority.
- Order scoring should include animal composting and distribution of byproducts and non-odor causing poisonous or harmful fumes.
- There needs to be greater setbacks from property line for the facility and composting structures, and greater setback in the nutrient management program from neighboring property lines, wetlands, and any type of surface water.
- Greater setbacks from neighboring property lines for animal compost distribution.
- More stringent order score requirements and no credits for order score practices.

In addition to the above public input below is the recommendations from the Wisconsin Farmers Union that we are also in agreement with.

Sincerely,

John & Patricia Mattson
1953 270th Ave
Luck, WI 54853

Memo: Proposed revisions to ATCP 51, Livestock Siting Standards

From: Kara O'Connor, Wisconsin Farmers Union

Date: August 6, 2019 (revised from August 2, 2019)

Background

ATCP 51 is the rule promulgated by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) to implement the Livestock Siting Law (Wisconsin Statutes section 93.90). The law requires that DATCP review ATCP 51 every 4 years. Despite DATCP convening two panels of technical experts in 2010 and 2014 to review the technical standards and make significant recommendations, DATCP has never revised the standards since ATCP 51 came into effect over a decade ago in 2006. Large livestock operations have grown significantly in number, size, and complexity since these rules first came into effect.

In 2018, DATCP convened a third Technical Review Committee to recommend changes to ATCP 51. On July 10, 2019, the DATCP Board did vote to send a new draft of ATCP 51 out for public comment. This is the opportunity of a decade for concerned stakeholders to weigh in on the proposed changes to the state rules that regulate large livestock facilities.

Concepts that are positive in DATCP's proposed revisions to ATCP 51:

- replacing the flawed odor score calculation with greater setbacks.
- setbacks are calculated from neighbors' property lines, not neighbors' residences or buildings. It is critical that this element of the draft rules be maintained. Neighbors must be able to protect their current and future property rights on the entirety of their property, not just their use of existing buildings.
- applying feed storage leachate control standards to all feed, not just high-moisture feed.
- requiring more frequent visual inspections of manure storage facilities to ensure their integrity.
- creating a process for neighbors of a large livestock facility to initiate an odor complaint.
- delineating a process to clarify when an application is “complete.”

– 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.

Things that should be changed in the current draft revision to ATCP 51:

Financial/Procedural:

– The draft maintains the current cap of \$1,000 on the permit fee that a political subdivision can charge. This amount is grossly inadequate. For example, Green County has spent over \$40,000 reviewing a single permit application. Very large operations with complex engineering are becoming the new norm. To account for this size and complexity, the maximum allowable permit fee should be increased to either:

– \$1 per animal unit, or

– 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.

(Note: This would be the maximum permit fee allowed under the rule. Political subdivisions are always free to charge less than the maximum.)

– Currently political subdivisions are prohibited from requiring the large livestock facility to post a bond or other financial security. This prohibition should be removed, in order to protect taxpayers from a costly cleanup if a manure storage pit overtops or the operation goes out of business without a new buyer in place. As operations become extremely large, and as dairy and livestock markets become more volatile, the chances increase that we will see abandoned facilities for which no suitable buyer can be found.

– The proposed rule creates an abbreviated process for modifying an existing permit, rather than completing the full permitting process. The draft rule provides that the modification process could be used for expansions of up to 20% of existing animal units, provided that the modification does not require the operator to complete four or more of the required permit worksheets. A threshold question is whether an abbreviated modification process is desirable, or whether facilities should undergo the standard application procedure if they wish to modify or expand operations. Assuming a modification procedure is desirable, a number of commentators have noted that:

– 20% is a significant increase in the number of animal units. If a modification procedure is instituted, a 10% expansion would be a more appropriate cutoff.

– Even then, 10% of 3,000 is a lot more than 10% of 500. If a modification procedure is instituted, its use should be limited to expansions of either 10%, or 200 animal units, whichever is less.

– Alternatively, the modification procedure could be limited to modifications of structures and facilities, but expansions of animal units would have to go through the normal permitting process.

– Regarding completeness determinations: The proposed rule requires a political subdivision to respond within 45 days to a livestock siting application, and provide either a notice that the application is complete, or a checklist of what would be required to make the application complete. Input from political subdivisions should be solicited to determine whether 45 is generally sufficient. In addition, the rule should allow for an extension of the 45-day period in the event of extenuating circumstances, such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met.

Setbacks:

– Although the proposed draft rule constitutes a shift toward greater reliance on setbacks to manage nuisance issues, the draft rules still allow an operation to obtain more lenient setbacks by adopting certain odor control practices. Odor control practices are difficult to monitor, enforce, and scientifically defend based on the scant and sometimes conflicting research available. Rather than this hybrid approach that blends setbacks with odor control practices, DATCP should simply require greater setbacks for new permits, and dispense with credits for odor practices.

– In addition, the setbacks need to be more rigorous. The proposed rules require only 300 feet of setback from a property line and 200 feet of setback from a public right-of-way for animal housing on an operation over 2,500 animal units, including operations of 20,000 or 30,000 animal units or more. The draft rule would then allow the setback to be even smaller if the operation adopts certain odor control practices. With allowable setback reductions under the proposed rule, a manure storage structure on a farm of 4,000 or more animal units (with an estimated surface area of 240,000 square feet) could be less than one quarter of a mile from a neighboring property line.

These setbacks are inadequate to protect public health and safety, and neighbors' peaceful enjoyment of their own private property. In 2017 the Department of Revenue reduced residents' property taxes in two counties – Green and Kewaunee – in response to CAFOs built on adjacent properties. This case is part of a growing national trend of property taxes being reassessed downward due to nearby CAFOs. Counties cannot afford a significant redistribution of their property tax burden due to the impact of large livestock operations. Setbacks are a key tool in maintaining the property values for neighboring properties.

– The proposed rule prohibits local governments from having setbacks that exceed the standards set forth in ATCP 51. This is a diminution of a fundamental local police power. ATCP 51 should create a default setback framework, but the rule should allow local governments to require increased setbacks if local conditions so dictate.

– the proposed revisions would allow an existing operation to expand an existing structure in a manner that violates the

setbacks, provided that such an expansion increases the area of the structure or manure storage by no more than 20%. This should not be allowed. It is appropriate to “grandfather in” existing livestock housing and manure storage. However, an operation should only be allowed to expand an existing structure if the expansion would be in compliance with the new setbacks, the same as a new operation or structure would be required to meet.

- The proposed rule provides for more lenient setbacks for operations that “cluster” animals in multiple housing structures with multiple manure storages, rather than putting the same number of animals in a single barn and/or using a single manure storage facility. These “clustering” provisions in the draft rule are indefensible and should be removed. Having multiple barns and manure storage facilities spread out along a property line could actually create more odor problems for neighbors, rather than fewer, and yet farms using this “clustering” strategy would enjoy more lenient setbacks under the draft rule.

- One positive change is that the proposed rules would allow a political subdivision to require an odor management plan from a permitted facility if the subdivision receives a verified odor complaint from the owner of an adjacent property. This provision should be:

- clarified to explicitly state that a political subdivision may issue a fine or revoke a permit due to an operation’s failure to comply with an odor management plan;
- expanded to allow other affected individuals in the area, such as renters, employees of nearby businesses, other property owners within 2 miles of the permitted site, and users of nearby public or natural amenities, to register an odor complaint.

- The proposed rules allow an operator to make the case for a novel odor control strategy not included Appendix A, Worksheet 2. Assuming that the final rule continues to give setback reductions for odor control practices, political subdivisions should have the opportunity to present contrary evidence about the effectiveness of the proposed odor control strategy. An operator seeking to use a novel odor control strategy not described on Worksheet 2 should also be required to give notice to neighbors within a 2-mile radius, whose property values will be most affected, and these individuals should also have the opportunity to present evidence about the effectiveness of the proposed odor control strategy.

- Political subdivisions may also want to consider whether it is important for the rule to establish setbacks from feed storage structures, in addition to animal housing and manure storage. This would be important if feed storage structures have generated odor complaints.

Engineering Technical Standards:

- As noted above, the draft rule takes a step forward by requiring periodic visual inspections of manure storage facilities that are over 10 years old while empty to ensure their integrity. Unfortunately, actual experience in Wisconsin has taught us that manure storage facilities can start leaking within weeks or months of their construction. Thus, the requirement for an engineer to do a visual inspection of manure storage while empty in order to demonstrate compliance should be extended to all manure storage structures, not just those that are older than 10 years, in order to ensure that they are not cracked or leaking.

Nutrient Management Technical Standards:

- The nutrient management portion of the rules should require the operator to specifically list owned and rented acres where he or she plans to spread manure on Waste and Nutrient Management Worksheet 3.

- In addition, if the operator is relying on rented acres, he or she should be required to provide copies of written and signed rental agreements that cover the duration of the permit term. Recent experience has shown that without supporting documentation, operators’ assertions that they have access to the necessary acres for manure spreading have not always been reliable.

For more information, contact:

Kara O’Connor, Government Relations Director

Wisconsin Farmers Union

kcoconnor@wisconsinfarmersunion.com / 608-514-4541

Heaton-Amrhein, Jennifer A - DATCP

From: LaRae Painter <laraepainter@live.com>
Sent: Monday, September 2, 2019 6:17 PM
To: Clayton, Christopher R - DATCP
Subject: CAFO Siting

Categories: Green Category

Christopher Clayton, DATCP
P.O. Box 8911
Madison, WI 53708-8911
608-224-4630
christopher.clayton@wisconsin.gov

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- Extend the requirement of a political subdivision to respond to a livestock siting application within 6 months (not 45 days), and a potential extension of 6 months in the event of extenuating circumstances such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met, or permittee is running under an expired permit.
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In addition to the above public input below is the recommendations from the Wisconsin Farmers Union that we are also in agreement with.

Sincerely,

LaRae Painter
21058 Bayview Drive
Grantsburg, WI 54840
715 488-2998

Memo: Proposed revisions to ATCP 51, Livestock Siting Standards
From: Kara O'Connor, Wisconsin Farmers Union
Date: August 6, 2019 (revised from August 2, 2019)

Background

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acres where he or she plans to spread manure on Waste and Nutrient Management Worksheet 3.

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For more information, contact:

Kara O'Connor, Government Relations Director

Wisconsin Farmers Union

koconnor@wisconsinfarmersunion.com / 608-514-4541

Heaton-Amrhein, Jennifer A - DATCP

From: Leah Smith <thefiveladies@gmail.com>
Sent: Monday, September 2, 2019 8:32 PM
To: Clayton, Christopher R - DATCP
Subject: Comments and concerns

Categories: Green Category

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Sincerely,
Leah Smith

Heaton-Amrhein, Jennifer A - DATCP

From: Sandra J <sjotblad@gmail.com>
Sent: Monday, September 2, 2019 8:36 PM
To: Clayton, Christopher R - DATCP
Subject: DATCP Input
Attachments: WI Farmers Union Letter.docx

Categories: Green Category

Sep. 1, 2019

Christopher Clayton, DATCP
P.O. Box 8911
Madison, WI 53708-8911
608-224-4630
christopher.clayton@wisconsin.gov

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In addition to the above public input below is the recommendations from the Wisconsin Farmers Union that we are also in agreement with.

Sincerely,

Sep 1, 2019

Memo: Proposed revisions to ATCP 51, Livestock Siting Standards

From: Kara O'Connor, Wisconsin Farmers Union

Date: August 6, 2019 (revised from August 2, 2019)

Background

ATCP 51 is the rule promulgated by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) to implement the Livestock Siting Law (Wisconsin Statutes section 93.90). The law requires that DATCP review ATCP 51 every 4 years. Despite DATCP convening two panels of technical experts in 2010 and 2014 to review the technical standards and make significant recommendations, DATCP has never revised the standards since ATCP 51 came into effect over a decade ago in 2006. Large livestock operations have grown significantly in number, size, and complexity since these rules first came into effect.

In 2018, DATCP convened a third Technical Review Committee to recommend changes to ATCP 51. On July 10, 2019, the DATCP Board did vote to send a new draft of ATCP 51 out for public comment. This is the opportunity of a decade for concerned stakeholders to weigh in on the proposed changes to the state rules that regulate large livestock facilities.

Concepts that are positive in DATCP's proposed revisions to ATCP 51:

- replacing the flawed odor score calculation with greater setbacks.
- setbacks are calculated from neighbors' property lines, not neighbors' residences or buildings. It is critical that this element of the draft rules be maintained. Neighbors must be able to protect their current and future property rights on the entirety of their property, not just their use of existing buildings.
- applying feed storage leachate control standards to all feed, not just high-moisture feed.
- requiring more frequent visual inspections of manure storage facilities to ensure their integrity.
- creating a process for neighbors of a large livestock facility to initiate an odor complaint.
- delineating a process to clarify when an application is "complete."
- 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.

Things that should be changed in the current draft revision to ATCP 51:

Financial/Procedural:

- The draft maintains the current cap of \$1,000 on the permit fee that a political subdivision can charge. This amount is grossly inadequate. For example, Green County has spent over \$40,000 reviewing a single permit application. Very large operations with complex engineering are becoming the new norm. To account for this size and complexity, the maximum allowable permit fee should be increased to either:
 - \$1 per animal unit, or
 - 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. (Note: This would be the maximum permit fee allowed under the rule. Political subdivisions are always free to charge less than the maximum.)

- Currently political subdivisions are prohibited from requiring the large livestock facility to post a bond or other financial security. This prohibition should be removed, in order to protect taxpayers from a costly cleanup if a manure storage pit overtops or the operation goes out of business without a new buyer in place. As operations become extremely large, and as dairy and livestock markets become more volatile, the chances increase that we will see abandoned facilities for which no suitable buyer can be found.
- The proposed rule creates an abbreviated process for modifying an existing permit, rather than completing the full permitting process. The draft rule provides that the modification process could be used for expansions of up to 20% of existing animal units, provided that the modification does not require the operator to complete four or more of the required permit worksheets. A threshold question is whether an abbreviated modification process is desirable, or whether facilities should undergo the standard application procedure if they wish to modify or expand operations. Assuming a modification procedure is desirable, a number of commentators have noted that:
 - 20% is a significant increase in the number of animal units. If a modification procedure is instituted, a 10% expansion would be a more appropriate cutoff.
 - Even then, 10% of 3,000 is a lot more than 10% of 500. If a modification procedure is instituted, its use should be limited to expansions of either 10%, or 200 animal units, whichever is less.
 - Alternatively, the modification procedure could be limited to modifications of structures and facilities, but expansions of animal units would have to go through the normal permitting process.
- Regarding completeness determinations: The proposed rule requires a political subdivision to respond within 45 days to a livestock siting application, and provide either a notice that the application is complete, or a checklist of what would be required to make the application complete. Input from political subdivisions should be solicited to determine whether 45 is generally sufficient. In addition, the rule should allow for an extension of the 45-day period in the event of extenuating circumstances, such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met.

Setbacks:

- Although the proposed draft rule constitutes a shift toward greater reliance on setbacks to manage nuisance issues, the draft rules still allow an operation to obtain more lenient setbacks by adopting certain odor control practices. Odor control practices are difficult to monitor, enforce, and scientifically defend based on the scant and sometimes conflicting research available. Rather than this hybrid approach that blends setbacks with odor control practices, DATCP should simply require greater setbacks for new permits, and dispense with credits for odor practices.
 - In addition, the setbacks need to be more rigorous. The proposed rules require only 300 feet of setback from a property line and 200 feet of setback from a public right-of-way for animal housing on an operation over 2,500 animal units, including operations of 20,000 or 30,000 animal units or more. The draft rule would then allow the setback to be even smaller if the operation adopts certain odor control practices. With allowable setback reductions under the proposed rule, a manure storage structure on a farm of 4,000 or more animal units (with an estimated surface area of 240,000 square feet) could be less than one quarter of a mile from a neighboring property line.
- These setbacks are inadequate to protect public health and safety, and neighbors' peaceful

enjoyment of their own private property. In 2017 the Department of Revenue reduced residents' property taxes in two counties – Green and Kewaunee – in response to CAFOs built on adjacent properties. This case is part of a growing national trend of property taxes being reassessed downward due to nearby CAFOs. Counties cannot afford a significant redistribution of their property tax burden due to the impact of large livestock operations. Setbacks are a key tool in maintaining the property values for neighboring properties.

- The proposed rule prohibits local governments from having setbacks that exceed the standards set forth in ATCP 51. This is a diminution of a fundamental local police power. ATCP 51 should create a default setback framework, but the rule should allow local governments to require increased setbacks if local conditions so dictate.

- the proposed revisions would allow an existing operation to expand an existing structure in a manner that violates the setbacks, provided that such an expansion increases the area of the structure or manure storage by no more than 20%. This should not be allowed. It is appropriate to “grandfather in” existing livestock housing and manure storage. However, an operation should only be allowed to expand an existing structure if the expansion would be in compliance with the new setbacks, the same as a new operation or structure would be required to meet.

- The proposed rule provides for more lenient setbacks for operations that “cluster” animals in multiple housing structures with multiple manure storages, rather than putting the same number of animals in a single barn and/or using a single manure storage facility. These “clustering” provisions in the draft rule are indefensible and should be removed. Having multiple barns and manure storage facilities spread out along a property line could actually create more odor problems for neighbors, rather than fewer, and yet farms using this “clustering” strategy would enjoy more lenient setbacks under the draft rule.

- One positive change is that the proposed rules would allow a political subdivision to require an odor management plan from a permitted facility if the subdivision receives a verified odor complaint from the owner of an adjacent property. This provision should be:

- clarified to explicitly state that a political subdivision may issue a fine or revoke a permit due to an operation's failure to comply with an odor management plan;

- expanded to allow other affected individuals in the area, such as renters, employees of nearby businesses, other property owners within 2 miles of the permitted site, and users of nearby public or natural amenities, to register an odor complaint.

- The proposed rules allow an operator to make the case for a novel odor control strategy not included Appendix A, Worksheet 2. Assuming that the final rule continues to give setback reductions for odor control practices, political subdivisions should have the opportunity to present contrary evidence about the effectiveness of the proposed odor control strategy. An operator seeking to use a novel odor control strategy not described on Worksheet 2 should also be required to give notice to neighbors within a 2-mile radius, whose property values will be most affected, and these individuals should also have the opportunity to present evidence about the effectiveness of the proposed odor control strategy.

- Political subdivisions may also want to consider whether it is important for the rule to establish setbacks from feed storage structures, in addition to animal housing and manure storage. This would be important if feed storage structures have generated odor complaints.

Engineering Technical Standards:

- As noted above, the draft rule takes a step forward by requiring periodic visual inspections of manure storage facilities that are over 10 years old while empty to ensure their integrity.

Unfortunately, actual experience in Wisconsin has taught us that manure storage facilities can start leaking within weeks or months of their construction. Thus, the requirement for an engineer to do a visual inspection of manure storage while empty in order to demonstrate compliance should be extended to all manure storage structures, not just those that are older than 10 years, in order to ensure that they are not cracked or leaking.

Nutrient Management Technical Standards:

- The nutrient management portion of the rules should require the operator to specifically list owned and rented acres where he or she plans to spread manure on Waste and Nutrient Management Worksheet 3.
- In addition, if the operator is relying on rented acres, he or she should be required to provide copies of written and signed rental agreements that cover the duration of the permit term. Recent experience has shown that without supporting documentation, operators' assertions that they have access to the necessary acres for manure spreading have not always been reliable.

For more information, contact:

Kara O'Connor, Government Relations Director

Wisconsin Farmers Union

koconnor@wisconsinfarmersunion.com / 608-514-4541

Heaton-Amrhein, Jennifer A - DATCP

From: jeb clarin <jebclarin@msn.com>
Sent: Tuesday, September 3, 2019 7:03 AM
To: Clayton, Christopher R - DATCP
Subject: CAFO's

Categories: Green Category

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Jeb and Judy Clarin
20810 Lakewood Dr
Grantsburg, WI 54840

651 442 1689

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– 20% is a significant increase in the number of animal units. If a modification procedure is instituted, a 10% expansion would be a more appropriate cutoff.

– Even then, 10% of 3,000 is a lot more than 10% of 500. If a modification procedure is instituted, its use should be limited to expansions of either 10%, or 200 animal units, whichever is less.

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– In addition, the setbacks need to be more rigorous. The proposed rules require only 300 feet of setback from a property line and 200 feet of setback from a public right-of-way for animal housing on an operation over 2,500 animal units, including operations of 20,000 or 30,000 animal units or more. The draft rule would then allow the setback to be even smaller if the operation adopts certain odor control practices. With allowable setback reductions under the proposed rule, a manure storage structure on a farm of 4,000 or more animal units (with an estimated surface area of 240,000 square feet) could be less than one quarter of a mile from a neighboring property line.

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Heaton-Amrhein, Jennifer A - DATCP

From: Patricia & Alan Pearson <ppearson728@gmail.com>
Sent: Tuesday, September 3, 2019 7:50 AM
To: DATCP Livestock Siting Comments
Subject: Livestock Facility Siting Rule

Categories: Green Category

Greetings Mr. Clayton,

Beside all the item listed below I am greatly concerned about the amount of antibiotics used in livestock operations, there needs to be rules that greatly reduce the use of antibiotics.

We understand that now is the time to submit our comments and concerns to address changes to the administrative rule, formerly referred to as ATCP 51. We appreciate that you are allowing public input to make sure the rules are balanced. It is our opinion that livestock operations approaching the size of 1000 animal units or more is outside the scope of the “family agricultural farm” and into a scope of Industrialized agriculture and thus requires more environmentally protective and preventative regulations. It should not be acceptable to put even one waterway, or groundwater aquifer at risk of potential contamination due to any industrial entity. It should also not be acceptable to put neighboring residents, or communities at risk of contaminated air, or expose them to harmful biological disease or health risks. We understand that agriculture is a necessity but, without protecting our environment and groundwater we will lose it all – our agriculture, our environment and our clean water. That risk is too great and regulations must be stringent on industrialized agricultural operations.

Here is our public input for helping to balance the rules:

- An industrial sized agricultural operation must not be self-regulated.
- We understand that there are currently many industrialized agriculture operations running with expired DNR runoff management CAFO permits. We recommend that you urge the Wisconsin Governor to issue a moratorium on all applications for siting of new or expanding industrial sized agriculture operations.
- Extend the requirement of a political subdivision to respond to a livestock siting application within 6 months (not 45 days), and a potential extension of 6 months in the event of extenuating circumstances such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met, or permittee is running under an expired permit.
- Any industrial sized agriculture operation seeking to expand in animal units. An applicant or permittee must have all documents in good standing for the previous 5 years with no expired permits or incidences during that time period.
- There is currently no cap on the size of animal units an industrial size agriculture operation can expand to which is dangerous to the health of animals and residents. Siting an industrial sized agriculture operation needs to be as custom as the environment it is be placed in. Applications should be submitted to local / county government, not to the state. This includes the WPDES permit and any other permits that may be required. Monitoring needs to be done locally and/or 3rd party monitoring, not by permittee.
- Siting is as unique as the environment that the industrial size agriculture operation is put in. Therefore, an applicant should be required to provide or pay for an independent environmental impact study for each proposed facility, as directed by the permitting authority.
- The current system of renewing permits every 5 years with inadequate oversight of the industrial agriculture operations needs to be updated to an annual permit renewal with higher fees for renewal to offset the cost of more 3rd party oversight personnel.
- Under a new nutrient management plan, all properties in the NMP and facility site should be required to have monitoring wells at a minimum depth to groundwater to provide for early warning of groundwater contamination monitored by local government or independent 3rd party.
- Allowing a limited liability corporation to establish an industrial agriculture operation is unacceptable due to potential of disastrous environmental impact. Any entity that is seeking a permit to establish an industrial agriculture operation, should be required to put forward a trust or bond, or have other means to rectify the worst-case scenario of an environmental impact incident.
- The “Right to Farm” act needs to be modified, or repealed in such a way that differentiates an established or “Grandfathered” industrial agriculture operation from a newly formed industrial agriculture operation or one that is expanding. For example, the “Right to Farm” laws should not apply to an entity seeking to site a new industrial agriculture operation or expand an existing one in or near any rural town or community.
- Any operation requiring any type of high capacity well should be required to install a water treatment facility to reclaim usable water for the purpose of groundwater conservation and minimize the discharge of contaminated water.

- The nutrient management plan of liquid manure should be injected with a coulter type system that provides light incorporation into the soil. Any spray of liquid manure such as the center pivot, or irrigation style of spreading should be prohibited.
- All open lagoon type manure storage should be prohibited. All existing open lagoon style storage should be upgraded to a closed or covered system.
- Nutrient management planning has historically focused more heavily on surface water quality and phosphorus and much less on groundwater quality and nitrates. Many of the nitrates application rates that are used are designed to produce the best economic yield and are not necessarily designed to be protective of groundwater. Recent studies have indicated that nutrient management plans are questionably effective at reducing nitrate levels to below the maximum contaminate level of 10 parts per million (Wisconsin groundwater coordinating council 2018). Therefore, the nutrient management plan needs to have greater acreage per animal unit.
- Nutrient waste storage capacity should be at least 18 months to mitigate issues with trying to spread manure on overly saturated fields in the spring time, or early freezing in the fall. Although the need for waste storage capacity could be greatly reduced with the incorporation of a waste water treatment facility.
- Any newly designed liquid waste storage tank should be of a double hull design to allow for early detection of any leakage into the secondary hull, which could then alert of impending spill. The requirement should be that the alarm is issued to the operator as well as a 3rd party, authority.
- Order scoring should include animal composting and distribution of byproducts and non-odor causing poisonous or harmful fumes.
- There needs to be greater setbacks from property line for the facility and composting structures, and greater setback in the nutrient management program from neighboring property lines, wetlands, and any type of surface water.
- Greater setbacks from neighboring property lines for animal compost distribution.
- More stringent order score requirements and no credits for order score practices.

In addition to the above public input below is the recommendations from the Wisconsin Farmers Union that we are also in agreement with.

Memo: Proposed revisions to ATCP 51, Livestock Siting Standards

From: Kara O'Connor, Wisconsin Farmers Union

Date: August 6, 2019 (revised from August 2, 2019)

Background

ATCP 51 is the rule promulgated by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) to implement the Livestock Siting Law (Wisconsin Statutes section 93.90). The law requires that DATCP review ATCP 51 every 4 years. Despite DATCP convening two panels of technical experts in 2010 and 2014 to review the technical standards and make significant recommendations, DATCP has never revised the standards since ATCP 51 came into effect over a decade ago in 2006. Large livestock operations have grown significantly in number, size, and complexity since these rules first came into effect.

In 2018, DATCP convened a third Technical Review Committee to recommend changes to ATCP 51. On July 10, 2019, the DATCP Board did vote to send a new draft of ATCP 51 out for public comment. This is the opportunity of a decade for concerned stakeholders to weigh in on the proposed changes to the state rules that regulate large livestock facilities.

Concepts that are positive in DATCP's proposed revisions to ATCP 51:

- replacing the flawed odor score calculation with greater setbacks.
- setbacks are calculated from neighbors' property lines, not neighbors' residences or buildings. It is critical that this element of the draft rules be maintained. Neighbors must be able to protect their current and future property rights on the entirety of their property, not just their use of existing buildings.
- applying feed storage leachate control standards to all feed, not just high-moisture feed.
- requiring more frequent visual inspections of manure storage facilities to ensure their integrity.
- creating a process for neighbors of a large livestock facility to initiate an odor complaint.
- delineating a process to clarify when an application is "complete."
- 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.

Things that should be changed in the current draft revision to ATCP 51:

Financial/Procedural:

- The draft maintains the current cap of \$1,000 on the permit fee that a political subdivision can charge. This amount is grossly inadequate. For example, Green County has spent over \$40,000 reviewing a single permit application. Very large operations with complex engineering are becoming the new norm. To account for this size and complexity, the maximum allowable permit fee should be increased to either:
 - \$1 per animal unit, or
 - 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.

(Note: This would be the maximum permit fee allowed under the rule. Political subdivisions are always free to charge less than the maximum.)

- Currently political subdivisions are prohibited from requiring the large livestock facility to post a bond or other financial security. This prohibition should be removed, in order to protect taxpayers from a costly cleanup if a manure storage pit overtops or the operation goes out of business without a new buyer in place. As operations become extremely large, and as dairy and livestock markets become more volatile, the chances increase that we will see abandoned facilities for which no suitable buyer can be found.

- The proposed rule creates an abbreviated process for modifying an existing permit, rather than completing the full permitting process. The draft rule provides that the modification process could be used for expansions of up to 20% of existing animal units, provided that the modification does not require the operator to complete four or more of the required permit worksheets. A threshold question is whether an abbreviated modification process is desirable, or whether facilities should undergo the standard application procedure if they wish to modify or expand operations. Assuming a modification procedure is desirable, a number of commentators have noted that:

- 20% is a significant increase in the number of animal units. If a modification procedure is instituted, a 10% expansion would be a more appropriate cutoff.

- Even then, 10% of 3,000 is a lot more than 10% of 500. If a modification procedure is instituted, its use should be limited to expansions of either 10%, or 200 animal units, whichever is less.

- Alternatively, the modification procedure could be limited to modifications of structures and facilities, but expansions of animal units would have to go through the normal permitting process.

- Regarding completeness determinations: The proposed rule requires a political subdivision to respond within 45 days to a livestock siting application, and provide either a notice that the application is complete, or a checklist of what would be required to make the application complete. Input from political subdivisions should be solicited to determine whether 45 is generally sufficient. In addition, the rule should allow for an extension of the 45-day period in the event of extenuating circumstances, such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met.

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- In addition, the setbacks need to be more rigorous. The proposed rules require only 300 feet of setback from a property line and 200 feet of setback from a public right-of-way for animal housing on an operation over 2,500 animal units, including operations of 20,000 or 30,000 animal units or more. The draft rule would then allow the setback to be even smaller if the operation adopts certain odor control practices. With allowable setback reductions under the proposed rule, a manure storage structure on a farm of 4,000 or more animal units (with an estimated surface area of 240,000 square feet) could be less than one quarter of a mile from a neighboring property line.

These setbacks are inadequate to protect public health and safety, and neighbors' peaceful enjoyment of their own private property. In 2017 the Department of Revenue reduced residents' property taxes in two counties – Green and Kewaunee – in response to CAFOs built on adjacent properties. This case is part of a growing national trend of property taxes being reassessed downward due to nearby CAFOs. Counties cannot afford a significant redistribution of their property tax burden due to the impact of large livestock operations. Setbacks are a key tool in maintaining the property values for neighboring properties.

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- One positive change is that the proposed rules would allow a political subdivision to require an odor management plan from a permitted facility if the subdivision receives a verified odor complaint from the owner of an adjacent property. This provision should be:

- clarified to explicitly state that a political subdivision may issue a fine or revoke a permit due to an operation's failure to

comply with an odor management plan;

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For more information, contact:

Kara O'Connor, Government Relations Director
Wisconsin Farmers Union

koconnor@wisconsinfarmersunion.com / 608-514-4541

Sincerely,

Alan R Pearson
2947 200th St.
Luck, WI 5485

Heaton-Amrhein, Jennifer A - DATCP

From: DATCP Admin Rules
Sent: Tuesday, September 3, 2019 8:47 AM
To: Clayton, Christopher R - DATCP
Subject: FW: Public comment on CR 19-098

Categories: Green Category

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

From: Software-Notification@legis.wisconsin.gov <Software-Notification@legis.wisconsin.gov>
Sent: Monday, September 2, 2019 9:02 PM
To: DATCP Admin Rules <datcpadminrules@wisconsin.gov>
Cc: pameladavies@yahoo.com
Subject: Public comment on CR 19-098

Name: Pamela Davies
Address: 216 N Pine St, Box 352, Grantsburg WI 54840
Email: pameladavies@yahoo.com

Organization: Home owner

Comments: Memo: Proposed revisions to ATCP 51, Livestock Siting Standards
From: Kara O'Connor, Wisconsin Farmers Union
Date: August 6, 2019 (revised from August 2, 2019)

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For more information, contact:

Kara O'Connor, Government Relations Director Wisconsin Farmers Union koconnor@wisconsinfarmersunion.com / 608-514-4541

Heaton-Amrhein, Jennifer A - DATCP

From: HOWARD PAHL <hpahl1952@gmail.com>
Sent: Tuesday, September 3, 2019 11:14 AM
To: Clayton, Christopher R - DATCP
Subject: Spooner Meeting--DATCP
Attachments: DATCP Letter.docx

Categories: Green Category

Please see attached letter,

Thank You
Howard Pahl

Sep. 1, 2019

Christopher Clayton, DATCP
P.O. Box 8911
Madison, WI 53708-8911
608-224-4630
christopher.clayton@wisconsin.gov

Greetings Mr. Clayton,

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It is our opinion that livestock operations approaching the size of 1000 animal units or more is outside the scope of the "family agricultural farm" and into a scope of Industrialized agriculture and thus requires more environmentally protective and preventative regulations. It should not be acceptable to put even one waterway, or groundwater aquifer at risk of potential contamination due to any industrial entity. It should also not be acceptable to put neighboring residents, or communities at risk of contaminated air, or expose them to harmful biological disease or health risks. We understand that agriculture is a necessity but, without protecting our environment and groundwater we will lose it all – our agriculture, our environment and our clean water. That risk is too great and regulations must be stringent on industrialized agricultural operations.

Here is our public input for helping to balance the rules:

- An industrial sized agricultural operation must not be self-regulated.
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- Extend the requirement of a political subdivision to respond to a livestock siting application within 6 months (not 45 days), and a potential extension of 6 months in the event of extenuating circumstances such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met, or permittee is running under an expired permit.
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Sincerely,

Howard Pahl
 11425 Lundeen Rd
 Frederic WI 54837
 715-327-4595

Heaton-Amrhein, Jennifer A - DATCP

From: Ramona Moody <deanmona@grantsburgtelcom.net>
Sent: Tuesday, September 3, 2019 11:24 AM
To: Clayton, Christopher R - DATCP
Cc: Cochart, Lacey L - DATCP; Baczynski, Robert J - DNR; Jackson, Jeffrey L - DNR; Lowndes, MaryAnne - DNR; GOV Info
Subject: PROPOSED ORDER ATCP 51
Attachments: WisconsinFarmersUnion_ProposedRevisions.pdf

Categories: Green Category

Christopher Clayton, DATCP
P.O. Box 8911
Madison, WI 53708-8911
608-224-4630
christopher.clayton@wisconsin.gov

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In addition to the above public input below is the recommendations from the Wisconsin Farmers Union that we are also in agreement with.

Sincerely,

Dean & Ramona Moody
12761 Bucklund Rd.
Grantsburg, WI 54840



Memo: Proposed revisions to ATCP 51, Livestock Siting Standards

From: Kara O'Connor, Wisconsin Farmers Union

Date: August 6, 2019 (revised from August 2, 2019)

Background

ATCP 51 is the rule promulgated by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) to implement the Livestock Siting Law (Wisconsin Statutes section 93.90). The law requires that DATCP review ATCP 51 every 4 years. Despite DATCP convening two panels of technical experts in 2010 and 2014 to review the technical standards and make significant recommendations, DATCP has never revised the standards since ATCP 51 came into effect over a decade ago in 2006. Large livestock operations have grown significantly in number, size, and complexity since these rules first came into effect.

In 2018, DATCP convened a third Technical Review Committee to recommend changes to ATCP 51. On July 10, 2019, the DATCP Board did vote to send a new draft of ATCP 51 out for public comment. This is the opportunity of a decade for concerned stakeholders to weigh in on the proposed changes to the state rules that regulate large livestock facilities.

Concepts that are positive in DATCP's proposed revisions to ATCP 51:

- replacing the flawed odor score calculation with greater setbacks.
- setbacks are calculated from neighbors' property lines, not neighbors' residences or buildings. It is critical that this element of the draft rules be maintained. Neighbors must be able to protect their current and future property rights on the entirety of their property, not just their use of existing buildings.
- applying feed storage leachate control standards to all feed, not just high-moisture feed.
- requiring more frequent visual inspections of manure storage facilities to ensure their integrity.
- creating a process for neighbors of a large livestock facility to initiate an odor complaint.
- delineating a process to clarify when an application is "complete."
- 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.

Things that should be changed in the current draft revision to ATCP 51:

Financial/Procedural:

- The draft maintains the current cap of \$1,000 on the permit fee that a political subdivision can charge. This amount is grossly inadequate. For example, Green County has spent over \$40,000 reviewing a single permit application. Very large operations with complex engineering are becoming the new norm. To account for this size and complexity, **the maximum allowable permit fee should be increased** to either:

- \$1 per animal unit, or

- 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.

(Note: This would be the maximum permit fee allowed under the rule. Political subdivisions are always free to charge less than the maximum.)

- Currently political subdivisions are prohibited from **requiring the large livestock facility to post a bond or other financial security**. This prohibition should be removed, in order to protect taxpayers from a costly cleanup if a manure storage pit overtops or the operation goes out of business without a new buyer in place. As operations become extremely large, and as dairy and livestock markets become more volatile, the chances increase that we will see abandoned facilities for which no suitable buyer can be found.

- The proposed rule creates an **abbreviated process for modifying an existing permit**, rather than completing the full permitting process. The draft rule provides that the modification process could be used for expansions of up to 20% of existing animal units, provided that the modification does not require the operator to complete four or more of the required permit worksheets. A threshold question is whether an abbreviated modification process is desirable, or whether facilities should undergo the standard application procedure if they wish to modify or expand operations. Assuming a modification procedure is desirable, a number of commentators have noted that:

- 20% is a significant increase in the number of animal units. If a modification procedure is instituted, a 10% expansion would be a more appropriate cutoff.

- Even then, 10% of 3,000 is a lot more than 10% of 500. If a modification procedure is instituted, its use should be limited to expansions of *either* 10%, *or* 200 animal units, whichever is less.

- Alternatively, the modification procedure could be limited to modifications of structures and facilities, but expansions of animal units would have to go through the normal permitting process.

- **Regarding completeness determinations:** The proposed rule requires a political subdivision to respond within 45 days to a livestock siting application, and provide either a notice that the application is complete, or a checklist of what would be required to make the application complete. Input from political subdivisions should be solicited to determine whether 45 is generally sufficient. In addition, the rule should allow for an extension of the 45-day period in the event of extenuating circumstances, such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met.

Setbacks:

- Although the proposed draft rule constitutes a shift toward greater reliance on setbacks to manage nuisance issues, the draft rules still allow an operation to obtain more lenient setbacks by adopting certain odor control practices. Odor control practices are difficult to monitor, enforce, and scientifically defend based on the scant and sometimes conflicting research available. Rather than this hybrid approach that blends setbacks with odor control practices, **DATCP should simply require greater setbacks for new permits, and dispense with credits for odor practices.**

- **In addition, the setbacks need to be more rigorous.** The proposed rules require only 300 feet of setback from a property line and 200 feet of setback from a public right-of-way for animal housing on an operation over 2,500 animal units, including operations of 20,000 or 30,000 animal units or more. The draft rule would then allow the setback to be even smaller if the operation adopts certain odor control practices. With allowable setback reductions under the proposed rule, a manure storage structure on a farm of 4,000 or more animal units (with an estimated surface area of 240,000 square feet) could be less than one quarter of a mile from a neighboring property line.

These setbacks are inadequate to protect public health and safety, and neighbors' peaceful enjoyment of their own private property. In 2017 the Department of Revenue reduced residents' property taxes in two counties – Green and Kewaunee – in response to CAFOs built on adjacent properties. This case is part of a growing national trend of property taxes being reassessed downward due to nearby CAFOs. Counties cannot afford a significant redistribution of their property tax burden due to the impact of large livestock operations. **Setbacks are a key tool in maintaining the property values for neighboring properties.**

- The proposed rule prohibits local governments from having setbacks that exceed the standards set forth in ATCP 51. This is a diminution of a fundamental local police power. ATCP 51 should create a default setback framework, but **the rule should allow local governments to require increased setbacks if local conditions so dictate.**

- the proposed revisions would allow an existing operation to expand an existing structure in a manner that violates the setbacks, provided that such an expansion increases the area of the structure or manure storage by no more than 20%. This should not be allowed. It is appropriate to "grandfather in" existing livestock housing and manure storage. However, **an operation should only be allowed to expand an existing structure if the expansion would be in compliance with the new setbacks**, the same as a new operation or structure would be required to meet.

- The proposed rule provides for **more lenient setbacks for operations that "cluster" animals in multiple housing structures with multiple manure storages**, rather than putting the same number of animals in a single barn and/or using a single manure storage facility. These "clustering" provisions in the draft rule are indefensible and should be removed. Having multiple barns and manure storage facilities spread out along a property line could actually create *more* odor problems for neighbors, rather than fewer, and yet farms using this "clustering" strategy would enjoy more lenient setbacks under the draft rule.

- One positive change is that the proposed rules would allow a political subdivision to require an **odor management plan from a permitted facility if the subdivision receives a verified odor complaint** from the owner of an adjacent property. This provision should be:

- clarified to explicitly state that a political subdivision may issue a fine or revoke a permit due to an operation's failure to comply with an odor management plan;
- expanded to allow other affected individuals in the area, such as renters, employees of nearby businesses, other property owners within 2 miles of the permitted site, and users of nearby public or natural amenities, to register an odor complaint.

- The proposed rules allow an operator to make the case for a novel odor control strategy not included Appendix A, Worksheet 2. Assuming that the final rule continues to give setback reductions for odor control practices, **political subdivisions should have the opportunity to**

present contrary evidence about the effectiveness of the proposed odor control strategy.

An operator seeking to use a novel odor control strategy not described on Worksheet 2 should also be required to give notice to neighbors within a 2-mile radius, whose property values will be most affected, and these individuals should also have the opportunity to present evidence about the effectiveness of the proposed odor control strategy.

- **Political subdivisions may also want to consider whether it is important for the rule to establish setbacks from feed storage structures,** in addition to animal housing and manure storage. This would be important if feed storage structures have generated odor complaints.

Engineering Technical Standards:

- As noted above, the draft rule takes a step forward by requiring periodic visual inspections of manure storage facilities that are over 10 years old while empty to ensure their integrity. Unfortunately, actual experience in Wisconsin has taught us that manure storage facilities can start leaking within weeks or months of their construction. Thus, the requirement for an engineer to do a **visual inspection of manure storage while empty in order to demonstrate compliance should be extended to all manure storage structures**, not just those that are older than 10 years, in order to ensure that they are not cracked or leaking.

Nutrient Management Technical Standards:

- The nutrient management portion of the rules should require the operator to **specifically list owned and rented acres where he or she plans to spread manure** on Waste and Nutrient Management Worksheet 3.

- In addition, if the operator is relying on rented acres, he or she should be required to **provide copies of written and signed rental agreements that cover the duration of the permit term.** Recent experience has shown that without supporting documentation, operators' assertions that they have access to the necessary acres for manure spreading have not always been reliable.

For more information, contact:

Kara O'Connor, Government Relations Director

Wisconsin Farmers Union

koconnor@wisconsinfarmersunion.com / 608-514-4541

Heaton-Amrhein, Jennifer A - DATCP

From: Luann <luanntree@yahoo.com>
Sent: Tuesday, September 3, 2019 9:54 PM
To: Clayton, Christopher R - DATCP
Subject: CR 19-098 comments

Categories: Green Category

Christopher Clayton, DATCP

P.O. Box 8911

Madison, WI 53708-8911

608-224-4630

christopher.clayton@wisconsin.gov

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Sincerely,
 Luann Kleppe
 807 Hamilton
 St. Croix Falls, WI 54024

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From: Kara O'Connor, Wisconsin Farmers Union

Date: August 6, 2019 (revised from August 2, 2019)

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– In addition, the setbacks need to be more rigorous. The proposed rules require only 300 feet of setback from a property line and 200 feet of setback from a public right-of-way for animal housing on an operation over 2,500 animal units, including operations of 20,000 or 30,000 animal units or more. The draft rule would then allow the setback to be even smaller if the operation adopts certain odor control practices. With allowable setback reductions under the proposed rule, a manure storage structure on a farm of 4,000 or more animal units (with an estimated surface area of 240,000 square feet) could be less than one quarter of a mile from a neighboring property line.

These setbacks are inadequate to protect public health and safety, and neighbors' peaceful enjoyment of their own private property. In 2017 the Department of Revenue reduced residents' property taxes in two counties – Green and Kewaunee – in response to CAFOs built on adjacent properties. This case is part of a growing national trend of property taxes being reassessed downward due to nearby CAFOs. Counties cannot afford a significant redistribution of their property tax burden due to the impact of large livestock operations. Setbacks are a key tool in maintaining the property values for neighboring properties.

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– the proposed revisions would allow an existing operation to expand an existing structure in a manner that violates the setbacks, provided that such an expansion increases the area of the structure or manure storage by no more than 20%. This should not be allowed. It is appropriate to "grandfather in" existing livestock housing and manure storage. However, an operation should only be allowed to expand an existing structure if the expansion would be in compliance with the new setbacks, the same as a new operation or structure would be required to meet.

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manure storage facilities spread out along a property line could actually create more odor problems for neighbors, rather than fewer, and yet farms using this “clustering” strategy would enjoy more lenient setbacks under the draft rule.

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For more information, contact:

Kara O’Connor, Government Relations Director
Wisconsin Farmers Union

koconnor@wisconsinfarmersunion.com / 608-514-4541

Heaton-Amrhein, Jennifer A - DATCP

From: Mike Ehret <MEhret@kremerservices.net>
Sent: Wednesday, September 4, 2019 11:46 AM
To: Clayton, Christopher R - DATCP; DATCP Livestock Siting Comments
Subject: Comments on Livestock Facility Siting Rule
Attachments: Farmers Union Letter - Proposed Revisions to ATCP51, Livestock Siting Standards.docx

Categories: Green Category

Sep. 4, 2019

Christopher Clayton, DATCP
P.O. Box 8911
Madison, WI 53708-8911
608-224-4630

Dear Mr. Clayton,

We understand that now is the time to submit our comments and concerns to address changes to the administrative rule, formerly referred to as ATCP 51. We are in complete agreement with the following comments and recommendations:

Livestock operations approaching the size of 1000 animal units or more is outside the scope of the "family agricultural farm" and into a scope of industrialized agriculture and thus requires more environmentally protective and preventative regulations. It should not be acceptable to put even one waterway, or groundwater aquifer at risk of potential contamination due to any industrial entity. It should also not be acceptable to put neighboring residents, or communities at risk of contaminated air, or expose them to harmful biological disease or health risks. We understand that agriculture is a necessity but, without protecting our environment and groundwater we will lose it all – our agriculture, our environment and our clean water. That risk is too great and regulations must be stringent on industrialized agricultural operations.

Here is our public input for helping to balance the rules:

- An industrial sized agricultural operation must not be self-regulated.
- We understand that there are currently many industrialized agriculture operations running with expired DNR runoff management CAFO permits. We recommend that you urge the Wisconsin Governor to issue a moratorium on all applications for siting of new or expanding industrial sized agriculture operations.
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- The current system of renewing permits every 5 years with inadequate oversight of the industrial agriculture operations needs to be updated to an annual permit renewal with higher fees for renewal to offset the cost of more

3rd party oversight personnel.

- Under a new nutrient management plan, all properties in the NMP and facility site should be required to have monitoring wells at a minimum depth to groundwater to provide for early warning of groundwater contamination monitored by local government or independent 3rd party.
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- The "Right to Farm" act needs to be modified, or repealed in such a way that differentiates an established or "Grandfathered" industrial agriculture operation from a newly formed industrial agriculture operation or one that is expanding. For example, the "Right to Farm" laws should not apply to an entity seeking to site a new industrial agriculture operation or expand an existing one in or near any rural town or community.
- Any operation requiring any type of high capacity well should be required to install a water treatment facility to reclaim usable water for the purpose of groundwater conservation and minimize the discharge of contaminated water.
- The nutrient management plan of liquid manure should be injected with a coulter type system that provides light incorporation into the soil. Any spray of liquid manure such as the center pivot, or irrigation style of spreading should be prohibited.
- All open lagoon type manure storage should be prohibited. All existing open lagoon style storage should be upgraded to a closed or covered system.
- Nutrient management planning has historically focused more heavily on surface water quality and phosphorus and much less on groundwater quality and nitrates. Many of the nitrates application rates that are used are designed to produce the best economic yield and are not necessarily designed to be protective of groundwater. Recent studies have indicated that nutrient management plans are questionably effective at reducing nitrate levels to below the maximum contaminate level of 10 parts per million (Wisconsin groundwater coordinating council 2018). Therefore, the nutrient management plan needs to have greater acreage per animal unit.
- Nutrient waste storage capacity should be at least 18 months to mitigate issues with trying to spread manure on overly saturated fields in the spring time, or early freezing in the fall. Although the need for waste storage capacity could be greatly reduced with the incorporation of a waste water treatment facility.
- Any newly designed liquid waste storage tank should be of a double hull design to allow for early detection of any leakage into the secondary hull, which could then alert of impending spill. The requirement should be that the alarm is issued to the operator as well as a 3rd party, authority.
- Order scoring should include animal composting and distribution of byproducts and non-odor causing poisonous or harmful fumes.
- There needs to be greater setbacks from property line for the facility and composting structures, and greater setback in the nutrient management program from neighboring property lines, wetlands, and any type of surface water.
- Greater setbacks from neighboring property lines for animal compost distribution.
- More stringent order score requirements and no credits for order score practices.

We've attached a copy of the Wisconsin Farmers Union letter that also seeks significant changes to the Livestock Facility Siting Rule.

Sincerely,

Mike and Tracey Ehret
21801 White Pine Trail
Frederic, WI 54837

Memo: Proposed revisions to ATCP 51, Livestock Siting Standards
From: Kara O'Connor, Wisconsin Farmers Union
Date: August 6, 2019 (revised from August 2, 2019)

Background

ATCP 51 is the rule promulgated by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) to implement the Livestock Siting Law (Wisconsin Statutes section 93.90). The law requires that DATCP review ATCP 51 every 4 years. Despite DATCP convening two panels of technical experts in 2010 and 2014 to review the technical standards and make significant recommendations, DATCP has never revised the standards since ATCP 51 came into effect over a decade ago in 2006. Large livestock operations have grown significantly in number, size, and complexity since these rules first came into effect.

In 2018, DATCP convened a third Technical Review Committee to recommend changes to ATCP 51. On July 10, 2019, the DATCP Board did vote to send a new draft of ATCP 51 out for public comment. This is the opportunity of a decade for concerned stakeholders to weigh in on the proposed changes to the state rules that regulate large livestock facilities.

Concepts that are positive in DATCP's proposed revisions to ATCP 51:

- replacing the flawed odor score calculation with greater setbacks.
- setbacks are calculated from neighbors' property lines, not neighbors' residences or buildings. It is critical that this element of the draft rules be maintained. Neighbors must be able to protect their current and future property rights on the entirety of their property, not just their use of existing buildings.
- applying feed storage leachate control standards to all feed, not just high-moisture feed.
- requiring more frequent visual inspections of manure storage facilities to ensure their integrity.
- creating a process for neighbors of a large livestock facility to initiate an odor complaint.
- delineating a process to clarify when an application is "complete."
- 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.

Things that should be changed in the current draft revision to ATCP 51:

Financial/Procedural:

- The draft maintains the current cap of \$1,000 on the permit fee that a political subdivision can charge. This amount is grossly inadequate. For example, Green County has spent over \$40,000 reviewing a single permit application. Very large operations with complex engineering are becoming the new norm. To account for this size and complexity, the maximum allowable permit fee should be increased to either:
 - \$1 per animal unit, or
 - 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.(Note: This would be the maximum permit fee allowed under the rule. Political subdivisions are always free to charge less than the maximum.)
- Currently political subdivisions are prohibited from requiring the large livestock facility to post a bond or other financial security. This prohibition should be removed, in order to protect taxpayers from a costly cleanup if a manure storage pit overtops or the operation goes out of business without a new buyer in place. As operations become extremely large, and as dairy and livestock markets become more volatile, the chances increase that we will see abandoned facilities for which no suitable buyer can be found.
- The proposed rule creates an abbreviated process for modifying an existing permit, rather than completing the full permitting process. The draft rule provides that the modification process could be used for expansions of up to 20% of existing animal units, provided that the modification does not

require the operator to complete four or more of the required permit worksheets. A threshold question is whether an abbreviated modification process is desirable, or whether facilities should undergo the standard application procedure if they wish to modify or expand operations. Assuming a modification procedure is desirable, a number of commentators have noted that:

- 20% is a significant increase in the number of animal units. If a modification procedure is instituted, a 10% expansion would be a more appropriate cutoff.
- Even then, 10% of 3,000 is a lot more than 10% of 500. If a modification procedure is instituted, its use should be limited to expansions of either 10%, or 200 animal units, whichever is less.
- Alternatively, the modification procedure could be limited to modifications of structures and facilities, but expansions of animal units would have to go through the normal permitting process.
- Regarding completeness determinations: The proposed rule requires a political subdivision to respond within 45 days to a livestock siting application, and provide either a notice that the application is complete, or a checklist of what would be required to make the application complete. Input from political subdivisions should be solicited to determine whether 45 is generally sufficient. In addition, the rule should allow for an extension of the 45-day period in the event of extenuating circumstances, such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met.

Setbacks:

- Although the proposed draft rule constitutes a shift toward greater reliance on setbacks to manage nuisance issues, the draft rules still allow an operation to obtain more lenient setbacks by adopting certain odor control practices. Odor control practices are difficult to monitor, enforce, and scientifically defend based on the scant and sometimes conflicting research available. Rather than this hybrid approach that blends setbacks with odor control practices, DATCP should simply require greater setbacks for new permits, and dispense with credits for odor practices.
- In addition, the setbacks need to be more rigorous. The proposed rules require only 300 feet of setback from a property line and 200 feet of setback from a public right-of-way for animal housing on an operation over 2,500 animal units, including operations of 20,000 or 30,000 animal units or more. The draft rule would then allow the setback to be even smaller if the operation adopts certain odor control practices. With allowable setback reductions under the proposed rule, a manure storage structure on a farm of 4,000 or more animal units (with an estimated surface area of 240,000 square feet) could be less than one quarter of a mile from a neighboring property line. These setbacks are inadequate to protect public health and safety, and neighbors' peaceful enjoyment of their own private property. In 2017 the Department of Revenue reduced residents' property taxes in two counties – Green and Kewaunee – in response to CAFOs built on adjacent properties. This case is part of a growing national trend of property taxes being reassessed downward due to nearby CAFOs. Counties cannot afford a significant redistribution of their property tax burden due to the impact of large livestock operations. Setbacks are a key tool in maintaining the property values for neighboring properties.
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For more information, contact:

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Wisconsin Farmers Union
koconnor@wisconsinfarmersunion.com / 608-514-4541

Heaton-Amrhein, Jennifer A - DATCP

From: Joseph Lysdahl <josephlysahl@gmail.com>
Sent: Wednesday, September 4, 2019 2:34 PM
To: Clayton, Christopher R - DATCP
Subject: ATCP 51 topic
Attachments: ATCP 51.pdf

Categories: Green Category

Please see attached letter and letter from Wisconsin Farmers Union below

Memo: Proposed revisions to ATCP 51, Livestock Siting Standards

From: Kara O'Connor, Wisconsin Farmers Union

Date: August 6, 2019 (revised from August 2, 2019)

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Sep. 4, 2019
Christopher Clayton, DATCP
P.O. Box 8911
Madison, WI 53708-8911
608-224-4630
christopher.clayton@wisconsin.gov

Greetings Mr. Clayton,

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- The "Right to Farm" act needs to be modified, or repealed in such a way that differentiates an established or

"Grandfathered" industrial agriculture operation from a newly formed industrial agriculture operation or one that is expanding. For example, the "Right to Farm" laws should not apply to an entity seeking to site a new industrial agriculture operation or expand an existing one in or near any rural town or community.

- Any operation requiring any type of high capacity well should be required to install a water treatment facility to reclaim usable water for the purpose of groundwater conservation and minimize the discharge of contaminated water.
- The nutrient management plan of liquid manure should be injected with a coulter type system that provides light incorporation into the soil. Any spray of liquid manure such as the center pivot, or irrigation style of spreading should be prohibited.
- All open lagoon type manure storage should be prohibited. All existing open lagoon style storage should be upgraded to a closed or covered system.
- Nutrient management planning has historically focused more heavily on surface water quality and phosphorus and much less on groundwater quality and nitrates. Many of the nitrates application rates that are used are designed to produce the best economic yield and are not necessarily designed to be protective of groundwater. Recent studies have indicated that nutrient management plans are questionably effective at reducing nitrate levels to below the maximum contaminate level of 10 parts per million (Wisconsin groundwater coordinating council 2018). Therefore, the nutrient management plan needs to have greater acreage per animal unit.
- Nutrient waste storage capacity should be at least 18 months to mitigate issues with trying to spread manure on overly saturated fields in the spring time, or early freezing in the fall. Although the need for waste storage capacity could be greatly reduced with the incorporation of a waste water treatment facility.
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- Order scoring should include animal composting and distribution of byproducts and non-odor causing poisonous or harmful fumes.
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- Greater setbacks from neighboring property lines for animal compost distribution.
- More stringent order score requirements and no credits for order score practices.

Sincerely,

Joe Lysdahl
Joe Lysdahl
24250 N Fossum Rd
Grantsburg WI
54840

Heaton-Amrhein, Jennifer A - DATCP

From: Steph Wickstrom <smjudd@yahoo.com>
Sent: Wednesday, September 4, 2019 8:53 PM
To: Clayton, Christopher R - DATCP
Subject: Public input from a farmer for ATCP 51, Livestock Siting Standards

Categories: Green Category

Dear Mr. Clayton,

We understand that now is the time to submit comments and concerns to address changes to the administrative rule, formerly referred to as ATCP 51. We appreciate and thank you for allowing public input to make sure the rules are balanced.

As farmers ourselves, it is our opinion that concentrated livestock operations approaching the size of 1,000 animal units or more is outside the scope of the "family agricultural farm" and into a scope of industrialized "agriculture" and thus requires more environmentally protective and preventative regulations. It should not be acceptable to put even one waterway, or groundwater aquifer at risk of potential contamination due to any industrial entity. It should also not be acceptable to put neighboring residents, or communities at risk of contaminated air, or expose them to harmful biological disease or health risks. We support agriculture and agree it is a necessity but, without protecting our environment and groundwater we will lose it all – our agriculture, our environment and our clean water. That risk is too great and regulations must be stringent on industrialized agricultural operations.

Here is our public input for helping to balance the rules:

- An industrial sized agricultural operation must not be self-regulated.
- We understand that there are currently many industrialized agriculture operations running with expired DNR runoff management CAFO permits. We recommend that you urge the Wisconsin Governor to issue a moratorium on all applications for siting of new or expanding industrial sized agriculture operations.
- Extend the requirement of a political subdivision to respond to a livestock siting application within 6 months (not 45 days), and a potential extension of 6 months in the event of extenuating circumstances such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met, or permittee is running under an expired permit.
- Any industrial sized agriculture operation seeking to expand in animal units. An applicant or permittee must have all documents in good standing for the previous 5 years with no expired permits or incidences during that time period.
- There is currently no cap on the size of animal units an industrial size agriculture operation can expand to which is dangerous to the health of animals and residents. Siting an industrial sized agriculture operation needs to be as custom as the environment it is be placed in. Applications should be submitted to local / county government, not to the state. This includes the WPDES permit and any other permits that may be required. Monitoring needs to be done locally and/or 3rd party monitoring, not by permittee.
- Siting is as unique as the environment that the industrial size agriculture operation is put in. Therefore, an applicant should be required to provide or pay for an independent environmental impact study for each proposed facility, as directed by the permitting authority.
- The current system of renewing permits every 5 years with inadequate oversight of the industrial agriculture operations needs to be updated to an annual permit renewal with higher fees for renewal to offset the cost of more 3rd party oversight personnel.
- Under a new nutrient management plan, all properties in the NMP and facility site should be required to have monitoring wells at a minimum depth to groundwater to provide for early warning of groundwater contamination monitored by local government or independent 3rd party.
- Allowing a limited liability corporation to establish an industrial agriculture operation is unacceptable due to potential of disastrous environmental impact. Any entity that is seeking a permit to establish an industrial agriculture operation, should be required to put forward a trust or bond, or have other means to rectify the worst-case scenario of an environmental impact incident.
- The "Right to Farm" act needs to be modified, or repealed in such a way that differentiates an established or "Grandfathered" industrial agriculture operation from a newly formed industrial agriculture operation or one that is expanding. For example, the "Right to Farm" laws should not apply to an entity seeking to site a new industrial agriculture operation or expand an existing

one in or near any rural town or community.

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- Greater setbacks from neighboring property lines for animal compost distribution.
- More stringent order score requirements and no credits for order score practices.

In addition to the above public input below is the recommendations from the Wisconsin Farmers Union that we are also in agreement with. https://docs.wixstatic.com/ugd/629d75_93a15312d7e04b97970f5d8a0c35b0bb.pdf

PS - We are in SUPPORT of agriculture and the spirit of the right to farm act. Our concern is with industrial operations being protected under the right to farm act. A fine tends to be a cost of doing business for some of these operations.

Thank you for your time and consideration,

Doug & Stephanie Wickstrom, Wick-Strom Farms
22134 Maplewood Rd | Town of Trade Lake | Burnett County, WI

Heaton-Amrhein, Jennifer A - DATCP

From: Doug Anderson <beavercr919@gmail.com>
Sent: Thursday, September 5, 2019 8:43 AM
To: Clayton, Christopher R - DATCP
Subject: Comments on Livestock Siting Rules (ATCP 51) now Administrative Rule
Attachments: Administrative Rule Public Comments, Formerly Referred to as ATCP 51, 9.5.19.docx;
Proposed Revisions to ATCP 51, Livestock Siting Standards WI Farmers Union Sept 1.docx

Categories: Green Category

Dear Mr. Clayton,

Please see our public comment letter attached in regards to the Livestock Siting Rules (ATCP 51) now Administrative Rule that is being reviewed. It is extremely important that DATCP take action to revise the rules to protect area residents public health and the environment including safe drinking water and odor control.

Also, there is a trend that property taxes are being reassessed downward due to nearby CAFOs. Counties cannot afford a significant redistribution of their property tax burden due to the impact of large livestock operations. Setbacks are a key tool in maintaining the property values for neighboring properties!

We are also including a document from the Wisconsin Farmers Union that has very informative information and shares our views.

Thank you for your efforts to keep Wisconsin's environment clean and protect its citizens health!

Kathy and Doug Anderson
12402 State Road 48
Grantsburg WI 54840

Sep 5, 2019

Christopher Clayton, DATCP
P.O. Box 8911
Madison, WI 53708-8911
608-224-4630
christopher.clayton@wisconsin.gov

Greetings Mr. Clayton,

We understand that now is the time to submit our comments and concerns to address changes to the administrative rule, formerly referred to as ATCP 51. We appreciate that you are allowing public input to make sure the rules are balanced.

It is our opinion that livestock operations approaching the size of 1000 animal units or more is outside the scope of the "family agricultural farm" and into a scope of Industrialized agriculture and thus requires more environmentally protective and preventative regulations. It should not be acceptable to put even one waterway, or groundwater aquifer at risk of potential contamination due to any industrial entity. It should also not be acceptable to put neighboring residents, or communities at risk of contaminated air, or expose them to harmful biological disease or health risks. We understand that agriculture is a necessity but, without protecting our environment and groundwater we will lose it all – our agriculture, our environment and our clean water. That risk is too great and regulations must be stringent on industrialized agricultural operations.

Here is our public input for helping to balance the rules:

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plans are questionably effective at reducing nitrate levels to below the maximum contaminate level of 10 parts per million (Wisconsin groundwater coordinating council 2018). Therefore, the nutrient management plan needs to have greater acreage per animal unit.

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- Greater setbacks from neighboring property lines for animal compost distribution.
- More stringent order score requirements and no credits for order score practices.

In addition to the above public input below is the recommendations from the Wisconsin Farmers Union that we are also in agreement with.

Sincerely,

Kathy and Doug Anderson
12402 State Road 48
Grantsburg WI 54840
715-488-3995

Sept 1, 2019

Memo: Proposed revisions to ATCP 51, Livestock Siting Standards

From: Kara O'Connor, Wisconsin Farmers Union

Date: August 6, 2019 (revised from August 2, 2019)

Background

ATCP 51 is the rule promulgated by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) to implement the Livestock Siting Law (Wisconsin Statutes section 93.90). The law requires that DATCP review ATCP 51 every 4 years. Despite DATCP convening two panels of technical experts in 2010 and 2014 to review the technical standards and make significant recommendations, DATCP has never revised the standards since ATCP 51 came into effect over a decade ago in 2006. Large livestock operations have grown significantly in number, size, and complexity since these rules first came into effect.

In 2018, DATCP convened a third Technical Review Committee to recommend changes to ATCP 51. On July 10, 2019, the DATCP Board did vote to send a new draft of ATCP 51 out for public comment. This is the opportunity of a decade for concerned stakeholders to weigh in on the proposed changes to the state rules that regulate large livestock facilities.

Concepts that are positive in DATCP's proposed revisions to ATCP 51:

- replacing the flawed odor score calculation with greater setbacks.
- setbacks are calculated from neighbors' property lines, not neighbors' residences or buildings. It is critical that this element of the draft rules be maintained. Neighbors must be able to protect their current and future property rights on the entirety of their property, not just their use of existing buildings.
- applying feed storage leachate control standards to all feed, not just high-moisture feed.
- requiring more frequent visual inspections of manure storage facilities to ensure their integrity.
- creating a process for neighbors of a large livestock facility to initiate an odor complaint.
- delineating a process to clarify when an application is "complete."
- 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.

Things that should be changed in the current draft revision to ATCP 51:

Financial/Procedural:

– The draft maintains the current cap of \$1,000 on the permit fee that a political subdivision can charge. This amount is grossly inadequate. For example, Green County has spent over \$40,000 reviewing a single permit application. Very large operations with complex engineering are becoming the new norm. To account for this size and complexity, the maximum allowable permit fee should be increased to either:

– \$1 per animal unit, or

– 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.

(Note: This would be the maximum permit fee allowed under the rule. Political subdivisions are always free to charge less than the maximum.)

– Currently political subdivisions are prohibited from requiring the large livestock facility to post a bond or other financial security. This prohibition should be removed, in order to protect taxpayers from a costly cleanup if a manure storage pit overtops or the operation goes out of business without a new buyer in place. As operations become extremely large, and as dairy and livestock markets become more volatile, the chances increase that we will see abandoned facilities for which no suitable buyer can be found.

– The proposed rule creates an abbreviated process for modifying an existing permit, rather than completing the full permitting process. The draft rule provides that the modification process could be used for expansions of up to 20% of existing animal units, provided that the modification does not require the operator to complete four or more of the required permit worksheets. A threshold question is whether an abbreviated modification process is desirable, or whether facilities should undergo the standard application procedure if they wish to modify or expand operations. Assuming a modification procedure is desirable, a number of commentators have noted that:

– 20% is a significant increase in the number of animal units. If a modification procedure is instituted, a 10% expansion would be a more appropriate cutoff.

– Even then, 10% of 3,000 is a lot more than 10% of 500. If a modification procedure is instituted, its use should be limited to expansions of either 10%, or 200 animal units, whichever is less.

-Alternatively, the modification procedure could be limited to modifications of structures and facilities, but expansions of animal units would have to go through the normal permitting process.

– Regarding completeness determinations: The proposed rule requires a political subdivision to respond within 45 days to a livestock siting application, and provide either a notice that the application is complete, or a checklist of what would be required to make the application complete. Input from political subdivisions should be solicited to determine whether 45 is generally sufficient. In addition, the rule should allow for an extension of the 45-day period in the event of extenuating circumstances, such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met.

Setbacks:

– Although the proposed draft rule constitutes a shift toward greater reliance on setbacks to manage nuisance issues, the draft rules still allow an operation to obtain more lenient setbacks by adopting certain odor control practices. Odor control practices are difficult to monitor, enforce, and scientifically defend based on the scant and sometimes conflicting research available. Rather than this hybrid approach that blends setbacks with odor control practices, DATCP should simply require greater setbacks for new permits, and dispense with credits for odor practices.

– In addition, the setbacks need to be more rigorous. The proposed rules require only 300 feet of setback from a property line and 200 feet of setback from a public right-of-way for animal housing on an operation over 2,500 animal units, including operations of 20,000 or 30,000 animal units or more. The draft rule would then allow the setback to be even smaller if the operation adopts certain odor control practices. With allowable setback reductions under the proposed rule, a manure storage structure on a farm of 4,000 or more animal units (with an estimated surface area of 240,000 square feet) could be less than one quarter of a mile from a neighboring property line.

These setbacks are inadequate to protect public health and safety, and neighbors' peaceful enjoyment of their own private property. In 2017 the Department of Revenue reduced residents' property taxes in two counties – Green and Kewaunee – in response to CAFOs built on adjacent properties. This case is part of a growing national trend of property taxes being reassessed downward due to nearby CAFOs. Counties cannot afford a significant redistribution of their property tax burden due to the impact of large livestock operations. Setbacks are a key tool in maintaining the property values for neighboring properties.

– The proposed rule prohibits local governments from having setbacks that exceed the standards set forth in ATCP 51. This is a diminution of a fundamental local police power. ATCP 51 should create a default setback framework, but the rule should allow local governments to require increased setbacks if local conditions so dictate.

– the proposed revisions would allow an existing operation to expand an existing structure in a manner that violates the setbacks, provided that such an expansion increases the area of the structure or manure storage by no more than 20%. This should not be allowed. It is appropriate to "grandfather in" existing livestock housing and manure storage. However, an operation should only be allowed to expand an existing structure if the expansion would be in compliance with the new setbacks, the same as a new operation or structure would be required to meet.

– The proposed rule provides for more lenient setbacks for operations that "cluster" animals in multiple housing structures with multiple manure storages, rather than putting the same number of animals in a single barn and/or using a single manure storage facility. These "clustering" provisions in the draft rule are indefensible and should be removed. Having multiple barns and manure storage

facilities spread out along a property line could actually create more odor problems for neighbors, rather than fewer, and yet farms using this “clustering” strategy would enjoy more lenient setbacks under the draft rule.

- One positive change is that the proposed rules would allow a political subdivision to require an odor management plan from a permitted facility if the subdivision receives a verified odor complaint from the owner of an adjacent property. This provision should be:

- clarified to explicitly state that a political subdivision may issue a fine or revoke a permit due to an operation’s failure to comply with an odor management plan;

- expanded to allow other affected individuals in the area, such as renters, employees of nearby businesses, other property owners within 2 miles of the permitted site, and users of nearby public or natural amenities, to register an odor complaint.

- The proposed rules allow an operator to make the case for a novel odor control strategy not included Appendix A, Worksheet 2. Assuming that the final rule continues to give setback reductions for odor control practices, political subdivisions should have the opportunity to present contrary evidence about the effectiveness of the proposed odor control strategy. An operator seeking to use a novel odor control strategy not described on Worksheet 2 should also be required to give notice to neighbors within a 2-mile radius, whose property values will be most affected, and these individuals should also have the opportunity to present evidence about the effectiveness of the proposed odor control strategy.

- Political subdivisions may also want to consider whether it is important for the rule to establish setbacks from feed storage structures, in addition to animal housing and manure storage. This would be important if feed storage structures have generated odor complaints.

Engineering Technical Standards:

- As noted above, the draft rule takes a step forward by requiring periodic visual inspections of manure storage facilities that are over 10 years old while empty to ensure their integrity.

Unfortunately, actual experience in Wisconsin has taught us that manure storage facilities can start leaking within weeks or months of their construction. Thus, the requirement for an engineer to do a visual inspection of manure storage while empty in order to demonstrate compliance should be extended to all manure storage structures, not just those that are older than 10 years, in order to ensure that they are not cracked or leaking.

Nutrient Management Technical Standards:

- The nutrient management portion of the rules should require the operator to specifically list owned and rented acres where he or she plans to spread manure on Waste and Nutrient Management Worksheet 3.

- In addition, if the operator is relying on rented acres, he or she should be required to provide

copies of written and signed rental agreements that cover the duration of the permit term. Recent experience has shown that without supporting documentation, operators' assertions that they have access to the necessary acres for manure spreading have not always been reliable.

For more information, contact:

Kara O'Connor, Government Relations Director

Wisconsin Farmers Union

koconnor@wisconsinfarmersunion.com / 608-514-4541

Heaton-Amrhein, Jennifer A - DATCP

From: Tiffany Nelson <tmnelson38@gmail.com>
Sent: Thursday, September 5, 2019 9:26 PM
To: Clayton, Christopher R - DATCP
Subject: Proposed revisions to ATCP 51, Livestock Siting Standards

Categories: Green Category

Sep. 5, 2019

Christopher Clayton, DATCP

P.O. Box 8911

Madison, WI 53708-8911

608-224-4630

christopher.clayton@wisconsin.gov

Greetings Mr. Clayton,

We understand that now is the time to submit our comments and concerns to address changes to the administrative rule, formerly referred to as ATCP 51. We appreciate that you are allowing public input to make sure the rules are balanced.

It is our opinion that livestock operations approaching the size of 1000 animal units or more is outside the scope of the "family agricultural farm" and into a scope of Industrialized agriculture and thus requires more environmentally protective and preventative regulations. It should not be acceptable to put even one waterway, or groundwater aquifer at risk of potential contamination due to any industrial entity. It should also not be acceptable to put neighboring residents, or communities at risk of contaminated air, or expose them to harmful biological disease or health risks. We understand that agriculture is a necessity but, without protecting our environment and groundwater we will lose it all – our agriculture, our environment and our clean water. That risk is too great and regulations must be stringent on industrialized agricultural operations.

Here is our public input for helping to balance the rules:

- An industrial sized agricultural operation must not be self-regulated.
- We understand that there are currently many industrialized agriculture operations running with expired DNR runoff management CAFO permits. We recommend that you urge the Wisconsin Governor to issue a moratorium on all applications for siting of new or expanding industrial sized agriculture operations.
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more 3rd party oversight personnel.

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In addition to the above public input below is the recommendations from the Wisconsin Farmers Union that we are also in agreement with.

Sincerely,

Tiffany Nelson
24810 115th st nw
Zimmerman, MN 55398

Also own 10 acres on Maplewood Rd, just 1 mile from proposed hog farm factory. We are planning on building our dream home there in the Spring, but have major concerns with this proposed industrial hog farm.

Sep 1, 2019

Memo: Proposed revisions to ATCP 51, Livestock Siting Standards

From: Kara O'Connor, Wisconsin Farmers Union

Date: August 6, 2019 (revised from August 2, 2019)

Background

ATCP 51 is the rule promulgated by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) to implement the Livestock Siting Law (Wisconsin Statutes section 93.90). The law requires that DATCP review ATCP 51 every 4 years. Despite DATCP convening two panels of technical experts in 2010 and 2014 to review the technical standards and make significant recommendations, DATCP has never revised the standards since ATCP 51 came into effect over a decade ago in 2006. Large livestock operations have grown significantly in number, size, and complexity since these rules first came into effect.

In 2018, DATCP convened a third Technical Review Committee to recommend changes to ATCP 51. On July 10, 2019, the DATCP Board did vote to send a new draft of ATCP 51 out for public comment. This is the opportunity of a decade for concerned stakeholders to weigh in on the proposed changes to the state rules that regulate large livestock facilities.

Concepts that are positive in DATCP's proposed revisions to ATCP 51:

- replacing the flawed odor score calculation with greater setbacks.
- setbacks are calculated from neighbors' property lines, not neighbors' residences or buildings. It is critical that this element of the draft rules be maintained. Neighbors must be able to protect their current and future property rights on the entirety of their property, not just their use of existing buildings.
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- requiring more frequent visual inspections of manure storage facilities to ensure their integrity.
- creating a process for neighbors of a large livestock facility to initiate an odor complaint.
- delineating a process to clarify when an application is "complete."
- 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.

Things that should be changed in the current draft revision to ATCP 51:

Financial/Procedural:

– The draft maintains the current cap of \$1,000 on the permit fee that a political subdivision can charge. This amount is grossly inadequate. For example, Green County has spent over \$40,000 reviewing a single permit application. Very large operations with complex engineering are becoming the new norm. To account for this size and complexity, the maximum allowable permit fee should be increased to either:

- \$1 per animal unit, or
- 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.

(Note: This would be the maximum permit fee allowed under the rule. Political subdivisions are always free to charge less than the maximum.)

– Currently political subdivisions are prohibited from requiring the large livestock facility to post a bond or other financial security. This prohibition should be removed, in order to protect taxpayers from a costly cleanup if a manure storage pit overtops or the operation goes out of business without a new buyer in place. As operations become extremely large, and as dairy and livestock markets become more volatile, the chances increase that we will see abandoned facilities for which no suitable buyer can be found.

– The proposed rule creates an abbreviated process for modifying an existing permit, rather than completing the full permitting process. The draft rule provides that the modification process could be used for expansions of up to 20% of existing animal units, provided that the modification does not require the operator to complete four or more of the required permit worksheets. A threshold question is whether an abbreviated modification process is desirable, or whether facilities should undergo the standard application procedure if they wish to modify or expand operations. Assuming a modification procedure is desirable, a number of commentators have noted that:

- 20% is a significant increase in the number of animal units. If a modification procedure is instituted, a 10%

expansion would be a more appropriate cutoff.

- Even then, 10% of 3,000 is a lot more than 10% of 500. If a modification procedure is instituted, its use should be limited to expansions of either 10%, or 200 animal units, whichever is less.

- Alternatively, the modification procedure could be limited to modifications of structures and facilities, but expansions of animal units would have to go through the normal permitting process.

- Regarding completeness determinations: The proposed rule requires a political subdivision to respond within 45 days to a livestock siting application, and provide either a notice that the application is complete, or a checklist of what would be required to make the application complete. Input from political subdivisions should be solicited to determine whether 45 is generally sufficient. In addition, the rule should allow for an extension of the 45-day period in the event of extenuating circumstances, such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met.

Setbacks:

- Although the proposed draft rule constitutes a shift toward greater reliance on setbacks to manage nuisance issues, the draft rules still allow an operation to obtain more lenient setbacks by adopting certain odor control practices. Odor control practices are difficult to monitor, enforce, and scientifically defend based on the scant and sometimes conflicting research available. Rather than this hybrid approach that blends setbacks with odor control practices, DATCP should simply require greater setbacks for new permits, and dispense with credits for odor practices.

- In addition, the setbacks need to be more rigorous. The proposed rules require only 300 feet of setback from a property line and 200 feet of setback from a public right-of-way for animal housing on an operation over 2,500 animal units, including operations of 20,000 or 30,000 animal units or more. The draft rule would then allow the setback to be even smaller if the operation adopts certain odor control practices. With allowable setback reductions under the proposed rule, a manure storage structure on a farm of 4,000 or more animal units (with an estimated surface area of 240,000 square feet) could be less than one quarter of a mile from a neighboring property line.

These setbacks are inadequate to protect public health and safety, and neighbors' peaceful enjoyment of their own private property. In 2017 the Department of Revenue reduced residents' property taxes in two counties – Green and Kewaunee – in response to CAFOs built on adjacent properties. This case is part of a growing national trend of property taxes being reassessed downward due to nearby CAFOs. Counties cannot afford a significant redistribution of their property tax burden due to the impact of large livestock operations. Setbacks are a key tool in maintaining the property values for neighboring properties.

- The proposed rule prohibits local governments from having setbacks that exceed the standards set forth in ATCP 51. This is a diminution of a fundamental local police power. ATCP 51 should create a default setback framework, but the rule should allow local governments to require increased setbacks if local conditions so dictate.

- the proposed revisions would allow an existing operation to expand an existing structure in a manner that violates the setbacks, provided that such an expansion increases the area of the structure or manure storage by no more than 20%. This should not be allowed. It is appropriate to “grandfather in” existing livestock housing and manure storage. However, an operation should only be allowed to expand an existing structure if the expansion would be in compliance with the new setbacks, the same as a new operation or structure would be required to meet.

- The proposed rule provides for more lenient setbacks for operations that “cluster” animals in multiple housing structures with multiple manure storages, rather than putting the same number of animals in a single barn and/or using a single manure storage facility. These “clustering” provisions in the draft rule are indefensible and should be removed. Having multiple barns and manure storage facilities spread out along a property line could actually create more odor problems for neighbors, rather than fewer, and yet farms using this “clustering” strategy would enjoy more lenient setbacks under the draft rule.

- One positive change is that the proposed rules would allow a political subdivision to require an odor management plan from a permitted facility if the subdivision receives a verified odor complaint from the owner of an adjacent property. This provision should be:

- clarified to explicitly state that a political subdivision may issue a fine or revoke a permit due to an

operation's failure to comply with an odor management plan;

- expanded to allow other affected individuals in the area, such as renters, employees of nearby businesses, other property owners within 2 miles of the permitted site, and users of nearby public or natural amenities, to register an odor complaint.

- The proposed rules allow an operator to make the case for a novel odor control strategy not included Appendix A, Worksheet 2. Assuming that the final rule continues to give setback reductions for odor control practices, political subdivisions should have the opportunity to present contrary evidence about the effectiveness of the proposed odor control strategy. An operator seeking to use a novel odor control strategy not described on Worksheet 2 should also be required to give notice to neighbors within a 2-mile radius, whose property values will be most affected, and these individuals should also have the opportunity to present evidence about the effectiveness of the proposed odor control strategy.

- Political subdivisions may also want to consider whether it is important for the rule to establish setbacks from feed storage structures, in addition to animal housing and manure storage. This would be important if feed storage structures have generated odor complaints.

Engineering Technical Standards:

- As noted above, the draft rule takes a step forward by requiring periodic visual inspections of manure storage facilities that are over 10 years old while empty to ensure their integrity. Unfortunately, actual experience in Wisconsin has taught us that manure storage facilities can start leaking within weeks or months of their construction. Thus, the requirement for an engineer to do a visual inspection of manure storage while empty in order to demonstrate compliance should be extended to all manure storage structures, not just those that are older than 10 years, in order to ensure that they are not cracked or leaking.

Nutrient Management Technical Standards:

- The nutrient management portion of the rules should require the operator to specifically list owned and rented acres where he or she plans to spread manure on Waste and Nutrient Management Worksheet 3.

- In addition, if the operator is relying on rented acres, he or she should be required to provide copies of written and signed rental agreements that cover the duration of the permit term. Recent experience has shown that without supporting documentation, operators' assertions that they have access to the necessary acres for manure spreading have not always been reliable.

For more information, contact:

Kara O'Connor, Government Relations Director

Wisconsin Farmers Union

koconnor@wisconsinfarmersunion.com / 608-514-4541

Sent from my iPhone

Heaton-Amrhein, Jennifer A - DATCP

From: kciw@grantsburgtelcom.net
Sent: Friday, September 6, 2019 8:01 PM
To: Clayton, Christopher R - DATCP
Subject: Public input from a farmer for ATCP 51, Livestock Siting Standards

Categories: Green Category

Dear Mr. Clayton,

We understand that now is the time to submit comments and concerns to address changes to the administrative rule, formerly referred to as ATCP 51. We appreciate and thank you for allowing public input to make sure the rules are balanced.

As farmers ourselves, it is our opinion that concentrated livestock operations approaching the size of 1,000 animal units or more is outside the scope of the "family agricultural farm" and into a scope of industrialized "agriculture" and thus requires more environmentally protective and preventative regulations. It should not be acceptable to put even one waterway, or groundwater aquifer at risk of potential contamination due to any industrial entity. It should also not be acceptable to put neighboring residents, or communities at risk of contaminated air, or expose them to harmful biological disease or health risks. We support agriculture and agree it is a necessity but, without protecting our environment and groundwater we will lose it all – our agriculture, our environment and our clean water. That risk is too great and regulations must be stringent on industrialized agricultural operations.

Here is our public input for helping to balance the rules:

- An industrial sized agricultural operation must not be self-regulated.
- We understand that there are currently many industrialized agriculture operations running with expired DNR runoff management CAFO permits. We recommend that you urge the Wisconsin Governor to issue a moratorium on all applications for siting of new or expanding industrial sized agriculture operations.
- Extend the requirement of a political subdivision to respond to a livestock siting application within 6 months (not 45 days), and a potential extension of 6 months in the event of extenuating circumstances such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met, or permittee is running under an expired permit.
- Any industrial sized agriculture operation seeking to expand in animal units. An applicant or permittee must have all documents in good standing for the previous 5 years with no expired permits or incidences during that time period.
- There is currently no cap on the size of animal units an industrial size agriculture operation can expand to which is dangerous to the health of animals and residents. Siting an industrial sized agriculture operation needs to be as custom as the environment it is be placed in. Applications should be submitted to local / county government, not to the state. This includes the WPDES permit and any other permits that may be required. Monitoring needs to be done locally and/or 3rd party monitoring, not by permittee.
- Siting is as unique as the environment that the industrial size agriculture operation is put in. Therefore, an applicant should be required to provide or pay for an independent environmental impact study for each proposed facility, as directed by the permitting authority.
- The current system of renewing permits every 5 years with inadequate oversight of the industrial agriculture operations needs to be updated to an annual permit renewal with higher fees for renewal to offset the cost of more 3rd party oversight personnel.
- Under a new nutrient management plan, all properties in the NMP and facility site should be required to have monitoring wells at a minimum depth to groundwater to provide for early warning of groundwater contamination monitored by local government or independent 3rd party.
- Allowing a limited liability corporation to establish an industrial agriculture operation is unacceptable due to potential of disastrous environmental impact. Any entity that is seeking a permit to establish an industrial agriculture operation, should be required to put forward a trust or bond, or have other means to rectify the worst-case scenario

of an environmental impact incident.

- The "Right to Farm" act needs to be modified, or repealed in such a way that differentiates an established or "Grandfathered" industrial agriculture operation from a newly formed industrial agriculture operation or one that is expanding. For example, the "Right to Farm" laws should not apply to an entity seeking to site a new industrial agriculture operation or expand an existing one in or near any rural town or community.
- Any operation requiring any type of high capacity well should be required to install a water treatment facility to reclaim usable water for the purpose of groundwater conservation and minimize the discharge of contaminated water.
- The nutrient management plan of liquid manure should be injected with a coulter type system that provides light incorporation into the soil. Any spray of liquid manure such as the center pivot, or irrigation style of spreading should be prohibited.
- All open lagoon type manure storage should be prohibited. All existing open lagoon style storage should be upgraded to a closed or covered system.
- Nutrient management planning has historically focused more heavily on surface water quality and phosphorus and much less on groundwater quality and nitrates. Many of the nitrates application rates that are used are designed to produce the best economic yield and are not necessarily designed to be protective of groundwater. Recent studies have indicated that nutrient management plans are questionably effective at reducing nitrate levels to below the maximum contaminate level of 10 parts per million (Wisconsin groundwater coordinating council 2018). Therefore, the nutrient management plan needs to have greater acreage per animal unit.
- Nutrient waste storage capacity should be at least 18 months to mitigate issues with trying to spread manure on overly saturated fields in the spring time, or early freezing in the fall. Although the need for waste storage capacity could be greatly reduced with the incorporation of a waste water treatment facility.
- Any newly designed liquid waste storage tank should be of a double hull design to allow for early detection of any leakage into the secondary hull, which could then alert of impending spill. The requirement should be that the alarm is issued to the operator as well as a 3rd party, authority.
- Order scoring should include animal composting and distribution of byproducts and non-odor causing poisonous or harmful fumes.
- There needs to be greater setbacks from property line for the facility and composting structures, and greater setback in the nutrient management program from neighboring property lines, wetlands, and any type of surface water.
- Greater setbacks from neighboring property lines for animal compost distribution.
- More stringent order score requirements and no credits for order score practices.

In addition to the above public input below is the recommendations from the Wisconsin Farmers Union that we are also in agreement with. https://docs.wixstatic.com/ugd/629d75_93a15312d7e04b97970f5d8a0c35b0bb.pdf

PS - We are in SUPPORT of agriculture and the spirit of the right to farm act. Our concern is with industrial operations being protected under the right to farm act. A fine tends to be a cost of doing business for some of these operations.

Thank you for your time and consideration,

Gary & Norma Wickstrom, Wick-Strom Farms
13084 Bass Lake Rd | Town of Anderson | Burnett County, WI

Sent from [Mail](#) for Windows 10

Heaton-Amrhein, Jennifer A - DATCP

From: Ellie Clarin <ellie.clarin@gmail.com>
Sent: Saturday, September 7, 2019 1:18 AM
To: Clayton, Christopher R - DATCP
Subject: ATCP 51

Categories: Green Category

Sep. 1, 2019

Christopher Clayton, DATCP

P.O. Box 8911

Madison, WI 53708-8911

608-224-4630

christopher.clayton@wisconsin.gov

Greetings Mr. Clayton,

We understand that now is the time to submit our comments and concerns to address changes to the administrative rule, formerly referred to as ATCP 51. We appreciate that you are allowing public input to make sure the rules are balanced.

It is our opinion that livestock operations approaching the size of 1000 animal units or more is outside the scope of the "family agricultural farm" and into a scope of Industrialized agriculture and thus requires more environmentally protective and preventative regulations. It should not be acceptable to put even one waterway, or groundwater aquifer at risk of potential contamination due to any industrial entity. It should also not be acceptable to put neighboring residents, or communities at risk of contaminated air, or expose them to harmful biological disease or health risks. We understand that agriculture is a necessity but, without protecting our environment and groundwater we will lose it all – our agriculture, our environment and our clean water. That risk is too great and regulations must be stringent on industrialized agricultural operations.

Here is our public input for helping to balance the rules:

- An industrial sized agricultural operation must not be self-regulated.
- We understand that there are currently many industrialized agriculture operations running with expired DNR runoff management CAFO permits. We recommend that you urge the Wisconsin Governor to issue a moratorium on all applications for siting of new or expanding industrial sized agriculture operations.
- Extend the requirement of a political subdivision to respond to a livestock siting application within 6 months (not 45 days), and a potential extension of 6 months in the event of extenuating circumstances such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met, or permittee is running under an expired permit.
- Any industrial sized agriculture operation seeking to expand in animal units. An applicant or permittee must have all documents in good standing for the previous 5 years with no expired permits or incidences during that time period.
- There is currently no cap on the size of animal units an industrial size agriculture operation can expand to which is dangerous to the health of animals and residents. Siting an industrial sized agriculture operation needs to be as custom as the environment it is be placed in. Applications should be submitted to local / county government, not to the state. This includes the WPDES permit and any other permits that may be required. Monitoring needs to be done locally and/or 3rd party monitoring, not by permittee.
- Siting is as unique as the environment that the industrial size agriculture operation is put in. Therefore, an applicant should be required to provide or pay for an independent environmental impact study for each proposed facility, as directed by the permitting authority.
- The current system of renewing permits every 5 years with inadequate oversight of the industrial agriculture operations needs to be updated to an annual permit renewal with higher fees for renewal to offset the cost of

more 3rd party oversight personnel.

- Under a new nutrient management plan, all properties in the NMP and facility site should be required to have monitoring wells at a minimum depth to groundwater to provide for early warning of groundwater contamination monitored by local government or independent 3rd party.
- Allowing a limited liability corporation to establish an industrial agriculture operation is unacceptable due to potential of disastrous environmental impact. Any entity that is seeking a permit to establish an industrial agriculture operation, should be required to put forward a trust or bond, or have other means to rectify the worst-case scenario of an environmental impact incident.
- The “Right to Farm” act needs to be modified, or repealed in such a way that differentiates an established or “Grandfathered” industrial agriculture operation from a newly formed industrial agriculture operation or one that is expanding. For example, the “Right to Farm” laws should not apply to an entity seeking to site a new industrial agriculture operation or expand an existing one in or near any rural town or community.
- Any operation requiring any type of high capacity well should be required to install a water treatment facility to reclaim usable water for the purpose of groundwater conservation and minimize the discharge of contaminated water.
- The nutrient management plan of liquid manure should be injected with a coulter type system that provides light incorporation into the soil. Any spray of liquid manure such as the center pivot, or irrigation style of spreading should be prohibited.
- All open lagoon type manure storage should be prohibited. All existing open lagoon style storage should be upgraded to a closed or covered system.
- Nutrient management planning has historically focused more heavily on surface water quality and phosphorus and much less on groundwater quality and nitrates. Many of the nitrates application rates that are used are designed to produce the best economic yield and are not necessarily designed to be protective of groundwater. Recent studies have indicated that nutrient management plans are questionably effective at reducing nitrate levels to below the maximum contaminate level of 10 parts per million (Wisconsin groundwater coordinating council 2018). Therefore, the nutrient management plan needs to have greater acreage per animal unit.
- Nutrient waste storage capacity should be at least 18 months to mitigate issues with trying to spread manure on overly saturated fields in the spring time, or early freezing in the fall. Although the need for waste storage capacity could be greatly reduced with the incorporation of a waste water treatment facility.
- Any newly designed liquid waste storage tank should be of a double hull design to allow for early detection of any leakage into the secondary hull, which could then alert of impending spill. The requirement should be that the alarm is issued to the operator as well as a 3rd party, authority.
- Order scoring should include animal composting and distribution of byproducts and non-odor causing poisonous or harmful fumes.
- There needs to be greater setbacks from property line for the facility and composting structures, and greater setback in the nutrient management program from neighboring property lines, wetlands, and any type of surface water.
- Greater setbacks from neighboring property lines for animal compost distribution.
- More stringent order score requirements and no credits for order score practices.

In addition to the above public input below is the recommendations from the Wisconsin Farmers Union that we are also in agreement with.

Sincerely,

Arielle E. Clarin

R&D Chemist | MOLS Pharmaceutical Operations

Medtronic

[7000 Central Ave NE, RCC-125 | Fridley, MN 55432 | USA](#)

Heaton-Amrhein, Jennifer A - DATCP

From: Kelly and Anne <Taylors330@msn.com>
Sent: Sunday, September 8, 2019 8:10 PM
To: Clayton, Christopher R - DATCP
Subject: ATCP 51 - A taxpayer's comments on the livestock siting rule
Attachments: ATCP 51_AnneTaylor_Sept 8 2019 comments.docx

Categories: Green Category

Dear Mr. Clayton,
Please find attached and enter into the public record of comments on ATCP 51 my written comments which are attached.

Thank you,
Anne Taylor
Property owned: 23287 Thorson Road, Granstburg, WI 54840
Residence: 1307 Niles Ave., St. Paul, MN 55116
Phone: 651-706-3039

Sent from [Mail](#) for Windows 10

Sep 8, 2019

Christopher Clayton, DATCP
P.O. Box 8911
Madison, WI 53708-8911
608-224-4630

christopher.clayton@wisconsin.gov

Dear Mr. Clayton,

I am writing to comment on changes to the administrative rule ATCP 51. I appreciate the opportunity to provide comment to help ensure the rules represent the interests of property owners. My husband and I own 15 acres in western Burnett County and plan to retire there if the environmental conditions are not degraded by industrialized agriculture.

I agree with comment provided by others that livestock operations approaching the size of 1,000 animal units or more is outside the scope of the "family agricultural farm" and into a scope of Industrialized agriculture and thus requires more stringent environmental regulations and public resources to provide oversight of industrial-scale manufacturing plants. We understand that agriculture is a necessity but, without protecting our environment and groundwater we will lose it all – our agriculture, our environment and our clean water.

Furthermore, the data shared in this letter suggests that the term "farm" does not pertain to the discussion of entities that raise animals on a scale exceeding 1,000 animals per operation. The data shared here is technical and requires sophisticated oversight by local government, which requires adequate staffing of professionals with specialized education and training. The prospect of mega-scale animal manufacturing requires regulations on par with manufacturing and not with agriculture.

Here are specific comments to the proposed rule ATCP 51.

- An industrial sized agricultural operation (manufacturing plant) must not be self-regulated.
- I understand that there are currently many industrialized agriculture manufacturing plants with expired DNR runoff management CAFO permits. The rule should require permit fees that help fund public oversight to ensure that permits are monitored. Permits should not be issued in counties that lack sufficient oversight capacity.
- Increase the time political subdivisions may respond to a livestock siting application from the current proposal of 45 days which is inadequate. The absence of key personnel, who are needed to determine whether the completeness criteria have been met, means the County is relying on the entity applying for the permit. The political subdivision should be required to notify the public and provide public review.

The current system of renewing permits every 5 years with inadequate oversight of the industrial agriculture manufacturing plant needs to be updated to an annual permit renewal with higher fees for renewal to offset the cost of more 3rd party oversight personnel.

- The proposed rule creates an abbreviated process for modifying an existing permit, rather than completing the full permitting process. Any industrial sized agriculture manufacturing plant seeking to modify an existing manufacturing plant must be required to have all documents in good standing for the previous 5 years with no expired permits or incidences during that time period. They must be required to seek a new permit for any threshold of expansion. The proposed threshold of 20% of existing animal units introduces too much risk to adjacent property owners.

Applications should be submitted to local / county government, not to the state. This includes the WPDES permit and any other permits that may be required. Monitoring needs to be done locally and/or 3rd party monitoring, not by permittee.

- Siting is as unique as the environment that the industrial size agriculture manufacturing plant put in. Therefore, an applicant should be required to provide or pay for an independent environmental impact study for each proposed facility, as directed by the permitting authority.

Setbacks:

- Setbacks are a key tool in maintaining the property values for neighboring properties. In 2017 the Department of Revenue reduced residents' property taxes in two counties – Green and Kewaunee – in response to CAFOs built on adjacent properties. This case is part of a growing national trend of property taxes being reassessed downward due to nearby CAFOs. Counties cannot afford a significant redistribution of their property tax burden due to the impact of large livestock manufacturing plants.

– Although the proposed draft rule relies more on setbacks to manage nuisance issues, the draft rule allows an manufacturing plants to obtain more lenient setbacks by adopting certain odor control practices. Odor control practices are difficult to monitor, enforce, and scientifically defend based on the scant and sometimes conflicting research available. Rather than this hybrid approach of setbacks with odor control practices, DATCP should require greater setbacks for new permits, and dispense with credits for odor practices.

– Setbacks need to be more rigorous. The proposed rules require only 300 feet of setback from a property line and 200 feet of setback from a public right-of-way for animal housing on a manufacturing plant over 2,500 animal units, including manufacturing plants of 20,000 or 30,000 animal units or more. The draft rule would then allow the setback to be even smaller if the manufacturing plant adopts certain odor control practices. With allowable setback reductions under the proposed rule, a manure storage structure on a farm of 4,000 or more animal units (with an estimated surface area of 240,000 square feet) could be less than one quarter of a mile from a neighboring property line.

– The proposed rule prohibits local governments from requiring setbacks that exceed the standards set forth in ATCP 51. This diminishes local government control. ATCP 51 should create a default setback framework, but the rule should allow local governments to require increased setbacks if local conditions so dictate.

– An animal manufacturing plant should only be allowed to expand an existing structure if the expansion would be in compliance with the PERMITTED new setbacks, the same as a new manufacturing plant or structure would be required to meet. The proposed revisions would allow an existing manufacturing plant to expand an existing structure in a manner that violates the setbacks, provided that such an expansion increases the area of the structure or manure storage by no more than 20%. This should not be allowed. It is appropriate to “grandfather in” existing livestock housing and manure storage.

– The proposed rule provides for more lenient setbacks for manufacturing plants that “cluster” animals in multiple housing structures with multiple manure storages, rather than putting the same number of animals in a single barn and/or using a single manure storage facility. These “clustering” provisions in the draft rule are indefensible and should be removed. Having multiple barns and manure storage facilities spread out along a property line could actually create more odor problems for neighbors, rather than fewer, and yet farms using this “clustering” strategy would enjoy more lenient setbacks under the draft rule.

– If the local unit of government receives a verified odor complaint from the owner of an adjacent property, that unit of government should have the authority to revoke a permit or issue a fine that pays for the cost of the oversight of the mitigation of that infraction due to an manufacturing plant’s failure to comply with an odor management plan;

– The new rule should allow other affected individuals in the area, such as renters, employees of nearby businesses, other property owners within 2 miles of the permitted site, and users of nearby public or natural amenities, to register an odor complaint, in addition to nearby property owners.

– The proposed rules allow an operator to make the case for a novel odor control strategy not included Appendix A, Worksheet 2. IF the final rule gives setback reductions for odor control practices (against previously stated recommendations), local governments should have the opportunity to present contrary evidence about the effectiveness of the proposed odor control strategy. An operator seeking to use a novel odor control strategy not described on Worksheet 2 must be required to give notice to neighbors (including renters, nearby businesses, etc.) within a 2-mile radius, whose property values will be most affected, and these individuals should also have the opportunity to present evidence about the effectiveness of the proposed odor control strategy.

– Political subdivisions may also want to consider whether it is important for the rule to establish setbacks from feed storage structures, in addition to animal housing and manure storage. This would be important if feed storage structures have generated odor complaints.

Nutrient Management

- Under a new nutrient management plan (NMP), all properties in the NMP and facility site should be required to have monitoring wells at a minimum depth to groundwater to provide for early warning of groundwater contamination monitored by local government or independent 3rd party.
- Allowing a limited liability corporation to establish an industrial animal agriculture manufacturing plant is unacceptable due to potential of disastrous environmental impact. Any entity that is seeking a permit to establish an industrial agriculture manufacturing plant, should be required to put forward a trust or bond, or have other means to rectify the worst-case scenario of an environmental impact incident.
- The "Right to Farm" act needs to be modified, or repealed in such a way that differentiates an established or "Grandfathered" industrial agriculture manufacturing plant from a newly formed industrial agriculture manufacturing plant or one that is expanding. For example, the "Right to Farm" laws should not apply to an entity seeking to site a new industrial agriculture manufacturing plant or expand an existing one in or near any rural town or community.
- Any operation requiring any type of high capacity well should be required to install a water treatment facility to reclaim usable water for the purpose of groundwater conservation and minimize the discharge of contaminated water.
- The nutrient management plan of liquid manure should be injected with a coulter type system that provides light incorporation into the soil. Any spray of liquid manure such as the center pivot, or irrigation style of spreading should be prohibited.
- All open lagoon type manure storage should be prohibited. All existing open lagoon style storage should be upgraded to a closed or covered system.
- Nutrient management planning has historically focused more heavily on surface water quality and phosphorus and much less on groundwater quality and nitrates. Many of the nitrates application rates that are used are designed to produce the best economic yield and are not necessarily designed to be protective of groundwater. Recent studies have indicated that nutrient management plans are questionably effective at reducing nitrate levels to below the maximum contaminate level of 10 parts per million (Wisconsin groundwater coordinating council 2018). Therefore, the nutrient management plan needs to have greater acreage per animal unit.
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- Any newly designed liquid waste storage tank should be of a double hull design to allow for early detection of any leakage into the secondary hull, which could then alert of impending spill. The requirement should be that the alarm is issued to the operator as well as a 3rd party, authority.

The nutrient management portion of the rules should require the operator to specifically list owned and rented acres where he or she plans to spread manure on Waste and Nutrient Management Worksheet 3.

– In addition, if the operator is relying on rented acres, he or she should be required to provide copies of written and signed rental agreements that cover the duration of the permit term. Recent experience has shown that without supporting documentation, operators' assertions that they have access to the necessary acres for manure spreading have not always been reliable.

Sincerely,

Anne Taylor
23287 Thorson Road
Grantsburg, WI 54840
651-706-3039

Heaton-Amrhein, Jennifer A - DATCP

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

Categories: Green Category

From: Ellie Clarin <ellie.clarin@gmail.com>
Sent: Saturday, September 7, 2019 1:26 AM
To: DATCP Admin Rules <datcpadminrules@wisconsin.gov>
Subject: Feedback on CR 19-098

To Whom it May Concern,

We understand that now is the time to submit our comments and concerns to address changes to the administrative rule, formerly referred to as ATCP 51. We appreciate that you are allowing public input to make sure the rules are balanced.

It is our opinion that livestock operations approaching the size of 1000 animal units or more is outside the scope of the "family agricultural farm" and into a scope of Industrialized agriculture and thus requires more environmentally protective and preventative regulations. It should not be acceptable to put even one waterway, or groundwater aquifer at risk of potential contamination due to any industrial entity. It should also not be acceptable to put neighboring residents, or communities at risk of contaminated air, or expose them to harmful biological disease or health risks. We understand that agriculture is a necessity but, without protecting our environment and groundwater we will lose it all – our agriculture, our environment and our clean water. That risk is too great and regulations must be stringent on industrialized agricultural operations.

Here is our public input for helping to balance the rules:

- An industrial sized agricultural operation must not be self-regulated.
- We understand that there are currently many industrialized agriculture operations running with expired DNR runoff management CAFO permits. We recommend that you urge the Wisconsin Governor to issue a moratorium on all applications for siting of new or expanding industrial sized agriculture operations.
- Extend the requirement of a political subdivision to respond to a livestock siting application within 6 months (not 45 days), and a potential extension of 6 months in the event of extenuating circumstances such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met, or permittee is running under an expired permit.
- Any industrial sized agriculture operation seeking to expand in animal units. An applicant or permittee must have all documents in good standing for the previous 5 years with no expired permits or incidences during that time period.
- There is currently no cap on the size of animal units an industrial size agriculture operation can expand to which is dangerous to the health of animals and residents. Siting an industrial sized agriculture operation needs to be as custom as the environment it is be placed in. Applications should be submitted to local / county government, not to the state. This includes the WPDES permit and any other permits that may be required. Monitoring needs to be done locally and/or 3rd party monitoring, not by permittee.
- Siting is as unique as the environment that the industrial size agriculture operation is put in. Therefore, an applicant should be required to provide or pay for an independent environmental impact study for each

proposed facility, as directed by the permitting authority.

- The current system of renewing permits every 5 years with inadequate oversight of the industrial agriculture operations needs to be updated to an annual permit renewal with higher fees for renewal to offset the cost of more 3rd party oversight personnel.
- Under a new nutrient management plan, all properties in the NMP and facility site should be required to have monitoring wells at a minimum depth to groundwater to provide for early warning of groundwater contamination monitored by local government or independent 3rd party.
- Allowing a limited liability corporation to establish an industrial agriculture operation is unacceptable due to potential of disastrous environmental impact. Any entity that is seeking a permit to establish an industrial agriculture operation, should be required to put forward a trust or bond, or have other means to rectify the worst-case scenario of an environmental impact incident.
- The “Right to Farm” act needs to be modified, or repealed in such a way that differentiates an established or “Grandfathered” industrial agriculture operation from a newly formed industrial agriculture operation or one that is expanding. For example, the “Right to Farm” laws should not apply to an entity seeking to site a new industrial agriculture operation or expand an existing one in or near any rural town or community.
- Any operation requiring any type of high capacity well should be required to install a water treatment facility to reclaim usable water for the purpose of groundwater conservation and minimize the discharge of contaminated water.
- The nutrient management plan of liquid manure should be injected with a coulter type system that provides light incorporation into the soil. Any spray of liquid manure such as the center pivot, or irrigation style of spreading should be prohibited.
- All open lagoon type manure storage should be prohibited. All existing open lagoon style storage should be upgraded to a closed or covered system.
- Nutrient management planning has historically focused more heavily on surface water quality and phosphorus and much less on groundwater quality and nitrates. Many of the nitrates application rates that are used are designed to produce the best economic yield and are not necessarily designed to be protective of groundwater. Recent studies have indicated that nutrient management plans are questionably effective at reducing nitrate levels to below the maximum contaminate level of 10 parts per million (Wisconsin groundwater coordinating council 2018). Therefore, the nutrient management plan needs to have greater acreage per animal unit.
- Nutrient waste storage capacity should be at least 18 months to mitigate issues with trying to spread manure on overly saturated fields in the spring time, or early freezing in the fall. Although the need for waste storage capacity could be greatly reduced with the incorporation of a waste water treatment facility.
- Any newly designed liquid waste storage tank should be of a double hull design to allow for early detection of any leakage into the secondary hull, which could then alert of impending spill. The requirement should be that the alarm is issued to the operator as well as a 3rd party, authority.
- Order scoring should include animal composting and distribution of byproducts and non-odor causing poisonous or harmful fumes.
- There needs to be greater setbacks from property line for the facility and composting structures, and greater setback in the nutrient management program from neighboring property lines, wetlands, and any type of surface water.
- Greater setbacks from neighboring property lines for animal compost distribution.
- More stringent order score requirements and no credits for order score practices.

In addition to the above public input below is the recommendations from the Wisconsin Farmers Union that we are also in agreement with.

Sincerely,

Arielle E. Clarin

R&D Chemist | MOLS Pharmaceutical Operations

Medtronic

[7000 Central Ave NE, RCC-125 | Fridley, MN 55432 | USA](#)

Heaton-Amrhein, Jennifer A - DATCP

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

Categories: Green Category

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

From: Software-Notification@legis.wisconsin.gov <Software-Notification@legis.wisconsin.gov>
Sent: Friday, September 6, 2019 8:26 AM
To: DATCP Admin Rules <datcpadminrules@wisconsin.gov>
Cc: jebclarin@msn.com
Subject: Public comment on CR 19-098

Name: Gerald Clarin
Address: 20810 Lakewood Drive, Grantsburg Wisconsin 54840
Email: jebclarin@msn.com

Organization:

Comments: To whom it may concern,
We understand that now is the time to submit our comments and concerns to address changes to the administrative rule, formerly referred to as ATCP 51. We appreciate that you are allowing public input to make sure the rules are balanced.

It is our opinion that livestock operations approaching the size of 1000 animal units or more is outside the scope of the "family agricultural farm" and into a scope of industrialized agriculture and thus requires more environmentally protective and preventative regulations. It should not be acceptable to put even one waterway, or groundwater aquifer at risk of potential contamination due to any industrial entity. It should also not be acceptable to put neighboring residents, or communities at risk of contaminated air, or expose them to harmful biological disease or health risks. We understand that agriculture is a necessity but, without protecting our environment and groundwater we will lose it all – our agriculture, our environment and our clean water. That risk is too great and regulations must be stringent on industrialized agricultural operations.

Here is our public input for helping to balance the rules:

- An industrial sized agricultural operation must not be self-regulated.
- We understand that there are currently many industrialized agriculture operations running with expired DNR runoff management CAFO permits. We recommend that you urge the Wisconsin Governor to issue a moratorium on all applications for siting of new or expanding industrial sized agriculture operations.
- Extend the requirement of a political subdivision to respond to a livestock siting application within 6 months (not 45 days), and a potential extension of 6 months in the event of extenuating circumstances such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met, or permittee is running under an expired permit.
- Any industrial sized agriculture operation seeking to expand in animal units. An applicant or permittee must have all documents in good standing for the previous 5 years with no expired permits or incidences during that time period.

- There is currently no cap on the size of animal units an industrial size agriculture operation can expand to which is dangerous to the health of animals and residents. Siting an industrial sized agriculture operation needs to be as custom as the environment it is be placed in. Applications should be submitted to local / county government, not to the state. This includes the WPDES permit and any other permits that may be required. Monitoring needs to be done locally and/or 3rd party monitoring, not by permittee.
- Siting is as unique as the environment that the industrial size agriculture operation is put in. Therefore, an applicant should be required to provide or pay for an independent environmental impact study for each proposed facility, as directed by the permitting authority.
- The current system of renewing permits every 5 years with inadequate oversight of the industrial agriculture operations needs to be updated to an annual permit renewal with higher fees for renewal to offset the cost of more 3rd party oversight personnel.
- Under a new nutrient management plan, all properties in the NMP and facility site should be required to have monitoring wells at a minimum depth to groundwater to provide for early warning of groundwater contamination monitored by local government or independent 3rd party.
- Allowing a limited liability corporation to establish an industrial agriculture operation is unacceptable due to potential of disastrous environmental impact. Any entity that is seeking a permit to establish an industrial agriculture operation, should be required to put forward a trust or bond, or have other means to rectify the worst-case scenario of an environmental impact incident.
- The "Right to Farm" act needs to be modified, or repealed in such a way that differentiates an established or "Grandfathered" industrial agriculture operation from a newly formed industrial agriculture operation or one that is expanding. For example, the "Right to Farm" laws should not apply to an entity seeking to site a new industrial agriculture operation or expand an existing one in or near any rural town or community.
- Any operation requiring any type of high capacity well should be required to install a water treatment facility to reclaim usable water for the purpose of groundwater conservation and minimize the discharge of contaminated water.
- The nutrient management plan of liquid manure should be injected with a coulter type system that provides light incorporation into the soil. Any spray of liquid manure such as the center pivot, or irrigation style of spreading should be prohibited.
- All open lagoon type manure storage should be prohibited. All existing open lagoon style storage should be upgraded to a closed or covered system.
- Nutrient management planning has historically focused more heavily on surface water quality and phosphorus and much less on groundwater quality and nitrates. Many of the nitrates application rates that are used are designed to produce the best economic yield and are not necessarily designed to be protective of groundwater. Recent studies have indicated that nutrient management plans are questionably effective at reducing nitrate levels to below the maximum contaminate level of 10 parts per million (Wisconsin groundwater coordinating council 2018). Therefore, the nutrient management plan needs to have greater acreage per animal unit.
- Nutrient waste storage capacity should be at least 18 months to mitigate issues with trying to spread manure on overly saturated fields in the spring time, or early freezing in the fall. Although the need for waste storage capacity could be greatly reduced with the incorporation of a waste water treatment facility.
- Any newly designed liquid waste storage tank should be of a double hull design to allow for early detection of any leakage into the secondary hull, which could then alert of impending spill. The requirement should be that the alarm is issued to the operator as well as a 3rd party, authority.
- Order scoring should include animal composting and distribution of byproducts and non-odor causing poisonous or harmful fumes.
- There needs to be greater setbacks from property line for the facility and composting structures, and greater setback in the nutrient management program from neighboring property lines, wetlands, and any type of surface water.
- Greater setbacks from neighboring property lines for animal compost distribution.
- More stringent order score requirements and no credits for order score practices.

In addition to the above public input below is the recommendations from the Wisconsin Farmers Union that we are also in agreement with.

Sincerely,

Heaton-Amrhein, Jennifer A - DATCP

From: asamkod@aol.com
Sent: Thursday, September 12, 2019 2:33 PM
To: DATCP Livestock Siting Comments
Subject: Comments on ATCP 51, Livestock Siting Standards
Attachments: Wisconsin Farmers Union Comments.pdf

Categories: Green Category

I am writing to comment of the proposed ATCP 51 revised Livestock Siting Standards as proposed by DATCP Board.

I grew up on a small dairy farm in central Wisconsin and now live on this farm growing vegetables and fruit for sale. We live in a time that is crucial to our environment now. Any decision we make today will have lasting effects well beyond our lifetimes. And will affect those around the world we have not even understood the concept of til recently.

Although I do not believe that any Confined Animal Feeding Operation that does not use grazing as its primary means of feeding its animals and being able to spread its manure is an environmental disaster. Our water in Wisconsin is precious and is being contaminated on a daily basis by these operations now. Budget cuts have decimated any enforcement capability this State has in protecting its citizens' health and welfare. It is a crying shame that these standards have now only revised and recently been sent out for public comment and even acted on by DATCP.

I support odor setbacks from neighboring property lines. I want to be able to walk on my land wherever it be and not be stunk out by the next door or down the road livestock odors. That is my property right to enjoy every piece of my property.

People should have the right to complain about foul odors and that they should be addressed in a responsible way. Our property rights are violated if complaints not allowed nor odors taken care of.

Manure storage facilities need to be inspected more frequently and by inspectors that are properly trained and staffed throughout all areas of government agencies responsible for this monitoring. The budget ought to indicate this. Our water quality is dependent on this.

Any livestock operation needs to have and possess the land needed to properly implement their nutrient management plan that does not endanger the areas drinking water. This also needs to be in geologically sound area that can absorb and filter the animal waste before it reaches our water reservoirs.

All existing livestock operations that are in the category for this ATCP 51 need to be monitored under these revised standards and not allowed to skirt them because they were already approved.

All confined livestock operations need to post a reasonable and responsible bond that would cover clean up costs for any leaks or other contamination to the environment. My tax payer money should not be used to cover this cost.

Permit fees should be based on the amount of livestock being requested for permitting - on a progressive scale. The more the heads the more the cost as this presents more of the risk to the environment and public health.

Local governments should be allowed and able to increase setbacks based on local situations.

DATCP and all governments entities should be able to take the time required to properly review the permit to ensure all technical aspects of the permit are feasible and work for environmental and health standards prior to approval and not be limited to some arbitrary time set by political or higher entities.

As I write this the more I learn of the term "Regenerative Agriculture". This basically was the way this State used to farm. The small farms that we are losing every single day are the ones that farmed this way. Way before Big Ag came into being. This is the way my family used to farm with a true family owned, operated and run family farm. There needs to be a moratorium on CAFOs and the ones that are in existence need to at least be regulated and monitored to ensure our environment and property rights do not continue to be washed away in the manure runoff.

Until we wake up to our coming disaster created by man these livestock standards need to be supported, some changed and more implemented.

I have attached a copy of the Wisconsin Farmers Union Proposed revisions to ATCP 51, Livestock Siting Standards dated August 2, 2019. I agree wholeheartedly with their comments.

Thank you for opening this up for review and public comment. It looks like you actually are taking seriously the people of this State and their welfare along with the environmental welfare of our future.

Joan Arnold
285 County Road PP
Rudolph, WI 54475
715-435-3518



Memo: Proposed revisions to ATCP 51, Livestock Siting Standards

From: Kara O'Connor, Wisconsin Farmers Union

Date: August 2, 2019

Background

ATCP 51 is the rule promulgated by DATCP to implement the Livestock Siting Law (Wisconsin Statutes section 93.90). The law requires that DATCP review the rules every 4 years. Despite convening two panels of technical experts in 2010 and 2014 to review the technical standards and make significant recommendations, the standards have never been revised since ATCP 51 came into effect over a decade ago in 2006.

On July 10, 2019, however, after receiving recommendations from a third Technical Review Committee, the DATCP Board did vote to send a new draft of ATCP 51 out for public comment. This is the opportunity of a decade for concerned stakeholders to weigh in on the proposed changes to the state rules that regulate large livestock facilities.

Concepts that are positive in DATCP's proposed revisions to ATCP 51:

- replacing the flawed odor score calculation with greater setbacks.
- setbacks are calculated from neighbors' property lines, not neighbors' residences or buildings. It is critical that this element of the draft rules be maintained. Neighbors must be able to protect their current and future property rights on the entirety of their property, not just their use of existing buildings.
- applying feed storage leachate control standards to all feed, not just high-moisture feed.
- requiring more frequent visual inspections of manure storage facilities to ensure their integrity.
- creating a process for neighbors of a large livestock facility to initiate an odor complaint.
- delineating a process to clarify when an application is "complete."
- 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.

Concepts that are questionable in DATCP's proposed revisions to ATCP 51:

- Creating an accelerated/streamlined "modification" process for existing large livestock facilities to expand.
- Developing a confusing hybrid approach of setbacks combined with odor control practices to manage nuisance, rather than simply shifting to setbacks and abandoning credits for odor control practices that are difficult to monitor, enforce, and scientifically defend based on the scant and sometimes conflicting research available.

Things that should be changed in the current draft revision to ATCP 51:

Financial/Procedural:

- The draft maintains the current cap of \$1,000 on the permit fee that a political subdivision can charge. This amount is grossly inadequate. For example, Green County has spent over \$40,000 reviewing a single permit application. Very large operations with complex engineering are becoming the new norm. To account for this size and complexity, **the maximum allowable permit fee should be increased** to either:

- \$1 per animal unit, or
- 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.

(Note: This would be the maximum permit fee allowed under the rule. Political subdivisions are always free to charge less than the maximum.)

- Currently political subdivisions are prohibited from **requiring the large livestock facility to post a bond or other financial security**. This prohibition should be removed, in order to protect taxpayers from a costly cleanup if a manure storage pit overtops or the operation goes out of business without a new buyer in place. As operations become extremely large, and as dairy and livestock markets become more volatile, the chances increase that we will see abandoned facilities for which no suitable buyer can be found.

- The proposed rule creates an **abbreviated process for modifying an existing permit**, rather than completing the full permitting process. The draft rule provides that the modification process could be used for expansions of up to 30% of existing animal units, provided that the modification does not require the operator to complete four or more of the required permit worksheets. A threshold question is whether an abbreviated modification process is desirable, or whether facilities should undergo the standard application procedure if they wish to modify or expand operations. Assuming a modification procedure is desirable, a number of commentators have noted that:

- 30% is a very significant increase in the number of animal units. If a modification procedure is instituted, a 10% expansion would be a more appropriate cutoff.
- Even then, 10% of 3,000 is a lot more than 10% of 500. If a modification procedure is instituted, it might be wise to limit its application to expansions of *either 10%, or 200 animal units, whichever is less*.
- Alternatively, the modification procedure could be limited to modifications of structures and facilities, but expansions of animal units would have to go through the normal permitting process.

- **Regarding completeness determinations:** The proposed rule requires a political subdivision to respond within 45 days to a livestock siting application, and provide either a notice that the application is complete, or a checklist of what would be required to make the application complete. Input from political subdivisions should be solicited to determine whether 45 is generally sufficient. In addition, the rule should allow for an extension of the 45-day period in the event of extenuating circumstances, such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met.

Setbacks:

- Although the proposed draft rule constitutes a shift toward greater reliance on setbacks to manage nuisance issues, the draft rules still allow an operation to obtain more lenient setbacks by adopting certain odor control practices. Odor control practices are difficult to monitor, enforce, and scientifically defend based on the scant and sometimes conflicting research available. Rather than this hybrid approach that blends setbacks with odor control practices, **DATCP should simply require greater setbacks for new permits, and dispense with credits for odor practices.**

- **In addition, the setbacks need to be more rigorous.** The proposed rules require only 300 feet of setback from a property line and 200 feet of setback from a public right-of-way for animal housing on an operation over 2,500 animal units, including operations of 20,000 or 30,000 animal units or more. The draft rule would then allow the setback to be even smaller if the operation adopts certain odor control practices. With allowable setback reductions under the proposed rule, a manure storage structure on a farm of 4,000 or more animal units (with an estimated surface area of 240,000 square feet) could be less than one quarter of a mile from a neighboring property line.

These setbacks are inadequate to protect public health and safety, and neighbors' peaceful enjoyment of their own private property. In 2017 the Department of Revenue reduced residents' property taxes in two counties – Green and Kewaunee – in response to CAFOs built on adjacent properties. This case is part of a growing national trend of property taxes being reassessed downward due to nearby CAFOs. Counties cannot afford a significant redistribution of their property tax burden due to the impact of large livestock operations. **Setbacks are a key tool in maintaining the property values for neighboring properties.**

- The proposed rule prohibits local governments from having setbacks that exceed the standards set forth in ATCP 51. This is a diminution of a fundamental local police power. ATCP 51 should create a default setback framework, but **the rule should allow local governments to require increased setbacks if local conditions so dictate.**

- the proposed revisions would allow an existing operation to incrementally expand an existing structure in a manner that violates the setbacks, provided that each incremental expansion increases the area of the structure or manure storage by no more than 20%. This should not be allowed. Current operations should be "grandfathered in," *provided that they maintain their existing structures and permit.* **An operation should only be allowed to expand an existing structure if the expansion would be in compliance with the new setbacks,** the same as a new operation or structure would be required to meet.

- The proposed rule provides for **more lenient setbacks for operations that "cluster" animals in multiple housing structures,** rather than housing the same number of animals in a single structure. This "clustering" provision is indefensible and should be removed.

- One positive change is that the proposed rules would allow a political subdivision to require an **odor management plan from a permitted facility if the subdivision receives a verified odor complaint** from the owner of an adjacent property. This provision should be:

- clarified to explicitly state that a political subdivision may issue a fine or revoke a permit due to an operation's failure to comply with an odor management plan;

- expanded to allow other affected individuals in the area, such as renters, other property owners within 2 miles of the permitted site, and users of nearby public or natural amenities, to register an odor complaint.
- The proposed rules allow an operator to make the case for a novel odor control strategy not included Appendix A, Worksheet 2. Assuming that the final rule continues to give setback reductions for odor control practices, **political subdivisions should have the opportunity to present contrary evidence about the effectiveness of the proposed odor control strategy.** An operator seeking to use a novel odor control strategy not described on Worksheet 2 should also be required to give notice to neighbors within a 2-mile radius, whose property values will be most affected, and these individuals should also have the opportunity to present evidence about the effectiveness of the proposed odor control strategy.
- **Political subdivisions may also want to consider whether it is important for the rule to establish setbacks from feed storage structures,** in addition to animal housing and manure storage. This would be important if feed storage structures have generated odor complaints.

Engineering Technical Standards:

- As noted above, the draft rule takes a step forward by requiring periodic visual inspections of manure storage facilities that are over 10 years old while empty to ensure their integrity. Unfortunately, actual experience in Wisconsin has taught us that manure storage facilities can start leaking within weeks or months of their construction. Thus, the requirement for an engineer to do a **visual inspection of manure storage while empty in order to demonstrate compliance should be extended to all manure storage structures,** not just those that are older than 10 years, in order to ensure that they are not cracked or leaking.

Nutrient Management Technical Standards:

- The nutrient management portion of the rules should require the operator to **specifically list owned and rented acres where he or she plans to spread manure** on Waste and Nutrient Management Worksheet 3. If the operator is relying on rented acres, he or she should provide documentation of rental agreements that cover the duration of the permit term. Recent experience has shown that without supporting documentation, operators' assertions that they have access to the necessary acres for manure spreading have not always been reliable.

For more information, contact:

Kara O'Connor, Government Relations Director

Wisconsin Farmers Union

koconnor@wisconsinfarmersunion.com / 608-514-4541

Dear Members of the Committee--

Now that the ATCP 51 hearings are underway, we have heard certain groups making threats that if you change these rules in any substantive way, farms will leave and it will be the death of the dairy industry in the state. Let's look at that claim, that these changes will somehow damage our dairy industry in Wisconsin.

First of all, it's absurd to suggest in any way that these proposed changes came as a surprise. Everyone understood, from the moment that the state livestock siting law was passed in 2006, that these rules were going to be updated periodically. If general farm organizations didn't make that clear to their members from the get-go, then shame on them. Moreover, if their members have a business model that is so fragile and vulnerable to scheduled rule revisions, then maybe it's not a sound business model to begin with. It is starting to seem more and more like the CAFO business model is a house of cards. One change in livestock siting, and it's allegedly all going to collapse – unless we preempt local control and force the towns and the counties and the neighbors that are most affected by the spillover effects of these farms to hold their noses and look the other way while roads get destroyed and property values decline. (And talking about ATCP 51 doesn't even begin to address CAFO's vulnerability to changes in immigration laws, high-capacity well permitting, or nutrient management rules.)

Farmers Union members, including a number of CAFO owners, support ATCP 51 as a means of protecting water and air quality. If the CAFO's that are in opposition to the rule changes are really so precariously situated that requiring them to respect roads and neighbors will destroy their business, then we'd better not send any other new farms down this path. Remember, existing farms get the benefit of grandfathering when it comes to setbacks and many other aspects of these rules. So what we're really talking about is, what rules are we establishing for *new* farms that will put them on a solid footing for years to come? There is no question that under the current regulations, sited farms are causing damage to roads, problems with odor, and property value declines. We should fix these rules before anyone else builds a farm on a fundamentally flawed foundation.

Second, it's especially galling that the exact same large farms that are most responsible for the current oversupply of milk and the resulting low prices are now looking for sympathy in these tough times. They are asking the state of Wisconsin, and you as the DATCP Board, to bail them out by keeping rules and regulations weak. Lax regulations are not going to solve the current dairy crisis. The fundamental problem is that we have too much milk, and we need a federal policy to better balance supply with demand. Ironically, the very groups that have fought most vociferously against policies designed to address the over-supply are now bemoaning its effects in these hearings, and asking for your sympathy. They can't have it both ways. It is unfair and disingenuous to use low milk prices as an excuse for neighbors to have to suffer the consequences of foul odors, damaged roads, and diminished property values, while at the same time opposing the very policies that would solve low milk prices. There is ample information

about these policies, and the academic research that proves that they work, at DairyTogether.com.

At the Oshkosh hearing on August 15th, people who opposed making changes to ATCP 51 made the somewhat stunning assertion that "the current system is working." What, exactly, is working about Wisconsin losing 691 dairy farms last year? Or 503 the year before that? Or 391 the year before that? In the past decade, we have lost 5,459 Wisconsin dairy herds, or about 42% of the 13,078 that existed back in August of 2009.

We know that small farms generate 55% more economic activity in rural communities than large farms do, because small farms make 95% of their purchases locally, compared to only 20% of purchases made locally by the largest farms. The farms that we are losing by the hundreds are the very farms that actually contribute the most to the Wisconsin economy. Data from the Towns Association presented at last week's Oshkosh hearing showed how CAFO's can actually cost their communities, due to roads that have to be rebuilt decades before they should be.

The flaws in the current ATCP 51 rules aren't entirely responsible for our current challenges, but they are part of the puzzle. So what is Wisconsin Farmers Union asking for in the ATCP 51 process? Our memo gives a number of specific recommendations, but in general what we would ask is this:

First, that you as the DATCP board use the ATCP 51 process to hold large livestock operations accountable for the damage they are causing to land, water, roads, and neighboring property values. The setbacks need to be greater, the caps on permit fees need to be increased or eliminated entirely, and farms need to document and have written contracts to prove that they have the land base to handle the manure from all animal units allowed under the permit. Periodic visual inspections should be conducted of all manure pits, not just ones over 10 years old.

Second, we are asking you to do exactly what the Livestock Siting Law contemplated, which was to make periodic and substantive changes to these rules with the benefit of Technical Committee recommendations.

And finally, through this ATCP 51 process, we are asking you to reject the argument that low commodity prices are an excuse for stepping on one's neighbors. Lax regulations in Wisconsin are not going to solve the nationwide dairy price crisis. Nor the very real threat to our state's groundwater. Real solutions to the dairy crisis exist that would benefit all sizes of farms, from the smallest to the largest, and we invite all farms and all organizations to be part of the Dairy Together movement to work toward real solutions.

Julie Keown-Bomar
Wisconsin Farmers Union
117 W Spring St.

Chippewa Falls, WI

jbomar@wisconsinfarmersunion.com

715-492-3549

Testimony on ATCP 51: Livestock Facility Siting Administrative Rule Revision

**DATCP Public Hearing
Madison, Wisconsin
August 22, 2019**

Harry Pulliam
W5120 County Road W
New Glarus, WI 53574

My name is Harry Pulliam. I am a proud member of the Wisconsin Farmers Union and a strong supporter of Family Farming. Having thoroughly reviewed the proposed changes to ATCP 51, I would like to make the following comments and recommendations.

Setbacks:

While I applaud the replacement of the imprecise odor score calculation with increased setbacks, I believe that the proposed setback of 300 feet from a neighboring property line is grossly insufficient. Here is a statement from farmer Kathie Riemer, whose home is roughly ¼ mile from the 5,800-cow Pinnacle Dairy near Brodhead, WI:

“We lived on our farm for fifty years before we lost the fight against a 6,000-cow CAFO. When they were looking to hire, they put up a big, beautiful sign with cows out grazing. What a joke! And we have not had a breath of healthy air since. We cannot ever open a window. The stench has decimated an entire community, not to mention the concern over water quality. This situation is all thanks to an out-of-state owner who could care less.”

I also think that DATCP should simply require greater setbacks for new permits and totally dispense with credits for odor control practices. Because odor control practices are hard to monitor, enforce and scientifically defend, they should not be part of the equation.

Permit Fees:

The draft rules maintain the incredibly meager permit fee cap of \$1,000. I believe that any political subdivision should be allowed to recover the actual costs it incurs in the permitting process. Green County's experience provides a perfect example of why this is necessary. Green County taxpayers ended up being on the hook for over \$40,000 in expenditures to review and oversee the permit for Pinnacle Dairy, a multi-million-dollar operation.

By comparison, organic farmers producing hemp for CBD for medicine are required to spend \$150 to \$1,000 for a grower's license and then \$350 per year for grower registration and a minimum of \$250 per year per field and variety for product testing. Somehow this seems terribly unfair.

Memo: Proposed revisions to ATCP 51, Livestock Siting Standards

From: Kara O'Connor, Wisconsin Farmers Union

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

Date: August 22, 2019

Wisconsin Farmers Union appreciates this opportunity to comment on the proposed revisions to ATCP 51, implementing the Wisconsin Livestock Siting Law (Wisconsin Statutes section 93.90). Despite DATCP convening two panels of technical experts in 2010 and 2014 to review the technical standards and make significant recommendations, DATCP has never revised the standards since ATCP 51 came into effect over a decade ago in 2006. Large livestock operations have grown significantly in number, size, and complexity since these rules first came into effect.

Wisconsin Farmers Union appreciates many of the recommendations of the third Technical Review Committee that was convened in 2018, though in many cases WFU feels that the changes do not go far enough to satisfy DATCP's mandate to craft rules that take all of the following into account:

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

In particular, the rules as written are not sufficiently protective of public health and safety, objective, protective of natural resources and other community interests such as rural community vitality, or usable by political subdivisions.

Concepts that are positive in DATCP's proposed revisions to ATCP 51:

- replacing the flawed odor score calculation with greater setbacks. Setbacks are more objective than the odor score.
- setbacks are calculated from neighbors' property lines, not neighbors' residences or buildings. It is critical that this element of the draft rules be maintained. Neighbors must be able to protect their current and future property rights on the entirety of their property, not just their use of existing buildings.
- applying feed storage leachate control standards to all feed, not just high-moisture feed.
- requiring more frequent visual inspections of manure storage facilities to ensure their integrity.
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- delineating a process to clarify when an application is "complete."
- 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.

Things that should be changed in the current draft revision to ATCP 51:

Financial/Procedural:

- The draft maintains the current cap of \$1,000 on the permit fee that a political subdivision can charge. This amount is grossly inadequate. For example, Green County has spent over \$40,000 reviewing a single permit application. Very large operations with complex engineering are becoming the new norm. To account for this size and complexity, **the maximum allowable permit fee should be increased** to either:

- \$1 per animal unit, or
- 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.

(Note: This would be the maximum permit fee allowed under the rule. Political subdivisions are always free to charge less than the maximum.)

- Currently political subdivisions are prohibited from **requiring the large livestock facility to post a bond or other financial security**. This prohibition should be removed, in order to protect taxpayers from a costly cleanup if a manure storage pit overtops or the operation goes out of business without a new buyer in place. As operations become extremely large, and as dairy and livestock markets become more volatile, the chances increase that we will see abandoned facilities for which no suitable buyer can be found.

- The proposed rule creates an **abbreviated process for modifying an existing permit**, rather than completing the full permitting process. The draft rule provides that the modification process could be used for expansions of up to 20% of existing animal units, provided that the modification does not require the operator to complete four or more of the required permit worksheets. A threshold question is whether an abbreviated modification process is desirable, or whether facilities should undergo the standard application procedure if they wish to modify or expand operations. Assuming a modification procedure is desirable, a number of commentators have noted that:

- 20% is a significant increase in the number of animal units. If a modification procedure is instituted, a 10% expansion would be a more appropriate cutoff.
- Even then, 10% of 3,000 is a lot more than 10% of 500. If a modification procedure is instituted, its use should be limited to expansions of *either 10%, or 200 animal units, whichever is less.*
- Alternatively, the modification procedure could be limited to modifications of structures and facilities, but expansions of animal units would have to go through the normal permitting process.

- **Regarding completeness determinations:** The proposed rule requires a political subdivision to respond within 45 days to a livestock siting application, and provide either a notice that the application is complete, or a checklist of what would be required to make the application complete. Input from political subdivisions should be solicited to determine whether 45 is generally sufficient. In addition, the rule should allow for an extension of the 45-day period in the event of extenuating circumstances, such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met.

Setbacks:

- Although the proposed draft rule constitutes a shift toward greater reliance on setbacks to manage nuisance issues, the draft rules still allow an operation to obtain more lenient setbacks by adopting certain odor control practices. Odor control practices are difficult to monitor, enforce, and scientifically defend based on the scant and sometimes conflicting research available. Rather than this hybrid approach that blends setbacks with odor control practices, **DATCP should simply require greater setbacks for new permits, and dispense with credits for odor practices.**

- **In addition, the setbacks need to be more rigorous.** The proposed rules require only 300 feet of setback from a property line and 200 feet of setback from a public right-of-way for animal housing on an operation over 2,500 animal units, including operations of 20,000 or 30,000 animal units or more. The draft rule would then allow the setback to be even smaller if the operation adopts certain odor control practices. With allowable setback reductions under the proposed rule, a manure storage structure on a farm of 4,000 or more animal units (with an estimated surface area of 240,000 square feet) could be less than one quarter of a mile from a neighboring property line.

These setbacks are inadequate to protect public health and safety, and neighbors' peaceful enjoyment of their own private property. In 2017 the Department of Revenue reduced residents' property taxes in two counties – Green and Kewaunee – in response to CAFOs built on adjacent properties. This case is part of a growing national trend of property taxes being reassessed downward due to nearby CAFOs. Counties cannot afford a significant redistribution of their property tax burden due to the impact of large livestock operations. **Setbacks are a key tool in maintaining the property values for neighboring properties.**

- The proposed rule prohibits local governments from having setbacks that exceed the standards set forth in ATCP 51. This is a diminution of a fundamental local police power. ATCP 51 should create a default setback framework, but **the rule should allow local governments to require increased setbacks if local conditions so dictate.**

- the proposed revisions would allow an existing operation not only to continue using non-complying structures that are within the new setback areas, but also to *expand* the size of an existing non-complying structure by no more than 20%. This should not be allowed. It is appropriate to "grandfather in" existing livestock housing and manure storage. However, **an operation should only be allowed to expand an existing structure if the expansion would be in compliance with the new setbacks**, the same as a new operation or structure would be required to meet.

- The proposed rule provides for **more lenient setbacks for operations that "cluster" animals in multiple housing structures with multiple manure storages**, rather than putting the same number of animals in a single barn and/or using a single manure storage facility. These "clustering" provisions in the draft rule are indefensible and should be removed. Having multiple barns and manure storage facilities spread out along a property line could actually create *more* odor problems for neighbors, rather than fewer, and yet farms using this "clustering" strategy would enjoy more lenient setbacks under the draft rule.

- One positive change is that the proposed rules would allow a political subdivision to require an **odor management plan from a permitted facility if the subdivision receives a verified odor complaint** from the owner of an adjacent property. This provision should be:
 - clarified to explicitly state that a political subdivision may issue a fine or revoke a permit due to an operation's failure to comply with an odor management plan;
 - expanded to allow other affected individuals in the area, such as renters, employees of nearby businesses, other property owners within 2 miles of the permitted site, and users of nearby public or natural amenities, to register an odor complaint.
- The proposed rules allow an operator to make the case for a novel odor control strategy not included Appendix A, Worksheet 2. Assuming that the final rule continues to give setback reductions for odor control practices, **political subdivisions should have the opportunity to present contrary evidence about the effectiveness of the proposed odor control strategy.** An operator seeking to use a novel odor control strategy not described on Worksheet 2 should also be required to give notice to neighbors within a 2-mile radius, whose property values will be most affected, and these individuals should also have the opportunity to present evidence about the effectiveness of the proposed odor control strategy.
- **Political subdivisions may also want to consider whether it is important for the rule to establish setbacks from feed storage structures,** in addition to animal housing and manure storage. This would be important if feed storage structures have generated odor complaints.

Engineering Technical Standards:

- As noted above, the draft rule takes a step forward by requiring periodic visual inspections of manure storage facilities that are over 10 years old while empty to ensure their integrity. Unfortunately, actual experience in Wisconsin has taught us that manure storage facilities can start leaking within weeks or months of their construction. Thus, the requirement for an engineer to do a **visual inspection of manure storage while empty in order to demonstrate compliance should be extended to all manure storage structures,** not just those that are older than 10 years, in order to ensure that they are not cracked or leaking.

Nutrient Management Technical Standards:

- The nutrient management portion of the rules should require the operator to **specifically list owned and rented acres where he or she plans to spread manure** on Waste and Nutrient Management Worksheet 3.
- In addition, if the operator is relying on rented acres, he or she should be required to **provide copies of written and signed rental agreements that cover the duration of the permit term.** Recent experience has shown that without supporting documentation, operators' assertions that they have access to the necessary acres for manure spreading have not always been reliable.

For more information, contact:

Kara O'Connor, WFU Government Relations Director

koconnor@wisconsinfarmersunion.com / 608-514-4541



Memo: Proposed revisions to ATCP 51, Livestock Siting Standards

From: Kara O'Connor, Wisconsin Farmers Union

Date: August 6, 2019 (revised from August 2, 2019)

Background

ATCP 51 is the rule promulgated by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) to implement the Livestock Siting Law (Wisconsin Statutes section 93.90). The law requires that DATCP review ATCP 51 every 4 years. Despite DATCP convening two panels of technical experts in 2010 and 2014 to review the technical standards and make significant recommendations, DATCP has never revised the standards since ATCP 51 came into effect over a decade ago in 2006. Large livestock operations have grown significantly in number, size, and complexity since these rules first came into effect.

In 2018, DATCP convened a third Technical Review Committee to recommend changes to ATCP 51. On July 10, 2019, the DATCP Board did vote to send a new draft of ATCP 51 out for public comment. This is the opportunity of a decade for concerned stakeholders to weigh in on the proposed changes to the state rules that regulate large livestock facilities.

Concepts that are positive in DATCP's proposed revisions to ATCP 51:

- replacing the flawed odor score calculation with greater setbacks.
- setbacks are calculated from neighbors' property lines, not neighbors' residences or buildings. It is critical that this element of the draft rules be maintained. Neighbors must be able to protect their current and future property rights on the entirety of their property, not just their use of existing buildings.
- applying feed storage leachate control standards to all feed, not just high-moisture feed.
- requiring more frequent visual inspections of manure storage facilities to ensure their integrity.
- creating a process for neighbors of a large livestock facility to initiate an odor complaint.
- delineating a process to clarify when an application is "complete."
- 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.

Things that should be changed in the current draft revision to ATCP 51:

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- \$1 per animal unit, or



- 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.

(Note: This would be the maximum permit fee allowed under the rule. Political subdivisions are always free to charge less than the maximum.)

- Currently political subdivisions are prohibited from **requiring the large livestock facility to post a bond or other financial security**. This prohibition should be removed, in order to protect taxpayers from a costly cleanup if a manure storage pit overtops or the operation goes out of business without a new buyer in place. As operations become extremely large, and as dairy and livestock markets become more volatile, the chances increase that we will see abandoned facilities for which no suitable buyer can be found.

- The proposed rule creates an **abbreviated process for modifying an existing permit**, rather than completing the full permitting process. The draft rule provides that the modification process could be used for expansions of up to 20% of existing animal units, provided that the modification does not require the operator to complete four or more of the required permit worksheets. A threshold question is whether an abbreviated modification process is desirable, or whether facilities should undergo the standard application procedure if they wish to modify or expand operations. Assuming a modification procedure is desirable, a number of commentators have noted that:

- 20% is a significant increase in the number of animal units. If a modification procedure is instituted, a 10% expansion would be a more appropriate cutoff.

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- the proposed revisions would allow an existing operation to expand an existing structure in a manner that violates the setbacks, provided that such an expansion increases the area of the structure or manure storage by no more than 20%. This should not be allowed. It is appropriate to "grandfather in" existing livestock housing and manure storage. However, **an operation should only be allowed to expand an existing structure if the expansion would be in compliance with the new setbacks**, the same as a new operation or structure would be required to meet.

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- clarified to explicitly state that a political subdivision may issue a fine or revoke a permit due to an operation's failure to comply with an odor management plan;
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present contrary evidence about the effectiveness of the proposed odor control strategy. An operator seeking to use a novel odor control strategy not described on Worksheet 2 should also be required to give notice to neighbors within a 2-mile radius, whose property values will be most affected, and these individuals should also have the opportunity to present evidence about the effectiveness of the proposed odor control strategy.

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For more information, contact:

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Livestock Siting Chronology

2003:

The Wisconsin Legislature passed a law to provide a system for more uniform regulation of livestock facilities statewide. That law was codified at section 93.90 of the Wisconsin State Statutes.

2004-2005:

DATCP convened a committee of technical experts to develop technical and procedural standards pursuant to section 93.90, the livestock siting law. The rules proposed by the technical committee then went through the public review and comment process, and received some revisions.

May 1, 2006:

The livestock siting rules went into effect as ATP 51.

February and March 2010:

ATCP 51, the livestock siting rules, have been in effect for four years. The law requires a four-year review of the rules to ensure that they are up to date and serving their intended purpose. DATCP hosted four listening sessions in Dodgeville, Eau Claire, Oshkosh and Wausau to gather comments about ATP 51, the livestock siting rules, and received written comments. About 400 persons attended and over 860 comments were provided.

April 2010:

DATCP published its livestock siting four-year annual report. The report summarized the comments from the public, and recommended appointing a Technical Review Committee to review the technical standards in ATP 51.

mid-June 2010:

Secretary Nilsestuen appoints members of the Technical Review Committee. The committee is comprised of farmers who own large livestock facilities, private farm consultants, county land and water conservation specialists, county planning and economic development staff, Extension agents, and University researchers specializing in livestock systems management, and DATCP, DNR, and NRCS agency staff.

July 7, 2010:

A number of individuals attended the DATCP Board meeting and testified in support of the Technical Review Committee and a review of the technical standards in ATP 51:

Gary Siporski of Vita Plus:

Support updating the technical standards used in the livestock siting program.

Oppose changing the statutory requirements underlying the livestock siting program.



David Ward of Cooperative Network:

I want to commend Secretary Nilsestuen for appointing the Livestock Siting Standards Technical Expert Committee, a very important step in the review process of ATP 51 required by the Livestock Siting Law. When ATP 51 was created from the passage of 2003 Assembly Bill 868 the Legislature wanted the statewide standards for siting and expanding livestock facilities to be based on available peer-reviewed scientific information. We all know science changes over time and I hope the Livestock Siting Standards Technical Expert Committee will use *new* peer-reviewed scientific information so the statewide standards can work in the future as well as they have over the last four years.

Kara Slaughter of Wisconsin Farmers Union:

That's a broad rulemaking mandate from the legislature. WFU applauds the Board for voting in May to appoint a technical review committee to make sure that the technical standards in the livestock siting rule, such as those for odor and setbacks, reflect the best science as we know it today.

I am here today to ask that you likewise appoint a procedural review committee to address those aspects of the rule that are non-technical in nature.

Jerry Meisner, President of the Dairy Business Association:

While DBA supports DATCP's recent appointment of a technical expert panel to review the technical standards farmers are required to meet as part of the livestock siting process, we oppose any effort to review or revise s. 93.90, Wis. Stats. Any revision to these statutory provisions will negatively affect the policies underlying the siting law. To

Sandy Larson of Larson Acres, a facility regulated under livestock siting:

I appreciate your time and effort with regards to the Livestock Facility Siting Law. This program is working and is allowing the dairy industry to grow. I further believe that the state Siting law is crucial and beneficial for the dairy industry in the state of Wisconsin.

...

I do believe though that there are procedural issues that need to be revised which I have previously submitted. Reviewing this law every four years gives you the chance to make sure that Livestock Siting will continue to benefit the dairy industry and the State of Wisconsin.

July 21, 2010:

DATCP published the "charge statement" for the three subcommittees of the Technical Review committee. The charge statement consisted of the questions that the subcommittees were tasked with answering, using available data and studies and their professional knowledge and expertise. Each subcommittee met 3-4 times between July and October 2010.

September 30, 2010:

DATCP Secretary Randy Romanski issued a Scope Statement to allow the agency to go forward with revising ATP 51.



October 27, 2010:

A number of individuals attended the DATCP Board meeting and testified in support of the Scope Statement, and in support of updating the technical standards in ATCP 51:

Mike Sipple, V.P. Technical Services, Trega Foods:

Trega Foods supports the Scope Statement drafted by DATCP. We believe it is consistent with the Livestock Facility Siting Rule (ACTP 51) and it properly limits the scope of any rulemaking. Provided that the review is limited to the technical siting standards for livestock structures, odor control, nutrient management, waste storage, and runoff management, Trega Foods supports the DATCP technical committee's review of those standards, and we ask that DATCP adhere to the provisions of the proposed Scope Statement when reviewing or revising any technical recommendations to the Livestock Facility Siting Rule.

David Ward, Cooperative Network:

Cooperative Network supports the Scope Statement as drafted by DATCP staff and wish to thank Secretary Romanski and his staff for their efforts on the review of the livestock facility siting standards.

Jeff Lyon, Wisconsin Farm Bureau Federation:

On behalf of the Wisconsin Farm Bureau Federation I am pleased to appear before you today in support of the scope statement with respect to ATCP 51, the livestock siting rule.

Last spring I appeared before the board in support of naming a technical expert committee to review livestock facility standards to determine if there are additional best management practices that can or should be incorporated into the rule addressing manure and odor management.

...

The adoption of the scope statement by the board will allow DATCP staff to proceed with proposed changes to the technical standards. We ask that all members vote in support of the scope statement.

Wisconsin Cheese Makers Board of Directors:

The cheese industry supports the proposed Scope Statement because it does what state law demands – it focuses on review of technical siting standards in the Livestock Facility Siting regulations overseen of WDATCP. It is appropriate to review these technical standards and keep them up to date with changes in science and technology. The review required in the Livestock Siting Law was never intended as a political tool to revisit the entire law. The review is a technical tune-up for a law and a rule that are performing well.



Sandy Cihlar, Cihlar Farms:

I support the Scope Statement as drafted, and request that DATCP Staff maintain the provisions of this proposed Scope Statement - when reviewing, or revising technical recommendations to the ~~livestock~~ siting administrative rule.

Kara Slaughter, Wisconsin Farmers Union:

Wisconsin Farmers Union is very pleased that DATCP has issued this scoping statement. It is the first step in responding to some of the real concerns about odor and nutrient management that hundreds of citizens expressed during the listening sessions and comment period. Clearly the review and revisions of ATCP 51 will incorporate the recommendations of the three technical subcommittees, and again I want to commend them for the work that they are doing.

...

So I am asking you to make three small amendments to the scope statement.

First, adding "neighbors" and "citizens" or "taxpayers" to the list of affected parties in the scope statement.

Second, clarifying in the scope statement that the outdated fee structure should be updated during the rule revision.

And third, clarifying in the scope statement that the issue of bonding should also be revisited during the rule revision.

Jennifer Nelson, Sustain Rural Wisconsin Network:

The Siting Law Review has not been on the Board's agenda since May.- although hours of public comments by industry supporters and board discussion as to impacts on industry was allowed by Sec. Nilsestuen at the July meeting. The first formal discussion of the next steps outlined by Secretary Nilsestuen will take place this afternoon.

WE ARE ASKING THE BOARD TO "MAKE EXPLICIT" IN THE SCOPING STATEMENT BEING CONSIDERED TODAY, THE CREATION OF A POLICY COMMITTEE TO ADDRESS ISSUES RAISED BY THE PUBLIC AND NOT COVERED BY THE TECHNICAL REVIEW.



Jim Winn, board member, Dairy Business Association:

I believe the ATPC 51 statewide technical standards are supposed to be based on peer-reviewed science so that we, the regulated community, can be reassured that the money we spend to comply with the law goes toward effective engineering and pollution controls.

I support the proposed scope statement because I believe it will properly limit any technical standard revisions to those supported by evidence of problems with the existing standards, and that any solutions will be supported by peer-reviewed science, as the Livestock Siting Law requires.

David Jelinski, Wisconsin Dairy Business Association:

DBA supports the scope statement as drafted by DATCP and published on October 14th as it properly limits the scope of any rulemaking to that which is consistent with the livestock siting law. Our support is based on the following three central elements of the law:

1. **Its implementation.** ATPC 51 is working as the Legislature intended it to work. The fact that the public comments on the rule were split evenly, between those who support it and those who oppose it, reveals that DATCP and the Legislature got it right the first time around.
2. **The technical committee.** DATCP is obligated to conduct a 4-year technical review and DBA fully supports that review, provided it is limited to the "technical siting standards" for livestock structures, odor control, nutrient management, waste storage, and runoff management.
3. **State-wide technical standards.** DBA supports changes to the standards to the extent such changes are:
 - consistent with the language and legislative intent of the livestock siting law;
 - needed because existing standards have either been upgraded through the Wisconsin Standards and Oversight Council technical process or because the existing standard is wholly failing to meet its objectives;
 - supported by peer-reviewed science and responsive to a failure of the existing standards.

As a practical matter, DBA will not support the adoption of any technical standard beyond the technical subject areas of livestock structures, odor, nutrient management, waste storage, and runoff control; DBA will not support any revision of a technical standard that is not based on sound science; and DBA will not support any revision of a technical standard which constitutes "change for change's sake" By "change for change's sake", we mean where the existing standard has not been updated using the SOC technical process or where there is no prevailing evidence that the existing standard is not working.



December 8, 2010:

Individuals attended the DATCP Board meeting and testified in support of the recommendations in the Draft Technical Committee report:

Sarah Lloyd, NelDell Farms, Wisconsin Dells:

First I would like to thank the Board and DATCP for their commitment to the process of this 4-year review. The listening sessions that were held around the state were an important part of the needed conversation on livestock siting but also the future of agriculture in local communities and the state as a whole. I also appreciate very much the technical review that is going on. From what I have seen from the draft documents and from talking with people that have been observing the process the expertise represented on the technical review committees are committed to a thorough look at the scientific considerations around the issue. I commend the Board and DATCP for overseeing this important process. I look forward to reviewing the recommendations when they are released later this month.

What I would like to ask you today is to keep this technology review in your sights and make sure that the recommendations that are made are implemented into the process. But for me it is important that the Board work to conduct a full and meaningful review of the policy of livestock siting, not just the technical considerations. Issues that came up in the listening sessions that are not covered in the technical review were the socio-economic impacts of large-scale farms as well as the uneven coverage that has been created because the vast majority of towns and counties have not adopted ordinances bringing them under the Livestock Siting Rule.

December 21, 2010:

Technical Committee transmits its final report and recommendations for revisions to ATCP 51.

Hello, I'm Kirsten Jurcek. I manage our 300 acre family farm in Jefferson Co WI and am the president our for SE WI Farmers Union Chapter. I'd like to thank you for taking the time to host these public hearings and for taking into consideration the thoughts of citizens of our beautiful state.

- 1) I urge you to calculate setbacks from neighboring property boundaries Not neighboring residence. Neighbors must be able to protect their current and future property rights on the entirety of their property, not just their use of existing buildings. When our neighboring property came up for sale we assumed it would be split into 3 lots with large homes built on the hill top that would look into our family farm valley. Not wanting this to happen we purchased the property. Our home is nestled in the center of the 300 acres that we maintain and pay taxes on. Land base is obviously a cost of agricultural production and property boundaries should be respected.
- 2) Livestock Facilities should be required to post a bond or other financial security to protect taxpayers from costly cleanups if manure storage pits overflow or operators leave town. This would follow suit with other family businesses in WI such as the rules small quarries and gravel pits follow under NR135.
- 3) Visual inspection of manure storage while empty should be required on an annual basis in order to demonstration compliance. This rule should be extended to ALL Manure storage structures, not just those that are older than 10 years to ensure that they are not cracked or leaking. The cost associated with this is a cost of doing business and is much less expensive that remediating contaminated ground water. Further while we own the land we farm on, the surface and groundwater belong to all of us under WI's common water law. One farmer or industry should not be allowed to contaminate the water!

While I understand this board does not have the power to restore local control I urge everyone to encourage our legislature to restore local control of livestock siting. State wide standards should be a floor not a ceiling and local communities should be able to zone for their regions current and future needs.

Thank you again for considering my testimony.

Kirsten Jurcek
N2437 Brattset Lane
Jefferson, WI 53549
(920) 342-9504

Sep. 5, 2019

Christopher Clayton, DATCP
P.O. Box 8911
Madison, WI 53708-8911
608-224-4630
christopher.clayton@wisconsin.gov

Greetings Mr. Clayton,

We understand that now is the time to submit our comments and concerns to address changes to the administrative rule, formerly referred to as ATCP 51. We appreciate that you are allowing public input to make sure the rules are balanced.

It is our opinion that livestock operations approaching the size of 1000 animal units or more is outside the scope of the “family agricultural farm” and into a scope of Industrialized agriculture and thus requires more environmentally protective and preventative regulations. It should not be acceptable to put even one waterway, or groundwater aquifer at risk of potential contamination due to any industrial entity. It should also not be acceptable to put neighboring residents, or communities at risk of contaminated air, or expose them to harmful biological disease or health risks. We understand that agriculture is a necessity but, without protecting our environment and groundwater we will lose it all – our agriculture, our environment and our clean water. That risk is too great and regulations must be stringent on industrialized agricultural operations. Here is our public input for helping to balance the rules:

- An industrial sized agricultural operation must not be self-regulated.
- We understand that there are currently many industrialized agriculture operations running with expired DNR runoff management CAFO permits. We recommend that you urge the Wisconsin Governor to issue a moratorium on all applications for siting of new or expanding industrial sized agriculture operations.
- Extend the requirement of a political subdivision to respond to a livestock siting application within 6 months (not 45 days), and a potential extension of 6 months in the event of extenuating circumstances such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met, or permittee is running under an expired permit.
- Any industrial sized agriculture operation seeking to expand in animal units. An applicant or permittee must have all documents in good standing for the previous 5 years with no expired permits or incidences during that time period.
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- The current system of renewing permits every 5 years with inadequate oversight of the industrial agriculture operations needs to be updated to an annual permit renewal with higher fees for renewal to offset the cost of more 3rd party oversight personnel.
- Under a new nutrient management plan, all properties in the NMP and facility site should be required to have monitoring wells at a minimum depth to groundwater to provide for early

warning of groundwater contamination monitored by local government or independent 3rd party.

- Allowing a limited liability corporation to establish an industrial agriculture operation is unacceptable due to potential of disastrous environmental impact. Any entity that is seeking a permit to establish an industrial agriculture operation, should be required to put forward a trust or bond, or have other means to rectify the worst-case scenario of an environmental impact incident.
- The "Right to Farm" act needs to be modified, or repealed in such a way that differentiates an established or "Grandfathered" industrial agriculture operation from a newly formed industrial agriculture operation or one that is expanding. For example, the "Right to Farm" laws should not apply to an entity seeking to site a new industrial agriculture operation or expand an existing one in or near any rural town or community.
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- Greater setbacks from neighboring property lines for animal compost distribution.
- More stringent order score requirements and no credits for order score practices.

In addition to the above public input below is the recommendations from the Wisconsin Farmers Union that we are also in agreement with.

Sincerely,

Dean & Ranona Mody
12761 Bucklund Rd,
Grantsburg, WI 54840

Sep. 1, 2019

Christopher Clayton, DATCP
P.O. Box 8911
Madison, WI 53708-8911
608-224-4630
christopher.clayton@wisconsin.gov

Greetings Mr. Clayton,

We understand that now is the time to submit our comments and concerns to address changes to the administrative rule, formerly referred to as ATCP 51. We appreciate that you are allowing public input to make sure the rules are balanced.

It is our opinion that livestock operations approaching the size of 1000 animal units or more is outside the scope of the "family agricultural farm" and into a scope of Industrialized agriculture and thus requires more environmentally protective and preventative regulations. It should not be acceptable to put even one waterway, or groundwater aquifer at risk of potential contamination due to any industrial entity. It should also not be acceptable to put neighboring residents, or communities at risk of contaminated air, or expose them to harmful biological disease or health risks. We understand that agriculture is a necessity but, without protecting our environment and groundwater we will lose it all -- our agriculture, our environment and our clean water. That risk is too great and regulations must be stringent on industrialized agricultural operations.

Here is our public input for helping to balance the rules:

- An industrial sized agricultural operation must not be self-regulated.
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Sincerely,

Cheryl Ash
Washburn WI 54891

Thank You
I'm Sorry I'm Late
There is so much
at stake here -
Please Call -

Sep. 3, 2019

Christopher Clayton, DATCP

P.O. Box 8911

Madison, WI 53708-8911

608-224-4630

christopher.clayton@wisconsin.gov

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Sincerely,

Jen Goldman

12605 State Rd 48
Grantsburg, WI 54840

Sept 4-2019

Christopher Clayton, DATCP
P.O. Box 8911
Madison, WI 53708

Greetings Mr. Clayton,

I understand that now is the time to submit our Comments and concerns to address changes to the administrative Rule, formerly referred to as ATCP 51. I appreciate that you are allowing public input to make sure the rules are balanced.

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This is some public input for helping to balance the rules:

AN industrial sized agricultural operation must Not be
Self Regulated.

I understand that there are currently many
industrialized agriculture operations running with
expired DNR Runoff management CAFO permits.

I Recommend that you urge Wisconsin Governor to
Issue a moratorium on all applications for siting
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6 months (Not 45 days), and a potential extension
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Under a new nutrient management plan, all properties in the NMP and facility site should be required to have monitoring Wells at a minimum depth to groundwater to provide for early warning of groundwater contamination monitored by Local government or independent 3rd party.

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Greater setbacks from neighboring property lines for animal compost distribution.

More stringent order score requirements and no credits for order score practices.

This is also recommendations from the Farmers Union in Wisconsin an in agreement

page 6

Also we want to be able to drink our water,
sit outside without a bad smell
and fish our lake

Keep our property value's high
we have had our place on Trade Lake
for over 50 years and want the
families to be able to enjoy for another
50 years.

Sincerely,

Debbie Eggers

Fire # 12135 County Road Z

Sept 4-2019

To Whom it may Concern;

Memo: Proposed Revisions to ATCP 51, Livestock
Siting Standards

ATCP 51 is the Rule promulgated by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) to implement the Livestock siting Law (Wisconsin Statutes Section 93.90). The Law Requires that DATCP Review ATCP 51 every 4 years. Despite DATCP convening Two panels of Technical Experts in 2010 and 2014 to Review the Technical Standards and make significant Recommendations, DATCP has Never Revised the standards since ATCP 51 Came into effect over a decade ago in 2006. Large Livestock operations have grown significantly in number, size, and complexity since these Rules came into effect.

In 2018, DATCP convened a Third Technical Review Committee to recommend changes to ATCP 51. On July 10, 2019, the DATCP Board did vote to send a new draft of ATCP 51 out for Public comment. This is the opportunity of a decade for concerned stakeholders to weigh in on the proposed changes to the state rules that regulate large livestock facilities. Concepts that are positive in DATCP's proposed Revisions to ATCP 51:
Replacing the flawed order score calculation

with greater setbacks.

setbacks are calculated from neighbor's property lines, not neighbors' residences or buildings.

It is critical that this element of the draft Rules be maintained.

* Neighbors must be able to protect their current and future property rights on the entirety of their property, not just their use of existing buildings applying feed storage leachate control standards to all feed, not just high moisture feed.

Requiring more frequent visual inspections of manure storage facilities to ensure their integrity.

Create a process for neighbors of a large livestock facility to initiate an odor complaint.

delimiting a process to clarify when an application is "Complete."

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.

* Things that should be changed in the current draft Revision to ATCP 51: Financial/Procedural:

The draft maintains the current cap of \$1,000.⁰⁰ on the permit fee that a political subdivision can charge.

This amount is grossly inadequate. For example, Green County has spent over \$40,000.⁰⁰ reviewing a single permit application. Very large operations with complex engineering are becoming the new norm. To account for this size and complexity, the maximum

allowable permit fee should be increased to either:
 \$ 1.⁰⁰ per animal unit, or

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.

(Note: This would be the maximum permit fee allowed under the Rule. Political subdivisions

are always free to charge less than the maximum.)

currently political subdivisions are prohibited from requiring the Large Livestock facility to post or other financial security. This prohibition should be removed, in order to protect taxpayers from a costly cleanup if a manure storage pit overtops or the operation goes out of business without a new buyer in place. As operations become extremely large, and as dairy and livestock markets become more volatile, the chances increase that we will see abandoned facilities for which no suitable buyer can be found.

The proposed rule creates an abbreviated process for modifying an existing permit, rather than completing the full permitting process. The draft rule provides that the modification process could be used for expansions of up to 20% of existing animal units, provided that the modification does not require the operator to complete four or more of the required permit worksheets. A threshold question is whether an abbreviated modification process is desirable,

or whether facilities should undergo the standard application procedure if they wish to modify or expand operations. Assuming a modification procedure is desirable, a number of commentators have noted that:

20% is a significant increase in the number of animal units. If a modification procedure is instituted, a 10% expansion would be a more appropriate cutoff.

* Even then, 10% of 3,000 is a lot more than 10% of 500. If a modification procedure is instituted, its use should be limited to expansions of either 10%, or 200 animal units, whichever is less.

Alternatively, the modification procedure could be limited to modifications of structures and facilities, but expansions of animal units would have to go through the normal permitting process.

Regarding completeness determinations: The proposed Rule requires a political subdivision to respond within 45 days to a livestock siting application, and provide either a notice that the application is complete, or a checklist of what would be required to make the application complete. Input from political subdivisions should be solicited to determine whether 45 is generally sufficient. In addition, the Rule should allow for an extension of the 45-day period in the event of extenuating circumstances, such as the absence of key personnel, who are needed to determine whether the completeness criteria has been met.

Setbacks

Although the proposed draft Rule constitutes a shift towards greater reliance on setbacks to manage nuisance issues, the draft Rules still allow an operation to obtain more lenient setbacks by adopting certain odor control practices. Odor control practices are difficult to monitor, enforce, and scientifically defend based on the scant and sometimes conflicting research available. Rather than this hybrid approach that blends setbacks with odor control practices, DATCP should simply require greater setbacks for new permits, and dispense with credits for odor practices.

In addition, the setbacks need to be more rigorous.

The proposed Rules require only 300 feet from the setback from a property line and 200 feet setback from a public right-of-way for animal housing on an operation over 2,500 animal units, including operations of 20,000 or 30,000 animal units or more.

The draft Rule would then allow the setback to be even smaller if the operation adopts certain odor control practices. With allowable setback reductions under the proposed Rule, a manure storage structure on a farm of 4,000 or more animal units (with an estimated surface area of 240,000 square feet) could be less than one quarter of a mile from a neighboring property line.

* These setbacks are inadequate to protect public health and safety, and neighbors' peaceful enjoyment

of their own private property. IN 2017 the Department of Revenue Reduced Residents' property taxes in two Counties - Green and Kewaunee - in Response to CAFOs built on adjacent properties. This case is part of a growing national trend of property taxes being Reassessed downward due to nearby CAFOs. Counties cannot afford a significant Redistribution of their property tax Burden due to the impact of Large Livestock operations. Setbacks are a Key tool in maintaining the property values for neighboring properties. - The proposed Rule prohibits Local government from having setbacks that exceed the standards set forth in ATCP 51. This is a diminution of a fundamental local police power. ATCP 51 should create a default setback framework, but the rule should allow local governments to require increased setbacks if local conditions so dictate. The proposed Revisions would allow an existing operation to expand an existing structure in a manner that Violates the setbacks, provided that such an expansion increases the area of the structure or manure storage by no more than 20%. This should not be allowed. It is appropriate to 'grandfather in' existing livestock housing and manure storage. However, an operation should only be allowed to expand an existing structure if the expansion would be in compliance with the new setbacks, the same as a new operation or structure would be required to meet.

The proposed Rule provides for more lenient setbacks for operations that "cluster" animals in multiple housing

structures with multiple manure storages, rather than putting the same number of animals in a single barn and/or using a single manure storage facility. These "Clustering" provisions in the draft Rule are indefensible and should be removed. Having multiple barns and manure storage facilities spread out along a property line could actually create more odor problems for neighbors, rather than fewer, and yet farms using this "Clustering" strategy would enjoy more lenient setbacks under the draft Rule.

One positive change is that the proposed Rules would allow a political subdivision to require an odor management plan from a permitted facility if the subdivision receives a verified odor complaint from the owner of an adjacent property. This provision should be:

Clarified to explicitly state that a political subdivision may issue a fine or revoke a permit due to an operation's failure to comply with an odor management plan, expanded to allow other affected individuals in the area, such as renters, employees of nearby businesses, other property owners within 2 miles of the permitted site, and users of nearby public or natural amenities, to register an odor complaint.

The proposed Rules allow an operator to make the case for a novel odor control strategy not included in Appendix A, Worksheet 2. Assuming that the final Rule continues to give setback reductions for

odor control practices, political subdivisions should have the opportunity to present contrary evidence about the effectiveness of the proposed odor control strategy. An operator seeking to use a novel odor control strategy not described on Worksheet 2 should also be required to give notice to neighbors within a 2 mile radius, whose property values will be most affected, and those individuals should also have the opportunity to present evidence about the effectiveness of the proposed odor control strategy.

Political subdivisions may also want to consider whether it is important for the rule to establish setbacks from feed storage structures, in addition to animal housing and manure storage. This would be important if feed storage structures have generated odor complaints.

Engineering Technical Standards:

★ as noted above, the draft rule takes a step forward by requiring periodic visual inspections of manure storage facilities that are over 10 years old while empty to ensure their integrity. Unfortunately, actual experience in Wisconsin has taught us that manure storage facilities can start leaking within weeks or months of their construction. Thus, the requirement for an engineer to do a visual inspection of manure storage while empty in order to demonstrate compliance should be extended to all manure storage structures, not just those

that are older than 10 years, in order to ensure that they are not cracking or leaking.

Nutrient Management Technical Standards:

The nutrient management portion of the Rules should require the operator to specifically list owned and Rented acres where he or she plans to spread manure on Waste and Nutrient Management Worksheet 3.

in addition, if the operator is Relying on Rented acres, he or she should be Required to provide copies of Written and signed Rental agreements that cover the duration of the permit term. Recent experience has shown that Without supporting documentation, operators' assertions that they have access to necessary acres for spreading manure have not always been Reliable.

Sincerely,

Dillon Eggers

Fire # 12135 County Rd Z
Trade Lake, WI

Sep. 1, 2019

Christopher Clayton, DATCP
P.O. Box 8911
Madison, WI 53708-8911
608-224-4630
christopher.clayton@wisconsin.gov

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- Nutrient waste storage capacity should be at least 18 months to mitigate issues with trying to spread manure on overly saturated fields in the spring time, or early freezing in the fall. Although the need for waste storage capacity could be greatly reduced with the incorporation of a waste water treatment facility.
- Any newly designed liquid waste storage tank should be of a double hull design to allow for early detection of any leakage into the secondary hull, which could then alert of impending spill. The requirement should be that the alarm is issued to the operator as well as a 3rd party, authority.
- Order scoring should include animal composting and distribution of byproducts and non-odor causing poisonous or harmful fumes.
- There needs to be greater setbacks from property line for the facility and composting structures, and greater setback in the nutrient management program from neighboring property lines, wetlands, and any type of surface water.
- Greater setbacks from neighboring property lines for animal compost distribution.
- More stringent order score requirements and no credits for order score practices.

In addition to the above public input below is the recommendations from the Wisconsin Farmers Union that we are also in agreement with.

Sincerely,

Lois Schmitt *P. L. E. J.*
12823 Assembly Rd
Grantsburg WI 54840 12823 Assembly Rd
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Sep 1, 2019

Memo: Proposed revisions to ATCP 51, Livestock Siting Standards

From: Kara O'Connor, Wisconsin Farmers Union

Date: August 6, 2019 (revised from August 2, 2019)

Background

ATCP 51 is the rule promulgated by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) to implement the Livestock Siting Law (Wisconsin Statutes section 93.90). The law requires that DATCP review ATCP 51 every 4 years. Despite DATCP convening two panels of technical experts in 2010 and 2014 to review the technical standards and make significant recommendations, DATCP has never revised the standards since ATCP 51 came into effect over a decade ago in 2006. Large livestock operations have grown significantly in number, size, and complexity since these rules first came into effect.

In 2018, DATCP convened a third Technical Review Committee to recommend changes to ATCP 51. On July 10, 2019, the DATCP Board did vote to send a new draft of ATCP 51 out for public comment. This is the opportunity of a decade for concerned stakeholders to weigh in on the proposed changes to the state rules that regulate large livestock facilities.

Concepts that are positive in DATCP's proposed revisions to ATCP 51:

- replacing the flawed odor score calculation with greater setbacks.
- setbacks are calculated from neighbors' property lines, not neighbors' residences or buildings. It is critical that this element of the draft rules be maintained. Neighbors must be able to protect their current and future property rights on the entirety of their property, not just their use of existing buildings.
- applying feed storage leachate control standards to all feed, not just high-moisture feed.
- requiring more frequent visual inspections of manure storage facilities to ensure their integrity.
- creating a process for neighbors of a large livestock facility to initiate an odor complaint.
- delineating a process to clarify when an application is "complete."
- 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.

Things that should be changed in the current draft revision to ATCP 51:

Financial/Procedural:

- The draft maintains the current cap of \$1,000 on the permit fee that a political subdivision can charge. This amount is grossly inadequate. For example, Green County has spent over \$40,000 reviewing a single permit application. Very large operations with complex engineering are becoming the new norm. To account for this size and complexity, the maximum allowable permit fee should be increased to either:
 - \$1 per animal unit, or
 - 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. (Note: This would be the maximum permit fee allowed under the rule. Political subdivisions are always free to charge less than the maximum.)

– Currently political subdivisions are prohibited from requiring the large livestock facility to post a bond or other financial security. This prohibition should be removed, in order to protect taxpayers from a costly cleanup if a manure storage pit overtops or the operation goes out of business without a new buyer in place. As operations become extremely large, and as dairy and livestock markets become more volatile, the chances increase that we will see abandoned facilities for which no suitable buyer can be found.

– The proposed rule creates an abbreviated process for modifying an existing permit, rather than completing the full permitting process. The draft rule provides that the modification process could be used for expansions of up to 20% of existing animal units, provided that the modification does not require the operator to complete four or more of the required permit worksheets. A threshold question is whether an abbreviated modification process is desirable, or whether facilities should undergo the standard application procedure if they wish to modify or expand operations. Assuming a modification procedure is desirable, a number of commentators have noted that:

– 20% is a significant increase in the number of animal units. If a modification procedure is instituted, a 10% expansion would be a more appropriate cutoff.

– Even then, 10% of 3,000 is a lot more than 10% of 500. If a modification procedure is instituted, its use should be limited to expansions of either 10%, or 200 animal units, whichever is less.

– Alternatively, the modification procedure could be limited to modifications of structures and facilities, but expansions of animal units would have to go through the normal permitting process.

– Regarding completeness determinations: The proposed rule requires a political subdivision to respond within 45 days to a livestock siting application, and provide either a notice that the application is complete, or a checklist of what would be required to make the application complete. Input from political subdivisions should be solicited to determine whether 45 is generally sufficient. In addition, the rule should allow for an extension of the 45-day period in the event of extenuating circumstances, such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met.

Setbacks:

– Although the proposed draft rule constitutes a shift toward greater reliance on setbacks to manage nuisance issues, the draft rules still allow an operation to obtain more lenient setbacks by adopting certain odor control practices. Odor control practices are difficult to monitor, enforce, and scientifically defend based on the scant and sometimes conflicting research available. Rather than this hybrid approach that blends setbacks with odor control practices, DATCP should simply require greater setbacks for new permits, and dispense with credits for odor practices.

– In addition, the setbacks need to be more rigorous. The proposed rules require only 300 feet of setback from a property line and 200 feet of setback from a public right-of-way for animal housing on an operation over 2,500 animal units, including operations of 20,000 or 30,000 animal units or more. The draft rule would then allow the setback to be even smaller if the operation adopts certain odor control practices. With allowable setback reductions under the proposed rule, a manure storage structure on a farm of 4,000 or more animal units (with an estimated surface area of 240,000 square feet) could be less than one quarter of a mile from a neighboring property line.

These setbacks are inadequate to protect public health and safety, and neighbors' peaceful

enjoyment of their own private property. In 2017 the Department of Revenue reduced residents' property taxes in two counties – Green and Kewaunee – in response to CAFOs built on adjacent properties. This case is part of a growing national trend of property taxes being reassessed downward due to nearby CAFOs. Counties cannot afford a significant redistribution of their property tax burden due to the impact of large livestock operations. Setbacks are a key tool in maintaining the property values for neighboring properties.

- The proposed rule prohibits local governments from having setbacks that exceed the standards set forth in ATCP 51. This is a diminution of a fundamental local police power. ATCP 51 should create a default setback framework, but the rule should allow local governments to require increased setbacks if local conditions so dictate.

- the proposed revisions would allow an existing operation to expand an existing structure in a manner that violates the setbacks, provided that such an expansion increases the area of the structure or manure storage by no more than 20%. This should not be allowed. It is appropriate to “grandfather in” existing livestock housing and manure storage. However, an operation should only be allowed to expand an existing structure if the expansion would be in compliance with the new setbacks, the same as a new operation or structure would be required to meet.

- The proposed rule provides for more lenient setbacks for operations that “cluster” animals in multiple housing structures with multiple manure storages, rather than putting the same number of animals in a single barn and/or using a single manure storage facility. These “clustering” provisions in the draft rule are indefensible and should be removed. Having multiple barns and manure storage facilities spread out along a property line could actually create more odor problems for neighbors, rather than fewer, and yet farms using this “clustering” strategy would enjoy more lenient setbacks under the draft rule.

- One positive change is that the proposed rules would allow a political subdivision to require an odor management plan from a permitted facility if the subdivision receives a verified odor complaint from the owner of an adjacent property. This provision should be:

- clarified to explicitly state that a political subdivision may issue a fine or revoke a permit due to an operation's failure to comply with an odor management plan;

- expanded to allow other affected individuals in the area, such as renters, employees of nearby businesses, other property owners within 2 miles of the permitted site, and users of nearby public or natural amenities, to register an odor complaint.

- The proposed rules allow an operator to make the case for a novel odor control strategy not included Appendix A, Worksheet 2. Assuming that the final rule continues to give setback reductions for odor control practices, political subdivisions should have the opportunity to present contrary evidence about the effectiveness of the proposed odor control strategy. An operator seeking to use a novel odor control strategy not described on Worksheet 2 should also be required to give notice to neighbors within a 2-mile radius, whose property values will be most affected, and these individuals should also have the opportunity to present evidence about the effectiveness of the proposed odor control strategy.

- Political subdivisions may also want to consider whether it is important for the rule to establish setbacks from feed storage structures, in addition to animal housing and manure storage. This would be important if feed storage structures have generated odor complaints.

Engineering Technical Standards:

- As noted above, the draft rule takes a step forward by requiring periodic visual inspections of manure storage facilities that are over 10 years old while empty to ensure their integrity.

Unfortunately, actual experience in Wisconsin has taught us that manure storage facilities can start leaking within weeks or months of their construction. Thus, the requirement for an engineer to do a visual inspection of manure storage while empty in order to demonstrate compliance should be extended to all manure storage structures, not just those that are older than 10 years, in order to ensure that they are not cracked or leaking.

Nutrient Management Technical Standards:

- The nutrient management portion of the rules should require the operator to specifically list owned and rented acres where he or she plans to spread manure on Waste and Nutrient Management Worksheet 3.
- In addition, if the operator is relying on rented acres, he or she should be required to provide copies of written and signed rental agreements that cover the duration of the permit term. Recent experience has shown that without supporting documentation, operators' assertions that they have access to the necessary acres for manure spreading have not always been reliable.

For more information, contact:

Kara O'Connor, Government Relations Director

Wisconsin Farmers Union

koconnor@wisconsinfarmersunion.com / 608-514-4541

Christopher Clayton, DATCP
P.O. Box 8911
Madison, WI 53708-8911
608-224-4630
christopher.clayton@wisconsin.gov

Greetings Mr. Clayton,

We understand that now is the time to submit our comments and concerns to address changes to the administrative rule, formerly referred to as ATCP 51. We appreciate that you are allowing public input to make sure the rules are balanced.

It is our opinion that livestock operations approaching the size of 1000 animal units or more is outside the scope of the "family agricultural farm" and into a scope of industrialized agriculture and thus requires more environmentally protective and preventative regulations. It should not be acceptable to put even one waterway, or groundwater aquifer at risk of potential contamination due to any industrial entity. It should also not be acceptable to put neighboring residents, or communities at risk of contaminated air, or expose them to harmful biological disease or health risks. We understand that agriculture is a necessity but, without protecting our environment and groundwater we will lose it all – our agriculture, our environment and our clean water. That risk is too great and regulations must be stringent on industrialized agricultural operations.

Here is our public input for helping to balance the rules:

- An industrial sized agricultural operation must not be self-regulated.
- We understand that there are currently many industrialized agriculture operations running with expired DNR runoff management CAFO permits. We recommend that you urge the Wisconsin Governor to issue a moratorium on all applications for siting of new or expanding industrial sized agriculture operations.
- Extend the requirement of a political subdivision to respond to a livestock siting application within 6 months (not 45 days), and a potential extension of 6 months in the event of extenuating circumstances such as the absence of key personnel, who are needed to determine whether the completeness criteria have been met, or permittee is running under an expired permit.
- Any industrial sized agriculture operation seeking to expand in animal units. An applicant or permittee must have all documents in good standing for the previous 5 years with no expired permits or incidences during that time period.
- There is currently no cap on the size of animal units an industrial size agriculture operation can expand to which is dangerous to the health of animals and residents. Siting an industrial sized agriculture operation needs to be as custom as the environment it is be placed in. Applications should be submitted to local / county government, not to the state. This includes the WPDES permit and any other permits that may be required. Monitoring needs to be done locally and/or 3rd party monitoring, not by permittee.
- Siting is as unique as the environment that the industrial size agriculture operation is put in. Therefore, an applicant should be required to provide or pay for an independent environmental impact study for each proposed facility, as directed by the permitting authority.
- The current system of renewing permits every 5 years with inadequate oversight of the industrial agriculture operations needs to be updated to an annual permit renewal with higher fees for renewal to offset the cost of more 3rd party oversight personnel.
- Under a new nutrient management plan, all properties in the NMP and facility site should be required to have monitoring wells at a minimum depth to groundwater to provide for early warning of groundwater contamination monitored by local government or independent 3rd party.
- Allowing a limited liability corporation to establish an industrial agriculture operation is unacceptable due to potential of disastrous environmental impact. Any entity that is seeking a permit to establish an industrial agriculture operation, should be required to put forward a trust or bond, or have other means to rectify the worst-case scenario of an environmental impact incident.
- The "Right to Farm" act needs to be modified, or repealed in such a way that differentiates an established or "Grandfathered" industrial agriculture operation from a newly formed industrial agriculture operation or one that is expanding. For example, the "Right to Farm" laws should not

apply to an entity seeking to site a new industrial agriculture operation or expand an existing one in or near any rural town or community.

- Any operation requiring any type of high capacity well should be required to install a water treatment facility to reclaim usable water for the purpose of groundwater conservation and minimize the discharge of contaminated water.

- The nutrient management plan of liquid manure should be injected with a coulter type system that provides light incorporation into the soil. Any spray of liquid manure such as the center pivot, or irrigation style of spreading should be prohibited.

- All open lagoon type manure storage should be prohibited. All existing open lagoon style storage should be upgraded to a closed or covered system.

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Paul+Kit Lannert

12433 Cedar Pt. Trn.

Shanksburg, WI 54840

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From: Kara O'Connor, Wisconsin Farmers Union

Date: August 6, 2019 (revised from August 2, 2019)

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For more information, contact:

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