

## **DNR Response to Public Comments for Proposed Reissuance of WPDES Permit for Dairy Dreams LLC**

Public hearing summary: The WPDES Permit public hearing was a combined hearing on the proposed reissuance for Dairy Dreams, Kinnard Farms, Seidl's Mountain View Dairy and Wakker Dairy Farm and the proposed issuance for Sandway Farms. 83 participants (that filled out and turned in a hearing slip); 44 in support, 24 opposed & 15 as interest may appear or no position indicated; 21 provided oral comments

Written comments summary: 58 written comments received (Via email, at hearing or via mail): 5 in support, 50 opposed, 3 had general questions not indicating a position

Comments received have been grouped and summarized below. Most comments were general in nature and not specific to the items available for review and comment (draft permit, permit application materials, nutrient management plan, etc.).

See individual Notice of Final Determination documents for changes made (if any) to the draft permits up for notice.

### **Public Input/Hearing Format**

**Comments:** The DNR received a number of comments that were not specifically relevant to the proposed actions. These issues are listed below to acknowledge these broader issues of concern to the public.

- When will expansions not be permitted by DNR?
- Government should be held responsible for allowing expansions in areas with known problems.
- Why expand in current market? Hurts other dairy farmers.
- Several supported the reissuance but without the proposed expansion.
- The agency should base their decisions on sound science. The study conducted shows that the sensitive geology is not capable of handling the type of operations allowed under a WPDES permit.
- Today's public hearing broke protocol with how CAFO permit hearings have been done in the past, most speakers did not identify what operation they were addressing. Where and how will that commentary be addressed?
- There was not adequate time given for hearing participants to provide comments.
- Concern about the density of animals in an enclosed space.
- Several concerns about noise, traffic, odor, road damage, property value reduction

**Response:** No specific suggestions to the proposed draft WPDES permit were made in the comments summarized above; therefore no changes were made to the permit. Technical staff that review and approve associated permit application and compliance items do verify that all requirements of the law are met.

The hearing format complied with the requirements of Ch. 227 of the Wisconsin Statutes. The DNR chose to conduct a single hearing for five permit actions in an effort to maximize the opportunity for public comment, while being respectful of all participants time and resources. The DNR has emphasized that written comments are given the same weight as comments made at the hearing.

### **Groundwater Quality**

#### **Comments regarding groundwater quality concerns:**

- We need safe food and safe groundwater. We have enough milk cows. Do not need more waste.
- Given the current research, we are learning our situation with groundwater is even worse than we thought, expansion of CAFOs is the opposite of what we need to do.
- We need a moratorium on expansion until we get a better handle on how to deal with waste.
- If technologies are available to treat the waste, this should be a condition of the permit.
- No additional permits to increase overall herd size should be approved until all the problems and issues concerning manure management and groundwater contamination have been solved.
- DNR needs to do its job to protect groundwater.
- Concerns about private wells getting contaminated from manure spills or runoff.

**Response:** The DNR does not claim that the requirements of a WPDES permit, including the requirement to develop and implement a nutrient management plan (NMP), will guarantee that water quality will not be impacted. However, the

permit contains a number of requirements designed to protect groundwater. The permit also requires compliance with groundwater standards, including for land application areas. Practices to protect water quality include:

- Manure or process wastewater may not be applied within 100 feet of a direct conduit to groundwater.
- Nutrient shall not be spread within 200 feet upslope of direct conduits to groundwater unless the nutrient is effectively incorporated within 48 hours
- No manure application within 100 feet of direct conduits to groundwater (sinkholes, private wells)
- No causing fecal contamination of water in a well.
- No application on fields with soils that are 60 inches thick or less over fractured bedrock when ground is frozen or where snow is present.
- No application when snow is actively melting.
- No application on areas of fields that have less than 24 inches of soil to bedrock.
- Field verification procedures include ground depth evaluations on fields with mapped shallow soils. A detailed protocol for determining bedrock depth on fields with such soils is outlined in the NMP. All fields must be evaluated before applying manure.

Existing environmental issues in the area are not a basis for denial of the WPDES permit.

WPDES permit conditions are intended to protect private wells and groundwater from becoming impacted from land spreading activities and the production site. If a private well becomes contaminated with manure or process wastewater, the DNR should be contacted immediately to investigate the source of contamination. Once the source of contamination is known the DNR will determine the appropriate enforcement response which may include referral to the Department of Justice. The DNR can provide technical assistance for well treatment or replacement options if a well is impacted by contamination. The DNR recommends homeowners sample their well water on an annual sampling for nitrate and bacteria.

### **Land Application**

#### **Comments regarding land application sites:**

- The land in the Lincoln township has the following restrictions to consider for spreading liquid manure: water table within 3 feet; less than 5 feet to bedrock; karst features; hydric soils; shallow karst potential soils; soils with low attenuation potential; highly permeable soils; sand subsoil; within an environmental corridor; drains to a closed depression; DNR wetland; within 250 feet of a private well.
- Is DNR going to allow spreading of liquid manure on drain tiled fields? Why would you approve these fields?
- Comments on impaired surface waters due to agricultural activity.
- Are landowners allowing CAFOs to apply manure or process wastewater liable if discharges or runoff of manure or process wastewater occurs?

**Response:** The WPDES permit is a water quality protection based permit intended to protect surface water, groundwater and wetlands. The proposed and finalized WPDES permit contains permit conditions that limits nutrient applications to reduce the risk to groundwater and surface water and are consistent with ch. NR 243, Wis. Adm. Code, the code that establishes permit requirements for CAFOs throughout the state. Ch. NR 243 and permits issued under this authority already have requirements designed to address issues such as surface runoff as well as a number of other potential surface and groundwater related concerns. Fields that have drain tile present must be identified in NMP and the outlets must be monitored during application of manure and recorded. In general, under ch. NR 243, the DNR has limited authority to require case-by-case best management practices.

#### **Comments regarding oversight:**

- Are you, the DNR going to check out these fields and test them to see how much manure can be applied?
- Will you prove that the fields in their NMP are spreadable?

**Response:** The permittee is required to oversee land application activities. The nutrient management plan and permit conditions call for monitoring of cropland sites before, during and after land spreading occurs. Manure logs and other

required inspection logs are kept by the permittee and available to the DNR upon request or within the annual reports submitted to the DNR each year. DNR staff review records, respond to complaints and perform site inspections of both land application sites and production sites to evaluate compliance.

**Comments regarding field overlap with other CAFOs and or land stability:**

- What is the check that is in place that guarantees that multiple farmers are not using the very same fields for distributing manure?
- The permit does not ascertain how many of the acres owned and there is no guarantee that any rental land will always be available. This needs to be addressed.
- The permit review process should be modified to include the requirement that all potential spreading sites be confirmed by written agreement prior to WPDES permit issuance.

**Response:** The DNR has reviewed the nutrient management plans for all five CAFOs and determined that there is no land base overlap with other CAFO NMPs. There have been no comments or other evidence to question the availability of land in the approved NMP to receive manure and process wastewater from either of these operations; therefore, written agreements were not requested by the DNR. The DNR may ask for land contract agreements if it's determined the farm has limited acreage available for application. These farm operations have shown to have adequate acreage for the animal units for the first year of the permit term. In addition, the DNR may request land contract agreements if it's brought to the DNR's attention that land within the NMP do not have permission for the farm to land apply manure.

When a permitted operation proposes to expand during the permit term, they must confirm adequate land base and manure storage to support the addition of animal units. If the facility needs to build additional storage or land base to support the expansion those items are available for public review and comment. Addition of a sample point for manure storage requires a permit modification; addition of any new land necessary is public noticed online.

The NMP is part of the permit and conditions of the approved NMP are legally enforceable.

**Comments regarding waste treatment prior to land application:**

- Manure should be treated with a digester or other system prior to land application.

**Response:** The DNR does not have authority to require treatment of wastes prior to land application.

**Expansion/Production Site**

**Comments:**

- Manure storages need to be checked more often.
- Groundwater monitoring should be required at each of these CAFOs. DNR can require a CAFO install groundwater monitoring wells for any of the following reasons: 1) Geologic conditions warrant monitoring (such as karst areas); 2) Construction conditions warrant monitoring (such as where a facility hasn't yet designed or built runoff control or treatment systems to prevent groundwater discharges); or 3) DNR determines monitoring is necessary to evaluate groundwater impacts.
- Why is the animal unit 1.4 per milk cow? How does this relate to the amount of storage and land needed to show compliance?
- Not opposed to the reissuance of the permit in general, however, strongly opposed to any CAFO expansions
- Several of the CAFOs have violated their current permits by exceeding permit limitations on herd size.
- Vegetated Treatment Areas (VTA)/Calf hutches – DNR was moving in the right direction until Dairy Business Association (DBA) settlement; is there modeling of these areas to demonstrate “no discharge;” other states do not allow VTAs

**Response:** The DNR's WPDES permit authority is limited to issuing a permit that is protective of water quality should a CAFO decide to locate or expand at a given site. The DNR is tasked with the responsibility to ensure that WPDES permit applicants meet all required technical standards before a permit is issued. Based upon the authority granted to the DNR, CAFOs must meet or exceed these requirements to be issued a permit.

The DNR may require the permittee to install and monitor wells at the production area if site conditions warrant such monitoring. All waste storage systems were built or have been evaluated to standards and permit conditions; therefore, if properly managed will comply with groundwater standards.

The animal unit ratios are not the basis for determining adequate storage and land for an existing permitted farm—land application and storage records demonstrate actual waste produced at the facility; while book values associated with animal units may be used to cross check reported values, ultimately, the facility records of waste production are more accurate.

The DNR is not including an animal unit cap/modification threshold in the reissued WPDES permit. There are a number of reasons the DNR does not include an animal unit cap/threshold in this or most other individual WPDES permits. CAFO WPDES permits are permits issued by the DNR to livestock operations to operate at 1,000 animal units or more.\* At the time of application and on an annual basis, animal unit numbers, associated manure and process wastewater generation, and available storage is reported to the department. The department reviews this information to determine if the facility has maintained enough spreadable acreage in the approved nutrient management plan and determines if the facility has a minimum of 180 days of storage for liquid manure.

When a facility proposes to expand during the permit term, they must confirm adequate land base and manure storage to support the addition of animal units. If the facility needs to build additional storage or add land base to support the expansion, those items are available for public review and comment. Addition of a sample point for manure storage requires a permit modification; addition of any new land is public noticed online.

\* In a limited number of cases, the DNR may issue a WPDES permit to operations with fewer than 1,000 animal units based on certain discharges to waters of the state.

The DNR does not claim that CAFO WPDES permits are “zero risk” permits and the DNR acknowledges that there have been impacts associated with CAFOs, some of those impacts have been significant. However, the DNR believes that the WPDES permit program has been an effective means to address these impacts and avoid impacts from occurring in the future. As with any license or permit that is issued, there is always the potential for environmental impacts associated with permit noncompliance or situations not easily or explicitly addressed by prescriptive permit requirements.

In accordance with the DNR’s recent settlement with DBA regarding VTA’s, the DNR evaluates VTA compliance with permit discharge limitations on a case-by-case basis. There are a number of ways the DNR can evaluate compliance, including documenting actual discharges via inspections, review of annual reports submitted by the permittee, and/or when appropriate, the use of hydrological analysis or other means.

### **General Questions on WPDES permits for CAFOs**

#### **Comments:**

- Could you please explain what these manure runoff permits are for? Is there more I should know? Is there a place to get this information?

**Response:** CAFO WPDES are water quality protection permits that address proper handling, storage and land application of CAFO manure and process wastewater. There is information available on the CAFO WPDES permit program on the Wisconsin DNR website at: <http://dnr.wi.gov/topic/AgBusiness/CAFO/>

### **Specific to Dairy Dreams**

**Comments:** Two site inspections of Dairy Dreams’ operation by DNR in 2014 showed polluted process wastewater being discharged from the production area. DNR sampled runoff from these areas, which showed high levels of fecal coliform bacteria, BOD, nitrates, and phosphorus. DNR should explain whether and how these discharges have been addressed, and the effectiveness of any improvements.

Each of the five draft permits on public notice use vegetated treatment areas (VTAs) for some portion of feed storage runoff, or have calf hutch areas, or both. Despite evidence that these practices, as currently permitted, cause water pollution, DNR is proposing to issue or reissue permits to these CAFOs without necessary protections. VTAs for Feed Storage Runoff Control: the U.S. Environmental Protection Agency (EPA) informed DNR that if CAFOs use VTAs for feed storage area runoff, “the VTAs need to be designed, constructed, operated and maintained to achieve compliance with the ‘no discharge’ performance standard requirement” in federal law. EPA explained that DNR’s current practice, to review VTAs for compliance with the Natural Resources Conservation Service (NRCS) Standard 635, was not enough to ensure compliance with the “no discharge” standard.

At least three of the permits on public notice— Dairy Dreams LLC, Sandway Farms LLC, and Kinnard Farms, Inc.—are for CAFOs with calf hutch areas. Compliance inspection reports within the past permit term at two of these CAFOs (Dairy Dreams and Sandway Farms) detail surface water runoff from calf hutch areas. DNR and EPA have also documented evidence of surface water and groundwater discharges from calf hutch areas at CAFOs generally, which is summarized in a DNR memo, Calf Hutch Lots. DNR rescinded this memorandum as part of the settlement agreement between DBA and DNR. The DBA and DNR settlement does not and cannot legally change regulatory requirements, including the requirement that DNR include conditions in permits “that are necessary to achieve compliance with surface water and groundwater quality standards.” Wis. Admin. Code § NR 243.13(1). Additionally, Wisconsin law requires that DNR may issue a Water Pollution Discharge Elimination System (WPDES) permit only if the discharge will meet effluent limits included in the permit. Wis. Stat. § 283.31(3)(a). For CAFO WPDES permits, the core effluent limit is the “no discharge” limit that applies to process wastewater discharges from the CAFO production area. Wis. Admin. Code § NR243.13.

**Response:** Corrective measures were taken by Dairy Dreams following inspections and compliance notices from the DNR and EPA. Follow-up site inspections by DNR have found the production area to be in substantial compliance.

- Outdoor calf housing areas were modified to collect runoff, clean water diversion modifications were made and calf barns were built.
- Feed storage area runoff system was modified and its operation adjusted to stop discharges documented by DNR and EPA. An engineering evaluation of the feed storage system is required in the permit to ensure that it meets discharge limitations of permit.