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December 23, 2015

**TO: Members of the Bayfield County Large Scale Livestock Study Committee (LSLSC)  
Members of the Bayfield County Board of Supervisor  
Via email: cafoinput@bayfieldcounty.org**

**FROM: Midwest Environmental Advocates, Inc.**

**RE: Moving Forward – DRAFT  
LSLSC Report and Recommendations to the Bayfield County Board**

Midwest Environmental Advocates, Inc. (MEA) appreciates the time that your committee has dedicated to understanding the impact of large-scale livestock operations in your County. This letter serves as MEA's response to the December 2015 Preliminary Report of the LSLSC.<sup>1</sup> We submit these comments on our own behalf as Wisconsin's only non-profit environmental law center, working to provide legal and technical assistance to communities and families working for clean air, clean water, and clean government.<sup>2</sup>

Firstly, MEA commends Bayfield County's approach of enacting a temporary livestock siting moratorium and creating the LSLSC. This model of soliciting thorough expert input is an example to any community that is faced with a proposed or expanding Concentrated Animal Feeding Operation (CAFO). MEA notes the transparency of the LSLSC process and the opportunity for public to comment on the Committee's preliminary report. Furthermore, your consideration of the "unique climate, geography, and soils of Bayfield County"<sup>3</sup> is crucial in light of the state's insufficient, one-size-fits-all approach to CAFO permitting.

We understand that you are already analyzing the tourism benefits other services provided by the ecological resources in your part of the state. MEA also urges you to account for the considerable taxpayer funding and other resources invested in the nationally-protected areas in Bayfield County. We will not utilize this letter to focus on this issue as we understand that you will receive related comments from Friends of the National Parks.

<sup>1</sup> See <http://www.bayfieldcounty.org/DocumentCenter/View/3458> (last visited Dec. 23, 2015) (hereinafter "Preliminary Report").

<sup>2</sup> This document is submitted with the understanding that MEA does not hereby render any legal or other professional advice and/or service.

<sup>3</sup> See Preliminary Report page 1.

MEA generally supports the efforts of the LSLSC but submits the following questions and/or concerns regarding your Preliminary Report.

- I. The Bayfield County Board (“Board”) should adopt the Large-Scale Confined Animal Feeding Operations Ordinance.

The Preliminary Report recommends that the Board adopt an Operations Ordinance, which states that the Board “may” attach protective conditions to an operations permit. . . .” Lacking more specific guidance regarding when to attach operation conditions to an Operations permit, the draft ordinance leaves open the possibility that local officials may interpret and apply the ordinance to minimize or undo its intended protective impact.<sup>4</sup> This same concern extends to the unqualified discretion of the Board to require operations data from “substantially similar” CAFOs as part of the local permitting process.<sup>5</sup> If the Board is under no mandate to collect this data as part of the permitting process, local officials and the public alike could have an incomplete understanding of the groundwater, surface water, and nuisance impacts of proposed CAFOs.

MEA recognizes that a level of discretion is necessary to avoid codification of potential conditions which may be attached to an Operations permit.<sup>6</sup> However, we encourage you to state in your report to the Board that the intent of the proposed Operations Ordinance is to provide a strong and effective regulatory framework for the protection of public health, safety, general welfare, and the environment, particularly in light of the unique economic and environmental attributes of Bayfield County.

The significant amount of time, effort, and expertise invested in the work of the LSLSC leads to the conclusion that Bayfield County residents expect the Operations Ordinance to have a protective effect upon public health, safety, general welfare, and the environment.

- II. The Board should approve certain LSLSC recommendations to protect surface water.

Many components of the LSLSC recommendations to protect surface water simply align Bayfield County ordinances with Natural Resources Conservation Service standards and state regulations. It is an important first step for the County to act as robustly as allowed under existing state law to protect Lake Superior and other waters of Bayfield County. For example, by “incorporat[ing] NR 151 standards into the Bayfield County Animal Waste Storage and Management Ordinance to allow for local enforcement,”<sup>7</sup> the Board would

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<sup>4</sup> See Preliminary Report page 2, recommendation 1.

<sup>5</sup> *Id.*

<sup>6</sup> Bayfield County has authority to issue individual permits that require livestock facilities to comply with uncodified conservation or water quality protection standards that may exceed state standards, without prior review and approval by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (“DATCP”) or the DNR, provided such permit requirements or standards are not routinely applied as *de facto* regulatory enactments. See Wis. Stat. § 92.15, Wis. Admin. Code § ATCP 50.60(1), and Wis. Admin. Code § NR 151.096(3).

<sup>7</sup> See Preliminary Report page 3, recommendation 2(d).

encourage local investigation, understanding of agricultural impacts, and an ongoing dialogue between the County and permit applicants. This recommendation is echoed in ongoing state-level discussions. The state’s Livestock Siting Technical Committee recently recommended to DATCP that state regulations should better clarify and encourage local monitoring.<sup>8</sup>

MEA has concerns about the resources needed to monitor and enforce the recommended phosphorus Bayfield County Water Quality Trading Program.<sup>9</sup> Although the compliance and enforcement components of a particular trading program may prove surmountable, the Board would be well-served to approve such a program based on review of available trading program analysis and other literature.<sup>10</sup> This review should include analysis of county authority to develop a trading program. It would be unfortunate to invest limited local resources on a trading program unless the program meaningfully reduces and monitors phosphorus loading in surface waters.

The trading program recommended by the LSLSC also has questionable application to CAFOs. These operations are treated as “zero-discharge” facilities under state law and thus the State does not require CAFOs to purchase credits to off-set nutrient pollution.<sup>11</sup> This treatment means that the ability of CAFOs to generate and/or purchase trading credits is questionable at best. Resolutions of these and other mentioned hurdles would need to precede the implementation of any effective trading program.

III. The Board should approve LSLSC recommendations to protect ground water.

The Committee’s recommendation to implement well testing-related outreach and education and to provide county funding for baseline well testing is particularly commendable and important.<sup>12</sup> MEA recommends that any collected data go into a publicly-accessible database, such as the comprehensive database maintained at University of Wisconsin-Stevens Point,<sup>13</sup> rather than a database that is accessibly only to the county. Well testing data has public health ramifications and as a result is often time-sensitive. A public database would avoid the time and effort needed—both by the interested public and by responsible county officials—to respond to individual records requests. We extend this recommendation to the other maps, records, and efforts outlined in recommendation 3 of the LSLSC Preliminary Report.

IV. The Board should approve LSLSC recommendations to protect air quality.

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<sup>8</sup> See <http://datcp.wi.gov/uploads/Environment/pdf/LivestockTechComReport2015.pdf> at pages 4-5 (last visited Dec. 21, 2015).

<sup>9</sup> See Preliminary Report page 3, recommendation 2(e).

<sup>10</sup> See, e.g., chapter 9, <http://willamettepartnership.org/wp-content/uploads/2015/06/BuildingaWQTPProgram-NNWQT.pdf>; see also [https://www.foodandwaterwatch.org/sites/default/files/rpt\\_1510\\_waterqualitytrading-web.pdf](https://www.foodandwaterwatch.org/sites/default/files/rpt_1510_waterqualitytrading-web.pdf) (last visited Dec. 22, 2015).

<sup>11</sup> Wis. Admin. Code § NR 243.13(2)(a).

<sup>12</sup> See Preliminary Report page 4, recommendation 3(a)-(c).

<sup>13</sup> See <http://www.uwsp.edu/cnr-ap/watershed/Pages/WellWaterViewer.aspx> (last visited Dec. 23, 2015).

Despite the fact that CAFOs are known to impact air quality and public health,<sup>14</sup> not one Wisconsin CAFO has received an air pollution permit. As a result, the air impacts of CAFOs are not addressed or regulated at the state level through air pollution permits or other state permit requirements. For this reason, the air quality decisions by Bayfield County—to the extent allowed within the confines allowed by applicable state and federal law—are crucial and could provide an important model for communities throughout the State.

- V. The Board should approve LSLSC recommendations to protect against microbiological pathogens after further analysis of the impact of encouraging use of manure digesters.

Certain recommendations of the Committee, such as implementation of manure spill response training, will likely result in a significant public health benefit to human and animal health. In a time when an expanding number of farming operations are seeking to dispose of animal waste via aerial manure spraying, it is heartening to see local government acknowledge that the public health impacts of agriculture may change along with the scale and type of agricultural practices.

MEA encourages the Committee and the full Board to further review the costs and benefits of manure digesters before acting to “provide market incentives to enable installation” of these facilities.<sup>15</sup> The LSLSC and its advisory members likely already have access to literature and other information regarding manure digesters, but MEA is willing and able to answer questions or provide further information if requested. As a starting point, we note that manure digesters may process microbiological pathogens and even provide energy benefits, but this method of treatment does not remove nutrients such as phosphorus and nitrogen that have a major impact upon water quality.<sup>16</sup> Furthermore, because other public incentives already exist with respect to manure digesters, the county may be best served by allocating limited resources toward incentivizing other practices that are more clearly associated with water quality protection.

Sincerely,

/s/

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<sup>14</sup> See page 5, [http://www.cdc.gov/nceh/ehs/docs/understanding\\_cafos\\_nalboh.pdf](http://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf) (last visited Dec. 22, 2015).

<sup>15</sup> See Preliminary Report page 4, recommendation 5(b).

<sup>16</sup> See, e.g., <http://articles.extension.org/pages/19461/economics-of-anaerobic-digesters-for-processing-animal-manure> (last visited Dec. 22, 2015). Please note that this article serves only as a brief example and is not an exhaustive or seminal resource.