

## MEMORANDUM OF UNDERSTANDING

BETWEEN  
WISCONSIN DEPARTMENT OF NATURAL RESOURCES,

And the  
WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

The Wisconsin Department of Natural Resources ("DNR") and the Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") have entered into this MOU to ensure Wisconsin's dairy industry will continue to grow and thrive while implementing environmental standards necessary to protect and improve the state's natural resources. This MOU defines each agency's respective role in the review of submittals related to CAFO permit applications concerning engineering plans and specifications, and nutrient management plans, and all work performed pursuant to these submittals.

DNR and DATCP acknowledge the importance of Wisconsin's dairy industry to the state's economy, rural health, well-being, and cultural heritage. DNR and DATCP also acknowledge that Wisconsin's dairy industry is a \$21 billion annual industry and a cornerstone industry in Governor Doyle's "Grow Wisconsin" initiative.

### Agency Goals

DNR is the administrative agency in the state tasked with promulgating and enforcing regulations to implement state laws that promote and protect the state's environmental, fish and wildlife and natural resources. DATCP is the administrative agency in the state responsible for agricultural development and promotion, food safety, animal and plant health, protecting water and soil and monitoring fair and safe business practices.

Together DNR and DATCP intend to achieve the following goals:

- ensure that Wisconsin's environment and natural resources are adequately protected throughout the CAFO permit process;
- increase consistency and completeness in all CAFO permit application materials, including engineering and nutrient management plans, and specifications, related to these permit application materials;
- increase communication among reviewing staff and applicants to ensure that minor deficiencies in submittals do not result in undue delays in the review and approval process and CAFO permit process; and
- reduce the plan and specification review process to an average of 60 days and the CAFO permit process to an average of 240 days.

## Section A: Plan and Specification Review Objectives

### 1. Share engineering and nutrient management work

DNR and DATCP agree to work together to bring more staff resources to the review process for engineering and nutrient management plans and specifications through the formal process specified in Appendix A of this MOU for long term work sharing and tracking of reviews. If DATCP completes a specific review DNR will rely on that review for further processing of a permit application or other necessary actions related to the CAFO permit.

### 2. Centralize the plan and specification submittal process

DNR agrees to centralize submittal and review of the engineering and nutrient management plans and specifications. The centralization of this activity will allow DNR to receive and immediately review each submittal for completeness and contact the applicant for any additional needs or clarifications related to the submittal.

### 3. Develop guidance on plan and specification submittal requirements

DNR and DATCP agree to issue guidance to applicants and their consultants related to the level of plan and specification detail necessary in the applicants submittal in order for DNR to determine that the submittal is complete. This guidance shall adequately explain completeness requirements for the following elements of the submittal: project description, site assessment, management assessment, calculation sheets, design decisions, steel schedules, concrete specifications, and maintenance schedules. The guidance shall also explain the requirements for the PE stamp and signature as well as the number of copies of the plans and specification that have to be submitted to DNR.

### 4. Establish a plan and specification tracking system

DNR and DATCP agree to establish respective tracking systems to monitor the review progress for each plan and specification submittal. For each submittal, the agencies agree to create a data-base that will note the date received, the date of completeness determination, the date the review is completed, and any other official documentation deemed necessary as part of the review process. Information in the tracking databases will be available for review online by the applicant and available to the general public.

### 5. Improve communications with the CAFO permit applicants and their consultants

DNR and DATCP agree to develop an organizational template and a set of checklists that consultants must follow for plan and specification submittals. DNR and DATCP also agree to develop a streamlined review process that will consist of a combination of required communications with the permit applicant to include a list of form letters that will be used to send official documentation of the plan and specification process to the applicant. See Appendix A for details of the proposed process.

### 6. Train all staff and consultants involved in the plan and specification review process

DNR and DATCP agree to conduct a joint annual training conference for all responsible agency staff, consulting engineers, and nutrient management planners concerning all NR 243 plan and specification requirements, and any construction compliance requirements.

7. Adhere to the requirements of the NR 243 technical standards.

DATCP agrees to adhere to the NR 243 technical standards in the review of engineering and nutrient management plan and specification submittals related to CAFO permit applications. DNR and DATCP also agree to train all agency review staff to adhere to the requirements of the NR 243 technical standards in order to fulfill this objective.

#### **Section B: CAFO Permit Objectives**

1. Participate in Pre-Application Meetings

DNR agrees to invite DATCP to participate in pre-application meetings with interested applicants to explain the scope of a WPDES permit application, the requirements the applicant must satisfy, the information that must be submitted, and the timing of the project review and WPDES permit issuance. DNR also agrees to educate producers on the importance of this pre-application meeting, generating a standard meeting agenda and a list of materials that both parties should bring to the meeting to ensure that every potential applicant is fully informed prior to submitting CAFO permit application materials.

2. Develop CAFO Permit Application Tracking Database

DNR agrees to develop and manage a tracking system and assign a DNR staff person to track the progress of each CAFO permit application submitted for review. The database will note the date received, the date of completeness determination, the date reviewed, any official documentation produced by the reviewing agency, and the dates of requests for additional information for environmental assessment, engineering or nutrient management planning. DNR also agrees to make information in the tracking database available for review online by the applicant and available to the general public.

3. Authorize DATCP to review and approve plans and specifications

DNR agrees to authorize DATCP to review and approve engineering plans and specifications and nutrient management plans in order to maximize program efficiency and better utilize the staff expertise of each agency. DATCP agrees to review and approve the plans in accordance with NR 243 and appropriate technical standards agreed to by the agencies.

4. Revise Environmental Assessment Questionnaire

DNR agrees to review the environmental assessment questionnaire, and revise the questions to ensure that language in the questionnaire is clear, concise, and ask only for information necessary to complete an adequate environmental assessment. DNR also agrees to issue guidance on the environmental assessment requirements in NR 150, and train DATCP staff on the use of these requirements.

5. Develop a General Permit for CAFOs'

DNR agrees to develop and implement a General WPDES Permit for large CAFOs' requesting a WPDES permit reissuance, and expansions of existing operations and new operations that will exceed 1000 animals. DNR also agrees to prepare an environmental assessment (EA) for all such operations to facilitate issuance of these general permits. The EA for the general permit

will discuss the environmental impacts associated with large CAFOs' in Wisconsin in sufficient detail to satisfy WEPA requirements for Type II Actions as described in NR 150.

6. Develop Best Management Practices in Anticipation of Air Regulations for CAFOs

DNR acknowledges that livestock operations are exempt from compliance with hazardous air pollutant emissions limitations promulgated in NR 445 until June 30, 2011. A CAFO can demonstrate compliance with NR 445 by implementing approved best management practices pursuant to NR 445.08(3)(c) once the exemption expires. DNR and DATCP agree to work with appropriate agencies and researchers to jointly develop air emission best management practices by June 30, 2010 that will mitigate such emissions from CAFOs and allow them to demonstrate compliance with NR 445.

**Section C: Communication Objectives**

1. Develop training workshops and an engineering certification program

DNR and DATCP agree to co-sponsor training workshops for dairy producers and their consultants to better educate applicants about how to successfully apply for engineering plan and specification approvals and CAFO permit applications.

DNR and DATCP also agree to develop a program to certify private consultants who attend the training workshops described above. Private consultants who attend a minimum of one training workshop a year and successfully submit a minimum of three plan and specifications approval requests, as determined by a panel of DNR and DATCP engineers, will be added to a list of agency certified engineers.

DNR and DATCP agree to seek the Dairy Business Association (DBA) sponsorship of these workshops and request that DBA notify the dairy industry about the workshops, provide funding for the workshops, coordinate workshop logistics, report workshop attendance, and maintain an up-to-date list of agency certified engineers. WDNR and DATCP further agree to provide experts to speak at workshops.

2. Post CAFO permit information on agency websites

DNR and DATCP agree to develop a user-friendly CAFO permit website, and routinely update the website to ensure current information related to plan and specification approval, permit application status and guidance, links to applicable state laws and regulations, enforcement information, and any other relevant information. To the extent agency information technology policy provides, DNR and DATCP also agree to allow DBA and other interested stakeholders to establish links to the WDNR and DATCP websites for maximum information sharing with the dairy industry.

3. Develop an "ombudsman" for WPDES Permit Applicants

DNR and DATCP acknowledge that the agencies currently do not have the resources to help each and every producer successfully complete a CAFO permit application within the 240 day timeframe desired by the livestock industry. Therefore, DNR and DATCP agree that having an "ombudsman" to help the applicants through the permitting process would be invaluable by working with applicants to ensure that their permit application package is complete and advise applicants as to timing of approvals, and other process issues. The "ombudsman" would also work with the agencies to ensure that the permit application process is adhered to and

completed in a timely fashion, avoiding unnecessary delays. In order to carry out these responsibilities, the "ombudsman" would have full and direct access to agency staff assigned to CAFO permit applications, and plan and specification submittals. DNR and DATCP agree to enter into contract discussions with DBA and other interested agricultural organizations for an "ombudsman" position.

#### **Section D: Agency Commitment**

DNR and DATCP commit to put forth a good faith effort to implement the agency agreements within this MOU, and promote the cooperative spirit that underlies these agreements. DNR and DATCP further agree to contribute whatever creative problem solving efforts are necessary to ensure the success of the projects undertaken pursuant to this MOU.

The Director of DNR's Bureau of Watershed Management and the Director of DATCP's Bureau of Land and Water Resources are responsible for implementing this MOU; and, shall provide a joint status report on the implementation of the MOU to the Secretary of DNR and the Secretary of DATCP every six months until such time as the MOU is fully implemented, and then every year thereafter.

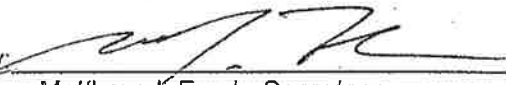
In the event, disputes arise between the agencies concerning the agreements reached within this MOU, the Bureau Directors shall notify the Administrator of DNR's Water Division and the Administrator of DATCP's Agricultural Resource Management Division. The Administrators shall resolve any disputes within 30 days of such notification.

In the event, the Administrators are unable to resolve a dispute within the 30 day notification period, the Administrators will request a meeting with the Deputy Secretary of DNR and the Deputy Secretary of DATCP. Within 15 days of the meeting with the Administrators, the Deputy Secretaries are responsible for implementing the final reconciliation of any outstanding dispute.


This agreement may be cancelled at any time upon 30 days written notice to the other party.

Entered into on May 26, 2009

#### **Wisconsin Department of Natural Resources**

By:   
Matthew J. Frank, Secretary

#### **Wisconsin Department of Agriculture, Trade and Consumer Protection**

By:   
Rodney J. Nilsestuen, Secretary

# **DNR / DATCP Memorandum of Understanding CAFO Permits**

## **Appendix A**

### **Process for Reviewing Plans and Specifications Associated with CAFO Permits**

#### **A. DNR agrees to**

1. Receive all plans and specifications (P&S) at the DNR central office by the assigned intake specialist (IS).
2. The DNR IS will complete an initial review to determine completeness of the P&S, using the P&S checklist within 2 business days of receipt
3. If the intake specialist determines the P&S is complete, the IS will
  - i. Issue a completeness letter to the applicant and copy the consultant.
  - ii. The date of this letter will determine the start of the 90 day statutory approval clock.
  - iii. If the IS determines that the P&S involves a manure storage ordinance permit, the IS will forward the P&S application to DATCP for further review to determine compliance with appropriate administrative code and technical standard requirements, otherwise the P&S will be forwarded to a DNR engineer for this review.
4. If the IS determines that the P&S submittal is not complete, the IS will telephone the consultant requesting the missing information with a follow up email to both the consultant and the applicant.
5. If the requested information is received within 5 business days, the process will revert to step A.3. above.
6. If the requested information is not received by the IS within five business days, the IS will issue an incompleteness letter to the applicant with a copy to the consultant and forward the incomplete P&S along with related correspondence to DATCP.
7. The IS will maintain the tracking data base to keep it as current as possible.

#### **B. DATCP agrees to**

1. Receive all P&S forwarded by DNR at a central location
  - i. Assign an appropriate engineer to review P&S submittals from LCDs or NRCS.
  - ii. Assign an appropriate engineer to work with consultants on incomplete P&S submittals to obtain the information necessary to ensure the planned facilities will comply with applicable administrative rule and technical standards.
2. Upon determining that all necessary P&S information is obtained, inform DNR so that DNR can issue the letter under A.3.i.
3. Provide DNR a recommendation for approval or rejection of P&S submittals forwarded to DATCP based on applicable administrative codes and technical standards.

C. Both agencies agree to:

1. Complete engineering reviews of complete P&S submittals promptly, with a goal of DNR issuing a decision to approve, approve with conditions or reject the P&S within 60 days of a complete determination.
2. Complete engineering reviews using state and federal statutes and regulations, administrative codes and technical standards that apply to Concentrated Animal Feeding Operations.
3. Work jointly to complete reviews on very large and controversial projects.
4. Complete joint evaluations of the P&S review process at least annually, to determine the effectiveness of the facility reviews in construction of facilities in and to ensure that proper communications between the agencies are maintained.
5. Revise this appendix as appropriate based on the evaluation in C.4. above, upon agreement of both agencies.
6. Reassign workload as necessary to achieve the goal in C1.

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# CAFO Permits

## Agreement in Principle

WISCONSIN DEPARTMENT OF NATURAL RESOURCES,  
WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION  
AND DAIRY BUSINESS ASSOCIATION, INC.

This "agreement in principle" ("Agreement") between the Wisconsin Department of Natural Resources ("DNR"), the Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") and the Dairy Business Association, Inc. ("DBA") (collectively, the "Parties") outlines a cooperative approach to enhance the plan and specification ("P&S") review and approval process and the Wisconsin Pollutant Discharge Elimination System ("WPDES") permitting process as applied to confined animal feeding operations ("CAFOs") in Wisconsin.

**Background** DNR is the administrative agency in the state tasked with promulgating and enforcing regulations to implement state laws that promote and protect the state's environmental, fish and wildlife and natural resources.

DATCP is the administrative agency in the state responsible for agricultural development and promotion, food safety, animal and plant health, protecting water and soil and monitoring fair and safe business practices.

DBA is a statewide nonprofit organization of dairy producers, vendors, allied industry partners and professionals who are committed to helping Wisconsin's dairy industry grow and thrive while being protective of the state's natural resources.

**Goals** The Parties acknowledge the importance of the dairy industry in Wisconsin to the state's economy, rural health and wellbeing and cultural heritage; and further acknowledge that Wisconsin's dairy industry is a \$21 billion annual industry and a cornerstone industry in Governor Doyle's "Grow Wisconsin" initiative.

The recent growth and modernization of Wisconsin's dairy industry has created a need to ensure that Wisconsin's dairy producers submit P&S and CAFO WPDES permit application materials that are complete and to ensure that DNR and DATCP collaborate to process such applications in a manner that improves the permitting process for the benefit of all involved. Through this cooperative effort, the parties to this agreement intend to achieve the following:

- improve the level of protection provided to Wisconsin's environment and natural resources as a consequence of compliance with the P&S and CAFO WPDES permit processes;



- increase the quality, consistency, and completeness of all P&S and CAFO WPDES permit application submittals to DNR;
- enhance communications between P&S and CAFO WPDES permit applicants, review staff, and interested citizens so that the review and approval process is transparent;
- collaborate on research, development and deployment of alternative clean and renewable energy sources.

**Actions** To achieve the above goals, the Parties commit to following actions:

**1. *Share technical work between DATCP and DNR***

DNR and DATCP will provide additional staff resources to the P&S and CAFO WPDES permit review approval process. The agencies will establish, and operate pursuant to, a separate memorandum of understanding which will provide a formal process for long term work sharing with the goal of streamlining intake, review, communication and approval of P&S applications to meet the goals of this Agreement.

**2. *Centralize the P&S review and approval process***

DNR will centralize submittal, review, and approval of P&S; and will designate one person to receive and immediately review each submittal for completeness and timely contact the applicant with additional needs or clarifications.

**3. *Streamline and improve communications between the applicant, the agencies, and the public***

The Parties will develop an organizational template for applicants and consultants to follow for P&S and CAFO WPDES permit application submittals as well as a set of recommended protocols for notifying affected local government and interested citizens about the dairy expansion proposal. The DNR/DATCP memorandum of understanding shall include a procedure for DNR and DATCP staff to effectively communicate with the applicant and consultant at all necessary stages of the P&S review and approval processes.

**4. *Develop a CAFO permit process tracking system***

DNR will establish a tracking system to track the progress of each set of P&S and each CAFO WPDES Permit application submitted for review. The tracking system will be available for review online by the applicant and available to the general public.

**5. *Conduct pre-application conferences***

The Parties will jointly educate producers on the importance of scheduling a meeting with DNR/DATCP staff prior to submitting P&S materials. The Parties will develop a standard pre-application meeting agenda and materials designed to ensure potential applicants are fully informed about the requirements of the CAFO WPDES permit process.

**6. *Revise P&S completeness checklist***

DNR agrees to revise the P&S checklist to include a conspicuous note that without a PE stamp, applicant's signature and three copies submitted, P&S will be automatically rejected. DNR further agrees to revise the P&S checklist to explain how much detail must be submitted regarding project description, site assessment, management assessment, calculation sheets, PE's explanation of design decisions and assumptions, and steel and concrete specifications and maintenance schedules.

**7. *Determine the Feasibility of Standardized Design Packages for Expedited DNR Approval***

The Parties agree to assess the feasibility of standardizing the design of certain reviewable facilities which can then be implemented at various facilities as a "package" product. If the parties agree that this approach is feasible, a system of expedited approval will be developed.

**8. *Link WDNR, DATCP and DBA Websites for Maximum Information Sharing***

The Parties commit to update and make more user-friendly its websites to ensure that updated P&S approval and WPDES permit application guidance, links to applicable state laws and regulations, enforcement information, and any other information relevant to CAFO ownership and operation is readily available to the public.

**9. *Issue guidance for NR 150 environmental review requirements***

DNR will issue a guidance statement explaining the requirements of NR 150 as those requirements pertain to P&S approval and issuance of CAFO WPDES permits; the guidance statement will be used as a framework for future revisions to NR 150. DNR will also refine the environmental assessment questionnaire for CAFO WPDES permit applicants to ensure that it is clear, concise, and only asks for information relevant to the approval sought.

**10. *Develop a "general" WPDES permit for CAFOs***

DNR will develop and implement a "general" WPDES permit that will be available for new and expanding dairy operations taking into account business cases and water quality protection. To facilitate issuance of these General WPDES permits, WDNR will also complete a comprehensive general environmental review that will satisfy NR 150 requirements for all CAFOs operating pursuant to the General Permit.

**11. *Develop best management practices for implementation of NR 445***

The Parties will develop best management practices that, when implemented, will mitigate air emissions from CAFOs. This work will be completed no later than June 30, 2011 in order to allow livestock operations to demonstrate compliance with NR 445.

**12. Conduct training workshops and develop an engineer certification program**

The Parties will co-sponsor annual training workshops for dairy producers and their consultants to better educate applicants about how to successfully apply for P&S approval and/or a CAFO WPDES permit.

The Parties will develop a program to certify private consultants who attend the annual training workshops and successfully complete three P&S and/or CAFO WPDES permit applications. DBA will maintain the list of private consultants who are certified through this program. DNR and DATCP agree to rely on and trust the efficacy of the certification program developed and implemented through this agreement.

The Parties will jointly inform the dairy industry about this opportunity, coordinate workshop attendance lists and logistics, provide experts to speak at workshops, and share in the costs of the workshops as budgets allow.

The Parties further agree that the engineer certification program will end eighteen months after the first certification is issued unless all Parties agree, after an evaluation of the program's efficacy regarding streamlining, quality of plans and specifications submitted, and protection of water quality, that the certification program should continue or continue with revisions agreed to by the Parties.

**13. Develop an "ombudsman" to act as a liaison between the applicants and the agencies**

The Parties will work toward establishing an "ombudsman" to help applicants through the CAFO WPDES permit process. The "ombudsman" would assist applicants to ensure that CAFO WPDES permit applications are complete and advise applicants as to the process, timing, and approval of permits with an emphasis of avoiding unnecessary delays in the permit process. The "ombudsman" would also work with DNR and DATCP to ensure that the WPDES permit application process is adhered to and completed in a timely fashion, further avoiding unnecessary delays. If resources allow, DNR and DATCP will provide all or part of the funding for such a position.

**Commitment**

The Parties commit to put forth a good faith effort to implement the objectives of and promote the cooperative spirit that underlies this agreement. The Parties further agree to contribute whatever time and creative problem solving efforts are necessary to ensure the success of the projects undertaken pursuant to this agreement.

The Director of DNR's Bureau of Watershed Management, the Director of DATCP's Bureau of Land and Water Resources, and the DBA Executive Director are responsible for implementing this agreement. Within 60 days of the effective date of this Agreement, the Parties shall establish a timeline for the estimated completion of each provision within this Agreement. The Parties shall provide a joint status report on its implementation to the Secretary of DNR and the Secretary of DATCP every six months beginning on October 15, 2009 until such time as the agreement is fully implemented.

This agreement may be cancelled at any time by any of the Parties with 30 days written notice to the other Parties.

**Outcome**

The Parties believe the cooperative approach described in this agreement will streamline the P&S review and approval process, improve the efficiency of the CAFO WPDES permit issuance process, and enhance the overall environmental performance of CAFO WPDES permit applicants. While this agreement is not a binding contract, the Parties pledge to continue to work together and negotiate in good faith with one another on all issues related to this agreement, and any other issues that arise from the actions described herein.

This agreement has been entered into on May 30, 2009

**Wisconsin Department of Natural Resources**

By: 

Matthew J. Frank, Secretary

**Wisconsin Department of Agriculture,  
Trade and Consumer Protection**

By: 

Rodney J. Nisestuen, Secretary

**Dairy Business Association, Inc.**

By: 

Jerry Meisner, President