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November 17, 2015

Secretary Ben Brancel
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
Madison, WI 53718

Secretary Brancel:

Midwest Environmental Advocates, Inc., (MEA) writes regarding the final report and recommendations from the 2014 Livestock Siting Technical Expert Committee (Technical Committee). MEA is a nonprofit environmental law center that provides legal and technical assistance to communities and families working for clean air, clean water, and clean government. Our organization also submitted comments in May 2014¹ in response to the Department of Agriculture, Trade and Consumer Protection (DATCP) review of Wisconsin Admin. Code ch. ATCP 51 (Siting Law).

1. DATCP should incorporate Technical Committee findings into the Siting Law.

As discussed herein, the Technical Committee recommendations do not fully comport with MEA's May 2014 comments. Regardless of these differences, we stress the need for transparent, comprehensive review of the Siting Law and view the Technical Committee's efforts as an important acknowledgement of the need for the Siting Law to better address statewide, current public health and water quality issues.

MEA urges, at minimum, that DATCP adopt recommendations of the Technical Committee and incorporate said recommendations into our State's Siting Law. As noted in our May 2014 comments, DATCP convened the first Technical Committee in 2010 but made no changes to the Siting Law as a result of the Committee's work or summary report. The November 18, 2015, DATCP Board meeting agenda notes a "written report only" for the 2014 Report and Recommendations.² **We respectfully ask for a written response to this letter identifying documents or records that demonstrate the extent to which the DATCP Board reviewed and considered the 2014 Technical Committee findings. This will help ensure that DATCP's decisions regarding the 2014 report and recommendations are made in an open and transparent manner.**

¹ Available at

http://midwestadvocates.org/assets/resources/Livestock%20Siting/Final_Comments_5.21.14.pdf
(also attached hereto for reference).

² Available at

http://datcp.wi.gov/uploads/Public_Notices/pdf/1115November%2018th%20Agenda.pdf.

Wisconsin's statute contains a unique but important requirement that DATCP review its livestock siting rules every four years. Wis. Stat. § 93.90(2)(b)(c). A technical committee must advise DATCP as to siting rule promulgation and review. *Id.* at sub. (d). The Legislature surely did not intend for these statutory provisions to have meaning on paper but not in practice. Especially because the 2010 and 2014 Technical Committee reports are largely aligned, it's important that DATCP support the credibility of the Siting Law by adopting the 2014 Technical Committee report. To act otherwise will convey a message of inefficient use of taxpayer dollars and other State resources that were allocated toward convening of the Technical Committee. Furthermore, the trend toward piecemeal local regulation will continue if local Wisconsin governments and residents view the Siting Law as stagnant despite our State's changing agricultural landscape.

2. A revised Siting Law should clarify and restore the ability of local governments to protect public health and safety.

MEA also noted in our May 2014 comments that the Siting Law severely limits local governments' ability to adopt local laws that address particular quality of life preferences and/or environmental conditions. Since our previous comments, MEA continues to receive a growing number of questions from citizen groups and officials regarding the legal bounds of the Siting Law and corresponding local government authority. While our organization continues to believe in the need to modify the Siting Law to clearly restore local authority, this letter will focus on actions DATCP can take within the confines of the existing law.

The Technical Committee partially acknowledged the uncertain state of local government siting authority by recommending that DATCP clarify how to impose locally-identified nutrient application restrictions, and "help local governments understand how they can meet current state requirements for adopting more stringent standards to protect groundwater."³ MEA echoes the need for this clarity and guidance for local governments. MEA recommends that DATCP help local governments more broadly understand how to properly enact stricter siting standards that are based on "reasonable and scientifically defensible findings of fact" that "clearly show that the standards are needed to protect the public health or safety." Wis. Stat. § 93.90(3)(a)6. MEA has witnessed more and more local governments receiving letters that threaten legal challenge in response to any local effort to protect public health and safety. DATCP has a key role in educating and assisting local government response to these letters of intimidation.

3. DATCP should initiate revision of the Siting Law to formally adopt the latest technical and nutrient management standards.

MEA reiterates our May 2014 comment that the Siting Law should adopt the latest technical standards for feed storage runoff control systems as incorporated into ACTP 50 and require that all new or modified feed storage structures meet the latest technical standards (e.g., NRCS 629). The 2014 Technical Committee made an identical recommendation to DATCP.⁴

³ Wis. Dep't of Agric., Trade and Consumer Protection, Tech. Expert Comm., LIVESTOCK FACILITY SITING FOUR-YEAR REVIEW: REPORT AND RECOMMENDATIONS FROM THE TECHNICAL EXPERT COMMITTEE, Sept. 22, 2015 (hereinafter "2014 Report and Recommendations"), page 5, available at <http://datcp.wi.gov/uploads/Environment/pdf/LivestockTechComReport2015.pdf> (last visited Nov. 12, 2015).

⁴ *Id.*, see, e.g., page 2.

MEA also supports the various recommendations from the Technical Committee to align the Siting Law with the most recent version of NRCS 590.⁵ State-level protection of groundwater quality at a minimum requires DATCP to incorporate the new 590 standard for nutrient management into the Siting Law. We particularly support the Technical Committee's recommendation that the Siting Law should not exempt Concentrated Animal Feeding Operations (CAFOs) from submitting NRCS 590 compliance paperwork and annual plan updates when requested by local governments. Finally, we restate our position that the Siting Law must include additional nutrient management standards, including but not limited to law revision to remove the current exclusion of certain NRCS 590 standards for land applications of waste.⁶

Unfortunately, since the 2010 Technical Committee report the status of groundwater contamination in Wisconsin has only worsened, endangering public health and drawing increased media attention.⁷ All the more essential is DATCP's responsibility and commitment to ensure consistency between all laws and regulations affecting nonpoint pollution.

4. Revision to Siting Law setback requirements is necessary to reflect modern industrial livestock practices.

MEA urges DATCP to increase setback requirements in the Siting Law to better address odor and other impacts of large-scale manure storage structures and livestock housing facilities.⁸ We generally support the recommendations of the Technical Committee to consider increasing setbacks,⁹ but more specifically recommend the following: (1) a minimum 750-foot setback for storage on farms over 1000 animal units; and (2) greater setbacks not just for high-density uses as recommended by the Technical Committee, but also for exceptional and outstanding resource waters.

5. Revision to the Siting Law and corresponding regulations is necessary to address odor implications resulting from current industrial livestock practices.

Odor complaints constitute one of the most common bases of citizen intakes received by MEA. Neither air nor water pollution permits issued by the Department of Natural Resources (DNR) are intended to regulate odor; as such, too often Wisconsin residents have reached out to regulatory agency staff for guidance and relief only to be told that staff lack authority to respond.

In several important respects, the 2014 Technical Committee recommendations are less protective than those of the 2010 committee. For example, while the 2010 committee recommended eliminating the exemption for livestock facilities with all livestock structures located at least 2,500 feet from the

⁵ *Id.*, see, e.g., page 5.

⁶ *Supra*, note 1, at page 7.

⁷ See, e.g., <http://wisconsinwatch.org/2015/11/safe-clean-drinking-water-eludes-many-wisconsinites/> (last visited Nov. 13, 2015).

⁸ *Supra*, note 1, at page 6.

⁹ 2014 Report and Recommendations, e.g., at page 6.

nearest affected neighbor,¹⁰ the 2014 Report and Recommendations would maintain the existing three exemptions from the odor standard.¹¹

Especially in light of our State's trend toward larger but fewer farms, MEA restates our position that the Siting Law and corresponding regulations should apply equally to all applicants. The neighbors of an expanding operation with fewer than 1000 animal units should receive the same protections against the nuisance and public health impacts of odor as the protections afforded to neighbors of facilities that must comply with the Siting Law's odor standards. Reexamination of the exemptions to the odor standard is key to guaranteeing such equal protection.

MEA also expressed concern in our May 2014 comments regarding the lack of a method for tacking compliance with a facility's odor score.¹² The corresponding recommendation from the Technical Committee is that DATCP "support local government efforts by developing checklists and providing other support to facilitate local review."¹³ This is an important but incomplete first step, which DATCP must supplement with at least some statewide oversight and data collection responsibilities. The importance of local government inspection and compliance monitoring is discussed further below in Section 5 of this letter.

We otherwise respectfully refer the Board to pages 6 and 7 of our May 2014 recommendations regarding recommended odor standards updates to the Siting Law to reflect current industrial livestock practices, including large waste storage facilities and modern containment systems. The 2014 Report and Recommendations begin to address the under-regulated odor impacts from livestock operations, but we recommend that DATCP adopt the additional measures outlined in our May 2014 comments to better address the dated odor standards that are set up so that virtually no facility can fail.

6. MEA supports the Technical Committee's recommendations that encourage more robust local monitoring of compliance with the Siting Law.

The 2010 and 2014 technical committees were generally in agreement regarding the need for DATCP to clarify local government authority to perform compliance monitoring and enforcement of local permit requirements. Again, MEA's position is that local compliance monitoring is vital for local governments to protect public health and safety.¹⁴ Our position is reinforced as the staff and funding needed for DNR monitoring of CAFOs remains unchanged while the CAFO industry continues to grow rapidly. The 2014 Report and Recommendations include DATCP development of local government training, guidance, and tools such as checklists. These recommendations facilitate local compliance monitoring and enforcement but do not establish codified and enforceable requirements. MEA repeats the importance of modifying the Siting Law with stepped enforcement, reasonable fines, and other clear local government authority.¹⁵

¹⁰ Wis. Dep't of Agric., Trade and Consumer Protection, Tech. Expert Comm., REPORT: LIVESTOCK FACILITY SITING TECHNICAL EXPERT COMMITTEE RECOMMENDATIONS, Dec. 21, 2010, page 6, available at <http://datcp.wi.gov/uploads/Environment/pdf/LSTechCommitteeReportFinal.pdf> (last visited Nov. 13, 2015).

¹¹ 2014 Report and Recommendations, e.g., at page 6.

¹² *Supra*, note 1, at page 7.

¹³ *Id.*

¹⁴ *Supra*, note 1, at page 8.

¹⁵ *Id.*

Finally, MEA restates our May 2014 comments with respect to the need to modify the Siting Law to do the following: (1) ensure proper facility design and operation; (2) give local officials the authority to require a bond to ensure proper abandonment and remediation; and (3) better address nuisance impacts. We understand that DATCP has determined not to regulate manure spray irrigation within the Siting Law and MEA supports this decision as this practice becomes more controversial and locally-debated. Various federal, state, and local officials and other experts have dedicated significant time to the Manure Irrigation Workgroup. This workgroup is an essential step toward understanding the impacts of manure spray irrigation, but regardless of the workgroup's findings we emphasize the need to maintain local government authority to regulate this practice as necessary to protect public health and safety.

MEA anticipates appearing before the Board of Agriculture, Trade and Consumer Protection at the Board's November 18, 2015, meeting to discuss the aforementioned issues. Thank you for the opportunity to submit written and verbal commentary regarding the 2014 Livestock Siting Technical Expert report and recommendations.

Respectfully submitted,

/s/

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