May 21, 2014

Steve R. Struss
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Wisconsin Department of Agriculture,
Trade & Consumer Protection
2811 Agriculture Dr.
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Dear Mr. Struss,

Thank you for the opportunity to provide comments in anticipation of the Department of Agriculture, Trade and Consumer Protection’s ("Department") review of Wisconsin Administrative Rule ATCP 51 ("Siting Law"). I respectfully submit these comments on behalf of Midwest Environmental Advocates ("MEA"), a non-profit environmental law center that provides legal and technical assistance to communities and families working for clean air, water, land and government.

Wisconsin citizens rely on their state agencies to protect the health of their families through effective implementation, monitoring and enforcement of laws designed to protect them. People living near one or many industrial livestock operations have very little control where the next expansion or new facility is permitted. We thank the Department for holding these listening sessions in anticipation of the Technical Committee’s 4-year review of the Siting Law. It is important that Wisconsin make every effort to protect the health and safety of citizens from the potential negative consequences associated with the proliferation of large industrial livestock facilities and to protect both the health of families and our shared natural heritage. MEA looks forward to providing additional information as requested and assisting all stakeholders in creating a Siting Law that is reasonable and protective of public health and the environment.

Change in Wisconsin’s Agricultural Landscape

Over the years, Wisconsin has seen remarkable changes in its livestock operations. Small efficient farms have been replaced with large industrial livestock operations. This shift to industrial livestock operations has caused serious environmental harm and threatened public health. In a very short period of time, we’ve seen a dramatic increase in Concentrated Animal Feeding Operations ("CAFO"), as well as a significant jump in the number of animals at
each facility. Industrial dairies are proliferating in the Central Sands and the Northeast counties around Green Bay. These two areas of our state are the most vulnerable and least suitable to the spreading of tens of millions of gallons of untreated waste from these expanding industrial livestock operations.

Industrial livestock operations generate an enormous amount of waste every day. Cows and calves of expanding mega-dairies alone produce more waste than all the people in Wisconsin, and the vast majority of that waste is spread, untreated throughout the communities where people live and recreate. The waste produced per day by one dairy cow is equal to that of 20-40 people. This means that a single 2,000 cow dairy operation can produce over 3 times as much waste as the city of Wisconsin Rapids (population 18,367). If you live near a 6,000 cow dairy, the manure spread on fields near your home is more than the waste produced by the population of the city of Green Bay (104,057). Manure from these large livestock facilities is rarely treated to eliminate pathogens before being applied to farm fields as fertilizer. In contrast, human waste is treated by municipal wastewater facilities or septic systems before returning to land or waterways.

Existing CAFOs in Wisconsin produce more manure than can be safely disposed of by spreading on fields, and the Siting Law strips local communities of their say on how many more CAFOs will be permitted, or where they will be located. Taking away local control in the name of consistency is particularly a problem where the statewide regulation is not adequate to protect people.

Many farm fields across the state have reached their maximum capacity to absorb nutrients efficiently as a result of over-application and little or no monitoring by the Wisconsin Department of Natural Resources (“DNR”). For example, over 75% of the farm land in Kewaunee County is covered by Nutrient Management Plans (“NMP”), and has some of the most polluted groundwater in the state. The main tool to safely manage these massive amounts of untreated manure, the NMP, is either not working or they are not being implemented properly.

In the Central Sands region, where the water levels in lakes, streams, wetlands and private wells are dropping, there are numerous industrial dairies being permitted that can require as many as 50 high capacity wells for the water they need to operate. After July 1, 2014, state

law will preclude citizens from challenging a high cap well decision on the basis that the DNR did not consider cumulative impacts, further limiting citizens’ ability to be heard.

Environmental Protection for the Citizens of Wisconsin

Historically, citizens relied on common law nuisance laws to protect them from environmental harm. In the 1970s, environmental laws were passed, giving citizens state and federal statutory protection. Today, nuisance laws have been weakened by “right-to-farm” laws and business interests have lobbied to weaken statutory law.

Wisconsin’s right to farm law has caused immeasurable harm to citizens’ ability to protect themselves from industrial livestock operations. What was originally intended to protect existing family farms from complaints associated with urban sprawl, Wisconsin’s right-to-farm law has resulted in virtually unlimited protection to industrial livestock operations. Industrial livestock operations are very different from family farms and right-to-farm regulations should not protect practices that are no typically associated with Wisconsin’s family farms. Like right-to-farm laws, the Siting Law is just another example of citizens’ inability to protect their communities and natural resources.

In addition, state regulatory agencies have been hit with budget cuts and inadequate staffing levels to sufficiently monitor and enforce environmental laws. The DNR acknowledges reduced staffing levels and resources.⁷ As of February 2014, to cover 258 CAFOs, the DNR has just 8 inspectors. Ironically, these are staffing levels and resources that are needed to provide the level of oversight to protect communities from the serious problems caused by industrial livestock operations, which citizens have little or no control over.

Citizens must be able to pass local ordinances and zoning laws that protect their communities. The location of industrial livestock facilities is a critical issue when it comes to protecting public health, property values, quality of life and natural resources. Changes to the Siting Law will help fill the void left by a weakened regulatory scheme and protect public health and safety, air, land and water.

As the Department begins its second four-year review of the Siting Law and prepares to appoint a Technical Committee to recommend changes to ATCP 51, MEA submits the following comments and suggestions for the Department’s consideration:

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⁷ Kate Golden, DNR Vacancies Hinder CAFO Enforcement, LACROSSE TRIBUNE, Feb. 8, 2014. [http://lacrossetribune.com/news/local/dnr-vacancies-hinder-cafo-enforcement/article_d7f43ce0-0e09-5fbb-8e24-84a8c48e0e6d.html](http://lacrossetribune.com/news/local/dnr-vacancies-hinder-cafo-enforcement/article_d7f43ce0-0e09-5fbb-8e24-84a8c48e0e6d.html)
1. **The Technical Committee should be provided with a copy of the previous Technical Committee’s December 21, 2010 Report and Recommendations.**

In 2010, the Department conducted its first required four-year review of the Siting Law. A committee of experts issued its report and recommendations on December 21, 2010. At that time, the decision was made to not make any changes to the Siting Law. The soon-to-be appointed Technical Committee would benefit from the work done by the previous committee.

Since the last review, large livestock facilities have proliferated and concentrated in some areas of the state. As a result, many environmental and local siting concerns have emerged that are not sufficiently addressed by the Siting Law. Since many of the concerns and recommendations of the first Technical Committee remain valid, the soon to be appointed Technical Committee should utilize the 2010 report as a starting point, and address the many issues that have emerged since that first four-year review.

2. **Appointees to the Technical Committee should include individuals from the organic/sustainable farming, public health and environmental communities.**

Wisconsin has experienced dramatic growth in organic agriculture. The number of organic farms in Wisconsin grew 157 percent from 2002 to 2007. Wisconsin is also in the top five states for organic acreage, with a total of 195,603 acres. In addition, Wisconsin ranks second after California in the number of farms transitioning to organic farming, positioning the state well to grow its future capacity for organic agriculture.

Organic growers and producers are negatively affected when industrial livestock operations are located nearby. The integrity of seed and purity of livestock are critical to the livelihood of organic and sustainable farms. Industrial livestock practices jeopardize the products these farms produce through cross-pollination, over-spray from manure irrigation practices and contaminated runoff. It is imperative that a member(s) from the sustainable and/or organic farming community be added to the Technical Committee to represent this important and growing market in Wisconsin.

The issues facing citizens in communities where industrial livestock operations are located are public health issues. From airborne pathogens to bacteria and nitrates in private drinking water, citizens are increasingly exposed to dangerous contaminants affecting them and their

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families. This is a public health issue and it is critical that there be representatives from the public health community on the Technical Committee as the Siting Law is reviewed and revised.

Finally, as industrial livestock operations expand and flourish at will, issues related to the environment have increased and become more and more complex. When presented with a siting application, local governments must interpret complicated nutrient management plans, state permits, engineering plans and specifications to adequately consider environmental impact to their communities. This often requires consulting with hydrologists, agronomists and environmental law experts. As the Siting Law is reviewed and revised, it is important that professionals from the environmental community have a voice in the process as members of the Technical Committee.

3. Revisions to the Siting Law should be made so that local government police powers’ are restored such that they are able to protect the public health and safety of its citizens.

Police power of government has been described as the power to regulate conduct and property of some, for the safety and property of all.\textsuperscript{13} The one-size-fits-all approach endorsed by the Siting Law is not working. Communities across Wisconsin each have their own unique characteristics that make it imperative they be free to develop their own standards. What may be necessary in Dane County may not be necessary or applicable in Kewaunee County. Applying the same siting standards to each community is unreasonable and does not ensure the safety of all.

Furthermore, groundwater contamination is a common occurrence in areas like Kewaunee County and the Central Sands region, where geologic conditions promote rapid flow of contaminants from land applied manure and process waste water.\textsuperscript{14} To deprive these communities their police powers to protect the public health and welfare of citizens is immoral and without justification.

As written, the Siting Law requires local governments, who choose to enact a siting ordinance or zoning law, to adopt the State standards in the Siting Law. In the name of consistency, the Siting Law makes it very difficult for local governments to independently and democratically adopt livestock siting laws that are most beneficial to their communities and their unique characteristics. Rather, the Siting Law requires local governments to submit scientific studies showing that more stringent standards are necessary. If a local government chooses to adopt more stringent standards than the Siting Law to protect its citizens, it essentially must prove they are necessary.

This is counter to the role of local governance, and its duty to protect its residents. When local government officials determine more stringent protections are needed to protect public

\textsuperscript{13} State ex rel. Zillmer v. Kreutzberg, 114 Wis. 530, 533, 90 N.W. 1098 (1902).
health and/or natural resources, they should be free exercise their police powers through the siting process instead of burdened by it.

4. **The Siting Law should be revised to formally adopt the latest technical standards.**

   The Siting Law should adopt the latest technical standards for feed storage runoff control systems as incorporated in ATCP 50 and require that all new or modified feed storage structures meet the latest technical standards (e.g., NRCS 629).

5. **Setback requirements should be modified to reflect modern industrial livestock practices.**

   The current maximum setbacks in the Siting Law are inadequate to deal with the large manure storage structures and housing facilities of modern industrial operations that often exceed 2000 animal units. In spite of the obstacles created by the current Siting Law, some local governments have adopted setbacks more stringent than in the Siting Law, however, larger setbacks should be the standard to reflect these ever increasing livestock facilities.

   Furthermore, greater setback distances should be required for schools, hospitals, scenic river ways, state parks, state and federal historic sites, exceptional resource waters and outstanding resource waters.

6. **The Odor Standards.**

   The Technical Committee should work to ensure the odor standards are based on accurate odor predictions. Any revisions should be evaluated and confirmed by running an odor model and conducting site visits to applicable industrial livestock facilities. Additionally, the current Siting law sets odor generation numbers based on research from 2006. Odor generation numbers need to be adjusted to reflect current industrial livestock practices including larger waste storage facilities and modern containment systems.

   The odor point system is set up so that virtually no one can fail. Credits are given for basic business and management practices. For example, each applicant receives 80 points for completing required employee training and developing incident response plans. This is required under the Siting Law and should be independent of the odor point system. There is no need to give facilities points for these reasonable mandatory measures. Moreover, applicants may receive an additional 20 points toward their odor score by completing an optional advanced odor management plan. The advanced odor management plan consists of measures that any good operator should be utilizing anyway. These include measures designed to reduce community conflict, reduce dust and odors from feed storage leachate, and reduce odors from dead animals. Not only are these reasonable odor reduction and health and safety measures, they are all practices that should be included in the mandatory odor and air emissions standards.\(^\text{15}\)

   The odor standard should be equally applied to all applicants to ensure that affected neighbors are treated fairly. As such, expanded facilities with fewer than 1000 animal units

\(^{15}\text{2010 Report and Recommendations, supra note 8, pp. 28-29.}\)
should no longer be exempt from meeting the odor standard. Since the threshold for the Siting Law is 500 animal units, the same threshold should be applied to the odor standard.

Exemptions and Credits

The 2010 Technical Committee recommended that certain exemptions and odor control practice multipliers for housing, manure management and animal lot practices be modified.\textsuperscript{16} Many of the current multipliers were based on outdated science and older research. The Technical Committee’s recommendations include:

- Reviewing the 20\% credit for diet manipulation;
- Lowering the 80\% credit awarded for composting;
- Revising the 40\% odor control credit for solids separation and reduction;
- Revising the 30\% credit awarded for aeration; and
- Eliminating the exemption for livestock facilities that have all their livestock structures located at least 2,500 feet from the nearest affected neighbor.

Practices Not Covered by the Odor Standard

The 2010 Technical Committee recommended creating odor generation numbers for new types of structures and manure management methods.\textsuperscript{17} For example, there are no odor generation numbers for feed stored in bunkers, sand/manure solid separation systems, and feed storage areas. In addition, the current Siting Law does not include odor control practices for immediate return of flush water and poultry litter dryer belt systems and does not regulate odors when raw manure is applied to fields. Finally, there is no way to track compliance with a facility’s odor score. This should be changed.

MEA recommends the Technical Committee modify odor generation numbers for existing sources and create new odor generation numbers for new types of structures and manure management methods.

7. The Siting Law should include additional nutrient management standards.

The current Siting Law excludes certain NRCS 590 standards for land applications of waste. For example, operators do not have to comply with Section V.A.2.b(2), related to additional requirements imposed by local conservation plans; Section V.D, related to additional criteria to minimize N and particulate air emissions; Section V.E, related to additional criteria to protect the physical, chemical and biological condition of the soil; and Section V.I, related to discretionary conditions. This exclusion should be eliminated and authority given to local governments to utilize as needed.

Moreover, it is critical that local governments have the ability to monitor manure applications. By restoring, for example, V.A.2.b(2) of the 590 Standard, local governments

\textsuperscript{16} 2010 Report and Recommendations, supra note 8, pp. 23-27.
\textsuperscript{17} 2010 Report and Recommendations, supra note 8, pp. 21-22.
would retain local control over manure applications on frozen and snow covered ground. Further, the Siting Law should require facilities to provide a breakdown of total acres available for land spreading by owned acres, rented acres, and acres under other land spreading agreements. Applicants should also be required to identify the location of sensitive geologic and hydrologic features, alternative manure disposal methods, and whether other types of nutrients, including organic by-products, will be used.

8. The Siting Law needs to be modified to ensure that local governments are able perform compliance monitoring and enforcement of local permit requirements.

Compliance monitoring is vital for local governments to protect public health and safety. In order to facilitate better monitoring and enforcement, the Siting Law should be revised, requiring applicants to submit complete and accurate information on their facilities. The current Siting Law application does not require applicants to fully describe their operations. Clear descriptions of manure management systems, waste storage facilities, feed storage leachate control systems and animal lots all need to be clearly described so local authorities have a clear picture of the operation.

The current Siting Law does not facilitate compliance and enforcement. Rather than outline a stepped enforcement process for local governments, the current Siting Law merely provides that local governments may monitor compliance and seek redress provided by law. In a note, the Siting Law warns that local governments “should exercise sound judgment in deciding whether to take compliance action.”

A clear compliance and enforcement provision should be added to the Siting Law, including reasonable fines that may be assessed when it is determined a violation has occurred. This will eliminate current confusion on the part of the applicant and local authorities regarding their duties and responsibilities, and instill confidence among citizens that their local governments have the authority to protect their health and safety.

The 2010 Technical Committee recommended state agencies assist local governments with monitoring and compliance. In addition, it is recommended the Department provide guidance and training to local officials on compliance and monitoring.

Finally, tracking compliance related to waste storage facilities needs to be standardized. The 2010 Technical Committee recommended the Department use a checklist system similar to the nutrient management checklist to verify structures are in good condition and will function properly.

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18 Wis. Admin. Code ATCP 51.34(4) (emphasis added).
19 2010 Report and Recommendations, supra note 8, p. 35.
20 2010 Report and Recommendations, supra note 8, p. 29.
21 Id.
9. The Sitting Law needs to be modified to ensure proper facility design and operation.

The Siting Law should be revised to require evaluation and inspection requirements for each specific type of storage facility. Moreover, inspections should be mandatory for waste storage and transfer systems. These requirements need to be clear, consistent and supported with adequate documentation.

10. Local fees and bond.

Abandoned livestock facilities can pose a serious environmental hazard, attracting flies and vermin creating a nuisance and supporting vectors for disease. Proper abandonment needs to be implemented and in a timely fashion.

The current Siting Law forbids local governments from establishing a bond. Therefore, it must be revised to give local officials the authority to require a bond to ensure proper abandonment and remediation, based on the size and type of facility. It is not practical to establish a firm dollar amount; rather, the Siting Law should be revised in such a way that local authorities can determine an appropriate bond for their particular situation.

In addition, under the current Siting Law, local governments may not charge more than $1,000.00 to review and process an applicant’s application. This is too low. Industrial livestock operations have become highly sophisticated and technical. Facilities and management practices are increasingly complicated; review of which require experts from various disciplines. Review of an NMP alone can cost well over $1,000.00. Therefore, the fee authorized by the Siting Law is insufficient to adequately perform a review of materials submitted by applicants.

Finally, the Siting Law should include a provision making reimbursement costs to local governments mandatory when they must pay for repairs/replacement of local roads and polluted wells caused by the increased activity from industrial livestock operations in their communities.

11. The Siting Law should include additional standards to deal with nuisance impacts.

The growth of industrial livestock operations create public and private nuisance issues not addressed by the current five (5) standards in the Siting Law. Local residents living near these facilities are subject to the loss of the use and enjoyment of their homes and property from odors, increased traffic and noise and light. The citizens of Wisconsin have a right to clean air, water and a quality of life that enables them to enjoy outdoor activities. The current standards should be revised to address these issues, or a new standard related to nuisance should be included in a revised Siting Law.


Currently, the Siting Law does not address spray manure irrigation, however, this has the potential to be one of the more controversial practices associated with industrial livestock facilities. The full extent of health and safety risks are unknown and potentially severe. Some of the concerns currently being studied include:
• Health concerns that aerosol spray drift from manure irrigation could carry pathogens, particulates, antibiotics, endocrine disruptors, cleaning compounds, toxic gases (hydrogen sulfide and ammonia), and ‘super bacteria’ including LA-MRSA.

• Concerns that contaminants could affect the general population and especially those with compromised immune systems and elderly; concerns that those negative health effects could be magnified because aerosols penetrate lungs and carry toxins to the bloodstream more directly than if ingested.

• Quality of life concerns, reinforced by reports from people who have complained of worsening respiratory health, poor air quality, increased airborne particulates, odor, and contamination of their property as a result of nearby manure irrigation.

• The potential for contamination of surface water and wells from irrigation application, especially in areas where access to groundwater is more direct such as in sandy soil or karst. There are concerns about runoff from precipitation events after manure irrigation application.

• Groundwater quantity concerns that manure irrigation might use excessive amounts of groundwater resources and may draw down wells.

• There are concerns that existing and future setbacks will be inadequate to protect neighbors, surface waterways, and crops in nearby fields.

• Organic farms are concerned about the risk of losing organic certification due to spray drift depositing materials on crops.

• There are concerns that monitoring implementation of manure irrigation practices would be difficult and impractical.

Spray manure irrigation will trigger standards included in the Siting Law, including setbacks, nutrient management and odor and air emissions. Given that this practice is inadequately researched with considerable public health implications, local governments must be given the ability to limit or ban this practice until health officials fully understand the extent of potential public health consequences that may result from this practice.
In the event the Department chooses to address spray irrigation of manure in the Siting Law, MEA recommends it adopt standards that are protective of public health and safety. However, in no way should citizens lose their ability to control and/or regulate this practice. Local governments should be authorized, on a case-by-case basis, to establish setbacks, establish odor and air emission standards, and establish nutrient management guidelines for practices associated with spray irrigation.

Thank you for the opportunity to comment.

Respectfully submitted,

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