Members of the Senate Committee on Agriculture, Revenue, and Financial Institutions and the Assembly Committee on Agriculture, good afternoon, thank you for the opportunity to provide testimony in opposition of SB 808/AB 894. My name is Adam Voskuil, and I am a staff attorney at Midwest Environmental Advocates (MEA). MEA is public interest environmental law center that has worked for over two decades to protect Wisconsin’s land, air, water, and government.

As we’ve heard today, this bill would revise the Livestock Facility Siting law in Wisconsin. Though promoted as a means to streamline local approvals, in effect, this law could limit what little local authority governments have to regulate Wisconsin’s largest industrial agricultural facilities. Moreover, MEA has serious concerns regarding the creation of a technical review committee that will ensure ATCP 51, DATCP’s implementation of this statute, remains stagnant. The bill also places more restrictions on local governments and potentially creates a heightened evidentiary bar that will limit a town or county’s ability to set more stringent standards. Overall, this bill is wholly insufficient to address the problems with livestock siting in Wisconsin and likely creates new problems.

The speed with which this legislation is moving means that important voices are being overlooked or ignored.

The expedited process associated with this bill is preventing meaningful review, discussion and comments from the public and interested parties. Senate Bill 808 and Assembly Bill 894 were circulated for co-sponsorship on Monday, February 10 with a deadline of less than 24 hours to sign on. Following that abbreviated schedule, the bill is already being reviewed today. Since this hearing was announced, MEA has been inundated with citizen comments and concerns regarding the process and substance of this legislation. For example, Karen, Wilson, a resident of Door County, reached out to us, exclaiming that legislation of this complexity “needs in-depth consideration of its many aspects, including financial effects on local government, and environmental consequences of ‘stream-lined’ regulation;” further stating that the “timeline of this legislation itself makes it unworthy of passage.” This speed is particularly excessive when compared to the timeline for the most recent Livestock Facility Siting Rule revision attempt, which lasted over 30 months and elicited hundreds of comments from citizens, producers, and interested groups around the state. To exemplify how this process is overlooking citizen input, I have included the e-mailed testimony of individuals that reached out to MEA in the last 24 hours. This is not a simple bill, and we need more review and citizen insight in this process.
Eliminating the mandatory expert review of ATCP 51 will make updating the rule even harder because new science, standards, and technologies will not be readily available.

Currently, the Livestock Facility Siting Rule requires that DATCP convene a group of technical experts every four years. The technical expert committee reviews the standards and issues recommendations for rule revisions to the Department. That report often outlines known deficiencies in ATCP 51, but it also provides scientific and technical updates which serve as a guidepost for citizen input and proposed rulemakings. This bill would effectively eliminate that expert committee review, making the decision on whether to ever perform future analyses discretionary. There is no guidance indicating how often future reviews would occur and it seems unlikely that DATCP would convene those technical expert committees as regularly given the cost and time associated with the analysis. The elimination of this provision is highly problematic for the future of livestock siting in Wisconsin.

The creation of a technical review board will further prevent any updates to an already outdated rule.

The proposed technical review board would ensure that no meaningful updates to ATCP 51 ever occur, should this bill pass. The nine member technical review board would consist of five members representing ag-business organizations and would require a 2/3’s vote to promulgate any future rules. Although there are claims that this evens the balance to give producers a voice, that is a clear misrepresentation. This bill unnecessarily tips the scale and gives industrial agriculture groups the ultimate decision-making power in deciding whether new, more protective standards should be enacted, even as more studies emerge showing the detrimental public health, economic, and environmental impacts of CAFOs and the industrial agriculture industry as a whole.

Importantly, this bill also creates an unnecessary administrative step by including an additional review vote in a rulemaking process that already struggles to meet the requisite 30-month statutory deadline. DATCP needs more flexibility and autonomy to fix the current rule, yet this bill essentially does just the opposite. As such, any updates to the current bill or future iterations in subsequent legislative sessions should not include any form of the technical review board.

Unclear language could create lasting issues with local authority to set more stringent standards.

MEA has concerns that added language may increase the challenges for local governments to create more protective standards. Counties or towns looking to protect their residents already struggle to meet the evidentiary burden to enact stricter regulations, and this bill likely adds language to what is required. We’ve heard different characterizations of these additions and recognize that there may be differences of opinion, or confusion and misunderstanding as to language in this bill. However, those differences in understanding only further illustrate the need for more discussion and analysis.

Setting a fee cap and prohibiting bonding removes valuable tools that local governments traditionally have to enact regulate livestock facilities.

During the most recent rulemaking revision process for ATCP 51, DATCP confirmed that the department does not have the authority to limit fee caps or prohibit bonding. Both of these are valuable tools for local governments looking to protect their communities. Absent a statutory feed cap for livestock facility applications, local governments could charge the actual costs they incur in reviewing Livestock Facility Siting applications. Current Wisconsin Law limits local governments to charging fees that are “reasonably related” to the service for which the fee is being imposed. Therefore, it makes sense to revert to the default law which would ensure that applicants are paying their fair-share for review of their applications.
Additionally, allowing bonding would ensure that remediation can occur for abandoned manure storage systems and their potential environmental fallout. Currently, there is no guarantee that an area will undergo restoration once a CAFO closes, and we’ve seen reports of manure cleanup costs reaching egregious levels. As such, local governments should not be precluded from requiring bonds that would protect their communities.

In conclusion, we see that there may be valuable portions of this bill that would allow for increased adoption of Livestock Facility Siting rules around the state. However, the trade-offs of limiting public participation in an effort to force the bill ahead, creation of systems that ensure that technical reviews and rule revisions never occur, and increased constraints on local control lead MEA to oppose this bill recognizing that more work must be done. Thank you for your time.