



July 8, 2019

Chairperson Miranda Leis
Department of Agriculture, Trade and Consumer Protection Board
2811 Agriculture Dr.
P.O. Box 8911
Madison, WI 53708-8911

Dear Chairperson Leis:

On behalf of the undersigned agricultural groups, we express our opposition to the proposed public hearing draft of ATCP 51 that has been submitted for your consideration. Two years ago, a very similar draft was presented to this board. At that time, you heard from farmers and ag advocacy organizations that the proposed rule was problematic and had not been properly vetted. Unfortunately, we find ourselves in the same place now. The rule before you has not been modified in any significant way. An analysis of whether farms that were previously permitted under siting would still be allowed under the proposed new rule has still not been done. The chief objections to the draft that were raised in 2017 are still true today. In fact, the economic situation for farmers, which was one of the concerns raised two years ago has deteriorated further in the intervening two years. Therefore, we ask that you take the same action you did in 2017: Do not authorize public hearings on this draft.

A fundamental concern is that the department's approach to revising ATCP 51 is not consistent with its statutory authority. Wisconsin Statutes section 93.90(2)(b) outlines the eight considerations by which the department is supposed to be guided. It is telling that one of the first proposed changes to the rule is the deletion of legislative intent and the same statutory

considerations from the introductory note. The major revisions proposed in the draft rule are not grounded in the department's statutory authority. The proposed draft would shift the rule's focus to the operation of permitted farms. The siting law is intended to apply to the siting of new and expanding livestock facilities; it was never meant to mandate a host of operational considerations that are already addressed by other statutes and administrative rules.

While the proposed rule does include some improvements to the permitting process, most of the changes to actual farm standards are unworkable and would be harmful to the future of livestock agriculture in our state. The following areas are of particular concern:

- **Odor management and setbacks** – The proposed rule would abandon the current odor management standard, which relies on an odor score along with setbacks, in favor of a new system that relies on drastically increased setbacks with the possibility of credits for certain odor control practices. The argument for this shift is that the odor scoring methodology is no longer the subject of ongoing study and improvement. Yet, the new setback numbers themselves are based on this same body of knowledge. There is no evidence that the proposed system is practical and workable, cost effective or objective, designed to promote the growth and viability of animal agriculture in this state and designed to balance the economic viability of farm operations with protecting natural resources and other community interest. These are the statutory guideposts for the siting law, and they have been largely ignored.

A significant concern is that new system has not been applied to already permitted facilities to gauge its impact on farms. When some of that testing has been attempted by farmer-advocacy groups, the result is that even modest expansions to existing farms would struggle to be permitted without locally-implemented variances. Relying on the possibility of local exceptions would result in a patchwork of regulation that siting was meant to avoid.

- **Consistency with existing standards** – Agricultural facilities are already heavily regulated by a host of state laws and administrative rules. Navigating these different layers of regulations can be one of the chief hurdles farmers face. Where possible, livestock siting should be consistent with other areas of regulation. ATCP 50 and NR 151 regulate runoff management and manure application. The state's permitted CAFOs are accountable to the standards found in NR 243 and the federal Clean Water Act. The Department of Natural Resources (DNR) has existing standards meant to be protective of groundwater and surface water. Adding another layer of complexity and inconsistency to this already confusing and duplicative set of regulations is undesirable and inconsistent with the siting law's legislative intent.
- **Runoff Management** – There is a concern that some of the new standards proposed in the draft rule are inconsistent with the runoff standards already found in other parts of the administrative code (namely ATCP 50, NR 151 and NR 243). Additionally, DATCP lacks the authority to establish effluent limits. This duty has been expressly

delegated to DNR and any attempt to undermine this delegation would be contrary to law. Finally, the proposed rule would adopt a 2016 NRCS standard for vegetated treatment areas that is not consistent with the Clean Water Act nor existing DNR practice. Compliance with this new standard would be very expensive for farms subject to siting and in many instances could be detrimental to the environment. There is no adequate reason to incorporate the new NRCS 635 standard into this rule revision given its numerous drawbacks.

- **Monitoring Compliance** – Section 51 of the proposed rule revisions would require local governments to monitor permitted livestock facilities using an approved checklist prepared by the department. The statute granting authority to promulgate ATCP 51 does not expressly provide for the delegation of monitoring permitted farms' compliance to local units of government. This is another example of how the changes being proposed are arguably exceeding statutory authority.

We appreciate your time and attention to this matter. We want to work with you and the department to ensure that our state's livestock farms and the industries that rely on them continue to thrive. The livestock siting law plays a key role in this effort, which is why we must proceed with great caution when faced with a rule revision that could undermine the law and its original intent. For that reason, we ask that you not authorize public hearings on the proposed hearing draft of ATCP 51 that you have received.

Sincerely,

Cooperative Network
Dairy Business Association
Wisconsin Association of Professional Agricultural Consultants
Wisconsin Cattlemen's Association
Wisconsin Cheese Makers Association
Wisconsin Dairy Alliance
Wisconsin Farm Bureau
Wisconsin Manufacturers & Commerce
Wisconsin Pork Association