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# ROBIN J. VOS

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SPEAKER OF THE WISCONSIN STATE ASSEMBLY

July 3, 2019

Secretary Brad Pfaff  
Department of Ag, Trade & Consumer Protection  
2811 Ag Drive  
Madison, WI 53708

Dear Secretary Pfaff,

We are writing to encourage that you return the draft ATCP 51 revisions back to staff for further work and consultation with affected stakeholders prior to advancing the rule to the full DATCP Board for its consideration. As we understand matters, the revisions DATCP staff are recommending could add significant new costs to existing and expanding CAFO operations and have a chilling impact on any future potential growth in the dairy industry. This added uncertainty compounds an already problematic farm economy, which is struggling with low commodity prices and trade issues.

According to Ch. 93.90(2)(b), Wis. Stats. DATCP is required to promulgate rules "specifying standards for siting and expanding livestock facilities." Those rules must be, *inter alia* (i) "practicable and workable"; (ii) "cost effective"; and, (iii) "designed to promote the growth and viability of agriculture in this state." Unfortunately, the revisions under consideration by DATCP fail to meet these legislative charges and should not advance to the DATCP Board until it is reworked with stakeholder input.

Every four years, DATCP must review the siting rule, ATCP 51. However, DATCP does not have to revise the rule it adopted in 2006, which we understand has been working as it is written without any revisions in the previous four-year reviews.

The 2003 ACT 235, which created the Livestock Siting law, was a bipartisan compromise between legislative Republicans and Democrat Governor Jim Doyle. The final product included negotiated agreements between the Ag community, Wisconsin Towns' and Counties Associations. The Livestock Siting law struck a fair balance between Wisconsin's desire to maintain its' position as the dairy state while providing local governments the tools they needed to ensure CAFOs were operating in an environmentally safe manner to protect the health and safety of residents.

If local governments or neighbors were unhappy about some aspect of a CAFO operation, they could take their complaint to the Livestock Siting Review Board. The amount of traffic before the Livestock Siting Review Board is an indicator of whether the siting law is working as intended.

In recent years, the Review Board was largely inactive. These years coincided with significant expansion of the livestock industry in Wisconsin and yet the controversy was minimal as evidenced by the paucity of cases before the Review Board. That is a good thing. The cases that have appeared of late have not centered on the adequacy of setbacks or odor complaints; rather, these cases have largely focused on local units of government attempting to condition local approvals with “operational” restrictions, nothing whatsoever to do with the adequacy of ATCP 51.

The Livestock Siting law was intended to apply to the siting and expansion of livestock facilities and related structures, not to mandate a host of operational conditions that are already covered under other laws (i.e., NR 151, NR 243, ATCP 50, etc.). These revisions expand ATCP 51 to include “operational provisions” and would grant local officials’ powers over operations that they do not currently have under state law. That was never the intent of 2003 ACT 235.

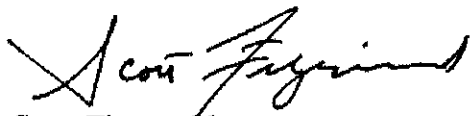
The rule proposes hugely expanded setbacks that would limit a farmer’s ability to site or expand, rather than assist them. These extreme setbacks are not “designed to promote the growth and viability of animal agriculture in this state.” Depending on the size of the facility and local land base, areas of the state will simply be off limits from any further livestock growth. This rule has not been adequately examined to gauge its impacts on farmers.

Setbacks in the revised rule are from property lines, not neighbors, or receptors. A livestock operation that abuts a third-party owned 100-acre cornfield with no residence, should not have to be set back nearly ¼ of a mile, as if it were located next to an elementary school.

It appears your staff is creating a solution in search of a problem. The ATCP 51 revisions are not ready for a public hearing, the next stage of the process, and should be sent back to staff for further work with the affected stakeholders. We have asked Ag Committee Chairman Howard Marklein and Gary Tauchen to monitor this process and, if necessary, reject the current revisions and send them back to DATCP.

Thank you for your attention to this important matter.

Sincerely,



Scott Fitzgerald  
Senate Majority Leader



Robin J. Vos  
Assembly Speaker

Cc: Senator Howard Marklein  
Representative Gary Tauchen