

April 29, 2005

TO: EQB Members
FROM: Gregg Downing
651/205-4660
gregg.downing@state.mn.us

SUBJECT: Comments on Proposed Revision of Feedlot EAW Category

In addition to the other comments on the proposed changes to the mandatory EAW category for animal feedlots (of which you will receive paper copies), EQB received approximately 400 e-mail comments with the following text:

“Member of the Environmental Quality Board,

I oppose any weakening of mandatory environmental review for animal feeding operations. Environmental review is already so limited that it does not adequately protect Minnesota citizens or our environment. The EQB should strengthen environmental review for animal feeding operations and protect Minnesota’s environment.

[name]
[address]”

Also, the EQB received approximately 75 e-mail comments which include the quoted text but added additional information, personal observations, or opinions. The additional material ranged from a single sentence to several paragraphs. The staff does not intent to copy these for the Board members, unless we receive a request for them.



"Minnesota COACT (Citizens Organized ACTing Together) is a grassroots membership governed organization, working to build community in the quest for social and economic justice. We educate and organize people to empower themselves and take action in the democratic process."

April 18, 2005

Grogg Downing
Environmental Quality Board
300 Centennial Bldg, 658 Cedar Street
St. Paul, MN 55155
Fax: 651-296-3698

Re: Maintain current mandatory EAW threshold

Dear Mr. Downing:

Minnesota COACT (Citizens Organized ACTing Together) is a grassroots organization of 12,000 members statewide, including 500 dairy farmers. We work on health care reform, food safety and family farm advocacy. Many of our members are rural residents. The majority of dairy farms in Minnesota, 96% in fact, are under 200 cows. The proposed change would only be a further benefit for the megadairies, or the 4% minority.

The proposal to raise the mandatory threshold above 1000 au is a particularly sensitive issue after the 2003 legislation that strips away the right of citizens to petition for environmental review of a proposed feedlot under 1000 au except under very narrowly defined circumstances. In fact, we feel it appropriate to call for lowering the mandatory threshold for an EAW, not raising it. Until very recently, a CAFO at the federal level (EPA) was an operation of 500 au and above, and we think that would be an appropriate mandatory EAW threshold.

Members who served on the committee for the GEIS on feedlots have expressed surprise at the recommended change to feedlot environmental review. That recommendation did not come out of that study, nor out of earlier EQB/MPCA meetings that our groups attended on revisions to the environmental review program. Pressure for this change seems to be coming from the Department of Agriculture through the Governor's Livestock Advisory Task Force Report mentioned on p. 11 of the draft amendments under #33. "Direct the EQB to evaluate animal unit thresholds triggering EAWs." Since the group was largely comprised of large livestock interests, we hope more weight will be given to average farmers and rural residents now submitting comments.

We feel there is much need for education of new legislators and the public on the difference between the role of environmental review and regulation according to Minn. Rules Chap. 7020. An EAW provides detailed information that may result in changes to a project that could not be achieved after-the-fact.

2.

As EQB staff have said in the past, the record does not show general abuse of the petition process. According to the EQB report to the Legislature shown on the website, only 19 EAW petitions were filed for the three-year period (2001-2003) and five were ordered--one by the RGU, two for the courts, one voluntary, and one mandatory. The three applicants in question may feel they were inconvenienced in having to do an EAW, which is regrettable, but that was no reason to make the 2003 changes to environmental review.

Also, we oppose a "two-tiered" process where certain local regs would qualify a project for higher threshold. This would only add to the confusion in rural areas. The effect of the 2003 legislation is just now being felt. One example is the handling of an EAW request for a 3,300 finishing hog proposal in Rice County.

Please retain the current EAW threshold at 1000 au. The EAW worksheet for a feedlot has already been reduced from the usual 31 questions for other developments to 12 questions. We see the need for no more changes.

Thank you for considering our recommendation.

Sincerely,

Jeff Kunstleben

Jeff Kunstleben, President
Minnesota COACT, 320-845-4336

Don Pylkkanen

Don Pylkkanen, Executive Director
Minnesota COACT, 651-646-0900

April 18, 2005

308 East Hennepin Avenue
Minneapolis, MN 55414
Office Tel: 612-623-3666
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Greg Downing
Environmental Quality Board
300 Centennial Building, 658 Cedar Street
Saint Paul, MN 55155

Re: Mandatory Environmental Review thresholds for feedlot operations in Minnesota

Dear Mr. Downing:

Clean Water Action Alliance (CWAA) is a nonprofit grassroots environmental organization with 58,000 members statewide. Many of our members will be adversely affected as a result of changes to the mandatory environmental assessment worksheet (EAW) thresholds. CWAA respectfully submits the follow comments regarding the published 60-day request for comments on the proposed mandatory threshold changes for Environmental Review on feedlot operations in Minnesota.

CWAA action strongly opposes any attempts to weaken the Environmental Review process for feedlots. Over the past several years Environmental Review has been significantly eroded. Right now only four percent of all feedlots in Minnesota are required to complete an environmental assessment work sheet.

Environmental Review is a very important environmental safeguard. The review process allows citizens a legal venue to have their concerns heard and addressed. The Environmental Review process has added badly needed improvements to permits and has allowed for compromise and corrections to permits before facilities were built.

CWAA believes this process helps foster better relationships between producers and neighbors and protects the environment. Environmental Review can also help avoid lawsuits and assure that we are doing our best to prevent environmental damage from occurring in the future. Local citizens know their community, the area, landscape and the situation better than any one else. Often, they will spot weaknesses in proposals or suggest improvements that no one else would have identified. They should have a legal venue to voice their concerns.

CWAA has carefully reviewed the environmental violations recorded through the Minnesota Pollution Control Agency. CWAA believes that the Environmental Quality Board (EQB) cannot justify for the record as to why or with what rationale the EQB would have to change the mandatory threshold for mandatory review. CWAA believes that the record would prove that feedlots are causing harm and having trouble complying with Minnesota Environmental laws -- even those below 1000 animal units (a.u.). Clearly an independent NPDES permit would be required for these facilities because of the potential to pollute. The EPA proposed that 500 a.u. be the cut off for NPDES permits because they believed that facilities of this size had the potential to cause environmental harm. Industry pressure and the cost to implement permits required the EPA to compromise at a 1000 a.u. threshold for NPDES permits. CWAA suggests that the EQB also leave the Environmental Review at 1000 a.u. There should be no change to the threshold unless it would be to strengthen the rules to protect the environment.

CWAA also opposes any attempts to tier the Environmental Review process according to the amount of land use at the local level. Setbacks and animal unit caps are the most commonly used tools for local zoning provisions. These tools are used and have (in most cases) been put in place knowing that the Environmental Review would also take place on larger operations, as well as the option for review on a smaller feedlot if petitioned for. State Legislators have taken away citizens rights to petition for Environmental Review. Now, only the largest operations are required to complete Environmental Review. CWAA believes that a tiered system would create more chaos to an already complicated system to protect the environment.

The new 7020 rules do not adequately address all potential pollution problems. The rule calls for manure management plans as well as air quality emergency response plans. These plans do not have to be addressed at the time of permitting at the local level of government. Thus citizens are left little chance to ask for mitigation to address any problems that could exist within these plans. The Environmental Review process is the *only* avenue to examine these issues, request information and work towards solutions -- for example, using dikes to prevent manure spills from leaving the area, requiring bio-filters to help mitigate odor concerns or to adopting best management tools that are not being mandated by the State.

Minnesota citizens and Minnesota's environment deserve check and balances. Unfair advantages to Minnesota's large-scale producers have gutted the standards for protection of our rural citizens' health and for our water and air. State government should be defending its environment and its citizens. It should not be pushing an agenda that has the potential to cause environmental harm and minimizing the actions a citizen has available to voice concerns in a legally binding arena.

CWAA believes that the EQB must leave the mandatory threshold for feedlots at 1000 a.u. with no tiered actions allowed. The Environmental Review process is already too weak to adequately protect the environment and the community, which is impacted by the State's lack of protection, rules and enforcement.

Sincerely,

Julie Jansen
Project Manager
Clean Water Action Alliance

Gregg Downing

From: Brad Redlin [bredlin@iwla.org]
Sent: Monday, April 18, 2005 4:24 PM
To: Gregg.Downing@state.mn.us
Subject: EQB Request for Comments, Environmental Review Rules

Please find submitted comments below and attached.

April 18, 2005

Gregg Downing
Environmental Quality Board
300 Centennial Building, 658 Cedar ST
St. Paul, MN 55155

Re: Request for comments, Proposed Amendments to Rules Governing the Environmental Review Program, *Minnesota Rules*, chapter 4410

These comments are submitted on behalf of the Izaak Walton League of America, and address the Environmental Quality Board proposed changes to the mandatory threshold levels for environmental review of animal feedlots.

The Izaak Walton League of America (IWLA) opposes any changes to the existing mandatory thresholds for environmental review of animal feedlots. Further, we believe we can provide a unique and important perspective on why animal unit thresholds should not be raised, and in fact may need to be lowered for appropriate environmental review and resource protection.

IWLA maintains and administrates the Fish Kill Advisory Network. This database is the only one of its kind in the United States and can be accessed on-line at www.iwla.org/fishkill.

The database is sourced entirely from official state agency reports from the states of Minnesota, Wisconsin, Iowa, Illinois and Missouri. The searchable database contains fish kill and manure spill events from 1980 through present with new reports added as they are officially released. The fish kill and manure spill events can be accessed by the county, waterbody, year of event and other criteria.

For example, the Fish Kill Advisory Network database shows that in the last 10 years in Minnesota more than 900,000 fish have been killed from agricultural spills. Those spills exceeded 1.2 million gallons of pollutants, and under the current regulatory system there were nearly \$435,000 in fines and penalties levied.

It is important to note that the reporting and data have no animal unit thresholds on the size of livestock operation involved. The records are for events only, and by their existence alone demonstrate the reality that even existing environmental review requirements are failing to prevent a significant number of damaging incidents.

IWLA believes that further loosening environmental review rules cannot better serve the citizens of

4/28/2005

Minnesota and our waterbodies. Rather, should EQB reduce requirements for environmental review, IWLA is concerned that the number of already regularly occurring fish kill and manure spill events will only increase.

We appreciate the opportunity to provide these comments and any questions concerning this submission may be made to:

Brad Redlin
Director, Agricultural Programs
Izaak Walton League of America
1619 Dayton AVE, STE 202
St. Paul, MN 55104
(651) 649-1449
bredlin@iwla.org

Founded in 1922, the Izaak Walton League of America is dedicated to common sense conservation that protects America's hunting, fishing, and outdoor heritage relying on solution-oriented conservation, education, and the promotion of outdoor recreation for the benefit of our citizens.

The Izaak Walton League is proud of our long history working with and for farms and ranches. Our support of farmers and ranchers is spelled out in our official policy: "The League supports the development of agricultural systems that sustain both natural resources and people. Incentives should be provided for sustainable farming systems that work in concert with nature and are designed to produce quality food, protect human health, enhance opportunities in farming, and strengthen farm communities."

Brad Redlin
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April 18, 2005

VIA FACSIMILE and E-MAIL

Mr. Gregg Downing
Environmental Quality Board
300 Centennial Building, 658 Cedar Street
St. Paul, MN 55155

Re: Comments on Proposed Amendments to Rules on Environmental Review

Dear Mr. Downing:

I am writing to comment on the proposed amendments to rules governing the environmental review program.

Proposed Changes to Mandatory EAW Threshold for Feedlots

I am a lawyer and have practiced in the area of environmental law for over 16 years. In the course of my practice, I and my firm have represented many farmers and other individuals on feedlot-related matters, including environmental review matters and permitting matters. In addition, I live in outstate Minnesota, in an area that is a mix of agriculture and lakes and recreation.

I am strongly opposed to the proposal to increase the mandatory EAW threshold above 1,000 animal units based on some higher level of local planning and/or controls, or on increased mitigation measures incorporated by projects.

1. The Large Feedlot Industry Has Not Demonstrated Sufficient Compliance, and There Is Insufficient Enforcement and Oversight

The proposed increase in the mandatory EAW threshold is based on two premises: 1) there is adequate permitting and compliance with the current feedlot rules and with County zoning requirements; and 2) there is adequate enforcement and oversight of this program.

However, the feedlot industry has not demonstrated that they have a record of compliance that would justify increasing the thresholds, and the MPCA and Counties do not have adequate enforcement and oversight of permitting and compliance. There is need for greater review of feedlots above 800 animal units, in order to provide the public and the

state adequate assurance that these feedlots are and will continue to comply with the feedlot permitting rules. In sum, the feedlot EAW mandatory threshold should be reduced to 800 animal units. This and other changes to the permitting and enforcement program would help assure feedlots are meeting County, State and the Federal Clean Water Act requirements.

In 1999, the State Legislative Audit concluded that there were a host of compliance problems with feedlots, and that the MPCA and counties had inadequate enforcement or oversight of feedlots. A copy of the Legislative Audit is located at <http://www.auditor.leg.state.mn.us/ped/1999/pe9904.htm>. The report faults the MPCA for inconsistent permit processing, too few site visits, outdated rules, inconsistent enforcement activities, and inadequate oversight of county feedlot programs. The feedlot rules have been changed, and the MPCA has attempted to change its programs. However, as discussed in more detail below, there still is inadequate enforcement and oversight of the Counties.

In 2001/2002, the MPCA conducted an audit of the Rock County feedlot program, after the feedlot officer there was indicted and eventually pleaded guilty to the federal crime of taking a bribe for failing to report illegal disposal of hazardous waste in a feedlot basin. I attach a summary of the results, as well as a copy of the May 2002 MPCA Memorandum summarizing the Rock County Feedlot Program Review. Attachment A. The results of that audit showed a host of problems with feedlot permitting in that county. Over 75% of the feedlots had compliance issues. There was a pattern of failures. Many sites "used incorrect animal unit values," such that they exceeded the 1,000 animal unit threshold at which an EAW or a federal National Pollutant Discharge Elimination System (NPDES) permit was required. In other words, there were facilities that did not have federal NPDES permits required by law, and that did not go through the EAW process required by law. Many did not have manure management plans (MMPs) on file. Many others had "missing information" or information that was required but not provided to the County.

The follow-up from the Rock County audit (a Level III feedlot inventory) has just concluded. However, well into that follow-up, just within the past year, there was a feedlot project in Rock County that applied for an expansion, and it turned out the project was well over 1000 animal units, even before its proposed expansion. The feedlot permit showed approximately 500 animal units. The only reason this compliance issue was "caught" was because of the public hearing process. The project went through an EAW, and that was the basis for its getting into compliance with the rules.

Another telling piece of information in connection with this audit is that it is unclear whether there were any fines/enforcement actions brought against any of these noncomplying facilities. Some of them were clearly in violation of the federal NPDES requirements, in addition to violations of state laws and requirements (including the EAW requirements). In connection with discussing the results of the audit and its aftermath, however, there is no discussion of fines or penalties assessed against feedlot operators. The EQB should ask for information on enforcement activities associated with this Rock

County Audit. Here is the question: if the State or delegated Counties do not assess feedlot operators with fines/penalties/serious consequences for failing to comply with the laws, how is there adequate incentive or consequences for feedlot operators to comply with the law?

I have asked the MPCA but have not received information on the number of audits that the MPCA has conducted on delegated counties and feedlot operations since the Rock County audit. The EQB should request this information, and evaluate whether any have been done, the results of those audits, and any penalties or enforcement actions, in determining whether there should be any increase in the EAW threshold.

Just within the past week, the Minnesota Court of Appeals issued a significant decision regarding feedlot permitting and environmental review. *Berne Area Alliance v. Dodge County*. The Court determined that although the feedlot was to be permitted at just under 1,000 animal units (960 animal units), the feedlot needed to be evaluated for purposes of its physical capacity to house the animals, which amounted to 1,400 animal units. Based on this, the Court concluded that the MPCA rather than the County should have done an EAW on this project, because the MPCA has to do EAWs for projects over 1000 animal units.

This addresses the problem identified in the Rock County audit—that some facilities have the capacity for over 1,000 animal units, and very well could exceed that level as long as there is physical capacity, and then they would not be in compliance with the EAW requirements or with the federal Clean Water Act NPDES requirements. In fact, when the Rock County audit was conducted it was discovered that several operators had done just that—they had a higher number of animals than allowed under their permits and therefore were violating the requirement for a NPDES permit at 1,000 animal units or more (not to mention violating the EAW requirement for facilities over 1,000). The Court of Appeals decision requires feedlot operators, the Counties and the MPCA to be honest about the capacity of a feedlot and evaluate that upfront.

Unfortunately, this case is further evidence of a lack of adequate control/oversight by delegated Counties and the MPCA. In the above-mentioned case, the Counties and their attorneys were arguing based on their misinterpretation of the law that “permitted capacity” was sufficient—yet this type of argument in effect gives the feedlot operators the ability to exceed permit limits down the road. Counties and the MPCA do not have the staff to regularly inspect facilities for their capacity. In addition, the political backbone to enforce the feedlot program against feedlot operators often is not there. Look at how much effort it took to enforce against the Valadco operation. That operation had repeated violations of the State hydrogen sulfide standards; yet the County and MPCA could not enforce against the facility alone. It took involvement of the Attorney General to achieve enforcement and a settlement.

Recently, our firm has represented a farmer in a trial in a Minnesota County, with issues involving feedlot permitting of a neighboring facility. Despite clear MPCA and County

rule requirements that the feedlot operation needed a site plan and a manure management plan in order to receive a permit, the facility did not submit a manure management plan for many years, with the full knowledge of the feedlot officer in that County. In fact, despite the fact that the feedlot operator and County were sued over the permitting of that project by a neighbor having to live with the awful odors, the feedlot operator did not submit a manure management plan until the eve of trial, three years after the operation had been sued!

In the record of that case is a letter to the feedlot operator from a local Soil and Water Conservation agency. The letter stated that several agencies had been "bending over backwards" for the feedlot, and pleads with the feedlot operator to do something to address odors even though it likely would not work, by planting trees. Even though that letter was written several years ago, the trees still are not planted today.

In this recent trial, Ron Leaf testified under oath that there have been thousands of unpermitted and uncertified feedlot manure basins. Mr. Leaf was a licensed, professional engineer with the MPCA during the 1990s, and his job was to address uncertified/unpermitted basins. He testified that an unpermitted basin (such as the one involved in this trial) was "nothing unusual." To our knowledge, there is no aggressive program out there to bring those basins into compliance.

One of the significant issues in that trial was a "splitting" of the feedlot project from adjacent property in order to avoid animal unit numbers above 1,000 animal units. There was adjoining property, shared equipment, shared manure management plans, shared management, and shared manure; yet the feedlot operator was trying to split the farms into two "properties" or "facilities" to avoid compliance with the requirements that take effect at the 1000 animal unit level. This is the same type of issue noted in the Rock County audit, and identified by the Court of Appeals in the *Berne Area Alliance* case. Without adequate oversight and enforcement, there is potential for gross manipulation of animal unit numbers to avoid federal and state requirements.

In this same trial, Ms. Kim Brynildson of the MPCA testified that the MPCA is not in a position to assess this problem—they do not have enough staff to sort out the feedlots that have been split on paper to avoid the permitting levels. This exacerbates the likelihood (discussed above) that there are feedlots in Minnesota that exceed the 1,000 animal unit federal NPDES permit program, and therefore are in violation of federal Clean Water Act along with state requirements.

Ms. Brynildson also testified under oath in District Court that the MPCA did not and does not have adequate staff to manage the feedlot program or to do oversight of the delegated counties. They have not been able to get to the capacity issue.

Minnesota has required that feedlots over 1000 animal units be subject to National Pollutant Discharge Elimination System Permits, and this requirement was in effect as a matter of State law for the past several years. However, there have been many facilities,

at least 100 or more, that have not had the NPDES permits required by law. (This number is based on the actual permitted animal unit numbers for those facilities. This does not include any estimate for the facilities that might fall under NPDES permit requirements because they are exceeding their permitted capacity, as discussed above). The MPCA has known about the issue for some time, because they have even issued guidance indicating that these facilities might be subject to liability under the Federal Clean Water Act for their failure to have a permit.

I have asked but have not received information from the MPCA as to whether they have brought any enforcement actions against any of these facilities. I have not heard of any such enforcement actions. Even though the MPCA gave these facilities an informal extension to submit their permit applications (in conjunction with amendments to the general NPDES permit), while still telling them that they had potential federal liability during the time they didn't have a permit, my guess is that there are still several operations that are in violation of the Clean Water Act and Minnesota law because they are over 1,000 animal units under federal law and do not have federal NPDES permits. The EQB should request information from the MPCA on the state of permitting and enforcement for these "gap" facilities (including when the facilities received their permits). The failure to require permits, and lack of enforcement for facilities that are above 1,000 animal units, suggests that the EAW threshold should be lowered to below 1,000 animal units, in order to better assure compliance of such facilities with the federal NPDES requirements.

There are many conscientious producers that are legitimately following the rules. The problem occurs when a statistically significant percentage of feedlot operators are not doing so. This problem is exacerbated by lack of enforcement, manipulation of animal unit numbers, failure to have manure management plans, and misinterpretation of the law. The feedlot operators that are not complying are hurting the public and the other producers who are trying to comply, because they give the perception that no one is complying.

Before any increase in the mandatory EAW threshold above 1,000 animal units, there should be a statewide audit. The audit should focus on several compliance-related issues for confinement feedlots above 600 animal units, including: 1) whether the facilities have permitted basins; 2) whether the facilities have manure management plans on file and are meeting them; and 3) what animal capacity the facilities have (permitted capacity, physical capacity, and how many animals do the feedlot operators actually have). Only if this type of audit shows substantial compliance with current county, federal and state feedlot permitting and NPDES requirements, should an increase in the EAW threshold even be considered. Unfortunately, current information suggests that there would need to be many changes in permitting and enforcement in order to consider any increase in the EAW threshold, due to existing problems.

2. Impacts from Feedlots over 1,000 Merit Environmental Review.

Feedlots over 1,000 animal units have the potential for huge impacts, and merit environmental review. There is no mandatory pollution control for their air and odor

impacts (such as methane gas digesters), and in the case of the large hog confinements, they are designed with fans to push out the contaminated air from the manure pits, so the hogs don't die. The air impacts can travel great distances. Plus, a confinement facility of over 1,000 animal units may manage upwards of 5 million gallons of liquid manure.

Given the prevalence and significance of water resources in Minnesota—lakes, rivers and wetlands, not to mention groundwater and drinking water—facilities of this size create a significant risk of pollution to our waters. It's appropriate to have environmental review of facilities with these types of impacts, especially here in Minnesota. Our rivers and streams are impaired waterways, and we are contributing to the Dead Zone in the Gulf of Mexico. We need to understand the potential impacts of run-off and contamination from the multiple millions of gallons of liquid manure that can be generated from a feedlot over 1,000 animal units.

The federal EPA requires NPDES permits under the Clean Water Act for confinement operations at 1,000 animal units or above. This reflects the serious potential impacts of confinement operations over 1,000 animal units on water resources—it is sufficiently high that a federal Clean Water Act permit is necessary to protect those resources.

The EAW process is necessary at 1,000 animal units because it involves notice, a public hearing, and an analysis of the project scope. This is more notice than in the typical county permitting process. Typically, County permitting programs will not ask the same list of 30 questions that is asked on feedlot EAWS. The EAW process is a far more comprehensive process than any County conditional use permitting program, because these programs are not designed to focus on environmental impacts. In our experience, for example, the EAW process has resulted in information that a feedlot barn was to be located on top of an intermittent stream. The County had not identified this during the ordinary permitting process.

An EAW process allows for a detailed review of the project location, the capacity of the feedlot and other operations, etc. In the Hancock Pro-Pork EIS, the process of completing the Environmental Impact Statement revealed that the projects that were already in existence did not all have manure management plans, several did not comply with the dead animal disposal requirements, etc. They had already permitted three of the barns before environmental review was even done.

The Hancock Pro-Pork EIS showed that large feedlots have significant environmental impacts in the area of air, surface and ground water, and animal health (dead animal disposal). People in the area and State and local agencies should have the ability to review and comment on these projects, to make sure that health and the environment are protected. The EAW threshold should be lower—based on the HPP EIS, operations at 600 animal units showed significant air and groundwater impacts. As noted above, an EAW threshold at 800 animal units would allow an analysis of the capacity and other factors to assure that facilities are not avoiding compliance with State and federal NPDES Clean Water Act requirements. The mandatory EAW threshold should be no higher than

800 for confinement feedlot operations; based on the HPP EIS results, it should be no higher than approximately 600 animal units.

3. Reducing Environmental Review in Exchange for Higher Local Planning Is Bad Public Policy.

The proposed increase in the EAW threshold would be conditioned on two possible concepts: either a "higher level of local planning and/or controls," or increased mitigation by those facilities. The proposal for "higher level of planning or controls" is not clear at this point. As noted above, there are substantial questions about whether current feedlot permitting at the local level is adequate. This calls into question whether any "higher levels of planning or controls" would be reliable, without increased compliance and adequate enforcement and oversight.

In addition, if the proposal means the possibility of increasing setbacks at the local level, this would not be good for local planning. Setbacks are reciprocal. This means that a large feedlot will create a large "doughnut" around it, in which residences can't be built. We have represented farmers in cases in which they are prevented from building houses because of neighboring feedlots (even at much smaller sizes than 1000 animal units). In essence, increasing setbacks will mean that full property rights are taken away from neighbors, most of whom are farmers. Plus, it sounds as if the proposal will require local officials to spend large resources to re-do their zoning requirements, because most of them did not originally plan for large facilities over 1,000 animal units. In sum, this proposal would require expenditure of resources by local planning officials, and has the potential to take away property rights and values away from neighbors.

In addition, in the County in which I live, feedlot operators in our County recently put on a presentation for our County Commissioners, involving speakers from the Department of Agriculture and the Farm Bureau, arguing that the setbacks in our county should be reduced or eliminated. At the State level, there is legislation sponsored by agriculture groups and the Department of Agriculture designed to put restrictions on township zoning of feedlots.

The feedlot industry is unique, in that they are constantly pressuring the legislature and agencies to reduce or eliminate laws and regulation. This proposed change in the EQB rules is evidence of this—its primary sponsor has been the Department of Agriculture. Other industry does not make such a concerted effort to eliminate all laws. Within the past several years, the industry has successfully lobbied to: 1) remove the requirement to do environmental review of feedlots together when they are "connected actions," in the wake of the Hancock Pro-Pork case; 2) taken away the ability of citizens to petition for environmental review of feedlots under 1000 animal units; and 3) reduced the ability of neighbors to bring nuisance cases against feedlots (even though those standards were already difficult to meet).

There is constant industry pressure to erode local planning and environmental review. Once the EAW threshold is increased, it is likely that the industry would focus their efforts on reducing/weakening local zoning protections. The "higher level of review" would be eroded also, and the reason for it would be forgotten.

4. Increased Mitigation Measures Are Not An Adequate Substitute for Environmental Review

The proposal to increase the mandatory EAW threshold for feedlots indicates that this might be conditioned on facilities adopting "mitigation measures." As noted above, because there currently is an inadequate permitting and enforcement/oversight program, there is no sufficient assurance that facilities actually would carry out any mitigation that might be offered as an alternative to environmental review. The EQB should not even consider the possibility of mitigation as an alternative, unless there is adequate permitting, compliance and oversight.

Mitigation measures are not an effective substitute for environmental review. "Mitigation measures" often are thought of as ways of addressing potential impacts, such as a manure digester to reduce odors. But these types of measures cannot be considered in a vacuum, without a detailed understanding of the site and its location. If a project just needed to have a "manure digester" to avoid environmental review, then it might go across the street (only 50 feet away) from a neighbor. In this case, the odors possibly still could be too much given the location.

Many of the issues associated with feedlots, which environmental review has been able to address, involve the location of the facility (on karst, on an intermittent stream). A detailed review of the location is necessary to understand the potential impacts and how to address them. This is best done through environmental review, because it allows for thorough public review and comment, by people who know the area the best (those in the neighborhood of the project).

In addition, a big benefit of environmental review could be prior public review and comment regarding a manure management plan. Currently, the permitting program does not require prior review, and as shown in the Rock County audit and the recent trial in which we were involved, often they simply are not submitted to Counties. However, they are required under the law.

There are other key aspects to adequate permitting and enforcement of feedlot facilities that are not addressed simply through mitigation measures. A possible problem associated with the current system is that there is no accountability or responsibility for the facilities that contract with feedlot operators. The contractors (who have contracts with the growers) are not required to be on the permits; yet they require the facilities be built to their specifications, they own the hogs, they dictate all manner of the operations, and they have the ability to take over the site if the grower defaults on the payments. These contractor/owners should be listed on the permits, and they should have potential liability

SUMMARY OF ROCK COUNTY AUDIT

Permit Issuance	Permit # and Applicant	Permit Filé	Inspection Findings and Potential Violations
8/8/98	Rock-C-146 Alan Luethold	States that all buildings and structures are existing	Construction without a permit for : -earthen basin -presently constructing hog barn w/o a permit -received \$20,000 BMP's loan fund to expand feeder cattle operation and concrete the open lot -overflow discharge from a earthen basin near intermittent stream -10'x102'x 6.5' concrete pit and slatted floors that has been demolished still on tax exemption list -no field notes or abandonment report for above pit -flevel does not show steep slopes, channalized flow toward intermittent stream and floodplain area -no monitoring of development or closure
8/25/00	Rock-C-278 Jamie Pap	-Application says 51' x 240' - 2400 head - -lco-wean pigs (< 50#) -Permit says 81' x 240'.0 -application submitted 8/23/00 -land use permit issued 8/25/00 -feedlot permit issued 8/25/00 -PE plans submitted 9/5/00 -preconstruction meeting 9/15/00 -pouring concrete 9/21/00 - 522 AU's ?	-81' x 240' for 4800 nursery pigs and 2400 finishers/2 turns -720 AU's -error when issued feedlot and land use permit prior to submittal and reviewal of PE plans -incorrect AU's -no monitoring of development -no soils data
5/14/96	Rock-C-30 Harold Versteeg	Inconsistency with application: -to construct a 51' x 160' barn -application not dated -p-1 shows expansion -p-3 depth of pit unknown -site map shows unpermitted earthen basin, application does not -applicant to receive \$50,000 to replace basin	-constructed a 41' x 200' barn -no waters of the state in the immediate area -feedlot owner says basin only 3' deep and very small -no interim permit issued -county unaware if earthen basin was properly closed -a second 41' x 200' barn under construction at this time -no monitoring of past development - received \$25,000 BMP low interest loan
10/21/98	Rock-C-153 Ken Hoime	-says that a grass filter strip will correct the runoff problem to road right-of-way -no design plans -0 on the flevel	-said grass filter strip is 5-10' long -vegetation in the road ditch dead -no corrective action plan or interim permit -sewer pipe from household waste discharging into the road ditch -no monitoring of assumed corrective action plan

5/10/01	Rock-05-01CSF7 -Rock-C-250R Lloyd Prins	-field notes indicate this site has a big problem from the cattle and swine openlot runoff to intermittent stream and qualifies for BMP's state guaranteed loan. -Issued CSF permit anyway without corrective action or plans to correct any of the manure discharge to the Int. stream and private pond	-unpermitted earthen basins -nursery barn pit with 4" hole one foot from bottom of pit -channelized flow toward intermittent stream -no interim permit issued as required -no corrective action plans as required -no pollution abatement accomplished on existing feedlot -no MMP
New CSF	Grant Binford	-constructed new nonoslope barn to house 560 feeder cattle, cattle are confined, < 1000 AU's -Expanded and doubled herd size	-manure and manure contaminated runoff has reached a tile intake in the road ditch from the existing outside cattle lot where all vegetated cover (alfalfa field) for 600-700' is dead between the intake/road ditch and the feedlot. There is a 1' x 3' discharge chute in the lowest corner of this lot where the manure and it's runoff runs into a unpermitted earthen basin where some solids are collected and the liquid flows across the field to the county road right-of way and into a field tile intake on the west side of the county highway. -interim permit should have been issued to correct problem and no stocking of new cattle barn allowed until corrective measures were completed. -based on the AU's at 1145, this should have been a Individual NPDES permit. -exceeded county permitting authority
1997	Rock-C-57R Paul Doherty	Registered 2000 finishing hogs Backgrounding calves 550 =985 AU's	-Rock-C-57 and 57R. 40,000 chickens and 2000 = 1200 AU's (old rule). - Exceeded county permitting authority -NPDES permit required -chicken barn disappears and then comes back -needs to address manure stockpile type. -one barn is incorrectly called a 1200 head nursery barn which lowers the AU's below 1000 and would allow county issuance. -No MMP -Registration okay
	Rock-C-53 Harvey Van Wyhe	90'x 120'x 6' earthen basin county wants him to take manure from other feedlots	-non-certified earthen basin for 250 finishing swine -sidewalls eroded about 3' gone on inslopes -will need to certify.
	Rock-C-178 Dave Tilstra	-dirty water diversion for discharge to road ditch (750 feeder cattle) -no plans for construction -150 head expansion	-should have been interim permit and construction abatement plans - discharges to field tile intake in the road ditch 200' from feedlot
	Rock-C-238 Binford Bros	-C of C issued states 41x 240' barns w/1200 head finishing hogs each -county unsure of the size of barns -plans say that it is a 41'x 192'6" barn for 1000 head of finishers -rock-c-06 says 240' barn (1200 head) -rock -c-06R says 200' barn(1000 head)	-two 41'x 200' finishing swine barns -need PE plans for 240' pit -no MMP -barns were in fact 41'x 200'/1000 head finishing barns
5/15/97	Rock-C-40 Roger Kracht	-other livestock 2-41'x 240'x 8' barns, one 1200 nursery pigs the other 1200 finishing pigs	-2 barns both 1200 head finishing barns -1320 AU's at the time of county permit -Exceeded county permitting authority

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5/15/97	Rock-C-40 Roger Kracht	-other livestock 2-41'x 240'x 8' barns, one 1200 nursery pigs the other 1200 finishing pigs	-2 barns both 1200 head finishing barns -1320 AU's at the time of county permit -Exceeded county permitting authority

6/27/00	Rock-C-143R Gary Frodeman	MMP says 7000gal per acre (19-63-70)	441# of Phosphorus applied
8/19/98	Rock-C-145 Matt Boeve	MMP says 65.7 ton per acre	525 # of applied phosphorus
12/20/01	Rock-C-100R Replaces C-1847R2 Tom Arends	-Barn#3=55'x300' barn for 1200 finishers and 2-150' pits -AU's calculated at 420, should be 920. -other barns have disappeared	-Barn # 3 should be for 2100 finishers -no PE plans -no MMP -no tax exemption for barn #3 pit -application shows 55x300x8' pit -AU's > 1000
	Dave DeBoer	C of C issued.	-constructed new hog barn without interim permit to fix existing runoff problems -constructed unpermitted earthen basin with a PVC pipe to discharge manure contaminated runoff into road right-of-way and to a branch of Beaver Creek from the basin.
	Erwin Bonestroo		
3/19/98	Rock C-123 Don Hengeveld	C of C issued	-next to intermittent stream -unpermitted earthen basin and no PE plans -3300 gallon concrete tank not eligible for tank exemption
3/09/01	Rock-03-01 CSF2 Roger Wynia	CSF new 41'x 204' barn	- needs construction inspection report on new barn
8/24/00	Rock-C-152R Stewart Leuthold	-two cattle lots with runoff controls -earthen basin	-unpermitted earthen basin -no plans for runoff controls on file
	Dave Skyerboer	C of C issued	- constructed a grass filter strip on the south lot but no corrective actions were taken along the north intermittent stream that runs through the center of the open feedlot, no vegetated cover along the stream in this area.
	Sheldon Sandagger	C of C issued	-constructed a unpermitted earthen basin with a liquid discharge overflow immediately adjacent and discharging to a intermittent stream without a permit.
	Robert Sandagger	C of C issued with grass filter	-600-800 head cattle adjacent to intermittent stream, terrace and grass filter strip were used but covered to a field road access and no longer has vegetative cover, -length of filter strip inadequate. - channeled manure flow to both intermittent streams on east and west side of lots.
	Glen Boeve	Permit indicates no runoff problem	> 300 AU's of holsteins with manure runoff problem into stream through concrete wall to creek.
	Art Boeve	Permit indicates no pollution problem	> 300 AU's that runoff into creek
	Dave DeBoer	C of C issued	- constructed unpermitted earthen basin with PVC pipe discharge into road right-of-way.
	Hoyne Farms	Same site as Don Hengeveld	

3/9/98	Rock-C-98R Vernon & Nancy VanDeberg	-2- proposed 41' x 248' hog barns, one 1200 head finishing and one 1200 head nursery plus 85 cattle. -permit says 570 AU's	-no PE plans for swine barns -both barns are indeed for 1200 head finishing barns -AUs were obviously altered on application -actual AU's 1036.5 -outside of the counties permitting authority
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FREQUENTLY MISSING INFORMATION>

- NO CONCRETE TESTING INFORMATION WHEN TEST WERE COMPLETED
- NO SOILS INFORMATION OR DATA
- NO PROFESSIONAL ENGINEERED (PE) PLANS
- PE PLANS ARE FOR DIFFERENT PROJECTS THAN WHAT IS IN THE FILE
- PERMITS ISSUED BEFORE APPLICATION SUBMITTED
- NO PERMIT APPLICATION
- NO SIGNATURE (or signed later)
- NO DATE (or dated later)
- WRONG ANIMAL UNITS
- ANIMALS UNITS GROSSLY MANIPULATED TO BE LESS THAN 1000 ANIMAL UNITS
- PE. PLANS INCONSISTANT WITH THE PROJECT
- EXCESSIVE APPLICATIONS OF PHOSPHORUS
- POOR MANURE MGT. PLANNING
- LACK OF INFORMATION IN THE FIELD ASSISTANCE NOTES
- LACK OF PLANS PERTAINING TO FEEDLOT CORRECTIVE MEASURE
- LACK OF CORRECTIVE MEASURES
- UNPERMITTED EARTHEN BASINS
- INADEQUATE BUFFER AND GRASS FILTER STRIPS

DEPARTMENT: POLLUTION CONTROL AGENCY

STATE OF MINNESOTA

Office Memorandum

DATE: May 30, 2002

TO: Myrna M. Halbach, P.E.
Manager, Southwest Region
Regional Environmental Management Division

FROM: Kim Brynildson, P.E.
Senior Engineer, Metro Region
Regional Environmental Management Division

PHONE: 651-296-7366

SUBJECT: Rock County Feedlot Program Review

Background

Rock County has administered the Minnesota Pollution Control Agency's (MPCA) delegated county feedlot permit application program under Minn. R. chapter 7020 since the mid-1990s. Rock County, as a part of that delegated program, designated a county feedlot officer to perform duties associated with the administration of that permit application program. In the fall of 2001, the U.S. Department of Justice brought criminal indictments against a county feedlot official and an animal feedlot owner located in Rock County. In response to the information contained in the federal indictments, the MPCA initiated a review of the county's delegated feedlot program as a means to determine the program's conformance with the requirements of applicable Minnesota statutes and MPCA rules, including the MPCA feedlot rules, Minn. R. ch. 7020.

This program review covers periods of time when the MPCA county-delegated feedlot program operated under different MPCA feedlot rules. The Rock County-delegated program initially operated under MPCA feedlot rules that were in effect until MPCA adopted amended feedlot rules, which went into effect October 2000. The summaries below attempt to distinguish the rule versions being discussed as the basis for the identified concern.

In order to conduct the program review, it was important that files be reviewed and the need for on-site inspections evaluated. The first step was to choose the files for review. To ensure minimal bias in the program review, it was determined to utilize a random selection process but one that addressed all feedlot sizes. A random selection of feedlot files was completed using the Rock County feedlot inventory. The inventory was sorted into three groups based on size. The groups were: (1) Sites with less than 50 animal units; (2) Sites with 51 - 299 animal units; and (3) Sites with 300 - 999 animal units. No sites were selected with animal units greater than 1000, as those facilities are permitted by the MPCA. The Rock County feedlot inventory was organized by animal unit capacity and every fourth site was selected from the list for review. Of the sites selected, a file review was done for every site that had feedlot permit file. As each file was reviewed notes were taken regarding various deficiencies with the permit application, certificate of compliance, permit or other information pertaining to the site or file. The number of total sites on in each group on the inventory, number of sites selected, and number of files reviewed are indicated in the table below.

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<i>Animal Capacity</i>	<i>Total No. of Sites on Inventory</i>	<i>Total No. of Sites Selected from Inventory</i>	<i>Total No. of Sites Selected with Feedlot Permit Files</i>
<50 a.u.	109	28	5
50 - 299 a.u.	315	78	34
>300 a.u.	162	41	32
Total	586	147	71

Jerry Holien and I completed the partial review as designed to assess a representative sample of permit files. After the partial permit file review, we conducted several on-site feedlot inspections. These inspections were to assess and compare our file review evaluations with the actual conditions existing at the feedlots for which a file review was conducted. Rock County feedlot staff were present during the inspections.

We want to acknowledge the county's cooperation and assistance to date in completing this program review. County staff were very helpful in making files available and in responding to inquiries. In addition, we have already made suggestions on various program implementation aspects that have been implemented by the county staff. We know that much hard work remains to be completed to address the areas of concern, but we appreciate the county staff initiating steps to implement an effective county-delegated feedlot program.

The following program review summary is intended to highlight several areas of concern that were identified during the file reviews and on-site inspections. Examples are used in some cases to show the types of situations that were the basis for the identified concern. In addition, a brief overview of the regulatory provisions or expectations is also provided to give some context for the identified concern. Finally, each concern includes a general recommendation. These recommendations are general in nature because the final resolution of any specific concern must take into account the specific facts associated with a specific feedlot, or take into account the specific situations associated with possible county feedlot program revisions.

A. **Unpermitted earthen basins**

Problems:

1. Several sites, where an existing earthen basin (e.g. liquid manure storage area) was identified by inspection or on the permit application, were issued a Certificate of Compliance (COC) without any apparent or documented investigation into the history or integrity of the existing basin. The files did not contain information about the manure storage basins except the size, location and which barn and/or open lot the manure was coming from. Failure to investigate unpermitted earthen basins occurred both before and after the implementation of the revised feedlot rules (October 2000).
2. During our site inspections, shallow excavations were found at several feedlot locations. The excavations had been constructed on the site by the owner to act as a solid settling basin. The runoff from an open lot would flow to the basin where solids would settle out. The effluent in the basin evaporated, seeped into the ground or overflowed the top of the basin. These structures were not permitted, nor was there any information in the file regarding the basin. Two of these structures observed during our inspections were constructed in the past three years. These basins are generally less than three feet deep.

Regulatory Provisions and Expectations:

1. In 1997, the MPCA established a policy regarding unpermitted earthen basins that were found on a site during the permitting process including during on-site inspections. This policy required an Interim Permit be issued with special conditions requiring the owner to provide information to the MPCA or County Feedlot Officer (CFO) pertaining to these unpermitted basins. The policy was widely distributed to consultants and CFOs. On October 23, 2000, the MPCA revised feedlot rules, Minn. R. ch. 7020, went into effect. Minn. R. 7020.2110 contains requirements for addressing unpermitted basins that are discovered through the permitting process or during inspections.
2. In 1991, the MPCA established a policy that required plans and specifications prepared by a qualified registered engineer for the construction of any earthen basin regardless of size. This policy was distributed to consultants and CFOs. The revised rules, Minn. R. 7020.2100, Subpart 4, requires that all earthen basins be prepared and signed by a design engineer.

Recommendations:

Unpermitted basins, unauthorized excavations, and unpermitted expansions to basins shall be identified during the Level III inventory or during any applicable permitting process. A plan to address the basin(s) on each site should be developed with the feedlot owner so that MPCA rule compliance is ensured. This plan will vary from site to site depending on when the basin was constructed, how it was constructed, and site specific conditions.

B. Open Lot Runoff to Surface Water Not AddressedProblems:

1. COCs were issued for construction of new barns on existing feedlot sites where runoff from an existing open lot is discharging to a nearby surface water. However, the COC did not contain conditions for addressing the pollution hazard associated with the open lot runoff situation.
2. This situation occurred on sites with more than 300 animal units (AU).

Regulatory Provisions and Expectations:

1. The MPCA rules at that time (Minn. R. 7020.0500, subp. 4) required that existing pollution hazards be addressed through the issuance of an Interim Permit when any new construction is being proposed. The Interim Permit was to contain conditions (e.g. necessary protective and corrective measures) to address both the pollution hazard and new construction at the site. This requirement remains in effect in the revised rules, for example, Minn. R. 7020.0405, subp. 1.C.
2. Prior to effective date of the amended MPCA feedlot rules in October 2000, the CFO did not have authority to issue permits or certificates to sites with an existing pollution hazard and with a capacity for more than 300 AU. Prior to the amended rules and under Minn. R. 7020.1600, subp. 3, the delegated county program was authorized to issue interim permits for feedlots smaller than 300 AU.

Recommendation:

Sites that are creating or maintaining a potential pollution problem to surface or ground waters should be identified during the Level III inventory or any applicable permitting process. Once the sites have been identified, a plan and schedule for addressing the problems should be developed with the owner. This plan and schedule for protective and corrective actions will need to reflect the specific circumstances of each site situation.

C. Unsigned and/or Undated Permit Applications**Problem:**

Permit applications were found in the files that were not signed or dated by the permit applicant. There was no indication or documentation in the file as to why this occurred.

Regulatory Provisions and Expectations:

The previous feedlot rules (Minn. R. 7020.0500, subp. 2.A.) and the existing rules (Minn. R. 7020.0505, subp. 4.A (1)) both require that an application be signed by at least one of the facility owners. By signing the application the owner is stating that the contents of the application are true and accurate. In addition, signing and dating of regulatory program documents, such as permit applications, correspondence and inspection reports, assists staff in determining the potential applicability of new or existing regulatory requirements (e.g. amended county or state rules, environmental review, etc.) and in creating a history of the site so that future staff can recreate and understand when and how decisions were made.

Recommendation:

The current CFO shall require that all future permit applications be signed and dated by at least one owner of the feedlot in accordance with the MPCA feedlot rules. The practice of executing and dating permit applications should also be used for any regulatory documents, such as correspondence, inspection reports and telephone call notes and summaries.

D. Reissuance of a COC without a new permit application**Problem:**

COCs were reissued without a new feedlot permit application signed by the permit applicant in the file. A permit for a county building permit was often found in the file, but the only permit application in the file was the one submitted for original COC.

For example: A feedlot owner wanted to construct a hog barn in 1998, so he submitted a permit application to the CFO and a COC was issued. Then, in 1999, he applied to build another barn. A new feedlot permit application was not submitted. A building permit was applied for and a revised COC was issued that included the existing barn and the proposed barn.

Regulatory Provisions and Expectations:

The previous rules, Minn. R. 7020.0500, subp. 1.B., required that the owner of a feedlot submit a permit application to the MPCA or CFO whenever a change to the site occurred which would increase the maximum number of animal units housed on the site. The current rules require that the owner of a feedlot with 300 AU or more and no pollution hazard submit a permit application prior to constructing a new barn.

Recommendation:

The current CFO shall insure that a completed permit application, with the information required by rule, is submitted as required by rule prior to the issuance of a feedlot permit.

E. Inconsistencies between the permit application and the COC**Problem:**

Files were reviewed in which the animal numbers, animal type, barn sizes or other information listed in the permit application did not match the information then contained in the issued COC. The files contained no apparent documentation explaining what occurred during the permitting process to explain the differences between the permit application and the resulting issued regulatory document.

Regulatory Provisions and Expectations:

In signing the permit application, the feedlot owner has verified that the information on application is correct and that what is listed on the application is what will be on the site once construction is complete. When the plans of the site are changed during the permitting process without any further documentation explaining the reasons and basis for the changes, it creates difficulties in verifying the accuracy of the representations made in the permit application and in recreating the regulatory history and regulatory decisions regarding the differences.

Recommendation:

In future feedlot permitting actions, the current CFO must document any changes made to the proposed project after the permit application has been submitted in the file to indicate what the changes are, why the changes are being made, and that the changes are approved by the feedlot owner.

F. COC issued without engineer plans or with plans that do not meet the minimum requirements**Problem:**

1. COCs were found that had been issued for sites that were constructing concrete pits with a capacity of 500,000 gallons or more and no engineer plans had been submitted with the permit application.
2. During the file review, sites were found that had constructed concrete pits between April 1998 and October 2000, but no engineer plans were included in the file.
3. Some files showed that a Construction Short Form (CSF) permit had been issued for construction of a concrete pit but a site specific soil boring report was not included in the file and the engineer plans found in the file did not meet the minimum design requirements of the revised rules. Also, the design engineer's report, inspector's report, and contractor's certification were not found in the file and there was no indication that these documents had been submitted to the CFO within 60 days after completion of construction as required by rule. There were also no records in the file regarding when the owner of the facility had contacted the CFO either before or after construction.

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4. It was not clear in the files as to whether unique plans were developed for each facility. There were photos in one file that indicated that the constructed pit was a different size than was indicated in the engineer plans. In other situations, the plans seemed inconsistent with information included in the permit or certificate of compliance.

Regulatory Provisions and Expectations:

1. The previous rules, Minn. R. 7020.0500, subp. 2.C., required that engineer plans were required for the construction of any structure that is over 500,000 gallons in capacity.
2. The 1998 legislature enacted Minn. Laws 1998, ch. 401, effective on April 22, 1998, requiring all concrete pits with a capacity of 20,000 gallons or more to have site specific engineer plans developed for the structure prior to construction.
3. The revised rules, Minn. R. 7020.2100, contain the minimum requirements for engineer plans for liquid manure storage structures including concrete pits. This same part of the rules also contains requirements for a soil investigation to be done at the site and criteria for inspections and reporting.
4. The revised rules indicate the need for site specific plans. This expectation requires that a unique set of plans be developed for facilities and that a unique signature (wet signature) be provided by the design engineer. The MPCA and county staff must ensure that no unauthorized use of plans developed by an engineer for a specific site be used for another site.

Recommendation:

To address all four of the problems identified above, the current CFO must submit all plans and specifications to the MPCA for review and approval prior to the issuance of a permit. The review will be performed jointly with the current CFO to assist in their education on the MPCA requirements for liquid manure storage structure construction. This should be included as one of the elements in the county workplan.

It is also recommended that the design engineer reports be obtained by the CFO for all concrete pits constructed since October 2000, when the revised rules went into effect.

G. Abandonment of an earthen basin

Problem:

A COC was issued for a site that was doing some other construction but also abandoning an existing earthen basin. No conditions were included in the COC for the abandonment of the basin. There were also no inspection or other notes in the file regarding how the basin was abandoned or if all of the manure and contaminated soil had been removed prior to filling in the basin. In summary, there was no documentation demonstrating how the basin was supposed to be abandoned or how, in fact, it was abandoned.

Regulatory Provisions and Expectations:

1. In 1997, the MPCA established a policy regarding unpermitted earthen basins that were found on a site during the permitting process. This policy required an Interim Permit be issued with special conditions outlining the procedure to be followed by the feedlot

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owner when abandoning an earthen basin, notification requirements to the CFO or MPCA and a follow-up inspection by the CFO or MPCA.

2. The previous rules, Minn. R. 7020.0500, subp. 4.B(1), required that an Interim Permit be issued for sites that were correcting a potential pollution hazard. An unpermitted basin has the potential to seep to ground water and create a pollution hazard. There is also potential for seepage to the ground water if the basin is not properly abandoned.

Recommendation:

When the plan is being developed on how to address any existing unpermitted basins during the Level III (see the recommendations of Item A), the current CFO must take care that the requirements of the revised rules, Minn. R. 7020.2110, are met.

H. No inspection notes in file

Problem:

The CFO often indicates on a permit application or else where in the file that an inspection had been done on the site, but there are no notes in the file to indicate what was found on the site during the inspection, what was discussed with the owner, or what actions were going to be taken by the owner or CFO. There are also photos in the files that are not dated, and there are no notes to indicate what the photos were supposed to be showing.

Some of the inspections appear to have been done for construction of concrete pits. There are notes in the file that indicate that concrete testing was done but there is no record located in the file as to which tests were done or what the results were.

Regulatory Provisions and Expectations:

There is no specific rule or written policy regarding the maintenance of inspection or file notes. However, it is difficult to determine from the information in a file if there are any problems to be addressed at a site without the appropriate notes. Generally accepted regulatory practices dictate the need to keep appropriate documentation in a form that others can use to determine applicability to a specific site, when actions occurred or were taken, and some reasons or discussion of the basis for why actions were or were not taken. It is also prudent to document what information was conveyed or shared with the owner as a means to avoid future misunderstandings or disagreements.

Recommendation:

The current CFO should implement a process for reporting inspection results in the appropriate file after performing an on-site inspection, office visit with a feedlot owner or phone conversation.

I. Use of registration form as a permit application

Problem:

The CFO used the registration form as a feedlot permit application when construction was being proposed on a site. The registration form does not include the minimum information required by rule for a permit application. This particular issue was immediately raised with the acting CFO and has been corrected.

Regulatory Provisions and Expectations:

The revised rules, Minn. R. 7020.0505, subp. 4, identifies the minimum information that is to be included in the permit application. The information required by the registration form does not include all of the information required to be included in the permit application.

Recommendation:

This problem has already been discussed with the current CFO and it was immediately corrected.

J. Discrepancies between registration and permit information**Problem:**

For sites that have completed a registration form, there is often a significant difference between the number of animals listed on the registration form and the number that is listed on the previously issued COC. There are files for sites where this occurred that do not have any notes in the file to explain why these differences have occurred.

Regulatory Provisions and Expectations:

If there have been changes to the site that increased the number of animals on the site or modified how the amount of manure or how it was handled, a permit application was required under the previous rules, Minn. R. 7020.0500, subp. 1.B., or under the revised rules, Minn. R. 7020.0405.

Recommendation:

As the Level III inventory is performed, the files for each site should be updated with the correct information.

K. Using incorrect animal unit values**Problem:**

Several files were reviewed where a COC was issued by the CFO for a nursery pig barn and a finishing hog barn where the barns and concrete pits were the same size and had the same number of animals in them. For example, both barns are 40' x 406' and both pits are 40' x 406' x 8', but one barn will house 1200 nursery pigs (60 AU) and the other will house 1200 finishing hogs (480 AU at 0.4 AU. per hog). It is not logical that a barn that is exactly the same size as one that will house 1200 hogs up to 250 lb. will only house 1200 nursery pigs from 10 lb. to 55 lb.

In 1997, the MPCA identified that sites that bring swine to a barn site that are under 55 lb. at the time they are placed in the barn and removed from the barn at market weight, to all be considered as grower/finisher hogs and the animal unit value for this animal is 0.4 (or 0.3 after April 2000). Therefore, the example above would have 960 AU instead of 540 AU. In this particular, example it is not a significant issue. However, for those sites with three or more barns using this system, the animal numbers are such that the correct animal unit value would be over 1000 instead of under as calculated by the CFO.

Regulatory Provisions and Expectations:

By not assigning the correct animal unit value to these sites the following could occur:

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1. The CFO may have issued COCs outside of his authority. Under the previous rules and current rules, Minn. R. 7020.1600, subp. 2, the CFO was not authorized to issue a COC to any site with more than 1000 AU.
2. An Environmental Assessment Worksheet (EAW) may have been required for construction, but not done prior to the construction. If a site had actually been expanding by more than 1000 AU over a three-year period, an EAW may have been required. By not listing the correct number of animal units on the permit application and COC, this requirement may not have been met.
3. A NPDES permit application may have been required to be submitted for sites that are over 1000 AU in accordance with the Federal guidelines. If a NPDES permit was required, the owner has not been given any protection from a citizen lawsuit under the Clean Water Act.
4. The local citizens may have been denied the opportunity for comment through the EAW, NPDES permit or Conditional Use Permit processes.

Recommendation:

During the Level III Inventory process, information pertaining to the capacity of each barn and the date that it was constructed will need to be collected. This information will need to be reviewed for the larger sites to determine if an EAW was required at the time it was constructed using the au numbers that were applicable at that time. A similar determination will also need to be made regarding the need for a NPDES permit for the larger sites. The proper follow-up steps will need to be implemented to correct the situation. Final resolution will be site specific.

L. No Manure Management Plan and Inadequate Plans

Problem:

Files for sites where a Construction Short Form permit was issued for sites with over 300 AU do not always contain a manure management plan that complies with the requirements of the revised rules and the files were not clear why a manure management plan was not requested. Further file reviews indicated that Interim Permits were needed for correcting pollution hazards at some facilities. Again, manure management plans seemed to be missing or not requested. Additionally, where plans do exist they inadequately address existing soil conditions and proper land application of manure (e.g. too much phosphorus applied).

Regulatory Provisions and Expectations:

The revised rules, Minn. R. 7020.2225, subp. 4.A(1), require that a manure management plan be prepared when a feedlot owner applies for an NPDES permit, an Interim Permit or a Construction Short Form permit. The manure management plan must be submitted when an NPDES permit application or an Interim Permit is submitted, or when requested by the MPCA or County Feedlot Officer. This subpart also requires that the manure management plan contain the minimum requirements of the rule.

Recommendation:

The current CFO work should work closely with the MPCA staff and attend training events as provided on the manure management requirements of the revised rules. The current CFO

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should also review the materials already made available on this topic. It is particularly important to understand how phosphorus is taken into account during the development of proper rates of application for manure. Existing manure management plans must be re-evaluated and upgraded to meet Minn. R. 7020.2225. All new manure management plans submitted to Rock County must be required to meet Minn. R. 7020.2225.

M. Wrong Permit or Certificate of Compliance Issued by the County

Problem:

The CFO issued a COC to sites with existing pollution hazards or for abandonment of an existing earthen basin, when an Interim Permit should have been issued instead. Many of the sites that should have received an Interim Permit prior to the revision of the rules and over 300 AU in capacity were above the animal unit limit at which the CFO was allowed to issue an Interim Permit. These permit applications should have been forwarded to the MPCA to process.

Regulatory Provisions and Expectations:

See the discussion in Items C and L regarding the CFO issuing a COC outside of their authority.

Recommendation:

The current CFO should work with the MPCA staff to identify pollution hazards at a feedlot site and consulting on proper corrective actions.

N. Notification Requirements for Sites \geq 500 animal units Were Done Incorrectly

Problem:

Since August 1, 1997, the owner of any feedlot that was expanding or constructing is required to notify all neighbors and residents within 5000 feet of the feedlot. This notice is to include information regarding the existing site, as well as what is being added to the site. The information available in the files indicated that the notices for several sites did not include any reference to the existing animals or total capacity of the site, only information about what was being added to the site.

Regulatory Provisions and Expectations:

The 1997 legislature enacted this requirement which became effective on August 1, 1997, and was then incorporated into the revised rules as Minn. R. 7020.2000, subp. 4. The CFO did ensure that the feedlot owner did the notification, but all of the information that is required in the notification was not included.

Recommendation:

This problem has been discussed with the current CFO and has been resolved.

O. Tax Exemptions

The MPCA also provides the following area as an advisory recommendation. The MPCA in reviewing files maintained by the Rock County Land Use Management Office was unable to determine how county staff evaluated site eligibility for tax exemptions. For example, manure storage structures were listed on COCs issued by the county that were identified as qualifying for a tax exemption from personal property tax but no clarifications as to why components were eligible.

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Regulatory Provisions and Expectations:

Minn. Statute 272.02, Exempt property.

Subdivision 28. Manure pits. Manure pits and appurtenances, which may include slatted floors and pipes, installed or operated in accordance with a permit, order, or certificate of compliance issued by the Minnesota pollution control agency are exempt. The exemption shall continue for as long as the permit, order, or certificate issued by the Minnesota pollution control agency remains in effect.

In July 1997, the MPCA provided a factsheet regarding tax exemptions for feedlots. The factsheet explained what structures qualified for tax-exempt status.

Recommendations:

Rock County should consider the need to re-evaluate each manure storage area identified as eligible for tax exemption for purposes of determining and notify the feedlot owner and tax assessor as to whether the property as originally identified, as qualifying for tax exemptions remains qualified.

FREQUENTLY MISSING INFORMATION

- NO CONCRETE TESTING INFORMATION WHEN TEST WERE COMPLETED
- NO SOILS INVESTIGATION DATA
- NO PROFESSIONAL ENGINEERED (PE) PLANS
- PE PLANS ARE FOR DIFFERENT PROJECTS THAN WHAT IS IN THE FILE
- PERMITS ISSUED BEFORE APPLICATION SUBMITTED
- POLLUTION HAZARDS NOT IDENTIFIED
- NO PERMIT APPLICATION
- PERMIT APPLICATION INCOMPLETE
- REISSUANCE OF PERMITS WITHOUT REAPPLICATION
- WRONG PERMIT ISSUED
- PERMITS ISSUED WITHOUT ACCOMPANYING DATA
- INACCURATE INFORMATION ON PERMIT
- PERMIT NOT CONSISTENT WITH APPLICATION
- NO SIGNATURE (or signed later) ON APPLICATION
- NO DATE (or dated later) ON APPLICATION
- CONSTRUCTION WITHOUT A PERMIT
- LIVESTOCK BUILDINGS AND STRUCTURES NOT COMPATIBLE WITH PROPOSED NUMBERS, TYPE, OR SPECIES
- WRONG ANIMAL UNITS
- ANIMALS UNITS MANIPULATED TO BE LESS THAN 1000 ANIMAL UNITS
- PE. PLANS INCONSISTANT WITH THE PROJECT
- EXCESSIVE APPLICATIONS OF PHOSHORUS
- POOR MANURE MGT. PLANNING
- LACK OF INFORMATION IN THE FIELD ASSISTANCE NOTES
- NO PLANS WHEN CORRECTIVE MEASURES ARE REQUIRED
- NO CORRECTIVE MEASURES PROPOSED
- UNPERMITTED/UNCERTIFIED EARTHEN BASINS STILL ALLOWED WITHOUT PE PLANS
- INADEQUATE BUFFER AND GRASS FILTER STRIPS
- INELGIBLE TAX EXEMPT LIVESTOCK EQUIPMENT AND STRUCTURES
- OPENLOT RUNOFF



PETERS & PETERS PLC
ATTORNEYS AT LAW

507 N. Nokomis St. #100
Alexandria, MN 56308
320-763-8458

Karna M. Peters*
James P. Peters

*Also Admitted in California

FACSIMILE TRANSMISSION COVER LETTER

DATED: April 18, 2005 TIME: 2:30 p.m.

TO: Gregg Downing
Environmental Quality Board

FAX: 651-296-3698

FROM: Karna M. Peters

PAGES (including this page): 26

Message (if any):

NOTE TO FACSIMILE OPERATOR: If you experience problems receiving this facsimile, please contact Tammy in Alexandria at (320) 763-8458. Thank you.

NOTE: The information contained in this facsimile transmission is privileged and confidential. It is intended only for the use of the individual or entity to whom it is sent. If the recipient of this transmittal is not the intended recipient, or an employee or agent responsible to deliver it to the intended recipient, any dissemination, distribution or reproduction of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via U.S. Postal Service.



MINNESOTA FARMERS UNION

OFFICE OF PRESIDENT DOUG PETERSON

Thursday April 14, 2005

Greg Downing
Environmental Quality Board
300 Centennial Building, 658 Cedar Street
St. Paul, MN 55155

To Whom It May Concern:

On behalf of the membership of the Minnesota Farmers Union (MFU), we are writing with concerns about the Environmental Quality Boards (EQB)'s proposed rule change to the Mandatory Threshold Levels for Environmental Review regarding animal feedlots.

MFU is a grassroots-based general farm organization that has represented family farms and rural residents in Minnesota since 1929.

MFU does not support the proposed change that would implement a "two-tier" system in dealing with animal feedlots and environmental review in feedlots over 1,000 animal units. Two years ago the Legislature significantly altered the process by raising the mandatory threshold to 1,000 animal units.

MFU's concern is based on this simple premise, while we would support a lower threshold; there is no need to raise the current threshold. MFU believes that Environmental Review is a positive tool in helping a facility go forward and develop a positive relationship with its' neighbors and community.

MFU also believes that the current Environmental Review process has not been an impediment to growth animal agriculture in the state. Minnesota is #1 in the nation in Turkeys, a 2003 Agri-Growth report said that 9 of the top 20 hog feedlots in the nation are in Minnesota, and Minnesota now has 50 dairy farms in Minnesota that milk 500 or more cows (top 1%), that is also at least a 50% growth in that category in the past year.

If I can be of any assistance, please feel free to contact me at 651-639-1223.

Sincerely,

Doug Peterson, President

April 18, 05

Gregg Downing:

Our league lobbyists were at the Capitol today.
In the event you do not receive a comment
from Gwen Myers or Allene Moreska by deadline,
I submit this copy in its place.

Thank you,

Stephaine Humber
507-645-7086

Gwen Myers phone 952-545-8696
Please call her?

TESTIMONY TO THE MINNESOTA ENVIRONMENTAL QUALITY BOARD**On the Revision of Mandatory Categories and Housekeeping and Technical Procedural Changes to Environmental Review Rules****Presented by Gwen Myers, League of Women Voters Lobbyist****December 16, 2004**

I am Gwen Myers, a volunteer lobbyist for the League of Women Voters of Minnesota. This morning I am pinch-hitting for our regular lobbyists in agriculture.

The League of Women Voters is not an environmental organization; we are a "good government" organization and our interests are wide-ranging. I am here today because we are committed to the protection and wise management of our natural resources. We believe that an essential feature of good government is protecting our ecosystem for our children and grandchildren.

With this in mind, we are opposed to any modification of the requirements for a mandatory Environmental Assessment Worksheet that would result in increasing the threshold number of animal units beyond 1000 animal units, whether through a flat increase in the number or through the implementation of a two-tiered threshold.

The League is in favor of *sustainable agriculture*, and by this we mean an agriculture that balances three long-term goals:

- a) economics - our farms must be profitable
- b) quality of life - they should aim to satisfy personal, family, and community needs for health, safety, food and happiness
- c) environment - they should enhance, rather than threaten, finite soil, water, and air resources

We understand that the goal of the EQB and of the government itself is to provide a balance. You'll notice that the League's position favors economic profitability for agriculture, but not at the expense of the other two goals—quality of life and the environment. We do not pit the environment against profitability, and we believe that the government should not do so. These goals must be considered together. It is also a question of taking the long view. Sustainable implies long-term. We in Minnesota must think about the long term, and resist short-term fixes, particularly ones that look good economically, but that risk bringing long-term harm to the state.

The League of Women Voters opposes attempts to change any rules governing feedlots that would weaken environmental protection, and we oppose attempts to change any rules that would lessen the public's involvement in decision-making regarding such

protection. The mandatory EAW threshold of 1000 animal units is already very high. To raise this to 2000 animal units would mean further reducing the right of the public to have a voice in decisions having a major impact on their lives, on the air they breath, on the water they drink, literally on the health of the community. Raising this threshold would pose greater risks to the environment.

The permitting and environmental review process may appear burdensome to some, but such review is essential in a healthy and democratic state, and *it is false economics to think that suspending or weakening environmental regulations will benefit Minnesota in the long run.* The Environmental Quality Board bears the responsibility for making decisions for the benefit of the state and is accountable to Minnesota citizens.

Thank you for your attention.

March 25, 2005

Mr. Gregg Downing
300 Centennial Building
658 Cedar Street
Saint Paul, MN 55155

Member of the Environmental Quality Board,

Why would you want to take what little environmental review remains for feedlot operations and make it even weaker?

These are not "family farms" that are being impacted by these reviews. These are livestock factories. I grew up on a family farm, one that raised dairy and beef cattle. In our operation, there was a cycle that was self-sufficient and self-sustaining: All the feed that was consumed by the livestock was grown on our land. The cows produced milk and the beef cattle were sent to market. The animal waste was returned to the fields in manageable amounts to restore nutrients to the soil. New crops were grown and the cycle began anew.

That simple balance is lost with factory farming. Yes, agribusiness has changed greatly since I was on a true family farm. Yes, the economics of farming favor the larger operation (the livestock factory). But if the operations are now larger, doesn't that imply a greater responsibility by those operators to assure that everything is being done to minimize the environmental impact that these feedlots incur? How do we assure ourselves that nearby water remains clean? Shouldn't somebody pay environmental attention to what is happening at these operations?

Ask yourself this: With passage of the proposed relaxed standards, are you going to be more comfortable fishing downstream from a 2,500-head feedlot operation? Or less comfortable? Are you going to be more willing to drink nearby groundwater? Or less willing?

If anything, the EQB should strengthen environmental review for animal feeding operations.

Sincerely,

A handwritten signature in cursive script that reads "Randy Baranczyk".

Randy Baranczyk
1254 Juno Ave
Saint Paul, MN 55116-1660

26 March 2005

To: Minnesota Environmental Quality Board (EQB)
From: Amelia Kroeger
65 Stubbs Bay Rd
Maple Plain MN 55359
952-476-6126 or email: ackroeger@aol.com

I understand that EQB is considering revising mandatory environmental review for factory feedlots downward. Not a good idea from what I've been learning about these kind of operations - most especially the effect collection ponds for waste have on environmental quality.

Please do not weaken these review thresholds for factory feedlots. If anything, they should be strengthened!

Thank you.

Amelia Kroeger

March 31, 2005

Mr. Gregg Downing
300 Centennial Building
658 Cedar Street
Saint Paul, MN 55155

Member of the Environmental Quality Board,

I oppose any weakening of mandatory environmental review for animal feeding operations. This is not only an environmental issue, but a human rights issue for anyone in Minnesota who lives near a huge feedlot or factory farms, and for anyone who cares about our state's water and air quality. "Quality" is the crucial word here.

In Minnesota, we've already had several problems in the past with CAFOs. In Renville County, a daycare center had to be shut down because the children were becoming so ill from hydrogen sulfide poisoning (an effect of the hog waste lagoons). Last year in St. Cloud, a manure spill from a dairy operation caused fish kills and water contamination. These are serious public health and environmental dangers, and they illustrate why environmental review must be comprehensive and thorough: to prevent problems before they occur. The cleanup is always more expensive and troublesome than any preventative measures would have been!

If anything, environmental review for such operations should be strengthened, not weakened.

Thank you for your time.

Sincerely,



Andria Williams
221 Montrose Place
#6
St. Paul, MN 55104

Oppose Weakening Mandatory Environmental Review for Factory Farms

Mr. Gregg Downing,

I oppose any weakening of mandatory environmental review for animal feeding operations. Environmental review is already so limited that it does not adequately protect Minnesota citizens or our environment. The EQB should strengthen environmental review for animal feeding operations and protect Minnesota's environment.

David Johanson II
221 Montrose Place, Apt. 6
St. Paul, MN 55104

March 28, 2005

Mr. Gregg Downing
300 Centennial Building
658 Cedar Street
Saint Paul, MN 55155

Member of the Environmental Quality Board,

Please, please stop the pressure from the arm-twisting agricultural corporations by enforcing and strengthening oversight. Environmental quality is for all humans, not just environmentalists. Supporting effective control over the environment is a moral, to use a Republican term, duty, and should not be used politically. If we are compassionate about life and the quality of life for now and the future, vote with people in mind.

I oppose any weakening of mandatory environmental review for animal feeding operations. Environmental review is already so limited that it does not adequately protect Minnesota citizens or our environment. The EQB should strengthen environmental review for animal feeding operations and protect Minnesota's environment.

Sincerely,



Jan Atchison
2110 19th St S
Moorhead, MN 56560-5845

3/29/05

Mr. Gregg Downing
300 Centennial Building
658 Cedar Street
Saint Paul, MN 55155

Member of the Environmental Quality Board,

I oppose any weakening of mandatory environmental review for animal feeding operations. Environmental review is already so limited that it does not adequately protect Minnesota citizens or our environment. The EQB should strengthen environmental review for animal feeding operations and protect Minnesota's environment.

Sincerely,



Martin Steitz
21853 Iden Avenue PI N
Forest Lake, MN 55025
USA

March 28, 2005

Mr. Gregg Downing
300 Centennial Building
658 Cedar Street
Saint Paul, MN 55155

Member of the Environmental Quality Board,

Minnesota has a wonderful legacy of strong environmental advocates. We must continue this appropriate concern for the welfare of our state's environment and the health of our citizens.

I oppose any weakening of mandatory environmental review for animal feeding operations. Environmental review is already so limited that it does not adequately protect Minnesota citizens or our environment. The EQB should strengthen environmental review for animal feeding operations and protect Minnesota's environment.

Sincerely,

A handwritten signature in black ink, appearing to read "Dottie Dolezal". The signature is written in a cursive, flowing style with a large initial "D".

Dottie Dolezal
3005 W 43rd St
Minneapolis, MN 55410-1518

March 24, 2005

Mr. Gregg Downing
300 Centennial Building
658 Cedar Street
Saint Paul, MN 55155

Member of the Environmental Quality Board,

I am asking you to oppose the weakening of mandatory environmental review standards for animal feeding operations. We need stronger, not weaker, standards to protect our environment and our citizens.

The EQB should strengthen environmental review for animal feeding operations and protect Minnesota's environment.

Sincerely,

A handwritten signature in cursive script that reads "Janet Rog".

Janet Rog
1589 Roselawn Ave W
Roseville, MN 55113-5718

April 18, 2005

TO: Gregg Downing

FR: Al Christopherson, President, Minnesota Farm Bureau Federation

RE: Farm Bureau's comments on proposed changes to the EAW process

Thank you for allowing me the opportunity to comment on behalf of the Minnesota Farm Bureau Federation regarding the proposed changes to the EAW process. Below are some brief comments about the three questions posed by the EQB.

1. Size Threshold – We recommend raising the threshold for animal facilities that have no rainfall falling into the manure storage area from the current 1,000 a.u. to 2,000 a.u. and from 500 a.u. in sensitive areas to 1,000 a.u. We do not believe that a petition process is needed for feedlots under 2,000 a.u. The types of facilities that exclude rainfall from the manure storage are deep pits under buildings, hard covers on storage or deep-bedded facilities. These present extremely low risk and use standard engineering that is easily replicated.
2. Local Regulation – We are interested in continuing discussion on this issue; however, we are concerned that there could be unintended negative consequences for farmers. If no zoning exists in a county for animal feedlots it may be appropriate to retain the 1,000 a.u. trigger for an EAW but this is rare.
3. Mitigation – The application of biofilters on swine facilities, methane digesters for dairy farms, or other new technologies that reduce odors and prevent water pollution should be considered for either raising the threshold level, or eliminating the need for an EAW.

In general, because of recent amendments to the Chapter 7020 Feedlot Rules, standardization of facilities, updates to county zoning ordinances and improved scientific knowledge about impacts of facilities, the EAW process is not as necessary. We also support any person, group, or organization (non-profit or profit) filing a petition for an EAW or EIS being responsible for the additional costs incurred by the EAW or EIS process.

Thank you for the opportunity to comment.

Gregg Downing

From: A. Richard and Martha Olson [arolson@runestone.net]
Sent: Monday, April 18, 2005 3:10 PM
To: Gregg.Downing@state.mn.us
Subject: Comments of Proposed Revision of Rules Governing the Environmental Review Program

Comments on Proposed Revision of Rules Governing the Environmental Review Program EQB 04/18/2005

I am writing to voice the concern of the Pope County Mothers and Others Concerned for Health, Inc. organization of which I am a board member and an officer.

Pope County Mothers and Others Concerned for Health was a participant in seeking an EIS through the courts after the MPCA had decided to grant Hancock ProPork the right to proceed without study. Hancock ProPork is a project with a total of 10 sites in a multi-feedlot project. There was one farrowing/nursery (with a total of five confinement barns at just one location), plus 9 other sites, in Stevens and Pope County. Four of the sites required mitigation, indicating that there were significant environmental effects (the standard for EIS) at those sites. Of the four sites, two of them had significant air quality impacts. There were modeled violations of the air quality standards at the property lines. These were violations of the hydrogen sulfide standard (the 30 parts per billion, 5-day hydrogen sulfide standard). One of the sites (Schaefer) was a 600 animal unit facility. The other site was the farrowing/nursery facility, with 1,393 animal units.

These two sites also had the potential to generate off-site annoying odors (although the EIS concluded that the annoying odors didn't reach the neighbors.) The EIS did state that detectable odors from the farrowing/nursery facility could persist up to 0.8 miles from the site and that detectable odors did reach neighbors (although they were not modeled as annoying).

The HPP EIS is the only site-specific EIS done on feedlots in the State of Minnesota and it shows that feedlots well below 1000 animal units have the potential to create significant environmental effects in their air quality impacts. This documented evidence of environmental impacts from feedlots indicates that the EAW threshold should be actually lowered -- to 600 animal units --- instead of being raised.

Feedlots are not required to have air pollution controls to reduce air impacts and odor (the state only requires an odor management plan, but that's not the same as actual pollution control such as methane gas digesters.) The EQB staff proposal for increasing the threshold for EAW's based on some level of higher zoning does not adequately address air impacts and odors. Given that the last legislature and

currently Governor Pawlenty have made several attempt to strip local control of planning and zoning away from townships and counties, this proposal is at best disingenuous. If this proposal is allowed, I foresee an eventual position where there is no protection at all. It appears that the Agriculture Industry wants to completely exempt the public from determination and protection of its property rights.

If we look at the gravel industry, who have taken the step of suggesting that the EAW process threshold be lowered, not raised, thereby establishing a process where people's concerns and issues can be dealt with at the front end. It seems that they have decided it is in their best interests to deal openly and fairly with the people of Minnesota. Contrast that with what seems to be a stealth approach, where feedlots are brought in under cover of darkness, with no public participation. Its time we put some sunshine to work in Minnesota --- especially with regards large corporate CAFO's and feedlots.

We realize that the HPP EIS addressed problems that would have gone unnoticed with such a process.

- * It discussed in detail problems with liquid manure application which threatens the glacial outwash soil and groundwater.
- * It found potential air quality violations in confinement facilities of 600 and 1393 animal units.
- * It determined potential threats to the Chippewa River unless adequate set backs for manure application were followed.
- * It discussed risks associated with the use of antibiotics in feedlot facilities, especially when used as growth inducements.
- * And significantly, it found problems with dead animal disposal at several HPP sites.

As you consider lessening environmental scope by raising mandatory category thresholds I think a caution is required. These changes can only make it even more difficult to ascertain what environmental impacts might be associated with larger numbers of animal units. The HPP EIS is proof that confinements with as few as 600 Animal units can produce significant air quality impacts. Hydrogen sulfide gas was found in sufficient quantity to have the following included in comments on the EIS "MPCA will require the farrowing/nursery site and the Schaefer site to implement mitigation to address Hydrogen Sulfide violations."

All concerned parties should seek a balanced approach, taking into consideration agricultural benefits and environmental protections and benefits for the citizens of rural Minnesota. There is little evidence that administrative burden is such that one

ought to stop reviews that can identify significant health risks.

The risks identified relating to ground water contamination are real and would have gone unidentified without the HPP EIS. The MPCA confirms that potential for granular soil and shallow ground water are factors that increase the risk of ground water contamination. The comments document for the EIS went on to state: "any individuals now or in the future utilizing the shallow water supplies in this area may be subjected to elevated nitrate concentration stemming from past, current or future agricultural practices" further: "the MPCA believes that the potential for ground water impacts exist and the EIS documents this risk."

Are we really a state that is willing to place its people at risk so that corporate farms can operate without constraint? Currently, there are numerous undocumented feedlots that are not addressed through review or management practices. Is it the intent to further place the people of Minnesota at risk by increasing the number of unregulated polluters?

Rural Minnesota has come to depend upon non-Ag for its support. In Pope County, the valuation of agricultural and non-agricultural holdings are about the same. But, the tax revenue is skewed away from Ag to such an extent that 75% of our tax revenue comes from non-Ag properties, only 25% from Ag related properties. Is it good government to place at risk the revenue base of the county to accommodate an industry that wants to operate without good environmental practice?

In my view this proposal is not based on any kind of real, detailed analysis of environmental impacts and how they can best be dealt with through a higher level of zoning. The only existing EIS for this industry (HPP) shows that the mandatory threshold for feedlots should be lowered to account for the significance of their impacts, not raised. Zoning doesn't address the issues of air quality or water quality.

PCMOCH is opposed to the Proposed Revision of Rules governing the Environmental Review Program since it would significantly shift thresholds to higher levels of animal units.

Such a move can only put more citizens at risk. As feedlot size grows, there can only be a multiplication of threats to the well being of air, water and soil. In many parts of Minnesota, we are facing population declines, and declining school enrollments. What effect does increasing setbacks on larger and larger facilities have on availability of residential housing?

Thank you.

A. Richard Olson

Officer: Pope County Mothers and Others Concerned for Health, Inc.

19986 Shady Oaks Road

Glenwood, MN 56334

(320) 634-4827

Gregg Downing

From: Don [issues@coact.org]
Sent: Monday, April 18, 2005 4:35 PM
To: Gregg.Downing@state.mn.us
Subject: COACT Recommendation: Maintain current mandatory EAW threshold

Minnesota COACT
2469 University Avenue West
W150
St. Paul, MN 55114
651-646-0900

April 18, 2005

Gregg Downing
Environmental Quality Board
300 Centennial Bldg, 658 Cedar Street
St. Paul, MN 55155

Re: Maintain current

mandatory EAW threshold Dear Mr. Downing:

Minnesota COACT (Citizens Organized ACTing Together) is a grassroots organization of 12,000 members statewide, including 500 dairy farmers. We work on health care reform, food safety and family farm advocacy. Many of our members are rural residents. The majority of dairy farms in Minnesota, 96% in fact, are under 200 cows. The proposed change would only be a further benefit for the megadairies, or the 4% minority.

The proposal to raise the mandatory threshold above 1000 au is a particularly sensitive issue after the 2003 legislation that strips away the right of citizens to petition for environmental review of a proposed feedlot under 1000 au except under very narrowly defined circumstances. In fact, we feel it appropriate to call for lowering the mandatory threshold for an EAW, not raising it. Until very recently, a CAFO at the federal level (EPA) was an operation of 500 au and above, and we think that would be an appropriate mandatory EAW threshold.

Members who served on the committee for the GEIS on feedlots have expressed surprise at the recommended change to feedlot environmental review. That recommendation did not come out of that study, nor out of earlier EQB/MPCA meetings that our groups attended on revisions to the environmental review program. Pressure for this change seems to be coming from the Department of Agriculture through the Governor's Livestock Advisory Task Force Report mentioned on p. 11 of the draft amendments under #33. "Direct the EQB to evaluate animal unit thresholds triggering EAWs." Since the group was largely comprised of large livestock interests, we hope more weight will be given to average farmers and rural residents now submitting comments.

We feel there is much need for education of new legislators and the public on the difference between the role of environmental review and regulation according to Minn. Rules Chap. 7020. An EAW provides detailed information that may result in changes to a project that could not be achieved after-the-fact. As EQB staff have said in the past, the record does not show general abuse of the petition process. According to the EQB report to the Legislature shown on the website, only 19 EAW petitions were filed for the three-year period (2001-2003) and five were ordered--one by the RGU, two for the courts, one voluntary, and one mandatory. The three applicants in question may feel they were inconvenienced in having to do an EAW, which is regrettable, but that was no reason to make the 2003 changes to environmental review.

Also, we oppose a "two-tiered" process where certain local regs would qualify a project for higher threshold. This would only add to the confusion in rural areas. The effect of the 2003 legislation is just now being felt. One example is the handling of an EAW request for a 3,300 finishing hog proposal in Rice County.

Please retain the current EAW threshold at 1000 au. The EAW worksheet for a feedlot has already been reduced from the usual 31 questions for other developments to 12 questions.

We see the need for no more changes.

Thank you,

Jeff Kunstleben, President
Minnesota COACT, 320-845-4336

Don Pylkkanen, Executive Director
Minnesota COACT, 651-646-0900

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Gregg Downing

From: david [dkamis@rconnect.com]
Sent: Monday, April 18, 2005 5:40 PM
To: Gregg.Downing@state.mn.us
Subject: Keep 1000 au threshold

April 18, 2005

Gregg Downing
EQB
300 Centennial Bldg, 658 Cedar Street
St. Paul, MN 55155

Dear Mr. Downing,

As a farmer, I ask that the 1000 au threshold for mandatory EAW not be raised. We have a few feedlots over that size in Rice County, but most are well under that size. I feel it is fair to expect detailed answers to questions provided in an EAW before an operation with potential impact on the environment receives permits.

Too many bills have been passed that take away basic rights, such as the right to a nuisance complaint against a neighboring feedlot and the right to petition for an EAW under 1000 au. I would by no means support raising the mandatory EAW threshold which is too high already.

Thank you for the opportunity to comment.

D.P. Kamis
1866 130th St. E.
Dundas, MN 55019

507-645-7086

Gregg Downing

From: Hartley Clark [clark@carleton.edu]
Sent: Monday, April 18, 2005 2:52 PM
To: Gregg.Downing@state.mn.us
Subject: New rule for feedlots

I object strenuously to any change for the threshold size for feedlots. The GEIS report on agronomic rates for manure spreading found that there is not enough spreadable acreage for the feedlots already permitted in Southern Minnesota (see Phosphorus Balance in Minnesota Feedlot Permitting, p. 80). Because the state is attempting to reduce pollution in lakes and rivers, it makes sense for the EQB to lower the threshold size for feedlots requiring an EAW.

Millions of anti-pollution dollars will be wasted if the state does not reduce the size of permitted feedlots.

Barbara Clark

Gregg Downing

From: Hartley Clark [clark@carleton.edu]
Sent: Monday, April 18, 2005 2:39 PM
To: Gregg.Downing@state.mn.us
Subject: Comment on rules change proposal

I am commenting on the rules under consideration by the EQB for which the comments closing time is 4:30 pm April 18, 2005.

I urge the EQB not to raise the threshold size for feedlots at which they must prepare an EAW. The threshold is already too high in that all feedlots near the present threshold now can be counted on to pollute. Since the MPCA routinely grants permits to feedlots nearing the present threshold, the real value of the EAW today is that it is an instrument through which the MPCA (and administering counties) can be forced to recognize highly adverse conditions at certain sites. If the MPCA were not forced to recognize them it would merely grant a permit.

We have prevented a feedlot that was to use, exclusively, hills that drained into nearby lakes as a site by successfully suing the owner to force him to prepare an EAW. He therefore withdrew his application for a permit, because it was plain to him as to us that the an EAW would document the unsuitability of his site.

We now face a permit seeker who has been granted a permit for the first phase of his feedlot even though he has no plan for the disposal of the phosphorus of potassium in his manure. He plans to expand. This is all taking place in a known karst area where there are known sinkholes.

If the EQB starts raising the threshold for mandatory EAW's he will simply stay beneath the ludicrous succession of new thresholds as he expands.

The MPCA is able to ignore the pollution implications of the feedlots it now permits. Why add evil standards to evil administration by raising the threshold?

Hartley Clark
for the Feedlot Front, Northfield, MN

Gregg Downing

From: JOEL BOESER [boeser123@msn.com]
Sent: Monday, April 18, 2005 8:26 PM
To: gregg downing
Subject: Fw: comment on eaw rule changes - submitted at 3:30 4/18/05

Gregg,

I sent this today at 3:30. now at 8:30, I get a message back from my ISP saying that the address was wrong and it was not delivered. (at 3:30 I got a message saying it had been delivered.) I guess I forgot 1 "g" in your name. I hope that you can still considered this submitted before 4:30, as you can see the history of the email transmission on this document.

Thank you,
 Annette Boeser

----- Original Message -----

From: JOEL BOESER
To: gregg downing
Sent: Monday, April 18, 2005 3:28 PM
Subject: Fw: comment on eaw rule changes - submitted at 3:30 4/18/05

----- Original Message -----

From: JOEL BOESER
To: gregg downing
Sent: Monday, April 18, 2005 3:26 PM
Subject: comment on eaw rule changes - submitted at 3:30 4/18/05

DEAR GREGG,

I HAVE REVIEWED ALL OF THE DRAFT CHANGES TO THE EAW RULES. I BELIEVE THAT A LOT OF THE PROPOSED CHANGES ARE GOOD - CLARIFICATION OF THE PREVIOUS RULES. HOWEVER, I WOULD LIKE TO COMMENT ON THE PROPOSED CHANGE TO THE MANDATORY EAW CATEGORY: ANIMAL FEEDLOTS, RULE NUMBER 33.4410.4300, SUBP.29. THE CURRENT RULES REQUIRE THAT AN EAW IS MANDATORY AFTER 999 ANIMAL UNITS. MY EXPERIENCE HAS BEEN WITH HOG FEEDLOTS AND I CAN TELL YOU THAT IF A FARM WANTS TO GO FROM SAY, 600 ANIMAL UNITS, TO OVER 1000 ANIMAL UNITS, THIS CAN BE A HUGE CHANGE FOR THE NEIGHBORHOOD SURROUNDING THE FARM. 1000 ANIMAL UNITS TRANSLATES INTO APPROXIMATELY 4000 HOGS. IF ONE LOOKS AT NATIONAL STATISTICS, THIS IS A LARGE HOG FARM BY ANYONE'S STANDARDS. ALTHOUGH MANY HOG FARMS ARE LARGER THAN THIS IN MINNESOTA AND IOWA, NATIONALLY 4000 HOGS IS A LOT OF ANIMALS AND IS USUALLY NO LONGER A "FAMILY FARM", BUT RATHER A CORPORATE ENTITY WHICH NO LONGER HAS RELATIONSHIPS WITH IT'S NEIGHBORS. IN MY SITUATION, MY NEIGHBOR WANTED TO GO FROM 700 AU TO 1100 ANIMAL UNITS AND REFUSED TO DO ANYTHING IN THE WAY OF ODOR MITIGATION. IT WAS ONLY OUR NEIGHBORHOOD'S EAW PETITION THAT MADE THIS FARM, (AND OUR LOCAL RGU) REALIZE THAT NEIGHBORS HAVE SOME RIGHTS ALSO TO PROTECT THEIR PROPERTY VALUES AND QUALITY OF LIFE. IN THE END, THE FARMER REVISED HIS REQUEST DOWN TO 999 AU, AND WAS GRANTED 800 AU. IF WE HAD NOT HAD THE MANDATORY THRESHOLD FOR THE EAW SET AT 1000 ANIMAL UNITS, OUR NEIGHBORHOOD WOULD HAVE BEEN TURNED INTO A GIANT STINKING HELLHOLE AND WE ONLY LIVE 40 MILES FROM THE TWIN CITIES, IN CARVER COUNTY. EVEN AT 700 AU, THIS FARM HAD BEEN MAKING MOST OF THEIR NEIGHBORS LIVES

4/28/2005

MISERABLE, BUT THERE WAS NO METHOD IN PLACE TO DO ANYTHING ABOUT IT. AFTER THE EAW PETITION WAS FILED, THIS FARMER REALIZED HE HAD TO CLEAN UP HIS ACT IF HE WANTED TO DO ANY FURTHER PROJECTS. NOW, AT 800 AU, THERE IS LESS STENCH COMING FROM THIS FARM THAN PREVIOUSLY. SEVERAL OF MY NEIGHBORS ARE OLD, RETIRED FARMERS, AND THEY WERE FEELING TRAPPED IN THEIR HOMES - THEY COULDN'T EVEN GO OUT AND GARDEN IN THE SUMMER. ONE NEIGHBOR HAD BEEN TRYING TO SELL HIS FARM AND MOVE INTO TOWN, AND COULDN'T EVEN GET PEOPLE TO LOOK AT THE HOUSE BECAUSE WHEN THEY GOT OUT OF THE CAR, THE STENCH WAS AWFUL. MOST OF MY NEIGHBORS HAVE THANKED US OVER AND OVER AGAIN FOR BECOMING THE "PETITIONER'S REPRESENTATIVE" AND PUTTING A STOP TO THIS FARM TOTALLY DEVALUING OUR PROPERTIES.

PLEASE DO NOT ALLOW A CHANGE IN THE MANDATORY EAW LIMIT OF 999 ANIMAL UNITS. THIS IS A LEVEL THAT A NEIGHBORHOOD CAN WORK WITH AND POSSIBLY LIVE WITH. ANYTHING MORE WOULD BE INTOLERABLE, UNLESS THE FARM IS MADE TO LOOK AT THEIR FARM PRACTICES, IN PARTICULAR THEIR ODOR AND PEST MANAGEMENT.

IF YOU WOULD LIKE TO SPEAK TO ME, YOU CAN REACH ME AT 952 - 467 - 4400.

SINCERELY,

ANNETTE BOESER

Gregg Downing

From: Joseph Blaha [jcbblaha@yahoo.com]
Sent: Friday, March 25, 2005 6:11 AM
To: Gregg.Downing@state.mn.us
Subject: EQB changes

I have been made aware that changes are being proposed in the language that governs feed lots, lake shore development, non mineral mining and others. I would like to express my concern that small changes in language can have a large and detrimental effect on our state.

I feel that the "family farm" has been in decline for years. Larger operations have been buying smaller and that corporations are running many of these farms. Much of the land in this state was given or sold to the immigrants in the 1800's. Land, that today we recognize should not have been drained and cultivated. It is not too late to reverse the wrong that have been done to the environment of our state.

With that having been said, I would ask that any changes that are considered by the EQB have the effect of strengthening, limiting and safeguarding the land and it's waters. These changes may come at the expense of farms, both corporate and family.

As for lake shore development, there are environmentally sensitive lake and wetlands that must not be developed. Dead Lake of Otter Tail county for one. It is an outdated way of thinking that simply because you own the land that you can do as you please with it. We must recognize that many areas of the state are too sensitive for development.

Thank you,
Joseph C. Blaha
Arden Hills, MN
651-636-0646

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Gregg Downing

From: June Varner [just@outtech.com]
Sent: Monday, April 18, 2005 6:01 PM
To: Gregg.Downing@state.mn.us
Subject: Concern about raising limit for an EIS

04/18/05

Gregg Downing
EQB
300 Centennial Bldg, 658 Cedar Street
St. Paul, MN 55155

Dear Mr. Downing,

I am a farmer in Morrison County in Central Minnesota, and as a farmer, I ask that the 1000 au threshold for mandatory EAW not be raised. We have some feedlots over that size, but most operations are not that big. I feel it is fair to expect detailed answers to questions provided in an EAW BEFORE an operation having an enormous impact on our environment receives its permits.

There have already been too many bills passed that take away basic rights such as the right to a nuisance complaint against a neighboring feedlot and the right to petition for an EAW under 1000 au. I do not support raising the mandatory EAW threshold, but would support lowering it.

Thank you for this opportunity to comment.

Sincerely,

Stanley E. Estes
15451 - 83rd Street
Little Falls MN 56345

4/28/2005

Gregg Downing

From: mpease@mn.rr.com
Sent: Friday, March 25, 2005 10:28 AM
To: Gregg.Downing@state.mn.us
Subject: Keep Environmental Review Strong

Member of the Environmental Quality Board,

Minnesota's environment needs to be protected for all of our health and well-being. I appreciate the work you do in keeping us safe.

However, I understand that agrabusiness is lobbying hard to weaken your power to protect us. I support the EQB's continued strong environmental review powers.

If anything, your charge should be further extended to make sure that the good of the state comes before the profits of agrabusiness.

Mike Pease
2720 Webster Ave S
St Louis Park, MN 55416-1844

Gregg Downing

From: robe0284@umn.edu
Sent: Friday, March 25, 2005 2:24 PM
To: Gregg.Downing@state.mn.us
Subject: Keep the Air and Water Clean

Member of the Environmental Quality Board,

Weakening environmental review for factory farms is an acting against the interest of a majority of Minnesotans. We all drink the water and breathe the air. We all have rights to clean water and air. I am sure YOU would NOT like live next to a factory farm and neither would anyone else. Give citizens a voice in the process. I believe in keeping farms small and family operated!

Beth Robelin
1496 Arona St
Saint Paul, MN 55108-2333