



BASSFORD REMELE

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September 15, 2020

VIA EMAIL

Amy Middleton
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Re: *September 14, 2020 correspondence from representatives of Venture Dairy Cooperative, Wisconsin Dairy Alliance and Wisconsin Manufacturers and Commerce*

Dear Ms. Middleton:

I was provided a copy of the September 14, 2020 correspondence from representatives of Venture Dairy Cooperative, Wisconsin Dairy Alliance and Wisconsin Manufacturers and Commerce. (“The September 14th letter.”) The letter appears to be a re-tread of previous correspondence from the Wisconsin Dairy Alliance and it carries forward inaccuracies contained in that correspondence—the most obvious of which is the misstatement regarding the holding of the *Adams* case.

The holding of *Adams v. State Livestock Facilities Siting Review Bd.*, 2012 WI 85, ¶ 1, 342 Wis. 2d 444, 450, 820 N.W.2d 404, 407 (which is cited in the September 14th letter) is often misstated by opponents of CAFO regulation. That case **does not** say a county or township is prohibited from regulating CAFOs. To the contrary, the Wisconsin Supreme Court opinion in *Adams* explicitly confirmed that governmental subunits, such as towns or counties, **can** impose siting regulations on concentrated animal feeding operations that are more stringent than the state standards. The Court simply held the town in that case did not adopt “reasonable and scientifically defensible findings of fact” supporting those more stringent standards, as required by §93.90 (3)(a)(6) and ATCP § 51.50. In other words, the town did not follow the correct procedures for implementing its proposed regulation.

Moreover, the significant risks posed by CAFOs are not the fantasy of “fringe environmental groups.” Frankly the attempt to pass off concerns regarding contamination of air Wisconsin’s air and water using stereotypical political arguments should highlight the weakness of the authors’ opposition to reasonable regulation of these industrial operations. The hazards posed by CAFOs

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have been determined by solid scientific research conducted by such credible organizations such as: the National Association of Local Boards of Health; the Centers for Disease Control and Prevention (CDC); Johns Hopkins University; and the World Health Organization. Papers describing significant health and environmental risks posed by CAFO's are readily accessible on the websites of these organizations. For example, an article entitled "Understanding Concentrated Animal Feeding Operations and Their Impact on Communities," was published by the National Association of Local Boards of Health. The Centers for Disease Control and Prevention (CDC) posted this article on its website. It lists some of the hazards associated with the operation of Concentrated Animal Feeding Operations, including:

1. Ground water contamination: Ground water can be contaminated by CAFOs through runoff from land application of manure, leaching from manure that has been improperly spread on land, or through leaks or breaks in storage or containment units. A study of private water wells in Idaho detected veterinary antibiotics, as well as elevated levels of nitrates.
2. Contamination of surface water: The agriculture sector, including CAFOs, is the leading contributor of pollutants to lakes, rivers and reservoirs. It has been found that States with high concentrations of CAFOs experience on average 20 to 30 serious water quality problems per year as a result of manure management problems.
3. Diminution of air quality: In addition to polluting ground and surface water, CAFOs also contributed to the reduction of air quality in areas surrounding industrial farms. Animal feeding operations produce several types of air emissions, including gaseous and particulate substances and CAFOs produce even more emissions due to their size. The most typical pollutants found in air surrounding CAFOs are ammonia, hydrogen sulfide, methane, and particulate matter, all of which have varying human health risks.
4. Greenhouse gas and climate change: CAFOs emit greenhouse gases, and therefore contribute to climate change. Globally, livestock operations are responsible for approximately 18% of greenhouse gas production and over 7% of U.S. greenhouse gas emissions. While carbon dioxide is often considered the primary greenhouse gas of concern, manure emits methane and nitrous oxide which are 23 and 300 times more potent as greenhouse gases than carbon dioxide, respectfully. The EPA attributes manure management as the fourth leading source of noxious oxide emissions and the fifth leading source of methane emissions.
5. Odors: One of the most common complaints associated with CAFOs are the odors produced. The odors that CAFOs emit are a complex mixture of ammonia, hydrogen sulfide, and carbon dioxide, as well as volatile and semi-volatile organic compounds. These odors are worse than smells formerly associated with smaller livestock farms. The

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anaerobic reaction that occurs when manure is stored in pits or lagoons for long amounts of time is the primary cause of the smells. Odors from waste are carried away from farm areas on dust and other air particulates. Depending upon things like weather conditions and farming techniques, CAFO odors can be smelled from **as much as 5 or 6 miles away** although 3 miles is a more common distance.

6. Insect Vectors: CAFOs and their waste can be breeding grounds for insect vectors. House flies, stable flies, and mosquitos are the most common insects associated with CAFOs. House flies breed in manure, while stable and other flies breed in decaying organic material such as livestock bedding. Mosquitos breed in standing water and water on the edges of manure lagoons can cause mosquito infestations to rise. Flies can change from eggs to adults in only 10 days, which means that substances in which flies breed need to be cleaned up regularly. The John Hopkins Bloomberg School of Public Health found evidence that houseflies near poultry operations may contribute to the dispersion of drug-resistant bacteria. Moreover, since flies are attracted to and eat human food, there is a potential for spreading bacteria or pathogens to humans, including microbes that can cause dysentery and diarrhea. Mosquitoes spread zoonotic diseases, such as West Nile virus, St. Louis encephalitis, and equine encephalitis.
7. Pathogens: Pathogens are parasites, bacterium, or viruses that are capable of causing disease or infection in animals or humans. The major source of pathogens from CAFOs is in animal manure. There are over 150 pathogens in manure that could impact human health. Many of these pathogens are concerning because they can quickly cause severe diarrhea. Healthy people who are exposed to pathogens can generally recover, but those who have weakened immune systems are at risk for severe illness or death. Those at higher risk include infants or young children, pregnant women, the elderly, and those who are immunosuppressed, HIV positive, or have had chemotherapy.
8. Antibiotics: Antibiotics are commonly administered in animal feed in the United States. Antibiotics are included at low levels in animal feed to reduce the chance for an infection and to eliminate the need for animals to expend energy fighting off bacteria, with the assumption that saved energy will be translated into growth. The trend of using antibiotics in feed has increased with greater numbers of animals held in confinement. The more animals that are kept in close quarters, the more likely it is that infection or bacteria can spread among the animals. Seventy percent of all antibiotics and related drugs used in the U.S. each year are given to beef cattle, hogs, and chicken as feed additives. Nearly half of the antibiotics are identical to ones given to humans.

There is strong evidence that the use of antibiotics in animal feed is contributing to an increase in antibiotic resistant microbes and causing antibiotics to be less effective for humans. This is a serious threat to human health because fewer options exist to help people

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overcome disease when infected with antibiotic resistant pathogens. Antibiotics are not fully metabolized by animals, and can be present in their manure. If manure pollutes a water supply, antibiotics can also leach into the ground water or surface water.

9. Property Values: There is evidence that CAFOs do affect property values. The reasons for this are many: the fear of loss of amenities, the risk of air or water pollution, and the increased possibility of nuisances related to odor or insects. CAFOs are typically viewed as a negative externality that can't be solved or cured. There may be stigma that is attached to living by a CAFO. One study shows that property value declines can range from a decrease of 6.6% within a 3 miles radius of a CAFO to an 88% decrease within 1/10 of a mile from a CAFO.

The authors of the September 14th letter are also wrong in their conclusion that Polk County lacks the authority to implement a moratorium. It makes sense for counties, such as Polk County, to implement a moratorium to: a) investigate whether additional regulations for CAFOs are required; and b) investigate whether the County has sufficient resources to enforce existing or new regulations. There is no statutory prohibition against the County implementing such a moratorium because the moratorium does not deny or grant any livestock facility citing permits. Accordingly, the moratorium is not controlled by Wisconsin Statute §93.90(3). In addition, the *Adams* case did not deal with the issue of whether a moratorium may be implemented by a town or county—so that case provides no support for the position that a moratorium cannot be implemented by Polk County.

Such a moratorium is also not the same thing as a “development moratorium.” Wisconsin Statutes §66.1002(1)(b) defines a development moratorium as follows:

“Development moratorium” means a moratorium on rezoning or approving any subdivision or other division of land by plat or certified survey map that is authorized under ch. 236.

A moratorium implemented for the purpose of investigating the need for siting or operational regulations is not a development moratorium and therefore it is not controlled by statutes §59.69(4).

Finally, without any explanation, the September 14th letter mixes statutes and administrative rules regarding siting with laws that apply to operational regulation. It should go without saying that Wisconsin statute §93.90 is not the same thing as Wisconsin statutes §92.15.

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Very truly yours,

A handwritten signature in blue ink, appearing to read "Andrew L. Marshall", with a stylized, cursive script.

Andrew L. Marshall

ALM:sag