Question Responses – Public Hearing

S & S Jerseyland, March 2, 2017

Comment Period Closed March 9, 2017

103 people submitted attendance forms, 31 people made oral comments (25 against & 6 in favor) and 6 written comments (opposing) were received, 14 written comments were received via USPS (1 supporting and 13 opposing) and 84 e-mail comments were received (30 supporting and 54 opposed).

The majority of the comments related to the proposed growth in animal units during the next permit term. Prior to any proposed expansion the farm must demonstrate its compliance with the 180 day storage requirement found in *NR 243.14(8).* Other concerns about noise, odor, vehicle traffic, impacts to tourism and a general feeling that "10,000 cows is too much for the area" are placed in the record but are not considered specific to the water quality aspects of a WPDES permit.

1) Request that WDNR limit manure applications in closed depressions regardless of soil depth?

The Department's rules at § NR 243.14(2) (b) (8) currently restrict the application of manure within 100 feet of a "direct conduit to groundwater." A direct conduit to groundwater is defined to mean "wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, non-metallic mines, the inlets discharging to groundwater quarries, or depressional groundwater recharge areas over shallow fractured bedrock." Wis. Admin. Code § NR 243.03(20) (emphasis added). The promulgated restrictions and definitions in NR 243 are the result of a robust rulemaking procedure that incorporated input from numerous stakeholders. To prohibit manure applications entirely over depressional areas as the County Departments request would be contrary to the language in NR 243 that spreading manure should only be restricted in a depressional area that is over shallow fractured bedrock. Any changes to this language must go through a rule-making process. Additionally, regarding manure spreading near sinkholes, it is noted that § NR 243.14(2)(b)(8) already provides a 100-foot setback from a sinkhole.

2) Require a storm water management plan be developed and implemented?

To the extent S&S will alter its production facility, it will follow the necessary procedures to obtain advanced engineering plan and spec approval and storm water runoff permits for construction activities. No further environmental review is warranted for the Department's reissuance action. See § NR 150.02 (note) (citing exemption from environmental review for WPDES permitting actions under Wis. Stat. § 283.93).

3) Request for animal unit cap be inserted in the reissued permit?

The DNR is not including an animal unit cap/modification threshold in the reissued WPDES permit. There are a number of reasons the DNR does not include an animal unit cap/threshold in this or most other individual WPDES permits. CAFO WPDES permits are permits issued by the DNR to livestock operations to operate at 1,000 animal units or more. At the time of application and on an annual basis, animal unit numbers, associated manure and process wastewater generation, and available storage is reported to the department. The department reviews this information to determine if the facility has maintained enough spreadable acreage in the approved nutrient management plan and*

determines if the facility has a minimum of 180 days of storage for liquid manure.

When a facility proposes to expand during the permit term, they must confirm adequate land base and manure storage to support the addition of animal units. If the facility needs to build additional storage or add land base to support the expansion, those items are available for public review and comment at that time. Addition of a sample point for manure storage requires a permit modification; addition of any new land is public noticed online at that time also.

**In a limited number of cases, the DNR may issue a WDPES permit to operations with fewer than 1,000 animal units based on certain discharges to waters of the state.*

4) Require S & S Jerseyland to complete an environmental impact statement (EIS) of the farm's production areas?

Only the issuance of WPDES permits for new sources are subject to a level of environmental review, and even then, the issuance of a WPDES permit for a new source CAFO generally qualifies as an "integrated analysis action," a term that recognizes environmental review has been built into the permitting process, obfuscating the need for an environmental impact statement in those situations. § NR 150.20(2)(a)(3w).
In this situation, S&S is an existing source so its reissuance application is not subject to and does not require the preparation of an EIS. The Department conducted an environmental review process when S&S first applied for and received its initial WPDES permit and this reissuance does not authorize the discharge of a different nature or kind of pollutant. The facility's WPDES permit regulates production area discharges and runoff to meet the requirements of the laws of the State of Wisconsin. To the extent S&S will alter its production facility, it will follow the necessary procedures to obtain advanced engineering plan and spec approval and storm water runoff permits for construction activities. No further environmental review is required for the Department's reissuance action. See § NR 150.02 (note) (citing exemption from environmental review for WPDES permitting actions under Wis. Stat. § 283.93).

5) Require a review of the effectiveness of the farm's silo bunker vegetative treatment area?
As with all WPDES permits S & S Jerseyland shall conduct an evaluation of the farm's existing feed storage runoff collection systems to determine if it meets the requirements of NR 243.15. Below is a proposed schedule for this facility:

Required Action	***Due Date***
Written Description of Existing System and Interim Measures: *Submit written description of the existing feed storage area and its adequacy to meet the conditions found in the Production Area Discharge Limitations subsection and NR 243.15, Wis. Adm. Code. Specify any interim measures in place to comply.*	*11/01/2017*
Plans and Specifications: *Submit plans and specifications for Department review and approval to permanently correct any adverse conditions for the feed storage area in accordance with Chapter 281.41, Wis. Stats., and Chapter NR 243, Wis. Adm. Code.*	*05/01/2018*

Corrections and Post Construction Documentation: *Complete construction of improvements to permanently correct any adverse conditions in concurrence with and approval by the Department, by the specified Date Due. Submit post construction documentation within 60 days of completion of the project.*	*11/01/2018*

6) Does the proposed herd expansion constitute a violation of the Clean Water Act (CWA)?

The production site area of a CAFO is presumed to be zero discharge as stated in the permit: "Section 1.1 of the permit (Production Area Discharge Limitations) says: "A permittee may not discharge any pollutants from the production area to a 303(d) listed surface water if the pollutants discharged are related to the cause of the impairment, unless the discharge is allowed under an EPA approved TMDL." The fields are considered nonpoint and are not part of the production area. So unless there is a proposed permitted increase in pollutants from the production area, the CWA argument has no merit. The Ahnapee River is listed as an impaired water for PCBs above the Forestville Dam and PCBs and Phosphorus below the Dam. At this time the Ahnapee River is not an approved TMDL.

7) Request to require monitoring wells be installed in close proximity to the manure storage(s) and "possibly sensitive karst areas where land spreading activities are also taking place by the operation?"

Managing manure according to a Nutrient Management Plan as required under a CAFO permit will limit nutrient inputs to groundwater. The permit requirements and the NMP are designed to protect groundwater and nearby waterways from the impacts of manure spreading on surrounding farmlands. There are practical obstacles to site-specific groundwater monitoring of land application sites as monitoring numerous locations over a long period of time would be required to determine existing background and isolate trends in nutrient concentrations in response to an NMP. The permit program is designed to protect groundwater as a first resort, rather than detect problems after they occur.

At this time, the department has determined there are no unique risks associated with the storage and containment of wastes at S & S Jerseyland Dairy's production sites to warrant installation of groundwater monitoring wells. The storages were built to NRCS standards and permit requirements that are designed to minimize impacts to groundwater.