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Wisconsin State Senator
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Testimony on 2019 Assembly Bill 69 Senator Robert Cowles Assembly Committee on Agriculture – May 28, 2019

Thank you, committee members, for allowing me to testify on 2019 Assembly Bill 69. This bill would divert the entirety of the annual agricultural permitting fees for large-farms from the general fund to the DNR’s segregated account for environmental quality and management of state water resources to help address the wastewater permitting and inspection backlog.

Under current law, a \$345 annual permit fee is collected from all concentrated animal feeding operations (CAFO) that hold a Wisconsin Pollution Discharge Elimination System (WPDES) permit from the Department of Natural Resources (DNR). Of this \$345 permit fee, just \$95 is deposited into a program revenue account that the DNR uses for staff time and expenses related to permit issuance, reissuance, and compliance activities such as inspections and enforcement. The remaining \$250 of the permit fee is deposited into the general fund.

In June of 2016, the nonpartisan Legislative Audit Bureau, at the request of the Joint Audit Committee which I Co-Chair, released an evaluation of the DNR’s Wastewater Permitting and Enforcement Program (Audit 16-6). The audit highlighted numerous deficiencies in several areas of the Department’s Program. This Program is not just for agricultural permitting, but also includes permitting for municipal wastewater treatment plants and industrial facilities. The permit backlog discovered at that time is noted below.

Permit Backlog¹

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015 ²
Municipal Permits	6.0%	4.7%	6.8%	10.0%	14.1%	19.0%	26.1%	30.1%	29.8%	27.6%	22.5%
Industrial Permits	13.9%	13.2%	16.3%	19.4%	21.6%	27.4%	37.1%	43.9%	36.0%	27.0%	27.7%
CAFO Permits	13.6%	13.2%	10.4%	13.6%	11.9%	13.5%	13.7%	15.1%	15.4%	9.9%	9.9%

■ Shaded cells indicate DNR did not meet its backlog goal: no more than 10 percent for municipal and industrial permits and no more than 15 percent for CAFO permits.

¹Based on July of each year.

²Based on unaudited data reported by DNR.

Along with permit issuance, reissuance, and enforcement, the Department is also required to complete on-site inspections. The audit noted that the DNR’s goals include inspecting CAFO permittees at least twice during each five-year permit term.

Since the release of the audit, the DNR has taken several steps to address municipal, industrial, and CAFO permit backlogs, in-part through reassigning some staff members to this Program. The Department is also addressing inspection backlogs and they have taken innovative steps to make more permitting materials and information available on their website.

Results of these efforts have produced better results for the Program, as permit backlogs are generally decreasing. However, in the most recent update from the DNR on WPDES permits, backlogs now exceed 21% in the CAFO division. The simplest and most common-sense way to reduce the permit backlog and ensure inspections are taking place within the DNR's goal levels is to allocate the entirety of the permit fees to the segregated permitting account so permit drafters can expeditiously review and approve more permits while still ensuring the permit's validity. In numbers provided by the nonpartisan Legislative Fiscal Bureau, diverting the entirety of the permitting fees from the general fund to the program revenue account could result in somewhere between approximately \$55,000 and \$75,000 in additional WPDES funding as illustrated below.

Fiscal Year	PR (Actual)	GPR (Estimated)	Total (Estimated)
2014	\$22,100	\$58,200	\$80,300
2015	\$21,000	\$55,200	\$76,200
2016	\$25,900	\$68,200	\$94,200
2017	\$24,500	\$64,400	\$88,900
2018	\$28,600	\$75,400	\$104,000

Maintaining a large permit backlog only hinders our ability to improve water quality and creates uncertainty for the agricultural industry. Assembly Bill 69 recognizes that this revenue can be better utilized by the DNR's permitting program rather than its continued deposit in the general fund, and further ensures that the permittees pay a greater share of the cost of the program responsible for their oversight.

This additional revenue may not eliminate the backlog, but we believe that funding an additional staff position or creating flexibility to train and retain more permitting staff will produce a noticeable impact and create a better functioning wastewater permitting program.

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Assembly Committee on Agriculture
2019 Assembly Bill 69
Permit Fees for Concentrated Animal Feeding Operations
May 28, 2019

Good morning Chairman Tauchen and members of the Committee. My name is Brian Weigel, and I am the Deputy Director of the Runoff Management Program with the Wisconsin Department of Natural Resources. I am joined today by Todd Ambs, who is the Assistant Deputy Secretary for the DNR. Thank you for the opportunity to testify for informational purposes on Assembly Bill 69, which relates to permitting fees for concentrated animal feeding operations.

Under current law, a concentrated animal feeding operation (CAFO) permit holder pays an annual fee of \$345. Of that amount, \$95 is designated as program revenue and used to administer the CAFO program. The remaining \$250 is deposited into the general fund. Under this bill, the full amount of annual permit fee would be available to implement the CAFO program.

As of February 2019, there were 305 CAFOs paying an annual \$345 fee. The current state annual revenue is estimated at \$105,225, with \$28,975 going to department program revenue, and \$76,250 to the state general fund. SB 31 would increase DNR program revenue by \$76,250 and correspondingly reduce the state general purpose revenue by \$76,250.

Directing the entire annual CAFO fee would provide the CAFO program with sufficient funding to support one additional field staff person. The department's goal is to achieve a 20:1 permit-to-field staff ratio for optimal program implementation. We currently have 305 active permits and 14 field staff for a 22:1 ratio. Please also note that, on average, there are 15 new CAFO permits added annually in the State of Wisconsin. The department is currently processing 30 new permit applications. Therefore, in the short-term, this bill would help the Department move toward achieving the appropriate permit-to-staff ratio.

While AB 69 offers additional resources to implement the CAFO program, the Governor's budget proposal offers much needed, long-term stability in supporting the program through increased permit fees which would be used for five new positions. The proposal establishes an initial permit issuance and 5-year reissuance fee of \$3,270, and an annual fee of \$660 for all permits, for an annual estimate of \$425,000.

Of the five new positions, three would be directed as field staff for drafting permits and assuring compliance. The department currently has a 0.5 FTE hydrogeologist position to investigate groundwater, and a 0.5 FTE position to coordinate compliance and enforcement activities. The Governor's budget proposal would create a full-time hydrogeologist and a full-time compliance and enforcement coordinator position. We would add a statewide manure spills coordinator due to increasing workload in

manure spill response. The number of spills has approximately doubled over the last 10 years and may exceed 100 episodes in 2019. The fifth new position would perform a central intake function to improve department review of required submittals, such as, nutrient management plans, engineering plans for designed structures, and permit applications. The intake specialist will help facilitate complete and timely reviews.

Whenever CAFO permit application numbers increase without increasing staffing, the following tend to occur:

- Reduced frequency of compliance inspections (limited to once every five years) and reduction or elimination of manure hauling compliance checks.
- Fewer staff interactions with facility owners and operators reduces an ability to develop an understanding of whole-farm operations which is paramount to proactively avoiding problems.
- Reduced or limited review of annual reports submitted by permitted operations.
- Increased permit backlog due to increased focus on permitting first time permittees and expansions at currently permitted operations.

While AB 69 moves us in the right direction, the Governor's budget would go a long way towards adequately supporting a program in need of additional resources. On behalf of the DNR and the Watershed Management Bureau, we would like to thank you for your time today. We would be happy to answer any questions that you may have.



**Testimony of Amber Meyer Smith
Vice President of Programs and Government Relations
AB 69
Assembly Agriculture Committee
May 28, 2019**

Clean Wisconsin is a non-profit environmental advocacy group focused on clean water, clean air and clean energy issues. We were founded almost fifty years ago and have 20,000 members and supporters around the state.

We certainly appreciate the intent of the authors to re-examine some of the inherent issues with our CAFO fee structure. This bill calls attention to the fact that CAFO fees are woefully inadequate to support the necessary oversight that we count on our government to provide.

Many people have been focused on agricultural pollution in the past few years, with science providing us increasing evidence of the direct link between agricultural runoff and drinking water contamination. A 2016 Legislative Audit Bureau audit of DNR's WPDES program revealed several inadequacies with respect to CAFO staffing and enforcement. It is clear that much more needs to be done to make sure that people's health and our waters are protected from the huge pollution potential that comes along with a large agricultural operation. People are demanding bold action, and unfortunately this bill falls short of delivering enough resources to address the problems.

We support the concept that all fees should be deposited with the agency for staffing as this bill provides, but it is hard not to see the stark contrast with Governor Evers' budget proposal to add 5 staff at DNR to deal with CAFO permits by raising fees which is being taken up by the Joint Finance Committee today. AB 69 would generate \$76,250 and the Governor's proposal will generate \$310,000 annually. Raising the fee is a necessary component of any effort to make an impact on how our state looks at CAFO permitting and enforcement. One of the strongest commitments made to remedy the issues with DNR's permit system brought up in the 2016 LAB audit was a higher permit-to-staff ratio. The DNR offered that a 20:1 ratio would allow them to conduct inspections in a timely way, but they need the revenue offered in the budget bill to achieve that goal. Unfortunately, this bill will only offer a fraction of the revenue needed for meaningful change in our CAFO permit monitoring.

It should also be noted that Wisconsin currently has the lowest CAFO fees in the Midwest. It is well past time that we rectify this and better align CAFO permit fees in Wisconsin with our neighboring states in order to provide needed resources for permitting and enforcement to make sure that CAFOs aren't contributing to the pollution problems we face.

In other DNR programs, industry willingly pays fees commensurate with the staffing needs of the agency. For instance, industries that rely on air permits have championed fee increases in the past in order to ensure the programs they regularly interact with are fully staffed. They realize that adequate staffing means they get faster and better-quality permits that ultimately help ensure they are operating in ways that

make environmental harm unlikely. As the Legislative Fiscal Bureau points out in Budget Paper #529, "Regulatory fees are often assessed on regulated entities to cover the state's costs associated with their oversight and regulation. For example, the Department of Safety and Professional Services, Department of Financial Institutions, and the Public Service Commission are all largely funded by program revenue assessments on the entities that they are charged with regulating." We think it's time legislators and the CAFO community embrace the same method of funding.

We hope that the supporters of this bill will join us in supporting the CAFO fees proposed in the Governor's budget and the 5 staff that will add great value as the DNR continues its work to address agricultural pollution.





Committee on Agriculture

Assembly Bill 69

May 28, 2019

Thank you Chairman Tauchen and committee members for allowing me to address Assembly Bill 69. My name is Jim VandenBrook and I am representing Wisconsin's Green Fire. We have some suggestions on how to make the bill better.

In short, Wisconsin's Green Fire believes that AB 69 is an important step in the right direction toward improving the effectiveness of the state's CAFO program to protect water quality. Providing all of the existing CAFO fees directly to the program, as AB 69 proposes, is a very good thing. **But we believe that ensuring compliance with CAFO regulations, is a much larger task than the fees can reasonably support.** After all CAFOs now produce about 40% of the state's milk and roughly that percentage of manure. This accounts for a great economic impact, but also a large environmental risk that must be managed.

Inspections provide the oversight to enforce the CAFO rules. The DNR goal has been to inspect CAFOs at least twice in a five-year period. The Legislative Audit Bureau found that while the number of CAFO inspections increased, the percentage of CAFOs inspected twice within a five-year period has never exceeded 48%. Maintaining a target inspection rate is critical to ensure that facilities and practices are in place to avoid fertilizer or manure spills and to comply with nutrient management plans intended to avoid pollution.

Just as the dairy industry benefits from the high public regard for the safety of its food products due to DATCP's strong enforcement of its dairy inspection program, so too should the public be assured that their water supplies are protected by an adequate CAFO permit inspection program by DNR.

Again, we applaud the direction that AB 69 takes the CAFO program. It is a good first step. As a next step, we believe that the Governor's budget proposal to increase CAFO fees would not only make DNR's inspection program more credible, but would build trust between the dairy industry and its consumers. Further, considering a tiered approach to the fee structure based on CAFO size would parallel the increased inspection effort that larger operations engender.

Thank you for the opportunity to deliver me comments to you and I would be happy to talk further with you if you would like to contact me at the email below.

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organization formed in 2017. WGF supports the conservation legacy of Wisconsin by promoting science-based management of its natural resources