

ROBERT L. COWLES

Wisconsin State Senator
 2nd Senate District

Testimony on 2019 Senate Bill 31

Senator Robert Cowles

Senate Committee on Natural Resources and Energy – April 30, 2019

Thank you, committee members, for allowing me to testify on 2019 Senate Bill 31. 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	11.6%	11.2%	10.4%	13.8%	11.9%	11.5%	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 includes 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.

These efforts have produced better results for the Program, as permit backlogs are generally decreasing. However, in an August 2018 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. Senate Bill 31 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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TO: Senate Committee on Natural Resources and Energy
FROM: Rep. Scott Krug
RE: 2019 SENATE BILL 31
DATE: April 30, 2019

I write today to thank the committee and Sen. Cowles for holding a hearing on SB 31, a proposal pertaining to permit fees for concentrated animal feeding operations (CAFOs). I also thank Sen. Cowles for his role in authoring SB 31 in the State Senate. As you know, I am the lead author in the State Assembly. (SB 31 has a companion bill, 2019 AB 69.)

SB31 is a bill based in common sense.

- For a reason we cannot fathom, a large portion of fees paid by CAFOs for their waste discharge permit goes into the general fund and is not directed entirely toward permitting decisions.
- Senator Cowles and the Joint Legislative Audit Committee were able to share some data last year showing that the DNR had a significant backlog on their review of WPDES (Wastewater Pollutant Discharge Elimination System) CAFO permits. It isn't hard to connect the dots to see that these two pieces of information are probably related.

We must find better ways to help DNR reach their goal of holding backlogs for permits to 15% or less, and not allow that number to creep up to 22% where it sits right now. Extra dollars from CAFO fees for WPDES permits (that are not needed in the general fund, which now enjoys a large surplus) need to be put to use for what they are intended for.

Permit decisions (yes or no) should must come in a reasonable time frame, and not drag on for communities and producers to have to wonder what the decision will be. I have more than one community in my district that is facing that uncertainty and it isn't a very comfortable

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proposition for anyone involved. This bill takes a first step in addressing the ability of the DNR to make some sort of a decision in a timely manner.

Now, there can be, and should be, plenty of discussion this session on whether the \$345 amount is appropriate. I am sure that some will want to discuss enforcement actions and what should be done with violations, especially those with multiple violations. What I can say for sure is that any fee paid for by an operator for a certain reason, whether this or any other, should go for what it is intended.

Other bills can follow this bill and build on the integrity of the WPDES program for CAFO operations. Today, we take this first step in ensuring certainty in at least one aspect. I will be happy to meet with anyone and go through some of the details, I apologize for not being in attendance today but assure you I am committed to this process and other bills coming forward.

I conclude by asking for your support for SB 31. Thank you for your attention to this matter.

State Rep Scott Krug



Committee on Natural Resources and Energy

Senate Bill 31

April 30, 2019

Thank you Chairman Cowles and committee members. My name is Jim VandenBrook and I am here today representing Wisconsin's Green Fire and am speaking for information only.

In short, Wisconsin's Green Fire believes that SB 31 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 SB 31 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 SB 31 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 speak with you today and I would be happy to answer any questions.

Jim VandenBrook
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Wisconsin's Green Fire: Voices for Conservation (WGF) is an independent nonpartisan organization formed in 2017. WGF supports the conservation legacy of Wisconsin by promoting science-based management of its natural resources

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Senate Committee on Natural Resources and Energy
2019 Senate Bill 31
Permit Fees for Concentrated Animal Feeding Operations
April 30, 2019

Good morning Chairman Cowles 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 Senate Bill 31, 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 SB 31 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 SB 31 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
SB 31
Senate Natural Resources and Energy Committee
April 30, 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 Chairman's intent 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. Chairman Cowles himself helped launch an audit of DNR's CAFO program which revealed several inadequacies with respect to staffing and enforcement to carry out agency procedures. 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 begin to address the problems.

We support the concept that all fees should be deposited with the agency for staffing, 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. This bill 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. 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. We think it's time the CAFO community embrace the same attitude.

We also 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.

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