BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

DECISION/DETERMINATION ON
WISCONSIN ENVIRONMENTAL POLICY ACT COMPLIANCE

For

Richfield Dairy Confined Animal Feeding Operation (RDCAFO)

INTRODUCTION

The Wisconsin Environmental Policy Act (WEPA), s. 1.11, Stats., requires state agencies to fully consider and disclose the environmental impacts of agency actions. Chapter NR 150, Wis. Adm. Code, outlines policy and procedures for implementing WEPA for the Department of Natural Resources (DNR). Section NR 150.24, Wis. Adm. Code (2013), and s. NR 150.35, Wis. Adm. Code (2014), require a final written decision regarding WEPA compliance.

The Wisconsin Department of Natural Resources has prepared an environmental impact statement for the RDCAFO in order to satisfy WEPA as outlined above.

FINDINGS OF FACT

The Department of Natural Resources finds that:

1. This project was initiated under a previous version of ch. NR 150, Wis. Adm. Code – referred to here as the 2013 version. This decision/determination is made under the current version of ch. NR 150, Wis. Adm. Code, which is an emergency rule revision to the rule promulgated on April 1, 2014. This is referred to here as the 2014 version.

2. Under the 2013 version, s. NR 150.03, Wis. Adm. Code, established a "Type List" for all DNR actions, setting minimum procedural requirements for WEPA compliance. Pursuant to s. NR 150.03 (8)(i)2.a, Wis. Adm. Code (2013), issuance of a Wisconsin Pollutant Discharge Elimination System (WPDES) permit for this RDCAFO project was a Type 2 action, requiring that an Environmental Assessment (EA) be completed. An EA was prepared, received public review from June 8, 2011 to July 25, 2011, and was finalized on November 1, 2011. A Supplemental EA (SEA) was also prepared, received public review from November 26, 2012 to January 7, 2013, and was finalized on March 12, 2013. The Department followed the process as outlined under s. NR 150.20 (1) (c), Wis. Adm. Code (2013).

3. Interested parties sought judicial review of the adequacy of the EA. As a general matter, the Dane County Circuit Court found the original EA to be adequate. However, the Court remanded the EA to DNR on July 20, 2012, finding that the EA did not evaluate the effects of the high capacity wells at their approved pumping rate. In response to the Court's order, DNR prepared

the SEA. The SEA included additional factual investigation to allow a reasonably informed preliminary judgment about the environmental effects of the high capacity wells operating at 72.5 million gallons per year (MGY), which is the rate requested by the Richfield Dairy in a revised high capacity well approval application. During the public review period on the SEA, the DNR received 183 comments. The DNR carefully reviewed all comments and provided detailed responses to those comments as part of its March 12, 2013, WEPA compliance decision.

4. The Circuit Court had concluded that DNR's original EA and SEA evinced "sufficient consideration of the cumulative effects of the high capacity wells." The parties that sought judicial review of the EA appealed that portion of the court's ruling. The Court of Appeals, District IV, issued its decision on December 19, 2013 (2012AP1882). The Court of Appeals reversed the part of the Circuit Court's decision that concluded that DNR properly considered cumulative impacts and remanded the case, directing DNR to consider the cumulative effects of the two high capacity wells in conjunction with other high capacity wells.

5. On March 26, 2014, pursuant to the Court of Appeals decision, the Dane County Circuit Court issued a Supplemental Remand Order (case # 11CV3375), directing DNR to consider the cumulative effects of the two high capacity wells, consistent with the Court of Appeals decision.

6. The same parties that petitioned for judicial review of the EA also requested a contested case hearing regarding the permit and approvals for the proposed Richfield Dairy, including the high capacity well approval. During the time when the original EA was being challenged at the Court of Appeals, the contested case hearing proceeded, on June 24-28, August 19-22 and December 16-20, 2013. Because the Supplemental Remand Order was received by DNR following the close of the contested case hearing, this WEPA analysis includes some relevant information that became available at the hearing.

7. Since the Court's remand, Chapter NR 150 has been revised, and the new rule went into effect on April 1, 2014.[1]

8. The department has decided, pursuant to s. NR 150.20(4)(b), Wis. Adm. Code (2014), and s. NR 150.22(1)(f), Wis. Adm. Code (2013), to follow the Environmental Impact Statement (EIS) procedures as the best approach to achieve WEPA compliance for this action and to satisfy the Circuit Court's Supplemental Remand Order. In addition, an EIS was determined to be the best way to capture the previous EA, Supplemental EA and the associated response to comments for both documents.

9. DNR received the decision in the contested case hearing, dated September 3, 2014. The Administrative Law Judge (ALJ) limited the approved maximum groundwater withdrawal amount for the property to 52.5 million gallons in any 365-day period. Since the draft environmental impact statement (EIS) was largely prepared before the decision in the contested

[1] In addition, ch. NR 150 was amended by an emergency rule, ER1417, which became effective on August 31, 2014, and continues in effect until May 27, 2015. The emergency rule provisions do not have an effect on this EIS.

case hearing was received, it primarily considered the potential environmental impacts of the high capacity wells operating at 72.5 MGY, such that the impacts from the Dairy's wells were overstated in the draft EIS. The final EIS has been amended to primarily consider the potential environmental impacts of the high capacity wells operating at 52.5 MGY, which is the pumping rate approved by the ALJ.

10. Much of the EIS includes materials prepared for public review in the previous environmental analysis documents, as described above. In specific response to the Court's remand order, the area impacts and cumulative impacts sections of the analyses have been revised and may be found in Section IV.A.4 and Chapter V of the EIS.

11. The process for public comment was conducted in a manner that complied with both the 2014 and 2013 versions of ch. NR 150. As such, the public review followed the current procedures, as outlined in ss. NR 150.20 and 150.30, Wis. Adm. Code (2014), and the prior procedures, as outlined in ss. NR 150.20to 150.23, Wis. Adm. Code (2013), with a 45 day comment period for the Draft EIS, as provided in s. NR 150.22(3)(d), Wis. Adm. Code (2013).

12. The Department web-site has most of the current and previous documentation for this proposal at:

    http://dnr.wi.gov/topic/agbusiness/cafo/richfielddairy.html

13. In addition to the documentation on the Department's web-site, there are three (3) DVDs that contain the following documentation from the contested case hearing for this proposal: pre-filed testimony from all witnesses, all hearing exhibits and the hearing transcript. The DVDs can be made available by contacting Russ Anderson, Fitchburg Service Center, 3911 Fish Hatchery Road, Fitchburg, WI 53711 at 608-275-3467

CONCLUSIONS OF LAW

The Department concludes that:

1. The Department of Natural Resources, under s. 1.11, Stats., and Ch. NR 150, Wis. Adm. Code (2013 and 2014), has the responsibility to comply with WEPA, and the authority to determine its compliance with that Act.

2. The procedure and analysis identified in the Findings of Fact complies with the requirements of s. 1.11, Stats., and ch. NR 150, Wis. Adm. Code (2013 and 2014).

DECISION/DETERMINATION

The DNR has complied with the requirements of WEPA, s. 1.11, Stats. and Ch. NR 150, Wis. Adm. Code (2013 and 2014), for the RDCAFO project. Documents for this project can be found on the Department website under Paragraphs 12, and by contacting Russ Anderson under paragraph 13 above.

This Decision/Determination applies to all DNR actions on the project, the impacts of which are considered in the EIS and are already completed.

Dated at Fitchburg, Wisconsin, this 13th day of April, 2015

STATE OF WISCONSIN
Department of Natural Resources
For the Secretary

By: _____
Russ Anderson, Supervisor of the Environmental Analysis and Review program, South Central Region

NOTICE OF APPEAL RIGHTS

If you believe you have a right to challenge this decision made by the Department, you should know that Wisconsin statutes, administrative codes, and case law establish time periods and requirements for reviewing Department decisions.

To seek judicial review of the Department's decision, ss. 227.52 and 227.53, Stats., establish criteria for filing a petition for judicial review. Such a petition shall be filed with the appropriate circuit court and shall be served on the Department. The petition shall name the Department of Natural Resources as the respondent.