January 4, 2019

TO: INTERESTED PARTIES

RE: Daley Farms of Lewiston, LLP – 2018 Dairy Expansion

The Minnesota Pollution Control Agency (MPCA) has approved the Findings of Fact, Conclusions of Law, and Order for a Negative Declaration on the need for an Environmental Impact Statement on the proposed Daley Farms of Lewiston, LLP – 2018 Dairy expansion project, Winona County. The Findings of Fact, Conclusions of Law, and Order document concludes that this project does not have the potential for significant environmental effects. The decision for a Negative Declaration completes the state environmental review process under the revised Environmental Quality Board rules, Minn. R. ch. 4410. Final governmental decisions on the granting of permits or approvals for the project may now be made.

The MPCA has also approved the Findings of Fact, Conclusions of Law, and Order to deny the request for a Contested Case Hearing on the issuance of coverage under the State of Minnesota Individual Animal Feedlot National Pollution Discharge Elimination System Permit MN0067652 (Individual NPDES Feedlot Permit) for Daley Farms of Lewiston, LLP.

These documents can be reviewed at the following locations: the MPCA offices in St. Paul; the Minneapolis Public Library at 300 Nicollet Mall, Minneapolis; and the Rochester Public Library at 101 Second Street SE. The document can be viewed on our MPCA website at www.pca.state.mn.us/eaw. Requests for copies of these documents may be made by contacting the St. Paul office at 651-757-2100.

Also, enclosed is a copy of my letter to the MN Environmental Quality Board (EQB) recommending a Generic Environmental Impact Statement for the karst area of southeastern Minnesota. This area suffers from existing groundwater contamination that pollutes existing and future drinking water wells.

We want to express our appreciation for comments submitted on the Environmental Assessment Worksheet and the Individual NPDES Feedlot Permit. Comments and responses to them have been incorporated into the Findings of Fact, Conclusions of Law, and Order and have been considered by MPCA staff during the permit process for the proposed project.

Please note that the mailed packet will not include the comment letters since the volume of comment letters is so large. However, all of the comment letters will be included in the packet posted on the MPCA website, https://www.pca.state.mn.us/quick-links/projects-under-m pca-review.

Sincerely,

John Linc Stine
Commissioner

JS:bt
January 4, 2019

David Frederickson, Chair
Minnesota Environmental Quality Board
625 Robert Street North
St. Paul, MN 55155

Dear Chair Frederickson:

In follow-up to our discussion at the December 19, 2018, Minnesota Environmental Quality Board (EQB) meeting, I am formally requesting that the EQB order a generic environmental impact statement (EIS) under Minn. Rules pt. 4410.3800, subp. 3 to study and address nitrate pollution of groundwater in the geologically sensitive karst region of southeastern Minnesota.

As you know, the karst region is particularly susceptible to rapid seepage of contaminants from the land and overlying soils, making the groundwater of this region very vulnerable to contamination. The Minnesota Department of Health (MDH) and the Minnesota Department of Agriculture (MDA) together have extensive data documenting nitrate contamination of public and private drinking water wells. In particular, data recently compiled via the MDA Township Testing Program have found numerous townships in the karst region with private wells at or above the 10 milligrams per liter health risk limit for nitrate.

Nitrate in drinking water can pose a health risk to people, especially infants and the elderly. It is important to have a sound understanding of the sources of nitrate contamination of groundwater in order to properly minimize and manage potential impacts. However, this issue of nitrate contamination is bigger than any one project or site, and merits a generic EIS.

A generic EIS can help Minnesota citizens, businesses, and decision-makers better understand the nature, extent and sources of the nitrate contamination. This will provide insight into the actions needed to address the existing contamination that is the cumulative effect of current practices and activities, as well as inform the review of new projects. Such a generic EIS could be scoped to focus on the sensitive karst region of Minnesota, or could be expanded to include all areas with data showing nitrate contamination of groundwater.

I understand that completing such an EIS will require time and resources. While a decision is pending on a generic EIS, and while a generic EIS is underway if one is ordered, project-specific environmental review will continue as required by Minn. Rules pt. 4410.3800, subpts 8 and 9. The MPCA will continue to work with project proposers within our authority to mitigate potential impacts from new or expanding projects. At the same time, I strongly urge EQB to pursue a generic EIS as noted above, to provide the additional information needed to take a more holistic view of this significant problem, and to help Minnesota to go beyond mitigating the impact of new projects to also better address the existing nitrate contamination that already threatens human health and our environment.

Sincerely,

John Linc Stine
Commissioner

cc: Will Seuffert, EQB Executive Director
Pursuant to Minn. R. ch. 4410.1000, the Minnesota Pollution Control Agency (MPCA) staff prepared and distributed an Environmental Assessment Worksheet (EAW) for the proposed Daley Farms of Lewiston, LLP – 2018 Dairy Expansion. Based on the MPCA staff environmental review, comments, and information received during the comment period, and other information in the record of the MPCA, the MPCA hereby makes the following Findings of Fact, Conclusions of Law, and Order.

**FINDINGS OF FACT**

**Project Description**

1. Daley Farms of Lewiston, LLP (Daley) proposes to expand its existing dairy feedlot in Section 16 of Utica Township, Winona County (Project). The existing feedlot consists of three sites, regulated under the State of Minnesota Individual Animal Feedlot National Pollution Discharge Elimination System (NPDES) Permit MN0067652 (Individual NPDES Feedlot Permit).
   - LLP site, a 1,996.4 animal unit (AU) total confinement barns
   - LLP1 site, a 140 AU partial confinement barn and concrete lot without runoff control
   - LLP7 site, a 138.8 AU partial confinement barn and concrete lot without runoff control

2. Daley is ineligible for the State of Minnesota General Animal Feedlot National Pollution Discharge Elimination System Permit because the feedlot does not currently comply with the surface water effluent limitation requirements of Code of Federal Regulations, Title 40, section 412. Therefore, Daley has applied to modify its Individual NPDES Feedlot Permit, and the Project will be regulated under the Individual NPDES Feedlot Permit. Daley will come into compliance with the federal regulation under a Schedule of Compliance that is incorporated into the Individual NPDES Feedlot Permit.

3. The Project consists of the following items at the LLP site.
   - Adding a cross-vented, total confinement freestall barn with 3,000 dairy cows
   - Eliminating 525 dairy cows and adding 525 heifers to the existing barns
   - Adding a liquid manure storage area (LMSA)
   - Adding stormwater basins to collect the new barn stormwater runoff
   - Adding a rotary milking parlor with a holding area
   - Adding a sand processing and storage building
   - Adding an animal mortality building
   - Adding a feed storage pad
   - Adding a basin to collect feed storage pad stormwater runoff
   - Installing two livestock wells
4. The Project also consists of eliminating the LLP1 site, and adding open-lot runoff controls at the LLP7 site. Daley will add open-lot runoff controls, required to eliminate runoff from animal lots in order to create zero discharge from LLP7 site, in accordance with the Individual NPDES Feedlot Permit Schedule of Compliance.

5. The Project would result in the feedlot increasing from 2,275.2 AU to 5,967.7 AU.

6. The Project would generate approximately 46.2 million gallons of manure annually, and 1.7 million gallons of runoff from the feed storage pad.

7. Daley will land apply the manure on its own fields, and fields owned by third parties who have entered into agreements with Daley.

8. Daley will hire a commercial animal waste technician (CAWT) to land apply manure to cropland according to the MPCA approved manure management plan (MMP).


10. Daley plans to construct the Project once environmental review is complete, and all necessary permits and approvals are granted.

Environmental Review of Project

11. An EAW is a brief document designed to provide the basic facts necessary for the Responsible Governmental Unit (RGU) to determine whether an Environmental Impact Statement (EIS) is required for a proposed project or to initiate the scoping process for an EIS (Minn. R. 4410.0200, subp. 24). The MPCA is the RGU for this Project.

12. In 1997, the MPCA prepared an EAW for Daley’s then proposed expansion, a consolidation of milking operations and retirement of older facilities. The MPCA issued a negative declaration on the need for an EIS on September 22, 1997.

13. Minn. R. 4410.4300, subp. 29(B) requires preparation of an EAW for the Project because it is the construction of an animal feedlot facility with a capacity of 500 AUs or more located in a sensitive location.


15. The MPCA provided public notice of the Project as follows:

   a. The Environmental Quality Board (EQB) published the notice of availability of the EAW for public comment in the EQB Monitor on October 1, 2018, as required by Minn. R. 4410.1500.

   b. The EAW was available for review on the MPCA website at: http://www.pca.state.mn.us/news/eaw/index.html.

   c. The MPCA provided a news release to media in Minnesota and other interested parties on October 1, 2018.

   d. Daley’s draft Individual NPDES Feedlot Permit was open for public comment on October 1, 2018.

   e. On October 11, 2018, the MPCA extended both the EAW and Individual NPDES Feedlot Permit comment period until November 15, 2018.
f. The MPCA provided a news release to the media in Minnesota and other interested parties on October 12, 2018, announcing the extension of the public comment periods.

g. The EBQ announced the extension of the public comment period in the *EQB Monitor* on October 22, 2018.

16. During the 45-day comment period ending on November 15, 2018, the MPCA received 615 comment letters on the EAW and the Individual NPDES Feedlot Permit. The MPCA also received six late comment letters after November 15, 2018; these late comment letters did not include any new information.

17. The list of the comments received during the 45-day public comment period are included as Appendix A to these Findings.

18. The MPCA prepared written responses to the comments received during the 45-day public comment period. These responses are included as Appendix B to these Findings.

**Criteria for Determining the Potential for Significant Environmental Effects**

19. The MPCA shall base its decision on the need for an EIS on the information gathered during the EAW process and the comments received on the EAW (Minn. R. 4410.1700, subp. 3). The MPCA must order an EIS for projects that have the potential for significant environmental effects (Minn. R. 4410.1700, subp. 1). In deciding whether a project has the potential for significant environmental effects, the MPCA must compare the impacts that may be reasonably expected to occur from the Project with the criteria set forth in Minn. R. 4410.1700, subp. 7. These criteria are:

- Type, extent, and reversibility of environmental effects.

- Cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of project proposer to minimize the contributions from the project.

- The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project.

- The extent to which environmental effects are anticipated and controlled as a result of other available environmental studies undertaken by public agencies or project proposer, including other EISs.
On the Need for an Environmental Impact Statement

Findings of Fact

Daley Farms of Lewiston, LLP – 2018 Dairy Expansion

Conclusions of Law

Utica Township, Winona County, Minnesota

And Order

The MPCA Findings with Respect to Each of These Criteria

Are Set Forth Below

Type, Extent, and Reversibility of Environmental Effects

20. The first criterion that the MPCA must consider when determining if a project has the potential for significant environmental effects is the “type, extent, and reversibility of environmental effects” Minn. R. 4410.1700, subp. 7(A). The MPCA findings with respect to this criterion are set forth below.

21. The types of impacts that are reasonably expected to occur from the Project include the following

- Surface water and groundwater quality
- Groundwater appropriation
- Air quality - related to hydrogen sulfide, ammonia, and odor emissions

22. Written comments received during the EAW and Individual NPDES Feedlot Permit comment period raised additional issues

- Non-compliance at existing Daley operations
- Karst geology concerns
- Winona County animal unit cap

23. With respect to the type, extent and reversibility of impacts that are reasonably expected to occur from the Project, the MPCA makes the following findings.

Surface Water and Groundwater Quality

24. Minn. R. pt. 7020.2003, subp. 1 requires feedlots to have no discharge to natural or constructed channels that convey fluids to groundwater.

25. Minn. R. pt. 7020.2003, supb. 2 requires feedlots (CAFO’s or feedlots with 1,000 animal units or more) to comply with surface water effluent limitation requirements of Code of Federal Regulations, Title 40, section 412, and discharge only as authorized by an NPDES permit.

26. The existing LLP site does not comply with the surface water effluent limitation requirements of Code of Federal Regulations, Title 40, section 412, and is currently operating under an Individual NPDES permit for addressing the portion of the feedlot (small part of feed pad runoff collection) that is not meeting the requirements. In addition to expansion at the site, Daley will construct/install runoff control measures for the portion of the existing feedlot that is currently not meeting effluent limitation requirements. Upon completion of the Project, existing and proposed feedlot components will meet effluent limitation requirements.

27. The existing feedlot at the LLP1 site does not meet surface water effluent limitation requirements of Code of Federal Regulations, Title 40, section 412. If Daley receives all permits and approvals for the proposed Project, Daley will close the LLP1 site. If Daley is unable to receive all needed permits and approvals, Daley will continue to operate the LLP1 site. And, in accordance to the Individual NPDES Feedlot Permit Schedule of Compliance, Daley will construct open-lot runoff controls to create a compliant feedlot meeting surface water effluent limitation requirements of Code of Federal Regulations, Title 40, section 412.
28. The existing feedlot at the LLP7 site does not meet surface water effluent limitation requirements of Code of Federal Regulations, Title 40, section 412. However, in accordance to Individual NPDES Feedlot Permit Schedule of Compliance, Daley will construct open-lot runoff controls at the LLP7 site to create a feedlot meeting surface water effluent limitation requirements of Code of Federal Regulations, Title 40, section 412.

29. The Individual NPDES Feedlot Permit requires that all animals at the feedlot have no access to Waters of the State; manure storage occur in a dual-lined (concrete/high-density polyethylene (HDPE) and earthen) LMSA that meets the design criteria of Minn. R. 7020.2100; and all permanent manure stockpile sites meet the requirements of Minn. R. 7020.2125.

30. The Individual NPDES Feedlot Permit requires Daley to develop and maintain on-site a stormwater pollution prevention plan for the Project that includes erosion prevention and sediment control best management practices for the construction and operation of the Project.

31. The Project will include more than 1 acre of new impervious surface. Therefore Daley is required to install permanent stormwater treatment. Daley will install stormwater filtration basins (barn runoff basins) to collect, filter, and discharge barn stormwater runoff.

32. As stated in Daley’s application for permit coverage under the Individual NPDES Feedlot Permit, and confirmed in the MPCA’s review of the application and in the EAW, Daley will install perimeter drain tiles below the dual lined (concrete/HDPE and earthen) LMSA. Daley will install inspection ports on the perimeter tiles to allow for observation of the drains tiles to ensure these are functioning properly and to identify seepage from the LMSA if a leak were to occur.

33. The Individual NPDES Feedlot Permit; also requires Daley to develop updates to its MMP that meet the requirements of Minn. R. 7020.2225. The MMP describes how manure generated at the feedlot is land applied during the fall or spring in a way that maximizes the benefits to cropland, meets all rules and regulations, and protects surface water quality. Daley prepared and submitted a MMP with the Individual NPDES Feedlot Permit application. Once approved, the MMP becomes an integral and enforceable part of the Individual NPDES Feedlot Permit.

34. The Project will require approximately 4,083 acres of land for manure application. Daley has identified 4,179 acres of cropland available for manure application.

35. Daley will hire a CAWT to land apply manure generated by the Project to cropland owned by the manure recipients, as well as land owned by Daley. The CAWT must land apply manure using accepted industry methods to prevent manure spilling onto public roadways. If spillage occurs, the CAWT must remove and properly dispose of the manure in accordance with Minn. R. 7020.2010.

36. The Individual NPDES Feedlot Permit requires Daley, prior to or at the time of manure land application, to provide the manure recipient with the most current manure nutrient analysis. The manure recipient will follow the application of manure as applicable under Minn. R. 7020.2225 or local requirements, whichever is the more stringent. Daley will follow the same requirements for the manure that it applies to the land application sites that it controls.

37. Daley, the CAWT, and the person receiving transferred manure from Daley must keep records of manure land application. Minn. R. 7020.2225 and the Individual NPDES Feedlot Permit contain recordkeeping requirements.

38. Daley must keep records for the six most recent years. Transferred manure records need to include: the commercial applicator that is receiving and applying the manure, amount and nutrient
content of manure delivered, the name and address of the recipient of the manure, and the location and rate where the manure is applied. Retained manure records need to include: nutrient content of manure applied, rate of application, location of application, date of application, application method including timing of incorporation, expected plant-available amounts of nitrogen and phosphorus released from manure and commercial fertilizers, a description of changes to the MMP, and soil nutrient test results.

39. The CAWT must, no later than 60 days following land application, provide Daley with the amount and nutrient content of manure delivered, the name and address of the recipient of the manure, and the location and rate where the manure is applied.

40. The person receiving manure from Daley must complete and comply with Daley’s MMP, and keep records including: nutrient content of manure applied, rate of application, location of application, date of application, application method including timing of incorporation, expected plant-available amounts of nitrogen and phosphorus released from manure and commercial fertilizers, a description of changes to the MMP, and soil nutrient test results.

41. In order to avoid contaminating the groundwater at the manure application sites, the CAWT will apply manure at agronomic rates based on the type of crop grown, the soil type, and the soil chemistry to minimize the potential for nitrate leaching into the groundwater. Minn. R. ch. 7020.2225 governs the requirements for land application of manure, including setbacks to county and/or water supply wells, open well intakes, special protection areas, sinkholes, mines, quarries, and wells. Where a county also has setback requirements, Daley, the CAWT, and the recipients of transferred manure must follow the most restrictive of the state and county setback requirements.

42. Daley agrees to comply with special Individual NPDES Feedlot Permit conditions, beyond what is required in feedlot rule, to better mitigate nitrate loss from manure application. Daley will employ two or more of the following practices on field areas where liquid manure is applied:

1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the Minnesota Department of Agriculture (MDA) soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by thermometer at a depth of 6 inches.

2. Adding a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.

3. Adding a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall before soil temperatures are below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by soil temperature taken by thermometer at a depth of 6 inches.

4. Planting/seeding a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in the fall so to allow for germination and growth of the cover crop before the end of the growing season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.
5. Applying manure in the spring.

6. Split-applying nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.

7. Avoiding application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5, and 6.

43. The MPCA finds that the measures specified above will mitigate the potential for adverse impacts on groundwater quality related to manure incorporated at the manure application sites.

44. The land application of manure, if done improperly, can not only adversely impact groundwater, but can adversely impact surface water resources through manure-laden runoff or manure residue leaching into drain tile lines that outfall to surface waters. Therefore, the MMP requires the CAWT to observe MPCA and/or county setback requirements, as well as all other applicable federal and state rules, whichever are most restrictive, around drain tile intakes located within and adjacent to manure application areas, and near other surface water resources.

45. The MMP requires manure applications to follow all applicable required setbacks from sensitive features, such as karst features and waterways. The land application practices in the MMP, once approved by the MPCA, become enforceable provisions of the Individual NPDES Feedlot Permit.

46. According to University of Minnesota Agriculture Extension manure management information, manure contains several essential plant nutrients and contributes to increased crop yields when properly applied to soils. Manure provides valuable organic matter to soil that improves soil tilth, aids in the retention of water and nutrients, and promotes growth of beneficial microorganisms.

47. Minnesota’s "Final Animal Agriculture Generic Environmental Impact Statement" (2002) and the University of Minnesota Agriculture Extension Program state that manure not only supplies nutrients, but can also improve the biological and physical properties of soil, making it more productive and less erosive.

48. Manure, when properly used as part of a soil management program, improves soil quality, builds soil structure, and increases the level of soil organic matter. Commercial fertilizers cannot provide these same improvements to soil properties.

49. Landowners may alternate between commercial fertilizers and manure for differing reasons. However, Minnesota rule requires that landowners receiving manure on their fields only add commercial nitrogen fertilizer in quantities to meet the nitrogen needs of non-legume crops or nitrogen removal of legume crops they plan to grow.

50. Daley will hire a licensed CAWT to land apply the manure from the Project. The CAWT will land apply manure by direct injection. Daley’s MMP, once approved by the MPCA, will require Daley, the CAWT, and the recipients of transferred manure to incorporate manure via direct injection into the soil.

51. The MPCA finds that the quality of the stormwater runoff from land application areas for the manure will not significantly change if managed in accordance with the MMP required by the Individual NPDES Feedlot Permit.
52. The MPCA finds that the requirements of the Individual NPDES Feedlot Permit and the MMP minimize the potential for manure applied at manure application sites to enter surface waters.

53. The MPCA finds that the information presented in the EAW and other information in the environmental review record is adequate to assess potential impacts to water quality that are reasonably expected to occur from the Project.

54. The MPCA finds Daley has developed adequate measures in its MMP to prevent or mitigate potential water quality impacts.

55. The Individual NPDES Feedlot Permit includes conditions for the prevention of adverse effects on surface water and groundwater quality due to manure storage and application.

56. MPCA does not expect the project, if constructed as designed and operated in accordance with the Individual NPDES Feedlot Permit and MMP, will have significant adverse impacts on water quality. If violations of the Individual NPDES Feedlot Permit or the MMP were to occur, the MPCA has regulatory enforcement powers to correct the violations and address and mitigate any impacts to waters. Therefore, the MPCA finds any reasonably expected water quality impacts that may occur from the Project are reversible. The MPCA finds that information presented in the EAW and other information in the environmental review record are adequate to assess potential impacts to the quality of surface water and groundwater that are reasonably expected to occur from the Project.

57. The MPCA finds the Project, as proposed, does not have the potential for significant environmental effects based on the type, extent and reversibility of impacts related to surface water and groundwater quality, which are reasonably expected to occur.

Groundwater Appropriation

58. Daley currently has two water wells at its existing feedlot, which is also its proposed Project site (Unique Well IDs 00591916 and 00678949).

59. Daley has received a Minnesota Department of Natural Resources (DNR) Water Appropriation Permit for its two existing wells.

60. Daley’s two existing wells are registered with the Minnesota Department of Health (MDH).

61. Daley’s existing wells are used at its feedlot for drinking water for livestock and employees, as well as livestock cooling, facility cleaning, and sanitary use.

62. The Project would result in Daley constructing two additional water wells at its feedlot site, for a total of four wells. The two new wells would serve the same purpose as the existing two wells.

63. The Project would result in Daley increasing its water use at the Project site from 32 million gallons per year to 92 million gallons per year (i.e., an increase of approximately 60 million gallons per year). This would be a total consumption of 2.3 billion gallons of water over 25 years.

64. Daley will be required to obtain a modification to its current Water Appropriation Permit before they would be allowed to appropriate the additional water needed for the Project.

65. The DNR is the permitting authority for appropriating waters of the state in Minnesota. The DNR Water Appropriations Permit allows for a reasonable use of water if the use does not negatively impact surrounding wells or other water resources.
66. The purpose of the DNR Water Appropriation Permit is to ensure water resources are managed so that adequate supply is available for long-range seasonal requirements for domestic, agricultural, fish and wildlife, recreational, power, navigational, and water quality.

67. The DNR Water Appropriation Permit balances competing management objectives, including both the development and protection of water resources. Minn. Stat. § 103G.261 establishes domestic water use as the highest priority of the State’s water when supplies are limited. If a well interference arises, the DNR has a standard procedure for investigating the matter. If the DNR finds a commercial operator is causing interference, the operator must correct it.

68. Unauthorized pumping or use of the well or other water resources is subject to enforcement under Minn. Stat. § 103. Upon completion of an investigation, a permit for water appropriation may be limited, amended, or denied in accordance with applicable laws and rules for the protection of the public interests and the sustainability of Minnesota’s water resources.

69. Daley has not installed the new wells at the Project site at the time of this Order. Daley has coordinated with the DNR to obtain a Well Construction Preliminary Assessment for the proposed new wells. The Well Construction Preliminary Assessment provides the DNR’s preliminary approval to construct the wells, and does not constitute an authorization to operate the wells or guarantee DNR appropriation permit approval.

70. Following the completion of environmental review, Daley may pursue the water appropriation permitting process with the DNR. The Well Construction Preliminary Assessment is information that Daley can use to decide whether to proceed in constructing a well, but does not act as a notification to the MDH, nor is it a DNR water use permit.

71. Daley intends to register the wells at the Project site with the MDH following well construction, and apply for a modification to the existing DNR Water Appropriation Permit, for the proposed wells at the Project site in order to use the new wells. The DNR reviews the permit applications upon approval of the Individual NPDES Feedlot Permit, which determines final animal numbers and, hence, water consumption.

72. Unauthorized pumping or use of wells without a DNR Water Appropriation Permit is subject to DNR enforcement under Minn. Stat. § 103. Upon completion of a permit review period, a Water Appropriation Permit may be limited, amended, or denied by the DNR in accordance with applicable laws and rules for the protection of the public interests and the sustainability of Minnesota’s water resources.

73. If the DNR determines there may be the potential for impacts to resources such as trout waters, Wetland Conservation Act (WCA) wetlands, public watercourses, rare species, sites of outstanding biodiversity, wellhead protection areas, and/or wildlife management areas, the DNR has the authority to require additional testing and monitoring for those impacts.

74. Due to the DNR oversight and permitting of water appropriations, the MPCA does not expect significant adverse impacts to water appropriation. However, if the DNR determines there is well interference based on concerns or well interference claims, the DNR has regulatory enforcement authority to address it, including the authority to order the operator to fix the causes of the interference. Thus, the impacts to water appropriations would then be reversed. Therefore, the MPCA finds that any water appropriation impacts that may occur from the Project are reversible.
75. The MPCA finds that the Project, as proposed, does not have the potential for significant environmental effects based on the type, extent, and reversibility of impacts related to water appropriations that are reasonably expected to occur.

**Air Quality**

76. Daley conducted air dispersion modeling to estimate the atmospheric concentrations of hydrogen sulfide, ammonia, and the intensity of odorous gases at the Project property lines and nearest neighbors.

77. Daley's air modeling used the American Meteorological Society Regulatory Model (AERMOD) developed by the American Meteorological Society and the U.S. Environmental Protection Agency. The model evaluated the air quality impacts of the Project. AERMOD is a widely accepted air dispersion model, which uses conservative assumptions to predict air quality.

**Air Quality Related to Hydrogen Sulfide Emissions**

*Minnesota Ambient Air Quality Standards (MAAQS)*

78. The air modeling predicts that the Project will comply with the 30 parts per billion (ppb) hydrogen sulfide MAAQS. Under the MAAQS, the third exceedance of the MAAQS within any 5-day period is a violation. The air modeling predicts compliance when the high third high hydrogen sulfide concentration for any 5-day period at each property-line receptor is less than 30 ppb.

79. The air modeling predicts that the emissions from the Project and existing nearby feedlots will result in a maximum property-line hydrogen sulfide concentration of 7.72 ppb. The estimated hydrogen sulfide background concentration in the Project area is 17 ppb. The total hydrogen sulfide concentration is predicted to be 24.72 ppb at the Project’s property lines.

*Sub-Chronic Inhalation Health Risk Value (iHRV)*

80. The air modeling predicts that the Project will not exceed the 10 micrograms per cubic meter (μg/m³) subchronic (13-week) hydrogen sulfide iHRV at neighboring residences. Inhalation Health Risk Values are concentrations of chemicals emitted to air that are unlikely to pose a significant risk of harmful effects when humans are exposed to those concentrations over a specified period.

81. The air modeling predicts that the emissions from the Project and existing nearby feedlots will result in a maximum monthly hydrogen sulfide concentration of 0.42 μg/m³ at the nearest residence. The estimated hydrogen sulfide background concentration in the Project area is 1.0 μg/m³. The predicted total maximum monthly hydrogen sulfide concentration at the neighboring residences is 1.42 μg/m³. Note that while the iHRV is for a 13-week period, AERMOD is not capable of averaging concentrations for that time-period, so a monthly averaging period was used instead. The monthly averaging period is acceptable because it produces a more conservative or protective prediction than the 13-week period.

82. Based on the air modeling results discussed above, the MPCA finds that hydrogen sulfide emissions expected from the Project do not present the potential for significant environmental effects.
Air Quality Related to Ammonia Emissions

**Acute iHRV**

83. The air modeling predicts that the Project will not exceed the 3,200 μg/m$^3$ (1-hour) acute ammonia iHRV at the Project’s property-line.

84. The air modeling predicts that the emissions from the Project and existing nearby feedlots will result in a maximum hourly property-line ammonia concentration of 814 μg/m$^3$. The estimated ammonia background concentration in the Project area is 148 μg/m$^3$. The maximum total property-line ammonia concentration is predicted to be 962 μg/m$^3$.

**Chronic iHRV**

85. The air modeling predicts that the Project will not exceed the 80 μg/m$^3$ (1-year) chronic ammonia iHRV at neighboring residences to the Project site.

86. The air modeling predicts that the emissions from the Project and existing nearby feedlots will result in a maximum 1-year time averaged ammonia concentration of 19.54 μg/m$^3$ at the neighboring residences. The estimated ammonia background concentration in the Project area is 5.7 μg/m$^3$. The maximum total (Project emissions plus existing background) ammonia concentration is predicted to be 25.3 μg/m$^3$ at the nearest residences.

87. Based on the air modeling results discussed above, the MPCA finds that ammonia emissions expected from the Project do not present the potential for significant environmental effects.

Air Quality Related to Odor Emissions

88. Although the state of Minnesota has not established ambient air quality standards to regulate odor, Daley completed air dispersion modeling for odor.

89. The modeled maximum hourly odor intensity, at the Project’s property lines is 238 odor units (OU) and occurs on the north boundary line. This predicted odor intensity is below the “moderate” odor threshold of 244 OU and above the “faint” odor threshold of 83 OU, as defined by the air modeling report used in the EAW for this Project (Attachment T of EAW).

90. The modeled maximum hourly odor intensity at the nearest residences is 126 OU. This predicted odor intensity is below the “moderate” odor threshold and above the “faint” odor threshold.

91. Daley has submitted an air emissions and odor management plan to the MPCA with its Individual NPDES Feedlot Permit application. The plan includes measures that Daley will take to minimize the generation of odors from its existing and proposed feedlots and from associated manure application activities. Daley will maintain an organic crust on the LMSAs and immediately inject liquid manure into the soil as its manure application method to minimize odors. Daley has also taken other measures as listed in item 6.B. of the EAW to further reduce odors.

92. Based on the modeling results discussed above, the MPCA finds that odor at the Daley’s property lines and nearby residences does not present the potential for significant environmental effects.
On the Need for an Environmental Impact Statement

Findings of Fact

Daley Farms of Lewiston, LLP – 2018 Dairy Expansion

Conclusions of Law

Utica Township, Winona County, Minnesota

And Order

Summary of Air Quality Impacts

93. The MPCA expects the Project to meet applicable Minnesota ambient air quality standards and health risk value guidance.

94. With respect to the reversibility of air quality impacts expected to occur from the Project, air emissions from the Project will continue while it remains in operation and would cease only if the Project were temporarily or permanently closed.

95. If excessive air emissions or violations of the ambient hydrogen sulfide air standards were to occur, or if Daley exceeded iHRVs for ammonia, air quality impacts are likely correctable. The MPCA could initiate an investigation and require Daley to make operation and maintenance changes. Therefore, the MPCA finds that any impacts on air quality that may occur from the Project are reversible.

96. The MPCA finds that information presented in the EAW and other information in the environmental review record are adequate to assess the impacts on air quality that are reasonably expected to occur because of the Project.

97. The MPCA finds the Project, as proposed, does not have the potential for significant environmental effects based on the type, extent, and reversibility of impacts on air quality reasonably expected to occur from the Project.

Non-compliance at existing Daley operations

98. The existing LLP site does not comply with the surface water effluent limitation requirements of Code of Federal Regulations, Title 40, section 412 and is currently operating under an Individual NPDES permit for addressing the portion of the feedlot (small part of feed pad runoff collection) that is not meeting the requirements. In addition to expansion at the site, Daley will construct/install runoff control measures for the portion of the existing feedlot that is currently not meeting effluent limitation requirements. Upon completion of the project, existing and proposed feedlot components will meet effluent limitation requirements.

99. The existing feedlot at the LLP1 site does not meet surface water effluent limitation requirements of Code of Federal Regulations, Title 40, section 412. If Daley receives all permits and approvals for the proposed Project, Daley will close the LLP1 site. If Daley is unable to receive all needed permits and approvals, Daley will keep operating the LLP1 site. And, in accordance to the Individual NPDES Feedlot Permit Schedule of Compliance, Daley will construct open-lot runoff controls to create a compliant feedlot, meeting surface water effluent limitation requirements of Code of Federal Regulations, Title 40, section 412.

100. The existing feedlot at the LLP7 site does not meet surface water effluent limitation requirements of Code of Federal Regulations, Title 40, section 412. However, in accordance to Individual NPDES Feedlot Permit Schedule of Compliance, Daley will construct open-lot runoff controls at the LLP7 site to create a feedlot meeting surface water effluent limitation requirements of Code of Federal Regulations, Title 40, section 412.

101. The MPCA finds that the impacts that are reasonably expected to occur from the existing noncompliant activities at the feedlot will be adequately addressed through the information presented in the EAW and the environmental review record for the Project.
102. The MPCA finds that because the existing non-compliant issues will be addressed by permit requirements in the Individual NPDES Feedlot Permit, the Project does not have the potential for significant environmental effects based on the type, extent, and reversibility of impacts from the Project.

Karst geology concerns

103. The southeastern part of Minnesota has karst geology and therefore contain sinkholes, caves, springs and other karst features that allow pollutants to enter groundwater quickly.

104. Daley conducted several geotechnical evaluations, including soil borings, on the Project property. No karst features were identified at the existing or proposed feedlot or LMSA sites.

105. Manure land application site 5, to the northeast of the proposed LMSA, contains a mapped sinkhole. Minn. R. 7020.2005, subp. 1, prohibits construction of a new animal feedlot or a manure storage area within 300 feet of a sinkhole. MPCA technical staff verified that the proposed feedlot and LMSA are more than 300 feet from the mapped sinkhole. Therefore, the Project design complies with this setback requirement.

106. Manure land application sites 1, 2, 5, 9N, 10, 11, 12, 23, 24, 27, 29N, 32, 33, 34, 45, 36, 39, 40, Lappier’s, and Matt’s contain or are near mapped sinkholes. Open sinkholes may provide direct access of surface pollutants, such as nitrate dissolved in water, to groundwater through fractured bedrock. At these sites, Daley will follow manure application practices and setbacks required in the Individual NPDES Feedlot Permit or Minn. R. 7020.2225, subp. 8, as applicable.

107. Manure land application sites 3, 4, 5, 6, 8, 9N, 9S, 11, 12, 13, 19, 20, 21, 22, 24, 25, 26, 27, 28, 32, 34, 36, 39, 41, Lappier’s, Matt’s, and Orlies contain soils developed in bedrock, described as shallow bedrock in soils. Shallow bedrock provides greater risk of pollution leaching to groundwater since there is less soil to absorb and treat pollutants before reaching bedrock.

108. Daley agrees to comply with special Individual NPDES Feedlot Permit conditions, beyond what is required in feedlot rule, to better mitigate nitrate loss from manure application. Daley will employ two or more of the following practices on field areas where liquid manure is applied:

1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by thermometer at a depth of 6 inches.

2. Adding a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.

3. Adding a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall before soil temperatures are below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by soil temperature taken by thermometer at a depth of 6 inches.

4. Planting/seedling a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in the fall so to allow for germination and growth of the cover crop before the end
the growing season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.

5. Applying manure in the spring.

6. Split-applying nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.

7. Avoiding application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5 and 6.

109. The MPCA finds that information presented in the EAW and other information in the environmental review record are adequate to assess the impacts from karst geology that are reasonably expected to occur because of the Project.

110. The MPCA finds the Project, as proposed, does not have the potential for significant environmental effects based on the type, extent, and reversibility of impacts from karst geology reasonably expected to occur from the Project.

Winona County Animal Unit Limit

111. A Winona County ordinance prohibits new feedlots or expansions of feedlots in excess of 1,500 AU. Daley’s existing operations exceed this cap because Daley’s operations were grandfathered in at the time of the ordinance.

112. According to the grandfathering allowance, Daley may not exceed the AU at its feedlot at the time of the ordinance passage, which is 2,275.2 AU. Therefore, for Daley to increase the feedlot to the proposed 5,967.7 AU, Daley must apply for a variance or exemption from the Winona County ordinance to construct the Project.

113. If the Winona County variance or exemption is not approved, the expansion at the LLP site may not be constructed. Additionally, Daley will not close the LLP1 site, and instead will add open-lot runoff controls, in accordance with the Individual NPDES Feedlot Permit Schedule of Compliance.

114. Winona County’s decision on granting a variance or exemption is independent of the MPCA’s environmental review process.

Cumulative Potential Effects

115. The second criterion that the MPCA must consider when determining if a project has the potential for significant environmental effects is the “cumulative potential effects.” In making this determination, the MPCA must consider “whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effects; and the efforts of project proposer to minimize the contributions from the project.” Minn. R. 4410.1700 subp. 7(B). The MPCA findings with respect to this criterion are set forth below.
116. The EAW, public comments, and MPCA follow-up evaluation did not disclose any related or anticipated future projects that may interact with this Project in such a way as to result in significant cumulative potential environmental effects.

117. The EAW addressed the following cumulative potential effects of the proposed Project:

- Surface water and groundwater quality
- Groundwater appropriation
- Air quality

Surface Water and Groundwater Quality

118. The Project and its associated manure application sites are within either the Mississippi River – Winona Watershed or the Root River Watershed in Winona County.

119. The Project and its manure application sites are in areas where the land use is predominantly agricultural. Feedlots in these areas have the potential to contribute to water pollution.

120. Whitewater River South Fork, Peterson Creek, and Rush Creek are the closest listed impaired water bodies to the Project and its manure application sites.

121. Whitewater River South Fork and Peterson Creek are both located within the Mississippi River – Winona Watershed. Whitewater River South Fork is approximately 2 miles northwest of the Project site and Peterson Creek is located approximately 2.5 miles east of the Project site.

122. The MPCA’s 2018 impaired waters list identifies Whitewater River South Fork (AUID 07040003-512) as impaired for: Aquatic macroinvertebrates bioassessments, turbidity, fecal coliform, and nitrates. This reach of the river is included in the January 2016 Mississippi River – Winona Watershed Pollutant Reduction Project Total Maximum Daily Load (TMDL) for Nutrients, Sediments and Bacteria. The TMDL identifies feedlots and associated land application of manure as a potential contributor to these impairments.

123. The MPCA’s 2018 impaired waters list identifies Peterson Creek (AUID 07040003-529) as impaired for fecal coliform. This reach of the river is included in the January 2016 Mississippi River – Winona Watershed Pollutant Reduction Project TMDL for Nutrients, Sediments and Bacteria. The TMDL identifies feedlots and associated land application of manure as a potential contributor to this impairment.

124. Rush Creek is located within the Root River Watershed and is approximately 2 miles southeast of the Project site.

125. The MPCA’s 2018 impaired waters list identifies Rush Creek (AUID 07040008-524) as impaired for aquatic macroinvertebrate bioassessments. This reach of the river is included in the November 2016 Root River Watershed TMDL Report for Bacteria, Nitrate and Suspended Solids, which provides nitrate as one of the stressors of the biota in this reach.

126. The Individual NPDES Feedlot Permit is consistent with the Mississippi River – Winona Watershed nitrate reduction strategies for nutrient management and soil health.

127. The MDA determines current nitrate-nitrogen concentrations in private wells, on a township scale, through the Township Testing Program. The MDA has conducted nitrate-nitrogen testing on private wells in townships throughout the state that are vulnerable to groundwater contamination and have significant row crop production. The testing results for Utica, Fremont and St. Charles townships,
where the Project and manure application sites are located, identified nitrate-nitrogen concentrations above the Health Risk Limit (HRL) of 10 milligrams/liter in 19.6%, 42.9% and 14.5%, respectively, of the wells tested. Daley agrees to comply with special Individual NPDES Feedlot Permit conditions, beyond what is required in feedlot rule, to better mitigate nitrate loss from manure application. Daley will employ two or more of the practices listed in Findings of Fact 42 and 108 on field areas where liquid manure is applied.

128. The MPCA does not expect Project-generated manure-contaminated runoff from the Project site because it is a total confinement facility. In addition, the Project will operate under the NPDES feedlot permitting system, which has more stringent MMP requirements than smaller feedlots in the region. Finally, the manure from the Project is liquid and will be incorporated into the soil by direct injection, which reduces the likelihood that manure will run off the fields.

129. The Individual NPDES Feedlot Permit requires that the Project meet zero discharge standards (except in extreme weather events such as a 25-year, 24-hour rain event). As a result, the MPCA does not expect any discharge of manure or manure-contaminated runoff to any waters of the state.

130. All manure application sites must also comply with MPCA and county setback requirements, as well as all other applicable federal and state rules, whatever are the most restrictive.

131. The MMP, in order to prevent impacts to any waters of the state, is designed specifically for the manure that Daley expects to generate at the Project and send to the manure application sites.

132. Proper operation and management of the Project and adherence to appropriate manure land application practices in the MPCA-approved MMPs will prevent runoff of manure and/or manure-contaminated stormwater runoff from impacting waters of the state.

133. Since the Individual NPDES Feedlot Permit and MMPs require preventative measures to protect surface water and groundwater quality, the MPCA does not anticipate the Project will contribute to any potentially significant adverse effects on water quality. Therefore, the MPCA finds that the Project is not expected to contribute significantly to adverse cumulative potential effects on water quality.

Groundwater Appropriation

134. Daley currently has two existing wells at the Project site. The Project plans to add two more wells at the site. The Project would result in Daley increasing its water use from 32 million gallons per year to 92 million gallons per year (i.e., an increase of approximately 60 million gallons per year). This would be a total consumption of 2.3 billion gallons of water over 25 years.

135. Daley holds a DNR Water Appropriation Permit for its existing two wells. Daley will be required to obtain a modification to its current Water Appropriation Permit before it would be allowed to appropriate the additional water requested for its two new wells.

136. The purpose of the DNR permit program is to ensure management of water resources so that adequate supply is provided to long-range seasonal requirements for domestic, agricultural, fish and wildlife, recreational, power, navigational, and quality control. The permit program balances competing management objectives, including both the development and protection of water resources. Minn. Stat. § 103G.261 establishes domestic water use as the highest priority of the state’s water when supplies are limited. If a well interference arises, the DNR has a standard
procedure for investigating the matter. If the DNR determines that a commercial operator is causing the problem, the operator must correct it.

137. The MPCA finds that the Project is not expected to contribute significantly to adverse cumulative potential effects on water appropriation.

Air Quality

138. The MPCA evaluated cumulative potential effects on air quality by comparing the MAAQS for hydrogen sulfide, iHRVs for hydrogen sulfide and ammonia, and odor intensity thresholds with concentrations in the air predicted by air modeling.

139. The modeling analysis included the estimated emissions from the Project, nearby feedlots, and incorporated conservative background concentrations to account for the potential impacts of air emissions from other air emissions sources in the area of the Project. The modeling analysis estimated air concentrations for these pollutants at the residences closest to the Project.

140. All modeled air pollutant concentrations for the Project were below the health-based criteria used in the analyses. Therefore, the MPCA finds that cumulative potential effects on air quality will not be significant in the Project area, and the Project will not contribute significantly to adverse cumulative potential effects on air quality.

Cumulative Effects – Summary

141. Based on information on the Project obtained from air modeling reports and Individual NPDES Feedlot Permit application processes, information on water quality and groundwater appropriation presented in the EAW, and consideration of potential effects due to related or anticipated future projects, the MPCA does not expect significant cumulative effects from this Project.

142. The MPCA finds the Project, as proposed, does not have the potential for significant environmental effects related to cumulative potential effects that are reasonably expected to occur.

The Extent to Which the Environmental Effects Are Subject to Mitigation by Ongoing Public Regulatory Authority

143. The third criterion that the MPCA must consider when determining if a project has the potential for significant environmental effects is “the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project.” Minn. R. 4410.1700, subp. 7.C. The MPCA Findings with respect to this criterion are set forth below.

144. The following permits or approvals will be required for the Project.

<table>
<thead>
<tr>
<th>Unit of Government</th>
<th>Permit or Approval Required</th>
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<tbody>
<tr>
<td>MPCA</td>
<td>State of Minnesota Individual Animal Feedlot National Pollution Discharge Elimination System (NPDES) Permit (Individual NPDES Feedlot Permit) MN0067652 – including NPDES/State Disposal System General Construction Stormwater Permit requirements</td>
</tr>
<tr>
<td>Winona County</td>
<td>Animal Unit Cap Variance or Exemption</td>
</tr>
<tr>
<td>Winona County</td>
<td>Conditional Use Permit</td>
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<tr>
<td>Utica Township</td>
<td>Building Permit</td>
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<tr>
<td>DNR</td>
<td>Water Appropriation Permit</td>
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145. MPCA Individual NPDES Feedlot Permit. The MPCA requires Daley to obtain an Individual NPDES Feedlot Permit for the Project. The Individual NPDES Feedlot Permit incorporates construction and operation requirements, and includes operating plans that address manure management, emergency response protocols, stormwater, and odor/air quality management. The attachments are an enforceable condition of the Individual NPDES Feedlot Permit.

146. Winona County Animal Unit Cap Variance or Exemption. Winona County has a 1,500 AU cap ordinance. Daley's existing operations exceed this cap because Daley's operations were grandfathered in at the time of the passage of the ordinance. However, for Daley to exceed its existing AU count through the proposed Project, it must receive a variance or exemption from Winona County.

147. Winona County Conditional Use Permit. Daley is required to obtain all required building and conditional use permits required by local units of government to ensure compliance with local ordinances. The Conditional Use Permit will address local zoning, environmental, regulatory, and other requirements needed to avoid adverse effects on adjacent land.

148. Utica Township Building Permit. Daley is required to obtain all required building and conditional use permits required by local units of government to ensure compliance with local ordinances.

149. DNR Water Appropriation Permit. Daley must obtain a DNR Water Appropriation Permit modification for the Project, as the Project will be withdrawing more than 10,000 gallons per year. Daley will hire a licensed well driller to install the two new production wells.

150. The above-listed permits include general and specific requirements for mitigation of environmental effects of the Project. The MPCA finds that the environmental effects of the Project are subject to mitigation by ongoing public regulatory authority.

The Extent to Which Environmental Effects can be Anticipated and Controlled as a Result of Other Available Environmental Studies Undertaken by Public Agencies or the Project, Including Other EISs

151. The fourth criterion that the MPCA must consider is "the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs," Minn. R. 4410.1700, subp. 7.D. The MPCA Findings with respect to this criterion are set forth below.

152. Although not exhaustive, the MPCA reviewed the following documents as part of the environmental impact analysis for the Proposed Project: data presented in the EAW, Individual NPDES Feedlot Permit application, with MMPs and attachments, Air Dispersion Modeling Report, Minnesota’s “Final Animal Agriculture Generic Environmental Impact Statement” (2002), MDA Township Testing Program results, MPCA’s report Nitrogen in Minnesota Surface Waters (June 2013), The Minnesota Nutrient Reduction Strategy (September 2014), and permits and environmental review of similar projects.

153. The MPCA also relies on information provided by Daley, persons commenting on the EAW, staff experience, and other available information obtained by staff.

154. The environmental effects of the Project have been addressed by the design and permit development processes, and state and local permit and plan requirements and approvals by ensuring conformance with regional and local plans. No elements of the Project pose the potential for significant environmental effects.
155. Based on the environmental review, previous environmental studies by public agencies or Daley, and staff expertise and experience on similar projects, the MPCA finds that the environmental effects of the Project that are reasonably expected to occur can be anticipated and controlled.

156. The MPCA adopts the rationale stated in the attached Responses to Comments (Appendix B) as the basis for response to any issues not specifically addressed in these Findings.

**CONCLUSIONS OF LAW**

157. The MPCA has jurisdiction in determining the need for an EIS for this Project. The EAW, the permit development process, and the evidence in the record are adequate to support a reasoned decision regarding the potential for significant environmental effects that are reasonably expected to occur from this Project.

158. The MPCA identified areas for potentially significant environmental effects. The Project design and permits ensure that Daley will take appropriate mitigation measures to address significant effects. The MPCA expects the Project to comply with all environmental rules, regulations, and standards.

159. Based on a comparison of the impacts that are reasonably expected to occur from the Project with the criteria established in Minn. R. 4410.1700 subp. 7, the Project does not have the potential for significant environmental effects.

160. An EIS is not required for the proposed Daley Farms of Lewiston, LLP – 2018 Dairy Expansion.

161. Any Findings that might properly be termed conclusions and any conclusions that might properly be termed Findings are hereby adopted as such.

**ORDER**

162. The Minnesota Pollution Control Agency determines that there are no potentially significant environmental effects reasonably expected to occur from the Daley Farms of Lewiston, LLP – 2018 Dairy Expansion and that there is no need for an Environmental Impact Statement.

**IT IS SO ORDERED**

[Signature]

John Linc Stine, Commissioner
Minnesota Pollution Control Agency

[Date]

1/4/19
STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

IN THE MATTER OF THE DENIAL OF A CONTESTED CASE
HEARING REQUEST AND MODIFICATION OF A NOTICE OF COVERAGE UNDER INDIVIDUAL NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM FEEDLOT PERMIT NO. MN0067652, FOR THE PROPOSED EXPANSION OF DALEY FARMS OF LEWISTON LLP, DALEY FARMS OF LEWISTON LLP 1, AND DALEY FARMS OF LEWISTON LLP 7 SECTION 16, UTICA TOWNSHIP

Based on Minnesota Pollution Control Agency (MPCA) staff review, comments and information received during the comment period, and other information in the record of the MPCA, the MPCA hereby makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

Project Description

1. Daley Farms of Lewiston, LLP (Daley) proposes to expand its existing dairy feedlot in Section 16 of Utica Township, Winona County (Project). The existing feedlot consists of three sites, regulated under the State of Minnesota Individual Animal Feedlot National Pollution Discharge Elimination System (NPDES) Permit MN0067652 (Feedlot Permit).

   - LLP site, a 1,996.4 animal unit (AU) total confinement barns
   - LLP1 site, a 140 AU partial confinement barn and concrete lot without runoff control
   - LLP7 site, a 138.8 AU partial confinement barn and concrete lot without runoff control

2. The Project consists of the following items at the LLP site.

   - Adding a cross-vented, total confinement freestall barn with 3,000 dairy cows
   - Eliminating 525 dairy cows and adding 525 heifers to the existing barns
   - Adding a liquid manure storage area (LMSA)
   - Adding stormwater basins to collect the new barn stormwater runoff
   - Adding a rotary milking parlor with a holding area
   - Adding a sand processing and storage building
   - Adding an animal mortality building
   - Adding a feed storage pad
   - Adding a basin to collect feed storage pad stormwater runoff
   - Installing two livestock wells

3. The Project also consists of eliminating the LLP1 site, and adding open-lot runoff controls at the LLP7 site. Daley will add open-lot runoff controls, required to eliminate runoff from animal lots in order to create zero discharge from LLP7 site, in accordance with the Feedlot Permit Schedule of Compliance.

4. The Project would result in the feedlot increasing from 2,275.2 AU to 5,967.7 AU.
5. The Project would generate approximately 46.2 million gallons of manure annually, and 1.7 million gallons of runoff from the feed storage pad.

6. Daley will utilize the manure on its own fields, and fields owned by third parties who have entered into agreements with Daley.

7. Daley will land apply or hire a commercial animal waste technician (CAWT) to land apply manure to cropland according to the MPCA approved manure management plan (MMP).


9. Daley plans to construct the Project once environmental review is complete, and all necessary permits and approvals are granted.

**PROCEDURAL HISTORY**

**Public Notices and Comment Periods for Feedlot Permit for Daley Farms of Lewiston LLP, Daley Farms of Lewiston LLP 1, and Daley Farms of Lewiston LLP 7**

10. On October 1, 2018, pursuant to Minn. R. 7001.0100, the MPCA issued a public notice of intent to modify coverage under the NPDES Individual Feedlot Permit for the construction of an expansion and operation at the Proposer’s Daley Farms of Lewiston LLP feedlot site. The public comment period was open for comment from October 1, 2018, through November 15, 2018.

11. The Public notice documents were available for review throughout the public comment period on the MPCA website at http://www.pca.state.mn.us/index.php/public-notices/list.html.

12. The MPCA met all applicable public notice requirements for the issuance of an NPDES Permit.

**Public Notice and Comment Period for the Environmental Assessment Worksheets for Feedlot Permit for Daley Farms of Lewiston LLP, Daley Farms of Lewiston LLP 1, and Daley Farms of Lewiston LLP 7**

13. Pursuant to Minn. R. ch. 4410, the MPCA prepared an Environmental Assessment Worksheet (EAW) assessing impacts for Feedlot Permit for Daley Farms of Lewiston LLP, Daley Farms of Lewiston LLP 1, and Daley Farms of Lewiston LLP 7.

14. Meeting the requirements of Minn. R. 4410.1500, the MPCA provided notice of the EAW in the October 1, 2018, Environmental Quality Board (EQB) Monitor; made the EAW available for review on the MPCA website at http://pca.state.mn.us/news/eaw/indexJ1trnJ; and provided a news release on the EAW to media in Minnesota and other interested parties, on October 1, 2018. At the time of submission of the EAW to EQB, the MPCA also submitted copies of the EAW to all entities listed in Minn. R. 4410.1500, subp. A.

15. The MPCA provided public notice of the Project as follows:

   a. The EQB published the notice of availability of the EAW for public comment in the EQB Monitor on October 1, 2018, as required by Minn. R. 4410.1500.
b. The EAW was available for review on the MPCA website at: http://www.pca.state.mn.us/news/eaw/index.html.

c. The MPCA provided a news release to media in Minnesota and other interested parties on October 1, 2018.

d. Daley’s draft Feedlot Permit was open for public comment on October 1, 2018.

e. On October 11, 2018, the MPCA extended both the EAW and Feedlot Permit comment period until November 15, 2018.

f. The MPCA provided a news release to the media in Minnesota and other interested parties on October 12, 2018, announcing the extension of the public comment periods.

g. The EBQ announced the extension of the public comment period in the EQB Monitor on October 22, 2108.

16. The MPCA met all applicable public notice requirements for the EAW.

17. The MPCA has prepared separate Findings of Fact, Conclusions of Law, and Order for the EAW.

18. During the 45-day comment period ending on November 15, 2018, the MPCA received 615 comment letters and six late comment letters received after November 15, 2018, on the EAW and the Feedlot Permit. The late comment letters, which are not included in the record, did not include any new information.

Five commenters requested contested case hearings. Four of the requests did not meet criteria to be a valid request. One request was determined to be a valid request, indicating the concern that the draft permit for the Project and the Proposer’s MMP do not meet requirements of the Clean Water Act and State Law.

19. The list of the comments received during the 45-day public comment period are included as Appendix A to these Findings.

20. The MPCA prepared written responses to the comments received during the 45-day public comment period. These responses are included as Appendix B to these Findings.

21. In response to comments received while on public notice, on December 23, 2018, the Project Proposer submitted an addendum to its MMP. The addendum included additional manure application management practices that will be implemented and additional notifications that will be made during LMSA construction.

22. In response to comments received while on public notice, and the MMP addendum submitted by the Project Proposer on December 23, 2018, the Final Permit for the Project included additional requirements that were not part of the Draft Permit. The additional requirements were relating to manure management and notifications for LMSA construction.

23. The additional requirements added to the Proposer’s MMP and the Final Permit are not substantial requiring re-pubic notice of the permit.

24. The Proposer’s addendum to the MMP are in Appendix C of these findings.
EVALUATION OF THE REQUESTS FOR A CONTESTED CASE HEARING

25. During the October 1, 2018, through November 15, 2018, public notice period for the MPCA’s intent to issue coverage under the Individual NPDES Feedlot Permit, the MPCA received one request for a contested case hearing from the Minnesota Center for Environmental Advocacy (MCEA).

26. Minn. R. 7000.1800, subp. 2(A) sets out the requirements of a petition for a contested case hearing. A petition must include:

   a. A statement of reasons or proposed findings supporting a Board or Commissioner decision to hold a contested case hearing pursuant to the criteria in part 7000.1900, subpart 1.

   b. A statement of the issues proposed to be addressed by a contested case hearing and the specific relief requested or resolution of the matter.

27. Minn. R. 7000.1800, subp. 2(8) states:

   To the extent known by the petitioner, a petition for a contested case hearing may also include the following information

   (1) A proposed list of prospective witnesses to be called at the hearing, including experts, with a brief description of the testimony they will provide.

   (2) A proposed list of publications, references, or studies that the petitioner would introduce at the hearing.

   (3) An estimate of the time required for the petitioner to present the case at a hearing.

28. The MPCA notes that while the information specified in Minn. R. 7000.1800, subp. 2(8) is not required in a contested case hearing petition; it is information that is helpful to the MPCA as it considers whether a hearing will aid the Board or Commissioner in making a final decision.

29. The MPCA decision on whether to grant the petition is governed by Minn. R. 7000.1900, subp. 1, which states:

   The Board or Commissioner must grant the petition to hold a contested case hearing or order upon its own motion that a contested case hearing be held if it finds that:

   A. There is a material issue of fact in dispute concerning the matter pending before the Board or Commissioner.

   B. The Board or Commissioner has the jurisdiction to make a determination on the disputed material issue of fact.

   C. There is a reasonable basis underlying the disputed material issue of fact or facts such that the holding of a contested case hearing would allow the introduction of information that would aid the Board or Commissioner in resolving the disputed facts in making a final decision on the matter.

30. In order to satisfy the first criterion, Minn. R. 7000.1900, subp. 1(A), the hearing requester must show there is a material issue of fact in dispute as opposed to a disputed issue of law or policy. A
fact is material if its resolution will affect the outcome of the case (O’Malley v. Ulland Brothers, 540 N.W.2d 889,892 (Minn. 1996)).

31. In order to satisfy the second criterion, Minn. R. 7000.1900, subp. ll(B), the requester must show that the MPCA has jurisdiction or authority to make a determination on the disputed issues of material fact. "Agencies are not permitted to act outside the jurisdictional boundaries of their enabling act" (Cable Communications Board v. Nor-West Cable, 356 N.W.2d 658, 668 (Minn. 1984)). Therefore, each issue in the contested case request has to be such that it is within the MPCA’s authority to resolve.

32. Finally, under Minn. R. 7000.1900, subp. ll(C), “[t]he petitioners for a contested case hearing have the burden of demonstrating the existence of material facts that would aid the [Agency] in making a decision before they are entitled to a contested case hearing” (Matter of Solid Waste Permit for the NSP Red Wing Ash Disposal Facility, 421 N.W.2d 398,404 (Minn. Ct. App. 1988)). The Minnesota Supreme Court has recognized that to meet this standard, “[i]t is simply not enough to raise questions or pose alternatives without some showing that evidence can be produced which is contrary to the action proposed by the (Agency)” (In the Matter of Amendment No. 4 to Air Emission Facility Permit, 454 N.W.2d 427,430 (Minn. 1990)).

33. The MPCA evaluated the outstanding request for a contested case hearing by examining each of the issues raised in the petition received, to determine if the petition met each of the three required criteria in Minn. R. 7000.1900, subp. 1.

THE MPCA FINDINGS WITH RESPECT TO EACH OF THESE CRITERIA

34. The MPCA finds that the contested case hearing petition (hereinafter "CCHR") submitted by MCEA was timely submitted prior to the close of the public comment period.

35. The MCEA CCHR petition requests that the MPCA deny the NPDES Permit for the Daley expansion. The petition also requests that the MPCA refer the disputed issues of material fact to the Office of Administrative Hearings for resolution in a contested case hearing if the MPCA does not deny the application.

36. The MCEA CCHR petition identifies six reasons for a contested case hearing. The MPCA’s findings regarding each of these reasons are as follows.

   Reason #1: The Project’s MMP will allow application of manure at rates that exceed agricultural utilization of the nutrients, in violation of 40 C.F.R. § 412.4(c), 40 C.F.R. § 122.42(e), and Minn. R.
   7020.2225, subp. 3.

   The applicability of 40 C.F.R. § 412.4(c), 40 C.F.R. § 122.42(e), and Minn. R. 7020.2225, subp. 3, are a question of law and not a disputed material fact.

   Furthermore, the requestor has not raised a material issue of fact that the project will result in application of manure at rates that exceed agricultural utilization of the nutrients but instead questions the rate limits within Minn. Rule 7020. This is a question of law not a disputed fact. Nonetheless, the MPCA offers the following in response.
The requestor states that the proposal utilizes an erroneous University of Minnesota recommendation for nitrogen application to the corn crop. This assertion is based on commentary provided by Dr. Gyles Randall, emeritus professor University of Minnesota, which states the "Corn N Rate Calculator" should be used and results in a recommendation of a 159 pounds (lbs) of nitrogen for corn following corn or 123 lbs of nitrogen for corn following soybeans. The Corn N Rate Calculator is a seven state regional tool developed primarily for use with commercial fertilizers, nonetheless; the University of Minnesota publication is consistent with the Corn N Rate Calculator.

The techniques used to arrive at nutrient recommendations for the Corn N Rate Calculator and most recent University of Minnesota publication methodology were developed for commercial fertilizers, meaning that it is not directly amenable to use when manure is the nutrient source. The MPCA has developed and published its interpretation of the recommendations when manure is the nutrient source. It can be found at: https://www.pca.state.mn.us/sites/default/files/wq-f8-18.pdf.

The recommendations cited by Dr. Randall are accurate should the N price/Crop value ratio within the Corn N Rate Calculator be considered to be 0.10; however, in accordance with the MPCA interpretation, the N price/Crop value ratio most applicable to use with manure nutrients is 0.05. Using this ratio the recommendation is 180 lbs N/acre for corn following corn and 140 lbs N/acre for corn following soybeans, which is consistent with the MMP for the project.

Dr. Randall also gave his opinion of some of the specifics of the MMP, namely field characteristics that give some fields a higher pollution potential than other fields. The MPCA agrees with that assertion but the application to those fields does meet the requirements of Minn. R. ch. 7020 and they are therefore eligible for manure application even if it is not from the proposed project. In other words, simply removing them from the MMP for this facility does not make them ineligible for manure application from other manure or nutrient sources. The fact that these fields are covered by an MMP incorporated into the NPDES Permit for the site means that they will receive more regulation and restrictions than if they were not a part of the MMP.

Finally, Dr. Randall questions the nutrient content of the manure, specifically how it can vary so much from the "book value." The values used in the MMP are the results of actual test from the existing facility which will be far more representative of actual conditions than a “book value” meant to generally apply to a similar operation. Further, the proposer intentionally utilized a book value for the manure generated from the proposed expansion instead of the lower actual test values from the current operation so that the total amount of nitrogen identified in the MMP is higher than what will likely actually be generated at the facility. In all likelihood, the nutrient content of the manure will be similar to the existing operation historical test values but the use of the higher book value will ensure that the MMP identified sufficient land available to apply the manure at agronomic rates.

Additionally, the feedlot rules and Feedlot Permit require manure and process wastewater application rates must be limited so that the estimated plant available nitrogen from all nitrogen sources does not exceed expected crop nitrogen needs for non-legume crops and expected nitrogen removal for legumes. Expected crop nitrogen needs, crop nitrogen removal rates, and estimated plant available nitrogen from manure and legumes must be based on the most recent published
recommendations of the University of Minnesota Extension Service or of another land grant college in a contiguous state.

The MPCA reviewed the submitted MMP, including planned nitrogen application rates used in the plan, and found it meets feedlot rule and permit requirements. The project proposers have chosen to implement the following BMP’s to further mitigate impacts from nitrate loss to ground and surface water:

Project will employ two or more of the following practices on field areas where liquid manure is applied:

1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the Minnesota Department of Agriculture (MDA) soil temperature network website: https://app.gisdata.mn.gov/mda-soiltemp/, or documented by thermometer at a depth of six inches.
2. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.
3. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall before soil temperatures are below 50 degrees, as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website: https://app.gisdata.mn.gov/mda-soiltemp/, or documented by soil temperature taken by thermometer at a depth of six inches.
4. Plant/seed a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in the fall so as to allow for germination and growth of the cover crop before the end of the growing season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.
5. Apply manure in the spring.
6. Split apply nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.
7. Avoid application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5 and 6.

Reason #2: The Project's land application practices will apply manure in a manner that will result in subsurface discharges of manure to groundwater, rendering the project ineligible for permit coverage and violating Minn. R. 7020.2003, subp. 1 and 7020.2225.

The applicability of Minn. R. 7020.2003, subp. 1 and 7020.2225 are a question of law and not a disputed material fact.

The commenter asserts the Project does not comply with the Feedlot Permit section 13.4 (no discharge to groundwater) requirements because of the karst topography and information provided in Dr. Randall's report (Exhibit 1 of the petition), and therefore the project is ineligible for coverage
under the Feedlot Permit. The eligibility of the project for permit coverage is a question of law and is not a disputed fact. Nonetheless, the MPCA offers the following response.

Section 13.4 of the proposed permit is only applicable to the facility, not the land application sites. The definition of facility is included within the draft permit and reads as such: “Facility means an animal feedlot, a manure storage area, or an animal feedlot with a manure storage area that is subject to the Permit.”

Likewise, 7020.2003 subp1. is only applicable to an animal feedlot or manure storage area, not land application sites. The definition of animal feedlot in Minn. R. 7020 reads as such: “Animal feedlot means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. For purposes of these parts, open lots used for the feeding and rearing of poultry (poultry ranges) shall be considered to be animal feedlots. Pastures shall not be considered animal feedlots under these parts.” The definition of manure storage area in Minn. R. 7020 reads as such: “Manure storage area means an area where animal manure or process wastewaters are stored or processed. Short-term and permanent stockpile sites and composting sites are manure storage areas. Animal manure packs or mounding within the animal holding area of an animal feedlot that are managed according to part 7020.2000, subpart 3, are not manure storage areas.” Neither of these definitions include land application areas.

The arguments presented are all related to land application of manure and therefore would not be subject to either permit or rule parts cited, rendering them moot.

Even though the land application sites are not subject to the cited rules, the project proposer has developed an MMP in accordance with applicable state and federal regulations. This document includes practices that are designed to limit the impacts of the land application of manure, namely applying at agronomic rates, observing setbacks, and restricting the practice of winter time application of manure. The project proposers have chosen to implement the following best management practices (BMP’s) to further mitigate nitrate loss to ground and surface water:

Project will employ two or more of the following practices on field areas where liquid manure is applied:

1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website: https://app.gisdata.mn.gov/mda-soiltemp/, or documented by thermometer at a depth of six inches.
2. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.
3. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall, before soil temperatures are below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website: https://app.gisdata.mn.gov/mda-soiltemp/, or documented by soil temperature taken by thermometer at a depth of six inches.
4. Plant/seed a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in the fall so to allow for germination and growth of the cover crop before the end of the growing season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.

5. Apply manure in the spring.

6. Split apply nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.

7. Avoid application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5 and 6.

Reason #3: Whether the MMP—allowed practices of over-applying manure and applying manure to croplands featuring sinkholes and other karst features such as fractured bedrock, fissures, sinkholes, and other conduits, have the reasonable potential to cause or contribute to water quality standard exceedances for nitrates and bacteria, rendering the project ineligible for permit coverage and violating 40 C.F.R. §122.44(d)(1).

The applicability of 40 C.F.R. §122.44(d) (1) is a question of law and not a disputed material fact. Nonetheless, the MPCA offers the following in response.

The requestor relies on the assertion of over application of manure to cropland as presented in Reason number 1. A response to that assertion can be found above.

The other contention is that the land application practices have the reasonable potential to cause or contribute to water quality standard exceedances. The requestor has not identified a disputed fact and simply states the areas are underlain by karst susceptible bedrock and its various types of surface and subsurface features (i.e. sinkholes, fractures, etc.) and therefore is an area of heightened sensitivity to impacts from surface activities like land application of manure. The MPCA agrees with this statement and uses an MMP to address these concerns. The project proposer has developed an MMP in accordance with applicable state and federal regulations. This document includes practices that are designed to limit the impacts of the land application of manure, namely through applying at agronomic rates, observing setbacks, and restricting the practice of winter time application of manure.

The requestor also asserts that the MPCA must establish a water quality based effluent limitation for the land application sites, similar to the pollutant load allocations established for point source discharges to water bodies (i.e. wastewater plants). The application of this federal provision to land application sites is a point of law and not a disputed material fact. Furthermore, this provision of federal law is not applicable to agricultural stormwater discharges. The draft permit does not authorize a discharge from land application sites that is not agricultural stormwater. Even though agricultural stormwater discharges are not applicable under this provision of federal law, the NPDES Permit does include conditions related to land application practices not specifically required by state or federal rule in order to minimize potential impacts from agricultural stormwater discharge. These include restrictions for application during winter, application to saturated soils, application to coarse textured soils, and application prior to expected rainfall. The project proposers have chosen to
implement the following BMPs to further mitigate impacts from nitrate loss to ground and surface water and agricultural stormwater discharge:

Project will employ two or more of the following practices on field areas where liquid manure is applied:

1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website: https://app.gisdata.mn.gov/mda-soiltemp/, or documented by thermometer at a depth of six inches.
2. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.
3. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall before soil temperatures are below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website: https://app.gisdata.mn.gov/mda-soiltemp/, or documented by soil temperature taken by thermometer at a depth of six inches.
4. Plant/seed a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in the fall so to allow for germination and growth of the cover crop before the end of the growing season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.
5. Apply manure in the spring.
6. Split apply nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.
7. Avoid application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5 and 6.

Reason #4: The Project’s MMP will result in discharges to waters of the U.S. through hydrologically connected groundwaters, rendering the project ineligible for permit coverage and violating Minn. R. 7020.2003, subp. 2.

The applicability of Minn. R. 7020.2003, subp. 2 is a question of law and not a disputed material fact. Nonetheless, the MPCA offers the following in response.

Minn. R. 7020.2003 subp. 2 is only applicable to an animal feedlot or manure storage area, not land application sites. The definition of animal feedlot in Minn. Rule 7020 reads as such: “Animal feedlot means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. For purposes of these parts, open lots used for the feeding and rearing of poultry (poultry ranges) shall be considered to be animal feedlots. Pastures shall not be considered animal feedlots under these parts.” The definition of manure storage area in Minn. Rule 7020 reads as such: “Manure storage area means an area where animal manure or process wastewaters are stored or processed. Short-term and permanent stockpile sites and
composting sites are manure storage areas. Animal manure packs or mounding within the animal holding area of an animal feedlot that are managed according to part 7020.2000, subpart 3, are not manure storage areas.” Neither of these definitions include land application areas.

The arguments presented are all related to land application of manure and therefore would not be subject to the rule parts cited, rendering them moot.

Land application discharges are regulated by the NPDES Permit program unless they are agricultural stormwater discharges. 40 CFR 122.23 (e) reads “Land application discharges from a Concentrated Animal Feeding Operation (CAFO) are subject to NPDES requirements. The discharge of manure, litter, or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter, or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES Permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14). For purposes of this paragraph, where the manure, litter, or process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as specified in §122.42(e)(1)(vi)-(ix), a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO is an agricultural stormwater discharge.” The draft permit does not authorize a discharge from land application sites that is not agricultural stormwater. Therefore, unless there is non-compliance with the permit, the facility will comply with the discharge standards in state and federal rule.

The project proposer has developed an MMP in accordance with applicable state and federal regulations. This document includes practices that are designed to limit the impacts of the land application of manure, namely applying at agronomic rates, observing setbacks, and restricting the practice of winter time application of manure. The project proposers have chosen to implement the following BMPs to further mitigate impacts from nitrate loss to ground and surface water and agricultural stormwater discharge:

Project will employ two or more of the following practices on field areas where liquid manure is applied:

1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website: https://app.gisdata.mn.gov/mda-soiltemp/, or documented by thermometer at a depth of six inches.
2. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.
3. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall before soil temperatures are below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website: https://app.gisdata.mn.gov/mda-soiltemp/, or documented by soil temperature taken by thermometer at a depth of six inches.
4. Plant/seed a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in the fall so to allow for germination and growth of the cover crop before the end of the growing
season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.

5. Apply manure in the spring.

6. Split apply nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.

7. Avoid application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5 and 6.

Reason #5: The MMP’s allowed practices of overapplying manure and applying manure to croplands featuring sinkholes and other karst features will cause or contribute to a violation of water quality standards and for which the state has performed a pollutant load allocation, where the agency has not demonstrated there are sufficient remaining pollutant load allocations to allow for the new discharge, in violation of 40 C.F.R. § 122.4(i) and state law.

The applicability of 40 C.F.R. § 122.4(i) is a question of law and not a disputed material fact. Nonetheless, the MPCA offers the following in response.

Pollutant load allocations are designated for point source discharges, such as a wastewater treatment plant. The production area of a permitted CAFO (i.e. animal holding areas, manure storage areas, etc.) is assigned a load allocation of zero as it is considered a point source. The proposed facility is designed to meet the zero load allocation assigned to it. In regards to the land application sites, as discussed in the responses to Issues 2, 3, and 4, the draft permit only authorizes agricultural stormwater discharge from the land application sites. Agricultural stormwater is not a point source discharge, it is a non-point discharge. Total maximum daily loads (TMDLs) manage non-point discharges, such as agricultural stormwater, through the use of BMPs and MMPs to help limit impacts from these sources. The draft permit and Project’s MMP are consistent with applicable TMDLs. The project proposers have chosen to implement the following BMPs to further mitigate impacts from nitrate loss to ground and surface water and agricultural stormwater discharge:

Project will employ two or more of the following practices on field areas where liquid manure is applied:

1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website: https://app.gisdata.mn.gov/mda-soiltemp/, or documented by thermometer at a depth of six inches.

2. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.

3. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall before soil temperatures are below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website: https://app.gisdata.mn.gov/mda-soiltemp/, or documented by soil temperature taken by thermometer at a depth of six inches.

4. Plant/seed a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in
the fall so to allow for germination and growth of the cover crop before the end of the growing season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.

5. Apply manure in the spring.

6. Split apply nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.

7. Avoid application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5 and 6.

Reason #6: The MMP endangers human health and the danger cannot be removed by a modification of the conditions of the permit.

The requestor cites Minn. R. 7001.0140 subp 2. prohibits issuance of the proposed permit due to the public health threat the project creates. The applicability of Minn R. 7001.0140 subp 2. is a question of law and not a disputed material fact. Nonetheless, the MPCA offers the following in response.

The requestor again fails to identify a disputed material fact. The main issues identified by the requestor are:

- The area is underlain by karst susceptible bedrock and is therefore more vulnerable to impacts from land application of manure;
- The project is in an area of high sinkhole probability;
- There are TMDLs in the area influenced by agricultural pollutants;
- Many wells in the area have high nitrate levels; and
- The public water supply for Utica is within two miles and some land application sites are within the Drinking Water Supply Management Area (DWSMA).

The MPCA acknowledges these issues, therefore, there are no disputed facts for which a contested case hearing would be warranted. The Feedlot Permit and Project MMP contains requirements and management practices that mitigate these items. Some of the requirements found in the Feedlot Permit and management practice in the Project’s MMP that mitigate concerns relating to the items noted include:

a) Manure cannot be applied to land in a manner that will result in a discharge to waters of the state during the application process.

b) The rate at which manure is applied cannot exceed the hydraulic loading capacity of the land application site based on soil conditions.

c) The application of manure at rates so the estimated nitrogen available to crops from all nitrogen sources (including commercial fertilizer) does not exceed expected annual crop nitrogen needs for non-legumes and expected nitrogen removal for legumes.

d) Manure application is prohibited within 100 feet of a well, mine, or quarry.

e) Manure application is prohibited within 300 feet of a sinkhole unless one of the following protective measures is employed:
1. Manure is not applied within 100 feet of the sinkhole and manure is injected or incorporated prior to rainfall or within 24 hours (whichever occurs first) within 300 feet of the sinkhole; or
2. A protective berm exists that prohibits runoff from entering the sinkhole.

f) The Project Proposer’s MMP indicates manure will either be directly injected into the soil or incorporated into soil within 24 hours of application and prior to rainfall.

Furthermore, the project proposer has recognized the issues cited by the requestor and made adjustments to the MMP to further minimize potential impacts from the project proposal; these include:

Project will employ two or more of the following practices on field areas where liquid manure is applied:

1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website: https://app.gisdata.mn.gov/mda-soiltemp/, or documented by thermometer at a depth of six inches.
2. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.
3. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall before soil temperatures are below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website: https://app.gisdata.mn.gov/mda-soiltemp/, or documented by soil temperature taken by thermometer at a depth of six inches.
4. Plant/seed a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in the fall so to allow for germination and growth of the cover crop before the end of the growing season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.
5. Apply manure in the spring.
6. Split apply nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.
7. Avoid application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5 and 6.

**FINAL DETERMINATION ON ISSUANCE OF PERMIT COVERAGE OF DALEY FARMS OF LEWISTON LLP, DALEY FARMS OF LEWISTON LLP 1, DALEY FARMS OF LEWISTON LLP 7 UNDER THE INDIVIDUAL NPDES FEEDLOT PERMIT**

37. The MPCA’s decision to issue coverage under the Individual NPDES Feedlot Permit for the Daley Farms of Lewiston LLP, Daley Farms of Lewiston LLP 1, and Daley Farms of Lewiston LLP 7 feedlot sites are governed by its permit rule, Minn. R. 7001.0140, subp. 1. which states:
Except as provided in subpart 2, the agency shall issue, reissue, revoke and reissue, or modify a permit if the agency determines that the proposed permittee or permittees will, with respect to the facility or activity to be permitted, comply or will undertake a schedule of compliance to achieve compliance with all applicable state and federal pollution control statutes and rules administered by the agency, and conditions of the permit and that all applicable requirements of Minnesota Statutes, chapter 116D, and the rules adopted under Minnesota Statutes, chapter 116D, have been fulfilled.

38. Minn. R. 7001.0140, subp 2., states:

The following findings by the agency constitute justification for the agency to refuse to issue a new or modified permit, to refuse permit reissuance, or to revoke a permit without reissuance:

A. that with respect to the facility or activity to be permitted, the proposed permittee or permittees will not comply with all applicable state and federal pollution control statutes and rules administered by the agency, or conditions of the permit;
B. that there exists at the facility to be permitted unresolved noncompliance with applicable state and federal pollution control statutes and rules administered by the agency, or conditions of the permit and that the permittee will not undertake a schedule of compliance to resolve the noncompliance;
C. that the permittee has failed to disclose fully all facts relevant to the facility or activity to be permitted, or that the permittee has submitted false or misleading information to the agency or to the Commissioner;
D. that the permitted facility or activity endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit;
E. that all applicable requirements of Minn. Stat. ch. 116D and the rules adopted under Minn. Stat. ch. 116D has not been fulfilled;
F. that with respect to the facility or activity to be permitted, the proposed permittee has not complied with any requirement under parts 7002.0210 to 7002.0310 or chapter 7046 to pay fees; and
G. that with respect to the facility or activity to be permitted, the proposed permittee has failed to pay a penalty owed under Minn. Stat. § 116.072.

39. The Proposer has submitted complete applications. These applications have been reviewed and preliminarily approved by MPCA staff and demonstrate that all environmental protection standards will be satisfied.

40. The MPCA finds that the proposed issuance of permit coverage under the Feedlot Permit for the Daley Farms of Lewiston LLP, Daley Farms of Lewiston LLP 1, and Daley Farms of Lewiston LLP 7 feedlot sites, as public noticed on October 1, 2018, through November 15, 2018, meets the requirements of Minn. R. 7001.0140. The MPCA has reasonable assurance based on the information submitted, that proper operation of the facilities in compliance with the requirements of the permit and completion of all required monitoring in accordance with the conditions of the permit issued by this Order, will achieve compliance with all applicable state and federal pollution control statutes and rules and the conditions of the permit, and will not pose a danger to human health or the environment.
CONCLUSIONS OF LAW

41. The MPCA has jurisdiction over the decision whether to issue permit coverage under the Feedlot Permit for the Daley Farms of Lewiston LLP, Daley Farms of Lewiston LLP 1, and Daley Farms of Lewiston LLP 7 feedlot sites.

42. The MPCA has jurisdiction over the decision whether to grant or deny the request for a CCH for the proposed modification of permit coverage under the Feedlot Permit for the Daley Farms of Lewiston LLP, Daley Farms of Lewiston LLP 1, and Daley Farms of Lewiston LLP 7 sites.

43. For the reasons set forth in this document, the requirements of Minn. R. 7000.1800, subp. 2(A) and Minn. R. 7001.1900, subp. 1 (A) have not been met with respect to the issues raised by the MCEA request for a CCH on the permit coverage under the Feedlot Permit for the Daley Farms of Lewiston LLP, Daley Farms of Lewiston LLP 1, and Daley Farms of Lewiston LLP 7 feedlot sites. Therefore, the request for a contested case hearing is denied.

44. Due, adequate, and timely public notice of the proposed modification of permit coverage under the Feedlot Permit for the Daley Farms of Lewiston LLP, Daley Farms of Lewiston LLP 1, and Daley Farms of Lewiston LLP 7 feedlot sites was given in accordance with Minn. R. 7001.0100.

45. The requirements set forth in Minn. R. 7001.0140 for modification of the notice of coverage under a Feedlot Permit and issuance of the notice of coverage under the Feedlot Permit are satisfied. Therefore, the modified permit coverage under the Feedlot Permit for the Proposer’s Daley Farms of Lewiston LLP, Daley Farms of Lewiston LLP 1, and Daley Farms of Lewiston LLP 7 feedlot sites should be issued.

46. Any findings that might properly be termed conclusions and any conclusions that might properly be termed findings are hereby adopted as such.

ORDER

47. The Minnesota Pollution Control Agency determines that the issues raised by the contested case hearing request do not meet the requirements of Minn. R. 7000.1800, subp. 2(A) and Minn. R. 7000.1900, subp. 1 (A) for granting a contested case hearing. The Minnesota Pollution Control Agency denies the requests for a contested case hearing.

48. The Minnesota Pollution Control Agency approves and authorizes modification of permit coverage under the Feedlot Permit for the Daley Farms of Lewiston LLP, Daley Farms of Lewiston LLP 1, and Daley Farms of Lewiston LLP 7 feedlot sites.

IT IS SO ORDERED

[Signature]
John Linc Stine, Commissioner
Minnesota Pollution Control Agency

[Date]

1/4/19
LIST OF COMMENT LETTERS RECEIVED ON THE EAW AND FEEDLOT PERMIT

7. Paul Doran. Email received October 19, 2018.
17. Haley O’Neill. Email received November 1, 2018.
18. Joan Buske. Email received October 30, 2018.
22. Dan and Donna. Email received October 30, 2018.
24. Kim Hiltnen. Email received October 30, 2018.
26. Dean Borgeson. Email received October 30, 2018.
27. Michelle Wilkes. Email received October 30, 2018.
29. Marco Polo. Email received October 30, 2018.
30. Dayna Burtness. Email received October 30, 2018.
31. Thomas Walsh. Email received October 30, 2018.
32. Laura Dillon. Email received October 30, 2018.
33. Lorraine Redig. Email received October 30, 2018.
34. Vincent Ready. Email received October 30, 2018.
35. Robert Goetz. Email received October 30, 2018.
36. Mary Baird. Email received October 30, 2018.
37. Barbara Veit. Email received October 30, 2018.
38. Phoebe Ruona. Email received October 30, 2018.
40. Kurt Kimber. Email received October 30, 2018.
41. Roslyn Hjermstad. Email received October 30, 2018.
42. Sonja Trom Eayrs. Email received October 30, 2018.
43. DeeAnn Stenlund. Email received October 30, 2018.
44. Sonja Trom Eayrs, on behalf of Dodge County Concerned Citizens. Email received October 30, 2018.
45. Diane J. Peterson. Email received October 30, 2018.
46. Jake Stacken. Email received October 30, 2018.
47. Anna Racer. Email received October 30, 2018.
48. Peggy Endres. Email received October 30, 2018.
49. Henry Homburger. Email received October 30, 2018.
50. Donna Martinson. Email received October 30, 2018.
51. Kally Goschke. Email received October 30, 2018.
52. Joline Gitis. Email received October 30, 2018.
53. Stan Sattinger. Email received October 30, 2018.
54. Gretchen Bratvold. Email received October 31, 2018.
55. Nancy Palmer. Email received October 31, 2018.
56. Jesgroebner. Email received October 31, 2018.
58. Theresa Zeman. Email received October 31, 2018.
60. Dean Flugstad. Email received October 31, 2018.
61. Mary Jo Bibby. Email received October 31, 2018.
62. Catherine Steffens. Email received October 31, 2018.
63. Dale Hadler. Email received October 31, 2018.
64. Richard Dahl. Email received October 31, 2018.
65. Tiffany Reinitz. Email received October 31, 2018.
66. Carol Ashley. Email received October 31, 2018.
67. Annette Homburger. Email received October 31, 2018.
68. Frank Bures. Email received October 31, 2018.
69. Don Walser. Email received October 31, 2018.
70. RedHeart RedHeart. Email received October 31, 2018.
71. Stan Smith. Email received October 31, 2018.
72. ML Wilm. Email received October 31, 2018.
73. Jennifer Rupprecht. Email received October 31, 2018.
74. Mike Rupredht. Email received October 31, 2018.
75. Roy House. Email received October 31, 2018.
76. Dana Jackson. Email received October 31, 2018.
77. Robert Munneke. Email received October 31, 2018.
78. Julie Gordon. Email received October 31, 2018.
79. Megan Falvey. Email received October 31, 2018.
82. Wendy Larson. Email received October 31, 2018.
83. Eric Utne. Email received October 31, 2018.
84. Aaron Thompson. Email received October 31, 2018.
85. Janice Kittok. Email received October 31, 2018.
86. John King. Email received October 31, 2018.
87. Loni Kemp. Email received October 31, 2018.
88. Barb Nagel. Email received October 31, 2018.
89. Robert Benson. Email received October 31, 2018.
90. Virginia Templeton. Email received October 31, 2018.
91. Emily Falc and leadership team of the Winona Climate Action Network. Email received October 31, 2018.
93. Leslea Hodgson. Email received October 31, 2018.
95. Hootch Hanson. Email received October 31, 2018.
96. Jean and Mark Reisetter. Email received October 31, 2018.
97. Mark M. Giese. Email received October 31, 2018.
98. Linda D'Amico. Email received October 31, 2018.
100. Mabel Nichols. Letter received October 25, 2018.
104. Jean Schilling. Email received October 30, 2018.
105. Mary Voight. Email received October 30, 2018.
106. Stuart Malanaphy. Email received October 30, 2018.
107. Angela Anderson. Email received October 30, 2018.
108. Lawrence Krantz. Email received October 30, 2018.
110. Jean Greenwood. Email received October 30, 2018.
111. Elizabeth Oness. Email received October 30, 2018.
112. Sue Griebel. Email received October 30, 2018.
113. Gene Kremer. Email received October 30, 2018.
115. Edward Lagace. Email received October 30, 2018.
118. Eric Nelson. Email received October 30, 2018.
119. Jan Dahl. Email received October 30, 2018.
120. Bruno Bonsari-2. Email received October 30, 2018.
121. Loretta Jaus. Email received October 30, 2018.
122. Mike Kennedy. Email received October 30, 2018.
123. Nancy Conger. Email received October 30, 2018.
125. Chris Peckover. Email received October 30, 2018.
126. Jennifer Cantine. Email received October 30, 2018.
127. Michelle Gobely. Email received October 30, 2018.
128. Margot Monson. Email received October 30, 2018.
129. Dorothy Dolezal. Email received October 30, 2018.
130. Laura Inman. Email received October 30, 2018.
131. Sarah Orman. Email received October 30, 2018.
132. Dorothy Kloehn. Email received October 30, 2018.
133. Ken Lyons. Email received October 30, 2018.
134. Carolyn Carr. Email received October 30, 2018.
135. Elizabeth Jarrett Andrew. Email received October 30, 2018.
136. Margaret Mahoney. Email received November 5, 2018.
137. Donald Greenebaum. Email received November 4, 2018.
186. Erin Moffit. Online submittal received October 8, 2018.
187. Chad Theede. Online submittal received October 8, 2018.
188. Amanda Domeier. Online submittal received October 8, 2018.
189. Mary Domeier. Online submittal received October 8, 2018.
190. Kevin. Online submittal received October 8, 2018.
191. Mike Buringa. Online submittal received October 8, 2018.
194. George Droogsma. Online submittal received October 8, 2018.
197. Taylor Bartelson. Online submittal received October 8, 2018.
199. Austin Liepold. Online submittal received October 8, 2018.
201. Dustin Rohe. Online submittal received October 8, 2018.
203. Devin Banitt. Online submittal received October 9, 2018.
204. Jesse Ellinghuysen. Online submittal received October 9, 2018.
206. Lee Kloechner. Online submittal received October 9, 2018.
207. Lori LaBrec. Online submittal received October 9, 2018.
208. Dave Riebel. Online submittal received October 9, 2019.
209. Mitch Thompson. Online submittal received October 9, 2018.
211. No name given. Online submittal received October 10, 2018.
218. Tom Theede. Online submittal received October 11, 2018.
220. Scott Ellinghuysen. Online submittal received October 12, 2018.
221. Lee Ihrke. Online submittal received October 12, 2018.
222. Wendy Badenhorst. Online submittal received October 12, 2018.
223. Wade Gustafson. Online submittal received October 12, 2018.
228. Laura McDonough. Online submittal received October 13, 2018.
230. Mary Hansel. Online submittal received October 14, 2018.
231. Brent and Polly Greden. Online submittal received October 14, 2018.
232. John Fritts. Online submittal received October 14, 2018.
243. No name or comment given, received October 16, 2018.
244. Elias Anoszko. Online submittal received October 17, 2018.
248. Cameron Kennedy. Online submittal received October 18, 2018.
250. Mary Hansel. Online submittal received October 19, 2018.
254. Alex Romano. Online submittal received October 19, 2018.
256. Lynn Glesne. Online submittal received October 19, 2018.
259. Tom van der Linden. Online submittal received October 19, 2018.
263. Steve Sandberg. Online submittal received October 19, 2018.
266. Beth Tamminen. Online submittal received October 19, 2018.
269. Mary Vlazny. Online submittal received October 19, 2018.
270. Mary Voight. Online submittal received October 19, 2018.
274. Elizabeth Oness. Online submittal received October 19, 2018.
275. Mary Farrell. Online submittal received October 19, 2018.
278. Linda O’Neill DeRemee. Online submittal received October 20, 2018.
280. Margaret Merkow. Online submittal received October 20, 2018.
283. Sylvia Borgmeier. Online submittal received October 20, 2018.
284. Milo Oien-Rochat. Online submittal received October 20, 2018.
286. Sara Gjerdrum. Online submittal received October 20, 2018.
287. Eva Barr. Online submittal received October 20, 2018.
288. Allan LaValier. Online submittal received October 20, 2018.
290. Scott Kerl. Online submittal received October 20, 2018.
291. Suzanne Swanson. Online submittal received October 20, 2018.
293. Larry Jungwirth. Online submittal received October 20, 2018.
296. Angela Anderson. Online submittal received October 22, 2018.
299. Sylvia Borgmeier. Online submittal received October 22, 2018.
300. Gayle Anderson. Online submittal received October 22, 2018.
301. Dee Czech. Online submittal received October 22, 2018.
305. Sharon Vipond. Online submittal received October 23, 2018.
308. Daryl Buck. Online submittal received October 24, 2018.
311. Christopher Loch. Online submittal received October 24, 2018.
313. Sharon DePestel. Online submittal received October 25, 2018.
316. Shannon Martin. Online submittal received October 26, 2018.
326. Jim Riddle. Online submittal received October 31, 2018.
328. Shona Snater. Online submittal received October 31, 2018.
329. Terry Houle. Online submittal received October 31, 2018.
335. Linda Fabiano. Online submittal received October 31, 2018.
337. Deborah Niebuhr. Online submittal received October 31, 2018.
338. Madeline Neenan. Online submittal received November 1, 2018.
341. Kevin Schermer. Online submittal received November 1, 2018.
342. Thomas Szyszkiewicz. Online submittal received November 1, 2018.
344. Scott Doblar. Online submittal received November 2, 2018.
348. Merry Sawdey. Email received November 13, 2018.
349. Nadine Heidinger. Email received November 13, 2018.
351. Bridget Levin. Email received November 13, 2018.
352. Kurt Schulz. Email received November 13, 2018.
355. Barbara Norblom. Email received November 13, 2018.
356. Sarah Simpson. Email received November 13, 2018.
357. Kelly Kirkpatrick. Email received November 13, 2018.
359. Kelsey Koch. Email received November 12, 2018.
360. James Pelowski. Email received November 12, 2018.
361. Judy Linman. Email received November 12, 2018.
362. Annette McGinley. Email received November 11, 2018.
363. Leslie Stewart. Email received November 11, 2018.
365. Janette Dean. Email received November 10, 2018.
368. Billy Gurmano. Email received November 10, 2018.
369. Pamela DeWolf. Email received November 9, 2018.
370. John McGowan. Email received November 9, 2018.
371. Allen Larson. Email received November 9, 2018.
372. Elizabeth Merz. Email received November 9, 2018.
373. Peggy Endres. Email received November 9, 2018.
374. Jeremy Wales. Email received November 9, 2018.
375. Julie Rettig. Email received November 9, 2018.
376. Patricia Loverink. Email received November 9, 2018.
377. John Reynolds. Email received November 9, 2018.
378. Christine Harshman. Email received November 9, 2018.
379. Scott Olson. Email received November 9, 2018.
380. Renee Walz. Email received November 9, 2018.
381. Kristine Hall. Email received November 9, 2018.
382. Rhyan Schicker. Email received November 9, 2018.
383. Dan Hooley. Email received November 9, 2018.
384. Gail Bradford. Email received November 9, 2018.
385. Cheryl Peterson. Email received November 9, 2018.
386. Danielle Hernandez. Email received November 9, 2018.
387. Dawn Pesicka. Email received November 9, 2018.
388. John Brown. Email received November 9, 2018.
389. Cleeson Mill. Online submittal received November 6, 2018.
391. Lee Rain. Online submittal received November 6, 2018.
392. Glen Groth. Online submittal received November 6, 2018.
394. Roberta Bumann. Online submittal received November 7, 2018.
395. Larry Hampel. Online submittal received November 7, 2018.
400. Jim Reinhardt. Online submittal received November 11, 2018.
403. Don Nordby. Online submittal received November 12, 2018.
408. Margaret Walsh. Online submittal received November 13, 2018.
411. William Davis. Online submittal received November 14, 2018.
413. Dayna Burtness. Online submittal received November 15, 2018.
419. Carol Thompson. Online submittal received November 15, 2018.
422. Rita Young. Online submittal received November 15, 2018.
423. John Lenczewski. Online submittal received November 15, 2018. (DUPLICATE)
425. Tina Gronquist. Email received November 9, 2018.
426. Barbara Courneya. Email received November 9, 2018.
427. Wayne Potratz. Email received November 9, 2018.
428. Walter Wegner. Email received November 9, 2018.
430. Nora Moore. Email received November 9, 2018.
431. Joshua Howe. Email received November 9, 2018.
432. Juey Brommerich. Email received November 7, 2018.
433. Karen Swanson. Email received November 6, 2018.
434. Melissa Gordon. Email received November 5, 2018.
435. Lois Kozlowski. Email received November 13, 2018.
436. Lynnea Pfohl. Email received November 13, 2018.
437. Anne Wildenborg. Email received November 13, 2018.
438. Stuart Malanaphy. Email received November 13, 2018.
439. Sheila Maybanks. Email received November 13, 2018.
441. Mary Vlazny. Email received November 13, 2018.
442. Sharon Kutter. Email received November 13, 2018.
443. Nancy Sogabe-Engelmayer. Email received November 13, 2018.
444. Curtis Speck. Email received November 13, 2018.
446. Lynne Anderson. Email received November 13, 2018.
449. Steward Day. Email received November 13, 2018.
450. Mary Melbo. Email received November 13, 2018.
452. Wendy Hagen. Email received November 13, 2018.
453. Michelle Gobely. Email received November 13, 2018.
454. Virginia Mackay. Email received November 13, 2018.
455. Leo Klisch. Email received November 13, 2018.
458. S.E. Email received November 13, 2018.
459. Debra Sluis. Email received November 13, 2018.
460. Sandra Webb. Email received November 13, 2018.
461. Blanchard and Doris Krogstad. Email received November 13, 2018.
462. Mike Kennedy. Email received November 13, 2018.
466. Lynn Albrecht. Email received November 13, 2018.
467. Thomas Harries. Email received November 13, 2018.
468. Chris Hughes. Email received November 13, 2018.
469. Elsie Kyllo. Email received November 13, 2018.
470. Joe Lineweaver. Email received November 13, 2018.
471. Katherine Clinch. Email received November 13, 2018.
472. Florence Hedeen. Email received November 13, 2018.
473. Ron Pribyl. Email received November 13, 2018.
474. Diane Boushek. Email received November 13, 2018.
475. Marie Piltingsrud. Email received November 13, 2018.
476. Donna Butler. Email received November 13, 2018.
477. Charles and Marilyn Magnuson. Email received November 13, 2018.
478. Ron Kroese. Email received November 13, 2018.
481. Joan Olson. Email received November 13, 2018.
482. Allen Larson. Email received November 13, 2018.
484. Nick Olson. Email received November 13, 2018.
485. Peg Furshong. Email received November 13, 2018.
486. Michael Byro. Email received November 13, 2018.
487. Ron Laswell. Email received November 13, 2018.
489. Steven Sundstrom. Email received November 13, 2018.
490. Steven Sundstrom. Email received November 13, 2018.
491. Sue Griebel. Email received November 13, 2018.
492. Kyle Black. Email received November 13, 2018.
493. Marian Severt. Email received November 13, 2018.
494. Sarah Sander. Email received November 13, 2018.
495. Ruth Lindh. Email received November 13, 2018.
496. Candace Marx. Email received November 13, 2018.
497. Dustin Szumowski. Email received November 13, 2018.
498. Ha Hulett. Email received November 13, 2018.
499. Patty Kakac. Email received November 13, 2018.
500. Donna Stockman. Email received November 13, 2018.
502. Dean Borgeson. Email received November 13, 2018.
504. Jean Greenwood. Email received November 13, 2018.
505. Christina Schmitt. Email received November 13, 2018.
507. Diane Polasik. Email received November 13, 2018.
508. Deborah Allan. Email received November 13, 2018.
509. Laurence Margolis. Email received November 13, 2018.
511. Molly Nemec. Email received November 14, 2018.
512. Ron Pribyl. Email received November 14, 2018.
513. Dustin Braun. Email received November 14, 2018.
514. Donovan Dyrdal. Email received November 14, 2018.
515. Mark Plemel. Email received November 14, 2018.
516. Stacie Spaeth. Email received November 14, 2018.
517. Kathleen Mary Kiemen SSnd. Email received November 14, 2018.
518. Diane Klinefelter. Email received November 14, 2018.
520. Jeanne Groebner. Email received November 14, 2018.
521. Thomas Richards. Email received November 14, 2018.
522. Deb Alper. Email received November 14, 2018.
524. Sylvia Borgmeier. Email received October 31, 2018.
525. David Washburn. Email received November 13, 2018.
526. Meg Anderson. Email received November 13, 2018.
527. Lee Randall. Email received November 14, 2018.
528. Kathy Crandall. Email received November 14, 2018.
529. Starr Brainard. Email received November 14, 2018.
530. Rafael Bustos. Email received November 14, 2018.
531. Gretchen Bratvold. Email received November 14, 2018.
532. Wayne Hervey. Email received November 13, 2018.
533. Melissa Hochstetler. Email received November 13, 2018.
534. Joan Meierotto. Email received November 13, 2018.
535. Mark M. Giese. Email received November 13, 2018.
536. Alec Nord. Email received November 13, 2018.
538. Mary Voigt. Email received November 13, 2018.
541. Darcy Bergh. Email received November 13, 2018.
543. Doug Ploof. Email received November 13, 2018.
545. Mary Baird. Email received November 13, 2018.
546. Wendy Peardot. Email received November 13, 2018.
547. Mickey Foley. Email received November 13, 2018.
548. Sylvia Luetmer. Email received November 13, 2018.
549. Tim Olish. Email received November 13, 2018.
552. Janet Kortuem. Email received November 13, 2018.
553. Ginny Halloran. Email received November 13, 2018.
554. Sheryl Samuel. Email received November 13, 2018.
555. Milo Oien-Rochat. Email received November 13, 2018.
556. Kathleen Blake. Email received November 13, 2018.
557. Gloria Degele. Email received November 13, 2018.
558. Elizabeth Wehrwein. Email received November 13, 2018.
561. Dorothy Dolezal. Email received November 13, 2018.
562. Randy Baker. Email received November 13, 2018.
563. Sally Vogel. Email received November 13, 2018.
564. Joshua Otte. Email received November 14, 2018.
566. Kellie Hoyt. Email received November 14, 2018.
567. Joan Stockinger. Email received November 14, 2018.
568. Diana Brainard. Email received November 14, 2018.
569. Vincent Ready. Email received November 14, 2018.
570. Vincent Ready. Email received November 14, 2018.
571. Amy Cordry. Email received November 14, 2018.
572. Deborah L. Nichols. Email received November 15, 2018.
573. Richard Harle. Email received November 15, 2018.
574. Margaret Walsh. Email received November 15, 2018.
575. Patrick Byron. Email received November 15, 2018.
578. Mary Tacheny. Email received November 14, 2018.
579. Madeline Neenan. Email received November 15, 2018.
580. John Zschetzsche. Email received November 15, 2018.
581. Eva Barr. Email received November 15, 2018.
582. Alan Muller. Email received November 15, 2018.
583. Peg Zahorik. Email received November 15, 2018.
584. John P. Lenczewski. Email received November 15, 2018.
585. Pat Schmieder. Email received November 15, 2018.
587. Dennis Johnson. Email received November 15, 2018.
588. Barbara Sogn-Frank. Email received November 15, 2018.
589. Aleta Borrud. Email received November 15, 2018.
590. Ryan Franke. Email received November 15, 2018.
591. Mark Erickson. Email received November 15, 2018.
592. Sandra D. Jones. Email received November 15, 2018.
593. Janette Dean. Email received November 15, 2018.
594. Becky Ault. Email received November 15, 2018.
595. Calvin Alexander. Email received November 15, 2018.
596. Lynn Theurer. Email received November 15, 2018.
597. Denise Zabinski. Email received November 15, 2018.
598. Carly McGinty, Winona County Feedlot Officer. Email received November 15, 2018.
599. Arthur Hawkins. Email received November 15, 2018.
600. Becky Horton, Minnesota Department of Natural Resources. Email received November 15, 2018.
601. Jill Crafton. Email received November 15, 2018.
602. John King. Email received November 15, 2018.
603. Nancy Wagner. Email received November 15, 2018.
604. Tom Richards. Email received November 15, 2018.
605. Lizzy Haywood. Email received November 15, 2018.
606. Mary Lundell. Email received November 15, 2018.
607. Scott Lowery. Email received November 14, 2018.
608. Hilary Reeves. Email received November 14, 2018.
610. Roger Wacek. Email received November 14, 2018.
611. Keith Johnson. Email received November 14, 2018.
612. Laurie Hougne-Eitzman. Email received November 14, 2018.
613. Ryan Ronchak. Email received November 14, 2018.
615. Douglas Anderson. Email received November 14, 2018.
616. Bonnie Haugen. Email received November 14, 2018.
617. Cherie Hales. Email received November 14, 2018.
618. Melissa Maher. Email received November 14, 2018.
Kim Grosenheider  
MPCA  
520 Lafayette Road N.  
St. Paul, MN 55155-4194 

Re: Application by Daley Farm of Lewiston, MN plans to more than double the number of cows 

Dear Ms. Grosenheider— 

I read in the Oct. 7, 2018 edition of the Mpls. StarTribune, about the application before the MPCA (and other bodies) by the Daley family of Lewiston to radically increase their dairy feedlot operation. The article indicates these are good, hardworking people. 

I for one hope that the state rejects the Daley permit application to greatly expand their feedlot operations. I believe it was Gov. Jesse Ventura’s administration that first allowed the expansion of feedlots in MN. Since then, groundwater has become further contaminated by ag operations, nearby neighbors swoon from the stench emanating from their neighbor’s cattle and hog feedlots, and "accidents" at manure lagoons cause untold millions of gallons of swill to penetrate groundwater and streams. 

A better solution would be to once again encourage animal operations be part of small and medium sized farms—where pasture grazed animals would spread manure in a more natural way—and reduce the concentration of animal confinement compared to feedlots. 

A concerted effort SHOULD also be made to require feedlots over a certain size to install anaerobic manure digesters.  

Install anaerobic digesters would partially treat the sewage, and recover methane gas—a major contributor to climate change. The captured methane can be used to generate on site heat or electricity. The digester will also reduce pathogens in the effluent, and reduce odors wafting to nearby neighbors. Using a state or federal loan program to finance these digesters, operators who build them report that they pay back the initial investment and then continue to reap both benefits to the environment and to the bottom line. 

State and local regulators need to halt the spread of "business as usual" feedlot operations in our state. The environment is already overtaxed by their proliferation, and, if an operator goes under, who then is responsible for cleaning up their contaminated feedlot? 

Regards, 

Bruce Clark
John F. Campe

Certified General Real Property Appraiser

39342 County Road 8
Dakota, Minnesota 55925

October 12, 2018

MS Kim Grosenheider
MCPA
520 Lafayette Road North
St. Paul, MN 55155-4194

RE: Daley Farm, Lewiston, MN 55952

Dear MS Grosenheider:

As an Independent Appraiser, I have had the opportunity to view a number of dairy operations in Iowa, Minnesota, and Wisconsin. I have observed the operation of Daley Farm as being responsible stewards of their land, humane in the management of their dairy herds, and on the leading edge of manure management.

I would recommend that your agency proceed in a positive manner with the Daley Farm application.

Very Respectfully,

John F. Campe, Minnesota License # 20049866
Certified General Real Property Appraiser

CC: Winona County Commissioners, Senator Jeremy Miller
I could write pages but I'll keep it short.

I am asking MPCA to be as considerate to the citizens of SE. MN who register concern to your office as you've been to the Dalesys who are proceeding with their dairy expansion. E.A.W. even... The animal Cap in Winona Co is 1500. They've been converting that for 20 years. The way I understand the ordinance, it's not even legal to have proceeded to this point. How much time and money has been spent on this project? Located about 1 mi. from a city that already the entire contents of their municipal sewer facility into the ground water in 1992. As did Altura and Delchester. Using 92 million gallons of water when the city of Lewiston's water supply is a cocktail of 3 wells in order to comply with contaminant levels. SE Minnesota is not the place for this project. You can study and regulate all you want, you simply cannot guarantee that a project of this size will be safe. The well water is already unsafe at many wells in their area. The U.S.D.A. says that a 250 cow dairy produces as much waste as 5,000 people. EPA says 250 cows = 41,000 people. Do you think that's correct or does MN MPCA know something they don't. Good grief! A home in my area has to put in a $30,000 mound system for a home with 2 people because we live in this Karst Area.

AN ENVIRONMENTAL IMPACT STATEMENT!!
Comment Sheet
Proposed Daley Farms expansion
Environmental Assessment Worksheet
and Individual Feedlot Permit Coverage

Your comments!
If you would like to comment on the Environmental Assessment Worksheet (EAW) and Individual Feedlot Permit for Daley Farms’ proposed dairy expansion in Winona County, Minnesota, please use this form and mail it to:
Kim Grosenheider, MPCA, 520 Lafayette Road N., St. Paul, MN 55155. You may also submit comments online: http://survey.mn.gov/s.asp?k=153730433478. Written comments must be received by 4:30 p.m., Oct. 31, 2018.

Our family has known the Daley family for 23 years. They are hard working, respectful and conscientious people. We support their expansion.

(For additional space, continue on backside of this sheet.)

| Name (Required. Please print.) | TED BETH HESS |
| Address (Required. Please print.) | 21387 FERGUSON VALLEY DRIVE- LEWISON MN 55952 |

Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194
(651) 296-6300, toll-free (800) 657-3864, TTY (651) 282-5332 or (800) 657-3864
This material can be made available in alternative formats for people with disabilities.
Printed on recycled paper containing at least 30 percent fibers from paper recycled by consumers.
Comment Sheet  
Proposed Daley Farms expansion  
Environmental Assessment Worksheet  
and Individual Feedlot Permit Coverage

Your comments!

If you would like to comment on the Environmental Assessment Worksheet (EAW) and Individual Feedlot Permit for Daley Farms' proposed dairy expansion in Winona County, Minnesota, please use this form and mail it to: Kim Grosenhaeder, MPCA, 520 Lafayette Road N., St. Paul, MN 55155. You may also submit comments online: http://survey.mn.gov/s.asp?k=153730433478. Written comments must be received by 4:30 p.m., Oct. 31, 2018.

I farm and live in Winona and Fillmore Counties.
I believe strongly that a project of this magnitude needs the highest possible scrutiny authorized by law... a full environmental impact statement.

I do not doubt that the likelihood of an accident occurring is small.
But risk is a function of likelihood and severity of an accident.

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such a tight space ... this presents risk of a catastrophic incident for the environment.

How can we understand risk of this magnitude without the highest possible environmental risk review?

Does an EAW really consider and rule out potential impact for a 500 year rain event within 24 hours?

16-20" rain on saturated soil, like we had here in 2007?

Can the EAW guarantee that this would not produce overflow / outflow of manure?

What about a tornado passing right over the facility (manure lagoon etc)?

Again ... very unlikely. But what would happen if something like this did occur??

I do not believe that a simple EAW can possibly anticipate and control "environmental effects sufficiently ..."

Only a full EIS can do this.
Why would anyone want to milk 3000 cows??

Long time ago you could make a living milking 40 cows, then 80 cows, later 160 cows then 250, then 500 cows. Notice a trend here?? This isn’t a local or temporary trend. Right now over 1/3rd of all milk marketed in the U.S. is from herds milking OVER 2000 cows.

Why??

Scale of Economics ..... a lot less money to build a 3000cow dairy than 10 – 300 cow dairies or 30 -100 cow dairies.

With all the new technologies on the market today, managing 3000 cows today is more efficient and feasible than an 80cow herd many years ago.

Because of this trend, Dr. Marin Bozic, a dairy economist for the University of Minnesota said, I anticipate out of the 3000 dairy farmers left in the state of Minnesota, 80% are LAST GENERATION dairy farmers.

That is VERY scarrv for me as a dairy farmer and should be for the local economy as well.

What will happen to our local economy when 80% of our local dairy farms are gone?? What will happen to Vet clinic, local feed dealers and dairy equipment repair businesses and all the people and families that these businesses support?? How about the school districts and county budgets??

The economic activity from dairy herds is between $10,000 to $12,000 PER COW PER YEAR, depending on which economist you consult.

That is a lot of money for our state, county and school districts.

I’m sure there are going to be people who speak in opposition to this proposal, that opposition is likely based out of a misunderstanding of how large farms are operated, regulated and managed.

Some groups use fearmongering to get attention to their cause, they try to SCARE people from the unknown or unusual, like the first large dairy in the county.

That is why we have the M.P.C.A. to make sure our natural resources in the area are preserved for our future generations.

I would like to thank the Daley family for all they have done for the community they have been a part of for many generations and wish them all the best in the future.

Thanks,

Becky Clark
Good Morning Kim,

My name is Paul Doran and my family and I have been residents of Lewiston for 40+ years. I’ve also been a business owner in Lewiston for over 40 years.

I’m contacting you today regarding the proposed Daley farm expansion west of the city. I’d like to express support in allowing them to move forward with the expansion. The Daley’s have a long history of doing “what is right” and I have complete confidence that they would continue doing so moving forward with the expansion. This is a well educated family and they are definitely aware that they need to protect all natural resources for their neighbors as well as themselves. I’m confident they will take every precaution moving forward to use safe farming practices.

The Daley family has been a huge contributor in every way to Lewiston and the Lewiston Area. I spend a large amount of time within the community and in local businesses and I can assure you the support for the expansion project is overwhelming. Unfortunately most people aren’t willing to take the time to contact you but I do talk to a large number of people running my business and I’ve yet to talk to anyone opposed to the expansion.

It would very unfair to stop a local family business from expanding to allow the younger generation to get involved.

Trust the Daley’s will do everything possible to keep our environment safe and continue to be good stewards of the land.

Thanks,
Paul Doran
Kim Grosenheider  
MPCA  
525 Lafayette Rd N.  
St. Paul, MN 55155-4194

Kim: I am writing to oppose approval of an increase in cows at the Daley farm in Lewiston, Minn. The Daley family is already allowed to exceed the county limits. If they are allowed to increase their herd, how would the county be able to deny others to do the same?

I live in Wilson township. Our water was tested about a year ago and we have nitrates and traces of pesticides present. If our water is showing signs of agricultural contamination with just normal sized farms, how much risk are the Daley's potentially causing? Please do not allow this enormous increase in cows which will threaten our water and quality of life in Winona county.

Sincerely,
Lorette Boyer
Kim Groenheider:

I unequivocally oppose the radical Daley Farm expansion proposal.

An Environmental Impact Statement must be required. After the completion of an Environmental Impact Statement, I may reconsider my opposition to the Daley proposal. A reconsideration will be based on the competence of the scientists doing the EIS, and a citizens review of their research. Until the EIS is completed, I unequivocally oppose the Daley Farm proposal.

Cordially,

Richard Stephen Schwartz
Comment Sheet
Proposed Daley Farms expansion
Environmental Assessment Worksheet
and Individual Feedlot Permit Coverage

Your comments!
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Reasons to require an EIS on the Daley Farm expansion:

- Utica township has 46% of its wells over 10 mg/L Nitrate.
- St. Charles township has 34% of its wells over 10 mg/L Nitrate.
- Agriculture is a known non-point source of nitrate-nitrogen. Water use of 9.2 million gallons of water use annually threatens aquifer for others. Karst limestone formations are prevalent in the area and continue to form. Current evaluations do not take that into account. There is absolutely...

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Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194
(651) 296-6300, toll-free (800) 657-3864, TTY (651) 282-5332 or (800) 657-3864
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Comment Sheet
Proposed Daley Farms expansion
Environmental Assessment Worksheet and Individual Feedlot Permit Coverage

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[Handwritten text]

I oppose the Daley farm expansion and ask the MPCA to require an EIS. The Daley Farm is not complying to MPCA regulations already put in place. Why will they follow the rules put forward with a bigger expansion with larger environmental consequences, when they haven't complied with old requirements already in place.

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Dear Mr. Groenkefein:

As someone who lives in an area of the state with serious water quality issues, I am asking you to require an Environmental Impact Statement on the proposed expansion of the Dakey Farm in Leinster.

By more than doubling their herd of cattle, they will be putting the surrounding area in serious danger of water (not to speak of soil and air) pollution. The good of the larger community must take precedence over the profits of one company.

Thank you for your consideration of this concern.

Respectfully,

Mabel Nichols
6460 Lawless Ave
Cottage Grove, MN 55016

nicholsmabel@yahoo.com
Comment Sheet
Proposed Daley Farms expansion
Environmental Assessment Worksheet and Individual Feedlot Permit Coverage

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I am glad that Daley Farms has a successful dairy operation in our area. Due to my concern over water quality & water use, I would ask that Daley Farms not expand beyond their current animal unit level. Our feedlot ordinance is in place to protect the health & wellness of Winona County lands, waters, and citizens.

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TO KIM
MINN POLLUTION CONTROL AGENCY
I WENT TO THE MEETING OCT 14TH
REGARDING THE DALEY DAIRY EXPANSION.
I AM VERY CONCERNED ABOUT THIS
PROJECT, AS TO WHAT EFFECT IT WILL HAVE
ON WATER QUALITY, AIR QUALITY AND
SALINITY. THIS IS THE MAIN CONCERN OF
THIS WHOLE PROJECT AND ALSO THINKING OF
THE FUTURE, NOT JUST TOMORROW.

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| Name (Required. Please print.) | DONNA SPELTZ |
| Address (Required. Please print.) | 28651 C Rd 33 |
|                                | UTICA, MINN (City, State, Zip) 55919 |

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To Kim

Minn Pollution Control Agency

Comment Sheet For Daley Farms

Daleys own a farm south of where we live on County Rd 33 and when they haul chopped alfalfa in early June and corn silage in the fall it is a steady roar of trucks going by every 3-4 mins and they are moving that is now with 1700+ cows. What will it be with the increase? You have to think of safety getting out on the road. They go from early morning till way late at night sometimes.

I saw the slogan "we support all dairy" I think we are destroying dairy by there big massive set ups.

Highway 14 is to be one of the scenic routes through S. E. Minn but coming past Daleys now you can smell liquid manure at certain times, with more cows the smell will last longer. What do city people think of this that have never been on a farm and this is
WHERE SOME OF THEIR FOOD COMES FROM. THINK ABOUT IT. AN EIS SHOULD BE DONE.
I WONDER IF EVERYONE INVOLVED WITH THIS EXPANSION REALIZES THE MAGNITUDE OF THIS PROJECT, THE AMOUNT OF QUESTIONS FROM LOCAL, STATE, AND WORLD WIDE, MANY FOREIGN VISITORS AND NO EIS? THEY WILL SAY TO YOU HOW DID YOU GET BY THAT?

THANK YOU
JOE SPELTZ
28651 C-6233
UTICA, MINN 55979
Comment Sheet
Proposed Daley Farms expansion:
Environmental Assessment Worksheet
and Individual Feedlot Permit Coverage

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The overriding issue regarding the proposed expansion is the probable effect on the aquifer, and therefore local wells. According to Minnesota Dept. of Agriculture results for 2018 tests for nitrate nitrogen, 42.9% of wells tested over the 10 mg/L limit in Fremont twp; 19.6% in Utica twp; and 14.5% in St. Charles twp, and 11.3% in Warren twp. The Daley farm is in Utica twp. They are proposing to increase their dairy herd by 167%, from 1728 cows and calves to 4,628. Where is all the increase in manure going to go? Are they already near their application limits? If they are allowed to proceed, and in a few years

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<td>Address (Required. Please print.)</td>
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The groundwater contamination is worse, then what can be done? We need an Environmental Impact Statement!

This farm already exceeds the limit for animal units set by Winona County, since they were grandfathered in. So I'm wondering how they expect to get approved by Winona County. Are they relying on being able to get the limits changed?
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

I'm from a family-owned livestock farm. I understand the unique challenges of small, family-run farming, particularly the challenges of competing with larger and/or corporate livestock production. I'm also from the incredibly valuable landscape, geology, Mississippi River Valley, bluff country, and driftless region that is southeast Minnesota. I still live here and I don't want to see this one-of-a-kind place deteriorate further.

The EAW indicates that this factory farm expansion will generate 46 million gallons of liquid manure annually. The EAW clearly demonstrates that this facility will have the potential for significant environmental impacts and therefore, as required by law, I request that the MPCA order the completion of an Environmental Impact Statement (EIS).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota's 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

I understand that Midwest dairies are struggling and that expansions make financial sense. I understand the efficient nature of confined animal farming operations, otherwise known as CAFOs-- a high animal density on a small amount of land allows more livestock for shorter periods of time while providing more space for row crops. I get this, that doesn't mean I agree with this form of farming or that I don't empathize with Daley farms and family members about the future of their farming endeavors. I'm not opposing the survival of the Daley dairy, I'm speaking in opposition to the environmental impact this expansion would have.

I spent a large amount of my senior theses at Grinnell College conducting microbial research regarding the antibiotic resistant genes and bacteria that pose threats to human and environmental health in a myriad of ways. Antibiotic resistance, whether naturally occurring or created via overuse of antibiotics, is one of the most prominent threats to our health and future as a species. Overuse and over-reliance on antibiotics positively benefits CAFO farms-- in the short term-- animals in high-density environments get sick less often and yield higher weight gains or milk production. In the long term, animals cannot metabolize the amount of antibiotics they're exposed to (whether through injections, feed, water sources, etc) and excrete the un-metabolized antibiotics, which are then stored in manure lagoons or run off to lower elevations with rain water, wind, and snow melt (in applicable areas). While stored in manure pits, antibiotic resistant genes and bacteria can change-- genotypically and metabolically.

Resistance genes and bacteria can transfer from a resistance organism to a non-resistant organism, through horizontal gene transfer, HGT, which transforms non-resistant bacteria and/or genes to resistance bacteriagenes and also poses a threat to further spread-- through future bacterial replication cycles by the genetic spread of antibiotic resistance through HGT. When manure is spread or spilled, such resistance can be spread. In instances where resistance is not spread, the microbiota of the landscape that is now exposed to manure as fertilizer is drastically affected. I've spent countless hours in a lab counting the number of antibiotic resistance colonies prior to and after manure application in Iowa-- resistance does spread. This is a well-documented fact of which the consequences are not yet well known. We do know the consequences are overwhelmingly concerning and threatening to the balances.
of naturally occurring antibiotic resistance and the consequence of tipping these balances.

Once spread as fertilizer, manure that is not fully absorbed often erodes with precipitation events, wind, and/or snow (where applicable). If antibiotic resistance components are present, these are now transferred to waterways, where naturally occurring resistance is much LESS common than in terrestrial soil spaces. Regardless of if resistance is present or not, the amount of concentrated nitrogen, phosphorous, and urea that comprise manure (and give it its nutrient-rich properties as fertilizer) that are introduced to waterways through manure runoff are more than naturally occurs near and in waterways and almost always contribute to algal blooms downriver. At their most basic, algal blooms threaten the organic life of water systems by decreasing oxygen availability (i.e. causing fish kills) and causing algal mats at surface levels, which inhibit the photosynthesizing ability of many below-surface plants. The consequences of high-density manure lagoons and over-reliance on antibiotics and their subsequent potential (but likely and documented) affects for nearby water, air, and plant systems need to be taken seriously if local agriculture as a whole entity is to thrive in the future. We cannot push our polluted problems onto others downstream, downwind, or hidden from us.

This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take--if restoration is even possible.

The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed.

The EAW indicates that groundwater is present at average depths of between 16 and 20 feet only in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

The proposal will produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting). This is part of the record. USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS. Again, please reference my above comments. The consequences of high-density manure lagoons and over-reliance on antibiotics and their subsequent potential (but likely and documented) affects for nearby water, air, and plant systems need to be taken seriously if local agriculture as a whole entity is to thrive in the future. We cannot push our polluted problems onto others downstream, downwind, or hidden from us.

Climate change has increased intense rainfall events--since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation. My family and I survived the 2007 floods of Rushford, Lanesboro, Lewiston, Wiscoy Valley, parts of Winona, etc. We were lucky. Lagoon pits will never be able to contest with such a force of nature as the 2007 floods, which are expected to increase with increasing climate change intensity.

The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that. I want all family farms to succeed-- I know the struggle and the sentimental, often trans-generational pride of family-farming. But there is a balance to sustaining a competitive, productive, and rural farming economy. Big, corporate-consolidated dairies are not the answer for Winona, Fillmore, and surrounding counties. Southeast MN has a unique responsibility to protecting the precious geological, hydrological, and
topographical beauties that make our home so special-- industrial-scale dairy farms and row crops cannot preserve this unique landscape, especially not with expansions. The health threats posed by increased manure and increased manure spreading need to also be considered—such as the aerosolization of antibiotic resistant genes and bacteria (recent data have found increased densities of MRSA bacteria near high-density farms), that neighboring families, farms, and communities cannot escape. We need to consider potential increases in health-related expenses due to illness and environmental degradation and the affect this might have for our local communities.

Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County's ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue, but not expand. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity."

Ultimately, I support family-owned business and understand that the dairy industry is struggling. However, expansions need to account for the threats to environmental and human health, our unique SE Minnesota landscape, and the local economy of many small, family-owned dairies that may be outcompeted by a Daley farm expansion. Our landscape cannot tolerate 46+ million gallons of manure annually. If our landscape cannot tolerate it, surely those downstream, who are exposed to higher concentrations of pollution runoff from many directions, will not be able to either.

I'd be happy to share the research I cited above, if requested.

Sincerely,

Haley O'Neill
29182 Hartwood Dr.
Rushford, MN 55971
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Sincerely,

Joan Buske
2718 25th Ave SE
Rochester, MN 55904
Kim and Mark,

Below are my public comments, and supporting documentation with regard to the Daley Farm expansion. I did submit them via the website, as well. I just wanted to make certain they went through.

One topic I neglected to address on the website was the agencies’ use of air quality “models”, and “agronomic rates” of manure application. When were these models and rates developed? Have they been updated to account for the changing climate in Minnesota (i.e., more frequent severe weather events, etc.)? It does not seem sufficient to rely on theoretical models and rates to preserve air and water quality, especially when other factors have changed dramatically. When conditions on the ground are significantly different than when the models and rates were developed, actual testing is required to determine whether they are still valid.

This is yet another reason it is essential to our public health and welfare that a full EIS be performed.

Sincerely,

Kelley Stanage
Winona County resident
meet minimum healthy standards.

MPCA staff and industry frequently refer to “best practices” when talking about preserving water quality. These “best practices” typically do not take into account the fact that our changing climate has made severe weather events far more frequent — it doesn’t matter how thick manure pond linings are if the manure pond overflows due to heavy rain and/or flooding. This poses a very real threat to groundwater quality, something that an EIS should examine.

In addition, has any analysis been done regarding the locations on which the manure is to be spread? Are they receiving manure from other sources? Have nitrate levels been actually monitored in any of these locations with devices such as lysimeters?

How will it be determined whether the crops are absorbing the nutrients, or if they are going into groundwater, making an already severe water quality problem even worse? And, even if it were ever proven that the manure application was contributing to the nitrate problem, what party is responsible for cleanup? The dairy? The landowner on which the manure was applied? The MPCA? It it is the MPCA, then it ends up being the taxpayer.

In addition to contaminants such as nitrates, other types of potential contaminations should be examined, such as phosphorus, antibiotics, and hormones.

Another particularly troubling factor is the DNR’s statement in the EAW, “The DNR has stated in the preliminary approval letter, that DNR has “determined that the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands.” This alone should be sufficient to do a full EIS, and the report points out, “State law establishes domestic use as the highest priority. . . “.

Why should a resident with a private well be forced to go through a “standardized procedure of investigation,” doubtlessly a long, involved, bureaucratic, perhaps expensive process which may or may not end up proving their well dried up because their neighbor needed a high-capacity well to expand their dairy well beyond what is legally permitted in the county? Which party will have the financial resources to prove their position? The owners of an enormous dairy, or the neighbor?

Lastly, the EAW did not examine the effects of this expansion on the economics of the area. This particular business has already demonstrated a propensity to ignore labor laws. For more information on this, please reference the Winona Post article from 2/24/13, titled, “Federal agency rules in favor of farm workers in labor dispute,” outlining Daley Farm violations for which the farm was ordered to pay $86,385 in unpaid wages and damages.

Aside from the poor employment conditions the above referenced article indicates, such factory farms typically do little to benefit the local economy. Smaller family farms typically do business locally with regard to feed and equipment, while larger mega-dairies do business outside the area, and generate few quality jobs for local residents. Also, the sheer scale of this dairy threatens to put smaller operators out of business in this tight dairy market. I am sure there are other key economic effects that should be thoroughly examined through an EIS.

It should be obvious that a full Environmental Impact Statement be required on this project for numerous reasons. The key reasons in my mind are the following:

This project is prohibited by the Winona County Zoning Ordinance.
The enormous volume of manure puts already impaired water at risk - both public and private wells. The proposed volume of water to be used (which is nearly equivalent to adding three new towns the size of Lewiston) "may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands."
The economic risks posed by this project have not been examined.

The outcome of an EIS will make clear why Winona County has prohibited a land use such as this in the first place.

Sincerely,
Kelley Stanage
Winona County resident
Federal agency rules in favor of farm workers in labor dispute

(2/24/2013)

by Chris Rogers

A Lewiston dairy farm has been ordered to pay $86,385 in unpaid wages and damages following an appellate court ruling stating that the farm violated state labor laws. Daley Farms refused to pay 46 employees over $43,000 in overtime wages. Another area farm, Hader Farms, of Zumbrota, agreed to $17,633 in back wages in a recent settlement with the Minnesota Department of Labor and Industry (DLI).

The July 2012 court ruling ended a six-year legal battle between Daley Farms and the DLI. The appellate court's decision clarifies and perhaps changes how Minnesota labor laws apply on the farm.

Daley Farms is a well-respected name in local agriculture. It hosted the Winona Chamber of Commerce Night on the Farm in 2009 and in June 2012—a month before the appellate court decision. Land Stewardship Project spokeswoman Barb Nelson said the folks at the Daley Farm are good people. "Everybody looks up to them," she said.

But in 2006, Daley Farms received an order of compliance from the DLI, telling it that it had to pay its workers overtime. Presumably, employee complaints alerted the DLI to the situation. Daley Farms appealed the order.

At the heart of the farm's objection was whether its workers met an exception to the state overtime requirement. Under the Minnesota Fair Labor Standards Act (MFLSA) farm workers must be paid time-and-a-half after 48 hours of work in a week, unless they earn a weekly salary greater than the wages for 48 hours at minimum wage plus 17 hours of overtime. According to the appellate court decision, Daley Farms argued that its workers did earn more than that and thus fit the exception. The DLI maintained the exception did not apply because the workers were paid by the hour, not through a salary agreement.

Daley Farms challenged the DLI orders through various channels over the next five plus years. At one point it seemed like the farm might prevail.

In 2008, an Administrative Law Judge recommended the DLI stand down, because of a 2006 case in which state courts ruled the exception did apply to an hourly laborer whose earnings exceeded the salary threshold.

However, the DLI was unwavering. It dismissed the recommendation and issued a final order to Daley Farms to pay back wages plus damages.
Daley Farms appealed that order with the state appellate court. However, when the court reached its decision last July, it backed the DLI.

In the 2012 decision the court held that the 2006 case did not constitute a legal precedent because the court was "not presented with the question of whether the exemption is limited [by the DLI's regulatory power] to employees paid on a salaried basis." The court also ruled, that although federal labor laws do not require farm workers to be paid overtime, farms must follow Minnesota laws which do.

DLI Commissioner Ken Peterson said there is a misconception among farmers that the federal overtime exemption for agricultural laborers supersedes state law.

"To some extent I think that Daley Farms was trying to test that whole question," Peterson continued. "That is why they litigated it. And I don't blame them for that. They are making sure we are enforcing the law correctly. At the same time, I think we were right from the beginning."

Organizations: labor violations are a big problem in Minnesota agriculture

The Daley Farms case made recent news because of a report issued by the Land Stewardship Project (LSP), Central Campesino, and the Latino Economic Development Center (LEDC)—advocates for sustainable agriculture, Latino and migrant farmworkers, and Latino-owned business, respectively. The report outlines the two cases, which had largely escaped the public eye, and labor law violations the organizations say are a widespread problem in Minnesota, especially among illegal immigrants.

While the DLI said that immigration status is not something that it checks, and therefore could not say if the workers at Daley Farms were illegal immigrants, the content of the LSP, LEDC, and Central Campesino's report and the fact that the DLI brought up the Daley Farms and Hader Farms cases during a discussion of alleged labor abuses against illegal immigrants with the three organizations, raises the question.

In any case, according to the organizations, there are other cases of labor violations against illegal immigrants. The organizations say they have documented cases of "failure to provide a final paycheck after an employee's resignation or dismissal," "failure to pay for all hours worked," "docking of worker wages for damage to farm equipment or buildings," and "failure to inform injured workers of their rights to workers' compensation."

Central Campesino has received reports of abuses like this for years, Executive Director Ernesto Velez Bustos said in the report. "This is wage theft."

Yolanda Cotterall, spokeswoman for the LEDC, said that labor abuse among undocumented workers is a widespread issue in Minnesota. While her organization is not meant to take reports of labor abuse, the stories keep coming.

LSP spokeswoman Barb Nelson also said that labor law violations against illegal immigrants is a
wide spread problem in Southeastern Minnesota. She has heard several complaints personally, she said. She spoke highly of Daley Farms, and said that if labor violations occurred there, they are "absolutely" occurring elsewhere.

"It's a farmer's responsibility to understand labor laws," she added. "I'm not really compassionate for people who violate them."

Being poor and being an illegal immigrant are both factors which make people vulnerable to labor violations, Cotterall said. And farm workers are disposable, she added. "People are lined up for these jobs in rural communities."

"Undocumented workers hesitate to say anything for fear of deportation," Nelson said.

"Imagine a workforce that has no voice," Cotterall said. "How do you make sure that they are treated justly if they don't speak?"

DLI Commissioner Ken Peterson admitted that the fear of deportation creates a "chilling effect" for would-be reporters of labor law violations, though the DLI protects the anonymity of complainants.

The LSP has asked the University of Minnesota to better promote education for producers on labor laws, to educate workers of their rights (including posting information in workers' native language on the farm), and to research the issue of labor violations and the treatment of immigrant workers.

Farm Bureau: violations are not the norm

"Hispanic labor is an important part of agriculture in Winona County. How many are legally here or not—that is unknown," Winona County Farm Bureau President Glen Groth said. Farmers are not allowed to question workers' immigration status beyond asking for a social security card. "Often times farmers have no way of knowing, until the government sends them back," he said. "That is why some kind of immigration reform is so desperately needed for our industry."

Hispanic labor is important, he said, because farmers cannot find enough local people willing to do the work, even for 10 or 12 dollars an hour wages. Conversely, "A lot of the immigrant labor see it as an opportunity," Groth said. "They are here to work long hours."

Groth said that all of the people he knows pay their workers overtime and offer wages well above minimum wage.

Area farm owners "don't treat these people like dirt," he said. "They treat them like family." Farmers know they cannot operate their farms without good help, and many immigrant workers "move into management positions, and become an integral part of the operation," Groth said.

Nelson concurred that she knew of employers who help their immigrant workers as if they were family. "The saddest part of the whole thing is that the violators give everyone a bad name," she
said. "People will start to think that everyone who hires Hispanic workers are treating them badly."

"Employers are doing what they need to do to. To say that abuse is widespread is an error and not representing the reality of the situation," Groth said.

Groth added that he would like to see Minnesota labor laws match federal laws, and that the Farm Bureau has considered lobbying for the removal of the state overtime requirements for hourly agricultural laborers. "I think it makes a lot of sense," he said. "The nature of agriculture is that it is seasonal and the work week doesn't always stop at 48 hours. A lot of farms are willing to pay their workers more to have good people on hand when they need them."

Winona Chamber of Commerce President Della Schmidt expressed concerns that complying with stricter labor laws may put Minnesota farms at a disadvantage. "When farms on the other side of state lines have more agribusiness-friendly policies, that is concerning for us."

A recent proposal in the state senate would increase minimum wage and overtime requirements for a variety of businesses including agriculture (see story).
Winona County: Final Overview of Nitrate Levels in Private Wells (2016-2017)

The Minnesota Department of Agriculture (MDA) determines current nitrate-nitrogen concentrations in private wells, on a township scale, through the Township Testing Program. The MDA has identified townships throughout the state that are vulnerable to groundwater contamination and have significant row crop production. The MDA plans to offer nitrate testing to more than 70,000 private well owners in over 300 townships by 2019.

Each selected township is offered testing in two steps, the “initial” sampling and the “follow-up” sampling. In the initial sampling, all township homeowners using private wells are sent a nitrate test kit. If nitrate is detected in their initial sample, the homeowner is offered a follow-up nitrate test, pesticide test and well site visit. Trained MDA staff visit willing homeowners to resample the well and then conduct a site assessment. The assessment helps to identify possible non-fertilizer sources of nitrate and to see the condition of the well. A well with construction problems may be more susceptible to contamination.

The MDA and Winona County Environmental Services worked together to select townships and implement the nitrate testing project. The following townships were selected: Elba, Fremont, Hart, Hillsdale, Mt. Vernon, Norton, Pleasant Hill, St. Charles, Saratoga, Utica, Warren, Wilson, and Wiscoy. The initial sampling in Winona County started in 2016 and follow-up sampling ended in 2017.

Results
Two datasets are used to evaluate nitrate. The initial well dataset contains 940* wells; the final dataset contains 731 wells. Wells that had nitrate-nitrogen results over 5 mg/L were removed from the initial dataset if a non-fertilizer source or well problem was identified, to form the final well dataset. A total of 209 wells (22%) were removed. The results from the initial and final well datasets are summarized in the table below.

In Fremont, Saint Charles, Utica, and Warren Townships, more than 10% of the wells were over the Health Risk Limit of 10 mg/L of nitrate-nitrogen (map below). The percent of wells over the Health Risk Limit in each township ranged from 0% to 42.9%. The Winona County Final Report will be available on the MDA website in 2018: www.mda.state.mn.us/townshiptesting.

Next steps
The MDA uses the final well dataset to determine if additional action is warranted, as described in the Minnesota Nitrogen Fertilizer Management Plan (NFMP). The MDA uses the assessment process and prioritization guidelines in the NFMP to determine next steps. Find more information about the NFMP on the MDA website at www.mda.state.mn.us/nfmp.

Funding Acknowledgement

Funding for this project is provided by the Clean Water, Land and Legacy Amendment

Published May 2018
Table: Winona County Private Well Nitrate Results, 2018.

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<tr>
<th>Township</th>
<th>Initial Well Dataset</th>
<th>Final Well Dataset</th>
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<tr>
<td></td>
<td>Total Wells*</td>
<td>Percent of Wells ≥10 mg/L Nitrate-Nitrogen</td>
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<tr>
<td>Elba</td>
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<td>Hart</td>
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<td>Mt. Vernon</td>
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<td>Utica</td>
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<tr>
<td>Total</td>
<td>940</td>
<td>19.1%</td>
</tr>
</tbody>
</table>

* All well types included.

Figure: Winona County Final Well Dataset Map, 2018.

In accordance with the Americans with Disabilities Act, this information is available in alternative forms of communication upon request by calling 651-291-6000. TTY users can call the Minnesota Relay Service at 711. The MDA is an equal opportunity employer and provider.
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

The EAW indicates that this factory farm expansion will generate 46 million gallons of liquid manure annually. The EAW clearly demonstrates that this facility will have the potential for significant environmental impacts and therefore, as required by law, I request that the MPCA order the completion of an Environmental Impact Statement (EIS).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota's 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take--if restoration is even possible.

The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed.

The EAW indicates that groundwater is present at average depths of between 16 and 20 feet only in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

The proposal will produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting). This is part of the record. USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

Climate change has increased intense rainfall events--since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).

The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact
on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County's ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue, but not expand. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity."

Sincerely,

Shahin Shabanian
1111 Elmira St
Williamsport, PA 17701
Our natural resources are too precious and the magnitude of this proposal is too great to rush this process.

Brennan Malanaphy

920 N Everett Street
Stillwater, MN 55082

612-308-1676

Demand Full Environmental Review for Mega-Dairy Operation Proposed in Winona County

Proposal Would use 92 Million Gallons of Groundwater & Produce 46 Million Gallons of Manure in the Sensitive Karst Region

Corporate interests are suing to shorten the comment period: Comments may be needed to the MPCA as soon as Oct. 31, 2018, at 4:30 p.m.

Rural people know that factory farms harm the environment and viability of rural communities. Now Daley Farms of Lewiston, LLP in Winona County wants to increase its current operation by almost 3,000 cattle for a total herd size of 4,628. This would make Daley Farms one of the largest dairy operations in the state. Over 96 percent of dairy farms in Minnesota are 500 cows or fewer.

This proposed expansion would double the liquid manure and waste water production of this operation to 46 million gallons a year, and require adding a manure basin the size of three football fields at a depth of 16 feet. All this liquid waste would sit right over sensitive karst geology, which is composed of porous limestone that is highly prone to sinkholes and disappearing springs. This geology can allow surface pollution to enter the groundwater in a matter of hours.

This dairy expansion would use 92 million gallons of the area’s groundwater annually. The nearby city of Lewiston (pop. 1,506) uses 33.6 million gallons a year. And the operation is surrounded by towns plagued with nitrate levels nearing or above the maximum allowable
nitrate level of 10 mg/L.

Clearly, this factory farm has the “potential for significant environmental impacts” and needs an Environmental Impact Statement. Currently, the proposal is undergoing an Environmental Assessment Worksheet (EAW), which is the first step in environmental review. (The EAW is available here.) The purpose of the EAW is to determine if an in-depth Environmental Impact Statement (EIS) is needed. State law requires that if a project has “the potential for significant environmental impacts,” then an EIS must be completed. An EIS fully considers potential environmental, human and economic impacts, and analyzes how and if the project can be built in a way that mitigates potential harm.

But corporate interests are suing to shorten the public comment period so it would end on October 31—TOMORROW. You may remember that the Land Stewardship Project pushed the Minnesota Pollution Control Agency (MPCA) to extend the public comment period to give the public more time to read and understand the hundreds of pages in the environmental review documents. As a result, the MPCA extended the comment period until Nov. 15. Now the state’s largest corporate ag interests, including the Agri-Growth Council, are suing the MPCA to roll back this brief extension so that the comment period will end on Oct. 31 at 4:30 p.m. (We are fighting this and will let you know the outcome.)

Don’t let corporate ag take away your voice. Submit your comments now demanding an Environmental Impact Statement on the Daley Farms mega-dairy.

ACT NOW and submit your comments to the MPCA's Kim Grosenheider at kim.grosenheider@state.mn.us by 4:30 p.m. on October 31. Tell the MPCA we need an Environmental Impact Statement on Daley Farms LLP’s dairy expansion proposal.

If you’ve already commented, thanks! If you’ve commented but you’ve got something to add, it is OK to comment twice.

For more information, contact LSP organizer Barb Sogn-Frank at 612-722-6377 or via e-mail.
Hi,

I am a farmer in McLeod County and find it very suspect to see a dairy propose to expand to this magnitude when many dairy near us have liquidated and closed down after milking at a loss for so many years in a row. Farming is a optimistic guess each year anyway and farming some years at a loss is part of farming. Knowing milk prices are down below most sustainable rates it does bring a suspecting question of how will such an operation make a go of it without cutting corners in safety, quality, or animal welfare that are not being mentioned up front. It would be a disaster if this farm built the infrastructure to support the cow herd to only close down shortly after starting. No one wins. The goal is or should be that all parties, the individual farmer, community, environment, the other farmers supplying the state, and that the market can support such growth. This letter is being sent to ask you to take a good look at the proposal and not rush any decisions until all parties can win through the decision.

Dan and Donna
The Farm of Minnesota
Dan@thefarmofmn.com
(320) 296-9585
Nutritional Supplements:
https://www.amway.com/moe
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

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I am certainly aware of the restrictions and constraints new business ventures must overcome in order to expand; it is the "sticking point" that differentiates those who grow and those who don't. Likewise, tax- payers and folks who are directly impacted by those business decisions must protect their assets and their road to success.

To be asked for a full environmental review on this expansion must surely have been anticipated by the decision-makers in this endeavor. It makes good business sense for taxpayers and other folks who are being possibly adversely affected by the expansion make certain their growth, their health, and their assets remain solid and not put at risk.

Sincerely,

Robert Schultz
118 Glendale Rd.
Winona, MN 55987
4,628 cows on a single farm?!!

I’ve read that the proposed expansion of Daley Farms would produce 46 million gallons of liquid manure and waste water a year, and it would sit atop sensitive karst geology – limestone that is porous and could allow the surface pollution to enter the groundwater easily. The expansion would also use 92 million gallons of the area’s groundwater annually, when the entire nearby city of Lewiston uses only 33.6 million gallons a year! Clearly, an EIS is desperately needed to honestly gauge the potential for significant environmental, human and economic impacts. It’s time to use science instead of looking only at profit margins.

Kim Hiltner, Paynesville MN
From: mailagent@thesofteedge.com on behalf of Tmalanaphysorg@alliantconsulting.com
To: Grosenheider, Kim (MPCA)
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP
Date: Tuesday, October 30, 2018 4:49:32 PM

Dear Ms. Kim Grosenheider:

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I grew up on a farm in this area and had the benefit of being able to enjoy pure spring water straight out of the ground without worrying about nitrate levels. This dairy expansion is a bad idea all around. Please take the time to explore the facts before approving.

Sincerely,

Marie Malanaphy-Sorg
165 Western Avenue N. #205
St. Paul, MN 55102
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Dean Borgeson
36030 Bonnie Lakes Rd
Crosslake, MN 56442
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Sincerely,

Michelle Wilkes
383 South Ridge Rd
Houston, MN 55943
Dear Ms. Kim Grosenheider:

As a trained geologist, and lifelong resident in southeastern Minnesota, I am appalled at the consideration of the Daley Farms of Lewiston, LLP dairy operation expansion proposal near Lewiston, in Winona County, in our sensitive karst environment, for the reasons listed below and am adding my voice to the requests for an Environmental Impact Statement.

This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

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Marilyn Frauenkron Bayer
15910 Catalpa Coulee Drive
Houston, MN 55943
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marco polo
1105 scanlon way
cloquet, MN 55720
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Dayna Burtness
23970 county 19
Spring grove , MN 55974
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Thomas Walsh
N4693 440th Street
Menomonie, WI 54751
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Sincerely,

Laura Dillon
3245 39TH AVE S
MINNEAPOLIS, MN 55406
From: mailagent@thesoftege.com on behalf of lorraine2rt@hbci.com
To: Grosenheider, Kim (MPCA)
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP
Date: Tuesday, October 30, 2018 5:53:34 PM

Dear Ms. Kim Grosenheider:

Dear Kim and environmental board,

I don’t blame Daley’s for trying to make a living. Our government is designed to make a few rich from the work of farmers and labor. At the beginning of this nation, those producers were called serfs and slaves. Now we are called farmers and labor.

Say NO to that expansion. All of us own that water they expect to use. All of own the air they will pollute- to the detriment of our health and our ecosystem.

I don’t want more nitrogen in my water from my private well.

We are told that milk prices at the farm are so low because there is a surplus surplus of milk. If Daleys increase the surplus some more, the milk prices will go down some more and hurt all the dairy farmers and that will hurt the economy some more because dairy farmers will not be able to meet as many of their needs as those who sell those needs need us to, so they can make a living.

Please do what you can to make this into a just-for-everyone nation. Farmers are still serfs, we just aren’t called serfs any more.

I hope you read my letter to the editor.
I have to leave for Aberdeen now. My brother died

Lorraine Redig

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Sincerely, Mrs Lorraine Redig

Sincerely,

Lorraine Redig
27689 Gilmore Ridge Drive
Winona, MN 55987
I live in the same county as the Daly Farm and use the water from the area. I feel strongly that an EIS is warranted for this expansion. Water in the area is already very high in nitrates. More animal waste being spread is only moving in the opposite direction as a fix. Tremendous risk associated with the liquid manure storage. Over 90 million gallons of our water being used for this one enterprise. Unfair to the rest of us. Much greater usage than any of the adjacent towns. We need to reduce the nitrate levels for the safety of our citizenry and our children. Thank you.
Vincent Ready
Saratoga township MN
vincentready@hotmail.com

Get [Outlook for Android](http://outlook.com)
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Sincerely,

Robert Goetz
900 17th Ave SW
Austin, MN 55912-2881
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Sincerely,

Mary Baird
9601 Union Road PO Box 1
Donaldson, IN 46513
The Daley Mega Dairy will not treat dairy cows with respect because there are too many cows.

It will damage the environment with 46 million gallons of manure and the amount of water it will use is unacceptable.

Do what’s right and do a full environmental review of the Daley Farms proposal.

Barbara Veit
24558 Osprey Ln
Bovey, MN
55709

bdveit@paulbunyan.net

218-910-9313
Kim Grosenheider,

Please extend the public comment period so that it does not end on October 31st. I believe we must limit the environmental impact of huge diary operations. The wastewater and liquid manure are toxic as they weep into the ground, they contaminate the water sources and are a public health nuisance. Also when there are thousands of cows together in confined area, the bacteria spreads like wildfire and farmers must use antibiotics to keep both cows and milk safe.

Phoebe Ruona
900W 48th St.
Minneapolis
Dear Kim,

Please use your power and expertise to conduct an environmental review for the mega-dairy operation proposed by the Daley Farms in Winona County. The use of groundwater and the resulting millions of gallons of manure each year puts the Karst Region watershed in peril.

Rural people know that factory farms harm the environment and viability of rural communities. Now Daley Farms of Lewiston, LLP in Winona County wants to increase its current operation by almost 3,000 cattle for a total herd size of 4,628. This would make Daley Farms one of the largest dairy operations in the state. Over 96 percent of dairy farms in Minnesota are 500 cows or fewer.

Thank you.

Chris Hughes
3515 Snelling Ave N
Arden Hills, MN 55112

cthchahch@comcast.net
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Sincerely,

Kurt Kimber
4811 35th Ave S
Minneapolis, MN 55417
October 30, 2018

To Whom It May Concern:

I understand that Daley Farms have applied to enlarge their dairy operation near Lewiston. It is hard to understand why they should be allowed to proceed with such a project, since their herd already exceeds the limit. (I understand they were grandfathered in when the standard was set.) The amount of water the operation would use and the amount of manure it will generate are both big concerns in southeastern Minnesota with its karst geology.

For those two reasons, I am opposed to the project. For sure, it should not go forward without a full, complete, thorough, and fair environmental assessment.

Thank you for allowing this public comment.

Roslyn Hjermstad
30830 Woodhaven Trail
Cannon Falls MN 55009

651-258-4526
roslynhjermstad@yahoo.com
From: Sonja Eayrs <sonja.eayrs@gmail.com>  
Sent: Tuesday, October 30, 2018 7:32 PM  
To: Grosenheider, Kim (MPCA) <kim.grosenheider@state.mn.us>; Sonja Eayrs <sonja.eayrs@gmail.com>  
Subject: Environmental Review - Daley Farms

To MPCA Officials:

I encourage you to read the attached briefs that were filed on behalf of my parents, Lowell and Evelyn Trom, to the Minnesota Court of Appeals following installation of the 11th swine factory farm within a 3-mile radius of our family farm in Dodge County, Minnesota.

Amicus (“friends of the court”) briefs were filed by the following organizations:

Professionals at Johns Hopkins Center for a Livable Future regarding the public health concerns relating to factory farms;

The Humane Society of the United States and Animal Legal Defense Fund regarding antibiotic resistance and the over-administration of antibiotics to animals held in confinement;

Food & Water Watch, Minnesota Center for Environmental Advocacy and Environment Minnesota regarding the serious environmental concerns relating to factory farms.

While these briefs relate to swine factory farms in Dodge County, the issues are the same and certainly raise serious concerns regarding the expansion of Daley Farms of Lewiston, LLP in Winona County or other Minnesota counties.

Please include the attached briefs in the official record.

Please, we need environmental review of this mega-dairy operation to protect Minnesota waterways and neighboring farm families.

Sonja Trom Eayrs  
612 743 1312
Sonja.eayrs@gmail.com
On behalf of Dodge County Concerned Citizens

4 Attachments

NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you
Amanda/Peter,

Thanks again for your time this afternoon. Just wanted you to know that I heard from Socially Responsible Agricultural Project (SRAP) this afternoon. Jim and I are going to participate in a conference call with SRAP sometime this week, and it’s possible that they will also submit an amicus brief.
State of Minnesota
In Court of Appeals

Lowel Trom, et al,

Appellants,

vs.

County of Dodge, et al,

Respondents,

And

Masching Swine Farms, LLC

Respondent.

BRIEF OF AMICI CURIAE DR. JILLIAN P. FRY, Ph.D., M.P.H.,
DR. ROBERT S. LAWRENCE, M.D., MS. CLAIRE M. FITCH, M.S.P.H.,
AND MS. CAROLYN R. HRICKO, M.P.H.

JAMES P. PETERS (#0177623)
Law Offices of James P. Peters, PLLC
460 Franklin St. N #100
P.O. Box 313
Glenwood, MN 56334
(320) 634-3778
Attorney for Appellants,
Lowell Trom, et al.

PAUL D. REUVERS (#0217700)
Iverson Reuvers Condon
9321 Ensign Avenue South
Bloomington, MN 55438
(952) 548-7205
Attorney for Respondents
Dodge County, et al.
No. A16-1099

State of Minnesota

In Court of Appeals

Lowell Trom, et al., Appellants,

v.

County of Dodge, et al., Respondents, and
Masching Swine Farms, LLC, Respondent.

BRIEF OF AMICI CURIAE
THE HUMANE SOCIETY OF THE UNITED STATES
AND ANIMAL LEGAL DEFENSE FUND

JAMES P. PETERS (#177623)  PAUL D. REUVERS (#217700)
Law Offices of James Peters PLLC  Iverson Reuvers Condon
460 Franklin Street N. #100  9321 Ensign Avenue S.
Glenwood, MN 56334  Bloomington, MN 55438
(320) 634-3778  (952) 548-7205
Attorney for Appellants  Attorney for Respondent County

JACK Y. PERRY (#209272)  JENNEANE JANSEN (#236792)
Briggs and Morgan  Kris Palmer (#240138)
80 S. 8th Street  Jansen & Palmer, LLC
Minneapolis, MN 55402  4746 Elliot Avenue S.
(612) 977-8400  Minneapolis, MN 55407
Attorney for Respondent  (612) 823-9088
Masching Swine Farms, LLC  Attorneys for Amici Professors and
Researchers

KEVIN P. LEE (#395933)  BRUCE D. NESTOR (#318024)
Minn. Ctr. for Envtl. Advocacy  De León & Nestor, LLC
26 E. Exchange Street, Suite 206  3547 Cedar Avenue S.
St. Paul, MN 55101  Minneapolis, MN 55407
(651) 223-5969  (612) 659-9019
Attorney for Amici  Attorney for Amici The Humane
Environmental Organizations Society of the United States and
Animal Legal Defense Fund
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ARGUMENT

Pursuant to this Court’s August 19, 2016 Order, as well as Rules 129 and 132 of the Minnesota Rules of Civil Appellate Procedure, amici The Humane Society of the United States (“HSUS”) and Animal Legal Defense Fund (“ALDF”) submit the following brief in support of Appellants.¹

I. INTRODUCTION.

In their challenge to the approval of Masching, LLC hog feedlot conditional use permit (“CUP”), Appellants Lowell and Evelyn Trom did not receive the agency and judicial review they deserved. The Dodge County Planning Commission and Board of Commissioners (collectively, “the County”), and subsequently the Dodge County District Court, approved the Masching CUP without full inquiry into the hog feedlot’s public health threat, opening the door for disease and infection to enter easily into the Appellants’ community. In support of Appellants, HSUS and ALDF respectfully submit this amicus brief to assist the Court in understanding two critical errors that occurred within the CUP approval and judicial review decisions below.

First, the County and the District Court both failed to consider a serious threat to public health and animal welfare: the spread of antibiotic-resistant bacteria. Appellants repeatedly explained to the County how the hog feedlot CUP risked developing and widely spreading antibiotic-resistant bacteria in the area, posing a specific public health threat to feedlot workers, neighbors, and County residents. The Masching feedlot will

¹ No party’s counsel authored this brief in whole or in part, and no person or entity other than amici and their counsel contributed to the preparation and submission of this brief.
produce manure that will first pile up inside the feedlot building, and will then be spread over at least 244 acres. Antibiotic-resistant bacteria from the manure can jump to human populations via various environmental pathways—through the air as dust, up from the soil into edible crops, and into groundwater and surface waterways. Yet the County did not press pause on its fast-track approval of the Masching CUP—i.e., what the District Court called a “cart-ahead-of-the-horse approach to CUP analysis and approval”—to assess the potential health risks. Nor did the District Court acknowledge the serious threat of increased antibiotic resistance. In spite of broad scientific consensus that the continuous, herd-wide use of antibiotics to raise pigs has led to the development and spread of antibiotic-resistant bacteria, both the County and the District Court erred by failing to considered whether and how the Masching CUP would contribute to the presence of antibiotic-resistant bacteria in the area.

Second, the District Court gave far too much deference to the County in its decision to approve the Masching CUP. The County gave no indication that it had even considered the spread of antibiotic resistance in its CUP decision. But because the County approved the Masching CUP application, the District Court assumed that the County must have implicitly considered the antibiotic resistance public health threat. The District Court then deferred to the County decision. This conflicts with longstanding principles of administrative law, which do not permit the District Court to engage in blind deference to

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the County—especially on this important public health issue. The District Court erred in
upholding the CUP decision despite there being nothing in the record to permit
meaningful judicial review of the County’s consideration of the consequences of large-
scale antibiotic usage at the Masching facility.

Antibiotic-resistant bacteria are so significant a threat that the United Nations
General Assembly, acting for fourth time ever on a public health issue and the first time
since the Ebola emergency of 2014, declared resistance a “most urgent global risk.”
If a county were to fail to consider public health implications in approving a CUP that
increased the risk of Ebola, a reviewing court would surely intervene—yet here, the
District Court allowed the County to ignore a similar risk.

Accordingly, for the reasons described below, amici HSUS and ALDF support
Appellants’ position that this Court should reverse the District Court and vacate the
Masching CUP.

II. THE PLANNING COMMISSION, DODGE COUNTY BOARD, AND
TRIAL COURT ALL ERRED IN IGNORING ANTIBIOTIC
RESISTANCE IN BACTERIA AS A RISK TO THE PUBLIC HEALTH.

a. The County and the District Court Failed to Consider Appellants’
Significant Health Concerns of Increased Antibiotic Resistance from
the Masching Feedlot Approval.

Before the County, the Appellants repeatedly expressed concern about how the
Masching CUP posed a risk of increased antibiotic resistance. When the County first

antimicrobial-resistance/.
considered the Masching CUP application, in April 2014, Appellants’ counsel James Peters submitted a letter explaining:

MRSA [bacterium named methicillin-resistant Staphylococcus aureus] is considered a major threat to public health with the FDA taking action against hog production facilities to reduce this threat. Among other things, the FDA announced in December 2013 that it is implementing a voluntary plan with the industry to phase out the use of antibiotics for enhanced food production. Antibiotics used in hog feed is a factor in the development of drug-resistant bacteria. Industrial farm workers have been contaminated with pig MRSA, an antibiotic resistant bacteria, that is increasingly found in hogs. The Project would in Dodge County add to what governments consider a major public health threat.

AR 065 (emphasis added). The Peters letter included an exhibit listing multiple studies that explain how CAFOs generally, and hog feedlots in particular, increase the risk of creating and spreading antibiotic-resistant bacteria. AR 069-70. Soon after receiving the Peters letter, the County approved the CUP without considering the feedlot’s impact on developing antibiotic-resistant bacteria. See AR 70A-77.

Appellants appealed the April 2014 CUP approval, and the District Court vacated the CUP on November 18, 2014. See Mem. Order 5, Trom et al. v. Dodge County, 20-cv-15-17 (3d Judicial Dist. Ct. May 13, 2016) [hereinafter “May 2016 Order”]. Two days later, Masching applied for a new CUP for the same project. AR 122. Appellants again submitted information identifying serious concerns with how concentrated feedlots like the Masching CUP proposal contribute to an increase in antibiotic-resistant bacteria. For instance, Appellants submitted a letter from Michael Williamson asking that the County not approve the Masching CUP because hog feedlots “cause health problems.” AR 629. The Williamson letter included, as an exhibit, a white paper from the National
Association of Local Boards of Health. The white paper described how feedlots like the Masching CUP feedlot can create public health harms:

The trend of using antibiotics in feed has increased with the 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 chickens as feed additives. Nearly half of the antibiotics used are nearly 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. Resistant strains of pathogenic bacteria in animals, which can be transferred to humans [through] the handling or eating of meat, have increased recently. This is a serious threat to human health because fewer options exist to help people overcome disease when infected with antibiotic-resistant pathogens. The antibiotics often are not fully metabolized by animals, and can be present in their manure. If manure pollutes a water supply, antibiotics can also leach into groundwater or surface water.

AR 651 (internal citations omitted).

Even though the County decision-makers claimed they “all had a chance to read” the letters they received, see AR 959, neither the County Planning Commission nor the County Board considered, or even referenced, the threat of increased antibiotic resistance in their reports and meetings. See, e.g., AR 779-84, 785-87, 884-971, 986-1007.

The District Court similarly did not consider the risk of increased antibiotic resistance. Appellants directed the District Court to their submissions before the County,

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4 See also AR 961 (“Okay, we got this big binder here that was handed to us yesterday and that we all read last night”) (transcript of Dec. 11, 2014 Dodge County Planning Commission meeting); AR 994 (“We also received the letters that was [sic] talked about earlier so we’ll – we’ll put that into the – packet”) (transcript of Dec. 11, 2014 Dodge County Board of Commissioners meeting).
which discussed their suite of public health concerns, including the increased
development of antibiotic resistance. See Pls.’ Mot. for Summ. J. Br. 11-12, 18-19. In its
decision, the District Court only reviewed the County’s consideration (or lack thereof) of
one public health issue—the “alleged connection” of feedlots to “development of a
‘cancer cluster.’” May 2016 Order 14. This was the totality of the District Court’s
discussion of whether the CUP will endanger the public health. Neither the Appellants’
antibiotic resistance concerns nor the County’s failure to consider such concerns
appeared in the District Court’s Order.5

b. The Dodge County Zoning Ordinance Requires Consideration of
Antibiotic Resistance and Its Public Health Implications.

As part of its authority to carry out planning and zoning activities, Dodge County
may designate a process for permitting “conditional uses.” See Minn. Stat. § 394.301,
subd. 1. The County has made such a designation through its zoning ordinance. See AR
439 (Dodge County Zoning Ordinance § 18.13.8) [hereinafter “Zoning Ordinance”].

“Conditional uses may be approved upon a showing by an applicant that the
standards and criteria stated in the ordinance will be satisfied.” Minn. Stat. § 394.301,
subd. 1. However, the County decision approving a CUP is arbitrary or capricious if,
among other reasons, “it entirely failed to consider an important aspect of the problem.”

5 The District Court may have been referencing the Williamson letter when it wrote,
“Troms and Dodge County Concerned Citizens have presented articles indicating that
‘concentrated animal feeding operations or large industrial farms can cause a myriad of
environmental and public health problems.” May 2016 Order 14. If so, the District
Court’s review skipped over the public health concerns in the letter. The court focused
exclusively on one of the environmental problems identified, simply stating, “there is no
evidence in the record adequate to support a conclusion that this project will damage the
habitat of protected species.” Id. at 14-15 (emphasis in original).
Multiple Zoning Ordinance criteria, which require the County to make findings before it may grant a CUP, encompass the public health threats of increasing antibiotic-resistant bacteria. In relevant part, the Zoning Ordinance states that before approving a CUP, the County Board shall find that:

I. The establishment, maintenance or operation will not be detrimental to or endanger the public health, safety, or general welfare [...]

IV. The proposed use is compatible with adjacent uses of land. The use shall not be substantially injurious to the permitted uses nor unduly restrict the enjoyment of other property in the immediate vicinity. This includes whether the applicant has ensured adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration, so that none of these will constitute a nuisance6 [... and]

IX. That existing groundwater, surface water and air quality are or will be adequately protected.

Zoning Ordinance § 18.13.8.

With regard to ordinance criteria like these, this Court has held that “[a] legally sufficient reason [to deny a CUP] is one reasonably related to the promotion of the public health, safety, morals and general welfare of the community.” BECA of Alexandria, LLP v. County of Douglas ex rel. Bd. of Comm'rs, 607 N.W.2d 459, 463 (Minn. App. 2000) (quotation omitted).

6 The Minnesota Supreme Court has read human health concerns into the “broad language” of another county’s zoning ordinance provision that ensured “that the proposed use will not interfere with neighbors’ enjoyment of their property or create a nuisance.” Schwardt v. County of Wantonwan, 656 N.W.2d 383, 387 (Minn. 2003).
c. The Addition of a Large Hog Feedlot Significantly Increases the Risk of Proliferation of Antibiotic-Resistant Bacteria.

A broad array of scientific research and governmental findings ties antibiotic use in the raising and slaughter of food-producing animals, such as pigs, to increased antibiotic resistance in bacterial populations in animals, the environment, and humans. See, e.g., Timothy A. Johnson et al., Clusters of Antibiotic Resistance Genes Enriched Together Stay Together in Swine Agriculture, 7 mBio e2214-15 (Mar./Apr. 2016) ("In this study, we identify high correlations in the cooccurrence of clusters of identical antibiotic resistance genes (ARGs) and mobile genetic element sequences in Chinese swine farms and farm-impacted soils as well as U.S. laboratory swine."); Jim O’Neill et al., Tackling Drug-Resistant Infections Globally: Final Report and Recommendations, The Review on Antimicrobial Resistance, at 24 (May 2016). According to a 2014 blue-ribbon report to the President of the United States, “[a]ll uses of antibiotics – whether in human or animal populations – promote the emergence and spread of antibiotic resistance by selecting for microbes able to grow well despite the presence of antibiotics.” John P. Holdren & Eric Lander (co-chairs), President’s Council of Advisors on Sci. & Tech., Report to the President on Combating Antibiotic Resistance 50 (2014) [hereinafter “2014 Report to President”].

7 The Mayo Clinic, located about 20 miles from Dodge County, has on its website an easy-to-understand multimedia description of how antibiotics given to farm animals can lead to illness or even death in humans, titled, “Antibiotic Resistance from Farm to Table.” See Mayo Clinic, “Animal use in agriculture,” available at http://www.mayoclinic.org/diseases-conditions/infectious-diseases/multimedia/img-20144910 (last visited Sept. 15, 2016).
Bacteria are promiscuous organisms that can “adapt rapidly to new environmental conditions and can acquire genes or undergo molecular changes with increasing exposure to antimicrobials in human and veterinary medicine, leading to resistance to these agents.” European Ctr. for Disease Prevention & Control et al., Joint Opinion on Antimicrobial Resistance Focused on Zoonotic Infections 7 (2009) [hereinafter “2009 European Centre for Disease Prevention Opinion”]. Through contact, antibiotic-resistant bacteria can disseminate resistant genes by injecting other bacteria with copies of mobile genetic elements called plasmids—stretches of DNA containing multiple genes, each of which may confer increased resistance to different antibiotics. See U.S. Gov’t Accounting Office, No. GAO-04-490, Antibiotic Resistance: Federal Agencies Need to Better Focus Efforts to Address Risk to Humans from Antibiotic Use in Animals 9 (2004) [hereinafter “2004 GAO Report”]. Bacteria may also develop resistance through mutations in their own DNA. Id.

“The dose of antibiotic and length of time bacteria are exposed to the antibiotic are major factors affecting whether the resistant bacteria population will dominate.” Id. The provision of antibiotics to an entire group of animals at a facility in steady, low doses “strongly encourages” drug resistance, “especially when provided in feed or water, where they remain active and are widely dispersed.” Stuart B. Levy, Multidrug Resistance—A Sign of the Times, 338 New Eng. J. of Med. 1376, 1377 (1998); see also White House, National Action Plan for Combating Antibiotic-Resistant Bacteria 20 (2015) (“Because antibiotics in feed or water are typically administered to herds or flocks of food-producing animals, in-feed or in-water antibiotic use leads to an increased risk of
selecting for resistance”); 2009 European Centre for Disease Prevention Opinion, at 9 (“Flock or herd administration of antimicrobials, which in most cases is given orally is considered one of the most important factors contributing to the selection of antimicrobial-resistant zoonotic bacteria”).

Hog feedlot operations are particularly susceptible to the development of antibiotic-resistant bacteria. See Rebecca Goldburg et al., The Risks of Pigging Out on Antibiotics, 321 Science 1294 (2008) (finding 70% of pigs tested in Iowa and Illinois were carrying MRSA); Shylo E. Wardyn et al., Swine Farming is a Risk Factor for Infection With and High Prevalence of Carriage of Multidrug-Resistant Staphylococcus Aureus, 61 Clinical Infectious Diseases 59 (2016). Operators consistently provide antibiotics to their entire herd through feed or water, for both growth-promotion and prevention purposes. See generally, Bengston & Greko, supra note 2.

Bacteriology 429 (1988). As a result, it is unsurprising that bacteria with genes resistant to tetracycline and sulfonamide antibiotics—both of which are medically important—have been found in soils adjacent to hog feedlots. See N. Wu et al., *Abundance and Diversity of Tetracycline Resistance Genes in Soils Adjacent to Representative Swine Feedlots in China*, 44 Envlt. Sci. & Tech. 6933 (2010).

Exposure to one antibiotic may “co-select” for resistance to multiple antibiotics. See A. Carattoli, *Plasmids and the Spread of Resistance*, 303 Int’l J. Med. Microbiology 298 (2013). One study of antibiotic resistance on hog farms discovered that “resistance genes found in our samples were not limited to the antibiotics administered,” and stated the phenomenon “is most likely due to aggregation of resistance genes on mobile genetic elements.” Yong-Guan Zhu et al., *Diverse and Abundant Antibiotic Resistance Genes in Chinese Swine Farms*, 110 Proceedings of Nat’l Acad. of Scis. 3435, 3437 (2013). In this way, even feedlots that give animals an antimicrobial class of drug that is not used in clinical medicine may still cause bacteria to select for genes resistant to drugs that are used in medicine. For example, U.S. Department of Agriculture researchers have shown that antibiotics in feed given to hogs cause a significant increase in the abundance of

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8 According to one experiment concerning stress and pigs, “only 25% of the pre-stress isolates showed multiple antimicrobial resistance patterns, in contrast to 85% of isolates from post-stress. Moreover, a significant difference was observed for tetracycline resistance between isolates obtained from the carcasses of the control (40%) versus the stressed group (80%), suggesting that stressed animals were shedding higher numbers of resistant bacteria that contaminated the carcasses.” M.H. Rostagno et al., *Split Marketing as a Risk Factor for Salmonella Enterica Infection in Swine*, 6 Foodborne Pathogens & Disease 865 (2009). Tetracycline is a very important antibiotic in human medicine, used to treat *Brucella*, *Chlamydia*, and *Rickettsia* infections. See World Health Org., Advisory Group on Integrated Surveillance of Antimicrobial Resistance, Critically Important Microbials for Human Medicine 7, 20 (2011).
genes resistant to antibiotics not appearing in the feed. Torey Looft et al., *In-Feed Antibiotic Effects on the Swine Intestinal Microbiome*, 109 Proceedings of the Nat’l Acad. of Scis. 1691 (2012). Similarly, treating chickens with antibiotic streptomycin not only selects for bacteria with streptomycin resistance, but can also create resistance to sulfonamides, an unrelated class of antibiotics considered very important to human medicine. M. Faldynova et al., *Prevalence of Antibiotic Resistance Genes in Faecal Samples from Cattle, Pigs and Poultry*, 58 Veterinarni Medicina 298 (2013).

The antibiotic-resistant bacterial populations in food-producing animals are capable of transferring to humans. See, e.g., FDA Guidance for Industry #209, *The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals* 12 (Apr. 2012) (performing literature review and describing, among others, the 2004 GAO Report, which definitively concluded that “antibiotic-resistant bacteria have been transferred from animals to humans”). A recent study of veterans in rural Iowa found that the frequency of antibiotic-resistant Staphylococcus aureus was 88% higher among veterans living within one mile of high-density hog feedlots. M. Carrell et al., *Residential Proximity to Large Numbers of Swine in Feeding Operations is Associated with Increased Risk of Methicillin-Resistant Staphylococcus Aureus Colonization at Time of Hospital Admission in Rural Iowa Veterans*, 35 Infection Control & Hosp. Control Epidemiology 190 (2014).

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9 According to the District Court, the Appellant Troms and other neighbors live within one mile of the Masching feedlot at issue here. See May 2016 Order 16 n.13.

When applied on land, the manure and its antibiotic-resistant bacteria can enter the soil, groundwater or surface water through runoff. Id. According to an article that Appellants identified in the Administrative Record, "genes resistant to tetracycline, a common antibiotic, have been found in groundwater as far as a sixth of a mile downstream from two swine facilities that use antibiotics as growth promoters." Envtl. News Service, "Antibiotic Resistant Genes Traced from Farms to Groundwater," May 1, 2001 (listed on AR 69); see also Bridgett M. West et al., Antibiotic Resistance, Gene Transfer, and Water Quality Patterns Observed in Waterways near CAFO Farms and Wastewater Treatment Facilities, 217 Water, Air, & Soil Pollution 473, 473 (May 2011) (studying six sites in Michigan and finding results that "indicate that CAFO farms not
only impair traditional measures of water quality but may also increase the prevalence of multi-drug-resistant bacteria in natural waters”).

Bacteria also enter into soil “when manure from antibiotic-fed animals is land applied as a source of crop nutrients.” Chander et al., 34 J. Env. Quality at 1952 (listed on AR 069). A 2005 study found that two antibiotics used in hog production, tetracycline and tylosin, remained active in soil, allowing for “emergence of antibiotic resistant bacteria in the environment.” Id. at 1956. In addition, antibiotics and antibiotic-resistant bacteria in soil can contaminate plants grown on the manure-applied lands, such that “[a]ntibiotics present in plant materials ingested by humans may provide resistance to human pathogens thus resulting in illnesses that may be difficult to cure with presently available antibiotics.” Kumar et al., 34 J. Env. Quality at 2084 (listed on AR 069); see also 2014 Report to President at 50-51 n.84.

Second, antibiotic-resistant bacteria can enter the air, where they can infect feedlot workers and neighbors. According to a description of a Johns Hopkins study of air inside large-scale hog production facilities, which Appellants also identified in the Administrative Record, “bacteria resistant to at least two antibiotics [appeared] in air samples collected from inside” the facilities. Science Daily, “Multidrug-Resistant Bacteria Found to be Airborne in Concentrated Swine Operation,” available at https://www.sciencenews.com/releases/2004/12/041206213925.htm (last visited Oct. 7, 2016) (listed on AR 070). The finding led researchers to believe that feedlot workers have a great risk of airborne exposure to antibiotic-resistant bacteria, and “may also become reservoirs of drug-resistant bacteria that can be spread to family and the broader
community.” Id.; see also Gerd Hamscher et al., *Antibiotics in Dust Originating from a Pig-Fattening Farm*, 111 Envtl. Health Perspectives 1590, 1592 (2003) (finding that “dust originating from a pig-fattening farm represents a new route of entry into the environment for drugs applied in animal houses,” which poses a risk of antibiotic resistance in humans from dust inhalation); Jessica L. Rinsky et al., *Livestock-associated Methicillin and Multidrug resistant Staphylococcus aureus is Present among Industrial, Not Antibiotic-free Livestock Operation Workers in North Carolina*, 8 PloS ONE e67641 (2013) (finding MRSA transferred from livestock to workers).

Downwind neighbors can also be exposed to antibiotics and antibiotic-resistant bacteria present in dust. See generally, Eva Hershaw, “When the Dust Settles,” Texas Monthly (Sept. 2016) (describing 2011 event in Missouri, where a tornado carried a fungus and antibiotic-resistant bacteria “over long distances”). According to a recent study, “feedlot-derived microbes, including those possessing antibiotic resistance, can be transported to new locations where they may occupy new niches.” See A.D. McEachran et al., *Antibiotics, Bacteria, and Antibiotic Resistant Genes: Aerial Transport from Cattle Feed Yards via Particulate Matter*, 123 Envtl. Health Perspectives 337, 342 (2015).

Third, bacteria that develop antibiotic resistance in animals can affect public health through human handling and consumption of meat. 2004 GAO Report at 11. “Most food-borne infections originate from faecal contamination of carcasses during slaughter or cross-contamination during subsequent processing.” 2009 European Centre for Disease Prevention Opinion at 8-9. The Centers for Disease Control and Prevention (“CDC”) observed that in 2015, 192 cases and 30 hospitalizations arose from antibiotic-

Upon human exposure, the resistant bacteria, or “superbugs,” can colonize the human gut and cause illnesses resistant to clinically important antibiotics. See Mayo Clinic, “Antibiotic resistance: Understanding the connection to antibiotic use in animals raised for food,” available at http://www.mayoclinic.org/diseases-conditions/infectious-diseases/in-depth/antibiotic-resistance/art-20135516; see also 2009 European Centre for Disease Prevention Opinion at 9 (“[H]umans can become more susceptible to infection with antimicrobial-resistant zoonotic bacteria to which they are exposed”).

Thus, according to the President of the United States, antibiotic-resistant bacteria from animal agriculture pose a serious threat to public health, and “[c]ombating antibiotic resistant bacteria is a national security policy,” Exec. Order No. 13676 (Sept. 18, 2014) (citing CDC estimates that annually at least two million illnesses and 23,000 deaths are caused by antibiotic-resistant bacteria alone); see id. §§ 5, 7. Scientists have estimated that, by 2050, antimicrobial resistance would be related to ten million deaths per year, overtaking the current rates of cancer-related deaths. Jim O’Neill, Antimicrobial Resistance: Tackling a crisis for the health and wealth of nations, Review on Antimicrobial Resistance, at 5 (Dec. 2014). The threat of antibiotic-resistant bacteria to public health—especially to the health of feedlot workers and neighbors—is so severe that the American Public Health Association has issued a policy document calling on
“federal, state and local governments to impose a moratorium on new Concentrated Animal Feed Operations.” See Am. Pub. Health Ass’n Policy 2003-7.10

The continuous provision of antibiotics to food-producing animals such as pigs also increases the risk of harm to the animals themselves. A number of different contagious bacterial diseases cause suffering in animals raised for food. See J. Vaarten, Clinical impact of antimicrobial resistance in animals, 31 Scientific and Technical Review of the Office International des Epizooties 221 (2012). As the blue-ribbon panel reporting to the President acknowledged, “antibiotic resistance also limits the therapeutic effectiveness of antibiotics in animals themselves; this further supports the need to reduce resistance in animal agriculture.” 2014 Report to President at 51. MRSA has become common among pigs. See Verkade & Kluytmans, Livestock-associated Staphylococcus


Here, the Masching feedlot is certain to increase the number of bacteria in the area, which will develop antibiotic resistance. As the District Court observed in colloquy with Appellants’ counsel, the area around the Masching feedlot is saturated with other feedlots and the manure they produce. See Mot. Summ. J. Hearing Tr. 40-41. Moreover, the District Court concluded that the manure from the Masching facility alone will be spread over at least 244 acres, and near manure coming from other feedlots. May 2016 Order 9-11. As explained above, the bacteria in the Masching manure can interact with other feedlot manure to share or accept new antibiotic resistance, and can easily enter the soil, crops, groundwater and waterways—environmental pathways to the surrounding human population. Moreover, the Masching feedlot neighbors—including Appellants, who are older and, thus, more susceptible to illness—live quite close. Cf. M. Carrell et al., 35 Infection Control & Hospital Control Epidemiology 190 (Iowa study finding higher percentage of veterans with MRSA living within one mile of hog confinement facilities). The threat of antibiotic-resistant bacteria poses a “salient problem” to which the County must give a “hard look.” See *Pope County Mothers*, 594 N.W.2d at 236.
d. The County Decision to Approve the Masching Feedlot Conditional Use Permit without Any Consideration to the Risk of Increased Antibiotic Resistance Was Arbitrary and Capricious.

Neither the County Planning Commission nor the Board considered the increased presence of antibiotic-resistant bacteria, even though the County is tasked with ensuring the protection of public health when evaluating a CUP application. See Section II.a-b, supra. For example, the County failed to investigate how, if at all, Masching plans to protect its workers and neighbors from exposure to antibiotic-resistant bacteria. See generally, AR 779-81, 785-86, 884-971, 986-1007. And despite the fact that continuous use of antibiotics is common at facilities like the Maching feedlot, see notes 2 and 10, supra, the County did not even ask the obvious questions of whether Masching plans to feed its hogs antibiotics, and assuming so, what kinds of antibiotics, and for what duration. See AR 779-81, 785-86, 884-971, 986-1007. By overlooking the public health risk that the Masching feedlot will increase the threat of antibiotic resistance in the community, and the risk that antibiotic-resistant bacteria will enter the local environment, the County bypassed multiple specific requirements in its own ordinance. See Zoning Ordinance § 18.13.8(A)(I), (IV), (IX). The County, therefore, acted arbitrarily and capriciously because it “entirely failed to consider an important aspect of the problem.”

See Pope County Mothers, 594 N.W.2d at 236; BECA of Alexandria, 607 N.W.2d at 463.

11 Appellants and other local residents raised the issue of how the Masching CUP will contribute to the spread of antibiotic-resistant bacteria early and often. See Section II.a, supra (describing comments from the community concerning antibiotic resistance during the County’s consideration of both the Masching 2014 and 2016 CUP applications). Defendant Masching had plenty of opportunities to remove the public health threat of antibiotic resistance as an issue by disclaiming plans to use continuous doses of antibiotics at the feedlot, but never did so.
III. THE DISTRICT COURT'S STANDARD OF REVIEW WAS FAR TOO DEFERENTIAL TO COUNTY DECISION-MAKERS.

The District Court applied an overly deferential standard in reviewing the County’s approval of the Masching CUP. Referencing Schwardt v. County of Wantonwan, the District Court stated that it would provide heightened deference to the local authority for the approval of a CUP. May 2016 Order 4. But the Supreme Court’s directions on deference to CUP approvals are not so clear cut. In fact, by providing more judicial deference to a CUP approval than it would provide to a CUP denial, and consequently blessing the CUP approval even though the County completely failed to consider an important public health issue, the District Court contravened core principles of Minnesota administrative law.

In Schwardt, the Minnesota Supreme Court acknowledged it had “traditionally held CUP approvals to a more deferential standard of review than CUP denials.” 656 N.W.2d at 389 n.4 (citing Interstate Power Co. v. Nobles County Bd. of Comm’rs, 617 N.W.2d 566 (Minn. 2000) and Corwine v. Crow Wing County, 244 N.W.2d 482 (Minn. 1976)). The Court still accepted the deferential standard because “[n]either party argued that this distinction is unwarranted.” Id. This observation that a “traditional” standard of review went uncontested suggests that the Supreme Court may not believe there is a valid reason for the distinction in judicial deference between CUP approvals and CUP denials.

The Schwardt decision cites two cases—Interstate Power and Corwine—for why courts have “traditionally” applied a heightened deference standard of review to CUP approvals. Both cases explain that “[w]hen a use permit is approved, the decision-making
body is always implicitly giving the same reason – all requirements for the issuance of
the permit have been met.” *Corwine*, 244 N.W.2d at 486; see also *Interstate Power*, 617
N.W.2d at 579-80.

But the *increase* of deference to an administrative entity, based on the assumption
that the entity considered all relevant issues *sub silentio*, conflicts with administrative law
doctrines.

According to the Minnesota Supreme Court, judicial deference to an agency is
“rooted in the separation of powers doctrine and the agency’s training and expertise in the
subject matter.” *In re City of Annandale*, 731 N.W.2d 502, 512 (Minn. 2007). Agencies
deserve deference when they employ their expertise and “special knowledge in the field
of their technical training, education, and experience.” *Reserve Mining Co. v. Herbst*, 256
N.W.2d 808, 824 (Minn. 1977). Thus, to receive judicial deference, the County must
actually engage with the issues within its field of expertise—it “necessarily requires
application of the agency’s technical knowledge and expertise to the facts presented.”
*Minn. Ctr. for Envtl. Advocacy (MCEA) v. MPCA*, 644 N.W.2d 457, 464 (Minn. 2002).

Indeed, the requirement that an agency must actually *apply* its technical training
and expertise to the facts of the controversy to receive judicial deference is a corollary to
the “arbitrary and capricious” standard of review in administrative law. “An agency’s
decision is arbitrary or capricious if the agency relied on factors the legislature never
intended it to consider, if it entirely failed to consider an important aspect of the problem,
if it offered an explanation for the decision that runs counter to the evidence, or if the
decision is so implausible that it could not be ascribed to a difference in view or the result
of agency expertise.” *In re Block*, 727 N.W.2d 166, 177-78 (Minn. App. 2007). Similarly, courts will intervene “when a ‘combination of danger signals . . . suggest the agency has not taken a hard look at the salient problems’ and the decision lacks ‘articulated standards and reflective findings.’” *MCEA v. City of St. Paul Park*, 711 N.W.2d 526, 534 (Minn. App. 2006) (quoting *Reserve Mining Co.*, 256 N.W.2d at 825). The presumption against deference in the absence of agency findings reflects the “general rule” that an agency “should state with clarity and completeness the facts and conclusions essential to its decision so that a reviewing court can determine from the record whether the facts furnish justifiable reason for its action.” *Minn. Transitions Charter Sch. v. Minn. Dep’t of Educ.*, 2004 Minn. App. LEXIS 525, *10* (Minn. App. May 11, 2014). Judicial review has no meaning if the decision-making record is absent a key issue relevant to the decision.

Thus, a County cannot receive heightened deference for approving a CUP based on an assumption that the County’s approval implicitly—*i.e., silently*—found that all relevant issues underlying the required criteria have been considered. Because a CUP is a variation from a normal land use, county ordinances contain material obligations, and applicants must demonstrate that all of the “standards and criteria stated in the ordinance *will be* satisfied.” Minn. Stat. § 394.301, subd. 1 (emphasis added); *see also RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 78 (Minn. 2015) (explaining that the “burden was on [the applicant] to show that it could satisfy the standards specified by ordinance”).

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12 A CUP approval requires the county to ensure that an applicant satisfy each and every standard set out in a county ordinance, and a CUP denial only requires the county to find
Courts cannot assume, without any showing in the record, that applicants, and the county agencies that approved the applicants’ permits, have met their burden. See *Murphy v. Comm' r of Econ. Sec.*, 1998 Minn. App. LEXIS 1125, *15-16 (Minn. App. Oct. 6, 1998) (“Although our standard of review is deferential and we afford due regard to agency expertise, due process prohibits us from affirming a factual finding based on an entirely silent record where the underlying facts are not of such common knowledge that we may take judicial notice of them”); see also *Loncorich v. Buss*, 868 N.W.2d 755, 765 (unpublished Minn. App. 2015) (Hudson, concurring) (“[O]ur courts should require more by mandating that CUP applicants strictly comply with ordinance requirements by submitting all required information with the application so that a full, meaningful hearing on the merits can be properly conducted”) (emphasis added). As the Minnesota Supreme Court has explained, such a judicial assumption unfairly makes Appellants guess at an agency’s reasons while also endorsing *post hoc* agency rationalizations:

> [A]n appellant in this situation must intuit the rationale for the agency’s decision and prepare argument based on their speculation as to the agency’s thinking. The agency, on the other hand, is able to rationalize its decision in retrospect and in direct response to an appellant’s contentions. Sanctioning this procedure would be unfair to appellants and runs the risk inherent in any opportunity to rationalize or justify what one has done before.

*Reserve Mining Co. v. MPCA*, 364 N.W.2d 411, 415 (Minn. 1985) (internal quotation omitted).

the applicant to fall short of one ordinance standard. See Minn. Stat. § 394.301, subd. 1; see also *Schwardt*, 656 N.W.2d at 387 (explaining how a county acts unlawfully if it approves a CUP application that does not meet one of the standards set out in ordinance). Thus, if courts must apply different levels of deference to county CUP decisions, one would expect CUP application *denials* to receive more deference than *approvals*. 

23
Increased deference, premised on the assumption that the County considered and determined that the CUP applicant met all ordinance criteria, is especially inappropriate for the facts here. Masching filed the application at issue on November 20, 2014. The very next day, well before the public had time to submit comments, the County had already prepared a Staff Report recommending approval of the CUP. See AR 199. After denying requests to extend the permit application consideration period, the County Planning Commission approved the CUP on December 11, 2014, a mere 13 business days after the application was filed. See AR 530-31, 1008-09. This short turnaround between application and approval does not and cannot “implicitly” suggest that the County considered all Zoning Ordinance criteria and assured itself that the application met them. To the contrary, as the District Court found, the County took a “cart-ahead-of-the-horse approach to CUP analysis and approval,” thinking “it could act on a CUP application without having information important to the question of its issuance.” May 2016 Order 7. The County did not apply technical knowledge and expertise to the facts presented. See, e.g., Section II, supra (detailing how the County did not confront the serious public health concerns presented during the CUP application process, including concerns about how CUP approval might lead to increased antibiotic resistance in the area). Accordingly, the County does not deserve more judicial deference for approving the Masching CUP application than it would have received for a denial. See City of Annandale, 731 N.W.2d at 512.13

13 Moreover, there is no evidence of any Dodge County legislative intent for applying increased deference to a CUP approval. The CUP judicial review provision of the Zoning
IV. CONCLUSION.

The development of antibiotic resistance from pig feedlot operations is a serious threat to public health and animal welfare. The District Court erred when it did not find that the County had failed to evaluate the critical health risk that the Masching feedlot may pose to its workers, neighbors, and consumers. Moreover, the District Court afforded far too much deference to the County, even in the face of a complete lack of evidence in the decision-making record of any consideration of a crucial public health concern, in reviewing the County’s CUP approval decision. For the foregoing reasons, this Court should reverse the District Court’s decision upholding the County’s approval of the Masching CUP.

Respectfully submitted,

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Ordinance, titled “Appeal of County Board Decision,” makes no distinction between review of a CUP approval and a CUP denial. See Zoning Ordinance § 18.13.12 (“Any aggrieved person or persons, or any department, board or commission of the jurisdiction, or of the state shall have the right to appeal the decision of the County Board to the District Court on questions of law and fact”).
CERTIFICATE OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Rule 132.01 of the Minnesota Rules of Civil Appellate Procedure. The length of this brief is 6,974 words.

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By, Dated: October 10, 2016

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INTEREST OF AMICI CURIAE¹

Jillian P. Fry, Ph.D., MPH, Robert S. Lawrence, MD, Claire M. Fitch, MSPH, and Carolyn R. Hricko, MPH are faculty and/or researchers World Health Organization study the food system and public health. They are all affiliated with the Johns Hopkins Center for a Livable Future ("CLF").² Within this brief, these amici will refer to themselves as the "Public Health Amici."

CLF is an interdisciplinary academic center based within the Johns Hopkins Bloomberg School of Public Health, which applies scientific, policy, and regulatory expertise to issues surrounding food systems and public health. http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-a-livable-future/. CLF engages in research, policy analysis, education, and other activities guided by an ecological perspective that diet, food production, the environment, and public health are interwoven elements of a complex system. The Public Health Amici recognize the prominent role that food animal production plays with regard to a wide range of public-health concerns within and associated with that system.

Dr. Jillian P. Fry, Ph.D., MPH, directs the CLF’s Public Health & Sustainable Aquaculture Project, and is an Assistant Scientist in the Departments of Environmental Health Sciences and Health, Behavior, and Society at the Johns Hopkins Bloomberg

¹ No counsel for any party authored this brief in whole or in part. No person or entity other than Amici, or its counsel, made any monetary contribution to the preparation or submission of this brief.

² The views of these amici do not necessarily reflect the views of Johns Hopkins University.
School of Public Health. Dr. Fry’s research focuses on the effects of industrial food animal production (including aquaculture) on environmental public health, especially regarding resource use, effectiveness of regulations, and understanding policy processes relevant to food-animal production at the local, state, and federal levels. She has published 5 peer-reviewed journal articles on issues related to the environmental and public-health impacts of industrial food animal production. Dr. Fry also coordinates CLF’s response to requests for technical assistance from community members, non-governmental organizations, and other stakeholders who are seeking a public health professional to interpret the scientific evidence on industrial food-animal production. (7/25/16 Palmer Aff., Exhibit 4, Curriculum Vitae of Jillian P. Fry).

Dr. Robert S. Lawrence, MD, is a Professor Emeritus of Environmental Health Science and International Health at the Johns Hopkins Bloomberg School of Public Health. He is also a Professor of Medicine at the Johns Hopkins School of Medicine. Dr. Lawrence is a graduate of Harvard College and Harvard Medical School, and trained in internal medicine at the Massachusetts General Hospital in Boston, Massachusetts. Dr. Lawrence founded the Center for a Livable Future in 1996, served as director until 2015, and has published 8 peer-reviewed articles directly related to the environmental and health impacts of industrial food-animal production. Before joining the Johns Hopkins Bloomberg School of Public Health and starting the CLF, Dr. Lawrence spent many years advancing the field of public health via leadership positions at multiple organizations, including the U.S. Centers for Disease Control and Prevention, the University of North Carolina Chapel Hill, Harvard Medical School, Cambridge Hospital,
the U.S. Preventive Services Task Force, and the Rockefeller Foundation. *(See July 25, 2016 Affidavit of Kris Palmer in Support of Amicus Petition, Exhibit 1, Biographical Sketch of Robert S. Lawrence)*.

Ms. Claire M. Fitch, MSPH, is a Program Officer in the Food System Policy Program at the Johns Hopkins Bloomberg School of Public Health. In this position, Ms. Fitch has conducted literature reviews, and provided public comment and testimony on the public health impacts of industrial hog, turkey, and broiler-chicken production in the U.S. Prior to joining the CLF, Ms. Fitch was a U.S. Borlaug Fellow in Global Food Security with the USAID Nutrition Innovation Lab. *(7/25/16 Palmer Aff., Exhibit 5, Curriculum Vitae of Claire M. Fitch)*.

Ms. Carolyn R. Hricko, MPH, is a Research Assistant in the Food System Policy Program at the Johns Hopkins Bloomberg School of Public Health. Ms. Hricko has a background in global health and sustainability, and has conducted literature reviews on air pollution and other environmental and public health impacts of industrial hog, turkey, and broiler-chicken production and processing in the U.S. *(7/25/16 Palmer Aff., Exhibit 6, Curriculum Vitae of Carolyn R. Hricko)*.

The Public Health Amici assert a public interest. The Dodge County Ordinances at issue in this case required compliance with U.S. and state environmental laws, and the permit at issue in this appeal has broad implications for Dodge County, other counties in Minnesota, and rural areas across the U.S. Through this brief, the Public Health Amici provide interpretation of relevant scientific evidence regarding the public-health and community impacts of industrial-scale hog production.
RECORD FACTS THAT DEMONSTRATED THE LIKELIHOOD OF NEGATIVE PUBLIC HEALTH EFFECTS

The administrative record contained substantial evidence that demonstrated a high likelihood of negative public-health effects caused by industrial-scale hog production such as the one at issue in this case.

Masching Hog Farm (hereinafter, "Masching") proposed to build a facility that would house 2,400 hogs. Each hog generates as much waste as three people. So the Masching proposal amounted to the equivalent of a housing project that would house 7,200 people for 24 hours a day, seven days a week, 365 days a year.

Per the Masching proposal, all of those 7,200 people’s feces and urine would remain onsite, in a concrete pit underneath their living space, with open-air slats to allow for ventilation of the excrements’ gases. (Id. at AR-780-82). This hypothetical housing project’s waste would remain in that pit for up to a year at a time. (Id. at 782). By the end of each year, this “housing project’s” occupants would have produced an estimated 1.14 million gallons of liquid waste composed of excrement and urine. (Id. at AR-812).

Such waste breaks down, and as it does, it releases toxic gases, including ammonia, hydrogen sulfide, and methane. (AR-647). All of these gases are potentially explosive, which poses an obvious risk to public health. And the evidence presented to the County specifically described how two of these gases --- ammonia and hydrogen sulfide --- directly affect human health with repeated exposure, even at low doses. (Id. at AR-646-48).
The evidence presented to the County showed that ammonia is an irritant that causes chemical burns to the respiratory tract, skin, and eyes. (Id. at 646). At high concentrations, it generates a severe cough, and chronic exposures to levels as low as 0.5 mg/m3 can result in decreased lung function and respiratory system.

Those at highest risk are children and the elderly. The evidence presented to the County showed that children who are regularly proximate to operations like the Masching’s are more likely to develop asthma (a chronic lung disease that can affect said children for the rest of their lives), and bronchitis. Chronic lung disease can, and often does, kill the elderly. (AR-647).

The evidence presented to the County also showed that hydrogen sulfide causes inflammation of the moist membranes of the eyes and respiratory tract, and olfactory neuron loss. (Id.). It has an extremely noxious “rotten egg” odor. Studies presented to the County showed that this odor is so noxious that repeated exposure (merely due to the odor) can pose risks to mental health. And data submitted to the County showed that the odors from industrial hog operations such as the Masching’s can be detected from as far away as six miles.

The County received evidence demonstrating that 1.1 million gallons of hog waste would be expected to generate significant amounts of ammonia and hydrogen sulfide. Such gases are so concentrated in facilities such as the Masching’s, that the latters’ designs must incorporate powerful ventilation systems, lest the hogs die due to exposure to the gases produced by their own decomposing bodily waste.
These necessary ventilation systems pump the bodily waste materials into the air around the facility, and until these gases disperse, nearby properties experience continuously elevated exposure to them, thereby increasing the properties’ inhabitants’ risk of chronic respiratory illnesses, changes to mental health, and even death.

As one would expect with a 7,200-occupant human housing project, the occupants of such high-density hog facilities are at increased risk of disease from various pathogens, including bacteria and viruses. One of the most commonly found bacteria is *Staphylococcus aureus*. *Staphylococcus aureus* is a pathogen responsible for a significant burden of skin infections and respiratory disorders.

In order to protect the animals (as well as enhance their growth), it is commonplace to feed them antibiotics. The evidence presented to the County included data showing that such feeding practices increase the risk of antibiotic resistance, and that therefore such facilities result in increased local risk of exposure to various antibiotic-resistant bacterial infections, including infections with Methicillin-Resistant *Staphylococcus aureus*, or “MRSA.”

MRSA is a resistant strain of an otherwise-common bacterium. It can be life-threatening. In the elderly, it can cause life-threatening antibiotic-resistant pneumonia. In both elderly and younger people, it can cause severe skin infections, including necrotizing fasciitis, a severe type of skin infection that spreads quickly, and kills the body’s soft tissues. MRSA is one of the so-called “flesh-eating bacteria.”

In addition, pigs are one of the world’s greatest sources of zoonotic diseases (i.e., viral or bacterial diseases that may be spread between animals and humans). Zoonotic
diseases may be spread via contaminated water sources, air, and insect vectors. And the evidence presented to the County showed that large, concentrated hog facilities, such as the Masching's, are breeding grounds for these zoonotic diseases.

To be fair, the County ultimately required some preventatives to avoid public health insult. But the County did not require (and therefore, the record does not include) any data from which the County (or a reviewing court) could reasonably assess whether the Masching’s proposal would affect water or air quality, or whether the presence of this facility would pose a health risk to nearby residents.

ARGUMENT

The Dodge County Zoning Ordinance criteria for granting a Conditional Use Permit includes determinations that the project will not be detrimental to or endanger public health and that groundwater, surface water, and air quality will be protected. (Id. at AR-355).

In the Planning Commission Meeting and Dodge County Board Meeting minutes (Id. at AR-29 and AR-77), it is apparent that public-health issues were not discussed. The offset determination by the County Feedlot Officer that the site was “98% odor annoyance free” is not a robust analysis and fails to consider air emissions during manure removal and spreading, the compounded odor effects of the animal density in that area, the public-health impacts of gases and particulate matter associated with odor, and the offset under various weather conditions. In short, this data cannot be deemed a sufficient amount of evidence for a local authority to determine that a project will not be detrimental to public health.
The district court properly described a court’s standard of review of a county’s decision. That standard of review includes appropriate deference to the County. Such deference is necessary to preserve separation of powers. See, e.g., *Big Lake Association v. Saint Louis County Planning Commission*, 761 N.W.2d 487, 490-91 (Minn. 2009).

But in this case, the County undertook to protect public health. The state regulatory agencies assumed that the County would honor that undertaking. Where, as here, local governments like the County fail to give a hard look at proposals that endanger public health, court intervention is appropriate.

I. **Air quality is a public-health issue, not a “nuisance.”**

The Masching’s proposal is a medium-to-large scale hog feedlot. Such facilities are often described as Concentrated Animal Feeding Operations, or “CAFOs.”

Gaseous emissions from hog feedlots primarily come from decomposing manure. When underground storage is used, gases are released by ventilation systems, manure removal, and during spreading. Such feedlot buildings also disseminate gases and particulate matter (*Id. at* AR-652). Major air pollutants from hog feedlots and the resulting public health risks are summarized in the NALBOH review (*Id. at* AR-652-654) and GRACE Communications Materials (*Id. at* AR-632-634). Main air emissions include hydrogen sulfide, ammonia, particulate matter, endotoxins, and methane.

One study, submitted below, identified 331 fixed gases and volatile organic compounds (VOCs) in air samples near North Carolina farms. A North Carolina State University study found that when human subjects were exposed to simulated feedlot emissions in a field laboratory for one hour, subjects were 4.1 times more likely to
develop headaches, 6.1 times more likely to report eye irritation, and 7.8 times more likely to report nausea than those in a control group (breathing clean air). (Id. at AR-633). Some of the health conditions associated with exposure to feedlot emissions include asthma symptoms, bronchitis, nasal irritation, diarrhea, hoarseness, sore throat, cough, chest tightness, nasal congestion, palpitations, shortness of breath, stress, drowsiness, and alteration in mood. (Id.).

Decomposing hog manure emits hydrogen sulfide, a colorless gas that limits cells' ability to use oxygen. This gas is particularly dangerous because the intensity of its odor only slightly increases at levels above 6 parts per million (ppm), and can reduce individuals' sense of smell at concentrations of 150 ppm or higher. Exposure to 500 ppm or higher is likely to be lethal. Exposure at low levels is associated with chronic cough, throat irritation, eye symptoms, nasal symptoms, headache, low blood pressure, and psychological disorders. Exposure is also linked to nausea, stomach distress, and blistering of the lips. Exposure to high levels can cause skin, eye, and respiratory irritation, neurologic and cardiac disorders, loss of consciousness, shock, pulmonary edema, seizures, comas, and death. Minnesota’s Pollution Control Agency has documented hydrogen sulfide concentrations in excess of World Health Organization maximum exposure standards on properties near hog feedlots (Id. at AR-634).

Ammonia, emitted via manure decomposition, is absorbed in the upper airways and exposure can cause wheezing, shortness of breath, chronic lung disease, and irritation of the eyes, throat, respiratory system, sinuses and skin. Exposure to moderate concentrations of ammonia (50-150 ppm) can cause severe cough and mucous production
and exposure to concentrations higher than 150 ppm can cause scarring of the upper and lower airways, reactive airways dysfunction syndrome (RADS), persistent airway hypersensitiveness, lower lung inflammation, and pulmonary edema. Exposure to extremely high concentrations of ammonia can be fatal.

Detection of odor from hog feedlots indicates exposure to one or more of the gases described above, and may also mean that particulate matter and endotoxins are present. Regular exposure to particulate matter — which may include fecal matter, feed materials, skin cells, and pathogens — is linked to bronchitis, asthma, chronic respiratory symptoms, organic toxic dust syndrome, and cardiac disorders (including arrhythmia and heart attacks). Endotoxins may also be present in particulate matter and can cause respiratory problems even in extremely low concentrations.

II. The county also failed to consider evidence of substantial public-health impacts from pathogens.

After the Plaintiffs’ Motion for Summary Judgment was granted and the Maschings’ Conditional Use Permit vacated (Id. at AR-330), Nick Masching reapplied for a CUP with additional information (Id. at AR-128), including a geotechnical evaluation and a manure management plan. No additional information was provided to satisfy the zoning ordinance criteria that the project would not be detrimental to or endanger public health or air quality. The Planning Commission granted a CUP, citing the additional information contained in the second application, despite the continued lack of materials related to public health and/or air quality.
Based on the NALBOH report and information from the GRACE Communications Foundation submitted below, there is ample evidence contained in the record showing that large-scale animal operations are a serious threat to public health, especially when geographically clustered. This information is widely available, from these sources and many others, and should have been considered by Dodge County when making a decision about granting the CUP. For Dodge County to approve numerous hog feedlots and be in compliance with their zoning ordinance that claims to protect public health, air, and water, robust monitoring and action plans should be in place to track levels of common contaminants from feedlots and to respond if/when air and/or water are contaminated by the large-scale hog operations in Dodge County. Under current regulations, once the CUP is granted there are very minimal air regulations due to a significant exemption for feedlots (Id. at AR-578) and oversight of manure management relies heavily on record keeping and voluntary compliance (Id. at AR-574-578).

The evidence presented to the County showed that over 150 disease-causing bacteria, viruses, and other pathogens can be found in animal manure and can be transferred to people through fecal-oral transmission and exposure to contaminated air, drinking water, and recreational water. (Id. at AR-655-657). The crowded conditions in confined animal feeding operations like the Masching’s proposal present frequent opportunities for the transmission of pathogens among animals, and between animals and humans.

While exposure to these pathogens poses a risk to healthy people, those with compromised immune systems, such as pregnant women, infants and young children, the
elderly and those who are HIV positive or have had chemotherapy, are at even greater risk of severe illness or death. Widespread disease outbreaks, such as salmonellosis, cryptosporidiosis and giardiasis, can result from exposure to water contaminated by pathogens.

These diseases cause symptoms ranging from nausea, vomiting and diarrhea, to dehydration, fever, and muscle pain and may result in death. Industrial hog operations also present opportunities for the replication, mutation, and recombination of viruses that can result in the development of novel viruses, some of which may lead to more efficient human-to-human transmission. (Id. at AR-657).

Antibiotics are routinely administered through animal feed, sometimes at non-therapeutic doses to promote growth and/or prevent disease. The evidence presented to the County showed that approximately 70% of all antibiotics and related drugs in the U.S. each year are sold for use in food animals, and more than half of those antibiotics are considered important in human medicine. There is strong evidence that the use of antibiotics in food animal production contributes to antibiotic resistance in bacteria and decreases the effectiveness of antibiotics in human medicine. This threatens human health because fewer options exist to help people overcome disease when infected with antibiotic-resistant pathogens. Moreover, antibiotics are often not fully metabolized by animals and can be present in manure. If manure pollutes a water supply, antibiotics can also leech into groundwater or surface water. Because of this concern for human health, there is a growing movement to eliminate the routine use of antibiotics in food animal production.
The NALBOH report, presented to the County, mentions opposition to the use of non-therapeutic antibiotics in animal agriculture by the American Medical Association and World Health Organization. (Id. at AR-657). In the fall of 2013, a research study titled “High-Density Livestock Operations, Crop Field Application of Manure, and Risk of Community-Associated Methicillin-Resistant Staphylococcus Aureus Infection in Pennsylvania” was published in JAMA Internal Medicine (a leading journal published by the American Medical Association).

The study focused on rates of MRSA infection, a type of bacteria resistant to some medically-important antibiotics, among residents living various distances from industrial hog operations and spray fields. The study had the following conclusion: “Proximity to hog manure application to crop fields and livestock operations each was associated with MRSA and skin and soft-tissue infection. These findings contribute to the growing concern about the potential public health impacts of high-density livestock production.”

In addition, the World Health Organization identified antimicrobial resistance (a term used widely in recent years that includes antibiotic resistance) as “one of the biggest threats to global health” in the fall of 2016. The World Health Organization recognizes misuse of antimicrobials in animal agriculture for the purpose of growth promotion as a major cause of global antimicrobial resistance.

CONCLUSION

The Public Health Amici urge this court to examine the record before the County, below. That record included ample scientific evidence to support an inference that the proposed facility would endanger public health. The evidence submitted to the County
demonstrated a significant risk of injury due to lowered air quality. It also demonstrated a significant risk of antimicrobial resistance and increasingly dangerous pathogens.

Where, as here, local officials are charged with protecting public health, such evidence must be given serious consideration. At a minimum, courts must require that local officials carefully review the submitted evidence, as well as any contrary evidence submitted by the applicant. Local authorities must be required to articulate the bases for their conclusions, so that courts may reasonably review their decisions. Any other process risks endangering the lives of the public living near these facilities.

Respectfully Submitted

Dated: October 11, 2016

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 3,851 words. This brief was prepared using Microsoft Office Word 2010.

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State of Minnesota

In Court of Appeals

Lowell Trom, et al.,

Appellants,

vs.

County of Dodge, et al.,

Respondents,

Masching Swine Farms, LLC,

Respondent.

BRIEF OF AMICI CURIAE

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INTRODUCTION AND INTEREST OF THE AMICI CURIAE¹

On December 11, 2014 the Dodge County Planning Commission ("Commission") and Board of Commissioners ("Board") held specially arranged sessions to reapprove a feedlot conditional use permit ("CUP") application submitted by Masching Swine Farms, LLC ("MSF"). AR 884-971, 981-85. Concentrated animal feeding operations ("CAFOs") such as MSF pose a series of significant threats to water, air, and land. While a handful of federal and state laws regulate CAFO activity generally, county-level zoning ordinances often provide the only means to determine when a CAFO is not an appropriate operation for its proposed location. Where, as here, a Board fails to uphold its ordinance, the environmental and public health and welfare concerns protected by the ordinance are undermined.

The Minnesota Center for Environmental Advocacy ("MCEA"), Environment Minnesota, and Food & Water Watch ("FWW") (collectively "amici") are concerned that upholding the MSF feedlot CUP has implications beyond the parties to this litigation. The issues in this case concern the duties of delegated counties such as Dodge to properly exercise their permitting and regulatory authority over feedlots. In addition, issues in this case concern and will likely affect citizens’ ability to meaningfully participate in the permitting and citing processes for feedlots, during which a critical and unique opportunity is guaranteed to the public both to protect one’s property rights and health

¹ Pursuant to Minn. R. Civ. App. P. 129.03, amici hereby state that no counsel for a party authored this brief in whole or in part and no person other than the amici, their members, or their counsels made any monetary contribution to the preparation or submission of this brief.
concerns and to encourage environmental protection. Amici submit this brief in support of
the Plaintiff-Appellants Lowell Trom and Evelyn Trom, respectfully requesting that this
Court reverse the district court and Board and vacate the CUP granted to Defendant-
Respondent MSF.

MCEA is a Minnesota non-profit organization founded in 1974 whose mission is
to use law, science, and research to preserve and protect Minnesota’s natural resources,
wildlife, and the health of its people. MCEA is engaged in public policy advocacy and
education in five program areas, including water quality and natural resources. As part of
its advocacy, MCEA has participated in administrative rulemaking proceedings (Minn.
R., Ch. 7020) concerning the regulation of pollutants discharged to surface and ground
waters from CAFOs. MCEA’s continued participation in such matters since 1974 is
unique, and gives MCEA specific expertise and experience in the local regulation of
animal feedlot operations. MCEA has a distinct interest in ensuring that local regulations
properly implement state laws intended to prevent pollution of rivers, streams and lakes
from animal feedlot operations. MCEA also has a distinct interest in ensuring that local
regulations preserve and respect the procedural rights of itself and other citizens or
organizations working to protect the natural resources of this state. MCEA has state-wide
membership, and many of those members individually participate in proceedings of the
sort at issue in this particular appeal.

Environment Minnesota is the state affiliate of Environment America, a 501(c)(4)
organization doing business as Environment Minnesota on behalf of its thousands of
supporters in the state. As part of its longstanding commitment to protect our rivers,
lakes, streams and other water resources, Environment Minnesota is deeply concerned by the water pollution impacts of industrial livestock operations, such as the MSF feedlot. Environment Minnesota has expertise particular to this case, and recently published a national report outlining the water pollution threats of industrial agribusiness operations, including animal feedlots of the type at issue in this matter.

FWW is a national, non-profit consumer advocacy organization with its headquarters in Washington, D.C. and several offices throughout the United States. FWW’s mission is to champion healthy food and clean water for all by standing up to corporations that put profits before people, and advocating for a democracy that improves people’s lives and protects our environment. FWW works to ensure safe food and clean water, advocating for safe, wholesome food produced in a humane and sustainable manner and the public, rather than private, control of water resources. FWW has more than 900,000 members and supporters in the United States. More than 28,000 of these members and supporters are Minnesota residents, and at least 30 live in Dodge County.

ARGUMENT

I. THE MSF FEEDLOT POSES A KNOWN THREAT TO THE ENVIRONMENT.

Swine CAFOs such as the MSF feedlot\(^2\) pose several significant threats to the environment and to public health, both individually and in the aggregate.\(^3\) A primary

\(^2\) Assuming the 2,400 finishing-swine legal capacity is not exceeded, the MSF feedlot meets the size threshold definition of a medium CAFO. 40 C.F.R. 122.23 (b)(6); Minn. R. 7020.0300, subp. 7d.

\(^3\) Nat. Ass’n of Local Bds. of Health, *Understanding Concentrated Animal Feeding*
threat is due to the quantity of manure they produce. One hog produces roughly ten times more fecal waste than a human. The Minnesota Pollution Control Agency ("MPCA") estimates that the amount of manure generated in Minnesota is equivalent to a human population of about 50 million. At full legal capacity, the MSF CAFO alone will produce more fecal waste than the total human population of Dodge. Pig manure contains high levels of several potential contaminants such as nitrogen, phosphorus, ammonia, nitrate, hydrogen sulfide, and methane, in addition to any pathogens, hormones, antibiotics, and chemicals used or produced at the feedlot, which pose a variety of distinct threats to water and air.

The MPCA’s water monitoring suggests that about 40 percent of Minnesota’s lakes, rivers, and streams are impaired, failing to meet one or more water quality

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4 *Id.*  
7 In 2010, Minnesota’s census-reported human population was 5,303,925, of which 20,087 resided in Dodge. U.S. Census Bureau, QuickFacts-Minnesota, available at www.census.gov/quickfacts/table/PST045215127. Minnesota’s current hog population is an estimated 8,100,000 (accounting for 11.7% of the national inventory), with a Dodge County pig population in 2012 of 163,874. U.S. Dept. of Agriculture—National Agricultural Statistics Service, Quick Stats, available at quickstats.nass.usda.gov/. Pigs in Dodge are thus producing the fecal equivalent of more than 1,638,740 humans.  
8 Nat. Ass’n of Local Bd’s of Health, supra at 2; see generally, Marc Ribaudo et al., *USDA—Manure Management for Water Quality*, Agricultural Economic Report No. 824 (June 2003).
standards. The majority of impaired waters are in the southern half of Minnesota, which has the highest number of stressors related to excess nutrients, such as nitrogen and phosphorus, excess sediment, lack of habitat and connectivity, and impaired biological communities. More than half of these southern waters fail to meet swimmable or fishable standards. Several "fish-kills" have occurred in Southeastern Minnesota: In July 2015, 10,000 fish died after heavy rains, which saw nutrient levels exceed drinking water standards by 400 percent. In 1998, a 100,000 gallon manure spill into a creek killed nearly 700,000 fish along 19 miles of stream.

Westfield-Ripley Drainage Ditch runs through the Toquam land on which MSF is located and on which MSF manure is to be applied. A few hundred feet from the CAFO the ditch turns and runs less than a mile downstream and empties into the Little Cedar River, which is an impaired water listed as "non-supporting of aquatic life for aquatic macroinvertebrate communities" due, in part, to low oxygen caused by high concentrations of nitrogen and phosphorus. The Little Cedar River, in turn, empties into

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9 MPCA, Minnesota’s Impaired Waters List, www.pca.state.mn.us/water/minnesota-impaired-waters-list (last accessed October 9, 2016).
11 Id.
12 Id.
the impaired Cedar River, a tributary of the impaired Iowa River, and ultimately into the Mississippi River.\textsuperscript{15}

The MSF CUP application estimates that its pigs will produce 1.1 million gallons of swine manure that requires land application. AR 146. It also anticipates that its 1.1 million gallons of manure will contain 55,000 pounds of nitrogen and 48,400 pounds of phosphorus. AR 147. Nitrogen and phosphorus in manure applied to land will runoff into the watershed’s already impaired waters at varying rates depending on rain levels, soil permeability, and method of application.\textsuperscript{16} This excess nutrient runoff directly contributes to algal blooms, decreased oxygen levels, and other surface water impairments.\textsuperscript{17} Nitrogen also converts in the soil to nitrate, which is a potential drinking water contaminant that is of serious concern for infant health.\textsuperscript{18}

As early as 1992, agricultural sources discharged 4.65 million tons of nitrogen and 1.16 million tons of phosphorus into surface waters each year.\textsuperscript{19} Since 1992, agricultural waste has dramatically increased, with operations consolidating and growing at a high

\textsuperscript{15} Id.
\textsuperscript{17} Id.
\textsuperscript{18} Id.
rate in the interim. In 1994, land use models indicated that agriculture was the leading source of nitrogen (76 percent) and phosphorus (56 percent) in the environment.

Since crop absorption rates for nitrogen and phosphorus differ, farms may apply manure to cropland according to a nitrogen or phosphorus standard. One study estimated that 51 percent of nitrogen in pig manure and 64 percent of its phosphorus, applied nationally in 1997, was in excess of crop needs at the farm level. In 1998, most farms, regardless of size, failed to meet recommended nitrogen based standards for application of manure. Only 18 percent of large farms met recommended nitrogen application standards. Even then, fewer farms were applying manure to meet a phosphorus standard, because the high phosphorus content of manure relative to crop needs significantly reduces the quantity of manure that can be applied on an acre of land. No large farms in the Eastern Corn Belt, Mid-Atlantic, or West met a phosphorus based standard. Slurry systems, such as MSF’s, preserve more of the nutrients in manure than do lagoon systems, which lose a significant amount of nitrogen to the atmosphere and phosphorus to the sludge at the lagoon bottom. As a result, more land per animal is necessary under a slurry system than a lagoon system in order to meet either

\[\text{20} \text{ Curt Zimmerman, Minn. Dept. of Agriculture—2015 Livestock Industry Study (February 1, 2016), at 3.} \]
\[\text{21} \text{ James Stephen Carpenter, Farm Chemicals, Soil Erosion, and Sustainable Agriculture, } \]
\[\text{Stanford Env. L.J. 190, 201 (1994).} \]
\[\text{22} \text{ Ribaudo et al., supra.} \]
\[\text{23} \text{ Id. at 14.} \]
\[\text{24} \text{ Id. at 17.} \]
\[\text{25} \text{ Id. at 14.} \]
\[\text{26} \text{ Id. at 16.} \]
\[\text{27} \text{ Id.} \]
\[\text{28} \text{ Id. at 18.} \]
nutrient standard. When a phosphorus-based standard is required, producers require even more land for application; large farms, on average, would need to spread on over 1,000 additional acres of land to meet a phosphorus-based standard.

This water quality threat is not limited to the immediate locality. The same heavy June rains throughout the Corn Belt that initiated the 2015 Minnesota fish-kill expanded a dead-zone in the Gulf of Mexico to 6,474 square miles in which oxygen levels were too low to support fish and marine life. The National Oceanic and Atmospheric Administration stated that agricultural pollutant-nutrient runoff directly caused the growth of the dead-zone in the Gulf. MSF seems a long way from the world’s second-largest dead-zone, but the few maps submitted with the CUP application show that runoff produced by MSF manure has a direct hydrological connection to the Gulf of Mexico.

In an attempt to limit this environmental threat to surface waters, the feedlot rules require manure management plans ("MMPs") that "help ensure that application rates do not exceed crop nutrient needs, and that setback from waters and drain tile intakes are observed." The determination of how much of MSF's 103,000 pounds of pollutant-nutrients will runoff into impaired surface waters is complicated and depends on weather,

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29 Id.
30 Id.
32 Id.
33 MPCA, Livestock and the environment, supra.; Minn. R. 7020.2225.
method of application, crop rotations, and expected yield.\textsuperscript{34} In light of this difficulty, the feedlot rules do not provide a specific application rate for nitrogen or phosphorus, but instead require application rates in line with current recommendations from the University of Minnesota—Extension. Minn. R. 7020.2225. The current MPCA recommendation provides a maximum recommendation of 180 pounds per acre.\textsuperscript{35} The requirements also confirm that other pollutant-nutrients often exceed crop needs when manure is applied at a nitrogen standard and that “[s]ometimes there are economic and environmental benefits of applying manure at rates lower than [nitrogen] needs.”\textsuperscript{36}

Dodge’s zoning administrator, advising the Board, failed to detail the calculations behind her estimation that just 244 acres were required for the land application of the annual 1.1 million gallons of manure produced by MSF. AR 941-43. However, if manure is applied at her suggested rate, more than 225 pounds of nitrogen and 196 pounds of phosphorus would be applied to each acre, well in excess of MPCA recommended guidance that determines feedlot rule compliance.\textsuperscript{37} This suggests that land application of MSF manure is unlikely to comply with the manure management requirements of the feedlot rules. Citizens submitted detailed evidence, arbitrarily and unreasonably set-aside by the Board, that there was insufficient land to support MSF’s manure footprint and that at least 190 of the 490 acres reserved for MSF manure had been doubly-pledged, as was

\begin{footnotesize}
\textsuperscript{34} University of Minnesota—Extension, \textit{supra}.
\textsuperscript{36} \textit{Id.}
\textsuperscript{37} Fernandez & Schmitt, \textit{supra}.
\end{footnotesize}
later verified. AR 291, 890; Appellants’ Brief at 27. The Board’s role, confirmed by the
district court and contrary to the advice it received from its zoning administrator, is to
satisfy the express requirements of its ordinance in order to protect environmental
interests and its public’s health, welfare, and property from uses inappropriate to the
proposed location. AR 323-41.

II. THE BOARD FAILED TO TAKE THE REQUIRED HARD LOOK AT THE
ISSUES RELEVANT TO ITS MSF CUP DETERMINATION.

Under Minn. Stat. § 394.21, “[f]or the purpose of promoting the health, safety,
morals, and general welfare of the community any county in the state having less than
300,000 population...is authorized to carry on county planning and zoning activities.” So
empowered, a county board may designate by ordinance certain developments or
activities as conditional uses. Minn. Stat. § 394.301. In approving a CUP, a county
board’s action must accord with the requirements of its relevant planning and zoning
ordinances. Eagle Lake of Becker Lake Ass’n v. Becker Cty. Bd. of Comm’rs, 738 N.W.2d
788, 797 (Minn. App. 2007). Where, as here, a county board failed to take a hard look at
the relevant issues in a zoning decision, such as the granting of a CUP, the board’s
decision is arbitrary and subject to reversal. In re Block, 727 N.W.2d 166, 180 (Minn.
App. 2007). Further, a municipality acts consistent with Minnesota law in refusing to
issue a permit based on an incomplete application. Application of Q Petroleum, 498
N.W.2d 320, 325 (Minn. 1981).

The ordinance clearly articulates its purpose in Chapter 1:

Section 1.2—Purpose
1.2.1—This Ordinance is adopted for the purpose of:

A. Protecting and promoting public health, safety, general welfare and morals of the citizens of Dodge County;

B. Protecting and preserving agricultural land, productivity of such land and animal agriculture;

C. Promoting and providing for orderly, responsible, and sustainable development of agricultural, residential, commercial, industrial, recreational, conservation and public areas and land uses;

D. Promoting compatible development and uses to prevent land use conflicts, conserve the value of properties and preserve the quality of life for the citizens of the county;

E. Promoting appropriate development and use of land located within the shoreland to preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands and provide for the wise use of water and related land resources;

F. Promoting appropriate development of floodplains and limiting the development or use of land which could result in the potential for loss of life and property, create health and safety hazards, and lead to extraordinary public expenditures for flood protection and relief;

G. Protecting and preserving historical, archeological, scenic and other natural resources which are significant to Dodge County;

H. Protect groundwater water quality and quantity and quality by facilitating the adequate provision of water, sewage treatment, manure storage and application and management of all land uses within the county;

J. Protecting the environment;

L. Administering the planning and zoning activities pursuant to Minnesota Statutes 394.21, as amended.

Ordinance § 1.2. Chapter 1 further requires that “no structure shall be erected, converted, enlarged, reconstructed or altered, and no structure or land shall be used for any purpose or in any manner which is not in conformity with this ordinance.” Ordinance § 1.5.
A conditional use is defined as a “land use or development as defined by Ordinance that would be inappropiate generally but may be allowed with appropriate restrictions as provided by official controls upon a finding that (1) certain conditions as detailed in the Zoning Ordinance exist; (2) the use or development conforms to the comprehensive land use plan of the County; and (3) is compatible with the existing neighborhood.” Ordinance § 4.2 (emphasis added). “Conditional uses may be approved upon a showing by an applicant that standards and criteria stated in the ordinance will be satisfied. Such standards and criteria shall include both general requirements for all conditional uses and, insofar as practicable, requirements specific to each designated conditional use.” Minn. Stat. § 394.301. Chapters 16 and 18 of the ordinance, among others, provide two such sets of standards and criteria. Where, as here, a county board fails to take a hard look at whether the criteria of its ordinance are met, the decision is arbitrary and subject to reversal. In re Block, 727 N.W.2d, at 180.

A. Approval Of The MSF CUP Failed To Satisfy The Requirements Of Ordinance § 18.13.8, Endangering The Environment And The Public’s Welfare.

The ordinance also requires that the County exercise its authority within the limits of Chapter 18, which details the powers, duties, and limitations vested in the Commission and its advisory boards, and which lists the many requirements for conditional uses at the planning, application, vetting, permitting, and rescinding or discontinuance stages. These requirements are not displaced by the feedlot-specific requirements of Chapter 16; indeed, the “findings and recommendations” section of Chapter 18 provides eleven
additional “criteria for granting all CUPS,” which appear on both iterations of the MSF CUP application. AR 2, 122; Ordinance § 18.13.8.

The ordinance first requires that an incomplete application must be returned prior to consideration, and requires that an application will not be considered complete until the fee is submitted. Ordinance §18.13.5. The applicant must show that the use or development conforms to the comprehensive land use plan and is compatible with the existing neighborhood. Ordinance § 18.13.8 (A). The Board may then approve the conditional use, but only upon a finding that the proposed conditional use meets each of the eleven criteria. Id. The first criterion requires a Board finding that “[t]he establishment, maintenance, or operation will not be detrimental to or endanger the public health, safety, or general welfare.” Id. This language echoes the first express purpose listed by the ordinance in Chapter 1 and the express purpose of relevant state statutes, underscoring the critical duty of the County to protect its citizens from conditional uses inappropriate to the area. Ordinance §§ 1.2.1, 4.2, 18.13.1, 18.13.8; Minn. Stat. § 394.21. The fourth criterion requires a Board finding that proposed use will not “unduly restrict the enjoyment of other property in the immediate vicinity” including whether the applicant has ensured that the use will not constitute a nuisance. Ordinance § 18.13.8 (A). The fifth criterion requires a Board finding that “the proposed use shall not substantially diminish and impair property values within the area.” Id. The ninth criterion requires “[t]hat existing groundwater, surface water and air quality are or will be adequately

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protected. 38 Id. Also, under the ordinance, “minutes of the County Board shall constitute written findings for its decisions.” Ordinance § 18.13.11.

Here, the MSF application fee was waived weeks after it was accepted, in violation of Ordinance § 18.13.5. AR 981. Prior to the fee waiver request and grant on December 11, 2014, the MSF application was incomplete under the ordinance and required to be returned by the zoning administrator. Ordinance § 18.13.5. The county failed to return the incomplete application, but instead (a) prepared a staff report urging approval of the MSF CUP, (b) scheduled special sessions of the Board and Commission, (c) fielded comments from relevant state and county officials otherwise required by the ordinance, (d) organized and held a Feedlot Advisory Committee (“FAC”) review on-site at MSF, and (e) prepared a Feedlot Advisory Report urging approval of the CUP. AR 199, 281, 283, 518-220, 522-24, 778-87.

While the second application was swollen with lengthy construction details pertaining to a building already constructed, it failed to convey information sufficient to support Board findings on whether the criteria of § 18.13.5 were met. AR 986-1007. The public, through extensive written and oral commentary opposing the feedlot, presented detailed evidence of known environmental, public health, and property value threats posed by the feedlot. AR 294-300, 573-667, 871-75, 888-909. These public submissions included comments on the existing oversaturation of feedlots in Dodge, the impaired

38 In 2011, the legislature amended law pertaining to surface waters, limiting MPCA’s ability to set more stringent Clean Water Act requirements than those set by federal law. Minn. Stat. § 116.07, subd. 7(c). Despite this limitation, legislature left standing the right for counties to adopt and enforce zoning ordinances or plans, even resulting in more strict standards than under the feedlot rules. Minn. R. 7020.0200.
nature of local surface waters into which MSF manure would runoff, the known, ongoing violations of feedlots in the vicinity, and the distinct threat to nearby property values, amongst other concerns. Id.

Having received this public commentary, the Commission and Board closed their public hearings and assessed the application, relying almost exclusively on the opinion of the county’s zoning administrator, Melissa DeVetter. AR 875-82, 922-67, 984. She opined that the ordinance’s many express requirements under Chapter 18 might be assumed satisfied because compliance with the feedlot rules would later be required of the feedlot. AR 938. When questioned by the Commission, with the Board present, about sufficiency of the MMP and the acreage required to support MSF, DeVetter

39 DeVetter stated to the Board, with respect to the first criteria of § 18.13.8: “The first is to establish the maintenance and operation will be detrimental or endanger public health, safety, and welfare. Again, [MSF is] designed to be a zero discharge facility if it’s—if—I’m not sure, this is—what it was trying to relay previously was that this program is so highly regulated by both the county and the state that everything—everything from the engineered plans to how they keep their records has to be in a way that’s defined by the state.” AR 938. With respect to whether MSF’s proposed use was appropriate to its location, DeVetter provided that “the area is zoned agriculture. Conditional—I mean, feedlots, and this could be any kind of feedlot, it could be anything from a small, you know, a couple horses on a lot up to, you know, up to 3,000 animal units, because that’s where half is of, you know, dairy, hogs, beef. It—it is an appropriate use in the agricultural district, and so I’m not sure—I—I’m not sure where else you would put these facilities. If that’s not an appropriate use out in the agricultural district we’re not exactly sure where you would put them.” AR 938-39. Finally, regarding her assessment of MSF’s compatibility and potential to diminish or impair property values, she stated that “the real issue I think here appears to be compatibility with the one adjacent land unit—land owner. Again, this indicates that we have one person that is within, you know, 3,845. As you are aware, they are very opposed to the project, but I’m—I cannot—they have expressed that they would be injured by this. It is our opinion that it—it meets all the ordinance requirements so. We talked about substantially diminishing and impairing property values within the area, we have records that the property wouldn’t be devalued on that.” AR 939
advised that the MPCA feedlot rules concerning manure management would require just 244 acres for application of the annual 1.1 million gallons of MSF manure. AR 941-43.

DeVetter arrived at this figure with the assistance of “Paul Brietzke, Minnesota Pollution Control Agency . . . not speaking on behalf of the Pollution Control Agency.” AR 943. A Commissioner then asked DeVetter to clarify that MPCA takes “precedence over anything we would even do anyway, right, the state?” DeVetter responded that the MPCA “regulates air quality. They regulate surface water quality, so they have the standards.” AR 943. The Commissioner stated, “That we use?” to which DeVetter replied, “Correct.” AR 943-44. This interpretation, that the county’s oversight can be substituted with that of the state, evinces a fundamental misunderstanding of CAFO regulation and delegation under state law.

The Board then granted the MSF CUP, finding that “the application and materials submitted by the applicant provide the County Board with all of the information required by the Ordinance and further, provide the County Board with sufficient information to fully evaluate the proposal under the criteria set forth in the County’s Ordinance.” AR 983. “The County Board has considered [] the objections and materials submitted by the project opponents, and rejects their conclusion. The County Board specifically credits the information provided by [DeVetter], who refuted all of their objections.” AR 984.

The Board’s finding that DeVetter refuted all objections presented against the feedlot is incorrect. The Board did not consider evidence of doubly-pledged land, did not consider or weigh evidence of known local impaired surface waters, did not consider evidence of improper application techniques, did not consider the likelihood of nuisance
conditions arising from the feedlot, did not consider the likelihood of surface water pollution from antibiotic use, and, critically, did not consider either the existing oversaturation of the immediate area and county or the cumulative impact of existing feedlots. See AR 779-84, 785-87, 884-971, 986-1007. The Board thus failed to satisfy the requirements of § 18.13.8 (A) with respect, at least, to the first, fourth, fifth, and ninth criteria, instead arbitrarily and capriciously relying on the incomplete and erroneous interpretation of the ordinance and the potential impact of MSF presented by the zoning administrator—against the weight of public showings of known threats to the environment, public’s health, safety, and general welfare. Under In re Block and Application of Q Petroleum, this court should reverse the determination of the Board and vacate the MSF CUP.

B. The Board’s Refusal To Enforce Informational Requirements Under The Ordinance Deprived The Public Of Its Ability To Evaluate And Challenge A Feedlot That Posed A Significant, Known Risk To Its Environment And Welfare.

Due to the failure of MSF to submit a completed feedlot CUP application, the public and Board did not have the requisite information to assess the conditional use with respect to the express purpose of its ordinance, which protects environmental and public health and welfare considerations. Chapter 16 sets standards for specific uses and structures, which are the “minimum requirements for the use or structure and are in addition to any other requirement of this Ordinance . . . [a]ll uses . . . whether Permitted,

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40 Regardless of whether cumulative impacts are relevant to feedlot rule considerations, they are imperative for the determination of whether a conditional use is appropriate where proposed.
Interim, or Conditional shall comply with all applicable Federal, State and County laws, rules and regulations . . .” Ordinance §§ 16.1, 16.2.1. Chapter 16 also lists feedlot specific permitting criteria delineating feedlot CUP standards, siting requirements, manure management planning, and compliance certifications. Ordinance § 16.24.

Section 16.24.3 of the ordinance, since amended, provided informational requirements for a feedlot CUP application. These informational requirements, also detailed on the County’s CUP application itself as of the February 10, 2014 first MSF application (AR 2), were found lacking by the district court, a decision that was not appealed. Trom et al., v. County of Dodge et al., 20-CV-14-293 (3d Jud. Dist. Ct.) (November 18, 2014) (provided at AR 323-41). MSF submitted a second application, dated two days after the court’s reversal order, on a form recently updated by the County. AR 122-24. The feedlot section of the ordinance had not been amended in the interim. Yet where the earlier CUP form had provided spaces for applicants to fill in the “[a]dditional information requirements,” of § 16.42.3 (AR 2), the new form removed spaces for the required information, merely listing the requirements of § 16.24.3 as post hoc conditions of a CUP grant: “Upon approval of the [CUP] for the feedlot additional information is required.” AR 123. This update may have reflected a Board intention to no longer hold feedlot applicants to the informational requirements of § 16.24.3, which it has

41 In February 2015, the Board amended the § 16.24.3 feedlot CUP informational requirements as advised by its zoning administrator and county attorney, replacing thirteen informational requirements with the sole requirement that “[a]n application for a CUP shall be submitted on forms provided by the County.” Dodge County, Planning Minutes (February 4, 2015), available at www.co.dodge.mn.us/EnvironmentalServices/2_4_2015_Planning_minutes.pdf
since amended; but at the time of the second MSF CUP approval, the detailed informational requirements were intact and required strict compliance in order to support valid Board approval of a feedlot CUP. See Ordinance § 16.2.1.

MSF’s second application on the updated form was more expansive, but still failed to meet the requirements of Chapter 16. AR 122-96. First, the MMP remained inadequate, failing to describe how 1,100,000 million gallons of MSF manure could legally be spread on the pledged land. AR 146-47. Second, the aerial photos, required under § 16.24.3 (F) (I), do not provide enough information for the Board to properly determine that the land is available and sufficient. AR 140-45. Third, the application does not provide information of a “pollution abatement structure.” AR 92.

Despite extensive public commentary on the issues of insufficient acreage for application and of doubly pledged land, the Board refused to take the required hard look at whether enough land was available to support the manure footprint of the MSF feedlot. See AR 779-84, 785-87, 884-971, 986-1007. Instead, the Board took the same approach as when it approved the first MSF CUP, assuming the feedlot was an appropriate use because it would later be subject to feedlot rules once in operation. AR 938-39. However, as stressed by the district court vacating the first MSF CUP, the mere possibility, or even likelihood, of subsequent and alternative regulatory compliance does not relieve the Board of its duty to uphold its ordinance. AR 330.

Because the MSF application was incomplete, failing in part to meet the clear requirements of § 16.24.3, the conditional use did not comply with applicable county and state laws, as required by § 16.2.1. The Board thus did not, and could not, take the
hard look required under *In re Block*. This court should vacate the CUP, as the
determination was based on an incomplete application. *Application of Q Petroleum*, 498
N.W.2d at 325.

**III. THE BOARD IMPROPERLY SUBSTITUTED THE REQUIREMENTS OF
THE FEEDLOT RULES FOR THE REQUIREMENTS OF THE
ORDINANCE, UNDERMINING THE EXPRESS PURPOSE OF COUNTY
AND STATE ZONING LAWS.**

Most regulated sectors are subject to various labor, anti-trust, animal welfare, and
environmental laws, but agricultural producers enjoy a unique level of freedom from
33 U.S.C. § 1362; 42 U.S.C. §§ 7412, 7521-7590, 9601; 42 U.S.C. § 11021(e)(5); 40
C.F.R. 68.125, 355.40(2); Minn. Stat. § 116.0713; Minn. Stat. § 116D.04, subd. 2a (d);
Minn. Stat. § 561.19; Minn. R. 4410. 0300, subp. 3; Minn. R. 7020.2002. Authority over
the few remaining environmental regulations from which CAFOs have not been
exempted has been largely delegated from federal to state agencies. See, *e.g.*, 33 U.S.C. §
1342. In Minnesota, where the bulk of feedlot regulation is codified in the feedlot rules,
the MPCA may further delegate responsibility to the county level, as it has in Dodge.
Minn. Stat. § 116.07, subd. 7; Minn. R. § 7020.1500. Under this delegation program, in
which “most of the state’s major feedlot areas participate,” counties must designate a
County Feedlot Officer (“CFO”), who is charged with monitoring and enforcing the
feedlot rules.42 Minn. R. 7020.1600, subp. 3a (D).

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42 MPCA, *Delegated County Feedlot Program*, (January 2015) available at
In Dodge, the CFO is a member of the Environmental Services staff, which also includes the zoning administrator, DeVetter.\(^\text{43}\) Before his 2011 retirement, Ken Folie was Dodge’s CFO; he does not sit on the FAC, but attended both FAC visits to the MSF feedlot and spoke in support of CUP approval at the second public hearing, claiming an individual interest. AR 911. Ryan Thesing was Dodge’s CFO until the special session approval of the second MSF CUP session, at which his departure was approved. AR 681, 699, 976. Chad Knudson was later introduced as the new CFO.\(^\text{44}\)

Nowhere in the administrative record is DeVetter listed as Dodge’s CFO, yet she is held out as the CFO to the state and public across various media: She appears as the contact person on Dodge’s 2011, 2012, 2014, and 2015 MPCA Annual CFO and Performance Credit Reports required of a county CFO under Minn. R. § 7020.1600.\(^\text{45}\) DeVetter is listed online as the “County Agricultural Inspector & Designated Employee.”\(^\text{46}\) She is also listed as Dodge’s primary contact and CFO on the current MPCA delegated county list, with actual CFO Knudson included as an assistant.\(^\text{47}\)

DeVetter was also involved in Planning Commission appointment decisions, recommending soon after the Board’s approval of the first MSF CUP that Commissioner

\(^{43}\) Dodge County, Environmental Services, www.co.dodge.mn.us/departments/environmental_services/index.php (last accessed October 9, 2016).

\(^{44}\) Dodge County, Board Minutes (January 27, 2015), available at www.co.dodge.mn.us/County_Board/2015_Board_Minutes/01_27_15.pdf.


\(^{46}\) Minn. Dept. of Agriculture, County Agricultural Inspectors & Designated Employees, available at www.mda.state.mn.us/plants/pestmanagement/weedcontrol/cailist.aspx (last accessed October 9, 2016).

Jessica Masching be replaced with Joshua Toquam. DeVetter also participated in closed sessions with the Board and the county’s attorney, one week after the district court’s reversal of the Board’s decision and five days after MSF submitted a second CUP application to DeVetter, in order to “discuss options and receive direction from the Board” regarding the MSF CUP. DeVetter featured heavily in the each of the County’s MSF CUP determinations, advocating for the CAFO and providing her interpretation of the purpose and requirements of the feedlot rules, the ordinance, and the district court’s order to vacate the first CUP.

In a sworn affidavit, DeVetter stated that she was initially hired as a compliance officer, “responsible for inspecting zoning permits, processing violations, . . . evaluating compliance with CUP conditions, and performing compliance inspections on feedlots under [the feedlot rules].” She also swore that the CUP “application and ordinance do not indicate that all of the information [required by the ordinance] has to be submitted up front as part of the application, but is satisfied with conditions placed upon the CUP and the numerous requirements of the county delegated feedlot program and [the feedlot rules.]” This interpretation, which played a critical role in the reasoning of the Board (see AR 943-44), is inaccurate; the informational requirements for a feedlot CUP are clear and unambiguously enumerated in Chapters 16 and 18 of the ordinance.

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and informed by the clear purpose in Chapter 1. Such requirements are not duplicative of those controlled by the feedlot rules, but are distinct requirements that exist for the express purpose of protecting public health and environmental considerations, as provided by the ordinance and state law. Ordinance §§ 1.2.1, 4.2, 18.13.1, and 18.13.8; Minn. Stat. § 394.21.

Fulfilling dual-functions of zoning administrator and acting-CFO, DeVetter encouraged the county to take a mistaken view of the interplay between the requirements of the ordinance and the feedlot rules. AR 943-44. Minnesota’s feedlot rules exist so that the state can satisfy its duty as a state delegated Clean Water Act authority and to protect, if minimally, environmental and human health concerns related to water and air quality threats posed by CAFOs. Minn. R. 7020.2000, 7020.2002. While permits or certificates may be required of a facility under the feedlot rules, these rules are distinct from zoning regulations and do not directly or sufficiently protect the interest of the neighboring citizens from the impact to their health, environment, and enjoyment of property, as does Dodge’s ordinance. Ordinance §§ 1.2.1, 4.2, 18.13.1, and 18.13.8; Minn. Stat. § 394.21.

The district court order denying the first MSP application identified DeVetter and the Board’s misstep: the county “argues that all the information required by § 16.23.4 will eventually be submitted to the County as Mr. Masching continues the process of approval for his feedlot. For instance, . . . it must comply with [the feedlot rules]. Dodge County argues that, by conditioning Mr. Masching’s CUP on complying with state and local law, it has sufficiently addressed the feedlot CUP requirements of § 16.24.3. This argument is unconvincing. Indeed, the fact that the County found it necessary to
condition the CUP on Mr. Masching’s later completion of certain requirements shows clearly that the County did not have any facts regarding these requirements.” AR 338.

In this context, it is especially troubling that the Environmental Services office, to which the CFO—whether DeVetter or Knudson—belongs, publically acknowledges its awareness of multiple violations of the feedlot rules against which it has not acted. The same office—perhaps the very individual—that is charged with and knowingly fails to enforce the feedlot rules also holds a key advisory position with respect to the Board’s zoning decisions under the ordinance.

The unambiguous purpose of the ordinance focuses heavily on environmental, public health, and protection of citizens’ property rights. Ordinance § 1.2.1. Yet such concerns were effectively stripped from the Board’s determination process, when it failed to evaluate the evidence before it that the MSF feedlot was incomplete and failed to satisfy multiple requirements of the relevant ordinance. Despite the clear purpose and requirements of the ordinance under Chapters 1, 16, and 18, the Board inquired only whether the feedlot would later be required to comply with the feedlot rules. AR 984. Advised by DeVetter that the state has precedence over any of the Board’s determinations and that MSF would later face state feedlot regulation, the Board refused to otherwise consider the known likelihood of environmental and public health threats.

50 “This year we received over 30 calls related to [air quality exemptions for] manure applications. . . . The County knows the number of applications is much greater. It is required by MN Rule 7020.2002 to call in for an air quality exemption before manure application occurs. This call gives the applicator legal coverage related to any odor nuisance complaints that may filed [sic]. Dodge County, Feedlot Flyer (December 2015), available at www.co.dodge.mn.us/EnvironmentalServices/Feedlot%20newsletter%202012072015.pdf.
extensively documented by the public. AR 938-39, 943-44, 984. Ordinance requirements, not the feedlot rules, are due the hard look of the Board, which it failed to give in granting the second MSF CUP.

CONCLUSION

Failure by the Board to take a hard look at the requisite criteria of the ordinance is grounds for reversal by this court. The Board failed to meet its duty under, at least, Chapters 16 and 18, failing the purpose of the ordinance expressly provided in Chapter 1. As such, and because the feedlot application proposes an inappropriate use in an unsuitable area, which poses a distinct threat and non-speculative detriment to the environment, public health, safety, welfare, and property interests, this court should reverse the Board and district court, vacating the MSF CUP.

Dated: October 10, 2014

By: /s/ Kevin P. Lee
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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the form requirements and length limits of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The brief was prepared using Microsoft Word 2007, which reports that the brief contains 6,832 words.

Dated: October 10, 2014

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Environment America d/b/a Environment Minnesota, and Food & Water Watch
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

The EAW indicates that this factory farm expansion will generate 46 million gallons of liquid manure annually. The EAW clearly demonstrates that this facility will have the potential for significant environmental impacts and therefore, as required by law, I request that the MPCA order the completion of an Environmental Impact Statement (EIS).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota's 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take--if restoration is even possible.

The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed.

The EAW indicates that groundwater is present at average depths of between 16 and 20 feet only in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

The proposal will produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting). This is part of the record. USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

Climate change has increased intense rainfall events--since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).

The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact
on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County's ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue, but not expand. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity."

Sincerely,

DeeAnn Stenlund
2687 Matilda St.
Roseville, MN 55113
To MPCA,

On behalf of Dodge County Concerned Citizens, I encourage you to request an EIS relating to the Daley Farms expansion. Please put the people of Winona County above the interests of the industry.

My husband and I both grew up in Dodge County, Minnesota.

I grew up on the Trom family farm in Westfield Township, Dodge County. Our family farm is surrounded by 11, and soon a 12th, swine factory farm in a 3-mile radius. Our family farm is located in the headwaters of the Cedar River which flows south to Austin, Minnesota, which, as you know, serves as the world headquarters of Hormel Corporation. Last summer, our group, Dodge County Concerned Citizens, worked with the Izaak Walton League to collect water samples in the Cedar River. Of the 500 water samples, 70% tested high for E. coli, many of which were 20 to 30 times state standards. Please, take action to defend the public health of local citizens.

My husband grew up in the northern part of Dodge County near Berne, Minnesota. Several years ago, a neighborhood citizens group fought installation of a swine factory farm, similar to the one proposed in Fillmore County. This area of Dodge County, like Winona County, is known for its karst topography. Following installation of this swine factory farm, the nitrate levels significantly increased. We test the nitrate levels in the spring and again in the fall. This spring, the nitrate reading was 26.6 mg/l (milligrams per liter), far in excess of the maximum nitrate level of 10 mg/l. We have not been able to drink water at the Eayrs farm for years and must take bottled water to the farm.

Winona County and this beautiful part of the State of Minnesota must be preserved for future generations.

We’re counting on your assistance to help preserve the beauty of southeastern Minnesota.

Thank you for taking a bold step and making a difference!

Sonja Trom Eayrs
612 743 1312
Sonja.eayrs@gmail.com
On behalf of Dodge County Concerned Citizens
www.dodgecc.org
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. The physical factors of this expansion worry me. Please order the completion of an EIS.

The proposed lagoon of this dairy operation may not be able to handle the fierce rains we have been experiencing lately in Minnesota. The MPCA should seriously consider that potential threat of the plant's incapacity in regard to frequent, heavy, downpouring rainfall.

Sincerely,

Diane J. Peterson
4051 Gisella Boulevard
White Bear Lake, MN 55110
Dear MPCA,

I am writing as a citizen and rural resident of Fillmore county to request that the Daley dairy expansion proposal not be permitted without an Environmental Impact Statement to assure the public the proposal is safe and healthful to the surrounding people and environment. Our rural areas don’t need more pollution from industrial agriculture. The MPCA needs to do its job and investigate proposals such as this one that are located in the fragile and vulnerable karst region of our state. Please require and EIS for the Daley Farms proposal. Thank you for working to protect our health and safety.

Jake

Jake Stacken
Fillmore County Resident
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

The EAW indicates that this factory farm expansion will generate 46 million gallons of liquid manure annually. The EAW clearly demonstrates that this facility will have the potential for significant environmental impacts and therefore, as required by law, I request that the MPCA order the completion of an Environmental Impact Statement (EIS).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota's 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take--if restoration is even possible.

The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed. The EAW indicates that groundwater is present at average depths of between 16 and 20 feet only in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

The proposal will produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptestng). This is part of the record. USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrsc.usda.gov/wps/portal/nrsc/detail/null/?cid=nrcs143_014211).

Climate change has increased intense rainfall events--since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).

The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact.
on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County's ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue, but not expand. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity."

Sincerely,

Anna Racer
4800 Dent ave
Webster, MN 55088
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Sincerely,

Peggy Endres
943 Wilder St E
Saint Paul, MN 55116
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Sincerely,

Henry Homburger
2950 Fox Valley Drive Sw
Rochester, MN 55902
Dear Ms. Kim Grosenheider:

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Actually, no matter the terrain or geology, this proposal is beyond the scope of what is healthy for our planet.

Please protect our air, water, soil, and climate.

Sincerely,

Donna Martinson
90 E Spors St
Le Center, MN 56057
We need an Environmental Impact Statement on Daley Farms LLP’s dairy expansion proposal. Please don't let corpse railroad us.

Thank you
Kally Goschke.

As interpreted by Siri
Dear Ms. Kim Grosenheider:

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Sincerely,

Joline Gitis
1517 E River Pkwy
Minneapolis, MN 55414
Dear Kim --

We need an Environmental Impact Statement on Daley Farms LLP’s dairy expansion proposal.

This factory farm has the “potential for significant environmental impacts” and needs an Environmental Impact Statement. It would double the liquid manure and waste water production of this operation to 46 million gallons a year, and require adding a manure basin the size of three football fields at a depth of 16 feet. All this liquid waste would sit right over sensitive karst geology, which is composed of porous limestone that is highly prone to sinkholes and disappearing springs. This geology can allow surface pollution to enter the groundwater in a matter of hours.

I am of the understanding that open basins or “lagoons” are significant emitters of methane, which is up to 90 times as potent a greenhouse gas as is CO2. This is not the time for us to allow further upsets to an already unstable climate.

Corporate agriculture must not be allowed to further destroy our environment. I demand that an Environmental Impact Statement be prepared on the Daley Farms mega-dairy.

Stan Sattinger
3933 12th Ave. S.
Minneapolis, MN 55407
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

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Sincerely,

Gretchen Bratvold
3444 Edmund Blvd
Minneapolis, MN 55406
Dear Friend,

The politics of corporate bullying is at play again. The era of unlimited natural resources is a myth that has to end. The concept that high levels of ground pollution can be ignored is a myth. The awareness that water is the resource that gives life means we must all wake up and be stewards of the land and water.

The truth is the world can live with less dairy products but we can't live without water. Take the time to give a real assessment to this project. You know if they thought they were doing the right thing they could wait for the assessment to be done. Be strong..

Nancy Palmer
I am requesting that you please require an Environmental impact statement on Daley Farm in Winona County.

Thank you
An EIS needs to be done on this operation. They want to have too many cows using too much water and creating too much manure!!! Clearly this dairy operation needs a full EIS especially since this is in a karst area. Do what's right for the people and the environment! Karen Swanson Lanesboro MN

Sent from my iPad
Daley Farms of Lewiston, LLP in Winona County wants to increase its current operation by almost 3,000 cattle for a total herd size of 4,628. This would make Daley Farms one of the largest dairy operations in the state. Over 96 percent of dairy farms in Minnesota are 500 cows or fewer.

This proposed expansion would double the liquid manure and waste water production of this operation to 46 million gallons a year, and require adding a manure basin the size of three football fields at a depth of 16 feet. All this liquid waste would sit right over sensitive karst geology, which is composed of porous limestone that is highly prone to sinkholes and disappearing springs. This geology can allow surface pollution to enter the groundwater in a matter of hours.

This dairy expansion would use 92 million gallons of the area’s groundwater annually. The nearby city of Lewiston (pop. 1,506) uses 33.6 million gallons a year. And the operation is surrounded by towns plagued with nitrate levels nearing or above the maximum allowable nitrate level of 10 mg/L.

I live in rural Winona County and I and my family will personally suffer from the (almost inevitable) groundwater pollution caused by this size operation in karst country. I implore your agency to "protect and improve the environment and human health" of the residents of our region and require an Environmental Impact Statement for this project.

Thank you,

Theresa Zeman
Zephyr Valley Lane
Rushford, MN
507.330.2151 mobile
Dear Ms. Grosenheider:

I am submitting comments to the EAW on the Daley Farms of Lewiston, LLP dairy expansion proposal near Lewiston, Winona County. According to the EAW, this factory farm expansion will generate 46 million gallons of liquid manure annually. It will also use 92 million gallons of groundwater annually. The EAW clearly demonstrates that this facility will have the potential for significant environmental impacts and therefore, as required by law, I request that the MPCA order an Environmental Impact Statement.

This factory dairy operation, with its multi-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota's 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in April 1976, Lewiston in 1991, and Bellechester in April 1992.

The MPCA must analyze what the impact of a catastrophic failure of this multi-million-gallon manure pit would be, and that requires an EIS. The DNR, in its analysis for an initial permit for drilling of an additional well for this expansion stated that "the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If such negative impacts happen for lakes, streams and wetlands, how would that damage be undone and how much time might restoration take if at all possible?

This project would annually use 92 million gallons of water. The city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. What will be the impact on our aquifer of this major annual use of water? The 3 actions that can lead to sink hole development in karst country are, moving earth (digging, displacement), pumping water and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed. Since ground water is present at averages between 16 and 20 feet only in the area where manure storage is planned, how will ground water be protected? How will fissures and geologic collapse be avoided?

The proposal will produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from surface water deep into the ground.

Well testing conducted by the Minnesota Department of Agriculture in 2016 showed that "46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates."

Climate change is being felt in southern Minnesota in many ways, one of which is increased rainfall and increased instances of large rainfall events (there have been 3 mega storms with rainfall totals over 9 inches in 24 to 36 hour periods since 2004 in southern Minnesota alone.

https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html
Pg. 23: Since there is no rating for determining a sensitivity of the water table because of the surface karst feature development, how can the MPCA accept only this EAW in determining possible ill-effects of this expansion? Th EAW does not address the potential negative economic impacts for neighboring farms and especially small and mid-sized dairy farmers.

Sincerely,

Sincerely,

Victoria Jaskierski
1517 River Dr S
Wabasha, MN 55981-1766
Dear Ms. Kim Grosenheider:

As an avid trout fisherman this project frightens me a great deal. There was a total fish kill on the South Branch of the Whitewater River a few years ago. caused by AG spills. This project is an environmental train wreck in the making. Besides pollution will the ground water be affected? Please give it a full environmental review.

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The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County's ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue, but not expand. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity."

Sincerely,

Dean Flugstad
72243 300 th Ave
Lake City, MN 55041-3370
Please do whatever you can to see that the revised deadline to comment on the Daley dairy expansion request is not shortened. It is of serious import and its extremely sensitive environmental impact must be thoughtfully examined.

Mary Jo Bibby
Alexandria, MN
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

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The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed.

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Sincerely,

Catherine steffens
1745 Graham Ave #134
St. Paul, MN 55116
Dear Ms. Kim Grosenheider:

My name is Dale Hadler, I live in Winona County and I am submitting comments regarding the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves, and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

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Sincerely,

Dale Hadler
1723 West 6th Street Apt.C
Winona, MN 55987
Kim,

This was sent to the agencies general email inbox. Forwarding to you.

Michelle Ooley  
Administrative Assistant Principal, Legal Services Unit & Operations Division  
Minnesota Pollution Control Agency (MPCA)  
520 Lafayette Rd North | St. Paul, MN| 55155  
651-757-2666  
Michelle.ooley@state.mn.us | www.pca.state.mn.us

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From: Richard Dahl <richard.dahl580@gmail.com>  
Sent: Wednesday, October 31, 2018 8:48 AM  
To: MN_MPCA_General-Info <Info.PCA@state.mn.us>  
Subject: Tis for Daley Farm Proposal

October 24, 2018

Kim Grosenheider  
MPCA  
520 Lafayette Road N  
St. Paul, MN 55155-4194

Re: Comment on EAW and Permit

Dear Kim Grosenheider,
I attended the EAW in Lewiston on October 16. Mr. Gernes, an expert on the Permit who provided input on the EAW, said that if rules were not followed after the Dailey proposal was implemented, fines would be levied.

I do not think that either the threat of fines nor their implementation after an environmental disaster constitute adequate compensation for a disaster that might have been averted by a more in depth study before authorization for expansion is given.

The Daley farm is already in non-compliance in reference to nitrate levels in some wells.

I consider it criminal negligence to allow a four-fold increase in AUs from the limit set by Winona County Ordinance without first having an EIS.

For the sake of the environment, the people living in proximity to the Daley farm, and all the people of Winona County, I ask and even implore the MPCA to implement an EIS before any authorization is given to implement the Daley proposal.

Thank you the excellent meeting you held in Lewiston about the EAW and for your consideration of what I have stated in this letter.

Sincerely,

Richard K. Dahl
1167 W. 5th Street
Winona, MN 55987
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

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Sincerely,

Tiffany Reinitz
314 N 6th St
Henderson, MN 56044
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Sincerely,

Carol Ashley
24639 County 25
Akeley, MN 56433
Kim,
I’m very concerned about the damage Daley Farms expansion would do to the area’s aquifers. 70% of all drinking water in Minnesota comes from groundwater seeping through the karst.

Sent from my iPad
The proposed expansion of the Daley farm by Lewiston should NOT happen. It will deplete the water supply of the town, and likely pollute the rest by nitrogen going into ground water. Not mention the methane produced by that many cattle. There must be at least an EIS, but preferably denial of the request.

We cannot let corporate profit and greed destroy the environment, which is irreplaceable. They have already crossed the legal limit. The proposed expansion would use roughly 92 million gallons of ground water. Lewiston use only 33.6 million. Water is the most precious substance on our planet. We must protect it.

Frank Bures, M.D.
224 Lake Park Dr.
Winona, MN 55987
507-452-2505
From: Don Walser
To: Grosenheider, Kim (MPCA)
Subject: Daley Farms LLC proposed expansion
Date: Wednesday, October 31, 2018 9:45:12 AM

I am contacting you to urge you and the agency to support the demands for an EIS on this project. I think our state rarely sees a proposed project that cries out for environmental examination and protection more than this one. Don Walser, Hutchinson MN

Sent from Mail for Windows 10
Dear Ms Grosenheider,

I have a regenerative farm where we raise pasture-fed meats - beeves, hogs, goats, lambs, chickens and rabbits on 43 bluff acres just south of Red Wing - www.earthwisdomfarm.com.

I am writing to you request the appropriate level of study and care be taken regarding the massive environmental impact and utilization of natural resources the proposed 4000+ cow dairy would have on its neighbors in Winona county. For something of this scale, in this fragile geology, a paper review is completely inadequate.

I am sure you have mega-gigabytes of satellite data and historical data which will make you feel like you have everything you need. But I can assure you an on-the-ground real-time examination by real and knowledgeable people will bring you important localized information which you did not have prior.

For the sake our very blessed State of abundant land and water, please make sure a full scale environmental impact study is done before this proposed dairy is given the green light to expand.

Thank you for your work!
RedHeart RedHeart
28419 Circle S Road
Red Wing, MN 55066
952-250-8299

--

“Nothing about us without us is for us.”  HAZEL EDWARDS teenage transgender educator
I live a mile from one of the Daley farms that is used to dispose the manure from their herd. My well water is already over acceptable drinkable limits. This farm very seldom receives their manure as it is a long haul so is much easier to over apply on close fields, nobody really checks application rates. This farm is adjacent to an abandoned quarry giving runoff a direct path to my drinking water. Expansion will add more manure to this farm. Has the impact of using so much water in that large an operation looked. Can our aqueduct continue to supply other wells?

Can our engineers design a containment of that large amount of manure without it leaking in the future? Past experience says no. Both cities of Lewiston and Utica have had breaches of their sewer systems. The Daley Farms have also had problems with leaks. Please check into things in depth and have an EIS done.

Stan Smith
Lewiston, Mn
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

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Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County’s ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue, but not expand. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity."

Sincerely,

ML Wilm
2919 45th Ave. S,
Mpls, MN 55406
To: Kim Grosenheider and MPCA officials

From: Jennifer Rupprecht  Lewiston, MN

RE: comments on EAW and Proposed Daley Dairy Farm Expansion

I farm with my husband on a 275 acre certified organic pastured-beef and crop farm located two miles from the Daley dairy farm. The Daley’s proposed expansion certainly has potential for significant environmental impacts and should definitely require an Environmental Impact Statement.

My concerns are as follows:

This expansion proposal clearly violates the current Winona County ordinance regarding animal numbers. Winona County's ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The county ordinance also states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity." Even though the Daley farm was over the 1,500 animal unit cap at the time the ordinance was enacted, I don’t feel this should give license for such enormous expansion. I am very concerned about the potential negative environmental impact of the high concentration of livestock which this proposal seeks.

If allowed to proceed, I believe the excessive volume of manure and excessive water usage by an expanded Daley farm have potential to harm the water supply for the community of Lewiston and surrounding area. Lewiston has already dealt with a sinkhole problem and the area has seen devastating erosion and flooding during extreme rain events. An EIS must be done to determine the effect of failure of the proposed 13.6 million gallon manure pit. Further, I question how one farming operation should have the right to use nearly three times the water annually that is used by the nearby town. To date, our farm well has provided sufficient water and tests (barely) in the safe-for-drinking zone. I am concerned that this may change drastically if the proposal is allowed to proceed. An EIS must be done to determine the effect on the aquifer of the proposed use of 92 million gallons of water annually.

Thank you,
Jennifer Rupprecht
Lewiston
Dear Kim Grosenheider,

My name is Mike Rupprecht and I am a farmer from Lewiston, MN. Our farm is about 2 miles from the proposed expansion of the Daley farm dairy operation. I have some environmental concerns with this proposed expansion.

1. The amount of liquid manure that would be stored is too much for this area of SE Minnesota and our karst geology. Common sense tells us the risk from a potential leak or spill is too great.

2. The volume of water to be drawn from our aquifer is too much. I’m concerned that neighboring wells (including my own) may run dry and need to be redrilled.

I ask that this proposal be subject to a full EIS.

Thank you,
Mike Rupprecht
The magnitude of Daley Farm's expansion poses threats to the health of both livestock and humans; particularly, with respect to the management of animal crowding and waste production. Please require a formal environmental impact statement (EIS).

Yours truly,
Roy House, retired pediatrician
Rochester, MN

Sent from my iPhone
Ms. Grosenheider:

The proposed expansion of the mega dairy Hansen Farms should not be even considered without a full Environmental Impact Statement. The strong opposition to such an investigation by proponents of mega dairies is not unexpected since close analysis of the huge amount of fresh water a 4,628 cow dairy will use and the likely groundwater contamination that will occur from dairy cow waste will show the danger that such mega dairies, which are really mega factories, pose.

No other kind of factory would be allowed to start construction in that location without very careful inspection of its Impacts. Powerful organizations promoting huge milk factories, even those proposed by an extended family, should not be allowed to bully the Environmental Protection Agency into neglecting public health protection.

Good water quality is often not appreciated until it is destroyed. The karst geology in Winona County almost guarantees contamination of ground water at some future date from this dairy factory.

Drinking water is too precious to give away for expanding a dairy business. Milk is not a rare commodity. In fact there is such an excess of milk that prices are historically very low. Good water is the rare commodity that should be protected.

A full Environmental Impact Statement on the Daley Farms expansion should be prepared and citizens should have extended opportunity to learn about the impacts of such mega dairies on water supply and water quality.

Sincerely,

Dana Jackson
814 Everett St. N.
Stillwater, MN 55082
651-823-8838
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

The EAW indicates that this factory farm expansion will generate 46 million gallons of liquid manure annually. The EAW clearly demonstrates that this facility will have the potential for significant environmental impacts and therefore, as required by law, I request that the MPCA order the completion of an Environmental Impact Statement (EIS).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota's 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take--if restoration is even possible.

The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed. The EAW indicates that groundwater is present at average depths of between 16 and 20 feet only in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

The proposal will produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting). This is part of the record. USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

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The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact.
on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

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Sincerely,

Robert Munneke
PO Box 197
Aitkin, MN 56431
Hello. I am reaching out to let you know I want a full environmental impact study completed on the proposed expansion of the herd size at Daley Farms. Please do not allow big money Ag to slam this through. Thank you. Julie Gordon, Rochester, MN, 55901. 507 244 0359.
Dear Ms. Kim Grosenheider:

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Sincerely,

Megan Falvey
4115 310th Ave
Clarkfield, MN 56223
Dear Ms. Kim Grosenheider:

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Sincerely,

Karen L. Dingle
3938 Cannonball Lake Road
Duluth, MN 55803
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Sincerely,

John Fisher-Merritt
2614 County Road 1
Wrenshall, MN 55797-8718
Dear Kim Grosenheider,

As a resident of rural Winona County, I applaud the MPCA’s extension of the comment period on the proposed Daley Farms LLP expansion in Winona County, and I strongly urge that an Environmental Impact Statement (EIS) be carried out. As you are no doubt well informed about the porous karst geology in our driftless area, and with the already fragile state of our water quality related to that geology and farm runoff, I think it is clear that the expansion very likely has “the potential for significant environmental impacts” and that therefore an EIS is indeed justified.

It is important to note that the Daley Farm already significantly exceeds the limit that was set in the 1990s, but was grandfathered in. I also don’t buy the Farm’s arguments for the need to expand, especially when over 96 percent of dairy farms in Minnesota are 500 cows or fewer. Also, claiming that the operation needs to expand because more family members want to get involved raises the question of whether any limit, then, could ever be sustained. It is my belief that such a large, factory-farm style operation would be very detrimental to our environment and to the interactions within our rural communities.

Thank you for your consideration, and for the critical work you do overseeing the health of our environment and therefore of posterity.

Wendy Larson
2020 Clinton Drive
Homer Township
Winona County
Dear Kim Grosenheider,

We need an environmental impact study on the Daley Farms LLP’s dairy expansion proposal. Common sense, the geology of Winona County, and the scale of the proposed operation all require it.

Thanks for your consideration.

Sincerely,

Eric Utne
1484 Summit Avenue
St. Paul, MN 55105
ericutne@aol.com
612-325-3697
Good afternoon Kim,

My name is Aaron Thompson and I'm a resident of Minnesota. I am asking for an Environmental Impact statement on Daley Farms LLP's dairy expansion proposal.

As I understand things their proposal nearly triples the existing operation. As a resident I'm very concerned about the impact this will have on our ground water.

Please advise

Aaron Thompson

Get [Outlook for Android](https://www.outlook.com)
Ms. Grosenheider,

We need an Environmental Impact Statement on Daley Farms LLP’s dairy expansion proposal. Please be diligent with making decisions that affect our fragile environment, the well being of the people nearby and the economic impact of the property values of those people.

Janice Kittok
8403 County Line Road SE
Delano, MN 55328
To whom it may concern:

I am writing to encourage you to extend the review period to the stated deadline of November 15. Because of the porous nature to the soil in the area the large dairy poses a unique threat to the groundwater. There are other issues associated with the expansion as well. The excessive amount of water used by an expanded facility requires extensive study to ensure it doesn’t negatively impact the availability of groundwater for the communities and residences in the county.

John King
Long Prairie, MN
Dear Ms. Grosenheider

Please accept my comments on the Daley Farms EAW. This proposal definitely has the potential for significant environmental impacts, and should trigger a requirement by the MPCA that an EIS be done.

I live in Fillmore County, next to Winona County, and I have a vast amount of experience with these issues. I was on the MPCA staff and the Citizens Board in years past. I led our county’s committee to create its first Comprehensive Water Plan. I had a 40 year career in agriculture and environmental policy analysis. I worked nationally on feedlot laws and regulations, and helped pass Minnesota’s Groundwater Protection Act. Please accept these comments and order an EIS.

1. The EAW does not sufficiently address the precise nature of karst features that would impact the dairy facility dairy or manure deposition fields. The proposed liquid manure storage basin is larger than any built before in this region, and either catastrophic failure — or slow leaks — would have the potential of releasing 46 million gallons a year of nutrient-laden waste into groundwater, affecting wells and eventually surface water. Extremely detailed investigations must be conducted in an EIS to determine specific karst weaknesses deep under and around the facility, including electrical resistivity studies, dye traces throughout the county, and water quality analyses. The ever changing flowages of karst water are what makes a karst area unique. It is not a static system. Indeed, the very act of disturbing the soil and rocks, plus adding stormwater storage and drainage, plus placing and storing that volume of liquid above the karst constitute a perfect storm that will practically guarantee catastrophic pollution of regional waters. An EIS should study existing karst features of the site, and engineers should analyze the impact of construction of the facility itself in causing karst changes that could spell mass contamination of wells and trout streams.

2. An adequate and realistic emergency response plan would be impossible to formulate or carry out. A catastrophic breaching of the giant manure pit is not only possible, but very likely given the history of three community sewage ponds having already drained overnight. With 4,628 cows, there is no way to “turn off” the source of contamination. Those cows must continue creating manure no matter what. It is totally unrealistic to think that the Daley operation would evacuate the cows, much less kill them. Where could they be sent to if the pits had a sudden collapse? No alternative facility is available anywhere. Instead, MPCA has no mitigation options. Those cows would continue the ongoing pollution of our aquifers for years to come.

3. The level of groundwater use by the facility will be a major contributor to the very catastrophic failures of the manure pit that are feared. Such water withdrawal rates will change the karst groundwater system. Existing nitrate levels of communities nearby are already near or exceeding the maximum allowable level of 10 mg/L. The level of extraction will affect the volume of well water available to rural residences, farms and communities. This one dairy proposes to take nearly three times the amount of groundwater as nearby Lewiston. One business/farm should not be allowed to destroy all their neighbors’ water supplies.

4. It is not a legitimate argument to say that only large dairies, of such a size as to threaten the region with massive water pollution, can survive. At this time, 96 percent of Minnesota dairy farms are one-ninth the size of this proposal. It is Daley Farms that is out of synch with reality. We do not need massive water pollution in order to have our milk and dairy products! We need clean water too. Remember, those cows would need clean drinking water too!

Thank you for addressing these comments, and agreeing on the need to demand a full Environmental Impact Statement.

Sincerely,

Loni Kemp
14083 County 23
Canton MN 55922
507 743 8438
Dear Ms Grosenheider,

Please do everything in your power to see that the expansion of the Daley Farms hog operation must submit to an in depth Environmental Impact Statement!
We, in this southeastern corner of Minnesota, have a fragile geology underlying our earth which makes our water source also very fragile.
Please vote for an EIS for the sake of south eastern Minnesota residents!

Thank you,

Barb Nagel

Sent from my iPad
Dear Ms. Grossenheider and the MPCA,

I am a proud citizen of the State of Minnesota. I love our gorgeous state, I love our wilderness areas, our vibrant cities, our robust economy and our agricultural backbone. All of these need to be in sustainable harmony for the long haul.

I am urging the MPCA to undertake a full Environmental Impact Review and public statement on the proposed Daley Farms mega expansion. Karst is delicate and once groundwater is polluted it cannot be undone. We need to steward our land for our children’s children and beyond.

Sincerely,
Roberta Benson
2640 Ulysses Street NE
Minneapolis, MN 56418
612.203.2872

Sent from my iPhone
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Sincerely,

Virginia Templeton
4327 abbott av s
Minneapolis, MN 55410
While the Daley Dairy farm in Lewiston already exceeds the Winona County Feedlot size maximum due to a grandfathered condition and currently poses potential harm to ground water in a karst prone area, Winona Climate Action Network would like to remind decision makers of the increased likelihood of extreme weather events making any increase in feedlot size an unsound idea. Additional cows also includes: increased methane and carbon dioxide, both greenhouse gasses that further increase climate change related risks of extreme weather events like heavy rains and flooding, which, in turn, increase the risks of contaminating ground water with manure.

This mega dairy poses greater risks to the environment than smaller scale operations that are aligned with the practice of local production for local consumption.

Sincerely,
Emilie Falc and the leadership team of the Winona Climate Action Network
In the early 1970s I lived in Winona and by the mid 1970s had purchased 140 acres of wild, undeveloped property along Cedar Creek, S.E. of Winona.

While I am no longer the co-owner, the property is still pristine and was once featured in a WCCO TV piece in their ongoing series Finding Minnesota, along with the adjoining farm operated by the Robert Briggs family.

I mention this background because it underscores my concern about the EAW for an expansion of the Daily Farms Dairy near Lewiston, Winona Co., which I have learned about in the past 2 weeks.

While I have concerns about this project on multiple levels, I just want to focus on water issues in this letter.

First, it is obvious that the DNR has multiple concerns about environmental issues connected with Daley's application to drill 2 new wells to service expansion of the dairy by almost 3,000 milk cows. Total water use projected at 92,000 gallons per day (gpd) for the original and expanded operation, if approved.

There is no indication in the EAW as to whether the Jordan Aquifer can withstand being taxed to that degree. Presumably it is up to the DNR to pass judgement on this issue.

Secondly, a passage on page 21 of the EAW states that "the Federal Clean Water Act requires that every state develop a plan to identify and restore any waterbody that is impaired by state regulations"

"The TMDLs and WRAPS for the S. Fork of the Whitewater River and Rush Creek call for decreasing the leaching loss of nitrate from cultivated acres in those stream watersheds." The Daley farm is within these watersheds.

Daley does enumerate several measures to ensure that feedlot applications of manure do not "exacerbate" leaching loss of nitrate. But I'm sorry, that statement is counterintuitive.

Only a magician could perform a magic act on this scale, where a wave of a wand can make the nitrogen wastes from nearly 3000 added milk cows disappear if not incorporated into soil or living plants.

Like others before me, I'm sure, I urge MPCA to recommend a EIS for this project unless the DNR rejects the Daley application for new wells, thereby effectively disenfranchising the project.

Sincerely,

John F. Hick
St. Paul, MN
I would like to submit my comments AGAINST the Daley farm dairy expansion.

It is a horrible idea to store so much more potential pollution in such large quantities. Engineers always claim the structures will not leak nor will they overflow but they do fail. When they fail then there are all the reasons and excuses and damage.

I believe PREVENTION of pollution is the only sensible answer in our state, the risks are TOO HIGH to allow for contamination of so many citizens drinking water. It is NOT ACCEPTABLE to contaminate drinking water/ground water in our state. I live here because we are smarter than that.

A manure tanker just tipped over on HWY 52 near our home last week...because he was driving carelessly....I followed that truck through town loaded (overloaded I would guess) whose rear right spring appeared to be weak, later on my way back from town I met the truck, driving like a nut very fast and 1/2 on the shoulder running back for his next load to haul to a nearby farm to put on the field.
You are mistaken when you think all this manure gets handled with a high level of responsibility. Down in the ditch it went, Watson creek? I don't know for sure where it goes from that corner.

What if Daleys don't get enough land leased for manure, I'm sure there is an answer to everything on paper but then reality happens AFTER the state okays the project. THEN WHAT??

The fields around here that are left fallow for a toilet for a large unsustainable farming operations are a disgrace, on slopes. How does that work when it rains? I could start taking pictures of run off.

You all are in denial of reality for what REALLY goes on out here.

They can diversify some safer way, or move to a state that welcomes nitrates, was it IOWA?

These big manure generating outfits should be zoned commercial, not Agricultural.

JUST SAY NO please.

Thank you
Leslea Hodgson
Fountain, MN
507-867-4004
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves, and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

The EAW indicates that this factory farm expansion will generate 46 million gallons of liquid manure annually. The EAW clearly demonstrates that this facility will have the potential for significant environmental impacts and therefore, as required by law, I request that the MPCA order the completion of an Environmental Impact Statement (EIS).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota's 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams, and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take--if restoration is even possible.

The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed. The EAW indicates that groundwater is present at average depths of between 16 and 20 feet only in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

The proposal will produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting). This is part of the record. USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

Climate change has increased intense rainfall events--since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).

The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact...
on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County's ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue, but not expand. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity."

Sincerely,

Richard Morris
613 4th Ave SE
Rochester, MN 55904
From: mailagent@thesoftedge.com on behalf of hootchfish@hotmail.com
To: Grosenheider, Kim (MPCA)
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP
Date: Wednesday, October 31, 2018 7:09:38 PM

Dear Ms. Kim Grosenheider:

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Sincerely,

Hootch Hanson
909 W. Lakewood Ave., Unit 20
Lake City, MN 55041
If I saw the correct info given at the special farm expansion meeting regarding farm odor, there is no guideline for control of odor. I find that unbelievable. Odor is a huge problem for Lewiston, where I live. It affects our way of life, especially in the spring, summer and fall, we can't have windows open, hang clothes on the line or spend time outside. It's nauseating!! People are constantly complaining about the putrid smell. We don't make any money smelling Daley's manure. Guidelines must be established.
Dear Ms. Kim Grosenheider:

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Sincerely,

Mark M Giese
1520 Bryn Mawr Ave
Racine, WI 53403
We need to steward our precious water and avoid damage from mega-dairy operations in Winona county. What would the consequence of the proposed project be? Can we be assured that our children will have clean water to drink? Has the environmental study been done?

Linda D’Amico
October 22, 2018

Mark P. Gernes
Feedlot Permit Contact
Minnesota Pollution Control Agency
18 Wood Lake DR Southeast
Rochester MN 55904

Dear Mr Gernes,

Please record our comments with the Public Comments on the Daley Farms of Lewiston LLP 2018 Dairy Expansion. We have lived in Winona County since 1969 and have watched/participated in the development of Winona County Ordinances to protect the citizens, air quality, water quality (both ground water and trout streams), and farmland of Winona County. Now the Daleys wish to expand their operation that already exceeds the cap of 1500 animal units that was passed in 1998.

We do not want Winona County to permit this expansion and cannot understand why the MPCA is even investigating this operation for an expansion when it already exceeds the existing cap. Do not County Ordinances rule in instances like this? The Daley Farms are asking to take from our aquifer nearly the amount of water each year that would be needed to serve the city of Lewiston for three years. What is that going to do to the wells of the surrounding farmers and citizens of Lewiston in the future? But even of more concern is the amount of liquid manure which will be stored and eventually spread on the surrounding farmland owned by the Daleys. With our karst topography and the frequent incidence of sinkholes developing in the area, the storage lagoons present a constant danger to the groundwater and nearby trout streams. When the manure is spread, the wells and trout streams in the area will be exposed to nitrate contamination due to our karst topography and run-off as well.

It is the responsibility of the MPCA to follow Minnesota law to protect the environment, water quality and quantity, air quality, health and quality-of-life for all citizens of Minnesota. The Daley application should have been denied outright given Minnesota laws and Winona County Ordinances. The very least the MPCA can do is require an extensive environmental study, an Environmental Impact Statement. When the Daley proposal would result in the largest confinement operation in southeastern Minnesota, the citizens deserve to know all of the risks involved.

We support family farms. Unfortunately, this type of mega-farming is making it impossible for family farms to survive and succeed.

Please keep the environment, air, water, and citizens of Winona County healthy by denying the application or at the very least requiring a thorough Environmental Impact Statement (that should be required of any proposal of this magnitude) before any final decisions are made.

Sincerely,

Nancy and James Reynolds
4455 West 7th ST
Winona MN 55987
October 19, 2017

Mark P. James
Feedlot Permit Contact
M.P.C.A.
19 Wood Lake Dr SE
Rochester, MN 55904

Dear Mr. James,

As someone who lives in an area of the state with serious water quality issues, I am asking you to require an Environmental Impact Statement on the proposed expansion of the Daley Farm in Lewiston.

By more than doubling their herd of cattle, they will be putting the surrounding area in serious danger of water (not to speak of soil and air) pollution.

The good of the larger community must take precedence over the profits of one company.

Thank you for your consideration of this concern.

Respectfully,

Mabel Nichols
6460 Laura Ave S
Cottage Grove, MN 55016

nicholsmabel@yahoo.com
To the Minnesota Pollution Control Agency

Requesting an Environmental Impact Statement for the Daley Farms, Lewiston MN, proposed expansion.

The MPCA holds a responsibility to the citizens of Minnesota for the long-term protection of our environment. One of the ways of providing that protection is by requesting that an Environmental Impact Statement be required to determine if a proposed project might cause such damage. After reading the EAW for the proposed Daley Farm expansion, I feel an EIS is called for. An EIS is a part of the MPCA’s responsibility for a project of this size, especially when the possibility of a catastrophe exists. An EIS can provide confidence that the proposed plan is safe for all concerned.

There are several areas of concern involving the amount of water needed, the potential degradation of the area’s water supply, and economic impacts. In terms of water supply, in Attachment R it specifically states “the proposed rate and volume of water may interfere with other water users and have a negative impact on lakes, streams and wetlands”. That statement is followed by a list of seven potential concerns. Considering they are asking for 93 million gallons of water a year that concern is justified. Also, existing water appropriation permits with higher priorities (Statute 103G.261) already exist in the area. There are Municipal Well head Protection Areas in the vicinity. What happens if there is not enough water for the Daley operation? How will the draw off 93 million gallons of water affect other wells in the area? Will its quality be changed? These are questions that need to be explored.

The potential for water degradation exists because of the topography of the area. As a Karst area with multiple sink holes, runoff can easily enter the water supplies of not only the immediate area but all the Karst area. One of the sink holes is even marked on the site map and is just off the proposed site plan. The city of Lewiston, located within two miles of the farm lost its lagoon system in a sink hole in the 1990s. Luckily that lagoon was treated water. The potential for disaster is real. Also, there already exists a high concentration of nitrates in many area wells including city supplies which requires special handling. Any increase could cause considerable harm.

There also seems to be some economic factors that should come in to play. The amount of product from an operation of the projected size will impact other dairies in the area. Small producers may be forced out, prices may drop in a market that already is stressed. What happens to the local economy, school systems, and churches if there is a measurable reduction of small farms in the area?

Margaret Lambert

1463 Gilmore Valley Road

Winona MN 55987
Comment Sheet
Proposed Daley Farms expansion
Environmental Assessment Worksheet
and Individual Feedlot Permit Coverage

Your comments!
If you would like to comment on the Environmental Assessment Worksheet (EAW) and Individual Feedlot Permit for Daley Farms' proposed dairy expansion in Winona County, Minnesota, please use this form and mail it to:
Kim Grosenheider, MPCA, 520 Lafayette Road N., St. Paul, MN 55155. You may also submit comments online:
http://survey.mn.gov/asp?k=153730433478. **Written comments must be received by 4:30 p.m., Oct. 31, 2018.**

Having lived and worked in ag. related fields a majority of our adult lives, my husband grew up on a large farm here and has and is still running a welding/machine business. I worked as a secretary for a milk company in the area and then spent 30 yrs. in the welding business with my husband, so we do have a little agricultural background. I have some concern with so many cows in a small area, however I do believe this does need to be decided on a case by case basis~ each being different and each having

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<table>
<thead>
<tr>
<th>Name (Required. Please print.)</th>
<th>Rhonda Schell</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address (Required. Please print.)</td>
<td>116 Washington St. Rolla, MN 55969</td>
</tr>
</tbody>
</table>
its own concerns. I believe there are farmers who could not and do not manage a 100 cow farm and should not be allowed even that. I believe the Daleys as a family not only could manage a large increase in their herd, but would do it well. I understand that it is necessary to increase the number of animal units to provide an income to the family members there, as well as those who want to come into the family business. Because we are losing so many family farms I think we should do what we can to save the ones who are good stewards of land, animals and family. Many of the Daleys are college educated in the fields they excel in on the farm. They know what it takes to operate a business of that size; hence the maintenance and expansion is required.

I understand concerns for the groundwater and the manure pit — but doesn’t it make sense to be in constant observation of one pit than to have 3 or 4 pits spread throughout the region? The Daleys maintain a boat in the pit bringing and stirring the solids throughout which maintains consistancy. They have a good record and know the spreading rates for the fields. They are involved in all forms of dairy production on all different levels. The farms are clean and safe and open to the public and yet only one person who wants an EIS study has even visited them.

I applaud the MPCA for the work they do, but permit these expansions “CASE BY CASE.” Some people should not have a farm at all — and yet... I live in Rollingstone, downhill from all the Daleys... if anyone is going to stand over me and my family with a load of manure on one hand and feeding me with the other...I want it to be a Daley!
Comment Sheet
Proposed Daley Farms expansion
Environmental Assessment Worksheet
and Individual Feedlot Permit Coverage

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Pg 5 of EAW describes manure basin construction proposed
"install a drain tile system around the base of the manure basin to control fluctuations in seasonal saturation," climate
change patterns for SE MN project [see MN Dept. of Health Aug.
2018 Planning for Climate & Health Impacts in SE MN] p 3]
an increase in weather events & related natural disasters ...
a higher frequency of very heavy rain events .... An EIS is
needed to further research impacts of weather patterns change
on proposal - not just the manure basin but also the other
structure/building for "storm runoff capacities.

(For additional space, continue on backside of this sheet.)

| Name (Required. Please print.) | JOYCE E. FORD |
| Address (Required. Please print.) | 31762 Wiscoy Ridge Rd  |
|                                 | WINONA, MN 55987 |

Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194
(651) 296-6300, toll-free (800) 657-3864, TTY (651) 282-5332 or (800) 657-3864
This material can be made available in alternative formats for people with disabilities.

Printed on recycled paper containing at least 30 percent fibers from paper recycled by consumers.
Additional E1S Considerations Needed

- Impact on existing aquifer with increased water usage
- Impact of increased animal units overall in Winona County and capacity of available land/fields to absorb manure applications from all feed lots collectively

At some point in time Winona County will not be able to accept more manure application. Water quality in the townships has already been compromised by nitrates and other farming-related chemicals. We must consider the totality of manure usage, not farm by farm - see MDA map of nitrate contamination from study of wells tested in 2016.

While this proposal addresses existing violations from buildings without runoff controls, these violations should not have been allowed to continue "indefinitely." MPCA has been negligent.
That is greed to have that many animals in one location. That's not helping middle income or small farmers in fact in probably pushes them out of business.

It's also not good for the animals, don't produce the best milk results and far more septal to disease. It's hard to control that much manure. A horse defecates 350 pounds of manure in one week I imagine the same for a cow.

The production dairy farm I visited in Kansas, the animals are seen as dollars and cents and if they fail to produce just a tiny bit under their 30 lbs a milking they went to slaughter. That's not what this county is about, mass production at the expense of animals.

We can feed the people of the world and ourselves without 4,628 cows in one place.

Jean F. Schilling
Rural Property Owner, Minnesota

Warren Buffett: “There seems to be some perverse human characteristic that likes to make easy things difficult.”
Hello:

One of these times the corporations will have a personal impact on your life and you'll remember the day you gave away the farm for profit instead of to protect people.

We need an Environmental Impact Statement on Daley Farms LLP’s dairy expansion proposal.

Mary Voight

NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you
From: mailagent@thesoftedge.com <mailagent@thesoftedge.com> on behalf of stumalanaphy@hotmail.com <stumalanaphy@hotmail.com>
Sent: Tuesday, October 30, 2018 3:44 PM
To: Grosenheider, Kim (MPCA)
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP

Dear Ms. Grosenheider:

I am submitting comments to the EAW on the Daley Farms of Lewiston, LLP dairy expansion proposal near Lewiston, Winona County. According to the EAW, this factory farm expansion will generate 46 million gallons of liquid manure annually. It will also use 92 million gallons of groundwater annually. The EAW clearly demonstrates that this facility will have the potential for significant environmental impacts and therefore, as required by law, I request that the MPCA order an Environmental Impact Statement.

This factory dairy operation, with its multi-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota's 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in April 1976, Lewiston in 1991, and Bellechester in April 1992.

The MPCA must analyze what the impact of a catastrophic failure of this multi-million-gallon manure pit would be, and that requires an EIS. The DNR, in its analysis for an initial permit for drilling of an additional well for this expansion stated that "the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If such negative impacts happen for lakes, streams and wetlands, how would that damage be undone and how much time might restoration take if at all possible?

This project would annually use 92 million gallons of water. The city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. What will be the impact on our aquifer of this major annual use of water?

The 3 actions that can lead to sink hole development in karst country are, moving earth (digging, displacement), pumping water and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed. Since ground water is present at averages between 16 and 20 feet only in the area where manure storage is planned, how will ground water be protected? How will fissures and geologic collapse be avoided?

The proposal will produce 46 million gallons of manure and wastewater in an area where karst...
geology channels contaminants from surface water deep into the ground.

Well testing conducted by the Minnesota Department of Agriculture in 2016 showed that "46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates."

Climate change is being felt in southern Minnesota in many ways, one of which is increased rainfall and increased instances of large rainfall events (there have been 3 mega storms with rainfall totals over 9 inches in 24 to 36 hour periods since 2004 in southern Minnesota alone. 
https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html

Historic Mega-Rain Events in Minnesota - Minnesota DNR ...

www.dnr.state.mn.us

Minnesota is no stranger to heavy rain events. The early surveyors mapping out the state witnessed such events. The DNR climate office has assembled a list of so-called "Mega-rain" events that have occurred since statehood.

Pg. 23: Since there is no rating for determining a sensitivity of the water table because of the surface karst feature development, how can the MPCA accept only this EAW in determining possible ill-effects of this expansion?
Th EAW does not address the potential negative economic impacts for neighboring farms and especially small and mid-sized dairy farmers.

Sincerely,

Sincerely,

stuart malanaphy

N7375 910th St.
Riverfalls, WI 54022

NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you
Dear Kim Grosenheider,

I believe that all Concentrated Animal Feeding Operations (CAFO) take a toll on people living close to these operations in regard to smell, water use, water pollution, erosion and degradation of land. That alone is deeply unfair.

Water use: the expansion of the Daley Farms expansion would use 92 million gallons of water per year compared to the city of Lewiston's 33.5 million.

Water pollution: wells tested by MDA in 2016 showed that 46% of well tested in Utica Township exceeded the safe drinking water standards for nitrates. According to the USDA Natural Resources Conservation Service 250 cows produce as much nitrate/nitrogen as 5000 people.

I am deeply concerned about the project at hand. First of all The Daley Farms Mega-Expansion grossly violates Winona County’s 1500-animal unit cap. Everybody else has to comply why not Daley Farms. A permit should not be granted. Winona County already has 13 other feedlots.

Second, the size of this expansion, tripling the animal units, warrants an Environmental Impact Statement (EIS) to allow for an in depth study when dealing with the vulnerable karst landscape of SE Minnesota. Twice have sewage lagoons in the past disappeared in a sinkhole. What proof do you have that a manure holding lagoon the size of 3 football fields, 16 feet deep will hold in this karst landscape. In depth modeling needs to be done first.

In closing I want to express my disappointment with MPCA in this matter. I hope you reconsider your role as watching out for people’s health not those of cows and pocketbooks.

Sincerely

Angela Anderson
Dear Ms. Grosenheider:

I am submitting comments to the EAW on the Daley Farms of Lewiston, LLP dairy expansion proposal near Lewiston, Winona County. According to the EAW, this factory farm expansion will generate 46 million gallons of liquid manure annually. It will also use 92 million gallons of groundwater annually. The EAW clearly demonstrates that this facility will have the potential for significant environmental impacts and therefore, as required by law, I request that the MPCA order an Environmental Impact Statement.

This factory dairy operation, with its multi-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota’s 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in April 1976, Lewiston in 1991, and Bellechester in April 1992.

The MPCA must analyze what the impact of a catastrophic failure of this multi-million-gallon manure pit would be, and that requires an EIS. The DNR, in its analysis for an initial permit for drilling of an additional well for this expansion stated that "the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If such negative impacts happen for lakes, streams and wetlands, how would that damage be undone and how much time might restoration take if at all possible?

This project would annually use 92 million gallons of water. The city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. What will be the impact on our aquifer of this major annual use of water?

The 3 actions that can lead to sink hole development in karst country are, moving earth (digging, displacement), pumping water and storing water. All three actions would be involved if the proposed 400’ X 400’ X 16’ manure pit were to be constructed. Since ground water is present at averages between 16 and 20 feet only in the area where manure storage is planned, how will ground water be protected? How will fissures and geologic collapse be avoided?

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[https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html](https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html)

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**Historic Mega-Rain Events in Minnesota - Minnesota DNR**

www.dnr.state.mn.us

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Th EAW does not address the potential negative economic impacts for neighboring farms and especially small and mid-sized dairy farmers.

Sincerely,

Sincerely,

Lawrence Krantz
9180 Goodnuff Ln NE
Bemidji, MN 56601-9780

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Sincerely,

Jennifer Tacheny
269 Erie St, --
St. Paul, MN 55102

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Sincerely,

Sincerely,

Jean Greenwood
4515 Garfield Ave.
Minneapolis, MN 55419-4848

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From: mailagent@thesoftedge.com <mailagent@thesoftedge.com> on behalf of Eoness@winona.edu <Eoness@winona.edu>
Sent: Tuesday, October 30, 2018 3:28 PM
To: Grosenheider, Kim (MPCA)
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP

Dear Ms. Grosenheider:

I am submitting comments to the EAW on the Daley Farms of Lewiston, LLP dairy expansion proposal near Lewiston, Winona County. According to the EAW, this factory farm expansion will generate 46 million gallons of liquid manure annually. It will also use 92 million gallons of groundwater annually. The EAW clearly demonstrates that this facility will have the potential for significant environmental impacts and therefore, as required by law, I request that the MPCA order an Environmental Impact Statement.

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The MPCA must analyze what the impact of a catastrophic failure of this multi-million-gallon manure pit would be, and that requires an EIS. The DNR, in its analysis for an initial permit for drilling of an additional well for this expansion stated that "the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If such negative impacts happen for lakes, streams and wetlands, how would that damage be undone and how much time might restoration take if at all possible?

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Sincerely,

Sincerely,

Elizabeth Oness
672 West Wabasha St.
Winona, MN 55987

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From: mailagent@thesoftedge.com <mailagent@thesoftedge.com> on behalf of ksgriebel@newulmtel.net <ksgriebel@newulmtel.net>
Sent: Tuesday, October 30, 2018 3:55 PM
To: Grosenheider, Kim (MPCA)
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP

Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

The EAW indicates that this factory farm expansion will generate 46 million gallons of liquid manure annually. The EAW clearly demonstrates that this facility will have the potential for significant environmental impacts and therefore, as required by law, I request that the MPCA order the completion of an Environmental Impact Statement (EIS).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota’s 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After
expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take--if restoration is even possible.

The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed. The EAW indicates that groundwater is present at average depths of between 16 and 20 feet only in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

The proposal will produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting). This is part of the record. USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

Climate change has increased intense rainfall events--since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).

The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County's ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue, but not
expand. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity."

Sincerely,

Sue Griebel
12327 170th St
New Ulm, MN 56073-4461

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Sincerely,

Sincerely,

Gene Kremer
3938 Cannon Ball Lake Rd
Duluth, MN 55803-8209

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From: Nancy Higgins <nanhigs@gmail.com>
Sent: Tuesday, October 30, 2018 3:20 PM
To: Grosenheider, Kim (MPCA)
Subject: Huge Farm

An environmental study needs to be done on the Daley Farms LLP's dairy expansion proposal.

This literally is a lot of shit! I see it as having serious negative consequences to the environment. I believe it will affect the land, water and air. We need to look more to the future generations and preserve our water & land & air.

I can't help but think this is just greed operating. If 3000 more cows are allowed now, how many more later? sets precedence for other huge factory farms if allowed to happen.

I personally support small farmers when shopping for groceries. I also support those who practice good land stewardship.

Sincerely
Nancy Higgins
1753 Randolph Ave #2
St Paul, MN

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Keeping this short. Any expansion that uses

**92 Million Gallons of Groundwater & Produce 46 Million Gallons of Manure**

*any where is a disgrace. If this venture is being given serious thought then an environmental review is a requirement no short cuts. I do believe that farms of 300 animals should be the norm. Please allow the proper review by the* Clearly, this factory farm has the “potential for significant environmental impacts” and needs an Environmental Impact Statement. Please no shortcuts!!

Thank you.

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Dear Mr. Grosenheider,

The proposed scale of expansion (increasing the cows herd from 1,728 cows and calves to 4,628) that Daley Farms LLP of Lewiston is requesting should require an Environmental Impact Assessment without hesitations! An EIS is legitimized by the fact that the proposed Mega-Farm will have a huge environmental impact for Winona. For example, it will use about 92 million gallons of water annually. This volume of fresh water (equivalent to 36 milk trucks that every day would be needed by Daley Farms), could put area wells at risk of flow for such needs by a single water user. In return the operation will generate about 46 million gallons of manure and wastewater to be disposed annually, in an area where karst geology channels contaminants (e.g., nitrogen, phosphorus, enteric bacteria like E. coli, Shigella, Salmonella) from surface waters deep down into aquifers, from where the same is pumped to be used. Also, the storage of raw cow manure and waste waters in lagoons does not make me feel any safer from the risks of land and water contaminations because lagoons overflow, or break from time to time (especially during heavy rain storm precipitations).

What about air quality? Have we forgotten the environmental disaster of the Excel Mega-Dairy in Thief River Falls, MN, which caused the evacuation of its residents in 2008, due to levels of hydrogen sulfide (H2S) in the air 2-3 hundred times higher than the 30 ppm/l safety threshold? What about more dangerous gases released by animal feedlots like Daley Farms? I am referring to ammonia (NH3) and methane (CH4). Ammonia and hydrogen sulfide are irritant to animals’ respiratory systems. A prolonged exposure to these gasses affects the functioning of lungs and respiratory ways, causing stress, which may lead to asthma, cardiovascular problems and, eventually, premature death. I am thinking about the health deterioration as a cascading effect for the children and residents of Lewiston and Utica should the Daley Farms be granted permission to expand their operation. Aren’t the farm owners, their children and grand children going to be affected too by the scale of such an expansion? I am disturbed also by the fact that the Daley Farms are already exceeding the limit of 1,500 animal units (they presently raise 2,275 animal units) and thus would need a variance from the Winona Co. Board of Adjustment. Therefore, if laws like the animal units-cap provision are
rules that have been agreed upon after endless hours of deliberations and consultations with professionals and experts (including farmers), and local citizens, why (I am wondering), the rule should be change?
And (more importantly), what if more farmers wish to expand their operation/s in the future? Wouldn’t the Daley Farms case create a precedence for which further requests of expansion could NOT be denied? I think these questions are legitimate and reasonable to ensure that an EIS is accomplished before allowing an establishment of a mega-dairy farm in Winona County.

Sincerely,
Bruno Borsari, Ph.D.
260 Liberty St.
Winona, MN 55987
Ph.: 507-454-5041

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I am opposed to the Daley Farm expansion. Because of our karst topography we cannot sustain clean water under such an expansion. We already have many contaminated wells in the county, and this will only add to the problems. Moreover, factory farming, even if done by a large family such as the Daley's, is not suited to this area and will put even more pressure on smaller farms who will find it hard to compete. Please ask for a complete and exhaustive environmental review before making any decisions.

Jane Cowgill
317 Walnut St
Winona, MN 55987

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Sincerely,

Sincerely,

Eric Nelson
551 E. 8th St.
Winona, MN 55987

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From: Jan Dahl <dahljan6@gmail.com>
Sent: Tuesday, October 30, 2018 3:12 PM
To: Grosenheider, Kim (MPCA)
Subject: Environmental Impact Statement

This factory farm has the “potential for significant negative environmental impacts” and needs an Environmental Impact Statement!

I'm AN ACTIVE participant (not a farmer, not a politician); however, I VOTE, I love Minnesota's clean air, lakes and earth. Elections are coming next week. Please consider my request!

Sincerely,

Jan Dahl
Royalton, Minnesota

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Sincerely,

Sincerely,

Bruno Borsari
260 Liberty St.
Winona, MN 55987

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Sincerely,

Sincerely,

Loretta Jaus
22891 651st Ave
Gibbon, MN 55335-2077

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Mike Kennedy
316 W 7th St
Winona, MN 55987

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From: mailagent@thesoftedge.com <mailagent@thesoftedge.com> on behalf of nancy conger <mailagent@thesoftedge.com>
Sent: Tuesday, October 30, 2018 3:06 PM
To: Grosenheider, Kim (MPCA)
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP

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Sincerely,
nancy conger
8010 275th Ave NE
North Branch, MN 55056

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From: mailagent@thesoftedge.com <mailagent@thesoftedge.com> on behalf of bob@emphasislighting.com <bob@emphasislighting.com>
Sent: Tuesday, October 30, 2018 3:01 PM
To: Grosenheider, Kim (MPCA)
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Sincerely,

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Bob Sirchia
3375 Stark Rd NE
Cambridge, MN 55008

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Chris Peckover
118 Park St
Rollingstone, MN 55969

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Jennifer Cantine
3501 44th Ave S
Minneapolis, MN 55406

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Michelle Gobely
1581 Wheelock Ln Apt 202
Saint Paul, MN 55117

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From: Margot Monson <mpmonson.insx@gmail.com>
Sent: Tuesday, October 30, 2018 2:52 PM
To: Grosenheider, Kim (MPCA)
Cc: bsognfrank@landstewardshipproject.org
Subject: Daley farms expansion

Kim,

Please authorize an EIS on the proposal to expand Daley Dairy Farms - You know well that any operation that will produce 46 million gallons of liquid manure and use 92 million gallons of ground water needs a careful, thorough review before any expansion of their permit.

Thank you,

Margot Monson

--

Margot Monson, MS Entomology, aquatic biologist
22 Ludlow Ave.
St.Paul, MN  55108
651-644-3749

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This factory dairy operation, with its multi-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota’s 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in April 1976, Lewiston in 1991, and Bellechester in April 1992.

The MPCA must analyze what the impact of a catastrophic failure of this multi-million-gallon manure pit would be, and that requires an EIS. The DNR, in its analysis for an initial permit for drilling of an additional well for this expansion stated that "the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If such negative impacts happen for lakes, streams and wetlands, how would that damage be undone and how much time might restoration take if at all possible?

This project would annually use 92 million gallons of water. The city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. What will be the impact on our aquifer of this major annual use of water?

The 3 actions that can lead to sink hole development in karst country are, moving earth (digging, displacement), pumping water and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed. Since ground water is present at averages between 16 and 20 feet only in the area where manure storage is planned, how will ground water be protected? How will fissures and geologic collapse be avoided?

The proposal will produce 46 million gallons of manure and wastewater in an area where karst
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Th EAW does not address the potential negative economic impacts for neighboring farms and especially small and mid-sized dairy farmers.

Sincerely,

Dorothy Dolezal
3005 West 43rd St
Minneapolis, MN 55410

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Laura Inman
72435 160TH AVE
HAYFIELD, MN 55940

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From: sarah orman <absolutesarah@hotmail.com>
Sent: Tuesday, October 30, 2018 2:49:34 PM
To: Grosenheider, Kim (MPCA)
Subject: Environmental Impact Statement on Daley Farms LLP’s dairy expansion proposal

I want to add my voice and concerns.
We need an Environmental Impact Statement on Daley Farms LLP’s dairy expansion proposal. Our planet is fragile and we are in the midst of the devastating effects of climate change. Before anymore damage is done, there is time to review and study the impact of this herd expansion on the land.
Thank you,
Sarah E. Orman
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**Historic Mega-Rain Events in Minnesota - Minnesota DNR**

www.dnr.state.mn.us

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Sincerely,

Sincerely,

Doreen Kloehn
4036 Xerxes Ave S
Minneapolis, MN 55410

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From: k l <kll30@hotmail.com>
Sent: Tuesday, October 30, 2018 2:47:36 PM
To: Grosenheider, Kim (MPCA)
Subject:

I am very concerned about mega farms. The wells required will crowd out local farmers or force them to dig deeper.

If the cattle are milked 24/7 how much noise and odors will neighbors and livestock have to listen to.

Ken lyons

Lake Cty

Member of the Land Stewardship Project.

Sent from Mail for Windows 10

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Sincerely,

Sincerely,

Carolyn Carr
4050 39th Ave. S.
Minneapolis, MN 55406-3433
From: mailagent@thesoftedge.com <mailagent@thesoftedge.com> on behalf of elizabeth@spiritualmemoir.com <elizabeth@spiritualmemoir.com>
Sent: Tuesday, October 30, 2018 2:43 PM
To: Grosenheider, Kim (MPCA)
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP

Dear Ms. Grosenheider:

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Sincerely,

Sincerely,

Elizabeth Jarrett Andrew
4244 24th Ave S
Minneapolis, MN 55406-3028

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Dear Ms Grosenheider:

I am submitting comments on the proposal of Daley Farms of Lewiston, LLP, to expand its dairy option to about three times its current capacity - to 4,628 cows.

A dairy of this size is highly unusual for Minnesota (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php), which means that Daley Farms' proposal must be carefully considered. The proposal should not be granted unless Daley Farms provides evidence demonstrating that it truly has the capability to deal with waste on an ongoing basis and in extreme weather events, that it will operate the farm in conformity with all applicable requirements, that it will prevent pesticide contamination, and that it will not threaten the aquifer.

Waste

USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211). As a result, Daley Farms' proposal for a threefold increase to its operation is like adding 20,000 people, in terms of the nitrogen produced. The impact of this increased nitrogen load must be fully analyzed through an EIS.

In addition, Daley Farms' proposed operation will produce 46 million gallons of manure and store store 35.6 million gallons of raw liquid manure. The proposed factory dairy operation will be located in an area of the state (1) where 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them, (2) with similar geological formations as Utica Township, where 46.3% of the wells tested exceeded the safe drinking water standard for nitrates in 2016 (www.mda.state.mn.us/townshiptesting), (3) that has been hit by three storms since 2004 that dumped over 9 inches of rain over a 24- to 36-hour period (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).

The capacity of the proposed lagoon, located in an area that is vulnerable both geologically and weather-wise, is not designed to handle this kind of rainfall situation. The Minnesota Pollution Control Agency must conduct an EIS to assess the impact of a catastrophic failure of the manure pit. Moreover, MPCA feedlot official, Mark Gernes, stated that 75% of Daley's existing facilities are out of compliance with Federal pollutant discharge requirements. Given this history, Daley Farms also needs to demonstrate that its day-to-day operations will actually conform to all local, state, and federal requirements, rather than simply asserting that it hypothetically could conform.

Pesticides

When nitrates are found in drinking water, the same wells and aquifers often also are contaminated with pesticides. Daley Farms has not shown how it will measure and mitigate pesticides and protect humans and animals from carcinogens due to run-off and leakage of contaminated water.

Water

This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS.

Sincerely,

Margaret Mahoney
4215 24th Ave S
Minneapolis, MN 55406
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows.

The proposal will produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates". This is part of the record. USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS.

During the public information session in Lewiston, MPCA feedlot official, Mark Gernes, stated that 3 out of 4 of the Daley's existing facilities are out of compliance with Federal pollutant discharge requirements. It is difficult for the public, for neighboring farmers, rural residents and township residents to trust that they MPCA will be thorough in oversight and enforcement when years go by with full awareness of active noncompliance.

We know that when nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW. Also, western Winona County is informally known as a "cancer cluster" as cancer rates are already high in this area. It would stand to reason that threats to human and animal health is threatened in an already compromised region when additional carcinogens are added to the environment through run-off and leakage of contaminated water.

It is not clear from the EAW, how Daley Farms' proposed expansion would improve the quality of life, including the quality of health, for area residents.

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota's 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

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Climate change has increased intense rainfall events—since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).

The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County's ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue, but not expand. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity."

Sincerely,

Donald Greenebaum
15055 Riverside Ave N
Marine On Saint Croix, MN 55047-8722
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Sincerely,

Jessie Pinney
1449 Bertram Dr
Maple Plain, MN 55359-5031
Dear Ms Grosenheider:

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56810 122nd Ave
Minneiska, MN 55910-3018
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Kathleen Felt
702 Cornelia St.
North Mankato, MN 56003
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37 Capri Drive
Mankato, MN 56001
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Virginia Templeton
4327 Abbott Ave S
Minneapolis, MN 55410-1442
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240 60th Ave NE
Willmar, MN 56201-9195
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2610main st s Austin mn
Austin, MN 55912-6127
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This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota's 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take--if restoration is even possible.
The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed.

The EAW indicates that groundwater is present at average depths of between 16 and 20 feet only in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

Climate change has increased intense rainfall events—since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).

The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County’s ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue, but not expand. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity."

Sincerely,

Joel Schmidt
12430 County Road 1 NW
Pennock, MN 56279-9667
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

The proposal will produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting). This is part of the record. USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

During the public information session in Lewiston, MPCA feedlot official, Mark Gernes, stated that 3 our of 4 of the Daley's existing facilities are out of compliance with Federal pollutant discharge requirements. It is difficult for the public, for neighboring farmers, rural residents and township residents to trust that they MPCA will be thorough in oversight and enforcement when years go by with full awareness of active noncompliance.

We know that when nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW. Also, western Winona County is informally known as a "cancer cluster" as cancer rates are already high in this area. It would stand to reason that threats to human and animal health is threatened in an already compromised region when additional carcinogens are added to the environment through run-off and leakage of contaminated water.

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The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County’s ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue, but not expand. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity."

Sincerely,

Wendy Haan
3824 47th Ave S
Minneapolis, MN 55406-3606
Dear Ms Grosenheider:

Thank you for reading my comments. I want to preface them with a few facts. 1) I grew up on a dairy farm, 2) I have friends who work on a dairy farm now 3) I formerly worked for the Ag Programs at Southwest Minnesota State University where I met many people who are well-known throughout the Ag Industry in Minnesota as well as a couple national figures 4) I only skimmed the Environmental Assessment Worksheet and did no research of my own 5) I have partnered with Land Stewardship Project briefly in 2017 through my involvement in LSP’s work to shape the latest iteration of the Farm Bill. After I left my position with SMSU_Ag I didn’t continue active involvement but found the LSP members and staff I interacted with to be hard-working practical people who care about their community 1st, bottom line 2nd and a 3rd major priority they seemed to have in common was an honest realization that their involvement was needed to protect/strengthen agriculture through stewardship of natural resources for our future generations. The first meeting I went to, my youngest son Cooper who is 11 going on 83 (#OldSoul #Hunting/Fishing/Farming #CountryBoyStuckInTheCity) had to come with me. After he met some of the old farmers, younger farmers, LSP staff and he listened to the topics discussed he asked LSP staff, "Is there an age limit to becoming an LSP member?" Like the others I met, he genuinely cared about the topics discussed related to the Farm Bill. He even got involved in the planning and implementation of a public meeting with Collin Peterson at Redwood Falls. 5) I have not vetted LSP’s form letter but if what they say is true, there are serious reservations about this Daley project that at a minimum need further study 6) my own comments will be in Caps lock henceforth (not to scream but to delineate my comments from the form letter). Thanks again for reading and any thought you give to my comments.

Grant Will
113 E Street
Marshall, MN 56258

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

I HELPED MY DAD HOST THE "DISPLAY HERD" AT THE MINNESOTA STATE FAIR THIS PAST YEAR. IT ALLOWED ME THE OPPORTUNITY TO VISIT WITH PEOPLE ACROSS THE STATE. MY UPBRINGING ON THE DAIRY FARM WAS MISERABLE AND I HAD AND STILL HAVE NO INTEREST IN DAIRY FARMING MYSELF. HOWEVER, I AM AN EDUCATOR BY PROFESSION, SOCIOLOGIST BY TRAINING AND A CURIOUS MIND BY NATURE. ANY CONVERSATION THAT I HAD WITH FARMERS AT THE STATE FAIR FEATURED ME AS A GENUINELY INTERESTED QUESTIONER/LISTENER NOT AN OPINION PURVEYOR. EVERY SINGLE FARMER LAMENTED THE TURN TO CORPORATE AG. MORE IMPORTANTLY, AFTER ALLOWING A LITTLE VENTING/COMPLAINING AS FARMERS ARE WONT TO DO IN MY EXPERIENCE I ALWAYS ASKED WHAT IS COMING NEXT AS A RESULT OF THE CLEAR TURN TO CORPORATE AG. AGAIN, EVERY SINGLE FARMER TOLD ME THAT THEY THINK IT WILL LEAD TO DEGRADATION OF THE ENVIRONMENT. PERSONALLY, I'M NOT SURE IF THAT IS TRUE. IT MAY BE BUT I PRESUME LIKE MOST THINGS IT CAN BE VIEWED THROUGH A LENS MORE LIKE A SPECTRUM NOT A LENS OF CLEAR BLACK AND WHITE.

YES, I CARE ABOUT THE ENVIRONMENT BUT MOST PEOPLE DO. AGAIN "CARING FOR THE ENVIRONMENT" IN MY OPINION IS SEEN ON A SPECTRUM.
MOST IMPORTANTLY THOUGH, PLEASE HEAR THIS!!...THE TURN TO CORPORATE AG HAS ALREADY, IS ACTIVELY CONTINUING TO AND APPEARS TO NOT BE ABLE TO BE REVERSED OFF THE "RUIN MINNESOTA’S RURAL TOWNS TRAIN" THAT IS CHANGING OWNERSHIP OF LAND FROM INDIVIDUAL/FAMILY FARMS TO LARGE CORPORATE ENTITIES. I PERSONALLY KNOW FARMERS WHO HAVE BEEN FORCED TO SELL OFF LAND ASSETS TO THE HIGHEST BIDDER, A CORPORATE AG ENTITY. THERE IS A SHIFT OCCURRING IN LAND OWNERSHIP THAT I THINK HAS BEEN PRECIPITATED BY CORPORATE AG ENTITIES BUT I KNOW IS BEING TAKEN ADVANTAGE OF NOW BY CORPORATE AG. AS SMALLER FARMERS BEGIN TO BE PHASED OUT BY SYSTEMIC ISSUES LARGELY, BUT ALSO INDIVIDUAL SITUATIONS, LAND ASSET SALES ARE THE CHOICE OF LAST RESORT. IT TAKES MONEY TO MAKE MONEY AND CORPORATE AG HAS A PURCHASING POWER GREATER THAN INDIVIDUALS THAT IS CHANGING THE NATURE OF LAND OWNERSHIP IN OUR STATE. I HOPE THAT YOU WILL SIMPLY CONSIDER THAT NUMEROUS INDIVIDUALS/FAMILY FARMS LOGICALLY ARE NATURALLY INTERTWINED IN THE FABRIC OF RURAL COMMUNITIES WHILE CORPORATE AG LIKELY VIEWS COMMUNITY INVOLVEMENT MORE OFTEN AS A MECHANISM THAT HELPS ACHIEVE THE GOAL OF MAXIMIZING PROFIT. I DON’T MEAN THAT AS A VALUE STATEMENT OF FACT. I MEAN IT AS A LOGICAL CONCLUSION THAT AGAIN IS, IN MY OPINION VIEWED AS A SPECTRUM.

THANKS FOR STAYING WITH ME :)

NOW, CONSIDER THE NEXT COMMENT THAT EVERY SINGLE DAIRY FARMER THAT I LEARNED ABOUT THE NATURE OF THE DAIRY INDUSTRY FROM AT THE STATE FAIR POINTED TO LARGE DAIRY FARMS LIKE THE ONE PROPOSED HERE AS THE KEY COG IN THE DESTRUCTIVE TREND OF DAIRY FARMING FOR SMALLER OPERATORS. AGAIN, ANECDOTALLY BUT UNANIMOUSLY, THE 30 OR SO MEN AND 2 WOMEN I LEARNED FROM LAMENTED THE ROLE OF BIG DAIRIES MORE SO FOR THE ROLE IN RURAL COMMUNITY DEGENERATION BIG DAIRIES PLAY THAN TO THEIR OWN BOTTOM LINE. SADLY OR COURAGEOUSLY, MOST OF THE FOLKS I LEARNED FROM INDICATED THAT THEY THEMSELVES WOULD SURVIVE BUT THOUGHT MANY OF THEIR PEERS COULDN'T.

IN SUM, LAND OWNERSHIP IS CHANGING HANDS FROM INDIVIDUALS/FAMILIES WHO MAKE UP THE FABRIC OF RURAL MINNESOTA TO CORPORATE/LARGER BUSINESS ENTITIES WHOSE NATURAL GOAL IS TO MAXIMIZE PROFIT.

PLEASE KEEP IN MIND MY CENTRAL THEME AS YOU CONSIDER THE COMMENTS/QUESTIONS I HAVE OF THIS PARTICULAR PROJECT NEAR LEWISTON. I’M NOT FOR DENYING CORPORATE AG ANY RIGHTS IT IS ENTITLED TO. LIKewise, I’M NOT FOR ELEVATING CORPORATE AG RIGHTS OVER ANY RIGHTS CITIZENS ARE ENTITLED TO.

I HAVE 2 FRIENDS WHO ARE VETS AT 1,000+ DAIRIES AND THEY TELL ME THE ANIMALS ARE CARED FOR BUT THERE IS NOT THE SAME CONNECTION WITH THE ANIMALS AND FARM THAT THERE IS WITH SMALLER FARMERS. I HAVE 2 FRIENDS WHO HAVE WORKED AT THE SAME 500+ HEAD DAIRY WHO DON'T SHARE ANY "HORROR" STORIES BUT TELL ME ABOUT QUESTIONS THEY HAVE ABOUT THE FARM’S ENVIRONMENTAL IMPACT IN THE REGION I LIVE, SW MN.

THANK YOU FOR LISTENING AND KEEPING AN OPEN MIND. JUST AS EASILY AS I THINK MY CENTRAL POINT IS CLEAR, PERHAPS I'M WRONG. SO, AS YOU READ MY COMMENTS/QUESTIONS BELOW PLEASE UNDERSTAND THAT I'M TRYING TO COME AT IT FROM THE VIEWPOINT OF AN EDUCATOR WHO ASKS QUESTIONS TO INCREASE DISCUSSION/UNDERSTANDING. YES, I COME WITH A BIASED VIEW BUT ALSO I BELIEVE COMPLETE RIGIDITY THAT TRIES TO CLASSIFY THIS COMPLEX SOCIAL QUESTION INTO CLEAR BLACK AND WHITE CLASSIFICATIONS DOESN’T HELP BUILD OUR UNDERSTANDING.

THANKS AGAIN FOR READING. I WILL STEP DOWN FROM MY PEDESTAL NOW...THIS TIME FOR REAL :)

I DON’T EXPECT ANY RESPONSE OTHER THAN A FORM EMAIL THANKING ME FOR COMMENT. I ONLY EXPECT THAT AS A PUBLIC SERVANT YOU WILL JUST CONSIDER WHAT I OFFER.

The proposal will produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting).
- UHHHHH, REALLY? LOTS OF QUESTIONS HERE. 1) IS THE STANDARD FOR "SAFE DRINKING WATER" REASONABLE? 2) IF IT IS, DOES YOUR OFFICE BELIEVE THIS PROJECT WILL WORSEN THIS SITUATION? WILL IT HELP? I WONDER IF THIS IS A WELL KNOWN FACT AMONGST THE PEOPLE IN THAT REGION. IS IMPACT ON DRINKING WATER PART OF YOUR OFFICE'S CONSIDERATION PROCESS? IF NOT, IS ANY GOVERNMENT ENTITY CHARGED WITH KEEPING ONGOING DATA RELATED TO THE STATISTIC CITED? AM I BEING DUPED HERE I.E. SHOWN A STATISTIC OUT OF CONTEXT THAT TRIES TO RELATE TWO SEEMINGLY RELATED THINGS BUT IS MISLEADING BECAUSE THE TOPIC IS MUCH MORE COMPLEX? This is part of the record. USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS ([https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211](https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211)). I USUALLY VIEW GOVERNMENT DATA AS MORE RELIABLE THAN SPECIAL INTEREST GROUP DATA BUT DOES YOUR OFFICE HAVE DATA FROM OTHER SOURCES THAT ADDS VALIDITY TO THE CITATION OR CONTRADICTS/ADDS NUANCE THAT WOULD SHAPE MY VIEWPOINT IN A MORE CONTEXTUALLY COMPLETE WAY?

During the public information session in Lewiston, MPCA feedlot official, Mark Gernes, stated that 3 OUT OF 4 of the Daley's existing facilities are out of compliance with Federal pollutant discharge REQUIREMENTS. It is difficult for the public, for neighboring farmers, rural residents and township residents to trust that they MPCA will be thorough in oversight and enforcement when years go by with full awareness of active noncompliance.

WHAT?! LOL. HERE I WAS THINKING THAT SOMEONE MIGHT ACTUALLY READ MY DIATRIBE AND CONSIDER MY COMMENTS/QUESTIONS FOR MY INTENT OF GREATER DISCUSSION/DEEPER UNDERSTANDING. I ASSUME, THAT IF THIS STATEMENT IS TRUE AND ACTIVE NONCOMPLIANCE HAS OR IS OCCURRING, IT IS BECAUSE YOUR OFFICE IS SEVERELY UNDERSTAFFED. HOWEVER, IF THAT IS THE CASE, WHAT HAVE YOU DONE TO ADDRESS THIS ISSUE? DID IT WORK? WHY OR WHY NOT? YOUR POSITION'S IMPORTANCE ACCURATELY OR NOT APPEARS TO ME TO BE ONE THAT IS ABSOLUTELY ESSENTIAL TO THE PRESENT AND THE FUTURE SO YOUR OFFICE MUST DO BETTER. I'M GUESSING THE BUREAUCRACY MAY BE GETTING IN ITS OWN WAY BUT HOLY COW! (PUN INTENDED) IN MY VIEW, IF PAST OR PRESENT NONCOMPLIANCE IS ON THE RECORD OF ANY OPERATOR OF ANY SIZE THEIR APPLICATION TO EXPAND SHOULD NOT BE CONSIDERED. EVER. TO ME, THIS IS LIKE THE BAJILLION BACKGROUND CHECKS I'VE COMPLETED AS AN EDUCATOR/VOLUNTEER THAT ASKS ME QUESTIONS ABOUT CRIMINAL HISTORY. ALTHOUGH, OFFICIALLY I BELIEVE CRIMINAL HISTORY ISN'T SUPPOSED TO AUTOMATICALLY DISQUALIFY ME, WE KNOW THAT IT WOULD.

PARDON MY LANGUAGE, BUT THAT TAKES SOME BALLS TO BE NONCOMPLIANT YET BELIEVE EXPANSION SHOULD BE APPROVED BY REGULATORS. EITHER THAT, OR IT SHOULD BE A SIGN THAT THE MPCA IS VIEWED AS COMPLETELY INEPT OR POWERLESS AND SIMPLY A SYMBOLIC SIVIE THAT WILL NOT STRAIN OUT THE SUBSTANCE ITS INTENDED TO PROHIBIT. I HOPE THERE IS MORE TO THIS STORY TOO. IF WHAT I JUST READ IS WORTHY OF FACE VALUE, THIS PROJECT SHOULD NOT HAVE GOTTEN TO THIS POINT. I HOPE THERE IS MORE EXPLANATION OR THAT I I'M MISUNDERSTANDING BECAUSE THIS IS UPSETTING.

I WOULD BE WILLING TO LISTEN TO HOW I CAN HELP IF THIS IS TRUE AND YOU WANT TO TAKE STEPS TO CLOSE THIS GASH IN OUR PROTECTION OF MINNESOTA'S ENVIRONMENT.

We know that when nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW.

- YIKES! I'M GETTING UPSET. AGAIN, I HOPE THIS IS NOT THE WHOLE STORY. I WANT TO BELIEVE WE'RE SMART ENOUGH TO AT LEAST CONSIDER THE ROLE OF PESTICIDES (IF THEY ARE GOING TO BE USED) IN THE FARM HEALTH, WORKER HEALTH AND COMMUNITY HEALTH. PESTICIDE USE/MANAGEMENT PRACTICES HAVE MADE EFFICIENT GAINS TO MAXIMIZE PROFIT WHILE MINIMIZING RISK SINCE THE EARLY DAYS (WHICH WEREN'T THAT LONG AGO) OF PESTICIDES. YET, IT IS WIDELY ACCEPTED THAT PESTICIDES IF USED INAPPROPRIATELY, ARE DANGEROUS TO PLANT, SOIL AND PUBLIC HEALTH. SEEMS PRETTY SIMPLE THAT THE APPLICANT SHOULD PRESENT A PLAN PROPOSAL TO MITIGATE OR ELIMINATE THE KNOWN RISKS OF PESTICIDES.

Also, western Winona County is informally known as a "cancer cluster" as cancer rates are already high in this area.

- - I HAVEN'T HEARD OF THIS AREA TO BE A "CANCER CLUSTER" BUT IF THAT IS TRUE, WHY ARE YOU STILL CONSIDERING THIS APPLICATION? STRIKE IT DOWN AND USE THE SAVINGS/FUNDS TO ADDRESS THE "CANCER CLUSTER" INSTEAD OF
HASTILY OFFERING AN APPROVAL STAMP THAT QUITE POSSIBLY WILL EXACERBATE ANY NEGATIVES THAT ARE ONGOING.

It would stand to reason that threats to human and animal health is threatened in an already compromised region when additional carcinogens are added to the environment through run-off and leakage of contaminated water.

I FEEL LIKE THIS POINT IS LIKELY MISLEADING. IF IT "STANDS TO REASON" THEN LSP SHOULD WORK TO GATHER ADDITIONAL DATA FROM STUDIES THAT PROVIDES RELIABILITY TO THEIR ASSERTION. ARE THERE PROVEN METHODS THAT ELIMINATE THE THREAT? IF SO, DALEY OUGHT TO OUTLINE HOW THEY WILL IMPLEMENT THOSE METHODS.

It is not clear from the EAW, how Daley Farms' proposed expansion would improve the quality of life, including the quality of health, for area residents.

- IS THAT ONE OF THE REQUIREMENTS TO GET THE PROJECT APPROVED? IN MY 37 YEARS OF EXPERIENCE IN AGRICULTURE (18 FIRST HAND) THE REST TERTIARY, I AM CONFIDENT THE ONLY POSSIBLE ARGUMENT OF "IMPROVING QUALITY OF LIFE" OR "QUALITY OF HEALTH" CAN BE MADE AROUND JOB CREATION. EVEN MAKING THAT ARGUMENT WOULD BE LAUGHABLE THOUGH. DAIRY FARM WORKERS ARE NOT PAID COMMISERATE TO RISK/GROSS FACTOR. I'VE NEVER HEARD OF A DAIRY FARM WORKER EARNING A WAGE THAT EVEN APPROACHED MEAN OR MEDIAN SALARIES OF A GIVEN MINNESOTA REGION. DAIRY FARM WORKERS IN MY EXPERIENCE ARE SHORT TERM (BECAUSE THE WORK STINKS (LITERALLY AND FIGURATIVELY), IS DANGEROUS TO PHYSICAL HEALTH (ACCIDENTS BUT MORE SO WEAR AND TEAR ON THE BODY, SPECIFICALLY JOINTS AND THE BACK) AND PAYS POORLY. IN MY EXPERIENCE, DAIRY FARM WORKERS COME FROM DISADVANTAGED SOCIAL GROUPS LARGELY. WE HAD MEN WITH CRIMINAL RECORDS WHO COULDN'T GET A JOB ELSEWHERE BE FORCED TO DO THE CRAPPY WORK FOR LESS THAN THEY SHOULD BE PAID/BARELY A LIVING WAGE FOR INDIVIDUALS LET ALONE FAMILIES OR FOREIGN EXCHANGE STUDENTS WERE WERE "PAID" PARTIALLY THROUGH ROOM AND BOARD WHILE "STUDYING AGRICULTURE" IN AMERICA FOR PERIODS OF TIME TYPICALLY LESS THAN A YEAR OR PEOPLE WITHOUT A HIGH SCHOOL DIPLOMA, OR AN FBI CON MAN WHO ENDED UP STEALING TENS OF THOUSANDS OF DOLLARS WORTH OF COINS AND BASEBALL CARDS (WILD BUT TRUE STORY :) PRIOR TO GETTING ROBBED BLIND HE WAS BY FAR THE BEST WORKER WE EVER HAD LOL). BY FAR THOUGH THE WORK ON OUR FARM WAS COMPLETED BY THE KIDS. MY 4 SIBLINGS AND I DID 95% OF THE HARD LABOR.

IS THERE ANY MECHANISM IN THIS PROCESS THAT ALLOWS FOR INPUT FROM YOUTH UNDER 18? IS THERE A SPECIAL CONSIDERATION GIVEN TO CHILDREN RELATED TO THE OWNER WHO ARE LIKELY TO BE FORCED TO PROVIDE FREE OR UNDERPAID LABOR? IS THERE ANY DESIGN IN THE PROCESS FOR YOUTH OF THE COMMUNITY TO PROVIDE INPUT?

ALTHOUGH I REMEMBER BEING MISERABLE AND RESENTFUL OF MY LABOR ON THE FARM GROWING UP, I'VE COME NOW TO REALIZE SOME OF THE REASONS I HAD FOR RESENTMENT WERE BEYOND MY UNDERSTANDING AT THE TIME. STILL, I REMEMBER IT BEING MISERABLE.

AS FAR AS PUBLIC HEALTH BENEFIT, THEY COULD PLAY THE "MILK PRODUCTS ARE GOOD FOR YOU AND VERSATILE FOR THE MINNESOTA DIET" HOWEVER THERE IS NO POSSIBLE PUBLIC HEALTH BENEFIT TO THE COMMUNITY WHERE THE PROPOSED LOCATION IS. ONLY NEGATIVE PUBLIC HEALTH IMPACTS CAN RESULT. I REALLY HOPE THE PEOPLE OF THE LEWISTON AREA ARE ASKING QUESTIONS AND COMMENTING TOO BECAUSE IF THIS PROJECT IS APPROVED IT WILL NEGATIVELY AFFECT THEIR DAILY LIFE.

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area.

- I'M NOT SURE WHAT "HIGH-RISK KARST AREA" MEANS BUT I DO KNOW THAT PART OF SOUTHEAST MINNESOTA'S BEAUTY IS FORMED BY THE LIMESTONE WHICH ALLOWS FOR SOME AWESOME CAVES. WHAT HAPPENS IF THE MANURE PIT FAILS? ARE YOU SURE IT WON'T? IS THERE ANY WAY TO BE SURE OR IS IT JUST A THRESH HOLD OF "MOST LIKELY NOT"

- WHAT WAS LEARNED FROM THESE COLLAPSES THAT CAN BE APPLIED TO SAFE CONSTRUCTION AND UTILIZATION OF MANURE PITS? DOES THE DALEY PROJECT INCLUDE EVIDENCE THAT DEMONSTRATES NEW KNOWLEDGE THAT WAS GAINED FROM THESE FAILURES?

After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

- HOW WOULD A CATASTROPHIC, MEDIUM, SMALL FAILURE IMPACT THE TOURISM OF THE AREA? IS THE ESTIMATED FINANCIAL IMPACT OF DALEY FARMS EVEN POSITIVE? IF SO, WOULD IT OUTWEIGH THE COST OF INCOME LOST IN OTHER AREAS OF THEIR LOCAL ECONOMY?

This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year.

- YIKES! WHERE DOES YOUR WATER COME FROM? DO YOU CONFIDENTLY KNOW HOW MUCH WATER IS THERE? CAN ANY WATER BE RECYCLED? HOW IS 92 MILLION GALLONS ESTIMATE CALCULATED? ARE YOU FULLY AWARE OF THE INTRICACIES OF WATER SHORTAGES FOUND IN OTHER PARTS OF OUR COUNTRY? WHEN YOU START MESSING WITH YOUR OWN WATER SUPPLY I KNOW THAT IT WILL RESULT IN COMMUNITY ENDING CATASTROPHE. NO WATER, NO COMMUNITY. ARE YOU POSITIVE THAT IS NOT A POSSIBILITY?

The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take--if restoration is even possible.

- DEAR GOD. HOW MANY GOVERNMENT ENTITIES NEED TO RAISE RED FLAGS? I SINCERELY HOPE THAT I'M BEING NAIVE OR LSP IS LYING OR DELIBERATELY MISLEADING BECAUSE FROM WHAT I'VE READ TO THIS POINT MAKES ME FEEL LIKE THE ONLY REASON THIS IS STILL AN ISSUE IS BECAUSE OF THE MONEY BEING THRUST FORTH BY BIG AG AS THEY TRY TO RAMROD A SHIT SANDWICH DOWN THE THROATS OF MY FELLOW MINNESOTANS.

The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed.

The EAW indicates that groundwater is present at average depths of between 16 and 20 feet only in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

- PLEASE PRIORITIZE SAFE WATER

Climate change has increased intense rainfall events--since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).

- HADN'T THOUGHT ABOUT THIS YET BUT THAT WOULD BE ONE WAY A MEDIUM TO LARGE SIZE CATASTROPHE COULD CAUSE MILLIONS OR BILLIONS OF DOLLARS OF HARM TO OTHER SECTORS OF THEIR REGIONAL ECONOMY.

The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on our rural community.

- SOMEONE WITH MORE THOROUGH KNOWLEDGE OF THE OFTEN OPAQUE INDUSTRY MAY BE ABLE TO ARTICULATE WHY PEOPLE BELIEVE BIG DAIRIES ARE BAD FOR RURAL COMMUNITIES BUT I KNOW FIRST HAND THAT MINNESOTA FARMERS FROM AREAS ALL AROUND THE STATE POINT TO BIG DAIRIES AS A MAJOR PART OF THE FAILING DAIRY INDUSTRY FOR SMALL FARMS WITH A DIRECT AND ACTIVE NEGATIVE IMPACT ON RURAL MINNESOTA.
and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

- HONESTLY, I WANTED TO OFFER MY 2 CENTS BECAUSE AS I SAID AT THE OUTSET THE BIAS I HAD REGARDING THIS PROJECT BECAUSE I CARE ABOUT RURAL COMMUNITIES AND RURAL MINNESOTA, GREW UP ON A DAIRY FARM, AND HAD MANY CONVERSATIONS RECENTLY WITH DAIRY FARMERS FROM AROUND THE STATE. I ENDED UP INVESTING MORE TIME THAN I THOUGHT BECAUSE AS I READ LSP’S FORM LETTER IT INCREASINGLY SEEMED TO ME THAT COMMON SENSE, RULE OF LAW, AND THE COMMON GOOD IS LOSING OUT TO A FORCE MORE POWERFUL AND DETRIMENTAL TO MY FELLOW MINNESOTANS. I WOULD BE INTERESTED IN HEARING WHAT THE DALEY PROJECT’S VIEW IS ON SOME OF THE KEY ISSUES. LIKE I SAID AT THE BEGINNING, I’VE FOUND LSP STAFF AND MEMBERS TO BE GREAT PEOPLE. HOWEVER, I UNDERSTAND IT IS AN INTEREST GROUP AND AIMS TO ADVANCE THEIR CAUSE. PERSONALLY, IT IS A CAUSE I THINK IS WORTHY BUT IN THE DEMOCRACY THAT IS BEING PRACTICED TODAY IT SEEMS THAT THE ONLY VOICES HEARD ARE THOSE OF INTEREST GROUPS; NOT CITIZENS. SO BEFORE I SENT YOU A FORM LETTER, I WANTED TO AT LEAST SHARE A BIT OF MY STORY SO YOU KNEW IT CAME FROM A REAL PERSON. WHEN I STARTED, I HONESTLY THOUGHT “MEH, THAT’S A LONG WAYS AWAY”. HOWEVER, AS I READ I KEPT FEELING MORE AND MORE INCREDULOUS. MAYBE LSP IS MISLEADING ME. IF THEY AREN’T, THEN I HOPE YOU CAN GIVE THE CITIZENS OF THE LEWISTON AREA AND IN PROXY THE REST OF US HEARTY MINNESOTANS THE EQUIVALENT OF TWIN HEIFER CALVES. I FEAR THAT BIG AG IS YIELDING THE POWER OF THE PURSE TO SUPRISE MN CITIZENS WITH A PAUL Bunyan SIZE MANURE PIT FILLED WITH SUDDEN STUPIDITY, ENDURING CONSEQUENCES AND BOUNTIFUL BULLSHIT.

Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County's ordinance states: “No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site.” The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was “grandfathered in.” This means it could continue, but not expand. The county ordinance states: “No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity.”

- WE KNOW HOW THIS PORTION ENDS...DALEY GETS THE COUNTY ORDINANCES COME STEAMING COW PIES OR GOD FORBID HIGH WATER THAT TAKES A BAD IDEA AND TURNS IT INTO AN ENVIRONMENTAL CALAMITY THAT LEAVES UNSUSPECTING CITIZENS HOLDING THE PITCHFORK WHILE THE MANURE PIT CATALYSTS ESCAPED OUT THE BACK BARN DOOR.

I ENCOURAGE YOU TO APPLY THE VALUES I’VE LEARNED FROM SOME OF THE PEOPLE WHO MAKE UP THE MAJORITY OF DAIRY PRODUCERS IN MINNESOTA. DO IT RIGHT OR DON’T DO IT AT ALL. BE COUNTED, EVEN IF YOU STAND ALONE. MAKE CHOICES THAT BENEFIT YOUR COMMUNITY NOT JUST YOUR BANK ACCOUNT. ENDURE PAIN AND STRESS TODAY IF IT MEANS A BETTER OUTCOME FOR TOMORROW. CHECK YOUR FENCES, IT’S EASIER THAN CHASING COWS IN THE CORN. TREAT YOUR STOCK AS FAMILY OR AS DAIRY FARMERS OFTEN DO, A LITTLE BETTER. TODAY’S DIFFICULT DECISION UNDER PRESSURE FROM MULTIPLE FRONTS SHOULD BE GUIDED BY YOUR COMPASS THAT HAS BEEN REFINED THROUGH THE PERSISTENT NOSE TO THE GRINDSTONE OF COMMON SENSE, COMMUNITY STRENGTHENING AND THE RELIABLE OL SMELL TEST.

THANK YOU SO MUCH FOR READING AND EVEN MORE IF YOU GAVE MY COMMENTS/QUESTIONS ANY THOUGHT. GOOD LUCK! IF I CAN HELP, PLEASE REACH OUT TO ME VIA TEXT OR EMAIL.

SINCERELY,

GRANT WILL
grantwill10@gmail.com
507-401-1214

Sincerely,

Grant Will
113 E St
Marshall, MN 56258-2511
From: mailagent@thesoftedge.com <mailagent@thesoftedge.com> On Behalf Of Farmersusie@chartermi.net
Sent: Saturday, November 03, 2018 12:58 AM
To: Grosenheider, Kim (MPCA) <kim.grosenheider@state.mn.us>
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP

Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state.

No dairy farm "needs" to be this big, generating a huge amount of manure that threatens to pollute the groundwater that serves as a drinking water source for many. The geology of the area makes groundwater contamination from nitrates a very real possibility.

In addition to polluting the groundwater, the actual quantity of water required by such a large operation is staggering, which is an additional threat to that common water source needed to support the general population.

There seems to be no benefit to the area residents in granting an expansion; just the opposite: this poses significant threats to the quality and sustainability of the community.

An Environmental Impact Statement is needed to evaluate the economic impact which an expanded operation would have on neighboring farms and the rural community; the impacts to roads must be addressed, in addition to assessing the previously mentioned quantity of water use and potential degradation of groundwater by the spreading of manure.

Please note that Winona County's ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The Daley operation was grandfathered in; it is already larger than the permitted limit. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity." The MPCA should not even be considering a permit that would further expand an operation already larger than what the county would normally permit and which poses a significant threat, through excessive use and potential contamination, of a water source shared by many and necessary to sustaining the quality of life in the area.

Sincerely,
Susan Darley-Hill

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Susan Darley-Hill
1710 E. 7th St.
Duluth, MN 55812
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The proposal will produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting). This is part of the record. USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

During the public information session in Lewiston, MPCA feedlot official, Mark Gernes, stated that 3 out of 4 of the Daley's existing facilities are out of compliance with Federal pollutant discharge requirements. It is difficult for the public, for neighboring farmers, rural residents and township residents to trust that the MPCA will be thorough in oversight and enforcement when years go by with full awareness of active noncompliance.

We know that when nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW. Also, western Winona County is informally known as a "cancer cluster" as cancer rates are already high in this area. It would stand to reason that threats to human and animal health is threatened in an already compromised region when additional carcinogens are added to the environment through run-off and leakage of contaminated water.

It is not clear from the EAW, how Daley Farms' proposed expansion would improve the quality of life, including the quality of health, for area residents.

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota's 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take--if restoration is even possible.
The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed.

The EAW indicates that groundwater is present at average depths of between 16 and 20 feet only in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

Climate change has increased intense rainfall events—since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).

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Sincerely,

Jennifer Therkilsen
19715 Grandview Dr
Park Rapids, MN 56470-5315
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Sincerely,

Mary Melbo
2950 Dean Pkwy
Minneapolis, MN 55416
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For 25 years, I served as the director of the Office for Social Concerns & Family Life, for the Diocese of New Ulm. The diocese encompasses a fifteen county area of Minnesota, almost co-extensive with the MN River Basin, and much of its land is devoted to agricultural production. During my tenure in the diocese, I became increasingly aware of the dangers that large livestock confinement operations posed to water and air quality, human health, and the viability of modest-scale family farms.

Please do everything you can to protect human health, our water and air resources, and truly sustainable family farm operations.

Sincerely,

Christopher Loetscher
415 N. German Street
New Ulm, MN 56073
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Sincerely,

Merry Sawdey
30844 56th Avenue Way
Cannon Falls, MN 55009
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Virginia Mackay
2697 Riviera Dr S
White Bear Lake, MN 55110-4923
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Bonnie Beckel
3519 23rd Ave S
Minneapolis, MN 55407-2440
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340 N Minnesota St Apt 108
Muscoda, WI 53573-9496
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Sally Vogel
19429 US Highway 218
Austin, MN 55912-5867
From: mailagent@thesoftedge.com <mailagent@thesoftedge.com> On Behalf Of christinaschmitt6@gmail.com
Sent: Friday, November 02, 2018 12:25 PM
To: Grosenheider, Kim (MPCA) <kim.grosenheider@state.mn.us>
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP

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3140 43rd Ave. S.
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I feel karst landscape has suffered enough from the impact of ag. And being that the Daley Farm seems to have a problem with being in compliance now with Federal requirements. What would guarantee that they would be responsible to operate safely? There is way too much to risk with a environmental disaster. Please do what is correct with the dissection not just for the impact to the environment but our future generation's.

Sincerely,

Bruce Gockowski
PO Box 36
Wyoming, MN 55092-0036
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Sincerely,

Mark Hustad
629 S. Front St.
Mankato, MN 56001
Dear Ms. Grosenheider,

My husband and I live on a farm in Winona County and are very concerned about the proposed huge expansion of the Daley Farm. In years past, our farm operated as a small dairy farm with about 40 cows. I do believe that a farm of this size would be driven out of business today by farms such as the Daley’s. We also have two wells on the property that even now have a high chance of contamination.

It seems that regulations were put in place for a reason. Some laws, such as the bluff-top regulations, have had a negative impact on the value of our ag land but we do understand that you cannot change the will of the majority just because it impacts your ability to make a profit.

The Daley family may be fine people but their insistence to forge ahead and overturn a very sensible regulation seems another case of the “big guys” ability to pay the legal fees that this kind of opposition to the law requires. Please do not allow this expansion to go forward.

Thank you,
Lynn Nankivil
2490 Garvin Heights Road
Winona MN 55987
Dear Ms Grosenheider:

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Sincerely,

Shirley Espeland
2250 Luther Place
St. Paul, MN 55108
Dear Ms Grosenheider:

Please stand strongly to uphold the Winona County ordinance against allowing expansion of feedlots beyond 1500 head of cattle. The risks to the future health of the region are extremely high. See details below:

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Barbara Prokop
6580 Glen Rd Woodbury, MN
Saint Paul, MN 55129-9503
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13376 Elaine ct
Savage, MN 55378-2457
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2616 W 4th St
Duluth, MN 55806
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3193 Strand Rd
Duluth, MN 55803-9795
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Sincerely,

Jim Schumer
1213 County Road 2 S
Saint Stephen, MN 56375-9603
From: mailagent@thesoftedge.com <mailagent@thesoftedge.com>  
Sent: Friday, November 02, 2018 10:28 AM  
To: Grosenheider, Kim (MPCA) <kim.grosenheider@state.mn.us>  
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP  

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C. John Hildebrand
1212 Powderhorn Ter Apt 304
Minneapolis, MN 55407-1646
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1581 Wheelock Ln Apt 202
Saint Paul, MN 55117-5965
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Appleton, MN 56208-1666
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1908 1st Avenue NW
Austin, MN 55912
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When there are so many cows, it makes it impossible to allow them to be grass-fed and be raised in a sustainable way. Bigger is not better. Thanks for listening!

Sincerely,

Joyce Genis
2817 W 97th St
Bloomington, MN 55431-2421
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Climate change has increased intense rainfall events—since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).

The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County’s ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue, but not expand. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity."

The impacts of this project affect public resources, the economy, and our environment. Pushing it through just to satisfy the individual farm owners does a disservice to local citizens’ concerns. An EIS is the proper way to move forward on this issue.

Sincerely,

Laura Frerichs
23229 200th St.
Hutchinson, MN 55350
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows.

The proposal will produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates". This is part of the record. USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS.

During the public information session in Lewiston, MPCA feedlot official, Mark Gernes, stated that 3 our of 4 of the Daley's existing facilities are out of compliance with Federal pollutant discharge requiremehts. It is difficult for the public, for neighboring farmers, rural residents and township residents to trust that they MPCA will be thorough in oversight and enforcement when years go by with full awareness of active noncompliance.

We know that when nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW. Also, western Winona County is informally known as a "cancer cluster" as cancer rates are already high in this area. It would stand to reason that threats to human and animal health is threatened in an already compromised region when additional carcinogens are added to the environment through run-off and leakage of contaminated water.

It is not clear from the EAW, how Daley Farms' proposed expansion would improve the quality of life, including the quality of health, for area residents.

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota's 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take--if restoration is even possible.
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The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

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Sincerely,

John White
5655 County Road 10
Chaska, MN 55318-9228
Please require an Environmental Impact Statement for the Daley farm expansion. We must protect our water and land and other natural resources, not destroy or imperil them.

Thank you.

Ruth Bures
224 Lake Park Drive
Winona, MN 55987
507-452-2505
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

The EAW indicates that this factory farm expansion will generate 46 million gallons of liquid manure annually. The EAW clearly demonstrates that this facility will have the potential for significant environmental impacts and therefore, as required by law, I request that the MPCA order the completion of an Environmental Impact Statement (EIS).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota’s 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

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Sincerely,

Sharon Schmidt
4462 W 132nd
Savage, MN 55378
Comment Sheet  
Proposed Daley Farms expansion  
Environmental Assessment Worksheet  
and Individual Feedlot Permit Coverage

Your comments!

If you would like to comment on the Environmental Assessment Worksheet (EAW) and Individual Feedlot Permit for Daley Farms’ proposed dairy expansion in Winona County, Minnesota, please use this form and mail it to: Kim Groenenheider, MPCA, 520 Lafayette Road N., St. Paul, MN 55155. You may also submit comments online: http://survey.mn.gov/s.asp?k=153730433478. Written comments must be received by 4:30 p.m., Oct. 31, 2018.

![Received Nov 02 2018](image)

I would like to express my solid support for the Daley Farms expansion. My relationship is both personal and professional for the last 14 years in Winona County and Lewiston, Minnesota. My credentials on the business side are listed below.

<table>
<thead>
<tr>
<th>Owner: Lewiston Feed &amp; Produce</th>
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<tbody>
<tr>
<td>P.O. Box 309</td>
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<tr>
<td>Lewiston, Minnesota 55952</td>
</tr>
<tr>
<td>Position: Agronomist</td>
</tr>
<tr>
<td>Certified Crop Advisor #10755</td>
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<th>Name (Required. Please print.)</th>
<th>Michael E KANZ</th>
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<tr>
<td>Address (Required. Please print.)</td>
<td>340 Williams Street</td>
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<td>Lewiston, MN 55952</td>
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Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194
(651) 296-6300, toll-free (800) 657-3864, TTY (651) 282-5332 or (800) 657-3864
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The Daley farm organization has been a leader in environmental respect in our community and I am truly proud of the relationship we have had over these many years. In my professional opinion their farming practices have always been exceptional in every sector of their farming operation. I do not think EIS is needed for this expansion. My personal opinion of the Daley family is best expressed by saying I wish I had more neighbors with common concern of our community and a true belief that family & friends come first. It's been great knowing this family.
October 31, 2018

Ms. Kim Groseenheider
Resource Mgmt. and Assistance Div.
MPCA
520 Lafayette Rd N
St. Paul, MN 55155

RE: EAW - Daley Farms of Lewiston, LLP - 2018 Dairy Expansion
T106 R9 S16 NE
Utica Twp., Winona County
SHPO Number: 2019-0037

Dear Ms. Groseenheider:

Thank you for providing this office with a copy of the Environmental Assessment Worksheet (EAW) for the above-referenced project.

Based on our review of the project information, we conclude that there are no properties listed in the National or State Registers of Historic Places, and no known or suspected archaeological properties in the area that will be affected by this project.

Please note that this comment letter does not address the requirements of Section 106 of the National Historic Preservation Act of 1966 and 36 CFR § 800. If this project is considered for federal financial assistance, or requires a federal permit or license, then review and consultation with our office will need to be initiated by the lead federal agency. Be advised that comments and recommendations provided by our office for this state-level review may differ from findings and determinations made by the federal agency as part of review and consultation under Section 106.

Please contact our Environmental Review Program at (651) 201-3285 if you have any questions regarding our review of this project.

Sincerely,

Sarah J. Beimers
Environmental Review Program Manager
Comment Sheet  
Proposed Daley Farms expansion  
Environmental Assessment Worksheet  
and Individual Feedlot Permit Coverage

Your comments!
If you would like to comment on the Environmental Assessment Worksheet (EAW) and Individual Feedlot Permit for Daley Farms’ proposed dairy expansion in Winona County, Minnesota, please use this form and mail it to: Kim Grosenheider, MPCA, 520 Lafayette Road N., St. Paul, MN 55155. You may also submit comments online: http://survey.mn.gov/s.asp?k=153730433478. Written comments must be received by 4:30 p.m. Oct. 31, 2018.

![Comment](https://example.com/comment.png)

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<td>706 West Wabasha St.</td>
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<td>Winona, MN (Street) 55987</td>
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<td>(City, State, Zip)</td>
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My husband, Richard, and I urge the MPCA to require an EIS for the proposed Daley Farms’ dairy expansion. In the media and in a prepared written statement, the Delys referenced those opposing their expansion as “fear mongers.” Indeed, we are and we believe justifiably so.

We own two parcels of land, both within a mile of the Dely facility. The land is leased to an organic farm family who homesteaded on one of three parcels. We have municipal water and sewer service and a well on our parcel. This is an account of our water woes.

(For additional space, continue on backside of this sheet.)

| Name (Required. Please print.) | Karen M. Ahrens |
| Address (Required. Please print.) | 200 West Main Street |
|                                 | Lewiston, MN (Street) 55952 |

(City, State, Zip)
For at least 10 years we purchased bottled water for drinking and cooking because of public notice that read "Our water system recently violated a drinking water standard." The notice are included in our water bills and printed in our official city newspaper. We took this action because we were fearful for our health & safety.

We had reason to believe that because we are at the end of a waterline that pollutants, chemicals used to treat them and mineral deposits were pooling right here. Water tests proved that our assumptions were true.

For years we sought advice to improve our water quality. Beginning with the city council and public works, we also conferred with city engineers below: "MnK working with infrastructure repairs, Environmental Health Dept, Drinking Water Hotline, the Attorney General, MPCA and the Federal EPA. Most referred us back to our municipal water supplier, the City of [Redacted]."

Meanwhile we continued to pay a high water bill (about $80 per month) for water that we couldn't drink, cook with or launder our clothes.

We prayed for our health and that of our neighbors.

We took measures to combat our problems. At the advice of public works we replaced old pipes discharging our front yard, burrowing through our treatment center floor. All was a costly venture with no water improvement.

We installed a whole house water filter.

Housekeeping to take care of uncleanly rust was never ending. We were impacted by cost, time and damage to our belongings.

We were tired of the battle after a seemingly endless struggle the city took action and looped our water line one week ago. The service came with a 28% tap levy.

As is true any wonder why we are fearful of the massive Kelly field expansion. I wish that we were all "fear mongers" doing everything we can to preserve our precious water resource. Our lives depend on it.

THANK YOU FOR YOUR CAREFUL CONSIDERATION.

Karen M Ahrens
Comment Sheet
Proposed Daley Farms expansion
Environmental Assessment Worksheet
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I am requesting that an Environmental Impact Statement be done for the proposed Daley Farm expansion. I have lived and farmed just over a mile from the Daley Farms for 70 years. I've witnessed the changes in farming practices and changing landscape.

We live in a very vulnerable topography. Just north of Lewistown is an area known as Ruprecht's Valley. In that valley is a series of caves, caves large enough to walk into. As a Scoutmaster in Lewistown, I would take my Boy Scouts there. We studied the topography of the area. We learned from the late John Michael, who worked for the Conservation Service in Lewistown, that these caves are in a line that extends along State Highway 14 to Dover MN (about 15 miles)

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<th>Richard E. Ahrens</th>
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<td>Address (Required. Please print.)</td>
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<td>Lewistown, MN 55952</td>
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Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194
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away). These underground caverns extend right through the Daley farms.

Because of our Karst Topography, water seeps into the caverns and to the ground water. When the water seeps in, it often forms a sinkhole. Numerous sinkholes can be seen from Highway 14. Our farm is also on the line of caverns. Fortunately I have no sinkholes, but my neighbors do. They have dumped junk/garbage/dead animals in them for as long as I can remember. When the Lewiston Elevator burned the rubble was dumped into a sinkhole and covered with soil. This caused all the neighboring wells to go bad.

In 2007 following a heavy rain, three sinkholes opened in a cow yard on the corner of Hwy 14 and CR 33. This can happen anytime. Should this happen at the Daley farm it would be catastrophic for the city of Lewiston and surrounding area.

I can remember when our city water was pure, no pollutants. As a city council member we tried to get a water filtration system to treat our ailing water but it was too costly. Today we drink bottled water.

The Daleys are presently operating non compliant feed lots. I realize it is not possible to police all these farms. Now is the time for you to step forward and make the right judgment for the common good.

I would be glad to point out these sinkholes to you if you’d like. Thank you.

Richard E Ahrens
Comment Sheet
Proposed Daley Farms expansion
Environmental Assessment Worksheet
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Kirk Groshenheider, MPCA, 520 Lafayette Road N., St. Paul, MN 55155. You may also submit comments online: http://survey.mn.gov/s.asp?k=153730433478. Written comments must be received by 4:30 p.m. Oct. 31, 2018.

Taxpayers pay to have experts collect the data needed to protect us. To ignore the facts and in turn allow individuals to endanger our environment for profit (to a few) is actually illegal. The limits are set for a reason. This is a totally unnecessary variance. It is not the citizen's right. Water quality is sacred and we expect compliance not random changes because a project has been planned. If big money wins this fight we will all feel the effects eventually. Those responsible have to face their abuse.

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Sincerely,

Merry Sawdey
30844 56th Avenue Way
Cannon Falls, MN 55009
Dear Ms Grosenheider:

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Sincerely,

Nadine Heidinger
15 Gramercy Park S
New York, NY 10003-1705
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Sincerely,

Kelly Karstad
1011 Willow Drive
Saint Peter, MN 56082
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Thank you- Bridget Levin

Sincerely,

Bridget Levin
4201 Fremont Avenue South
Minneapolis, MN 55409
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9364 160th St.
Glencoe, MN 55336
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This trend towards large farms, whether cows, hogs, turkeys or any other animal, does not help farmers, our water system or land. We need to protect our resources and rethink allowing corporations to produce our food without care to the environment,

Sincerely,

Bonita Schwartz
13376 Elaine ct
Savage, MN 55378-2457
Dear Ms Grosenheider:

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The costs to clean water is significantly more expensive than to keep it clean.

Sincerely,

nancy m palmer
12470 Camwood trail
Baxter, MN 56425
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Sincerely,

Barbara Norblom
1705 Stevens Avenue
Minneapolis, MN 55403
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Sincerely,

Sarah Simpson
132 4th Ave SE
Spring Grove, MN 55974
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Kelly Kirkpatrick
1115 East Center Street
Rochester, MN 55904
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Jacquelyn Warren
189 Spruce Drive
Apple Valley, MN 55124
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Let’s also consider that big, factory-run agriculture is not what Minnesotans want right now. The movement towards sustainable, local, small, organic farming run by ethical farmers who care about the community has been growing in strength and affordability for years now. We need to think long-term. We need not only to live off of this planet, but ensure it will continue to support us and generations after us. Decisions like this, allowing this farm to expand without investigating environmental disaster potential, without their other corporate farms even being pollution compliant, is deeply irresponsible. Please show integrity and responsibility by thoroughly investigating the environmental impact of this corporate factory farm.

Sincerely,

Kelsey Koch
8825 Oakland Ave s
Minneapolis, MN 55420-3033
Daley farm extension Nov. 12 2018

As a farmer near Lewiston, Minnesota I do not agree of their dairy expansion. We live in an area where bad water and bad manure can reach our ground water supply very fast. So dumping huge amounts of raw gassy manure is not for this south east farming area.

When another farm comes up for sale, guess what---they out bid ever one and this is not for a new start up farmer. Our ground water is saturated already with nitrates already, deadly for the young children. Allowing for their expansion will only make matters worse.

Minnesota needs leadership who will stand up against poisoning our water supply. It appears to me this is a case of democracy verses dictatorship. This is a very busy season for our farmers to attend meetings and as I see it was planned that way. The timing for hearings could of been in January when farmers have time to attend meeting. These hearings must not of been held in this harvesting season. This allowed very little out put from farmers. Who ever planned this should be put to shame. It is disgraceful at the highest level.

Minnesota needs new young farmers not giant ones. Giant farms in Russia failed, why are you following a failed system anyway. Now frac sand comes into play. These huge trucks have destroyed Winona County Road 113, if you don't believe me check it out for yourself.

About factory farms, dairy, turkey, pork and chickens. None of these unit farm animals are on open range and sunshine. This is a sin against God, he created a beautiful world and man is destroying every part of it just for greed. A test you must do, buy some factory farm pork spare ribs at the grocery store. All you officials go to one of your friends. The wife in this house will add only water (not salt, spices etc) start to cook this pork and you will stink yourselves out of the house, don't believe me, just do it. Please send me a letter if I am lying. Lastly but not least is all factory farm food is poison to us humans. America has seen an explosion of deformed children about the time of glyphosate (roundup) introduction for weed killing. Their genes are being altered. Don't believe me, check out just one of these childrens hospitals. You see them every day asking for donations on TV.

My friends, please help save our children. They are products of factory farms.

signed James Pelowski 3107 County Road Utica, Minnesota 55979 ph 1-507-932-4665
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19 Bell Circle
Silver Bay, MN 55614
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Annette McGinley
18037 Miller Dr
Park Rapids, MN 56470
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Leslie Stewart
603 Dunn St
Pepin, WI 54759
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Cathy Witthoeft
100 Probstfield St.
Georgetown, MN 56546
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Janette Dean
103 N. Gjere Avenue, #5
Caledonia, MN 55921
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Gail Bromenschenkel
43029 E Elysian Lake Rd
Janesville, MN 56048
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Karen nielsen
5408 100th ave
clear lake, MN 55319
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27979 County Road 17
Winona, MN 55987
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Pamela DeWolf
1002 BUSH ST
RED WING, MN 55066
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301 Ryan Ave.
Saint Paul, MN 55102
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Allen Larson
3408 Beauty Lake Rd SW
Pillager, MN 56473
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Sincerely,

Elizabeth Merz
111 W Lincoln Ave, Apt 305
FERGUS FALLS, MN 56537
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Sincerely,

Peggy Endres
943 Wilder St S
Saint Paul, MN 55116-2026
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

The EAW indicates that this factory farm expansion will generate 46 million gallons of liquid manure annually. The EAW clearly demonstrates that this facility will have the potential for significant environmental impacts and therefore, as required by law, I request that the MPCA order the completion of an Environmental Impact Statement (EIS).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota’s 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

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The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400’ X 400’ X 16’ manure pit were to be constructed.

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The proposal will produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting). This is part of the record. USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

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Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County’s ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue, but not expand. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity."

Sincerely,

Jeremy Wales
316 Alexandria St, P.O. Box 173
Evansville, MN 56326
I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

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Sincerely,

Julie Rettig
942 main st
Breckenridge, MN 56520
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With climate change accelerating, the last thing we need is a massive dairy farm with huge manure waste. And more people are going vegan, so cow's milk is on the decline. Please don't allow this expansion.

Sincerely,

Patricia Loverink
403 19th St NE
Austin, MN 55912
Dear Ms Grosenheider:

It’s too dangerous to site this factory on such porous earth. To proceed with the permitting is irresponsible.

Sincerely,

John Reynolds
26385 County Road 3
Merrifield MN, MN 56465
Dear Ms Grosenheider:

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Sincerely,

Christine Harshman
30303 Abby Road Northeast
North Branch, MN 55056
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Sincerely,

Scott Olson
515 Birch Ave
Alexandria, MN 56308-8510
Dear Ms Grosenheider:

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Sincerely,

Renee Walz
1221 Gilmore Valley Road
Winona, MN 55987
Dear Ms Grosenheider:

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What precedent is set for permitting a further increase of animal units without an EIS for a large-scale high density feedlot (and its manure application sites) already 'grandfathered in' beyond a county's allowed animal units? How many more similar "grandfathered in" large-scale concentrated feedlots would this allow in southeast (and the rest of) Minnesota to further expand in the future without requiring an EIS based on this precedent? We cannot know the social and economic impacts of expanding a large-scale high density feedlot without doing an EIS. Social and economic impacts on the affected communities must be studied to ensure the communities remain livable so people are not forced to decide between "putting up" with, or moving away from, the negative aspects of a large-scale high density feedlot and its manure application sites. People in the vicinity of such a feedlot and its manure application sites are left with great uncertainty to questions such as: what they should spend on maintaining or improving their properties, whether they should buy a property in the area impacted by a large-scale high density feedlot, and what costs they could incur if they have to dig a new well. People in "the country" as well as in our towns (and cities) are affected by nearby large-scale high density feedlots and their manure application sites. The social and economic impacts for the future of the affected region need to be studied through an EIS.

The proposal will produce 46 million gallons of liquid manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting) USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

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Kristine Hall
301 Falcon Drive
Mankato, MN 56001
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If existing, smaller, facilities are non compliant there should be no allowance of opening a new facility, especially of this size, until others are brought into compliance. Furthermore the size of this facility and associated environmental degradation is in a sensitive area where groundwater, among other resources, can be negatively affected. With nitrate levels where they currently are this would be a move for large factory farming and not the people of Greater Minnesota.

Sincerely,

Rhyan Schicker
821 3rd ave madison mn
Madison, MN 56256-1013
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. I want you to know that I have some experience living near factory farms, that I live in the country now on an old farmstead, and am not sending in the quoted comments below lightly or without thought. An increase in scope proposed by the Daley farms radically increases environmental and health risks to neighbors and neighboring communities. A detailed study of potential consequences needs to be done; you cannot just ‘see what happens.’ It’s time to be responsible to people, first, business second.

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Dan Hooley
14241 205th St. N.
Scandia, MN 55073
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Sincerely,

Gail Bradford
16033 County Road 44
South Haven, MN 55382
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Sincerely,

Cheryl Peterson
1640 Gray Fox Dr NE
Owatonna, MN 55060
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Sincerely,

Danielle Hernandez
2506 18 1/2 Ave NW
Rochester, MN 55901
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Dawn Pesicka
3200 S Terry Ave
Sioux Falls, SD 57106
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Given that the United States currently has a surplus of milk, cheese and other dairy products, it makes no sense to take the risks outlined above to produce more! Only dairy subsidies keep farmers producing milk now. Please vote against allowing this dangerous factory farm to expand further!

Barbara Courneya
Pine River, Minnesota
218-947-3568
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Minneapolis, MN 55414
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Walter Wegner
1539 Pheasantwood Trail
Northfield, MN 55057
-----Original Message-----
From: mailagent@thesoftedge.com <mailagent@thesoftedge.com> On Behalf Of jeremywales8@gmail.com
Sent: Friday, November 09, 2018 12:06 PM
To: Grosenheider, Kim (MPCA) <kim.grosenheider@state.mn.us>
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP

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Sincerely,

Jeremy Wales
316 Alexandria St, P.O. Box 173
Evansville, MN 56326
Dear Ms Grosenheider:

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Sincerely,

Nora Moore
481 Laurel ave
St paul, MN 55102
Dear Ms Grosenheider:

I personally own a 150 acres farm in Pierce County, Wisconsin and I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County.

I was surprised to see the proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

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Joshua Howe
2202 Parklands Lane
Minneapolis, MN 55416
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Sincerely,

Judy Brommerich
22878 Pleasant Ridge Rd
Winona, MN 55987-5720
Ms. Grosenheider, I urge you to do an EIS on the Daley Farms expansion. My concern is much too much water usage. This water needs to be used for the people that live in the area not just for one farm. Another huge concern is the huge amount of manure that will be stored over karst land. It will probably leak into the ground water. It has happened before. People have the right to have clean water! Common sense tells us that we need an EIS done on this expansion. Thanks you, Karen Swanson Lanesboro MN
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1078 W. Broadway
Winona, MN 55987
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Sincerely,

Lois Kozlowski
12619 Twp Rd 106
Mount Perry, OH 43760
Dear Ms Grosenheider:

I hope the government will do its job and execute due diligence in the most thorough possible review of this proposal. CLEARLY, the potential for danger exists--I believe it is guaranteed--and it is upsetting for me to think about the MPCA opting out of an EIS. The MPCA needs to protect the citizens of Winona County as fully as it is willing to protect the interests of this mega "family" farm.

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Sincerely,

Lynnea Pfohl
25932 County Road 9
Winona, MN 55987
Original Message

From: mailagent@thesoftedge.com <mailagent@thesoftedge.com> On Behalf Of pawildenborg@msn.com
Sent: Tuesday, November 13, 2018 8:24 AM
To: Grosenheider, Kim (MPCA) <kim.grosenheider@state.mn.us>
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP

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Anne Wildenborg
903 Burton St
Red Wing, MN 55066
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stuart malanaphy
N7375 910th St.
Riverfalls, WI 54022
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Also, This is inhumane for the animals. Although cows are herd animals, they suffer from overcrowding and will be stressed by the level of noise and activity that would exist in such a huge group of thousands of cows.

Sincerely,

Sheila Maybanks
201 Bayberry Avenue Court
Stillwater, MN 55082
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. I am very concerned about the proposed expansion of 3,000 cows, which would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

One concern is the waste that this expanded operation will produce, particularly because it is in an area with karst geology. This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota’s 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400’ X 400’ X 16’ manure pit were to be constructed. Therefore, the Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

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2232 Minneapolis Avenue
Minneapolis, MN 55406
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Sincerely,

Mary Vlazny
2201 3rd Ave SW
Rochester, MN 55902
Dear Ms Grosenheider:

My comments about the Daley Farms project in Winona County are supported by the clear and undeniable facts presented below. My comment is a request for an EIS or an immediate denial of permits. The facts presented here make it crystal clear that the impact of these farms is disastrous at best. Please consider if you, your children or grandchildren lived nearby. The depression and illness caused by the pollution of air, water and soil would be insurmountable. And we are not talking of only decades. The long-term consequences will last generations and centuries. For what gain? Millions of dollars in the hands of the very few who have already proven that they are irresponsible and a relative few pennies in the hands of a few locals and County coffers. Smaller farms have been shown to be more efficient, sustainable, responsible and they keep the profits more local. Do what is right, smart and responsible. There is enough information to deny this immediately but if you must, show the facts with a required EIS.

Sharon Kutter
Grey Eagle MN

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Do the right thing not only for this present moment in time but for the sanctity of life for future generations.

Sincerely,

Nancy Sogabe-Engelmayer
2371 Nebraska Avenue East
Maplewood, MN 55119
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Sincerely,

Curtis Speck
15877 560 lane
Good Thunder, MN 56037
From: saormsby@gmail.com
To: Grosenheider, Kim (MPCA) <kim.grosenheider@state.mn.us>
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP

Dear Ms Grosenheider:

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I have lived in southeaster Minnesota of nearly 70 years. I drove by the farm I grew up near Caledonia. Our closest neighbor is a 4th generation farmer and has never cost damage to the neighbors. The daily expenses is dangerous in this area. Please do an assessment that looks at sink holes and damage that can never be replaced.

Sharon Keefe Ormsby

Sincerely,

Sharon Ormsby
32063 Wiscoy Co-op Ln
Winona, MN 55987
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Lynne Anderson
211 Dewey Street
Jackson, MN 56143
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Vernon Crowson
28247 state hwy 30
Chatfield, MN 55923
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613 4th Ave SE
Rochester, MN 55904
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310 N. Grant St.
Minneota, MN 56264
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Mary Melbo
2950 Dean Pkwy
Minneapolis, MN 55416
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Mark Roalson
518 Coventry Road
Hoyt Lakes, MN 55750
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Minnesota is known for its water resources. You are supposed to protect them. PLEASE don't let big business take over yet another of our resources and ruin our environment. The almighty dollar should never be the main consideration, but it seems like it always is. Shame!

The proposal will produce 46 million gallons of liquid manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting) USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

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Wendy Hagen
1322 Frank Hall Dr
Albert Lea, MN 56007-3138
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Michelle Gobely
1581 Wheelock Ln Apt 202
Saint Paul, MN 55117-5965
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Virginia Mackay
2697 Riviera Dr S
White Bear Lake, MN 55110-4923
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po box 247
st. joseph, MN 56374
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Sincerely,

Jonelle Ringnalda
761 Hague Ave
Saint Paul, MN 55104
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1130 Clam Falls Drive
Frederic, WI 54837
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Faribault, MN 55021
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This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take--if restoration is even possible.
The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

During the public information session in Lewiston, MPCA feedlot official, Mark Gernes, stated that 3 out of 4 of the Daley's existing facilities are out of compliance with Federal pollutant discharge requirements. It is difficult to trust that the MPCA will be thorough in oversight and enforcement when years go by with full awareness of active noncompliance.

Sincerely,

Debra Sluis
12668 185th Street
Milaca, MN 56353
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. Please conduct an EIS for this operation.

How big must our factory farms get before we realize that we have lost all perspective, all common sense and dignity regarding the way we raise our food? Must corporate farming be the only way? Is completely separating ourselves from the food growing process really a healthy way to proceed? Is it really in our (Minnesotans’) best interest to let corporate economics drive farming to the extent that small farmers are forced out?

These questions might sound philosophical. You already have other letters with the facts about numbers of gallons of water and karst geology and nitrates. I ask you to heed those facts, but I ask you also to consider the ideas behind these facts in contrast to practices that tend toward trusting the more and more and bigger and bigger mentality. There ARE other ways to raise food that promote the dignity, health and THEREFORE the wealth and prosperity of Minnesotans.

The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

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Sincerely,

Sandra Webb  
827 Zenith St E  
Lanesboro, MN 55949
Dear Ms. Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

The proposal will produce 46 million gallons of liquid manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting) USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota’s 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400’ X 400’ X 16’ manure pit were to be constructed. Therefore, the Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

We know that when nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW. Also, western Winona County is informally known as a "cancer cluster" as cancer rates are already high in this area. It would stand to reason that threats to human and animal health is threatened in an already compromised region when additional carcinogens are added to the environment through run-off and leakage of contaminated water.

The EAW indicates that groundwater is present at average depths of between 16 and 20 feet only in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

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Sincerely,

Blanchard And Doris Krogstad
25894 430th St SE
Winger, MN 56592
Dear Ms Grosenheider:

The Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County is insufficient information for decision making by state and county governments. The combined effects of these huge potential expansions in our karst geology areas of SE MN is now and will continue to be a growing detriment to our ground water resources. Only an EIS can begin to show that this expansion and any others like it are a very bad idea. Having lived in SE MN all my life, I have seen enough damage done to our natural resources by larger and larger agricultural projects that are not sustainable and should have never been allowed. It is time for better, science based decisions that consider long term consequences.

Sincerely,

Mike Kennedy
316 West 7th Street
Winona, MN 55987
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

The EAW indicates that this factory farm expansion will generate 46 million gallons of liquid manure annually. The EAW clearly demonstrates that this facility will have the potential for significant environmental impacts and therefore, as required by law, I request that the MPCA order the completion of an Environmental Impact Statement (EIS).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota’s 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

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The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed.

The EAW indicates that groundwater is present at average depths of between 16 and 20 feet only in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

The proposal will produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting). This is part of the record. USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

Climate change has increased intense rainfall events--since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).
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Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County's ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue, but not expand. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity."

Sincerely,

Jim Schumer
1213 County Road 2 S
Saint Stephen, MN 56375-9603
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

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We know that when nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW. Also, western Winona County is informally known as a "cancer cluster" as cancer rates are already high in this area. It would stand to reason that threats to human and animal health is threatened in an already compromised region when additional carcinogens are added to the environment through run-off and leakage of contaminated water.

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Sincerely,

Gerald Lelou
1628 Case Ln
Saint Cloud, MN 56303-1145
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Sincerely,

Barbara Finley-Shea
2816 17th St. SE
Austin, MN 55912
Dear Ms Grosenheider:

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Sincerely,

Lynn Albrecht
24785 Chatfield Drive
Belle Plaine, MN 56011
Dear Ms Grosenheider:

As a concerned Episcopalian and Priest, I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

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Sincerely,

Thomas Harries
10520 Beard Ave S
Bloomington, MN 55431
Dear Ms Grosenheider:

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Sincerely,

Chris Hughes
3515 Snellling Ave North
Arden Hills, MN 55112
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Sincerely,

Elise Kyllo
26 pincushion drive
Gand marais, MN 55604
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Sincerely,

Joe Lineweaver
305 Thompson Avenue, East
West St. Paul, MN 55118
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Sincerely,

Katherine Clinch
3717 Fairway Point
Woodbury, MN 55125
From: mailagent@thesoftedge.com <mailagent@thesoftedge.com> On Behalf Of fbhedeen@gmail.com
Sent: Tuesday, November 13, 2018 10:06 AM
To: Grosenheider, Kim (MPCA) <kim.grosenheider@state.mn.us>
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP

Dear Ms Grosenheider:

As 75-yr old’s, my husband and I still consume dairy products, but are alarmed at the project, as described below, to increase a dairy herd in the Winona area by 3,000 animals. We live in potato country in northern Minnesota and know what nitrate contamination of our city’s water source has meant to us. It appears to be even more consequential for the Winona area.

These comments concern the limited scope of the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. We understand that the proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

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Sincerely,

Florence Hedeen
703 First St. West
Park Rapids, MN 56470
-----Original Message-----
From: mailagent@thesoftedge.com <mailagent@thesoftedge.com>
Sent: Tuesday, November 13, 2018 10:02 AM
To: Grosenheider, Kim (MPCA) <kim.grosenheider@state.mn.us>
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP

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Ron Pribyl
415 7th St NE
Fosston, MN 56542
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I grew up on a small dairy farm in SW MN and know any 'corporate' farm trying to raise this many cows in one location will have profound, negative effects on all surrounding farmers. Even a farmer raising 200 to 300 cows near us made the air quality often sickening for us. I totally agree with the above reasons an EIS study needs to be done.

Diane Boushek

Sincerely,

Diane Boushek
506 Ardmore Dr
Golden Valley, MN 55422
Dear Ms. Grosenheider:

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Sincerely,

Marie Piltingsrud
12346 220th Avenue
New Richland, MN 56072
Dear Ms Grosenheider:

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Sincerely,

Donna Butler
8438 Mississippi Blvd NW
Coon Rapids, MN 55433
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Charles and Marilyn Magnuson
2744 199th Ave NW
New London, MN 56273
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Sincerely,

Ron Kroese
2048 Garden Avenue
Falcon Heights, MN 55113
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Sincerely,

Kassie Brown
488 Charles Avenue
Saint Paul, MN 55103
Dear Ms Grosenheider:

I am writing to express concern over the proposed expansion of the Daley dairy expansion from approximately 1600 to a proposed herd of more than 4600 cows. This is clearly a very substantial increase (>280% increase). This is clearly a "big ag" corporate farm, dwarfing the typical family owned dairy operation in MN.

I am concerned about the potential adverse impact of this operations on water, both in terms of potential contamination of both surface and ground water, and the magnitude of use in dairy operations. There clearly is the risk of significant environmental impacts from this factory farm. Corporate ag would like to argue otherwise and restrict public input.

I understand that MPCA is currently conducting a preliminary assessment of the proposed expansion (EAW). The potential environmental consequences associated with this expansion are significant enough to warrant a full assessment as would be completed in an Environmental Impact Statement (EIS).

Sincerely,

John Goodfellow
PO Box 132
Marine on St Croix, MN 55047
From: mailagent@thesoftedge.com <mailagent@thesoftedge.com> On Behalf Of prairiedrifterfarm@gmail.com
Sent: Tuesday, November 13, 2018 9:32 AM
To: Grosenheider, Kim (MPCA) <kim.grosenheider@state.mn.us>
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP

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Joan Olson
61369 223rd St
Litchfield, MN 55355
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Sincerely,

Allen Larson
3408 Beauty Lake Rd SW
Pillager, MN 56473
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County.

As a neighbor in Wisconsin, and fellow inhabitants of the same sensitive karst geology region I am extremely concerned about the trend toward ever larger dairies and other animal operations which both draw down enormous amounts of water from the aquifer and produce even more enormous amounts of manure which are likely to eventually contaminate the same aquifer. The proposal will produce 46 million gallons of liquid manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground.

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Nick Olson
61369 223rd St
Litchfield, MN 55355
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81307 150th Street
Sacred Heart, MN 56285
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Michael Byro
19289 150th st
Hanska, MN 56041
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Sincerely,

Ron Laswell
1414 31st Street S.
La Crosse, WI 54601
From: mailagent@thesoftedge.com <mailagent@thesoftedge.com> On Behalf Of Barbaraprokop@gmail.com
Sent: Tuesday, November 13, 2018 9:12 AM
To: Grosenheider, Kim (MPCA) <kim.grosenheider@state.mn.us>
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP

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Barbara Prokop
6580 Glen Rd Woodbury, MN
Saint Paul, MN 55129-9503
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17251 Marscfield LN SE
Prior Lake, MN 55372
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Sue Griebel
12327 170th ST
NEW ULM, MN 56073
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We know that when nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW. Also, western Winona County is informally known as a "cancer cluster" as cancer rates are already high in this area. It would stand to reason that threats to human and animal health is threatened in an already compromised region when additional carcinogens are added to the environment through run-off and leakage of contaminated water.

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Sincerely,

Kyle Black
1081 Gilmore Valley Road
Winona, MN 55987
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The proposal will produce 46 million gallons of liquid manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground water. The impact of increased nitrogen levels is unsustainable. Nitrate levels in the ground water will exceed the level for safe drinking water. USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS.

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Marian Severt
11465 Easy Street
Brainerd, MN 56401
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Large corporate farms are designed from the ground up for profit. They are a major factor in the decline of the small family farmer. Smaller farms tend to be more diversified and environmentally friendly. Survival is dependent on the health of the land. We(humans) are way beyond the time frame where we should be able to recognize that the health of our land and our water is directly connected to our health and wellbeing. We need to start considering the land and the water and the animals as sentient beings entitled to the same rights as human beings. The burden of proof belongs to the large corporations. The living ecosystems that will be violated by large corporate farming need a voice. The request for an Environmental Impact Statement should be a requirement that can not be influenced by politics, political parties and special interests. Please take a look at the big picture and ask for an Environmental Impact Statement. ALL of our lives are depending on it.

Sincerely,

Sarah Sander
3956 Cty #
Brownsville, MN 55919
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Sincerely,

Ruth Lindh
436 Newton Av S
Minneapolis, MN 55405-2039
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Sincerely,

Candace Marx
47323 County 11 Blvd.
Mazeppa, MN 55956
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Sincerely,

Dustin Szumowski
113, County Road W
River Falls, WI 54022
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My grandparents were dairy farmers. I understand something of the life. You cannot take humane care of animals in an operation this big.

I live downstream from this operation. I do NOT want their waste polluting my water.

Sincerely,

ha hulett
144 Eagles bluff
La Crescent, MN 55947
Dear Ms Grosenheider:

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Sincerely,

Patty Kakac
21467 County Rd 24 NW
evansville, MN 56326
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Sincerely,

Donna Stockman
6375 Upper 35th St N., Unit 16
Oakdale, MN 55128
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Eric Gatehouse
S1567 Simpson Rd
Wisconsin Dells, WI 53965
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Dean Borgeson
36030 Bonnie Lakes Rd
Crosslake, MN 56442-3081
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3200 S Terry Ave
Sioux Falls, SD 57106
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4515 Garfield Ave.
Minneapolis, MN 55419-4848
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3140 43rd Ave. S.
Minneapolis, MN 55406
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Sincerely,

Michael Snater
1312 Skyline Drive
Winona, MN 55987
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This expansion has serious side effects of increasing nitrate levels in the surrounding groundwaters with grave effects on people and the environment. It is due diligence to analyze this through an EIS.(https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

Another concern is the high risk karst area that this factory farm would be located in making it subject to sink holes. An EIS should address this.

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Sincerely,. Dianne Polasik

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Dianne Polasik
14420 94th Street N
Stillwater, MN 55082
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. This increase of 3,000 cows would make this one of the largest dairies in the state. The huge increases in water demand and liquid manure and wastewater will definitely affect the environment greatly, especially in this area of karst geology, where sinkhole collapses of lagoons and high levels of nitrate due to accelerated entry of surface waters into groundwater are major risks. As a retired U of M soil scientist, I am shocked that these potential impacts have not triggered a more detailed environmental review process. An Environmental Impact Statement is required to address several concerns:

1) the potential for sinkhole-related manure pit failure. Moving earth (digging, displacement), pumping water, and storing water would all be required for the proposed 400' X 400' X 16' manure pit and these are all contributors to sinkhole development. Therefore, the Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

2) the potential for high nitrates and pesticides to occur in well water. We know that when nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW. The EAW indicates that groundwater is present at average depths of only 16-20 feet in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

3) the potential for lagoon failure due to extreme weather. Climate change has increased intense rainfall events--since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).

4) the impact of a quadrupling of water usage on nearby communities and water bodies. This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take--if restoration is even possible.

5) Economic and transportation impacts. Increased consolidation in the dairy industry will have a devastating impact on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

During the public information session in Lewiston, MPCA feedlot official, Mark Gernes, stated that 3 out of 4 of the Daley's existing facilities are out of compliance with Federal pollutant discharge requirements. It is difficult to trust that the MPCA will be thorough in oversight and enforcement when years go by with full awareness of active noncompliance.

Sincerely,

Deborah Allan
1575 Merrill St
Saint Paul, MN 55108
Dear Ms. Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

The proposal will produce 46 million gallons of liquid manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting) USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota’s 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400’ X 400’ X 16’ manure pit were to be constructed. Therefore, the Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

We know that when nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW. Also, western Winona County is informally known as a "cancer cluster" as cancer rates are already high in this area. It would stand to reason that threats to human and animal health is threatened in an already compromised region when additional carcinogens are added to the environment through run-off and leakage of contaminated water.

The EAW indicates that groundwater is present at average depths of between 16 and 20 feet only in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

Climate change has increased intense rainfall events—since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).

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The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

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Sincerely,

Laurence Margolis
3916 Avondale St
Mitka, MN 55345
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

The proposal will produce 46 million gallons of liquid manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting) USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

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Sincerely,

Joseph Adler
3305 126th Lane NE, Unit E
Blaine, MN 55449
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

The proposal will produce 46 million gallons of liquid manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting) USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota’s 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400’ X 400’ X 16’ manure pit were to be constructed. Therefore, the Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

We know that when nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW. Also, western Winona County is informally known as a "cancer cluster" as cancer rates are already high in this area. It would stand to reason that threats to human and animal health is threatened in an already compromised region when additional carcinogens are added to the environment through run-off and leakage of contaminated water.

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Climate change has increased intense rainfall events--since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).

This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take--if restoration is even possible.

The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on
our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

During the public information session in Lewiston, MPCA feedlot official, Mark Gernes, stated that 3 out of 4 of the Daley’s existing facilities are out of compliance with Federal pollutant discharge requirements. It is difficult to trust that the MPCA will be thorough in oversight and enforcement when years go by with full awareness of active noncompliance.

Sincerely,

Molly Nemec
12975 351st Court
Lindstrom, MN 55045
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows.

The EAW indicates that this factory farm expansion will generate 46 million gallons of liquid manure annually. The EAW clearly demonstrates that this facility will have the potential for significant environmental impacts and therefore, as required by law, I request that the MPCA order the completion of an Environmental Impact Statement (EIS).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota’s 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take—if restoration is even possible.

The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400’ X 400’ X 16’ manure pit were to be constructed.

The EAW indicates that groundwater is present at average depths of between 16 and 20 feet only in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

The proposal will produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting). This is part of the record. USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS.

Climate change has increased intense rainfall events—since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation.
The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County’s ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue, but not expand. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity."

Sincerely,

Ron Pribyl
415 7th St NE
Fosston, MN 56542
Dear Ms Grosenheider:

Please, please think about the dramatic costs associated with such unethical, unintelligent industrial practices. This is not farming, plain and simple.

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

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We know that when nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW. Also, western Winona County is informally known as a "cancer cluster" as cancer rates are already high in this area. It would stand to reason that threats to human and animal health is threatened in an already compromised region when additional carcinogens are added to the environment through run-off and leakage of contaminated water.

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This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take--if restoration is even possible.
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Sincerely,

Dustin Braun
3324 Portland Ave
Minneapolis, MN 55420
Dear Ms. Kim Grosenheider,

Please see attached letter regarding the purposed "mega dairy".

Thank you,

Donovan Dyrdal
Dear Ms. Kim Grosenheider,

I live in an area where on of these “mega dairies” formerly existed. This farm was also out of compliance with the MPCA. These big dairy farms are driving out small dairy farmers. Several were lost when this mega dairy came in, and now they are gone and so is the mega dairy. Don’t do this to the small farms around the proposed mega dairy.

People that grow up on dairy farms have such a strong work ethic. I can sure tell over the years in our labor force the decline in capable people available to fill the roles in the agricultural industry. The expense of the farms being out of compliance with the MPCA and the several mega dairy operations that have come and gone have already cost this state too much.

They are out of compliance with the MPCA, that should be enough said. Then you factor in the very real water quality concerns, do not contaminate our finite fresh water resources.

Do not allow the mega dairy.

The comments below further provide other information regarding the negative impact that this mega dairy would have in Winona County.

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

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Sincerely,

Donovan Dyrdal

dyr-valley@hughes.net
218.681.8606
12744 180th St NW
Thief River Falls, MN 56701
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers.

The proposal will produce 46 million gallons of liquid manure and wastewater. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting) USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

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CAFOs are not the right way to farm for the health of people or the health of the environment. Industrial farming should be under the same level of scrutiny of any other industrial activity and meet the same environmental standards.

Sincerely,

Mark Plemel
3875 JACKSON RD
CLOQUET, MN 55720
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

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During the public information session in Lewiston, MPCA feedlot official, Mark Gernes, stated that 3 out of 4 of the Daley's existing facilities are out of compliance with Federal pollutant discharge requirements. It is difficult to trust that the MPCA will be thorough in oversight and enforcement when years go by with full awareness of active noncompliance.

Sincerely,

stacie spaeth
6516 channel rd
Minneapolis, MN 55432-4627
Dear Ms Grosenheider:

Please consider my comments. I have been in contact with several people who live in the area where the Factory Farm owner of Daley Farms wants to expand a herd of cows. I am opposed to Factory Farms for many reasons, including, damage to water, soil and the animals themselves, let alone pollution to the property of human neighbors. Definitely a review is necessary to assure that any such Factory Farm owner is protecting our wonderful environment for us, their neighbors and the next generations. Therefore, with others, I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

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on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take—if restoration is even possible.

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During the public information session in Lewiston, MPCA feedlot official, Mark Gernes, stated that 3 out of 4 of the Daley’s existing facilities are out of compliance with Federal pollutant discharge requirements. It is difficult to trust that the MPCA will be thorough in oversight and enforcement when years go by with full awareness of active noncompliance.

Sincerely,

Kathleen Mary Kiemen Ssnd
1284 Eldridge Ave W
Saint Paul, MN 55113-5918
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state.

This area of our state, with its karst geology of porous limestone and a high tendency to produce sinkholes, is particularly sensitive and vulnerable to groundwater contamination. The proposal will produce 46 million gallons of liquid manure and wastewater which could very quickly pollute ground water as well as aquifers. Contamination of the water would likely bring nitrate levels to an even higher level in an area where well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting) It is essential, for the good of this rural community, to thoroughly analyze the potential impact of increased nitrogen in ground water through an EIS.

There is a strong possibility of sink holes developing in this area. The creation of a larger facility involves digging and displacement of soil, pumping and storing water, all things that would increase the likelihood of new sink holes. Short of a failure of the manure lagoon, leakage from the lagoon would result in serious pollution of ground water. The Minnesota Pollution Control Agency needs to analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

A new factor that we must pay attention to and adequately plan for is the increased intense rainfall events that are occurring in Minnesota. Rainfall totals of over 9 inches in a 24- to 36- hour period have occurred three times since 2004. The capacity of a manure lagoon must be able to handle a rain storm of this nature without polluting the groundwater. (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).

The total amount of water used in this project is enormous, about 92 million gallons of water per year and would put a strain on the local water supply. With additional wells needed for this project, the impact on local water supply must be evaluated. This includes the effect that additional water usage would have on the local aquifer, and potential effect on lakes, streams, and wetlands.

The overall effect on the economy of the rural community must also be considered, in particular in how it affects neighboring family farms and moderate-sized dairy farms. This includes the need to access impact on local roads.

It is essential that an EIS is conducted in order to protect natural resources, including ground water supply and quality. The health of humans as well as wildlife is at risk with this project. In considering the impact of factory farms, it is very important to consider the overall well-being of the people, the local economy, and the natural environment. Once facility can cause tremendous damage, so it is imperative that the plan for a larger operation be carefully studied through an EIS.

Sincerely,

Diane Klinefelter
1011 Iowa Ave W
Saint Paul, MN 55117-3360
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

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Sincerely,

Judith Meyer-Larson
36244 Shady Lane Trail
Cannon Falls, MN 55009
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Sincerely,

Jeanne Groebner
32526 Hugo Dr
St. Peter, MN 56082
Dear Ms Grosenheider:

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Sincerely,

Thomas Richards
3333 Red Oak Lane
Barnum, MN 55707
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During the public information session in Lewiston, MPCA feedlot official, Mark Gernes, stated that 3 out of 4 of the Daley's existing facilities are out of compliance with Federal pollutant discharge requirements. It is difficult to trust that the MPCA will be thorough in oversight and enforcement when years go by with full awareness of active noncompliance. All told, this mega dairy farm is an environmental and human disaster in the making. Please proceed with a full environmental review.

Sincerely
Deborah Alper

Sincerely,

Deb Alper
1835 fairmount ave
St. Paul, MN 55105
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows.

The EAW indicates that this factory farm expansion will generate 46 million gallons of liquid manure annually. The EAW clearly demonstrates that this facility will have the potential for significant environmental impacts and therefore, as required by law, I request that the MPCA order the completion of an Environmental Impact Statement (EIS).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota's 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

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Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County’s ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue, but not expand. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity."

Sincerely,

Paulette Pass
170 Good Counsel dr.
Mankato, MN 56001
Dear Ms. Kim Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP, dairy expansion proposal near Lewiston in Winona County. This is a proposed expansion from 1,728 cows and calves to 4,628 cows, calves and heifers, making it one of the largest dairies in the state. Over 96 percent of dairies in Minnesota are 500 cows or smaller and 86 percent are less than 200 cows (https://www.nass.usda.gov/Statistics_by_State/Minnesota/index.php).

The EAW indicates that this factory farm expansion will generate 46 million gallons of liquid manure annually. The EAW clearly demonstrates that this facility will have the potential for significant environmental impacts and therefore, as required by law, I request that the MPCA order the completion of an Environmental Impact Statement (EIS).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota's 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take—if restoration is even possible.

The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed.

The EAW indicates that groundwater is present at average depths of between 16 and 20 feet only in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

The proposal will produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting). This is part of the record. USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

Climate change has increased intense rainfall events—since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).
The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

Lastly, I am concerned that a project that is clearly not allowed by the Winona County Ordinance is currently being considered for a state feedlot permit by the MPCA. Winona County’s ordinance states: "No permit shall be issued for a feedlot having in excess of 1,500 animal units per feedlot site." The current Daley Farms operation was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue, but not expand. The county ordinance states: "No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity."

Sincerely,

Sylvia Borgmeier
170 Good Counsel Dr
Mankato, MN 56001-3138
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

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We know that when nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW. Also, western Winona County is informally known as a "cancer cluster" as cancer rates are already high in this area. It would stand to reason that threats to human and animal health is threatened in an already compromised region when additional carcinogens are added to the environment through run-off and leakage of contaminated water.

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Sincerely,

DAVID WASHBURN
225 E. 9th St., Unit 601
St Paul, MN 55101-2522
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Sincerely,

Meg Anderson
225 9th St E
St Paul, MN 55101
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Sincerely,

Lee Randall
3098 Alexander Lane
Mound, MN 55364
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Sincerely,

Kathy Crandall
6259 County Road 15
Herman, MN 56248
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Sincerely,

Starr Brainard
125 N 2nd Ave E
Duluth, MN 55805
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Sincerely,

Rafael Bustos
2931 W. 85th St.
BLoomington, MN 55431
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Sincerely,

Gretchen Bratvold
3444 Edmund Blvd
Minneapolis, MN 55406
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Wayne Hervey
502 1st Av So
WHEATON, MN 56296
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Sincerely,

Melissa Hochstetler
2200 E24th St
Minneapolis, MN 55404
Dear Ms Grosenheider:

My first reaction was to laugh at what is certainly a preposterous plan. Over four and one-half thousand cows on one site in a karst subsoil area. Surely, this must be a joke and the Daley Farm folks are pulling our leg.

But no, it's for real. So, I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

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Please order the EIS.

Thank you for your attention and for this opportunity to comment.

Sincerely,

Joan Meierotto
13900 44th St S
Afton, MN 55001-9371
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Sincerely,

Mark M Giese
1520 Bryn Mawr Ave
Racine, WI 53403-3606
-----Original Message-----
From: mailagent@thesoftedge.com <mailagent@thesoftedge.com> On Behalf Of alecnord@hotmail.com
Sent: Tuesday, November 13, 2018 9:27 PM
To: Grosenheider, Kim (MPCA) <kim.grosenheider@state.mn.us>
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP

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Sincerely,

Alec Nord
204 west 77th street
Chanhassen, MN 55317
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John Fisher-Merritt  
2614 County Road 1  
Wrenshall, MN 55797-8718
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Sincerely,

Mary Voight
951 McKnight Road
St. Paul, MN 55119
Dear Ms Grosenheider:

My name is John Harper, and I am writing to you to voice my "against the proposed expansion of the Daley farm". I grew up on a small family farm in the 70's and 80's with enough cows and hogs to raise a family of 6. Agriculture was our way of life. We knew the land and the land knew us. The land gave us crops and food for our animals, which in turn gave us a rural life that can never be taken from us. We also knew the direct importance of a clean environment and how farmers can change that. We were and are still grateful to farming and the farmers that choose this vocation of work.

My family and I currently live within 1 mile of the Daley Farm. We are DEEPLY CONCERNED about their environmental impact of their proposed farm/animal expansion. We currently have clean, fresh, low nitrate water, but will we if the Daley farm is expanded? Will their proposed water usage deplete the underground aquifers? Will sink holes develop around their proposed site-spilling millions of gallons of manure and animal waste into the aquifers? I don't know, and I don't think anyone really knows. For these reasons, I am against the Daley expansion......for the health of ALL people living within the Lewiston-Daley Farm region.

I like the Daley family, for I've even taught their kids in the public elementary school for the past 20 years. I do not like their proposed business idea for the future. I see too many people being affected in an ill way if this proposed operation passes.

Thank you for considering my point of view, John Harper Altura, MN

-----Original Message-----
From: mailagent@thesoftedge.com <mailagent@thesoftedge.com> On Behalf Of siloways@hotmail.com
Sent: Tuesday, November 13, 2018 8:46 PM
To: Grosenheider, Kim (MPCA) <kim.grosenheider@state.mn.us>
Subject: Request for Environmental Impact Statement on Daley Farms of Lewiston, LLP

Dear Ms Grosenheider:

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My family and I currently live within 1 mile of the Daley Farm. We are DEEPLY CONCERNED about their environmental impact of their proposed farm/animal expansion. We currently have clean, fresh, low nitrate water, but will we if the Daley farm is expanded? Will their proposed water usage deplete the underground aquifers? Will sink holes develop around their proposed site-spilling millions of gallons of manure and animal waste into the aquifers? I don't know, and I don't think anyone really knows. For these reasons, I am against the Daley expansion......for the health of ALL people living within the Lewiston-Daley Farm region.

I like the Daley family, for I've even taught their kids in the public elementary school for the past 20 years. I do not like their proposed business idea for the future. I see too many people being affected in an ill way if this proposed operation passes.

Thank you for considering my point of view, John Harper Altura, MN

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21579 Only Avenue
Altura, MN 55910
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Kurt Kimber
4811 35th Ave S
Minneapolis, MN 55417
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Darcy Bergh
1121 Hallam Ave N
Mahtomedi, MN 55115-1569
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732 West 4th Street
Winona, MN 55987
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16363 70th Ave
Little Falls, MN 56345-5282
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richard Laybourn
11020 oregon curve
bloomington, MN 55438
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9601 Union Road PO Box 1
Donaldson, IN 46513-0001
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Pollution of ground water, streams and rivers is no longer acceptable. The over use of our water supply is a growing concern as climate change continues.

Quality of life issues in these areas are despicable and a health hazard also.

Until these farms find a way to comply with existing rules, and prevent additional compromise of our resources, they should not be allowed to operate, much less expand.

If the MCPA can not oversee and these issues in a timely manner, they should be replaced with people that can.

We are all watching this closely. We pay taxes and WE VOTE.

Sincerely,

Wendy Peardot
4500 Southmore Dr
Minneapolis, MN 55437
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Sincerely,

Mickey Foley
1796 29th Ave NW
New Brighton, MN 55112
Dear Ms Grosenheider:

It is time for the safety of the public and rural economic stability to take precedence over corporate profits. For these reasons and all of the supporting evidence listed below you must do all the due diligence EIS work, Or Better Yet, just call it a day skip the expense and refuse to permit this operation. The risks are high (just ask North Carolina) and the potential financial benefits will only serve a very few but will hurt many small producers.

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Sylvia Luetmer
2204 E Lake Jessie Road SE
Alexandria, MN 56308-8925
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7420 Izaak Walton Rd W
Bloomington, MN 55438
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Amelia Shoptaugh
888 Thomas Avenue
Saint Paul, MN 55104-2630
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Sincerely,

Gwen S Myers
12009 Hilloway Rd W
Minnetonka, MN 55305
Dear Ms. Grosenheider,
I am writing as a concerned citizen, user of dairy products, user of clean water and inhabitant of the Metro area. This proposal of Daley Farms to expand exponentially is a really unsound idea. There is such a thing as being too big and that looks to be true of this proposal. The expected water usage and its effects on the aquifer plus the huge issue of the manure pond containment in a geological region of karst formation speaks very strongly for a thorough Environmental Impact Statement. Also Daley Farms has a blemished record of meeting environmental standards as it is. Please protect all of us and our environment with a thorough EIS. Thank you!
Dear Ms Grosenheider:

The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on our rural community, and an EIS is needed to evaluate this. When will we return to the days of COMMON GOOD over the CORPORATE PROFIT MOTIVE that destroys. Regenerative Agriculture is a solution that needs to be considered and protected in all PUC Agricultural reviews and recommendations. Study and educate yourself about the benefits you could be encouraging we move toward.

Sincerely,

Ginny Halloran
4011 Queen Ave S
Minneapolis, MN 55410
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Having many friends in this beautiful area, that is a favorite destination for us, please protect the health and safety of this place.

Sincerely,

Sheryl Samuel
891 Berme Rd
High Falls, NY 12440
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Milo Oien-Rochat
5908 Russell Ave S
Minneapolis, MN 55410
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Kathleen Blake
835 NE 3rd Ave
Grand Rapids, MN 55744-2816
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Sincerely,

Gloria Degele
1284 Eldridge Ave W
Roseville, MN 55113-5918
Dear Ms. Grosenheider,

I am writing to express my concern regarding the Massive Farm proposal and believe it is in the best interest for all to implement an EIS in response to this request. The size of this proposed farm is enormous and the demands it will have on the environment are very real and need very careful consideration.

The liquid manure and wastewater generated is of great concern and the demand of water use will be taxing. The safety of processing this amount of waste in an area prone to sinkholes is a great risk.

Minnesota has had a reputation for taking care of its natural resources, but economic claims create real challenges. I do not want the State of Minnesota to not take into consideration the long term and negative environmental and economic effects of such a proposal, with only a short term view of any economic benefits. We are all at a point in time when we can no longer afford to not fully understand the long term risks and costs of decisions that are made. We have been turning away from environmental issues for too long and it is catching up to us. Tainted drinking water and cancer rates are not something that easily goes away.

We need a balanced solution to all of the state’s farming practices. There is nothing balanced about this mega operation proposal and because of this alone, it requires careful and detailed scrutinization.

I therefore ask that a full and detailed EIS take place. I would further like there to be a discussion in general about requests such as a mega-dairy farms in Minnesota, and perhaps some guidelines could be developed so that this request and future requests may be placed within a forum that does not pit environmentalists against business and economic interests. There is too much US vs THEM going on in our discourse. We need greater understanding of how we can live and work with a quality of life that we can all be proud of.

Thank you

Elizabeth Wehrwein
1403 Albany Ave
Saint Paul, MN. 55108
c) 651-470-6943
albanyskye@mac.com
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5293 Nolan Parkway
Stillwater, MN 55082
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1112 North jSecond Street
Stillwater, MN 55082
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Dorothy Dolezal
3005 West 43rd St
Minneapolis, MN 55410
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Randy Baker
137 w 46th
Minneapolis, MN 55419
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Sincerely,

Sally Vogel
19429 US Highway 218
Austin, MN 55912-5867
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Sincerely,

Joshua Otte
18356 Sylvan Heights Rd
St. Charles, MN 55972
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Sincerely,

Luke Nord
2027 worcester ave
saint paul, MN 55116
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I am opposed to this expansion for environmental, health, and moral reasons. People are consuming less dairy and MN should be looking toward the future, with more sustainable and less harmful practices.

Sincerely,

Kellie Hoyt
3140 Bryant Ave S #4
Minneapolis, MN 55408
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And there is currently a national excess of milk in the market, resulting in prices below the cost of production. This has been the case for the past three years. A UMN expert economist has stated that 80% of Minnesota dairy farms should stop milking cows (close down their dairies) because they cannot get a sufficient price to cover their costs. So we do not need more milk to "feed the world" or supply our communities.

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Sincerely,

Joan Stockinger
4119 York Ave South
Minneapolis, MN 55410
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. An in-depth Environmental Income Statement (EIS) is absolutely necessary. I can hardly believe I have to request this when the IPCC has given us 12 years to limit climate change enough to keep the world as we know it. Worldwide, animal agriculture is responsible for 90 percent of methane emissions and the U.S. habit of raising animals for food contributes more than half of our carbon footprint. There is no longer a place in this world for this kind of factory dairy operation. I am asking you to protect us.

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We have to make changes now. An EIS is required to show the true costs of an operation like this.

Sincerely,

Diana Brainard
4544 Sunset View Drive
Duluth, MN 55803
Mr Gernes,

We share the water supply (aquifer) that Daly farms is relying on for their expansion. In our region of Minnesota alone, in the last 15 years, there have been three storms with rainfall totals over 9 inches during 24- to 36-hour periods in the last decade. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation.

This should be addressed prior to any consideration of expansion.

Thank you,

Vincent Ready
11048 Cox Dr
St Charles MN 55972
Mr Gernes,
Concerning the decision whether there needs to be a hearing for Daley Farms.

Although the MPCA acknowledges that Daley Farms manure pits and feed pads are out-of-compliance, they’ve been allowed to continue operating for evidently about 10 – 12 years without fixing the problem. This flies in the face of a standard of “pollution discharge elimination”.

It appears that during this period of non-compliance and non-enforcement, there has been no monitoring by MPCA of chemical and bacterial impact or any effort to measure the impact of leakage and runoff from out-of-compliance facilities on local water. Therefore, it makes no sense that Daley Farm’s proposal is being considered for permit when proposed new buildings for their expansion are still in need of plans to be developed to collect runoff.

Given the proximity to known sink hole features, construction of a new 400’ X 400’ X 16’ manure pit which would have to meet a ZERO discharge standard, it’s impossible for the public to have confidence this standard will be enforced. If the past is any indication of the future, it’s a red flag. The volume and potential harmful impact of the new manure pit alone increases current issues and threats to public health

Please consider these facts.

Thank you,
Vince Ready
11048 Cox Dr
St Charles Mn 55972
Mr Gernes,

Given the following reasons and information, it is clear that the NPDES permit application for the Daley farm be denied and a contested Case Hearing be held:

* The MPCA has allowed the Daley farm manure lagoons and feed pads to be out of compliance for approximately 10-12 years.

* During this period of non-compliance, there has been no monitoring by the MPCA for chemical or bacterial effect, no effort to measure the impact of the out-of-compliance measures, or effort to collect data on any of these effects. Why in the world would the county trust the Daley farm or the MPCA to follow their own regulations now?

* The documented karst geological formation of the area predisposes it to catastrophic sinkhole development. Oh that’s right, that has already occurred in 1991 when the Lewiston Municipal sewage lagoon disappeared into a sinkhole. Maybe you forgot that.

* The combination of massive water use, vast amounts of animal waste producing huge quantities of nitrogen added to the soil, and likelihood of sinkhole formation require that an EIS be required as it is without a doubt that there would be "significant environmental impact" if this plan were to move forward.

No NPDES permit, and an EIS required is the least the MPCA can do at this point after wasting taxpayer dollars on an effort that would endanger the land, water, air, and citizens of Winona County.

Thanks and hopefully,
Amy Cordry
26006 County Road 9
Winona MN 55987
507.454.7731
As a concerned citizen, I must let you know I am strongly opposed to the Daley farm expansion. I have been a multi-decades long customer of several of the nearby farms, and believe that allowing this expansion would negatively impact these farms, the neighborhood, and the image of this region. The Daley farm is already out of compliance. Bypassing ordinances that are meant to protect and preserve the land and livelihood of all the local farmers and neighbors would be a disaster, and a slap in the face to those who work and live within the rules.

Respectfully,

Deborah L. Nichols
Dear Sir:

It seems insane to not demand all the studies appropriate for this expansion. #1 Karst topography. #2 They are already in violation of waste water disposal. #3 We cannot afford the to allow the vast amount of water they would take from our aquifer we all share. Please have some respect for those of us who share water with the Daleys. There are other ways they could expand their business.

Thank you for considering my concerns.
Mr Gernes,

Please do not issue a NPDES permit for the Daley Farm expansion. I think that you are very knowledgeable about Winona County having worked here. You must know that this size dairy farm is not a good fit for our sinkhole prone and fragile karst geology. A request for a dairy of this size in other parts of MN may not have the same impact that one in SE MN would have on water quality. Our impaired waterways in this part of MN are substantial. Wells are contaminated and the aquifer is at risk both from pollutants as well as a reduction of water. Clean drinking water is a necessity for people.

It would also be a shame to disrupt the habitat of fish, especially trout in our area. We would be exchanging one form of commerce for another. We are nationally known for good fishing in Winona County. The fish in our streams and rivers are more in harmony with our water than the cows.

It is my understanding that the MPCA has been remiss in monitoring the Daley Farm and other operations for chemical and bacterial pollution in SE MN for over a decade. We need testing information on run off and leakage from manure pits. I do not understand why an operation would be issued a permit when not in compliance or why the Daley Farm has been allowed to continue operation under non-compliance circumstances. I view this monitoring as the responsibility of the MPCA.

I also have some concerns about giving the Daley Farm in Lewiston a NPDES Permit for their expansion before Winona County has approved a bigger dairy. I think that your issuing the permit would act as bias on behalf of the dairy.

Again, Mr Gernes, please do not issue a NPDES permit for the Daley Farm in Lewiston. Thank you.

Margaret Walsh
1775 W Broadway Street
Winona, MN  55987
507-452-2292
Mr. Gernes,

I am writing to express my opinions on the expansion of the Daley Farm dairy operation.

I OPPOSE this expansion for the following reasons;
1. As stated in the Winona press current feeding pads and manure pits are out of compliance and have been for a number of years. Granting a permit when current requirements are NOT met is asinine and  gross negligence as it relates to the public health.

2. MPCA monitoring has been lax and confidence in such monitoring as it relates to future expansion is of extreme concern.

3. This area is in a karst region and with the majority of wells in Winona County exceeding nitrate levels it puts more wells in harms way with this proposed MAJOR expansion.

4. Proposed off site distribution of manure may have a broader effect on the groundwater contamination unless these sites are monitored rigorously of which there is no indication of such action being proposed. Have future(off site)manure sites been vetted and studied for their suitability for use? Who and how often will these sites be monitored?

5. Have current land areas around this expansion been monitored for ground-water contamination? Has there been monitoring of the current manure holding facilities to dispel any potential leakage?

6. EXTREME rainfall amounts such as we have had the past few months do not bode well for manure application with the prospect of contamination.

7. The amount of water needed for this operation has the potential to undermine water quantity and quality in this area. Future study and further study is CRITICAL.

8. The amount of nitrogen and methane gas produced by this expansion is a serious concern and MUST be ADDRESSED before any further action is taken on this permit.

9. I have observed over the past two years manure application on frozen ground in this area which contributes runoff and increased water impairment.

ALL of the above issues MUST be carefully examined and publicized in an open,fair and complete manner.

In summary, the NPDES permit application for this expansion must be DENIED.
A Contested Case Hearing needs to be arranged for the safety and well-being of the public.

As a final note, a retired hydrologist for the STATE of MONTANA and a registered geologist for the Nature Conservancy has looked at this expansion in depth and has determined this expansion has serious negative effects on the environmental health of the area.

Sincerely,

Patrick Byron
157 West Third Street
Winona, MN  55987
Dear Mr. Gernes:

These are comments from the Land Stewardship Project to the NPDES permit application on the proposed Daley Farms of Lewiston, LLP – 2018 Dairy Expansion from 1,728 cows (2,275 animal units) to 4,628 cows (5,968 animal units) in section 16 of Utica Township, Winona County.

**For the reasons listed below we do think it is possible for Daley Farms to meet the no-discharge standard required by a NPDES permit. Therefore, we request that the NPDES permit application for Daley Farms be DENIED. We are also requesting a Contested Case Hearing.**

1. **Daley Farms facilities are currently out of compliance.** Although the MPCA acknowledges that Daley Farms manure pits and feed pads are out-of-compliance, they’ve been allowed to continue operating for evidently several years without fixing the problem. This flies in the face of a standard of “pollution discharge elimination”. It appears that during this period of non-compliance and non-enforcement, there has been no monitoring by MPCA of chemical and bacterial impact or any effort to measure the impact of leakage and runoff from out-of-compliance facilities on local water. Therefore, it makes no sense that Daley Farm’s proposal is being considered for permit when proposed new buildings for their expansion are still in need of plans to be developed to collect runoff.

2. **Given the proximity to known sink hole features, construction of a new 400’ X 400’ X 16’ manure pit which would have to meet a ZERO discharge standard, it’s impossible for the public to have confidence this standard will be enforced.** If the past is any indication of the future, it’s a red flag. The volume and potential harmful impact of the new manure pit alone increases current issues and threats to public health.

3. **Climate change has increased intense rainfall events--since 2004** in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24 to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (Study available here: https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html)

4. The proposal will produce 46 million gallons of liquid manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.5% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (Study available here: www.mda.state.mn.us/townshiptesting)

5. USDA Natural Resources Conservation Service studies indicate that 200 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (Study...
6. **A failure of the manure pit due to the area’s karst geology is possible and will result in a massive discharge.** The EAW does not acknowledge or analyze the potential for the pit failure. This possible pit failure due to the sensitive karst area would result in millions of gallons of raw manure and liquid waste entering the groundwater. The EAW states this factory farm will generate 46 million gallons of manure and liquid waste annually and the pits will be emptied twice a year. This means there will be millions of gallons in the pit most of the year. Three of southeast Minnesota’s 22 municipal sewage lagoons have collapsed, the most recent in 1992. (Altura in 1976, Lewiston in 1991 and BelleChester in 1992). The MPCA must analyze what the impact of a catastrophic failure of this multi-million-gallon manure pit would be. After expansion, in total all manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed new 400' X 400' X 16' manure pit were to be constructed. Therefore, the Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

7. **The EAW indicates that groundwater is present at average depths of between just 16 and 20 feet in the area where manure storage is planned.** Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater. Climate change has increased intense rainfall events--since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24 to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (Study available here: [https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html](https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html)).

8. **The impact on groundwater availability and quality pose potential for significant environmental impact.** This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take--if restoration is even possible. USDA Natural Resources Conservation Service studies indicate that 200 cows produce as much nitrogen as 5,000 people. (available here and study attached [https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211](https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211)).

First and foremost, water wells in Utica and Lewiston have already been compromised with nitrate and radium levels nearing, matching, and/or above the maximum level of 10mg/L designated by the Minnesota Department of Health (Available here and study attached [http://www.mda.state.mn.us/sites/default/files/inline-files/allctyresults_0.pdf](http://www.mda.state.mn.us/sites/default/files/inline-files/allctyresults_0.pdf)) Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates." (Available here and study attached [www.mda.state.mn.us/townshiptesting](www.mda.state.mn.us/townshiptesting)).
Direct from the Department of Health web site, “…where sources of nitrate such as fertilizers, animal wastes, or human sewage are concentrated near the ground surface, nitrate may seep down and contaminate the groundwater. Elevated nitrate levels in groundwater are often caused by run-off from barnyards or feedlots, excessive use of fertilizers, or septic systems….Nitrate contamination of a well is often regarded as a first sign of deteriorating groundwater quality.” (Available here: http://www.health.state.mn.us/divs/eh/wells/waterquality/nitrate.html).

We submit that this NPDES permit application must be denied and we request a contested case hearing due to the reasons outlined here.

Sincerely,

Barbara Sogn-Frank
Land Stewardship Project
Factory Farm Policy Organizer
612-722-6377
bsognfrank@landstewardshipproject.org

Barb Sogn-Frank, Factory Farm Policy Organizer
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STATE OF MINNESOTA IN DISTRICT COURT
COUNTY OF FILLMORE THIRD JUDICIAL DISTRICT

File No. CX-00-306

Fillmore County Residents
Concerned For Health, Janice Poldervaard,
Loren Poldervaard, Erwin Tart, Robert
Wood, Eloda Wood, George Heidtke,
Thomas Schulz, Larry Schulz, Otto Meyer,
Judy Tart, David Applen, Donovan Ruesink,
Jeff Tart, Joyce Tart, Sandy Oeltjen, Mark Oeltjen,
Karen Angell, Arlen Angell, Laurie Applen, Gene
Merkel, Darlene Merkel, Lois VanderPlas,
Verlyn Johnson, Sara Poldervaard, Robert K.
Johnson, Judy Bly-Smith,

Plaintiffs,

vs.

ORDER AND
MEMORANDUM OF LAW

Minnesota Pollution Control Agency,

Defendant,

Reiland Farms,

Intervenor.

This matter came on for hearing before the Honorable Robert R. Benson on September 25, 2000, on cross-motions for summary judgment.

James P. Peters and Karna M. Peters of Peters and Peters, PLC, 20020 S. Lakeshore Dr., Glenwood, Minnesota 56334, appeared on behalf of the Plaintiffs.

Ann E. Cohen, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127, appeared on behalf of Defendant Minnesota Pollution Control Agency (MPCA).

Michael S. Dove, 2700 South Broadway, P.O. Box 458, New Ulm, Minnesota 56073-3111, appeared on behalf of Defendant-Intervenor Reiland Farms.

This Court, being fully advised, and based on the files, records, and proceedings herein hereby finds and orders as

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follows:

1. Plaintiff Fillmore County Residents Concerned for Health’s motion for summary judgment is granted;
2. Defendant Minnesota Pollution Control Agency’s motion for summary judgment is denied;
3. The attached Memorandum is incorporated by reference.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT

Dated: December 22, 2000 /s/ Robert R. Benson

Robert R. Benson
Judge of District Court

JUDGMENT

The foregoing Order and Memorandum of Law dated the 22nd day of December, 2000 constitutes the Judgment of the Court.

Judgment is hereby entered this 22nd day of December, 2000.

JAMES ATTWOOD
COURT ADMINISTRATOR
MEMORANDUM OF LAW

Introduction

This Court, like most courts, is concerned about inserting the power of our third branch of government into areas that are primarily and appropriately within the realm of the legislative or executive branches. In the instant case, a statute was propounded by the legislature, but the enforcement and interpretation of that law was delegated by the legislature to the executive branch. Defendant MPCA argues that Plaintiffs seek to have this Court second-guess the technical judgment of the MPCA on the strength of popular opinion. "Boiled down" (to borrow another phrase from Defendant's brief) Defendant essentially argues that this issue is none of the Court's business. This Court wishes it were so. However, the same legislature that delegated responsibility to the MPCA also specifies by law (Minn. Stat. §116D.04 subd. 10) that an executive decision on the need for an EIS is reviewable in the District Court. Plaintiffs have properly sought the review of this Court.

Fillmore County Residents Concerned for Health has filed a motion for summary judgment, which challenges MPCA's negative declaration concerning the need for an environmental impact statement (EIS) regarding Reiland Farms' proposal to develop a dairy feedlot in the karst area of southeastern Minnesota. Defendant MPCA has filed a cross motion for summary judgment. The Court finds that the Plaintiffs are entitled to summary judgment. The motion of Defendants for summary judgment is denied.

There has also been disagreement over the Plaintiff's offer of proof to the Court. The Court finds that some of these items will be allowed into evidence as stated below in greater detail.

Plaintiff's Offer of Proof

The Court may consider evidence outside the administrative record when 1) the agency's failure to explain its action frustrates judicial review; 2) additional evidence is necessary to explain technical terms of complex subject matter involved in the agency action; 3) the agency failed to consider information relevant to making its decision; or 4) plaintiffs make a showing that the agency acted in bad faith. White v. Minnesota Department of Natural Resources, 567 N.W.2d 724, 735 (Minn. App. 1997). If the evidence submitted outside the administrative record demonstrates that the agency's effort was clearly inadequate or that the agency failed to set forth widely shared relevant scientific views, the Court's proper function is to remand to the agency for correction of the agency's error. Id.

It should be noted that the Court is only addressing the offers of proof which are being admitted and which were initially contested in this decision.

Peters Exhibit C:

This exhibit shall not be admitted. Exhibit C is unclear in its comments, and there are sufficient viewpoints from Dr. E. Calvin Alexander, Jr. present in the official record.

Peters Exhibit I:

The Guidelines for Alternative EAW form for Animal Feedlots provide general guidance on the EAW form and explains how the MPCA interprets the technical terms of "phased actions" established by EQB (Environmental Quality Board) rules. Under White and Audubon (National Audubon Society v. Minnesota Pollution Control Agency, 569 N.W.2d 211 (Minn. App. 1997)), the information is relevant to explain technical terms and is therefore admitted for this purpose.

Peters Exhibit J:

This exhibit is admitted because it is not objected to by the MPCA.
Peters Exhibit N:

This exhibit shall not be admitted. It does appear to the Court that this document, which is essentially a memo from one person in the Department of Health to another person in the Department of Health, is strictly an internal memorandum, and accordingly its admission would appear to the Court to be in violation of Audubon.

Peters Exhibit O:

This exhibit has been withdrawn by the plaintiff and shall not be considered.

Peters Exhibit S:

This exhibit is withdrawn by plaintiff and shall not be considered.

Peters Exhibit W:

The MPCA does not object to this document and it shall be considered.

Peters Exhibit CC:

The Court finds that this exhibit should not be admitted. It appears to be cumulative and it does not constitute such additional evidence that would meet the White criteria.

Peters Exhibit DD:

This exhibit does discuss a report of the MPCA (the RGU (Responsible Government Unit)) and it would appear to the Court that the data in this report is something that should have been considered by the MPCA. Clearly it does discuss the information which was in the hands of the MPCA and which it should have considered. This Court finds that this information is admissible under Audubon.

Peters Exhibit EE:

This exhibit demonstrates the scientific view that manure application can cause serious bacteria contamination of groundwater, thereby meeting the standard for consideration of the evidence. It is clear, however, that the document was available to the MPCA during its deliberations. The MPCA should recognize its own studies, and it is not necessary for plaintiff in this case to submit into the administrative record information generated by the MPCA. Accordingly the Court admits this exhibit.

Peters Exhibit FF:

The Court finds that this exhibit is appropriate to include. It contains detailed information on MPCA staff reasoning on a project that is similar even though not the same as the currently proposed project. In many ways, the Court agrees that it is not the same as the proposed project but there are parts of it that contain MPCA staff reasoning. The staff reasoning in some cases relates to the types of problems that are foreseen in the current project. Therefore, the Court finds that this exhibit does meet the White criteria. The Court understands that in the above case the MPCA board did not recommend an EIS, but some of the MPCA staff certainly did.
Peters Exhibit HH:

The MPCA does not object to this document and so it shall be admitted.

Peters Exhibit II:

The MPCA does not object to this document and so it shall be admitted.

Peters Exhibit JJ:

The Court finds that this exhibit does not meet any of the White criteria and is not otherwise helpful to the Court and it therefore shall not be admitted.

Peters Exhibit KK:

The notes shown in this exhibit are not explained to the Court in any manner. These notes are also undated and do not meet any of the criteria listed in White. This Court cannot determine how these notes would be helpful to it and therefore denies admission.

Tart, Poldervaard and Heidtke affidavits and pictures:

Essentially these affidavits and pictures deal with water problems alleged in the general area where the project is to be located, but not where the lagoon would actually be located. These documents do not meet any of the criteria set forth in White. This Court finds that this information is cumulative and shall not be admitted.

Facts

The parties have essentially agreed upon the facts. The Court finds the pertinent facts to be as follows:

This project is proposed to occur in the karst regions of Southeastern Minnesota. Karst is a geological term for a landscape area created over soluble rock with efficient drainage. Constructing New Manure Storage Systems in the Karst Region, Interim Guidelines Document, pg. 2 (March 2000). The underlying carbonate bedrock in a karst region dissolves over time to produce solution-enlarged joints and cracks. Id. These features can result in rapid transmission of contaminants from the land surface to the groundwater below. Id. Groundwater contamination from excessive levels of nitrates and bacteria, which exceed state health standards, is already higher in Fillmore County than in other counties in the area.

Reiland Farms is a third-generation family farm. In an effort to compete in an ever-changing agricultural arena Reiland Farms proposed to develop a dairy feedlot near their home in Fillmore County. Reiland Farms agreed to voluntarily prepare an Environmental Assessment Worksheet (EAW) to ensure the environmental integrity of its proposed dairy.

The Feedlot expands upon and aggregates with an existing feedlot at their Home site, which is permitted for 390 animal units. According to the EAW, the Feedlot proposes to use the Home site to feed replacement heifers for the new facility and may expand. The Home site sits in an area of high risk for sinkhole formation. The EAW also affirmatively states in a check-off box that the Feedlot includes a planned and likely expansion of 560 animal units.

The Feedlot includes plans for two open manure basins holding a total of 7.3 million gallons of liquid manure with capacity to serve 1,260 animal units. The Feedlot is proposed for the karst region with nearby blind valleys and sinkholes.
The Feedlot is proposed near the North Branch of the Forestville Creek, a high quality trout stream, near the South Branch Root River, near groundwater resources in the area and near a state park.

In February 2000, the MPCA published an EAW that summarized environmental information relative to Reiland Farms’ proposal to develop a Feedlot. After review of geological and engineering information regarding the proposed facility, the MPCA concluded that location and design of the facility were adequately protective of the environment and that the Reilands would not be required to prepare an EIS.

Analysis

THE MPCA’S NEGATIVE DECISION INVOLVING AN EIS

This Court has jurisdiction over this matter under Minn. Stat. §116D.04, subd. 10, which provides that decisions on the need for an EIS may be reviewed in the District Court of the County where the action is proposed to be taken.

Summary judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law. Minn. R.Civ.P. 56.03. In ruling on a summary judgment motion, the Court must view the facts in the light most favorable to the non-moving party, and resolve doubts and factual inferences against the moving party. Hopkins v. Empire Fire & Marine Ins., 474 N.W.2d 209, 212 (Minn. App. 1991). The trial court’s obligation is to determine whether issues of fact exist, not to weigh the evidence, determine credibility of the witnesses or resolve the issues of fact. Schumacher v. Heig, 454 N.W.2d 446, 448 (Minn. App. 1990); Nord v. Herreid, 305 N.W.2d 337 (Minn. 1981).

When reviewing a responsible government agency’s negative declaration of need for an EIS, this Court reviews the decision to determine if it is "unreasonable, arbitrary or capricious, with review focused on the legal sufficiency of and factual basis for the reasons given." Iron Rangers for Responsible Ridge Action v. Iron Range Resources, 531 N.W.2d 874, 880 (Minn. App. 1995) (quoting Swanson v. City of Bloomington, 421 N.W.2d 307, 303 (Minn. 1988)). An agency’s decision is arbitrary and capricious if it represents its will and not its judgment. Trout Unlimited, Inc. v. Minnesota Dep’t of Agriculture, 528 N.W.2d 903, 907 (Minn. App. 1995).

An agency ruling is arbitrary and capricious if the agency: 1) relies on factors not intended by the legislature; 2) entirely failed to consider an important aspect of the problem; 3) offered an explanation that runs counter to the evidence; or 4) the decision is so implausible that it could not be explained as a difference in view or the result of the agency’s expertise. White at 730.

Agency decisions are reversed only when they reflect an error of law, the findings are arbitrary or capricious, or the findings are unsupported by substantial evidence. Id. The Courts have endorsed the following definition of "substantial evidence": 1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2) more than a scintilla of evidence; 3) more than some evidence; 4) more than any evidence; 5) evidence considered in its entirety. Id.

The Court will intervene, however, where there is combination of danger signals which suggest the agency has not taken a hard look at the salient problems and the decision lacks articulated standards and reflective findings. Id.

An EIS is required where there is potential for significant environmental effects. Audubon at 216. In determining whether a project has the potential for significant environmental effects, the agency must consider four factors: 1) type, extent, and reversibility of environmental effects; 2) cumulative potential effects of related or anticipated future projects; 3) the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and 4) the extent to which the environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or of EIS’s previously prepared on similar projects. Id. and Rule 4410.1700 Subp. 7 Minnesota Rules (1999). The Court will address each of the four factors in turn.

1. Type, extent, and reversibility of environmental effects

The Plaintiffs claim that the MPCA’s Findings: (1) do not address the substantive comments in violation of Minn. R. 4410.1700, subp. 4; (2) contain conclusions that are contrary to the comments and the evidence in the record; (3) fail to consider MPCA’s studies that show groundwater contamination from intensive agriculture; and (4) fail to consider the incremental impacts from this operation upon the already existing contamination of ground and

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surface water.

The Plaintiffs state that there is a wealth of evidence in the record that suggests a significant potential for groundwater contamination at this particular proposed feedlot site. They also claim that during the spring melting periods and during heavy rainfall, wide channels of water run off the land around the Feedlot. The MPCA has acknowledged the close proximity of the groundwater to the surface by requiring that the land around the basins must undergo a dewatering procedure to artificially bring down the water table. The Plaintiffs also point out the concern about contaminated groundwater and claim that the MPCA did not address these concerns, making their decision arbitrary.

One of the most significant environmental impacts posed by the planned facility, according to the Plaintiffs, is the catastrophic level of water pollution that would result from a sinkhole developing under the manure storage basin and breaching the structure. If such an event were to occur, 7.3 million gallon of liquid waste could flow into groundwater through the sinkhole breach. Plaintiffs also argue that because of the close connection between groundwater flows and surface water flows in this area, it is also highly likely that liquid waste flowing into the groundwater due to a sinkhole breach would quickly reach the surface water such as Forestville Creek, one of the premier trout streams in the state, and eventually flow through Forestville State Park and nearby campground where thousands of visitors will come into direct contact with the manure-polluted water through swimming and fishing activities.

Various individuals, especially those who live closest to the proposed feedlot, commented with concerns about air emissions and odors. The Plaintiffs claim that the MPCA made no findings on air emissions and odor and allowed the project to go forward without an EIS even where the preliminary modeling predicted air emissions would exceed allowable levels. They claim that the belated permit conditions to reduce or eliminate the potential failures in air quality demonstrate MPCA’s concern for air emissions and constitute an abandonment of MPCA’s duty to determine the potential for significant effects before they occur.

The MPCA reviewed an air emissions modeling study of the facility performed by Gantzer Environmental Software and Services, Inc. The MPCA concluded that the facility could comply with ambient standards and Health Risk Values, and that it would not cause nuisance odor that could be detected by receptors beyond the property line, although some odorous emissions could be detected at the property line. Also based on their investigations the MPCA concluded that cumulative impacts should not be significant. When dealing with air emissions this Court finds that the MPCA’s findings were based on some evidence, as discussed above.

The MPCA reviewed a manure management plan submitted by the Reilands. Based on the analysis in this plan, the MPCA concluded that the manure spreading would not result in additional loading of either phosphorus or nitrates. The MPCA found no information that would support the conclusion that manure has harsher environmental impacts than chemical fertilizers. When dealing with manure management the Court finds that the MPCA’s findings were based on some evidence, as discussed above.

The MPCA states that three prongs support its conclusion that the proposed facility would not cause significant environmental impacts as the result of karst-related failure. First, the MPCA evaluated the geological evidence regarding the proposed site. This information, it claims, suggested that the land proposed for the facility "has relatively little evidence of soil collapse problems..." even though in a moderate to high-risk area. The MPCA also considered the engineering of the proposed facility, its liner system, and depth to bedrock, claiming that this information suggested that the proposed facility would not accelerate sinkhole formation.

The MPCA claims that they followed the guidelines put in place for minimum separation distances in the karst area. They state that two factors are considered: the number of animal units to be handled at the facility and the type of storage system (liner). For facilities between 300 to 999 animal units with a composite liner, the guidance proposes that there be five feet separation between the liquid manure and the bedrock. The MPCA did find the minimum of 5 feet separation required for a facility consisting of 300 to 999 animal units.

The record shows that the MPCA did research the area of environmental effects, however, this Court finds that not all major issues were discussed by this agency. The agency neglected to talk about the possibility of the storage basin being breached underground. There were discussions about a spill above ground and what could be done in this situation, but none about underground spills. The Court agrees that there was information stating that there would be limited seepage, but that does not resolve the issue of mitigation of a spill larger than limited seepage.

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There should be a plan put into effect to encompass the problem of a spill underground. How would this be contained? How would the groundwater be protected? How would Forestville State Park and the trout streams be protected? This Court is concerned because these areas were not addressed and they should have been. The Plaintiffs were correct in questioning the possible contamination of the groundwater and the trout streams located in the area.

A reviewing Court will intervene only where there is a "combination of danger signals (that) suggest the agency has not taken a 'hard look' at the salient problems and "has not genuinely engaged in reasoned decision-making." Pope County Mothers v. Minnesota Pollution Control Agency, 594 N.W.2d 233, 236 (Minn. App. 1999). This Court finds that this is the situation in the case at hand. When asked about spills the Agency would respond by talking about above ground spills and by assuring people that there would not be an underground spill or only a little leakage because of the durability of composite liners, but this does not answer the question.

This Court finds that this is a very real issue and one that should have been addressed by the Agency before finding that an EIS was not in order in this case. The MPCA neglected its duties when it did not discuss the type, extent, and reversibility of the environmental effects of an underground spill. The MPCA did make a conscious effort to discuss other issues that caused concern, but completely avoided this issue. The MPCA’s neglect in discussing this issue shows that their decision was arbitrary and capricious.

Essentially this Court finds that the MPCA considered all the concerns except how to mitigate the problem of an underground spill from the pond. If a collapse occurs, how would the pollution be mitigated? There is no discussion of this and thus the MPCA did not fulfill its requirement. On all the other issues discussed, the MPCA made a decision based on some evidence. The Court might disagree with the decision, but it is bound to honor that decision.

One of the problems also not discussed is the problem of water (from the higher water table or from precipitation) migrating downward along the outside of the liner. After reviewing studies contained in the record, it appears such water would likely travel along the liner to the bottom of the lined lagoon. Would this then carry the risk of accelerated failure of the ground under the lagoon? Is this risk greater if less than 10 feet of soil is not present between the bedrock and the liner above it?

2. Cumulative potential effects of related or anticipated future projects.

The EQB rules provide that "multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when...preparing the EAW, and determining the need for an EIS." Minn. R. 4410.1000, subp. 4. The EQB rules define "phased action" as meaning "two or more projects to be undertaken by the same proposer that a RGU determines: (1) will have environmental effects on the same geographic area; and (2) are substantially certain to be undertaken sequentially over a limited period of time." Minn. R. 4410.0200, subp. 60.

The Plaintiffs state they have submitted evidence that the expansion is substantially certain to occur in a limited period of time, including: 1) MPCA’s own certified admission at pages 4 and 19 of the EAW; 2) the Project site map showing the exact location of the future freestall barn on Exhibit 3a, page 1 to the EAW; and 3) the May 23, 2000 Findings of MPCA verifying that the manure settling basin and the manure storage basin are designed for manure from 1,000 mature dairy cows (1,400 animal units).

The MPCA states that the definition of "phased action" in the EQB rules ensures that environmental review is not undertaken on expansions of projects that are speculative. The MPCA argues that although the EAW notes that the Reilands have designed their new dairy facility to accommodate future expansion, the MPCA would have been on solid ground had it decided not to include any information in the EAW regarding the impacts from the expansion because it was not "substantially certain" to occur in a "limited period of time."

The Court disagrees with the MPCA. This Court finds that there is a strong possibility that there will be an expansion within a limited period of time. The new freestall barn will encompass the same land as what is in dispute in this action. The Court also finds that this barn will be constructed in a limited period of time. Although there is no guidance on what "limited period of time" means, this Court finds that it is relatively certain that a barn will be constructed in the near future. This information is supported by the fact that the plans do have the freestall barn listed on them. This information is also supported by the fact that the storage basin is large enough to hold

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manure for at least 1,000 animal units.

The law is explicit that large projects must not be broken up into smaller units in order to avoid environmental review. Pope County Mothers at 237. The rules governing environmental review recognize that cumulative impacts can result from individually minor but collectively significant projects taking place over a "period of time." Id.

The Court’s decision that this is actually a phased action will also impact the minimum separation distance that is mentioned under the first factor. To determine whether the minimum separation distance will be met, the owner must conduct soil thickness investigations at a minimum of four locations for the first one-half acre of manure storage area surface and a minimum of two additional locations for each additional acre. Constructing New Manure Storage Systems at 8. According to Table 1 of this article a minimum separation distance of 10 feet is needed when the basin is serving over 1000 animal units. Id. at 9.

The Court is also perplexed by the fact that the MPCA and the Reilands argue that they can store manure in these basins for up to a year, and very well may do so, but this would not force them to have 10 feet minimum separation. Would this not be the same volume and amount of weight that would be caused by having over 1,000 animal units and emptying the basin twice a year? At any rate, this Court finds that since the current project and the anticipated freestall barn shall be considered as a phased action this project would still need to have at least a minimum separation of 10 feet between the bedrock to meet the MPCA’s own guidelines.

3. The Extent to Which the Environmental Effects are Subject to Mitigation by Ongoing Public Regulatory Authority.

The extent to which environmental effects are subject to mitigation is an important consideration when determining whether a project has the potential for significant environmental effects. Pope County Mothers at 238. The MPCA must consider the extent of the environmental effects likely to result and how those effects could be mitigated. Id. Mitigation includes avoiding or limiting the size of a project, repairing or restoring the environment, working to preserve or maintain the environment during the life of the project, or replacing or substituting resources. Trout Unlimited at 907.

The Plaintiffs state that the MPCA is improperly deferring key issues to the permitting phase; one of them being whether this proposed operation poses a significant environmental impact. The Plaintiffs claim that the MPCA is relying on soil inspections during the construction of the manure storage basin to determine whether there is subsurface evidence that suggest a possibility of sinkhole development under the manure storage basin. They state that deferring the gathering of key information to the post-permitting stage is an abandonment of the agency’s duty in an EIS determination.

The Plaintiffs are concerned because the MPCA did not seek additional Ground Penetrating Radar tests in better conditions to obtain a thorough investigation of the subsurface conditions under the manure basin before allowing the project to proceed. They state such soil investigation during construction will not provide the kind of subsurface investigation that Dr. Alexander and the DNR insist are necessary. Dr. Alexander stated that the additional investigation was easy to redo and the DNR stated that additional information was necessary and could be obtained reasonably. The Plaintiffs state that the MPCA’s negative decision was premature and based on inadequate information.

The MPCA states that the case at hand does not have the same problems as Trout Unlimited and their decision should be upheld. In Trout Unlimited, the Court struck down the Department of Agriculture’s decision to identify significant impacts associated with pesticide and fertilizer application by monitoring after permits for the use of those chemicals were issued, instead of examining whether such impacts had the potential to be significant during the environmental review process. The Court found that the purpose of environmental review was to ensure that risks were identified before they occur, and that unspecified "monitoring and permit conditions" required after the deleterious effects occurred would not suffice. Id. at 909.

The Defendant states that the Court did not hold, however, that it was improper to consider mitigation of risks by specified emission limits and operating requirements proposed for facility permits. The Defendant points out that the Court has in other cases specifically noted that consideration of such mitigation measures during environmental review is appropriate so long as they are "more than mere vague statements of good intentions." Iron Rangers at
881. The MPCA concludes that the problem in Trout Unlimited was that the Commissioner of Agriculture both failed to examine the environmental effects likely to result from the project and how any effects could be mitigated; thus, so long as the EAW sets forth specific mitigation measures to address specific environmental effect, such consideration is proper.

The very purpose of an EIS is to determine the potential for significant environmental effects before they occur. Trout Unlimited at 909. By deferring issues to later permitting and monitoring decisions, the Commissioner abandoned his duty to require an EIS where there exists a "potential for significant environmental effects." Id.

Both Plaintiff and Defendant have offered logical arguments to support their respective positions. After a thorough review of case law and the facts, the Court finds that the MPCA did not address the mitigating factors. As in Trout Unlimited, the project here would go forward without an EIS and in the event significant environmental effects did occur, the project may be cancelled. The MPCA is relying on permitting and monitoring just as the ROU did in Trout Unlimited. As stated above the MPCA does not even address certain issues, much less talk about how to mitigate them. It is the MPCA’s duty to determine the possible environmental effects; they have neglected this duty in the case at hand.

The Court also questions the fact that the basin is larger than the capacity needed at this time, which supports the finding that this project is a phased action. One of the factors to consider when looking at mitigation includes limiting the size of the project. It would make sense for the MPCA to have limited the size of the storage basin, given the sensitive karst region and the claim that there is not an adequate plan to expand. This reaffirms the Court’s finding that the MPCA did not fulfill its duty when dealing with the issue of mitigation.

4. The extent to which the environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or of EIS’s previously prepared on similar projects

The Plaintiffs claim that the MPCA had relevant information and disregarded it. The MPCA has been studying nitrates in Minnesota groundwater beneath agricultural land for years. In March 1999, the MPCA identified groundwater impacts from land application of manure as one of three objectives for examination in a study entitled "Effects of Manure Management on Ground Water Quality." The MPCA was also provided a copy of the Iowa Department of Public Health’s article on the chemical and microbial constituents of ground and surface water proximal to large-scale swine operations. Plaintiffs claim that this study shows that pathogens in manure break down more slowly when incorporated in the ground. The Plaintiffs also state that the MPCA omitted the most pertinent studies in an arbitrary fashion.

The Interim Guidelines are established by the MPCA to define the measures and conditions generally needed to ensure that, to the maximum extent practicable, groundwater is protected when new liquid manure storage systems are constructed in the karst region. Constructing New Manure Storage Systems at 1. Minnesota Rule 7060.0500 states that it is the "policy of the Minnesota Pollution Control Agency to control wastes as may be necessary to ensure that to the maximum practicable extent the underground waters of the state are maintained at their natural quality." Id. Maintaining high quality ground water supplies is challenging in the karst region of southeastern Minnesota due to the rapid transport of contaminants from the land surface to ground water in this unique geologic setting. Id.

Three potential water quality risks associated with liquid manure storage systems in the karst region are described below. Two of the risk factors could lead to long-term (chronic) problems, whereas the third risk factor is associated with catastrophic failure. Id. at 3. The water quality risks include: 1) seepage of contaminants through the liner and underlying soil to fractured bedrock and subsequently to ground water; 2) gradual soil subsidence of formation of a shallow sinkhole below the storage structure that breaches the integrity of the liner, causing slow and perhaps indetectable leaking of manure from the storage system to ground water; and 3) larger sinkhole forming below a manure storage system leading to a rapid flow of manure into ground water or causing a collapse in a basin sidewall and a release of manure onto the ground surface. Id. at 3.

Manure entering ground water will discharge into streams within a period of time ranging from hours to decades depending on the site-specific hydrogeology. Id. The karst region of Minnesota maintains a large number of high quality trout streams. A rapid discharge of a large quantity of manure into a stream will destroy the aquatic life for a stretch of the stream and also result in increased nutrient loading into the receiving waters of the Mississippi River system. Id. Manure that travels in the ground water for a longer period before discharging into streams will be more diluted and may not destroy aquatic life, but will threaten drinking water supplies as it travels toward the stream, and then still contribute to
stream pollution upon discharge. Id.

Using liners with very low seepage rates can reduce the probability of a soil collapse below a manure storage system. Id. at 4. Risks of failure can also be reduced by such measures as proper siting of the storage facility on the landscape; minimizing the manure storage capacity; preventing excess infiltration of runoff water around the storage facility; and maintaining a certain separation distance between the manure and fractured bedrock. Id.

Between 1974 and 1992, sinkholes opened below three of the twenty-two municipal wastewater treatment ponds in Minnesota’s karst region. Id. at 4. These failures demonstrate the potential for sinkholes to develop in southeastern Minnesota when large quantities of liquids are stored in sinkhole prone areas with minimum barriers between the liquid and underlying materials. Id. It is important to consider that the contamination concentration of manure lagoons are often over 100 times greater than municipal wastewater pond liquids, and thus the environmental consequences of a catastrophic manure release could be much worse than municipal pond failures. Id.

Most sinkholes in southeastern Minnesota appear where there is less than 50 feet of soil cover over carbonate and sandstone bedrock. Id. at 5. The risk of soil collapse has generally been found to increase in areas of ponded or intermittently flowing water, and in areas with indication of more extensive karstification, including areas with disappearing streams, caves, springs and solution cavities. Id.

After reading the interim guidelines and reading over the briefs of counsel this Court finds that leaks and seepage can be anticipated. As a matter of fact, it seems to be the norm that these basins do have seepage. This Court finds that the MPCA did not take advantage of some of the data that was available to them. The Guidelines state that there is concern about protecting the groundwater, but there is not a plan to mitigate (or at least none was mentioned) if a sinkhole would form underneath the basin. As stated above, the MPCA does discuss an above ground spill and does have a plan if this were to occur, but nothing is mentioned about below ground spills. As the guidelines point out, the streams, as well as drinking water could be harmed if this were to occur.

As stated above, this Court does find that this is a phased action and therefore, the proposed freestall barn should be included in the evaluation of this site. Given this information and the MPCA’s own guidelines, there is not enough separation distance between liquid manure and fractured bedrock to erect these basins on the proposed site.

Conclusions

An RGU’s decision is arbitrary and capricious if it: (1) relied on factors the legislature never intended it to consider; (2) entirely failed to consider an important aspect of the problem; (3) offered an explanation for its decision that runs counter to the evidence; or (4) is so implausible that it could not be ascribed to a difference in view or the result of agency expertise. Pope County Mothers at 236. If the RGU’s decision represents its will rather than its judgment, that decision is arbitrary and capricious. Id.

The MPCA’s decision not to conduct an EIS in this matter is not supported by the record and is arbitrary and capricious. This Court finds that the MPCA failed to consider at least one important aspect of the problem, i.e., the possibility of an underground collapse of the basin. If the basin would collapse how would ground water contamination be stopped? This Court could not find any information in the MPCA’s brief to answer this disturbing question. The MPCA should have addressed this issue and they did not.

This Court also finds that the MPCA violated its own interim guidelines by only requiring five feet of separation distance when using a composite liner, instead of the 10 feet required for a facility designed for over 1,000 animal units. This Court, as stated earlier, finds that this is a phased action and therefore it should be held to the standards applied for a project comprised of over 1,000 animal units instead of the 300 to 999 animal units this study was based on.

Plaintiffs have argued that the MPCA decision was improperly influenced by the threats of members of the legislative branch to change the law. Writing and rewriting of the law is what legislatures do. It is not the function of the Court to determine what is or is not proper in discussions between the legislative and executive branches of our government. Furthermore, this Court suspects that the executive branch is fully capable of protecting itself from the legislative branch. This Court doubts that the executive branch needs judicial protection from the legislature.

Obviously this decision does not bar the completion of the proposed project. It does, however, require further evaluation
by the RGU. This Court is mindful that the preparation of an EIS is costly and time consuming, but then, so is litigation. Based on all the information in the file and the law, the Plaintiff’s motion for summary judgment is granted, and Defendant’s motion for summary judgment is denied.

This decision is not meant to, and should not be read as a denigration of the work and investigation completed by the MPCA on this issue. Most of the disputed issues have been resolved in favor of the MPCA. While the Court may not have reached the same conclusions as the MPCA, where these conclusions were based on some reasonable evidence this Court should not intervene. RRB
Much of the rolling, picturesque farmland of southeast Minnesota is what geologists call "karst." The soil is underlain by cracked, water-soluble rock, riddled with underground tunnels and caves. That makes the region's groundwater highly vulnerable to pollution. Depressions, known as sinkholes, can appear without warning when the underlying rock collapses. Sinkholes act like drains, whooshing water and contaminants into underground aquifers.

Now, many local residents are worried as large, industrial-scale feedlots begin to move into the karst region.

Bob and Eloda Wood are retired dairy farmers who do volunteer monitoring of the south branch of the Root River in southeast Minnesota. It's one of the state's best trout streams, and flows through Forestville State Park.

Each point, the two drive the winding road from their farm to the stream to collect samples. On a recent day, Eloda Wood pointed out the sinkholes, disappearing stream valleys, and other classic karst features along the way.

"They tell us that much of our surface is like Swiss cheese, and wherever there is vertical crack, that's an invitation for a sinkhole," she says.

So the Woods were alarmed when they learned of plans to build a factory-scale feedlot, the Reiland Dairy, just up the valley from Forestville State Park.

The dairy's earthen-lined manure lagoons would hold more than seven million gallons of manure. If a sinkhole opened up under a lagoon, the Woods and other opponents worry that all that manure would flow into the groundwater. From there it could push through underground rock tunnels into the Root River, and devastate both it and Forestville State Park.

"Instead of just flooding with water, it would be flooding with manure," Bob Wood says.

A University of Minnesota karst expert characterized the feedlot's risk as "enormous." Both the state Department of Natural Resources and the state Health Department expressed serious concerns, but the Minnesota Pollution Control Agency ruled the project could go ahead.

Opponents, including the Woods, took the PCA to court - and won. In December, a Fillmore County Judge ruled the agency had neglected its duty by failing to consider the catastrophic level of water pollution a sinkhole collapse might cause.

The judge noted that three of the areas 22 municipal sewage lagoons have collapsed, the most recent in 1992. And he pointed out that manure lagoons pose a much greater environmental threat than sewage lagoons, since they are often more than 100 times more concentrated.

But PCA officials still insist the project could have gone ahead safely. "That was our decision and is still our decision," according to Beth Lockwood, the supervisor of the agency's environmental review program. Lockwood says the agency evaluates only environmental impacts that may be "reasonably expected" to occur from a project, and in the agency's judgement, a sinkhole breach was too remote a possibility to consider.

"We did not feel that after the engineering was all designed, and we looked at the project as a whole and how it was designed and engineered, that we reasonably expected a catastrophic release to happen," according to Lockwood.

The PCA did not appeal the judge's decision, and proposers of the dairy decided to move it to another area. But it's likely more lagoons will be proposed in the karst region, as are dairy farmers there expand their operations. That could cause problems.

Manure lagoons have caused massive water contamination in North Carolina, the state where they were first widely used. They are now banned there.

Minnesota has banned them for hogs, but still allows them for dairies.

In Minnesota's karst geology, dairy manure lagoons are permitted as long as there are no more than four sinkholes within a 1,000 feet of the bedrock is more than 10 feet deep. In addition, lagoons may not be built within 300 feet of any sinkhole. Hog manure pits must be lined with cement.

If they meet those regulations, the only thing stopping big feedlots in the karst is local opposition. And that isn't always as effective as it was in the Reiland case.

"We're right in the middle of three big outfits," laments Kermit Burt, whose parents own Burt's Hilltop Poultry, a small poultry processing plant surrounded by a large turkey farm and two industrial-scale hog operations.

Now the Burts worry about their well. "What's going to happen if our well does suddenly shoot sky high in nitrates and we've got to replace it? Who's going to cover it?"

The Burts and other neighbors fought hard against the most recently built hog feedlot. Until this summer, they thought they'd stopped it.

The feedlot was not large enough to require mandatory review by the PCA, but the county board had denied it a permit because it would sit in a high-risk karst area.

The Minnesota State Court of Appeals upheld the county's decision, ruling that "the proposed feedlot presents legitimate public health concerns."

But this June, neighbors like Dale Pierce learned it was going up anyway. "We thought that because it was all denied by the county officials and even the state Court of Appeals, that it would not go any further. But then they changed the way animal units are counted, and one person was able to approve the permit, and we've got the building now and we can't do a darn thing about it," says neighbor Dale Pierce.

A little-noticed change in the county's regulations had put the proposed feedlot just under the size limit for environmental review by the county.
Bobby King, an organizer for the family farm group The Land Stewardship Project in Lewiston, says with the weakened county regulations, there’s not much they can do. “Now we’re relying basically on the PCA to look out for a facility that size to make sure it’s safe. And we know they’re not doing the job,” King says.

But others, like State Sen. Kenric Scheevel, R-Preston, say blanket opposition to big feedlots in karst terrain is misguided. The area has traditionally been home to small-scale livestock operations, and Scheevel if such farmers can’t expand, they’ll get out of the livestock business. He says that would mean hilly terrain that’s traditionally been used for pasture, would be plowed up and planted in row crops like corn and soybeans, which would greatly increase soil erosion.

“Frankly, a lot of those hills will end up in our waterways, because farmers are going to use their land; they’re not going to just idle it. They’re in the business of producing either crops or livestock,” Scheevel says.

Scheevel says large feedlots can be built safely, as long as they’re properly located. “There is a certain level of risk to anything you build in the karst region,” he says, “but you can also map out the sinkhole plains, and you find that there are regions in which the sinkholes tend to follow a specific pattern. You get away from those sinkhole plains, and the risk of a sinkhole opening up is probably minimal, if not almost irrelevant.”

But others are not convinced the risks are minimal, especially if more and more factory-style farms move into the karst region.

The State Health department has asked the PCA to develop guidelines for emergency response plans in the area to handle possible catastrophic spills.
Historic Mega-Rain Events in Minnesota

Minnesota is no stranger to heavy rain events. The early surveyors mapping out the state witnessed such events.

The DNR climate office has assembled a list of so-called "Mega-rain" events that have occurred since statehood. These are events in which six inches of rain covers more than 1000 square miles and the core of the event topped eight inches. Rainfalls of of this magnitude and geographic extent have the potential to become catastrophic. Using newspaper accounts, diaries, and the historical climate record, 15 such events in Minnesota's post-settlement history have been identified. However, our ability to detect these events has improved dramatically since the 1970s.

The number of daily rainfall observers in Minnesota exploded in the early 1970s, thanks to the foresight and ambitions of Dr. Don Baker, and then-State Climatologist Earl Kuehnast. Since that period, the state has benefited from an unusually dense network of observations (/climate/summaries_and_publications/appliedmain.html). This network has remained intact, plus or minus year-to-year changes, and has enabled climatologists to identify mega-rainfall events that undoubtedly would have been missed during periods of much sparser observations.

Thus, the State Climatology Office considers the "stable" period of record to stretch from 1973 through present. Any given year during that period has roughly the same chance of capturing (or missing) an actual mega-event. The years prior to 1973, however, are likely to have some number of missing events.

If we examine the period 1973-2016, Minnesota has seen eleven mega-rains, with a sharp uptick since 2000, despite a small decrease in observer numbers. Of these 11 events, two were in the 1970s, one was in the 1980s, none were in the 1990s, but four occurred in both the 2000s, and the 2010s (still underway). Thus, the 18 years from 2000-2017 have seen nearly three times as many mega-rains as the 27 years spanning 1973-99. Although it is difficult to assess the statistical significance of that rapid increase, we do know that these trends are consistent with the expectation that Minnesota and the Upper Midwest will receive more precipitation, and more precipitation from large events (http://nca2014.globalchange.gov/report/regions/midwest#graphic-17083), in response to increasing global temperatures and increased available moisture for passing storm systems.

Documented Mega-Rains in Minnesota

(There may be other events prior to 1973 that require further investigation such as September 11-15, 1903
(https://files.dnr.state.mn.us/natural_resources/climate/summaries_and_publications/COEsto
• **August 6, 1866 Southern Minnesota**

  Also known as the *Wisel Flood*, this event killed 16 people, including 3 members of the Wisel family in Fillmore County. 10.30 inches of rain fell at the Sibley Indian Agency located in Sibley County. The story of the Wisel family in peril appeared in the Harmony/Mabel/Canton News Record Newspaper.

• **July 17-19 1867 Central Minnesota**

  Climatologists and historians believe this to be Minnesota's most extreme flash flood of the past 200 years. In his *Minnesota Weather Almanac*, Mark Seeley referred to this event as "Minnesota's Greatest Thunderstorm." Torrential rains pounded portions of west-central Minnesota relentlessly. Unfortunately, the rains escaped direct measurement, but astute observers of the time estimated from unobstructed upright barrels and other such containers, that 30-36 inches of rain fell in 36 hours. No official observation in Minnesota has come anywhere near those magnitudes. The few surviving details of the storm back up the claims, however, as the flooding that resulted was unimaginable and catastrophic. Most of what we do know about this event comes from a [paper](https://files.dnr.state.mn.us/natural_resources/climate/summaries_and_publications/na) that was read before the Minnesota Academy of Sciences on March 7, 1876. Climate Historian Tom St. Martin summarized [here](https://files.dnr.state.mn.us/natural_resources/climate/summaries_and_publications/1) the event as well.

• **July 20-22, 1909 Northern Minnesota**

  Extensive flood event from Northwest Minnesota to the UP of Michigan [here](https://files.dnr.state.mn.us/natural_resources/climate/summaries_and_publications/C). Highest one day rainfall total was 10.75 inches at Beaulieu in Mahnomen County (11.10 inches for the three day total.) This storm also did extensive damage in Duluth and killed two children in the city when they were swept out of their mother's arms.

• **September 9-10 1947, Iron Range**

  24 hour totals of 6 inches or more at Hibbing, Ely and Winton. Unofficial report of 8.60 inches in five hours at Hibbing. Extensive damage over the Iron Range district.

• **July 21-22, 1972 *Grand Daddy* Flash Flood**

  10.84 inches fell in 24 hours was set at Fort Ripley [here](https://files.dnr.state.mn.us/natural_resources/climate/summaries_and_publications/fi). This was the state record for a highest 24 hour total at a National Weather Service station until Hokah broke the record in 2007.
• June 28-29 and July 1-2, 1975, Northwest Minnesota

Geographically extensive and intense rains (https://files.dnr.state.mn.us/natural_resources/climate/summaries_and_publications/f1 fall on eastern North Dakota and Northwest Minnesota in two separate events.

• July 23-24, 1987 Twin Cities Superstorm

Greatest calendar day precipitation on record for Twin Cities International Airport (https://files.dnr.state.mn.us/natural_resources/climate/summaries_and_publications/f1 with 9.15 inches.

• June 9-10, 2002 Northern Minnesota

48 hour rainfall totals topped 12 inches (/climate/journal/ff020609-10.html) in a some areas of Roseau and Lake of the Woods counties.

• June 22-23, 2002 Northern Minnesota

This event was so large (http://climateapps.dnr.state.mn.us/doc/journal/flash_floods/ff020622-23.htm), two different parts of northern Minnesota met the mega-rainfall definition used here.

• September 14-15, 2004 Southern Minnesota

More than ten inches of rain fell in a 36 hour period (/climate/journal/ff040914_15.html) in Faribault and Freeborn Counties.

• August 18-20, 2007 Southern Minnesota

Although the 1867 storm detailed above likely produced higher totals, the 15.10 inches measured one mile south of Hokah stands as the official record for 24-hour rainfall (/climate/journal/ff070820.html) at a Minnesota National Weather Service Cooperative station. The three day total for this station was 16.27 inches.

• September 22-23, 2010 Southern Minnesota

The National Weather Service site in Amboy measured 9.48 inches (/climate/journal/ff100924.html) on September 23, with 10.68 inches for the event.

• June 19-20, 2012 Northeast Minnesota

The two day total at Duluth was 7.24 inches (/climate/journal/duluth_flooding_120620.html). The St. Louis River at Scanlon set a new record crest at 16.62 feet, rising 10 feet in 24 hours.

• July 11-12, 2016, East-central Minnesota
Extreme rainfall affected a swath from the Brainerd Lakes area, eastward into Pine County (/climate/journal/160711_12_flood.html) (and also well into Wisconsin). Cloverton in Pine county recorded 9.34 inches.

- **August 10-11, 2016, Central Minnesota, Southeastern Minnesota**

  Two distinct areas received over 6 inches of rainfall (/climate/journal/160810_11_flood.html): one near Willmar, and another in Wabasha County. The highest total of 9.74 inches was recorded just east of Willmar.

For more information contact: climate@umn.edu (mailto:climate@umn.edu)

(/)

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Nitrate Testing for Private Wells
Results as of March 22, 2018

The Minnesota Department of Agriculture (MDA) has designed a Township Testing Program to determine current nitrate-nitrogen concentrations in private wells. The initial criteria used to select townships for testing is based on the percentage of township land vulnerable to groundwater contamination (30% or greater) and amount of land in row crop production (20% or greater). The MDA uses the final results to determine if additional action is needed to minimize potential sources of nitrate pollution in the state’s groundwater.

Program testing and the summarizing of results are ongoing. Tables were created with current data, 3/22/2018.

Table 1: Final Township Testing Results*

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<th>County</th>
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<th>Final Well Dataset</th>
<th>Number of Townships with Wells Over the Health Risk Limit (≥10 mg/L Nitrate-N)</th>
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Table 2: Initial Township Testing Results-Final Township Testing Results are Not Yet Available*

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<td>7</td>
</tr>
<tr>
<td>Hubbard</td>
<td>6</td>
<td>1106</td>
<td>1</td>
</tr>
<tr>
<td>Kandiyohi</td>
<td>4</td>
<td>313</td>
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<tr>
<td>Nobles</td>
<td>4</td>
<td>45</td>
<td>0</td>
</tr>
<tr>
<td>Otter Tail</td>
<td>11</td>
<td>2160</td>
<td>9</td>
</tr>
<tr>
<td>Rock</td>
<td>7</td>
<td>171</td>
<td>0</td>
</tr>
<tr>
<td>Todd</td>
<td>9</td>
<td>797</td>
<td>4</td>
</tr>
<tr>
<td>Winona</td>
<td>13</td>
<td>940</td>
<td>2</td>
</tr>
</tbody>
</table>
* The initial township testing results include data from all wells initially tested. An optional follow-up testing and well survey is offered to homeowners that have a presence of nitrate in their initial sample. Wells with nitrate-nitrogen results over 5 mg/L and a nearby non-fertilizer source or identified well problem are removed. The remaining wells form the final township testing well dataset.

** Additional information for these townships is available in Table 3.

**Table 3: Townships with > 40% of Wells Exceeding the Health Risk Limit (> 10 mg/L Nitrate-N)**

<table>
<thead>
<tr>
<th>County</th>
<th>Township</th>
<th>Years Sampled (Initial, follow-up)</th>
<th>Total Wells</th>
<th>Number of Wells ≥ 10 mg/L Nitrate-N</th>
<th>Percentage of Wells ≥ 10 mg/L Nitrate-N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dakota</td>
<td>Marshan</td>
<td>2013, 2015</td>
<td>95</td>
<td>41</td>
<td>43.2%</td>
</tr>
<tr>
<td>Morrison</td>
<td>Agram</td>
<td>2013, 2015</td>
<td>93</td>
<td>44</td>
<td>47.3%</td>
</tr>
</tbody>
</table>

**Initial Township Testing Results**

<table>
<thead>
<tr>
<th>County</th>
<th>Township</th>
<th>Year Sampled</th>
<th>Total Wells</th>
<th>Number of Wells ≥ 10 mg/L Nitrate-N</th>
<th>Percentage of Wells ≥ 10 mg/L Nitrate-N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nobles</td>
<td>Grand Prairie</td>
<td>2016</td>
<td>14</td>
<td>13</td>
<td>92.9%</td>
</tr>
<tr>
<td>Nobles</td>
<td>Westside</td>
<td>2016</td>
<td>15</td>
<td>13</td>
<td>86.7%</td>
</tr>
<tr>
<td>Nobles</td>
<td>Lismore</td>
<td>2016</td>
<td>7</td>
<td>5</td>
<td>71.4%</td>
</tr>
<tr>
<td>Nobles</td>
<td>Olney</td>
<td>2016</td>
<td>9</td>
<td>4</td>
<td>44.4%</td>
</tr>
<tr>
<td>Rock</td>
<td>Clinton</td>
<td>2016</td>
<td>10</td>
<td>8</td>
<td>80.0%</td>
</tr>
<tr>
<td>Rock</td>
<td>Battle Plain</td>
<td>2016</td>
<td>23</td>
<td>15</td>
<td>65.2%</td>
</tr>
<tr>
<td>Rock</td>
<td>Mound</td>
<td>2016</td>
<td>28</td>
<td>16</td>
<td>57.1%</td>
</tr>
<tr>
<td>Rock</td>
<td>Vienna</td>
<td>2016</td>
<td>23</td>
<td>11</td>
<td>47.8%</td>
</tr>
<tr>
<td>Rock</td>
<td>Magnolia</td>
<td>2016</td>
<td>20</td>
<td>9</td>
<td>45.0%</td>
</tr>
<tr>
<td>Rock</td>
<td>Rose Dell</td>
<td>2016</td>
<td>30</td>
<td>13</td>
<td>43.3%</td>
</tr>
<tr>
<td>Rock</td>
<td>Luverne</td>
<td>2016</td>
<td>37</td>
<td>15</td>
<td>40.5%</td>
</tr>
<tr>
<td>Winona</td>
<td>Fremont</td>
<td>2016</td>
<td>42</td>
<td>23</td>
<td>54.8%</td>
</tr>
<tr>
<td>Winona</td>
<td>Utica</td>
<td>2016</td>
<td>86</td>
<td>40</td>
<td>46.5%</td>
</tr>
</tbody>
</table>

**Additional Information**

Township Testing Program: [www.mda.state.mn.us/townshiptesting](http://www.mda.state.mn.us/townshiptesting)

Minnesota Nitrogen Fertilizer Management Plan (NFMP): To learn more about the NFMP, the state’s blueprint for preventing or minimizing impacts of nitrogen fertilizer on groundwater, visit: [www.mda.state.mn.us/nfmp](http://www.mda.state.mn.us/nfmp).

**Funding Acknowledgement**

Funding for this project is provided by the Clean Water, Land and Legacy Amendment.

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In accordance with the Americans with Disabilities Act, this information is available in alternative forms of communication upon request by calling 651-201-6000. TTY users can call the Minnesota Relay Service at 711. The MDA is an equal opportunity employer and provider.

March 2018
Winona County: Final Overview of Nitrate Levels in Private Wells (2016-2017)

The Minnesota Department of Agriculture (MDA) determines current nitrate-nitrogen concentrations in private wells, on a township scale, through the Township Testing Program. The MDA has identified townships throughout the state that are vulnerable to groundwater contamination and have significant row crop production. The MDA plans to offer nitrate testing to more than 70,000 private well owners in over 300 townships by 2019.

Each selected township is offered testing in two steps, the “initial” sampling and the “follow-up” sampling. In the initial sampling, all township homeowners using private wells are sent a nitrate test kit. If nitrate is detected in their initial sample, the homeowner is offered a follow-up nitrate test, pesticide test and well site visit. Trained MDA staff visit willing homeowners to resample the well and then conduct a site assessment. The assessment helps to identify possible non-fertilizer sources of nitrate and to see the condition of the well. A well with construction problems may be more susceptible to contamination.

The MDA and Winona County Environmental Services worked together to select townships and implement the nitrate testing project. The following townships were selected: Elba, Fremont, Hart, Hillsdale, Mt. Vernon, Norton, Pleasant Hill, St. Charles, Saratoga, Utica, Warren, Wilson, and Wiscoy. The initial sampling in Winona County started in 2016 and follow-up sampling ended in 2017.

Results
Two datasets are used to evaluate nitrate. The initial well dataset contains 940* wells; the final dataset contains 731 wells. Wells that had nitrate-nitrogen results over 5 mg/L were removed from the initial dataset if a non-fertilizer source or well problem was identified, to form the final well dataset. A total of 209 wells (22%) were removed. The results from the initial and final well datasets are summarized in the table below.

In Fremont, Saint Charles, Utica, and Warren Townships, more than 10% of the wells were over the Health Risk Limit of 10 mg/L of nitrate-nitrogen (map below). The percent of wells over the Health Risk Limit in each township ranged from 0% to 42.9%. The Winona County Final Report will be available on the MDA website in 2018: www.mda.state.mn.us/townshiptesting.

Next steps
The MDA uses the final well dataset to determine if additional action is warranted, as described in the Minnesota Nitrogen Fertilizer Management Plan (NFMP). The MDA uses the assessment process and prioritization guidelines in the NFMP to determine next steps. Find more information about the NFMP on the MDA website at www.mda.state.mn.us/nfmp.

Funding Acknowledgement
Funding for this project is provided by the Clean Water, Land and Legacy Amendment

Published May 2018
Table: Winona County Private Well Nitrate Results, 2018.

<table>
<thead>
<tr>
<th>Township</th>
<th>Initial Well Dataset</th>
<th>Final Well Dataset</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total Wells*</td>
<td>Percent of Wells ≥10 mg/L Nitrate-Nitrogen</td>
</tr>
<tr>
<td>Elba</td>
<td>62</td>
<td>16.1%</td>
</tr>
<tr>
<td>Fremont</td>
<td>42</td>
<td>54.8%</td>
</tr>
<tr>
<td>Hart</td>
<td>48</td>
<td>18.8%</td>
</tr>
<tr>
<td>Hillsdale</td>
<td>52</td>
<td>1.9%</td>
</tr>
<tr>
<td>Mt. Vernon</td>
<td>33</td>
<td>15.2%</td>
</tr>
<tr>
<td>Norton</td>
<td>80</td>
<td>11.3%</td>
</tr>
<tr>
<td>Pleasant Hill</td>
<td>58</td>
<td>8.6%</td>
</tr>
<tr>
<td>St. Charles</td>
<td>85</td>
<td>34.1%</td>
</tr>
<tr>
<td>Saratoga</td>
<td>56</td>
<td>19.6%</td>
</tr>
<tr>
<td>Utica</td>
<td>86</td>
<td>46.5%</td>
</tr>
<tr>
<td>Warren</td>
<td>92</td>
<td>28.3%</td>
</tr>
<tr>
<td>Wilson</td>
<td>196</td>
<td>6.1%</td>
</tr>
<tr>
<td>Wiscoy</td>
<td>50</td>
<td>0.0%</td>
</tr>
<tr>
<td>Total</td>
<td>940</td>
<td>19.1%</td>
</tr>
</tbody>
</table>

* All well types included.

Figure: Winona County Final Well Dataset Map, 2018.

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Animal Manure Management

RCA Issue Brief #7 December 1995

What are organic by-products, and how are they quantified?
How much manure can actually be collected?
How much manure do different types of livestock produce?
Recoverable manure, by livestock type
What natural resource problems are associated with manure management?
What are the trends in manure production?
Animal population summaries, 1994
What can be done?
How does manure management help?

Did you know ...

...that the manure from a dairy milking 200 cows produces as much nitrogen as is in the sewage from a community of 5,000-10,000 people? Or that the annual litter from a typical broiler house of 22,000 birds contains as much phosphorus as is in the sewage from a community of 6,000 people?

...that any increase in animal numbers results in an equal increase in the problems arising from manure collection, storage, treatment, and utilization?

...that beef production in the United States decreased almost 15 percent between 1982 and 1992, while broiler production increased 59 percent and turkey production increased 62 percent, with a corresponding increase in manure and other residual materials?

Words are important!

Richard Kashmanian, in an editorial for BIOCYCLE, stresses the importance of words. He points out that words such as "wastes," "garbage," and "trash" send negative signals to readers or listeners and set in motion a sequence of events that is difficult to reverse.

The following definitions are taken from Webster's New Collegiate Dictionary: "Waste: garbage, rubbish, discarded as worthless, defective, or of no use." Dispose: "to get rid of." Various synonyms listed in Webster's New World Thesaurus for waste are "garbage, refuse, filth, litter, debris, and junk." Not very attractive!

Efforts are underway by various groups to change the vocabulary used to define their products or services. For example, the American Forest and Paper Institute is discontinuing the use of the term "waste paper" when referring to recycled paper. The Water and Environment Federation, formerly the Water Pollution and Control Federation, is using the term "biosolids" to refer to or define the largely organic material commonly called "sludges."

More and more, the agricultural sector recognizes that the reference to livestock manure as livestock "waste" has helped lead to the undervaluation of manure as a source of nutrients, the loss of manure nutrients through mishandling and misapplication, and the overapplication of manure to the land. Understanding that a term's use implies a value, the agricultural sector can replace the use of the word "waste" with "manure," "residuals," or "by-products."

What are organic by-products, and how are they quantified?

Organic by-products, or "wastes," of the livestock industry include a variety of materials such as solid and liquid animal manures, used bedding, spilled feed, and a variety of other substances. Most livestock-associated organic by-products are animal manures.

The amount and consistency of manures varies with animal type, climate, feed ration, animal age and health, and other factors. To compare manure production between animal types or between animals of the same type, manure production is expressed in terms of 1,000-pound animal units. For reference, a single dairy cow weighs about 1,400 pounds, or 1.4 animal units. A typical steer weighs about 1,000 pounds, or 1 animal unit, and most hogs weigh between 200 and 300 pounds, or 0.2 to 0.3 animal unit. A mature broiler, on the other hand, weighs between 4 and 5 pounds, so it takes as many as 250 birds to make up an animal unit.
Nitrate in Well Water
Well Management Program

Introduction
Nitrate is a common contaminant found in many wells in Minnesota. Too much nitrate in drinking water can cause serious health problems for young infants. This page provides a basic explanation of nitrate in wells and gives steps that you as a well owner can take to protect your family and visitors from illness.

What is nitrate?
Nitrate (NO₃) is a naturally occurring chemical made of nitrogen and oxygen. Nitrate is found in air, soil, water, and plants. Much of the nitrate in our environment comes from decomposition of plants and animal wastes. People also add nitrate to the environment in the form of fertilizers.

How does nitrate get into well water?
Natural levels of nitrate in Minnesota groundwater are usually quite low (less than 1 milligram per liter [mg/L] of nitrate-nitrogen). However, where sources of nitrate such as fertilizers, animal wastes, or human sewage are concentrated near the ground surface, nitrate may seep down and contaminate the groundwater. Elevated nitrate levels in groundwater are often caused by run-off from barnyards or feedlots, excessive use of fertilizers, or septic systems.

Wells most vulnerable to nitrate contamination include shallow wells, dug wells with casing which is not watertight, and wells with damaged, leaking casing or fittings.

Nitrate contamination of a well is often regarded as a first sign of deteriorating groundwater quality.

What are the health risks of nitrate in well water?
Too much nitrate in drinking water poses a risk to infants under six months of age. If an infant is fed water or formula made with water that is high in nitrate, a condition called "blue baby syndrome" (or "methemoglobinemia") can develop. Bacteria which are present in an infant's stomach can convert nitrate to nitrite (NO₂), a chemical which can interfere with the ability of the infant's blood to carry oxygen. As the condition worsens, the baby's skin turns a bluish color, particularly around the eyes and mouth. If nitrate levels in the water are high enough and prompt medical
attention is not received, death can result. See also (http://www.health.state.mn.us/divs/eh/wells/waterquality/safebaby.html): Safe Drinking Water For Your Baby (http://www.health.state.mn.us/divs/eh/wells/waterquality/safebaby.html).

Why are young infants more susceptible?
As an infant ages, its stomach acidity increases, reducing the numbers of nitrite-producing bacteria. After six months, the conversion of nitrate to nitrite in the stomach no longer occurs. Most adults can consume large amounts of nitrate with no ill effects. In fact, the average adult in the United States consumes about 20-25 milligrams of nitrate-nitrogen every day in food, largely from vegetables.

Pregnant women, people with reduced stomach acidity, and people with certain blood disorders may also be susceptible to nitrate-induced methemoglobinemia. Some research has suggested that nitrate may also play a role in the development of some cancers. However, at this time there is no clear evidence that nitrate ingestion results in an increased cancer risk.

How much nitrate is too much?
The federal drinking water standard for nitrate is 10 mg/L of nitrate-nitrogen, which provides newborns with reasonable protection against blue baby syndrome. This level is mandatory for all public water systems, and recommended for private wells.

How do I know if my well water has nitrate?
Nitrate is tasteless, odorless, and colorless. To find out if there is nitrate in your water, have it tested by a laboratory that is certified for nitrate testing by the Minnesota Department of Health. Laboratories will provide sampling bottles and instructions. Visit the Environmental Laboratory Accreditation Program (https://eldo.web.health.state.mn.us/public/accreditedlabs/labsearch.seam) website for all your water testing needs. Regardless of which tests you want done, always make sure to use a laboratory that has been certified to perform each of those particular tests.

How often should I have my well tested for nitrate?
It's a good idea to have a routine nitrate test every two or three years, more frequently if nitrate has been detected in previous sampling. State regulations require well contractors to have a water sample tested for bacteria and nitrate when they construct a new well. After that, owners of private wells must arrange for their own water testing.

You should also have your water tested for nitrate if you are a woman planning on becoming pregnant or if infants will be using the water.

What if nitrate is found in my water?
1. If the nitrate-nitrogen concentration exceeds the health limit of 10 mg/L, do not give the water to any infant under six months of age, either directly or in formula. Infants should be provided with water from a source which has been tested and shown to be low in nitrate and bacteriologically safe. Commercially bottled water is required to meet the nitrate standard.
2. Do not boil to "treat" high nitrate water. Nitrate is not removed from the water by boiling. Boiling actually concentrates the nitrate, due to evaporation of the water.
3. Have your well inspected. It's a good idea to have your well inspected by a licensed well contractor if the well is old, or you do not know if it is structurally sound. Nitrate and bacteria problems are sometimes caused by structural flaws which allow contaminated surface water to enter the well. Repairing the well or constructing a new, deeper well often results in a results in a significant reduction in the nitrate level. To find licensed well drillers (http://www.health.state.mn.us/divs/eh/wells/lwc/index.html) in your area, look in the Yellow Pages under "Well Drilling and Service."
4. Identify and remove sources of nitrate near the well. Fertilizers, animal wastes, and sewage systems should be located and managed so that they do not contaminate the well. If a nitrate source is too close to the well and
cannot be moved, then you may need to consider having the well permanently sealed and replaced by a licensed well contractor.

What about a water treatment unit?
Home water treatment units are not recommended for treating high nitrate water which will be given to infants. There is no foolproof way of knowing when the treatment system may fail, and blue baby syndrome has been known to occur after just one day of exposure to high nitrate water.

Should I test my well for anything other than nitrate?
Yes. Private wells should be tested at least once a year for bacterial safety. It is also wise to test well water for bacteria any time the water changes in taste, odor, or appearance. See also: Bacterial Safety of Well Water (http://www.health.state.mn.us/divs/eh/wells/waterquality/bacteria.html).

In addition, water can absorb lead from old lead pipes, lead-soldered copper pipes, or brass plumbing components, when the water stands idle in the pipes for more than a few hours. It is recommended to either flush standing water until you feel the water get colder (usually 30-60 seconds), or have your water tested for lead after it has been standing in the pipes at least six hours. Also, never use water from hot water faucets for drinking or cooking. See also: Lead in Well Water Systems (http://www.health.state.mn.us/divs/eh/wells/waterquality/lead.html).

Arsenic occurs naturally in about half the wells in Minnesota, and about 10 percent of wells produce water which exceeds 10 micrograms per liter (parts per billion), the federal drinking water standard. Arsenic is more prevalent in western Minnesota, but can occur almost anywhere in the state (see map on arsenic occurrence (http://www.health.state.mn.us/divs/eh/wells/waterquality/arsenicmap.pdf). Long-term consumption of arsenic above the drinking water standard may increase the risk of health problems of the skin, circulatory system, nervous system, lungs, and bladder, including some forms of cancer. Every private well should be tested at least once or twice to determine if arsenic is present in the water. See also: Arsenic in Minnesota’s Well Water (http://www.health.state.mn.us/divs/eh/wells/waterquality/arsenic.html).

Other contaminants sometimes occur in private water systems, but much less frequently than bacteria, nitrate, arsenic, or lead. If the well is located close to fuel tanks or to a commercial or industrial area, a test for "volatile organic chemicals" (VOCs) is a good idea. A brochure, VOCs, is available from the MDH. Agricultural chemicals are sometimes found in wells located near cropped fields or handling areas for agricultural chemicals. Shallow wells are more vulnerable to pesticide contamination than are deep wells. If your well is located in an agricultural area, and especially if it is a shallow well, testing for several of the pesticides most commonly used in the area may be warranted.

If children or adolescents are drinking the water, a test for natural levels of fluoride will give your dentist useful information when considering fluoride supplements. A small number of wells in Minnesota (primarily northeastern Minnesota) do have naturally-occurring levels of fluoride that exceed the health standard.

Questions?
Contact the MDH Well Management Section
651-201-4600 or 800-383-9808
health.wells@state.mn.us

Minnesota Department of Health
Updated Thursday, June 28, 2018 at 10:18AM
From: Jane Cowgill <JCOWGILL@smumn.edu>
Sent: Thursday, November 15, 2018 4:31 PM
To: Gernes, Mark P (MPCA) <mark.p.gernes@state.mn.us>
Subject: Daley farm expansion

Dear Mr. Gernes,
I am writing to express my opposition to the Daley Farm expansion. This proposed expansion is just not right for our county given its karst topography. I ask that the NPDES application be Denied, especially since the farm is already out of compliance. I would also like you to know that we are requesting a Contested Case Hearing. We feel very strongly about this issue and expect your attention.
Jane Cowgill
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

The proposal will produce 46 million gallons of liquid manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting) USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota’s 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400’ X 400’ X 16’ manure pit were to be constructed. Therefore, the Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

We know that when nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW. Also, western Winona County is informally known as a “cancer cluster” as cancer rates are already high in this area. It would stand to reason that threats to human and animal health is threatened in an already compromised region when additional carcinogens are added to the environment through run-off and leakage of contaminated water.

The EAW indicates that groundwater is present at average depths of between 16 and 20 feet only in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

Climate change has increased intense rainfall events—since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).

This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take—if restoration is even possible.
The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

During the public information session in Lewiston, MPCA feedlot official, Mark Gernes, stated that 3 out of 4 of the Daley's existing facilities are out of compliance with Federal pollutant discharge requirements. It is difficult to trust that the MPCA will be thorough in oversight and enforcement when years go by with full awareness of active noncompliance.

Sincerely,

Mary Tacheny
170 Good Counsel Drive, Mankato MN
Mankato, MN 56001-3138
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion will make this a HUGE dairy operation and that means we need a real in-depth look at the environmental consequences.

The amount of liquid manure and wastewater this will produce is very concerning. Smaller operations have struggled to manage their waste produce, and I do not think allowing an operation like this over karst geology makes any sense from a groundwater perspective.

An EIS is the minimum of due diligence we should do before this farm is allowed to begin operation.

Sincerely,

Madeline Neenan
3623 Elliot Ave
Minneapolis, MN 55407
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

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This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota's 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed. Therefore, the Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

We know that when nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW. Also, western Winona County is informally known as a "cancer cluster" as cancer rates are already high in this area. It would stand to reason that threats to human and animal health is threatened in an already compromised region when additional carcinogens are added to the environment through run-off and leakage of contaminated water.

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Climate change has increased intense rainfall events--since 2004 in southern Minnesota alone, there have been three mega-storms with rainfall totals over 9 inches during 24- to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation (https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html).

This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take--if restoration is even possible.

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Sincerely,

John Zschetzsche
1311 Bpxelder St.
Mountain Lake, MN 56159
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Sincerely,

Eva Barr
17289 County 8
Wykoff, MN 55990-2134
From: Alan Muller <alan@greendel.org>  
Sent: Thursday, November 15, 2018 6:00 PM  
To: Stine, John (MPCA) <john.stine@state.mn.us>  
Cc: Grosenheider, Kim (MPCA) <kim.grosenheider@state.mn.us>; bsognfrank@landstewardshipproject.org  
Subject: EIS for proposed Daley Farms feedlot expansion

John Stine, Commissioner, MPCA

Dear Commissioner Stine:

This is to support the requests for an Environmental Impact Statement for the proposed dairy (feedlot) expansion sought by Daley Farms of Lewiston, Winona County.

Most of the key points have been well made by Land Stewardship Project members and don't need repetition by me.

The project would annually use 92 million gallons of water. The city of Lewiston (pop. 1,564) uses about 33 million gallons of water per year.

From the EAW: "Daley received DNR's preliminary approval letter to construct the new wells for the Project on October 30, 2017. The DNR has stated in the preliminary approval letter, that DNR has 'determined that the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands.' Also, "The DNR's preliminary approval to construct a well is not an approval to use or pump the well." Thus, it does not seem to be established that the proposed withdrawals would be sustainable.

The proposal would annually produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from surface water deep into the ground.

Lewiston's municipal sewage lagoon disappeared into a sinkhole in 1991. What if one of the multi-million gallon lagoons at this project disappears into a sinkhole? The municipal lagoon in Altura failed due to a sinkhole in 1976. The same thing happened in Bellechester in 1992.

Well testing conducted by the Minnesota Department of Agriculture in 2016 showed that 46.3 percent of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates.

According to the USDA Natural Resources Conservation Service, 250 cows produce as much nitrate/nitrogen as 5,000 people. By that count, the 4,628-cow Daley Dairy would conservatively produce as much nitrate/nitrogen as a town of 90,000 people. Citation: https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211

The proposed manure basin would have a surface area equal to 3.3 football fields – and it's designed to be 16-feet deep.

Winona County has, since 1998, limited feedlots to 1,500 animal units. This cap acknowledges the reality that, in karst country, there is a limit to how many animals you can sensibly pack into one location when you are storing liquid manure in lagoons. The Daleys' farm was over the 1,500-animal unit cap at the time the ordinance was adopted and so was "grandfathered" in. This means it could continue but could not expand (increase its non-conformity). The application, as I understand it, is for 5968 animal units, 3.98 times the county cap.

Serious questions have been raised about the scheduling of the Oct 16 meeting, ostensibly held by the MPCA,
and whether it was not arranged to minimize public participation. If the applicants were acting in good faith and confident of community support they would presumably not need to use these tactics. Nor would they be litigating against expansion of the public comment period.

As you know, an EAW is intended to be a brief screening document used to help decide whether an EIS is necessary. It is clear that the impact of the proposed facility would be substantial, in an area already impacted by other feedlot operations. Thus the need for an EIS seems apparent and indisputable. Please order one.

It hardly needs to be said that such massive feedlot operations are profoundly unsustainable from a "climate" point of view.

Yours very truly,

Alan Muller
1110 West Avenue
Red Wing, MN 55066
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Sincerely,

Peg Zahorik
P.O. Box 127
Knife river, MN 55609
Please see attached.

John P. Lenczewski  
Executive Director  
Minnesota Trout Unlimited  
P.O. Box 845  
Chanhasen, MN 55317  
612-670-1629  
jlenczewski@comcast.net
November 15, 2018

Kim Grosenheider
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155
kim.grosenheider@state.mn.us

via electronic mail

Re: Daley Farms of Lewiston, LLP – 2018 Dairy Expansion
Comments on the EAW and need for an EIS

Dear Ms. Grosenheider:

I am writing on behalf of Minnesota Trout Unlimited and its several thousand members to express our concerns over the proposed expansion of the Daley Farms feedlot near Lewiston, Minnesota. Because the information provided as part of the Environmental Assessment Worksheet for this project makes it clear that the project will have significant environmental effects, we urge the MPCA to follow state law and require the preparation of an Environmental Impact Statement (EIS).

Minnesota Trout Unlimited is a grassroots conservation organization with several thousand members in six chapters around the state. We work to protect, restore, reconnect and sustain coldwater fisheries and their watersheds. In the past seven years we focused more than One Million Dollars restoring habitat in and along more than four miles of stream in the Rush Creek watershed and more than three miles of stream in the Garvin Brook watershed. Next summer we will restore habitat on an 8,000 foot segment of the South Branch of the Whitewater River downstream from the project site. Many of our members live in the Rush Creek, Whitewater River and Peterson Creek/Garvin Brook sub watersheds which will be impacted by the proposed project. Hundreds more fish these streams ever year and pump thousands of dollars into the local communities. In short, we are deeply invested in restoring and protecting the high quality trout fisheries found in these special streams.

We pride ourselves on working closely with the agricultural producers who live and work along these streams to restore good trout habitat while accommodating the needs of working farms. Local farmers are valued partners and we appreciate the many challenges they face turning a
profit year after year. In addition, some of our members know members of the Daley family and can attest to the fact that they are good people and good farmers. So it is with some trepidation that we write to share our concerns about the significant environmental effects which the proposed expansion of the Daley Farms’ feedlot operation would likely have. We hope these comments will be received with an open mind and spur agreement that further study is needed to make sure this significant expansion is a sustainable use of the land and water.

Given the scale of the project and its location on sensitive soils at the headwaters of these three top notch trout streams we believe that the project as proposed is very likely to have significant adverse impacts on the wells, aquifers and trout streams in the area. Given the information gaps in the EAW materials we cannot say how large the impacts will be and to what degree they could be avoided. However, the information provided does indicate that significant environmental effects are likely. Consequently, preparation of an EIS is warranted.

The information provided in the EAW appears to be accurate, but it is incomplete in several important areas and warrants further investigation. There are significant impacts that are reasonably expected to occur that warrant further investigation via an EIS. Most important from a water resources standpoint is the inevitable pollution of the aquifers and trout streams from manure applications.

A few major gaps or flaws in analysis are listed below:

- The EAW fails to consistently factor in that the entire area of the operation, especially the manure application areas, is on relatively shallow soils over fractured bedrock, which provides an easy pathway for pollutants and bacteria to leach into wells, aquifers and eventually the trout streams.

- The EAW indicates that at the manure application sites the depth to groundwater averages just 6.5 feet and depth to bedrock is less than 10 feet. The average depth to bedrock is “unknown”. The soils maps are of little help, since they flag only areas where bedrock is 40 inches or less and tell us nothing about the vast majority of soil depths. The bulk could be less than 50” for all we know. Given that the depth to groundwater averages just 6.5 feet, the cumulative impact of applying 46,000,000 gallons of manure annually needs to be determined. Furthermore, the amount and impact should be determined for each sub watershed (Whitewater, Garvin, and Rush).

- The degree to which the underlying bedrock is fractured at the manure application sites is another significant unknown. Only the largest fractures will appear as sinkholes. Yet the ability of pollutants to enter wells, aquifers and streams increases exponentially where extensive fractures exist. This warrants closer study.
The EAW also fails to adequately examine the impacts on both runoff and leaching rates of a major precipitation event.

The adequacy of the feed pad runoff basin also needs closer analysis. The EAW indicates that the liquid level in the feed pad runoff basin will be managed so that sufficient storage is available “for the runoff volume generated by a 25-year 24-hour storm event (5.4 inches).” But larger rain events are all too common and it is likely that larger precipitation events will occur within the next 5 to 10 years. Has MPCA or the project proposer examined precipitation records from the past 10 years to determine how many times more than 5.4” fell within a 24 hour period? And what about the slightly smaller events that followed heavy rains which had saturated the soils?

The EAW failed to adequately examine the potential impacts of manure applications on the e. coli levels of each stream. The ability of the MMP to prevent significant increases in e coli levels is assumed, but nowhere critically analyzed. This needs far greater scrutiny, especially given the substantial increases in application amounts in some sub watersheds.

The EAW erroneously equates liquid manure for the operation with nitrogen fertilizer. Manure contains has other chemicals and bacteria, yet the EAW largely ignores their impacts.

The EAW fails to break out how much manure will be applied in each sub watershed. Based upon the current number of AU's in the Rush Creek (1,783 AU), which does not include any animals from Daley’s existing operations, it seems likely that the manure applied by the expanded operation in the Rush Creek sub watershed will exceed this amount. In other words the amount of manure spread on these sensitive soils with double. The likelihood of increased levels of pollutants and bacteria levels was not examined. It should be for this sub watershed, as well as the others.

The EAW also assumes that the state mandated buffer strips and setback strips by sinkholes will be followed and are actually adequate to remove pollutants. Yet there is much research collected by BWSR and other state agencies that indicates the 50 foot buffer strips do not remove all pollutants. This area needs further study, as does the cumulative impacts of manure applications around this many sinkholes and streams in a small area.

The proposed project is likely to have significant environmental effects, especially on the quality of aquifers and surface waters, as well as the trout and other aquatic organism which populate the trout streams in the area. For this reason we respectfully request that the MPCA order an EIS be prepared for this project.

Respectfully submitted,

John P. Lenczewski
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. After reading the EAW and seeing the proposed expansion of 3,000 cows I am concerned about the potential impact on the water resources of the sub-watersheds where the expansion project is located. The geology of the area and vulnerable groundwater resource needs to be better considered in an EIS. One map included shows a sinkhole at the edge of the LLP boundary. There are multiple karst formations and special consideration areas in manure application fields.

I have many concerns, including that fact that small family dairy operations are already suffering from oversupply of milk and reduced prices and this megafarm will make those economics much worse. The risks being taken on are not reasonable given the oversupply already. This economic concern that is not addressed in the EAW is in addition to the failure to adequately address the potential water pollution impacts.

A few of many environmental concerns are listed below:
- The probability of groundwater pollution in this sensitive porous limestone area is great - The consequence of further groundwater pollution added to the fact that many nearby towns already have elevated nitrate levels (i.e., close to meeting or exceeding allowable nitrate limits of 10 ppm), putting at risk the population including pregnant women and children - The health consequence are potentially very large - The concentration of the enormous volume of manure is setting up the likelihood for a massive pollution event from either "routine" leakage or a breach.
- The EAW does not address how the lagoon will withstand extreme weather events that are now a matter of time with our altered MN climate.
- Given that Daley will drill 2 new wells and increase water draw from ~32MG annually to 92MG annually. This is not a small increase, but a considerable one. The current EAW shows Daley has a permit to build the wells, but does not have a DNR permit to pump - more information on impact on hydrology of the area is warranted justifying an EIS - It is not clear that the total manure pit and feedpad runoff basin storage is adequate for the extreme weather events that have already occurred in MN with climate change and ones anticipated to be much more frequent and with larger volumes of rain in shorter periods. For example, the EAW listed management of feedpad runoff to accommodate a 25-year 24-hour storm event of 5.4 inches has been exceeded in MN this year. More realistic estimates of extreme weather events that will have consequences to manure pit and runoff basin storage capacities, and the potential for overflows and their consequences needs to be better addressed in an EIS.
- The manure pit storage volume of 281 days estimated by Daley seems marginal given the large amount of manure being generated, the sensitive geologic area, and the chance for extreme weather events that can increase the volume of waste in the pit and runoff basins and decrease the access to fields for spreading manure at critical times when pits and retention basins may overflow.
- Daley's Manure management does not anticipate any change in stormwater runoff characteristics (physically and chemically) from the Project manure application sites. Again consideration of increase in number and intensity of extreme weather events is missing and needs to be addressed in an EIS.

The economic impact of this operation needs to be analyzed, especially its impact on the many neighboring family-owned and moderate-sized dairy farms. Increased consolidation in the dairy industry will have a devastating impact on our rural community, and an EIS is needed to evaluate this. In addition, the impacts to roads needs assessment and only an EIS will address that.

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the MPCA will be thorough in oversight and enforcement when years go by with full awareness of active noncompliance. This is of great concern.

Sincerely,

Pat Schmieder
7100 Mikkonen Rd
Two Harbors, MN 55616-8060
Dear Ms. Grosenheider,

I am writing to comment on the EAW for the Daley Farms proposal and to request that MPCA require an EIS on the project, as state law clearly requires in this case. It is entirely obvious that this factory farm has the potential for significant environmental impacts, and therefore an EIS must be carried out. Failing to order the EIS would be not only an insult to Winona County residents, but a violation of state statute, and yet another tragic example of our government failing to protect the best interests of rural people. Is this the legacy the Dayton administration wants to leave? Is this how the Walz administration wants to begin its time in office?

I am a Winona County resident who works in Lewiston. I grew up on my family's farm only a few miles from the Daley operation. It is ALREADY a hazard to the community and far larger than is safe, appropriate, or necessary for any farm to be, particularly in this vulnerable region. I am extremely concerned about the potential harm this proposed expansion would cause to my family and to the entire Lewiston area and Winona County community. I am particularly concerned about the harm to our water. The Daley factory farm would use 92 million gallons of groundwater per year, an outrageous amount that is nearly 3 times the amount used by the entire town of Lewiston annually. The Daleys do not have more right to use water than anyone else in the community. The proposal would also generate 46 million gallons of liquid manure and wastewater per year, to be stored in open pits directly above vulnerable karst topography. I do not want to see my family members' or our neighbors' wells (including the Lewiston municipal wells) dry up or become contaminated with manure due to the Daleys' proposed abuse of public resources for private profit. The purpose of Minnesota's environmental review process is to identify and prevent such outcomes before they can occur.

Like all factory farms, this proposal is also a threat to air quality for rural neighbors. Odors generated by this operation are already a problem. Manure produced and concentrated at this scale generates literally poisonous gases, even beyond the foul odors that also cause unacceptable harm to rural people's quality of life.

Winona County itself has already recognized that an operation of this scale carries an unacceptable risk to the environment and people's health, safety, and quality of life. The Daley operation at its current scale is already above Winona County's animal unit cap of 1,500.

MPCA must not allow itself to be swayed by the Daleys' use of rhetoric to the effect that they are a "family farm" or that their proposal would somehow be of benefit to the community. It would bring no benefit to anyone but its owners, only harm and perhaps disaster. The Daleys' unwillingness to undergo an EIS has no bearing on whether or not one must be ordered: state law is clear. The role of our government is to protect the common good, for people and the land.

Thank you,
Johanna Rupprecht
460 E Mark St
Winona, MN 55987
320-305-4096
johanna.rupprecht@gmail.com
From: Dennis Johnson <dairydgj@morris.umn.edu>
Sent: Thursday, November 15, 2018 3:45 PM
To: Grosenheider, Kim (MPCA) <kim.grosenheider@state.mn.us>
Subject: Comment on large dairy expansion

I strongly encourage implementation of a complete environmental impact statement on the large Winona country dairy proposal. My position is entirely in line with that advanced by the Land Stewardship Project.

I emphasize the social impact considering the impact of large dairies in my region, west central Minnesota. There is a need to study and consider the community breakdown that results from over-large farms. This impact statement might provide a start in that direction.

Dennis Johnson, retired U of M dairy scientist.
21474 430th Ave, Morris, MN 56267

320 760 4431, dairydgj@gmail.com
Attached and below are our comments:

Dear Ms. Grosenheider:

These are comments from the Land Stewardship Project to the Environmental Assessment Worksheet on the proposed Daley Farms of Lewiston, LLP – 2018 Dairy Expansion from 1,728 cows or 2,275 animal units to 4,628 cows or 5,968 animal units in section 16 of Utica Township, Winona County. The project has the potential for significant environmental impacts and an Environmental Impact Statement (EIS) is required. Among others, this proposed dairy expansion contains the following potential significant negative environmental impacts:

1. **A failure of the manure pit due to the area’s karst geology is possible and must be analyzed through an EIS.** The EAW does not acknowledge or analyze the potential for the pit failure. This possible pit failure due to the sensitive karst area would result in millions of gallons of raw manure and liquid waste entering the groundwater. The EAW states this factory farm will generate 46 million gallons of manure and liquid waste annually and the pits will be emptied twice a year. This means there will be millions of gallons in the pit most of the year. Three of southeast Minnesota’s 22 municipal sewage lagoons have collapsed, the most recent in 1992. (Altura in 1976, Lewiston in 1991 and BelleChester in 1992). The MPCA must analyze what the impact of a catastrophic failure of this multi-million-gallon manure pit would be. After expansion, in total all manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed new 400' X 400' X 16' manure pit were to be constructed. Therefore, the Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be and that requires an EIS.

In a December 22, 2000 ruling on Fillmore County Residents Concerned for Health vs MPCA, District Court Judge Benson writes, “The MPCA’s decision not to conduct an EIS in this matter is not supported by the record and is arbitrary and capricious. The Court finds that the MPCA failed to consider at least one important aspect of the problem, i.e. the possibility of an underground collapse of the basin. If the basin would collapse how would ground water contamination be stopped? This Court could not find any information in the MPCA’s brief to answer this disturbing question. The MPCA should have addressed this issue and they did not.” (Ruling attached.) Much of the analysis in this ruling applies directly to this proposed dairy expansion. The EAW does not indicate that the pit is constructed to withstand the opening of one or several sinkholes beneath it.

2. **The impact on groundwater availability could be significantly, negatively impacted and must be analyzed through an EIS.** This project would annually use 92 million gallons of water. The nearby city of Lewiston (pop. 1,564) uses 33.5 million gallons per year. The impact of this additional major draw of water on the local aquifer must be analyzed through an EIS. The Department of Natural Resources, in its analysis of an initial permit for drilling of an additional well for this expansion, stated that: "...the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands.”
If lakes, streams and wetlands are negatively impacted, there must be a detailed analysis as to how that damage would be undone and how long restoration might take—if restoration is even possible.

3. The impact on groundwater quality has the potential to be significantly, negatively impacted. The EAW indicates that groundwater is present at average depths of only 16 and 20 feet in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater. Climate change has increased intense rainfall events—since 2004 in southern Minnesota alone according to the Minnesota Department of Natural Resources (DNR), there have been three mega-storms with rainfall totals over 9 inches during 24 to 36-hour periods. The capacity of the proposed lagoon is not designed to handle this kind of rainfall situation. (Source attached and available online here: https://www.dnr.state.mn.us/climate/summaries_and_publications/mega_rain_events.html.)

Water wells in the nearby city of Utica and Lewiston are already compromised with nitrate and radium levels nearing, matching, and/or above the maximum level of 10mg/L designated by the Minnesota Department of Health. (Study attached and available here: http://www.mda.state.mn.us/sites/default/files/inline-files/allctyresults_0.pdf) Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.5% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates.” (Study attached and available here: www.mda.state.mn.us/townshiptesting.) USDA Natural Resources Conservation Service studies indicate that 200 cows produce as much nitrogen as 5,000 people. (Source attached and available: https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211)

From the Minnesota Department of Health web site, “...where sources of nitrate such as fertilizers, animal wastes, or human sewage are concentrated near the ground surface, nitrate may seep down and contaminate the groundwater. Elevated nitrate levels in groundwater are often caused by run-off from barnyards or feedlots, excessive use of fertilizers, or septic systems....Nitrate contamination of a well is often regarded as a first sign of deteriorating groundwater quality.” (Attached and available here: http://www.health.state.mn.us/divs/eh/wells/waterquality/nitrate.html.)

When nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW. Also, western Winona County is informally known as a "cancer cluster" as cancer rates are already high in this area. It would stand to reason that threats to human and animal health is threatened in an already compromised region when additional carcinogens are added to the environment through run-off and leakage of contaminated water. The EAW indicates that groundwater is present at average depths of between just 16 and 20 feet in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater. Therefore, the law requires an EIS on Daley Farms proposal.

4. Daley Farms facilities are currently out of compliance with their NPDES permit. Although the MPCA acknowledges that Daley Farms manure pits and feed pads are out-of-compliance, they’ve been allowed to continue operating for about for many years without fixing the problem and coming into compliance. This flies in the face of a standard of “pollution discharge elimination”. It appears that during this period of non-compliance and non-enforcement, there has been no monitoring by MPCA of chemical and bacterial impact or any effort to measure the impact of leakage and runoff from out-of-compliance facilities on local water. In closing, we submit that “the potential for significant environmental impacts” is clear within the EAW for this project and therefore the law requires an EIS.

Sincerely,
Barbara Sogn-Frank
Land Stewardship Project
Factory Farm Policy Organizer
612-722-6377
bsognfrank@landstewardshipproject.org

Barb Sogn-Frank, Factory Farm Policy Organizer
Land Stewardship Project
bsognfrank@landstewardshipproject.org
507-479-9119 (cell)
612-722-6377 (office)
Kim Grosenheider  
Resource Management and Assistance Division  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155  

Nov. 15, 2018  

Dear Ms. Grosenheider:  

These are comments from the Land Stewardship Project to the Environmental Assessment Worksheet on the proposed Daley Farms of Lewiston, LLP – 2018 Dairy Expansion from 1,728 cows or 2,275 animal units to 4,628 cows or 5,968 animal units in section 16 of Utica Township, Winona County.  

The project has the potential for significant environmental impacts and an Environmental Impact Statement (EIS) is required. Among others, this proposed dairy expansion contains the following potential significant negative environmental impacts:  

1. **A failure of the manure pit due to the area’s karst geology is possible and must be analyzed through an EIS.** The EAW does not acknowledge or analyze the potential for the pit failure. This possible pit failure due to the sensitive karst area would result in millions of gallons of raw manure and liquid waste entering the groundwater. The EAW states this factory farm will generate 46 million gallons of manure and liquid waste annually and the pits will be emptied twice a year. This means there will be millions of gallons in the pit most of the year. Three of southeast Minnesota’s 22 municipal sewage lagoons have collapsed, the most recent in 1992. (Altura in 1976, Lewiston in 1991 and BelleChester in 1992). The MPCA must analyze what the impact of a catastrophic failure of this multi-million-gallon manure pit would be. After expansion, in total all manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed new 400’ X 400’ X 16’ manure pit were to be constructed. Therefore, the Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be and that requires an EIS.  

In a December 22, 2000 ruling on Fillmore County Residents Concerned for Health vs MPCA, District Court Judge Benson writes, “The MPCA’s decision not to conduct an EIS in this matter is not supported by the record and is arbitrary and capricious. The Court finds that the MPCA failed to consider at least one important aspect of the problem, i.e. the possibility of an underground collapse of the basin. If the basin would collapse how would ground water
contamination be stopped? This Court could not find any information in the MPCA's brief to answer this disturbing question. The MPCA should have addressed this issue and they did not." (Ruling attached.) Much of the analysis in this ruling applies directly to this proposed dairy expansion. The EAW does not indicate that the pit is constructed to withstand the opening of one or several sinkholes beneath it.

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Water wells in the nearby city of Utica and Lewiston are already compromised with nitrate and radium levels nearing, matching, and/or above the maximum level of 10mg/L designated by the Minnesota Department of Health. (Study attached and available here: [http://www.mda.state.mn.us/sites/default/files/inline-files/allctyresults_0.pdf](http://www.mda.state.mn.us/sites/default/files/inline-files/allctyresults_0.pdf)) Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.5% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates.” (Study attached and available here: [www.mda.state.mn.us/townshiptesting.](http://www.mda.state.mn.us/townshiptesting.)) USDA Natural Resources Conservation Service studies indicate that 200 cows produce as much nitrogen as 5,000 people. (Source attached and available: [https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211](https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211))

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When nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW. Also, western Winona County is informally known as a "cancer cluster" as cancer rates are already high in this area. It would stand to reason that threats to human and animal health is threatened in an already compromised region when additional carcinogens are added to the environment through run-off and leakage of contaminated water. The EAW indicates that groundwater is present at average depths of between just 16 and 20 feet in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater. Therefore, the law requires an EIS on Daley Farms proposal.

4. **Daley Farms facilities are currently out of compliance with their NPDES permit.** Although the MPCA acknowledges that Daley Farms manure pits and feed pads are out-of-compliance, they’ve been allowed to continue operating for about for many years without fixing the problem and coming into compliance. This flies in the face of a standard of “pollution discharge elimination”. It appears that during this period of non-compliance and non-enforcement, there has been no monitoring by MPCA of chemical and bacterial impact or any effort to measure the impact of leakage and runoff from out-of-compliance facilities on local water.

In closing, we submit that “the potential for significant environmental impacts” is clear within the EAW for this project and therefore the law requires an EIS.

Sincerely,

[Signature]

Barbara Sogn-Frank
Land Stewardship Project
Factory Farm Policy Organizer
612-722-6377
bsognfrank@landstewardshipproject.org
STATE OF MINNESOTA IN DISTRICT COURT
COUNTY OF FILLMORE THIRD JUDICIAL DISTRICT

File No. CX-00-306

Fillmore County Residents
Concerned For Health, Janice Poldervaard,
Loren Poldervaard, Erwin Tart, Robert
Wood, Eloda Wood, George Heidtk
Thomas Schulz, Larry Schulz, Otto Meyer,
Judy Tart, David Applen, Donovan Ruesink,
Jeff Tart, Joyce Tart, Sandy Oeltjen, Mark Oeltjen,
Karen Angell, Arlen Angell, Laurie Applen, Gene
Merkel, Darlene Merkel, Lois VanderPlas,
Verlyn Johnson, Sara Poldervaard, Robert K.
Johnson, Judy Bly-Smith,

Plaintiffs,

vs.

ORDER AND
MEMORANDUM OF LAW

Minnesota Pollution Control Agency,

Defendant,

Reiland Farms,

Intervenor.

This matter came on for hearing before the Honorable Robert R. Benson on September 25, 2000, on cross-motions for summary judgment.

James P. Peters and Karna M. Peters of Peters and Peters, PLC, 20020 S. Lakeshore Dr., Glenwood, Minnesota 56334, appeared on behalf of the Plaintiffs.

Ann E. Cohen, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127, appeared on behalf of Defendant Minnesota Pollution Control Agency (MPCA).

Michael S. Dove, 2700 South Broadway, P.O. Box 458, New Ulm, Minnesota 56073-3111, appeared on behalf of Defendant-Intervenor Reiland Farms.

This Court, being fully advised, and based on the files, records, and proceedings herein hereby finds and orders as

http://www.courts.state.mn.us/districts/third/mpca.htm
follows:

1. Plaintiff Fillmore County Residents Concerned for Health’s motion for summary judgment is granted;
2. Defendant Minnesota Pollution Control Agency’s motion for summary judgment is denied;
3. The attached Memorandum is incorporated by reference.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT

Dated: December 22, 2000 /s/ Robert R. Benson

Robert R. Benson
Judge of District Court

JUDGMENT

The foregoing Order and Memorandum of Law dated the 22nd day of December, 2000 constitutes the Judgment of the Court.

Judgment is hereby entered this 22nd day of December, 2000.

JAMES ATTWOOD

COURT ADMINISTRATOR

http://www.courts.state.mn.us/districts/third/mpca.htm
/s/ James D. Attwood

MEMORANDUM OF LAW

Introduction

This Court, like most courts, is concerned about inserting the power of our third branch of government into areas that are primarily and appropriately within the realm of the legislative or executive branches. In the instant case, a statute was propounded by the legislature, but the enforcement and interpretation of that law was delegated by the legislature to the executive branch. Defendant MPCA argues that Plaintiffs seek to have this Court second-guess the technical judgment of the MPCA on the strength of popular opinion. "Boiled down" (to borrow another phrase from Defendant's brief) Defendant essentially argues that this issue is none of the Court's business. This Court wishes it were so. However, the same legislature that delegated responsibility to the MPCA also specifies by law (Minn. Stat. §116D.04 subd. 10) that an executive decision on the need for an EIS is reviewable in the District Court. Plaintiffs have properly sought the review of this Court.

Fillmore County Residents Concerned for Health has filed a motion for summary judgment, which challenges MPCA's negative declaration concerning the need for an environmental impact statement (EIS) regarding Reiland Farms' proposal to develop a dairy feedlot in the karst area of southeastern Minnesota. Defendant MPCA has filed a cross motion for summary judgment. The Court finds that the Plaintiffs are entitled to summary judgment. The motion of Defendants for summary judgment is denied.

There has also been disagreement over the Plaintiff's offer of proof to the Court. The Court finds that some of these items will be allowed into evidence as stated below in greater detail.

Plaintiff's Offer of Proof

The Court may consider evidence outside the administrative record when 1) the agency’s failure to explain its action frustrates judicial review; 2) additional evidence is necessary to explain technical terms of complex subject matter involved in the agency action; 3) the agency failed to consider information relevant to making its decision; or 4) plaintiffs make a showing that the agency acted in bad faith. White v. Minnesota Department of Natural Resources, 567 N.W.2d 724, 735 (Minn. App. 1997). If the evidence submitted outside the administrative record demonstrates that the agency’s effort was clearly inadequate or that the agency failed to set forth widely shared relevant scientific views, the Court’s proper function is to remand to the agency for correction of the agency’s error. Id.

It should be noted that the Court is only addressing the offers of proof which are being admitted and which were initially contested in this decision.

Peters Exhibit C:

This exhibit shall not be admitted. Exhibit C is unclear in its comments, and there are sufficient viewpoints from Dr. E. Calvin Alexander, Jr. present in the official record.

Peters Exhibit I:

The Guidelines for Alternative EAW form for Animal Feedlots provide general guidance on the EAW form and explains how the MPCA interprets the technical terms of "phased actions" established by EQB (Environmental Quality Board) rules. Under White and Audubon (National Audubon Society v. Minnesota Pollution Control Agency, 569 N.W.2d 211 (Minn. App. 1997)), the information is relevant to explain technical terms and is therefore admitted for this purpose.

Peters Exhibit J:

This exhibit is admitted because it is not objected to by the MPCA.
Peters Exhibit N:

This exhibit shall not be admitted. It does appear to the Court that this document, which is essentially a memo from one person in the Department of Health to another person in the Department of Health, is strictly an internal memorandum, and accordingly its admission would appear to the Court to be in violation of Audubon.

Peters Exhibit O:

This exhibit has been withdrawn by the plaintiff and shall not be considered.

Peters Exhibit S:

This exhibit is withdrawn by plaintiff and shall not be considered.

Peters Exhibit W:

The MPCA does not object to this document and it shall be considered.

Peters Exhibit CC:

The Court finds that this exhibit should not be admitted. It appears to be cumulative and it does not constitute such additional evidence that would meet the White criteria.

Peters Exhibit DD:

This exhibit does discuss a report of the MPCA (the RGU (Responsible Government Unit)) and it would appear to the Court that the data in this report is something that should have been considered by the MPCA. Clearly it does discuss the information which was in the hands of the MPCA and which it should have considered. This Court finds that this information is admissible under Audubon.

Peters Exhibit EE:

This exhibit demonstrates the scientific view that manure application can cause serious bacteria contamination of groundwater, thereby meeting the standard for consideration of the evidence. It is clear, however, that the document was available to the MPCA during its deliberations. The MPCA should recognize its own studies, and it is not necessary for plaintiff in this case to submit into the administrative record information generated by the MPCA. Accordingly the Court admits this exhibit.

Peters Exhibit FF:

The Court finds that this exhibit is appropriate to include. It contains detailed information on MPCA staff reasoning on a project that is similar even though not the same as the currently proposed project. In many ways, the Court agrees that it is not the same as the proposed project but there are parts of it that contain MPCA staff reasoning. The staff reasoning in some cases relates to the types of problems that are foreseen in the current project. Therefore, the Court finds that this exhibit does meet the White criteria. The Court understands that in the above case the MPCA board did not recommend an EIS, but some of the MPCA staff certainly did.
Peters Exhibit HH:

The MPCA does not object to this document and so it shall be admitted.

Peters Exhibit II:

The MPCA does not object to this document and so it shall be admitted.

Peters Exhibit JJ:

The Court finds that this exhibit does not meet any of the White criteria and is not otherwise helpful to the Court and it therefore shall not be admitted.

Peters Exhibit KK:

The notes shown in this exhibit are not explained to the Court in any manner. These notes are also undated and do not met any of the criteria listed in White. This Court cannot determine how these notes would be helpful to it and therefore denies admission.

Tart, Poldervaard and Heidtke affidavits and pictures:

Essentially these affidavits and pictures deal with water problems alleged in the general area where the project is to be located, but not where the lagoon would actually be located. These documents do not meet any of the criteria set forth in White. This Court finds that this information is cumulative and shall not be admitted.

Facts

The parties have essentially agreed upon the facts. The Court finds the pertinent facts to be as follows:

This project is proposed to occur in the karst regions of Southeastern Minnesota. Karst is a geological term for a landscape area created over soluble rock with efficient drainage. Constructing New Manure Storage Systems in the Karst Region, Interim Guidelines Document, pg. 2 (March 2000). The underlying carbonate bedrock in a karst region dissolves over time to produce solution-enlarged joints and cracks. Id. These features can result in rapid transmission of contaminants from the land surface to the groundwater below. Id. Groundwater contamination from excessive levels of nitrates and bacteria, which exceed state health standards, is already higher in Fillmore County than in other counties in the area.

Reiland Farms is a third-generation family farm. In an effort to compete in an ever-changing agricultural arena Reiland Farms proposed to develop a dairy feedlot near their home in Fillmore County. Reiland Farms agreed to voluntarily prepare an Environmental Assessment Worksheet (EAW) to ensure the environmental integrity of its proposed dairy.

The Feedlot expands upon and aggregates with an existing feedlot at their Home site, which is permitted for 390 animal units. According to the EAW, the Feedlot proposes to use the Home site to feed replacement heifers for the new facility and may expand. The Home site sits in an area of high risk for sinkhole formation. The EAW also affirmatively states in a check-off box that the Feedlot includes a planned and likely expansion of 560 animal units.

The Feedlot includes plans for two open manure basins holding a total of 7.3 million gallons of liquid manure with capacity to serve 1,260 animal units. The Feedlot is proposed for the karst region with nearby blind valleys and sinkholes.
The Feedlot is proposed near the North Branch of the Forestville Creek, a high quality trout stream, near the South Branch Root River, near groundwater resources in the area and near a state park.

In February 2000, the MPCA published an EAW that summarized environmental information relative to Reiland Farms' proposal to develop a Feedlot. After review of geological and engineering information regarding the proposed facility, the MPCA concluded that location and design of the facility were adequately protective of the environment and that the Reilands would not be required to prepare an EIS.

Analysis

THE MPCA'S NEGATIVE DECISION INVOLVING AN EIS

This Court has jurisdiction over this matter under Minn. Stat. §116D.04, subd. 10, which provides that decisions on the need for an EIS may be reviewed in the District Court of the County where the action is proposed to be taken.

Summary judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law. Minn. R.Civ.P. 56.03. In ruling on a summary judgment motion, the Court must view the facts in the light most favorable to the non-moving party, and resolve doubts and factual inferences against the moving party. Hopkins v. Empire Fire & Marine Ins., 474 N.W.2d 209, 212 (Minn. App. 1991). The trial court’s obligation is to determine whether issues of fact exist, not to weigh the evidence, determine credibility of the witnesses or resolve the issues of fact. Schumacher v. Helig, 454 N.W.2d 446, 448 (Minn. App. 1990); Nord v. Herrel, 305 N.W.2d 337 (Minn. 1981).

When reviewing a responsible government agency’s negative declaration of need for an EIS, this Court reviews the decision to determine if it is "unreasonable, arbitrary or capricious, with review focused on the legal sufficiency of and factual basis for the reasons given." Iron Rangers for Responsible Ridge Action v. Iron Range Resources, 531 N.W.2d 874, 880 (Minn. App. 1995) (quoting Swanson v. City of Bloomington, 421 N.W.2d 307, 303 (Minn. 1988)). An agency’s decision is arbitrary and capricious if it represents its will and not its judgment. Trout Unlimited, Inc. v. Minnesota Dep’t of Agriculture, 528 N.W.2d 903, 907 (Minn. App. 1995).

An agency ruling is arbitrary and capricious if the agency: 1) relies on factors not intended by the legislature; 2) entirely failed to consider an important aspect of the problem; 3) offered an explanation that runs counter to the evidence; or 4) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise. White at 730.

Agency decisions are reversed only when they reflect an error of law, the findings are arbitrary or capricious, or the findings are unsupported by substantial evidence. Id. The Courts have endorsed the following definition of "substantial evidence": 1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2) more than a scintilla of evidence; 3) more than some evidence; 4) more than any evidence; 5) evidence considered in its entirety. Id. The Court will intervene, however, where there is combination of danger signals which suggest the agency has not taken a hard look at the salient problems and the decision lacks articulated standards and reflective findings. Id.

An EIS is required where there is potential for significant environmental effects. Audubon at 216. In determining whether a project has the potential for significant environmental effects, the agency must consider four factors: 1) type, extent, and reversibility of environmental effects; 2) cumulative potential effects of related or anticipated future projects; 3) the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and 4) the extent to which the environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or of EIS's previously prepared on similar projects. Id. and Rule 4410.1700 Subp. 7 Minnesota Rules (1999). The Court will address each of the four factors in turn.

1. Type, extent, and reversibility of environmental effects

The Plaintiffs claim that the MPCA’s Findings: (1) do not address the substantive comments in violation of Minn. R. 4410.1700, subp. 4; (2) contain conclusions that are contrary to the comments and the evidence in the record; (3) fail to consider MPCA’s studies that show groundwater contamination from intensive agriculture; and (4) fail to consider the incremental impacts from this operation upon the already existing contamination of ground and
surface water.

The Plaintiffs state that there is a wealth of evidence in the record that suggests a significant potential for groundwater contamination at this particular proposed feedlot site. They also claim that during the spring melting periods and during heavy rainfall, wide channels of water run off the land around the Feedlot. The MPCA has acknowledged the close proximity of the groundwater to the surface by requiring that the land around the basins must undergo a dewatering procedure to artificially bring down the water table. The Plaintiffs also point out the concern about contaminated groundwater and claim that the MPCA did not address these concerns, making their decision arbitrary.

One of the most significant environmental impacts posed by the planned facility, according to the Plaintiffs, is the catastrophic level of water pollution that would result from a sinkhole developing under the manure storage basin and breaching the structure. If such an event were to occur, 7.3 million gallon of liquid waste could flow into groundwater through the sinkhole breach. Plaintiffs also argue that because of the close connection between groundwater flows and surface water flows in this area, it is also highly likely that liquid waste flowing into the groundwater due to a sinkhole breach would quickly reach the surface water such as Forestville Creek, one of the premier trout streams in the state, and eventually flow through Forestville State Park and nearby campground where thousands of visitors will come into direct contact with the manure-polluted water through swimming and fishing activities.

Various individuals, especially those who live closest to the proposed feedlot, commented with concerns about air emissions and odors. The Plaintiffs claim that the MPCA made no findings on air emissions and odor and allowed the project to go forward without an EIS even where the preliminary modeling predicted air emissions would exceed allowable levels. They claim that the belated permit conditions to reduce or eliminate the potential failures in air quality demonstrate MPCA’s concern for air emissions and constitute an abandonment of MPCA’s duty to determine the potential for significant effects before they occur.

The MPCA reviewed an air emissions modeling study of the facility performed by Gantzer Environmental Software and Services, Inc. The MPCA concluded that the facility could comply with ambient standards and Health Risk Values, and that it would not cause nuisance odor that could be detected by receptors beyond the property line, although some odorous emissions could be detected at the property line. Also based on their investigations the MPCA concluded that cumulative impacts should not be significant. When dealing with air emissions this Court finds that the MPCA’s findings were based on some evidence, as discussed above.

The MPCA reviewed a manure management plan submitted by the Reilands. Based on the analysis in this plan, the MPCA concluded that the manure spreading would not result in additional loading of either phosphorus or nitrates. The MPCA found no information that would support the conclusion that manure has harsher environmental impacts than chemical fertilizers. When dealing with manure management the Court finds that the MPCA’s findings were based on some evidence, as discussed above.

The MPCA states that three prongs support its conclusion that the proposed facility would not cause significant environmental impacts as the result of karst-related failure. First, the MPCA evaluated the geological evidence regarding the proposed site. This information, it claims, suggested that the land proposed for the facility "has relatively little evidence of soil collapse problems..." even though in a moderate to high-risk area. The MPCA also considered the engineering of the proposed facility, its liner system, and depth to bedrock, claiming that this information suggested that the proposed facility would not accelerate sinkhole formation.

The MPCA claims that they followed the guidelines put in place for minimum separation distances in the karst area. They state that two factors are considered: the number of animal units to be handled at the facility and the type of storage system (liner). For facilities between 300 to 999 animal units with a composite liner, the guidance proposes that there be five feet separation between the liquid manure and the bedrock. The MPCA did find the minimum of 5 feet separation required for a facility consisting of 300 to 999 animal units.

The record shows that the MPCA did research the area of environmental effects, however, this Court finds that not all major issues were discussed by this agency. The agency neglected to talk about the possibility of the storage basin being breached underground. There were discussions about a spill above ground and what could be done in this situation, but none about underground spills. The Court agrees that there was information stating that there would be limited seepage, but that does not resolve the issue of mitigation of a spill larger than limited seepage.
There should be a plan put into effect to encompass the problem of a spill underground. How would this be contained? How would the groundwater be protected? How would Forestville State Park and the trout streams be protected? This Court is concerned because these areas were not addressed and they should have been. The Plaintiffs were correct in questioning the possible contamination of the groundwater and the trout streams located in the area.

A reviewing Court will intervene only where there is a "combination of danger signals (that) suggest the agency has not taken a 'hard look' at the salient problems and "has not genuinely engaged in reasoned decision-making." Pope County Mothers v. Minnesota Pollution Control Agency, 594 N.W.2d 233, 236 (Minn. App. 1999). This Court finds that this is the situation in the case at hand. When asked about spills the Agency would respond by talking about above ground spills and by assuring people that there would not be an underground spill or only a little leakage because of the durability of composite liners, but this does not answer the question.

This Court finds that this is a very real issue and one that should have been addressed by the Agency before finding that an EIS was not in order in this case. The MPCA neglected its duties when it did not discuss the type, extent, and reversibility of the environmental effects of an underground spill. The MPCA did make a conscious effort to discuss other issues that caused concern, but completely avoided this issue. The MPCA’s neglect in discussing this issue shows that their decision was arbitrary and capricious.

Essentially this Court finds that the MPCA considered all the concerns except how to mitigate the problem of an underground spill from the pond. If a collapse occurs, how would the pollution be mitigated? There is no discussion of this and thus the MPCA did not fulfill its requirement. On all the other issues discussed, the MPCA made a decision based on some evidence. The Court might disagree with the decision, but it is bound to honor that decision.

One of the problems also not discussed is the problem of water (from the higher water table or from precipitation) migrating downward along the outside of the liner. After reviewing studies contained in the record, it appears such water would likely travel along the liner to the bottom of the lined lagoon. Would this then carry the risk of accelerated failure of the ground under the lagoon? Is this risk greater if less than 10 feet of soil is not present between the bedrock and the liner above it?

2. Cumulative potential effects of related or anticipated future projects.

The EQB rules provide that "multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when...preparing the EAW, and determining the need for an EIS." Minn. R. 4410.1000, subp. 4. The EQB rules define "phased action" as meaning "two or more projects to be undertaken by the same proposer that a RGU determines: (1) will have environmental effects on the same geographic area; and (2) are substantially certain to be undertaken sequentially over a limited period of time." Minn. R. 4410.0200, subp. 60.

The Plaintiffs state they have submitted evidence that the expansion is substantially certain to occur in a limited period of time, including: 1) MPCA’s own certified admission at pages 4 and 19 of the EAW; 2) the Project site map showing the exact location of the future freestall barn on Exhibit 3a, page 1 to the EAW; and 3) the May 23, 2000 Findings of MPCA verifying that the manure settling basin and the manure storage basin are designed for manure from 1,000 mature dairy cows (1,400 animal units).

The MPCA states that the definition of "phased action" in the EQB rules ensures that environmental review is not undertaken on expansions of projects that are speculative. The MPCA argues that although the EAW notes that the Reilands have designed their new dairy facility to accommodate future expansion, the MPCA would have been on solid ground had it decided not to include any information in the EAW regarding the impacts from the expansion because it was not "substantially certain" to occur in a "limited period of time."

The Court disagrees with the MPCA. This Court finds that there is a strong possibility that there will be an expansion within a limited period of time. The new freestall barn will encompass the same land as what is in dispute in this action. The Court also finds that this barn will be constructed in a limited period of time. Although there is no guidance on what "limited period of time" means, this Court finds that it is relatively certain that a barn will be constructed in the near future. This information is supported by the fact that the plans do have the freestall barn listed on them. This information is also supported by the fact that the storage basin is large enough to hold

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1/2/01
manure for at least 1,000 animal units.

The law is explicit that large projects must not be broken up into smaller units in order to avoid environmental review. Pope County Mothers at 237. The rules governing environmental review recognize that cumulative impacts can result from individually minor but collectively significant projects taking place over a "period of time." Id.

The Court’s decision that this is actually a phased action will also impact the minimum separation distance that is mentioned under the first factor. To determine whether the minimum separation distance will be met, the owner must conduct soil thickness investigations at a minimum of four locations for the first one-half acre of manure storage area surface and a minimum of two additional locations for each additional acre. Constructing New Manure Storage Systems at 8. According to Table 1 of this article a minimum separation distance of 10 feet is needed when the basin is serving over 1000 animal units. Id, at 9.

The Court is also perplexed by the fact that the MPCA and the Reilands argue that they can store manure in these basins for up to a year, and very well may do so, but this would not force them to have 10 feet minimum separation. Would this not be the same volume and amount of weight that would be caused by having over 1,000 animal units and emptying the basin twice a year? At any rate, this Court finds that since the current project and the anticipated freestall barn shall be considered as a phased action this project would still need to have at least a minimum separation of 10 feet between the bedrock to meet the MPCA’s own guidelines.

3. The Extent to Which the Environmental Effects are Subject to Mitigation by Ongoing Public Regulatory Authority.

The extent to which environmental effects are subject to mitigation is an important consideration when determining whether a project has the potential for significant environmental effects. Pope County Mothers at 238. The MPCA must consider the extent of the environmental effects likely to result and how those effects could be mitigated. Id. Mitigation includes avoiding or limiting the size of a project, repairing or restoring the environment, working to preserve or maintain the environment during the life of the project, or replacing or substituting resources. Trout Unlimited at 907.

The Plaintiffs state that the MPCA is improperly deferring key issues to the permitting phase; one of them being whether this proposed operation poses a significant environmental impact. The Plaintiffs claim that the MPCA is relying on soil inspections during the construction of the manure storage basin to determine whether there is subsurface evidence that suggest a possibility of sinkhole development under the manure storage basin. They state that deferring the gathering of key information to the post-permitting stage is an abandonment of the agency’s duty in an EIS determination.

The Plaintiffs are concerned because the MPCA did not seek additional Ground Penetrating Radar tests in better conditions to obtain a thorough investigation of the subsurface conditions under the manure basin before allowing the project to proceed. They state such soil investigation during construction will not provide the kind of subsurface investigation that Dr. Alexander and the DNR insist are necessary. Dr. Alexander stated that the additional investigation was easy to redo and the DNR stated that additional information was necessary and could be obtained reasonably. The Plaintiffs state that the MPCA’s negative decision was premature and based on inadequate information.

The MPCA states that the case at hand does not have the same problems as Trout Unlimited and their decision should be upheld. In Trout Unlimited, the Court struck down the Department of Agriculture’s decision to identify significant impacts associated with pesticide and fertilizer application by monitoring after permits for the use of those chemicals were issued, instead of examining whether such impacts had the potential to be significant during the environmental review process. The Court found that the purpose of environmental review was to ensure that risks were identified before they occur, and that unspecified "monitoring and permit conditions" required after the deleterious effects occurred would not suffice. Id, at 909.

The Defendant states that the Court did not hold, however, that it was improper to consider mitigation of risks by specified emission limits and operating requirements proposed for facility permits. The Defendant points out that the Court has in other cases specifically noted that consideration of such mitigation measures during environmental review is appropriate so long as they are "more than mere vague statements of good intentions." Iron Rangers at
881. The MPCA concludes that the problem in Trout Unlimited was that the Commissioner of Agriculture both failed to examine the environmental effects likely to result from the project and how any effects could be mitigated; thus, so long as the EAW sets forth specific mitigation measures to address specific environmental effect, such consideration is proper.

The very purpose of an EIS is to determine the potential for significant environmental effects before they occur. Trout Unlimited at 909. By deferring issues to later permitting and monitoring decisions, the Commissioner abandoned his duty to require an EIS where there exists a "potential for significant environmental effects." Id.

Both Plaintiff and Defendant have offered logical arguments to support their respective positions. After a thorough review of case law and the facts, the Court finds that the MPCA did not address the mitigating factors. As in Trout Unlimited, the project here would go forward without an EIS and in the event significant environmental effects did occur, the project may be cancelled. The MPCA is relying on permitting and monitoring just as the RGU did in Trout Unlimited. As stated above the MPCA does not even address certain issues, much less talk about how to mitigate them. It is the MPCA's duty to determine the possible environmental effects; they have neglected this duty in the case at hand.

The Court also questions the fact that the basin is larger than the capacity needed at this time, which supports the finding that this project is a phased action. One of the factors to consider when looking at mitigation includes limiting the size of the project. It would make sense for the MPCA to have limited the size of the storage basin, given the sensitive karst region and the claim that there is not any immediate plan to expand. This reaffirms the Court's finding that the MPCA did not fulfill its duty when dealing with the issue of mitigation.

4. The extent to which the environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or of EIS's previously prepared on similar projects

The Plaintiffs claim that the MPCA had relevant information and disregarded it. The MPCA has been studying nitrates in Minnesota groundwater beneath agricultural land for years. In March 1999, the MPCA identified groundwater impacts from land application of manure as one of three objectives for examination in a study entitled "Effects of Manure Management on Ground Water Quality." The MPCA was also provided a copy of the Iowa Department of Public Health's article on the chemical and microbial constituents of ground and surface water proximal to large-scale swine operations. Plaintiffs claim that this study shows that pathogens in manure break down more slowly when incorporated in the ground. The Plaintiffs also state that the MPCA omitted the most pertinent studies in an arbitrary fashion.

The Interim Guidelines are established by the MPCA to define the measures and conditions generally needed to ensure that, to the maximum extent practicable, groundwater is protected when new liquid manure storage systems are constructed in the karst region. Constructing New Manure Storage Systems at 1. Minnesota Rule 7060.0500 states that it is the "policy of the Minnesota Pollution Control Agency to control wastes as may be necessary to ensure that to the maximum practicable extent the underground waters of the state are maintained at their natural quality." Id. Maintaining high quality ground water supplies is challenging in the karst region of southeastern Minnesota due to the rapid transport of contaminants from the land surface to ground water in this unique geologic setting. Id.

Three potential water quality risks associated with liquid manure storage systems in the karst region are described below. Two of the risk factors could lead to long-term (chronic) problems, whereas the third risk factor is associated with catastrophic failure. Id. at 3. The water quality risks include: 1) seepage of contaminants through the liner and underlying soil to fractured bedrock and subsequently to ground water; 2) gradual soil subsidence of formation of a shallow sinkhole below the storage structure that breaches the integrity of the liner, causing slow and perhaps undetectable leaking of manure from the storage system to ground water; and 3) larger sinkhole forming below a manure storage system leading to a rapid flow of manure into ground water or causing a collapse in a basin sidewall and a release of manure onto the ground surface. Id. at 3.

Manure entering ground water will discharge into streams within a period of time ranging from hours to decades depending on the site-specific hydrogeology. Id. The karst region of Minnesota maintains a large number of high quality trout streams. A rapid discharge of a large quantity of manure into a stream will destroy the aquatic life for a stretch of the stream and also result in increased nutrient loading into the receiving waters of the Mississippi River system. Id. Manure that travels in the ground water for a longer period before discharging into streams will be more diluted and may not destroy aquatic life, but will threaten drinking water supplies as it travels toward the stream, and then still contribute to
stream pollution upon discharge. Id.

Using liners with very low seepage rates can reduce the probability of a soil collapse below a manure storage system. Id. at 4. Risks of failure can also be reduced by such measures as proper siting of the storage facility on the landscape; minimizing the manure storage capacity; preventing excess infiltration of runoff water around the storage facility; and maintaining a certain separation distance between the manure and fractured bedrock. Id.

Between 1974 and 1992, sinkholes opened below three of the twenty-two municipal wastewater treatment ponds in Minnesota's karst region. Id. at 4. These failures demonstrate the potential for sinkholes to develop in southeastern Minnesota when large quantities of liquids are stored in sinkhole prone areas with minimum barriers between the liquid and underlying materials. Id. It is important to consider that the contamination concentration of manure lagoons are often over 100 times greater than municipal wastewater pond liquids, and thus the environmental consequences of a catastrophic manure release could be much worse than municipal pond failures. Id.

Most sinkholes in southeastern Minnesota appear where there is less than 50 feet of soil cover over carbonate and sandstone bedrock. Id. at 5. The risk of soil collapse has generally been found to increase in areas of ponded or intermittently flowing water, and in areas with indication of more extensive karstification, including areas with disappearing streams, caves, springs and solution cavities. Id.

After reading the interim guidelines and reading over the briefs of counsel this Court finds that leaks and seepage can be anticipated. As a matter of fact, it seems to be the norm that these basins do have seepage. This Court finds that the MPCA did not take advantage of some of the data that was available to them. The Guidelines state that there is concern about protecting the groundwater, but there is not a plan to mitigate (or at least none was mentioned) if a sinkhole would form underneath the basin. As stated above, the MPCA does discuss an above ground spill and does have a plan if this were to occur, but nothing is mentioned about below ground spills. As the guidelines point out, the streams, as well as drinking water could be harmed if this were to occur.

As stated above, this Court does find that this is a phased action and therefore, the proposed freestall barn should be included in the evaluation of this site. Given this information and the MPCA’s own guidelines, there is not enough separation distance between liquid manure and fractured bedrock to erect these basins on the proposed site.

Conclusions

An RGU’s decision is arbitrary and capricious if it: (1) relied on factors the legislature never intended it to consider; (2) entirely failed to consider an important aspect of the problem; (3) offered an explanation for its decision that runs counter to the evidence; or (4) is so implausible that it could not be ascribed to a difference in view or the result of agency expertise. Pope County Mothers at 236. If the RGU’s decision represents its will rather than its judgment, that decision is arbitrary and capricious. Id.

The MPCA’s decision not to conduct an EIS in this matter is not supported by the record and is arbitrary and capricious. This Court finds that the MPCA failed to consider at least one important aspect of the problem, i.e., the possibility of an underground collapse of the basin. If the basin would collapse how would ground water contamination be stopped? This Court could not find any information in the MPCA’s brief to answer this disturbing question. The MPCA should have addressed this issue and they did not.

This Court also finds that the MPCA violated its own interim guidelines by only requiring five feet of separation distance when using a composite liner, instead of the 10 feet required for a facility designed for over 1,000 animal units. This Court, as stated earlier, finds that this is a phased action and therefore it should be held to the standards applied for a project comprised of over 1,000 animal units instead of the 300 to 999 animal units this study was based on.

Plaintiffs have argued that the MPCA decision was improperly influenced by the threats of members of the legislative branch to change the law. Writing and rewriting of the law is what legislatures do. It is not the function of the Court to determine what is or is not proper in discussions between the legislative and executive branches of our government. Furthermore, this Court suspects that the executive branch is fully capable of protecting itself from the legislative branch. This Court doubts that the executive branch needs judicial protection from the legislature.

Obviously this decision does not bar the completion of the proposed project. It does, however, require further evaluation.

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by the RGU. This Court is mindful that the preparation of an EIS is costly and time consuming, but then, so is litigation. Based on all the information in the file and the law, the Plaintiff's motion for summary judgment is granted, and Defendant's motion for summary judgment is denied.

This decision is not meant to, and should not be read as a denigration of the work and investigation completed by the MPCA on this issue. Most of the disputed issues have been resolved in favor of the MPCA. While the Court may not have reached the same conclusions as the MPCA, where these conclusions were based on some reasonable evidence this Court should not intervene. RRB
Gambling on the Karst?
By Mary Losure, Minnesota Public Radio
September 10, 2001

Much of the rolling, picturesque farmland of southeast Minnesota is what geologists call "karst." The soil is underlain by cracked, water-soluble rock, riddled with underground tunnels and caves. That makes the region's groundwater highly vulnerable to pollution. Depressions, known as sinkholes, can appear without warning when the underlying rock collapses. Sinkholes act like drains, whooshing water and contaminants into underground aquifers.

Now, many local residents are worried as large, industrial-scale feedlots begin to move into the karst region.

Bob and Eloda Wood are retired dairy farmers who do volunteer monitoring of the south branch of the Root River in southeast Minnesota. It's one of the state's best trout streams, and flows through Forestville State Park.

Each week, the two drive the winding road from their farm to the stream to collect samples. On a recent day, Eloda Wood pointed out the sinkholes, disappearing stream valleys, and other classic karst features along the way.

"They tell us that much of our surface is like Swiss cheese, and wherever there is vertical crack, that's an invitation for a sinkhole," she says.

So the Woods were alarmed when they learned of plans to build a factory-scale feedlot, the Reiland Dairy, just up the valley from Forestville State Park.

The dairy's earthen-lined manure lagoons would hold more than seven million gallons of manure. If a sinkhole opened up under a lagoon, the Woods and other opponents worry that all that manure would flow into the groundwater. From there it could gush through underground rock tunnels into the Root River and devastate both it and Forestville State Park.

"Instead of just flooding with water, it would be flooding with manure," Bob Wood says.

A University of Minnesota karst expert characterized the feedlot's risk as "enormous." Both the state Department of Natural Resources and the state Health Department expressed serious concerns, but the Minnesota Pollution Control Agency ruled the project could go ahead.

Opponents, including the Woods, took the PCA to court - and won. In December, a Fillmore County Judge ruled the agency had neglected its duty by failing to consider the catastrophic level of water pollution a sinkhole collapse might cause.

The judge noted that three of the areas 22 municipal sewage lagoons have collapsed, the most recent in 1992. And he pointed out that manure lagoons pose a much greater environmental threat than sewage lagoons, since they are often more than 100 times more concentrated.

But PCA officials still insist the project could have gone ahead safely. "That was our decision and is still our decision," according to Beth Lockwood, the supervisor of the agency's environmental review program. Lockwood says the agency evaluates only environmental impacts that may be "reasonably expected" to occur from a project, and that in the agency's judgement, a sinkhole breach was too remote a possibility to consider.

"We did not feel that after the engineering was all designed, and we looked at the project as a whole and how it was designed and engineered, that we reasonably expected a catastrophic release to happen," according to Lockwood.

The PCA did not appeal the judge's decision, and proposers of the dairy decided to move it to another area. But it's likely more lagoons will be proposed in the karst region, as do dairy farmers there expand their operations. That could cause problems.

Manure lagoons have caused massive water contamination in North Carolina, the state where they were first widely used. They are now banned there.

Minnesota has banned them for hogs, but still allows them for dairies.

In Minnesota's karst geology, dairy manure lagoons are permitted as long as there are no more than four sinkholes within a 1,000 feet of the bedrock.

If they meet those regulations, the only thing stopping big feedlots in the karst is local opposition. And that isn't always as effective as it was in the Reiland case.

"We're right in the middle of three big outfits," laments Kermit Burt, whose parents own Burt's Hilltop Poultry, a small poultry processing plant surrounded by a large turkey farm and two industrial-scale hog operations.

Now the Burts worry about their well. "What's going to happen if our well does suddenly shoot sky high in nitrates and we've got to replace it? Who's going to cover it?"

The Burts and other neighbors fought hard against the most recently built hog feedlot. Until this summer, they thought they'd stopped it.

The feedlot was not large enough to require mandatory review by the PCA, but the county board had denied it a permit because it would sit in a high-risk karst area.

The Minnesota State Court of Appeals upheld the county's decision, ruling that "the proposed feedlot presents legitimate public health concerns."

But this June, neighbors like Dale Pierce learned it was going up anyway. "We thought that because it was all denied by the county officials and even the state Court of Appeals, that it would not go any further. But then they changed the way animal units are counted, and one person was able to approve the permit, and we've got the building now and we can't do a darn thing about it," says neighbor Dale Pierce.

A little-noticed change in the county's regulations had put the proposed feedlot just under the size limit for environmental review by the county.
Bobby King, an organizer for the family farm group The Land Stewardship Project in Lewiston, says with the weakened county regulations, there's not much they can do. "Now we're relying basically on the PCA to look out for a facility that size to make sure it's safe. And we know they're not doing the job," King says.

But others, like State Sen. Kenric Scheevel, R-Preston, say blanket opposition to big feedlots in karst terrain is misguided. The area has traditionally been home to small-scale livestock operations, and Scheevel says if such farmers can't expand, they'll get out of the livestock business. He says that would mean hilly terrain that's traditionally been used for pasture, would be plowed up and planted in row crops like corn and soybeans, which would greatly increase soil erosion.

"Frankly, a lot of those hills will end up in our waterways, because farmers are going to use their land; they're not going to just iddle it. They're in the business of producing either crops or livestock," Scheevel says.

Scheevel says large feedlots can be built safely, as long as they're properly located. "There is a certain level of risk to anything you build in the karst region," he says, "but you can also map out the sinkhole plains, and you find that there are regions in which the sinkholes tend to follow a specific pattern. You get away from those sinkhole plains, and the risk of a sinkhole opening up is probably minimal, if not almost irrelevant."

But others are not convinced the risks are minimal, especially if more and more factory-style farms move into the karst region.

The State Health department has asked the PCA to develop guidelines for emergency response plans in the area to handle possible catastrophic spills.

RISKY TERRAIN
Karst geology underlies many of Minnesota's existing dairy operations. As farms on the karst expand, more manure lagoons may be built on the region's fragile geology.

(Karst map courtesy of E. Calvin Alexander Jr. and Yongli Gao, University of Minnesota department of geology. Copyright 2001. (See map)

Dairy operations map courtesy of Land Management Information Center, Minnesota Office of Strategic and Long Range Planning. Source: Minnesota Department of Agriculture) See map To view this map, you will need the, Adobe Acrobat Reader.
Historic Mega-Rain Events in Minnesota

Minnesota is no stranger to heavy rain events. The early surveyors mapping out the state witnessed such events.

The DNR climate office has assembled a list of so-called "Mega-rain" events that have occurred since statehood. These are events in which six inches of rain covers more than 1000 square miles and the core of the event topped eight inches. Rainfalls of of this magnitude and geographic extent have the potential to become catastrophic. Using newspaper accounts, diaries, and the historical climate record, 15 such events in Minnesota's post-settlement history have been identified. However, our ability to detect these events has improved dramatically since the 1970s.

The number of daily rainfall observers in Minnesota exploded in the early 1970s, thanks to the foresight and ambitions of Dr. Don Baker, and then-State Climatologist Earl Kuehnast. Since that period, the state has benefited from an unusually dense network of observations (climate/summaries and publications/appliedmain.html). This network has remained intact, plus or minus year-to-year changes, and has enabled climatologists to identify mega-rainfall events that undoubtedly would have been missed during periods of much sparser observations.

Thus, the State Climatology Office considers the "stable" period of record to stretch from 1973 through present. Any given year during that period has roughly the same chance of capturing (or missing) an actual mega-event. The years prior to 1973, however, are likely to have some number of missing events.

If we examine the period 1973-2016, Minnesota has seen eleven mega-rains, with a sharp uptick since 2000, despite a small decrease in observer numbers. Of these 11 events, two were in the 1970s, one was in the 1980s, none were in the 1990s, but four occurred in both the 2000s, and the 2010s (still underway). Thus, the 18 years from 2000-2017 have seen nearly three times as many mega-rains as the 27 years spanning 1973-99. Although it is difficult to assess the statistical significance of that rapid increase, we do know that these trends are consistent with the expectation that Minnesota and the Upper Midwest will receive more precipitation, and more precipitation from large events (http://nca2014.globalchange.gov/report/regions/midwest#graphic-17083), in response to increasing global temperatures and increased available moisture for passing storm systems.

Documented Mega-Rains in Minnesota

(There may be other events prior to 1973 that require further investigation such as September 11-15, 1903 (https://files.dnr.state.mn.us/natural_resources/climate/summaries and publications/COEsto)
• **August 6, 1866 Southern Minnesota**

  Also known as the *Wisel Flood*, this event killed 16 people, including 3 members of the Wisel family in Fillmore County. 10.30 inches of rain fell at the Sibley Indian Agency located in Sibley County. The story of the Wisel family in peril appeared in the Harmony/Mabel/Canton News Record Newspaper.

• **July 17-19 1867 Central Minnesota**

  Climatologists and historians believe this to be Minnesota’s most extreme flash flood of the past 200 years. In his *Minnesota Weather Almanac*, Mark Seeley referred to this event as “Minnesota’s Greatest Thunderstorm.” Torrential rains pounded portions of west-central Minnesota relentlessly. Unfortunately, the rains escaped direct measurement, but astute observers of the time estimated from unobstructed upright barrels and other such containers, that 30-36 inches of rain fell in 36 hours. No official observation in Minnesota has come anywhere near those magnitudes. The few surviving details of the storm back up the claims, however, as the flooding that resulted was unimaginable and catastrophic. Most of what we do know about this event comes from a paper [PDF](https://files.dnr.state.mn.us/natural_resources/climate/summaries_and_publications/n) that was read before the Minnesota Academy of Sciences on March 7, 1876. Climate Historian Tom St. Martin [summarized](https://files.dnr.state.mn.us/natural_resources/climate/summaries_and_publications/1) the event as well.

• **July 20-22, 1909 Northern Minnesota**

  Extensive flood event from Northwest Minnesota to the UP of Michigan [PDF](https://files.dnr.state.mn.us/natural_resources/climate/summaries_and_publications/C). Highest one day rainfall total was 10.75 inches at Beaulieu in Mahnomen County (11.10 inches for the three day total.) This storm also did extensive damage in Duluth and killed two children in the city when they were swept out of their mother’s arms.

• **September 9-10 1947, Iron Range**

  24 hour totals of 6 inches or more at Hibbing, Ely and Winton. Unofficial report of 8.60 inches in five hours at Hibbing. Extensive damage over the Iron Range district.

• **July 21-22, 1972 Grand Daddy Flash Flood**

  10.84 inches fell in 24 hours was set at Fort Ripley [PDF](https://files.dnr.state.mn.us/natural_resources/climate/summaries_and_publications/f). This was the state record for a highest 24 hour total at a National Weather Service station until Hokah broke the record in 2007.
• June 28-29 and July 1-2, 1975, Northwest Minnesota

Geographically extensive and intense rains (https://files.dnr.state.mn.us/natural_resources/climate/summaries_and_publications/fi) fall on eastern North Dakota and Northwest Minnesota in two separate events.

• July 23-24, 1987 Twin Cities Superstorm

Greatest calendar day precipitation on record for Twin Cities International Airport (https://files.dnr.state.mn.us/natural_resources/climate/summaries_and_publications/fi) with 9.15 inches.

• June 9-10, 2002 Northern Minnesota

48 hour rainfall totals topped 12 inches (/climate/journal/ff020609-10.html) in a some areas of Roseau and Lake of the Woods counties.

• June 22-23, 2002 Northern Minnesota

This event was so large (http://climateapps.dnr.state.mn.us/doc/journal/flash_floods/ff020622-23.htm), two different parts of northern Minnesota met the mega-rainfall definition used here.

• September 14-15, 2004 Southern Minnesota

More than ten inches of rain fell in a 36 hour period (/climate/journal/ff040914_15.html) in Faribault and Freeborn Counties.

• August 18-20, 2007 Southern Minnesota

Although the 1867 storm detailed above likely produced higher totals, the 15.10 inches measured one mile south of Hokah stands as the official record for 24-hour rainfall (/climate/journal/ff070820.html) at a Minnesota National Weather Service Cooperative station. The three day total for this station was 16.27 inches.

• September 22-23, 2010 Southern Minnesota

The National Weather Service site in Amboy measured 9.48 inches (/climate/journal/ff100924.html) on September 23, with 10.68 inches for the event.

• June 19-20, 2012 Northeast Minnesota

The two day total at Duluth was 7.24 inches (/climate/journal/duluth_flooding_120620.html). The St. Louis River at Scanlon set a new record crest at 16.62 feet, rising 10 feet in 24 hours.

• July 11-12, 2016, East-central Minnesota
Extreme rainfall affected a swath from the Brainerd Lakes area, eastward into Pine County (/climate/journal/160711_12_flood.html) (and also well into Wisconsin). Cloverton in Pine county recorded 9.34 inches.

- **August 10-11, 2016, Central Minnesota, Southeastern Minnesota**

  Two distinct areas received over 6 inches of rainfall (/climate/journal/160810_11_flood.html): one near Willmar, and another in Wabasha County. The highest total of 9.74 inches was recorded just east of Willmar.

For more information contact: climate@umn.edu (mailto:climate@umn.edu)
Nitrate Testing for Private Wells
Results as of March 22, 2018

The Minnesota Department of Agriculture (MDA) has designed a Township Testing Program to determine current nitrate-nitrogen concentrations in private wells. The initial criteria used to select townships for testing is based on the percentage of township land vulnerable to groundwater contamination (30% or greater) and amount of land in row crop production (20% or greater). The MDA uses the final results to determine if additional action is needed to minimize potential sources of nitrate pollution in the state's groundwater.

Program testing and the summarizing of results are ongoing. Tables were created with current data, 3/22/2018.

Table 1: Final Township Testing Results*

<table>
<thead>
<tr>
<th>County</th>
<th>Number of Townships Tested</th>
<th>Final Well Dataset</th>
<th>Number of Townships with Wells Over the Health Risk Limit (&gt;10 mg/L Nitrate-N)</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>&lt;5%</td>
</tr>
<tr>
<td>Benton</td>
<td>3</td>
<td>472</td>
<td>1</td>
</tr>
<tr>
<td>Dakota</td>
<td>15</td>
<td>1179</td>
<td>4</td>
</tr>
<tr>
<td>Morrison</td>
<td>11</td>
<td>1104</td>
<td>3</td>
</tr>
<tr>
<td>Olmsted</td>
<td>11</td>
<td>923</td>
<td>10</td>
</tr>
<tr>
<td>Otter Tail</td>
<td>21</td>
<td>2276</td>
<td>15</td>
</tr>
<tr>
<td>Pope</td>
<td>6</td>
<td>283</td>
<td>6</td>
</tr>
<tr>
<td>Sherburne</td>
<td>6</td>
<td>1992</td>
<td>0</td>
</tr>
<tr>
<td>Stearns</td>
<td>14</td>
<td>1788</td>
<td>8</td>
</tr>
<tr>
<td>Wadena</td>
<td>4</td>
<td>224</td>
<td>1</td>
</tr>
<tr>
<td>Washington</td>
<td>2</td>
<td>441</td>
<td>0</td>
</tr>
</tbody>
</table>

Table 2: Initial Township Testing Results-Final Township Testing Results are Not Yet Available*

<table>
<thead>
<tr>
<th>County</th>
<th>Number of Townships Tested</th>
<th>Number of Wells</th>
<th>Number of Townships with Wells Over the Health Risk Limit (&gt;10 mg/L Nitrate-N)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>&lt;5%</td>
</tr>
<tr>
<td>2017</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clay</td>
<td>11</td>
<td>1159</td>
<td>11</td>
</tr>
<tr>
<td>Goodhue</td>
<td>22</td>
<td>2071</td>
<td>7</td>
</tr>
<tr>
<td>Fillmore</td>
<td>24</td>
<td>1477</td>
<td>2</td>
</tr>
<tr>
<td>Rice</td>
<td>4</td>
<td>478</td>
<td>3</td>
</tr>
<tr>
<td>Wabasha</td>
<td>14</td>
<td>1087</td>
<td>1</td>
</tr>
<tr>
<td>2015-2016</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Becker</td>
<td>3</td>
<td>200</td>
<td>0</td>
</tr>
<tr>
<td>Benton</td>
<td>1</td>
<td>321</td>
<td>0</td>
</tr>
<tr>
<td>Dodge</td>
<td>7</td>
<td>654</td>
<td>3</td>
</tr>
<tr>
<td>Douglas</td>
<td>9</td>
<td>1864</td>
<td>7</td>
</tr>
<tr>
<td>Hubbard</td>
<td>6</td>
<td>1106</td>
<td>1</td>
</tr>
<tr>
<td>Kandiyohi</td>
<td>4</td>
<td>313</td>
<td>1</td>
</tr>
<tr>
<td>Nobles</td>
<td>4</td>
<td>45</td>
<td>0</td>
</tr>
<tr>
<td>Otter Tail</td>
<td>11</td>
<td>2160</td>
<td>9</td>
</tr>
<tr>
<td>Rock</td>
<td>7</td>
<td>171</td>
<td>0</td>
</tr>
<tr>
<td>Todd</td>
<td>9</td>
<td>797</td>
<td>4</td>
</tr>
<tr>
<td>Winona</td>
<td>13</td>
<td>940</td>
<td>2</td>
</tr>
</tbody>
</table>
* The initial township testing results include data from all wells initially tested. An optional follow-up testing and well survey is offered to homeowners that have a presence of nitrate in their initial sample. Wells with nitrate-nitrogen results over 5 mg/L and a nearby non-fertilizer source or identified well problem are removed. The remaining wells form the final township testing well dataset.

** Additional information for these townships is available in Table 3.

Table 3: Townships with > 40% of Wells Exceeding the Health Risk Limit (> 10 mg/L Nitrate-N)

<table>
<thead>
<tr>
<th>County</th>
<th>Township</th>
<th>Years Sampled (initial, follow-up)</th>
<th>Total Wells</th>
<th>Number of Wells ≥ 10 mg/L Nitrate-N</th>
<th>Percentage of Wells ≥ 10 mg/L Nitrate-N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dakota</td>
<td>Marshan</td>
<td>2013, 2015</td>
<td>95</td>
<td>41</td>
<td>43.2%</td>
</tr>
<tr>
<td>Morrison</td>
<td>Agram</td>
<td>2013, 2015</td>
<td>93</td>
<td>44</td>
<td>47.3%</td>
</tr>
</tbody>
</table>

Initial Township Testing Results

<table>
<thead>
<tr>
<th>County</th>
<th>Township</th>
<th>Year Sampled</th>
<th>Total Wells</th>
<th>Number of Wells ≥ 10 mg/L Nitrate-N</th>
<th>Percentage of Wells ≥ 10 mg/L Nitrate-N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nobles</td>
<td>Grand Prairie</td>
<td>2016</td>
<td>14</td>
<td>13</td>
<td>92.9%</td>
</tr>
<tr>
<td>Nobles</td>
<td>Westside</td>
<td>2016</td>
<td>15</td>
<td>13</td>
<td>86.7%</td>
</tr>
<tr>
<td>Nobles</td>
<td>Lismore</td>
<td>2016</td>
<td>7</td>
<td>5</td>
<td>71.4%</td>
</tr>
<tr>
<td>Nobles</td>
<td>Olney</td>
<td>2016</td>
<td>9</td>
<td>4</td>
<td>44.4%</td>
</tr>
<tr>
<td>Rock</td>
<td>Clinton</td>
<td>2016</td>
<td>10</td>
<td>8</td>
<td>80.0%</td>
</tr>
<tr>
<td>Rock</td>
<td>Battle Plain</td>
<td>2016</td>
<td>23</td>
<td>15</td>
<td>65.2%</td>
</tr>
<tr>
<td>Rock</td>
<td>Mound</td>
<td>2016</td>
<td>28</td>
<td>16</td>
<td>57.1%</td>
</tr>
<tr>
<td>Rock</td>
<td>Vienna</td>
<td>2016</td>
<td>23</td>
<td>11</td>
<td>47.8%</td>
</tr>
<tr>
<td>Rock</td>
<td>Magnolia</td>
<td>2016</td>
<td>20</td>
<td>9</td>
<td>45.0%</td>
</tr>
<tr>
<td>Rock</td>
<td>Rose Dell</td>
<td>2016</td>
<td>30</td>
<td>13</td>
<td>43.3%</td>
</tr>
<tr>
<td>Rock</td>
<td>Luverne</td>
<td>2016</td>
<td>37</td>
<td>15</td>
<td>40.5%</td>
</tr>
<tr>
<td>Winona</td>
<td>Fremont</td>
<td>2016</td>
<td>42</td>
<td>23</td>
<td>54.8%</td>
</tr>
<tr>
<td>Winona</td>
<td>Utica</td>
<td>2016</td>
<td>86</td>
<td>40</td>
<td>46.5%</td>
</tr>
</tbody>
</table>

Additional Information
Township Testing Program: www.mda.state.mn.us/townshiptesting

Minnesota Nitrogen Fertilizer Management Plan (NFMP): To learn more about the NFMP, the state's blueprint for preventing or minimizing impacts of nitrogen fertilizer on groundwater, visit: www.mda.state.mn.us/nfmp.

Funding Acknowledgement
Funding for this project provided by the Clean Water, Land and Legacy Amendment.

In accordance with the Americans with Disabilities Act, this information is available in alternative forms of communication upon request by calling 651-201-6000. TTY users can call the Minnesota Relay Service at 711. The MDA is an equal opportunity employer and provider.

March 2018
Winona County: Final Overview of Nitrate Levels in Private Wells (2016-2017)

The Minnesota Department of Agriculture (MDA) determines current nitrate-nitrogen concentrations in private wells, on a township scale, through the Township Testing Program. The MDA has identified townships throughout the state that are vulnerable to groundwater contamination and have significant row crop production. The MDA plans to offer nitrate testing to more than 70,000 private well owners in over 300 townships by 2019.

Each selected township is offered testing in two steps, the "initial" sampling and the "follow-up" sampling. In the initial sampling, all township homeowners using private wells are sent a nitrate test kit. If nitrate is detected in their initial sample, the homeowner is offered a follow-up nitrate test, pesticide test and well site visit. Trained MDA staff visit willing homeowners to resample the well and then conduct a site assessment. The assessment helps to identify possible non-fertilizer sources of nitrate and to see the condition of the well. A well with construction problems may be more susceptible to contamination.

The MDA and Winona County Environmental Services worked together to select townships and implement the nitrate testing project. The following townships were selected: Elba, Fremont, Hart, Hillsdale, Mt. Vernon, Norton, Pleasant Hill, St. Charles, Saratoga, Utica, Warren, Wilson, and Wiscoy. The initial sampling in Winona County started in 2016 and follow-up sampling ended in 2017.

Results

Two datasets are used to evaluate nitrate. The initial well dataset contains 940* wells; the final dataset contains 731 wells. Wells that had nitrate-nitrogen results over 5 mg/L were removed from the initial dataset if a non-fertilizer source or well problem was identified, to form the final well dataset. A total of 209 wells (22%) were removed. The results from the initial and final well datasets are summarized in the table below.

In Fremont, Saint Charles, Utica, and Warren Townships, more than 10% of the wells were over the Health Risk Limit of 10 mg/L of nitrate-nitrogen (map below). The percent of wells over the Health Risk Limit in each township ranged from 0% to 42.9%. The Winona County Final Report will be available on the MDA website in 2018: www.mda.state.mn.us/townshiptesting.

Next steps

The MDA uses the final well dataset to determine if additional action is warranted, as described in the Minnesota Nitrogen Fertilizer Management Plan (NFMP). The MDA uses the assessment process and prioritization guidelines in the NFMP to determine next steps. Find more information about the NFMP on the MDA website at www.mda.state.mn.us/nfmp.

Funding Acknowledgement

Funding for this project is provided by the Clean Water, Land and Legacy Amendment

Published May 2018
Table: Winona County Private Well Nitrate Results, 2018.

<table>
<thead>
<tr>
<th>Township</th>
<th>Initial Well Dataset</th>
<th>Final Well Dataset</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total Wells*</td>
<td>Percent of Wells ≥10 mg/L Nitrate-Nitrogen</td>
</tr>
<tr>
<td>Elba</td>
<td>62</td>
<td>16.1%</td>
</tr>
<tr>
<td>Fremont</td>
<td>42</td>
<td>54.8%</td>
</tr>
<tr>
<td>Hart</td>
<td>48</td>
<td>18.8%</td>
</tr>
<tr>
<td>Hillsdale</td>
<td>52</td>
<td>1.9%</td>
</tr>
<tr>
<td>Mt. Vernon</td>
<td>33</td>
<td>15.2%</td>
</tr>
<tr>
<td>Norton</td>
<td>80</td>
<td>11.3%</td>
</tr>
<tr>
<td>Pleasant Hill</td>
<td>58</td>
<td>8.6%</td>
</tr>
<tr>
<td>St. Charles</td>
<td>85</td>
<td>34.1%</td>
</tr>
<tr>
<td>Saratoga</td>
<td>56</td>
<td>19.6%</td>
</tr>
<tr>
<td>Utica</td>
<td>86</td>
<td>46.5%</td>
</tr>
<tr>
<td>Warren</td>
<td>92</td>
<td>28.3%</td>
</tr>
<tr>
<td>Wilson</td>
<td>196</td>
<td>6.1%</td>
</tr>
<tr>
<td>Wiscoy</td>
<td>50</td>
<td>0.0%</td>
</tr>
<tr>
<td>Total</td>
<td>940</td>
<td>19.1%</td>
</tr>
</tbody>
</table>

* All well types included.

Figure: Winona County Final Well Dataset Map, 2018.

In accordance with the Americans with Disabilities Act, this information is available in alternative forms of communication upon request by calling 651-201-6000. TTY users can call the Minnesota Relay Service at 711. The MDA is an equal opportunity employer and provider.
Animal Manure Management

RCA Issue Brief #7 December 1995

What are organic by-products, and how are they quantified?
How much manure can actually be collected?
How much manure do different types of livestock produce?
Recoverable manure, by livestock type
What natural resource problems are associated with manure management?
What are the trends in manure production?
Animal population summaries, 1994
What can be done?
How does manure management help?

Did you know ...

...that the manure from a dairy milking 200 cows produces as much nitrogen as is in the sewage from a community of 5,000-10,000 people? Or that the annual litter from a typical broiler house of 22,000 birds contains as much phosphorus as is in the sewage from a community of 6,000 people?

...that any increase in animal numbers results in an equal increase in the problems arising from manure collection, storage, treatment, and utilization?

...that beef production in the United States decreased almost 15 percent between 1982 and 1992, while broiler production increased 59 percent and turkey production increased 62 percent, with a corresponding increase in manure and other residual materials?

Words are important!

Richard Kashmanian, in an editorial for BIOCYCLE, stresses the importance of words. He points out that words such as "wastes," "garbage," and "trash" send negative signals to readers or listeners and set in motion a sequence of events that is difficult to reverse.

The following definitions are taken from Webster's New Collegiate Dictionary: "Waste: garbage, rubbish, discarded as worthless, defective, or of no use." Dispose: "to get rid of." Various synonyms listed in Webster's New World Thesaurus for waste are "garbage, refuse, filth, litter, debris, and junk." Not very attractive!

Efforts are underway by various groups to change the vocabulary used to define their products or services. For example, the American Forest and Paper Institute is discontinuing the use of the term "waste paper" when referring to recycled paper. The Water and Environment Federation, formerly the Water Pollution and Control Federation, is using the term "biosolids" to refer to or define the largely organic material commonly called "sludges."

More and more, the agricultural sector recognizes that the reference to livestock manure as livestock "waste" has helped lead to the undervaluation of manure as a source of nutrients, the loss of manure nutrients through mishandling and misapplication, and the overapplication of manure to the land. Understanding that a term's use implies a value, the agricultural sector can replace the use of the word "waste" with "manure," "residuals," or "by-products."

What are organic by-products, and how are they quantified?

Organic by-products, or "wastes," of the livestock industry include a variety of materials such as solid and liquid animal manures, used bedding, spilled feed, and a variety of other substances. Most livestock-associated organic by-products are animal manures.

The amount and consistency of manures varies with animal type, climate, feed ration, animal age and health, and other factors. To compare manure production between animal types or between animals of the same type, manure production is expressed in terms of 1,000-pound animal units. For reference, a single dairy cow weighs about 1,400 pounds, or 1.4 animal units. A typical steer weighs about 1,000 pounds, or 1 animal unit, and most hogs weigh between 200 and 300 pounds, or 0.2 to 0.3 animal unit. A mature broiler, on the other hand, weighs between 4 and 5 pounds, so it takes as many as 250 birds to make up an animal unit.
Introduction
Nitrate is a common contaminant found in many wells in Minnesota. Too much nitrate in drinking water can cause serious health problems for young infants. This page provides a basic explanation of nitrate in wells and gives steps that you as a well owner can take to protect your family and visitors from illness.

What is nitrate?
Nitrate (NO₃) is a naturally occurring chemical made of nitrogen and oxygen. Nitrate is found in air, soil, water, and plants. Much of the nitrate in our environment comes from decomposition of plants and animal wastes. People also add nitrate to the environment in the form of fertilizers.

How does nitrate get into well water?
Natural levels of nitrate in Minnesota groundwater are usually quite low (less than 1 milligram per liter [mg/L] of nitrate-nitrogen). However, where sources of nitrate such as fertilizers, animal wastes, or human sewage are concentrated near the ground surface, nitrate may seep down and contaminate the groundwater. Elevated nitrate levels in groundwater are often caused by run-off from barnyards or feedlots, excessive use of fertilizers, or septic systems.

Wells most vulnerable to nitrate contamination include shallow wells, dug wells with casing which is not watertight, and wells with damaged, leaking casing or fittings.

Nitrate contamination of a well is often regarded as a first sign of deteriorating groundwater quality.

What are the health risks of nitrate in well water?
Too much nitrate in drinking water poses a risk to infants under six months of age. If an infant is fed water or formula made with water that is high in nitrate, a condition called "blue baby syndrome" (or "methemoglobinemia") can develop. Bacteria which are present in an infant's stomach can convert nitrate to nitrite (NO₂), a chemical which can interfere with the ability of the infant's blood to carry oxygen. As the condition worsens, the baby's skin turns a bluish color, particularly around the eyes and mouth. If nitrate levels in the water are high enough and prompt medical
attention is not received, death can result. See also
(http://www.health.state.mn.us/divs/eh/wells/waterquality/safebaby.html): Safe Drinking Water For Your Baby
(http://www.health.state.mn.us/divs/eh/wells/waterquality/safebaby.html).

Why are young infants more susceptible?
As an infant ages, its stomach acidity increases, reducing the numbers of nitrite-producing bacteria. After six months,
the conversion of nitrate to nitrite in the stomach no longer occurs. Most adults can consume large amounts of nitrate
with no ill effects. In fact, the average adult in the United States consumes about 20-25 milligrams of nitrate-nitrogen
every day in food, largely from vegetables.

Pregnant women, people with reduced stomach acidity, and people with certain blood disorders may also be
susceptible to nitrate-induced methemoglobinemia. Some research has suggested that nitrate may also play a role in
the development of some cancers. However, at this time there is no clear evidence that nitrate ingestion results in an
increased cancer risk.

How much nitrate is too much?
The federal drinking water standard for nitrate is 10 mg/L of nitrate-nitrogen, which provides newborns with
reasonable protection against blue baby syndrome. This level is mandatory for all public water systems, and
recommended for private wells.

How do I know if my well water has nitrate?
Nitrate is tasteless, odorless, and colorless. To find out if there is nitrate in your water, have it tested by a laboratory
that is certified for nitrate testing by the Minnesota Department of Health. Laboratories will provide sampling bottles
and instructions. Visit the Environmental Laboratory Accreditation Program
(https://eldo.web.health.state.mn.us/public/accreditedlabs/labsearch.seam) website for all your water testing
needs. Regardless of which tests you want done, always make sure to use a laboratory that has been certified to
perform each of those particular tests.

How often should I have my well tested for nitrate?
It's a good idea to have a routine nitrate test every two or three years, more frequently if nitrate has been detected in
previous sampling. State regulations require well contractors to have a water sample tested for bacteria and nitrate
when they construct a new well. After that, owners of private wells must arrange for their own water testing.

You should also have your water tested for nitrate if you are a woman planning on becoming pregnant or if infants will
be using the water.

What if nitrate is found in my water?
1. If the nitrate-nitrogen concentration exceeds the health limit of 10 mg/L, do not give the water to any
infant under six months of age, either directly or in formula. Infants should be provided with water from a
source which has been tested and shown to be low in nitrate and bacterially safe. Commercially bottled water is
required to meet the nitrate standard.

2. Do not boil to "treat" high nitrate water. Nitrate is not removed from the water by boiling. Boiling actually
concentrates the nitrate, due to evaporation of the water.

3. Have your well inspected. It's a good idea to have your well inspected by a licensed well contractor if the well
is old, or you do not know if it is structurally sound. Nitrate and bacteria problems are sometimes caused by
structural flaws which allow contaminated surface water to enter the well. Repairing the well or constructing a
new, deeper well often results in a results in a significant reduction in the nitrate level. To find licensed well
drillers (http://www.health.state.mn.us/divs/eh/wells/lwc/index.html), in your area, look in the Yellow Pages
under "Well Drilling and Service."

4. Identify and remove sources of nitrate near the well. Fertilizers, animal wastes, and sewage systems should
be located and managed so that they do not contaminate the well. If a nitrate source is too close to the well and
cannot be moved, then you may need to consider having the well permanently sealed and replaced by a licensed well contractor.

What about a water treatment unit?
Home water treatment units are not recommended for treating high nitrate water which will be given to infants. There is no foolproof way of knowing when the treatment system may fail, and blue baby syndrome has been known to occur after just one day of exposure to high nitrate water.

Should I test my well for anything other than nitrate?
Yes. Private wells should be tested at least once a year for bacterial safety. It is also wise to test well water for bacteria any time the water changes in taste, odor, or appearance. See also: Bacterial Safety of Well Water (http://www.health.state.mn.us/divs/eh/wells/waterquality/bacteria.html).

In addition, water can absorb lead from old lead pipes, lead-soldered copper pipes, or brass plumbing components, when the water stands idle in the pipes for more than a few hours. It is recommended to either flush standing water until you feel the water get colder (usually 30–60 seconds), or have your water tested for lead after it has been standing in the pipes at least six hours. Also, never use water from hot water faucets for drinking or cooking. See also: Lead in Well Water Systems (http://www.health.state.mn.us/divs/eh/wells/waterquality/lead.html).

Arsenic occurs naturally in about half the wells in Minnesota, and about 10 percent of wells produce water which exceeds 10 micrograms per liter (parts per billion), the federal drinking water standard. Arsenic is more prevalent in western Minnesota, but can occur almost anywhere in the state (see map on arsenic occurrence (http://www.health.state.mn.us/divs/eh/wells/waterquality/arsenicmap.pdf)). Long-term consumption of arsenic above the drinking water standard may increase the risk of health problems of the skin, circulatory system, nervous system, lungs, and bladder, including some forms of cancer. Every private well should be tested at least once or twice to determine if arsenic is present in the water. See also: Arsenic in Minnesota’s Well Water (http://www.health.state.mn.us/divs/eh/wells/waterquality/arsenic.html).

Other contaminants sometimes occur in private water systems, but much less frequently than bacteria, nitrate, arsenic, or lead. If the well is located close to fuel tanks or to a commercial or industrial area, a test for "volatile organic chemicals" (VOCs) is a good idea. A brochure, VOCs, is available from the MDH. Agricultural chemicals are sometimes found in wells located near cropped fields or handling areas for agricultural chemicals. Shallow wells are more vulnerable to pesticide contamination than are deep wells. If your well is located in an agricultural area, and especially if it is a shallow well, testing for several of the pesticides most commonly used in the area may be warranted.

If children or adolescents are drinking the water, a test for natural levels of fluoride will give your dentist useful information when considering fluoride supplements. A small number of wells in Minnesota (primarily northeastern Minnesota) do have naturally-occurring levels of fluoride that exceed the health standard.

Questions?
Contact the MDH Well Management Section
651-201-4600 or 800-383-9808
health.wells@state.mn.us

Minnesota Department of Health
Updated Thursday, June 28, 2018 at 10:18AM
Dear Ms Grosenheider:

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

The proposal will produce 46 million gallons of liquid manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting) USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211).

This factory dairy operation, with its new 13.6-million-gallon manure pit, is proposed in a high-risk karst area. Three of southeastern Minnesota’s 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. After expansion, in total all of the manure lagoons at the Daley Farms facility will be able to store 35.6 million gallons of raw liquid manure. The three actions that encourage sinkhole development in karst country are: moving earth (digging, displacement), pumping water, and storing water. All three actions would be involved if the proposed 400' X 400' X 16' manure pit were to be constructed. Therefore, the Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

We know that when nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated with pesticides. Pesticide measurement and mitigation is not addressed in the EAW. Also, western Winona County is informally known as a "cancer cluster" as cancer rates are already high in this area. It would stand to reason that threats to human and animal health is threatened in an already compromised region when additional carcinogens are added to the environment through run-off and leakage of contaminated water.

The EAW indicates that groundwater is present at average depths of between 16 and 20 feet only in the area where manure storage is planned. Leakage from the lagoon, even without a lagoon failure, will quickly impact and pollute groundwater.

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Sincerely,

Aleta Borrud
2411 Merrihills Dr SW, Rochester
Rochester, MN 55902-1165
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Ryan Franke
3641 10th Ave. South Apt. #3
Minneapolis, MN 55407
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Mark Erickson
50114 140th Street
Donnelly, MN 56235
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5567 Spruce Road
Mound, MN 55364
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103 N. Gjere Avenue, #5
Caledonia, MN 55921
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As a personal comment, there is no doubt in my mind that the proposed mega dairy in S E Minnesota is not wanted nor needed. The effect to the land, water and even air is appalling. The quote by Mahatmas Gandhi seems to apply here---"Earth provides enough to satisfy every man's needs but not every man's greed". Sincerely, Becky Ault

Sincerely,

Becky Ault
51564 262 St.
Austin, MN 55912
Hello Ms Grosenheider

Attached are my comments on the Daley Farm Expansion EAW near Lewiston, MN.

Best regards,

Calvin Alexander

---

E. Calvin Alexander, Jr.
Morse-Alumni Professor Emeritus
Earth Sciences Department
University of Minnesota
John T. Tate Hall, Room 150
116 Church Street SE
Minneapolis, MN 55455
alexa001@umn.edu
(612) 624-3517
Comment on
Daley Farms of Lewiston, LLP: 2018 Dairy Expansion - EAW (p-ear2-143i)

By
E. Calvin Alexander Jr.
Morse Alumni Professor Emeritus
Earth Sciences Department
University of Minnesota
116 Church Street SE
Minneapolis, MN 55455

Introduction:
The proposed Daley Farms expansion, if approved and constructed, will create a significant environmental risk to the Lewiston area. The site is surrounded by many sinkholes. Many of the wells in the first two aquifers under the area are already at or above the nitrate-nitrogen drinking water standard. The Lewiston Waste Water Treatment Lagoon catastrophically collapsed (Jannik et al., 1992). The failed lagoon is about 1.8 miles southeast of the Daley Farms site -- at approximately the same elevation and in the same hydrogeologic stratigraphic environment.

Mapped Sinkhole:
There is a mapped sinkhole, MN85:D00422 (hereafter D422), in the Minnesota Karst Features Data base that is about 450 feet from the existing manure storage lagoons at the Daley Farm operations. The feature is readily visible on historic air photos and is shown as a pond on the USGS topo sheet of the area. “The Daley Family describes the feature as a landfill that was miss-classified as a sinkhole in the 1980s and they do not recall any subsidence during the years they have lived on the farm.” (Dogwiler, 2015, p. 6) That feature was later filled as part of a grassed water way construction. Two Electrical Resistivity Imaging lines (ERI) were conducted at the site by Professor Toby Dogwiler (then at Winona State University -- currently at Missouri State University, Springfield, MO) in April 2015. Professor Dogwiler’s ERI specifically ran two ERI lines across the mapped location of D422. Those two lines are reproduced below as Professor Dogwiler’s Figures 12 and Figure 11.

Figure 12, the ERI line down the axis of the grassed waterway, shows an approximately 30 m deep pit in the bedrock surface at D422’s location (shown by the added dashed rectangle in Figure 12). Professor Dogwiler interpreted this apparent bedrock pit as an artifact of the disturbed and compacted materials used to fill the depression before and during the construction of the grassed waterway. Last week at the 2018 Geological Society of America’s annual meeting in Indianapolis, IN, I discussed the Daley Farms ERI study with Professor Dogwiler. He quickly reviewed his interpretation and said that he was comfortable with his
interpretation of the line -- but would check with a couple of his ERI mentors to see what they felt about his interpretation.

Professor Dogwiler, however, was not aware of the EAW for an expansion to almost 5000 dairy cows. In view of that proposal, given that development he recommended that the ERI results from his lines 5 and 6 below should be ground truthed with deep drilling and/or deep back hoe excavations. I share that recommendation and it was supported by two karst hydrogeologists who routinely use ERI to characterize sites in karst who looked at the Daley Report at my request.

**ERI Images of D422**

Reproduced below are the two ERI lines crossing mapped sinkhole D422 from Dogwiler’s (2015) Daley Farms study. The area of the mapped sinkhole is outlined in the black dashed rectangle. Dogwiler’s Fig. 12 (line 6) ran down the axis of the grassed waterway through D422. This figure shows the prominent, roughly 30 m deep, apparent pit in the surface of the red bedrock. This is the feature Professor Dogwiller interpreted as an artifact of the compacted fill near the surface.

![ERI Image of D422](image_url)

**Figure 12.** A profile of ERI Line 6 (see Figures 1 and 2 for the location of the line and Figure 7 for an overview of interpreting ERI profiles and the characteristics of different types of ERI arrays).
Professor Dogwiller’s Figure 11 (line 5) below was run across the location of D422 perpendicular to line 6. The near surface, red, compacted fill is not evident in this ERI line but there is still a clear, roughly 10 me deep depression in the surface of the bedrock -- consistent with D422 being a filled sinkhole.

**Recommendation:**

Given the prominent karst features all around the Daley Farms site, the nearby catastrophic collapse of the Lewiston Waste Water Treatment Lagoon on similar karst stratigraphy, the documented growing nitrate pollution of Lewiston’s wells and many local wells, and the enormous size of this proposed CAFO this facility should not be permitted at this site without a full scale EIS.

If this EAW is approved it should be contingent on a deep excavation of the D422 feature to check Professor Dogwiller’s interpretation. Simple soil borings to
“refusal” will not be sufficient. Given that the Daley’s used the site as a landfill before it was converted to a grassed waterway, there are probably metal or demolition debris in the fill that will stop a soil boring. An extensive, deep excavation of D422 will be necessary to document what the feature actually is.

If it is a filled sinkhole, the expansion should not be permitted.

References:

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PS - this operation needs to be reviewed for "sink holes" in the Karst topography --- as within 5 miles of the farming operations - is the City of Lewiston. That City lost its sewage system ponds about 20 years ago, as they "dropped" out of the bottom- due to the Karst topography.
Concerns for keeping our water aquifers from pollution. This is for animals and humans - clean water is the "life blood" for all living creatures. Prevention is better than expensive water treatment if pollution occurs.

Lynn Theurer - Winona Co. Citizen - former Public Health Nurse

Sincerely,

Lynn Theurer
498 Kerry Court
Winona, MN 55987
Dear Ms Grosenheider:

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Sincerely,

Denise Zabinski
26320 State Highway 78 NW
Ashby, MN 56309
Kim Grosenheider,

Attached is the Winona County Planning and Environmental Services comments on the Daley Farms of Lewiston, LLP expansion EAW.

Thank you,

**Carly McGinty**  
Feedlot Officer  
Winona County  
177 Main Street  
Winona, MN 55987  
(507) 457-6580
11/15/2018

Kim Grosenheider
Resource Management and Assistance Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

Re: Daley Farms of Lewiston, LLP EAW, Utica Township, Winona County, MN

Ms. Grosenheider,

Winona County Planning and Environmental Services Department appreciates the opportunity to comment on the Daley Farms of Lewiston, LLP Environmental Assessment Worksheet (EAW).

Upon review of the Daley Farms of Lewiston, LLP EAW, the following comments by the Winona County Planning and Environmental Services Department (Feedlot Division) are provided:

On page 7, section B: Compatibility with plans and land use regulations. Is the project subject to any of the following adopted plans or ordinances?

- The expansion is subject to the Winona County Local Comprehensive Plan.
  - Winona County’s Comprehensive Plan section of Natural Resource Protection, Goals state:
    - Goal 1: Protection and enhancement of the air, water and land resources in the County as a vital ingredient of the living environment.
    - Goal 6: A water quality level in the County that at a minimum is equivalent to the national goals of fishable and swimmable. Fishable and swimmable being defined as water capable of supporting healthy fish populations and safe for normal body contact. (Extreme rainfall events could provide impacts in this area).
    - Protection of all water resources in the County from sources of pollution.
  - Winona County’s Comprehensive Plan section of Natural Resource Protection, Policies state:
    - Policy 17: Control the location and size of feedlots and other animal confinement areas in the County following the State regulations, to minimize pollution and nuisance problems using nutrient management requirements and acreage for manure spreading to determine carrying capacity. (Over application of manure could impact surface and groundwater if not handled properly).
- The expansion is subject to the Lewiston Wellhead Protection Plan.

General Comments regarding MMP:
The Daley farm expansion Manure Management Plan (MMP) states that 4,083.3 acres of land is needed to spread manure within the proposed feedlot expansion. Of these spreadable acres, 2385 acres are owned by the Daley family, and 1698.3 acres are rented or available. Verbal agreements are mentioned as part of the total spreadable acreage management plan for renters and might need to be addressed in a more formalized manner for verification.

Sincerely,

Winona County
Planning and Environmental Services Department
177 Main Street
Winona, MN 55987
Dear Ms. Grosenheider:

I am a retired watershed biologist (USFWS) who spent the last 25 years of my career working in the area that would be affected by this expansion, in an effort to keep eroded sediment, nutrients and other harmful pollutants and contaminants from further damaging our streams and Mississippi River backwater habitats - this is the most biologically diverse and ecologically fragile part of the state.

Rules and restrictions have been created to protect this landscape and its inhabitants from further damage in an ongoing effort to restore water quality and landscape integrity. These limits on further land use intensification, ownership consolidation and resource exploitation need to be upheld rather than diluted or compromised for private profit at public expense. The state's future depends on it.

I concur with the following comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

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During the public information session in Lewiston, MPCA feedlot official, Mark Gernes, stated that 3 out of 4 of the Daley's existing facilities are out of compliance with Federal pollutant discharge requirements. It is difficult to trust that the MPCA will be thorough enough in its oversight and enforcement - as time passes and its workload increases despite staffing limitations - to prevent noncompliance and resulting environmental impacts and costs.

Sincerely,

Arthur S. Hawkins
Retired Biologist and WSU Sustainability Advisor

Sincerely,

Arthur Hawkins
318 West King St.
Winona, MN 55987
Hi Kim,

Attached are comments from the DNR.

Becky

Rebecca Horton
Region Environmental Assessment Ecologist | Ecological and Water Resources

Minnesota Department of Natural Resources
1200 Warner Road
St. Paul, MN 55404
Phone: 651-259-5755
Fax: 651-772-7977
Email: becky.horton@state.mn.us
mndnr.gov
November 13, 2018

Kim Grosenheider
520 Lafayette Road North
Saint Paul, MN 55155

RE: Daley Farms EAW

Dear Kim Grosenheider,

The Minnesota Department of Natural Resources (DNR) has reviewed the Environmental Assessment Worksheet (EAW) for the Daley Farms dairy expansion in Winona County. Regarding matters for which the DNR has regulatory responsibility or other interests, we offer the following comments for your consideration.

Item 2C (pages 7 – 9) does not describe the Rush Creek Aquatic Management Area (a public recreation area), Rush Creek, a designated trout stream, or the designated trout stream tributaries that lie nearby some of the manure application Sites (Matt’s, Lappiers, and Orlies). Rush Creek is one of Minnesota’s premier trout streams. These resources, and any project-related impacts to these resources, should be discussed and any measure to minimize and avoid adverse impacts should be described.

It is not clear if a karst walk has occurred on the project site or on all proposed manure application sites in order to determine presence of karst features, or if the information provided in the EAW is from the publicly available “Karst Feature Inventory Points” GIS data layer. Within this GIS data layer, an unverified sinkhole is shown within manure application Site 4. This sinkhole appears on the map in Attachment F, however this feature is not shown on the associated map for the site in Attachment G. Also, not all of the maps within Attachment G show all sinkholes mapped in the Karst Feature Inventory Points GIS layer; for example, the map for Site 39 shows a sinkhole to be present along the northern edge of the site, however, this same sinkhole is not shown on the map for Site 25, which is directly adjacent to the north. The DNR recommends that these maps be updated to be accurate so that it is clear where sinkhole application restrictions are required. Since new sinkholes can appear, we also recommend that karst walks be completed yearly, in order to accurate changes and properly inform permitting.

As noted in the EAW, Daley Farms currently has a DNR Water Appropriation Permit (No. 2010-0352) for the existing facility. DNR Water Appropriation Permit 2010-0352 authorizes the use of up to 30.0 million gallons per year from two wells at a combined rate of 160 gallons per minute for the use of livestock watering. The addition of two new installations (wells) required a DNR preliminary well assessment (2017-4001). After the wells are constructed, DNR Water Appropriation Permit 2010-0352 will need to be amended to reflect the existence and use of the new wells, as well as the additional water use. If the pump test for the new wells indicate that it is likely that the wells will interfere with neighboring wells or trout streams, then an aquifer test may be required for the facilities.

On behalf of the DNR, thank you for consideration of these comments.

Sincerely,

/s/ Rebecca Horton
Region Environmental Assessment Ecologist
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Sincerely,

Jill Crafton
10351 Decatur Ave S
Bloomington, MN 55438
Dear Ms Grosenheider:

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Sincerely,

John King
15125 County Road 38
Long Prairie, MN 56347
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Sincerely,

Nancy Wagner
23133 Highway 14
Lewiston, MN 55952
Subject: Daley Farms proposal

Dear Kim Grosenheider,

Just a quick note here respectfully but strongly suggesting that a comprehensive EIS be completed before determining whether to move forward on the Daley Farms proposal.

I have many relatives in Winona--and Wabasha--County and I know their concerns about protecting water resources as well as community life. At a minimum, they, we all, deserve a full EIS before making such a consequential decision. It's simply the right thing for our precious resources, the environment, the people and our fragile democracy. Please do what is right now and for our shared future.

Thank you very much.

Tom Richards
Rural Barnum, Minnesota
Dear Ms Grosenheider:

I represent People’ Food Co-op of Rochester, Minnesota. We have 3,614 owners in the southern Minnesota area. To serve our customers, we purchase millions of dollars annually from 200 farms in Minnesota, Wisconsin and Iowa.

Our owners and farmers are concerned about the potential for groundwater pollution food to mega-dairies.

Requiring an EIS on the Daley farm is a matter of putting human health, and our natural resources, in priority positions for Minnesota citizens.

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Sincerely,

Lizzy Haywood
519 1st Ave south
Rochester, MN 55902
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Sincerely,

Mary Lundell
33100 42nd Ave
Cannon Falls, MN 55009-7362
Dear Ms Grosenheider:

I live in the town of Rollingstone, less than 20 miles from the Daley Farms of Lewiston. As a neighbor and 25-year resident of rural Winona County, I am concerned about the Daley Farms' proposed expansion for a variety of reasons, many of them enumerated in concerns already sent to you by others.

I very much want to see the MNPCA require a full Environmental Impact Statement that addresses those concerns, including:
1. risk of groundwater contamination from runoff
2. risk of contamination of drinking water in the event of failure of manure containment caused by potential sinkhole collapse or other unforeseen causes
3. probable presence of pesticides concentrated in runoff and leakage
4. planning for additional risk from extreme climate events
5. effects on nearby municipal and private wells of using 92 million gallons of water annually (nearly three times as much as nearby Lewiston!)
6. Daley's record of noncompliance with Federal pollutant discharge requirements at 3 of 4 other facilities
7. impact on geography, air quality, and general perceived quality of life in areas of Winona County within vicinity of Daley Farms

I understand that some Winona County residents who live near the Daleys are supportive of their expansion plan. While it's nice to know that the Daleys have been good neighbors and employers, that is not nearly sufficient to answer the various scientific and health concerns related to this project.

Please fulfill your regulatory responsibilities and require an EIS, containing specific, enforceable answers in regards to these and any other serious concerns about the Daley mega-dairy proposal. Thank you!

Sincerely,

Scott Lowery
461 Sunnyview Drive
Rollingstone, MN 55969
Dear Ms Grosenheider:

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The Daley Farms expansion would come at too big a cost. I urge you to conduct a full environmental review of the impacts.

The proposal will produce 46 million gallons of liquid manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Three of southeastern Minnesota’s 22 municipal sewage lagoons have collapsed due to sinkholes opening beneath them: Altura in 1976, Lewiston in 1991, and Bellechester in 1992. The Minnesota Pollution Control Agency must analyze what the impact of a catastrophic failure of the new 13.6-million-gallon manure pit would be, and that requires an EIS.

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For all the reasons outlined above, an EIS is needed.

Sincerely,

Hilary Reeves
210 North 2nd St.
Minneapolis, MN 55401
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Sincerely,

Bonnie Nord
2027 Worcester Ave
Saint Paul, MN 55116
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Sincerely,

Roger Wacek
646 E Vine St, Owatonna, MN
Owatonna, MN 55060-2521
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Sincerely,

Keith Johnson
340 N Minnesota St
Muscoda, WI 53573-9496
Dear Ms Grossenheider:

I agree with the following statements. No one operation should be allowed to use so much water with so many potential problems surrounding it.

I am submitting comments to the Environmental Assessment Worksheet (EAW) on the Daley Farms of Lewiston, LLP in Winona County. The proposed expansion of 3,000 cows would result in a total of 4,628 cows, calves and heifers, making this one of the largest dairies in the state. For perspective, Over 96% of dairies in Minnesota are 500 cows or smaller and 86% are less than 200 cows.

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Laurie Hougen-Eitzman

Sincerely,

Laurie Hougen-Eitzman
10752 Nerstrand Blvd
Nerstrand, MN 55053
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Ryan Ronchak
414 Goodrich Ave
St Paul, MN 55102
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The proposal will produce 46 million gallons of liquid manure and wastewater in an area where karst geology channels contaminants from the surface deep into the ground. Well testing conducted by the Minnesota Department of Agriculture in 2016 shows that, "...46.3% of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates" (www.mda.state.mn.us/townshiptesting) USDA Natural Resources Conservation Service studies indicate that 250 cows produce as much nitrogen as 5,000 people. The impact of this increased nitrogen load must be fully analyzed through an EIS (https://www.nrcs.usda.gov/wps/portal/nrcs/detail-null/?cid=nrcs143_014211).

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Sincerely,

Judith Moore  
1430 Independence Ave. S.  
St. Louis Park, MN 55426
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Sincerely,

Douglas Anderson
21 Malcolm ave SE
Minneapolis, MN 55414
Dear Ms Grosenheider:

Good sunny crisp afternoon as I add my comments to prepared comments that I agree with.

I am a grazing diary farmer residing and farming in Canton Township of Fillmore County. I am not typically against dairy farming, but this dairy farming plan has too many concerns to be allowed to operate. My primary concern is for the water quality and quantity. Aquifers are not being recharged at the same pace that we draw water out, and this will exacerbate the issue. Water quality will be at a risk from any possible leaks or over application of manure. We can employ the best of engineers, construction workers, maintenance workers, and still these lagoons can and will leak, allowing manure to enter the karst water channels. I have places on my farm where the water appears or disappears. That farm proposal may be approximately 45 miles from me, but water channels travels that far and more. It is even riskier if these dairy operators have not kept their other farms in compliance.

The water draw and the amount of manure concentration is of the magnitude that an EIS (Environmental Impact Statement) should be done. Other factors such as air quality, community impacts should also be studied. I have a friend and colleague farming by Kerkhoven, Minnesota, and he tells me of the community negative issues with the expanding dairies in his neighborhood. The manure pipes and extra tractor/truck traffic is only one of the magnified concerns in addition to the water quality and quantity. Business growth of this type and size is not automatically acceptable.

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Sincerely,

Bonnie Haugen
12620 Deer Rd
Canton, MN 55922
I am writing to express my concerns about the Daley's application to expand their dairy operation in Winona County.

Winona County has serious issues with nitrate contamination of ground water. This is not a new situation and monitoring going back to the 80's confirms this. Utica Township where the Daley Farm is located has a very high level of nitrates in the wells tested. It is part of a "cluster" of townships: Utica, St. Charles, Warren and Fremont with the highest levels of nitrate contamination in the County. Not coincidentally it is an area of concentration of livestock operations. Two large expansions have recently been permitted in that area, both of them increasing their number of animals to just under the animal unit cap. One of these is a dairy SW of Lewiston in Utica Township, and the other, Holden Farms, is in St. Charles Township. Daley's expansion would be the third and largest in an already compromised area.

These farms produce a tremendous amount of manure. And they aren't the only animal operations in that area. I realize that manure management plans are required, but again; this is a lot of manure concentrated in a relatively small geographic area. And it's an area that impinges on the wellhead protection areas of several small communities.

Groundwater doesn't recognize property or township boundaries, particularly in this karst region. I think there is a real risk of irreparable contamination of groundwater by the cumulative effect of all these livestock operations. Daley's expansion and number of animals being far and away the largest, well beyond the current county animal unit cap.

Groundwater belongs to everyone, and I believe it would be irresponsible not to require an Environmental Impact Statement regarding this application.

Thank you for your consideration.

Cherie Hales
Wiscoy Township
Winona County
Dear Ms Grosenheider:

It only makes sense to thoroughly understand the environmental impact of a farm of this size. I won't go into the moral aspect of these farms. It would be lovely to see your organization work with the area to determine whether the financial benefit to big ag outweighs the certain environmental harm to this area. A reasonable cost-benefit analysis couldn't hurt.

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Sincerely,

Melissa Maher
6462 Fawn Ln
Circle Pines, MN 55014
I’m a local organic farmer less than 5 miles away from Daley Farms and I support the permitting of Faley Farms expansion. I believe they will bring greater economic prosperity to the area and will allow for expanded markets for local farmers commodities! Plus I would be willing to aid them in their manure disposal on our land! To whom it may concern farms like the Daley’s will be the farms of the future in Dairy and I could only see a better family to expand to the size they are seeking and wish them well.

We support the Daley Farm expansion plan. We trust that this family will do the right thing concerning environmental issues, such as groundwater contamination. We believe that they are using the latest information and farming practices that will help sustain land and water quality surrounding our farm. We own and operate a livestock feeding facility and know that preserving the environment is essential for future generations in farming. We also know how difficult it is for the next generations to continue on family farms. We applaud their efforts in wanting to pass along the value of good farming practices to the next generation of Daley.

I am supportive of this farm expansion in these programs. We know this farm to manage its land and livestock with professionalism and great care. It’s staff and owners are extremely concerned with animal welfare and proper care. I support any effort the farm wants to make in expanding their business and holdings. Thank you.

Having done business with Daley Farms for many years, the Daley Family has been a great partner to work with for over 10 years. Daley’s have invested their time and efforts to be good stewards of the land and implement agronomic practices that benefit their farming operation, the farm families that live next to them.

I am in support of the Daley Farm Expansion. This is a great family business that uses good practices.

I fully support Daley Farms Lewiston in their expansion plans. They are, and have been, very conscientious dairy farm family. Their proposal to expand is important for their generations of family to succeed in the dairy market. I have full confidence, and all farmers I have discussed this with, express full confidence they will do awesome with regard to the environmental responsibilities with this feedlot expansion. Daley Farms have my full confidence and support.

I’m excited for this project to get approved and see the progress it brings to southern Minnesota.

Daley farms of Lewiston is always looking to improve their farm and farm sites for the betterment of their animals and the environmental well being. With the improvements they already have in place with using organic bedding and bedding water system it can be well assume that they will continue this conservation mindset into the future. The ability for them to expand and manage the expansion according to the MPCA guidelines will only show proof in how this family farm chooses to put their animals, environment, and quality product first.

Having been in the agricultural inputs business for 20 years, it is of great pride that I do business with Daley Farms. This family run farm is one of the most professional and well kept farms in the tri-state area. Their attention to detail and care for the environment is evident as soon as you turn in the driveway. Approval of permitting for Daley Farms expansion will allow for this future of the great family run farm can remain a pillar of the Lewiston community for generations to come. The economic impact to the surrounding communities is positively impacted by means that can’t be quantified. I personally call on Daley Farms and when I do, local businesses are benefitted by my spending. The Daley Family are experts at getting agriculture salesman to buy them lunch while talking over business transactions! This is just the tip of the iceberg for I am just one of hundreds of people that is part of this great farming operation. Thank you for your consideration, Kevin Schmitz Sparta WI

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The Daley Farms near Lewiston is a family, yes family of generations of bringing quality Herdsmanship and dedication to the dairy industry MN. The whole family has continually abided by local and state regulations. Their effort to expand their feedlot is necessary as they come upon the next generation in their families who are ready to help more. It’s imperative that we look at where and what our young farmers want to do. Many of our young farmers have first gone off to college and have been taught the strict rules, laws, and regulations needed to increase farm management. Sales youth have pursued higher education and are now ready to grow the family business. They are conservationist and know about run off, manure management, etc. more prominently than smaller farms. If we as a State of Agriculture don’t help and encourage our young family farm members, where will our business in the Dairy industry be? Can our county continue to see cattle leaving the farms nor knowing what to do next? I hope not. Our legacy to the future and present farmers is to support them and when you have a family asking to expand how can we say no. They abide by the rules, they gave contacted their neighbors, they get the correct permits, etc. Now, is pur time to say yes to the Dairy Farms AND say thank you for continuing in the Dairy industry for us l

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The Daley Farms of Lewiston have proven, through multiple generations, to be excellent stewards of the land. Additionally, there exists a long history of philanthropy within and around the community of Lewiston. As a family farm consisting of members who have chosen to live and raise their families in Lewiston, I am 100% confident that this will be completed correctly and will be an asset, financially and otherwise, the the city and county.

Daley Farms of Lewiston is a well run dairy that takes excellent care of their livestock and land. Keeping high quality food producers in Minnesota is important to all of its residents.

Daley Farms of Lewiston is a well known dairy farm operated by good people doing a great job. They have a reputation of doing things right and are conscientious about animal well being and environmental well being of the area. With the proposed expansion they will continue to do a great job of keeping their farm in compliance with all environmental regulations.

I have served with Shelly Deppelet as a fellow board member of the Minnesota Mill Producers. I believe that the people of their community, the state of Minnesota and the United States are well served and lucky to be able to have that same group of people continue to grow their business.

I am a former resident of Lewiston Minnesota and I support Daley Farms of Lewiston. This family farm has done nothing but good for the community. When I was going through Elementary and Intermediate (5-6th grade) school, they paid for the milk we got during our milk/snack break, helping families save some money for other expenses. This is just one of many things the farm has done for the community. The Daley Farm also isn’t a business that hides or cuts corners with issues. The entire farm works tirelessly to make sure their farm expectations with the community. Not only that, but they encourage people to come tour the farm who are curious, skeptical, or just willing to learn about the dairy industry. They also have a Facebook page that shows how they treat their dairy cows making them very transparent with their operations. Ever since they wanted to expand, members of the farm have been working with the state and local community to make sure that everything is up to par, and to make sure that the entire city of Lewiston receives little to no negative impact that could potentially arise with such a big expansion. This family has done everything they can for this community. They are kind and easy going people who care about their community. With many family farms going under, I’d hate to see this one go too. If this farm doesn’t expand and it goes under, then some out of town factory farmer could take over, and greatly change the care of the people of Lewiston or the people that live themselves. This is a great farm family, the expansion for what they have done for themselves, the community, and the animals they care for.

The Daley’s have been an outstanding example of a well-run family dairy. You can be sure that they will be doing the dairy business by the book for managing there farm. Their family work ethics is second to none and they are working hard to survive in these times of test the commitment of the farm family. I strongly ask for your support of this family dairy farm endeavors. Sincerely
Daley Farms has been a fixture in the Lewiston community for nearly 160 years. Their philanthropy and strong support of our community will continue to help Lewiston thrive. They have become the gold standard among our area farms when it comes to sustainability and conservation practices. Whether it be sand reclamation or a diverse mixture of cover crops, DFLLP are great stewards of the land. With this expansion, I can only see their land stewardship practices having a stronger impact on decreasing nutrient runoff and slowing soil erosion. So many farmers in our area commit to the typical corn/soybean rotation and in the non-growing season that land is left barren, subject to wind and water erosion. Daley Farms on the other hand grows mostly corn and alfalfa. Alfalfa keeps the soil covered year round and, from what I’m told, their corn silage fields get planted to a diverse cover crop mixture once harvested. That keeps the vast majority of their fields covered year round and reclaiming nutrients deeper in the soil horizon. If the expansion were to go through, more Winona county farmland acres would be mitigating the effects of nutrient runoff, which is a serious issue in our county and neighboring counties as well. I’ve gotten to know the next generation considerably well and they are continually searching for new ways to maximize their operations sustainability and minimizing their environmental impact. Their passion for their family farm is strong! Finally, in a town that has turned in to more of a bedroom town than a town with strong job opportunities, DFLLPs expansion would provide additional jobs opportunities for the area.

Minnesota. Minnesota needs to remain an agriculturally friendly state and granting permission of expansion to Daley Farms would be a necessary step in accomplishing this. While I do not work and live in southeast Minnesota anymore, I would love nothing more than to see the dairy economy in the state of MN to remain sustainable and thrive. Thank you for your consideration!

Hello, my name is Jesse Ellinghusyen. I worked for Daley Farms for 8.5 years. They run a very well organized business. I build manure agitation boats now, and get to travel a bit and see different operations. They are one of the cleanest farms I've been on. I have no problem standing behind them in their hopes to expand. I'm planning on taking over my family's farm and would have no problem with working with them to house cattle or spreading manure on the land. If you have any questions feel free to send me an email at Jasper_B41@yahoo.com. Have a great day!

I was able to tour the current dairy twice through different school functions, and I was able to get to know the family better while attending college with a member of the next generation. To me, it is obvious this family cares about more than themselves and has shown it by opening their doors for educational purposes like the experiences I had. They have made an effort to maintain environmental and economic stability and I believe they are capable of maintaining them through the proposed expansion. Families like this are a great face for agriculture and ones I hope will be around for a long time.

The Daley Family farm is a big asset to the Lewiston community. The farm brings business into the community. They also hire out work done on the farmer through members of the Lewiston community. They are very conscientious of what goes on in the community, Daley Farms also open their doors to the publics interest and concerns in m...
214 Good afternoon, I am in favor of the full environmental review of the proposed Daley Mega Dairy. It is too large and too delicate of an area of the state to take chances. What happens when something goes wrong, and with the human condition, something always goes wrong. I live about 1 - 2 miles from the farm in Lewiston. The Daleys have always been good neighbors, but to allow this with out the full environmental review would be foolish. Below is a letter to the Winona Daily News, printed Oct 10, 2018. It is by Barb Ringler Lewiston, MN. I think it describes my thoughts on this subject very well. Thank you - Jim Ziegler

The Daley farm on Hwy. 14 in Ulica Township near Lewiston wants to expand its 1,400 cow mega-dairy to 4,600 cows. This would make it one of the 10 largest dairy farms in the state. All the other dairies of this size are in western Minnesota. It will generate 46 million gallons of liquid manure and wastewater per year in our high risk karst area. It would use 92 million gallons of water a year. For sure this will have a significant impact on our Winona County environment. Right now, the Minnesota Pollution Control Agency has started the mandatory basic environmental assessment of the project called an Environmental Assessment Worksheet (Editor’s note: You can read the worksheet at bit.ly/daleyfarms). The purpose of this is to determine whether an in-depth Environmental Impact Statement is needed. It is this EIS that deeply evaluates the potential harm and looks at ways to reduce the harm. The law says clearly if a "project has the potential for significant environmental impact" then an EIS is required. Of course, a dairy-sized this in a high risk karst area where groundwater is already polluted will have a significant impact. We should all remember that due to sinkholes, Lewiston’s municipal sewage lagoons collapsed in 1992. Two other municipal sewage lagoons in the area have also collapsed — Altura in 1976 and Bellchester in 1992. The Daleys are adding a 13.6-million-gallon liquid manure storage basin. They already have four that can store 22 million gallons. So in that one small area will be stored up to 35.6 million gallons of raw liquid manure. What if a sinkhole opens beneath one of them? That means millions of gallons of liquid manure flowing into our groundwater. Also, these manure lagoons allow for seepage. What is the impact of that on our drinking water? This also means 35.6 million gallons of raw liquid manure must be spread every year in the area. What will that impact be on water quality? The MPCA makes the final decision on doing an EIS unless the Daleys do the right thing and volunteer for one. For sure, without an EIS we won’t get a full review of the harm and how it might be avoided. Right now, the MPCA is taking comments on the environmental worksheet here: bit.ly/daley_comment. There is a limit to how big you can get before you start impacting everybody’s air, water, and quality of life. We need an in-depth Environmental Impact Statement to look into that. An EIS just makes sense.

215 Daley Farms has been a contributing member of the community for several decades. They take good care of their animals, they run an impeccable, clean operation, they are courteous to our neighbors and support the community through many donations. Not only is this expansion well deserved it will ensure Lewiston and the surrounding communities will be sound economically for many years to come.

216 We have been neighbors to Daley Farms, Inc for many years. They have proven to be responsible caretakers of both their livestock and the environment. They are involved in the local community and support the greater good of all members in the Lewiston area.

217 Growing up in Lewiston, Daley Family Farms have always been on the horizon. Always clean, always neat. Always striving to make the cattle they raise clean and comfortable to reach their full production. Great family! Great farm! Great for Lewiston!

218 Daley Farms of Lewiston LLP’s expansion project will be a continuation of the excellent operation that is run at this farm. A family business that has always prided itself on the importance of family, community, and environment. They have always been conscious of making the operation run better. Sand reclamation, manure application management, cover crop applications, feed storage runoff containment, recycling water, and numerous other BMPs have always been a priority for them. The management of the operation shows in the dairy cattle herd health and young stock. Daley Farms of Lewiston LLP have the ability to make this transition successful.

219 As a neighbor of the Daleys, I fully support their proposed expansion. They have always been good neighbors to me, and to the residents of the City of Lewiston. They are careful in every way in their land use, their dairy facility, and their handling of wastes involved. Their farms are a great benefit to the Lewiston community and the economy of Winona County.

220 I’m writing to support the planned expansion of Daley Farm of Lewiston. The Daley family is know in the community as a family that does things right. Their current dairy is a testament to that. Things are clean, organized and well run. The family made decisions for their dairy that are positive for the environment. For example, they built a leachate catch pit on the edge of their feed pad to catch any runoff from their feed piles. They have also invested in a sand separation barn to reclaim sand that they use for the bedding of their cows. This allows them to haul less sand on Winona County roads. Furthermore, Daley’s make it a priority to have all their liquid manure injected into their fields using a dragline system. This reduces the chance for runoff as well as vehicles on the roads hauling liquid manure. Moreover, it lessens the amount of commercial fertilizer used on their cropland. With 5 more family members from the next generation coming into Daley Farm of Lewiston, the need for expansion makes sense for this top-notch family.

221 Daley Farms of Lewiston has always been a fine example of how to operate and maintain a dairy farm. I commend them on their efforts to bring sons daughters etc back to family farm. They are very committed to family, community and dairy industry. I support their efforts in obtaining this permit.

222 I worked for the Daley family for almost 17 years. I continue a good relationship with them. They care about their employees and I felt needed and important when I worked there. Daley’s treat their cows very well and are always making improvements to make them more comfortable. Through the years, I got to see the family grow and the young kids grow up that are now integrating into the farm. I honestly miss working with them and with the cows.

223 I just wanted to comment on this farm and their attempt to grow in an effort to stay in business. This farm is currently using a sand reclamation system and are very diligent about how they manage their manure. By recycling their sand and reusing it for bedding they reduce the amount of manure that they have to spread out in the fields. This is only one of the ways that they are diligently caring for the land and the animals. The manure they do spread is sampled along with the soil it is spread on and together a plan is formulated on how to best use the manure to raise the crops that they feed to their cows. Manure is a very good source of not only nutrients for the plants but it also contains microbes, organ matter and micro minerals that help make the soil they Applied. By managing the soil this way, dairy farms greatly reduce the amount of fertilizer that they need to purchase and apply to their fields, making them a more self sustaining operation. The sand itself is considered by many to be the "gold" standard for dairy cows. It is one of the most comfortable for cows; they lay down for longer periods of time which leads to cows having less foot and leg problems. Sand is also organic which means bacteria cannot grow in it so mastitis cases tend to lessen as well, meaning the cows are healthier. I feel that this farm should be allowed to expand and continue to grow and perform the way they feel would help keep them in business.

224 My belief is that the Daley Family should be allowed to expand their operation. I have known this family and their operation very well for the past 15 years. I have no concern with water quality. The Daley Family already implements excellent manure management practices and is environmentally conscious. (More so even than other, smaller operators in our county.) The community support by the Daley family is unmatched. They spend excellent money locally first, if possible. This dairy will have a huge local economic impact. Which would be excellent for our county. They have a passion for their community, families, cattle, and employees. They are a local, extremely well-run family dairy. Not some group of investors looking to only manage numbers. Every member of the Daley family has a ‘hands-on’ role in the operation every day. If anyone should be allowed to expand in this manner, it should be the Daleys. Respectfully submitted, Paul Tveten Long Winona County Resident.

225 This Daley Farm expansion needs an EIS. This is a massive increase of cows and cattle. Too much manure for our karst geology! Too much water will be used for this project. Think of the public’s usage of water and wells. Again, do an EIS on this expansion. Karen Swanson Lansboro MN
Good morning, I am favor of the environmental review of the proposed Daley Mega Dairy. It is too large and in too delicate of an area of the state to take chances. What happens when something goes wrong? In the human condition, something always goes wrong. There is also the idea of ground cover crops and other mitigating methods for keeping ground water safe. Is that the guarantee that this will continue? What happens when economics overruns the good neighbor concept? This may happen in 50-20 years, who knows who will be in control of this factory by then about 1-2 miles from the farm in Lewiston? I have had a good relationship with the folks in Utica, MN; as I always call them or write them.

I think it describes my thoughts on this subject very well. Thank you - Kay Zeigler. The Daley farm on Hwy. 14 in Utica Township near Lewiston wants to expand their 1,600 cow mega dairy, to 4,600 cows. This would make it one of the 10 largest dairy farms in the state. All the other dairies of this size are in western Minnesota. It will generate 46 million gallons of liquid manure and wastewater a year in our high-risk karst area. It would use 92 million gallons of water a year. For sure this will have a significant impact on our Winona County environment. Right now, the Minnesota Pollution Control Agency has started the mandatory basic environmental assessment of the project called an Environmental Assessment Worksheet (Editor's note: You can read the worksheet at bit.ly/Daley Farms). The purpose of this is to determine whether or not an in-depth Environmental Impact Statement is needed. It is this EIS that deeply evaluates the potential harm and looks at ways to reduce the harm. The law says if a "project has the potential for significant environmental impact" then an EIS is required. Of course, a mega-dairy this size in a high risk karst area where groundwater is already polluted will have a significant impact.

There is a limit to how big you can get before you start impacting everybody's air, water, and quality of life. We need an in-depth impact. We should all remember that due to sinkholes, Lewiston's municipal sewage lagoons collapsed in 1992. Two other municipal sewage lagoons in the area have also collapsed, one in Altura in 1976 and Belchiler in 1992. The Daley's are adding a 13.6-million-gallon liquid manure storage basin. They already have four that can store 22 million gallons. So that in one small area will be stored up to 35.6 million gallons of raw liquid manure. What if a sinkhole opens beneath one of them? That means millions of gallons of liquid manure flowing into our groundwater. Also, these manure lagoons allow for seepage. What is the impact? We now need 35.6 million gallons of raw liquid manure must be spread every year in the area. What will that impact be on water quality? The MPCA makes the final decision on the EIS since it is one million gallons of liquid manure a year. If they decide there is no need for an EIS since they believe it is not significant, then the Daley's will do the right thing and not go forward. For me to get a full review of the harm and how it might be avoided. Right now, the MPCA is taking comments on the environmental worksheet here: bit.ly/Daley Comments. There is a limit to how big you can get before you start impacting everybody's air, water, and quality of life. We need an in-depth Environmental Impact Statement to look into that. An EIS just makes sense.

Great, hardworking family doing their work as their business, we need to support growth in MN, in this industry.

Confined animal feeding operations and over populated dairy farms are taking out our smaller farms and destroying the environment. I strenuously object to yet another expansive dairy farm. The big money seems to buy whatever it wants, regardless of the impact on communities, our environment, top soil, and ability to absorb tons of sewage. I oppose the expansion of Daley Farms.

Great luck to the Daley Family this coming week! Daley Farms have been a model of both animal husbandry & stewardship of the land. It’s one thing to farm, it’s another to work with other land owners/ farmers in the region to plan & this farm is a perfect example of that. The Daleys own and farm full circle are returning home from college. Many families struggle with getting their children to come back to the family farm. Not only do they farm well managed practices, but they give back to local community generously.

In these difficult times for dairy farmers it is refreshing to see the Daley family and 5 young adults willing to invest in a future in dairy farming. This is not a bunch of suits from the big city wanting an investment, these are people who live here, raise their children here, send their kids to our schools and support many, many local causes and businesses. The Daleys have been here for more than 100 years, they are committed to preserving the land they farm, caring and loving their animals and doing it in an economic, efficient manner. They follow every guideline put forth by the state when applying the nutrient rich manure back on the land. The Daley's believe that if a dairy doesn’t get rid of all over the roads, dairy waste, they are not doing their job in an environmentally friendly way. This is not a big city company, this is a family farm.

I have seen first hand the steps this dairy has taken to mitigate run off from their farm. They built a pond to catch water run off and prevent it from reaching streams. The manure from the dairy is injected into the ground for maximum benefit for the soil and to reduce any run off. Putting manure in the ground is safer than using synthetic fertilizers for our topography. The manure can be naturally broken down by our soils. All the family members live on farm property and drink from the wells on their properties. Polluting the ground water or streams around them is the last thing they want to happen and will take all the necessary steps needed to prevent it from happening in my view.

I would like to comment on the proposed expansion of Daley Farms of Lewiston. I have worked in the Winona County area for 35 years and I have always heard very positive comments about the Daley’s. I have personally worked with the Daley’s since the mid 90’s on a professional basis. The Daley’s have always done an excellent job of managing their farm and have always tried to do the right thing. I worked with the Daley’s when they expanded in 1997-1998 as they went from around 300 cows to 1500 cows. That expansion went very well and I feel that the Daley's will do an excellent job of moving from their present size to 3000 cows. I strongly recommend to the MPCA and Winona County that their expansion be approved.

I am writing in support of the Daley Farm of Lewiston's plan of expansion. Opportunity doesn't strike at everyone's door to enter the family business, but farming is one of those industries that allows for new beginnings for younger people to become involved in. This energetic, technology-loving, motivated, and hard-working group of young adults is ready to take on and join the family dairy. I witness them working side by side with the rest of the family members and employees doing daily farm practices and bringing new things to the table. Furthermore, they focus on the public with social media by posting new updates with the family farm and footage of various aspects for everyone to enjoy and learn from. I would encourage everyone to visit their Facebook and Twitter accounts to experience this. I fully support Sidney, Dustin, Dylan, Gabe, Dominic and the rest of their family in the plans of expansion.

Daley Farm does a great job of taking care of the land it is nice to see a family farm take such an interest in Agriculture with the challenging years that the farmers have been going through. The Dairy farms around us are declining at a rapid pace because of the challenging times with these extremely low milk prices. I believe by keeping the dairy cow numbers up in south east MN is a great thing. Alfalfa and grass with the dairy cows eat helps control erosion on the hills instead of the corn and beans row crops that you get more erosion with so keeping the dairy cows numbers up is a win for Winona County. Financially it make more since to have a large number of cattle in one site. They don’t regulate how many cars the car dealers can sell in Winona County I feel as long as they meet the requirements that the MPCA Daleys should be able to have the dairy animals they need to make the family operation financially work for them. There is so much negative emotions in the Agriculture industry around its nice to see the Daleys have such a positive out look for the Dairy industry. South East MN needs Dairy cows.
237 Daley Farms of Lewiston have their support to expand with their state agencies. All rules and regulations must be followed in the past and in preparation for this dairy expansion. This family farm deserves the chance to continue business in a profitable way to allow the next generation the opportunity to follow their passion of farming.

238 We are a small 250 cow dairy about 2 miles from the Daley dairy. We support all dairy, and expansion, The Daley's do a great job and are very environmentally conscious.

239 There has been Minnesota have been losing dairy farms at a rate once unknown in the state. During the past half their dairy farms. Now, as milk prices have entered the third year of a prolonged slump, the trend has accelerated. Combined, Minnesota and Wisconsin are losing dairy farms at the rate of 15 a week per reports. Many dairymen and women have been faced with the tough decision of whether to keep milking their cows, or to sell them at an on-farm auction or the local same. The upper Midwest have been losing dairy farms at a rate once unimaginable. During the past few years, there have been reports of land and water contamination. Minnesota and Wisconsin farms are losing their farms at a rate once unimaginable.

240 I grew up with mixed feelings of any dairy with size as I used to dairy myself with a max of 100 lactating cows. Since I've had the opportunity to travel and see or work at many sizeable farms and am nothing impressed with what I've learned. I honestly am more apt to want food on my plate from these farms because of the strict quality control standards and protocols put in place. With that said the rules and regulations the county, state and federal level enforce on these farms do work and ensure high quality product, excellent land stewardship practices, and a healthy and comfortable environment for both the animal and worker. The particular business and family farm, Daley Farms of Lewiston, is ranked right at the top of my list of many sustainable, environmentally friendly, cow friendly (yes there are happy cows in MN for that matter!)

241 I am writing in support of Daley Farms of Lewiston Dairy Expansion. As a consultant to the upper Midwest dairy industry, I find that this family dairy is one of the best managed dairies in the upper Midwest. Its operation and business structure serves as a model to all of agriculture. It supports several families currently and this number will continue to grow as the next generation enters the business. Daley Farms is a positive example to other businesses on how to take care of the environment. It controls any runoff that could pollute local streams and rivers. It stores manure in safe facilities to prevent surface and ground water contamination. It recycles whenever possible. Daley Farms shows that successful and profitable dairy farms can also be good stewards of the environment.

242 I have worked with Daley Farms of Lewiston for over 2 years. Mainly dealing with their bull calves and in all my dealings with them they have professional, honest and respectable. Their operation seems to be clean and organized. As far as the calves they have always been clean and have always treated them in a humane manner.

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244 This project poses a real threat to the health of aquatic ecosystems in the watershed. CAFO's because they concentrate waste from so many animals are inherently risky. Time and time again these manure lagoons leak and spill and release animal waste into our rivers and streams destroying aquatic life and harming human health. These projects are particularly risky in areas like SE MN where there is a lot of topography and karst geology such that spills can easily run directly into streams or sink into ground water. This is simply the wrong place for a CAFO as proposed.

245 Daley Farms shows that successful and profitable dairy farms can also be good stewards of the environment.

246 I have concerns regarding an increase in the Daley Farm Feed Lot. As someone who is a frequent user and advocate for our state parks, streams and rivers I am worried that this poses a risk to streams and other natural resources in the area. Water from Lewiston flows downstream to Garvin Brook and other surrounding streams and waterways. I have concerns that disposing of water generated by such an increase would affect water quality in the area. At minimum an environmental impact review should be completed.

247 Daley Farms is a great family who care about their community. They have professional, honest and respectable. Their operation seems to be clean and organized. As far as the calves they have always been clean and have always treated them in a humane manner.

248 If Daley Farms isn't allowed to increase their operation there is something seriously wrong with the system. These are very good farmers, they farm relatively flat ground, leave adequate amounts for waterways, use cover cropping where applicable, and run enough ground that they comply with animal units per acre requirements. We aren't talking about some absentee corporate farm here, this is a family owned and operated farm just at a larger scale than the norm for a family farm. This in itself truly says something about their character. Family business are a constant struggle and they far and away exceed "just making it work". Time and time again these farmers don't care about the environment. It is in the families best interest to keep all of their soil and manure on their fields.

249 Daley Farms are a large farm they have the means to harvest and do field work faster than anyone else (and they actually do) Take a drive around South East Minnesota and look how many of these farms are in the fields then look at the Daley properties. Their corn fields are tilled up, manure has been injected in (something most farmers don't do) and cover crops planted (something else most farmers don't do). Oh and by the way many of the Daley boys are trout fisherman and own several miles of trout stream which isn't under any easements but they gladly grant access to the public to use it for their enjoyment. There are many farmers in South East Minnesota that are habitually trying to shut them down. The Root River Valley is pathetic. If some of those farmers could plant corn in the river they would. Eroding banks with corn growing right up to the edge. And there are many other cases just like it across the region. (lower Money River just above the confluence with the Root River for one) Where are the governing agencies in these cases? Why isn't there public meetings being held to hold these farmers accountable? Nitrogen is Nitrogen weather it is in the form of animal manure, atmospheric nitrogen that legumes fix into the soil, or the millions of tons of high salt commercial fertilizers that cash crop farmers spread on their fields every year. (with a large portion of that fertilizer making its way into trout streams and rivers across the Driftless via drain tile). Who is going to hold them accountable? Another question I

250 Daley Farms are a large farm they have the means to harvest and do field work faster than anyone else (and they actually do) Take a drive around South East Minnesota and look how many of these farms are in the fields then look at the Daley properties. Their corn fields are tilled up, manure has been injected in (something most farmers don't do) and cover crops planted (something else most farmers don't do). Oh and by the way many of the Daley boys are trout fisherman and own several miles of trout stream which isn't under any easements but they gladly grant access to the public to use it for their enjoyment. There are many farmers in South East Minnesota that are habitually trying to shut them down. The Root River Valley is pathetic. If some of those farmers could plant corn in the river they would. Eroding banks with corn growing right up to the edge. And there are many other cases just like it across the region. (lower Money River just above the confluence with the Root River for one) Where are the governing agencies in these cases? Why isn't there public meetings being held to hold these farmers accountable? Nitrogen is Nitrogen weather it is in the form of animal manure, atmospheric nitrogen that legumes fix into the soil, or the millions of tons of high salt commercial fertilizers that cash crop farmers spread on their fields every year. (with a large portion of that fertilizer making its way into trout streams and rivers across the Driftless via drain tile). Who is going to hold them accountable? Another question I
I am writing to voice my concern about the Daley farm proposal that I oppose. I have 2 siblings and grew up on a 400 acre farm with a small feedlot and also worked on what was the largest farm in Trempealeau County, WI. That family had 6 siblings. My father’s family had 5 siblings and a dairy farm. My numerous cousins who grew up on farms have multiple siblings. There are other options for the Daley family to keep their farm there is the old tradition. Far exceeding the county limit does not have to be of them. Daley family has to have some experience that the family have been having. These type of manure lagoons were designed for 25 year rain events. We have those back-to-back and 100 year events are starting to feel like almost annual events. Just a few years back we had a lagoon spill in Canton (Filo County) of a million gallons that went right into a trout stream. The herd size was 400 believe. This is massive compared to that and the Whitewater watershed. This farm drains to a lot of public land. I know from experience that even with careful planning bad stuff can happen with manure lagoons and the spreading of liquid manure. If lagoons are getting near capacity and fields are too wet to spread manure what happens when that 25 year or 50 year or 100 year or 500 year sink event happens. I have seen it more than once. What happens when the lagoon is full and the fields are dry but the forecast is for lots of rain? Spread as much as you can as soon as you can so the lagoon doesn’t overflow. Then the rain event washes much of the manure into nearby streams. I have seen it too many times. I am sure the Daley Farm will try to do their best to prevent this sort of thing. I believe them. You just cannot plan for these sort of things and they will happen. The environmental impact of these sort of mega farms can be looked at several ways. Locally we have Whitewater State Park and the 1000’s of acres of public land surrounding it. I would be curious to know what the economic impact of those stress are on the local economy. We are known for great trout fishing. Antibiotics and growth hormones survive in manure lagoons for up to 270 days. Studies show that these affect the reproduction of fish downstream. I would think they also affect amphibians and possibly even aquatic insects. That is not okay with a lot of the public who care about these impacts. These things might not affect the Daleys but that is because they are on the upstream end of all of this. Everything from their farm flows downstream. On a larger scale, this kind of unsustainable agriculture adds to the problem of the Mississippi river basin. The dead zone and red algae blooms in the Gulf of Mexico are directly related to these kind of farms. This might not concern certain people this far upstream, but if you made your living in Louisiana or Alabama related to this future the Daley family was allowed to move forward. The Kinnard farm sits over Karst topography and has moved from 4000 milk cows to 6000. The family said they had science on their side, a good business plan, that they were good neighbors and it was nothing they could not handle. A majority of the residents in the township exceed safe bacteria and nitrate levels. Neighbors also said they were unprepared for the amount of truck traffic a mega dairy would bring and the ammonia in the wind. Here is language from that county (Town of Lincoln 2016 Supplement to Kewaunee County 2006 Comprehensive Plan ) “One particular downside to the dairy CAFOs in the Lincoln Township area is the generation of manure holding multiple-tens of thousands of gallons and the application on fields of ammonia, sulfur dioxide, and other noxious gases that have caused considerable consternation with the non-CAFO neighbors. One neighborhood within close proximity to a CAFO has seen the exodus of at least nine families who have sold their homes due to odors. (While the biggest complaints about CAFOs were odors, other issues cited were noise, increased road traffic, reduced property values, and not wanting to live near a CAFO.) While the owners, managers, operators, and employees of the CAFOs in the Kewaunee County are part of our community, there is little support for the expansion of this industrial model of farming in Lincoln Township and the county. Many residents are looking for alternatives. “ The Daley farm spreads from Lewiston towards Utica. I am not a member of Trout Unlimited but I would still like to know I can take my future grandkids trout fishing in the Whitewater watershed someday. Heck, I’d enjoy catching frogs and looking for salamanders just as much. As a boy I drank right out of the springs that fed our little stream. My parents didn’t have a lot of science to use but they did have common sense to know how many animals were actually good for the land. Our county has already spoken on how many animals under the different Karst topography. I give the Daley family credit for their hard work and have a stab at their options though. Also I wish the family well in passing on their farm to the next generation. I truly do. It is tricky business and difficult but there are a lot of other options. Others that don’t divide the county and communities, ones that are not damaging to the environment, ones that don’t tax taxpayers money, and ones that are good for the long-term future of farming in Winona County. 250 Winona County has a very fragile Karst topography. Every feedlot affects this and our water. Please do not allow any more feedlots or expansions in Winona County. Thank you. 251 Mississippi Market is a member owned natural foods cooperative in St Paul, MN. We have a number of amazing, owner member owned natural foods cooperative in St Paul, MN. We have a number of amazing, owner member owned natural foods cooperative in St Paul, MN. We have a number of amazing, owner member owned natural foods cooperative in St Paul, MN. We have a number of amazing, owner member owned natural foods cooperative in St Paul, MN. We have a number of amazing, owner member owned natural foods cooperative in St Paul, MN. 252 Please require an extensive Environmental Impact Statement on the expansion of the Daley Farms, Lewiston, MN. The geography of this region, and past history of City Lagoon failures in Lewiston, and Altura should be used to study problems that have been experienced in the permitting process of the Winn County DNR and the consequences of the expansion of the Daley Farms. We are also storing liquid manure in lagoons. The City of Lewiston has a 1,500-animal unit cap at the time the ordinance was adopted and so was ”grandfathered in.” This means it could continue but could not expand (increase its non-conformity). Thank you for considering our opinion in this matter.
The project would annually use 92 million gallons of water. The city of Lewiston (pop. 1,564) uses 33.5 million gallons of water per year. What impact will this major use of water have on our aquifer? From the EAW: “Daley received DNR’s preliminary approval letter to construct the new wells for the Project on October 30, 2017 (Attachment R). The DNR has stated in the preliminary approval letter, that DNR has ‘determined that the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands.’” Also, “The DNR’s preliminary approval to construct a well is not an approval to use or pump the well.” The proposal will annually produce 46 million gallons of manure and wastewater in an area where karst geology channel contaminants from surface water deep into the ground. Lewiston’s municipal sewage lagoon disappeared into a sinkhole in 1991. What if one of the multi-million gallon lagoons at this project disappears into a sinkhole? The municipal lagoon in Altura failed due to a sinkhole in 1976. The same thing happened in Bellechester in 1992. Well testing conducted by the Minnesota Department of Agriculture in 2016 showed that 46.3 percent of the wells tested in Utica Township exceeded the safe drinking water standard for nitrate/nitrogen. According to the USDA National Resources Conservation Service, 250 cows produce as much nitrate/nitrogen as 5,000 people. By that count, the 4,628-cow Daley Dairy would conservatively produce as much nitrate/nitrogen as a town of 90,000 people. Citation: https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=rsrc_143_014211

Record increases in cows with their methane. Vast increases in water use, much more manure to Dispose of & against county ordinances!!! Why would anyone approve this? Do the right thing & disapprove. Thank you. Lynn Glesne

The project would annually use 92 million gallons of water. The city of Lewiston (pop. 1,564) uses 33.5 million gallons of water per year. What impact will this major use of water have on our aquifer? From the EAW: “Daley received DNR’s preliminary approval letter to construct the new wells for the Project on October 30, 2017 (Attachment R). The DNR has stated in the preliminary approval letter, that DNR has ‘determined that the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands.’” Also, “The DNR’s preliminary approval to construct a well is not an approval to use or pump the well.” The proposal will annually produce 46 million gallons of manure and wastewater in an area where karst geology channel contaminants from surface water deep into the ground. Lewiston’s municipal sewage lagoon disappeared into a sinkhole in 1991. What if one of the multi-million gallon lagoons at this project disappears into a sinkhole? The municipal lagoon in Altura failed due to a sinkhole in 1976. The same thing happened in Bellechester in 1992. Well testing conducted by the Minnesota Department of Agriculture in 2016 showed that 46.3 percent of the wells tested in Utica Township exceeded the safe drinking water standard for nitrate/nitrogen. According to the USDA National Resources Conservation Service, 250 cows produce as much nitrate/nitrogen as 5,000 people. By that count, the 4,628-cow Daley Dairy would conservatively produce as much nitrate/nitrogen as a town of 90,000 people. Citation: https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=rsrc_143_014211

To whom it may concern: This project will use millions of gallons of water which will inevitably be a problem for the city. And millions of gallons of manure well eventually contaminate the aquifer. Please do not allow it. Thank you for the opportunity to comment. Jean Meierotto

Winona County has established a feedlot animal limit for a variety of reasons. This application for a feedlot that greatly exceeds such standards should be considered at all times. It is not to be considered at all, then it is imperative that an environmental impact statement be produced. MPCA should consider requiring municipal-grade waste treatment for such large amounts of sewage, and also alternatives such as anaerobic digestion.

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The MPCA needs to more extensively examine the environmental impact of the proposed expansion of the Daley farms. They propose to double their present herd, currently at 1728 (already over the county limit) to 4628. We must seriously consider the effect of this large an operation on our water supply. I understand that the proposed herd would require more water than is used by the city of Lewiston. And the Township exceeded the safe drinking water standard for nitrate/nitrogen. According to the USDA Natural Resources Conservation Service, 250 cows produce as much nitrate/nitrogen as 5,000 people. By that count, the 4,628-cow Daley Dairy would conservatively produce as much nitrate/nitrogen as a town of 90,000 people. Citation: https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=rsrc_143_014211

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I grew up on what was then considered to be a large dairy farm, 500-600 cows. The challenge of containing the waste product even in those unregulated times was enormous. I can’t think of one reason for approving the exception to their regulations when their farm has already exceeded except that MPCA folks are being bribed...there is no compelling need for their product that I’m aware of, so it must be a profit issue.
I am concerned about water quality for Minnesotans across the state. The proposed expansion of the feedlot in Daley Farms holds great potential for endangering the water supplies of Lewiston and the surrounding region. Located in the (beautiful) karst county of Winona County, this farm would require far more water than the town of Lewiston and would produce massive amounts of manure that would be stored in giant lagoons - in an area prone to sinkholes and with faults that can carry contaminants deep into the ground. Such a mishap - all the more likely in this time of greatly increased heavy precipitation everywhere worldwide - would pollute the water supplies indefinitely. This situation is for the worst the low-lying karst area that the MPCA claims to protect the drinking water for the people and land of Minnesota not massive farm areas. At very least, a full Environmental Impact Statement should be completed, nothing less like an Environmental Assessment Worksheet.

The Daley Farms of Lewiston and the Environmental Assessment Worksheet (EAW) which is part of the permit application approval process. Daley Farms wants to more than double its dairy herd from 1,728 cows and calves to 4,628. The proposal is that is too porous for animal waste to be spread without serious risk to the surrounding community. The existing community should not have to compete with a commercial livestock operation for enough clean water. This proposal is already banned under the Winona County Ordinances. Local communities neighborhoods should not have to "hold their breath" living in proximity to the threats posed by a giant manure lagoon. This proposal is akin to expanding a city with no regard for existing neighbors, safe infrastructure, existing zoning laws or environmental impact. This expansion defies environmental safety logic and existing law. Below is background information from the Land Stewardship Project.

The proposal will annually produce 46 million gallons of manure and wastewater in an area where karst geology channel contaminants from surface water deep into the ground. Lewiston's municipal sewage lagoon disappeared into a sinkhole in 1991. 4,628 cows would produce as much nitrate/nitrogen as 90,000 people. By that count, the 4,628-cow Daley Dairy would produce as much nitrate/nitrogen as a town of 90,000 people. What if one of the multi-million gallon lagoons at this project disappears into a sinkhole? The municipality in Altura failed due to a sinkhole in 1976. The same thing happened in Bellechester in 1992. Well testing conducted by the Minnesota Department of Agriculture in 2016 showed that 46.3 percent of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates. According to the USDA Natural Resources Conservation Service, 250 cows produce as much nitrates in their manure as a town of 5,000 people. By that count, the 4,628-cow Daley Dairy would produce as much nitrates as a town of 90,000 people. Daley Farms wants to more than double its dairy herd from 1,728 cows and calves to 4,628 total.

My comment is that we need an extensive environmental study to protect the environment, water quality and quantity, health and quality of life for the surrounding neighbors. The increase in anticipated nitrate levels is not healthy. The problems inherent in these operations, moral, environmental, economic, and otherwise, should be obvious to anyone concerned. At a time when we should be consuming less, expanding and allowing more waste is not the right thing! With all due respect, I believe the LAW concerning feedlot expansion must be followed by everyone: 1. The MPCA is doing an EAW on the Daleys' huge expansion when it is not allowed under Winona County ordinances. 2. Under the Winona County ordinances, NO feedlots are allowed over 1,500 animal units. Since it was "grandfathered in," the Daley's could keep on with their dairy operation BUT not expand. Why is there even a consideration of this expansion when two legal ordinances clearly stand firmly and rightfully in its way?

The MPCA is doing an EAW on the Daleys' proposed massive expansion when it is not allowed under our Winona County Ordinances. Winona County's ordinance is clear: no feedlots are allowed over 1,500 animal units. This animal unit cap was passed in 1998. This cap acknowledges the reality that, in karst country, there is a limit to how many animals you can pack into one location when you are storing liquid waste. Please demonstrate that you are an independent government body and not the employee of Big Agriculture. They have enough power and money. You are there to represent the People of Minnesota. Do the right thing!

Finally, why is the MPCA doing an EAW on the Daleys' proposed massive expansion when it is not allowed under Winona County Ordinances? Winona County's ordinance is clear: no feedlots are allowed over 1,500 animal units. This animal unit cap was passed in 1998. This cap acknowledges the reality that, in karst country, there is a limit to how many animals you can pack into one location when you are storing liquid waste. Please demonstrate that you are an independent government body and not the employee of Big Agriculture. They have enough power and money. You are there to represent the People of Minnesota. Do the right thing!

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Too much waste. We all know it. Common sense.

I believe that we need an extensive environmental study, called an Environmental Impact Statement (EIS) to protect the environment, water quality and quantity, health and quality-of-life for everyone affected.

These are my concerns: First, why is the MPCA doing an EAW on the Daleys' proposed massive expansion when it is not allowed under Winona County ordinances? Second, from the EAW: "Daley received DNR's preliminary approval letter to construct the new wells for the Project on October 30, 2017 (Attachment R). The DNR has stated in the preliminary approval letter that DNR has "determined that the proposed rate and volume may interfere with other water uses or have negative impacts on nearby lakes, streams or wetlands." Also, "The DNR's preliminary approval to construct a well is not an approval to use or pump the well." Third, the proposal will annually produce 46 million gallons of manure and wastewater in an area where karst geology channel contaminants from surface water deep into the ground. How can you guarantee the 46 million gallons of manure doesn't contaminate water sources? Fourth, Lewiston's municipal sewage lagoon disappeared into a sinkhole in 1991. What if one of the multi-million gallon lagoons at this project disappears into a sinkhole? The municipal lagoon in Altura failed due to a sinkhole in 1976. The same thing happened in Bellechester in 1992.

With all due respect, I believe the LAW concerning feedlot expansion must be followed by everyone: 1. The MPCA is doing an EAW on the Daleys' huge expansion when it is not allowed under Winona County ordinances. 2. Under the Winona County ordinances, NO feedlots are allowed over 1,500 animal units. Since it was "grandfathered in," the Daley's could keep on with their dairy operation BUT not expand. Why is there even a consideration of this expansion when two legal ordinances clearly stand firmly and rightfully in its way? Any dismissal of the word and meaning of these ordinances is an embarrassing and flagrant dismissal of law. Margaret Kihne

276 I do not favor large-scale factory farming operations of any kind. The problems inherent in these operations, moral, environmental, economic, and otherwise, should be obvious to anyone concerned.
Winona County Ordinances? Winona County’s ordinance is clear: no feedlots are allowed over 1,500 animal units. This animal unit cap was passed in 1998. This cap acknowledges the reality that, in karst country, there is a limit for how many animals you can pack into one location when you are storing liquid manure or wastewater in lagoons. The Daleys’ farm was over the 1,500-animal unit cap at the time the ordinance was written. This means it could continue as is (grandfathered in). This makes it difficult to protect the people living in the area.

I oppose the expansion of the Daley Farms feedlot. I believe in a sustainable agriculture environment for Minnesota not one that harms the waters and pollutes the air. I also believe all people have a right to life on their property in the state it was originally obtained. That is views should be saved, the air should be as fresh as when it was obtained and the water as pure. The neighbors near to this farm certainly are going to be adversely affected by an expansion. It is hard enough on them now. Please act under the governance of kindness to the land and the citizens of MN. Thank you for your thoughtful consideration and action. Sara Jerglund

I am writing to express my confusion on why the MPCA would be considering the Daley’s massive expansion when it is not allowed under our Winona Country Ordinances? Winona County’s ordinance is clear: no feedlots are allowed over 1,500 animal units. This animal unit cap was passed in 1998. This cap acknowledges the reality that, in karst country, there is a limit to how many animals you can pack into one location when you are storing liquid manure or wastewater in lagoons. The Daleys’ farm was over the 1,500-animal unit cap at the time the ordinance was adopted and so was “grandfathered in.” This means it could continue but could not expand (increase its non-conformity). Why don’t we stop this and protect our water? It is gray, not black and white.

I want to protect the people who live in this neighborhood, their children and pets, the schools and all other projects.

I oppose the expansion of Daley’s Dairy herd. It would mean too many cows in one place. This would undoubtedly impact the precious karst groundwater aquifers negatively, to the detriment of future generations. Major sinkhole problems have led to sewage lagoons disappearing in this area in the past. The same could happen at Daley’s, even in this prosperous, unnecessary expansion. In addition: Why is the MPCA doing an EAW on the Daleys’ proposed massive expansion when it is not allowed under our Winona County Ordinances? Winona County’s ordinance is clear: no feedlots are allowed over 1,500 animal units. This animal unit cap was passed in 1998. This cap acknowledges the reality that, in karst country, there is a limit to how many animals you can pack into one location when you are storing liquid manure or wastewater in lagoons. The Daleys’ farm was over the 1,500-animal unit cap at the time the ordinance was adopted and so was “grandfathered in.” This means it could continue but could not expand (increase its non-conformity). Please block and vote this attempt at expansion, as it is necessary for the common good. Daley’s already has too many cattle in this enterprise. In fact, already MORE cattle in this herd than the Winona County Ordinance allows. Sincerely, Daniel Blumberg-Atwater, MN

I do not approve of the Daley Farms Dairy Expansion since it could cause serious pollution to the surrounding land and waters. I want to protect the people who live in this neighborhood, their children and pets, our schools and all other projects.

The families and businesses in Lewiston could lose their quality of life and community. Respectfully, Linda O’Neill DeRemee

There is no good reason to create a resource intensive factory farm at this time. Sustainable farming practices have been developed that produce more nutritious food. The sustainable practices require more labor but less process inputs like water and feed. Large corporations should look at the sustainable farming industry as a way to differentiate themselves and create more Equitable food economies. I’m certain this is sustainable farming practices can be adopted by large corporations in a way that is more profitable than their current practices of resource intensive farming. The project would annually use 92 million gallons of water. The city of Lewiston (pop. 1,564) uses 33.5 million gallons of water per year. What impact will this major use of water have on our aquifer? From the EAW: “Daley received DNR’s preliminary approval letter to construct the new wells for the Project on October 30, 2017 (Attachment R). The DNR has stated in the preliminary approval letter, that DNR has ‘determined that the proposed project will not have a measurable impact on the environment or the use and availability of water in the area’.”

To whom it may concern, I recognize that balancing the needs and interests of corporations with the health of our fine state’s environment is a difficult job. It is gray, not black an white. With any development or decided change, there are payoffs and impacts. I appreciate your willingness to do this difficult work. I urge and implore you to review the data and ensure that we aren’t risking things that cannot be easily acquired. In the case of the safety risks to water and manure contamination, acquired by a farm of this scale, the risks are too high. This is where citizens may pay the ultimate price for a decision made to allow corporate interests to expand without absolute scrutiny to protect our communities and environmental systems. Money cannot buy these things back. Thank you, for your steadfast commitment to protecting the integrity of our land and communities. It is the right thing for us to put our trust in you to make the right decision. Kindly, Haley Steed

In my opinion, the Daley’s farm is being expanded to increase their profit. This is not because they have a good reason to increase their profit. It is because the MPCA allowed them to expand, and the idea is that this is allowed. Why is the MPCA allowing this development to occur? This farm is located in the karst region where there is no good reason to further exceed the animal unit cap. As a result, this farm is being expanded to increase their profit. The MPCA is allowing this expansion because it is allowed by the ordinance. This means that the MPCA is allowing the farm to expand because it is allowed by the ordinance. The ordinance is clear: no feedlots are allowed over 1,500 animal units. This cap was passed in 1998. This cap acknowledges the reality that, in karst country, there is a limit to how many animals you can pack into one location when you are storing liquid manure or wastewater in lagoons. The Daleys’ farm was over the 1,500-animal unit cap at the time the ordinance was adopted and so was “grandfathered in.” This means it could continue but could not expand (increase its non-conformity).

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I am writing to protest the proposed gigantic feedlot operation in Winona by the Daley farm. I am sure aware of two overriding facts about this proposal, either of which should be more than sufficient to put the kabosh on this project. One is that the Karst Geology of the area makes it a terrible risk for locating its huge manure holding pond, not to mention that the manure can’t be applied to fields in this area for the same reason of threat to ground waters. Second, Winona County does not allow feedlots over 1,500 units, so why are you even considering an application for a project that is triple this amount? Times are changing but increasing feedlots doesn’t need to be a major asset if they are raised in an environmentally sophisticated manner, protecting ground and surface waters, sequestering carbon, creating healthy soils, etc. It’s unfortunate that the Daley farm isn’t headed in this direction, but in any event this proposal is clearly bad and should progress no further as it is.

I am writing in response to the Daley Farms proposed expansion for their dairy farm. I have several concerns about this proposal. 1. Lewiston has an ordinance which limits the number of animals allowed on a farm. This ordinance was developed out of concern for the areas air, water, soil and people. The proposal would allow 4500 people to a waste water treatment plant would be required. A Cow produces much more waste than a person, yet no waste water treatment is required? A manure lagoon produces fumes affecting the air quality for all the residents living in the proximity. For breaches of the lagoon exists, which could contaminate all ground water and the aquifer. 3. The amount of water required for this large number of farm animals would significantly affect all. The city’s municipal water system and the individual rural households with private wells could lose their water source due to over use, pollution, reduction of the aquifer supply.

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Hello! As a resident and small-scale farmer in southeastern Minnesota for over twenty years, I am concerned now more than ever about the sanctioning of super-sized farming operations anywhere in Minnesota, but particularly in our fragile karst region. The Daley Farms Dairy proposal looking at more than doubling its size to nearly 5000 animal units, drawing yearly 92 million gallons of water, more than three times the amount of the entire city of St. Charles uses, will significantly impact our regional water supply, and waste produced by that number of animals kept in close proximity will significantly impact local and regional water quality. I am writing to urge you to consider, given the numbers and the magnitude of the project, entitled “Why Not Daley Farms?”. I strongly believe that the environmental footprint of mega-dairy farming, “looks at the issue from many angles, finding concentration of cows can be beneficial in per-cow methane production rates, but finally concludes that ethics contribute to obesity, autoimmune diseases and much more. I recommend ‘The China Study’ by T. Colin Campbell. More and more people are looking to plant based milk products as a way to address both human health and the health of our planet.

The extra added manure could add more nitrates to the well waters in the area. We all use the water but the cows use more and create more waste. Yes the crops use much of the fertilizer from the manure but seems excess for the area.

I support farmers. And I know that the Daley farm is not Daley Farms. There should be no permit. Winona county already has 13 other feedlots.

I wish to express my deep concern against the Daley Farm expansion in Lewiston. As a Minnesota citizen and in particular my concern for the fragile karst region of the county and the citizens of this area I oppose this gross expansion of the Daley feedlot. The estimated annual use of 92 million gallons of water(compared to the 33.5 million gallons that the city of Lewiston uses is just outrageous and egregious to say the least! Great! This the karst geology of the Lewiston region any contamination or any contamination of the drinking water source at the surface water deep into the ground, which could cause damaging consequences to aquifers. Please consider the enormity of the manure basin that would be created, the size of 3.3 football fields and 16 feet deep. All of these things are deeply troubling and concerning! Certainly the air quality in the surrounding areas will also be affected by this large quantity of manure production. The final point is the fact that the Winona County Ordinance does not permit such a feedlot size with these many animals, it states that no feedlots are allowed over 1,500 animals. Daley’s existing farm and size(1,728 cows and calves) was ‘grandfathered in’ when the animal unit cap was passed in 1998. Thank you for your consideration, Allan LaValier, firesuet@gmail.com, 651-351-0539 resident of Stillwater, MN.

To MPCA decisionmakers I believe that all Concentrated Animal Feeding Operations (CAFO) take a toll on people living close to them. I am deeply concerned about the project at hand. First of all The Daley Farms Mega-Expansion grossly violates Winona County’s 1500-animal unit cap. If everybody else has to comply why not Daley Farms. There should be no permit. Winona county already has 13 other feedlots. Second, the size of this expansion, tripling the animals units, warrants an Environmental Impact Statement (EIS) to allow for an--

Sir/Madam: Up here in northern Minnesota, to have a timber sale, start a mine, or build roads or highways, it is a requirement under federal, state and county law to have an Environmental Impact Statement to protect the land, waterways and people of Minnesota. You work for us, all citizens of Minnesota. You will be ignoring the MPCA’s professional responsibility if you do not require an EIS. I submit that, with all the facts as outlined above, this feedlot as proposed should not be allowed. Please conscientiously consider the well-being of our environment and the people of Winona County in making your decision. Thank you very much for this due diligence: Abide by the laws as written and perform a proper EIS for this massive project. Thank you, Mark S. Roalson
in depth study when dealing with the karst landscape of SE Minnesota. Twice have sewage lagoons in the past dissapeared in a sinkhole. What proof do you have that there is a manure holding lagoon the size of 3 football fields, 16 feet deep will hold in this karst landscape. Indepth modeling needs to be done first. In closing I want to express my disappointment with MPCA in this matter. I hope you reconsider your role as watching out for our health not those of cows and pocketbooks. Sincerely, John Anderson

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Hello, I am concerned about the environmental impact of this proposed expansion. Per information I received from The Land Stewardship Project, "The proposal will annually produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from surface water deep into the ground." This seems excessive, especially as per the LSP, "...[The] proposed massive expansion...is not allowed under...Winona County Ordinances." [Winona County’s ordinance is clear: no feedlots are allowed over 1,500 animal units. This animal unit cap was passed in 1998. This cap acknowledges the reality that, in karst country, there is a limit to how many animals you can pack into one location when you are storing liquid manure in lagoons. The Daleys’ farm was over the 1,500-animal cap at the time the ordinance was adopted and so was "grandfathered in." This means it could continue but could not expand (increase its non-comformity). Please do not allow this expansion to go forward. Thank you, Luke Anderson

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To whom it may concern, We are strongly opposed to Daley Farms expansion due to the environmental impact in addition to the effects on human health. This is not needed and sets us back. Countless studies suggest dairy is detrimental to human health and can be picked up by the air. This is one of the last things Lewiston and the rest of the country needs. We look to the future, not to go backwards.

299

I write regarding the community affected by the Daley Farms expansion and all the dangers associated with the environment and water in this area. I feel it endangers the very life of this farmland and the atmosphere. The ground water will be negatively affected. Do not approve of this expansion now or in the future.

300

Winona has a limit of 1500 animals per farm. Why are the local laws ignored in this case? This could become an environmental disaster for the resident of this community. Please reconsider.

301

I am a concerned citizen, and realize that it is imperative in today’s world that our first priority has to be to understand and honor the integrity and rhythms of Creation. We counter them at our own peril. Whatever our end game, if we think we can outwit nature, we have nothing left in the sand. We have to look down the pipe 7 generations and be honest: do we see? If our decisions and actions of today degrade earth's sustaining ability, we have no business even putting them on the table.

302

I am writing about the proposed expansion of Daley Farms of Lewiston. Having over 4,000 cows in an operation is against Winona County’s ordinance, and there’s a reason for that. As a Minnesota resident with an aunt and uncle who live in an area that could be affected by a daily large scale dairy operation, I know that an environmental impact analysis is necessary. The streams and wetlands surrounding a large factory farm like that can be affected negatively. Water quality isn’t something that should be messed with or risked for the sake of big dairy producers. I am writing to ask that you respect the county’s ordinance that caps a dairy operation at 1,500 animals and respect the residents who are being negatively affected by Daley Farms.

303

Please oppose this Dairy expansion for Daley Farms of Lewiston. Reasons 1) what will the impact be on the amount of water required from the aquifer? Will this withdrawl impact adversely other farm operations and citizens’ wells within the watershed? I live in Stearns County, a large dairy county, supporting many small/mid/daily operations. I also rely on ground water as my major source of water. Large expansions of any dairy operation ethically should not impact access to clean water for others. 2) Manure management is of great concern. Improper spreading on land in a karst region of Minnesota is serious. If Daley Farms does not have enough of their own land to take care of this manure that poses land and transportation concerns if they use a lagoon the same concerns apply. 3) Control of the market: Bigger operations end up having unfair access to the market. This is one reason why small/mid/large operations can’t survive. In addition as an operation gets bigger it poses concerns over animal care and diseases. Please look more to a future of small/mid/large operations concentrating around the state vs mega-concentrations like this.

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This project clearly vitiates responsible stewardship of our EARTH. It will pollute our streams, lakes, wetlands, air which will affect people in a negative way. The use of water alone is a huge concern especially on our aquifer. PLEASE DO THE RIGHT THING and do not allow this massive expansion! Thank you and God bless.

305

Hello, Please prohibit the permit for Daley Farms to increase their calf and cow numbers. You need to help protect the environment, water quality, and quantity of life. Increasing the cattle numbers will be a detriment to the bottom line of the Earth and all that depend upon it. The poisonous air we now breathe is not only a threat to our health but to our environment. The Daleys have not shown interest in how to provide life. Consider the safety of the manure containers. Sinkholes, tomatoes, human error - too much risk to allow such an increase. Thank you for considering the right decision. Please listen to the people concerned. Sharon Vipond

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Please do not proceed with the Daley Farm Mega-Dairy expansion. Raising cows for breast milk produces a tremendous and unnecessary burden on our environment. According to the USDA Natural Resources Conservation Service, 250 cows produce as much nitrate/nitrogen as 5,000 people. By that count, the 4,628-cow Daley Dairy would conservatively produce as much nitrate/nitrogen as a town of 90,000 people. Citation: https://www.nrcs.usda.gov/wps/portal/nrcs/detail/nul/7050/rncs143_014211. The proposal will annually produce 46 million gallons of manure and wastewater. Dairy has been linked to an increased risk for prostate cancer, lung cancer, breast cancer and ovarian cancer. Three servings of dairy per day increases the risk of death from prostate cancer by 141 percent. Please consider the safety and health of our community and act before it's too late. Contact the Department of Agriculture or any of their subdivisions to halt this project. We hope you reconsider any decision that would negatively impact the health of the people and the environment.

307

I support the expansion project of Daley Farms of Lewiston. I feel their farming practices are environmentally sound and are in the best interest of the public by minimizing traffic and odor in a livestock business. I also support an expanding business in our community. I think it is needed to support the local towns and keep enrollment up in our schools. It will also create more jobs in the community not just the dairy business but all the supporting businesses that will be servicing the Daley Farms.

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In reviewing the EAW for the Winona County Soil and Water Conservation District, We had a few things that came to mind. None of them to the point of requesting an EIS, but something that should be taken into considerations: 1. Since nitrates in the groundwater are a big concern in this area, we want to reiterate that all spreading of manure will follow proper setbacks from Karst features. It is especially important that these setbacks are adhered to by commercial haulers when they are being used. 2. Verbal agreements for spreadable acres may not be a strong enough commitment when adequate records are not kept. 3) Control of the market: Bigger operations end up having unfair access to the market. This is one reason why small/mid/large operations can’t survive. In addition as an operation gets bigger it poses concerns over animal care and diseases. Please look more to a future of small/mid/large operations concentrating around the state vs mega-concentrations like this.

309

Do not expand this and wreak the environment/promote animal cruelty.

310

I am very concerned about the Daley Farms’ proposal to grow their farm by more than doubling their current dairy herd from 1,728 cows and calves to 4,628 total and its’ negative environmental impact. It is imperative that the MPCA follows Minnesota law to protect the environment, water quality and quantity, health and quality-of-life for everyone affected. As such, an in-depth Environmental Impact Statement MUST be completed for this proposed expansion. Many factors must be considered include but not limited to the following: >>Well testing conducted by the Minnesota Department of Agriculture in 2016 showed that 46.3 percent of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates. According to the USDA Natural Resources Conservation Service, 250 cows produce as much nitrate/nitrogen as 5,000 people. By that count, the 4,628-cow Daley Dairy would conservatively produce as much nitrate/nitrogen as a town of 90,000 people. Citation: https://www.nrcs.usda.gov/wps/portal/nrcs/detail/nul/7050/rncs143_014211. How will the drinking water in the area be kept safe? >>The project would annually use 92 million gallons of water. The city of Lewiston (pop. 1,564) uses 33.5 million gallons of water per year. What impact will this major use of water have on Lewiston’s aquifer? >>SY NO to the Daley Farms. It should not be allowed!

311

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We don’t need more or larger animal confinement. We used to live in northwest Iowa. While there we couldn’t fish or swim in the waters. We could not open our windows, especially at night. The poisonous air caused us respiratory problems, even with windows closed. WHY SHOULD WE HAVE TO LIVE IN A SEWER??!!!!
I am attaching my comments regarding the Daley Farm Family Expansion. Please see attachment for comments and thoughts on this proposal. This is a very vital and important for the future of upcoming generations of the Daley Farm Family. Thank you for your time.

The extraordinary expansion of this dairy herd was an unpleasant surprise when I learned of it in the Mpls. Star. My response is that – from what I understand – no EIS is required is worrisome at best. The study of water quality/quantity implications alone would need to be reviewed and evaluated. The fact that groundwater supplies. However, even if a spill did not occur, the amount of water usage for that number of animals would be astronomical, at 92 millions gallons a year - above what the total population of the town of Lewiston uses in a year. The proposed expansion would also annually generate 46 million gallons of manure and wastewater - a large concern since sinkholes have occurred on the Daley Farm property in the past. If it happens - and it has happened - again near or on one of the proposed manure basins then - in conflict with a Winona County ordinance that limits feedlots to 1,500 animal units or less - passed in 1998. Why doesn’t this ordinance apply to the Daley Farm expansion? Why you are trying to circumvent county law? This expansion should not be approved, but at a very minimum, a full EIS should be conducted so the environmental and community costs can be reviewed and evaluated.

I oppose the expansion of the Daley Farm family for fifty years and know them to be outstanding, generous, caring people, friends, outstanding conservation-minded farmers - model citizens! It’s not very often that I get out told another story. The news in the Mpls Star Tribune, but the stories that I do have concerns. I have heard a lot about the karst topography of our region, its springs creek and this marvelous coldwater fishery. Lewiston, MN, also made the Mpls Star Tribune on February 2, 2011, with an article with a title of Lewiston, titled “Poison on Tap.” The article focused on the condition of our tap water. Spring creeks are under appreciated. And worse yet, In small towns there are fewer people to share the costs of expensive water projects that protect human health and the environment.

I was born in southwestern Wisconsin (La Crosse) and currently live in Minneapolis. I have grave concerns regarding the legality, water usage, and the potential contamination of groundwater in an already delicate landscape of the EAW for the proposed Daley Farms expansion and this is why I am writing to you today. Firstly, the MPCA should not be doing an EAW on the Daleys’ expansion when Winona County ordinances do not even allow feedlots over 1,500 animal units (a cap passed in 1998). I understand that the farm was “grandfathered in.” This means it could continue but could not expand (increase its non-conformity). Why doesn’t the rules apply to everyone equally? Because evidently Winona County’s ordinance that limits feedlots to 1,500 animal units or less - passed in 1998. Why doesn’t this ordinance apply to the Daley Farm expansion? Why are you trying to circumvent county law? This expansion should not be approved, but at a very minimum, a full EIS should be conducted so the environmental and community costs can be reviewed and evaluated.

I oppose the expansion of the Daley Farm request/believe an EIS is required. This isn’t about a family. This is about the MPCA doing its job and following Minnesota law to protect the environment, water quality and health, quality-of-life for everyone affected. Without a doubt, the scale and implications of this proposed factory farm expansion absolutely requires that an in-depth Environmental Impact Statement be completed. It doesn’t matter how many pages are added to the assessment worksheet process — an EAW does not do the job of an EIS. • The project would annually use 92 millions gallons of water. The city of Lewiston (pop. 1,564) uses 33.5 million gallons of water per year. What impact will this major use of water have on our aquifer? • From the EAW: “Daley received DNR’s preliminary approval letter to construct the new wells for the Project on October 30, 2017. The DNR has determined that the proposed rate and volume of water usage will not have any adverse impacts on nearby lakes, streams or wetlands.” Also, “The DNR’s preliminary approval to construct a well is not an approval to use or pump the well.” • The proposal will annually produce 46 million gallons of manure and wastewater in an area where karst geology channels contaminants from surface water deep into the ground. • Lewiston’s municipal sewage lagoon disappeared into a sinkhole in 1991. What if one of the multi-million gallon lagoons at this project disappears into a sinkhole? The municipal lagoon in Altura failed due to a sinkhole in 1976. The same thing happened in Belleshaw in 1992. • Well testing conducted by the Minnesota Department of Agriculture in 2016 showed that 46.3 percent of the wells tested in Utica Township exceeded the safe drinking water standard for nitrates. • According to the USDA National Resources Conservation Service, 250 cows produce as much nitrate/nitrogen as 5,000 people. By that count, the 6,428-cow Daley Dairy would conservatively produce as much nitrate/nitrogen as a town of 90,000 people. Citation: https://www.nrcs.usda.gov/wps/portal/nrcs/detail/null/?cid=nrcs143_014211 • The proposed manure basin would have a surface area equal to 3.3 football fields – and it’s designed to be 16-feet deep. Why is the MPCA doing an EAW on the Daley’s proposed massive expansion when it is not allowed under Winona County Ordinances? Winona County’s ordinance is clear: no feedlots are allowed over 1,500 animal units. This animal unit cap was passed in 1998. This cap acknowledges the reality that, in karst country, there is a limit to how many animals you can pack into one location when you are storing liquid manure in lagoons. The Daleys’ farm was over the 1,500-animal unit cap at the time the ordinance was adopted and so was grandfathered in.

There are a lot of unanswered questions. Relevant information to the Daley proposal from the 25% by 2025 initiative: “Major threats to groundwater  Nitrate — One of the most common water pollutants in State’s water quality 25 percent by 2025. Reverse the damage that has been done and prevent future water degradation.” “It will take all of us working together to protect our waters for ourselves and future generations.” Hence, the goal to improve our water quality for ourselves and future generations. We need a full EIS on this project because it is clear that the EAW raises some serious matters. Thirdly, the expansion will produce enormous quantities (46 million gallons) of manure annually. In a fragile karst ecosystem as the one in Lewiston, this is a risk I simply don’t think we can take in this moment for the health and safety of folks in this community who rely on clean water. I am not a professional geologist by any means, but even I have an understanding of how contaminants travel in karst landscapes—far and deep, much more so than in other areas. Lewiston has already one
sewage lagoon disappear into a sinkhole—what if one of the manure lagoons disappears as well? Is the benefit to one (already large) company worth the risk to thousands of people who live around the project? 46.3 percent of wells tested in Utica Township already exceeded safe drinking water standards for nitrates in 2016. The expanded 4,628-cow Daley Dairy expansion would produce as much nitrate as a sewage lagoon disappears? Already, almost half of wells in Utica are unsafe to drink from because they exceed safe nitrate levels. How can the MPCA approve a project in that region without an EIS since so many wells have failed for a reason, and to approve a variance for a farm that has already exhibited bad behavior is completely

320 I am emailing in regards to the MPCA needs to do its job to protect the environment, water quality and quantity, health and quality-of-life for everyone affected by this Daley Farms’ Proposed Mega-Dairy Expansion. Why is the MPCA doing an EAW on the Daleys’ proposed massive expansion when it is not allowed under our Winona County ordinances? Winona County’s ordinance is clear: no new manure storage areas or within or adjacent to the boundaries of the manure application sites: o Drinking Water supply management areas designated by the MN department of health o Public water supplies within two miles O Designated public parks, recreation areas or trails O State listed species, rare plant communities or other sensitive ecological resources o Public water supplies within two miles O Designated public parks, recreation areas or trails O State listed species, rare plant communities or other sensitive ecological resources. o Public water supplies within two miles O Designated public parks, recreation areas or trails O State listed species, rare plant communities or other sensitive ecological resources. o Public water supplies within two miles O Designated public parks, recreation areas or trails O State listed species, rare plant communities or other sensitive ecological resources.

321 I am a farmer outside Rushford and I am very concerned about the proposed expansion to the Daley Farm’s operation. As a small livestock farmer, I am concerned about the economic impact that such an expansion will have on other dairy farmers in the region. The EAW does not touch on environmental impacts which is one of the reasons I think that this project needs an EIS. Another concern I have is regarding the geology of the region. Municipal sewage lagoons have disappeared into sinkholes very close to where the project proposes to build very large manure lagoons. I noticed that the EAW marks all known sinkholes with an orange box. The city of Utica has no section to discuss economic effects of such an expansion.-As a small farmer, I am very concerned with the amount of water that the Daleys would need to accomplish this, and I assume this is within their 25 year plan to run their operation for more than 25 years. What do the Daleys plan to do with the very likely event of rainfall exceeding 6 inches in a 24-hour period? (page 13) Will the MPCA take measures to ensure that nitrate leaching loss is not exacerbated? What measures does Daley intend to take? How will those efforts be monitored and corroborated? Since nitrate contamination is already a huge issue for the state, it would not be prudent for the MPCA to take any action that at its best will not exacerbate nitrate leaching loss? (page 22) Since there is no rating for determining a sensitivity of the water table because of the surface karst feature development, how can the MPCA admit that they are not doing all they can to prevent such an expan

322 Dear MPCA Staff, My name is Rachel Stoll and I am a beef and pork farmer in Wiscoccy Township in Winona County. I have read the EAW regarding the Daley Dairy expansion and I have several questions and concerns both about what the EAW says and does not say: • On page 3 of the EAW, it is stated that the animal mortality building’s location is TBD—will that location be known by the MPCA before their determination of the necessity of an EIS? • Page 5 discusses the mechanics of the storage basins, where will runoff from storage basins be discharged and at what rate? • On page 7 the EAW section lists resources in close proximity to the proposed expansion. Why would the MPCA approve the expansion without an EIS while simultaneously acknowledging that the following resources are in proximity to the feedlot, manure storage areas or within or adjacent to the boundaries of the manure application sites: o Drinking Water supply management areas designated by the MN department of health o Public water supplies within two miles O Designated public parks, recreation areas or trails O State listed species, rare plant communities or other sensitive ecological resources. o Public water supplies within two miles O Designated public parks, recreation areas or trails O State listed species, rare plant communities or other sensitive ecological resources. o Public water supplies within two miles O Designated public parks, recreation areas or trails O State listed species, rare plant communities or other sensitive ecological resources. o Public water supplies within two miles O Designated public parks, recreation areas or trails O State listed species, rare plant communities or other sensitive ecological resources. o Public water supplies within two miles O Designated public parks, recreation areas or trails O State listed species, rare plant communities or other sensitive ecological resources.

323 Hello- I am a farmer outside Rushford and I am very concerned about the proposed expansion to the Daley Farm’s operation. As a small livestock farmer, I am concerned about the economic impact that such an expansion will have on other dairy farmers in the region. The EAW does not touch on environmental impacts which is one of the reasons I think that this project needs an EIS. Another concern I have is regarding the geology of the region. Municipal sewage lagoons have disappeared into sinkholes very close to where the project proposes to build very large manure lagoons. I noticed that the EAW marks all known sinkholes with an orange box. The city of Utica has no section to discuss economic effects of such an expansion. As a small farmer, I am very concerned with the amount of water that the Daleys would need to accomplish this, and I assume this is within their 25 year plan to run their operation for more than 25 years. What do the Daleys plan to do with the very likely event of rainfall exceeding 6 inches in a 24-hour period? (page 13) • Will the MPCA take measures to ensure that nitrate leaching loss is not exacerbated? What measures does Daley intend to take? How will those efforts be monitored and corroborated? Since nitrate contamination is already a huge issue for the state, it would not be prudent for the MPCA to take any action that at its best will not exacerbate nitrate leaching loss? (page 22) Since there is no rating for determining a sensitivity of the water table because of the surface karst feature development, how can the MPCA admit that they are not doing all they can to prevent such an expansion? What economic effects are being discussed in the EAW for the Daleys’ proposed project? Is this project being evaluated with an economic analysis? An EIS would provide more detailed analysis of the potential economic impacts of such an expansion. Our rural communities have suffered enough from consolidation of farms; we need more people farming, not less, if we want our rural communities to be healthy and vibrant. I don’t want to live rural if it means that I can’t drink water out of my own well and if I can’t make a living for myself and my family by farming on a reasonable scale. I understand perhaps none of your staff live in the drain region of Mississippi, so you may not understand that the DNR has to function at full capacity. The karst geology of central Minnesota is present in other parts of the state are really dangerous here. An EIS would be able to make a more detailed analysis of the potential risks of approving such a large project in such a geologically unique region. Please require an EIS for this expansion- once our water is contaminated there is no recourse. The residents of Minnesota depend on you to protect our water and air so that we can all live healthy and productive lives. We are counting on you. Rachel Stoll 30935 Zephyr Valley Lane Rushford MN 55971 507-545-6149.

324 My name is Abigail Hindson, and I am a resident of rural Rushford, MN. I am emailing in regards to the MPCA needs to do its job to protect the environment, water quality and quantity, health and quality-of-life for everyone affected by this Daley Farms’ Proposed Mega-Dairy Expansion. Why is the MPCA doing an EAW on the Daleys’ proposed massive expansion when it is not allowed under our Winona County ordinances? Winona County’s ordinance is clear: no new manure storage areas or within or adjacent to the boundaries of the manure application sites: o Drinking Water supply management areas designated by the MN department of health o Public water supplies within two miles O Designated public parks, recreation areas or trails O State listed species, rare plant communities or other sensitive ecological resources. o Public water supplies within two miles O Designated public parks, recreation areas or trails O State listed species, rare plant communities or other sensitive ecological resources. o Public water supplies within two miles O Designated public parks, recreation areas or trails O State listed species, rare plant communities or other sensitive ecological resources. o Public water supplies within two miles O Designated public parks, recreation areas or trails O State listed species, rare plant communities or other sensitive ecological resources. o Public water supplies within two miles O Designated public parks, recreation areas or trails O State listed species, rare plant communities or other sensitive ecological resources.

325 Public Comments regarding Daley Farms of Lewiston, LLP - 2018 Dairy Expansion First and foremost. I seriously question the propriety of the MPSC spending taxpayer money to conduct an EAW for a project that is without question a prohibited land use in the county. This project exceeds the animal unit cap for the county, and is thus prohibited. MPCA staff, Kim Grosenheid informed me that the MPCA was aware of this, and they were told by the applicant that they would need to get a variance in order to proceed. It would seem the appropriate action on the part of the MPCA would have been to decline to perform the mandatory EAW until such time as the applicant actually received a variance, thereby avoiding spending taxpayer money for their staff (and the numerous other expert staff in other agencies) over a
It is obvious from the Environmental Impact Assessment Worksheet that an Environmental Impact Statement must be conducted to address numerous questions about the environmental and health impacts of the Daley farm’s proposed expansion. Questions that must be addressed in an EIS include the following: How many animal units are already registered in Utica Township? How many animal units are already registered in Winona County? What is the animal unit carrying capacity for an area such as Winona County, with shallow topsoil, numerous sinkholes, and fractured limestone bedrock? What is the animal unit carrying capacity for an area such as Winona County, with shallow topsoil, numerous sinkholes, and fractured limestone bedrock? What is the animal unit carrying capacity for an area such as Winona County, with shallow topsoil, numerous sinkholes, and fractured limestone bedrock? What is the animal unit carrying capacity for an area such as Winona County, with shallow topsoil, numerous sinkholes, and fractured limestone bedrock?

How would the Daley farm’s proposed expansion impact the animal unit carrying capacity for Utica Township and for Winona County? Numerous sinkholes are located in the area where Daley’s intend to inject liquid dairy manure. How does the Daley farm’s planned injection of liquid manure, which is high in nitrates and other drinking water contaminants, protect groundwater from being contaminated? If liquid manure is to be injected into the aquifer, will the DNR be required to log all of the liquid manure being added to the approximately 3000 animal units? Consumers are increasingly concerned that non-organic milk, such as milk produced by the Daley farm, contains residues of pesticides, including chlorpyrifos, glyphosate, dicamba, 2,4-D, and neonicotinoids. If so, what pesticides are present, and at what levels? What are the health impacts caused by consuming milk with pesticide residues? According to private well test data from the MN Department of Agriculture, about half of the wells in Utica, Fremont and other townships adjoining the Daley farm are already unsafe to drink due to nitrate contamination. How would the addition of nearly 3000 animal units impact municipal wells in Winona County? The University of Minnesota has found that shifting land use from pasture to row crops significantly and negatively impacts both ground and surface water quality, increasing contamination levels for nitrates, pesticides and sediments, and well contaminate. How will the additional 3000 animal units increase the amount of land in crop row production, since the animals will be confined and not pastured? When nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated. What pesticides are available for use in dairy farms? Neonicotinoid insecticides have become a major health concern. Approximately 70% of the pesticides used in the US are used in livestock production, as a prophylactic or to stimulate production. Does the Daley farm routinely use antibiotics, in the absence of disease? If so, does the Daley farm have a plan to decrease their use of antibiotics? During the public information session in Lewiston, MPCA feedlot official, Mark Kerns, noted that 3 out of 4 of the Daley’s existing facilities are out of compliance with Federal pollutant discharge requirements. Mr. Kerns indicated that those non-compliances would be addressed, if the Daley’s are allowed to expand. How can the Daley’s be allowed to operate, if the MPCA is aware that their existing facilities are out of compliance? During the public information session in Lewiston, a Daley farm representative defended their existing facilities as being “well past their expiration date,” and said that their exit facility, which is only 20 feet away, is already out of compliance. How would the Daley farm’s proposed expansion impact the quality of life, including the quality of health, for area residents? Southeast Minnesota is experiencing extreme weather events on a regular basis, with rainfall totals ranging from 2 to 17 inches per rain event. How would the Daley’s proposed expansion impact the resiliency of the region to withstand frequent extreme weather events? Pollinator populations are in decline, according to numerous scientific studies. The UMN has reported that Monarch butterfly populations have decreased by 90% in recent years, and the researchers attributed the decline to widespread use of “Roundup Ready” crops. Daley farm grows “Roundup Ready” crops. “Roundup Ready” crops have been found to be toxic to bees in 100% of the samples tested by the US Geological Survey. Neonicotinoids are implicated in honeybee colony collapse and the loss of native bees. Does the Daley farm use seeds treated with neonicotinoid insecticides? If so, how would their proposed expansion impact honeybee hives and native bees? Does the Daley farm use seeds treated with neonicotinoid insecticides? If so, how would their proposed expansion impact honeybee hives and native bees? Does the Daley farm use seeds treated with neonicotinoid insecticides? If so, how would their proposed expansion impact honeybee hives and native bees? Does the Daley farm use seeds treated with neonicotinoid insecticides?

Orange County, which is informally known as a “cancer cluster.” How will the Daley’s proposed expansion impact cancer rates in western Winona County? The rise of antibiotic-resistant bacteria has become a major health concern. Approximately 70% of the antibiotics used in the US are used in livestock production, as a prophylactic or to stimulate production. Does the Daley farm routinely use antibiotics, in the absence of disease? If so, does the Daley farm have a plan to decrease their use of antibiotics? During the public information session in Lewiston, MPCA feedlot official, Mark Kerns, noted that 3 out of 4 of the Daley’s existing facilities are out of compliance with Federal pollutant discharge requirements. Mr. Kerns indicated that those non-compliances would be addressed, if the Daley’s are allowed to expand. How can the Daley’s be allowed to operate, if the MPCA is aware that their existing facilities are out of compliance? During the public information session in Lewiston, a Daley farm representative defended their existing facilities as being “well past their expiration date,” and said that their exit facility, which is only 20 feet away, is already out of compliance. How would the Daley farm’s proposed expansion impact the quality of life, including the quality of health, for area residents? Southeast Minnesota is experiencing extreme weather events on a regular basis, with rainfall totals ranging from 2 to 17 inches per rain event. How would the Daley’s proposed expansion impact the resiliency of the region to withstand frequent extreme weather events? Pollinator populations are in decline, according to numerous scientific studies. The UMN has reported that Monarch butterfly populations have decreased by 90% in recent years, and the researchers attributed the decline to widespread use of “Roundup Ready” crops. Daley farm grows “Roundup Ready” crops. “Roundup Ready” crops have been found to be toxic to bees in 100% of the samples tested by the US Geological Survey. Neonicotinoids are implicated in honeybee colony collapse and the loss of native bees. Does the Daley farm use seeds treated with neonicotinoid insecticides? If so, how would their proposed expansion impact honeybee hives and native bees? Does the Daley farm use seeds treated with neonicotinoid insecticides? If so, how would their proposed expansion impact honeybee hives and native bees? Does the Daley farm use seeds treated with neonicotinoid insecticides? If so, how would their proposed expansion impact honeybee hives and native bees? Does the Daley farm use seeds treated with neonicotinoid insecticides?

Is it obvious that a full Environmental Impact Statement be required on this project for numerous reasons. The key reasons in my mind are the following: This project is prohibited by the Winona County Zoning Ordinance. The enormouse volume of manure puts already impaired water at risk - both public and private wells. The proposed volume of water to be used (which is nearly equivalent to adding three new towns the “may imp”Leon) to the area where Daley’s intend to inject liquid dairy manure. How would the Daley’s proposed expansion impact the animal unit carrying capacity for Utica Township and for Winona County? Numerous sinkholes are located in the area where Daley’s intend to inject liquid dairy manure. How does the Daley farm’s planned injection of liquid manure, which is high in nitrates and other drinking water contaminants, protect groundwater from being contaminated? If liquid manure is to be injected into the aquifer, will the DNR be required to log all of the liquid manure being added to the approximately 3000 animal units? Consumers are increasingly concerned that non-organic milk, such as milk produced by the Daley farm, contains residues of pesticides, including chlorpyrifos, glyphosate, dicamba, 2,4-D, and neonicotinoids. If so, what pesticides are present, and at what levels? What are the health impacts caused by consuming milk with pesticide residues? According to private well test data from the MN Department of Agriculture, about half of the wells in Utica, Fremont and other townships adjoining the Daley farm are already unsafe to drink due to nitrate contamination. How would the addition of nearly 3000 animal units impact municipal wells in Winona County? The University of Minnesota has found that shifting land use from pasture to row crops significantly and negatively impacts both ground and surface water quality, increasing contamination levels for nitrates, pesticides and sediments, and well contaminate. How will the additional 3000 animal units increase the amount of land in crop row production, since the animals will be confined and not pastured? When nitrates are found in drinking water, follow up tests often show that the same wells and aquifers are contaminated. What pesticides are available for use in dairy farms? Neonicotinoid insecticides have become a major health concern. Approximately 70% of the pesticides used in the US are used in livestock production, as a prophylactic or to stimulate production. Does the Daley farm routinely use antibiotics, in the absence of disease? If so, does the Daley farm have a plan to decrease their use of antibiotics? During the public information session in Lewiston, MPCA feedlot official, Mark Kerns, noted that 3 out of 4 of the Daley’s existing facilities are out of compliance with Federal pollutant discharge requirements. Mr. Kerns indicated that those non-compliances would be addressed, if the Daley’s are allowed to expand. How can the Daley’s be allowed to operate, if the MPCA is aware that their existing facilities are out of compliance? During the public information session in Lewiston, a Daley farm representative defended their existing facilities as being “well past their expiration date,” and said that their exit facility, which is only 20 feet away, is already out of compliance. How would the Daley farm’s proposed expansion impact the quality of life, including the quality of health, for area residents? Southeast Minnesota is experiencing extreme weather events on a regular basis, with rainfall totals ranging from 2 to 17 inches per rain event. How would the Daley’s proposed expansion impact the resiliency of the region to withstand frequent extreme weather events? Pollinator populations are in decline, according to numerous scientific studies. The UMN has reported that Monarch butterfly populations have decreased by 90% in recent years, and the researchers attributed the decline to widespread use of “Roundup Ready” crops. Daley farm grows “Roundup Ready” crops. “Roundup Ready” crops have been found to be toxic to bees in 100% of the samples tested by the US Geological Survey. Neonicotinoids are implicated in honeybee colony collapse and the loss of native bees. Does the Daley farm use seeds treated with neonicotinoid insecticides? If so, how would their proposed expansion impact honeybee hives and native bees? Does the Daley farm use seeds treated with neonicotinoid insecticides? If so, how would their proposed expansion impact honeybee hives and native bees? Does the Daley farm use seeds treated with neonicotinoid insecticides? If so, how would their proposed expansion impact honeybee hives and native bees? Does the Daley farm use seeds treated with neonicotinoid insecticides?
wells that may be needed, and what would be required to do that. The MPCA has already committed to 92 million gallons of water. The City of Lewiston (pop. 1,564) uses 33.5 million gallons of water per year. What impact will this major use of water have on our aquifer? (See the EAW: "Daley received a $58,000 grant to construct the new wells for the Project on October 30, 2017 (Attachment R). The DNR has stated in the preliminary approval letter that DNR has "determined that the project will not alter the 92 million gallons of water to be drawn from our aquifer and 46 million gallons of manure & wastewater to be stored and spread in our fragile, sinkhole-prone karst area are factors which contribute to water quality and determine impacts. It is our responsibility to prevent significant environmental impacts."

351 This project needs an EIS. Unfortunately, despite being one of the largest dairy farms in southeast Minnesota, Daley Dairy has a history of operating outside of the law. In 2012, Daley Dairy was fined $85,000 by the Minnesota Department of Labor for their refusal to pay overtime wages to their workers. This is not the kind of behavior typically undertaken by model citizens of the community. It also, unfortunately, suggests the possibility that the Daley Dairy project may very well operate outside of the limits of the law again in the future. An EIS should examine all of the potential environmental hazards associated with this project, consider the consequences of those hazards, and include a thorough examination of the costs and benefits of those potential scenarios to development. Only this manner of evaluation and analysis will ensure that the Daley Dairy project will not be permitted to proceed without the necessary review and oversight.

352 As a consumer I pay for dairy products that are quite a bit more expensive, but have excellent environmental practices. The scale of the Daley operation is potentially very damaging to ground water. Would the Daley be willing to deal with the necessary overview to assure we don’t contribute to more nitrogen contamination? This is a huge issue and the oversight must be in place before any permitting is allowed. The MPCA willing and able to successfully carry out the oversight? Please put this in the proposal that we are ready to proceed.

353 I support the dairy expansion. The Daley's do a great job of taking care of things.

354 An EIS is necessary for the Daley Farms of Lewiston, LLP, in Winona County because Minnesota’s state law requires that an EIS must be completed if a project has the potential for significant environmental impacts. The projected 92 million gallons of water to be drawn from our aquifer and 46 million gallons of manure & wastewater to be stored and spread in our fragile, sinkhole-prone karst region are factors which contribute to water quality and determine impacts. It is our responsibility to prevent significant environmental impacts."

355 Surely there is enough evidence to show the destruction this expansion could cause. Do not allow this. Adding negative impact to our environment is unethical. I am 100% against expansion. Thank you, Linda Fabiano

356 This comment is about the Daley Farms EAW. The proposal will have significant negative environmental effects and I think we need to look at the potential for significant environmental effects and I think we need to look at the potential for significant environmental impacts. In the project, the proposal projects 92 million gallons of water to be drawn from our aquifer and 46 million gallons of manure & wastewater to be stored and spread in our fragile, sinkhole-prone karst region are factors which contribute to water quality and determine impacts. It is our responsibility to prevent significant environmental impacts.

357 I believe that this project needs a full Environmental Impact Statement. The proposal projects 92 million gallons of water to be drawn from our aquifer and 46 million gallons of manure & wastewater to be stored and spread in our fragile, sinkhole-prone karst region are factors which contribute to water quality and determine impacts. It is our responsibility to prevent significant environmental impacts.

358 More review is needed before this project should be allowed to proceed. Our water is in danger and being polluted. Do not allow this to proceed without further review and oversight.

359 This project needs an EIS. Unfortunately, despite being one of the largest dairy farms in southeast Minnesota, Daley Dairy has a history of operating outside of the law. In 2012, Daley Dairy was fined $85,000 by the Minnesota Department of Labor for their refusal to pay overtime wages to their workers. This is not the kind of behavior typically undertaken by model citizens of the community. It also, unfortunately, suggests the possibility that the Daley Dairy project may very well operate outside of the limits of the law again in the future. An EIS should examine all of the potential environmental hazards associated with this project, consider the consequences of those hazards, and include a thorough examination of the costs and benefits of those potential scenarios to development. Only this manner of evaluation and analysis will ensure that the Daley Dairy project will not be permitted to proceed without the necessary review and oversight.
Due to our county laws already in place it seems ridiculous to expand one dairy by this many animal units. We are already dealing with high nitrate levels of water in our county, why would a dairy this size with this much manure and run-off be allowed in our special karst geology? There is an existing lagoon that can store 50,000 gallons of run-off water. Do we want to see another lagoon扩建吗？

As a Minnesotan who relies on the MPCA to keep our communities safe from dangerous environmental actors, I am very concerned about the Daley farm being permitted to expand. The proposed farm is simply too big. The amount of water it will use and the waste it will produce will put its community's groundwater at risk. That risk is unacceptable. The MPCA needs to fulfill its mission and protect the public from dangerous environmental harm.

I believe the expansion of the Daley Farm feedlot to over 3,000 cows is a extremely poor idea for Winona County. We live across from a fairly large dairy farm and there are times when we are unable to hang our clothes out to dry because of the foul odors discharging from that farm. Just this past week, after they put their manure accumulations from this summer out into their fields, we could not get away from the odor for a couple of days. The New York Times (amongst other news outlets) reported on what happened after Hurricane Florence moved through North and South Carolina and it wasn't pretty: https://www.nytimes.com/2018/09/19/climate/florence-hog-farms.html

Obviously, we don't have hurricanes here, but only 10 years ago, we did have 17” of rain in 24 hours causing flooding all around the area. And just this year, heavy rains 30 miles east of Lewiston caused a waterfall to disappear in Hokes. It does not take much imagination to see what happened in the Carolinas could happen here with a nearly 5,000-head dairy operation. And you know better than I that the topography in the area simply doesn’t support that much waste. Not only that, but we also have tornadoes, one of which hit Lewiston in 1999. Again, it doesn’t take much imagination or scientific knowledge to figure out what a tornado hitting a lagoon or two of the size of what the Daleys want to build would do to the area. If this request is approved, I can only imagine that there will be others who will be making similar requests, including those closer to where we live. I am not a scientist, nor am I what you would call an environmentalist. But I do understand that adding 3600+ cows into one feedlot that already has more than a thousand head is going to create problems that we don't want in our county. No, the MN PCA should not approve this request.

I fully support the feedlot expansion for Daley Farms of Lewiston and all expansions they would like to do with a nearly 5,000-head dairy operation. And you know better than I that the topography in the area simply doesn’t support that much waste. Not only that, but we also have tornadoes, one of which hit Lewiston in 1999. I do understand that adding 3600+ cows into one feedlot that already has more than a thousand head is going to create problems that we don't want in our county. No, the MN PCA should not approve this request.

I am very concerned about the Daley farm being permitted to expand. The proposed farm is simply too big. The amount of water it will use and the waste it will produce will put its community's groundwater at risk. That risk is unacceptable. The MPCA needs to fulfill its mission and protect the public from dangerous environmental harm.

Please make sure your decision are on the facts and not on pressure from a special interest group.

Thank you.

Sincerely Jim Bambenek.
Winona County has traditionally been an area with a rich tradition of dairy farming. The Daley Farm project represents an evolution of that tradition and has my support. Winona County has a large percentage of its cropland classified as Highly Erodible. It is important to maintain alfalfa acreage in the area to prevent soil erosion and nutrient runoff. This project would require a significant increase in alfalfa acres which would support these goals.

I feel the SAW is adequate and no further changes are needed.

The Daley Farm request has potential for significant environmental impact. My particular concerns are water quality and environmental degradation. The Daley Farm is 1 mile from the City of Lewiston, MN. An EIS must be done to research and examine how the proposed water usage and potential for water contamination (see MN Dep't of Ag 2016 well testing report showing 46.1% of wells contaminated by nitrates in Utica township) affects the City of Lewiston's Wellhead Protection Plan (WHPP). The City of Lewiston's Comprehensive Plan requires them to be proactive about possible water related complications and expenses with protecting the groundwaters in the protection. The WHPP was recently changed to include Daley Farm previously the WHPP did not. An EIS should examine why this change occurred and the ramifications of this change on the City of Lewiston's drinking water. In general, I have similar concerns for the air quality and potential for hydrogen sulfide levels. The air quality dispersion model: Has this model ever been evaluated after a CAFO facility was put in place to see if the model is accurate? Research should be done in an EIS to follow-up on the air quality dispersion model and actual air quality levels of hydrogen sulfide. I also have concerns about the liquid manure basin. An EIS should be done to research whether lagoons of this size are guaranteed not to leak, given that they have already had violations of feedlot pollution regulations. Research should also be done on the sustainability of using the same fields for many years for manure dispersal and nitrate levels. How does this affect surrounding wells as well as all the aquifers. Can the aquifers handle this increased use of water over time, and how does this affect clean water availability for other residents and cites.

RE: Proposed Daley Farms expansion: Because the Daley Farms has high potential for significant environmental impact, I am completing a full environmental review including an Environmental Impact Statement (EIS) on Daley Farms proposed mega-dairy expansion. Concentrated large industrial animal operations can cause a myriad of environmental and public health problems. Extensive scientific evidence exists documenting the harmful impact that concentrated large animal operations have on ground water, surface water, air quality, odors, greenhouse gas and climate change, insect vectors, and pathogens that. (CDC). I have outlined a few points in support of my request:  Environmental Concerns 1) The Daley Farms operation poses high potential for harmful environmental impact due to its scope and level of animal intensity and from agricultural practices associated with concentrated large animal operations: a. Manure pollutant. Manure from concentrated large industrial animal operations contains a variety of potential contaminants. It can contain plant nutrients such as nitrogen and phosphorus, pathogens such as E. coli, growth hormones, antibiotics, chemicals used as additives to the manure or to clean equipment, animal sludge, silage leachate from corn, or copper sulfate used in footbaths for cows. https://www.cdc.gov/ncbhe/ehs/docs/understanding_cafos_nalboh.pdf b. Volume of manure generated. The expanded operation would generate around 46-million gallons of manure each year. The manure application sites include several fields that are within Utica’s drinking water supply management area - an area where groundwater contamination could affect Utica’s drinking water. There are many sinkholes in the area: manure on Daley is prohibited within 50 feet of a sinkhole. Other fields are close to wells or intermittent springs, where manure application setback distances are also required. The manure is held in great, rubber-lined lagoons or basins behind the barns. (Reported in the Winona Post on 10/8/2014. http://www.winonapost.com/News/ArticleID/41342/Daley-Farms-hopes-to-grow). Can the land support the volume of manure generated? c. Water quality. The high risks of concentrated large industrial animal operations for impacting water quality are well documented. For example, 1) The ‘dead zone’ of the Mississippi River delta and the present red tide occurring along the Gulf coast of Florida is due to nitrogen and phosphorus in the Mississippi River watershed. 2) In rural Western Iowa where my parents’ farm is located, the county has ‘rural water’ piped throughout the county because all the wells are contaminated with nitrates. d. Natural events. Concentrated large industrial animal operations pose high risk of contributing to impaired water quality because of natural events. For example, heavy rains. Manure overflow occurred at Blue Hail Dairy near Clinton, IA following heavy rains in Sept. 2018. Extensive rain and flooding in Sept, 2018 caused 44 wastewater and manure discharges in 18 communities and at 26 livestock confinement facilities. It was reported in Big River Magazine, North Dakota, February, 2019. (p. 19) E. Groundwater contamination could affect Utica’s drinking water. The Daley Farms operation request has potential for significant environmental impact. My particular concerns are water quality and environmen...
I am very concerned about groundwater pollution. When I moved from the Chicago area to Southern Minnesota in the early 1980’s I quickly learned about how the karst geology here creates a connection from surface water to underground water. I know that nitrates, pesticides, and other hazardous materials can seep up in larger and larger quantities in our streams and ultimately in our drinking water. I now have expensive filters on all my drinking water. I have lived in various locations in Olmsted and Wabasha County’s. I have noticed how the shallow wells have increased nitrate levels. Where I currently live, I needed to have a new well drilled to avoid drinking water from a sandpoint well that had over 5 ppm nitrate. The new well still came in with over 1 ppm nitrate and is now testing closer to 2 ppm. With the more recent concern in karst environments, I’m very concerned about how have given up hope in controlling the impacts to the environment. The result is a clear increase in quantities of harmful pollutants in our drinking water. The speed at which this is taking place is alarming. After reviewing the Daley Project EAW I was literally shocked to see how elevated the nitrate levels are in the wells near Uttica and Lewiston. I truly had no idea that so many people, living so near to me are dealing with such concerning conditions in the water that they and their families drink every day. I can only imagine that many of the people drinking this water fall into one of the following groups; those that are concerned to some degree and who take actions to mitigate their risks, those that are undecided and who have given up hope, those that are uneducated about what to do, and those that are not even aware that this is occurring. I feel that the government can or will get control over the conditions that are allowing this to happen. I attended the public hearing on the proposed Daley project. I listened to the people in support of the project. Many cited that the Daley’s are friends of theirs and great people. I have reason to believe that the Daley’s are not good people. Just because the Daley’s have lots of friends that support them does not relieve our government from providing all the needed regulation to protect the environment and the citizens who may be impacted by this project. I do not recall hearing anyone who was in support of the project say “I don’t care if the Daley’s have friends or not, we have a shared history.” It seems to me that the primary concern of all those speaking in support of this project is “I don’t care if the Daley’s have friends or not, we have a shared history.” I think this is a red herring. The stated purpose is to protect the environment, yet it’s approach to regulating pollution is being ignored. The environment does not care about the Daley’s or any other group of people. The environment is our responsibility and the responsibility of our elected officials to protect. I am not a biologist but I am an engineer and I just can’t seem to resolve the following. Why is human waste treated so carefully underground where bacteria can remove harmful pathogens whereas animal waste can be spread all over the ground where rain can wash it into karst features and streams? Only when human waste is fully decomposed by bacteria can it be spread on farm fields. Why can animal waste be spread on farm fields without significant pre-treatment? And while it is breaking down on the ground it can be washed into streams where I can encounter karst features that allow it to affect groundwater.

Respectfully, David G Martino
Specifically on the proposed Daley Project, has the MPCA considered that the numerous manure application sites may have drain tile installed? I would really like to know the impact of these drainage systems on the local streams and the groundwater. Please follow the information linked below on how liquefied manure finds its way into the drains and streams.

https://stateinnews.com/local-stories/252-down-the-drain-liquefied-manure-and-drain-tile. Furthermore, I am a trout fisherman. I am aware of the huge amounts of money from the Clean Water Fund that has been spent, and will continue to be spent on improving trout habitat in our streams. Again, it seems like the government is inconsistent in it’s approaches to regulating pollution of our environment. The DNR supports environmental improvement while the counties and the MPCA are clearly backpedaling when approached by a private business. Where does the buck stop? Hopefully it stops at least in this state since I would clearly not want the federal government to be involved in a matter so sensitive to this state. I do understand how Daley is “grandfather-ed in” to have the current number of animal units. But how can the Winona County Health Department, the Minnesota State Health Department, and the MPCA even begin to process this EAW when Daley is proposing to exceed the Winona County AU limit? It seems clear from the data that the AU per acre is high enough that the AU regulations are not taking into account the other regulations. This is a clear violation of the Clean Water Act. This violation is not being reported at the federal level. How is it that before this much has the public known about this project? I can only assume that the number of animal units has been increased because the Daley’s are friends of the health department. I can only assume that an increase of animal units will result in an increase in nitrogen and phosphorus. This is not good for the environment or the people who depend on it. Clearly, requiring an EIS is part and parcel of the MPCA’s mandate. I mean seriously, the name implies its job. People expect government to provide due diligence in matters that concern their health and financial future. Plunging into this project without requiring an EIS would be completely irresponsible. What about government accountability? A serious up-tick in nitrate levels (and probably pesticides) in this area will be a sure indicator that the MPCA does not provide due diligence in the event that an EIS is not generated for input to the Commissioner. I will be carefully watching the outcome of the MPCA’s choice. If an EIS is deemed unnecessary then I will join the many with others who oppose this project without an EIS. I will speak out in the news and on forums. I will make a serious effort to mobilize the many contesting this project. Many of our留言者 have worked hard to help improve water quality across this state. If no EIS is required for the Daley Project then I will personally write to future governor Tim Walz to suggest that he ask John Lincke Stine and his staff to resign for reasons of failure to perform and possible malfeasance. I welcome any and all direct communication regarding this matter. My email is a_trustworthy_man@yahoo.com and my phone number is 507-775-2430.
wells. Non-DNR Protected Streams are located .22, .24, and .34 miles from the proposed well site. There is no investigation of what the new wells impact will be, or of the increase in manure applications. There was a large fish kill on the Whitewater River in 2015 which is 5 miles downstream of the Daley Farm Site. Manure runoff was one of the supposed culprits. 7. There are 29 residences within 1 mile of the Project Site, the closest being approximately 1,150 feet south of the Project Site. Also, .34 mile of the Project Site is Benson Farm Services, a cemetery, Lewiston County Club, and Dairyland Cooperative. The Lewiston Waste Water Treatment Plant is just 1 mile south of the Project Site. 8. Whether the feeding of 4,628 animals on this plot of land in Southeast Minnesota is likely at some point. The topography of the driftless region predisposes us to flash floods. The frequency of big rain events has increased by 37% in the last 20 years related to climate change.

403 I normally would be one of the last people to oppose anyone rights to try to better themselves, but in this case the likelihood of disaster lurks just under the surface. Trying to contain much manure in karst topography as we have here is not a matter of if, but when the system will break. The quality of life in the area will be forever changed in many different ways when it does. If I somehow have a say in this I would vote against it. Thank you.

Greetings, I am trained as an aquatic biologist and have centered much of my work on the groundwater-fed streams of southeastern Minnesota. Part of what has kept these streams - which are an iconic resource of the Driftless Area - healthy and thriving in recent history has been responsible land use, including the limited scale of farms in this region of the state. Opening up this area to CAFOs, or Confined Animal Feeding Operations, is going to threaten the biotic integrity of soil, water streams, CAFOs, and the health of farm workers and nearby residents. The Daley feedlot expansion is said to aim toward 6,000 cows, which demands the disposal of 46 million gallons of raw cow manure per year. This is a single farm. What happens next? This large herd size will create nutrient buildup at the farm, which becomes a liability and threat to environmental quality. Excess nutrients in soil can contaminate water resources, killing aquatic life, and causing waterborne diseases in humans. To comply with the Clean Water Act, CAFOs are required to implement comprehensive nutrient management plans to make sure they are not exceeding the nutrient concentration beyond the soil carrying capacity. Our karst topography in southeastern Minnesota has limited capacity to buffer excessive nutrients. In fact, nitrogen levels in a majority of water wells in Minnesota already exceed the safe limits for consumption. Our geology is not equipped to process this. Southeast Minnesota is an amazing place where small scale farms can co-exist with healthy, productive streams - which provide (priceless) aesthetic and cultural values, and an economic impact through sport fishing/recreation that, across the entire Driftless Area, adds up to billions of dollars per year. Allowing one farm to obliterate established limits on the number of animals sets a dangerous precedent. In the last few years, Winona has truly turned a corner in terms of becoming a community that boasts unparalleled pride, appreciation, opportunity, and engagement in the arts, education, recreation, and incredible natural resources. Please help us build and grow this legacy by protecting the vital, shared resources. Thank you Carl Berberich

404 Because of the unique geography of the area, the significant value tourism and hunting/fishing provide to the area, and the increasing work toward healthy well water, it would be irresponsible not to complete an Environmental Impact Study for the planned significant increases on the Daley Farm site.

405 When considering the Daley Farms expansion, I hope events that may seem unlikely or unrelated based on past experience but that could cause damage to our environment are taken in to consideration. For instance, recently a frac sand mine in Wisconsin polluted the Trempealeau River when thousands of gallons of processing water and sludge were released. The mining company probably had set up their operation using best practices and were in compliance with environmental regulations. However, an unforeseen accident caused a bulldozer operator to become trapped underwater in a holding pond and required rescuers to break the ice to reach him. One that might not be so far fetched is climate change driven weather events unprecedented in recent history. Please take that into consideration and require an Environmental Impact Statement if the EAW is not adequate.

406 The proposed expansion of the Daley dairy herd should be rejected. At a minimum, an EIS should be performed. While the full impact of increasing the herd by 268% cannot be fully known, there are many reasons for concern. • The impact of manure generated on this plot of land is unprecedented in the fragile driftless region with its karst geology. • Nitrogen and coliform bacteria will end up in the aquifers, probably moving miles from the Daley property. Consider the underground river flowing through lower level of the Mystery Cave. Water quality in area wells and streams will be degraded. • Nutrients delivered to the Whitewater River and Rush Creek watersheds will alter the plant and animal communities in ways that cannot be accurately predicted. Algae blooms and fish kills are possible. • Failure of the manure storage systems is likely at some topography. The driftless region predisposes us to flash floods. The frequency of big rain events has increased by 37% in the last 20 years related to climate change (National Academies of Science, Engineering and Medicine publications). 4 to 6 inch rain events occur frequently in the area. In 2007 parts of Winona County received 16 inches of rain in 24 hours. It is unlikely that our geological landscape and water table can absorb and process such large amounts of manure. • A sinkhole could develop beneath a manure storage facility, dumping thousands of gallons of manure into the aquifer. There is a history of sinkholes opening up beneath sewage treatment ponds in our area, once in Lewiston and twice in Altura. The Daley family is highly regarded. By all accounts they are fine people and good neighbors. But putting 4,628 animals on this plot of land in Southeast Minnesota is an amazing place where small scale farms can co-exist with healthy, productive streams - which provide (priceless) aesthetic and cultural values, and an economic impact through sport fishing/recreation that, across the entire Driftless Area, adds up to billions of dollars per year. Allowing one farm to obliterate established limits on the number of animals sets a dangerous precedent. In the last few years, Winona has truly turned a corner in terms of becoming a community that boasts unparalleled pride, appreciation, opportunity, and engagement in the arts, education, recreation, and incredible natural resources. Please help us build and grow this legacy by protecting the vital, shared resources. Our geological landscape and water. Jennifer Lynn Cochran Biederman, Ph.D Assistant Professor of Winona State University Biology

407 The proposed expansion of the Daley dairy herd should be rejected. At a minimum, an EIS should be performed. While the full impact of increasing the herd by 268% cannot be fully known, there are many reasons for concern. • The impact of manure generated on this plot of land is unprecedented in the fragile driftless region with its karst geology. • Nitrogen and coliform bacteria will end up in the aquifers, probably moving miles from the Daley property. Consider the underground river flowing through lower level of the Mystery Cave. Water quality in area wells and streams will be degraded. • Nutrients delivered to the Whitewater River and Rush Creek watersheds will alter the plant and animal communities in ways that cannot be accurately predicted. Algae blooms and fish kills are possible. • Failure of the manure storage systems is likely at some topography. The driftless region predisposes us to flash floods. The frequency of big rain events has increased by 37% in the last 20 years related to climate change (National Academies of Science, Engineering and Medicine publications). 4 to 6 inch rain events occur frequently in the area. In 2007 parts of Winona County received 16 inches of rain in 24 hours. It is unlikely that our geological landscape and water table can absorb and process such large amounts of manure. • A sinkhole could develop beneath a manure storage facility, dumping thousands of gallons of manure into the aquifer. There is a history of sinkholes opening up beneath sewage treatment ponds in our area, once in Lewiston and twice in Altura. The Daley family is highly regarded. By all accounts they are fine people and good neighbors. But putting 4,628 animals on this plot of land in Southeast Minnesota is a truly bad idea and should be rejected. Charles A. Shepard, MD President, WinCres Chapter, Trout Unlimited

408 Please require an EIS for the Daley Farm Expansion in Lewiston, MN. We know that nitrates are a pronounced problem in SE MN. We know that 96,000 gallons of water usage is too much. We know that we have impounded waterways throughout the area where the Daley Farm is located. We know that our karst geology in SE MN is fragile and unlike the rest of the state. We know that people have contaminated wells in our area due to nitrates. In addition to the nitrate problem I am concerned about the additional waste that will go into our waterways from the massive amount of manure the farm will create. The Daley farm did not make the 2018 top10 list for somatic cell counts put out from the Department of Agriculture. How many antibiotics are being given to the current Daley herd? How many of these antibiotics will be in our water supply? How can we be assured that the water quality will not be compromised? ANSWER: The MPCA would be remiss if an EIS is not requested for the Daley Farm expansion. In addition to these environmental questions, The MN Department of Labor fined the Daley Farm for not paying their employees overtime. There is no evidence that the Daley farm do not respect people or are not good stewards of the land. In the future, however, they may not be. Since the Daley farm has been farming in the Lewiston area for over 100 years, they probably get special consideration from the local community. However I think there will be a large impact in the growth of the two adjacent communities of Lewiston and Utica. There is a reason Winona County passed the ordinance prohibiting feedlot over 1500AU. Please conduct an EIS Thank you Carl Berberich

409 I am in favor of the proposed expansion at Daley Farm of Lewiston. Great community supporters with a great reputation of taking care of the environment.

410 Comment on attached page

A number of years ago, a large hog operation was to be built just south of Utica. I was the Mayor of Utica at the time and we were concerned about the impact on our water quality, particularly nitrates. We called upon the University of MN. An expert in the field of hydrology and facility sitings came down and spent some time with us looking at the data and outlining on our maps where problem areas were located. Our geography is a fractured Karst and subject to severe infiltration from pollutants. He confirmed our worst fears. The hog facility would indeed put our wells at risk. That facility was not allowed to go forward and I believe that we have benefited from this experience. If the Daley farm expands, they have not done the research and this would likely result in a large impact in our water quality. The Daley's have taken this into account while proposing the expansion. They have made changes to accommodate the karst topography. There will be a large impact in the growth of the two adjacent communities of Lewiston and Utica. There is a reason Winona County passed the ordinance prohibiting feedlot over 1500AU. Please conduct an EIS Thank you Carl Berberich
very troubled if this were not allowed to go forward, as they play by the rules and even though it’s as large a Dairy operation we have ever seen, this operation will be overseen by some of the best farm management regulations in the world. We need to trust the experts and the regulators to do their work and to allow this operational plan to proceed. Respectfully submitted, Bill Davis Former Mayor Utica, MN

LONI S. KEMP
300 RIVERVIEW DRIVE
LEANDER, TX 78641

414

1. We would like to echo the concerns expressed by Loni Kemp. Loni is an expert on these issues: she was on the MPCA staff and the Citizens Board in years past, led Fillmore county’s committee to create its first Comprehensive Water Plan and had a 40 year career in agriculture and environmental policy analysis. Loni also worked nationally on feedlot laws and regulations, and helped pass Minnesota’s Groundwater Protection Act. Please accept these comments and order an EIS. 1. The EAW does not sufficiently address the precise nature of karst features that would impact the dairy facility dairy or manure deposition fields. The karst features to be impacted by the manure storage basins is larger than any built with 64 years, possibly since 2010. The MPCA needs to follow through with an EIS to demonstrate to the public that the agency is taking responsibility to monitor practices & pursue non-compliance actively to remedy.

And not all the info seems to be present: “Project proposer supplied reasonably accessible data for, but did not complete the final worksheet.” (p. 1) What has the MPCA done to assess the accuracy of this data? What is missing? Soil, geology & waters: The project site is centrally located in the extensive karst geology of Winona County and sits a mere 16-20 feet above ground water. Under these conditions, much is at risk from runoff due to the increased impervious surfaces that are part of the proposal. What is the MPCA doing to ensure that ground waters, this close to the surface, will be protected from contamination? The MPCA has not completed the geologic study of the area and the karst environment: potential pollution of air, surface & ground waters & soils, as well as the impacts on access to reliable unpolluted water resources – are accurately assessed and reported. This project clearly has the potential for “significant environmental risk” and the citizens of Winona County deserve the most thorough assessment possible – and that means an EIS. The EAW does provide information, but most of this is not reassuring when one considers recent rain events in SE MN: A Month’s Worth of Rain in 24 Hours, reported on mega-rains, with a sharp uptick since 2000, despite a small decrease in observer numbers. Of these 11 events, two were in the 1970s, one was in the 1980s, none were in the 1990s, but four occurred in both the 2000s and the 2010s (still today). Thus, the 18 years from 2000-2017 have seen nearly as many mega-rains as the 27 years spanning 1973-99. Although it is difficult to assess the statistical significance of that rapid increase, we do know that these trends are consistent with the expectation that Minnesota and the Upper Midwest will receive more precipitation, and more precipitation from large events, in response to increasing global temperatures and increased available moisture for passing storm systems. What have been the “usual” weather conditions will not prevail in the future, and the MPCA has an obligation to use the EIS to dig deep into the new conditions and forecasts to prevent the unforeseen and unintended consequences of this proposal. Wells. The project proposes to use 92 million gallons of water per year – 3 times what the nearby population of Lewiston uses – a fact that bears on the DNR’s assessment (Attachment R) that the “proposed rate and volume may interfere with other users or land uses on the properties and may result in severe impacts.”

The MPCA has not done enough to ensure that the feedpad runoff is handled correctly. The storage capacity of the manure basins as described in the EAW is only large “enough for 281 days of operation.” What has the MPCA done to ensure that conditions are protected when adverse conditions prevail – so in soil, weather – these manure storage basins will provide sufficient storage for feeding the mechanical system of local operations? Most recent weather patterns have shown increasing numbers for duration and total rainfall of rain events in southeast Minnesota. The only clear mention of these adverse weather conditions is on p. 19, “The manure basin and feedpad runoff basin are designed to contain precipitation falling in the basins.…” That is not reassuring when one considers recent rain events in SE MN: A Month’s Worth of Rain in 24 Hours, reported on mega-rains, with a sharp uptick since 2000, despite a small decrease in observer numbers. Of these 11 events, two were in the 1970s, one was in the 1980s, none were in the 1990s, but four occurred in both the 2000s and the 2010s (still today). Thus, the 18 years from 2000-2017 have seen nearly as many mega-rains as the 27 years spanning 1973-99. Although it is difficult to assess the statistical significance of that rapid increase, we do know that these trends are consistent with the expectation that Minnesota and the Upper Midwest will receive more precipitation, and more precipitation from large events, in response to increasing global temperatures and increased available moisture for passing storm systems. What have been the “usual” weather conditions will not prevail in the future, and the MPCA has an obligation to use the EIS to dig deep into the new conditions and forecasts to prevent the unforeseen and unintended consequences of this proposal. Wells. The project proposes to use 92 million gallons of water per year – 3 times what the nearby population of Lewiston uses – a fact that bears on the DNR’s assessment (Attachment R) that the “proposed rate and volume may interfere with other users or land uses on the properties and may result in severe impacts.”

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other farmers are monitored for accurate agronomic rates? Air Quality: The AERMOD modeling used to determine the human health impacts has significant deficiencies in predicting accurately the air quality consequences of this proposed dairy expansion & the cumulative impacts of this feedlot and the surrounding 13 feedlots that were included in the Air Quality Monitoring Report, Attachment T. Why? Because the AERMOD modeling program has no real data to use to calibrate the model. Please note: from your agency’s own report – “Model validation is important to ensure the model can accurately predict future emissions and impacts of activities. The validation process involves comparing the model’s predictions against real-world measurements to assess the model’s accuracy and reliability.” The Air Modeling Report for the Daley Farms project was prepared by MPCA staff with knowledge of the facility’s operations, with the objective to prepare a reliable emissions inventory, and with sufficient detail to support a meaningful analysis of potential impacts on receptors.

3. The AERMOD model used to assess the air quality impacts of the proposed expansion was not validated to the extent necessary to provide reliable results. The AERMOD model used by the MPCA was developed by the Federal Aviation Administration (FAA) to predict the concentration of pollutants from various sources. The AERMOD model is a dispersion model that is used to predict the concentration of pollutants in the atmosphere. It is a complex model that requires a large amount of input data, including meteorological data, emissions data, and topographical data. The model requires a number of assumptions and approximations, and the results of the model are subject to a number of uncertainties.

4. The AERMOD model used to assess the air quality impacts of the proposed expansion was not validated to the extent necessary to provide reliable results. The AERMOD model used by the MPCA was developed by the Federal Aviation Administration (FAA) to predict the concentration of pollutants from various sources. The AERMOD model is a dispersion model that is used to predict the concentration of pollutants in the atmosphere. It is a complex model that requires a large amount of input data, including meteorological data, emissions data, and topographical data. The model requires a number of assumptions and approximations, and the results of the model are subject to a number of uncertainties.

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calls many of the MPAC’s project outcomes to question. Further, neither document contains information on the existing amount of land with imperious surfaces at the Daley sites. c. The draft permit indicates that feedpad runoff will not go into the manure basin, but the EAW (page 12) shows a portion of the feedpad runoff going into the manure basin. d. Incomplete analysis i. The EAW contains no analysis of planned crop rotation? How many acres currently in hay or pasture will need to be converted to row crop production in order to feed grain to the confined dairy animals, since there is no plan for the animal to graze pasture? What will be the impacts on ground- and surface-water resources? A fact-based analysis must be conducted to understand likely environmental and human health impacts of adding 3,832.7 new animal units to the Daley operation (page 4) e. It is stated in the EAW (page 4) that “Eliminating the LLP of the Daley operation is not a real option in the short term.” This is not re-stated on page 6 of the Draft EIS. f. Nowhere does the EAW mention that Winona County’s ordinance states, “11.4.1.1.1.a No such use shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity.” g. The Daley Farms’ proposed expansion would clearly violate Winona County’s ordinance and does not qualify for a variance. h. If on page 7, the EAW indicates that the proposed project is not subject to a “local comprehensive plan.” This is untrue. Winona County adopted a Comprehensive Plan in 2014 and the proposed project is subject to that plan. The plan can be found at: https://www.co.winona.mn.us/page/3216. i. The EAW states “The state of Winona is aware that the Daley operation exceeds Winona County’s animal unit cap,” which is not true. j. What was the size of the Daley Farm when the ordinance was issued in 1998? How many AUs did they have in 1998 and how many do they have in 2018? There is a need for the EAW to present factual information in order to assess if the Daley’s have been in compliance with Winona County’s ordinance. An EIS needs to present accurate historical information regarding the operation’s compliance record. e. Page 6, the EAW discusses projects impacting water quality. The EAW states that both Utica and Lewiston’s municipal wells have been contaminated with nitrates in recent years, as they are “highly vulnerable to contamination.” The EAW states the nitrate levels in the W mortar wells in Utica and Lewiston are above the 10 mg/L standard, and reports that 42.8% of the private wells tested in Fremont Township exceeded the safe drinking water limit of 10 mg/L nitrate-nitrogen. MDA results available at: https://wconvaq.mn.gov/Winona_Final%20Summary_05_16_18.pdf These levels of contamination are occurring with current animal unit numbers and farm practices. The impacts on private well drinking water quality must be fully explored in an EIS, along with an analysis of the effectiveness of efforts to reverse groundwater contamination, and the potential impact of adding 3832.7 confined AUs in an area with extremely high levels of contaminated wells. g. Page 5 states that the manure storage capacity would expand from 22.0MG to 35.6MG, despite the fact that the number of animal units would more than double. This raises serious issues. h. The sign of manure storage needs to be relocated to a site that would not be near a lake or stream. I. The site of manure basin storage needs to be more than 1,000 feet from any waterway, as many cows would also be added to the manure basin. h. Page 7’s list of “nearby resources” does not mention sinkholes, caves and other unique karst features, which are found throughout the county, including in Utica Township. Since this box was not checked in the EAW, related to karst features must be addressed in an EIS. i. On page 9, the discussion of threatened and endangered species focuses on the dairy site, and does not mention impacts in the numerous manure application sites, in addition, the assessment does not mention insect species, such as Karner’s Blue Butterfly, amphibians, and reptiles. j. The EAW does not acknowledge that the change in the draft permit is the depth of manure injection discussed. What is the planned depth? Will it be in the zone of biological activity? Or, will nitrates, pesticides and antibiotics be provided direct access to aquifers? k. Page 10 shows that there are more manure application sites with mapped sinkholes and 27 sites with shallow bedrock soils, all of which provide direct conduits to aquifers. There is a discussion of planned strategies to minimize groundwater contamination, with no scientific assessment to determine the effectiveness of these planned actions. This is totally inadequate. l. Nowhere in the EAW or the draft permit is the depth of manure injection discussed. What is the planned depth? m. Will it be in the zone of biological activity? Or, will nitrates, pesticides and antibiotics be provided direct access to aquifers? n. Page 11 says the DNR “has determined that the proposed rate and volume may interfere with other uses or have negative impacts on nearby lakes, streams or wetlands.” This is a huge concern, yet the EAW does not address this need for an EIS. o. Page 11 contains a discussion of planned water usage, attending the informational meeting in Lewiston on October 16th, and the Daley Expansion Worksheet. I feel an Environmental Impact Statement is necessary to ensure Daley farm operations are safe. I don’t want our local water resources to be impaired and hope that clean water will be available in Winona County for domestic, industrial, and recreational use into the future. Questions: 1. Given the accumulating effect of pumping 92 million gallons of water per year, can the aquifers the Daley’s uses continue to provide clean water for all of their domestic, agricultural, and industrial uses into the future? 2. Considering the recent occurrences of severe droughts, and increasing tensions in the future due to high levels of water withdrawal, can the plan for the Daley Farms be approved? 3. Will there be additional nitrate pollution of ground water, local watersheds and downstream resources from such an extremely high intensity daily operation using the manure management plan described in the Daley Farms EAW? I don’t appreciate the contributions the Daley Farms have made to the Lewiston area over the years and that the next generation wants to continue to be involved in agriculture. I hope their expansion plan undergoes a rigorous environmental review and is determined to be safe for local residents and people now and into the future.
The EAW also assumes that the state mandated buffer strips and setback strips by sinkholes will be followed and are actually adequate to remove pollutants. Yet there is much research collected by BWSR and the amount of manure spread on these sensitive soils with double. The likelihood of increased levels of pollutants and bacteria levels was not examined. It should be for this sub watershed, as well as the others.

For this reason we respectfully request that the MPCA order an EIS be prepared for this project. Respectfully submitted, John P. Lenczewski
manure pack. For more information about flooding and the environmental problems it can create, visit the MPCA’s Floods: Minimizing pollution and health risks webpage. The webpage includes a factsheet specifically for livestock producers titled Managing manure storage and land application during adverse weather conditions. And this from the Minnesota EQB regarding the 2025 goals: “All drinking water in the southeast region comes from groundwater. Southeast Minnesota is especially vulnerable to groundwater contamination. Karst topography means this region needs to take extra steps to protect drinking water supplies from nitrate, bacteria, pesticides, and fertilizers.” And this project alone is said to need 92 million gallons of water a year. What might this do to the neighboring wells? What would the impact be on the aquifer? An EIS would answer these questions. 3. Real Estate Values. I’ve attached a study called, “An Analysis of the Impact of Swine CAFOs on the Value of Nearby Houses”. Dated 2008, this study was done by Hans R. Isakson, Department of Economics and Mark D. Ecker, Department of Mathematics, both from the University of Northern Iowa. We need an EIS so that we can look at the potential effects on real estate values in Lewiston. 4. Roads. What about the added stress on the roads due to the uptick in traffic because of the expansion? The added financial burden for the upkeep, and will this result in added taxes for the residents? An EIS would tell the whole story. 5. Residents’ Health. We have all heard of the respiratory effects, especially, of living (and working in) the vicinity of a project as large as the Daley’s expansion. An EIS could look at the risks to people’s health. This is to say nothing of the impacts on nearby community organizations such as churches, temples, synagogues, community centers, and schools, as well as quality of life issues. An EIS would be looking into all of these sorts of potential hardships. The mission of the MPCA is to protect and improve the environment and human health. There are enough risks here that must warrant an EIS; we need to know more.

Thank you, again, for your consideration, Michelle J. Hockersmith
41360 County Road 18
Mabel, MN 55954
651-697-0990
507-493-5562
Attachments to Comment 271.
Attachment to Comment 313:

Daley Farm Expansion

First of all I want to say I am 100% in favor of this expansion. With that being said; it amazes me with so many intelligent and educated people in Winona County that there is so much confusion regarding this expansion. SO many are concerned about the quality of the water. Do you actually think that that issue is not a concern for this family too? They drink and use these waters too. They have families living on all these farms; sons, daughters, grandchildren, great grandchildren, can you not relate to the fact that they have spent much time, energy and money into the investigation of this issue to protect their own? They do not have a "hidden" water supply of their own to use, they use the SAME water as all the rest of us county residents.

As we all know, many smaller farmers & dairy operations have had to sell out and that is sad; but there are many families that do not have children, grandchildren that are interested in continuing the Family Farm. They are either not interested in farming or cannot see themselves putting in those long hard hours that go with being a successful Family Farm. Farming and managing a dairy herd is not all fun and games, there is much hard, dirty work, long hours, and frustrations, government hurdles that they have to make sure they are abiding with and this will go on forever. The generations that are trying to make this Family Farm prosper and be able to continue to provide a living for years to come all know what it takes to make it work. They all have grown up working on the Family Farm working there as soon as they were old enough to work there, they have gone on to college to learn and stay knowledgeable about the future of the Family Farm and learn the new, better, safer, etc., ways to run a Family Farm. They are committed to what they are doing to keeping their farm alive and they are doing so in a manner that is open to all the world to see and learn about. Many people do not have any idea as to what they have all done to improve and meet governmental regulations. I say YES to the Daley Farm Expansion.
Federal agency rules in favor of farm workers in labor dispute

(2/24/2013)

by Chris Rogers

A Lewiston dairy farm has been ordered to pay $86,385 in unpaid wages and damages following an appellate court ruling stating that the farm violated state labor laws. Daley Farms refused to pay 46 employees over $43,000 in overtime wages. Another area farm, Hader Farms, of Zumbrota, agreed to $17,633 in back wages in a recent settlement with the Minnesota Department of Labor and Industry (DLI).

The July 2012 court ruling ended a six-year legal battle between Daley Farms and the DLI. The appellate court's decision clarifies and perhaps changes how Minnesota labor laws apply on the farm.

Daley Farms is a well-respected name in local agriculture. It hosted the Winona Chamber of Commerce Night on the Farm in 2009 and in June 2012—a month before the appellate court decision. Land Stewardship Project spokeswoman Barb Nelson said the folks at the Daley Farm are good people. "Everybody looks up to them," she said.

But in 2006, Daley Farms received an order of compliance from the DLI, telling it that it had to pay its workers overtime. Presumably, employee complaints alerted the DLI to the situation. Daley Farms appealed the order.

At the heart of the farm's objection was whether its workers met an exception to the state overtime requirement. Under the Minnesota Fair Labor Standards Act (MFLSA) farm workers must be paid time-and-a-half after 48 hours of work in a week, unless they earn a weekly salary greater than the wages for 48 hours at minimum wage plus 17 hours of overtime. According to the appellate court decision, Daley Farms argued that its workers did earn more than that and thus fit the exception. The DLI maintained the exception did not apply because the workers were paid by the hour, not through a salary agreement.

Daley Farms challenged the DLI orders through various channels over the next five plus years. At one point it seemed like the farm might prevail.

In 2008, an Administrative Law Judge recommended the DLI stand down, because of a 2006 case in which state courts ruled the exception did apply to an hourly laborer whose earnings exceeded the salary threshold.

However, the DLI was unwavering. It dismissed the recommendation and issued a final order to Daley Farms to pay back wages plus damages.
Daley Farms appealed that order with the state appellate court. However, when the court reached its decision last July, it backed the DLI.

In the 2012 decision the court held that the 2006 case did not constitute a legal precedent because the court was "not presented with the question of whether the exemption is limited [by the DLI's regulatory power] to employees paid on a salaried basis." The court also ruled, that although federal labor laws do not require farm workers to be paid overtime, farms must follow Minnesota laws which do.

DLI Commissioner Ken Peterson said there is a misconception among farmers that the federal overtime exemption for agricultural laborers supersedes state law.

"To some extent I think that Daley Farms was trying to test that whole question," Peterson continued. "That is why they litigated it. And I don't blame them for that. They are making sure we are enforcing the law correctly. At the same time, I think we were right from the beginning."

Organizations: labor violations are a big problem in Minnesota agriculture

The Daley Farms case made recent news because of a report issued by the Land Stewardship Project (LSP), Central Campesino, and the Latino Economic Development Center (LEDC)—advocates for sustainable agriculture, Latino and migrant farmworkers, and Latino-owned business, respectively. The report outlines the two cases, which had largely escaped the public eye, and labor law violations the organizations say are a widespread problem in Minnesota, especially among illegal immigrants.

While the DLI said that immigration status is not something that it checks, and therefore could not say if the workers at Daley Farms were illegal immigrants, the content of the LSP, LEDC, and Central Campesino's report and the fact that the DLI brought up the Daley Farms and Hader Farms cases during a discussion of alleged labor abuses against illegal immigrants with the three organizations, raises the question.

In any case, according to the organizations, there are other cases of labor violations against illegal immigrants. The organizations say they have documented cases of "failure to provide a final paycheck after an employee's resignation or dismissal," "failure to pay for all hours worked," "docking of worker wages for damage to farm equipment or buildings," and "failure to inform injured workers of their rights to workers' compensation."

Central Campesino has received reports of abuses like this for years, Executive Director Ernesto Velez Bustos said in the report. "This is wage theft."

Yolanda Cotterall, spokeswoman for the LEDC, said that labor abuse among undocumented workers is a wide spread issue in Minnesota. While her organization is not meant to take reports of labor abuse, the stories keep coming.

LSP spokeswoman Barb Nelson also said that labor law violations against illegal immigrants is a
wide spread problem in Southeastern Minnesota. She has heard several complaints personally, she said. She spoke highly of Daley Farms, and said that if labor violations occurred there, they are "absolutely" occurring elsewhere.

"It's a farmer's responsibility to understand labor laws," she added. "I'm not really compassionate for people who violate them."

Being poor and being an illegal immigrant are both factors which make people vulnerable to labor violations, Cotterall said. And farm workers are disposable, she added. "People are lined up for these jobs in rural communities."

"Undocumented workers hesitate to say anything for fear of deportation," Nelson said.

"Imagine a workforce that has no voice," Cotterall said. "How do you make sure that they are treated justly if they don't speak?"

DLI Commissioner Ken Peterson admitted that the fear of deportation creates a "chilling effect" for would-be reporters of labor law violations, though the DLI protects the anonymity of complainants.

The LSP has asked the University of Minnesota to better promote education for producers on labor laws, to educate workers of their rights (including posting information in workers' native language on the farm), and to research the issue of labor violations and the treatment of immigrant workers.

Farm Bureau: violations are not the norm

"Hispanic labor is an important part of agriculture in Winona County. How many are legally here or not—that is unknown," Winona County Farm Bureau President Glen Groth said. Farmers are not allowed to question workers' immigration status beyond asking for a social security card. "Often times farmers have no way of knowing, until the government sends them back," he said. "That is why some kind of immigration reform is so desperately needed for our industry."

Hispanic labor is important, he said, because farmers cannot find enough local people willing to do the work, even for 10 or 12 dollars an hour wages. Conversely, "A lot of the immigrant labor see it as an opportunity," Groth said. "They are here to work long hours."

Groth said that all of the people he knows pay their workers overtime and offer wages well above minimum wage.

Area farm owners "don't treat these people like dirt," he said. "They treat them like family." Farmers know they cannot operate their farms without good help, and many immigrant workers "move into management positions, and become an integral part of the operation," Groth said.

Nelson concurred that she knew of employers who help their immigrant workers as if they were family. "The saddest part of the whole thing is that the violators give everyone a bad name," she
said. "People will start to think that everyone who hires Hispanic workers are treating them badly."

"Employers are doing what they need to do to. To say that abuse is widespread is an error and not representing the reality of the situation," Groth said.

Groth added that he would like to see Minnesota labor laws match federal laws, and that the Farm Bureau has considered lobbying for the removal of the state overtime requirements for hourly agricultural laborers. "I think it makes a lot of sense," he said. "The nature of agriculture is that it is seasonal and the work week doesn't always stop at 48 hours. A lot of farms are willing to pay their workers more to have good people on hand when they need them."

Winona Chamber of Commerce President Della Schmidt expressed concerns that complying with stricter labor laws may put Minnesota farms at a disadvantage. "When farms on the other side of state lines have more agribusiness-friendly policies, that is concerning for us."

A recent proposal in the state senate would increase minimum wage and overtime requirements for a variety of businesses including agriculture (see story).
Winona County: Final Overview of Nitrate Levels in Private Wells (2016-2017)

The Minnesota Department of Agriculture (MDA) determines current nitrate-nitrogen concentrations in private wells, on a township scale, through the Township Testing Program. The MDA has identified townships throughout the state that are vulnerable to groundwater contamination and have significant row crop production. The MDA plans to offer nitrate testing to more than 70,000 private well owners in over 300 townships by 2019.

Each selected township is offered testing in two steps, the “initial” sampling and the “follow-up” sampling. In the initial sampling, all township homeowners using private wells are sent a nitrate test kit. If nitrate is detected in their initial sample, the homeowner is offered a follow-up nitrate test, pesticide test and well site visit. Trained MDA staff visit willing homeowners to resample the well and then conduct a site assessment. The assessment helps to identify possible non-fertilizer sources of nitrate and to see the condition of the well. A well with construction problems may be more susceptible to contamination.

The MDA and Winona County Environmental Services worked together to select townships and implement the nitrate testing project. The following townships were selected: Elba, Fremont, Hart, Hillsdale, Mt. Vernon, Norton, Pleasant Hill, St. Charles, Saratoga, Utica, Warren, Wilson, and Wiscoy. The initial sampling in Winona County started in 2016 and follow-up sampling ended in 2017.

Results

Two datasets are used to evaluate nitrate. The initial well dataset contains 940* wells; the final dataset contains 731 wells. Wells that had nitrate-nitrogen results over 5 mg/L were removed from the initial dataset if a non-fertilizer source or well problem was identified, to form the final well dataset. A total of 209 wells (22%) were removed. The results from the initial and final well datasets are summarized in the table below.

In Fremont, Saint Charles, Utica, and Warren Townships, more than 10% of the wells were over the Health Risk Limit of 10 mg/L of nitrate-nitrogen (map below). The percent of wells over the Health Risk Limit in each township ranged from 0% to 42.9%. The Winona County Final Report will be available on the MDA website in 2018: www.mda.state.mn.us/townshiptesting.

Next steps

The MDA uses the final well dataset to determine if additional action is warranted, as described in the Minnesota Nitrogen Fertilizer Management Plan (NFMP). The MDA uses the assessment process and prioritization guidelines in the NFMP to determine next steps. Find more information about the NFMP on the MDA website at www.mda.state.mn.us/nfmp.

Funding Acknowledgement

Funding for this project is provided by the Clean Water, Land and Legacy Amendment

Published May 2018
Table: Winona County Private Well Nitrate Results, 2018.

<table>
<thead>
<tr>
<th>Township</th>
<th>Initial Well Dataset</th>
<th>Final Well Dataset</th>
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<tr>
<td></td>
<td>Total Wells*</td>
<td>Percent of Wells ≥10 mg/L Nitrate-Nitrogen</td>
</tr>
<tr>
<td>Elba</td>
<td>62</td>
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<tr>
<td>Fremont</td>
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<td>Hart</td>
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<td>Hillsdale</td>
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<tr>
<td>Mt. Vernon</td>
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<tr>
<td>Norton</td>
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<tr>
<td>Pleasant Hill</td>
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<tr>
<td>St. Charles</td>
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<td>Saratoga</td>
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<td>Utica</td>
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<tr>
<td>Warren</td>
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<td>Wilson</td>
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<td>Wiscoy</td>
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<tr>
<td>Total</td>
<td>940</td>
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</tr>
</tbody>
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* All well types included.

Figure: Winona County Final Well Dataset Map, 2018.

In accordance with the Americans with Disabilities Act, this information is available in alternative forms of communication upon request by calling 651-201-6000. TTY users can call the Minnesota Relay Service at 711. The MDA is an equal opportunity employer and provider.
Our groundwater resources are being threatened by both overuse and contamination from various sources. As a member of Trout Unlimited, a resident of Winona County and a retired product assurance engineer I am writing to express my concerns in regards to the Daley Farms’ proposed feedlot expansion and the potential environmental impact to the area.

The potential environmental concerns resulting from expanding the herd from 2275 animal units to nearly 6000 and generating 46 million gallons of manure annually include:

- A breach or complete failure of the manure holding system due to a heavy rainfall event, such as the one that occurred in 2007 (16 inches in 24 hours) potentially resulting in significant environmental damage and fish kills in the Whitewater and/or Rush Creek watersheds.
- The porous limestone karst geology of the region allows pollutants to enter the ground water quickly impacting many residents drawing water from shallow groundwater wells. This may also be a problem during spring runoff after heavy snowfalls.
- Additional demands on the groundwater system (estimated to be 92 million gallons annually) will potentially affect groundwater levels resulting in higher concentrations of nitrates and other contaminants in the water supply. This is already a problem in some parts of the area.
- A manure leak can also contaminate certain types of crops posing a hazard for human consumption.

To assess these and other potential environmental hazards associated with the expansion of the Daley dairy herd operation an Environmental Hazard Analysis (EHA) must be performed.

The primary goal of the EHA process is the assessment of environmentally critical systems, the expanded feedlot operation in this case. An environmentally critical system is one that poses a reasonable threat to the environment in the event of a system malfunction or catastrophic failure. These events can result in violation of applicable regulations, or can result in significant environmental damage and clean up costs and pose health risks to the local population. The identification and control of potential hazards requires consideration of many factors including the proposed system design, operation and maintenance of the system as well as applicable regulations.

Based on the concerns identified no activity should be allowed to go forward until a full Environmental Hazard Analysis or similar assessment is performed with appropriate countermeasures identified to mitigate all potential environmental hazards.

There are many stakeholders impacted by the actions being considered in this matter. Therefore careful consideration must be given to all the issues raised by those involved in this debate. The decisions we make today will have a long and lasting impact on our local environment and valuable natural resources.

Roger M. Berg
Hello,

I’ve read through the EAW for the Daley Farm expansion in Winona County, and have a number of questions and concerns about the environmental impact of the proposed project:

- A major concern is whether there will be any ground water impacts from the manure application to fields. As noted in the EAW, a number of fields to receive manure contain karst features, are very near to bedrock, or the water table. All these conditions would facilitate nutrients and bacterial pollutants entering our ground water. The sheer volume of manure also presents a threat to surface water if a large rain hits during the application. A manure management plan will help, but I am not sure it will alleviate all impacts. I am skeptical that the CAWT will know where these sensitive features are and be able, or willing to put in the effort, to manage the manure disposal to prevent impacts. The proximity of the Utica and Lewiston drinking water wells are also somewhat concerning.

- 92 Million gallons of water is likely to be used by the operation, which I expect is more than the whole City of Lewiston uses annually. Will such a large withdrawal impact water table depth, and how does it compare to recharge rates? The existing wells on the Daley Farm seem to draw from the same Wonewoc aquifer level as the Lewiston public supply.

- Transportation numbers in 9.A. do not seem to include manure hauling events, which may be significant for the periods of application.

- I did not see any reference to greenhouse gases emissions such as methane and nitrous oxides. Both are tied to cattle and manure, and are potent greenhouse gases. Under the standard EAW, such numbers would be part of the EAW, and I would like to see them added to the alternative Feedlot EAW, possibly under #11 of the EAW.

- Under #5, stormwater from the feed storage pad will enter the storage basin and then be managed, but it is not clear where the 1.7 million gallons will go. Will it be applied to fields? Mixed with manure?

- I believe there may also be an erosion control permit required from the County (listed at the end of #10).

- The manure ponds are listed as being able to handle 281 days worth of manure. Does this number factor in the additional wash water from the sand cleaning operation and natural precipitation? I could see these two factors pushing the number below 270 days of storage if they are not already in the calculation.

- Small details, but I suspect you mean technician instead of “Technical” in the last paragraph of p. 13 and intended to say designed instead of “deigned” in the last sentence before the Emergency Response Plan section on p. 19.

Outside of these questions, I believe the EAW is comprehensive. Therefore if the above questions/concerns can be answered independently to doing an EIS, I do not feel a full EIS would be required.

Thank you for your consideration,

John Howard
On behalf of the Minnesota Well Owners Organization (MNWOO), we submit the following comments on the Daley Farms feedlot expansion.

We respectfully request that an Environmental Impact Statement (EIS) is needed to address the serious and extensive water quality problems for all water resources in the area of the proposed expansion. We conclude that there is not an area within the State of Minnesota that has more polluted water resources than that part of western Winona County situated for the feedlot expansion. We believe that this feedlot expansion will exacerbate the ongoing impairment of trout streams destroying remaining aquatic life and habitat, and intensify the poisoning of both private and public drinking water supplies creating an acute public health crisis.

**Current Documented Contamination of Water Resources in the Area of the Daley Farms Confined Dairy Feedlot**

-Utica, Bethany, and Lewiston, the three municipalities closest to the Daley Farms, have elevated nitrate contamination between 3 and 10 mg/L in their public water systems. Nearly 75% of all nitrogen contamination comes from row crop production from growing corn and soybeans (see [https://www.pca.state.mn.us/sites/default/files/wq-s1-80.pdf](https://www.pca.state.mn.us/sites/default/files/wq-s1-80.pdf)). In addition, these public water systems have concentrations of one of more of the following commonly detected herbicides used on row crops in the area: acetochlor and its metabolites, alachlor and its metabolites, metolachlor and its metabolites, and atrazine and its metabolites. See: [http://www.health.state.mn.us/divs/eh/water/com/dwar/report2014.pdf](http://www.health.state.mn.us/divs/eh/water/com/dwar/report2014.pdf)

-Utica Township and the surrounding areas have some of the highest nitrate contamination in private wells and the highest occurrences of private wells above the Health Risk Limit (HRL) of 10 mg/L (see table below). Nearly half of the wells tested the area of Daley Farms in 2016 by the Minnesota Department of Agriculture are currently above the HRL. The nitrate HRL was promulgated to protect the most vulnerable part of our population - expecting mothers and babies under 6 months old. In addition, these private wells have concentrations of one of more of the following commonly detected herbicides used on row crops in the area: acetochlor and its metabolites, alachlor and its metabolites, metolachlor and its metabolites, and atrazine and its metabolites.
Table: Winona County Initial Well Dataset Results, 2016.

<table>
<thead>
<tr>
<th>Township</th>
<th>Number of Wells Tested</th>
<th>Min</th>
<th>Max</th>
<th>Mean Nitrate-N mg/L or PPM</th>
<th>Median</th>
<th>Percent of Wells ≥10 mg/L</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elba</td>
<td>62</td>
<td>&lt;0.25</td>
<td>20.4</td>
<td>4.5</td>
<td>3.4</td>
<td>16.1%</td>
</tr>
<tr>
<td>Fremont</td>
<td>42</td>
<td>&lt;0.25</td>
<td>43.8</td>
<td>10.6</td>
<td>11.4</td>
<td>54.8%</td>
</tr>
<tr>
<td>Hart</td>
<td>48</td>
<td>&lt;0.25</td>
<td>32.7</td>
<td>5.7</td>
<td>4.4</td>
<td>18.8%</td>
</tr>
<tr>
<td>Hillsdale</td>
<td>52</td>
<td>&lt;0.25</td>
<td>12.9</td>
<td>1.7</td>
<td>&lt;0.25</td>
<td>1.9%</td>
</tr>
<tr>
<td>Mt. Vernon</td>
<td>33</td>
<td>&lt;0.25</td>
<td>14.4</td>
<td>4.5</td>
<td>3.5</td>
<td>15.2%</td>
</tr>
<tr>
<td>Norton</td>
<td>80</td>
<td>&lt;0.25</td>
<td>23.1</td>
<td>4.3</td>
<td>2.8</td>
<td>11.3%</td>
</tr>
<tr>
<td>Pleasant Hill</td>
<td>58</td>
<td>&lt;0.25</td>
<td>18.6</td>
<td>3.4</td>
<td>2.2</td>
<td>8.6%</td>
</tr>
<tr>
<td>St. Charles</td>
<td>85</td>
<td>&lt;0.25</td>
<td>34.8</td>
<td>7.0</td>
<td>4.7</td>
<td>34.1%</td>
</tr>
<tr>
<td>Saratoga</td>
<td>56</td>
<td>&lt;0.25</td>
<td>25.8</td>
<td>5.1</td>
<td>2.3</td>
<td>19.6%</td>
</tr>
<tr>
<td>Utica</td>
<td>86</td>
<td>&lt;0.25</td>
<td>27.9</td>
<td>8.9</td>
<td>8.6</td>
<td>46.5%</td>
</tr>
<tr>
<td>Warren</td>
<td>92</td>
<td>&lt;0.25</td>
<td>29.3</td>
<td>6.8</td>
<td>5.2</td>
<td>28.3%</td>
</tr>
<tr>
<td>Wilson</td>
<td>196</td>
<td>&lt;0.25</td>
<td>34.8</td>
<td>2.2</td>
<td>0.3</td>
<td>6.1%</td>
</tr>
<tr>
<td>Wiscow</td>
<td>50</td>
<td>&lt;0.25</td>
<td>9.4</td>
<td>1.5</td>
<td>&lt;0.25</td>
<td>0.0%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>940</strong></td>
<td><strong>&lt;0.25</strong></td>
<td><strong>43.8</strong></td>
<td><strong>4.9</strong></td>
<td><strong>2.1</strong></td>
<td><strong>19.1%</strong></td>
</tr>
</tbody>
</table>

*All well types included*

Figure: Winona County Initial Well Dataset Map, 2016.
-The South Fork of the Whitewater River (SFWW) is the sub-watershed of the Whitewater River that Daley Farms is located. The SFWW is currently impaired for total suspended solids/turbidity, nitrates, fecal coliform bacteria, stressful temperatures, and degraded habitat (see map below). The Daley Farms row cropping land use in the SFWW contribute to these impairments through soil, nutrient, and pesticide loss from fields where manure and commercial fertilizer and pesticides are applied. In addition, bacteria from manure applied to row crop fields pollute the SFWW. See: [https://www.pca.state.mn.us/sites/default/files/wq-iw9-18e.pdf](https://www.pca.state.mn.us/sites/default/files/wq-iw9-18e.pdf)

-On July 28, 2015 a major fish kill occurred on the SFWW. The Minnesota Department of Natural Resources estimated that 10,000 fish were killed and 6.5 miles of stream were poisoned killing nearly all aquatic life. Although State agencies could not determine the exact cause of the fish kill, recent applications

In sum, the current agricultural land use practices of the Daley Farms and their neighbors are causing significant groundwater and surface water contamination. The contamination of municipal and private drinking water supplies surrounding the Daley Farms are a threat to human health in the area. The steams flowing from this area are contaminated with bacteria, pesticides, sediment, and nutrients. These pollutants are causing long-term degradation of aquatic health and occasionally reach high enough levels to wipe out all the aquatic life in a stream. The cumulative evidence of existing water quality problems in the immediate vicinity of the Daley Farm operation warrant further study. Therefore MNWOO requests that an EIS be commenced on this proposed feedlot expansion to examine these ongoing risks to human and aquatic health.
Minnesota Center for Environmental Advocacy (“MCEA”)

Comments on the Environmental Assessment Worksheet and the
Need for an Environmental Impact Statement

for the Daley Farms of Lewiston, LLC dairy expansion in Winona County

November 15, 2018
The Minnesota Center for Environmental Advocacy ("MCEA" or "Petitioner") requests that the Minnesota Pollution Control Agency ("MPCA") prepare an Environmental Impact Statement ("EIS") for Daley Farms of Lewiston, LLC dairy expansion ("Daley Expansion" or "the project") in Winona County. Petitioner also requests that MPCA deny Daley Farm’s request for a National Pollutant Discharge Elimination System (NPDES) / State Disposal System (SDS) Permit ("Permit"). If MPCA issues a negative declaration on the EIS, Petitioner requests that MPCA grant a contested case hearing pursuant to Minn. R. 7000.1800-1900 due to material issues of fact with regard to whether the Daley Expansion can be operated in compliance with Minnesota Rules chapter 7020 and other applicable laws, as discussed in the Permit comment (concurrently filed).

I. TIMELINESS

These requests are timely. MPCA published the Public Notice of the Environmental Assessment Worksheet ("EAW") and intent to issue an NPDES permit for the Daley Expansion on October 1, 2018, and extended the comment period until November 15, 2018 at the request of Petitioner and others, due to the fact that this comment period coincided with harvesting, and because of the complexity of the project. Similarly, the petition for a contested case is timely pursuant to Minn. R. 7000.1800, which provides that a petition for a contested case hearing “must be submitted during the public comment period established under parts 7001.0100.”

II. SUMMARY OF REASONS

Minn. R. 4410.1700, subp. 1 provides that “[a]n EIS shall be ordered for projects that have the potential for significant environmental effects.” For the Daley Expansion, ample evidence exists that, due to location of the project, existing levels of pollutants in surface and
groundwater, and the volume of manure that will need to be managed, the project poses the potential for significant environmental effects.¹

Simply put, the project does not have enough acres of land to accommodate the volumes of manure produced by the facility, and the land that has been identified for application is pocked with karst features that will convey manure directly to ground and surface waters. For the same reasons, Petitioner asserts that the project as proposed cannot comply with the requirements of the Clean Water Act and state law and would endanger public health in an area that is already experiencing the health impacts of contaminated drinking water. Because evidence establishes that the proposal cannot comply with federal and state law and the effluent limitations in the draft permit, Petitioner requests that the MPCA deny the NPDES permit for the Daley Expansion. If the agency does not deny coverage, Petitioners request that the agency refer the disputed issues of material fact to the Office of Administrative Hearings for resolution in a contested case hearing.

III. STATEMENTS OF INTEREST

MCEA is a Minnesota nonprofit public interest organization with over 3,000 members including many in Winona County, and its mission is to use law, science, and research to protect and enhance Minnesota’s natural resources, wildlife, and the health of its people. MCEA has advocated for sustainable agriculture for many years, and was integrally involved in the feedlot rule amendments implemented in the early 2000s.

IV. AN EIS IS REQUIRED

Under applicable rules, the MPCA must decide whether a project has the potential for significant environmental effects by applying the following factors:

¹ E. Calvin Alexander Jr., Comment on Daley Farms of Lewiston, LLP:2018 Dairy Expansion – EAW (p-ear2-143i), attached as Exhibit 1.
A. type, extent, and reversibility of environmental effects;
B. cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project;
C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; and
D. the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.2

The EAW for the Daley Expansion lacks sufficient information to support a finding that the project does not have the potential to cause significant environmental impacts. Therefore, an EIS must be ordered.3 While this alone compels a decision to require an EIS, at the very least the lack of complete information supports the need to either “make a positive declaration and include within the scope of the EIS appropriate studies to obtain the lacking information” or “postpone the decision on the need for an EIS, for not more than 30 days or such other period of time as agreed upon by the RGU and proposer, in order to obtain the lacking information.”4

A. The Daley Expansion Has The Potential For Significant Environmental Impacts As A Result Of Cumulative Impacts Because Existing Water Quality Is Already Impacted By Similar Pollutants.

Winona County is a highly sensitive karst region. As the result of existing agricultural uses, water quality is suffering in Winona County. A significant proportion of the ground and surface water is already contaminated by nitrate and bacteria, and safe drinking water sources are increasingly difficult to find. The problem is created when fertilizers, both manure and

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2 Minn. R. 4410.1700, subp. 7
3 Minn. R. 4410.2000, subp. 3, 4410.1700, subp. 1.
4 Minn. R. 4410.1700, subp. 2a.
nitrogen fertilizer, are land applied, and seep, leach, or are otherwise discharged to groundwater and rivers and streams through the porous geology. Despite this existing problem, Daley Farms is proposing to significantly increase the amount of manure that will be landspread in a highly susceptible karst region.

The contribution from the project to existing pollution must be viewed as significant in connection with other contributions. If the expansion is granted, Daley Farms will need to dispose of 46.2 million gallons of liquid manure per year on nearby cropland. But nearly every stream or river nearby the Daley Expansion is already contaminated by agricultural pollutants including nitrate and bacteria, such as *E. coli* and fecal coliform. Similarly, a significant percentage of private wells are contaminated, and public water supplies are also at risk.

In the townships where Daley proposes to spread its manure, about 40% of private wells that have been tested already register above the health risk limit (HRL) for nitrate, with some wells testing at over 4 times the safe levels of nitrates.

<table>
<thead>
<tr>
<th>Township</th>
<th>% Private Wells &gt; HRL</th>
<th>Max Nitrate Level Recorded</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utica</td>
<td>46.5%</td>
<td>27.9 mg/L</td>
</tr>
<tr>
<td>Fremont</td>
<td>54.8%</td>
<td>43.8 mg/L</td>
</tr>
<tr>
<td>Saint Charles</td>
<td>34.1%</td>
<td>34.8 mg/L</td>
</tr>
</tbody>
</table>

*the results are based on data collected by the Minnesota Department of Agriculture’s Township Testing Program.*

Six of the Dales Farms’ proposed manure application sites are within the Utica Drinking Water Supply Management Area (DWSMA), which is rated “Highly Vulnerable.”

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6 See Map of Manure Application Acres Proposed at Daley Farms & Drinking Water Supply Management Area Vulnerability, attached as Exhibit 2.
water supply for Utica is at serious risk and has registered over the nitrate HRL in recent years.\textsuperscript{7} Other manure-spreading locations are also already impacted. Between 2011 and 2016, coliform was registered as present in the non-community water supplies of Trout Valley Trail in Lewiston.\textsuperscript{8} Coliform was also present in 3 locations in nearby St. Charles: Discount Grocery, Berea Moravian Church, and SEMA equipment.\textsuperscript{9} Coliform was also detected in the Whitewater State Park and Wildlife Management Area in Altura.\textsuperscript{10,11}

In this sad reality, any additional pollution has the potential to create significant environmental effects as a result of cumulative impacts.

B. The EAW Relies On Disproved “Mitigations” To Conclude That No Impacts Will Occur

Of key concern is the fact that the EAW heavily relies on entirely unproven assumptions to conclude that the proposed expansion will not significantly impact the environment. The MPCA must consider “the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority.”\textsuperscript{12} In considering these effects, “the RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project.”\textsuperscript{13} It may not rely on “mitigations” that are disproved by the available evidence.

\textsuperscript{7} See Minnesota Department of Health public water supply test results for PSWID 1850011 from 2016-2018, available by request from Minnesota Department of Health.
\textsuperscript{9} Id.
\textsuperscript{11} Despite a request to Winona County, MCEA was unable to obtain data on bacteria levels in private wells in this area during the comment period.
\textsuperscript{12} Minn. R. 4410.1700, subp. 7.
\textsuperscript{13} Id.
Although the EAW acknowledges that “feedlots may impact these impairments (for nitrate, TSS, *E. coli* and impaired biota) by contributing nutrients and fecal bacteria through overland runoff or drain tile intakes from the application of manure,” the EAW contains no further analysis on this question. Instead, the EAW simply presumes this impact away:14

- “Manure application at this field must be done according to its MMP15 and cannot exceed agronomical rates; therefore, the PCA does not expect cumulative impacts.”
- “The applied manure from the Project will not add additional nutrients, but will replace the use of commercial fertilizer at the manure application sites.”
- “Manure application provides enhanced soil tilth, a beneficial property of soil that helps retain moisture and reduce runoff from fields.”
- “The nutrients in manure from the Project will replace the use of commercial fertilizers for the manure application sites. All manure application is required to take place at agronomical rates and in accordance with Minn. R. 7020 and the Feedlot Permit.”
- “Daley expects the stormwater runoff characteristics from the Project manure application sites to remain the same, and under certain circumstances, improve because of the land application activities regulated under the Feedlot Permit. The improvements occur through developing better soil tilth from organic fertilizer and the uniform practices of incorporating manure over the acres identified in the MMP.”
- “Daley expects no change in stormwater runoff characteristics (physically and chemically) from the Project manure application sites.”

No analysis is undertaken to determine the veracity of these assumptions, and indeed, they cannot be supported. Under state law, the EAW has not considered the environmental impacts that are “reasonably expected to occur.”16 Instead of analyzing these reasonably foreseeable impacts, the EAW concludes they will not occur on the basis of two disproven assumptions, neither of which can reasonably be construed as “mitigations” that would justify a finding of no significant impact.

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15 Manure Management Plan (“MMP”)
16 Minn. R. 4410.1700, subp. 6.
1. **Manure does not replace commercial fertilizer.**

In the EAW, MPCA maintains that the groundwater and surface waters at the site and its surrounding area are already contaminated with nitrates, total suspended solids, and *E. coli*, but argues that the proposal “will not add additional nutrients, but will replace the use of commercial fertilizer at the manure application sites.”\(^{17}\) This replacement assumption is a critical component of the conclusion that the project will not add to the already heavy nutrient and pathogen load to area waters, but the EAW provides no evidence or even reasoning to support this assumption. In fact, the available evidence suggests that the exact opposite is true, rendering the EAW’s conclusions fundamentally baseless and therefore legally inadequate.

According to survey data collected by the Department of Agriculture, 74% of farmers in Southeastern Minnesota apply commercial fertilizers to their manured fields, and 83% did not know how much nitrogen was in the manure they applied to their fields.\(^{18}\) Proper application of commercial fertilizers requires the applicator to take into account the nitrogen applied to the field from manure, but the vast majority of producers in Southeastern Minnesota are entirely unable to make this adjustment. As a result, nearly half of the corn fields in Minnesota that are applied with both manure and commercial fertilizer received over 200 pounds of nitrogen per acre, well over the recommended limit.\(^{19}\) The *average* amount of nitrogen from manure and commercial fertilizer per acre is 191 pounds; again well over the recommended limit.\(^{20}\)

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\(^{17}\) EAW at 22; see also id. at 24 (“The nutrients in manure from the Project will replace the use of commercial fertilizers for the manure application sites.”).


\(^{19}\) Id. at 161.

\(^{20}\) Id. at 254.
producers do not use variable rate manure applications, and a majority are unaware of manure application rates at all.\textsuperscript{21}

In the face of this data, it is unreasonable and capricious for the agency to assert that the application of 46.5 million gallons of liquid manure to area croplands will not add nutrients and bacteria to the already impaired surface and groundwaters. The data very clearly show that manure applicators apply manure \textit{in addition to} their applications of commercial fertilizer, and that fertilizer rates are not reduced by the application of manure.

\textbf{2. Manure management plans do not prevent overapplication.}

MPCA also presumes that manure management plans will prevent the type of significant ground and water pollution that is already proven to occur in the area where Daley Farms is located. The EAW for Daley Farms repeatedly concludes that compliance with MMPs will prevent any impacts to groundwater or surfacewater. But Petitioner has evidence that the use of manure management plans fails to prevent overapplication and cumulative impacts. For example, as the EAW observes, Daley Farms proposes to apply manure on a field that also receives manure from a nearby swine facility operated by Holden Farms.\textsuperscript{22} In addition, MDA’s data shows that manure applicators are almost entirely unaware of the nitrogen content of the manure they are applying to fields, but the EAW for Daley Farms concludes, without any evidence or support of any kind: “[m]anure application at this field must be done according to its MMP and cannot exceed agronomical rates; therefore, the PCA does not expect cumulative impacts.”\textsuperscript{23}

Based on the information presented by Petitioner above, it is clear that the use of MMPs will not, and do not, prevent pollutants from reaching surface waters, nor do MMPs prevent

\begin{footnotesize}
\begin{enumerate}
  \item \textit{Id.} at 250.
  \item EAW at 21. The manure application site numbered 41 for the Daley project is the same site numbered 36 for the Holden Farms Inc., Sites 1 and 2 swine facility in Winona County.
  \item \textit{Id.}
\end{enumerate}
\end{footnotesize}
overapplication of transferred manure or the cumulative impacts of oversaturation of liquid manure applied in a relatively small area by multiple sources.

MPCA’s own documentation shows the impact of feedlot manure on the watershed. The Watershed Restoration and Protection Strategy (WRAPS) for the Mississippi River – Winona Watershed identifies ongoing bacterial contamination as a main issue that needs to be addressed.\(^{24}\) The Lower Mississippi River Fecal Coliform TMDL identifies “Livestock Facilities with NPDES Permits” and “Livestock Manure” as “major source categor[ies]” for bacterial contamination.\(^{25}\) The report concludes that “runoff from livestock feedlots, pastures, and land application areas has the potential to be a significant source of fecal coliform bacteria and other pollutants.” The study also implicitly acknowledges that producer adoption of MMPs is a largely aspirational goal, contrary to the oft-stated assumption that applicators follow the manure application rates in their MMPs.\(^{26}\) The more recent Mississippi River – Winona Watershed Pollutant Reduction Project (Total Maximum Daily Load Study) for Nutrients, Sediment and Bacteria concludes that:

Livestock manure is often either surface applied or incorporated into farm fields as fertilizer and soil amendment. This land application of manure has the potential to be a substantial source of fecal contamination, entering waterways from overland runoff and drain tile intakes. Research being conducted in southern Minnesota shows high concentrations of fecal bacteria leaving fields with incorporated manure and open tile intakes. Minn. R. ch. 7020 contains manure application setback requirements based on research related to phosphorus transport, and not bacterial transport, and the effectiveness of these current setbacks on bacterial transport to surface waters is not known.\(^{27}\)

\(^{24}\) Minnesota Pollution Control Agency, Mississippi River – Winona Watershed: Watershed Restoration and Protection Strategy, at 68 [hereinafter “MRWW WRAPS”].

\(^{25}\) Lower Mississippi River TMDL for Fecal Coliform at 23.

\(^{26}\) Id. at 118 (“Funding to support technical assistance and to provide producer incentives will be sought to maximize producer adoption of manure management plans.”).

\(^{27}\) Mississippi River – Winona Watershed Pollutant Reduction Project (Total Maximum Daily Load Study) for Nutrients, Sediment and Bacteria at 51-52.
Despite all this, every feedlot EAW continues to assert that land applied manure never reaches surface or ground waters, and in fact improves water quality. To continue to do so without evidence (and where the evidence that is available suggests otherwise) while the state of the watershed continues to deteriorate is unreasonable and demands an EIS under Minnesota Rule 4410.1700.

This pattern has unfortunately continued for every feedlot EAW in the state. Expansion and consolidation in the industry has led to more animals and more manure being concentrated in highly localized areas, and water quality continues to suffer not just from nutrients but from pathogens like \textit{E. coli}, which is not derived from commercial fertilizers but from animal manure. And yet in each instance, the MPCA repeats the same conclusions: agronomic rates of manure application ensure no environmental impact. Every feedlot EAW in fact contains the same conclusion: that new or expanded feedlots improve water quality in the surrounding area. Under state law, however, rote repetition cannot substitute for actual evidence, inquiry, and analysis.

This EAW is devoid of any actual evidence showing that the additional production of incredible amounts of manure will not affect surrounding waters in any way. At some point, the landscape is physically unable to absorb additional manure applications. However, MPCA’s regulatory scheme entirely fails to account for any sort of physical limits of the land. As far as state-level regulation of feedlots is concerned, facilities could continue to expand \textit{ad infinitum}, and the agency would bless that expansion with the same refrain: application cannot exceed agronomic rates, and therefore there are no impacts to the expansions. Minnesota Rule 4410.1700 requires the RGU to make a determination on the need for an EIS by considering the

\footnote{See, \textit{e.g.} Mississippi River – Winona Watershed Pollutant Reduction Project (Total Maximum Daily Load Study) for Nutrients, Sediment and Bacteria at section 3.5.2.1.}
“cumulative potential effects” of the proposal, which is defined as the “effect on the environment that results from the incremental effects of a project in addition to other projects in the environmentally relevant area that might reasonably be expected to affect the same environmental resources, including future projects actually planned or for which a basis of expectation has been laid.” In making this determination, the RGU may not rely on “bare assertions” alone, and a negative determination on the need for an EIS that is based on bare assertions alone is a violation of the Minnesota Administrative Procedure Act (MAPA). Here, the EAW’s conclusions on the potential for significant environmental effects is based on multiple critical assumptions – that manure applicators actually apply at agronomic rates and that manure applications substitute for applications of commercial fertilizers - that are unsupported by any evidence at all, and are in fact contrary to evidence. The MPCA cites no “independent scientific data, agency opinions, or studies” supporting these key assertions, thereby violating both MEPA and MAPA.

C. The EAW Fails To Address Cumulative Impacts Due To Manure Releases.

Despite the MPCA’s optimistic assumptions that feedlots improve water quality, outside of the EAW context the agency is clear that this is not the case. The available evidence tells us something different. The Mississippi River – Winona Watershed Restoration and Protection Strategy states that liquid storage manure areas are sources of bacterial contamination from leakage and structural failures. Elsewhere MPCA regularly reports on the overtopping of manure storage facilities from precipitation, noting recently that “heavy rains in southern

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29 Minn. R. 4410.1700, subp. 7.
30 Minn. R. 4410.0200, subp. 11a.
31 See CARD v. Kandiyohi County Bd. Of Comm’rs, 713 N.W.2d 817, 837 (Minn. 2006).
32 Id.
33 MRWW WRAPS at 41
Minnesota find some livestock producers scrambling to stem the overflow from livestock manure storage basins.\textsuperscript{34} The MPCA regularly publishes newsletters advising livestock producers to take steps to account for increased precipitation in order to avoid overtopping manure storage basins.\textsuperscript{35} Those recommendations state:

> It’s been cold and wet so far this October, delaying crop harvest. This makes it challenging to get manure applied in a timely fashion and for liquid manures there is a risk of overflow from storage basins.\textsuperscript{36}

These high precipitation events will only get more frequent and more intense with climate change,\textsuperscript{37} but the EAW ignores this entirely.

V. **THE EAW FAILS TO ACCOUNT FOR THE IMPACTS OF, AND CONTRIBUTIONS TO, CLIMATE CHANGE**

A. **The Proposed Expansion Will Significantly Contribute To The State’s Greenhouse Gas Emissions**

The proposed expansion would house 4,628 cows, of which 3,983 are dairy cows and 645 are heifers or calves.\textsuperscript{38} Recently calculated emission factors estimate that the average dairy cow in the United States produces 158.7 kg methane per animal per year via enteric fermentation, and 137 kg methane per animal per year via manure management.\textsuperscript{39} Meat and other cattle (e.g. heifers and calves) produce 58.8 kg and 2.4 kg methane per animal per year via enteric


\textsuperscript{37} MRWW WRAPS at 43, and Section V.

\textsuperscript{38} EAW at 4.

fermentation and manure management, respectively.\textsuperscript{40} In total the Daley Farms expansion would produce 1,217,247.1 kg of methane per year.\textsuperscript{41} Methane is many times as potent a greenhouse gas as CO\textsubscript{2}, and over the next twenty years a kg of methane will warm the planet as much as 84-86 kg of CO\textsubscript{2}.\textsuperscript{42} The 1.2 million kg of methane emitted by this proposal will therefore warm the planet by the equivalent of 102,248,748 kg of CO\textsubscript{2}, or 102,248 metric tons. This is the same GHG emissions as driving 21,895 cars for a year, or burning 558 rail cars full of coal.\textsuperscript{43} This would make the expanded Daley Farms the 43rd largest GHG emitter in the state, larger than power plants in Red Wing, Blue Earth County, Mower County, and Minneapolis.\textsuperscript{44}

If the concentrated dairy industry is viewed as whole, it would be one of the state’s largest greenhouse gas emitters. Even just looking at large dairies with over 1,000 AU, there are 95 such facilities in the state, housing a total of 269,770 AU of dairy cattle.\textsuperscript{45} Together these large dairies produce roughly 4,601,160 metric tons of CO\textsubscript{2} equivalent GHGs a year,\textsuperscript{46} which

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{40} Id.\textsuperscript{.}
\item \textsuperscript{41} 3,983 dairy cows at 158.7 kg methane = 632,102.1 kg methane via enteric fermentation. 3,983 dairy cows at 137 kg methane = 545,671 kg methane via manure management practices. 645 meat or other cattle at 137 kg methane = 37,926 kg methane via enteric fermentation. 645 meat or other cattle at 2.4 kg methane = 1,548 kg methane via manure management practices. See Wolf et al., supra.
\item \textsuperscript{44} U.S. EPA, GHG Reporting Program Data Sets, available at .https://www.epa.gov/ghgreporting/ghg-reporting-program-data-sets.
\item \textsuperscript{45} Data derived from state GIS information.
\item \textsuperscript{46} This estimate assumes that the Daley Farms profile of dairy cows, heifers, and calves is representative of these large dairies. 269,770 AU of dairy cattle is equivalent to about 45 operations similar to Daley Farms’ 6,000 AU proposal.
\end{itemize}
\end{footnotesize}
would make these dairy farms the #3 emitter of GHGs in the state, just below the Sherco and Boswell coal fired power plants.

Despite being a significant emitter by itself, and despite being part of an industry that cumulatively contributes more greenhouse gases than any other industry besides coal-fired electricity, the EAW contains no analysis of greenhouse gas emissions whatsoever. Question 6 of the EAW summarizes many other air emissions, including odors, hydrogen sulfide, ammonia, and dust, but no estimates of CO2, methane or nitrous oxide emissions. This omission is notable, for in Minnesota, agriculture is the third largest source of greenhouse gases.47 The failure to account for these impacts, both for the individual project and for the cumulative emissions of comparable projects, violates MAPA.48

B. The EAW relies on out-of-date rainfall data

Animal feedlots or manure containment areas are required to meet the effluent limits for five-day biochemical oxygen demand of 25 mg/L 49 unless it falls under the conditions for phosphorus effluent limits from existing facilities as specified in Minn. Rule 7053.0255. These effluent limits apply to stormwater leaving the facility as well as other treated and untreated effluent. These effluent limits do not apply, though, should the animal feedlot or manure storage areas overflow due to rainfall if the facilities are designed, constructed, and operated:50

- to meet effluent limits for rainfall events less than or equal to a 25-year, 24-hour rainfall event for that location; or
- to collect and contain the runoff from a 25-year, 24-hour rainfall event for that location.

48 See Pope Cty. Mothers v. Minnesota Pollution Control Agency, 594 N.W.2d 233 (Minn. Ct. App. 1999); CARD, 713 N.W.2d at 829.
49 Minn. R. 7053.0305 subp. 2(A).
50 Minn. R. 7053.0305, subp. 2(B).
The rainfall depth used in designing an animal feedlot for a 25-year, 24-hour rainfall event is the amount of rainfall over 24-hours that on average will be exceeded only every 25-years. Similarly, it is a depth over 24-hours that has a 1/25 chance of being exceeded in any given year.

The EAW for the Daley Farms expansion states that the proposed facility will be designed to withstand a rainfall event of 5.4 inches. This is lower than the median 25-Year, 24-hour rainfall event of 5.57 inches from the NOAA Atlas-14\textsuperscript{51} for the Daley Farms.\textsuperscript{52}

Unfortunately, the NOAA Atlas-14 is an outdated and insufficient resource to use for designs to prevent the overflow and discharge of raw manure into nearby waterways. Atlas-14 provides precipitation frequency estimates for durations of 5-minutes through 60-days at average recurrence intervals of 1-year through 1,000-year for eleven Midwestern states. It uses data from stations across Minnesota, yet the estimates for Southeast Minnesota do not incorporate data newer than 2011.\textsuperscript{53}

The increased precipitation from anthropogenic climate change has begun to accelerate in recent years, but the rainfall data relied on by the EAW does not take this acceleration into account. As an illustration that the rainfall patterns in the region around the Daley Farm are shifting, annual rainfall measured at the Winona Dam 5A weather station shows increasing annual rainfall due to climate change. See Figure 1. This trend is accelerating for extreme weather events as well. Increased storm intensity can appear as increased depth of a given type of rainfall event or as a greater frequency of heavy rainfall events. These events can have highly


\textsuperscript{53} Id.
localized effects, and Southeast Minnesota in particular has likely experienced the wettest six years on record since 2011. These events are not included in the Atlas-14 modeling. Designs for the Daley Farms derived from Atlas-14 will therefore be undersized for their stated purpose.

**Figure 1: Total annual precipitation as measured at the Winona Dam 5A Weather Station since 1941**

![Graph showing total annual precipitation at Winona Dam 5A Weather Station from 1940 to 2020.](image)

Knowing that even the most up-to-date resources like Atlas-14 are already out-of-date due to the quickly changing climate, many engineers compensate by using rainfall depths at or near the upper 90% confidence interval. That means that using the given dataset, there is only a 5% chance that real life rainfall depth, at the specified frequency, will exceed the modeled upper 90% confidence level. Compare this to a greater than 50% likelihood that rainfall depths will exceed the estimated depth currently used in Daley Farm designs. Since it is known that real life rainfall depths will be higher than those modeled in Atlas-14 and given the potential impacts of the uncontrolled release of manure, it is warranted to use the upper 90% confidence interval for

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54 Personal communication with Kenneth Blummenfeld, Senior Climatologist, Minnesota State Climate Office.

55 Years with missing data are not shown. The trend line is a linear fit of the data showing a long-term increase in the annual rainfall near the Daley Farm.
designs at the Daley Farms. The Atlas-14 upper 90% confidence interval at the Daley Farms is 7.31 inches.\textsuperscript{56}

This increased precipitation has a direct role on the environmental impacts that can be reasonably expected to occur from the project.\textsuperscript{57} Overall, the precipitation an area receives in wetter years will roughly double the nitrate leaching losses to groundwater.\textsuperscript{58} Climate, therefore, “has a significant effect on nonpoint source N loadings to Minnesota groundwater,” and yet the EAW concludes no analysis whatsoever of this effect.\textsuperscript{59}

C. The EAW Fails To Consider The Significant Impacts To The Environment And Current Wells Posed By Daley’s Proposed New Irrigation Wells.

The Daley Farms proposes to expand its current water use by over three times. The current wells used for livestock watering will continue to be used, and two additional wells will be constructed and permitted.

The current wells used by the Daley Farms are permitted for a combined 60 million gallons per year (“MGY”) and have a combined reported usage of 23.4 MGY to 35 MGY since they were installed in 2010.\textsuperscript{60} Both current wells draw from the Wonewoc Aquifer.\textsuperscript{61} Permission from the MN DNR will be required if modifications are to be made to the current wells to

\textsuperscript{56} See Atlas-14 output for Daley Farms, attached as Exhibit 3.
\textsuperscript{57} Minn. R. 4410.1700, subp. 6.
\textsuperscript{58} D.J. Mulla & J. Galzki, \textit{Nutrient Sources and Pathways to Groundwater in Minnesota} at slide 14, available at www.gwpc.org/sites/default/files/event-sessions/Mulla_DavidFINAL.pdf.
\textsuperscript{59} Mulla & Galzki, \textit{supra} at 29.
\textsuperscript{60} Based upon publicly available information in the Minnesota DNR Permitting and Reporting System (MPARS).
\textsuperscript{61} MN DNR water appropriations Permit Number 2010-0352 for the Daley Farms includes Well Number 591916 and Well Number 678949. Well Number 591916 has a Permit Total Volume of 30 MGY and is 715 feet deep. Well Number 678949 also has a Permit Total Volume of 30 MGY and is 720 feet deep. Both are permitted for Livestock Watering and draw from the Wonewoc Aquifer.
increase the pumping capacity. The two proposed new wells will be located near the current wells and at similar depths. The expected aquifers they will use are the Jordan, St. Laurence, and Tunnel City Aquifers.

Water use of greater than 1 MGY or 10,000 gallons per day requires a water use permit from the MN DNR in addition to a permit for drilling the well from the MDH. The water use permit is not granted at the same time as the well permit but later after well testing and other conditions of the permit are met that require the well to have already been constructed. Instead, the MN DNR issues a preliminary evaluation of the water use permit at the time the well permit is issued by the MDH. The preliminary evaluation gives the well owner an early indication of the likelihood that the well will cause harm to ecosystems, degrade water quality, or significantly reduce the public water supply. The Daley Farms received a preliminary approval letter from the MN DNR on October 30, 2017. As noted above, this approval only allows drilling of a well; it does not authorize the well owner to appropriate water.

Among the criteria MN DNR must consider in evaluating a water use permit is interference with other wells. Well interference is determined from analysis, modeling, and, primarily, by an aquifer test. In an aquifer test, the water is drawn down at the maximum requested pumping rate over time to determine if there will be impacts to other wells or surface waters. Testing and analysis necessarily occur after the well is drilled because many factors that may contribute to interference with surrounding wells are unknown beforehand. These factors

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63 The Tunnel City and Wonewoc Aquifers are related and synonymous in this context.
64 Minn. R. 6115.0620.
65 Minn. Stat. § 103I.205.
66 Minn. Stat. § 103G.287, subd. 1(c).
67 EAW Attachment R.
69 Test pumping does not require a water appropriations permit Minn. R. 6115.0620.
include the local rate of movement of groundwater, which aquifers the well will draw from once drilled, and the local interconnectedness of different aquifers between each other and with surface water. The results of an aquifer test are not included in the EAW.

The EAW lists three wells of potential concern for interference; however, there are additional wells that could also be impacted. The MDH report “Southeast Minnesota Domestic Well Network 2016 Data Report” issued in 2016 surveyed 206 domestic wells across Southeast Minnesota. The report indicates that in the Lewiston/Utica area surrounding the Daley Farm, the aquifers commonly used by domestic wells are the St. Peter-Prairie du Chien-Jordan aquifers and the Tunnel City – Wonewoc aquifers. The report also finds that, in general, the St. Peter-Prairie du Chien-Jordan aquifers in the Lewiston/Utica area have high vertical recharge rates while the Tunnel City-Wonewoc aquifers have low vertical recharge rates. Low vertical recharge rates indicate that there is likely little interaction between the two aquifer layers. It does not, however, mean that there aren’t localized interactions between the aquifers (e.g., cracks or fissures in the rock layers separating the aquifers) that would contribute to interference with wells drawing from a different aquifer than the proposed wells.

The Minnesota Well Index lists three wells within the same Township Section as the proposed well. See Table 1. These wells are the most likely to be impacted by the addition of a new high volume well as proposed by Daley Farms. Two of the existing wells are listed as using the Prairie Du Chien-Jordan or Prairie Du Chien aquifers. The aquifer used by the third is unknown, but it is likely, based upon the depth of the well, also drawing from the Prairie Du Chien aquifer.

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70 Minnesota Dep’t of Health, *Minnesota Well Index*, available at https://mnwellindex.web.health.state.mn.us/.
Table 1: Wells listed in the Minnesota Well Index located in the same Township Section as the Daley Farm.

<table>
<thead>
<tr>
<th>Well Number</th>
<th>Well Name</th>
<th>Type/Use</th>
<th>Status</th>
<th>Year</th>
<th>Depth</th>
<th>Aquifer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1000014074</td>
<td>BIVER, WAYNE –</td>
<td>Unknown</td>
<td>Active</td>
<td>Unknown</td>
<td>300</td>
<td>Prairie Du Chien-Jordan</td>
</tr>
<tr>
<td></td>
<td>RINTER</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1000014062</td>
<td>ROHRER, ROSLYN</td>
<td>Unknown</td>
<td>Active</td>
<td>Unknown</td>
<td>270</td>
<td>Unknown</td>
</tr>
<tr>
<td>100021848</td>
<td>RUPPRECHT</td>
<td>Unknown</td>
<td>Active</td>
<td>2018</td>
<td>120</td>
<td>Prairie Du Chien Group</td>
</tr>
</tbody>
</table>

The likelihood of well interference decreases the further an existing well is from the proposed well, however, the extent of the potential inference is unknown until an aquifer test is conducted. There are 32 wells in the Minnesota Well Index located in adjacent Township Sections to the Daley Farm.\(^{71}\) Of the 32 wells listed, 18 are domestic wells used for drinking water, and other household uses, and 12 are of unknown use. Most wells in the adjacent Sections to the Daley farm draw from the Prairie Du Chien – Jordan aquifer with most of the newer wells going deeper into the Tunnel City-Wonewoc aquifer (formerly known as the Franconia-Ironton-Galesville sandstone).\(^{72}\) It is quite possible that domestic wells will increasingly draw from the Tunnel City-Wonewoc aquifer as contamination of shallower groundwater becomes more pervasive. The EAW does not contain information necessary to evaluate the potential impacts on these wells.

The five high capacity wells in the vicinity of the Daley Farms also must be considered both because they may be interfered with by the proposed new wells and because they may have impacts on surrounding wells, aquifers, and surface waters that will be compounded by any new high capacity wells.\(^{73}\) Many of the existing water use permits rely on the same aquifers the new wells at the Daley Farm are expected to draw from which increases the likelihood of both well

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\(^{71}\) See Table 3, *Wells Listed in the Minnesota Well Index Located in Adjacent Township Sections to the Daley Farm*, attached as Exhibit 4.

\(^{72}\) This is consistent with the regional findings in “Southeast Minnesota Domestic Well Network 2016 Data Report” previously referenced.

\(^{73}\) See Table 4, *Groundwater Appropriations from the MPARS System Within Five Miles of the Daley Farm*, attached as Exhibit 5.
interference and cumulative adverse impacts. The EAW does not present information sufficient to determine the extent of the impact on surrounding public drinking water wells or to determine the cumulative impacts.

The MN DNR can issue water use permits only if “the proposed use will not harm ecosystems.” The preliminary well assessment states that the proposed wells present concerns that it will impact:

- An unnamed trout stream tributary to the Whitewater River,
- Rush Creek, a DNR designated trout stream, and
- Several non-DNR Protected Streams near the proposed well.

DNR also noted that Wilsons’ Phalarope, a State Species of Concern, was documented 1.9 miles from the site of the proposed wells. The EAW, however, does not present information sufficient to determine the extent of the impact on these surface waters.

The MN DNR is also required to consider the long-term impacts of water use permits. Minn. Statute § 103G.287, subd. 5 states:

The commissioner may issue water-use permits for appropriation from groundwater only if the commissioner determines that the groundwater use is sustainable to supply the needs of future generations.

A determination of the sustainability of the water supply necessitates consideration of current uses and the proposed use relative to the rate the affected aquifers will recharge or refill. The EAW does not provide the information needed to determine the impact of current uses on groundwater in the region or project the impact of the proposed use.

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74 Minn. Stat § 103G.287, subd. 5.
75 DNR Well Construction Preliminary Assessment; Tracking No. 2017-4001; T106N-R9W-S16 SENW; Winona County.
MN DNR maintains a network of observation wells across the state to track groundwater levels in key aquifers. No observation wells are located near the Daley Farm, and those located closest to the Daley Farm do not provide sufficient information to determine the current sustainability trends or the potential impact the Daley wells may have on water availability in the area. See Table 2. The Observation wells shown on Table 2 are located closest to the Daley Farm. Few of the Observation Wells are currently monitoring the same aquifers the proposed wells are likely to impact, and those that do are too new to indicate the long-term trends in water availability in the aquifer.

The MN DNR can require new water use applicants to install observation wells or other monitoring equipment to monitor the impacts of those appropriations.\(^{76}\) Without such observation wells or modern technology that allows for automatically measuring and reporting the static water level of active wells, there is not enough information to determine the impact that the Daley Farms is having on groundwater sustainability in a region with a currently insufficient network.

**Table 2: Observation wells located nearest to the Daley Farm.**

<table>
<thead>
<tr>
<th>Obs. Well Number</th>
<th>Name</th>
<th>Period of Record</th>
<th>Depth</th>
<th>Status</th>
<th>Aquifer</th>
</tr>
</thead>
<tbody>
<tr>
<td>85000</td>
<td>MTPL at Saint Charles ST. CHARLES 1</td>
<td>1973-10-26 to 1982-9-24</td>
<td>175 (drilled to 60 in 1892 then backfilled)</td>
<td>Sealed</td>
<td>multiple</td>
</tr>
<tr>
<td>85003</td>
<td>CJDN in Utica; Whitewater WMA</td>
<td>2016-10-25 to 2018-9-25</td>
<td>65</td>
<td>Active</td>
<td>Jordan</td>
</tr>
<tr>
<td>85002</td>
<td>CMTS at Winona, Winona #7</td>
<td>2010-1-19 to 2011-8-31</td>
<td>51</td>
<td>Sealed</td>
<td>Mt. Simon</td>
</tr>
<tr>
<td>23002</td>
<td>CMTS at Rushford Village, Peterson Fish Hatchery</td>
<td>2001-10-25 to 2015-2-28</td>
<td>43</td>
<td>Not Actively Read</td>
<td>Mt. Simon</td>
</tr>
<tr>
<td>55010</td>
<td>OGAL n Marion; Marion Rest Area</td>
<td>2016-10-25 to 2018-8-23</td>
<td>50</td>
<td>Active</td>
<td>Prosser</td>
</tr>
<tr>
<td>23004</td>
<td>OPDC at Chatfield, Mill Park Pdc</td>
<td>2012-12-6 to 2018-10-18</td>
<td>48.3</td>
<td>Active</td>
<td>Prairie du Chien</td>
</tr>
<tr>
<td>23001</td>
<td>OPCJ nr Chatfield, FILMOR COUNTY SHOP</td>
<td>1989-11-29 to 2012-11-29</td>
<td>84</td>
<td>Not Actively Read</td>
<td>Prairie du Chien</td>
</tr>
</tbody>
</table>

\(^{76}\) Minn. Stat. § 103G.282.
The Daley Farms EAW states that the proposed project will include drainage tile around the manure lagoons. However, the EAW does not include a plan to apply for a water use permit or state why such a permit is not required. Minn. Rule 6115.0620 allows for an exception for agricultural field tile but does not allow for an exception in the case of dewatering. The project proposal and EAW need to state explicitly why a permit is not required under Minn. Rule 6115.0620 (e.g., the withdrawal is less than 10,000 gallons per day and less than 1 MGY) or include the permit application in the project proposal. If a permit(s) is required for dewatering the additional requirements of Minn. Rule 6115.0710 must also be met, including showing that the “excess water can be discharged without adversely affecting the public interest.” This assurance includes that the capacity of the manure lagoons will not be exceeded by the of the discharged water or that the stormwater holding basins will not discharge untreated manure to waterways due to the dewatering discharge.

Based on this information, the lack of information in the EAW, and on the information that MCEA has gathered that suggests that additional wells and resources may be interfered with if this proposed water appropriation is allowed to proceed, MPCA has insufficient information to make a “reasoned decision about the potential for, or significance of” impacts from this proposed project on groundwater.\textsuperscript{77} MPCA must therefore delay its decision or order an EIS.

VI. THE EAW DOES NOT CONTAIN ANY MEANINGFUL ASSESSMENT OF THE PROJECT’S COMPATIBILITY WITH APPROVED PLANS OF LOCAL UNITS OF GOVERNMENT

Minnesota Rule 4410.1200 requires each EAW to include an “assessment of the compatibility of the project with approved plans of local units of government.”\textsuperscript{78} The Daley Farms EAW notes that the project as proposed is not consistent with local ordinances, which

\textsuperscript{77} Minn. R. 4410.1700, subp. 2a.
\textsuperscript{78} Minn. R. 4410.1200 (H).
prohibit feedlots in excess of 1,500 AU.\textsuperscript{79} In addressing this inconsistency, the EAW perfunctorily observes that “because the Project will increase Daley’s operations from 2,275.2 AU to 5,967.7 AU, Daley must apply for and receive a zoning variance from Winona County for the Project.”\textsuperscript{80} No other analysis or explanation is given, despite the regulatory directive to provide an assessment.

This omission is critical, for the local ordinances were specifically crafted to address and prohibit the situation present here, where a large feedlot that was “grandfathered in” proposes to expand even further. The Winona County feedlot ordinance was adopted to balance the County’s competing interests in “maintain[ing] a healthy agricultural community within the County while ensuring that farmers properly manage animal feedlots and animal wastes to protect the health of the public and the natural resources of Winona County.”\textsuperscript{81} To this end, the Zoning Ordinance allows nonconforming, pre-existing animal feedlots such as Daley Farms to continue to operate, but only as long as the number of animal units does not increase.\textsuperscript{82} The Ordinance’s provisions on non-conforming uses supplement this express intent, noting that “it is the intent of this section that all non-conformities shall be gradually eliminated and eventually brought into conformity.”\textsuperscript{83} Even more specifically, the Ordinance expressly forbids non-conforming uses of land from enlarging or increasing.\textsuperscript{84}

\begin{flushleft}
\textsuperscript{79} EAW at 7.
\textsuperscript{80} \textit{Id}.
\textsuperscript{81} Winona County, Minnesota, Zoning Ordinance § 8.1.1.
\textsuperscript{82} \textit{Id}. § 8.2.1 (“A feedlot that is non-conforming because of excessive animal-unit numbers, which exists at the time of adoption of this Ordinance, may continue, if the number of animal units does not increase.”).
\textsuperscript{83} \textit{Id}. § 3.2.1.
\textsuperscript{84} \textit{Id}. § 3.2.3 (“A lawful, non-conforming use shall not be enlarged, but may be continued at the same size and in the same manner of operation as it existed on the date it became legally non-conforming except as hereinafter specified.”).
\end{flushleft}
The express intent of the Zoning Ordinance to restrict feedlots to a maximum size and to eventually eliminate pre-existing nonconformities with this ceiling is the direct implementation of express policies in the 2014 Comprehensive Plan. The proposed expansion would be built in an area known for its karst topography, and the EAW confirms that many manure application sites contain karst features such as sinkholes, caves, and disappearing springs.\textsuperscript{85} The County Comprehensive Plan specifically addresses these circumstances, observing that “[b]ecause water moves very quickly in limestone formations and sinkholes with little or no purification by filtration, care must be used in preventing pollution in these areas. As a result, intense agricultural operations such as feedlot or solid waste disposal sites should be carefully regulated or prohibited in karst areas.”\textsuperscript{86} To address these concerns, the Plan states that the policy of the County is to “[c]arefully control the location and size of feedlots and other animal confinement areas in the County to minimize pollution and nuisance problems using acreage for manure spreading to determine carrying capacity and develop a fair and equitable permit system.”\textsuperscript{87}

The specific language of this policy referencing “carrying capacity” is especially worthy of notice. Feedlot manure is expensive to transport, and virtually all of a feedlot’s manure is applied to fields within 3-5 miles of the facility itself. In areas of high concentration of feedlot animals, then, the local fields can become effectively saturated with manure. In Utica Township, where the expansion would be built and the manure applied, almost \textit{half} of private wells already test over the health limit of 10 mg/L nitrate.\textsuperscript{88} The public water supply for Utica was already

\textsuperscript{85} EAW at 10.
\textsuperscript{87} Comp. Plan at 18.
contaminated with nitrate at levels “far exceeding the drinking water limit,” forcing the Township to drill a deeper well that also consistently shows elevated concentrations of nitrate, but at levels below the limit.\textsuperscript{89} The primary source of this contamination is from the application of commercial fertilizers and manure to croplands.\textsuperscript{90}

Winona County's Comprehensive Plan is clear that the policy of the County is to “maintain groundwater nitrate level at a point which is equal to or less than the drinking water standard of 10 parts per million or in accordance with State Standards.”\textsuperscript{91} An “assessment of the compatibility of the project” with the comprehensive plan must therefore contain some assessment of how the project as proposed would possibly be consistent with these clearly stated policies.

Likewise, Winona County the may not issue a Conditional Use Permit (CUP) for the Daley Expansion if it does not comply with the County’s Comprehensive Plan.\textsuperscript{92} Winona County had denied conditional use permits for smaller farms (800 AU) in the same area and the Court of Appeals has upheld this denial based on the comprehensive plan, in particular the requirement that “intense agricultural uses such as feedlots . . . should be carefully regulated or prohibited entirely” in areas consisting of Karst geology where the groundwater is very susceptible to pollution.\textsuperscript{93} The Court of Appeals further found that Winona County had appropriately denied the 800 AU farm discussed above due to the significant risk to water quality due the number of

\begin{flushleft}
\textsuperscript{89} EAW at 18.
\textsuperscript{90} MRWW WRAPS at 36.
\textsuperscript{91} Comp. Plan at 34.
\textsuperscript{92} Id. at § 5.5.4.3. Winona County also must provide a conditional use permit (CUP). EAW at 20. When deciding whether to grant a CUP, the board should consider the effect of the Daley Expansion on the health, safety and general welfare of occupants of surrounding lands. Comp. Plan at § 5.5.4.3.
\textsuperscript{93} Anderson v. Winona County board of Commissioners, Unpublished Opinion Minnesota Court of Appeals Case No. C2-00-537, December 5, 2000.
\end{flushleft}
sinkholes in the area; location in the “High Probability” sinkhole area; concern for the City of Utica wells. Daley Farms is similarly close to the City of Utica and located in an area with “high” sinkhole probability.

VII. THE EAW LACKS INFORMATION ABOUT DALEY’S COMPLIANCE HISTORY AND ASSESSMENT OF WHETHER ONGOING NONCOMPLIANCE WITH NPDES PERMIT REQUIREMENTS AND REMEDIATION OF POLLUTION HAZARDS SHOWS A RISK SIGNIFICANT ENVIRONMENTAL RISKS NOT BEING ADDRESSED.

The Daley Farms poses significant and ongoing risks to the environment by failing to timely remedy pollution hazards at its facilities and failing to meet the requirements of its NPDES permit and MMP.

In 2004, MPCA issued a notice of violation and compliance schedule to persuade Daley Farms to correct pollution hazards posed by bubbles and liner issues in its four manure lagoons. Since 1999, Daley had been aware of these large bubbles and knew that the bubbles indicated something was wrong with its basins. And by 2000 or 2001 Daley Farms believed that the basin liners had been “compromised.” In 2002, MPCA investigated an anonymous tip regarding a large bubble in the basin that reached nearly 30 feet in diameter, and Daley farms “admitted that it was more likely than not that the MPCA would require it to rel ine all four basins.” Yet it appears that as of October 2009, not all the work had been done yet to remedy this pollution hazard in at least one of the basins.

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94 Id.
96 Letter to Ben Daley dated November 19, 2004 and Schedule of Compliance between Daley Farms of Lewiston, LLP and MPCA, attached as Exhibit 7.
98 Id.
99 Inspection Form, October 6, 2009, attached as Exhibit 8.
In October 2009, MPCA notified Daley Farms that it was illegally operating two open feedlots and that there was a potential for contaminated leachate and feed pad runoff to reach surface waters.\(^{100}\) But as of the time the current Draft permit was proposed, Daley had not yet remedied those issues, despite a Compliance Schedule in Daley Farm’s 2010 NPDES permit requiring feed storage runoff controls and open lot runoff controls by January 1, 2014.\(^{101}\) Instead of requiring compliance with that deadline, it appears that MPCA extended the timeline for compliance when it issued Daley Farm’s a new NPDES permit in 2016.\(^{102}\) The 2016 Compliance Schedule required the feed pad runoff leachate collection system to be complete by October 1, 2017, open lot runoff controls constructed at Site 1 by October 1, 2019, and open lot runoff control completed at Site 7 by October 1, 2020.\(^{103}\) And rather than requiring Daley Farms to actually meet these compliance dates for open lot runoff controls MPCA now proposes to allow Daley Farms to continue to operate these pollution hazards for yet another year. The current draft permit does not require Daley to construct the open lot runoff controls, until October 1, 2021.\(^{104}\) MPCA has provided no justification for this extended compliance schedule in its permitting documents.

Finally, Daley Farms has not kept up with its permit commitments pertaining to land-spreading of liquid manure. In 2013, MPCA notified Daley Farms that its land application records showed Daley had applied liquid manure at rates 20% higher than allowed by rule.\(^{105}\) In 2015, Winona County became aware that Daley Farms had not completed a manure nutrient analysis, which is essential to determining proper application rates, for more than four years, as

\(^{100}\) Id.
\(^{101}\) 2010 Daley Farms NPDES permit, at III.B.4.
\(^{102}\) 2016 Daley Farms NPDES permit, at 3.1.1.3.
\(^{103}\) Id.
\(^{104}\) Draft Permit, at 3.2.1.4 and 3.2.1.5.
\(^{105}\) Letter from MPCA to Ben Daley dated December 26, 2012, attached as Exhibit 9.
required by Minnesota Rule 7020.2225, subp. 2.\textsuperscript{106} And more recently, MPCA has noted that Daley Farms had not supplied appropriate records of the dates and amount of manure applied by the facility.\textsuperscript{107}

\textbf{VIII. CONCLUSION}

For the reasons given above, MPCA must order an EIS. The EAW for the Daley Expansion simply lacks sufficient information to support a finding that the project does not have the potential to cause significant environmental impacts. Therefore an EIS must be ordered.\textsuperscript{108} While this alone compels a decision to require an EIS, at the very least the lack of complete information supports the need to either “make a positive declaration and include within the scope of the EIS appropriate studies to obtain the lacking information” or “postpone the decision on the need for an EIS, for not more than 30 days or such other period of time as agreed upon by the RGU and proposer, in order to obtain the lacking information.”\textsuperscript{109} For all of the foregoing reasons, an EIS is needed to prevent this facility from causing significant environmental impacts that threaten water quality and public health.

Respectfully submitted,

\textit{/s/ Betsy Lawton}

Betsy Lawton

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\textsuperscript{106} Letter from Winona County to Ben Daley dated September 18, 2015, attached as Exhibit 10.

\textsuperscript{107} MPCA Feedlot NPDES/SDS Permitted Facility Inspection Checklist re Daley Farms of Lewiston LLP 1 dated September 6, 2016, attached as Exhibit 11.

\textsuperscript{108} Minn. R. 4410.2000, subp. 3, 4410.1700, subp. 1.

\textsuperscript{109} Minn. R. 4410.1700, subp. 2a.
Comment on
Daley Farms of Lewiston, LLP: 2018 Dairy Expansion - EAW (p-ear2-143i)

By
E. Calvin Alexander Jr.
Morse Alumni Professor Emeritus
Earth Sciences Department
University of Minnesota
116 Church Street SE
Minneapolis, MN 55455

Introduction:
The proposed Daley Farms expansion, if approved and constructed, will create a significant environmental risk to the Lewiston area. The site is surrounded by many sinkholes. Many of the wells in the first two aquifers under the area are already at or above the nitrate-nitrogen drinking water standard. The Lewiston Waste Water Treatment Lagoon catastrophically collapsed (Jannik et al., 1992). The failed lagoon is about 1.8 miles southeast of the Daley Farms site -- at approximately the same elevation and in the same hydrogeologic stratigraphic environment.

Mapped Sinkhole:
There is a mapped sinkhole, MN85:D00422 (hereafter D422), in the Minnesota Karst Features Data base that is about 450 feet from the existing manure storage lagoons at the Daley Farm operations. The feature is readily visible on historic air photos and is shown as a pond on the USGS topo sheet of the area. “The Daley Family describes the feature as a landfill that was miss-classified as a sinkhole in the 1980s and they do not recall any subsidence during the years they have lived on the farm.” (Dogwiler, 2015, p. 6) That feature was later filled as part of a grassed water way construction. Two Electrical Resistivity Imaging lines (ERI) were conducted at the site by Professor Toby Dogwiler (then at Winona State University -- currently at Missouri State University, Springfield, MO) in April 2015. Professor Dogwiler’s ERI specifically ran two ERI lines across the mapped location of D422. Those two lines are reproduced below as Professor Dogwiler’s Figures 12 and Figure 11.

Figure 12, the ERI line down the axis of the grassed waterway, shows an approximately 30 m deep pit in the bedrock surface at D422’s location (shown by the added dashed rectangle in Figure 12). Professor Dogwiler interpreted this apparent bedrock pit as an artifact of the disturbed and compacted materials used to fill the depression before and during the construction of the grassed waterway. Last week at the 2018 Geological Society of America’s annual meeting in Indianapolis, IN, I discussed the Daley Farms ERI study with Professor Dogwiler. He quickly reviewed his interpretation and said that he was comfortable with his interpretation of the line - - but would check with a couple of his ERI mentors to see what they felt about his interpretation.
Professor Dogwiler, however, was not aware of the EAW for an expansion to almost 5000 dairy cows. In view of that proposal, given that development he recommended that the ERI results from his lines 5 and 6 below should be ground truthed with deep drilling and/or deep back hoe excavations. I share that recommendation and it was supported by two karst hydrogeologists who routinely use ERI to characterize sites in karst who looked at the Daley Report at my request.

**ERI Images of D422**

Reproduced below are the two ERI lines crossing mapped sinkhole D422 from Dogwiler’s (2015) Daley Farms study. The area of the mapped sinkhole is outlined in the black dashed rectangle. Dogwiler’s Fig. 12 (line 6) ran down the axis of the grassed waterway through D422. This figure shows the prominent, roughly 30 m deep, apparent pit in the surface of the red bedrock. This is the feature Professor Dogwiller interpreted as an artifact of the compacted fill near the surface.

Professor Dogwiller’s Figure 11 (line 5) below was run across the location of D422 perpendicular to line 6. The near surface, red, compacted fill in not evident in this ERI line but there is still a clear, roughly 10 m deep depression in the surface of the bedrock -- consistent with D422 being a filled sinkhole.

![ERI Image of D422](image-url)
Recommendation:

Given the prominent karst features all around the Daley Farms site, the nearby catastrophic collapse of the Lewiston Waste Water Treatment Lagoon on similar karst stratigraphy, the documented growing nitrate pollution of Lewiston’s wells and many local wells, and the enormous size of this proposed CAFO this facility should not be permitted at this site without a full scale EIS.

If this EAW is approved it should be contingent on a deep excavation of the D422 feature to check Professor Dogwiller’s interpretation. Simple soil borings to “refusal” will not be sufficient. Given that the Daley’s used the site as a landfill before it was converted to a grassed waterway, there are probably metal or
demolition debris in the fill that will stop a soil boring. An extensive, deep excavation of D422 will be necessary to document what the feature actually is.

If it is a filled sinkhole, the expansion should not be permitted.

**References:**

**NOAA Atlas 14, Volume 8, Version 2**

**Location name:** Lewiston, Minnesota, USA*

**Latitude:** 43.9843°, **Longitude:** -91.9038°

**Elevation:** 1200.11 ft**

* source: ESRI Maps
** source: USGS

**POINT PRECIPITATION FREQUENCY ESTIMATES**
Sanja Perica, Deborah Martin, Sandra Pavlovic, Ichani Roy, Michael St. Laurent, Carl Thypaluk, Dale Unruh, Michael Yekta, Geoffrey Bonnin
NOAA, National Weather Service, Silver Spring, Maryland

**PF tabular | PF graphical | Maps & aerials**

### PF tabular

### PDS-based point precipitation frequency estimates with 90% confidence intervals (in inches)

<table>
<thead>
<tr>
<th>Duration</th>
<th>Average recurrence interval (years)</th>
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<td>5-min</td>
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<tr>
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1 Precipitation frequency (PF) estimates in this table are based on frequency analysis of partial duration series (PDS).
Numbers in parenthesis are PF estimates at lower and upper bounds of the 90% confidence interval. The probability that precipitation frequency estimates (for a given duration and average recurrence interval) will be greater than the upper bound (or less than the lower bound) is 5%. Estimates at upper bounds are not checked against probable maximum precipitation (PMP) estimates and may be higher than currently valid PMP values.

Please refer to NOAA Atlas 14 document for more information.

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EXHIBIT 4
Table 3: Wells listed in the Minnesota Well Index located in adjacent Township Sections to the Daley Farm.

<table>
<thead>
<tr>
<th>Well Number</th>
<th>Well Name</th>
<th>Type/Use</th>
<th>Status</th>
<th>Year</th>
<th>Depth</th>
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EXHIBIT 5
Table 4: Groundwater appropriations from the MPARS system within five miles of the Daley Farm.

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<th>Permit Number</th>
<th>Permit Total Volume (mgy)</th>
<th>Landowner</th>
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<th>Aquifer</th>
<th>Use Type</th>
<th>Use in 2017 (mg)</th>
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<td>715</td>
<td>Wonewoc</td>
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</tr>
</tbody>
</table>
EXHIBIT 6
EXHIBIT 7
November 19, 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ben Daley
Daley Farms of Lewiston, LLP
18774 Highway 14
Lewiston, MN 55952

RE: Executed Schedule of Compliance / Failure to Comply with Part 7, subparts e and f

Dear Mr. Daley:

The executed Schedule of Compliance (Agreement), dated September 15, 2004, required Daley Farms of Lewiston, LLP, (Regulated Party), to submit to the Minnesota Pollution Control Agency (MPCA) an updated manure management plan and a plan to address the pollution hazards created by the liquid manure storage basins known as basin numbers 1, 3, and 4. The deadline to submit these items was within 60 days of the execution of the Agreement or November 15, 2004. To date, the Regulated Party has not submitted either of these items.

Part 8, subpart b of the Agreement states that if the Regulated Party fails to comply with the requirements in Part 7, subparts d – f of the Agreement, the Regulated Party will pay a penalty in the amount of $150 per requirement for each day of failure. Penalties shall accrue from the date that the Regulated Party was to have fulfilled the requirement until the Regulated Party fulfills the requirement.

Part 7, subpart e of the Agreement required the Regulated Party to submit an updated manure management plan to the MPCA. The plan does not have to be submitted at this time. The liquid manure storage basin known as basin number 2 is near completion and should soon be fully functional; therefore there will be no loss of manure storage going into the winter months. Penalties allowed by Part 8, subpart b of the Agreement shall not accrue.

Part 7, subpart f of the Agreement required the Regulated Party to submit a plan to address the pollution hazards created by basin numbers 1, 3 and 4, by November 15, 2004. The plan has not be received by the MPCA and therefore, penalties of $150 per day have accrued since November 15, 2004, and will continue to accrue through the date the Regulated Party fulfills the requirement.
Once the Regulated Party submits the plan required by Part 7, subpart f of the Agreement, the Regulated Party will receive written notice from the MPCA requesting payment of the penalty accrued for the non-compliance. The Regulated Party is required to pay the requested penalty within 30 days after receiving written notice that the penalty is due.

Please submit the plan required by Part 7, subpart f of the Agreement to Robert Kostinec at the MPCA’s Rochester Office; 18 Wood Lake Drive SE, Rochester, MN 55904.

If you have any questions about this letter or the Agreement, please contact me at (218) 846-0498. If you have question regarding the information that must be contained in the plan required by Part 7, subpart f of the Agreement, please contact Robert Kostinec at (507) 285-7305.

Sincerely,

Lisa M. Scheirer
Regional Division
Detroit Lakes Office

LMS:

cc: Michael Tiry, P.E., Tiry Engineering, Chippewa Falls, WI
    Douglas Boese, Attorney at Law, Dunlap & Seeger, P.A., Rochester
    Robert Kostinec, MPCA Rochester
    Jerry Hildebrandt, MPCA, Rochester
STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

IN THE MATTER OF: Daley Farms of Lewiston, LLP  SCHEDULE OF COMPLIANCE

Part 1. PARTIES. This Schedule of Compliance (“Agreement”) applies to and is binding upon the following parties:

a. Daley Farms of Lewiston, LLP (“Regulated Party”); and

b. The Minnesota Pollution Control Agency (“MPCA”).

Unless specified otherwise in this Agreement, where this Agreement identifies actions to be taken by the MPCA, the Commissioner or the Commissioner’s designees shall act on the MPCA's behalf.

Part 2. PURPOSE AND SCOPE OF SCHEDULE OF COMPLIANCE. The purpose of this Agreement is to resolve the alleged violations set out in Part 6 of this Agreement by specifying actions the Regulated Party agrees to undertake. By entering into this Agreement, the Regulated Party is settling a disputed matter between itself and the MPCA and does not admit that the alleged violations set out in Part 6 of this Agreement occurred. However, the Regulated Party agrees that the MPCA may rely upon the alleged violations set out in Part 6 as provided in Part 10 of this Agreement. Except for the purposes of implementing and enforcing this Agreement, nothing in this Agreement constitutes an admission by either Party, or creates rights, substantive or procedural, that can be asserted or enforced with respect to any claim of or legal action brought by a person who is not a party to this Agreement.

Part 3. AUTHORITY. This Agreement is entered under the authority vested in the MPCA by Minn. Stat. chs. 115 and 116.

Part 4. DEFINITIONS. Unless otherwise explicitly stated, the definitions in Minn. Stat. chs. 115, 115A, 115B, 115C, 116, 116B and in Minn. R. chs. 7000 to 7150 apply, as appropriate, to the terms used in this Agreement.

Part 5. BACKGROUND. The following is the background of this Agreement:
a. The Regulated Party is a Limited Liability Partnership and operates a 1,996 animal unit dairy facility located in the Section 16, Utica Township, Winona County, Minnesota, hereafter the "Facility."

b. Manure and process wastewaters produced at the Facility are stored in four liquid manure storage basins (Basins), each designed to be lined with 2.5 feet of compacted clay and 40 mil high density polyethylene (HDPE) material. For identification purposes, the Basins are known as Basin Numbers 1, 2, 3, and 4. The MPCA provided the Regulated Party the authorization to construct the Basins on November 17, 1999, with MPCA Feedlot Permit, MPCA-I 1748(A)R2.

c. On December 12, 2001, the Regulated Party was provided National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) Permit coverage under the State of Minnesota General Livestock Production Permit; Permit Number MNG440074 (Permit).

d. The Basins have formed bubbles beneath the HDPE liners. The bubbles have damaged the HDPE liners and therefore, the liners are not functioning as designed.

e. The Regulated Party has not yet repaired damage to the HDPE Basin liners with similar materials and installation techniques as required by the Regulated Party’s manure management plan (MMP) or replaced the HDPE liners with other materials.

Part 6. ALLEGED VIOLATIONS. The MPCA alleges that the Regulated Party has violated the following requirements of statute, rule and/or permit condition:

State of Minnesota General Livestock Production Permit NPDES/SDS Permit, Part 3.0, Prerequisite Plans for Submitting a Permit Application.

The following documents are required as part of the general permit application in accordance with Minn. R. ch. 7020, and are incorporated as enforceable requirements of the permit. ...

3.3. A manure management plan (MMP) in accordance with Minn. R. 7020.2225, subp. 1 and subp. 4.
The MPCA alleges that the Regulated Party has not replaced the HDPE liner from Basin Number 2 or investigated whether the integrity of the HDPE liners from Basin Numbers 1, 3, and 4 have been damaged from the bubbles, as described in the MMP submitted with the Regulated Party’s Permit application.

**Part 7. ** **REGULATED PARTY REQUIREMENTS.** The Regulated Party agrees to the following requirements:

a. Within 15 days of the execution date of the Agreement, the Regulated Party shall remove all manure and process wastewaters from Basin Number 2.

b. Within 15 days of the execution date of the Agreement, the Regulated Party shall discontinue use of Basin Number 2. No manure or process wastewaters shall be added to Basin Number 2 until the Basin has been re-constructed according to Minn. R. 7020.2100, and MPCA’s fact sheet titled, *Siting Manure Storage Areas in Minnesota’s Karst Region: State Requirements.*

c. Within 15 days of the execution date of the Agreement, the Regulated Party shall install a control device on the transfer pipe that leads from the barn to Basin Number 2, so that manure or processed wastewaters cannot be transferred from the barn to the Basin.

d. Within 60 days of the execution date of the Agreement, the Regulated Party shall close Basin Number 2 in accordance with Minn. R. 7020.2025, or submit to the MPCA for review and approval design plans and specifications for the reconstruction of Basin Number 2. The design plans and specifications must be prepared and submitted in accordance with Minn. R. 7020.2100, and MPCA’s fact sheet titled, *Siting Manure Storage Areas in Minnesota’s Karst Region: State Requirements.* Upon approval by the MPCA of the design plans and specifications, the design plans and specifications shall become an enforceable part of this Agreement and the Regulated Party shall implement each requirement and term in the design plans and specifications.

e. Within 60 days of the execution date of the Agreement, the Regulated Party shall submit to the MPCA for review and approval, an updated MMP. The updated MMP shall include a description of how manure and process wastewaters produced at the Facility will be managed due to the loss of storage from the unavailability of Basin Number 2. Upon approval by the MPCA, the MMP shall become an enforceable part of this Agreement and the Regulated Party shall implement each requirement and term in the MMP.
f. Within 60 days of the execution date of the Agreement, the Regulated Party shall submit to the MPCA for review and approval a plan to eliminate the pollution hazards created by Basin Numbers 1, 3 and 4. The plan shall be prepared by a professional engineer licensed in the state of Minnesota or a representative of the company that manufactured the Basin’s HPDE liners and shall include the following components: 1) methods that will be used to evaluate the structural integrity of the HDPE liners from Basin Numbers 1, 3 and 4; and 2) corrective or protective measures needed to restore the functionality of the liners from Basin Numbers 1, 3 and 4, as designed. Upon approval by the MPCA of the plan, the plan shall become an enforceable part of this Agreement and the Regulated Party shall implement each requirement and term in the plan.

Part 8. **PENALTIES FOR VIOLATIONS OF THIS AGREEMENT.**

a. If the Regulated Party fails to comply with requirements of Part 7, subparts a – c, of this Agreement, the Regulated Party shall pay to the MPCA a penalty in the amount of $250.00 per requirement for each day of failure.

b. If the Regulated Party fails to comply with requirements of Part 7, subparts d - f, of this Agreement, the Regulated Party shall pay to the MPCA a penalty in the amount of $150.00 per requirement for each day of failure.

c. Penalties for failure to comply with requirements of Part 7 of this Agreement shall accrue from the date the Regulated Party was to have fulfilled the requirement until the Regulated Party fulfills the requirement. Penalties shall not accrue while the MPCA considers a timely extension request under Part 13 or during dispute resolution under Part 11; unless the MPCA determines that the Regulated Party filed the request or initiated dispute resolution solely for purposes of delay. If the Regulated Party does not pursue dispute resolution under Part 11 for denial of a timely extension request, penalties shall accrue from the date the extension request is denied by the MPCA Case Contact. If the Regulated Party pursues dispute resolution for denial of an extension request and does not file a timely challenge in a court of competent jurisdiction as provided by Part 11, penalties shall accrue from the date of a Commissioner’s dispute resolution decision against the Regulated Party until the Regulated Party fulfills the requirement that is the subject of the extension request.
d. The Regulated Party shall pay a penalty under this Part within 30 days after receiving written notice from the MPCA that the penalty is due. The written notice shall specify the provision of the Agreement that the Regulated Party has not fulfilled and indicate the date penalties began to accrue. If the Regulated Party fails to make timely payment, the MPCA may assess and the Regulated Party agrees to pay a late payment charge, in addition to the stipulated penalty, to be assessed as follows. Forty-five days after receipt of written notice, the Regulated Party shall be obligated to pay a late charge in an amount equal to ten percent of the unpaid stipulated penalty. Sixty days after receipt of written notice, the Regulated Party shall be obligated to pay an additional late charge in an amount equal to twenty percent of the unpaid stipulated penalty.

e. In dispute resolution before the Commissioner under Part 11, the Regulated Party can contest the factual basis for the MPCA's determination that the Regulated Party has not fulfilled a requirement of this Agreement covered by this Part. However, the Regulated Party waives its right to challenge, on legal grounds, the requirement that it pay penalties under this Part.

f. The Regulated Party shall not be liable for payment of penalties for failure to comply with requirements of Part 7 of this Agreement covered by this Part if it has submitted to the MPCA a timely request for an extension of schedule under Part 13 and the MPCA has granted the request. The MPCA’s grant of an extension of schedule waives the payment of penalties covered by this Part only on the requirements for which the MPCA granted an extension of schedule and only for the time period specified by the MPCA in the grant of an extension. An extension of schedule for one requirement of Part 7 does not extend the schedule for any other requirement of Part 7.

g. Any requirement of this Agreement may be enforced as provided in Minn. Stat. § 115.071 (2002). Payment of a stipulated penalty does not relieve the Regulated Party of its obligation to fulfill and complete requirements under the Agreement and to otherwise comply with the terms and conditions of the Agreement.

Part 9. COVENANT NOT TO SUE AND RESERVATION OF REMEDIES. With respect to the Regulated Party, the MPCA agrees not to exercise any administrative, legal or equitable remedies available to the MPCA to
address the violations alleged and described in Part 6 as long as the Regulated Party performs according to and has 
complied with the terms, covenants and agreements contained in this Agreement. The MPCA reserves the right to 
enforce this Agreement or take any action authorized by law, if the Regulated Party fails to comply with the terms 
and conditions of this Agreement. Further, the MPCA reserves the right to seek to enjoin violations of this 
Agreement and to exercise its emergency powers pursuant to Minn. Stat. § 116.11 (2002) in the event 
conditions or the Regulated Party’s conduct warrant such action. Nothing in this Agreement shall prevent the 
MPCA from exercising these rights nor and nothing in this Agreement constitutes a waiver of these rights. 

The Regulated Party agrees to waive all claims it may now have, as of the effective date 
of this Agreement, under Minn. Stat. § 15.472 for fees and expenses arising out of matters 
leading up to and addressed in this Agreement.

Part 10. REPEAT VIOLATIONS. Federal and state environmental programs establish harsher penalties for 
violations of environmental laws or rules that constitute repeat violations. In a proceeding to resolve alleged 
violations by the Regulated Party, if any, occurring after the date of the alleged violations set out in Part 6 of this 
Agreement, the Regulated Party may argue about the extent to which the violations alleged in Part 6 of this 
Agreement should affect the penalty amount for the later violations, but waives the right: 1) to contend that the 
violations alleged in Part 6 of this Agreement did not occur as alleged; and 2) to require the MPCA to prove the 
violations alleged in Part 6 of this Agreement.

Part 11. RESOLUTION OF DISPUTES. The parties to this Agreement shall resolve disputes that arise as to any 
part of the Agreement as follows:

a. Either party, acting through its case contact, may initiate dispute resolution by providing to the 
case contact of the other party an initial written statement setting forth the matter in dispute, the position of the 
party, and the information the party is relying upon to support its position. The other party, acting through its case 
contact, shall provide a written statement of its position and supporting information to the case contact of the 
initiating party within 14 calendar days after receipt of the initial written statement.

b. If the parties, acting through their case contacts, do not reach a resolution of the dispute and 
reduce such resolution to writing in a form agreed upon by the parties within 21 calendar days after the
initiating party receives the statement of position from the responding party, the Commissioner shall issue a written
decision resolving the dispute. The written decision may address stipulated penalties assessed pursuant to Part 8.
The Commissioner's decision shall be considered a final decision of the MPCA for purposes of judicial review.

c. The Commissioner's decision shall become an integral and enforceable part of this Agreement unless the Regulated Party timely challenges the decision in a court of competent jurisdiction. Failure to timely challenge means the Regulated Party agrees to comply with the MPCA Commissioner’s decision on the matter in dispute and to pay any penalties that accrue pursuant to Part 8 for failure to fulfill requirements of this Agreement that are the subject of the dispute resolution. Further, if the Commissioner’s decision assesses penalties pursuant to Part 8 of this Agreement, the Regulated Party agrees to and shall pay the amount of penalty determined by the Commissioner within 60 days after receiving the Commissioner’s decision.

d. Throughout any dispute resolution, the Regulated Party shall comply with all portions of the Agreement that the MPCA determines are not in dispute.

Part 12. VENUE. Actions brought by the MPCA to enforce requirements and terms of this Agreement shall be venued in Ramsey County District Court.

Part 13. EXTENSION OF SCHEDULES. If the Regulated Party wants an extension of a deadline included in a schedule set out in Part 7, the Regulated Party must request the extension in writing at least ten days before the scheduled deadline, or as soon as possible before that date if the reason for the extension request arises less than ten days before the deadline. Each deadline extension request shall separately specify the reason why the extension is needed. No requested extension shall be effective until approved in writing by the MPCA, acting through the MPCA Case Contact or the Commissioner. The MPCA shall grant an extension only for the period of time the MPCA determines is reasonable under the circumstances. The written approval or grant of an extension request shall be considered an enforceable part of the Agreement.

The Regulated Party has the burden of demonstrating to the satisfaction of the MPCA that the request for the extension is timely, and that good cause exists for granting the extension. Good cause can include, but is not limited to, the following:

a. circumstances entirely beyond the reasonable control of the Regulated Party; and
b. delays caused by the MPCA in reviewing timely submittals required by this Agreement, the Regulated Party submitted in complete and approvable form, which make it not feasible for the Regulated Party to meet the required schedules.

Good cause does not include unanticipated costs, increases in the cost of control equipment, or delays in MPCA review of submittals when the submittals are not in complete and approvable form.

The Regulated Party may challenge a decision by the MPCA to deny a request for an extension under Part 11.

**Part 14. CASE CONTACT.** The MPCA and the Regulated Party shall each designate a Case Contact for the purpose of overseeing the implementation of this Agreement. The MPCA Case Contact is: Lisa Scheirer. The Regulated Party’s Case Contact is: Ben Daley. Either party may change its designated Case Contact by notifying the other party in writing, within five days of the change. To the extent possible, communications between the Regulated Party and the MPCA concerning the terms and conditions of this Agreement shall be directed through the Case Contacts. The address and telephone Number of the MPCA’s Case Contact is:

714 Lake Avenue, Suite 220, Detroit Lakes, MN  56501 (218) 846-0498.

**Part 15. REGULATED PARTY INFORMATION.** The Regulated Party shall not knowingly make any false statement, representation or certification in any record, report, plan or other document filed or required to be submitted to the MPCA under this Agreement. The Regulated Party shall immediately upon discovery report to the MPCA any errors in such record, report, plan or other document.

**Part 16. REVIEW OF SUBMITTALS.** The MPCA, acting through its Commissioner, Case Contact, or other designated MPCA staff, shall review all submittals made by the Regulated Party as required by this Agreement and shall notify the Regulated Party in writing of the approval or disapproval of each submittal. The MPCA and the Regulated Party shall consult with each other upon the request of either party during the review of submittals or modifications. If any submittal is disapproved in whole or in part, the MPCA Commissioner or designated MPCA staff shall notify the Regulated Party of the specific inadequacies and shall indicate the necessary amendments or reviews. Within 15 calendar days after receipt of any notice of disapproval, the Regulated Party shall submit revisions and take actions to correct the inadequacies.
Part 17. **ACCESS.** During the term of this Agreement, the Regulated Party agrees to provide the MPCA and its staff access to the Facility and its records and documents related to the implementation of this Agreement to the extent provided under Minn. Stat. § 116.091 (2002) or other law, conditioned only upon the presentation of credentials.

Part 18. **SAMPLING AND DATA AVAILABILITY.** The Regulated Party shall make available to the MPCA the results of any sampling, tests, or other data generated by the Regulated Party, or on its behalf, to implement the requirements of this Agreement.

Part 19. **RETENTION OF RECORDS.** The Regulated Party shall retain in its possession all records and documents related to this Agreement. The Regulated Party shall preserve these records, documents, reports and data for a minimum of three years after the termination of this Agreement despite any document retention policy of the Regulated Party to the contrary, and shall promptly make all such documentation available for review upon request by the MPCA.

Part 20. **APPLICABLE LAWS AND PERMITS.** The Regulated Party shall undertake all actions required to be taken pursuant to this Agreement in accordance with the requirements of all applicable state and federal laws and regulations. Except when the MPCA has specified and authorized a different compliance method in Part 7, the Regulated Party must also comply with all applicable permits, orders, stipulation agreements and schedules of compliance. Nothing in this Agreement exempts or relieves the Regulated Party of its obligation to comply with local governmental requirements.

Part 21. **OTHER CLAIMS.** Nothing herein shall release the Regulated Party from any claims, causes of action or demands in law or equity from any person, firm, partnership or corporation not a signatory to this Agreement for any liability it may have arising out of or relating to the release of any pollutant or contaminant from its operations or from a facility. Neither the Regulated Party nor the MPCA shall be held as a party to any contract entered into by the other party to implement the requirements of this Agreement.

Part 22. **HOLD HARMLESS AGREEMENT.** The Regulated Party agrees to indemnify, save and hold the MPCA, its agents and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of the Regulated Party, its officers, employees, agents, or contractors in implementing the
activities conducted pursuant to this Agreement; provided, however, that the Regulated Party shall not indemnify
the MPCA or save or hold its employees and agents harmless from any claims or causes of action arising out of the
acts or omissions of the MPCA, or its employees and agents. When the Regulated Party is required to hold the
MPCA harmless, the MPCA shall give the Regulated Party notice of any claim or cause of action subject to this Part
and the Regulated Party has the right to participate in the defense against any claim or cause of action. No
settlement shall be effective against the Regulated Party unless the Regulated Party agrees to the settlement.

Part 23. SUCCESSORS. This Agreement shall be binding upon the Regulated Party and its successors and
assigns and upon the MPCA, its successors and assigns. If the Regulated Party sells or otherwise conveys or
assigns any of its right, title or interest in the Facility, the conveyance shall not release the Regulated Party from any
obligation imposed by this Agreement, unless the party to whom the right, title or interest has been transferred or
assigned agrees in writing to fulfill the obligations of this Agreement and the MPCA approves the transfer or
assignment.

Part 24. AMENDMENTS. Except with respect to extensions of schedules granted under
Part 13 and approved submittals under Part 16, this Agreement may be amended only by written agreement between
the parties.

Part 25. EFFECTIVE DATE. This Agreement shall be effective on the date it is signed by the MPCA.

Part 26. TERMINATION. The provisions of this Agreement shall be deemed satisfied and terminated when the
MPCA notifies the Regulated Party in writing that an Individual NPDES/SDS Permit has been issued to the
Regulated Party. The Regulated Party agrees that all of the provisions of Part 7 of this Agreement may be
incorporated as enforceable parts of the Individual NPDES/SDS Permit.

Part 27. SURVIVAL. The provisions of Parts 2, 9, 10, 15, 18, 19, 20, 21, 22, 23, and 27 of this Agreement and
the rights, duties and obligations of the MPCA and the Regulated Party created in those provisions shall survive
termination of this Agreement.
BY THEIR SIGNATURES BELOW, THE UNDERSIGNED REPRESENT THAT THEY HAVE AUTHORITY TO BIND THE PARTIES THEY REPRESENT, AND THEIR AGENTS, CONTRACTORS, AND SUBSIDIARIES

DALEY FARMS OF LEWISTON, LLP

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

By: ____________________________
Name: _________________________
Title: __________________________
Date: __________________________

By: __________________________________________
Katherine Logan, Supervisor
Regional Environmental Management Division
Rochester Office

Date: ________________________________
EXHIBIT 8
## Inspection Form
### NPDES/SDS Permitted Facilities

**Owner/Operator:** Ben Daley  
**Date of Inspection:** 10/6/09  
**Facility Name:** Daley Farms of Lewiston LLP  
**Inspector Name:** Steve Schmidt  
**Registration No.:** 169-50002  
**Others Present:** John Pokorney MPCA Brainerd Office; Mark Gernes Winona County Feedlot Officer  
**Permit No.:** MN0067652  
**Type(s) of Animals:** Mature Dairy Cattle  
**Facility Name:** Daley Farms of Lewiston LLP  
**Qtr.:** NE  
**Sect.:** 16  
**Twp.:** Utica  
**Registered Number:** 1426  
**County:** Winona  
**Number of Animals:** 1426

### Livestock Production Area Facility Review
#### A. Animal Confinement Areas Operation & Maintenance

<table>
<thead>
<tr>
<th>1) All Barns</th>
<th>NA</th>
<th>Issues:</th>
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<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td>Ventilation fans kept clean of built-up dust, feathers, or other debris?</td>
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<tr>
<td>✔</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>2) Open Lots</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td>Runoff controls functioning?</td>
</tr>
<tr>
<td>✔</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Evidence of manure seepage from barn?  
- Upslope clean water diverted around or away from barn(s)?  

- Runoff controls needed?  
- Evidence of runoff reaching waters of the state?  
- Upslope clean water diverted?

**Compliant**  
**Conditional Compliance**  
**Non-compliant**  
**Not Applicable**  
**Return to Compliance by:** At the time of issuance of new individual NPDES/SDS permit  
**Issue(s):** Submit a plan with the NPDES/SDS permit application for addressing the open-cattle yard (dry cows). The plan will be incorporated into the new individual permit

#### B. Solid Manure Storage Areas Operation & Maintenance

<table>
<thead>
<tr>
<th>1) Short-term Stockpile</th>
<th>NA</th>
<th>Issues:</th>
</tr>
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<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td>Stockpile within required setback zones?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Located in sand/gravel quarry or bedrock?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Are pile slopes &lt; 3:1 or &lt;15% solids?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Located on greater than 6% slope?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Located on 2-6% slope without clean water diversion and erosion control practices?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Are saturated soils within 2 feet?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Are coarse-textured soils present throughout top 5 feet at stockpile location?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Are soils bare—without vegetation for one year pre/post-use?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Has this site been used longer than one year?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Does amount in stockpile require over 320 ac. to land apply?</td>
</tr>
<tr>
<td>✔</td>
<td>✔</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2) Permanent Stockpile</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td>Stockpile within required setback zones?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Located in sand/gravel quarry or bedrock?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Are pile slopes &lt; 3:1 or &lt;15% solids?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Does pad exceed permeability requirements?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Does pad show large ruts/erosion?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Does clean water flows through stockpile?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Does runoff flow from the stockpile to waters of state?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Compliant**  
**Conditional Compliance**  
**Non-compliant**  
**Not Applicable**  
**Return to Compliance by:** At the time of issuance of new individual NPDES/SDS permit  
**Issue(s):** Submit a plan with the NPDES/SDS permit application for addressing the open-cattle yard (dry cows). The plan will be incorporated into the new individual permit
C. Liquid Manure Storage Areas Operation & Maintenance

1) Concrete Pit

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>If open-air, depth marker installed?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Located under building?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Freeboard/capacity shortage?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Cracks in need of repair?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Sloughing/flaking of concrete?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Exposed rebar?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Nonfunctional perimeter tile outlet (if constructed after 2000)?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Barn constructed prior to 2000?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Odorous/discolored liquid in perimeter tile (if monitoring port present)?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Evidence of seepage from pit?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Build up of manure near pumpouts?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Pumpouts exposed (not covered)?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Woody/deep rooted vegetation growing near pit walls?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Is an anaerobic digester present?</td>
</tr>
</tbody>
</table>

2) Earthen Basin

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>If open-air, has depth marker installed?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Is the basin covered?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Is the cover maintained?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Are they flaring captured gases?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Is an anaerobic digester present?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Freeboard/capacity shortage?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Basin modified without approval?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Low spots in berm?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Evidence of overflows?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Odorous/discolored liquid in perimeter tile (if monitoring port present)?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Excessive gully erosion in basin walls?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Anti-scour device around pipe outlet absent?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Pumpout area maintenance problems?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Woody/deep rooted vegetation growing on basin walls?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Rodent burrows in berm?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Evidence of seeping on exterior wall?</td>
</tr>
</tbody>
</table>

3) Synthetic-lined Basin

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>If open-air, has depth marker installed?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Is the basin covered?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Is the cover maintained?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Are they flaring captured gases?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Is an anaerobic digester present?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Freeboard/capacity shortage?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Basin modified without approval?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Low spots in berm?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Evidence of overflows?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Liner torn or damaged?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Odorous/discolored liquid in perimeter tile (if monitoring port present)?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Evidence of seeping on exterior wall?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Pumpout area maintenance problems?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Woody/deep rooted vegetation growing on basin walls?</td>
</tr>
</tbody>
</table>

4) Slurry Store or Above-ground Tank

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>If open-air, has depth marker installed?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Is the structure covered?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Is the cover maintained?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Freeboard/capacity shortage?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Structure is leaking and/or overflowing?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Evidence of past leak and/or overflow?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Transfer valve not properly maintained?</td>
</tr>
</tbody>
</table>
## 5) Manure Storage Area Emergency Response Plan

<table>
<thead>
<tr>
<th>Issue(s):</th>
<th>Basin #4 has bubbled liner</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fencing required around basins 1-4</td>
</tr>
<tr>
<td></td>
<td>Depth Markers installed on basins 1-4</td>
</tr>
<tr>
<td></td>
<td>Submit plans and specifications for the repair/rebuilding of basin#4 along with an application packet for a new individual NPDES/SDS permit</td>
</tr>
<tr>
<td></td>
<td>Submit plans for fence installation around basins 1-4</td>
</tr>
<tr>
<td></td>
<td>Submit plans for the installation of depth markers in basins 1-4</td>
</tr>
</tbody>
</table>

### Issues:
- Has site plan showing release points to surface water (surface tile intakes, road ditches, etc.)?
- Has plan of action for emergency spill response at facility and during transport to land application?
- Trains employees?

### Return to Compliance by:
- At the time of issuance of new individual NPDES/SDS permit

## 6) Air Emission Notification for Exemption

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td>NA</td>
</tr>
</tbody>
</table>

### Issues:
- Is notification made for exemption during agitation and pumping for land application activities?

## D. Other Production Area Features Operation & Maintenance

### 1) Feed Storage Area

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td>NA</td>
</tr>
</tbody>
</table>

### Issues:
- Piles of spoiled feed around storage bin?
- Exposed feed or spillage on storage pad?
- Clean water flows through feed area?
- Silage leachate can flow to waters?
- Problems with leachate collection system?

### Return to Compliance by:
- At the time of issuance of new individual NPDES/SDS permit

### 3) Permanent Stormwater Controls

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td>NA</td>
</tr>
</tbody>
</table>

### Issues:
- Required permanent stormwater controls in place?
- Adequate permanent vegetation?
- Freeboard on control structure absent?
- Structure outlets eroding?

### Conditional Compliance

### Issue(s):
- Potential for leachate and feed pad contaminated run-off to reach the water way located near the east edge of the feed pad.
- Submit plans and specifications for addressing the silage leachate and feed pad run-off with the application packet for a new NPDES/SDS permit

## E. Carcass Disposal

### 1) Rendering

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td>NA</td>
</tr>
</tbody>
</table>

### Issues:
- Offsite pickup site accessible to scavengers?
- Carcasses present more than 72 hours non-refrigerated?

### Conditional Compliance

### Issue(s):
- Structure designed for this purpose?
- No afterburner?
## 3) Composting

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Impervious pad not present?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Exposed carcasses?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Temperature not measured daily?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Leachate not contained?</td>
</tr>
</tbody>
</table>

## 4) Burial

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Carcasses not covered?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Coarse-textured soils?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Within 5 feet of water table?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Within shoreland zone?</td>
</tr>
</tbody>
</table>

### Issue(s):

- Compliant
- Conditional Compliance
- Non-compliant
- Not Applicable

### Return to Compliance by:

- F. Non-Feedlot Operation & Maintenance

#### 1) Well

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Un-used wells are MDH sealed?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Anti-backflow protection on waterline connections?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>DNR Water Appropriation Permit</td>
</tr>
</tbody>
</table>

#### 2) On-site sewage system

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Straight-piped to surface water? (Report)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Discharging to ground surface? (Report)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Toilet plumbed to manure storage area?</td>
</tr>
</tbody>
</table>

#### 3) Burn Barrels

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Solid waste burned on site?</td>
</tr>
</tbody>
</table>

#### 4) Sharps Disposal

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Stored in heavy-duty plastic container for later disposal?</td>
</tr>
</tbody>
</table>

#### 5) Chemicals, Gas, and Oil Storage

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Chemicals leaking onto ground?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Pesticide containers accumulating?</td>
</tr>
</tbody>
</table>

### Issue(s):

- Compliant
- Conditional Compliance
- Non-compliant
- Not Applicable

### Return to Compliance by:

- 30 days of receipt of inspection form

## Facility Record-Keeping Review

### G. Land Application of Manure

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Rainfall amounts when runoff from land application sites occurs?</td>
</tr>
</tbody>
</table>

### Issue(s):

- Compliant
- Conditional Compliance
- Non-compliant
- Not Applicable

### Return to Compliance by:

- Did not perform record review at time of facility inspection. Mr. Daley was going to send application records to the MPCA in Rochester after 2009 spreading season was complete
### Facility Records Review

#### 1) O & M Records

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>Water lines checked daily?</td>
</tr>
<tr>
<td>☐</td>
<td>☒</td>
<td>☐</td>
<td>Weekly stormwater diversion devices?</td>
</tr>
<tr>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>Weekly runoff diversion structures?</td>
</tr>
<tr>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>Weekly devices channeling runoff to containment area(s)?</td>
</tr>
<tr>
<td>☐</td>
<td>☒</td>
<td>☐</td>
<td>Weekly of all LMSAs?</td>
</tr>
<tr>
<td>☐</td>
<td>☒</td>
<td>☐</td>
<td>Weekly LMSA depth marker(s) readings?</td>
</tr>
<tr>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>Weekly examinations of LMSA drain tile line(s)?</td>
</tr>
<tr>
<td>☐</td>
<td>☒</td>
<td>☐</td>
<td>Periodic inspections of land application equipment?</td>
</tr>
</tbody>
</table>

#### 2) Facility & Maintenance Records

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>Current design of all LMSAs?</td>
</tr>
<tr>
<td>☐</td>
<td>☒</td>
<td>☐</td>
<td>LMSA maintenance?</td>
</tr>
<tr>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>Soil-lined poultry barn floor soil test results?</td>
</tr>
<tr>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>SWPPP maintenance &amp; modification?</td>
</tr>
<tr>
<td>☐</td>
<td>☒</td>
<td>☐</td>
<td>Improvements to runoff control &amp; barns?</td>
</tr>
<tr>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>Activities that alter site or increase pollution potential?</td>
</tr>
</tbody>
</table>

#### 3) Short-term Stockpiling Records

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>Location information?</td>
</tr>
<tr>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>Date stockpile formed?</td>
</tr>
<tr>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>Volume of manure stored?</td>
</tr>
</tbody>
</table>

#### 4) Composting Records: Mortality or Manure

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>NA</th>
<th>Issues:</th>
</tr>
</thead>
<tbody>
<tr>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>Quantities of materials delivered to site?</td>
</tr>
<tr>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>Temperature of compost?</td>
</tr>
<tr>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>Retention time of compost?</td>
</tr>
<tr>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>Analysis of finished compost?</td>
</tr>
</tbody>
</table>

| Compliant | ☒ | Issue(s): |
| Conditional Compliance | ☐ |
| Non-compliant | ☒ |
| Not Applicable | ☐ |

Return to Compliance by:
EXHIBIT 9
December 26, 2012

Mr. Ben Daley  
18942 County Road 18  
Lewiston, MN  55952

RE:  October 23, 2012, Inspection  
Feedlot Registration Number 169-50002  
NPDES/SDS Permit Number MN0067652

Dear Mr. Daley:

Please find enclosed a Minnesota Feedlot NPDES/SDS Facility Inspection Checklist (Checklist) for Daley Farms of Lewiston LLP (Facility) located at 18942 County Road 18 Lewiston, Minnesota in Winona County. An inspection was conducted by the Minnesota Pollution Control Agency (MPCA) staff on October 23, 2012, others present at the inspection include Ben Daley (co-owner), and Mark Gernes Winona County feedlot officer. The inspection consisted of a Compliance and Land App II inspection. The purpose of the inspection was to evaluate the Facility for compliance with Minnesota feedlot rules and statutes.

The following is a summary of the MPCA staff’s findings and comments resulting from the inspection. Please refer to the enclosed Checklist for additional details regarding the inspection.

Areas of Concern or General Comments

1. The feed storage area, at the time of inspection, was incompliance with the National Pollutant Discharge Elimination System (NPDES) / State Disposal System (SDS) Permit.
2. At the time of the inspection, the confinement barns, liquid manure storage areas (LMSAs) and manure separating facilities were all being operated in compliance.
3. Install fence around LMSAs when the landscaping is complete.
4. Maintain records of water usage, daily water line checks, weekly tile monitoring checks, and diversion maintenance.
5. Submit an Annual report to the MPCA by March 1st, along with the records that are required on MPCA forms (MPCA manure management plan excel version).
6. Some fields inspected within the land application records contained application rates that were 20 percent higher than allowed by rule. This is due, in part, to the use of old manure management planning software that allowed higher rates. When planning and applying manure, make sure to be aware that for corn on corn the maximum Nitrogen rate from all sources is 180 pounds, 140 pounds of Nitrogen for corn following soybeans, and remember to take Nitrogen credits from alfalfa plow down first year credits 150 pounds and second year credits of 75 pounds.
If you have any questions regarding the inspection report, please contact me at 507-206-2618.

Sincerely,

Steven Schmidt
Pollution Control Specialist Senior
Rochester Office
Watershed Division

SS:cme

Enclosure

☑ Checklist ☐ Fact Sheet(s) ☐ LOW ☐ NOV ☐ Other

cc: Mark Gernes, Winona CFO (w/enclosure)
September 18, 2015

Mr. Ben Daley  
17755 County Rd 18  
Utica, MN 55979

RE: 9/10/2015 Feedlot Compliance Inspection  
Daley Farm of Lewiston, LLP (West Farm); Feedlot Registration Number 169-82503

Dear Mr. Daley:

Thank you for the opportunity to meet with you on 9/10/2015 and to view your feedlot facility.

Please find enclosed a Minnesota Feedlot non-NPDES Permitted Facility Inspection Checklist for Daley Farm of Lewiston, LLP (West Farm) located at 23866 Cemetery Rd. The Checklist indicates areas of the feedlot that were checked for compliance with Winona County and State feedlot rules and statutes.

The following is a summary of the County staff’s findings and comments resulting from the inspection. Please refer to the enclosed Checklist for additional details regarding the inspection.

Areas of Concern or General Comments:

1. Milkhouse waste water discharging into ditch; historical pollution hazard. Upon issuance of Feedlot Permit, waste water will be handled through an irrigation system.

2. Manure nutrient analysis from manure storage area is from March 30, 2010 (older than 4 years). Minnesota Rule 7020.2225 Subp. 2.: “Manure from all manure storage areas storing manure produced from more than 100 animal units must be tested by the owner of the animal feedlot for nitrogen and phosphorus...Ongoing testing must continue at least once every four years unless more frequent testing is required.”

Required Corrective Actions:

1. By February 1, 2016, obtain a current manure nutrient analysis from an accredited lab and submit a copy of nutrient analysis to Winona County Feedlot Officer.

If you have any questions regarding the inspection report, please contact me at 507-457-6580. Thank you, again, for your cooperation and coordination.

Sincerely,

Emily Bartusek  
Winona County Feedlot Officer

Enclosures:  
☑ Checklist
Minnesota Feedlot
(Non-NPDES) Inspection Checklist

NPDES/SDS Feedlot Program
National Pollutant Discharge Elimination System/
State Disposal System (NPDES/SDS)

Doc Type: Inspection (wq-f3-45e)

Key at the end of the checklist

Instructions: The MPCA or Delegated County staff should complete this form upon an inspection to evaluate non-NPDES permitted feedlots for compliance with Minnesota feedlot rules and statutes. A copy of the form will be returned to the feedlot owner following the inspection.

General Information

Name of facility: Daley Farm (West Farm) Date of inspection (mm/dd/yyyy): 9/10/2015
Registration No: 169-82503 Inspector Name: Emily Bartusek
Owner/Operator: Ben Daley (Mark, Brian & Shelly) Others Present: 
Phone: 507-251-2444 Fax: 
E-mail: 
Weather Conditions (at time of inspection): Foggy & semi-wet

Facility Location

County: Winona Twp: Utica Sect: 9 Qtr: SW
Facility address: 23866 Cemetery Rd
City: Lewiston State: MN Zip Code: 55952 Parcel ID: 15.000.0780

Inspection Type
(check all that apply):

A. Feedlot History (Date format: mm/dd/yyyy)

Type of most recent inspection: Compliance Date of most recent inspection: 10/23/2012
Type of most recent enforcement action: n/a Date of enforcement action: n/a
Permit Type: n/a Issuance Date: n/a Expiration Date: n/a
Date of most recent registration: 10/23/2012

<table>
<thead>
<tr>
<th></th>
<th>Y</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.1 Does a MinnFarm or FLEval exist for the feedlot?</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>A.2 Is the feedlot located in a Drinking Water Supply Management Area?</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>A.3 Is the feedlot located in Shoreland?</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>A.4 Enrolled in the Open Lot Agreement?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

B. Feedlot Components

<table>
<thead>
<tr>
<th>Animal Types Registered or On-Site</th>
<th>Animal (head) Numbers</th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dairy – calf Registered</td>
<td>150</td>
<td>150</td>
</tr>
<tr>
<td>Dairy – heifer Registered</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>Dairy – calf On-Site</td>
<td>150</td>
<td></td>
</tr>
<tr>
<td>Dairy – heifer On-Site</td>
<td>200</td>
<td></td>
</tr>
</tbody>
</table>

Notes:
Registered for 170 AU
### B. Feedlot Components (continued)

<table>
<thead>
<tr>
<th>Checklist Questions</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>B.1 Is Registration current (date within previous 4-year block)?</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B.2 Have animal units and animal species, types and numbers changed since the most recent registration or inspection?</td>
<td></td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B.3 Have animal holding areas or manure storage areas changed since the most recent permit, Notice of Construction or Expansion, MinnFarm or inspection?</td>
<td></td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Inspection Requirement**

| B.4 Construction or expansion requirements met. | ✔ |

### C. Concentrated Animal Feeding Operation (CAFO) Identification

<table>
<thead>
<tr>
<th>Checklist Questions</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>C.1 Does the maximum capacity of this feedlot meet or exceed the CAFO threshold (# of head per species) or 1,000 animal units? (if yes the feedlots must seek NPDES Permit Coverage)</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C.2 Does the owner own (all or part of) other feedlots adjacent to or within ¼ mile of this feedlot?</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C.4 Is the owner required to seek NPDES/SDS permit coverage for this feedlot and other commonly owned feedlots? (Refer to Minnesota Pollution Control Agency (MPCA))</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 1. Open Lot Agreement (OLA)

Not Applicable to this Facility

### 2. Animal Confinement Barn(s)

<table>
<thead>
<tr>
<th>Checklist Questions</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1 Is any manure seepage from barns visible?</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.2 Does upslope water drain through the barn(s)?</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 3. Open Lot(s)

<table>
<thead>
<tr>
<th>Checklist Questions</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 Do animals have access to a lake classified by the Minnesota Department of Natural Resources (DNR)? (7020.2015, subp. 2)</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.2 Are clean-water diversions in place, operational and maintained?</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.3 Are runoff controls in place, operational, and maintained?</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.4 Is there evidence of runoff leaving the open lot(s) or runoff control(s)? (past or present)</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>If Yes - Evaluate the following:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is runoff currently reaching surface waters?</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is there evidence runoff reached surface waters or tile intakes, sinkholes, fractured bedrock, well, mine or quarry? (e.g. inadequate buffer, steep slopes, channels, matted or dead vegetation, clean water run-on, stormwater flow)</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is there evidence runoff could impact ground water? (e.g., ponding, coarse-textured soils, depth to water table)</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Inspection Requirement**

| 3.7 Open Lot discharge requirements met. | ✔ |

### 4. Feed Storage Area(s)

<table>
<thead>
<tr>
<th>Checklist Questions</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes:</th>
</tr>
</thead>
</table>
| 4.1 Are the soils beneath the storage area coarse-textured? | ✔ |    |    |    |        | Feed is hauled over from main dairy on a daily basis. No feed storage on site.
Facility Name: Daley Farm  (West Farm)  
Registration Number: 169-82503

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.2</td>
<td>Is there evidence of runoff leaving the feed storage area or feed storage area runoff controls? (past or present)</td>
<td>✓</td>
<td></td>
<td></td>
<td>a daily basis. No feed storage on site.</td>
</tr>
<tr>
<td>4.5</td>
<td>Is more than 1,000 tons of sweet corn silage stored on site at any one time?</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.7</td>
<td>Feed Storage Area discharge requirements met.</td>
<td>✓</td>
<td></td>
<td></td>
<td>[7020.003, subp. 1 &amp; 3, 7050.0210, subp. 2 &amp; 13, 7060.0600, subp. 2]</td>
</tr>
</tbody>
</table>

### 5. Milkhouse Waste Handling System(s)

<table>
<thead>
<tr>
<th>Checklist Questions</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1</td>
<td>Is milk-house wastewater contained in an approved structure or treated by an approved system?</td>
<td>✓</td>
<td></td>
<td></td>
<td>Wastewater from calf feeding equipment discharges directly into the road ditch.</td>
</tr>
<tr>
<td>5.2</td>
<td>Is there evidence of milk-house wastewater leaving the control devices? (past or present)</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.5</td>
<td>Milkhouse waste discharge requirements met.</td>
<td>✓</td>
<td></td>
<td></td>
<td>[7020.003, subp. 1 &amp; 3, 7050.0210, subp. 2 &amp; 13, 7060.0600, subp. 2]</td>
</tr>
</tbody>
</table>

### 6. Short-term Manure Stockpile Site(s)

Not a Component of this Facility

### 7. Permanent Manure Stockpile Site(s)

<table>
<thead>
<tr>
<th>Checklist Questions</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical Requirements (Questions 7.1 - 7.6)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.1</td>
<td>Are the required location prohibitions of 7020.2005 met? (shoreland, flood plain, sinkhole, and public wells)</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.2</td>
<td>Are rock quarry(s), gravel or sand pit(s), bedrock, or any mining excavation site(s) used for the stockpile site?</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.3</td>
<td>Is stockpile on an impervious pad?</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.4</td>
<td>Does the stockpile stack have a slope of at least 3:1 or does the manure have at least 15% solids? (if no, manure cannot be stockpiled)</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.6</td>
<td>Is runoff contained in an approved structure or treated by an approved system?</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Discharge Requirements (Question 7.7)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.7</td>
<td>Is there evidence of runoff leaving the site? (past or present)</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Permanent stockpile site technical requirements met.</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td>[7020.2125, subp. 1 &amp; 4]</td>
</tr>
<tr>
<td>Permanent stockpile site discharge requirements met.</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td>[7020.003, subp. 1 &amp; 3, 7050.0210, subp. 2 &amp; 13, 7060.0600, subp. 2]</td>
</tr>
</tbody>
</table>

### 8. Manure Compost Site

Not a Component of this Facility

### 9., 10., & 11. Liquid Manure Storage Area(s) (LMSA)

Not a Component of this Facility

### 12. Poultry Barn Floor(s)

Not a Component of this Facility

### 13. Carcass Management

Type of Carcass Management (check all that apply) **single-click**

- ☑️ Render
- ☐ Compost
- ☐ Burial
- ☐ Incinerate

<table>
<thead>
<tr>
<th>Carcass Management Questions</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Render Checklist Questions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.1</td>
<td>Is there a dead box for rendering pick-up?</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
13.2 Are carcasses picked up within 72 hours? ✓

Referral
Referred to Board of Animal Health ✓

14. Level I Land Application of Manure Record Keeping for 100-299 AU (Non-CAFO)

Checklist Questions | Y | N | NA | NI | Notes
--- | --- | --- | --- | --- | ---
14.1 Is a MMP available for the next crop year? (crop 1yr from now) MMP is not required unless applying for a permit ✓

14.2 Is there a manure analysis within the last 4 years? Not required if 100 AU or less contribute to manure storage ✓

<table>
<thead>
<tr>
<th>Livestock species: Dairy □</th>
<th>Solid □</th>
<th>Liquid □</th>
</tr>
</thead>
<tbody>
<tr>
<td>N</td>
<td>P</td>
<td>K</td>
</tr>
<tr>
<td>7</td>
<td>7</td>
<td>15</td>
</tr>
</tbody>
</table>

14.3 Are there records with these items? ✓

- Field IDs and acres for each field ✓
- Amounts of manure applied per acre for each field ✓
- Method(s) of manure application ✓

14.4 Are records kept of application dates? ✓

14.5 Is manure incorporated within 24 hours near sensitive features? (may not be evident from records – may need to inquire) ✓

14.6 Are records kept of plant-available N per acre from manure and commercial fertilizers, including carry-over N? (P2O5 records also required if 100 or more AU and in DWSMA) ✓

<table>
<thead>
<tr>
<th>N</th>
<th>Crop: Corn □</th>
<th>Previous Crop: Corn □</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount N Applied</td>
<td>22 lbs/acre</td>
<td></td>
</tr>
</tbody>
</table>

14.7 List the highest rate of crop-available N applied: ✓

<table>
<thead>
<tr>
<th>P2O5</th>
<th>Crop: Corn □</th>
<th>Previous Crop: Corn □</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount P2O5 Applied</td>
<td>39.2 lbs/acre</td>
<td></td>
</tr>
</tbody>
</table>

14.8 List the highest rate of crop-available P2O5 applied (if in DWSMA): ✓

14.9 Land Application Recording Keeping requirements met. [7020.2225, subp. 5] ✓

15. Level II Land Application of Manure Inspection (Non-CAFO)  
Not inspected for this facility

16. Level III Land Application of Manure Inspection (Non-CAFO)  
Not inspected for this facility

17. Animal Feedlot and Manure Storage Area Closure  
Not Applicable to this Facility

18. Interim Permit  
Not Applicable to this Facility

19. Summary of Environmental Upgrades  
Not Applicable for this Inspection

End of Inspection.

**Key**
- C = Compliance – At the time of the inspection, the feedlot and/or owner meet the requirements of applicable state rules and statutes or permit conditions.
- NC = Non-Compliance – At the time of the inspection, the feedlot and/or owner do not meet the requirements of applicable state rules and statutes or permit conditions.
- NA = Not Applicable – The condition is not present at this feedlot.
- NI = Not Inspected – The condition was not inspected.
- Y = Yes – Does not indicate compliance or non-compliance.
- N = No – Does not indicate compliance or non-compliance.
Checklist Question = Checklist questions are used by the inspector to evaluate feedlot conditions.

Inspection Requirement = Inspection requirements are statements that summarize the regulatory requirements of applicable state rules and statutes or permit conditions.
EXHIBIT 11
Feedlot NPDES/SDS Permitted Facility Inspection Checklist

NPDES/SDS Feedlot Program
National Pollutant Discharge Elimination System/
State Disposal System (NPDES/SDS)

Doc Type: Inspection

General Information
Name of facility: Daley Farms of Lewiston LLP 1
Facility address: 18762 Highway 14
City: Lewiston State: MN Zip code: 55952
Phone: Fax: E-mail:
Owner/Operator: Daley Farms of Lewiston LLP Inspector Name: Mark Gernes
Registration No: 169-115453 Qtr: NE Sect: 16 Twp: Utica
County: Winona Parcel ID:
Others present: Emily Bartusek
Types of inspections (check all that apply): ☑ Facility compliance ☐ Land App II ☐ Land App III

A. Feedlot History (Date format: mm/dd/yyyy)
Date of most recent inspection: 6/21/2013 Type of most recent inspection: Land App II
Date of most recent enforcement action: 9/20/2004 Type of enforcement action: SOC
Permit Issuance Date: 11/17/2010 Permit Expiration Date: 11/17/2015 Permit Type: Individual NPDES (Multi-site)
Date of most recent registration: 11/17/2010

<table>
<thead>
<tr>
<th></th>
<th>Y</th>
<th>N</th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.1</td>
<td>Does a MinnFarm or FLEval exist for the feedlot?</td>
<td>☐</td>
<td>☑</td>
</tr>
<tr>
<td>A.2</td>
<td>Is the feedlot located in a Drinking Water Supply Management area?</td>
<td>☑</td>
<td>☐</td>
</tr>
<tr>
<td>A.3</td>
<td>Is the feedlot located in Shoreland?</td>
<td>☐</td>
<td>☑</td>
</tr>
<tr>
<td>A.4</td>
<td>Enrolled in the Open Lot Agreement?</td>
<td>☐</td>
<td>☑</td>
</tr>
</tbody>
</table>

B. Feedlot Components
Registered animal types and numbers: 100 cows over 1,000 lbs = 140 AU
Actual animal types and numbers on site: Same
### Key

| C  | Compliance – At the time of the inspection, the facility and/or Permittee meets the requirements of the permit and applicable state and federal rules and regulations. |
| NC | Non-Compliance – At the time of the inspection, the facility and/or Permittee does not meet the requirements of the permit and applicable state and federal rules and regulations. |
| NA | Not Applicable – This condition is not present at this facility. |
| NI | Not Inspected – This condition was not inspected. |
| Y  | Yes. Option applies to Review & Checklist Questions. This is not a statement of compliance. |
| N  | No. Option applies to Review & Checklist Questions. This is not a statement of compliance. |

### Checklist question:

Checklist questions are used by the inspector to evaluate compliance with the requirements of the permit and applicable state and federal rules and regulations.

### Inspection requirement:

Inspection requirements are statements that summarize the regulatory requirements of the permit and applicable state and federal rules and regulation for each major facility component for Permittees operating under the Minnesota National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) Permit. Each section of the checklist evaluates a single component.

---

### Section II: Inspection

<table>
<thead>
<tr>
<th>Checklist question:</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B.1</strong> Animal numbers are at or below permitted numbers?</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td><strong>B.2</strong> Animal species and types are the same as current permit?</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td><strong>B.3</strong> Other components, e.g. barns, lots, LMSAs, are the same as current permit?</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td><strong>B.4</strong> Facility components match permitted components.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
</tbody>
</table>

#### 1 Animal Confinement Barn Operation & Maintenance

<table>
<thead>
<tr>
<th>Checklist questions:</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1.1</strong> Are ventilation fans kept clean of built-up dust, feathers and other debris?</td>
<td>☐</td>
<td>☐</td>
<td>☒</td>
<td>☐</td>
</tr>
<tr>
<td><strong>1.2</strong> Is any manure seepage from barns visible?</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td><strong>1.3</strong> Is the clean water diverted?</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td><strong>1.4</strong> Confinement barn(s) meet(s) zero discharge standards.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

#### 2 Open Lot Operation & Maintenance

<table>
<thead>
<tr>
<th>Checklist questions:</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2.1</strong> Are clean water diversions in place and operational?</td>
<td>☐</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td><strong>2.2</strong> Is all manure-contaminated runoff contained?</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td><strong>2.3</strong> Is the transfer system between open lot and storage structure operating properly and well maintained?</td>
<td>☐</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td><strong>2.4</strong> Is the runoff contained in approved structure or system?</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td><strong>2.5</strong> Open lot(s) meet zero discharge standards.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

#### 3 Feed Storage Area(s) Operation & Maintenance

<table>
<thead>
<tr>
<th>Inspection requirement:</th>
<th>C</th>
<th>NC</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>3.7</strong> Feed storage area meets zero discharge.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

#### 4 Process Wastewater(s) Handling System Operation & Maintenance

<table>
<thead>
<tr>
<th>Inspection requirement:</th>
<th>C</th>
<th>NC</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>4.5</strong> Process wastewater handling meets zero discharge standards.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>
### 5 Short-term Manure Stockpile Site Operation & Maintenance

**Stockpile location checklist questions:**

<table>
<thead>
<tr>
<th>Question</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1 Is the required 50 feet horizontal and 300 feet flow distance to</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Short-term manure stockpile area was not inspected at the time of</td>
</tr>
<tr>
<td>surface water met?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>inspection.</td>
</tr>
<tr>
<td>5.2 If a well is nearby, is it greater than or equal to 100 feet away</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>When stockpiling manure</td>
</tr>
<tr>
<td>if the well is cased or 200 feet if it is not cased?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>requirements 5.1 to 5.11 need to</td>
</tr>
<tr>
<td>5.3 Is the stockpile located on slopes less than 6%?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>be followed.</td>
</tr>
<tr>
<td>5.4 At the stockpile site are saturated soils greater than 2 feet</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>below the surface?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.5 At the stockpile site are at least some soils in top 5 feet</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>verified sandy-loam or finer?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.6 Are rock quarry(s), gravel or sand pit(s), bedrock, or any</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>mining excavation site(s) used for the stockpile site?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.7 Does the manure in the stockpile stack with slopes of at least</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3:1 or have at least 15% solids been confirmed?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.8 Is the volume of stockpiled manure less than 320 acres based on</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>N?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.9 Are clean water diversions in place and operational?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.10 Is all manure removed from the site within 1 year?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.11 Is vegetation re-established for 1 growing season prior to site</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>re-use as a stockpile?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Inspection requirements:</strong> C  NC  NA  NI</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.12 Short-term stockpile location restrictions met.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.13 Short-term stockpile site technical requirements met.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 6 Permanent Stockpile Site Operation & Maintenance

**Checklist questions:**

<table>
<thead>
<tr>
<th>Question</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes:</th>
</tr>
</thead>
</table>

### 7 Manure Composting Operation & Maintenance

**Inspection requirements:**

<table>
<thead>
<tr>
<th>Inspection</th>
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<th>NC</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Question</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes:</th>
</tr>
</thead>
</table>

### 8 Earthen Basin Liquid Manure Storage (LMSA) with or without Synthetic Lining Requirements

**Inspection requirements:**

<table>
<thead>
<tr>
<th>Inspection</th>
<th>C</th>
<th>NC</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes:</th>
</tr>
</thead>
</table>

### 9 Concrete Liquid Manure Storage (LMSA) Requirements

**Inspection requirements:**

<table>
<thead>
<tr>
<th>Inspection</th>
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<th>NC</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes:</th>
</tr>
</thead>
</table>

### 10 Above-ground Liquid Manure Storage System (LMSA) Requirements

**Inspection requirements:**

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
</table>

### 11 Technical Requirements for Poultry Barn Floor

**Notes:**
### 11.1 Poultry barn floor maintenance requirements met.

<table>
<thead>
<tr>
<th>Inspection Requirement:</th>
<th>C</th>
<th>NC</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
</table>

### 12 Carcass Management Requirements

#### 12.1 Checklist questions:

<table>
<thead>
<tr>
<th>Y</th>
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<th>NA</th>
<th>NI</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>12.1.1 Is the Facility following their submitted Animal Mortality Plan?</td>
<td>☒</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### 12.2 Rendering checklist items:

<table>
<thead>
<tr>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
<tbody>
<tr>
<td>12.2.1 Is the carcass storage container animal-proof?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.2.2 Is the off-site carcass storage container at least 200' from the closest neighbor's buildings?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.2.3 Are carcasses picked up within 72 hours?</td>
<td>☒</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### 12.3 Composting checklist items:

<table>
<thead>
<tr>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
</table>

#### 12.4 Burial checklist items:

<table>
<thead>
<tr>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
</table>

#### 12.5 Incineration checklist items:

<table>
<thead>
<tr>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
</table>

#### 12.6 Method of carcass management meets BAH & MPCA technical requirements.

<table>
<thead>
<tr>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
</table>

#### 12.7 Dead animal disposal or storage containment meets he zero discharge standard if it lies within the footprint of the facility.

<table>
<thead>
<tr>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
</table>

### 13 Record-Keeping Requirements

#### Checklist questions:

<table>
<thead>
<tr>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.1 Are the Level I manure application record-keeping requirements met?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.2 Are the daily water line observation records kept?</td>
<td>☒</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.3 Are the weekly LMSA inspection records kept?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.4 In open-air systems, are the LMSA liquid level depth marker records kept?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.5 Where required, are the perimeter tile system observation records kept?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.6 Where required, are the storm water diversion structure observation records kept?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.7 Where required, are the records of runoff diversion observations kept?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.8 Where required, are the records of observation of devices channeling runoff kept?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.9 Where Permittee applies own manure, are records of manure application equipment inspection and maintenance kept?</td>
<td>☒</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.10 Are the records of actions taken to correct problems for items 13.2 through 13.9 kept?</td>
<td>☒</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.11 Are the record-keeping requirements of mortality disposal activities met?</td>
<td>☒</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.12 Are the record-keeping requirements of LMSA overflows met?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.13 Are the record-keeping requirements of stockpiling &amp; manure composting activities met?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.14 Are the record-keeping requirements for poultry barn floor maintenance met?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Inspection requirement:

<table>
<thead>
<tr>
<th>C</th>
<th>NC</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
</table>

#### Record-keeping requirements met.

<table>
<thead>
<tr>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
</table>

### 14 Level II Land Application Inspection
### MMP records and plans checklist questions:

<table>
<thead>
<tr>
<th>Question</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>14.1 Is the MMP for next year available for review?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Review of application records submitted as part of 2013, 2014 and 2015 annual reports noted:</td>
</tr>
<tr>
<td>14.2 Are the soil phosphorus test (SPT) results less than or equal to</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- record information that was included in annual reports was not actually records, but rather manure management plan information.</td>
</tr>
<tr>
<td>four years old?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- record information that was included in annual reports did not include any dates of application.</td>
</tr>
<tr>
<td>14.3 Is manure analysis obtained annually?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>- record information that was included in the 2013 &amp; 2014 annual reports was manure management plan information for next crop year rather than records for the crop year that was supposed to be provided as part of the annual report (i.e. a plan for the 2015 crop year was submitted for the 2014 annual report rather than 2014 records).</td>
</tr>
<tr>
<td>14.4 Do the records kept for transferred-ownership manure meet</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Required Corrective Actions:</td>
</tr>
<tr>
<td>requirements?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1) For future records/annual reports (starting with record/annual report for the 2016 crop year), submit &quot;record&quot; information that corresponds to the correct year/reporting period for which the annual report is based on.</td>
</tr>
<tr>
<td>14.5 Do the records kept for non-transferred-ownership manure</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>meet requirements?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14.6 Are records available for all manure applications?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14.7 Is emergency winter application of manure conducted only at sites</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>with MPCA pre-approval?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14.8 Is the total available N less than or equal to limits in 7020 rules?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14.9 Is summer manure application (June – August) followed with a</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>planted cover-crop?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14.10 Is manure applied to sandy soils only after mid-October?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Phosphorus management checklist questions:

<table>
<thead>
<tr>
<th>Question</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
<tbody>
<tr>
<td>14.11 In special protection areas or within 300 feet of open tile intakes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>on soils over 21 ppm Bray or 16 Olsen, is P applied during the rotation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(6 years) less than P removed? See worksheet.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14.12 In special protection areas or within 300 feet of open tile intakes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>is an approved P strategy followed for manure applied on soils greater</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>than 75 ppm Bray or 60 Olsen?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Inspection requirements:

<table>
<thead>
<tr>
<th>Inspected during application</th>
<th>Inspected after application</th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Same as site inspection</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Level III Land Application Inspection

<table>
<thead>
<tr>
<th>Facility where manure originated:</th>
<th>Same as site inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other (name):</td>
<td></td>
</tr>
</tbody>
</table>

### Inspected during application:  

<table>
<thead>
<tr>
<th>Land application technical requirements checklist questions:</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>15.1 Is the method of application consistent with the approved MMP?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Inspection did not include a level III inspection of a land application area.</td>
</tr>
<tr>
<td>15.2 Is the manure spread in a uniform pattern?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15.3 Is manure prevented from entering waters, tile intakes,</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>sinkholes and wells during the application process?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15.4 Is a surface application occurring when chances of ½</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>inches or more of rain are less than 50% within the next</td>
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<td>24 hours?</td>
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<td>15.5 Is a cover crop planted in fields after receiving</td>
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<td>manure application during summer months (June – August)?</td>
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<td>15.6 Is the manure applied into the road right-of-way?</td>
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<td>15.7 Manure application less than or equal to rates allowed</td>
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<tr>
<td>by Minn. R. 7020.</td>
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</table>

### Non-Frozen soils setback requirements checklist questions:  

<table>
<thead>
<tr>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes:</th>
</tr>
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<tbody>
<tr>
<td>15.8 Is the 25 foot setback from sensitive features followed?</td>
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<tr>
<td>15.9 Is the 50 foot setback from sinkholes and wells followed?</td>
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### Winter manure application requirements checklist questions:  

<table>
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<tr>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
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</tr>
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<tr>
<td>15.11 Is the manure getting applied only to fields identified in the Permittee’s MMP?</td>
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<tr>
<td>15.12 Is solid manure being applied to slopes greater than 6%?</td>
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<tr>
<td>15.13 Is liquid manure being applied to slopes greater than 2%?</td>
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</tbody>
</table>
15.14 Is manure application occurring during times of high snowmelt potential? ☐ ☐ ☐ ☐
15.15 Is the application meeting the 300 foot setback to sensitive feature(s)? ☐ ☐ ☐ ☐

<table>
<thead>
<tr>
<th>Inspection requirements:</th>
<th>C</th>
<th>NC</th>
<th>NA</th>
<th>NI</th>
</tr>
</thead>
</table>
15.16 Land application technical requirements met. ☐ ☐ ☐ ☒
15.17 Non-frozen Soils setback requirements met. ☐ ☐ ☐ ☒
15.18 Winter application requirements met. ☐ ☐ ☐ ☒

### Additional Individual Permit Requirements:

<table>
<thead>
<tr>
<th>Checklist Questions</th>
<th>Y</th>
<th>N</th>
<th>NA</th>
<th>NI</th>
<th>Notes:</th>
</tr>
</thead>
</table>
16.1 If site is operating under an individual permit, all additional permit conditions are met? ☐ ☒ ☐ ☐

### Other and Emerging Issues (Do not track in Delta)

19.1 Any additional county requirements?
19.2 Agitation and Pumpout Notification for Exemption
19.3 Have they identified potential release points to surface water at the site and along transportation route for manure application?
19.4 Do employees receive regular training on emergency procedures?
19.5 Secondary carcass management plan available?
19.6 Program updates

### Printed Materials Distribution (Do not track in Delta)

<table>
<thead>
<tr>
<th>Requested</th>
<th>Delivered</th>
<th>Mailed</th>
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</thead>
</table>
20.1 Copy of Minn. R. 7020 ☐ ☐ ☐
20.2 'Applying Manure in Sensitive Areas' booklet ☐ ☐ ☐
20.3 Transferred manure Record-keeping pad ☐ ☐ ☐
20.4 Record-keeping form for greater than 300 AU ☐ ☐ ☐
20.5 Field Records Booklet (MES) ☐ ☐ ☐
20.6 Manure Application Rate Guide ☐ ☐ ☐
20.7 Carcass Disposal Factsheet ☐ ☐ ☐
20.8 Catastrophic Loss Factsheet ☐ ☐ ☐
20.9 LMSA Maintenance Factsheet ☐ ☐ ☐
20.10 LMSA Closure Factsheet ☐ ☐ ☐
20.11 Silage Management Factsheet ☐ ☐ ☐
20.12 Well setback MDH Factsheet ☐ ☐ ☐
20.13 ISTS/SSTS Factsheet ☐ ☐ ☐
20.14 Burn Barrel Factsheet ☐ ☐ ☐
20.15 Solid/Hazardous Waste Factsheet ☐ ☐ ☐
20.16 Truck Wash Factsheet ☐ ☐ ☐
20.17 Stormwater Control Factsheet ☐ ☐ ☐
20.18 Sharps Disposal Factsheet ☐ ☐ ☐
20.19 Water Appropriation Permit Factsheet ☐ ☐ ☐
20.20 “Pasture vs Feedlot” ☐ ☐ ☐
20.21 Winter Grazing Factsheet ☐ ☐ ☐
20.22 Other ☐ ☐ ☐
Minnesota Center For Environmental Advocacy (“MCEA”)

Comments and Petition for a Contested Case Hearing

on

The Draft National Pollutant Discharge Elimination System (“NPDES”) Permit

for the expansion proposed at the

Daley Farms of Lewiston, LLC operation in Winona County

November 15, 2018

SUMMARY

The Minnesota Pollution Control Agency (“MPCA”) proposes to issue an National Pollutant Discharge Elimination System/State Disposal System permit (“NPDES permit”) authorizing a significant expansion of the Daley Farms of Lewiston LLC dairy operation in Winona County (“Daley Expansion”). Based on the existing record, MPCA cannot issue this permit because the project has not identified enough competent land that could receive the volumes of manure that will be produced by the expanded facility. The land that has been identified for application is pocked with karst features that will convey manure directly to ground and surface waters. As a result, MPCA cannot conclude that the project as proposed will comply with the requirements of the Clean Water Act and state law. The project as proposed would instead further endanger public health in an area that is already experiencing health impacts from contaminated drinking water. Petitioners therefore request that the MPCA deny the NPDES permit for the Daley Expansion. If the agency does not deny the application, Petitioners request
that the agency refer the disputed issues of material fact to the Office of Administrative Hearings for resolution in a contested case hearing.

I. TIMELINESS

This comment and request for a contested case hearing is timely. MPCA published the Public Notice of the intent to issue an NPDES permit for the Daley Expansion on October 1, 2018, and extended the comment period until November 15, 2018 at the request of Petitioners and others, due to the fact that this comment period coincided with harvesting, and because of the complexity of the project. The petition for a contested case is timely pursuant to Minn. R. 7000.1800, which provides that a petition for a contested case hearing “must be submitted during the public comment period established under parts 7001.0100.”

II. STATEMENT OF INTEREST

MCEA is a Minnesota nonprofit public interest organization with over 3,000 members including many in Winona County. MCEA’s mission is to use law, science, and research to protect and enhance Minnesota’s natural resources, wildlife, and the health of its people. MCEA has advocated for sustainable agriculture for many years, and was integrally involved in the feedlot rule amendments implemented in the early 2000s.

III. APPLICABLE LEGAL STANDARDS

Before issuing an NPDES Permit, MPCA must make the following finding:

Except as provided in subpart 2, the agency shall issue, reissue, revoke and reissue, or modify a permit if the agency determines that the proposed permittee or permittees will, with respect to the facility or activity to be permitted, comply or will undertake a schedule of compliance to achieve compliance with all applicable state and federal pollution control statutes and rules administered by the agency, and conditions of the permit and that all applicable requirements of
Similarly, the MPCA can refuse to issue the Permit if it finds:

A. that with respect to the facility or activity to be permitted, the proposed permittee or permittees will not comply with all applicable state and federal pollution control statutes and rules administered by the agency, or conditions of the permit;

C. that the permittee has failed to disclose fully all facts relevant to the facility or activity to be permitted, or that the permittee has submitted false or misleading information to the agency or to the commissioner;

D. that the permitted facility or activity endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit;

In issuing an NPDES/SDS permit, MPCA must ensure that the permit contains “conditions necessary for the permittee to achieve compliance with all Minnesota or federal statutes or rules.” The Commissioner is required to establish “effluent limitations, standards, or prohibitions for each pollutant to be discharged from each outfall or discharge point of the permitted facility.”

Below, Petitioners set forth the detailed reasons why the Permit does not meet the standards set forth above.

IV. THE DRAFT PERMIT DOES NOT MEET THE REQUIREMENTS OF THE CLEAN WATER ACT AND STATE LAW

A. Clean Water Act

The Clean Water Act prohibits the discharge of pollutants to waters of the United States without a NPDES permit. In Minnesota, MPCA administers the NPDES permit program by

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1 Minn. R. 7001.0140, subp. 1. In separate comments, MCEA also asserts that, under the conditions in Minn. R. 4410.1700, MPCA should order an EIS.
2 Id., subp. 2.
3 Minn. R. 7001.1080, subp. 1.
4 Id., subp. 2.
5 33 U.S.C. §§ 1311(a), 1342(a).
issuing permits that comply with or are more stringent than federal permit requirements, to persons seeking to discharge pollutants into waters within Minnesota.\(^6\) The CWA requires that all NPDES permits for point sources contain technology based effluent limits and any more stringent limits necessary to meet water quality standards.\(^7\) The limits necessary to meet water quality standards – commonly referred to as water quality based effluent limits or WQBELs – must control all pollutants that “are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an in-stream excursion above any State water quality standard.”\(^8,9\) MPCA must ensure that “the level of water quality to be achieved by limits on point sources … is derived from and complies with all applicable water quality standards.”\(^10\) In other words, MPCA must limit point source discharges as “necessary to keep the concentration of a pollutant in a waterway at or below the numeric benchmark.”\(^11\)

New sources and new dischargers,\(^12\) such as the Daley Expansion, are subject to more stringent controls, particularly where the new source or new discharger will contribute pollutants to an already impaired water. No permit may be issued to a new source or new discharger if a

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\(^6\) Minn. Stat. § 115.03; 40 C.F.R. § 123.25(a); 33 U.S.C. § 1342.
\(^7\) 33 U.S.C. § 1342, 1311(a)(1)(A)-(C); 40 C.F.R. 122.44(d)(1).
\(^8\) 40 C.F.R. 122.44(d)(1)(i).
\(^9\) The Clean Water Act made it the national goal to eliminate all discharges of pollutants to waters by 1985, with an interim goal that water quality supports both fish and aquatic life and all recreational uses by July 1, 1983. 33 U.S.C. § 1251(a). Under the Clean Water Act, each state is charged with establishing the water quality goals and uses of waters within its borders. See 40 C.F.R. § 131.(4)a. These so called “water quality standards” establish both the uses of waterways—such as for fishing or recreation—and the maximum allowable concentration of pollutants that may be present in a waterbody to ensure the designated uses will be met. See 40 C.F.R. § 131.5 (establishing the criteria for EPA approval of water quality standards, one of which being that the standards “protect the designated water uses”).
\(^10\) 40 C.F.R. § 122.44(d)(vii)(A).
\(^11\) In re Alexandria Lake Area Sanitary Dist. NPDES/SDS Permit No. MN0040738, 763 N.W.2d 303, 309 (Minn. 2009) (quoting Am. Paper Inst., Inc. v. EPA, 996 F.2d 346, 350 (D.C. Cir. 1993)).
\(^12\) 40 C.F.R. 122.29(a).
discharge from construction or operation will cause or contribute to a violation of water quality standards.\textsuperscript{13} However, a new source or new discharge may be permitted in situations where a pollutant load allocation has been performed and the permittee has demonstrated, before the close of the public comment period, that there are sufficient remaining pollutant load allocations to allow for the discharge (and the existing discharges are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards).\textsuperscript{14}

B. Effluent Limits For CAFOs

A Concentrated Animal Feeding Operation ("CAFO"), like all other NPDES permitted facilities, is subject to both technology based effluent limits and more stringent water quality based effluent limits needed to meet water quality standards for the types of pollutants discharged from the facility. The NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals."\textsuperscript{15} Land application discharges from a CAFO are also subject to NPDES requirements.\textsuperscript{16}

As a large CAFO subject to NPDES permitting requirements, the Daley Expansion must comply with federal technology based effluent limits, including Best Management Practices that include, among other things:

- A nutrient management plan ("NMP")\textsuperscript{17} “based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field and that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters;”

\textsuperscript{13} 40 C.F.R. § 122.4(i).
\textsuperscript{14} Id.
\textsuperscript{15} 40 C.F.R. § 122.23(a).
\textsuperscript{16} 40 C.F.R. § 122.23(e); Minn. R. ch. 7020.
\textsuperscript{17} The document known as a “nutrient management plan” under the federal rules is referred to as a “manure management plan” under state rules. Minn. R. 7020.2225, subp. 4.
• Application rates that minimize phosphorus and nitrogen transport from the field to surface waters in compliance with the technical standards for nutrient management;

• Manure and soil sampling;

• A prohibition on applying manure closer than 100 feet of surface waters, open tile line intakes, sinkholes, agricultural well heads, or other conduits to surface waters or a 35-foot vegetated buffer that receives no manure.\(^{18}\)

A nutrient management plan that meets the standards established in federal law is a mandatory prerequisite for a CAFO seeking coverage under an NPDES permit.\(^{19}\) Specifically, the NMP must:

“(vi) Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;

...(viii) Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrient in the manure, litter or process wastewater.”\(^{20}\)

It is of the utmost importance that either the NMP definitively prevents any pollutants from reaching surface waters at levels that contribute to a violation of water quality standards or that the NPDES permit contains additional conditions that do so. This is because federal law exempts from NPDES permit requirements any agricultural stormwater discharges that occur despite application of manure in accordance with an NMP.\(^{21,22}\) However, the agricultural stormwater exemption does not exempt all discharges from land application areas: precipitation related discharges are exempted agricultural stormwater discharges only where “the CAFO has applied the manure in accordance with nutrient management practices that ensure ‘appropriate

\(^{18}\) 40 C.F.R. § 412.4(c)1.

\(^{19}\) 40 C.F.R. § 122.42(e)1.

\(^{20}\) Id. See also Minn. R. 7020.2225.

\(^{21}\) 33 U.S.C. § 1362(14); 40 C.F.R. § 122.23(e).

\(^{22}\) This same exemption does not exist in state law, see Minn. R. 7001.1030.
agricultural utilization’ of the manure, litter, or process wastewater nutrients.”

“[W]hile the statute does include an exception for ‘agricultural stormwater discharges’ there can be no escape from liability for agricultural pollution simply because it occurs on rainy days.”

Minnesota State rules simply prohibit the application of manure and process wastewater in a manner that will “result in a discharge to waters of the state during the application process” or “cause pollution of waters of the state due to manure-contaminated runoff.”

By themselves, NMPs are not sufficient to ensure public health, nor are they intended to, and therefore water quality based effluent limits may be necessary to protect the public health.

Water quality based effluent limits may also be necessary, in addition to the NMP, to prevent a facility from contributing to a violation of water quality standards. In particular, water quality effluent limits may be needed to meet water quality standards for nitrate or pathogens, such as E. coli and fecal coliform, channeled to surface water overland or via other conduits such as sinkholes, fissures, fractured bedrock, or drain tile.

For example, compliance with EPA’s technology based limits will not eliminate the discharge of pathogens from land spreading activities, although the limit could reduce pathogens by about 46% from baseline levels. And the manure application setback requirements in Minn. R. ch. 7020 are based on research related

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24 Concerned Area Residents for Env’t v. Southview Farms, 34 F.3d 114, 120 (2nd Cir. 1994).
25 Minn. R. 7020.2225.
26 Waterkeeper All., Inc. v. U.S. E.P.A., 399 F.3d 486, 519 (2nd Cir. 2005).
27 74 Fed. Reg. at 70458.
29 73 Fed. Reg. 70,418-01; see also Chapter 12 of “Development Document for the Final Revisions to the NPDES and the Effluent Guidelines for CAFOs” EPA-821-R-03-001. See also 68 Fed. Reg. 7176, 7197-98 (the primary role of applying at agricultural rates is to control the runoff of nutrients, not the discharge of pathogens.)
to phosphorus transport, not bacterial transport, and the effectiveness of these current setbacks on bacterial transport to surface waters is not known.\textsuperscript{30}

In addition, discharges that reach surface water via overland runoff, sinkholes, fractured bedrock, fissures, drain tile, and other conduits can be discharges from a point source regardless of whether they are found on land application areas controlled by the facility or found on land application areas for transferred manure. Under federal law, the “collection of liquid manure into tankers and their discharge on fields from which the manure directly flows into navigable waters are point source discharges. . .”\textsuperscript{31} Under state law, sinkholes, discrete fissures, drain tile, and other conduits are by definition point sources that must be permitted irrespective of whether it is agricultural stormwater or another source of pollutants that flows through these conduits and fissures.\textsuperscript{32,33} Therefore, conditions sufficient to prevent these point source discharges of pollution from contributing to a violation of water quality standards are required by law.\textsuperscript{34}

\textsuperscript{30} Mississippi River – Winona Watershed Pollutant Reduction Project (Total Maximum Daily Load Study) for Nutrients, Sediment and Bacteria at 51-52.

\textsuperscript{31} \textit{Concerned Area Residents for Env’t v. Southview Farm}, 34 F.3d 114, 119 (2\textsuperscript{nd} Cir. 1994).

\textsuperscript{32} According to state law, point sources are “any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” Minn. Stat. § 115.01, subd. 11. A "Drainage system" is a “system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets, established and constructed by a drainage authority.” Minn. Stat. § 103E.005, subd. 12. A “sinkhole” is a “surface depression caused by a collapse of soil or overlying formation above fractured or cavernous bedrock. Minn. R. 7020.0300, subp. 22.

\textsuperscript{33} State law, which may be more stringent than the federal Clean Water Act, does not contain the agricultural stormwater exemption. Minn. R. 7001.0130. “Because the exemption is not incorporated by reference in state-administered NPDES programs, which may be more stringent than the EPA regulations, and because Minnesota’s NPDES program does not have its own [exemption], the federal [exemption] does not apply in Minnesota.” \textit{West McDonald Lake Association v. Minnesota Department of Natural Resources}, 899 N.W.2d 832, 842-843 (Minn. Ct. App. 2017); see also, 40 C.F.R. § 123.25; Minn. Stat. § 115.03, subd. 5.

C. MPCA Has A Duty To Regulate Agricultural Nonpoint Sources Of Pollution

The federal Clean Water Act creates the primary authority for permitting point source discharges of pollution, but the Act places primary responsibility for the control of nonpoint sources on states, such as Minnesota. Specifically MPCA has the authority and duty to control nonpoint sources of pollution, including those nonpoint sources from agricultural operations:

The agency is hereby given and charged with the following powers and duties:

... (e) to adopt, issue, reissue, modify, deny, or revoke, enter into or enforce reasonable orders, permits, variances, standards, rules, schedules of compliance, and stipulation agreements, under such conditions as it may prescribe, in order to prevent, control or abate water pollution, or for the installation or operation of disposal systems or parts thereof, or for other equipment and facilities:

(1) requiring the discontinuance of the discharge of sewage, industrial waste or other wastes into any waters of the state resulting in pollution in excess of the applicable pollution standard established under this chapter...  

The statute explicitly includes agricultural sources in its definition of “other waste”:

"Other wastes" mean garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, oil, tar, chemicals, dredged spoil, solid waste, incinerator residue, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, cellar dirt or municipal or agricultural waste, and all other substances not included within the definitions of sewage and industrial waste set forth in this chapter which may pollute or tend to pollute the waters of the state.

The Legislature plainly provided the MPCA with both the authority and the duty to regulate agricultural sources of pollution to the state’s waters.

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36 Minn. Stat. § 115.03, subd. 1 (emphasis added).
37 Minn. Stat. § 115.01, subd. 9 (emphasis added).
D. The Area Where Daley Farms Proposed To Land Apply Liquid Manure Is Highly Susceptible To Pollution Due To Karst Features And Sinkholes.

The record in this matter demonstrates that the sites where Daley Farms intends to apply the liquid manure generated from its proposed expansion are replete with karst features, including sinkholes and disappearing streams and the like. Moreover, these areas are likely to develop additional sinkholes.\(^{38}\) Groundwater under such areas is susceptible to pollution.\(^{39}\)


The terms of the draft permit are insufficient to prevent pollutants contained in land-applied liquid manure originating from the Daley Expansion from contaminating surface waters. The draft permit prohibits “the discharge of manure and manure contaminated runoff from a land application area, except where the discharge is an agricultural storm water discharge.”\(^{40}\) The agricultural stormwater exemption is broad, and includes any precipitation-related discharges of manure from land areas under the CAFO’s control if the manure has been applied in accordance with an MMP that ensures appropriate agricultural utilization of the nutrients in the manure.\(^{41}\) Thus, by allowing an “agricultural storm water discharge,” the draft permit is not sufficient to protect water quality because it is not designed to prevent discharges of nitrate, phosphorus and \textit{E. coli} from reaching surface waters.

The draft permit fails to ensure that the discharging facility is not generating pollution that will cause or contribute to a violation of water quality standards in two ways. First, the

\(^{38}\) See https://conservancy.umn.edu/bitstream/handle/11299/58435/winona_plt5_sinkholes%5b1\%5d.pdf?sequence=5&isAllowed=y

\(^{39}\) See https://conservancy.umn.edu/bitstream/handle/11299/58435/winona_plt6_gwsuscept%5b1\%5d.pdf?sequence=4&isAllowed=y

\(^{40}\) Draft Permit at 44, Section 13.3.

\(^{41}\) \textit{Id.} at 43.
permit restrictions do not appear to prevent the discharge of pollutants from land spreading of manure that occurs on land that is outside the facility’s control. MPCA has the duty to ensure these pollutants are not causing exceedances of water quality standards in surface waters, or contributing pollutants such as nitrates and bacteria in excess of a load allocation in a TMDL. Although rules apply to transferred manure, the MPCA does not directly inspect or regulate these applications.\textsuperscript{42} This is important considering that Daley Expansion will cause an estimated 19 million gallons of manure to be spread on land outside its control.\textsuperscript{43}

Second, the permit will not prevent discharges of pollution that occur even when the facility is applying manure according to its manure management plan. The agronomic rates utilized in the facility’s manure management plan are not intended to prevent the addition of nutrients to surface water or groundwater. These rates are calculated based on economics, and vary depending on the ratio of nitrogen costs to corn prices. These rates of application will result in subsurface discharges of nitrogen at levels higher than the health risk limit for nitrogen.\textsuperscript{44}

In addition, there has been no analysis of whether the landspreading of manure will contribute bacteria to waters of the United States which are already significantly contaminated by excess bacteria in the area where Daley Farms operates and where its manure will be applied. Compliance with EPA’s technology based limits will not eliminate the discharge of pathogens from manure application activities, although in some circumstances those limits could reduce pathogens by 46\% from baseline levels.\textsuperscript{45} There has been no analysis of whether this reduction

\textsuperscript{42} Minn. R. 7020.2225, subp. 1, item D.
\textsuperscript{43} Daley Farms Lewiston, LLC, NPDES Permit Application Materials, at 1061 of 1090.
\textsuperscript{44} Report of Dr. Gyles Randall’s Review of Portions of the Daley LLP Proposed Dairy Expansion, attached as Exhibit (Ex”) 1; Best Management Practices for Nitrogen Use in Southeastern Minnesota, University of Minnesota Extension, at Table 2.
\textsuperscript{45} 73 Fed. Reg. 70,418-01; see also Chapter 12 of “Development Document for the Final Revisions to the NPDES and the Effluent Guidelines for CAFOs” EPA-821-R-03-001; see also,
can be expected in areas where karst topography and sinkholes are ubiquitous. Additionally, the manure application setback requirements in Minn. R. ch. 7020 are based on research related to phosphorus transport, and not bacterial transport, and the effectiveness of these current setbacks on bacterial transport to surface waters is not known.46

The MMP, as drafted, clearly fails to control pollutants from reaching ground and surface water at land application sites. The application of manure from the Daley Expansion is likely to result in contamination of surface water given the karst geology of fissures, sinkholes, fractured bedrock and other conduits in the region where the facility is located and intends to land apply manure. This pollution will either happen directly on Daley Farms land, or after the manure is transferred to other individuals in the community.

These anticipated discharges will reach surface water either via overland runoff or via hydrologically connected groundwater and will contribute to a violation of water quality standards. The draft NPDES permit for Daley Farms does nothing to prevent this violation of the Clean Water Act and state law.

F. The Land Application Practices Allowed Under The Permit Will Result In Subsurface Discharges Of Manure To Groundwater

The Draft Permit Section 13.4 states:

The Permittee shall not discharge from the facility, by overflow or other means, manure, manure-contaminated runoff, or process wastewater to a sinkhole, fractured bedrock, well, surface tile intake, mine, quarry, or other natural or constructed channels that convey fluids to groundwater.

68 Fed. Reg. 7176, 7197-98 (the primary role of applying at agricultural rates is to control the runoff of nutrients, not the discharge of pathogens.)

46 Mississippi River – Winona Watershed Pollutant Reduction Project (Total Maximum Daily Load Study) for Nutrients, Sediment and Bacteria at 51-52.
The “leaky” nature of the karst topography underlying Daley Farms and surrounding areas, coupled with information provided in Dr. Randall’s attached report, demonstrates that MPCA does not have a factual basis for concluding that the Daley Expansion could comply with this prohibition. In this area—where current agricultural practices are already causing significant groundwater contamination—it is beyond reason to conclude that that spreading many million gallons more of liquid manure will not intensify the problem. MPCA has not shown that the additional liquid manure will not increase nitrogen or \textit{E. coli} in the groundwater.

In addition, there has been no analysis of whether the landspreading of liquid manure will contribute bacteria to waters of the state, including groundwater that is the source of drinking water for a significant number of individuals and families living in Winona County.

There are numerous pathways for land-applied liquid manure to reach ground and surface waters in this region via fissures, conduits, fractured bedrock, and sinkholes. In addition, Dr. Randall’s report identifies other additional pathways for subsurface discharges. Over-applying nutrients in excess of agricultural utilization to incompatible sites (very high STP levels, sloping soils, shallow soils, numerous setbacks) will lead to significant environmental concerns. Specifically, the Daley Expansion will “result in excess levels of nitrate available for leaching to ground water,” with a risk of “significant and unacceptable surface water contamination (sediment, manure, and pathogens) or ground water pollution.”

Because the project cannot comply with the effluent limitations on subsurface discharges, the project is ineligible for permit coverage.

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G. The Permit Will Allow Application Of Manure At Rates That Exceed Agricultural Utilization Of Nutrients

It is a certainty that the project as proposed will apply liquid manure to croplands in excess of agricultural utilization of nutrients, for two primary reasons. First, the proposal uses clearly erroneous maximum nitrogen application rates to estimate the acres needed. Second, many of the acres the MMP identifies for landspeading manure are unsuitable for land application due to setbacks, soil depth, and soil characteristics that render the land ineligible for land application. Uniform pattern application of liquid manure will be very difficult on many of the manure application sites identified in the MMP. In other words, the project does not have enough acres to apply the 46 million gallons of manure it will generate, and even less of the application acreage will be available for manure spreading than the proposal assumes. Dr. Randall in fact seriously questions “whether there are enough acceptable soils in this proposal to receive the manure produced from this dairy expansion project without significant and unacceptable surface water contamination (sediment, manure, and pathogen) or groundwater pollution (nitrate-nitrogen).” As a result, the project will apply far more manure than can be utilized by crops, causing contamination of ground and surface waters; violating 40 C.F.R. § 412.4(c), 40 C.F.R. § 122.42(e) and Minn. R. 7020.2225, subp. 3; and rendering the project ineligible for coverage under the permit for the following reasons:

- The project’s MMP states that manure will be applied on land under Daley Farm’s control at rates ranging from 3,000 to 20,000 gallons/acre. The MMP estimates the nutrient content of the liquid manure at either 13.18, or 31 lbs. nitrogen per 1,000 gallons, but Dr. Randall questions how the nutrient in previous year’s manure of 13 lbs. per gallon can be 58% lower than the Book value of 31 lbs. per 1000 gallons.

- As Dr. Randall explains, the recommended N rate used in the Daley Farms EAW is based on outdated recommendations of 180 lbs. N/acre for corn after corn and 140

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48 Id.
49 Daley Farms of Lewiston, LLC Nutrient Application Planning Worksheet.
50 Daley Farms of Lewiston, LLC Crop and Nutrient Planning Worksheet.
lbs. N per acre for corn following soybean. This is an excessive amount of nitrogen application, and far more than can be utilized by crops. Dr. Randall explains in his attached report that the Maximum Return to Nitrogen ("MRTN") rate is much lower: 123 lbs. nitrogen per acre for corn after soybeans and 159 lbs. per acre for corn after corn.\textsuperscript{51} Even then, we know that MRTN is not intended to protect groundwater, is based on the maximum economic return to the farmer, and will result in nitrate levels in groundwater above the health risk limit.\textsuperscript{52}

- The proposal would also apply phosphorus at rates excessive to agricultural needs. Dr. Randall concludes that manure applications on fields with very high soil test phosphorus, as Daley Farm’s proposes, are a “significant environmental concern to surface waters.”\textsuperscript{53} And scenario #1 in the 6-year soil phosphorus management plan would result in excessive nitrate.\textsuperscript{54}

- There are many characteristics of a crop field that render it ineligible for land application of manure, due to sloping soils, shallow soils, and numerous setbacks. As Dr. Randall observes, 10 identified manure application sites are identified as “poor” based on in-field characteristics including dominant soil types, slopes, topography, shallow soils to bedrock, Karst features, setbacks and water courses.

- Some of the soils at the application sites have slopes of 7-20% “that are more conducive to soil erosion, especially in the knifed-in manure strips that lead up and down the hill slopes.”\textsuperscript{55} At those sites significant erosion can occur “leading to pollution of surface waters.”\textsuperscript{56} In addition, the shallow soils found at many application sites “limit crop yields and enhance nitrate loss to groundwater.”

Dr. Randall ultimately concluded, “[b]etween site characteristics of the designated MAS including very high STP levels, sloping soils, shallow soils, numerous setbacks, and the improper N recommendations being used in the EAW, I am very concerned about the success of the proposed dairy expansion project. The large amount of manure being produced appears to require more ‘manure friendly’ land area than has been designated in the 42/44 MAS, unless

\textsuperscript{51} Dr. Gyles Randall, \textit{Review of Portions of the Daley LLP Proposedairy Expansion}, November 11, 2018, attached as Exhibit 1.

\textsuperscript{52} Dr. Gyles Randall, \textit{Nitrogen BMP’s for Corn in Minnesota}, attached as Exhibit 2.

\textsuperscript{53} \textit{Id.}

\textsuperscript{54} \textit{Id.}

\textsuperscript{55} \textit{Id.}

\textsuperscript{56} \textit{Id.}
manure is applied to the strongly sloping and shallow soils, which will lead to significant environmental concerns.”57

H. The Permit Lacks Conditions Sufficient To Meet Water Quality Standards.

The Daley permit does not contain conditions sufficient to prevent pollution of groundwater and surface water. Federal law requires MPCA to impose effluent limitations necessary to protect the receiving water and achieve water quality standards.58 No permit may be issued by the MPCA “[w]hen the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States.”59 Further regulations stipulate that:

. . .each NPDES permit shall include conditions meeting the following requirements when applicable.

. . .(d) Water quality standards and State requirements: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 of CWA necessary to:

(1) Achieve water quality standards established under section 303 of the CWA, including state narrative criteria for water quality.

(i) Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.60

Water quality based effluent limits (“WQBELs”) “shall ensure that… [t]he level of water quality to be achieved by limits on point sources … is derived from, and complies with all applicable water quality standards.”61

The threshold for inclusion of water quality based effluent limits is low: limits are necessary when a pollutant “may be discharged at a level which will cause, have a reasonable

57 Id.
59 40 C.F.R. § 122.4(d).
60 40 C.F.R. § 122.44.
potential to cause, or contribute to an excursion above State water quality criteria regardless of whether the water is listed on a state’s 303(d) impaired waters list.\textsuperscript{62} Even if a water body is not currently impaired, a permit writer must include a WQBEL if a discharge has the reasonable potential to cause or contribute to an excursion of applicable standards.\textsuperscript{63}

As explained more fully above, and in the attached expert reports of Dr. Randall, land spreading of manure from the facility will cause or contribute to violation of surface water quality standards in the already severely polluted area streams. The conditions in the Daley permit neither meet the standards of the Clean Water Act and state law, nor are they capable of preventing pollution from the facility from entering surface and groundwater.

\section{The Daley Farms Expansion Does Not Comply With EPA Approved Total Maximum Daily Loads.}

Rivers and streams with levels of nitrate and \textit{E. coli} (or fecal coliform) pollution that exceed Minnesota’s established water quality standards are unsafe for fishing or swimming, and MPCA may not authorize activities that increase pollution to these waters.

The Clean Water Act prohibits the Daley Expansion from discharging \textit{E. coli} and nitrate to impaired streams in the watershed unless, or until, a concrete plan is being implemented to bring the waters into compliance with water quality standards. The Clean Water Act prevents issuance of a NPDES permit:

(i) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of CWA, and for

\textsuperscript{63} \textit{City of Taunton}, at *39.
which the State or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

(1) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The Director may waive the submission of information by the new source or new discharger required by paragraph (i) of this section if the Director determines that the Director already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph (i)(2) is to be included in the fact sheet to the permit under §124.56(b)(1) of this chapter.64

This provision bans new discharges to impaired waters, even those that are offset by claimed reductions from other sources, unless “a TMDL has been performed and the [permittee] demonstrates that before the close of the comment period two conditions are met, which will assure that the impaired waters will be brought into compliance with the applicable water quality standards.”65 These two conditions require MPCA to show that there is sufficient remaining pollutant load allocations to allow for the discharge and that the existing dischargers are subject to “compliance schedules designed to bring the segment into compliance with water quality standards.”66 In other words the new discharge can only be permitted if it “can demonstrate that, under the TMDL, the plan is designed to bring the waters into compliance with applicable water quality standards.”67 There is nothing in the Clean Water Act “that provides an exception for an

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64 40 C.F.R. § 122.4(i).
65 Friends of Pinto Creek v. U.S. Envl. Prot. Agency, 504 F.3d 1007, 1012 (9th Cir. 2007), cert. denied, 555 U.S. 1097 (2009); see also 33 U.S.C. § 1251; 40 C.F.R. § 122.4(i). Friends of Pinto Creek interprets federal statutes and regulations that the Minnesota Supreme Court analyzed in Minn. Center for Environmental Advocacy v. Minn. Pollution Control Agency, 731 N.W.2d 502 (Minn. 2007) and is more authoritative because Minn. Center for Environmental Advocacy relied on a decision overturned by Friends of Pinto Creek.
66 40 C.F.R. § 122.4(i)(2).
67 Friends of Pinto Creek, 504 F.3d at 1012.
offset when the waters remain impaired and the new source is discharging pollution into that impaired water.”68

MPCA also may not authorize any activities that will contribute additional nitrate and *E. coli* from nonpoint sources to impaired waters. Impaired waters that could be impacted by the project include reaches of the South Fork of the Whitewater River, Garvin Brook, Peterson Creek, and Rush Creek. These reaches are impaired by bacteria and nitrates, and the applicable TMDLs demand reductions of these pollutants so that the water quality standards can be attained.

The MPCA must consider the following:

- Rush Creek, a trout stream directly impacted by Daley Farm’s land application sites, is so contaminated by bacteria that MPCA has determined the *E. coli* must be reduced in the watershed in order to meet water quality standards.69 To that end, MPCA has adopted a TMDL that specifies that all CAFOs in the watershed upstream of the outlet of the South Fork Root River must have a zero discharge of *E. coli*:

  CAFOs in the RRW were assigned a WLA of 0. Their role as a source of bacteria is discussed in Section 3.6.2.1. By assigning the allowable load to 0, it sets the strictest requirements for CAFOs - i.e., they are not allowed to discharge manure to surface waters, which should not occur in the first place if permit language governing them are properly followed.70

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68 *Id.*
70 *Id.* at 81.
In addition, the TMDL makes clear that *E. coli* will continue to exceed water quality standards unless other unregulated agricultural sources of *E. coli*, such as livestock facilities and land application of manure, reduce or eliminate *E. coli* contributions.\(^{71}\)

- Likewise, the trout stream portions of the Whitewater River, South Fork (AUID: 07040003-512) and Garvin Brook (07040003-524) are also impaired by bacteria and the TMDLs for these reaches allocate a “zero” discharge of fecal coliform to the Daley Farms of Lewiston and require reductions from other unregulated agricultural sources of fecal coliform, such as livestock facilities and land application of manure.\(^{72}\)

- The Peterson Creek watershed, which includes acres on which Daley Farms plans to spread manure, is also impaired by bacteria. MPCA estimates that there needs to be an 57% reduction in *E. coli* loading before this creek will meet water quality standards and be suitable for recreation.\(^{73}\)

- Nitrate pollution is also widespread in the watersheds where the Daley Expansion is located and anticipates spreading manure. MPCA has established a TMDL that includes reductions needed to meet nitrate water quality standards for the South Fork of the Whitewater watershed, where Daley Farms is located and intends to spread manure. Under this TMDL, there are zero nitrate allocations for Daley Farms. In addition, the

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\(^{71}\) *Id.* at 78.


TMDL identifies needed reductions from nonpermitted sources such as nitrate leaching loss from agricultural lands where nitrogen fertilizer and manure are land applied.\footnote{Id. at 2, 94-96.}

- MPCA has identified nitrate as the stressor causing impairment in Rush Creek but has not yet established a TMDL assigning appropriate load allocations and waste load allocations needed to bring the stream into compliance with applicable water quality standards. Therefore, no new discharges of nitrate that will reach these impaired surface waters are authorized.

As noted above, the proposed NPDES permit and manure management plan will likely result in a discharge of nitrate and bacteria to these waters that have no capacity to assimilate additional pollution. The MPCA has not shown, as required by federal law, that there are sufficient pollutant allocations for the Daley Expansion. For this reason, MPCA must deny the Daley Expansion NPDES permit until the facility meets the conditions in 40 C.F.R. § 122.4(i) and the three TMDLs that apply to the Daley Expansion site and areas where manure generated at this facility will be landspread.

\section*{V. THE PROJECT ENDANGERS HUMAN HEALTH AND THE ENVIRONMENT.}

Issuance of the draft NPDES permit is inappropriate because the project’s operations and discharges will create the potential for significant environmental effects. When those effects include threats to the public health that cannot be removed by permit modifications, the permit must be denied.\footnote{Minn. R. 7001.0140, subp. 2.} The current proposal would create just such a risk, and that risk is inherent to the location itself, the large quantity of liquid manure that is proposed to be land applied, and the
karst geology underlying Winona County. Simple modifications like acquiring more land application acres will not address the public health threat.

The overapplication of liquid manure and the existence of sinkholes, fractured bedrock, fissures, and other karst features near the proposed site and the land application sites constitute a threat to the public health justifying denial of coverage under the permit.\(^7^6\) Nearly every stream or river nearby the Daley Expansion is contaminated by agricultural pollutants including nitrate and bacteria, such as \textit{E. coli} and fecal coliform. In the townships where Daley proposes to land apply 46 million gallons of manure per year, about 40% of private wells that have been tested register above the health risk limit (“HRL”) for nitrate, with some wells testing at over 4 times the safe levels of nitrates.

<table>
<thead>
<tr>
<th>Township</th>
<th>% Private Wells &gt; HRL</th>
<th>Max Nitrate Level Recorded</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utica</td>
<td>46.5%</td>
<td>27.9 mg/L</td>
</tr>
<tr>
<td>Fremont</td>
<td>54.8%</td>
<td>43.8 mg/L</td>
</tr>
<tr>
<td>Saint Charles</td>
<td>34.1%</td>
<td>34.8 mg/L</td>
</tr>
</tbody>
</table>

*the results are based on data collected by the Minnesota Department of Agriculture’s Township Testing Program.

The Daley NPDES permit threatens to further contaminate public drinking water supplies:

- Six of the Daley Expansion’s proposed manure application sites are within the Utica Drinking Water Supply Management Area (“DWSMA”), which is rated “Highly Vulnerable.”\(^7^7\)
- The public water supply for Utica, located within 2 miles of the Daley site, is at serious risk and has registered over the nitrate HRL in recent years.
- Bacteria levels are reaching unsafe levels in public water supplies in the area where Daley is located and plans to landspread manure. Between 2011 and 2016, coliform was registered as present in the noncommunity water supplies of Trout Valley Trail in Lewiston; 3 locations in nearby St. Charles: Discount Grocery, Berea Moravian Church,

\(^7^6\) Minn. R. 7001.0140, subp. 2.
\(^7^7\) See Map of Manure Application Acres Proposed at Daley Farms & Drinking Water Supply Management Area Vulnerability, attached as Exhibit 3.
and SEMA equipment; and the Whitewater State Park and Wildlife Management Area in Altura.\textsuperscript{78}

There is a reasonable basis to dispute the underlying optimistic assumptions that the project will not apply liquid manure at rates that will contribute pollution to surface water and groundwater and surface water via karst features, fractured bedrock, sinkholes, and sinkholes that will convey manure to groundwater and threaten the public health. The land application sites are within watersheds, which are already contaminated with bacteria, nitrate, and nitrate caused aquatic toxicity.\textsuperscript{79} The connection between land application of liquid manure and groundwater contamination is established by the evidence already extant.

Finally, Daley Farms is located in an area with “high” sinkhole probability that is also highly susceptible to groundwater pollution.\textsuperscript{80} The groundwater impacts of a catastrophic manure pit failure would be immediate and severe, and the size of the proposal ensures that this threat cannot be eliminated by permit modifications.

\textbf{VI. REQUEST FOR A CONTESTED CASE ON DISPUTED ISSUES OF MATERIAL FACT}

The Commissioner must grant a petition to hold a contested case hearing if the Commissioner finds that:

A. there is a material issue of fact in dispute concerning the matter pending before the board or commissioner;

B. the board or commissioner has the jurisdiction to make a determination on the disputed material issue of fact; and


\textsuperscript{79} \textit{See} Map of Manure Application Acres Proposed at Daley Farms: Impaired Streams and Public Drinking Water Supply, attached as Exhibit 4.

C. there is a reasonable basis underlying the disputed material issue of fact or facts such that the holding of a contested case hearing would allow the introduction of information that would aid the board or commissioner in resolving the disputed facts in making a final decision on the matter.81

Above, Petitioners have set forth the materiality of the issues of fact that are in dispute. Petitioners have further provided the basis underlying the material and disputed issues illustrating that a contested case hearing on the following material issues would aid the Commissioner in making a final decision as to whether MPCA should issue an NPDES permit for the Daley Expansion.

1. The project’s Manure Management Plan (“MMP”) will allow application of manure at rates that exceed agricultural utilization of the nutrients, in violation of 40 C.F.R. § 412.4(c), 40 C.F.R. § 122.42(e) and Minn. R. 7020.2225, subp. 3;

2. The project’s land application practices will apply manure in a manner that will result in subsurface discharges of manure to groundwater, rendering the project ineligible for permit coverage and violating Minn. R. 7020.2003, subp. 1 and 7020.2225;82

3. Whether the MMP—allowed practices of overapplying manure and applying manure to croplands featuring sinkholes and other karst features such as fractured bedrock, fissures, sinkholes and other conduits, have the reasonable potential to cause or contribute to water quality standard exceedances for nitrates and bacteria, rendering the project ineligible for permit coverage and violating 40 C.F.R. § 122.44(d)(1);

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81 Minn. R. 7000.1900, subp. 1.
82 Permit at 13.4 (“Permittee shall not discharge from the facility, by overflow or other means, manure, manure-contaminated runoff, or process wastewater to a sinkhole, fractured bedrock, well, surface tile intake, mine quarry, or other natural or constructed channels that convey fluids to groundwater.”).
4. The project’s MMP will result in discharges to waters of the U.S. through hydrologically connected groundwaters, rendering the project ineligible for permit coverage and violating Minn. R. 7020.2003, subp. 2;

5. The MMP’s allowed practices of overapplying manure and applying manure to croplands featuring sinkholes and other karst features will cause or contribute to a violation of water quality standards and for which the state has performed a pollutant load allocation, where the agency has not demonstrated there are sufficient remaining pollutant load allocations to allow for the new discharge, in violation of 40 C.F.R. § 122.4(i) and state law;

6. The MMP endangers human health and the danger cannot be removed by a modification of the conditions of the permit;\textsuperscript{83}

Petitioners attach expert reports which reference numerous documents that support the issues identified in these Comments and Petition. Petitioners expect to call the following experts as witnesses if the Commissioner agrees to convene a contested case hearing on the issues that Petitioners identified:

- Dr. Gyles Randall, Professor Emeritus, University of Minnesota, Department of Soil, Water and Climate. Ph.D., M.S., B.S., Soil Science.

VII. CONCLUSION

For the foregoing reasons, issuance of an NPDES Permit would authorize the Daley Expansion to further pollute the surface water and drinking water in Winona County and would be unreasonable and unlawful. Issuance of an NPDES permit authorizing an enormous increase in the amount of manure produced at Daley Farms will result in discharges of nutrients,

\textsuperscript{83} Minn. R. 7001.0140, subp. 2.
pathogens, and pharmaceuticals to ground and surface waters, in violation of federal and state law. Should the agency decide to issue an NPDES permit for the Daley Expansion, Petitioners assert that the factual disputes concerning material facts critical to the agency’s permit determinations must be referred to the Office of Administrative Hearings for resolution in a contested case hearing.

Respectfully submitted,

/s/ Betsy Lawton

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EXHIBIT 1
The following review was based on the Environmental Review Documents found on the Daley Farm LLP Application Materials document placed on the MPCA website on October 2, 2018.

**Land Application and Nutrient Management:** Land application of manure is a highly significant economic and environmental portion of this project. Forty two field sites were identified as Manure Application Sites (MAS) to receive land-applied manure each year. The Daley’s own 31 sites and have written or verbal agreements with the other 11 sites. Three of the sites are located about 6-8 miles southeast and south of interstate I 90. Karst features including sink holes are found within or near 20 of the MSA. On 27 of the sites Daley will need to use specific field practices to reduce the likelihood of nitrates leaching to the ground water. Many of the sites were not uniform in size or shape, but were very chopped up with setbacks, Karst features, water wells, water courses including grass water ways and intermittent streams. Custom manure applicators prefer to apply manure in a pattern where they go back and forth from end to end working their way either to the right or to the left across the field. This pattern provides the most uniform application where all areas receive manure and skips are rare. Uniform pattern application will be very difficult on many of these designated MAS.

The silt loam soils found at all of the MAS are excellent for manure application and are highly productive. The Port Byron soil type, a dominant soil at many of these MAS, is arguably the best, most highly productive soil in the state. Steep slopes within these soil types can be a very limiting factor in terms of soil erosion and even crop yield. Sometimes the soils are very shallow to bedrock, which limits crop yields and enhances nitrate loss to ground water.

Each of the 44 MAS (two original MAS were split into two parts making a total of 44 MAS) were evaluated for in-field characteristics including dominant soil types, slopes, topography, shallow soils to bedrock, Karst features, setbacks and water courses. Conditions surrounding each field such as residences and sink holes along with soil test phosphorus (P) were not included in the evaluation. Each MAS was then given a rating: Good, OK with extra application care needed, and Poor. There were 20 Good sites, 14 OK sites and 10 Poor sites. The three sites in the Lewiston DWSMA were all rated Good while the Utica DWSMA had 3 Good sites, 3 OK sites, and 1 Poor site. The ratings were primarily based on soil type, slope, and depth to bedrock (shallow soils).

Many of the Poor sites contained soils with slopes ranging from 7 to 20% and/or significant areas of shallow soils to bedrock. Slopes over 6% are more conducive to soil erosion, especially in the knifed-in manure strips that lead up and down the hill slopes. In the spring with snow melt and rainfall, significant erosion can occur, leading to pollution of surface waters. Shallow
soils often have insufficient stored available water, leading to poor crop yields and inefficient use of the manure causing excess levels of nitrate available for leaching to ground water.

These findings lead one to seriously question whether there are enough acceptable soils in this proposal to receive the manure produced from this dairy expansion project without significant and unacceptable surface water contamination (sediment, manure, and pathogens) or ground water pollution (nitrate- nitrogen).

**Nutrient Management:** Issues of concern are listed below:

1) Page 311, Table A, Fertilizer Recommendations for Agronomic Crops in Minnesota is a 2001 publication. There have been numerous updates since 2001. For nitrogen, the Corn N Rate Calculator has been in use since 2006 and is the preferred method for obtaining N recommendations for corn after corn and after soybeans. The N rate recommendations for corn following alfalfa have also been changed since those used in this document. The recommended N rate used in this EAW for corn after corn is 180 lb N/acre and following soybeans is 140 lb N/acre. The Corn N Rate Calculator gives maximum rate of economic return (MRTN) N rates for corn after corn as 159 lb N/acre and after soybeans as 123 lb N/acre. The N rate recommendations in this EAW should be updated to be consistent with the present time.

2) The Bray P soil tests of these MAS are very high (page 410). A Bray soil test P (STP) of 21ppm or more is considered to be very high in Minnesota. The STP values from the hundreds of samples shown in the EAW document range from 11 ppm to 282 ppm. Twenty four soil samples tested >100 ppm. Only two MAS tested < very high – Lappiers and Orlies, both south of interstate I 90. All others were >25 ppm or very high. The three 2018 tests ranged from 93 to 136 ppm. These very high STP levels may pose a challenge to meet the goals of the MMP. Moreover, these very high levels of STP are a significant environmental concern to surface waters if there is runoff or erosion from these sites. Thus, the concern with applying manure to the MAS that have considerable areas with >6% slopes.

3) On page 158, why is 15,000 gal/acre being recommended for silage corn and 14,000 gal/acre for corn grain? I do not see a reason for this difference.

4) Why is the TKN of last year’s manure 58% lower (13 lb/1000 gal) than the Book value of 31 lb/1000 gal? Is this low amount of TKN typical of sand-based, open-pit, lagoon manure? Additional TKN tests providing an accurate summary of N content are critical for this project? For instance, the acreage needed for 26 lb TKN/1000 gal manure is twice that of 13 lb TKN/1000 gal of manure. In this project the very low N content is definitely an advantage to Daley Farms.

5) On page 1058 in the 6-Yr Soil Phosphorus Management Plan under scenario #1, applying 14,000 gal of manure for three consecutive years of corn with 25% carryover in year 2 and 25%+ again in year 3, one would be applying excessive N in that scenario. This should be changed.

6) Will soil NO3 or NH4 tests be used when manure is applied to a field for consecutive years? If so, when and how?
**Conclusion:** Between site characteristics of the designated MAS including very high STP levels, sloping soils, shallow soils, numerous setbacks, and the improper N recommendations being used in the EAW, I am very concerned about the success of the proposed dairy expansion project. The large amount of manure being produced appears to require more “manure friendly” land area than has been designated in the 42/44 MAS, unless manure is applied to the strongly sloping and shallow soils, which will lead to significant environmental concerns.
EXHIBIT 2
Nitrogen BMP’s for Corn in Minnesota

Gyles Randall
Soil Scientist (Retired) and Professor Emeritus
University of Minnesota

The purpose of this report, prepared for the Minnesota Center for Environmental Advocacy, is to review and assess the Minnesota Department of Agriculture’s (“MDA”) current proposal (Nitrogen Fertilizer Rule) to adopt restrictions on the fall and winter application of nitrogen fertilizer and adopt a “menu” of potential water resource protection requires (“WRPR”) that could be required in specific areas of the state via an order of the Commission of the Department of Agriculture.

MDA is currently proposing to:

1) Restrict application of nitrogen fertilizer in the fall or to frozen soils in areas of the state overlying vulnerable groundwater.
2) Identify mitigation level areas based on well water sampling for nitrogen-N concentrations and adopt WRPR’s for mitigation levels 3 and 4.

While MDA’s proposal for adoptions of WRPRs is directionally correct, MDA’s proposed WRPRs are not designed to, and cannot independently, prevent and minimize the nitrate pollution to the extent practicable; or prevent nitrate pollution from exceeding the health risk limit.

The University of Minnesota’s recommended Best Management Practices (BMP’s) for nitrogen fertilizer use are found in a series of University of Minnesota Extension bulletins written for specific geographic areas of the state and were published in 2008. These recommendations fall within and provide specifics for the currently popular 4R approach (right application rate, right source, right time of application and right placement). These BMP’s were developed from research based on yield optimization and the production economics of corn and not specifically on water quality indices. Environmental metrics such as nitrate concentration in drainage water or in the soil at the end of the growing season have been frequently measured alongside of agronomic and production metrics over a 33-yr period by this scientist in research studies located at Waseca, Lamberton and in southeastern Minnesota. In the future, scientists must collect agronomic and environmental data side by side in numerous studies located around the state if a robust data set is to be built, allowing N BMP’s for Minnesota to be based on agronomic, economic and environmental water quality measurements.
Summary

General Recommendations

- Using the right/correct rate of N is a foundational BMP from an economic and water quality perspective. Of all fertilizer N management practices, rate of application has the greatest potential for influencing nitrate losses to ground and surface waters. When determining the total N rate to apply, all forms of N should be included, i.e., N in starter fertilizer, weed and feed N, and ammonium-N in phosphate fertilizers. Nitrogen credits from previous crops and manure applications, requiring record keeping by the farmer, should also be included. Two additional practices that are sometimes associated with N rate decisions must be discontinued. They are: (a) application of excess “insurance” N generally associated with fall application and (b) using yield goal multiplied by a set K factor to determine the N rate needed. Neither of these practices is economically or environmentally sound.

- Spring application of N fertilizers is highly recommended regardless of N source. Corn grain yields are higher and nitrate losses are lower.

- No N is to be fall-applied to medium-textured SE Minnesota soils, coarse-textured sandy soils, and vulnerable soils throughout the state.

- Use split applications of N on coarse-textured soils.

- Incorporate broadcast or inject sidedress applications of urea and UAN into moist soil to a minimum depth of three inches.

- Restrict present “Acceptable, but with risk” BMPs if nitrate levels in ground and surface waters increase or BMPs are not used.

- Ag advisers (retailers, consultants, etc.) play a huge role in educating farmers and in advocating universal use of the 4Rs (right rate, right time, right source and right placement).
  - record keeping may be needed and should be considered in the more vulnerable areas and for fall application

- Cover crops perform quite well in Minnesota if planted by Sept. 1 when following sweet corn, peas, small grains, or corn harvested for silage. Innovative, newly developed planting equipment or aerial seeding may be successful for establishing cover crops in corn and soybeans well before harvest but risk of failure needs to be acknowledged.

- Use nitrification inhibitors (NI’s) such as N-Serve and urease inhibitors (UI’s) such as Agrotain and Limus when they are appropriate for reducing losses of yield and N.
Shifting a small portion of Minnesota’s corn acres to other non-N demanding crops, such as alfalfa into crop rotations or establishing perennials on marginal land areas would likely reduce nitrate losses more than simply implementing N BMPs for the current corn and soybean dominated landscape.

**Primary BMP recommendations for southern Minnesota**

**Recommended**
- Spring preplant application of ammonia and urea or split applications of ammonia, urea, and UAN are highly recommended.
- Under rain-fed (non-irrigated) conditions, apply sidedress N before corn is 12 inches tall (V7 stage).
- When soils have a high leaching potential (sandy texture), nitrogen application in a split application or sidedress program is preferred. Use a nitrification inhibitor (N-Serve) on labeled crops with early sidedressed N.

**Acceptable, but with greater risk**
- Fall application of ammonia + N-Serve after soil temperature at the 6-inch depth is below 50ºF in south-central Minnesota.
- Late fall or spring preplant application of ESN in south-central Minnesota.
- Spring preplant application of ESN in southeastern Minnesota.
- Spring preplant application of UAN.

**Not Recommended**
- Fall application of ammonia, urea, and UAN, with or without a nitrification inhibitor (N-Serve) in the 7-county area of southeastern Minnesota.
- Fall application of N to coarse-textured (sandy) soils.
- Application of any N fertilizer including MAP or DAP on frozen soils. (runoff in spring snow melt can be significant)
- Fall application of urea and ammonia without N-Serve and urea with N-Serve in south-central Minnesota.
- Fall application of UAN (28-0-0).

**Field research recommendations**
- Continue to conduct N rate research studies to determine corn yield response, net return to fertilizer N, N recovery in the corn plant, and residual soil nitrate in the soil profile in the fall after harvest and again the following spring (to determine leaching losses) on the medium-textured soils of SE Minnesota and similar vulnerable soils of the state. Collection of soil water at 5’ or tile drainage would be helpful. These complete sets of production and environmental data will be relied upon and necessary to make improved N management decisions for Minnesota in the future.
• Conduct cover crop research to increase the success of earlier fall establishment or to select/develop those cover crops that tolerate limited light in dense corn stands in August. Perhaps combining cover crops with lower vegetative biomass corn hybrids would allow for improved early fall establishment. Research comparing the economic risk of reduced corn yields with different N management and cover crop scenarios vs. the environmental benefit of reduced nitrate losses to ground water should be conducted.

• Crop rotation research involving a year or two of alfalfa in a rotation such as C-S-C-A-A or other crops is encouraged. Determining the efficacy of these rotations to reduce nitrate losses to ground and surface waters while optimizing net return would be particularly valuable in the vulnerable soils within areas of “high dairy cattle numbers”.

**General Conclusions**

Will the 4R approach be successful in reducing nitrate-N losses to surface and ground water to meet the goals of Nitrogen Loss Reduction Strategies being established?

My answers are:

1) The 4R approach is directionally correct and helpful but will not accomplish the goal by itself in a landscape almost completely dominated by corn and soybean.

2) Universal commitment will be needed within the agricultural community (ag advisers, retailers, consultants, farmers, land owners, commodity groups, agricultural interest groups, etc.) to advance the 4R concept consistently and quickly.

3) Shifting acreage away from corn to other crops not requiring N or other cropping systems is the most effective strategy as it decreases N inputs to the landscape consequently reducing N losses significantly to ground and surface water.

4) Nitrate losses to ground and surface water are quickly and substantially reduced by perennial crops compared to annual crops. Shifting some of the least productive row-crop acreage to perennial-based conservation practices could reduce nitrate losses significantly while minimizing soil erosion and sediment losses to water bodies. Crop diversification has numerous ecosystem benefits compared to the current and dominant corn-soybean rotation.
Review of Current Draft NFR

After thoroughly reviewing the 5/24/17 version of MDA’s NFR, the following three statements register my concerns and suggested revisions that should be considered.

1) The statement “after no fewer than three growing seasons, the commissioner shall conduct a re-evaluation” appears in lines 9.2-9.3, 9.12, 9.20, 14.17, 14.21 and 15.20. This seems to be an easy way to simply extend it to 4, 5, 6 or more growing seasons. Or will three growing seasons be firm unless extenuating conditions occur? Deleting “no fewer than” is suggested.

2) On page 11, line 11.19 states “i. for corn, using the acceptable range for the 0.10 ratio for corn at a minimum as defined in Fertilizing Corn in Minnesota”. Because the N rate range often has a range of 20 to 30 lbs. N/acre, I am concerned that the high end of the N rate range will often be used by corn producers. Using the high N rate in this range is not likely to reduce nitrate concentration below the health risk level as frequently as the low end of the N rate range. Therefore, I would strongly suggest replacing acceptable range with MRTN (Maximum economic Return to N). Making this change to MRTN would mean using the N rate that is midway between the high and low N rates of the range. For instance, if the range is from 140 to 170 lb. N/acre the MRTN would be 155 lb. N/acre. The 155 lb. N rate is the most economically optimum rate and would be a better environmental rate than the highest N rate (170 lb.) in the range. This change is especially important when dealing with mitigation levels 3 and 4. It is likely that the highest N rate in the range would lead to increased nitrate concentrations rather than reduced concentrations.

The N rate situation becomes worse when southern Minnesota producers use Iowa State University base MRTN recommendation rates, which are 20 to 30 lb N/A greater than Minnesota’s recommendations. If the producers or retailers use the high end of the Iowa MRTN range, the application rate becomes 30 to 40 lb N/A greater compared to Minnesota’s base MRTN rate recommendation.

3) Under Subpart 1. Mitigation level 3 on pages 24 & 25, another BMP should be added. I suggest: M. crop diversification including perennial crops and alternative species not requiring N fertilization such as a 5-yr crop rotation with at least one year of alfalfa, grass-dominated cover-crops, and perennial grasses on buffers and marginal land areas.
History

A series of BMP’s were identified and assembled by the University of Minnesota and the Minnesota Department of Agriculture (MDA) as part of the Nitrogen Fertilizer Management Plan developed by the Nitrogen Fertilizer Task Force coordinated by MDA in 1990 and 1991. A series of seven (7) bulletins were developed for specific areas of the state (generally based on specific soil and climatic conditions) and were published by the Minnesota Extension Service in 1993. These N BMPs were broadly defined as “economically and environmentally sound, voluntary practices that are capable of minimizing nutrient contamination of surface and groundwater”.

Based on numerous N research experiments between the early 1990’s and 2005, involving both crop production and nitrate-N loss data, another set of management guidelines were developed to assist crop producers to manage their nitrogen in ways that optimize profitability, reduce risk, and minimize loss of nitrate to surface and groundwater. Similar to the 1993 publications, these voluntary management practices were published in a series of University of M Extension bulletins in 2008 to be adopted on a statewide as well as a regional basis. In these publications, the management practices (BMP’s) have been divided into three categories: (1) recommended, (2) acceptable but with greater risk, and (3) not recommended. The risks can be either economic (input cost or yield) or environmental (potential for loss of nitrogen to ground or surface waters).

Nitrogen Management Practices

Rate of N Applied

Using the correct amount of N as opposed to extra “insurance” N optimizes crop yield while minimizing N loss to the environment. However, there are two factors leading to the optimum N rate: (1) N becoming available from the soil and (2) N added as fertilizer N to meet the crop’s total N need. Unfortunately, two uncontrollable factors (precipitation and temperature) affect the release of N from the soil as well as the amount of N needed by the crop.

For many years the optimum N rate for corn in the Midwest was determined by multiplying the yield goal times a factor of 1.2, i.e., 160 bu/A x 1.2 = 192 lb N/A minus N supplied by the previous crop. Nitrogen fertilizer recommendations in Minnesota used a somewhat similar process, but they also included the level of soil organic matter. By the late 1990’s this method of determining the rate of N to apply was being questioned by Minnesota and Midwest agronomic scientists. Consequently, a massive effort by them involved the collection and interpretation of data from hundreds of fertilizer N rate response studies with corn in Illinois, Iowa, Minnesota, and Wisconsin. The data showed yield goal was not a good predictor of the N rate needed. Instead, the recommended rate of N to apply was determined to be within a range of N rates, depending on the productivity of the soil, previous crop, and the ratio of the price of fertilizer N to corn price. Each year additional N rate studies are conducted in all states...
to increase the size and value of the database and to include the newest corn genetics and higher yield potentials.

For southern Minnesota with 109 sites, the range of N rates for corn after corn and corn after soybeans using a fertilizer N price of $0.35/lb and a corn price of $3.50/bu is 141-160 lb/A and 98-122 lb/A, respectively. The maximum economic return to N (MRTN) is 149 and 108 lb/A, respectively. Thus, on highly productive soils a N rate of 149-160 lb/A is recommended for corn after corn and 108-122 lb/A for corn after soybeans. On lower productively soils where the yield potential is less due to limited water holding capacity, the recommended N rates are 141-149 lb/A for corn after corn and 98-108 lb/A for corn after soybeans.

As one can see from this discussion the recommended N rates for corn are based totally on the production economics of corn as influenced by a large N rate response database and soil productivity. The economics or risk of N loss to ground or surface waters is not included because it is an uncontrollable factor and is not predictable at the time of N application.

Rate of N application has a huge effect on corn yield/production and on nitrate-N losses on both well-drained and poorly-drained soils. On a well-drained Port Byron soil in Olmsted Co., three-year average continuous corn yields ranged from 65 bu/A with 0 lb N/A to 164 bu/A with 140 lb N/A. Residual nitrate-N in the 0-7’ soil profile after harvest with the 0, 90, 120, 150 and 180 lb N/A rates averaged 35, 45, 65, 110 and 140 lb nitrate-N/A. These data clearly show the huge yield response to fertilizer N coupled with the large amount of nitrate-N remaining in the soil in the fall when the applied N rate was above optimum. These high levels of residual N would be expected to leach from the 0-7’ profile into the groundwater aquifers between Nov. 1 and mid-June the next year when corn roots would be taking up soil N and fertilizer N again. In a 5-yr study on the same soil, corn yields following soybeans averaged 72% of maximum yield with no fertilizer N (In other words, the soil supplied 72% of the N needed for maximum yield. The remaining 28% would come from fertilizer N). When 90 lb N/A was applied, yields reached 97% of maximum yield. When rates of 120 and 150 lb N/A were applied, yields attained 100% of maximum. Residual nitrate in the 0-5’ soil profile after harvest (Nov. 1) totaled 30, 40, 75 and 95 lb NO3-N/A for the 0, 90, 120 and 150 lb N/A fertilizer N rates. These data also support the high potential for large leaching losses of nitrate to groundwater aquifers when N rates applied are in excess of optimum.

In poorly drained soils the effect of N rate on corn yield, profitability, and nitrate loss to tile drainage is shown in Table 1. Compared with the standard 120-lb N rate applied in the fall, adding an additional 40 lb N/A (160-lb N rate) increased yield 6 bu/A (4%), increased net profit by $7/A (5%), and increased NO3-N concentration in tile water by 4.9 mg/L (37%). In other words, the economic gain from excess N was small compared to the large environmental effect of increased nitrate loss to water. On the other hand reducing N rate from 120 lb N/A to 80 lb/A reduced yield 22 bu/A (13%), reduced net profit $63/A (45%), and reduced NO3-N concentration in the water by 1.7 mg/L (13%). Greatest yield and profit with a minimal increase in NO3-N concentration (4%) was found with the spring-applied 120-lb N rate. (Net profit was calculated using corn = $3.50/bu, N fertilizer = $0.35/lb N, and N-Serve @ $10/A). These data clearly demonstrate two fundamental findings: (1) the importance of using the correct N rate as a cornerstone BMP from an economic and water quality perspective and (2) the net
return advantage (42%) of applying the correct rate of N in the spring compared to the fall with minimal effect on NO$_3$-N concentration (4%).

Table 1. Effect of N rate on yield of corn after soybean and nitrate-N concentration in tile drainage at Waseca (2000-2003).

<table>
<thead>
<tr>
<th>N Treatment</th>
<th>4-Yr Yield Avg.</th>
<th>4-Yr FW NO$_3$-N conc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time</td>
<td>Rate</td>
<td>N-Serve</td>
</tr>
<tr>
<td>---</td>
<td>lb/A</td>
<td>---</td>
</tr>
<tr>
<td>Fall</td>
<td>80</td>
<td>Yes</td>
</tr>
<tr>
<td>Fall</td>
<td>120</td>
<td>Yes</td>
</tr>
<tr>
<td>Fall</td>
<td>160</td>
<td>Yes</td>
</tr>
<tr>
<td>Spr.</td>
<td>120</td>
<td>No</td>
</tr>
</tbody>
</table>

Compliance with applying the correct rate (“Right Rate”) of fertilizer N does not come easily and without well-ingrained attitudes, thoughts, perceptions, and challenges from a variety of positions. First, because the price of N fertilizer has generally been low compared to crop price and because wet growing season conditions can cause loss of N, farmers will often apply an extra 20 to 50 pounds of “insurance N” to ensure that yield-limiting conditions do not occur due to insufficient N. This is particularly true in years when crop prices are high and the potential exists for a high net economic return to fertilizer. Second, no farmer, dealer, ag adviser/consultant or landlord likes to see N deficiency symptoms (yellow corn) occurring, especially early in the season. Dark green, robust, even-looking corn is a “hallmark” visual assessment of a grower’s ability to profitably produce corn. Yellow, N deficient corn has been known to terminate land rental agreements. Third, N credits from previous crops and previous manure applications vary if various crops were grown and manure sources and rates differed from field to field. This requires careful record keeping if correct N rates are to be applied for each field. Fourth, the amount of soil N mineralized to become available for the growing crop can be variable and is at this time not easily predictable. Thus, applying a slightly greater amount of fertilizer N is often done. Fifth, farmers often do not make their own fertilizer N rate recommendations; they rely on their retailer/dealer or on an ag advisor/consultant. This can present a problem, especially for the retailer who has a service and a product to sell. Trimming the “safe” higher-than-recommended rate to the correct/right rate of fertilizer N may be good for the farmer and the environment, but it may not be good for the retailer’s bottom line because of reduced fertilizer sales volume—a primary profit stream for them. This can put the retailer on a slippery slope especially if part of the service required by the farmer is to minimize loss of nitrate to ground and surface waters. Consultants on the other hand have a service to provide and sell, but no fertilizer product to sell. Thus, they can adopt their fertilizer recommendations more easily to a correct/right rate of application that considers the risks of both profitability and environmental losses of N to ground and surface waters. Sixth, the total N rate should include any N applied in a starter, weed and feed program, and contributions from phosphorus fertilizers such as MAP and DAP. Also, appropriate credits must be taken for previous legume crops and any manure used in the crop rotation. Seventh, historically fertilizer N recommendations have been made only from
the production perspective. Combining an environmental perspective with the production perspective may take time for some fertilizer N advisers, but adapting to change rather quickly with good record keeping will be a successful approach for improved water quality and profitable production.

In summary using the correct/right rate of N has a high potential for improving net economic return for farmers while minimizing the loss of nitrates to ground and surface waters.

Time of N Application and N-Serve

Time of N application has been an issue in the northern latitudes of the U.S. since anhydrous ammonia (AA) became available in the 1950’s. The thinking was that fall N would not be lost from soils that were frozen for 3-4 months during the winter. As a result, AA was being applied as early as the first week of October in the 1970’s. Under warm conditions when the fall soil temperature was in the 60’s, significant conversion of AA to nitrate (nitrification) occurred, which was then lost via leaching or denitrification. Since the rate of AA nitrification is a function of soil temperature, research on the process indicated that nitrification was slowed substantially at soil temperatures < 50ºF. Research on nitrification inhibitors (NI’s) such as N-Serve in the 1970’s and 80’s in Minnesota showed that they significantly inhibited nitrification. As a result the following BMP guidelines for fall application of N in southern Minnesota have existed since 2008:

Not Recommended
- Fall application of ammonia, urea, and UAN, with or without a nitrification inhibitor (N-Serve) in the 7-county area of southeastern Minnesota.
- Fall application of N to coarse-textured (sandy) soils.
- Application of any N fertilizer including MAP or DAP on frozen soils. (runoff in spring snow melt can be significant)
- Fall application of urea and ammonia without N-Serve in south-central Minnesota.
- Fall application of UAN (28-0-0).

Acceptable, but with greater risk
- Fall application of ammonia + N-Serve after soil temperature at the 6-inch depth is below 50ºF in south-central Minnesota.
- Late fall or spring preplant application of ESN in south-central Minnesota.
- Spring preplant application of ESN in southeastern Minnesota.
- Spring preplant application of UAN.

Recommended
- Spring preplant applications of ammonia and urea or split applications of ammonia, urea, and UAN are highly recommended.
- Under rain-fed (non-irrigated) conditions, apply sidedress N before corn is 12 inches tall (V7 stage).
• When soils have a high leaching potential (sandy texture), nitrogen application in a split application or sidedress program is preferred. Use a nitrification inhibitor (N-Serve) on labeled crops with early sidedressed N.

As one can see by the above Time of N recommendations, the influence of soil texture (coarse, medium, and fine), precipitation and characteristics of the N source are dominating factors when determining the suitability of fall-applied N.

The following text describing some of the research conducted in southern Minnesota contains corn production and water (soil and tile drainage) data that support the above Time of N Application recommendations. Southeastern Minnesota is characterized by permeable silt loam soils with underlying fractured limestone bedrock. This “Karst” region, which also receives the greatest amount of annual precipitation in the state, is very susceptible to ground water contamination. Consequently, few studies have examined fall application with spring and in-season N applications receiving most attention. A 4-yr study conducted in Olmsted Co. showed little yield average difference among the time of application treatments, but in the wet year (1990, 1987-89 were dry) fall-applied AA with and without N-Serve produced lower yields and greater NO₃-N concentrations in the soil water at 5’ than did spring applications (Table 2).

Table 2. Corn yield and NO₃-N concentration in the soil water at 5 feet as affected by rate and time of application in Olmsted Co., 1987-90.

<table>
<thead>
<tr>
<th>Nitrogen Treatment</th>
<th>Grain Yield</th>
<th>Nitrate-N Conc. in Soil Water ±</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate/Time/Method</td>
<td>1990</td>
<td>1987-90</td>
</tr>
<tr>
<td>lb N/A</td>
<td>- - - - bu/A - - - -</td>
<td>ppm</td>
</tr>
<tr>
<td>0</td>
<td>76</td>
<td>84</td>
</tr>
<tr>
<td>75 Spr., preplant</td>
<td>145</td>
<td>156</td>
</tr>
<tr>
<td>150 &quot;</td>
<td>155</td>
<td>172</td>
</tr>
<tr>
<td>225 &quot;</td>
<td>156</td>
<td>167</td>
</tr>
<tr>
<td>150 Fall</td>
<td>145</td>
<td>169</td>
</tr>
<tr>
<td>150 Fall + N-Serve</td>
<td>148</td>
<td>169</td>
</tr>
<tr>
<td>75 + 75 Spr. + SD (V7)</td>
<td>154</td>
<td>168</td>
</tr>
</tbody>
</table>

± Fall, 1990. Determined using porous cup suction samplers.

A long-term study on poorly drained soils in south-central Minnesota, comparing late-October application of ammonia with and without N-Serve with a spring pre-plant application without N-Serve, showed distinct yield and environmental advantages for spring application, but not in all years (Table 3). Across the 15-yr period, corn yields averaged about 10 bu/A greater for the fall N + N-Serve and spring N treatments compared with fall N without N-Serve. Also, compared with fall application of N without N-Serve, NO₃-N losses in the drainage water were reduced by 14 and 15% and N recovery in the grain was increased by 8 and 9% for fall N + N-Serve and spring N, respectively. However, corn yields were significantly affected by the N treatments in only 7 of 15 years. In those seven years, when April, May and/or June were wetter-than-normal, average corn grain yield was increased by 15 and 27 bu/A for the fall N + N-Serve and spring N treatments, respectively. In summary, the 15-yr data suggest that
applications of ammonia in the late fall + N-Serve or in the spring preplant were BMP’s. However, when spring conditions were wet, especially in May and June, spring application gave substantially greater yield and profit than the fall N + N-Serve treatment. Therefore, fall N + N-Serve application is considered to be more risky than a spring, preplant application of ammonia. Moreover when N-Serve was not used, fall application of ammonia was more risky (lower yields) compared with fall application + N-Serve.

Table 3. Corn yield and NO₃-N loss to drainage water as affected by time of application and N-Serve at Waseca, 1987-2001.

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Fall</th>
<th>Fall + N-Serve</th>
<th>Spring</th>
</tr>
</thead>
<tbody>
<tr>
<td>15-Yr Avg. Yield (bu/A)</td>
<td>144</td>
<td>153</td>
<td>156</td>
</tr>
<tr>
<td>7-Yr Avg. Yield (bu/A)¹²</td>
<td>131</td>
<td>146</td>
<td>158</td>
</tr>
<tr>
<td>Flow-weighted NO₃-N concentration in tile drainage from the corn-soybean rotation (mg/L)</td>
<td>14.1</td>
<td>12.2</td>
<td>12.0</td>
</tr>
<tr>
<td>Nitrogen recovery in the corn grain (%)³</td>
<td>38</td>
<td>46</td>
<td>47</td>
</tr>
</tbody>
</table>

¹ Rate of applications for 1987-1993 and 1994-2001 were 135 and 120 lb N/A, respectively.
² Only those seven years when a statistically significant yield difference occurred among treatments.
³ Nitrogen recovery in the corn grain as a percent of the amount of fertilizer N applied.

A split application of ammonia with 40% applied pre-plant and 60% applied sidedress at the V8 stage was compared with late October and spring preplant applications of ammonia (Table 4). In this 7-yr period, grain yields were significantly greater (6 bu/A) for the split-applied treatments, resulting in slightly greater N recovery in the grain compared with the fall and spring treatments. However NO₃-N concentrations in the tile drainage were also slightly higher with split-applied N than for the spring N and fall N + N-Serve treatments.

Table 4. Corn production after soybeans and nitrate loss as affected by time of N application and N-Serve at Waseca, 1987-93.

<table>
<thead>
<tr>
<th>N Treatment</th>
<th>7-Yr Average</th>
<th>Flow-weighted NO₃-N conc. in tile drainage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time</td>
<td>N-Serve</td>
<td>Corn yield (bu/A)</td>
</tr>
<tr>
<td>Fall</td>
<td>No</td>
<td>131</td>
</tr>
<tr>
<td>“</td>
<td>Yes</td>
<td>139</td>
</tr>
<tr>
<td>Spring</td>
<td>No</td>
<td>139</td>
</tr>
<tr>
<td>Split</td>
<td>No</td>
<td>145</td>
</tr>
</tbody>
</table>

LSD (0.10): 4
A 6-yr study comparing fall versus spring application of N-Serve with ammonia showed a statistically and economically significant 10 bu/A yield response to N-Serve applied in the fall (Table 5). The 4 bu/A yield increase to spring-applied N-Serve was not statistically significant and is considered economically neutral. However, a yield response to spring-applied N-Serve occurred in years when June rainfall was excessive. Because these data do not suggest a consistently significant and economical response to N-Serve applied in the spring and because excessive June rainfall can not be predicted at the time of spring ammonia application, adding N-Serve to spring-applied ammonia is not considered to be a BMP at this time.

### Table 5. Corn grain yield after soybeans as affected by fall and spring application of N-Serve with anhydrous ammonia at Waseca, 1994-99.

<table>
<thead>
<tr>
<th>N-Serve</th>
<th>No</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time of application</td>
<td>6-Yr. Avg. Yield (bu/A)</td>
<td></td>
</tr>
<tr>
<td>Fall</td>
<td>161</td>
<td>171</td>
</tr>
<tr>
<td>Spring</td>
<td>172</td>
<td>176</td>
</tr>
</tbody>
</table>

The corn yield data obtained in the above studies clearly support spring applications over fall applications regardless of N source (ammonia or urea). This is especially true when April-June rainfall was above average, causing denitrification and leaching losses of N. In addition, nitrate-N concentrations in tile drainage water were reduced (14 to 18%) with the fall N + N-Serve and spring N applications.

With spring application of N showing these increased corn yields and reduced nitrate losses to water, one would expect most fertilizer N to be spring applied. This is not true in Minnesota, however, as there has been a historic, fall application culture for fall-applied AA by both retailers and farmers when fall conditions allow (crops harvested, soils relatively dry, and soil temperatures cooling to below 50ºF). Fall application is often considered an advantage to either the retailer and/or farmer for the following reasons:

- Logistics – The workload is spread out for the retailer when a portion of the N is fall applied.
- Less storage space is required with a combination of fall and spring application. Storage space can be refilled during the winter.
- Less worry by the retailer about being able to receive and deliver the total amount of N needed in a timely manner. They question whether the fertilizer N infrastructure is able to supply and deliver the fertilizer in a timely manner when only spring applied?
- Fall application is often preferred by the farmer because more time is usually available in the fall.
- If the N is fall applied, the farmer does not need to worry about it in the spring when tillage and planting are the highest priorities. The worries only begin to occur later in the spring if the soils are warm and rainfall is plentiful, causing loss of the fall-applied N.
- Soils are generally more firm and better suited for application without compaction in the fall - favored by both farmers and retailers.
- Fertilizer N is often somewhat cheaper in the fall - an economic plus for the farmer.

**N Source and Time of Application**

The N source used must also be considered when selecting the proper time of application. Studies at Waseca in 1981 and 1982 compared fall application of anhydrous ammonia and urea, with and without N-Serve, to spring application of the same. Two-year average corn yields (Table 8) indicate: (a) broadcast and incorporated urea was inferior to anhydrous ammonia when fall-applied, (b) spring application of urea was superior to fall application, and (c) a slight yield advantage for spring-applied ammonia compared with fall application was found when averaged across N-Serve treatments.

A subsequent study evaluated late October application of urea (4" deep band) and anhydrous ammonia with and without N-Serve compared to spring preplant urea and anhydrous ammonia. Three-year average yields show a 33 bu/A advantage for urea and a 14 bu/A advantage for ammonia when applied in the spring (Table 6). Nitrogen recovery in the corn plant ranked: spring ammonia = spring urea > fall ammonia > fall urea. The effect of N-Serve in this study was minimal. Yield response to the spring treatments were greatest in 1998, when April and May were warm and late May was wet, and in 1999 when the fall of 1998 was warm and April and May, 1999 were very wet. Significant yield differences were not found in 1997 when the fall of 1996 was cold and the spring of 1997 was cool and dry.

In summary, these studies clearly show reduced corn yield and N recovery for fall-applied urea regardless of N-Serve use. Thus, fall application of urea with or without a nitrification inhibitor (NI) should not be recommended in south-central Minnesota.

---

**Table 6. Corn yield and N recovery in the whole plant as influenced by time of application and N source at Waseca, 1997-1999.**

<table>
<thead>
<tr>
<th>Nitrogen Management</th>
<th>3-Yr Average</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Time Source N-Serve</td>
<td>Yield (bu/A)</td>
<td>N Recovery (%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fall Urea No 152 43</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot; &quot; &quot; Yes 158 47</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot; An. Ammonia No 168 60</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot; &quot; &quot; Yes 170 63</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Spr. Preplant Urea No 185 76</td>
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<tr>
<td>&quot; An. Ammonia No 182 84</td>
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<tr>
<td>&quot; &quot; None 112 --</td>
<td></td>
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</table>

LSD (0.10): 8
Preplant-applied urea gave significantly greater continuous corn yields in a 3-yr study in southeastern Minnesota than did preplant-applied UAN (28%N). Yields for a split application of UAN were not significantly different from the preplant urea treatment. A 4-yr study in south-central Minnesota showed greatest corn yields following soybeans with preplant-applied urea (182 bu/A), followed by preplant and incorporated UAN (181 bu/A), and poorest yields with broadcast pre-emergence UAN (166 bu/A).

The results from the four above studies are not surprising and could have been predicted given the characteristics of the three primary sources of fertilizer N in Minnesota - - - anhydrous ammonia, urea, and UAN (a 50:50 blend of urea and ammonium nitrate). These three sources currently occupy 39, 50, and 11% respectively, of the fertilizer N used for crop production in Minnesota. Ammonium forms of N fertilizer such as anhydrous ammonia with a nitrification inhibitor should be used for fall applications. Urea and anhydrous ammonia (both ammonium forms) should be used for spring preplant applications to reduce the potential for early-season nitrate loss. Urea-ammonium nitrate (UAN) contains 25% nitrate, which is immediately susceptible to leaching, performs best when split applied or applied in-season. Under normal spring conditions anhydrous ammonia will take up to six weeks to nitrify from ammonium to nitrate while urea may take up to three to four weeks. This delay decreases the potential for leaching of nitrate during the last part of April and in May, when precipitation is greatest and crop demand for nitrogen and water is low.

Method of Application – Placement

Method of application or placement choices are generally not large contributing factors in the management of anhydrous ammonia or urea. Anhydrous ammonia is usually knifed into the soil about 7” deep. The only time AA placement becomes a decision factor is when sidedressing where the AA is usually knifed in between each of the rows but can be knifed in between every other row. The latter method is easy and requires less tractor horsepower. Yield comparisons show no difference between the two. Urea is usually broadcast on the soil surface and then incorporated with tillage. In some cases, urea is knifed in about 4” deep. Yield differences are generally not found between the two placement methods. UAN has myriad placement options ranging from broadcast on the soil surface with or without incorporation by tillage, to dribbling in bands on the soil surface, to being knifed in about 2-3” deep with preplant, pre-emergence, and sidedress application times or with a combination of split applications. Yield differences among placement systems show little consistency except that incorporation of UAN produces greater yields than UAN left on the soil surface and not incorporated. Dribbling UAN within 2” of the corn row at a rate of 20-30 lb N/A has also been quite effective.

Although not a specific application/placement method, incorporation of urea and UAN is generally recommended because of the possibility of volatilization losses of ammonium if rainfall does not occur within a few days of application. Broadcast application of urea for no-till corn is a problematic application method likely to result in ammonia volatilization especially under high urease conditions [high levels of surface residue and calcareous soils (pH>7.4)]. Urease inhibitors such as Agrotain and other products, reduce the potential of volatilization losses of N to the atmosphere. These products should be impregnated into the urea before broadcast application.
In other studies, sidedress application of urea and UAN at the V6 stage followed by cultivation a few days later resulted in corn yield reductions of 12 to 17 bu/A. These data suggest that the urea and UAN had not been incorporated sufficiently deep into moist soil to move down into the active root zone, thereby remaining positionally unavailable.

In summary, these data for southern Minnesota support the recommendation of incorporating or injecting broadcast or sidedress applications of urea or UAN into moist soil to a minimum depth of three inches.

Relative Effectiveness of Management Practices to Reduce Nitrate Losses

Various N and crop management systems can be employed to reduce the potential of nitrate loss from corn production systems to ground and surface (tile drainage) waters. The N management practices are commonly referred to as BMP’s (best management practices) - - - the ones discussed within the preceding portion of this document. The following discusses each of the management practices shown in Table 7 and their relative effectiveness at reducing nitrate losses. The estimates are based on my experience and professional judgment.

Nitrogen Management Practices

**Rate of N:** Of the five N management practices, rate of N application has the greatest potential for reducing nitrate losses. The data shown earlier in this document clearly shows the huge impact of fertilizer N rate on nitrate concentrations and losses in drainage and soil water. The wide range in effectiveness is related to the amount of excess N above the recommended rate, ranging from minimal effectiveness if the excess rate is small (10-20 lb N/A) to substantial if the applied excess N rate is large (>100 lb N/A). These large excess rates could occur from a combination of fertilizer N coupled with manure N including the buildup of labile soil N from high rates of past manure and fertilizer applications. Discontinuing the application of 20-50 lb of excess “insurance” N for corn would significantly reduce nitrate losses.

In looking to the future, it is important to continue N rate research studies to determine yield response, net return to fertilizer N, N recovery in the corn, residual soil nitrate in the profile of medium-textured soils of SE Minnesota, and nitrate concentration in soil water or tile drainage when growing new highly productive corn hybrids. These complete sets of production and environmental data will be relied upon and necessary to make improved N management decisions for the future in Minnesota. Research on remote sensing and in-season adaptive models may be helpful to provide diagnostic information to improve N rate decisions. It will be particularly useful to focus some studies on slightly less-than-recommended N rates for corn on highly productive soils to more clearly define the yield and economic effects/risk relative to the environmental effects/risk with this reduced N rate approach.

Another factor that clouds the optimum N rate picture is the high levels of labile organic N, which have accumulated in soils that have received long-term abundant to
excessive rates of manure or fertilizer N over the years. Because significant amounts of the labile organic N can be mineralized into available N each year from these soils, optimum fertilizer N rates could be rather small due to the large amounts of available soil N, yet nitrate concentrations leached into ground and surface waters could be large.

**Time of N:** Time of N application also can have a significant impact on reducing nitrate losses. This is particularly true if growers were to discontinue this application of extra “insurance” N when fall applying their fertilizer. Growers have additional options, - - - either add a nitrification inhibitor (NI) such as N-Serve to the recommended N rate and fall apply after the soil temps remain below 50ºF or switch to spring or in-season applications involving various N sources. The data shown throughout the earlier portion of this document consistently show the corn yield and economic advantage to spring application of N. Reductions in nitrate concentrations and losses are much smaller than the large and consistent yield advantages for spring-applied N. The greater effect of Time of Application for ground water under well-drained soils is the dominance of leaching and absence of denitrification on these soils.

As fall application of N becomes less popular, especially on vulnerable soils, due to economic and environmental risks and challenges, new Time of Application research must consist of various spring and in-season application times coupled with various N sources, placements, and inhibitors - - - both NI’s and UI’s. It is unlikely that these “new” combinations of sources, placement, timing, and inhibitors/additives will show a large advancement of reduced nitrate losses. But, it is important to identify combinations that improve net economic return for the farmer and improve logistics for the retailer.

**Source of N:** In the big picture source of N has little effectiveness on reducing nitrate losses. However, two examples stand out where N source plays a significant role: (1) urea applied in the fall with or without a NI in south-central Minnesota. With this treatment, corn yields are reduced, largely due to nitrate losses. (2) UAN applied in the spring to well-drained soils may be lost due to excessive spring rainfall, necessitating an additional in-season application of N that leads to the total N rate exceeding the original rate recommended.

**Method/Placement of N:** The method or placement of N generally has very little effect on nitrate losses even though it may affect grain yield some. An exception could be the broadcasting of urea or UAN without a urease inhibitor (UI) for no-till corn where surface residues are abundant and/or soil pH is high. Significant volatilization of ammonium could occur requiring a supplemental application of additional fertilizer, which would bring the total N rate applied to exceed the recommended N rate.

**Inhibitors (NI & UI):** Nitrification inhibitors (NI) such as N-Serve and Instinct currently play a role of improving the performance of fall-applied ammonia and hog manure. Urease inhibitors (UI’s) such as Agrotain and Limus reduce volatilization losses of ammonium fertilizers applied to the soil surface. Proper use of NI’s and UI’s allows improved N management, which in turn often improves corn yield but the effect on nitrate losses to water is yet unknown.
Table 7. Relative effectiveness of management practices to reduce nitrate losses to ground and surface waters in Minnesota

<table>
<thead>
<tr>
<th>Practice</th>
<th>Tile Drainage</th>
<th>Ground Water</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Poorly drained</td>
<td>Well drained</td>
</tr>
<tr>
<td>Rate of N</td>
<td>L-H (10-60)*</td>
<td>L-H (10-70)*</td>
</tr>
<tr>
<td>Time of N</td>
<td>L (10-30)</td>
<td>M-H (30-80)</td>
</tr>
<tr>
<td>Source of N</td>
<td>VL (0-10)</td>
<td>VL (0-10)</td>
</tr>
<tr>
<td>Method/Placement</td>
<td>VL (0-10)</td>
<td>VL (0-10)</td>
</tr>
<tr>
<td>Inhibitors (NI &amp; UI)</td>
<td>L (10-20)</td>
<td>L (10-20)</td>
</tr>
<tr>
<td>Fall tillage</td>
<td>VL (0-10)</td>
<td>VL (0-10)</td>
</tr>
<tr>
<td>Cover crops</td>
<td>L (0-30)</td>
<td>L (0-30)</td>
</tr>
<tr>
<td>Cropping system</td>
<td>VH (100)</td>
<td>VH (100)</td>
</tr>
</tbody>
</table>

* = Effectiveness (0 = VL to 100 = VH)

Crop Management Practices

**Fall tillage:** A 11-yr study was conducted at Waseca comparing no tillage with moldboard plowing for continuous corn. Moldboard plowing produced higher corn yields and slightly higher nitrate concentrations in the tile drainage but lower drainage volume. No tillage produced lower corn yields and slightly lower nitrate concentrations but greater drainage volume. Thus, nitrate loads (drainage volume X nitrate concentration) were not different between the two tillage extremes. This study conducted where soils are frozen from December through March produced data much different than are found in warm climates, where fall tillage stimulates nitrification of soil organic matter and hence greater nitrate concentrations and losses.

**Cover crops:** Cover crops are getting much notoriety in the U.S. for their ability to take up residual N remaining in the soil after corn. The cover crops (mainly cereal rye plus a host of other crops) are established in the fall for nitrate uptake in the fall, winter in some cases, and the spring before the next crop is planted. These cover crops perform well at more southern latitudes (below I 80) where fall establishment is successful. This is not the case in Minnesota where the window for establishment in the fall between corn harvest and fall freezing is small. Successful establishment occurs when the cover crops can be planted rather early, when soils are warm, when soil moisture is plentiful, and when the first fall frost is delayed. Additionally, the window in the spring for uptake of nitrate is often quite short between warm temps for uptake and planting of the next crop. A 3-yr study at Lamberton for soybean following corn showed excellent cover crop growth in one year (both fall and following spring) with superb uptake of nitrate. In another year, establishment of the cover crop was not possible due to the cold fall. In the third year, the crop was adequately established but further growth and N uptake was marginal at best. Examination of the 3-yr results and the 40-yr fall weather history at Lamberton led the scientists to predict that cover crops in a corn-soybean rotation would work well in 1 of 4 years in southern Minnesota. Cover crops can work extremely well in Minnesota if planted by September 1 when following sweet corn, peas, small grains, and corn removed for silage. Additional research on adopting cover crops for a corn-
soybean rotation in Minnesota is needed. Developing or selecting species that can germinate and then tolerate dense corn growth, limiting light in August and early September, is needed. Establishing a cover crop in mid-June and getting it to live within the dense and shaded conditions from mid-July until early September would be ideal. Also, out-of-the-box research such as planting a high yielding corn hybrid that has a low biomass characteristic at various reduced populations to provide sufficient light for growth of cover crops seeded in mid-June would be valuable. Depending on corn grain yield, N rate, net economic return, and cover crop sustainability, growth and N uptake, this could be an alternative to simply reducing or shifting X amount of corn acres to another non-N demanding crop to achieve meeting the goals of the N Reduction Strategy.

**Cropping Systems:** Cropping system really is the primary factor that controls the input of nitrogen, the management of nitrogen, and nitrate losses to ground and surface water systems. Corn-based production systems, whether they are continuous corn, a C-C-soybean rotation, or a simple C-S rotation all require large input loads of fertilizer N. To determine the influence of cropping system on drainage volume, nitrate concentration, and nitrate loss in tile drainage, a 6-year study (1988-93) was established at Lamberton, MN. Drainage occurred in 1990-93, and the results are shown in Table 8. Based on these seminal, well cited data, it is fair to say that cropping system has a greater effect on hydrology and nitrate losses than any other management practice. The perennial crops [alfalfa and Conservation Reserve Program plants (brome grass, orchard grass, timothy and alfalfa)] reduced drainage volume by 25 to 50% due to greater transpiration and reduced nitrate loses by >95%. Thus, shifting some of Minnesota’s approximately 8 million acres of corn to other crops requiring substantially less to no nitrogen would likely reduce nitrate losses more than implementing all of the previous nitrogen BMP’s and crop management practices discussed earlier.

Rather than simply shifting one or two million acres to another non-N demanding crop, it may be wise to encourage crop rotation research involving a year or two of alfalfa such as a C-S-C-A-A rotation or perhaps other crops to determine their efficacy at reducing nitrate losses to ground and surface water systems while optimizing net return. Because alfalfa requires different seeding and harvesting machinery and storage facilities than row crops, perhaps “neighbor” farmers could be incentivized to fulfill the alfalfa needs of the system. This may have merit especially in vulnerable soils within areas of “high dairy cattle numbers”.

<table>
<thead>
<tr>
<th>Cropping System</th>
<th>Total discharge</th>
<th>Nitrate-N Conc.</th>
<th>Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continuous corn</td>
<td>30.4 inches</td>
<td>28 mg/L</td>
<td>194 lb/A</td>
</tr>
<tr>
<td>Corn – soybean</td>
<td>35.5 inches</td>
<td>23 mg/L</td>
<td>182 lb/A</td>
</tr>
<tr>
<td>Soybean – corn</td>
<td>35.4 inches</td>
<td>22 mg/L</td>
<td>180 lb/A</td>
</tr>
<tr>
<td>Alfalfa</td>
<td>16.4 inches</td>
<td>1.6 mg/L</td>
<td>6 lb/A</td>
</tr>
<tr>
<td>CRP</td>
<td>25.2 inches</td>
<td>0.7 mg/L</td>
<td>4 lb/A</td>
</tr>
</tbody>
</table>

Table 8. Effect of cropping system on drainage volume. NO₃-N concentration, and N loss in subsurface tile drainage during a 4-yr period (1990-93) in MN.
Emerging 4R Practices Water Quality Research

In the October, 2015 issue of the Journal of Environmental Quality, a Technical Report was published by L.E. Christianson (U of Illinois) and R.D. Harmel (Texas A & M) entitled “4R Water Quality Impacts: An assessment and synthesis of forty years of drainage nitrogen losses”. They reviewed and quantitatively analyzed nearly 1000 site-years of subsurface tile drainage N load data to develop a more comprehensive understanding of the impacts of 4R practices (application of the right source of nutrients, at the right rate and time, and in the right places) within drained landscapes across North America.

They concluded that some of the 4R practices for reducing nitrate-N loads were stronger than others.

- Optimizing N rate was important and will continue to receive primary research and regulatory focus.
- The lack of significant difference between N application timing or application methods (placement and source) was inconsistent with the current emphasis placed on timing as a WQ improvement strategy.
  - Application timing analysis were complicated by differences in application rates between timing treatments; highest application rates resulted in greatest N losses.

Editorial Comment

Will the 4R approach be successful in reducing nitrate-N losses to surface and ground water to meet the goals of Nitrogen Loss Reduction Strategies being established?

My answers are:

1) They are directionally correct and helpful but will not accomplish the goal by themselves.
2) Universal commitment will be needed within the agricultural community (ag advisers, retailers, consultants, commodity groups, agricultural interest groups, etc.) to advance the 4R concept consistently and quickly.
3) Shifting acreage away from corn to other cropping systems is the most effective strategy as it decreases N inputs to the landscape and significantly reduces N losses to ground and surface water.
References


EXHIBIT 3
Manure Application Acres Proposed at Daley Farms: Impaired Streams and Public Drinking Water Supply

Map produced by Andra Mathews at MCEA on October 29, 2018. Map data sources include feedlots and impaired streams from the MN Pollution Control Agency, wellhead protection areas from the MN Department of Health, public drinking water supply from MN Department of Natural Resources "MN DNR Permitting and Reporting System (MDPRSS)" (2019), with distance buffers from Daley Farms proposed site, and application acres digitized from the EAW for Daley Farms (2018) at a scale of 1:10k in ArcGIS Desktop (v10.5).

Map produced in ArcMAP, v10.5, ESRI 2017. This map is meant for illustrative purposes only. MCEA is not responsible for any inaccuracies herein contained.
An Analysis of the Impact of Swine CAFOs on the Value of Nearby Houses

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July 23, 2008

ABSTRACT

The impact of 39 swine confined or concentrated animal feeding operations (CAFOs) in Black Hawk County, Iowa on 5,822 house sales is explored by introducing a new variable that more accurately captures the effects of prevailing winds, exploring potential adverse effects within concentric circles around each CAFO, managing selection bias, and incorporating spatial correlation into the error term of the empirical model. Large adverse impacts suffered by houses that are within 3 miles and directly downwind from a CAFO are found. Beyond three miles, CAFOs have a generally decreasing adverse impact on house prices as distance to the CAFO increases.

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Keywords: LULUs, swine CAFOs, house values, externalities, spatial correlation, hedonic analysis, maximum likelihood, concentric circles, prevailing winds, selection bias.

JEL Codes: Q51, Q53, R21
An Analysis of the Impact of Swine CAFOs on the Value of Nearby Houses

Introduction

Swine confined or concentrated animal feeding operations (CAFOs) can be and often are considered to be locally undesirable land uses (LULUs). Unpleasant odors and ground water contamination tend to be the greatest concerns of those who live near swine CAFOs. This situation has intensified since passage of the federal Pork Production, Research and Consumer Education Act (PPRCEA) in 1985, which lead to a significant increase in pork production. PPRCEA funded research into more efficient production techniques, especially CAFOs. During the late 1980s and early 1990s, two powerful influences, (1) PPRCEA funded advertising (pork, the other white meat) and (2) health concerns regarding the consumption of red meat, fueled a tremendous increase in the consumption and production of pork. Much of this increased production has been concentrated in a few, historically traditional, pork-producing states, particularly Iowa, North Carolina, Minnesota, and Illinois. As a result, nuisance complaints from those living near pork production sites, especially CAFOs, have increased. Lasley (1998) reports considerable concern with hog odors among rural Iowa residents. Van Keek and Bulley (1995) report that 95% of the nuisance attributed to farm odors can be traced back to swine CAFOs. In Iowa, some rural residences have sued nearby swine CAFOs as nuisances, and public hearings to consider new swine CAFO permits are overflowing with protesters.
The impact of proximity to swine CAFOs on housing values is a topic worthy of attention. To whatever extent swine CAFOs are the source of a negative externality deserves to be rigorously addressed, because the fears that the value of nearby homes might diminish could easily be exaggerated or overstated. Others have investigated this issue using proximity to a LULU to measure impact, implicitly assuming that any adverse effect will diminish with increasing distance from the source. However, relying solely on proximity as a measure of intensity can be problematic, because selection bias might distort the results. That is, the impact observed might be due to LULUs locating near low-valued houses. Therefore, additional measures of intensity and techniques to manage selection bias are desirable.

Spatial correlation abounds in housing sales data (Basu and Thibodeau, 1998; Isakson and Ecker, 2001; Case, Clapp, Dubin and Rodriquez, 2004) whereby two similar homes sell for a more similar price if they are closer geographically, than two homes farther apart. Omitted spatial variables and clustering of similarly priced homes are two sources of spatial correlation that, if omitted, will bias ordinary least squares (OLS) parameter estimates.

This study reviews previous studies of CAFOs, develops a spatial model for estimating the adverse affect associated with proximity to CAFOs, and applies this model to housing sales in a representative Iowa county. In particular, this study expands the approach taken in previous studies by (1) introducing a new variable that more accurately captures the effects of prevailing winds, (2) exploring potential adverse effects within concentric
circles around each CAFO, (3) managing selection bias, and (4) incorporating spatial correlation into the error term of the empirical model.

The organization of the paper is as follows: section 2 contains a review of the literature while the housing sales data and CAFO variables are examined in section 3. The statistical model is developed in section 4 while the results and findings are reported in section 5. The final section includes a discussion of the findings and suggests directions for further research.

**Review of the Literature**

Studies of the effects of a locally undesirable land use (LULU) on nearby housing values are abundant in the literature. In a meta-analysis, Simons and Saginor (2006) review 58 articles that study the impact on nearby property values of numerous LULUs, such as power lines, landfills, nuclear power plants, sex offenders, air pollution sources, and leaking underground storage tanks. They report that the adverse effect of a LULU diminishes with distance from the source.

In the earliest of the published studies of swine CAFOs, Palmquist, Roka, and Vukina (1997) examine 237 rural house sales in nine southeastern North Carolina counties, which occurred between January 1992 and July 1993. Unfortunately, due to privacy and confidentiality rules in North Carolina, the authors have no specific data for the locations of the CAFOs. Instead, they made use of data provided to them by the State Veterinarian’s Office consisting of the total number of herds and capacity of swine
CAFOs within three bands (0-1/2 mile, ½-1 mile, and 1-2 miles) around each of the 237 sales. From the CAFO data, the authors construct a manure index, based on the type and number of animals at the CAFO to estimate the weight of manure produced within each of the three bands. Using nonlinear least squares, they estimate that the effect of proximity is up to negative 9% of the value of a house, depending on the amount of manure produced by the CAFO.

In the second published study, Herriges, Secchi, and Babcock (2003) examine 1,145 house sales that occurred between 1992 and 2000 in five Iowa counties for the effects of proximity to 550 livestock facilities. By including more years (8) and a larger geographical area (five counties) in their analysis, these authors have many more sales and CAFOs than previous studies. The five Iowa counties selected for study include some of the highest concentration of CAFOs in the state. The authors make use of several measures of the effects of a CAFO, including distance to the nearest CAFO, the number of CAFOs within three miles of a house, the size (live animal weight) of the CAFO, a manure index, and whether the house is downwind from the nearest CAFO in warmer and colder months. Very few of these CAFO variables are statistically significant. Proximity to the nearest CAFO in the colder months for houses downwind from a CAFO shows a statistically significant loss in value depending on the size of the CAFO (their prevailing wind variable is a binary (0,1) measure). The strongest adverse effect reported is proximity to smaller CAFOs with a price-with-respect-to-distance elasticity of 0.097 during the winter and 0.112 during the summer months. Interestingly, the larger CAFOs show a smaller negative impact associated with proximity than smaller
The authors suggest that one reason for this effect is the ability of the larger CAFOs to afford the costs of odor abatement techniques. Unfortunately, the Herriges, Secchi, and Babcock study does not estimate the effect of proximity separately from the size of a CAFO. Instead, they include interaction terms (log size times the log proximity; and the log size times the number of nearby CAFOs) without including the main effects, i.e., they do not allow for the potential for main effects alone being statistically significant by only checking if the interaction is important.

Others have also studied swine CAFOs. For example, Taff, Tiffany, and Weisberg (1996) in an unpublished paper examine 292 sales of rural, residential properties in two Minnesota counties that occurred from 1993 to 1994. These authors measure proximity to CAFOs using a series of three, one-mile rings around each sale. They also attempt to control for the size of the CAFO, wind direction, and number of CAFOs within three miles of a sale. In contrast to Palmquist, Roka, and Vukina, the authors report a positive effect associated with proximity to CAFOs. That is, houses closer to the CAFOs are reported as selling for more than those located further away, after controlling for other factors that traditionally affect housing values.

In another unpublished study, Hamed, Johnson, and Miller (1999) examine the sales of 99 rural parcels (39 with houses) in Saline County, Missouri that occurred between January 1, 1996 and December 31, 1997 for effects of proximity to CAFOs. The authors use a linear measure of distance to the nearest CAFO and find a loss of $112 per acre of land with houses and no impact on vacant land within three miles of a CAFO.
another unpublished study, Abeles-Alison and Connor (1990) examine housing sales surrounding eight swine CAFOs in Michigan that received multiple odor complaints during the first nine months of 1989. The primary purpose of their study is to estimate the impact on property tax revenues due to the presence of a CAFO in a township. The authors’ analysis of 288 housing sales reveals that houses within 1.6 miles of a CAFO suffer a decline in value of $1.74 per animal in the CAFO. This impact is found to decrease with increasing distance from the CAFO.

The literature suggests that swine CAFOs can be a significant negative externality. Unfortunately, all previous studies suffer from at least one of the following: the lack of data on location/intensity at the CAFO level; small sample sizes; the lack of ability to detect any effect due to wind; a model that does not account for spatially correlated data; and the lack of management of selection bias. This study uses measures of location and intensity both at the CAFO level and at the individual house level, includes a new cardinal, wind angle variable, uses larger sample sizes, manages selection bias, and incorporates a spatial correlation component into the model.

Data

This study combines two primary sources of data: (1) housing sales data and (2) swine CAFO data. The housing sales data consists of 5822 single-family sales in Black Hawk County, Iowa. The number of sales in this dataset far exceeds the number of sales used in all of the previous studies. The sales data initially contained every transaction in the county from January 2000 to November 2004. These sales were refined by selecting only
those transactions identified as “arms length transactions” by the county tax assessor’s office. The sales were further refined by selecting only those sales with a selling price greater than $32,000 or less than $400,000, houses with at least three but less than 12 rooms, at least 500 square feet of living area, and a lot size greater than 3,000 square feet. In addition, due to limitations of the spatial model in this study, only the most recent sale, for any repeat sales, was used.

The housing sales data includes information on the following variables for each sale: date of sale, state-plane coordinates of the centroid of the property, municipal jurisdiction, year built, lot size, living area, and number of rooms. In addition to these variables, each sale includes calculations of the distance to selected points of influence; the CBDs of the two largest cities (Cedar Falls and Waterloo), the largest employer in the county (John Deere), and a large university (The University of Northern Iowa).

Information regarding CAFOs is difficult to obtain. CAFO owners are very reluctant to volunteer any data to researchers, because they fear that the information they disclose may be used against them. Thus, researchers are forced to use public records as their source of information. For each of the 39 swine CAFO sites in the county, information is obtained from the Iowa Department of Natural Resources (IDNR) on the following: state-plane coordinates of the centroid of the site, number of animal units permitted, and planned manure management techniques (method of applying manure to fields). Animal units represent a weighted sum that reflects the number and size of the animals permitted, whereby one animal unit is defined as one head of feeder cattle. Swine that weigh more
than 55 pounds count as 0.4 animal units, while swine that weigh between 15 and 55 pounds count as 0.1 animal units. Animals less than 15 pounds are not counted. The manure management techniques are planned rather than actual, because the state only requires CAFO owners to report their planned, rather than their actual manure management techniques, and unfortunately, the Iowa DNR does not monitor compliance with CAFO manure management plans. Data regarding manure storage facilities and operational types are not included in this study, because this type of data is difficult to obtain, unverified, and often unreliable.

One of the major contributions of this study is the introduction of a non-linear, cardinal variable called wind angle that measures the extent to which a house is downwind from a nearby CAFO; see Figure 2. Prevailing winds data during the study period obtained online from the National Climatic Data Center is used to determine the prevailing (most frequent) wind directions, which are from the northwest in the colder months (135 degrees from the X-axis) and from the south-southeast in the warmer months (300 degrees from the X-axis). The variable wind angle is defined as zero for all homes upwind of the CAFO, because one would anticipate no (additional) wind effect for homes in a 180 degree field upwind from the nearest CAFO. Wind angle is 90 for houses directly downwind from the nearest CAFO. One would anticipate that the more directly downwind from a CAFO a particular house is (at a fixed distance from the CAFO), the greater the intensity of any airborne pollutants, such as obnoxious odors\(^2\). This wind effect may play an even stronger role in affecting home prices than just proximity to the confinement building when the source of the odor is a large area of land, such as the
fields in the immediate vicinity of the CAFO where manure has been applied. The model also includes a seasonal binary variable indicating warmer or colder months based on the date of sale, and a binary variable that identifies on which side (north or south) of the prevailing winds the house is located. Lastly, a wind angle – season interaction variable is included to account for potential seasonality of the prevailing winds, i.e., to distinguish being downwind in the warmer versus the colder months.

The problem of selection bias in the data deserves attention. Selection bias can result when CAFOs and lower priced homes are clustered or concentrated in the same geographic area of the county, i.e. the low land prices attract CAFO owners as well as home buyers looking for inexpensive homes. One way to explore for selection bias is to examine house sales just before and right after a CAFO is opened and operating. This sort of event study is rarely performed and, moreover, establishing causality is extremely difficult since the observed price change could be due to the new CAFO or due to some other event. None of the previous studies of swine CAFOs make a direct attempt to manage selection bias, although Herriges, Secchi, and Babcock do so unintentionally by including the number of CAFOs within close proximity (three miles) of each sale. Munneke and Slawson (1999) manage selection bias in their study of mobile home parks by using a two-stage, random-effect, correction variable derived from a PROBIT analysis. Unlike covariates in standard (hedonic) regression models, their correction variable is not a fixed-effect; it has variability (sampling distribution/error) that is not accounted for in their final model. In the present study, selection bias is managed primarily by including a fixed-effect variable directly into the mean structure of the
model to capture the extent of CAFO clustering (rather than a two-stage approach). If CAFO owners locate their operations near low valued houses, then one should observe clusters of CAFOs in very close proximity to low valued houses. Therefore, this study includes, for each sale, the count or number of CAFOs within a very close (1.5 mile) distance of each sale. If selection bias were present, then one should find more CAFOs located near lower valued houses (than located near higher-valued houses), i.e., the count variable will be statistically significant and negative. In addition to this count variable, this study also manages selection bias within an error term that accounts for spatial correlation, as seen in the next section.

Table 1 contains summary statistics of the 5822 sales and 39 CAFOs. Figure 2 contains a map of the locations of the sales, CAFO sites as well as the municipal boundaries of the major cities in the county. Most of the sales occur within the jurisdictional boundaries of five incorporated cities, while 254 of these sales occur within the unincorporated (rural) areas of the county. On average, houses in the dataset are four miles from the nearest CAFO, and one out of forty (146/5822) houses has a CAFO located within 1.5 miles. The wind angle varies from zero to 90, with an average of 33.95, and about 20 percent of the sales occurred during one of the colder months.

The 39 CAFOs are permitted for an average of 977.5 animal units and range in size from 156 to 2005 animal units. About one-fourth of them (11/39) indicate that they plan to apply manure to fields in the vicinity of the confinement building using the older,
traditional broadcast method. The rest intend to use newer methods, such as injection or knife methods.

**Statistical Models and Methodology**

This study starts with a hedonic regression model of house price that includes independent variables to control for factors that traditionally influence house prices, including size and age of the dwelling, as well as, a set of variables that can capture the potential adverse effects of proximity to a CAFO. Specifically, let,

\[ P = \text{the selling price of the house}, \]
\[ S = \text{lot size in acres}, \]
\[ t = \text{the time of the sale}, \]
\[ C = \text{a vector of site level characteristics of the house that typically affects selling price}, \]
\[ L = \text{a vector of site level spatial measures of proximity to other points of influence}, \]
\[ J = \text{a vector of binary variables representing the jurisdiction in which the house is located}, \]
\[ D = \text{the distance to the nearest CAFO}, \]
\[ AU = \text{the number of animal units permitted at the CAFO}, \]
\[ CT = \text{the number of CAFOs within 1.5 miles of the home}, \]
\[ PW = \text{the degree (0 to 90) that the house is downwind from the nearest CAFO}, \]
\[ WS = \text{a binary variable representing the season (0 = summer; 1 = winter), and} \]
\[ PWS = PW \times WS, \text{a wind direction – season interaction variable}. \]

then the selling price of a house can be expressed as,

\[ P = \kappa S^\rho AU^\pi e^{\gamma D + \delta t + \phi C + \epsilon L + \eta J + \alpha CT + \beta PW + \delta WS + \lambda PWS + \epsilon} \]  

(1)

where the Greek letters represent parameters of the model to be estimated from the data. The site specific variables in \( C \) include living area, the number of rooms in the house and the year the house was built. The spatial variables in \( L \) include the distance to the CBD of two large cities (Waterloo and Cedar Falls) and distances to the two largest employers.
in the county (John Deere and the University of Northern Iowa) that dominate the labor markets in the county. This model includes independent variables to capture any adverse effect of CAFOs, including the size, wind-angle, and distance to the nearest CAFO.

We fit the hedonic model, equation (1), using a concentric circles statistical modeling approach, in which seven hedonic regression models are fitted for all sales that have a CAFO within 2, 2.5, 3, 3.5, 4, 4.5, and 5 miles of the house. An eighth hedonic regression model is fitted using all 5822 sales. Obviously, the results of the two mile hedonic regression analysis, with \( n_1 = 309 \) sales, will have an impact upon the results of the 2.5 miles analysis, with \( n_1 + n_2 = 507 \) sales, due to the common \( n_1 = 309 \) sales. However, we choose the concentric circles analysis over a ring analysis (of solely the \( n_2 = 198 \) sales between 2 and 2.5 miles from the nearest CAFO) because the concentric circles analysis provides a more continuous and smooth look at how proximity to a CAFO affects selling prices, i.e., we explore how the independent variables change in both interpretation and statistical significance with proximity to the nearest CAFO. Ring analysis often results in a smaller sample size, produces much more variable results and is beset with highly influential sales. These effects can be smoothed out using concentric circles.

In addition, we include a spatial correlation component in the hedonic regression model, equation (1), by modeling the error term, \( \varepsilon \), in a geostatistical manner (see Cressie (1993); Isakson and Ecker (2001); and Ecker (2003)), in lieu of the traditional OLS error term. Spatial correlation implies that, all things otherwise equal, two homes will sell for
a much more similar price if they are closer geographically, compared to two otherwise
similar homes much farther apart. Specifically, we model

$$\ln(\varepsilon) \sim N(0, \tau^2 + \sigma^2), \quad (2)$$

where $\tau^2$ is referred to as the “nugget” effect (a measurement error or micro-scale
variability) in the geostatistical literature. The sum of the parameters $\tau^2 + \sigma^2$ in (2)
represents the spatial variability of the spatial process or “sill”, i.e., the variability of the
home prices after adjusting for individual home characteristics. Lastly, for two home
sales with errors $\varepsilon_i$ and $\varepsilon_j$, we model the spatial correlation as a function of their
Euclidean distance apart, $d_{ij}$. Specifically,

$$\text{Corr}(\ln(\varepsilon_i), \ln(\varepsilon_j)) = \exp(-\phi d_{ij}) \quad (3)$$

where $\phi$ controls the strength of the spatial correlation and is called the “range”
parameter. The range indicates the distance beyond which home prices are (essentially)
uncorrelated. Spatial correlation models, (2) and (3), are random effects models designed
to “mop up” extra variability not captured in the mean structure in equation (1). In
particular, unobserved variables and any selection bias not fully captured by the count of
CAFOs within 1.5 miles of the home sale are managed by adding spatial correlation
components, (2) and (3), to the model.

The spatial correlation parameters, the range, sill and nugget in (2) and (3), along with the
site level mean structure parameters in (1), are estimated simultaneously, within each
concentric circle, using a maximum-likelihood, iterative fitting technique. Reasonable
starting or seed values of the spatial correlation parameters are needed to ensure timely
and accurate convergence of the fitting algorithm. These starting values for the range, sill
and nugget for each concentric circle are obtained by fitting an exponential theoretical variogram model to an empirical variogram constructed from the residuals of an ordinary least squares (a non-spatial correlation) hedonic regression model.\textsuperscript{4}

**Results and Findings**

The results of the eight, maximum-likelihood regressions are reported in Table 2 where the Goodness of Fit statistics indicates that as one adds more data in the larger diameter concentric circles, the model fits better. All of the house specific or structure variables have coefficients that are highly statistically significant, of reasonable magnitude and sign, and are very stable from one concentric circle to the next. Of the time variables, the date of sale is statistically important in all concentric circles, while the season variable is only important in the 4 mile concentric circle (in which, homes sold in warmer months sell for more that those sold in colder months). The date of sale coefficient shows lower rates of annual appreciation (3.7\%) for those sales that are close to a CAFO. In the larger concentric circles, the annual rates of appreciation are higher (about 5\%).

None of the distance variables are statistically significant in any concentric circle. It is not surprising that the CBDs of both cities are not strong points of influence, since they are not a major destination point for county residents. The employment and retail sites within the county are well disbursed, rather than concentrated at any particular point.

Very few of the city binary variables are statistically significant. Within the smaller concentric circles, no sales are present in some of the cities. Where the city variables
have statistically significant coefficients, these coefficients suggest that houses sell for more within the two major cities. Higher house values within a city, as opposed to a rural area, are not a surprise.

The coefficients of the spatial correlation variables are fairly stable for all concentric circles except for the range parameter in the smallest concentric circle. This range coefficient suggests that the spatial correlations diminish rapidly beyond about two thirds of a mile (0.35 = 3500 feet). The nugget value is consistently about 0.02 and represents about 40% of the total variability. Thus for parcels located within about two thirds of a mile from each other, OLS techniques would unnecessarily use the entire sill for explanation and prediction, i.e. the covariance for closer parcels is as much as 60% less than the total variability.

The pattern of statistical significance and insignificance for the CAFO variables reveals considerable insight into which characteristics of a CAFO most adversely affect nearby house values. The count variable, minimum distance and the manure application variables are all statistically not significant. Thus, there appears to be no evidence for selection bias, nor are houses affected by the planned method of manure management. (The actual method, if it were known, could be more important than the planned method of manure management.) The lack of significance for the distance variable indicates that just being close to a CAFO, all by itself, does not greatly affect house prices (more than wind-angle or size of the CAFO, as seen below).
The CAFO variables animal units and wind angle exhibit statistical significance within several of the concentric circles. For a house located at 3 miles or closer to a CAFO, how much the house is directly downwind from a CAFO is the most important (most statistically significant) CAFO variable. Beyond 3 miles, the size of the nearest CAFO in animal units is the only statistically significant CAFO coefficient. For houses that are five miles or more from the nearest CAFO, those that are north of being directly downwind from a CAFO sell for more than those that are south.

The CAFO coefficients from the concentric circle analysis paint a picture showing that the prevailing winds play a much more important role for houses within three miles of a CAFO, while the size of the nearest CAFO plays a more important role in influencing home prices for houses that are further away. Note that the sign and magnitude of the animal unit coefficient for very close sales (within 2 and 2.5 miles) is consistent with the signs and magnitudes in the larger concentric circles. Thus, lack of significance for animal units at close distances might be attributed to the relatively few sales in the smaller circles. Lastly, the wind angle – season interaction is not significant for any concentric circle, suggesting that the effect of being downwind from a CAFO in the warmer months is no different than in the colder months. In the smaller three concentric circles (2, 2.5 and 3 miles), wind angle is a more powerful (more statistically significant) explanatory variable than any of the other CAFO variables. Houses directly downwind and within two miles of a CAFO can suffer as much as a 44.1 percent loss in value (but, only one house is essentially (89.1 degrees) directly downwind and within 2 miles of a CAFO; the rest are no more than 60 degrees downwind). At the average wind-angle
(33.95 degrees), the loss in value for houses within two miles of a CAFO is slightly over 16.6 percent. If a house is within 2.5 miles of a CAFO, the maximum loss in value is 15.3 percent, while at the average wind-angle, the loss is 5.8 percent. Houses directly downwind within three miles of a CAFO (holding CAFO size constant) suffer a maximum loss in value of 9.9 percent, while at the average wind angle they suffer a 3.7 percent loss in value. Beyond three miles, wind-angle is not as important (statistically significant) as the size of the CAFO. Within three miles of a CAFO, the elasticity of house price with respect to CAFO size (measured in animal units) is -0.1370, which on average, suggests about a 6.85 percent loss in value for a 50 percent increase in CAFO size. For all sales, the elasticity of house price with respect to CAFO size is -0.0668, which on average, suggests about a 3.34 percent loss in value for a 50 percent increase in CAFO size.

Analysis of the sales data indicates that houses within very close proximity (3 miles or closer) to a CAFO can suffer a substantial loss in value, especially if the house is directly downwind from a CAFO. Further away from a CAFO (beyond three miles), houses suffer diminishing adverse effects as one moves further away from the CAFO. Generally, the rate of appreciation in house values is higher for houses further away from a CAFO.

**Summary and Conclusions**

This study improves our understanding of how and to what extent swine confined animal feeding operations (CAFOs) impact the value of nearby houses by (1) using concentric circles to increase sample sizes, (2) introducing a new variable that captures the effects of
prevailing winds, (3) using a model that accounts for spatially correlated data, and (4) managing the problem of selection bias. The study finds large adverse impacts suffered by houses that are very close (within 3 miles) to and directly downwind from a CAFO. Beyond three miles, CAFOs have an adverse impact on house prices, but this impact, in generally, diminishes with increasing distance from a CAFO.

This study also separates the effects of proximity, size, and prevailing winds, demonstrating for the first time that prevailing winds play a dominant role for houses within 3 miles of a CAFO, while size (animal units) plays a dominate role for houses beyond 3 miles from a CAFO. Additionally, this study finds that the impact of swine CAFOs is farther reaching than previous studies report; CAFOs can reduce the value of houses, albeit by a small amount, as far as six miles away.

Additional research remains to be done. In particular, the impact on houses located very close (within two miles) to a CAFO is extremely difficult to determine, because so little data are available. In fact, the impact could be so dramatic on these very close houses that they do not sell, due to the lack of willing buyers and/or the owner refusing to accept an offer that is a fraction of what its house specific variables would otherwise suggest. In addition, a comparison of the total loss in house values to the cost of odor abatement is also worth study. It might be less expensive for CAFO owners to compensate home owners for their loss than to implement odor abatement techniques. If transaction costs are sufficiently low, assigning tradable externality-free rights to homeowners or
externality-creation rights to CAFO owners represent market-based solutions that could be implemented to help mitigate the negative impacts associated with swine CAFOs.

Finally, the techniques developed in this study can easily be adopted by others who also study the impact of a particular land use on the value of nearby properties. The management of selection bias will always improve the results. Building spatial correlation into the error term will also help reduce biases in the estimates of the coefficients. The concentric circles technique can help deal with the problem of small sample sizes and influential observations. The wind angle measure introduced in this study could be adopted by others who study the impact of any sort of phenomenon that is carried and influenced by prevailing winds.

References


National Climatic Data Center, National Oceanic and Atmospheric Administration, Asheville, NC.


Acknowledgements

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**Figure 1** Definition of Wind Angle Variable

Warmer Months: March 22 to December 2 – SSE Predominate Wind Direction:

Colder Months: December 1 to March 21 – NW Predominate Wind Direction
Figure 2 Locations of Sales, CAFOs, and City Boundaries
Table 1  Summary Statistics of Data

<table>
<thead>
<tr>
<th>Variable</th>
<th>Mean</th>
<th>Std Dev</th>
<th>Minimum</th>
<th>Maximum</th>
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<td>60919.30</td>
<td>32208.96</td>
<td>399512.37</td>
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</table>

**Structural:**
- Living Area: 1182.67, 442.2736094, 502.7032320, 3904.95
- Year Built: 1953.08, 25.9301497, 1852.0, 2003.0
- N. Rooms: 5.4905531, 1.2581963, 4.0000000, 11.000000
- Lot Size: 3.0445554, 18.499110, 0.0706512, 365.0374679

**Time:**
- Date of Sale: 2.6873789, 1.3821553, 0, 4.88
- Season: 0.2006183, 0.4004974, 0, 1

**City:**
- Cedar Falls: 0.2858124, 0.4518393, 0, 1
- Waterloo: 0.5879423, 0.4922477, 0, 1
- Hudson: 0.0197527, 0.1391611, 0, 1
- Elk Run H.: 0.0475782, 0.2128902, 0, 1
- LaPort City: 0.0204397, 0.1415110, 0, 1

**Distance to:**
- Cedar Falls: 7.1481845, 3.6729565, 0.1600000, 25.5900000
- Waterloo: 3.7208159, 2.8765304, 0.1600000, 17.9400000
- John Deere: 6.5147149, 2.5233630, 0.4400000, 20.2500000
- University: 5.5595706, 3.5354120, 0.4700000, 23.7100000

**CAFOs:**
- Count: 0.0269667, 0.1771941, 0, 4.0
- Distance: 4.0029612, 1.0978247, 0.1600000, 6.5900000
- Wind Angle: 33.952926, 30.803978, 0, 89.989
- Animal Units: 977.5385, 508.9314, 156.0, 2005.0
- North: 0.709550, 0.454009, 0, 1
- Manure App: 0.2821, 0.4559, 0, 1

NOTES:
- a. Sales Price is measured in dollars
- b. Living Area is measured in square feet
- c. N. Rooms represents the number of rooms in the house
- d. Lot Size is measured in acres
- e. Date of Sale is measured in years beginning at Jan. 1, 2000
- f. Season = 1 for colder months (Dec. 1 thru March 21); 0 for warmer months
- g. City variables are bi-variant (0,1)
- h. Distance to variables are measured in miles to the center of each destination
- i. Count measures the number of CAFOs within 1.5 miles of the house
- j. Distance represents the distance to the nearest CAFO
- k. Wind Angle represents the extent to which a house is downwind from the nearest CAFO
- l. North = 1 for sales north of being downwind from the nearest CAFO; 0 if south
- m. Manure App = 1 for broadcast; 0 otherwise (injection, etc.)
Table 2 Maximum Likelihood Coefficients and p-values (statistically significant values, at the 0.1 level, are in **bold**)

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Endnotes

1 The authors thank the Black Hawk County Board of Supervisors for providing the house sales data used in this study. The opinions expressed in this paper should not be interpreted as representing the opinions of the Black Hawk County Board of Supervisors.

2 The effects of proximity to the second, third, etc. closest CAFO are not addressed in this study.

3 Specifically, the PROC MIXED procedure in SAS is used to fit all of the models.

4 Specifically, S-Plus is used to derive the seed values for the range, sill, and nugget in each model.
The Minnesota Pollution Control Agency (MPCA) received a number of comments on the Environmental Assessment Worksheet (EAW) and State of Minnesota Individual Animal Feedlot National Pollution Discharge Elimination System (NPDES) Permit MN0067652 (Individual NPDES Feedlot Permit). See Appendix A for the complete list. In this Appendix, the MPCA responds to comments, grouped by themes. For additional information on how the comments were grouped, please contact the MPCA.

**OVERALL PROJECT COMMENTS**


**Response:** The comments are noted.

**Comment 1-2:** Commenters oppose the Project. (8, 9, 11, 41, 68, 91, 93, 98, 117, 178, 181, 228, 249, 251, 261, 264, 265, 267, 268, 270, 271, 277, 280, 282, 283, 285, 288, 298, 301, 309, 311, 312, 318, 339, 342, 347, 360, 377, 399, 400, 403, 539, 566, 572, 575, 577)

**Response:** The comments are noted.

Response: The MPCA Commissioner, following the criteria in Minn. R. 4410.1700, subp. 7, will determine the need for an EIS after carefully reviewing all information in the EAW and in the public comments. The MPCA Commissioner will develop Findings of Fact and Conclusions of Law to support either a positive declaration on the need for an EIS, or a negative declaration on the need for an EIS.

Comment 1-4: Commenters request the MPCA deny or reject the Project. (1, 8, 13, 33, 68, 99, 160, 258, 259, 263, 286, 289, 294, 296, 297, 299, 300, 303, 304, 305, 311, 316, 324, 335, 340, 341, 342, 344, 395, 407, 415, 421, 514, 548, 571, 574, 576)

Response: The environmental review process does not involve approving or denying projects. MPCA staff prepare an EAW, which provides information about the environmental effects of a project. Environmental review gives the public access to decision makers, helps ensure awareness and meaningful input into public and private decision making, and informs decision makers so they may write better permits and better protect the environment before a project is built. The MPCA Commissioner determines if more study is needed in the form of an EIS.

Comment 1-5: Commenters have concern that the Project will reduce their quality of life. (8, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 147, 432, 434, 546, 607)

Response: The comments are noted. However, the comments are beyond the scope of the EAW because they are not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The comments are also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. chs. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

Comment 1-6: Commenters want to be able to submit comments until November 15, not October 31 as been requested by some agriculture trade groups. (21, 38, 61, 86)

Response: The MPCA extended the public comment period for this Project, and accepted comments from October 1, 2018, until 4:30 p.m. November 15, 2018.

Comment 1-7: Commenters ask that no EIS be required. (176, 308, 392)

Response: The comments are noted.

Comment 1-8: Commenters ask for a contested case hearing. (421, 571, 575, 576, 577)

Response: The comments are noted. The MPCA’s complete response to the contested case hearing request for comment number 421 is provided in the Individual NPDES Permit Denial of a Contested Case Hearing Request FOF.
Comment 1-9: Commenter asks that for the decision of requiring an EIS, the MPCA consider events that seem unlikely or unrelated based on past experience but could cause damage to our environment, such as climate change. The commenter also gives the example of the recent frac sand mine accident and spill. (406)

Response: According to Minn. R. 4410.1700, subp. 6, when deciding whether a project has the potential for significant environmental effects, the MPCA must compare the impacts that are reasonably expected to occur from the Project. To that end, this comment is beyond the scope of the EAW because the information on this issue would not inform a reasoned decision about the potential for or significance of the environmental effects of the Project under Minn. R. 4410.1700.

Also, see response to comment 7-2.

Comment 1-10: Commenter suggest that an Environmental Hazard Analysis (EHA) be prepared, to assess environmentally critical systems from reasonable threats to the environment in the event of a system malfunction or catastrophic failure. (410)

Response: The comment is noted. The MPCA conveyed this suggestion to Daley. Also, see responses to comments 8-2 and 8-6.

Comment 1-11: Commenter states that the EAW lists the total animal unit (AU) count as 5,968, while the draft permit lists 6107.7 and asks which is correct. (416)

Response: The AU differences arises because the Project description in the EAW includes the elimination of the LLP1 site (100 cows or 140 AU), while the draft Individual NPDES Feedlot Permit includes the continued operation of the LLP1 site. Also, note that the EAW rounded 5,967.7 AU to 5,968 AU.

Daley intends to eliminate the LLP1 site only upon the approval of the Project, which requires a variance from the Winona County Board of Adjustment and a conditional use permit from the Winona County Planning Commission and County Board. If the Project is approved, Daley will close the LLP1 site and will request termination of the Individual NPDES Feedlot Permit coverage for the LLP1 site, which will mean Daley will have 5,967.7 AU.

If Daley is unable to receive the variance or the conditional use permit, Daley will not conduct the expansion and the LLP1 site will remain in operation with the addition of open-lot runoff controls, in accordance with the Individual NPDES Feedlot Permit Schedule of Compliance, which will mean Daley will have 2,275.2 AU. Open-lot runoff controls are required to eliminate runoff from animal lots in order to create zero discharge from the LLP1 site.

COMMENTS CONCERNING WINONA COUNTY REGULATIONS

Comment 2-1: Commenters state that the EAW should not proceed since Winona County has an animal unit (AU) cap that the Project would exceed. (3, 17, 18, 19, 20, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 40, 43, 47, 48, 49, 52, 54, 60, 62, 63, 64, 65, 66, 72, 77, 79, 80, 81, 90, 94, 95, 97, 99, 108, 109, 110, 111, 112, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 175, 253, 254, 260,
Response: Winona County has a 1,500 AU cap specified in ordinance. Daley must receive a variance from the Winona County Board of Adjustment to construct the Project, which is a local governmental decision. The Winona County AU cap does not prevent the environmental review process from proceeding. In fact, the environmental review process must be complete before a decision on a variance from the county ordinance may be issued.


Response: The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

Also, see response to comment 2-8.

Comment 2-3: Commenters ask if Daley is allowed to exceed the Winona County AU cap, how will the County deny others an exception from the AU cap. (8, 114, 116, 117, 278, 381, 404)

Response: Enforcing the county ordinance is a local government responsibility, and not a function of the environmental review. As such, the comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

Comment 2-4: Commenters state that they believe the MPCA should have declined to perform the EAW, and avoided the cost associated with the EAW, until Winona County granted the AU variance, (19, 398)

Response: According to Minn. R. 4410.3100, Winona County cannot proceed in their AU variance request until the MPCA completes the environmental review process for the proposed Project.

Comment 2-5: Commenter states concern that issuing the Individual NPDES Feedlot Permit before the Winona County variance acts as bias on behalf of the dairy. (416, 574)
**Response:** The MPCA and Winona County are separate decision-making bodies. Daley must satisfy all permitting and approval decisions before implementing the Project. However, MPCA rules do not require local governmental decisions before the issuance of an Individual NPDES Feedlot Permit.

**Comment 2-6:** Commenter states that Daley Farm’s expansion is subject to the Winona County Local Comprehensive Plan. (598)

**Response:** The comment is noted.

**Comment 2-7:** Commenter states that an erosion control permit from the county might be required. (412)

**Response:** The Individual NPDES Feedlot Permit incorporates by reference the MPCA NPDES, State Disposal System, Construction Stormwater Permit (CSW Permit). The MPCA also notified Daley of the potential need for an erosion control permit from the county.

**Comment 2-8:** Commenter asks how many AUs Daley had at the time of the Winona County AU cap ordinance passage and how many do they have today. (416)

**Response:** The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

Although beyond the scope of both the EAW and the Individual NPDES Feedlot Permit, the following response is provided. The current Individual NPDES Feedlot Permit issued to Daley provides coverage to three feedlot sites: Daley Farms of Lewiston LLP, Daley Farms of Lewiston LLP 1 and Daley Farms of Lewiston LLP 7.

The Daley Farms of Lewiston LLP site was permitted for 1,996.4 AUs at the time when the animal unit cap was adopted into the Winona County ordinance. The Daley Farms of Lewiston LLP site is currently permitted to have 1,996.4 AUs.

The Daley Farms of Lewiston LLP 1 was not permitted, nor was it required to be permitted, at the time when the animal unit cap was adopted into the Winona County ordinance. When the site was initially registered in 2010 it was registered to have 140 AUs. The Daley Farms of Lewiston LLP 1 site is currently permitted to have 140 AUs.

The Daley Farms of Lewiston LLP 7 was not permitted, nor was it required to be permitted, at the time when the animal unit cap was adopted into the Winona County ordinance. When the site was initially registered in 2001 it was registered to have 77 AUs. The Daley Farms of Lewiston LLP 7 site is currently permitted to have 138.8 AUs.
Comment 2-9: Commenter states that the EAW does not contain a meaningful assessment of the project’s compatibility with approved plans of local units of government. (421)

Response: EAW item 2.B. compatibility with plans and land use regulations, page 7, discusses the Winona County Zoning Ordinance.

KARST GEOLOGY COMMENTS


Response: It is well known that impounding liquids on the surface can enhance sinkhole formation, as is evident by the wastewater pond failures of Lewiston, Altura, & Bellechester. The largest risk comes from seepage from unlined or poorly lined liquid holding areas. The feedlots rules were enacted after the wastewater pond failures and the lessons learned from those failures informed the development of the feedlot design standards, which greatly limit seepage in karst susceptible areas. The primary objective is to prevent catastrophic failure of liquid manure storage areas (LMSAs) related to sinkhole formation under the structure.

The feedlot rules require LMSAs and feedlots to be located at least 300 feet from an identified sinkhole. The rule further limits liquid storage volumes for facilities that have four or more sinkholes located within 1,000 feet of the liquid storage area. The feedlot rules also use rigorous design standards to limit the seepage from liquid manure storage structures in karst susceptible areas. Limiting seepage from a liquid holding area limits the potential for sinkhole formation. The feedlot rules also require a double liner for many structures in karst susceptible areas, such as this Project. The Project incorporates a dual liner of water tight concrete/HDPE over a cohesive soil liner. There is also a tile system between the two liners to detect any issues with the primary concrete/HDPE liner so that corrective measures can be taken if a leak occurs, before a failure ensues.

Daley also conducted additional investigation work [Electrical Resistivity Imaging (ERI) performed by Toby Dogweiler, PH. D and former Professor and Chair, Department of Geoscience, Winona State University] to provide more information about the subsurface bedrock conditions below the area where
The liquid manure storage area is proposed. The ERI can be used to look for conditions that are highly likely to lead to sinkhole formation and possible failure of a LMSA and that should prohibit construction of liquid storage area on the land surface. The two main features the MPCA looks for are mechanically filled sinkholes and air filled voids or caves. MPCA review of the ERI information found there was no evidence of active sinkhole development and there was not an active karst hazard that should preclude construction.

The Project location, design plans and specifications for the liquid manure storage were reviewed by MPCA staff and found to meet the feedlot rules and Individual NPDES Feedlot Permit requirements.

Comment 3-2: Commenters question the safety of the proposed project in an area with karst geology.

Response: See response to comment 3-1.

Comment 3-3: Commenters state concerns that project water withdrawal will change the karst groundwater system and will contribute to manure pit failure.

Response: The Project’s existing wells are over 700 feet deep and draw water from the Wonewoc aquifer. The proposed additional wells would be approximately the same depth and drawing from the same aquifer. Between the Wonewoc aquifer and the ground surface there are approximately 40 feet of glacial-fluvial sediments and several geologic formations, including the Prairie du Chien Group, Jordan Sandstone, St. Lawrence Formation, Lone Rock Formation, Wonewoc Sandstone, Eau Claire Formation and the Mt. Simon Sandstone. Withdrawal of water from the Wonewoc aquifer is not expected to induce or contribute to sinkhole formation.

Also, see response to comment 3-1.

Comment 3-4: Commenters ask will fissures and geologic collapse are avoided.

Response: See response to comment 3-1.

Response: See responses to comments 3-1 and 3-3.

Comment 3-6: Commenter states that the ERI results should be ground truthed with deep drilling and/or deep back hoe excavations to determine if the mapped sinkhole to the northeast of the Project site is a filled sinkhole. The commenter also states that if the mapped sinkhole is a filled sinkhole the expansion should not be permitted. (595)

Response: The mapped sinkhole is greater than 300 feet from the LMSA; thus the LMSA meets feedlot rule setback requirements. Also, see response to comment 3-1.

Comment 3-7: Commenter ask how karst features were identified at the Project site and at the manure application sites. (600)

Response: Karst features were identified at the Project site and manure application sites using the “Karst Feature Inventory Points” GIS data layer. Additionally, Daley hired Chosen Valley Testing to conduct geotechnical evaluations and a karst inventory survey of the Project site, and Daley hired Toby Dogweiler, PH. D and former Professor and Chair, Department of Geoscience, Winona State University to conduct an ERI.

Also, see response to comment 3-1.

Comment 3-8: Commenter states that the mapped sinkholes on the manure application sites are inconsistent on Attachment F and Attachment G of the EAW. (600)

Response: Daley updated manure land application sites 4 and 25 to include the mapped sinkholes. See Appendix C, Errata Sheet.

Comment 3-9: Commenter states that since new sinkholes can appear, they recommend a karst walk be completed annually at the project site and manure application sites. (600)

Response: The comment is noted. Neither the feedlot rules nor the Individual NPDES Feedlot Permit require karst walks to be completed on an annual basis. Although annual karst walks are not required,
Daley views the land around the Project site and its manure application fields where manure is applied numerous times throughout the year in its normal management of the feedlot and farming of the land. Therefore, Daley would be able to identify a new sinkhole should one develop. Manure application setback requirements are applicable if a new sinkhole should develop in a field area where manure applications occur.

**Comment 3-10:** Commenter states that the EAW did not mention sinkholes, caves and other unique karst features under “nearby resources” on page 7. (416)

**Response:** EAW Item 3, geologic and soil conditions, page 9, discusses karst features.

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**GROUNDWATER AND WELL COMMENTS**


**Response:** Minn. R. ch. 7020 contains specific requirements for locating, constructing, and operating feedlot facilities in Minnesota. The requirements found in rules are designed to provide protection to Minnesota groundwater. The Individual NPDES Feedlot Permit includes a LMSA, labeled as “manure basin” in the EAW; engineered design plans and construction specifications; and a manure management plan (MMP) describing how manure from the Project will be applied at agronomic rates based on the nutrient needs of the crops. The Individual NPDES Feedlot Permit does not allow any discharge of pollutants from the Project site to surface or groundwater. The MPCA staff reviewed these design plans and construction specifications and found them to meet Minn. R. ch. 7020 requirements. Additionally, Daley submitted, as a part of its Individual NPDES Feedlot Permit application materials, best management practices (BMPs) that it will implement to further protect groundwater quality.

Further, the design of the LMSA includes perimeter drain tile to control the seasonal water table near the LMSA, and allow Daley to observe if the LMSA is leaking. The Individual NPDES Feedlot Permit requires Daley to monitor the tile line and report any discharge from the site to the Minnesota Duty Officer and the MPCA.
Daley agrees to comply with special Individual NPDES Feedlot Permit conditions, beyond what is required in feedlot rule, to better mitigate nitrate loss from manure application. Daley will employ two or more of the following practices on field areas where liquid manure is applied:

1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the Minnesota Department of Agriculture (MDA) soil temperature network website [https://app.gisdata.mn.gov/mda-soiltemp/](https://app.gisdata.mn.gov/mda-soiltemp/) or documented by thermometer at a depth of 6 inches.
2. Adding a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.
3. Adding a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall before soil temperatures are below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website [https://app.gisdata.mn.gov/mda-soiltemp/](https://app.gisdata.mn.gov/mda-soiltemp/) or documented by soil temperature taken by thermometer at a depth of 6 inches.
4. Planting/seeding a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in the fall so to allow for germination and growth of the cover crop before the end of the growing season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.
5. Applying manure in the spring.
6. Split applying nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.
7. Avoiding application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5 and 6.

Response: The MPCA acknowledges that well water in different locations in the region may have contaminants. Unfortunately, contamination is a regional problem, which many are working to address. The Project is not anticipated to increase existing contamination. See response to comment 4-1.

The Minnesota Department of Health (MDH) recommends private wells be tested for coliform bacteria once a year, nitrate every other year, arsenic and lead at least once, and manganese before a baby drinks the well water. For more information on well testing, please visit this website [http://www.health.state.mn.us/divs/eh/wells/waterquality/tips.html](http://www.health.state.mn.us/divs/eh/wells/waterquality/tips.html), or call the MDH well management program at 507-206-2700.

Additionally, at Winona County’s Household Hazardous Waste Building, 225 West 2nd Street, Winona, well water test kits are available for a fee. Call for details and to insure kits are in stock. 507-457-6563.

Comment 4-3: Commenters state concern that the Project will cause water shortages in nearby wells.

Response: EAW item 4.A. water use, page 11, discussed Daley’s application for the Minnesota Department of Natural Resources (DNR) Well Construction Preliminary Assessment and the results of the DNR’s preliminary assessment (EAW Attachment R). As a result of the DNR’s identified potential concerns, when Daley submits an application to modify its DNR Water Appropriation Permit, the DNR may require additional testing, monitoring, and any other information to make a decision on permitting the proposed wells before deciding to approve, deny, reduce, or modify Daley’s requested water use. In addition, as discussed in EAW item 11. groundwater appropriation, page 24, Minn. Stat. 103G.261 establishes domestic water as the highest priority for water when supplies are limited. The DNR has a standard procedure for investigation claims of well interference, and if DNR determines the commercial operator is causing the problem, the operator must correct it.

Comment 4-4: Commenters state concern about the process and financial burden of the DNR well dispute process.
**Response:** An analysis of DNR’s well dispute process and how any financial burden is addressed in that process are beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

**Comment 4-5:** Commenter asks what happens if there is not enough water for the Daley operation. (101)

**Response:** State law establishes domestic use as the highest priority when water supplies are limited. If the DNR determines that there is not enough water for the Daley operation, the DNR will limit the Daley’s Water Appropriation Permit. Also see response to comment 4-3 (4-4).


**Response:** The Project does not involve the use of crop pesticide, so it will not contribute to or affect pesticide contamination. Therefore, the comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

**Comment 4-7:** Commenter asks if the nitrogen drinking water standard is reasonable, and how the Project will change nitrogen in drinking water. (147)

**Response:** The reasonableness of the nitrogen drinking water standard is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project. Furthermore, water quality standards are adopted via rulemaking governed by the Minnesota Administrative Procedures Act (Minnesota Statutes Chapter 13), which requires the establishment of the need and reasonableness of the rules.
The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

The MPCA does not expect the Project to affect the amount of nitrogen in drinking water. Also, see response to comment 4-1.

**Comment 4-8:** Commenter asks if project impacts to drinking water are considered in the environmental review process. (147)

**Response:** The MPCA does consider potential impacts to drinking water in the EAW process. Please refer to EAW item 11. cumulative impacts, page 21.

**Comment 4-9:** Commenter asks where the Project water will come from. (147)

**Response:** Daley plans to use two existing wells and drill two new wells that draw from the Wonewoc aquifer for the Project water needs.

**Comment 4-10:** Commenter asks how the proposed Project water use of 92 million gallons is calculated. (147)

**Response:** Daley provided the water use at the LLP site based on the capacity of the exiting two wells and the proposed two wells. The existing wells are able to pump 61 gallons per minute, or 32 million gallons per year, although Daley’s existing DNR Water Appropriations Permit allows for only 30 million gallons per year. Daley plans to drill the two new wells, with total capacity to pump 115 gallons per minute, or approximately 60 million gallons per year, for a grand total of 92 million gallons per year of well capacity.

Daley intentionally overdesigned the two proposed wells to provide redundancy in case of unexpected well problems. Daley does not expect to use 92 million gallons per year.

Instead, Daley estimates to use just over 75 million gallons of water per year at the LLP site. Water use includes cattle drinking water consumption, water used to cool the cattle, water use to wash the sand bedding and milking parlor equipment. Daley used existing operations to estimate water needs for cooling, sand and milking parlor wash water, and drinking water for lactating cows. Because Daley did not have detailed records for dry cow and heifer drinking water needs, Daley used an Oklahoma Cooperative Extension Service Factsheet (F-4275) to help estimate these needs. Here is a table of Daley’s estimates:

<table>
<thead>
<tr>
<th>Number of animals at LLP site</th>
<th>Daily Water use per cow</th>
<th>Daily Water use</th>
<th>Annual Water use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lactating cow(^1) 3,375</td>
<td>55 gallons</td>
<td>185,625 gallons</td>
<td>67,753,125 gallons</td>
</tr>
<tr>
<td>Dry cow(^2) 252</td>
<td>20 gallons</td>
<td>10,500 gallons</td>
<td>3,832,500 gallons</td>
</tr>
<tr>
<td>Heifer(^2) 252</td>
<td>19 gallons</td>
<td>9,975 gallons</td>
<td>3,640,875 gallons</td>
</tr>
<tr>
<td><strong>TOTAL:</strong></td>
<td></td>
<td><strong>75,226,500 gallons/year</strong></td>
<td></td>
</tr>
</tbody>
</table>

\(^1\) Includes cooling water, sand and milking parlor wash water, and drinking water.

\(^2\) Includes cooling water, sand wash water, and drinking water.
Comment 4-11: Commenter asks why one farm is allowed access to more water than all of its neighbors. (230)

Response: The DNR requires all users withdrawing more than 10,000 gallons of water per day or more than 1 million gallons per year, to obtain a water appropriation permit. Daley is required to obtain a permit for groundwater appropriation from the DNR, who will decide how much water may be withdrawn.

Comment 4-12: Commenter asks who pays for cleaning up polluted groundwater. (252)

Response: Daley is responsible for the investigation and, if necessary, cleanup of any chemical releases resulting in soil or groundwater contamination as a result of its activities at the feedlot. The feedlot rules and Individual NPDES Feedlot Permit do not require financial assurance or liability insurance.

Comment 4-13: Commenter asks why Daley received the DNR preliminary approval to build a well without more information and asks if the MPCA consults with the DNR before approving a project like this. (322)

Response: The DNR water use permitting process requires proposers to first submit a request for a DNR well construction preliminary assessment (Attachment R of the EAW) in order to obtain approval to drill a well. The DNR’s preliminary approval is not an approval to use or pump the wells. To use the wells, Daley must apply and receive a modification of its Water Appropriation Permit, which ensures adequate water supply is available for long-range seasonal requirements for domestic, agriculture, fish and wildlife, recreation, power, navigation and water quality. The DNR will require Daley to conduct a pump test and may also require additional testing such as an aquifer test to determine the amount of water that may be appropriated.

During the EAW preparation, the MPCA sends a copy of the EAW and the Individual NPDES Feedlot Permit to the DNR for its input. Additionally, the DNR has the ability to comment during the public comment period.

Comment 4-14: Commenter asks what measures Daley will take, and how the MPCA will monitor and corroborate, to ensure that nitrate leaching will not be exacerbated. (322)

Response: Daley will construct the LMSA to contain the liquid manure onsite, and inspect perimeter tiling to ensure the LMSA are not leaking. The commercial animal waste technician (CAWT) will land apply the liquid manure according to agronomic rates. Daley must update the MMP annually.

Additionally, the Individual NPDES Feedlot Permit requires Daley to submit an NPDES Annual report along with its application records to the MPCA annually, and the MPCA inspects Daley on a regular basis. The MPCA reviews manure application records during on-site inspections and may review application records that are submitted as part of annual reports or when the MPCA responds to a complaint.

Daley agrees to comply with special Individual NPDES Feedlot Permit conditions, beyond what is required in feedlot rule, to better mitigate nitrate loss from manure application. Daley will employ two or more of the following practices on field areas where liquid manure is applied:
1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by thermometer at a depth of 6 inches.

2. Adding a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.

3. Adding a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall before soil temperatures are below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by soil temperature taken by thermometer at a depth of 6 inches.

4. Planting/seeding a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in the fall so to allow for germination and growth of the cover crop before the end of the growing season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.

5. Applying manure in the spring.

6. Split applying nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.

7. Avoiding application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5 and 6.

Also, see response to comment 4-1.

**Comment 4-15:** Commenter ask that a study, conducted by non-biased geologists, hydrologists, soil scientists and agronomists, be conducted to determine if the use of liquid manure would help or hurt groundwater quality. (330)

**Response:** Any source of nitrates, manure included, if improperly managed may contaminate groundwater. The MPCA had determined that if the Project’s manure is stored and applied to the manure application sites according to feedlot rules and the Individual NPDES Feedlot Permit, the Project should not affect nitrate contamination to groundwater.

Also, see response to comment 4-1.

**Comment 4-16:** Commenters state concern that the aquifer recharge does not match aquifer withdraw. (412, 616)

**Response:** See response to comment 4-3.

**Comment 4-17:** Commenter states that the EAW contains no analysis of why Utica and Lewiston’s municipal wells were contaminated, and how the addition of 3832.7 AU could impact municipal water safety. (416)
Response: The MPCA consulted with the Minnesota Department of Health (MDH) and used the City of Utica and Lewiston's Wellhead Protection Plans in its evaluation of the potential for significant environmental effects. The MPCA has determined that the Individual NPDES Feedlot Permit requirements and MMP for this Project are consistent with these Wellhead Protection Plans and will not adversely impact those wells.

Also, see response to comment 4-1.

Comment 4-18: Commenter states that the variations in the Project and manure application sites minimum groundwater depth, and depth to bedrock given in the EAW should not vary so significantly since they are in the same geologic region. (416)

Response: The EAW uses estimates of depth to groundwater and bedrock derived from well records and soil surveys. Use of estimates is reliable and reasonable where exact measurements of depth to groundwater and bedrock data are not readily available.

Comment 4-19: Commenter states that the manure application sites minimum bedrock depth of “<10 feet” given in on page 9 of EAW isn't a number but is an estimate. (416)

Response: See response to comment 4-18.

Comment 4-20: Commenter states that there is no scientific assessment to determine the effectiveness of the planned actions to reduce nitrates given on page 10 of the EAW. (416)

Response: Several sources, such as the U of M Extension’s Best Management Practices for Nitrogen Use in Southeastern Minnesota (Publication # 08557), MPCA’s report Nitrogen in Minnesota Surface Waters (June 2013), and The Minnesota Nutrient Reduction Strategy (September 2014), provide an assessment of the practices contained within the Individual NPDES Feedlot Permit to reduce nitrate loss.

Comment 4-21: Commenter asks how many wells exist within a 5-mile radius and how much water do they draw, and for what purpose – drinking, irrigation, livestock or municipal purposes. (416)

Response: EAW item 4 water use, tiling and drainage, and physical alterations, page 10, discuss water use. EAW Attachment P shows nearby wells. The DNR assesses and regulates groundwater usage.

Also, see response to comment 4-3.

Comment 4-22: Commenter states that the City of Lewiston’s Wellhead Protection Plan recently changed to not include the Daley Farms’ property. The commenter asks how this change affects the ability of Daley Farms to move ahead with its proposal. (393)

Response: The change in the City of Lewiston’s Wellhead Protect Plan was a result of sealing an older well and constructing a new deeper well. See EAW item to 2.C. nearby resources, page 7, for additional information.
SURFACE WATER COMMENTS

Comment 5-1: Commenters state concern that the Project will contaminate surface water. (12, 13, 14, 17, 38, 82, 87, 92, 93, 99, 100, 116, 214, 226, 246, 251, 253, 255, 260, 271, 285, 287, 289, 293, 294, 304, 394, 395, 397, 399, 402, 407, 408, 410, 412, 413, 414, 415, 416, 418, 420, 421, 480, 584, 607)

Response: Minn. R. ch. 7020 contains specific requirements for locating, constructing, and operating feedlot facilities in Minnesota. The requirements found in rules are designed to provide protection to Minnesota surface waters. The Individual NPDES Feedlot Permit includes LMSA engineered design plans and construction specifications and a MMP describing how manure from the Project will be applied at agronomic rates based on the nutrient needs of the crops. The MPCA staff reviewed these design plans and construction specifications and found them to meet Minn. R. ch. 7020 requirements.

The design of the LMSA includes perimeter drain tile to both relieve hydrostatic pressure on the walls of the structure, and allow Daley to observe if the LMSA is leaking. The Individual NPDES Feedlot Permit requires Daley to monitor the tile line and report any discharge from the LMSA to the Minnesota Duty Officer and the MPCA.

Daley agrees to comply with special Individual NPDES Feedlot Permit conditions, beyond what is required in feedlot rule, to better mitigate nitrate loss from manure application. Daley will employ two or more of the following practices on field areas where liquid manure is applied:

1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by thermometer at a depth of 6 inches.
2. Adding a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.
3. Adding a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall before soil temperatures are below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by soil temperature taken by thermometer at a depth of 6 inches.
4. Planting/seeding a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in the fall so to allow for germination and growth of the cover crop before the end of the growing season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.
5. Applying manure in the spring.
6. Split applying nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.
7. Avoiding application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5 and 6.

Response: The DNR monitors area lakes and streams, and determines the sustainability of the aquifer from surrounding groundwater use.

Also, see response to comment 5-1.

Comment 5-3: Commenter state concern over Project contribution to the dead zone and red algae blooms in the Gulf of Mexico. (249)

Response: See responses to comments 4-1 and 5-1.

Comment 5-4: Commenters ask how the Project will affect cold-water streams and trout populations in southeast Minnesota. (326, 574)

Response: See responses to comments 4-1 and 5-1.

Comment 5-5: Commenter ask how the Project will affect amphibian populations. (326)

Response: See responses to comments 4-1 and 5-1.

Comment 5-6: Commenter states that the EAW does not describe the Rush Creek Aquatic Management Area, Rush Creek, a designated trout stream, or the designated trout stream tributaries that lie nearby some of the manure application sites (Matt’s, Lappiers, and Orlies). The commenter indicates these resources, and any Project-related impacts to these resources, should be discussed and any measure to minimize and avoid adverse impacts should be discussed. (600)

Response: EAW item 8 surface water runoff, page 18 and EAW item 11 cumulative effects, page 21, discuss Rush Creek and trout stream tributaries near the Project site and the manure application sites. The potential impacts and efforts to minimize and avoid impacts are also given in these sections.
However, the EAW did not discuss the Rusk Creek Aquatic Management Area (AMA), located just to the east of the manure application sites: Matt’s, Lappiers, and Orlies. This stretch of Rush Creek AMA contains an easement to allow angling access. Although the EAW did not discuss the Rusk Creek AMA, the same potential impacts and mitigations given in EAW item 11 cumulative effects, page 21, apply to the Rusk Creek AMA.

**STORMWATER COMMENTS**

**Comment 6-1:** Commenter states that since not all stormwater pollution prevention plans are reviewed by the MPCA, the Winona County Soil and Water Conservation District would be willing to review the SWPPP for the project. (308)

**Response:** The MPCA reviewed the Project Stormwater Pollution Prevention Plan (SWPPP) as part of the Individual NPDES Feedlot Permit application process. The Winona County Soil and Water Conservation District may also review the SWPPP.

**Comment 6-2:** Commenter states that with potentially 15 acres of new impervious surfaces from this project, and the increased rainfall amounts and intensities over recent years, designing permanent treatment to control only 1” of volume runoff from the project site may not be adequate. (308)

**Response:** The comment is noted. Additionally, the 1” of volume reduction is based on the last 50 years of rainfall data (1960-2010), which accounts for recent increases in rainfall amounts and intensity.

**Comment 6-3:** Commenter asks where the stormwater runoff basins will be located. (322)

**Response:** Daley will install a series of permanent stormwater runoff basins around the barn to collect, filter, and discharge the runoff. The location of these basins are indicated on the site plan developed by the project engineer hired by Daley.

**Comment 6-4:** Commenter asks how Daley can expect no change in stormwater runoff since rainfall events have increased over the last decade. (322)

**Response:** The proposed manure application sites have been in crop production for many years, and the Project will not require new areas to be turned into agriculture production land. Therefore, the effects of changes to rainfall patterns will not alter the stormwater runoff expected at the land application sites. Additionally, manure application to soils can increase soil tilth, a property that can provide increased water retention capacity of the soils so the quantity of stormwater runoff may actually be less than would be expected if the cropland in fertilized with commercial fertilizers.

**Comment 6-5:** Commenter states that the EAW contains no analysis of project stormwater runoff impact on water quality, water temperature, turbidity, sediment load, and nutrient, pathogen and pesticide contaminants in affected trout streams. (416)

**Response:** This Project’s Individual NPDES Feedlot Permit requires Daley to follow the CSW Permit, incorporated by reference in the Individual NPDES Feedlot Permit. During the development of the CSW Permit, the MPCA considered construction and post-construction stormwater impacts on water quality, water temperature, turbidity, nutrients, and sediment load. While the CSW Permit development did not
specifically include effects from pathogen contaminants, many of the measures to reduce other pollutants would reduce impacts of these pollutants.

The Project does not involve the use of crop pesticide, so it will not contribute to pesticide contamination. Therefore, the comment is beyond the scope of the EAW because the information on this issue would not inform a reasoned decision about the potential for or significance of the environmental effects of the Project under Minn. R. 4410.1700.

Pesticide analysis is beyond the scope of the feedlot rules (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, and Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090) and Individual NPDES Feedlot Permit requirements the Project is required to meet.

Comment 6-6: Commenter asks what will happen to the feed storage pad runoff after it enters the storage basin. (412)

Response: Feed pad runoff is stored in the LMSA (called “feedpad runoff basin” in the EAW), until it is removed by Daley and land applied. Also, see response to comment 7-1.

Comment 6-7: Commenter states that the EAW fails to adequately examine the impacts on both runoff and leaching rates of a major precipitation event. (584)

Response: The feedlot is designed in accordance with Minn. R. ch. 7020, which requires the manure handling and storage system design to accommodate the major precipitation event of the 25 year 24 hour storm.

The use of land application sites as crop fields is unchanged from the existing conditions. The fields will be tilled, planted, and harvested in the same manner as the existing practices. The amount of nutrients applied remains unchanged from existing practices. The only difference at the application sites is the source of the nutrients that will be applied to the crop, as those nutrients will now be coming from an organic source, manure. Manure application to soils can increase soil tilth, a property that can provide increased water retention capacity of the soils so the quantity of stormwater runoff may actually be less than would be expected if the cropland in fertilized with commercial fertilizers. Therefore, the runoff and leaching potential of the land application fields remains largely unaffected by the Project.

Also, see responses to comments 3-1, 4-1, 5-1, and 8-7.

Comment 6-8: Commenter states that the EAW says the project will produce 15 acres of new impervious surface, but the permit states only 8 acres of new impervious surface will be created, which impacts numerous calculations for stormwater generation, management strategies, and water temperature increases, and calls many of the MPCA’s projected outcomes into questions. (416)

Response: The 836 feet by 435 feet proposed barn creates approximately 8 acres of new impervious surface. The stormwater runoff basins surrounding the barn are designed to provide permanent stormwater treatment. Further, the 440 feet by 590 feet proposed feed storage pad creates approximately 6 additional acres of new impervious surface. The feed storage pad stormwater runoff is completely contained within the feedpad runoff basin, designed as a LMSA. The stormwater stored within the feedpad runoff basin is applied at agronomical rates to manure land application sites. In
addition to the barn and feed storage pad, other buildings such as the proposed sand building and milking parlor create a total of approximately 15 acres of new impervious surface.

**Comment 6-9:** Commenter states that neither the EAW nor permit contain information about existing impervious surfaces at the project site. (416)

**Response:** The existing impervious surfaces are not regulated by the CSW permit program as they are already constructed. The comment is noted.

**Comment 6-10:** Commenter states that the draft permit indicates that feedpad runoff will not go into the manure basin, but the EAW (page 12) shows a portion of the feedpad runoff going into the manure basin. (416)

**Response:** The proposed feedpad runoff basin, designed as a LMSA, includes a float trap that will capture floating solids washed in from the feed storage pad. Daley will place these solids in the manure LMSA (called the "manure basin" in the EAW). The EAW only provides a summary of planned operations. The Individual NPDES Feedlot Permit application materials includes more of the operational details. To view the Individual NPDES Feedlot Permit application materials, go to the MPCA Public Notices webpage at [https://www.pca.state.mn.us/public-notices/archive](https://www.pca.state.mn.us/public-notices/archive) and click on "October 2018" then scroll to "Monday, October 1, 2018."

**Comment 6-11:** Commenter states that no specific BMPs are mentioned in how the “permanent stormwater runoff basins around the barn [will] collect, filter and discharge.” The commenter then asks what specific measures will be taken to ensure that storm water runoff from 8.34 acres of impervious surface is handled correctly. (414)

**Response:** Stormwater engineering plans that provide details of BMPs are provided within the Individual NPDES Feedlot Permit application materials, available starting on October 1, 2018, at the MPCA website. To view this document, go to the MPCA Public Notices webpage at [https://www.pca.state.mn.us/public-notices/archive](https://www.pca.state.mn.us/public-notices/archive) and click on “October 2018” then scroll to “Monday, October 1, 2018.”

**Comment 6-12:** Commenter asks what specific measures will be taken to ensure the feedpad runoff is handled correctly. (414)

**Response:** Daley’s Individual NPDES Feedlot Permit application materials include design plans and construction specifications for the LMSA that will collect runoff from the proposed feed pad expansion area. MPCA reviewed the plans and found they meet feedlot rules and Individual NPDES Feedlot Permit requirements.

The draft Individual NPDES Feedlot Permit for the Project includes a Schedule of Compliance. The Schedule of Compliance requires construction/implementation of plans that were previously reviewed and approved for addressing the portion of the existing feed pad that is not meeting the discharge requirements of the Individual NPDES Feedlot Permit.
LAND APPLICATION OF MANURE COMMENTS

Comment 7-1: Commenters state concern that there is not enough land available to utilize the manure.
(16, 93, 103, 394, 421)

Response: Minn. R. ch. 7020 contains specific requirements relating to the application of manure from feedlot facilities in Minnesota. The requirements found in rules are designed to provide protection to Minnesota groundwater and surface waters and are based on University of Minnesota Extension Service recommendations. The rules require that nutrient (nitrogen) application rates from all sources (manure, commercial fertilizers, and nutrient credits from previous crops that were grown) not exceed the expected crop nitrogen needs for non-legume crops or the expected nitrogen removal for legume crops. In addition to applying nutrients from all sources at agronomic rates (nutrient applications based on nutrient needs of the crop that will be grown), the rules require nutrient testing of manure, soil testing, and calibration of equipment used for application of manure. MMPs are updated annually to adjust for newly measured levels of nutrients and crop needs. The requirements relating to manure application apply not only to the feedlot owner, but also anyone receiving manure from the Project. Daley’s Individual NPDES Feedlot Permit application includes a MMP describing how manure from the Project will be applied at agronomic rates. The MPCA reviewed the submitted MMP, including verifying that adequate land base is available for manure that will be generated from the feedlot, and found it meets Minn. R. ch. 7020 and Individual NPDES Feedlot Permit requirements.

Daley agrees to comply with special Individual NPDES Feedlot Permit conditions, beyond what is required in feedlot rule, to better mitigate nitrate loss from manure application. Daley will employ two or more of the following practices on field areas where liquid manure is applied:

1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by thermometer at a depth of 6 inches.
2. Adding a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.
3. Adding a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall before soil temperatures are below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by soil temperature taken by thermometer at a depth of 6 inches.
4. Planting/seeding a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in the fall so to allow for germination and growth of the cover crop before the end of the growing season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.
5. Applying manure in the spring.
6. Split applying nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.
7. Avoiding application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5 and 6.

Failure to apply manure as required by feedlot rules and the Individual NPDES Feedlot Permit may result in MPCA enforcement.

Comment 7-2: Commenters ask if the agronomic rate calculation takes into consideration Minnesota's changing climate. (19)

Response: The manure/nutrient application rate requirements found in the feedlot rules and the Individual NPDES Feedlot Permit are based on University of Minnesota (U of M) Extension Service recommendations. The U of M Extension Service is continually researching and evaluating the recommendations that they make. The U of M Extension Service is aware of climatic changes that have taken place in Minnesota. Because climatic changes affect continued research and evaluations that are conducted and used by U of M Extension Service for developing recommendations, climatic changes are indirectly considered.

Comment 7-3: Commenters ask if land application fields receive manure from sources other than Daley. (19, 325, 416)

Response: The feedlot rule and Individual NPDES Feedlot Permit requirements do not prohibit manure from more than one feedlot being applied on the same land; however, regardless of the feedlot site or sites where the manure originates from, the rules require that nutrient (nitrogen) application rates from all sources (manure, commercial fertilizers, and nutrient credits from previous crops that were grown) not exceed the expected crop nitrogen needs for non-legume crops or the expected nitrogen removal for legume crops.

Daley’s MMP includes information for both retained manure and transferred manure. Manure is considered “retained” when the manure will be applied on land that is owned, rented or controlled by Daley. Manure is considered “transferred” when manure from the project is transferred, sold or given away, and applied on land that is not owned, rented or controlled by Daley.

Fields that are part of Daley’s “retained” MMP only receive manure from feedlot facilities that are owned by Daley.

It is not known, or required to be known, if fields that are receiving transferred manure from the Project will also receive manure from feedlots other than Daley’s.

The feedlot rules and Individual NPDES Feedlot Permit contain manure application record keeping requirements for Daley and the land owners receiving transferred manure from the Project.

Comment 7-4: Commenters ask if nitrate levels have been monitored in any of the land application sites with devices such as lysimeters. (19, 325)

Response: Daley has not used a lysimeter to monitor nitrate levels in soil pore water at its existing manure land application sites. However, Daley must measure nutrient content of the soil and applied
manure as required by the MMP. See response to comment 7-1 for details of manure application requirements.

**Comment 7-5:** Commenters ask how it will be determined that the crops are absorbing the nutrients instead of going into groundwater. (19, 325, 575)

**Response:** See responses to comments 7-1 and 7-2.

**Comment 7-6:** Commenters ask that phosphorus, antibiotics, bacteria and hormones be evaluated. (17, 19, 38, 249, 271, 325)

**Response:** **Phosphorus:** The Individual NPDES Feedlot Permit requires Daley to ensure manure application fields are sampled and tested in the upper 6 inches for soil phosphorus at least once every 4 years. Soil sampling techniques must meet the most recently published sampling standards developed by either the Minnesota Extension Service or Natural Resources Conservation Service.

Additionally, Daley must apply manure in accordance with the following.

*Phosphorus Management Near Waters.*
Where field average soil test levels exceed 21 parts per million (ppm) Bray P1 or 16 ppm Olsen within 300 feet of a lake, stream, intermittent stream, drainage ditch without protective berms, or a public waters wetland, Daley must either:

a. Apply manure at a rate and frequency so that manure phosphorus applied during any six year period does not exceed crop phosphorus removal during that same period; or

b. Establish a vegetated buffer that does not receive manure application along the water provided that the buffer width is at least 100 feet along lakes and streams and is at least 50 feet wide along other waters.

*Phosphorus Management on Extremely High Soil Test Phosphorus Soils.*
Where field average phosphorus soil test levels exceed 75 ppm Bray P1 or 60 ppm Olsen within 300 feet of an open tile intake, lake, stream, intermittent stream, drainage ditch without protective berms, or a public waters wetland, or exceed 150 ppm Bray P1 or 120 ppm Olsen on any other land, the Permittee shall land apply manure in accordance with all of the following:

a. When manure is surface applied without incorporation within 24 hours, annual phosphorus application rates must not exceed crop phosphorus removal in the subsequent crop;

b. When manure is injected or incorporated (within 24 hours), reapplication of manure cannot occur until phosphorus from the previous manure application is calculated to have been removed by subsequent crops; and

c. The approved MMP includes runoff and soil erosion prevention practices that either achieves a “very low” or “low” rating with the Minnesota Phosphorus Index originally developed for the animal agriculture GEIS (www.mnpi.umn.edu) or NRCS Technical Standard 590.

**Antibiotics:** See response to comment 13-1.

**Bacteria:** Measures in feedlot rules and in the Individual NPDES Feedlot Permit to prevent manure from reaching surface water and groundwater will also prevent the movement of bacteria to surface water and groundwater. Also, see responses to comments 4-1 and 5-1.
Hormones: According to a University of Wisconsin Extension (Fall 2011) publication, *Assessing the Potential Effects of Hormones in Livestock Manure*, hormones are rapidly degraded in surface water runoff, which suggests minimal impact on aquatic organisms, and efforts that prevent manure from entering waterways will likely prevent hormones from entering surface water.


**Response:** See responses to comments 7-1 and 7-2.

**Comment 7-8:** Commenter asks what does the expanded feedlot have planned for the tons of manure and wastewater. (230)

**Response:** See response to comment 7-1.

**Comment 7-9:** Commenter states that verbal agreements for spreadable acres may not be a strong enough commitment when adequate spreadable acres are so critical to this project. (308, 598)

**Response:** The feedlot rules and Individual NPDES Feedlot Permit do not require Daley to submit signed contracts or agreements for land areas where transfer of manure is planned, nor is Daley required to identify additional manure recipients should one of the planned manure recipients no longer accept manure from the project. Rather, the rules require nutrient application rates from all sources (manure, commercial fertilizers and nutrient credits from previous crops that were grown) not exceed the expected crop nutrient needs or removal and that manure application records are kept for both retained and transferred manure.

**Comment 7-10:** Commenter states concern that injecting manure when air temperature drops below 50 degrees will result in more nitrogen contaminating groundwater since the lower temperatures mean less biological activity, and asks if research has looked into this. (330)

**Response:** Application of manure when soil temperature is below 50 degrees is in fact a recommended BMP by the U of M Extension Service. Microbial activity in the soil slows down at cooler temperatures, therefore slowing the conversion of the ammonium and organic nitrogen portions of manure to the
nitrate form. The ammonium and organic forms of nitrogen are stable in the soil whereas the nitrate form of nitrogen moves with water and may leach out of the root zone over winter and early spring.

**Comment 7-11:** Commenter asks how many animal units are in Utica Township and Winona County, and ask what the animal unit carrying capacity of the area. (326)

**Response:** Based on feedlot registration, which includes all animals from farms required to be registered, there are 110,901 registered AUs in Winona County and there are 12,941 registered AUs in Utica Township.

Daley's Individual NPDES Feedlot Permit application included a MMP describing how manure from the Project will be applied at agronomic rates. The MPCA reviewed the submitted MMP, including verifying that adequate land base is available for manure that will be generated from the Project, and found it meets Minn. R. ch. 7020 and Individual NPDES Feedlot Permit requirements.

**Comment 7-12:** Commenter asks how does the Daley's manure injection protect groundwater from being contaminated, if manure is injected below the zone of biological decomposition. (326)

**Response:** Daley proposes to inject manure at a depth where is can readily be utilized by plant roots. Also, see responses to comments 7-1, 7-2 and 7-20.

**Comment 7-13:** Commenters ask how manure application sites are vetted and how often they are monitored. (575, 584)

**Response:** Daley must meet the requirements of Minn. R. ch. 7020.2225, land application of manure. The MPCA’s draft Individual NPDES Feedlot Permit, which was out for public comment from October 1, 2018, through November 15, 2018, includes requirements for land application and nutrient management, including nutrient testing of both manure and land application sites. Daley’s MMP, once approved, also becomes an enforceable component of the Individual NPDES Feedlot Permit.

Additionally, the Individual NPDES Feedlot Permit requires Daley to submit its application records to the MPCA annually, and the MPCA inspects Daley on a regular basis. The MPCA reviews manure application records during on-site inspections and may review application records that are submitted as part of annual reports or when the MPCA responds to a complaint.

Also, see response to comment 7-1.

**Comment 7-14:** Commenter asks what the cumulative impacts of pollutants and bacteria are from manure land application in areas with shallow soils over fractured bedrock to wells, aquifers and eventually the trout streams. The commenter specifically asks for this evaluation for each sub watershed - Whitewater, Garvin, and Rush. (584)

**Response:** EAW item 11 cumulative effects, page 21, discusses cumulative effects to surface water.

Also, see responses to comments 4-1 and 5-1.
Comment 7-15: Commenter states that the EAW failed to adequately examine the potential impacts of manure applications on the e. coli levels of each stream. (584)

Response: See response to comment 7-6.

Comment 7-16: Commenter states that the EAW erroneously equates liquid manure for the operations with nitrogen fertilizer. Manure contains other chemicals and bacteria, yet the EAW largely ignores their impact. (584)

Response: Measures in feedlot rules and in the Individual NPDES Feedlot Permit to prevent manure from reaching surface water and groundwater also prevent the movement of bacteria and hormones to surface water and groundwater.

Also, see response to comment 7-6.

Comment 7-17: Commenter states that the EAW fails to break out how much manure will be applied in each sub watershed and therefore misses assessing impacts. (584)

Response: See response to comment 7-1.

Comment 7-18: Commenter states “The EAW also assumes that the state mandated buffer strips and setback strips by sinkholes will be followed and are actually adequate to remove pollutants. Yet there is much research collected by BWSR and other state agencies that indicates that the 50 foot buffer strips do not remove all pollutants. This area needs further study, as does the cumulative impacts of manure applications around this many sinkholes and streams in a small area.” (584)

Response: Setback requirements were adopted via rulemaking governed by the Minnesota Administrative Procedures Act (Minnesota Statutes Chapter 13), which requires the establishment of the need and reasonableness of the rules.

Comment 7-19: Commenter states that research should be done on the sustainability of using the same fields for many years for manure dispersal and nitrate levels. (393)

Response: Comment noted.

Comment 7-20: Commenter asks what is the planned manure injection depth and will it be in the zone of biological activity. (416)

Response: The CAWT will inject liquid manure at a depth of approximately 4 to 6 inches below the soil surface, which is within the rooting zone, and therefore is readily available for uptake by growing crops.

Comment 7-21: Commenter states that verbal agreements to accept manure is inadequate, given the responsibilities and liabilities that the landowner will be subject to, and state that written contracts are needed that clearly state all risks and responsibilities. (416)

Response: The comment is noted. Also, see response to comment 7-9.
**Comment 7-22:** Commenter states that the EAW does not provide a breakdown of crop type for the manure land application sites with agreements to accept manure. The commenter states that this is important because not all land is eligible to receive manure. (416)

**Response:** Breakdown of crop type for land areas where manure will potentially be transferred to is not required by the feedlot rules, Individual NPDES Feedlot Permit or as part of the EAW.

Regardless of whether manure is being retained or transferred, the feedlot rules require that manure and process wastewater application rates be limited so that the estimated plant available nitrogen from all nitrogen sources does not exceed expected crop nitrogen needs for nonlegume crops, and expected nitrogen removal for legumes.

Nitrogen sources include commercial fertilizer nitrogen, soil organic matter, irrigation water, legumes grown during previous years, biosolids, process wastewater, and manure applied for the current year and previous years.

**Comment 7-23:** Commenter asks how the MPCA will ensure manure land application BMPs are followed to protect public and private wells. (414)

**Response:** The Individual NPDES Feedlot Permit requires Daley to submit its application records to the MPCA annually, and the MPCA inspects Daley on a regular basis. The MPCA reviews manure application records during MPCA on-site inspections and may also review application records that are submitted as part of annual reports or when the MPCA responds to a complaint.

**Comment 7-24:** Commenter asks what the MPCA has done to ensure that all owners/operators receiving manure from Daley understand the manure application requirements and that all manure application records, soil tests, tests for available nutrients are maintained to ensure that the water shed is not cumulatively overloaded. (414)

**Response:** Regardless of whether manure is being retained or transferred, the feedlot rules and Individual NPDES Feedlot Permit require that manure and process wastewater application rates be limited so that the estimated plant available nitrogen from all nitrogen sources does not exceed expected crop nitrogen needs for nonlegume crops and expected nitrogen removal for legumes.

Nitrogen sources include commercial fertilizer nitrogen, soil organic matter, irrigation water, legumes grown during previous years, biosolids, process wastewater, and manure applied for the current year and previous years.

Daley’s MMP include plans specifically for transferred manure, including providing the recipient of the manure information regarding the feedlot rule requirements.

**Comment 7-25:** Commenter asks how the MPCA is aggregating manure application data to ensure that the proposed project will not overload the watershed. (414)

**Response:** Daley is required to meet Minn. R. 7020.2225 requirements for the land application of manure. The Individual NPDES Feedlot Permit incorporates 7020.2225 requirements and also contains additional land application requirements. Minn. R. ch. 7020 and the Individual NPDES Feedlot Permit are
enforceable requirements. These requirements are designed to protect Minnesota groundwater and surface water and are based on U of M Extension Service recommendations.

The MPCA reviewed Daley’s application for coverage under the Individual NPDES Feedlot Permit. The MPCA determined that Daley’s application, if constructed as designed, and operated in accordance with the requirements of the Individual NPDES Feedlot Permit, will comply with Minn. R. ch. 7020, including Minn. R. 7020.2225 requirements, which provide requirements for land application of manure.

Comment 7-26: Commenter asks if the MPCA considered that the numerous manure application sites may have drain tile installed. (398)

Response: Tile drainage is common throughout the State of Minnesota. Tile drainage was considered when the feedlot rules were developed and adopted. Requirements in the feedlot rules are designed to provide protection to both groundwater and surface waters.

Comment 7-27: Commenter states that the MPCA provides no evidence or reasoning to support the claim that manure will replace commercial fertilizer, therefore cannot be used as mitigation to justify no significant impact. The commenter also provides evidence of farmers applying commercial fertilizer to its manured fields and farmers not knowing how much nitrogen was contained in the manure they applied. (421)

Response: The MPCA provides oversight of Daley’s compliance with feedlot rules and Individual NPDES Feedlot Permit and has enforcement authority if it finds noncompliance.

Also, see response to comment 7-30.

Comment 7-28: Commenter states that the MPCA provides no evidence or reasoning to support the claim that manure management plans prevent over application, therefore cannot be used as mitigation to justify no significant impact. (421)

Response: Daley is required to meet Minn. R. 7020.2225 requirements for the land application of manure. The Individual NPDES Feedlot Permit incorporates 7020.2225 requirements and also contains additional land application requirements. Minn. R. ch. 7020 and the Individual NPDES Feedlot Permit are enforceable requirements. These requirements are designed to protect Minnesota groundwater and surface water and are based on U of M Extension Service recommendations.

The MPCA reviewed Daley’s application for coverage under the Individual NPDES Feedlot Permit. The MPCA determined that Daley’s application, if constructed as designed, and operated in accordance with the requirements of the Individual NPDES Feedlot Permit, will comply with Minn. R. ch. 7020, including Minn. R. 7020.2225 requirements, which provide requirements for land application of manure.

Additionally, the Individual NPDES Feedlot Permit requires Daley to submit its application records to the MPCA annually, and the MPCA inspects Daley on a regular basis. The MPCA reviews manure application records during MPCA on-site inspections and may also review application records that are submitted as part of annual reports or when the MPCA responds to a complaint.
Comment 7-29:  Commenter states that page 9 of the EAW only discusses the threat to endangered species from the project site and does not include the manure application sites or the species found in cold water springs. (416)

Response:  All proposed manure application sites have received manure in the past and have been in crop production for many years. The Project, including the manure application sites, is not expected to have the potential for an adverse effect to endangered species.

Comment 7-30:  The commenter states that the Project’s MMP will allow application of manure at rates that exceed agricultural utilization of the nutrients, in violation of 40 C.F.R. § 412.4(c), 40 C.F.R. § 122.42(e) and Minn. R. 7020.2225, subp. 3. (421)

Response:  The agronomic rate requirement found in the feedlot rules and the Individual NPDES Feedlot Permit is just one of many requirements found in the feedlot rules and the Individual NPDES Feedlot Permit that are designed to protect ground and surface water quality. Other manure application related requirements in the feedlot rules and the Individual NPDES Feedlot Permit include; manure and soil testing, setbacks to sensitive features, soil hydraulic loading restrictions, soil texture restrictions, application of manure prior to predicted rainfall events of one-half inch restrictions, cover crop requirements base on timing of manure application and manure applications restrictions based on application methods and the time of year/field conditions. It is a combination of all the feedlot rule and Individual NPDES Feedlot Permit requirements that protect ground and surface water quality.

The commenter states that the proposal utilizes an erroneous University of Minnesota recommendation for nitrogen application to the corn crop. This assertion is based on commentary provided by Dr. Gyles Randall, emeritus professor University of Minnesota, which states the “Corn N Rate Calculator” should be used and results in a recommendation of a 159 lbs of Nitrogen for corn following corn or 123 lbs of nitrogen for corn following soybeans. The Corn N rate calculator is a 7 state regional tool developed primarily for use with commercial fertilizers, nonetheless, the University of Minnesota publication is consistent with the Corn N rate Calculator.

The techniques used to arrive at nutrient recommendations for the Corn N Rate Calculator and most recent University of Minnesota publication methodology were developed for commercial fertilizers meaning that it is not directly amenable to use when manure is the nutrient source. The MPCA has developed and published its interpretation of the recommendations when manure is the nutrient source. It can be found at https://www.pca.state.mn.us/sites/default/files/wq-f8-18.pdf.

The recommendations cited by Dr. Randall are accurate should the N price/Crop value ratio within the Corn N Rate Calculator be considered to be 0.10; however, in accordance with the MPCA interpretation, the N price/Crop value ratio most applicable to use with manure nutrients is 0.05. Using this ratio the recommendation is 180 lb N/acre for corn following corn and 140 lb N/acre for corn following soybeans, which is consistent with the MMP for the project.

The commenter also assumes 3 years of nitrogen availability/crediting from manure application. The feedlot rules and Individual NPDES Feedlot Permit requirements are based on University of Minnesota Extension Service recommendations, including 2 years of nitrogen availability/crediting from manure applications.
Dr. Randall also give his opinion of some of the specifics of the MMP, namely field characteristics that give some fields a higher pollution potential than other fields. The MPCA agrees with that assertion but the application to those fields does meet the requirements of Minn. R. 7020 and they are therefore eligible for manure application even if it is not from the proposed Project. In other words, simply removing them from the MMP for this facility does not make them ineligible for manure application from other manure or nutrient sources. The fact that these fields are covered by a MMP incorporated into the Individual NPDES Feedlot Permit for the site means that they will receive more regulation and restrictions than if they were not a part of the MMP.

Finally, Dr. Randall questions the nutrient content of the manure, specifically how it can vary so much from the “book value”. The values used in the MMP are the results of actual test from the existing facility which will be far more representative of actual conditions than a “book value” meant to generally apply to a similar operation. Further, Daley intentionally utilized a book value for the manure generated from the proposed expansion instead of the lower actual test values from the current operation so that the total amount of nitrogen identified in the MMP is higher than what will likely actually be generated at the facility. In all likelihood the nutrient content of the manure will be similar to the existing operation historical test values but the use of the higher book value will ensure that the MMP identified sufficient land available to apply the manure at agronomic rates.

Pursuant to the feedlot rule (7020.2225, supb. 1.D.), MPCA has regulatory authority over property owners that receive manure from the Project. Any person receiving manure from the Project is required to comply with the MMP of the Project and to complete their own MMP, and MPCA does and has conducted inspections of landowners receiving manure from feedlot facilities. If Daley transfers manure to other property owners MPCA will conduct inspections, as appropriate.

Additionally, the feedlot rules and Individual NPDES Feedlot Permit require manure and process wastewater application rates must be limited so that the estimated plant available nitrogen from all nitrogen sources does not exceed expected crop nitrogen needs for non-legume crops and expected nitrogen removal for legumes. Expected crop nitrogen needs, crop nitrogen removal rates, and estimated plant available nitrogen from manure and legumes must be based on the most recent published recommendations of the U of M Extension Service or of another land grant college in a contiguous state.

The MPCA reviewed the submitted MMP, including planned nitrogen application rates used in the plan, and found it meets feedlot rule and Individual NPDES Feedlot Permit requirements. In addition to feedlot rule and Individual NPDES Feedlot Permit requirements, on December 23, 2018, Daley submitted an addendum to its MMP to further prevent nitrate loss to ground and surface water. The addendum indicates that the Project will employ two or more of the following practices on field areas where liquid manure is applied:

1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website [https://app.gisdata.mn.gov/mda-soiltemp/](https://app.gisdata.mn.gov/mda-soiltemp/) or documented by thermometer at a depth of 6 inches.
2. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.
3. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall before soil temperatures are below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network.
website [https://app.gisdata.mn.gov/mda-soiltemp/](https://app.gisdata.mn.gov/mda-soiltemp/) or documented by soil temperature taken by thermometer at a depth of 6 inches.

4. Plant/seed a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in the fall so to allow for germination and growth of the cover crop before the end of the growing season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.

5. Apply manure in the spring.

6. Split apply nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.

7. Avoid application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5 and 6.

The management practices in the Daley’s December 23, 2018, addendum are incorporated as requirements in the final Individual NPDES Feedlot Permit that is issued by the MPCA.

**Comment 7-31:** The commenter states that the Project’s land application practices will apply manure in a manner that will result in subsurface discharges of manure to groundwater, rendering the project ineligible for permit coverage and violating Minn. R. 7020.2003, subp. 1 and 7020.2225. (421)

**Response:** The commenter asserts the Project does not comply with the Individual NPDES Feedlot Permit section 13.4 (no discharge to groundwater) requirements because of the karst topography and information provided in Dr. Randall’s report (Exhibit 1 of the petition) and therefore the Project is ineligible for coverage under the Individual NPDES Feedlot Permit.

Section 13.4 of the proposed Individual NPDES Feedlot Permit permit is only applicable to the facility, not the land application sites. The definition of facility is included within the Individual NPDES Feedlot Permit and reads as such: “Facility means an animal feedlot, a manure storage area, or an animal feedlot with a manure storage area that is subject to the Permit.”

Likewise, 7020.2003 subp1. is only applicable to an animal feedlot or manure storage area, not land application sites. The definition of animal feedlot in Minn. Rule 7020 reads as such: “Animal feedlot means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. For purposes of these parts, open lots used for the feeding and rearing of poultry (poultry ranges) shall be considered to be animal feedlots. Pastures shall not be considered animal feedlots under these parts.” The definition of manure storage area in Minn. Rule 7020 reads as such: “Manure storage area means an area where animal manure or process wastewaters are stored or processed. Short-term and permanent stockpile sites and composting sites are manure storage areas. Animal manure packs or mounding within the animal holding area of an animal feedlot that are managed according to part 7020.2000, subpart 3, are not manure storage areas.” Neither of these definitions include land application areas.
The arguments presented are all related to land application of manure and therefore would not be subject to either Individual NPDES Feedlot Permit or rule parts cited, rendering them moot.

Even though the land application sites are not subject to the cited rules, Daley has developed a MMP in accordance with applicable state and federal regulations. This document includes practices that are designed to limit the impacts of the land application of manure, namely applying at agronomic rates, observing setbacks, and restricting the practice of winter time application of manure. In addition to feedlot rule and Individual NPDES Feedlot Permit requirements, on December 23, 2018 Daley submitted an addendum to its MMP to further prevent nitrate loss to ground and surface water. The addendum indicates that the Project will employ two or more of the following practices on field areas where liquid manure is applied:

1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by thermometer at a depth of 6 inches.
2. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.
3. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall before soil temperatures are below 50 degrees as determined by the closest soil temperature monitoring location available on the MN Department Agriculture soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by soil temperature taken by thermometer at a depth of 6 inches.
4. Plant/seed a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in the fall so to allow for germination and growth of the cover crop before the end of the growing season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.
5. Apply manure in the spring.
6. Split apply nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.
7. Avoid application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5 and 6.

The management practices in Daley’s December 23, 2018, addendum are incorporated as requirements in the final Individual NPDES Feedlot Permit that is issued by the MPCA.

Comment 7-32: The commenter states that the MMP allows overapplying manure and applying manure to croplands featuring sinkholes and other karst features such as fractured bedrock, fissures, sinkholes and other conduits, and therefore has potential to cause or contribute to water quality standard exceedances for nitrates and bacteria, rendering the project ineligible for permit coverage and violating 40 C.F.R. §122.44(d)(1). (421)

Response: The commenter relies on the assertion of overapplication of manure to cropland as presented in response to comment 7-31.
The other contention is that the land application practices have the reasonable potential to cause or contribute to water quality standard exceedances. The requestor has not identified a disputed fact and simply states the areas are underlain by karst susceptible bedrock and its various types of surface and subsurface features (i.e. sinkholes, fractures, etc.) and therefore is an area of heightened sensitivity to impacts from surface activities like land application of manure. The MPCA agrees with this statement and uses a MMP to address these concerns. Daley has developed a MMP in accordance with applicable state and federal regulations. This document includes practices that are designed to limit the impacts of the land application of manure, namely applying at agronomic rates, observing setbacks, and restricting the practice of winter time application of manure.

The requestor also asserts that the MPCA must establish a water quality based effluent limitation for the land application sites, similar to the pollutant load allocations established for point source discharges to water bodies (i.e. wastewater plants). The application of this federal provision to land application sites is a point of law and not a disputed material fact. Furthermore, this provision of federal law is not applicable to agricultural stormwater discharges. The Individual NPDES Feedlot Permit does not authorize a discharge from land application sites that is not agricultural stormwater. Even though the discharge authorized by this Individual NPDES Feedlot Permit is not subject to this provision, the Individual NPDES Feedlot Permit NPDES permit does include conditions related to land application practices not specifically required by state or federal rule in order to minimize potential impacts from agricultural stormwater discharge. These include restrictions for application during winter, application to saturated soils, application to coarse textured soils, and application prior to expected rainfall. In addition to feedlot rule and Individual NPDES Feedlot Permit requirements, on December 23, 2018, Daley submitted an addendum to its MMP to further prevent nitrate loss to ground and surface water. The addendum indicates that the Project will employ two or more of the following practices on field areas where liquid manure is applied:

1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by thermometer at a depth of 6 inches.
2. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.
3. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall before soil temperatures are below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by soil temperature taken by thermometer at a depth of 6 inches.
4. Plant/seed a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in the fall so that it will allow for germination and growth of the cover crop before the end of the growing season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.
5. Apply manure in the spring.
6. Split apply nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.
7. Avoid application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5 and 6.

The management practices in Daley’s December 23, 2018, addendum are incorporated as requirements in the final Individual NPDES Feedlot Permit that is issued by the MPCA.

**EMERGENCIES, SPILLS, AND CLIMATE CHANGE COMMENTS**

**Comment 8-1:** Commenters state concern that the Manure Pits will leak or fail. (1, 5, 17, 18, 20, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 40, 43, 47, 48, 49, 52, 54, 59, 60, 62, 63, 65, 66, 72, 77, 79, 80, 81, 87, 90, 93, 94, 95, 97, 106, 108, 109, 110, 111, 112, 113, 118, 120, 121, 122, 123, 124, 125, 126, 127, 129, 130, 132, 134, 135, 214, 226, 325, 374, 413, 415, 463, 512, 523, 524, 534, 576, 585)

**Response:** See response to comment 3-1.

**Comment 8-2:** Commenter writes, “An adequate and realistic emergency response plan would be impossible to formulate or carry out. A catastrophic breaching of the giant manure pit is not only possible, but very likely given the history of three community sewage ponds having already drained overnight. With 4,628 cows, there is no way to “turn off” the source of contamination. Those cows must continue creating manure no matter what. It is totally unrealistic to think that the Daley operation would evacuate the cows, must less kill them. Where could they be sent to if the pits had a sudden collapse? No alternative facility is available anywhere. Instead, MPCA has no mitigation options. Those cows would continue the ongoing pollution of our aquifers for years to come.” (87, 413, 419)

**Response:** Daley’s Individual NPDES Feedlot Permit application materials include an Emergency Response plan. If a spill or discharge occurs, Daley is responsible for containment and cleanup, as well as notifying the State Duty Officer. Also, see response to comment 3-1.


**Response:** The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.
The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

Additionally, according to Minn. R. 4410.1700, subp. 6, when deciding whether a project has the potential for significant environmental effects, the MPCA must compare the impacts that are reasonably expected to occur from the Project. Feedlot rules and the Individual NPDES Feedlot Permit contain measures to prevent an LSMA failure. See responses to comments 3-1, 4-1, 5-1 and 8-2.

Comment 8-4: Commenter asks what volume of rainfall would cause the manure basin to overflow, if it is at 90% capacity when the rainfall begins. (416)

Response: Comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

Although the comment is beyond the scope of the EAW and feedlot rules, the MPCA provides the following additional information on rainfall and references to other resources in response to comment 8-5.

Comment 8-5: Commenter asks with recent increased storm intensity, how can the MPCA approve design for a 25-year storm (5.4 inches in 24 hours), and asks what Daley will do when a storm exceeds this amount. (322)

Response: The feedlot rules and Individual NPDES Feedlot Permit require LMSAs that store animal manure and that receive precipitation runoff be operated and managed to provide a freeboard depth of not less than one foot or the volume generated by a 25-year, 24-hour storm event, whichever is greater.

With normal management and because the contents of LMSAs are pumped and land applied in the spring and fall, the LMSAs are not constantly being operated in a manner where there is only enough capacity for a 25-year, 24 hour storm event. Rather, for a significant portion of the year, and possibly all the time, LMSAs will have capacity to accommodate and contain storm events greater than a 25-year, 24 hour storm event. The Individual NPDES Feedlot Permit requires Daley to report to the MPCA any instance when the required freeboard depth is not being maintained and/or if a discharge of a LMSA occurs.

Also, see responses to comments 6-2 and 6-4.

Comment 8-6: Commenter asks how Daley will monitor to ensure manure spills and leaks are found as quickly as possible. (322)

Response: Daley will use a CAWT to apply manure from the Project. The CAWT is responsible for transporting manure in a manner that does not result in discharge to waters of the state as well as verifying its transporting equipment is maintained and functioning correctly. If a spill or discharge occurs, Daley or the CAWT are responsible for containment and cleanup as well as notifying the State Duty Officer.
Also, see response to comment 3-1 as it relates to leak detection from LMSAs.

Comment 8-7: Commenter states that manure can be spread, apparently, in an emergency, in winter in violation of the conditions of the permit, and states that what constitutes an emergency should be spelled out. (327)

Response: Parts 7.5.11.2 and 7.5.11.3 of the Individual NPDES Feedlot Permit provide clarification regarding what is considered an emergency application and requirements that must be followed if an emergency application needs to occur. For reference, Parts 7.5.11.2 and 7.5.11.3 of the Individual NPDES Feedlot Permit are below.

7.5.11.2 Liquid Manure Applications.

Surface application of liquid manure to frozen or snow-covered ground after November 30 is prohibited except for emergency applications.

An application of liquid manure is considered an emergency only for situations beyond the control of the Permittee, such as unusual weather conditions, unavoidable equipment failure, or other circumstances that could not have been avoided with proper planning and management.

Emergency applications shall comply with the following:

a) Only the volume of manure that is necessary to prevent manure storage overflows may be applied. Prior to emergency application, the Permittee shall use all options for additional temporary storage within other MPCA approved LMSAs;

b) Liquid manure application to frozen or snow-covered soil shall be only on those fields identified and approved by the MPCA in the MMP for emergency application;

c) The application of liquid manure on frozen or snow-covered soils shall be restricted to slopes of less than or equal to four percent;

d) The application rate is restricted to a maximum of 3,500 gallons per acre per winter season, not to exceed 60 pounds of crop available P205;

e) Applications must be more than 300 feet from sensitive features including lakes, streams, open tile inlets, sinkholes, water supply wells, mines and quarries, intermittent streams, un-bermed drainage ditches, or public water wetlands; and

f) The application rate of manure onto frozen or snow-covered soil shall be adjusted to preclude runoff or ponding of liquid manure during the application process.

7.5.11.3. Notification.

The Permittee shall notify the Minnesota Department of Public Safety Duty Officer toll free at 800-422-0798, and the MPCA by phone, in accordance with Part 16.1 of this Permit, within 24 hours of an emergency application of liquid manure to frozen or snow covered ground.
Comment 8-8: Commenter asks what rain event and amount of manure or stormwater in the basins would cause a failure of the manure and stormwater basins. (327)

Response: Part 8.2.2. of the Individual NPDES Feedlot Permit requires the following:

 Permittee shall operate the LMSA to maintain the freeboard of the LMSA as indicated in the approved design plans and specifications and Minn. R. 7020.2100, subp. 4, item D. All LMSAs are required to have a freeboard marker.

Minn. R. 7020.2100, subp. 4, item D. states:
In addition to the designed storage volume in item C, a freeboard depth of not less than one foot. Liquid manure storage areas that store animal manure and that receive precipitation runoff must provide a freeboard depth of not less than one foot or the volume generated by a 25-year, 24-hour storm event, whichever is greater.

Also, see response to comment 8-5.

Comment 8-9: Commenter asks if the EAW considers and rules out the potential impact for a 500-year rain event, or 16-20 inches of rain within 24 hours on saturated soil, like the one they had in 2007? The commenter asks if the EAW guarantees no overflow or outwash of manure, and ask what about the effects of a tornado. (5)

Response: See responses to comments 6-7 and 8-5.


Response: See responses to comments 3-1, 8-5 and 8-8.

Comment 8-11: Commenter asks that the MPCA require Daley to have a one million dollar escrow account to pay for response/cleanup of an environmental emergency. (336)
Response: The comment is noted; however, neither state nor federal rules provide the authority for the MPCA to require this request.

Comment 8-12: Commenter asks how would the Daley’s proposed expansion impact the resilience of the region to withstand frequent extreme weather events. (326)

Response: The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

Also, see responses to comments 3-1, 6-2, 6-4, 8-5, and 8-8.

Comment 8-13: Commenter states that the increased precipitation from anthropogenic climate change has begun to accelerate in recent years, but the rainfall data relied on by the EAW does not take this acceleration into account, leading to under designed structures. (421)

Response: The comment is noted. Also, see responses to comments 6-2, 6-4, 8-5 and 8-8.

IMPACTS TO ROADS COMMENTS

Comment 9-1: Commenters state concern about increased traffic associated with the Project. (15, 17, 148, 249, 424)

Response: EAW Item 9, traffic and public infrastructure impacts, page 20, provide an assessment of project traffic impacts.

Comment 9-2: Commenter states that manure hauling events do not seem to be included in EAW transportation estimates. (412)

Response: Daley will hire a CAWT to apply liquid manure via a tow hose/drag line, which does not require hauling trucks.

Comment 9-3: Commenter asks if traffic estimates are round trips. The commenter also states that crop production vehicles, manure removal equipment, veterinarian traffic were not included in traffic estimates. (416)

Response: Traffic estimates include vehicles coming and going, i.e., roundtrip. See response to comment 9-1.

Comment 9-4: Commenter states that that there was no analysis of traffic safety on Hwy 14, and asks how many additional accidents and fatalities are expected to occur, should the proposal be approved. (416)
Response: The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

AIR EMISSIONS AND ODOR COMMENTS

Comment 10-1: Commenters state concern about the odors emitted from the Project. (1, 15, 96, 100, 116, 133, 249, 255, 293, 395, 586)

Response: EAW Item 6, air and odor emissions, page 15, provide an assessment of odors. Additionally, since Minnesota has no odor rule, odor complaints are typically handled on the county or local level, as many counties, townships, and cities do have local odor nuisance rules on odor. However, odor complaints may be submitted to the MPCA, and MPCA staff will do appropriate follow-up that may include monitoring of hydrogen sulfide levels at the feedlot property line. In many cases, whether the MPCA or local authorities receive complaints, the odor may no longer be occurring as odors are transient and time-limited. It also may not be possible to determine the source of odors.

Minn. Stat. 116.0713 outlines requirements regarding livestock odor:

(a) The Pollution Control Agency must:

(1) monitor and identify potential livestock facility violations of the state ambient air quality standards for hydrogen sulfide, using a protocol for responding to citizen complaints regarding feedlot odor and its hydrogen sulfide component, including the appropriate use of portable monitoring equipment that enables monitoring staff to follow plumes;

(2) when livestock production facilities are found to be in violation of ambient hydrogen sulfide standards, take appropriate actions necessary to ensure compliance, utilizing appropriate technical assistance and enforcement and penalty authorities provided to the agency by statute and rule.

(b) Livestock production facilities are exempt from state ambient air quality standards while manure is being removed and for seven days after manure is removed from barns or manure storage facilities.

(c) For a livestock production facility having greater than 300 animal units, the maximum cumulative exemption in a calendar year under paragraph (b) is 21 days for the removal process.

(d) The operator of a livestock production facility that claims exemption from state ambient air quality standards under paragraph (b) must provide notice of that claim to either the Pollution Control Agency or the county feedlot officer delegated under section 116.07.

(e) State ambient air quality standards are applicable at the property boundary of a farm or a parcel of agricultural land on which a livestock production facility is located, except that if the owner or
operator of the farm or parcel obtains an air quality easement from the owner of land adjoining the farm or parcel, the air quality standards must be applicable at the property boundary of the adjoining land to which the easement pertains. The air quality easement must be for no more than five years, must be in writing, and must be available upon request by the agency or the county feedlot officer. Notwithstanding the provisions of this paragraph, state ambient air quality standards are applicable at locations to which the general public has access. The "general public" does not include employees or other categories of people who have been directly authorized by the property owner to enter or remain on the property for a limited period of time and for a specific purpose, or trespassers.

(f) The agency may not require air emission modeling for a type of livestock system that has not had a hydrogen sulfide emission violation.

Comment 10-2: Commenters state concern about the air emissions from the Project. (14, 116, 249, 256, 288, 312, 393, 394, 586, 607)

Response: Daley used the AERMOD dispersion model to predict emissions of hydrogen sulfide, ammonia, and selected odorous gases from the Project. The model estimated pollutant concentrations from the Project, nearby feedlots and background concentrations. Based on the results of the modeling, the MPCA does not expect significant air quality impacts. Attachment T of the EAW contains the full modeling report.

Also, see response to comment 10-1.

Comment 10-3: Commenter asks if the air emissions model takes into consideration Minnesota’s changing climate. (19)

Response: The air dispersion model calculates emission concentrations based on 5 years of weather data consisting of wind speeds, wind directions, and atmospheric stabilities. Daley used 2009 to 2013 surface meteorological data from the National Weather Service (NWS) station in Rochester, Minnesota and upper air weather data from the NWS station in Chanhassen, Minnesota. Because the model uses recent, actual, and local meteorological data, ongoing climate change effects on weather are included in the model.

Comment 10-4: Commenter asks that guidelines or rules be established for odors. (96)

Response: See response to comment 10-1.

Comment 10-5: Commenter asks if the MPCA will monitor air quality at the Daley property line. (322)

Response: See response to comment 10-1.

Comment 10-6: Commenter asks what are the greenhouse gas impacts of the project. (326, 394, 412, 416, 421, 575)

Response: The Feedlot EAW form does not currently require evaluation of greenhouse gases.
Comment 10-7: Commenter asks if the air model has been evaluated after a CAFO facility was put into place to see if the model is accurate. (393, 414)

Response: The U.S. Environmental Protection Agency (EPA), in conjunction with the American Meteorological Society, developed AERMOD through a rigorous process that involved comparisons of modeled output to monitored ambient air quality data. The result is a Gaussian plume steady-state model that predicts an unbiased, conservative, estimate of ambient air pollution concentrations. It is particularly useful to address calm wind conditions. A substantial amount of literature has been published on the comparison of modeled air quality values to ambient air quality monitoring from livestock operations. A 2010 evaluation of odor emissions from a swine production facility indicated that AERMOD performed well in comparison to ambient air measurements. A similar air modelling vs. monitoring comparison was conducted using ammonia emissions from a swine facility in 2015. In addition to recent AERMOD improvements by EPA, the MPCA has refined the applicable meteorology data to account for seasonality and snow cover. As a result, the MPCA is confident in the use of AERMOD to evaluate ambient air quality conditions from a livestock operation or any other stationary facility.

Comment 10-8: Commenter asks if the project will emit neonicotinoid insecticide dust in the cropland acres, which has been linked to colony collapse disorder in honeybees and the decline of native pollinators. (416)

Response: The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

Also, see response to comment 4-6.

COMPLIANCE AND ENFORCEMENT COMMENTS

Comment 11-1: Commenter asks what would happen if Daley runs out of land to apply manure to. (93)

Response: See responses to comments 7-1, 7-2, and 7-3.

Response: The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

Although beyond the scope of the EAW and rules, MPCA provides the following information on feedlot compliance and enforcement:

The MPCA provides oversight and enforcement authority for feedlot facilities operating under an Individual NPDES Feedlot Permit, including the Daley feedlot.

Requirements relating to the open lots and feed pad at Daley’s existing feedlot site were originally included in the Individual NPDES Feedlot Permit issued to Daley on November 17, 2010. The November 17, 2010, Individual NPDES Feedlot Permit also included requirements relating to the reconstruction of a liquid manure storage area. Reconstruction of the manure storage area has been totally completed.

The November 17, 2010, Individual NPDES Feedlot Permit established a date of January 1, 2014, by which the feed pad and open lot areas were to be addressed. Over 90% of the feed pad area was addressed.

Throughout the effective time frame of the Individual NPDES Feedlot Permit issued on November 17, 2010, Daley had communicated with the MPCA regarding progress toward complying with Individual NPDES Feedlot Permit requirements and application materials that were being worked on for the current propose project, which includes the planned closure/elimination of the LLP 1 site rather than installing runoff controls as originally planned.

The MPCA issued an Individual NPDES Feedlot Permit to Daley on November 30, 2016. The November 30, 2016, Individual NPDES Feedlot Permit established new dates for addressing the open lot areas and the remaining portion (less than 10%) of the feed pad area that still needed to be addressed. When the November 30, 2016, Individual NPDES Feedlot Permit was drafted, the MPCA considered both the permit application that Daley was working on at that time, and the anticipated time by which it planned to have the application completed/submitted. The November 30, 2016, Individual NPDES Feedlot Permit included new requirements and dates for addressing the open lot areas and the small portion of the feed pad that still needed to be addressed. The November 30, 2016, Individual NPDES Feedlot Permit established a date of October 1, 2017, by which the remaining portion of the feed pad was to be addressed and a date of October 1, 2019, by which the open lot areas were to be addressed.

At the time the MPCA was drafting the Individual NPDES Feedlot Permit, the MPCA again considered the anticipated time frames by which the MPCA would complete the EAW and Individual NPDES Feedlot
Permitting processes. The MPCA also considered other permitting requirements (i.e. county variance and Conditional Use Permit) that Daley would need to satisfy prior to being able to start construction, as well as the construction logistics (the new barn would need to be constructed so that the livestock on the LLP 1 site could be moved into the new facilities so LLP 1 site could be closed). The MPCA considered all these factors in establishing dates by which the open lot areas and the remaining portion of the feed pad area need to be addressed. The draft Individual NPDES Feedlot Permit establishes October 1, 2019, as the date by which the remaining portion of the feed pad needs to be addressed and October 1, 2021, as the date by which the open lot areas need to be addressed.

Comment 11-3: Commenter asks why there are not governmental agencies taking enforcement action and public meetings over farming operations that don’t take care of their land, and cause soil erosion. (248)

Response: The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

Comment 11-4: Commenter asks why there are not governmental agencies taking enforcement action over farming operations that apply too much nitrogen in the form of commercial fertilizers. (248)

Response: The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

Comment 11-5: Commenters state that the MPCA should not issue permits when history of the operation shows continued violations. (11, 327, 382, 514, 546, 570, 571, 572, 573, 574, 575, 576, 577)

Response: The comment is noted. Also, see response to comment 11-2.

Comment 11-6: Commenters state that the MPCA has not conducted proper monitoring of Daley Farms (574, 575, 576, 588)

Response: See response to comment 11-2.

ECONOMIC IMPACT COMMENTS

Comment 12-1: Commenter states information about the history and future of dairy operations, and the positive economic impact from dairy operations. (6)
Response: The comment is noted.


Response: The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

Comment 12-3: Commenters state that the project proposer ignored labor laws and some reference a 2/24/13 Winona Post article titled, "Federal agency rules in favor of farm workers in labor dispute." (19, 323, 325, 331, 408)

Response: The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

Comment 12-4: Commenters state concern over the low price of milk and asks how the proposer will make a go at it without cutting corners in safety, quality, or animal welfare. (22)

Response: The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.
The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

**Comment 12-5:** Commenter states concern that the project will reduce real estate values. (424)

**Response:** The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

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**HEALTH IMPACT COMMENTS**

**Comment 13-1:** Commenters state concern over antibiotics use in the project and antibiotic resistance development. (17, 38, 416)

**Response:** Under Federal Drug Administration (FDA) regulations, effective January 1, 2017, feedlot owners, including Daley, can no longer use antibiotics on animals for general production purposes. With licensed veterinary oversight, antibiotics may still be used for specific animal health purposes. See FDA website for more information: [https://www.fda.gov/AnimalVeterinary/SafetyHealth/AntimicrobialResistance/](https://www.fda.gov/AnimalVeterinary/SafetyHealth/AntimicrobialResistance/)


**Response:** The comment is noted.
Comment 13-3: Commenter asks what are the human health impacts caused by consuming milk with pesticide residues. (326)

Response: The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

Comment 13-4: Commenter asks how the project impact cancer rates in western Winona County will. (326)

Response: See responses to comment 14-8.

Comment 13-5: Commenter asks what drugs Daley administers to attempt to keep animals alive and does the facility’s manure or milk contain drug residues, including antibiotics. (416)

Response: See responses to 7-6 and 13-1.

Comment 13-6: Commenter states that the MMP endangers human health and the danger cannot be removed by a modification of the conditions of the Individual NPDES Feedlot Permit. The commenter identifies these main issues:

- the area is underlain by karst susceptible bedrock and is therefore more vulnerable to impacts from land application of manure,
- the Project is in an area of high sinkhole probability,
- there are TMDLs in the area influenced by agricultural pollutants,
- many wells in the area have high nitrate levels, and
- the public water supply for Utica is within 2 miles and some land application sites are within the DWSMA (421)

Response: The MPCA acknowledges these issues, but disagrees that the conditions of the Individual NPDES Feedlot Permit cannot address them. The Individual NPDES Feedlot Permit and Project MMP contains requirements and management practices that mitigate these items. Some of the requirements found in the Individual NPDES Feedlot Permit and management practice in the Projects MMP that mitigate concerns relating to the items noted include:

a) Manure cannot be applied to land in a manner that will result in a discharge to waters of the state during the application process.
b) The rate at which manure is applied cannot exceed the hydraulic loading capacity of the land application site based on soil conditions.
c) The application of manure at rates so the estimated nitrogen available to crops from all nitrogen sources (including commercial fertilizer) does not exceed expected annual crop nitrogen needs for non-legumes and expected nitrogen removal for legumes.
d) Manure application is prohibited within 100 feet of a well, mine, or quarry.
e) Manure application is prohibited within 300 feet of a sinkhole unless one of the following protective measures is employed:
1. Manure is not applied within 100 feet of the sinkhole and manure is injected or incorporated prior to rainfall or within 24 hours (whichever occurs first) within 300 feet of the sinkhole; or
2. A protective berm exists that prohibits runoff from entering the sinkhole. Daley’s MMP indicates manure will either be directly injected into the soil or incorporated into soil within 24 hours of application and prior to rainfall.
   f) Daley’s MMP indicates manure will either be directly injected into the soil or incorporated into soil within 24 hours of application and prior to rainfall.

Furthermore, Daley has recognized these issues and made adjustments to the MMP to help minimize impacts from the Project proposal, these include:

Project will employ two or more of the following practices on field areas where liquid manure is applied:
1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website [https://app.gisdata.mn.gov/mda-soiltemp/](https://app.gisdata.mn.gov/mda-soiltemp/) or documented by thermometer at a depth of 6 inches.
2. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.
3. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall before soil temperatures are below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website [https://app.gisdata.mn.gov/mda-soiltemp/](https://app.gisdata.mn.gov/mda-soiltemp/) or documented by soil temperature taken by thermometer at a depth of 6 inches.
4. Plant/seed a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in the fall so to allow for germination and growth of the cover crop before the end of the growing season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.
5. Apply manure in the spring.
6. Split apply nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.
7. Avoid application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5 and 6.

AGRICULTURAL PRACTICE COMMENTS


Response: The State of Minnesota does not have a cap on the size of feedlots. Zoning and land use decisions are made by local units of government. Winona County has a 1,500 animal unit cap. For this Project to proceed, Daley will require a variance from the Winona County Board of Adjustment and a
conditional use permit from the Winona County Planning Commission and County Board to construct the Project.

**Comment 14-2:** Commenter would like animal operations to be small and medium sized farms, where pasture grazed animals would spread manure in a more natural way, and reduce the concentration of animals. (1)

**Response:** See response to comment 14-1.

**Comment 14-3:** Commenter would like feedlots of a certain size to be required to install anaerobic manure digesters to partially treat the sewage, recover methane, generate heat or electricity, and reduce pathogens and odors. The commenter suggests that state or federal loan program could help with financing. (1)

**Response:** The comment is noted.

**Comment 14-4:** Commenter asks how many dairy cows are there today compared to five years ago. The commenter believes with there may be fewer dairy cows because many operations have gone out of business. (248)

**Response:** The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

**Comment 14-5:** Commenter asks that the MPCA consider requiring municipal-grade waste treatment or an anaerobic digester. (259)

**Response:** The comment is noted. Also, see response to comment 14-6.

**Comment 14-6:** Commenters ask why a waste water treatment plant isn’t required to treat the animal waste. (278, 345)

**Response:** Neither state nor federal rules provide the authority for the MPCA to require animal waste to be treated by the same treatment systems as human waste.

**Comment 14-7:** Commenter states that dairies are immoral. (306)

**Response:** The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.
The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

**Comment 14-8:** Commenter states that the project promotes animal cruelty. (309, 439)

**Response:** The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

**Comment 14-9:** Commenter asks about Daley's uses of antibiotics, and if Daley has a plan to decrease its use of antibiotics. (326, 408)

**Response:** See responses to comments 7-6 and 13-1.

**Comment 14-10:** Commenter states the decline of pollinators and asks if Daley uses Roundup Ready crops and seeds treated with neonicotinoid insecticides. (326)

**Response:** The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

**Comment 14-11:** Commenter asks how big must our factory farms get before we realize that we have lost all perspective, all common sense and dignity regarding the way we raise our food, must corporate farming be the only way, is completely separating ourselves from the food growing process really a healthy way to proceed, is it really in our best interest to let corporate economics drive farming to the extent that small farmers are forced out. (460)

**Response:** The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

Also, see response to comment 14-1.
Comment 14-12: Commenter states that Daley's row cropping land use contributes to water impairments through soil, nutrient, and pesticide loss from fields where manure and commercial fertilizer and pesticides are applied, and bacteria from manure applied to row crop fields pollute the watershed. (420)

Response: The comment is noted. Also, see responses to comments 4-1, 5-1, and 7-6.

Comment 14-13: Commenter states that consumers are increasingly concerned that non-organic milk contain residues of pesticides, and ask if milk from the Daley Farms contain pesticide residues. (326)

Response: The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

MISCELLANEOUS COMMENTS

Comment 15-1: Commenter asks who is financially responsible for cleaning up contamination if the business goes under. (1)

Response: A feedlot operating under an NPDES permit is responsible for cleaning up any contamination that it causes.

Comment 15-2: Commenter sent court documents from a proposed hog farm in Dodge County. (42)

Response: The documents are noted.

Comment 15-3: Commenters state concern over project-generated noise. (133, 255)

Response: Construction of the Project will create a temporary increase in noise, mostly due to construction equipment and delivery truck traffic, especially during earthwork operations. Typical construction noises, such as saws, pneumatic/electric power tools, and hand tools will also be present. Project construction noise will be limited to daylight hours as to minimize nuisances to neighboring properties. Operation of the Project will create minor amounts of noise, although not much more than what is already present at the Project site.

Comment 15-4: Commenter asks if there are any mechanisms in the EAW process to allow for input from youth under 18, and also asks if there is special consideration given to children related to the owner who are likely to be forced to provide free or underpaid labor. (147)

Response: The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.
The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

**Comment 15-5:** Commenter states that there are no properties listed in the National or State Registers of Historic Places, and no known or suspected archaeological properties in the area that will be affected by this project. (177)

**Response:** The comment is noted.

**Comment 15-6:** Commenter states concern over the timing of the public information meeting, saying that meetings should not be held during harvesting season since it allows for limited input from farmers. (360)

**Response:** Minn. R. 4410.04000, subp. 2, directs the MPCA, as the RGU, to comply with the environmental review process in a timely manner. The MPCA is unable to avoid having public meetings during harvest season.

However, the MPCA Commissioner responded to these concerns by deciding to extend the public comment period an extra 15 days to help alleviate the time pressure farmers were experiencing.

**Comment 15-7:** Commenters state that dairy is detrimental to human health. (292, 298, 306)

**Response:** The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

**Comment 15-8:** Commenter states that the animal mortality building’s location is not given and asks if the MPCA will know the location before determining the need for an EIS. (322)

**Response:** Daley is not sure of the exact location of the animal mortality building; however, Daley indicated that the most likely location would be near the proposed sand storage building. The location of the animal mortality building is not essential to the Commissioner’s decision on potentially significant environmental effects from the Project.

**Comment 15-9:** Commenter asks why the MPCA would approve the expansion without an EIS when the MPCA list resources, such as drinking water supply management areas, public wells, recreation areas etc., in close proximity to the project. (322)

**Response:** The existence of drinking water supply management areas, public wells, and recreation areas near a proposed project sites does not automatically mean there will be potentially significant environmental effects from the Project.
The Commissioner of the MPCA will make the determination on the potential for significant environmental effects after reviewing all the information in the EAW, comments, any new information, and responses to comments, applying the criteria specified in Minn. R. 4410.1700 subp. 7.

**Comment 15-10:** Commenter asks how the MPCA will quantify and corroborate the EAW statement, “Daley will minimize construction in the grassed waterways.” (322)

**Response:** The DNR Natural Heritage Information System (NHIS) review provided in Appendix K of the EAW recommends Daley limit disturbance near wetland and grassland areas from April through July to minimize disturbance to rare species (Wilson’s phalaropes and loggerhead shrike) in the vicinity of the Project. Daley intends to minimize disturbance by following the avoidance recommendations of the DNR.

**Comment 15-11:** Commenter asks if the project will increase the amount of land in row crop production, since the animals will be confined and not pastured. (326)

**Response:** Proposed manure land application sites have been in crop production for a long time, and no new land is expected to be needed for crop production.

However, Daley anticipated there might be some localized conversion of soybean/corn row crops to alfalfa fields due to increased demand for cattle feed.

**Comment 15-12:** Commenter asks what the life expectancy of the Daley’s proposed expansion is. (326)

**Response:** The comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

**Comment 15-13:** Commenter suggests that guidelines be developed for mega-dairy farms in Minnesota, so that future requests are placed within a forum that does not pit environmentalists against business and economic interests. The commenter continues to state that there is too much US vs THEM in our discourse. (558)

**Response:** The comment is noted. However, the comment is beyond the scope of the EAW because it is not directed to the criteria in Minn. R. 4410.1700 regarding the potential for significant environmental effects of the proposed Project.

The Comment is also beyond the scope of applicable feedlot regulations (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090), and Individual NPDES Feedlot Permit requirements the Project is required to meet.

**Comment 15-14:** Commenter asks if the 281 days of manure storage includes sand wash water and natural precipitation. (412)
Response: Yes, the 281 days of storage includes sand wash water and natural precipitation.

Comment 15-15: Commenter asks if the EAW should have read “technician” instead of “Technical” (page 13) and “designed” instead of “deigned” (page 19). (412)

Response: Yes, “Technical” and “deigned” were typos. These errors are noted in Appendix C, errata sheet.

Comment 15-16: Commenter asks how feeding the increase in animals will affect land use, such as needing to convert hay or pasture land to row crops, which impact ground and surface water resources. (416)

Response: See response to comment 15-11.

Comment 15-17: Commenter questions how the manure storage is proposed to expand from 22.0 MG to 35.6 MG while the proposed AU more than doubles. (416)

Response: The feedlot rules and Individual NPDES Feedlot Permit require that the Project have a minimum of 9 months storage capacity for manure that will be generated from the feedlot. The existing LMSAs at the site currently provide more than the minimum 9 months of storage. The Project expansion will use both the capacity of the existing LMSAs and a proposed LMSA to provide the required storage capacity. Therefore, although the proposed AU at the site will more than double, it is not necessary or required that Daley double the manure storage capacity.

Comment 15-18: Commenter asks what the average mortality rate for a dairy farm in Minnesota is and how does that compare to Daley’s project mortality rate. (416)

Response: Comment is beyond the scope of the EAW because the information on this issue would not inform a reasoned decision about the potential for or significance of the environmental effects of the Project under Minn. R. 4410.1700.

Comment is beyond the scope of the feedlot rules (U.S.C. 1251, 40 CFR pts. 52, 122, 123, 127, 412, Minn. Stat. ch. 115 and 116, and Minn. R. ch. 7001, 7009, 7020, 7053, 7060, and 7090) and Individual NPDES Feedlot Permit requirements the Project is required to meet.

Comment 15-19: Commenter asks how many AU are already in the county, Utica Township, and in the two sub-watersheds, and what percentage of the AU in Utica Township would be from Daley Farms of Lewiston. (416)

Response: EAW item 11 cumulative effects, page 21, provides a discussion on the AUs within Winona County and within the sub-watersheds.

Comment 15-20: Commenter asks what contaminants – chlorine, acids, detergents, antibiotics, chlorhexidine, barn pesticides, are found in process wastewater that is added to the manure basin. The commenter also asks when land applied how these chemicals impact soil organisms and do they leach into groundwater and do they contaminate drinking water supplies. (416)
Response: Daley cleans its milking equipment, and will continue to discharge this wastewater to its LMSA. Daley’s Individual NPDES Feedlot Permit contains requirements for land application.

Also, see responses to comments 4-1 and 5-1.

Comment 15-21: Commenter references the EAW language, “Project proposer supplied reasonably accessible data for, but did not complete the final worksheet” then asks what the MPCA did to access the accuracy of this data. (414)

Response: Minn. R. 4410.04000, subp. 2, directs the MPCA, as the responsible governmental unit (RGU), to verify the accuracy of environmental documents and comply with the environmental review process in a timely manner. The MPCA creates a technical team of internal and external experts to verify the data submitted by a project proposer. Often the MPCA requires additional information or clarification of information submitted by a project proposer.

Comment 15-22: Commenter states that there is a disconnect between the way we regulate human waste, treated underground where bacteria can remove harmful pathogens, vs. animal waste, which can be spread on farmland without significant pre-treatment, and while the manure is breaking down it can be washed into streams, encounter karst features that allow it to affect groundwater. (398)

Response: The comment is noted.

Also, see responses to comments 7-1 and 7-6.

Comment 15-23: Commenter states that the EAW did not state that a water use permit (for construction dewatering) was required, or provide a justification why the permit was not necessary. (421)

Response: Daley does not anticipate needing to pump greater than 10,000 gallons per day for construction dewatering purposes. It is the MPCA’s standard practice to only list permits in the EAW that are required, and not provide justification for permits not required.

Comment 15-24: Commenter states that the Project’s MMP will result in discharges to waters of the U.S. through hydrologically connected groundwater, rendering the project ineligible for permit coverage and violating Minn. R. 7020.2003, subp. 2. (421)

Response: Minn. R. 7020.2003 subp2. is only applicable to an animal feedlot or manure storage area, not land application sites. The definition of animal feedlot in Minn. R. 7020 reads as such: “Animal feedlot means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. For purposes of these parts, open lots used for the feeding and rearing of poultry (poultry ranges) shall be considered to be animal feedlots. Pastures shall not be considered animal feedlots under these parts.” The definition of manure storage area in Minn. Rule 7020 reads as such: “Manure storage area means an area where animal manure or process wastewaters are stored or processed. Short-term and permanent stockpile sites and composting sites are manure storage areas. Animal manure packs or mounding within the animal holding area of an animal feedlot that are
managed according to part 7020.2000, subpart 3, are not manure storage areas.” Neither of these definitions include land application areas.

The arguments presented are all related to land application of manure and therefore would not be subject to the rule parts cited, rendering them moot.

Land application discharges are regulated by the NPDES permit program unless they are agricultural stormwater discharges. 40 CFR 122.23 (e) reads “Land application discharges from a CAFO are subject to NPDES requirements. The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14). For purposes of this paragraph, where the manure, litter or process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as specified in §122.42(e)(1)(vi)-(ix), a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural stormwater discharge.” The draft Individual NPDES Feedlot Permit does not authorize a discharge from land application sites that is not agricultural stormwater. Therefore, unless there is non-compliance with the Individual NPDES Feedlot Permit, the facility will comply with the discharge standards in state and federal rule.

Even though the land application sites are not subject to the cited rules, Daley has developed a MMP in accordance with applicable state and federal regulations. This document includes practices that are designed to limit the impacts of the land application of manure, namely applying at agronomic rates, observing setbacks, and restricting the practice of winter time application of manure. In addition to feedlot rule and Individual NPDES Feedlot Permit requirements, on December 23, 2018, Daley submitted an addendum to its MMP to further prevent nitrate loss to ground and surface water and agricultural stormwater discharge. The addendum indicates that the Project will employ two or more of the following practices on field areas where liquid manure is applied:

1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by thermometer at a depth of 6 inches.
2. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.
3. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall before soil temperatures are below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by soil temperature taken by thermometer at a depth of 6 inches.
4. Plant/seed a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in the fall so to allow for germination and growth of the cover crop before the end of the growing season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.
5. Apply manure in the spring.
6. Split apply nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.

7. Avoid application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5 and 6.

The management practices in Daley’s December 23, 2018, addendum are incorporated as requirements in the final Individual NPDES Feedlot Permit that is issued by the MPCA.

Comment 15-25: Commenter states that the MMP allows practices of over applying manure and applying manure to croplands featuring sinkholes and other karst features that will cause or contribute to a violation of water quality standards and for which the state has performed a pollutant load allocation, where the agency has not demonstrated there are sufficient remaining pollutant load allocations to allow for the new discharge, in violation of 40 C.F.R. § 122.4(i) and state law. (421)

Response: Pollutant load allocations are designated for point source discharges, such as a wastewater treatment plant. The production area of a permitted CAFO (i.e. animal holding areas, manure storage areas, etc.) is assigned a load allocation of zero as it is considered a point source. The proposed facility is designed to meet the zero load allocation assigned to it. In regards to the land application sites, as discussed in the responses to CCH Comment numbers 2, 3, and 4, the draft Individual NPDES Feedlot Permit only authorizes agricultural stormwater discharge from the land application sites. Agricultural stormwater is not a point source discharge, it is a non-point discharge. Total maximum daily loads (TMDLS) manage non-point discharges, such as agricultural stormwater, through the use of BMPs and MMPs to help limit impacts from these sources. In addition to feedlot rule and Individual NPDES Feedlot Permit requirements, on December 23, 2018, Daley submitted an addendum to its MMP to further prevent nitrate loss to ground and surface water and agricultural stormwater discharge. The addendum indicates that the Project will employ two or more of the following practices on field areas where liquid manure is applied:

1. Delaying manure applications in the fall until soil temperature is below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by thermometer at a depth of 6 inches.

2. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied.

3. Add a nitrogen stabilizing additive at product recommended inclusion rates to manure when manure is applied in the fall before soil temperatures are below 50 degrees as determined by the closest soil temperature monitoring location available on the MDA soil temperature network website https://app.gisdata.mn.gov/mda-soiltemp/ or documented by soil temperature taken by thermometer at a depth of 6 inches.

4. Plant/seed a cover crop on field areas when manure is applied early in the fall before soil temperatures are below 50 degrees. The seeding of the cover crop must occur early enough in the fall so to allow for germination and growth of the cover crop before the end of the growing season in which it is seeded and provide a minimum of 80% coverage of the land surface after manure application has occurred.

5. Apply manure in the spring.
6. Split apply nutrients with no more than 90 pounds of predicted plant available nitrogen being supplied by manure applied in the fall and the remaining nutrient needs being supplied by either manure or commercial fertilizer applied in the spring.

7. Avoid application of manure on field areas that are shallow to bedrock (less than 40 inches – based on soil survey information). This practice only counts as a second practice if it is used in conjunction with practices 1, 4, 5 and 6.

The management practices in Daley’s December 23, 2018, addendum are incorporated as requirements in the final Feedlot Permit that is issued by the MPCA.
1. The EAW had a typo on page 13: “Technician” should have been written instead of “Technical.”

   Daley will hire a Commercial Animal Waste Technical Technician (CAWT) licensed by the Minnesota Department of Agriculture for manure application to the fields.

2. The EAW had a typo on page 19: “designed” should have been written instead of “deigned.”

   The manure basin and feedpad runoff basin are designed to contain precipitation falling in the basins, and therefore no manure-contaminated runoff should occur.

3. The EAW Attachment G, individual manure application site maps 4 and 25, did not have sinkholes identified. Daley updated these maps to include sinkholes, included in this Appendix (see the next two pages).
Utica 9, S1/2 of SW1/4 Field Map
Utica 9, S1/2 of SW1/4

Winona County, MN

MANURE APPLICATION NOTES:
Winter application is NOT permitted within 300' Buffer or slopes greater than 6%.
Non-Winter application within 300' Buffer needs 100' grass buffer on rivers and lakes, or 50' grass buffer on all other waterways. If insufficient buffer or within Tile Intake Buffer you must incorporate immediately.
There is NO application within 25' of any waterway and within 100' of all wells.
If soil tests exceed 21ppm Bray/16ppm Olsen in 300' Buffer, Phosphorus must be applied at crop removal rates.

Legend
Field Boundary
Stream (Intermittent)
Karst Feature
Karst_No_Application
Karst_Special_Protection_Area
300ftSetback

Soil Restrictions
No Restriction
Shallow Bedrock
Well 300' Buffer
CWI - Known Wells
MANURE APPLICATION NOTES:
Winter application is NOT permitted within 300’ Buffer or slopes greater than 6%.
Non-Winter application within 300’ Buffer needs 100’ grass buffer on rivers and lakes, or 50’ grass buffer on all other waterways. If insufficient buffer or within Tile Intake Buffer you must incorporate immediately.
There is NO application within 25’ of any waterway and within 100’ of all wells.
If soil tests exceed 21ppm Bray/16ppm Olsen in 300’ Buffer, Phosphorus must be applied at crop removal rates.