

Rosendale Dairy CAFO Environmental Impact Statement Record of Decision

Wisconsin Department of Natural Resources

Bureau of Watershed Management

WPDES Permit File#: S-2008-0406 and S-2008-0432

March 3, 2009



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary

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March 3, 2009

Dear Concerned Citizen:

The Environmental Impact Statement (EIS) for the Rosendale Dairy project was completed on February 27, 2009. The record of decision on the EIS contains a summary of responses to public comments. The EIS decision document is available at: <http://dnr.wi.gov/runoff/pdf/ag/rosencomment.pdf>.

The Department subsequently issued a Wisconsin Pollutant Discharge Elimination System (WPDES) permit to Rosendale Dairy LLC on February 27, 2009. The permit is effective March 1, 2009. You may review the permit at: <http://dnr.wi.gov/runoff/pdf/ag/cafo/rosenpermit.pdf>. A Notice of Determination (NOD) was prepared that is a summary of responses to public comments regarding the WPDES permit requirements. This document is on the DNR web site at: <http://dnr.wi.gov/runoff/pdf/ag/cafo/rosennotice.pdf>.

You are receiving this letter because you have shown an interest in the Rosendale Dairy LLC project by attending a public hearing, speaking at a hearing, writing us a letter, sending us an email, or requesting information. The Department prepared an EIS for the project and held public hearings on the proposed permit and the EIS to provide opportunities for public participation. The EIS is a forum for disclosure and discussion of potential environmental impacts. The EIS process does not serve as the basis for the issuance of the WPDES permit and does not provide any additional regulatory authority for Department permits or approvals. The Department has completed its review of the comments we received and prepared written responses in the documents noted above. Based upon this public participation process, the final permit was revised to incorporate additional requirements to avoid impacts to groundwater, surface water, and human health.

Rosendale Dairy LLC is considered a large farm regulated by ch. NR 243, Wis. Adm. Code. The Department also has the authority under chs. 160 and 283, Stats., to establish effluent limitations, monitoring requirements, and other permit conditions for discharges to groundwater and surface waters of the State. Many of the public comments we received suggested the Department add permit terms that we do not have the legal authority to require. We have written the WPDES permit to the best of our ability within our existing legal framework to ensure that the project will avoid and minimize adverse environmental water quality impacts.

If you believe that you have a right to challenge this decision, you should know that Wisconsin statutes, administrative rules, and case law establish time periods and requirements for reviewing Department decisions. To seek judicial review of a Department decision, sections 227.52 and 227.53, Stats., establish criteria for filing a petition for judicial review. Such a petition must be filed with the appropriate circuit court and served on the Department. The petition must name the Department of Natural Resources as the respondent.

Thank you for being part of the public participation process. If you cannot access an electronic version of the documents, please contact Terry Lohr at 608-267-2375 to request a printed copy.

Sincerely,


Russell Rasmussen, Director
Bureau of Watershed Management

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

DECISION ON
WISCONSIN ENVIRONMENTAL POLICY ACT COMPLIANCE

For

Rosendale Dairy WPDES Permit File #: S-2008-0406 and S-2008-0432

INTRODUCTION

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

Applicant James Ostrom (Rosendale Dairy) is proposing to construct a large dairy facility capable of housing and milking up to 4000 dairy cows and 150 beef cattle, with a possible second phase of similar size in the future. The facility will include: freestall barns, milking parlors, manure handling, storage equipment, feed storage, leachate collection and stormwater basins. The project will be a new dairy operation located on approximately 100 acres at N8997 County Highway M, Picket, WI 54964, in Section 9, Town of Rosendale, Fond du Lac County. A nutrient management plan for the first phase of the facility proposes the landspreading of manure on approximately 3,850 acres of croplands in the area.

FINDINGS OF FACT

The Department of Natural Resources finds that:

1. Section NR 150.03, Wis. Adm. Code, establishes a "Type List" for all DNR actions, setting minimum procedural requirements for WEPA compliance. Pursuant to s. NR 150.03 (8)(i) 2., Wis. Adm. Code, the Rosendale Dairy requirement for a WPDES Permit makes this a Type 2 action, requiring the Environmental Assessment (EA) process as outlined under s. NR 150.20 (1) (c), Wis. Adm. Code.
2. On September 16, 2008, the Department of Natural Resources completed an EA and received public comments through October 14, 2008.
3. Chapter NR 150 does not require the EIS process for this project. The Department did not determine that the action is a Type 1 action requiring the EIS process. The Department decided that the EIS process was the best approach for WEPA compliance for this action to fully address the comments received on the EA, to provide for further public involvement, and to complete a revised environmental analysis document.
4. On November 14, 2008, pursuant to ss. NR 150.20 (2)(h) and NR 150.21, Wis. Adm. Code, the

Department notified the Applicant of its determination to pursue the full EIS process, in order to complete its compliance with the Wisconsin Environmental Policy Act (WEPA), under s. 1.11 Stats., as it relates to the proposed Rosendale Dairy WPDES permit.

5. On November 18, 2008, pursuant to s. NR 150.21 (3), Wis. Adm. Code, by letter and news release, the Department notified interested parties of its determination to complete an environmental impact statement (EIS) process for the proposed Rosendale Dairy project. The Department explained to interested parties the process it would use for scoping of the analysis, in order to determine the scope and the significant issues to be analyzed in depth. For scoping, the Department relied on input gathered through substantial public comments on the EA and on additional public scoping comments that were received through December 5, 2008.
6. On December 19, 2008, the Department of Natural Resources announced the availability of the Environmental Impact Statement (EIS) for public comment and announced a public information hearing for January 22, 2009, in Ripon to receive comments on the EIS and on the proposed wastewater discharge (WPDES) permit for the Rosendale Dairy facility. Such notice was provided via letter to all interested parties, local governmental officials, the Governor's office, other state and federal agencies, and to local libraries. Copies of the EIS were made available through the Department's worldwide web site, in hard copy, at local libraries, and in the form of compact diskettes.
7. On December 19, 2008, at least 25 days prior to the hearing, a class 1 notice, as defined by ch. 985, Stats., was published in both: The Reporter, PO Box 630, Fond du Lac, WI 54935-0630; and the Oshkosh Northwestern, PO Box 2926, Oshkosh, WI 54901-2926
8. The Department held a public informational hearing on January 22, 2009, at 5pm at the Royal Ridges, 1 Westgate Drive, Ripon, WI 54971. An informational open house was held from 2pm to 4pm at the same location. The open house format also allowed for a question and answer session with Department experts prior to the formal hearing proceedings. The hearing on the EIS was held on the same day as the hearing on the proposed WPDES permit.
9. Verbal comments on the EIS were received at the January 22 hearing, and written comments were accepted in letter or electronic mail formats through February 4, 2009.
10. Pursuant to s. NR 150.22 (3)(e), Wis. Adm. Code, the Department prepared a summary of the comments received in writing during the comment period and comments received at the public hearing regarding the EIS. The Department has responded to the EIS comments in a document dated February 27, 2009. As part of the WPDES Permit process, the Department has also summarized and responded to comments received on the draft permit, in a document dated February 27, 2009.
11. DNR fully considered all comments on the EIS in making this decision pertaining to compliance with WEPA. Any substantive project changes that significantly affect its environmental impact may require additional analysis.

CONCLUSIONS OF LAW

The Department concludes that:

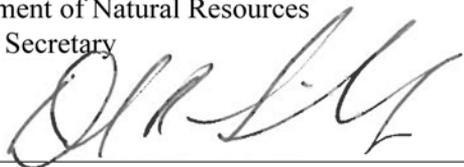
1. The Department of Natural Resources, under s. 1.11, Stats., and Ch. NR 150, Wis. Adm. Code, has the responsibility to comply with WEPA, and the authority to determine its compliance with that Act.
2. The procedure and analysis identified in the Findings of Fact complies with the requirements of s. 1.11, Stats., and ch. NR 150, Wis. Adm. Code.

DECISION

The DNR has complied with the requirements of WEPA, s. 1.11, Stats. and Ch. NR 150, Wis. Adm. Code, for the proposed Rosendale Dairy project. This Decision applies to all subsequent DNR actions on the project, the impacts of which are considered in the EIS.

Dated at Madison, Wisconsin, this 27th day of February, 2009

STATE OF WISCONSIN
Department of Natural Resources
For the Secretary

By: 

David Siebert, Director
WDNR Office of Energy and Environmental Analysis

NOTICE OF APPEAL RIGHTS

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

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