

Rural citizens have battled Larson Acres, Inc. all the way to the Wisconsin Supreme Court, seeking township power to monitor stream water quality.



Larson Acres, Inc. a dairy CAFO milking about 4,000 cows, sprawls at the junction of state highways 59 and 104, southwest of Evansville, WI. Six years ago, a hydrologist found nitrate pollution in a stream flowing from Larson Acres as high as 200 parts per million – 20X the federal EPA's guidelines for safe water. Larson Acres is fighting mandatory monitoring of surface water quality, as a condition for the township's CAFO siting permit.

Thirsting for Justice in America's Dairyland

by Tony Ends

My rural neighbors and I await justice in America's Dairyland. For ten years, we've pursued legal affirmation – with agencies, lawmakers, advisory boards, judges, and a governor – of established state and federal rights to protect the most vital element of our lives: our water.

Wisconsin's Supreme Court justices are reviewing the most recent challenge in this long legal battle. Locally, the conflict pits both the rural Town of Magnolia and a group of our citizens against Larson Acres, Inc. (a huge dairy farm located several miles southwest of Evansville, which milks several thousand cows). Yet the joint appeal by Town of Magnolia and concerned local citizens now before the state's highest court is also the first legal challenge of a measure legislators rushed into law in early 2004. That legislation spawned the Livestock Facility Siting Law, which stripped Wisconsin's towns and counties of the right to deny permits to Concentrated Animal Feeding Operations (CAFOs).

At issue presently in *John Adams vs. State of Wisconsin* (2009AP608) is this: When passing the livestock facility siting law, did Wisconsin's legislature take away local elected officials' abilities to monitor *performance* of huge livestock operations, as well as all but require the *siting* of these CAFOs in the permit process? Are Wisconsin's rural governing units – towns and counties – left with no powers to set water quality guidelines and monitor water quality? That's what the owners of Larson Acres, a powerful dairy trade association, and Wisconsin's agriculture department contend. By that logic, rural residents must simply all wait until our wells, streams and lakes are fouled by nitrate from liquid manure, with people suffering from skin rashes, vomiting, diarrhea, pneumonia and gastroenteritis – or worse – before towns and counties can act to protect us by setting reasonable conditions for the permits the state now forces us to grant?

In the present court case, and all along the past ten years, local town officials have stood bravely with our rural neighbors concerning Larson Acres' expanding its dairy and that dairy's impact on local water. Together, we've been to Rock County Circuit Court, the state Court of Appeals and Wisconsin's Supreme Court – over and over. Four out of five times in court, judges have sided with the Town of Magnolia. The fifth instance – a split, 2-1 ruling by three Appeals Court judges – went against the Town of Magnolia in 2010. That matter is what Wisconsin's Supreme Court justices are now weighing and will decide in 2012.

Win or lose, the outcome of our citizens' and the Town of Magnolia's appeal will affect every person residing in Wisconsin's 1,260 rural townships, all 72 Wisconsin counties, too. The decision of the state's Supreme Court will directly impact the abilities of their towns and counties to enforce water quality protections and ensure health and safety. Many local officials; groups trying to protect Wisconsin's lakes, rivers and streams; and several farming groups agree that the quality of ground and surface waters in our state hangs upon the Wisconsin Supreme Court's final determination of *Adams vs. the State of Wisconsin*. Other farm and business trade groups, state agencies and CAFO owners disagree. Yet the ten-year history of this issue in the Town of Magnolia (population 777) reveals deeply entrenched, powerful interests in Wisconsin over the power of locally elected officials to determine land use and monitor the quality of water, even after the highest level of nitrate pollution ever recorded in this state came from a stream flowing from Larson Acres.

I've reconciled myself to a harsh reality. I will always have to safeguard the water my family, livestock and children drink. My defense alone is sure to fail. Neighbors, farmers, consumers, voters must take up this ongoing defense, too. Pressures on this vital resource have become so great as to put us all at risk of losing it and with that loss, losing our health, safety and livelihoods. Competing interests to control the land, resources, and production are here in Wisconsin to stay.

These political and economic pressures on our vital, clean water resource have become so great as to put us all at risk. Losing water quality means loss of our health, safety and livelihoods. In Wisconsin, they frame vital issues as a cruel choice between abundant milk for processors, or safe rural surface water and groundwater. How each one of us responds to this choice will determine our legacy. Before you decide your response to this issue, before you drink the outcome, consider my personal attempts with my neighbors to ensure justice as regards our water over the past ten years. This may be your community's

Tony and his wife Della operate Scotch Hill Farm – a diversified organic farm – near Brodhead, Wisconsin.

personal story soon, too.

Water and our neighbors

One night about ten years ago, the phone in our farmhouse kitchen rang. A neighbor who lives about two miles north of our farmstead pleaded with me to attend the Town of Magnolia's next meeting. At that meeting, I recognized many people attending. These were folks with whom my wife Della and I share the same school district. Our children exhibited animals and worked on 4-H projects together at the Rock County Fair. We attended church with some of these folk, had meals together. In that town hall that long-ago night, I saw neighbors we counted on for mutual help when a tractor or piece of farm equipment broke down, or someone needed extra help getting up hay before rain.

There was one extended family at the town hall that night I did not recognize: members of the extended Larsons family – operators of Larson Acres Inc. The Larsons had farmed in the area for some 85 years. They worked very hard to grow their crop and milking operation to about 2,000 animal units. For all the neighbors I know, the legal conflicts of the past ten years have not been about the Larson families; they've been about protecting water, health and safety.

At that town hall meeting in March 2002, Larson Acres Inc.'s sought a conditional use permit to exceed local ordinance limitations. It sought to build a quarter-mile-long cattle barn and consolidate its heifers from five farms onto a single property about six miles south of its big dairy. This proposed new CAFO for raising about 1,000 replacement dairy cows would generate at least six million gallons of liquid manure a year. Manure applications would run from spring through the fall on 415 acres of land at this farm and thousands more acres in Green and Rock counties.

None of my neighbors is opposed to livestock production or manure applications. Most have farmed and handled manure. At our own Scotch Hill Farm, my family incorporates solid manure with straw bedding from our own livestock, working that organic material back into the soil to improve fertility for our vegetables and small grains. We believe livestock manure an essential source of organic matter and very important in agriculture – when properly managed. But a local opinion survey conducted in 2002 showed 90 percent of residents living near the proposed expansion on Norwegian Creek did not want Larson Acres' second proposed CAFO structure to be built, or permitted even with conditions.

Wisconsin Department of Natural Resources (DNR) records show that Larson Acres, Inc. has a history of liquid manure handling problems:

- In October 2002, Larson Acres had a 30,000 to 40,000-gallon spill of manure when a hose clamp failed near Allen Creek.
- In a five-page letter to Magnolia Planning and Zoning Committee May 2002, Lisa Wachtel, who lives near Larson Acres Inc.'s huge dairy on State Hwy 59 in Rock County, listed a record of 40 phone calls and letters between August 1999 and May 2002, notifying the Wisconsin Department of Natural Resources regarding liquid manure runoff and noxious odors at Larson Acres' huge dairy. Yet Wachtel's letter stated that only one of the complaints (the one April 2, 2001, which she'd copied to the DNR secretary, Sen. Russ Feingold, Rep. Michael Powers and Midwest Environmental Advocates), could be found recorded in DNR records. Wachtel said DNR field staff told her Larson Acres obtained an emergency manure spreading order on frozen ground "whenever it rained or whenever Larson desired" so that its slurry would not overflow. Spreading manure on frozen ground is against state standards.
- In March 2003 a county conservation warden had followed brown discoloring and odor in Allen Creek upstream, until she found a man-made ditch running brown from Larson Acres' huge dairy into that stream.

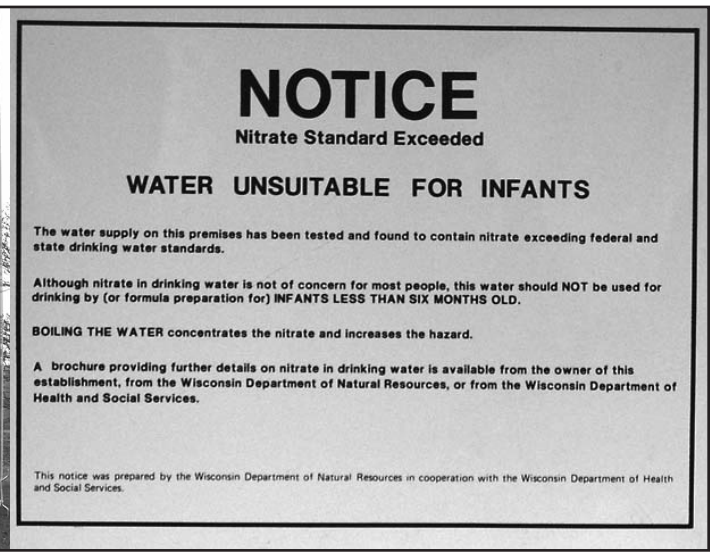
Under written and oral pressure from Larson Acres' powerful law firm, Michael Best & Friedrich, LLP (including threats of an expensive lawsuit), the Magnolia Town Board of Adjustment granted a conditional use permit for the second CAFO in December 2002. Ultimately, both Rock County Circuit and the Wisconsin Court of Appeals ruled that permit was improperly granted, finding that the *appointed* board had no authority to grant a conditional use permit. Only the town's supervisors could make such a decision. (*Magnolia Township and Western Rock County Citizens Against Factory Farming, et al. vs. Town of Magnolia, et al., April 2004 and May 2005*) (Case No. 03 CV157)

At this point, about two dozen concerned citizens, supported by scores more who were afraid to stand with us openly, hired an environmental law

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Magnolia Township (pop. 777) conducts its business in a modest, two-room building that's a converted former school house. The township and a citizens' group have challenged a lower court ruling that barred mandatory surface water quality testing all the way to the state Supreme Court.



A poster in the bathroom of the Magnolia Township hall warns users not to drink the water – due to nitrate contamination.

firm in Madison, then led by Ed Garvey and Glenn Stoddard. We called our group the Magnolia Township and Western Rock County Citizens against Factory Farming, later changing our name to Green Rock Citizens for Clean Water, and exercised our right to appeal the adjustment board's action in Rock County Circuit Court. Green Rock Audubon Society joined our citizen suit and supported our efforts for the next decade.

Attorneys at the firm (now called Garvey McNeil & Associates) helped us obtain an Impact Litigation Fund grant from Midwest Environmental Advocates. For our portion of legal fees, we neighbors held chili suppers in the Legion Hall, bake sales at a mall, a dance in our barn, and even a Green Bay Packer party. We passed the hat over and over, among our families to cover the legal expense of the appeal and later its defense on appeal. Ten long years to completely pay down our legal expenses.

That first long series of court cases ended in November 2005, when Wisconsin State Supreme Court justices ruled 5 to 2 not to hear Larson Acres' appeal of the original Rock County Circuit Court ruling. They let stand the lower court ruling voiding Larson Acres' first conditional use permit. That initial legal battle took several years. By then (despite strong possibility of losing against the court challenge), Larson Acres had built its second CAFO for its heifers. The day the local court voided the permit – October 13, 2003, Larson Acres was moving heifers into the new facility. Larson Acres then ignored court refusals to stay rulings on its voided permit for more than two years. Town of Magnolia officials tried repeatedly during that time to get Larson Acres' cattle numbers in the second facility drawn down to comply with local ordinances. All the while, Larson Acres knifed millions of gallons of liquid manure from the new heifer operation into nearby soils. The worst for all of this protracted experience was yet to come.

Water quality and our family

About this time in 2005 and 2006, my wife and children started experiencing mysterious headaches, sometimes stomach aches, too. I escaped these symptoms, but noticed every time I boiled water and drank a cup of coffee, I immediately felt drowsy instead of uplifted. We did not know it, but our well – which had tested clean at purchase ten years prior – had become polluted with nitrates.

When nitrate-contaminated water is boiled, that boiling water intensifies nitrate's effects on the human body. In the human bloodstream, nitrates can do to our brains and vital organs exactly what nitrate contamination does to aquatic and marine life in water: starve the body of oxygen, damaging and impairing health. For livestock, high nitrate levels in their drinking water and feed lead to reduced vitality and increased stillbirths, low birth-weights, and slow weight gain. I believe our family has lost lambs and goat kids due to nitrate water pollution of our well.

We might have gone on harming ourselves unwittingly by simply drinking our water had not a series of events taken place in our rural community. Larson Acres faced a possibility of hundreds of thousands of dollars in fines for operating without a permit at its second CAFO. Instead, the dairy paid \$72,500 in a settlement to the Town of Magnolia. Town officials used that money to hire a team of scientists to evaluate Larson Acres Inc.'s ongoing attempts to obtain a permit for its second CAFO. The team included:

- Soil and water scientist of more than 25 years experience, Dr. Byron Shaw (professor *emeritus*, UW Stevens Point),
- Aquatic ecologist and bio-geochemist Professor Emily Stanley (Center for Limnology, UW Madison),
- Hydrologist and aquatic biologist David Marshall. (During 30 years of state DNR service, Marshall had recommended Exceptional Water Resource designation for Norwegian Creek. Years later, during testing for the Town in late 2005 and early 2006, that creek registered what may be the highest levels of nitrate ever recorded in Wisconsin – only 2 to 7 mg/L upstream of Larson Acres' second CAFO, but an alarming 31 to 205 mg/L downstream of this contested CAFO. This is well in excess of the recommended safe concentrations for sensitive aquatic species of less than 3 mg/L),
- Retired lab manager from the Environmental Chemistry and Technology Program at the UW-Madison, Philip J. Emmling,
- Hydro-geologist Peter Taglia, who conducted a ground water study around Larson Acres' new CAFO.

These respected scientists studied Larson Acres' crop records and soil samples. They tested wells, surface water and drain tiles at Larson Acres' heifer operation and in the vicinity of the new CAFO. They carefully evaluated agronomy, health, safety, local geology and soils at the operation's dry cow feeding barn and massive pond holding animal waste slurry. That slurry was generating almost seven million gallons of liquid manure every 291 days, their report to the town stated.

These scientists' evidence and analyses formed the basis for more than 2,500 pages of public record, much of it collected with sworn testimony at a contested-case style hearing. The town held this hearing on March 10, 2007, to review Larson Acres' fourth permit application under the new state livestock facility siting law. The evidence showed well water readings for nitrates up to (and exceeding) 30 parts per million (ppm), including the well on Larson Acres' new CAFO property. Further, creek water readings of more than 200 ppm nitrate were recorded, along with field tile readings of more than 100 ppm nitrate. Upstream from Larson Acres, nitrate levels in water tested safely under 4 ppm.

Water nitrates at or above 10 ppm unsafe deemed unsafe

Federal water standards tell us that nitrate concentrates at 10 ppm can deprive the human body of oxygen in the blood stream, much as it starves aquatic life of oxygen in surface water. The federal Environmental Protection Agency considers water with nitrate concentrations of 10 ppm (and higher) unsafe to drink. Our family had our well tested, along with wells of our Magnolia Township neighbors as part of this evidence. Most of our wells, especially those adjacent the new CAFO tested at unsafe nitrate levels. Only three wells, however, were possibly linked to Larson Acres' new CAFO operation.

Odds are growing that a rural residence in our state has nitrate contaminate at unsafe levels in their well water. This mineral – so essential for fertilizing crops – is polluting our groundwater and wells in many parts of rural America. The EPA estimates nitrate water pollution impacts 13 percent of the population in the Upper Midwest. Nitrate is a human health threat, especially to infants, causing the condition known as methemoglobinemia, also called "blue baby syndrome." Ingested, nitrate is converted in the stomach to nitrite, which then combines with hemoglobin to form methemoglobin. In this form, it decreases the blood's ability to carry oxygen.

Infants are more susceptible to nitrate toxicity than older children or adults. Fatalities are rare, but sub-acute methemoglobinemia can be asymptomatic as it affects development. Spontaneous abortions have been reported near large confined animal feeding operations, where well water was found to be high in nitrates. Chronic consumption of high levels of nitrate may also cause other health problems. Some forms of cancer and other, non-malignant cell-altering effects are linked to high nitrate levels. Data are inconclusive, but cause for concern.

An EPA publication titled, "Is Your Drinking Water Safe?" states: "Only two substances for which standards have been set pose an immediate threat to health whenever they are exceeded: bacteria and nitrate."

Accumulation of nitrate in the environment results mainly from non-point source runoff from the over-application of nitrogenous fertilizers, livestock wastes, and from poorly or untreated sewage. Because agriculture is implicated in the nitrate pollution problem, farmers and rural communities are the most threatened populations. In the United States, the problem is concentrated in the Midwest and the far West, with large areas of Iowa, Illinois, Kansas, Michigan, Wisconsin, Washington and California being heavily affected. The U.S. Geological Survey released a report in 1995, which revealed that nitrate concentration in the nation's groundwater supply is increasing steadily: nine percent of wells tested have nitrate concentrations exceeding the EPA maximum contaminant level (MCL) for nitrate of 10 ppm. That level of contamination is up significantly from the 2.4 % findings in prior studies.

Wisconsin wells show increased nitrate levels

Nitrate contamination of well water has been creeping up on Wisconsin for a long time. Studies 15 years ago indicated water from 10 percent of wells statewide was unfit to drink, due to nitrate contamination. Rock County's Public Health Department has monitored 150 wells for that long, and has determined between one-quarter and one-third of all wells in the county are contaminated with nitrate. Rock County health technicians say nitrate pollution may have leveled off. Yet Janesville, in recent years, had to replace one of its three municipal wells because of nitrate contamination. In some watersheds in southern Wisconsin, half the wells are now polluted with nitrate.

Municipal water supplies monitor nitrate concentration worldwide, and authorities monitor it in foodstuffs, to prevent exposure of populations to harmful or toxic levels. After passage of the 2004 livestock facility siting law, rural residents that typically have no resources for monitoring nitrate levels in well water, have become particularly vulnerable to health problems from nitrates.

Wisconsin featured just a little more than 80 industrial dairy operations

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(CAFOs) among its more than 16,000 dairy farms in 2004. But as part of a state "milk growth strategy," CAFO proponents helped rush uniform livestock facility siting legislation into adoption six weeks after it was introduced in February that year. Guidelines for the state livestock facility siting law went into effect about two years later.

Some of my neighbors, Della and I drove to the one public hearing state lawmakers allowed during this legislation's brief consideration. Private citizen after private citizen from around the state asked the assembly representatives and state senators to give the issue more careful consideration. They pleaded for more time to gather independent testimony regarding impacts these gigantic facilities would have on water quality and public health. In a full day of dairy industry representatives and large-scale farmers thanking lawmakers for inviting their testimony in favor of dairy business interests, I heard no testimony from any medical researchers, doctors or public health specialists.

This avoidance of public health issues came despite a call from one of the oldest and largest health organization in the United States – the American Public Health Association – for a moratorium on constructing large-scale confined animal feeding operations. That call went out nationally just weeks before Wisconsin rushed into passage a law barring local communities from refusing to permit these facilities. Between 2001 and 2003, the U.S. Geological Survey and Wisconsin DNR tested 240 streams around Wisconsin and found average nitrate levels of two ppm. Nitrate levels that scientists were finding at Larson Acres' heifer operation in Magnolia Township, were beyond abnormal.

Did new Wisconsin CAFO siting law remove all local controls?

Supporters of the state Livestock Facility Siting Law and administrative rules of the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) believe this measure narrowly limits what scattered rural township populations (of often less than 1,000 people) can do about CAFO facilities and their storage and application of waste from 1,000, 10,000, even 20,000 cows.

Wisconsin's 2004 Livestock Facility Siting Law opened the floodgates to these facilities. In 1995, Wisconsin had just ten CAFOs (livestock operations with 1,000 or more animal units). Yet by June 2010, just four years after the law's passage, CAFO operations in Wisconsin had shot up to 194. By November 2011, they had climbed to 233, according to the Wisconsin DNR. Twenty to 30 CAFOs are being proposed or approved now, every year. Those numbers, in a state that still boasts more than 12,000 dairy farms, may not sound significant. Considering 200 of the state's mostly new CAFOs are already churning out 15 percent of the entire state's milk supply, environmental implications of concentrating more and more animals on single pieces of property statewide begin to become clear. Average dairy herd size in Wisconsin is still under 100 cows. About one-fourth of these farms rotationally graze their animals.

Officials claim siting law supercedes all local controls

State agencies have begun dictating to towns and counties, including Town of Magnolia officials, what local elected leaders may and may not do under the new state provisions. State officials say those provisions now supersede local ordinances, preclude most conditions, and force protections to enforcement actions after pollution happens and problems arise.

I witnessed in 2007, a step-by-step presentation to Town of Magnolia supervisors on behalf of Larson Acres, conducted by (then) staff member David Jelinski to the Town of Magnolia's board of supervisors. Jelinski described every element of the checklist for completing a permit application to construct a large-scale confined animal feeding operation under the new state law. He told the local town board that Larson Acres had met every letter of the law under the new permit process. He said Magnolia's elected officials must allow siting of the 1,500-animal-unit heifer operation on County Hwy B in their township of western Rock County. Jelinski urged the town board to grant a conditional use permit to Larson Acres for this facility – already built and operating for more than two years without a conditional use permit. Jelinski strongly advised the town board members that they could not deny Larson Acres a permit under the new state CAFO siting law.

At that very moment, however, the town was receiving and gathering information on Larson Acres Inc. from its soil and water scientists. Two of the scientists, both with long and distinguished careers, ultimately told the Town of Magnolia that the nitrate pollution evidenced at Larson Acres was the worst they had seen in their professional careers. Dr. Byron Shaw further told the local board that Larson Acres' field records and soil sample registered phosphorus levels more than five times what they should have been on more than half that farm's land base – thousands of acres. Shaw concluded that it could easily take 18 years of leaving those soils completely at rest, with no fertilizer or manure applications whatsoever, for crops to absorb that much phosphorus and return levels safely to normal. He said such high phosphorus readings indicated too much nitrate had been applied to much of Larson Acres' acreage.

What Wisconsin's new CAFO law thus presents to rural individuals is the following: we must accept pen and paper calculations, and blanket imposition of computer models based on theoretical standards, to ensure abundant production of huge volumes of cheap milk for cheese-making in Wisconsin. We countenance loss of democratic control and potential water pollution to ensure concentrated, large-scale operations will continue to depress milk prices by producing high volumes of milk, driving small- and mid-size milk producers out of business.

Or, as an alternative, concerned citizens press for clean water based on health, sustainable agricultural and medical science in our homes, on our land

and in streams near where we live. Local ability to ensure performance standards in livestock facility siting is thus what *Adams vs. State of Wisconsin* before the state Supreme Court is all about.

Water and our town

Historically, the collective wisdom of generations of farming people helped frame the first local ordinances and zoning laws to protect water, health and safety for Wisconsin's rural residents. Generations of people who'd raised animals knew the limitations of the terrain, the soils, and the forages where they lived. They knew soils' capacity to absorb animal wastes and to withstand grazing of herd animals. Like so many other townships, Town of Magnolia ordinances limited farmers to one large animal (dairy or beef) per acre of land.

Prior to the 2004 state siting law, any producer's request to exceed that limitation required a conditional use permit, which had to meet seven conditions in the Town of Magnolia. These conditions were molded by elected representatives – a system rooted in precepts of the Bill of Rights and Constitution that our ancestors sacrificed to create and protect.

Under the local rules (prior to the CAFO siting dictates), a large-scale livestock permit for conditioned use beyond what the local ordinance allowed, had to "show substantial justice to all parties concerned." It also had to "promote harmony within the community." By these Conditional Use Permit requirements, local officials in Magnolia twice refused a permit to Larson Acres to build a second CAFO in 2002 and 2003. Frustrated by local opposition to early attempts to permit its second CAFO of 1,500 animal units on a property of 415 tillable acres, Larson Acres joined other CAFO proponents in Wisconsin to propose state intervention:

- Ed Larson, of Larson Acres, Inc., served on a state task force that held hearings in late 2003 on the then proposed, large-scale livestock facility siting law after Magnolia Township turned down his own attempts to get a conditional use permit and after courts upheld local citizens' appeals.
- A legislative bill from those hearings, proposed to strip towns and counties of the right to refuse permits for expanding CAFO facilities. Larson Acres and others in the industry helped ram the measure into passage within just six weeks of its only public hearing before the state Assembly and Senate in early 2004.
- Larson Acres, Inc. company members made campaign contributions, along with others in their industry, to Representative David Ward (R) and other legislators who sponsored the law, and to Gov. Jim Doyle – who hastily signed AB868 into law (<http://www.wisdc.org/wdc.php>).
- Ed Larson was then appointed to the technical advisory panel in 2005 that crafted details of how the new State Statute 93.90 would work.

If local town officials refused a personal request from any of my neighbors or me, to receive exceptions to ordinance violations, none of us would thereafter propose – and get – a state law to permanently over-ride authorities where we live. Yet that is exactly what happened on behalf of Larson Acres, Inc. Advocates of Wisconsin's CAFO siting law laid out their justifications for state authority:

- CAFO advocates called the local ordinances and local citizens' concerns "acting on emotions and fears."
- They demanded a state-imposed uniform process for permitting and siting large-scale livestock facilities.
- They suggested that this state dictate would end local conflicts and curb litigation.
- They claimed state agencies such as the Wisconsin DNR and the Department of Agriculture, Commerce and Trade, would be better able to police CAFOs and administer a uniform permit process, statewide.
- They actually argued that concentrating millions of gallons of liquid manure on single properties under a state permit process would make the environment and public health safer.
- Most of all, proponents of the new state law designed to strip towns and counties of the ability to deny permits to large-scale livestock facilities said that this new law would protect the dairy industry in Wisconsin.

While the Town of Magnolia believed it had enough evidence to refuse the livestock facility siting permit for the application that DATCP asserted had met every letter of the new law, the town granted the requested permit to Larson Acres, Inc. in early 2007 with seven simple conditions. But Larson Acres' owners refused to submit to those conditions and appealed to the state's new livestock facility siting review board – seven DATCP appointees.

In July 2007, I attended, in Madison, the one day of open deliberation of the Livestock Siting Review Board (LSRB) that this new board devoted to Larson Acres' appeal and the Town of Magnolia's evidence. The review board held no open discussion regarding any details in the town's 2,500 pages of evidence. No party was granted a chance to speak. The review asked no questions of town officials in attendance. In a day-long public review of Larson Acres' appeal, the phrase "public health" was uttered only once. Only passing references admitted "problems" at Larson Acres. Several review board members belittled and scoffed at local residents.

A month later, the state's review board panel members struck down the Town of Magnolia's attempts to condition Larson Acres livestock facility siting permit. They refused to allow the town to require Larson Acres to:

- Stop fall manure application on its tile drained and upland fields till nitrate pollution stops.
- Set up regular water monitoring and annual soil testing on the property.
- Replace its plan to plant field corn (the most prone crop to leak nitrate into water) continuously in its manure application area, with wider rotation of hay (the least likely cropping system to leach nitrate).

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Instead, the LSRB decided the town could undertake (at the town's own expense) legal and enforcement action through courts if health and safety problems occurred. Panel members acknowledged the new state livestock facility siting law restricts how local authorities, towns, counties, even cities, can condition new and expanding large-scale livestock facility permits. Larson Acres, Inc., thus received a permit without any significant, local conditions to operate a livestock facility with 1,500 animal units, despite the documented water contamination at the site.

The citizens and town took this LSRB decision to court. A Rock County Circuit Court judge sided thereafter (in December 2008) with the town's right to set conditions for Larson Acres, Inc.'s CAFO, given the weight of evidence of environmental damage, the extensive statutory standing of a town to enforce water protection and public safety. Yet a state Appeals Court struck down the local court's ruling in June 2010 with a very narrow interpretation given to Larson Acres' appeal. During that proceeding, one judge asked Glenn Reynolds, who represents the Town of Magnolia, to explain what "DATCP" meant. DATCP, the state agriculture agency charged to administer the new state livestock facility siting law, was, in fact, with the new review board party with Larson Acres in the appeal before that judge.

DNR's oversight to date at Larson Acres, Inc. has been limited. The CAFO operation was allowed to proceed freely for five years under an expired permit; the second CAFO at the opposite end of the township was allowed to be folded into the expired permit; and the DNR delayed a public hearing and testimony almost a year beyond construction that broke ground in summer 2009 to now double the size of the Larson Acres' milking operation to more than 5,000 animals. The DNR held its hearings on that Water Pollution Elimination Discharge System permit away from the local community in neighboring Albany and Evansville, where large halls could be packed with supporters of CAFO expansion. I saw few of my neighbors who have been directly impacted by Larson Acres' testifying at those hearings. My protests of this fact were ignored, yet what I said didn't seem to matter. The \$12 million expansion to double Larson Acres' herd and operation was almost completed at the time of the DNR's hearing as to whether to reissue the WPEDS permit

Water and our courts/water and the Rule of Law

In the early years that my neighbors and I appealed to courts to uphold our rights and protect us, people I encountered sometimes would challenge me. "What are you fighting that big dairy for?" they would say. "You know what is going to happen to them?" These folks were mostly farmers who'd lived through financial shake-out after financial shake-out, over decades of watching those farmers who accepted the challenge to get big rather than get out, eventually fall like punctured, bursting balloons that got too big. "I'm just trying to live what I believe," I'd reply.

In their arguments before the state Supreme Court, both town attorney Reynolds and citizen attorney Christa Westerberg, cited the wide breadth of state law – upheld repeatedly – in court, supporting state and local protection of public water ways, health and safety. They cited provisions of state and federal law that prohibit any sort of water pollution and requiring "in all cases where the potential uses of water are in conflict, water quality standards be interpreted to protect the general public interests."

At any point in the past ten years, if our citizens stopped pressing for protections, stopped demanding conditions for large-scale farming practices, stopped arguing that the new state livestock facility siting law did not override laws protecting clean water and the host of state statutes established to protect the public, we would have relinquished the entire body of our legal rights. We would have given over to non-elected state agencies, a rule-making process and a pretense of protections and permits that are in fact impossible to oversee from state offices far from where we live, swim, fish, bathe, drink.

At the state Supreme and Appeals Court Web sites, anyone can read the thoughts of many others on the implications of this situation for our legal systems of public protection. They capture a strong sense of the possible outcomes for us of what our high court will soon decide regarding Appeal No. 2009AP608. <http://wscca.wicourts.gov/case>

Here's a sampling from *amicus curiae* (friend of the court) briefs of what's at stake for elected small town and county board members who serve and try to protect the people if that appeals court ruling is not overturned:

Wisconsin Lakes Association (100s of government bodies and voluntary associations for Wisconsin's 15,000 lakes), **Midwest Environmental Advocates**, **Wisconsin River Alliance**, **Wisconsin Trout Unlimited** (4,450 state members) – 18 pages

"In practice, the very governmental entities charged with protecting the public health, safety and welfare of their citizenry would be denied the basic tools decades of experience with zoning administration have shown necessary to prevent water contamination....it denies (them) any means to prevent harms arising from water pollution." State law has in the past strongly favored zoning as a means of resolving conflicts between farmers and neighbors, rather than lawsuits, such as those strict, narrow interpretations of the new state livestock facility siting law dictates will now become inevitable for towns to protect water."

Wisconsin Towns and Counties Associations – 32 pages

"An additional fear from the Court of Appeals' decision is not just that local governments have been written out of monitoring compliance with state water standards driving the siting or expansion process – it is that local governments will be preempted from monitoring compliance with state water quality standards altogether."

Wisconsin Farmers Union and Family Farm Defenders – 18 pages

"The use of local permits, that require a livestock facility to comply with existing laws of which it should already be aware does not defeat the purpose of providing a predictable process." While the process for siting was made uniform, the new law did not attempt to deny that farming operations and the places where they're situated are unique in landscape and watershed and must be protected by officials local people elect and appoint to look out for their interests, health and safety."

Water quality and public interest vs. special interests

The Town of Magnolia's meeting hall is a tiny building – an old school house – on a country highway. You have to be looking for the town hall, in order to notice it. The building features only two rooms and a bathroom. (A sign in the bathroom advises the public not to drink water from the sink because of high nitrate levels.) Yet some of the local meetings I've shared in this personal account were so jammed with people in this little town hall, that some folks who live near Larson Acres' facilities were unable to gain entry. Will our experiences and the questions with which we still live ever be heard? In this decade long battle, key questions remain, including:

* What brought CAFO operators from Green Bay to Eau Claire and from as far away as Texas to this little town hall in south central Wisconsin to urge support for Larson Acres' second CAFO? Who mobilized scores of people with business interests in seeing CAFOs proliferate in our state to attend meetings in the Town of Magnolia and now in hundreds of town halls around Wisconsin?

* How is it that Larson Acres has been held up as a model CAFO dairy operation (despite more than a decade of court battles), in publications ranging from little local weekly shoppers in Pennsylvania to the business section of USA Today? In December 2010, the Larson Acres families were presented with a leadership award by the Wisconsin Dairy Business Association, as "poster children" (DBA's phrase) in their effort to oppose undue local ordinances limiting dairy farm expansions."

* Why was the same livestock facility siting law stripping local communities of the right to deny permits to CAFOs proposed at virtually the same time in a number of states, including Iowa, Minnesota, Michigan, Pennsylvania, as well as Wisconsin?

* How is it that one of Larson Acres' attorneys, David Crass of Michael Best & Friedrich, LLP, was able to say in a Dairy Business Association (DBA) newsletter that if anyone has any questions about the 2004 state livestock facility siting law, he or she can contact the DBA because "we wrote the law" as reported in a Wisconsin State Journal three-part series on CAFOs?

* How is it that David Jelinski, one of the key DATCP officials who helped draft the administrative rules, checklist and code to implement the new state livestock facility siting law for CAFOs, then left his position in state government to work for the DBA?

* Who authorized the DBA in January 2007 to flood rural mailboxes in the Town of Magnolia with postcards urging local residents to vote against their town board members in their general election for spending their tax dollars to press conditions on Larson Acres' second CAFO, items it deemed "not beneficial to the town"?

* And how is it that another of Larson Acres' attorneys, Eric McLeod of Michael Best & Friedrich, LLP, could stand before state Supreme Court Justice Michael Gableman in September 2011, trying to persuade the high court to deny our citizens' and the Town of Magnolia's case, all the while knowing that Gableman had received tens of thousands of dollars free legal work which McLeod performed for him from July 2008 to July 2010, to help Gableman fight an ethics violation charge?

Hang together, or hang separately ...

Standing together for so long with common values and concerns deepened my relationship to my neighbors. We want the same things in life for our families, farms or businesses, children or grandchildren. Most of all, we want them to be safe and to have health. If we cannot control vital resources like water and the activities that directly affect them where we live to ensure safety and health, nothing we accumulate, own, or amass in our lives will be worth anything.

Groundwater cannot be cleaned up after it has been polluted. There is no available technology to do that. Industrialization has proven its ability to pollute that water, though. Will we allow this to happen without locally elected oversight? Neighborhoods where people know each other, meet together, talk, share meals, think aloud, and organize are essential if we are to protect our water quality. Whose dairy state is it if not our own? I thirst for a just response to that final question.

This entire story is available on line at *The Milkweed's* Web site:
www.themilkweed.com

On our home page, interested persons will find a red banner headline titled "WI Supreme Court Water Quality Lawsuit." Click once on that headline to bring up this story. Additionally, a chronology of the long-running battle, authored by Tony Ends, accompanies the electronic version of this story.