

Early Chronology: Four Permit Applications Over 4 Years – then a new State Livestock Facility Siting Law and 6 More Years in Court

March 1, 2002 – Larson Acres Inc. submits first application for conditional use permit to build 1,500 animal unit cow confinement facility on County Highway B in the Town of Magnolia. Local ordinance limits livestock confinement operations to 400 animal units.

March 21, April 18, May 16, 2002 – Planning and Zoning Committee members hold first hearings on first permit application. Area residents testify against the facility, citing strong odors, groundwater contamination, traffic and loss in property values. Larson’s attorney, David Crass of Michael, Best and Friedrich LLP, faults committee on procedural grounds and offers in letters to refrain from suing the town if the committee grants a permit with certain conditions agreeable to Larson Acres. The committee considers provisions of its ordinance, purpose and intent and votes 3-2 to recommend the town deny the permit.

June 11, 2002 – Magnolia Town Board of Supervisors hold a public hearing on the planning and zoning committee recommendation and vote 2 to 1 to refuse the permit.

July 30, 2002 – Larson files a formal appeal of the town board’s decision to Magnolia’s Board of Adjustment., asking that it “supplant its judgment for the (Town) Board’s” and grant the permit because the planning and zoning committee was “tainted,” “poisoned” and insidiously biased,” and because the town Board’s acceptance of the committee’s recommendation tainted its decision, as well.

Aug. 28, 2002 – Board of Adjustment hears the appeal and votes to refer a decision back to the Magnolia Town Board.

Sept. 10, 2002 – Town board members vote 2 to 1 to send a proposed agreement amending terms of the permit application back to the Board of Adjustment.

Oct. 2, 2002 – Board of Adjustment members vote 2 to 1 to deny permit.

Oct. 20, 2002 – Larson Acres experiences 30,000 to 40,000 gallon manure spill when a clamp fails on a hose connector at its dairy facility on Highway 59.

Dec. 2, 2002 – Board of Adjustment members hold a second hearing because its first meeting was not properly noticed, with the board this time voting to accept the permit application.

Feb. 6, 2003 – Residents in vicinity of the proposed Larson Acres heifer facility file a petition in Rock County Circuit Court, alleging that the board of adjustment failed to act within its jurisdiction when it issued the conditional use permit.

September 2003 – Ed Larson sits on state task force holding public hearings around Wisconsin for Department of Agriculture, Trade and Consumer Protection to develop a new Livestock Facility Siting law that supercedes local ordinances with uniform technical guidelines.

Oct. 13, 2003 – Rock County Circuit Court rules citizens’ request for restraining order and temporary injunction to halt Larson Acres’ construction of large-scale livestock facility is “premature” after Larson Acres maintains facility will not be completed before decision on the case is rendered and proceeds with building “at its own risk,” according to citizens.

Nov. 18, 2003 – American Public Health Association, the oldest (1872) and largest (50,000 professional members) health organization in the United States calls on all local, state and federal government authorities to issue a moratorium on construction of new confined animal feeding operations and urges support for research and protections against documented hazards from CAFOs.

Feb. 23, 2004 – Joint session of state Assembly and Senate holds one public hearing to consider AB868, a livestock facility siting bill patterned after a 1996 Illinois law, imposing state guidelines for permitting operations and restricting local governments from refusing permits to proposed large-scale facilities.

March 2004 – In Iowa City, the Institute for Rural and Environmental Health convenes a public conference on Environmental and Health Impacts of Confined Animal Feeding Operations.

Authorities on medicine, microbiology, veterinary science, occupational health, hydrology, virology, epidemiology, social medicine and infectious diseases – from around the nation and other parts of the world – make presentations. They share scientific observations, statistics, findings and direct experience related to research of confined animal feeding operations in 9 panels during a day-long conference.

April 13, 2004 – Gov. Jim Doyle signs the Livestock Facility Siting Bill into law for Wisconsin, prohibiting towns and counties from denying permits for large confined animal feeding operations in areas zoned for agriculture, excepting when negative health and safety impacts can be proven on basis of scientific fact. The law provides that DATCP will develop administrative rules to enforce the new law with guidelines that a technical advisory committee will compile.

April 15, 2004 – Judge Michael J. Byron sides with citizens in their appeal against the permit and orders the Town of Magnolia to declare the Larson Acres Conditional Use Permit null and void.

May 4, 2004 – Larson Acres asks Circuit Court for a stay of its ruling to allow nearly 1,000 cows to remain in its new livestock facility pending appeal of the voided permit to a higher court. Judge Byron denies the stay and orders cows above ordinance limitation (400) removed on June 29.

Larson Acres later seeks a stay of the judge's ruling a second time, but Judge Byron denies that request, too, and orders cows removed. Larson Acres does not remove the cows from the County Highway B heifer barn, which has no permit, yet continues to operate.

June 15, 2004 – Larson Acres files appeal of circuit court ruling to state Court of Appeals District IV. Larson Acres also asks for a stay of the lower court's ruling so that it can keep twice the number of cows local ordinance allows in its new cattle barn until the appeals court renders its decision. The state appeals court later denies this stay of the lower court ruling, but Larson Acres does not remove its cattle from the facility.

May 12, 2005 – State Court of Appeals upholds Rock County Circuit Court ruling against Larson Acres.

June 13, 2005 – Larson Acres files a petition with the state Supreme Court to review the appeals court denial of the ruling that voided its first conditional use permit.

Aug. 4, 2005 – Larson Acres and Town of Magnolia board members meet in mediation session in Madison to attempt resolution of each other's legal actions over CUP denial and refusal to draw down livestock numbers from between 800 and 900 heifers to the ordinance limitation of 400 animals.

Nov. 15, 2005 – Wisconsin State Supreme Court justices rule 5 to 2 to deny Larson Acres' a hearing on its appeal of the original Rock County Circuit Court ruling voiding their conditional use permit.

Dec. 9, 2005 – Planning and Zoning Committee members table Larson's third conditional use permit application, 4-0, pending outcome of Larson Acres' lawsuit against the Town of Magnolia alleging bias for refusing his second conditional use permit. They also announced that they will petition Rock County Circuit Court for fines against Larson Acres for repeated refusal to draw down livestock numbers at his County Highway B heifer facility, for which permits were voided in April 2004, and stays of the court order denied.

Dec. 10, 2005 – Ed Larson is member of state technical advisory committee at a public hearing in the DATCP building in Madison to help determine guidelines and administrative rules that will be used to implement Wisconsin's new Livestock Facility Siting Law.

Jan. 6, 2006 – Town Board members hold meeting to consider Larson Acres' attempts to reach a compromise, but vote 3-0 instead to instruct attorney Glenn Reynolds to hire a technical expert to counsel the town on legal and appropriate responses to large-scale confinement operation applications under the new state law and to address citizen concerns about health and public safety.

May 2006 – Larson Acres submits its fourth conditional use permit application for a 1500-animal unit confined animal feeding operation under the new state Livestock Facility Siting Law.

May 2006 – Town of Magnolia officials adopt a new water safety ordinance on advice from Dr. Byron Shaw, an emeritus professor of soil and water with the UW Stevens Point for more than 30 years.

October 2006 – Larson Acres agrees to pay \$72,500 fine for failing to remove livestock from County Hwy B heifer facility, in exchange for temporary permission to keep approximately 900 cows there pending his fourth conditional use permit application to the Town of Magnolia. The settlement is a fraction of the potential fine for defying court orders to draw down cattle numbers at the facility for more than 2 years.

Oct. 20, 2006 – Larson Acres refuses to respond to a long, detailed list of questions from the Town of Magnolia regarding its 4th conditional use permit application under the new state law. Instead, it appeals to a new state Livestock Facility Siting Law Review Board at the DATCP building in Madison. The board, however, notes that statutes under the new law describe its function as taking appeals from applicants that have been refused permits under the new law, or hearing appeals from residents regarding permits to applicants. It votes 7 to 0 to send Larson Acres back to the town to work through the questions and arrive at acceptance or denial of a permit within 60 days of filing. Board members note that Larson Acres replied to none of the local town board's questions regarding its nutrient management plan.

Oct. 25 – 2006 – Town of Magnolia officials file for a warrant of inspection with Rock County Circuit Court, after they are first given permission from Ed Larson by phone to take water samples on Larson Acres' County Hwy B property, then barred from going onto the property by a Sheriff's Deputy threatening the officials with trespass. The judge gave the town a warrant of inspection and sent town staff back to the property with the Sheriff's Deputy and a court order that Larson Acres permit the town to take water samples.

Nov. 9, 2006 – Following a 4-hour meeting and lengthy presentation on the new law from a DATCP engineer, Town of Magnolia Planning and Zoning Board members vote 5 to 0 to recommend to its town board that Larson Acres' 26-page checklist as "complete" in a fourth conditional use permit application for a 1500-animal unit dry cow operation at its County Hwy B facility under the new state Livestock Facility Siting law and DATCP administrative rules. At this meeting, Larson Acres' attorney refuses to recognize the Town of Magnolia's right to subpoena Larson Acres for information on its manure management plans, soil test records, crop records or land base for application of manure at the new heifer facility, yet he says Larson Acres is willing to cooperate with the town as it seeks more information on its permit request for the 1500 animal unit facility.

Nov. 14, 2006 – Town Board members vote 3 to 0 to accept the recommendation of their planning and zoning board (from last week) that Larson Acres Inc.'s application for a conditional use permit to expand its heifer operation to 1500 animal units is complete. DATCP considers "completeness" as compliance, but also recognizes that state law specifically states that this determination does not constitute award of a permit. The 3 town supervisors took this vote with two notations: (1) that Larson Acres could have moved to quash subpoenas the town issued in early November for more information and which Larson Acres has ignored, but Larson Acres did not do so, and (2) that the date of acceptance of the new state 26-page checklist from Larson Acres will be listed as complete is Oct. 25, on which date Larson Acres inserted 2 maps and substituted several pages from its original application to the town.

Dec. 14, 2006 – Town holds public hearing nearly 4 hours long on Larson Acres 4th permit application for the County Hwy B 1500 –animal unit operation. No decision is made since Larson Acres did not submit numerous folders, documents, maps and supportive evidence variously until days and hours before the meeting and at the meeting itself. Next hearing is set for the fourth Thursday in January at 6 p.m., to allow zoning board and consultants to review material.

Feb. 9, 2007 – A task force released a 49-page report documenting the findings of its 3 years of work, convened to consider the existing scientific data and to make recommendations regarding groundwater quality problems in northeast Wisconsin. The Karst Task Force included UW-Extension and county conservationists in Brown, Calumet, Door, Kewaunee, and Manitowoc counties as well as representatives of state and local agencies, the University of Wisconsin, and the private sector. Results of the study showed that much of Wisconsin’s subsurface geology consists of Karst – fractured limestone (carbonate) bedrock that allows contaminants to seep into groundwater through cracks and sinkholes. Recommendations of the study were to greatly restrict spreading of manure, yet these proposals, which eventually went before Wisconsin lawmakers, were not adopted.

July 20, 2007 - Wisconsin’s new livestock facility siting review panel of 7 men appointed by the state Department of Agriculture, Trade and Consumer Protection meets to hear Larson Acres’ grievance regarding the Town of Magnolia’s conditions attached to the livestock facility the town granted Larson Acres under the new state law.

Aug. 17, 2007 – Wisconsin’s new livestock facility siting review panel slaps down the local township’s health and safety conditions for a permit to this facility. The review board held no open discussion of any details on the town’s 2,500 pages of evidence, documenting the highest level of nitrate pollution ever found – more than 200 ppm – in the history of Wisconsin, and directly attributed to millions of gallons of liquid manure being applied by Larson Acres at its contested heifer operation on County Hwy B in Rock County. In the new panel’s one, daylong public review of Larson Acres’ appeal in July, the words “public health” were uttered only once. Only passing references admitted “problems” at Larson Acres. Review board members said the new law essentially allows them only to hear appeals and affirm state rights to administer permits to CAFO facilities.

December 2008 – A Rock County Circuit Court judge, James E. Welker, affirms the Town of Magnolia’s rights to protect public safety and enforce clean water protections in its appeal against the new state livestock facility siting review board’s decision and Wisconsin’s first legal challenge of the new law. The circuit court ruling affirms a rural town’s rights to condition a permit for a huge confined animal feeding operation, require farming practices, such as rotations of hay, that curtail pollution, protect well and surface water from nitrate damage, protect vital soils and farmland from phosphorus loading, enforce provisions grounded in scientific evidence and state and federal protections.

Feb. 17, 2010 – Wisconsin Court of Appeals judges hear oral arguments of attorneys representing Larson Acres, and the state department of agriculture, in their appeal against the Rock County Circuit Court ruling favoring the Town of Magnolia and Green Rock Citizens for Clean Water in the East Wing of the State Capitol building in Madison. The Town of Dunn, Dane County, Midwest Environmental Advocates, Family Farm Defenders, Wisconsin Towns Association, Wisconsin Lakes Association and Clean Water all file friend-of-the-court briefs in support of the lower court ruling to protect water, health and safety.

June 24, 2010 – Appeals Court of three judges rules in favor of Larson Acres’ and DATCP’s appeal against the Green Rock Citizens for Clean Water and the Town of Magnolia, with a narrow view of town authority under the 2004 state livestock facility siting law.

October 2010 – Larson Acres reported that it added 15 workers in an expansion that doubled its herd size to 5,000 animal units. This expanded \$12 million facility generates more than 40 million gallons of manure a year – at least as much or more than the combined waste streams of Janesville and Beloit – on a single farm operation. Larson Acres broke ground for this new facility the previous summer, all the while it was appealing a lower court ruling supporting the town’s conditions on its livestock facility siting permit. It forged ahead with the new expansion in winter even without final determination of a Wisconsin Pollution Discharge Elimination System permit from the Department of Natural Resources. The WPDES permit for the first confined animal feeding operation went expired for several years, yet the DNR repeatedly said it would likely to

renew the permit despite a number of serious problems and evidence of the highest recorded nitrate pollution in that first operation in the history of Wisconsin. The DNR even delayed holding a public hearing on the WPDES permit until March 5 of 2010, when it already appeared the expanded facility would be well on its way to completion.

December 2010 – Wisconsin Dairy Business Association, a 750-member trade group in a state of more than 12,000 dairy farms, gave a leadership award to the Larson Acres families “for demonstrating an exceptional commitment to growing the dairy industry in Wisconsin. The Larsons were recognized for their eight years of perseverance of doing what is not only right for their operation, but for the entire industry. The Larson's story began in 2002 when Larson Acres applied for a conditional-use permit for a heifer facility. The application met with considerable local opposition and their ensuing experiences made them "poster children" of sorts for the adoption of Wisconsin's landmark Livestock Facility Siting Law. In their recognition it was stated that the industry owes a great debt to the Larsons for not standing idly by when the Town made decisions inconsistent with the Siting Law, but rather stood up for itself and the industry in court, we hope when all is said and done, establishing a clear precedent under the law that will benefit every dairy producer trying to expand his or her operation by playing by the rules,” according to the DBA web site

Feb. 8, 2011 – Wisconsin Supreme Court justices rule that both the citizens and Town of Magnolia’s petition to review the appeals court ruling has merit, agreeing to hear the case to re-instate the 2008 lower court ruling in their favor. Citizens, the town and Larson acres were given 30 days to submit written arguments on their positions. Larson was given 20 additional days to respond to the citizens and the town. Citizens and the town were given 10 more days beyond Larson Acres’ response to file a final response. The high court is now reviewing case.

Sept. 7, 2011 – Wisconsin Supreme Court hears oral arguments on town and citizen appeals to re-instate Rock County Circuit Court 2008 ruling in favor of local conditions on state permits to build livestock facilities for Concentrated Animal Feeding Operations, such as Larson Acres Inc.’s heifer facility, now operating since 2003.

Dec. 22, 2011 – Attorney Eric McLeod of Michael Best and Friedrich, who with David Crass has represented Larson Acres Inc. for many years, resigned from Gov. Scott Walker’s judicial selection commission, according to a Milwaukee Journal Sentinel account filed on line Dec. 29. “Michael Best and Friedrich disclosed earlier in 2011 that state Supreme Court Justice Michael Gableman did not pay for legal work that McLeod performed from July 2008 to July 2010 as Gableman fought an ethics charge. The firm had a deal with Gableman that it would get paid only if Gableman prevailed in the ethics case and was able to persuade the state of Wisconsin to pay his attorney fees – an arrangement other attorneys have called highly unusual,” according to Patrick Marley of the Journal Sentinel. The state judicial ethics code says judges cannot accept gifts from those who are likely to appear before them. McLeod represented Larson Acres before Gableman and other high court justices in September 2011. “Walker continues to review whether he will allow McLeod to continue serving as one of the attorneys working as special counsel to help Wisconsin defend itself against legal challenges over the new law Walker wrote and signed this year that all but eliminates collective bargaining for most public workers. So far, Michael Best has been paid more than \$294,000 for that work,” the Journal Sentinel stated.

Dec. 29, 2011 – A U.S. Immigration and Customs Enforcement audit led Larson Acres to terminate several employees who were found to be illegal immigrants, according to a Madison State Journal report. Mike Larson, dairy manager of Larson Acres, said "around 10" illegal immigrants were fired from the operation in December. He added that the fired employees were not detained by any law enforcement agencies. "We had some people working here who gave us false identification and we had to let them go," he said. ICE spokeswoman Gail Montenegro said the agency reviewed employment records at Larson Acres in September. "However, no arrests were made and no one

was detained," she said in a statement. Larson Acres was reported to have 63 employees, the operation to have 2,900 adult cattle, of which 2,400 are milking cows.

Jan. 19, 2012 – State Supreme Court Justice Michael Gableman said in a virtually blanket order and notice to attorneys in multiple cases that he would not step aside in three matters. The matters include an attempt to reopen last year's decision that allowed a new law to take effect that curbed the power of public unions and the long-standing conflict with Larson Acres Inc. and its concentrated animal feeding operations. , The Milwaukee Journal-Sentinel reported the notice from Gableman in an article Jan. 20. Attorneys in the cases asked Gableman to remove himself because other parties in the cases were represented by Michael Best & Friedrich, which defended Gableman against an ethics allegation without billing him, the Journal-Sentinel account stated. Lawyers have said the legal work was likely worth tens of thousands of dollars. Now, the full court will have to decide whether to force Gableman from the cases. The court ruled 4-3 last year that justices do not have the power to remove one another from cases, but the latest requests for his disqualification are sure to reignite that debate on the fractured court. The state judicial ethics code says judges cannot accept gifts from those who are likely to appear before them. Separately, it says they must recuse themselves from cases in which a reasonable person might question their ability to be impartial. <http://www.jsonline.com/news/statepolitics/gableman-says-he-wont-recuse-himself-from-disputed-cases-3u3sq57-137796433.html>