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*pro bono publico*

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February 1, 2008

Wisconsin Livestock Facility Siting Review Board  
c/o Wisconsin Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911

**Re: Request for Review of the Decision of a Political  
Subdivision Pursuant to Wisconsin's Livestock Siting Law,  
Wis. Stat. § 93.90(5)(b)**

**Request for an Initial Determination as to When the Local  
Approval Occurred**

**Request for Leave to Amend or Supplement the Statement  
of Position by February 22, 2008**

To Members of the Livestock Facility Siting Review Board:

The aggrieved persons listed below, by their attorneys Midwest Environmental Advocates, Inc., hereby request the review by the Wisconsin Livestock Facility Siting Review Board of Crawford County's approval of an application by Roth Feeder Pig, Inc. for an expanded livestock facility. This review is authorized by Wisconsin's Livestock Siting Law, Wis. Stat. § 93.90(5)(b).

### I. Name and Address of Aggrieved Persons

The following twenty-six persons are "aggrieved persons," as defined by Wis. Stat. § 93.90(5)(a), because each of them either lives or owns land within two miles of the livestock facility that is proposed to be expanded, and whose approval for expansion is the subject of this request. Please find the enclosed DATCP forms, signed by each aggrieved person, attesting to this fact.

Mr. George Andrews  
31821 Hwy. 131  
Wauzeka, WI 53826

Ms. Debra Arnold  
46808 Mill Street  
Wauzeka, WI 53826

Mr. and Mrs. Brian Marx  
2305 Hwy. 80 S.  
Cuba City, WI 53807

Mr. and Mrs. Michael Bowers  
31579 Boydtown Lane  
Wauzeka, WI 53826

Mr. and Mrs. Edward Pitzer  
47683 Hwy. 60  
Wauzeka, WI 53826

Ms. Pauline Christ  
47310 Hilldale Road  
Wauzeka, WI 53826

Mr. and Mrs. Leonard Rose  
48371 Hwy. 60  
Wauzeka, WI 53826

Mr. Alice Clark  
Ms. Claire Straka  
29442 Pleasant Ridge Road  
Wauzeka, WI 53826

Ms. Evelyn Scheckel  
47878 Hwy. 60  
Wauzeka, WI 53826

Mr. and Mrs. Dennis Cooley  
30203 Pleasant Ridge Road  
Wauzeka, WI 53826

Mr. and Mrs. John Straka  
50532 Crowfoot Lane  
Wauzeka, WI 53826

Ms. Deborah Fidler  
29656 Big Valley Lane  
Wauzeka, WI 53826

Mr. and Mrs. Al Zinkle, Jr.  
30059 Boydtown Hollow Road  
Wauzeka, WI 53826

Mr. and Mrs. Fred Hausler  
48072 Knob Lane  
Wauzeka, WI 53826

Mr. and Mrs. A.P. Zinkle  
46900 Scenic Boydtown Ave.  
Wauzeka, WI 53826

Mr. and Mrs. Robert Lenz  
48314 Buck Lane  
Wauzeka, WI 53826

Mr. Thomas Zinkle  
46804 Mill Street  
Wauzeka, WI 53826

## **II. Name and Address of Principal Representative**

The aggrieved persons listed above are represented in this matter by their attorneys,  
Midwest Environmental Advocates, Inc.

James N. Saul  
Staff Attorney  
Midwest Environmental Advocates, Inc.  
551 W. Main Street, Suite 200  
Madison, WI 53703

### III. Name and Address of Political Subdivision whose Decision is Challenged

The aggrieved persons challenge the decision of:

Crawford County  
Land Conservation Committee  
225 N. Beaumont  
Prairie du Chien, WI 53821

### IV. Date of Decision Issuance / Request for Initial Determination

As explained in detail below, the date that Crawford County issued the decision that is the subject of this request for review was January 23, 2008.

Under the Livestock Siting Law, an aggrieved person must request review of the local decision within thirty days of the political subdivision's approval or disapproval; thus, the political subdivision's "approval" or "disapproval" of an application is the "trigger" that begins the tolling of the thirty-day appeal period. Wis. Stat. § 93.90(5)(b).

The Livestock Siting Rule specifies in more detail the required format of a political subdivision's approval or disapproval. The Rule first explains that "[a] political subdivision shall issue its decision [granting or denying an application] *in writing* . . . based on *written findings of fact* included in the decision." Wis. Admin. Code ATCP § 51.34(3)(a) (emphasis added). The Rule goes on to explain precisely how the political subdivision must issue its approval:

If a political subdivision grants an application for local approval, the political subdivision shall issue the local approval to the applicant in writing. The local approval shall include a duplicate copy of the approved application, marked as "approved." The duplicate copy shall include all of the worksheets, maps and other attachments included in the application, except that it is not required to include engineering design specifications.

*Id.* at § 51.34(3)(b).

In the present request for review, there are two actions that arguably could constitute "approval" of Roth Feeder Pig, Inc.'s application, triggering the thirty-day period for requesting review. The Crawford County Land Conservation Committee ("LCC") asserts that the approval of Roth's application occurred on January 3, 2008. *See* Letter from Russell Hagen, County Land Conservationist, to Roth Feeder Pig Inc, January 23, 2008

(hereinafter, "Hagen Letter") (attached as Exhibit 1). The asserted approval took place at a meeting of the LCC on that date, by a vote of the committee.<sup>1</sup>

The January 3rd vote of the LCC, however, was insufficient under the Livestock Siting Law and Rule to constitute an approval. The January 3rd vote was not "in writing" as required by law; it did not "include a duplicate copy of the approved application[;]" nor did it include "written findings of fact." Wis. Admin. Code ATCP § 51.34(3). Even though Mr. Roth was present for that vote, he did not receive the requisite approval documents from the LCC on that date. The vote merely demonstrated the LCC's *intention* to issue its approval of Roth's application.

A full and formal approval, meeting the requirements of the Livestock Siting Law and Rule, did not occur until January 23, 2008. On that date, a letter was prepared and sent to Roth by County Land Conservationist Russell Hagen. *See* Hagen Letter at 1. That letter *did* include written findings of fact, along with the conclusions drawn by the LCC. The letter also included various conditions placed by the LCC upon the approval, and a copy of the approved application marked "approved" was attached. Hagen Letter at 3.

Because the necessary steps for a local approval were not completed by the LCC until January 23, 2008, this date is the official "approval" which commenced the thirty-day review period under the Livestock Siting Law. Wis. Stat. § 93.90(5)(b). The deadline for requesting a review by the Livestock Facility Siting Review Board under the Livestock Siting Law is therefore February 22, 2008.

The aggrieved persons listed above hereby request a review of Crawford County's approval of Roth Feeder Pig's application for a license for the expansion of a livestock facility. By requesting this review now, the aggrieved persons do not waive their claim that the applicable deadline for requesting such review is actually February 22, 2008, and the aggrieved persons expressly reserve the right to supplement or amend their Statement of Position at any time up to and including February 22, 2008.

Additionally, because of the potential for confusion in the interpretation of language in the Livestock Siting Law and Rule governing exactly when an approval occurs, and because of the LCC's assertion that approval occurred on January 3, 2008, the aggrieved persons listed above respectfully request that the Board make an initial determination as to when Crawford County's "approval" occurred. It is further requested that the Board

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<sup>1</sup> The LCC had determined that the Roth application was complete on October 5, 2007. Hagen Letter at 1. January 3, 2008 was exactly 90 days following that determination. Because the Livestock Siting Law requires a political subdivision to "approve or disapprove an application for approval no more than 90 days after the day on which it notifies the applicant that the application for approval is complete[;]" Wis. Stat. § 93.90(4)(d), the LCC clearly has an interest in asserting that the "approval" occurred on January 3.

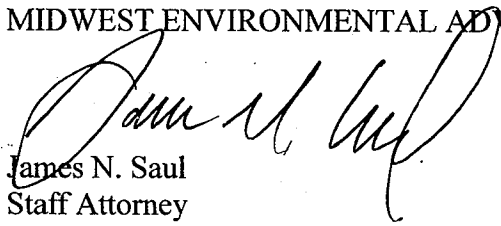
grant the aggrieved persons listed above leave to amend or supplement their initial Statement of Position by February 22, 2008.

**V. Name and Address of Local Applicant**

Howard A.V. Roth  
Roth Feeder Pig, Inc.  
31961 Hummingbird Lane  
Wauzeka, WI 53826

Respectfully Submitted,

MIDWEST ENVIRONMENTAL ADVOCATES, INC.



James N. Saul  
Staff Attorney

Virgil Butteris-Chair Pete Flesch-Vice Chair  
Phil Mueller Mike Killburg Harriet Behar  
Don Daentl Tom Cornford

Land Conservation Committee  
225 N Beaumont  
Prairie du Chien WI 53821  
608 326 0270

## Crawford County Land Conservation Committee

January 23, 2008

Roth Feeder Pig Inc.  
31961 Hummingbird Lane  
Wauzeka, WI 53826

RE: Application for Expanded Livestock Facility

Dear Mr. Roth:

The Crawford County Land Conservation Committee has approved the application for your expanded livestock facility per your request of August 20, 2007 at its meeting of January 3, 2008. This letter is Crawford County's written decision with findings of fact, conclusion and order.

Findings of fact:

This was 90 days after the committee ruled on October 5<sup>th</sup> 2007 that your application was complete.

Notification was sent to adjacent landowners of your application on October 18<sup>th</sup>.

Additional information was requested from you about additional livestock depositing manure on the spreadable land in the Nutrient Management Plan. You provided that information November 21<sup>st</sup> 2007 by revised SNAP+ data submitted by Ed Ruff.

A public hearing was held November 26<sup>th</sup> at the Crawford County Administration Building from 7:00 p.m. to 10:00 p.m. Approximately 190 attended. A registration sheet was provided for those who wished to register their support or opposition or just to indicate their presence. Not all attending registered. All registration sheets are on file. Testimony was taken throughout the three hour time period. A five minute time limit was given to each speaker giving testimony. Nine people spoke for; twenty two spoke against, and eight spoke to give information. A written and audio record of those speaking is on file. Written documents were presented by the Crawford Stewardship Project. They are under the heading of Airborne Disease, Human Health Issues, Nutrient Management – Expert Testimony, Hydrogeology & Engineering – Expert Testimony, Waterborne Disease – Confined Animal

Feeding Operations, and Health Effects of confined Animal Feeding Operations. These documents are on file and available for public viewing. Written documents were presented by AV Roth. They include Pork Quality Assurance Plus Program Certification, Quick Facts, the Pork Industry at a Glance, Biosecurity Guide for Pork Producers, USDA Swine 2006 Reference of Swine Health and Management Practices in the United States.

The Crawford County Land Conservation Committee accepted written public comment during the 90 day period between August 5, 2007 and January 3, 2008. The Land Conservation Department received 158 letters, the majority opposing the issuance of a license. The letters received to date were copied and distributed to all the committee members at the December 7, 2007 meeting.

Also in the record is A Collection of Brief Articles from Credible Sources prepared by the Crawford Stewardship Project submitted to each Crawford County Land Conservation Committee member September 14, 2007 at its regular monthly meeting.

On October 25, 2007 Mark Peterson, Crawford County Corporation Counsel responded in writing to a request by County Board Chair Ron Leys as to what discretionary authority the County has in regard to the acceptance, processing and granting of a license under the County Ordinance. This response was distributed to all county board and LCC members and is in the public record.

During the Crawford County Land Conservation Committee meeting of December 7, 2007, the committee voted to hire a Nutrient Planner certified in Wisconsin to review the Nutrient Management Plan submitted by Roth Feeder Pig, Inc. The committee hired Randy Busch, a certified planner working for Rock River Labs in Watertown Wisconsin. He appeared at the January 3, 2008 LCC meeting with the completed review. The committee questioned him about his summary and questions he raised in that summary. Ed Ruff, the consultant hired by Roth Feeder Pig Inc was present and addressed all the questions raised in Mr. Busch's review. The review is on file as is the discussion by the committee at the January meeting.

The Crawford County Land Conservation Committee voted with 5 members approving, two members abstaining, and the county board chairman voting to approve.

Therefore Crawford County hereby issues a license to Roth Feeder Pig Inc. to operate a livestock facility under the terms of the Crawford County Livestock Facility Licensing Ordinance. The County's decision is based on finding of fact supported by evidence in the record. The decision is also based in part on presumptions created by ATCP 51.

Conclusion:

If the facility operated as described in the application and the submitted applicable worksheets that have been reviewed by the Crawford County LCD and approved by the

Crawford County Land Conservation Committee, the facility should effectively meet the required state standards as specifically described in Wisconsin Administrative Rule ATCP51 and passed as An Ordinance for Licensing Livestock Facilities by Crawford County.

Order:

On January 3, 2008 the Crawford County Land Conservation Committee approved a license for the expansion of Roth Feeder Pig Inc. to 1703 animal units at its site on 31961 Hummingbird Lane, Wauzeka WI 53821.

- This license is conditioned upon compliance with the submitted application and worksheets and applicable standard of ATCP 51 of the Wisconsin Administrative Rule.
- This license is also conditioned upon an annual submittal of an updated nutrient management plan for review and approval by the Crawford County Land Conservation Department by January 31 of the upcoming crop year.
- It is further conditioned upon certification of construction compliance by a Wisconsin Certified Professional Engineer.
- Compliance Monitoring and Penalties shall occur by the Crawford County Land Conservation Department as authorized under Section 15 of the Crawford County Ordinance for Licensing Livestock Facilities.

Included is a duplicate copy of the approved application marked "Approved". It includes worksheets, maps, and documents (other than engineering specifications) included in the application.

This is your written notice with the accompanying duplicate copy of the approved application.

Respectfully, for the Crawford County Land Conservation Committee

Russell Hagen  
County Land Conservationist  
225 N. Beaumont Suite 230  
Prairie du Chien, WI 53821  
608 326 0272