

December 20, 2024



James Salscheider
WDNR
2984 Shawano Ave
Green Bay, WI, 54313
Via email

Re: Rob-N-Cin Farms LLC Concentrated Animal Feeding Operation Permit, WPDES WI-0067409-01-0

On behalf of Milwaukee Riverkeeper, we provide the following comments on the proposed Concentrated Animal Feeding Operation (CAFO) permit for Rob-N-Cin Farms (Farm) in the Township of Trenton in Washington County. Milwaukee Riverkeeper is a non-profit organization dedicated to protecting water quality and wildlife habitat and advocating for sound land use in the Milwaukee River Basin. We are concerned about the impacts of Rob-N-Cin's plans to expand its herd from 930 milking and dry cows, 80 large heifers, 50 steers, and 150 calves (1,470 animal units), to over 2,500 animal units by 2028. Rob-N-Cin Farms currently generates approximately 9,470,254 gallons of liquid manure and process wastewater and 1,528 tons of solid manure. After the expansion, Rob-N-Cin Farms will generate 16,851,866 gallons of manure and process wastewater and 795 tons of solid manure. Increased manure spreading over fields in our watershed is likely to result in more runoff of pollutants into our rivers, wetlands, groundwater, and watershed. Rob-N-Cin Farms has 2,778 acres in its approved nutrient management plan, of which 2,323 acres are rented or in contract agreements and 455 acres are owned. The Farm does not have the 180 required days of storage for this manure, but has received permission to build a third storage tank to facilitate this expansion.

It is our understanding that Rob-N-Cin Farms has been operating illegally as a CAFO for 2 years, or longer with more than 1000 animal units (1,470 animal units). The purpose of the Clean Water Act regulations, and the corollary Wisconsin Pollutant Discharge Elimination System, is to protect waters of the state. Violators should be penalized for knowingly being out of compliance. Without this, other farms will similarly expand to CAFO status without seeking permits (until forced to), which could be a threat to our rivers, drinking water, and public health. Due to this noncompliance, local residents have already been robbed of their opportunity to comment on the impacts from the farm expansion that has already occurred.

To the extent that another purpose of regulations is to bring farms into compliance with the law, and ensure they follow best management practices designed to protect our water and communities, it is important that those permits are as strong as possible. We offer the following comments to strengthen the proposed permit, which as written, is not adequate to protect waters of the state.

Background

We are concerned about the expansion of the Rob-N-Cin farm mostly due to environmental conditions present at the farm location/production areas, as well as the proposed areas where manure would be spread throughout the Milwaukee River Basin. The Greater Trenton area has very shallow, permeable soils, shallow depths to groundwater, and some areas of karst closer to the Newburg area (see attached maps). All of these factors make the drinking water aquifer susceptible to contamination from manure and other agricultural chemicals.

The eastern part of [Washington County](#) and western part of [Ozaukee County](#) have been identified by USGS and WDNR to have soils that are more susceptible to groundwater contamination. Several WDNR data sets as part

of the [Groundwater Retrieval Network](#), show data going back to 1994 showing dozens of wells in the Trenton/Newburg area with high nitrate levels and some hits for bovine bacteria. The Newburg well has high levels of nitrate, and there is a special well casing area spread over several square miles from past agricultural contamination. The depth to bedrock and other soil characteristics above bedrock are not well known in many areas of the Milwaukee River Basin, and often soil properties are estimated based on limited information that is available.

Given the Rob-N-Cin farm is already not in compliance with state law, the amount of karst soils in the area and the lack of information about exact karst lines/underlying geology in the area, and the nearly 17 MG of liquid manure that would have to be spread if the Farm nearly doubles the number of animal units, **it's reasonable to require more best management practices and monitoring to protect both surface waters and groundwater.** Governments can enact additional restrictions on CAFOs if those restrictions are based upon “reasonable and scientifically defensible findings of fact” that “clearly show that the prohibition is necessary to protect public health or safety.” Wis. Stat. § 93.90(3)(c).

In addition to the 2,788 acres of fields where Rob-N-Cin farm will spread manure, the Golden E CAFO to the northwest in Farmington is spreading over 4,500 acres, and Cheeseville CAFO (recently defunct) is spreading on 2,121 acres all in this same area, for a total of 9,440 acres. Currently, the Town of Trenton does not allow for CAFOs as part of its Agricultural Enterprise zoning, but is working on updating their ordinances. They have signaled that they will likely allow for up to 2,500 animal units as part of future zoning, which may attract more local farms to expand or move into the area.

Most of the rivers and streams that are most likely to be impacted by manure spreading are already impaired by phosphorus, sediment and bacteria—meaning, these rivers have unhealthy levels of pollutants, which affect our ability to use our waters for activities such as fishing, swimming, and drinking. Increasing animal units and gallons of manure spread will exacerbate this pollution problem, especially if there is not enough land or best management practices to accommodate the increased manure. In addition to other CAFOs, there are also cumulative impacts to local waters from other entities that spread manure and wastewater on agricultural fields, such as industrial users and municipal sewage treatment plants, which could be spreading on the same area fields. We are concerned about direct, indirect, and cumulative impacts of more manure spreading on our rivers, our water quality, and quality of life.

Better Protect Wellheads and Riparian Buffers

It is imperative that area wells, both adjacent to the Rob-N-Cin barnyard and farm facility, but also near manure spreading areas, are protected with large wellhead buffers where spreading is not allowed. Residents have stated that the Farm has not provided this level of protection in the past, and there are wells in the area already experiencing high nitrate levels. **We recommend that these wellhead areas be protected by buffers of at least 1,000 feet, especially where the underlying geology (karst/Silurian dolomite/shallow soils) shows increased risk of groundwater contamination.** State law (NR 243.15(1)(a)2) affords 1,000-foot setbacks for community wells but only 250-foot setbacks for private wells for “barnyards, feedlots and reviewable facilities or systems.” This same level of protection should be afforded to areas where manure is being spread.

This Farm is adjacent to Cedar Creek and the Cedarburg Bog, but will also likely impact dozens of streams that drain to the Milwaukee River and Lake Michigan. While these waters were not mentioned as downstream waters in the permit notice, it's likely the impact from manure spreading from this Farm is likely to affect large areas of both Washington and Ozaukee County, as well as downstream waters. We are concerned that as written, the permit is not specific enough to provide protection for Cedarburg Bog, which is a State Natural Area of high quality, Cedar Creek or downstream surface waters.

It is critical that we protect surface waters, Surface Water Quality Management Areas (SWQMAs), as well as high quality natural areas such as the Cedarburg Bog, from leakage from production areas as well as from runoff of manure applied to fields. It is our understanding that federal and state regulations allow for buffers to be mandated as part of permits. Under NR243.14, CAFO WPDES permits do not prohibit applications of manure and process wastewater within the SWQMA, which is generally 300 feet from navigable rivers/conduits to rivers and 1000 feet from lakes. State regulations do require CAFOs to take additional precautions when applying manure or process wastewater within the SWQMA. One option is to maintain a 100-foot setback from navigable waters and conduits, but there are other options that allow for a 21- or 35-foot setback for applying manure by navigable waters or conduits, with additional requirements that involve incorporating manure into soil and complying with restrictions on application rates in different scenarios.

Given environmental conditions in this area and past performance of this farm, WDNR should require larger buffers from surface waters. If possible. While state law under NR 243 does allow for several different options, Federal law in 40 CFR §122.42(e)(1)(vi) states that CAFO permits can be altered to: “Identify appropriate site-specific conservation practices to be implemented, including as appropriate, buffers or equivalent practices, to control runoff of pollutants to waters of the United States.” And as stated above, state law says that governments can enact additional restrictions on CAFOs if those restrictions are based upon “reasonable and scientifically defensible findings of fact” that “clearly show that the prohibition is necessary to protect public health or safety.” Wis. Stat. § 93.90(3)(c). **We recommend that WDNR use that discretion to require stronger protections for manure spreading in SWQMAs and encourage greater setbacks for spreading manure near waterways, and wider riparian buffers and filter strips to better protect waters of the state, and high-quality areas like the Cedarburg Bog.** There is funding available in the Milwaukee River Basin to incentivize better vegetated buffers and conservation easements both through farm bill programs and MMSD programs that could partially offset these costs.

Strengthen the Nutrient Management Plan

The Nutrient Management Plan (NMP) is the heart of the permit where all of the best management practices and controls are supposed to demonstrate how the Farm will comply with the Clean Water Act and state regulatory requirements. Federal regulations state the goals of an NMP are to: “Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater.” 40 CFR §122.42(e)(1)(viii)

Nutrient Management Plans, based on case law (*Waterkeeper Alliance, Inc. vs. US EPA*, 399 F.3d 486 (2005)) and the code of federal regulations, need to contain easily understandable “terms” for the public of what is going to be required for a farm to comply with the Clean Water Act. For example, how much manure will be spread in different fields per year based on the phosphorus index of the soils, what crops are growing in the fields in different years and how will they utilize nutrients, and how crops going to be changed year to year. If the farmer changes crops and rotations, that should also impact nutrient application. There needs to be a sufficient level of detail regarding how best management practices will protect waters of the state, and referring to state technical standards (like NRCS tech standards) is not sufficient. Federal regulations state:

40 CFR §122.42(e)(5): Terms of the nutrient management plan. Any permit issued to a CAFO must require compliance with the terms of the CAFO’s site-specific nutrient management plan. The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined by the Director to be necessary to meet the requirements of paragraph (e)(1) of this section. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater required by

paragraph (e)(1)(viii) of this section and, as applicable, 40 CFR 412.4(c), must include the fields available for land application; field-specific rates of application properly developed, as specified in paragraphs (e)(5)(i) through (ii) of this section, to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application.

This level of detail is not provided in the NMP for Rob-N-Cin. And, in many cases, even the best conceived NMPs are often not followed in the field, and are self-regulated, self-enforced, and self-reported.

In the case of Rob-N-Cin Farms, there are a number of other reasons to question if they can be trusted with the self-reporting framework of the NMP under the WPDES program. In addition to the Farm not seeking a CAFO permit until they were told by WDNR to do so (in a Notice of Noncompliance in August 2023), after several years of operating as a CAFO, the Farm did not have adequate manure storage for their existing herd. The Farm also did not disclose to WDNR that they had several other barnyards/farm facilities where they regularly dispose of manure (Farm at Hwy I and Hickory Road, and Farm at 2141 W. Center Rd in Saukville). **All areas that are being used by this farm to manage their waste should be included in the NMP. If the DNR doesn't know all the areas where manure will be applied, then they can't enforce the law or adequately protect waters of the state. WDNR should require Rob-N-Cin to update their NMP and hold another public hearing where neighbors of the undisclosed satellite farms can be afforded an opportunity to comment.**

Alternatively, if the Farm is transferring manure to other owners/satellite farms, which they could do, then state and federal regulations around transfer of manure should be included in the proposed permit along with a provision in the annual report requiring reporting on how much waste was transferred:

40 CFR §122.42(e)(3): Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter or process wastewater to other persons, Large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of 40 CFR part 412. Large CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of manure, litter or process wastewater transferred to another person.

State law (NR 243.142(3)) requires approval by the Department if a permittee wants to transfer manure:

Department approval. If a permittee wants to transfer responsibility to another person for the land application, disposal or use of manure or process wastewater that will be distributed in accordance with one of the methods in sub. (2) (b) to (e), the permittee shall obtain written department approval for the distribution. If written approval is not obtained, the permittee remains responsible for the land application, disposal and use of the distributed manure or process wastewater in accordance with the terms of the permit and this chapter. To obtain department approval for the purposes of transferring responsibility, the permittee shall comply with all of the following conditions:

(a) Neither the permittee, its agent or a contract hauler working on behalf of the permittee *may land apply* the distributed manure.

(b) The permittee shall demonstrate to the department that the distributed manure will be beneficially used. (Several other conditions follow in state code)

We are concerned that given that some of the fields proposed for spreading are over 10 miles away, that the farm will overspread in nearby fields in the Trenton/Newburg area, many of which have major spreading restrictions due to waterways and wetlands present, as well as extensive areas of karst soils, shallow soils, and

areas with 2 feet or less depth to groundwater. In addition, a review of the restriction maps for the Ron-N-Cin NMP doesn't provide much in the way of assurances that groundwater or surface waters will be protected. Of the 200 fields listed in the NMP, 187 have some type of restriction, with the majority of fields having multiple restrictions. See attached spreadsheet, developed by the Sustain Rural Wisconsin Network (SRWN), which shows the P levels, soils test dates, and type of field restrictions from the NMP. **During the first permit term for this CAFO, we request that WDNR provide more regular oversight over Rob-N-Cin operations, especially regarding when and where manure is being applied. The permit should also spell out and incorporate the state and federal regulations for what types of changes to an NMP require public notice and public comment.**

The Milwaukee River Basin has Total Maximum Daily Loads (TMDLs) or pollution reduction plans for total suspended solids, total phosphorus, and bacteria. Increasing the amount of manure applied in the Milwaukee River Basin could make it harder to meet our TMDL goals. The TMDLs should also be considered and inform the NMP, soil phosphorus levels, and the manure application rates. Even if farms don't receive a Waste Load Allocation, we should ensure that we are using science to inform and require what is being applied to the land and where. **There are fields identified in the NMP where manure is much more likely to runoff to waters of the state within the Milwaukee River Basin TMDL area, given their location near Cedar Creek, unnamed tributaries, and the Milwaukee River. WDNR could require more restrictions for manure spreading in these areas to ensure protection of water quality.** In addition, it is our understanding that the existing phosphorus index goals set for the entire State may not be appropriate for an area that has an existing TMDL for phosphorus, and many scientists think the phosphorus index level for fields should be lower.

Require Proof of Rented or Contracted Lands for Manure Application

It is unclear if all the identified owners of fields identified in the NMP have given permission or have agreements with Rob-N-Cin allowing for their lands to be used for manure management. Given that the Farm only owns 455 acres (16%) of the acres required to spread nearly 17 million gallons of manure, **the DNR should ensure that the farm has access to all the fields claimed in their NMP, and that the landowners have given their consent.** NR 243.14(1)(b) allows for this, stating: "In cases where there is limited acreage available for application, the department may require that the permittee submit additional or more specific information, including verification that the permittee has permission to land apply manure on fields not owned by the permittee."

At a minimum, these contracts/agreements must clearly state: the landowner's name, field names by landowner, length of contract/agreement, and that the farm has permission to land apply manure. This information is not clear in the NMP and as a result, Rob-N-Cin could fail to comply with its permit terms, unless DNR requires this information. As stated above, we encourage more frequent reporting be required, at least during the period when the farm is going through rapid expansion.

Strengthen Monitoring Provisions in the Permit

We are concerned that the Farm only needs to meet storage at the production area for a 25-year storm. We are seeing increasingly frequent and volatile rain events due to climate change, where we are getting more rain per event. **Existing storage tanks should be actively monitored for leakage,** including incorporation of technology for leak detection, if possible. **Leak detection should be required with the construction of the new storage tank, and liners installed to minimize leakage. Groundwater monitoring should be required near the storage and production areas to detect any leakage and to protect groundwater resources.** State law (NR 243.15(7)) does allow: "The Department to require the installation of groundwater monitoring wells in the vicinity of manure storage facilities, runoff control systems, permanent spray irrigation systems and other

treatment systems where the department determines monitoring is necessary to evaluate impacts to groundwater and geologic or construction conditions warrant monitoring.”

Likewise, there is a provision that any discharge from a manure lagoon in the production area would need to meet surface water quality standards, but that seems impossible for any farmer to know given the lack of required surface water monitoring. It would be clearer for them to report immediately any such discharge and allow for the state to conduct monitoring to verify any impacts.

Likewise, in section 1.5 of the permit, detailing requirements around Ancillary Service and Storage Areas, the permit states that: “The permittee may discharge contaminated storm water to waters of the state from ancillary service and storage areas provided the discharges of contaminated storm water comply with groundwater and surface water quality standards.” How would a farm ever know if their actions were complying with groundwater or surface water quality standards when they are not required to monitor for either? Given this, it does not seem prudent to allow the facility to discharge any contaminated storm water to waters of the state without any required practices aimed at reducing this or any monitoring. Some runoff may be unavoidable in emergency situations, but the permit is not clear when such discharge would be allowed from these areas. Is that also a 25-year storm?

The permit states in section 1.6.1., under General Spreading Restrictions, that “During dry weather conditions, manure or process wastewater may not run off the application site, nor discharge to waters of the state through subsurface drains.” How can this be assured without surface water monitoring? How are subsurface drains monitored? **There could be provisions added to the permit that would require these subsurface systems to be mapped and for a subset to be monitored.** A recent case in Washington State, *Washington State Dairy Federation v. State*, 18 Wash.App.2d 259, 490 P.3d 290, YEAR, found that the state CAFO permit did not impose sufficient surface water monitoring requirements on CAFOs, where both tile drains and any emergency winter land applications by CAFOs had potential to result in discharges into surface water. Furthermore, they found that the State (Washington Department of Ecology) undermined its ability to enforce effluent limitations in the permits by declining to provide for adequate monitoring of those activities. Federal Water Pollution Control Act §§ 301, 510, 33 U.S.C.A. §§ 1311(a), 1370; Wash. Rev. Code Ann. §§ 90.48.160, 90.48.260(1); 40 C.F.R. § 122.23(a).

Other than required soil sampling requirements every four years (permit section 1.7.2), and some sampling of manure before it is moved from tanks to fields for application, there are only visual inspections required in most of the permit and no numeric effluent limits included. It is also likely that sampling of manure does not include the right pollutants or forms of pollutants that are subject to TMDLs, for example. This permit, and most CAFO permits, don’t require numeric effluent limitations, and most states provide water quality-based effluent limitations in the form of best management practices, which is nonsensical. In the recent Washington State case mentioned above, the Court found that the permit was “too vague to prevent water quality violations from land application fields.” Federal Water Pollution Control Act §§ 301, 302, 402, 33 U.S.C.A. §§ 1311(b)(1)(C), 1312(a), 1342(a); 40 C.F.R. § 122.4(a) While caselaw and permits in Washington don’t bind the WDNR in any way, it’s worth noting that the Wisconsin permits are similarly vague and do not provide the needed assurances to protect waters of the state. And given that the Milwaukee River Basin has 3 TMDLs, due to established issues with streams NOT meeting water quality standards for total phosphorus, bacteria, and total suspended solids, **we’d recommend that WDNR consider requiring some targeted surface water monitoring.** Milwaukee Riverkeeper could help monitor surface waters for impacts, but would need to receive the information of where and when manure will be spread.

The Court in the Washington case also took issue that the boilerplate CAFO permit did not impose sufficient groundwater monitoring requirements on CAFOs, even though permits required soil monitoring, and found

that soil monitoring on its own was inadequate to ensure compliance with the condition that CAFOs not cause or contribute to a violation of water quality standards. Federal Water Pollution Control Act §§ 301, 510, 33 U.S.C.A. §§ 1311(a), 1370; Wash. Rev. Code Ann. §§ 90.48.160, 90.48.260(1); 40 C.F.R. § 122.23(a). We agree that more needs to be required to ensure protection of our groundwater.

In Wisconsin, there has been some groundwater monitoring at several CAFOs including Gordonville and Central Sands Dairy, which have shown extensive contamination from barnyards. In *Waterkeeper Alliance vs. US EPA* (399 F.3d 486, 2005), the Court found that EPA acted reasonably in choosing as best available technology for beef and cattle CAFOs an option requiring that groundwater-related requirements be implemented, as necessary, on a case-by-case basis, rather than uniformly imposed." In addition, in [Clean Wisconsin, Inc. v. Wisconsin Department of Natural Resources](#), 2021, WI71, the Wisconsin Supreme Court held that the DNR had explicit authority to impose a maximum on the number of animal units and impose conditions on the monitoring of off-site groundwater for CAFOs like Kinnard Farms, if the conditions are necessary to ensure that the permit holder complies with water pollution limitations or standards. **We recommend that DNR use their authority to require quarterly groundwater monitoring at this CAFO site and at a minimum of three fields that are most vulnerable to contaminating waters based on site geology, proximity to private wells, or location adjacent to surface waters.** The spreading should be suspended and monitoring increased if the Preventative Action Limits for nitrate, coliform bacteria, or other manure related contaminants are exceeded. If exceedances are detected, follow up monitoring should be required as well as any altered best management practices required to meet water quality standards.

In the spill reporting section (3.1.11), the permit states that "The permittee shall notify the Department in in the event that a spill or accidental release of any material or substance results in the discharge of pollutants to the waters of the state at a rate or concentration greater than the effluent limitations or restrictions established in this permit, or the spill or accidental release of the material is unregulated in this permit, unless the spill or release of pollutants has been reported to the Department in accordance with s. NR 205.07 (1)(s), Wis. Adm. Code, and the "Noncompliance - 24 Hour Reporting," section of this permit." How would a farm know if their discharge was at a concentration greater than effluent limitations when there are no numeric limitations and only best management practices? This section should be clarified. The Rob-N-Cin Farm recently had manure overflow from a pit at one of their satellite farms (on Center Street in Saukville) into a ditch that ran along the road. That spill was reported to WDNR by local residents.

Thank you for your consideration of these comments. If you have any questions, please feel free to contact me at (414) 378-3043.

Sincerely,



Cheryl Nenn
Riverkeeper

Cc: Jennifer Bolger Breceda, Executive Director