

Kewaunee County Land and Water Conservation Regularly Scheduled Committee Meeting
Kewaunee County Fairgrounds Office January 6, 2015 9:00 AM

2014-2016 Kewaunee County Land and Water Conservation Committee (LWCC) Members:

John Pagel – Chair (County Board member)
Ron Paider – Vice Chair (County Board member)
Lee Luft – Secretary (County Board member)
Bob Garfinkel – Committee Member (County Board Member)
Davina Bonness – County Conservationist
Clark Reimer (USDA Farm Service Agency Representative)
Aerica Bjurstrom – UW Extension Agricultural Agent

Kewaunee County Land and Water Conservation (LWCD) Staff:

Davina Bonness – County Conservationist
Open Position – Conservationist Specialist
Paul Fredrich – Conservationist - Soils Specialist
Theresa Albrecht – Program Specialist
Theresa Marcusen – LWCD Secretary

Cooperating Agency Members from the United States Department of Agriculture (USDA):

Joe Johnson -USDA Natural Resources Conservation Service District Conservationist
Aerica Bjurstrom - UW Extension Agricultural Agent
Brian Maedke – USDA Animal and Plant Health Inspection Service (APHIS) *Attends as appropriate.*

1) Call to Order: Meeting called to order at 9:00 AM by Chairman John Pagel

2) Roll Call: Committee Members present: John Pagel, Ron Paider, Lee Luft, Bob Garfinkel, Clark Reimer. LWCD and Cooperating Agency Staff present: Davina Bonness, Brian Maedke-USDA. Aerica Bjurstrom was absent. Kewaunee County Board Chairman, Ron Heuer was also present.

3) Approval/Repair of Agenda: Motion to accept the January 6th agenda as presented was made by Ron Paider and seconded by Bob Garfinkel. Committee vote was unanimous in favor of the motion.

4) Correspondence: There was no correspondence regarding the regularly scheduled meeting of the Land and Water Conservation Committee.

5) Public Comments regarding the regularly scheduled Land and Water Conservation Meeting: There were six public comments.

Pat Schoenbeck, Casco Town Resident: Ms. Schoenbeck read the following statement entitled, “Solving Water Problems While Taking Care of Our Dairy Industry”: I am here today because I read the minutes of your meeting last month. I was particularly struck by an exchange that occurred between Mr. Luft and Mr. Pagel during the public comments portion of your meeting, when you responded to a request a gentleman named Tom Konop had made. I’ll read from your minutes:

“Mr. Konop asked for an update (progress, timetables, etc.) on possible technical solutions for processing manure that would help Kewaunee County address its water quality concerns.”

There was quite a discussion that followed, about “potential” technological answers and more updates and the need for further study and so forth. (I have to cut to the chase because I only have 3 minutes here to speak).

Mr. Luft raised concern about what we can do in the more immediate future, “to reduce the on-going threats to our ground and surface waters”. He goes on to suggest your committee “evaluate options to present to the DNR and DATCP that could include halting the further growth in herd sizes or at least limiting the growth in herd size, or potentially sending any new volume of manure outside of Kewaunee County for spreading or processing”.

Mr. Pagel's response was, "...it is not the position of this committee to tell a farmer how many cows he can or cannot milk." That statement really struck me, and then I read in the minutes: "Pagel pointed out that we need to solve our water problems while taking care of our Dairy Industry".

I am very confused. WHAT is the role of the Kewaunee County Land and Water Conservation Committee if it isn't about protecting our land and water? While you are busy taking care of the Dairy Industry, who is taking care of everyone else? When I think of all the damage that has already been done by an industry hell-bent on expansion no matter what, it makes my head spin!

Do you really plan to keep dragging your feet and study this thing to death, while evidently ignoring the science we already have? And then you REFUSE to entertain the notion of limiting herd size? Are we all supposed to just wait and see how much more damage can be done before BIG TECHNOLOGY comes along and rescues us? Nobody can change the Karst geology we have in this county. It makes us especially vulnerable to groundwater contamination. That's scientific fact, PERIOD. It's not anyone's fault but it IS our REALITY!

You MUST consider limiting herd size until we can figure out what we are going to do with all this manure. We don't need more of what we already can't handle. That's just common sense. And I am sorry, Mr. Pagel, but if your priority to take care of the Dairy Industry, trumps the priority you should have as chair of this committee to protect our land and water, I urge you to reconsider remaining as chair, because clearly, you have a conflict of interest.

Bill Iwen, Town of Pierce Resident: Mr. Iwen spoke in support of the comments above by Ms. Schoenbeck. Mr. Iwen said more needs to be done now to lessen and then reverse the damage being done to our ground and surface waters.

Joe Musial, Kewaunee County Resident: Mr. Musial wants to see action on fragmite control. Mr. Musial also commented that a leaking manure hauling trailer had been repaired and said that manure leakage on the County roadways from that truck has been halted.

Mary Goodner, Algoma City Resident: Ms. Goodner held up several articles from the latest edition of the Peninsula Pulse that all referenced groundwater problems in and around Door and Kewaunee County. Ms. Goodner said that "contaminated ground and surface water is a problem that is not going away and needs to be dealt with now, in a responsible and effective manner."

Dale Goodner, Algoma City Resident: Mr. Goodner spoke in support of Ms. Schoenbeck's comments and added that this is not the time to make herds bigger in Kewaunee County".

Dick Swanson, Algoma City Resident: Mr. Swanson indicated that one of Kewaunee County's most recognizable tourist attractions, Crescent Beach in Algoma, was closed a total of 22 times last season (2014 summer season). Mr. Swanson asked how we could build our tourism base if we must continually close our beaches in both Algoma and Kewaunee. Mr. Swanson also indicated that more signs are needed to warn visitors of the beach closings. Mr. Swanson said that often only one or two signs are posted and that these are posted at the far North and South ends of the beach. Some visitors drive up to the beach on Highway 42 and never see the beach closure signs and that this puts the city and county at some risk for liability should a child or adult ingest the water or enter the water with an open cut. Mr. Swanson who lives very near Crescent beach suggested a minimum of five signs are needed to adequately alert visitors to a beach closure.

Note: Later in this Kewaunee County Land and Water Conservation Committee Meeting it was decided that Lee Luft would contact Ms. Cindy Kinnard in the Kewaunee County Public Health Office to see if more signs could be purchased and set up during beach closing incidents. **UPDATE:** Luft has now contacted Cindy Kinnard in the KC Public Health Department and provided a listing of Beach Closing signs authorized by the Wisconsin DNR. Luft will meet with Ms. Kinnard on January 21st to discuss.

6) Department Reports:

- a) **Animal Waste Storage Permits:** No new animal waste storage permits were issued since December 2014.
- b) **Employee Interview Update:** Bonness reported that six candidates were interviewed and in a unanimous opinion of the search team, one candidate will be offered the position of Conservation Specialist (Davina Bonness' former position). In addition, one candidate who interviewed for the Conservation Specialist position was identified as an ideal Conservation Intern for Kewaunee County. Both the Conservation Specialist and Conservation Intern candidates

will have a background check and if acceptable, these candidates will be offered employment with Kewaunee County. **Note:** Lee Luft, Land and Water Conservation Committee Secretary and Finance Committee Chairperson was asked to bring the issue of additional funding to extend the time period of employment for a newly hired intern to the Finance Committee.

- c) **Cost Share Agreements:** Davina Bonness indicated that there were no new cost share agreements to report in December.
- d) **Conservation Plans for Approval:** Davina reported no new conservation plans to report in December.
- e) **2014 Programs – Wrap Up e.g. Farmland Preservation/Standards and Prohibitions Walkovers, etc.:** Davina Bonness reported that 204 NR151 Walkovers were completed in 2014 of which 155 were in full compliance, 31 need waterways or waterway improvement, 6 have old pits that need abandonment, 9 need BY/MS and there were 3 EPA visits to Kewaunee County. Bonness also reported that there were 52 Notices of Non-Compliance issued in 2014 most were due to Nutrient Management Plan non-compliance. Of the 52 Notices of Non-Compliance, 26 have been resolved or cancelled.

Davina Bonness also reported these highlights in her detailed 2014 progress report:

Successful abandonment of two Manure Storage facilities.

Land and Water Resource Management Plan presented in Madison to DATCP.

Surveyed, Designed and Installed 5 waterways

Assisted in DNR and EPA visits

Completed Kevin Ferry's MS/BY/GWW/Pond using a TRM (DNR) grant.

Please see Bonness' complete progress report that is **attached** to these minutes.

- f) **Public Health and Groundwater Protection Ordinance Update:** Bonness reported that she had checked with Jeff Wisnicky, acting Kewaunee County Administrator and Kewaunee County Corporation Council and Jamie Annoye, Kewaunee County Clerk regarding the Public Health and Groundwater Protection Ordinance and its placement on the April ballots for all Kewaunee County voting districts and she has been assured that all the ballot preparations have been completed. Last month, Bonness reported that some farms are already working to come into compliance with the manure stacking provisions of this ordinance, even though the ordinance has not been voted on by each Township as yet. Specifically, solid manure storage permits are being evaluated. Also, last month, Bonness reported that fact sheets with specific township-by-township information relating to the ordinance are in circulation.

7) Cooperating Agency Reports:

- a) **USDA Natural Resources Conservation Service (NRCS):** No report for January's meeting.
- b) **USDA Farm Service Agency (FSA):** No report for January's meeting.
- c) **University of Wisconsin Extension (UWEX) and Farm Technology Days Update:** Aerica Bjurstrom was absent. No report from Aerica. However last month, Chairman Pagel and Ron Paider indicated that planning for the 2017 Farm Technology Days in Kewaunee County was progressing well and meetings to review how other counties had managed their Farm Technology responsibilities were on-going.
- d) **Other Agency Reports:** No additional reports were presented.
- e) **USDA-APHIS Wildlife Damage Program:** Brian Maedtke provided the KCLWCC with a detailed Powerpoint presentation of the USDA-APHIS Wildlife Damage Program, its scope and the impact it has here in Kewaunee County and throughout Wisconsin. A copy of a handout by the USDA regarding the Wisconsin Wildlife Damage Abatement and Claims Program is **attached**.

8) Other Matters:

a. John Pagel – Manure Technologies Update: Chairman Pagel indicated that to date he has met with three of six companies who are all working on technological solutions to process manure. These technological solutions hold the promise of reducing the amount of nutrients being applied to the land and can return some process water back into water that is suitable for animal consumption or irrigation. Chairman Pagel indicated he will keep the committee updated on these technologies.

b. Lee Luft – Luft asked that the KCLWCC add three items to our upcoming LWCC agenda for discussion. These three items are:

1. Begin a discussion regarding the mission we have for the Kewaunee County Land and Water Conservation Committee to include reasonable, measurable and responsible goals for improving ground and surface water quality. Luft said, establishing appropriate goals and measuring our progress in achieving them is the only way we will know with certainty whether we are having a positive impact. Luft will bring some suggested goals to

the February KCLWCC meeting and asked that other committee members try to do the same. Luft cited Chapter 92 of Wisconsin State Statutes which says, "As a member of your county's LCC, you have a responsibility to understand Chapter 92 and the powers that you are granted to meet your statutory responsibilities and address local conservation concerns."

2. Luft asked to begin a discussion on the recent EPA visits, the results of those visits (as they become available) and the reasons behind the petition by six environmental groups to bring the EPA to Kewaunee County.
3. Luft asked for a discussion on the recent Wisconsin Supreme Court ruling that "...cow manure is a pollutant when it enters a well". What impact will this ruling have on Kewaunee County, the Land and Water Conservation Committee, the farm community and neighboring property owners. (News report copy attached).

9) Scheduling of Future Committee Meetings: February and March meeting dates were set as follows: February 16th at 9:00 AM and March 16th at 9:00 AM.

Resolutions: No resolutions were acted upon by the Committee at this meeting.

Travel Authorizations: There were no travel authorizations presented at this meeting.

10) Approval of Bills: Current month bills were presented, reviewed and signed by all Committee members. A motion to approve all bills as presented was made by Ron Paider and seconded by Lee Luft. Committee vote was unanimous in favor of this motion.

11) Chairman's Wrap-Up Comments: Chairman Pagel commented that his closing comments were expressed above in the Other Matters section and thanked the committee members and the residents for their input.

12) Adjournment: A motion to adjourn the meeting at 10:30 AM was made by Ron Paider and seconded by Bob Garfinkel. Motion carried unanimously.

Respectfully submitted by Lee Luft – Kewaunee County Land and Water Conservation Committee

1. Land Conservation Committees and Chapter 92

Chapter 92 of the Wisconsin Statutes, which creates LCCs, is the state's soil and water conservation law. The statute declares it to be the policy of the state to halt and reverse the depletion of the state's soil resources and pollution of its waters. To carry out this policy, the legislature enacted Chapter 92 to:

- Establish goals and standards for conservation of soil and water resources;
- Provide for cost-sharing, technical assistance, educational programs and other programs to conserve soil and water resources;
- Encourage coordinated soil and water conservation planning and program implementation; and
- Enable the regulation of harmful land use and land management practices by county ordinance where necessary.

1. Land Conservation Committees and Chapter 92

- The statute explains why the state and county are involved in natural resource conservation. It lays out the basic organizational framework for implementing the state's conservation policy and identifies the conservation work to be done and who is responsible for completing this work. Land Conservation Committees are a key component of this law. Under Chapter 92, Land Conservation Committees must meet defined statutory responsibilities. The law also authorizes committees to carry out state and federal programs, and grants them powers to address local resource concerns through the adoption of strong local conservation programs. As a member of your county's LCC, you have a responsibility to understand Chapter 92 and the powers that you are granted to meet your statutory responsibilities and address local conservation concerns.



United States
Department of
Agriculture

APHIS

Wildlife Services

**WISCONSIN COOPERATIVE
WILDLIFE DAMAGE
CONTROL PROGRAM**

1201 Storbeck Dr.
Waupun, WI 53963
(920) 324-4514
(920) 324-5367 Fax

Wisconsin Department
of Natural Resources
and
Cooperating Counties



**WISCONSIN WILDLIFE DAMAGE ABATEMENT AND CLAIMS PROGRAM
(WDACP)**

Telephone: 1-800-433-0663

ELIGIBLE SPECIES:

Wild deer, bear, geese, turkeys, elk & cougar

EMPHASIS:

Primary - abatement

Secondary - compensation

ABATEMENT ELIGIBILITY:

- You must be the crop owner.
- You must control the hunting access on enrolled land (both owned and leased).
NOTE: For leased land the landowner must sign over hunting control to the enrollee.
- You must enroll under one of the following public access options:
 - 1) OPEN PUBLIC HUNTING (OPH)
 - 2) MANAGED HUNTING ACCESS (MHA) NOTE: hunter log required.
 - 3) NO PUBLIC HUNTING (ACT 82) - deer shooting permit ONLY*.
**NOTE: enrollee must waive all right to claim compensation during the calendar year.*
- You must select OPH, MHA, or ACT 82 and sign a completed enrollment form.
- You must agree to be cooperative. Abusive language, behavior or threats of violence or otherwise will be considered a failure on the part of the applicant to cooperate. (See info at bottom of this page.)
- You may not charge any fee for hunting, hunting access, or any other activity that includes the species causing the damage.
NOTE: Hunting leases make the land ineligible for enrollment.

COMPENSATION ELIGIBILITY: OPH or MHA options ONLY!

- You must follow the provisions listed under abatement eligibility.
- You must file a complaint with USDA-APHIS-WS within 14 DAYS of first damage.
- You must follow USDA-APHIS-WS's recommended abatement.
- You must contact USDA-APHIS-WS 10 DAYS prior to harvest, thus allowing us enough time to conduct our appraisal. *Crops harvested prior to appraisal being done will be ineligible for compensation.*
- You must follow normal agricultural practices.

COMPENSATION:

\$500.00 deductible per claim and \$10,000.00 maximum claim per year

ATTENTION: Increased penalties in Effect (10/28/2010)

Wrongfully denying hunter access and/or non-cooperative behavior will result in program ineligibility for the current year and the following year.

Your Wildlife Specialist is Brian Maedke, phone# 1-800-433-0663

REV 10/2014



Resolving conflicts between people and wildlife.

NR151 Walkovers: 204 Total

- 155 – Full Compliance
- 31 – Need Waterways
- 6 – Have old pits that need abandonment
- 9 – Need BY/MS
- 3 – EPA Visits

Notice Of Non-Compliance Issued: 52 (majority due to NMP)

Cancelled NONC: 26

- Designed & Oversaw **Abandonment of 2 Manure Storages**
- Well Testing Program (April 2014 -- 140 Participants)
- GW Festival (in May- here at the Expo Center – 5th graders at LC)
- Lincoln Well Testing ; Monthly testing of 10 wells until June ; Presented ; Wrote Paper that will be published
- Land Water Resource Mngt Plan – Presented to Madison
- Collaborating with Mark Borchardt (USDA/USGS) for a virus research study (grant submitted)
- Nutrient Management : 265 Plans (Mapped/GIS) / 101,557 acres 2014
- Submitted 2 TRM Grants (April 2014) – won't hear if funded until May 2015(ish)
- Assisted with Heim's Leachate Runoff Project
- Numerous Surveys with the GPS (most of the projects will be constructed in 2015) ... currently in the design / funding stage. 8 possible barnyard/storage projects – all surveyed.
- Numerous landowner meetings onsite to walkover potential problems/fixes
- Responded to numerous manure complaints and spills.
- **Surveyed, Designed & Installed 5 waterways**
- Technical Assistance to NRCS – surveys/designs
- Distributed Tree Planter to several locations throughout KC
- Distributed Trees / Shrubs in our Annual Program
- Distribute Year Round Well Testing Kits – in Office
- Distributed SWRM funding (Bond/Seg) to 20 individuals in 2014.
- Oversee 29 Non-Metallic Mines for Reclamation Permits, annual fees, financial assurance
- Assisted in DNR and **EPA visits**
- Attend meetings and trainings to keep our Engineering Certification
- **Kevin Ferry's MS/BY/GWW/Pond – all finished construction in 2014 – TRM (DNR) grant**
 - Submitted Final Report / Final reimbursement

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Supreme Court rules farmers liable when manure contaminates well water

By Don Behm of the Journal Sentinel

Dec. 30, 2014

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The Wisconsin Supreme Court ruled Tuesday that cow manure is a pollutant when it enters a well.

But the justices were not simply stating the obvious in an opinion written by Justice Michael Gableman for the majority.

Because manure applied to farm fields is no longer a crop fertilizer when it seeps into private wells and contaminates the water supply, the court majority ruled that Wilson Mutual Insurance Company's general farm liability policy for Robert and Jane Falk excluded coverage for damage to their neighbor's water supplies in Washington County.

A pollution exclusion clause in the policy issued to the Falks "unambiguously excludes coverage for well contamination caused by the seepage of cow manure," the court majority ruled in reversing a December 2013 state Court of Appeals decision.

In addition, fine print in the family's "Farm Chemicals Limited Liability Endorsement" section of their policy excludes coverage for physical injury to property resulting from pollutants, the ruling said.

But the state's highest court did not let Wilson Mutual off the hook completely. A separate bit of fine print - "Damage to Property of Others" clause under the incidental coverages section - provides up to \$500 for each unique well that has allegedly been contaminated by the Falks' manure, so the company has a duty to fulfill that portion of the policy and defend the family, the court ruled.

In early 2011, the Falks spread manure from their 600-head dairy herd on fields on their farm outside West Bend, under a plan approved by the Washington County Land and Water Conservation Division.

By May of 2011, the state Department of Natural Resources notified the Falks that their manure spreading activities had contaminated wells of several neighbors. Those adjacent property owners subsequently filed claims for damage to their water supplies.

The DNR also asked to be reimbursed for costs of temporarily providing safe drinking water to two of the neighbors.

When the Falks turned to their insurer, Wilson Mutual, to handle the claims, the company cited an exclusion for damage caused by pollutants.

In its December 2013 decision, the appeals court found Wilson Mutual specifically insured the equipment used for storage and spreading of manure on the Falk farm so the company must cover all claims arising from contaminated wells.

In an earlier ruling, Washington County Circuit Judge Todd Martens had agreed the insurance policy's exclusion for damage caused by pollutants relieved Wilson Mutual of any obligation in defending the family against well contamination claims.

Farmers understand manure is a waste, so there is no coverage under the pollution exclusion, Martens had ruled.

The Supreme Court returned the case to Washington County Circuit Court for further proceedings.



About Don Behm

Don Behm reports on the environment, Milwaukee Metropolitan Sewerage District and communities in southeastern Wisconsin. Behm has won reporting awards for investigations of Great Lakes water pollution, improper disposal of radioactive waste from nuclear weapons production, Milwaukee's cryptosporidiosis outbreak and the deaths of three sewer construction workers in a Menomonee Valley methane explosion.

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