

TESTIMONY OF

Karl Rockeman, Director of Water Quality

Good morning, Chairman Thomas and members of the House Agriculture committee. My name is Karl Rockeman, and I am the director of the Division of Water Quality within the North Dakota Department of Environmental Quality. The Division of Water Quality protects and monitors our water resources to ensure the quality of surface and groundwater for public use. I am here to testify in opposition to Section 2 of HB 1423.

The DEQ is responsible for issuing environmental permits to Animal Feeding Operations (AFO) under state and federal statutes. The Department respectfully objects to the proposed changes in Section 2. Section 2 would prevent the DEQ from considering whether a proposed facility has obtained the necessary zoning approval before reviewing or issuing a permit.

First, this directly contradicts parts of NDCC 23.1-06-15, adopted during the 2019 legislative session. To determine whether state or local odor setbacks apply to an AFO, the department needs to know whether there are county or townships setbacks for a specific facility. These setbacks can vary by location and facility type and size. The DEQ asks facilities to show compliance, usually by a letter from the local zoning authority stating whether they comply or that there are no applicable zoning regulations. It is unclear how the department can comply with these two disparate requirements.

Second, this section would prevent the DEQ from stopping the permit review if a facility does not legally meet local zoning, thereby wasting public resources. An environmental permit review can take weeks to months of multiple staff members' time, in addition to the attention of management and legal review. The review may include public meetings, hearings, and other notifications that cost real dollars and staff time. The department must defend its decision if challenged in court, which can take years for the various levels of judicial appeals. Changes made during the zoning process that affect the location of part of a facility may require us to restart the environmental review.

Currently the department does not charge a permit fee to review an AFO permit. If Section 2 remains in the bill, a fiscal note should be prepared to account for the additional resources needed to review and re-review speculative permits due to changes in location during the zoning process.

Additionally, a poorly sited facility that is not complying with local zoning can reinforce the negative views that this committee has heard on several livestock related bills this session, and

harm the public's perception of an entire industry. This creates additional controversy for future livestock facilities, even when those operations comply with the applicable requirements.

Finally, this section imposes this limitation on all DEQ permits, not solely on Animal Feeding Operations. It could prevent the department from working with local authorities on appropriate sites for ag processing, manufacturing, and other permits for new development. As an example, DEQ staff recently met with local officials in Casselton to explain the air quality permitting processing and waste management rules related to a proposed facility seeking zoning approval. This section also may delay such permits while the department spends its resources reviewing, issuing, and defending permits that may never be built.

In addition to striking Section 2, the DEQ requests additional clarification on a definition in sections 1 and 3. The definition of Model Zoning ordinance in sections 1 and 3 refers to an "ordinance related to animal feeding operations published by the ag commissioner". The DEQ is unaware of any current ordinance being published by the ag commissioner. The only model ordinance we are aware of was developed by the Zoning work group in March 2000. (*A Model Zoning Ordinance for Animal Feeding Operations, developed by a Zoning Work Group for Animal Feeding Operations, March 2000*). If this is the model ordinance, the definition should be updated to refer to it correctly.

Mr. Chairman and committee members, this concludes my testimony. I ask that you strike Section 2 of HB 1423 and update the definition of model ordinance, and I would be happy to answer any questions.