
REMAPPING DEBATE

Asking "Why" and "Why Not"

Let Business be business

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A Concentrated Animal Feeding Operation in Wisconsin.

November 23, 2010 — The night that Republican Scott Walker swept to victory in the race to become Wisconsin's governor, one refrain ran through his promises to deliver on his campaign pledges: "Wisconsin is open for business again," Walker repeated to crowds of jubilant campaign workers and supporters.

To highlight his seriousness, Walker vowed to convene the legislature within hours of his inauguration in January, declare an economic emergency, and enact a series of tax cuts and other measures to lessen what he described as the burden state government placed on small businesses.

While Walker's campaign featured sweeping rhetoric on these themes, it offered few details about just which laws and regulations he would seek to change, and how these demands got in the way of business. It said nothing about the origins of these laws, why Wisconsin's citizens at some point thought them necessary and why, now, they were no longer needed. Nor did it lay out for the public what the resulting deregulated landscape would look like.

Long-time political observers were more than a little perplexed trying to figure out just what changes the governor-elect had in mind. "We haven't been anti-business [in Wisconsin] for a long time," said John F. Witte, a professor of political science and public administration at the University of Wisconsin at Madison. "We've been grubbing for business. It hasn't really mattered which party was in power."

Ending the "gotcha" mentality?

A clearer picture of the governor-elect's specific targets does emerge from examining campaign materials and interviews he has given — some to small regional papers — and from following his appearances and speeches both before and after his election.

Wisconsin's Commerce Department currently insures that businesses meet the regulatory standards the state sets before issuing them a permit to do business in the state. Walker would transfer the regulatory functions of the state Commerce Department to the relevant state agencies for the specific industry — the norm, actually, before former Republican Governor Tommy Thompson incorporated many regulatory functions into the Commerce Department's granting of permits.

But the Commerce Department wouldn't be stepping out of the process. It would be changing hats. Walker would reconfigure the Department as an advocate for private industry in negotiating the regulatory demands of state agencies. Instead of the Commerce Department acting as a gatekeeper — protecting the public interest in, say, workplace safety — before issuing permits to do business, the new agency would advocate for the business, becoming, potentially, the adversary of state agencies seeking to insure compliance with government standards.

"I will demand that state employees end their 'gotcha' mentality," reads Walker's "Brown Bag Guide to Government," "and instead focus on helping job creators comply and get their applications approved."

NOT JUST IN WISCONSIN

Governor-elect Walker, who will be the first Republican governor in Wisconsin in 72 years to have the opportunity to carry out his program with both houses of the Legislature also in Republican hands, is one of several new state chief executives who campaigned on the platform of reducing a variety of regulatory obligations on the business sector.

The extent to which each of these governor-elects will carry out their campaign promises may differ, but the content and consequences of their programs deserve to be taken seriously. Just this year, after all, New Jersey Governor Chris Christie took the political and media establishment in the New York metropolitan area by surprise when he actually made good on his critique of a long-planned high-speed rail link and killed the project.

Presumptive Approval

At the same time, Walker plans to upend the procedure for granting companies permits to operate in Wisconsin. In a bid to "[Make] Government Accountable to Farmers," Walker has pledged to "require state agencies to review permit applications within 60 days of receipt and approve or deny them within 180 days or else they will be presumed approved."

"These reforms will put the government's focus back on encouraging job growth instead of stifling it," Walker says in his campaign literature.

Though Walker spoke constantly on the campaign trail of the need to shore up small farmers, and to free farmers from the burdens of the permit process — "He would say 'small business' or 'small farms' 14 times in a half hour," Professor Witte noted — the changes he is proposing actually relate to the

large industrial farms known as CAFOs, short for Concentrated Animal Feeding Operations. It is CAFOs that are subject to environmental regulations controlling potential contamination of nearby rivers, streams, and groundwater supplies.

These mega-operations account for only 2 percent of Wisconsin's farms, but 50 percent of its output from animal-based agriculture. CAFOs typically crowd hundreds or thousands of animals into relatively small areas. They produce millions of gallons of waste, typically as much as a small city, along with pesticides, hormones and antibiotics. The state issues permits to minimize contamination of ground and surface water.

Walker's proposal does appear to correspond to a proposal from the state's powerful Dairy Business Association.

Would "presumptive approval" mean that if an industrial farm submitted an application to the state Department of Natural Resources to expand its operations, the failure of the department to act in six months would give the farm a permanent green light to, for example, dramatically increasing the amount of manure it would spread over soil? Would state reviewers ever have an opportunity to "rescind" presumptive approval after it had been awarded? If so, how hard would the new rules make it for state regulators to act? And how would the new system protect the public against increased pollution and resulting harm?

Remapping Debate asked Walker these and a host of other questions on proposed regulatory changes through phone messages and in emails, but his spokesman, Cullen Werwie, said that the campaign could not respond. "We have not yet announced the exact details of the permitting plan that was laid out during the campaign," Werwie wrote in an email.

The questions surrounding Walker's pledge are hardly academic. Thomas Baumann, coordinator of the state environmental agency's agricultural runoff program, said that while many permits were granted within six months, reviewing the applications is not a straightforward process, and frequently takes longer (see sidebar on next page).

Spencer Black, an outgoing state senator who authored Wisconsin's tough barriers to sulfide mining in 1998, said lawmakers had floated bills in the past that aimed to impose a six-month limit on state review of applications. Usually, he said, such bills specified that the permit obtained that way is "deemed granted," and not subject to further review, except for gross violations.

Indeed, Walker's proposal does appear to correspond to a proposal the state's powerful Dairy Business Association has put forward for "automatic approval" of permits if the state environmental agency does not reach a decision within six months. John O'Brien, a consultant for the DBA who initially responded to calls made to the dairy association, said he was "not sure whether there's an exact connection between what the DBA has talked about in the past and what the governor is proposing." He promised to call the Walker team and said the dairy association's executive director, Laurie Fischer, would respond with the information. She did not.

One issue in terms of automatic approval is the fact that, by definition, such approvals would occur without the detailed restrictions that customarily accompany actual approvals, restrictions that spell out how and where farms will manage wastes.

Another issue is the fact that the state Department of Natural Resources does not audit farms on an ongoing basis, so the absence of an initial examination could be critical: “The Department of Natural Resources only inspects every five or six years, and the rest is supposed to be self-reported,” said Miriam Ostrov, a staff attorney for Midwest Environmental Advocates. “If a person didn’t look at something before it was approved, it could be five or six years before someone goes out there.”

The Complex Process of Reviewing Permit Applications

Under the federal Clean Water Act and state law in Wisconsin, large industrial farms must submit detailed information for a state permit that, in essence, allows them to release pollutants within limits.

The applications are complex, including plans for managing the enormous amount of animal waste produced by even the smallest industrial farm. Application components include floor plans and specifications for buildings, waste flow plans, and topographical maps. State officials are supposed to study the maps to see where, say, the farm will spread manure, how that waste will flow or be absorbed, and to insure the fields in question are not already receiving waste from another farm.

They check that the fields are not “tiled,” the term for fields that have tubes running beneath them. Such underground tubes reduce erosion by carrying off excess moisture, but often do so by delivering that collected water to lakes, rivers, and streams. In order to avoid the risk of manure and its toxins entering the water supply, the Department of Natural Resources bans the spreading of manure on tiled fields.

A critical piece of the application roadmap is a 30-day period for public notice and citizen input. Because the state Department of Natural Resources is chronically short-staffed, the citizen review component has become especially important, particularly in identifying information missing from permit applications.

Miriam Ostrov, a staff attorney at Midwest Environmental Advocates, recalled in an interview one permit that showed topographical maps of where a large industrial farm planned to spread animal waste. The application showed two fields, and ruled out the first because it was “tiled.” Once local residents got to study the application, however, they noticed that a second field, where the farm did propose to spread manure, was also tiled. Their input forced the farm to alter its plan to obtain a permit, and averted what could have been a disaster for the surrounding wells, Ostrov said.

Kimberly Wright, executive director of the Midwest Environmental Advocates, pointed to Rosendale Dairy, Wisconsin's largest industrial farm and the state's fourth largest source of sewage, lagging only behind the cities of Milwaukee, Madison and Green Bay. "People would think you're crazy if the fourth biggest city in the state figured in six months what to do with runoff from all its waste," she said.

Much would depend, Senator Black said, on whether industry has a hand in writing the related legislation, as it reportedly has in the past.

So where did the regulations come from?

In setting out his agenda for reining in the role of government, Walker singled out the practice of writing administrative regulations that, in his view, go farther than anything enshrined in law. And the top offender, in his eyes, was the Department of Natural Resources, or DNR. "In many other states, something that has the force and effect of law, well that's something the governor and the Legislature would have to sign off on," Walker said in a September interview with the Lackland Times.

Speeding up and cutting back

While Wisconsin's next governor wants regulatory agencies to act more quickly, he has also proposed, as a deficit-reducing measure, the elimination of civil service jobs that have gone unfilled for two years.

In the Department of Natural Resources, which is responsible for protecting the environment, some 300 jobs are vacant, from a staff that, at full strength, would run to 2,700, said Laurel Steffes, a spokeswoman.

Wright of Midwest Environmental Advocates, said that, even before the election, employees at the Department of Natural Resources complained of being short-staffed. She asserts that the problem is not over-regulation but rather failure to enforce adequately the regulations that exist, and her organization has sued the state for failing to uphold environmental standards. Wright says that the department has failed to add employees to accommodate its growing responsibilities for approving permits for vast industrial farms.

In 1995, the state reportedly granted just 8 such permits. By February 2010, it had granted 189 permits. Despite the soaring number of farms requiring permits from the agency, and increasingly complex requirements for granting permits, the number of employees handling the permits has remained largely unchanged over the last 15 years, according to an investigative report in the Wisconsin State Journal.

Should the governor — who has singled the Department of Natural Resources out as a particular impediment to private industry — make those vacancies permanent, it could render an already overtaxed system unworkable, rendering the permit process a largely perfunctory exercise, said Wright.

In the interview, Walker spoke of the need to “clamp down on the administrative code process so that mid- and lower-level bureaucrats don’t run amok in the DNR.” He added, “There are many barriers that our state agencies — not the least of which is the DNR but other agencies, too — put up to economic progress.”

But the environmental laws and regulations that Walker appears set to weaken in the name of job creation did not emerge out of thin air. At least some emerged from fetid water — or, more precisely, from the experiences of people who saw solid waste from farm runoff flowing through their kitchen faucets (see box on next page). The problem yielded new protective regulations in 2007.

Other environmental regulations in the state, older than the rules banning animal waste on frozen fields, also arose from the clash between business and public interests. Wisconsin’s ban on new nuclear power plants, which Governor Walker opposes, dates back to 1983, and the outcry following the March 1979 accident at the Three Mile Island nuclear power plant. The state’s effective moratorium on sulfide mining, passed by four-term Republican Governor Tommy Thompson, dates to 1998, and the battle over Exxon’s plans to mine copper from sulfide ore at the headwaters of the Wolf River, and to dump the waste into the Wisconsin River. (The law does not fully ban mining, but demands mining companies show a record of mining sulfide ores elsewhere for 10 years without acid drainage or heavy metals polluting ground or surface waters.)

“The big catchphrase is regulatory streamlining,” said James N. Saul, a former staff attorney for Midwest Environmental Advocates, who now runs a public interest environmental law practice in Madison. “We see that as code for weakening environmental standards, and making it easier to get a permit.”

Why will it be different now?

So if these regulations — whether aimed at mining, or nuclear reactors, or scrutinizing farm operations — were once necessary, what has changed? Will businesses voluntarily act as good corporate citizens?

Here, too, the Walker team did not respond to repeated requests for comment. Nor did the state Republican Party chairman Reince Priebus.

Mark Bugher is director of the University Research Park, an arm of the state university system that incubates start up companies based on technology developed by faculty. He is also a former secretary of administration in the Thompson administration.

In rankings of state friendliness to business, Bugher said, executives typically rank Wisconsin near the bottom. The new governor does not aim to roll back regulations, Bugher contends, but to make them easier to navigate.

“I think industry can be trusted,” he said. “As a state you have to work with industry and agriculture.”

A matter of under-regulation?

In 2004, the Judy and Scott Treml family, who lived on a small farm in Northeastern Wisconsin that Scott Treml's great grandfather had once homesteaded, watched in shock as their neighbor across the road, a 900-cow dairy operation known as Stahl Farms, spread 10,000 gallons of liquid manure over a snowy field. They saw the manure run off into a ditch, over another neighbor's property line, and into nearby School Creek, they later said. When Scott Treml approached his neighbor to stop spreading the manure, "he was met with an expletive," Judy Treml said in later testimony before the state Water Resources Committee. The neighbor claimed that he was well within his rights. The state Department of Natural Resources had granted him a permit to discharge his animal waste on the field.

Though the Treml's videotaped the incident, neither they nor their neighbors at first realized that water from School Creek — into which the Stahl Farms' manure flowed — filled the wells whose water came out of their taps.

Agency officials initially advised the family that the water was likely safe. Only days later did the Treml's and their neighbors see brown water flowing from their taps, with solid waste floating in the water. By then, it was already too late. The entire family, including the Treml's six-month old daughter, had been poisoned by e. coli bacteria. Samantha, the six-month-old, was vomiting and dehydrated. Ultimately, she and the family recovered.

Over the course of days, then weeks and months, the Tremls and their neighbors tried to reason, argue and shame the Department of Natural Resources into acknowledging that the farm's disposal of manure had tainted its neighbors' water supply, to no avail. In the summer of 2004, Midwest Environmental Advocates filed a complaint on behalf of the Treml's in federal district court, and also sued their neighbors, Stahl Farms. Despite the state's initial defense of Stahl Farms, the state Justice Department also filed a complaint against Stahl for releasing manure into School Creek, ultimately recovering \$50,000 in fines from Stahl Farms. The insurance company for Stahl Farms also paid the Treml's \$80,000, and, as part of the settlement, Glen Stahl, the owner, agreed not to spread any waste from December to April, when the ground is coldest and least able to break down toxins.

Beyond the suit, however, the ordeal galvanized the community and the state. In the years that followed, as the number of industrial farms multiplied, more communities complained of similar contamination of their water supplies. The problem was not the manure, which in smaller quantities and in warmer weather acted as fertilizer on the fields. The problem was that in cold weather, there were no plants to soak up the nutrients, and so the waste and its bacteria seeped directly into the water supply. Other problems emerged, with excessive levels of phosphorous seeping into water systems, and with the disposal of animal carcasses. In 2007, the Department of Natural Resources wrote new regulations covering phosphorous levels, and the handling of carcasses. The rules also required large industrial farms to build containers to store manure during the winter, and to spread the waste in warmer weather, and in fields away from drinking wells, sink-holes and fractured bedrock.

But what about all those farms that did dump waste, contaminating hundreds of wells with parasites and bacteria that left their neighbors sick with diarrhea and vomiting?

“No farmer wants to contaminate and make people sick. No farmer I know would be comfortable with that. And yet they’re asked to feed the world. How do we balance their pressures to produce with the concerns people have?” Bugher asked rhetorically. While large-scale industrial farms may be more efficient, they also produce more waste in smaller spaces.

Bugher said the new governor doesn’t see the question as one of sacrificing air and water quality in exchange for more growth. Rather, he said, there were ways to ease the regulatory burden on farmers that would not damage the environment. He pointed to “alternative disposal methods, alternative ways to take waste and filter it,” adding, “New technologies have to be deployed in order to protect the public.”

Bugher also said that Wisconsin’s companies had learned from the debacle of the Gulf oil spill, which dealt a body blow to the reputation of British Petroleum — a company that had spent millions projecting itself as a friend of the environment. From this, somehow, he drew reassurance. “I don’t think any company wants to see its name plastered across the newspaper,” he said.

But BP spill did happen, at least in part, because of a string of failures by the federal Interior Department’s Bureau of Ocean Energy Management to exercise tough oversight.

“I’m not suggesting that we leave industry without any regulation,” said Bugher. “The question is, how far does regulation go? Does it go so far as to stifle innovation and development?”

“If it does, it’s too far.”

Additional reporting by Timothy Martinez

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