

November 2023

Nomination for the Wisconsin Land + Water 2024 Outstanding Conservation Employee Award

Nominee: Shawn Esser, (608) 228-6347, esser.shawn@countyofdane.com

Award Category: Category 2

Title/Years of Service:

- Conservation Specialist – Advanced, Dane County Land & Water Resources Department, 2016 to Present
- Conservation Specialist – Project, Dane County Land & Water Resources Department, 2015 to 2016
- Agricultural Runoff Management Specialist, Wisconsin DNR, 2014 to 2015
- Conservation Analyst, Marathon County Conservation, Planning and Zoning, 1997 to 2014
- Conservation Specialist, Marathon County Land Conservation Department, 1990 to 1997

Education/Background:

- BS in Natural Resource Management, UW – Stevens Point
- Certified Crop Advisor
- Professional Soil Scientist

Nominator: Amy Piaget, 608.212.9172, piaget.amy@countyofdane.com

Nomination Summary:

Shawn Esser has been working in the conservation field for over 33 years between his time at Dane County, DNR, and Marathon County. He brings a wealth of knowledge and experience to the table every day. Shawn is not afraid to take on the challenging and difficult cases. He works through them systematically to bring resolution to noncompliance issues. He is a role model and leader within the Land Conservation Division and well as a resource for statewide technical issues.

Nomination Criteria:

The following are examples of the work and efforts Shawn conducts that demonstrate his commitment to soil and water conservation and how to make these efforts more efficient going into the future:

- Shawn has taken on some of the most challenging compliance cases we work with at the county. He is not afraid to jump in and be firm yet respectful with landowners working through difficult resource concern issues. A recent case that started in 2019 is finally wrapping up after going through the stepped enforcement process all the way to settling in court. Throughout the process, Shawn's detailed documentation of events was critical to the success of the case. Articles by the *Wisconsin Examiner* on the case are [here](#) and [here](#) (and also attached).

- Shawn voluntarily stepped up to conduct the compliance walk-overs for all of the county's stream easements annually. There are over 20 miles of easements in the southwest portion of the county with numerous landowners which were established primarily for public fishing access through the county's Parks Division. He systematically works through the sites documenting compliance by walking the full extent of the easements and identifying areas that need repair or where there is encroachment on the county's easements. He conducts the follow-up with the landowners and assists with any technical assistance that may be needed.
- For fun, and to assist the county's invasive species management, Shawn raises beetles to help manage purple loosestrife stands on county properties.
- Shawn manages the county's winter spread permits (approximately 190 permits) and issues certificates of use for manure storage facilities which is a new program for the county since 2019. So far, he has personally conducted site visits and assessed approximately 70 structures per year and issued certificates or assisted with closures of old storages throughout the county.
- For Wisconsin Land + Water, Shawn serves as a vice chair of the technical committee, providing his knowledge and expertise for the work done by that committee that benefits all counties. Historically, Shawn was on the SOC committee for one of the earlier revisions of the 590 Standard which is no small feat!

These are just a few examples of Shawn's career highlights at Dane County over the past nine years. He also has 24 years of experience and work history with Marathon County. With over 33 years, Shawn has made a career of conservation in Wisconsin.

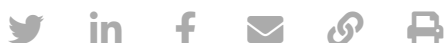


AGRICULTURE ENVIRONMENT POLITICS & GOVERNMENT

Small farm pollution can slip through the cracks and be hard to enforce

One Dane County farm’s years-long case exposes the difficulties in county-level agricultural enforcement

BY: **HENRY REDMAN** - SEPTEMBER 27, 2022 6:45 AM



📷 Several complaints have been made to Dane County’s animal welfare department over cows standing in deep mud. (Dane County Land and Water Resources Department)

Dane County instituted an ordinance guiding its enforcement of agricultural standards in 2019. Since then, the county’s land and water resources department (LWRD) has been fighting to improve the conditions on one cattle farm in the small Town of Primrose, southwest of Madison.

The farm, which as of 2021 held about 80 head of dairy and beef cattle, a dozen horses and a handful of pigs, sits near a trout stream that ultimately runs into the Sugar River. With that number of animals on the property, the vegetation in the pasture is often completely wiped out, leaving deep muck the cows have to stand in and a direct flow of pollution running into the stream.

For years, residents have complained to the land and water department, and animal control, about the state of the property and the health of its animals. But an obstinate landowner and limited tool belt have caused delay after delay – even as the pollution continues, harming the nearby watershed.

Much of the state’s clean water activism is focused on massive factory farms located around the state, but those operations come with much stricter regulations and deeper pockets to fix any persistent issues. The Primrose case highlights how smaller farms, when owned by someone unwilling or unable to fix a problem, can harm entire watersheds – even when local conservation departments are working to force the issue.

“Compliance issues are always complicated and always seem to take time to resolve,” says Amy Piaget, a conservationist for the Land and Water Resource Department.



📷 Cows in the trout stream during one of Dane County’s first visits to the property. (Dane County Land and Water Resources Department)

The property, owned by Wayne Aeschbach – who did not respond to a request for comment – was reported to the county as being potentially in violation of the agricultural standards in September of 2019, documents obtained by the Wisconsin Examiner in an open records request show.

The initial complaints stated that the pasture was overgrazed and cattle were frequently standing in the middle of the stream. In October, a few county land and water employees visited the farm to see the problem for themselves.

“The Dane County Land & Water Resources Department (LWRD) received a number of complaints regarding the feedlot located at your property in the Town of Primrose,” the department wrote to Aeschbach in an Oct. 16, 2019, letter. “The cattle feedlot has a direct runoff to an unnamed tributary to the Primrose Branch and unlimited livestock access to waters of the state has prevented the maintenance of adequate vegetative cover on the bank of the unnamed tributary.”

After that meeting, Aeschbach agreed to construct a temporary fence to keep the cows out of the stream while plans were made for a more permanent solution.



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“In order to help minimize runoff from the feedlot in the interim, you agreed to install a temporary fence to prevent livestock access to the unnamed tributary to the Primrose Branch,” the department wrote. “The fence shall be a minimum of 20 feet from the edge of the bank of the intermittent stream and installed no later than October 31, 2019.”

By 2020, the county had determined it was going to require Aeschbach to build a permanent fence 30 feet from the stream and re-seed the stream’s banks to allow the vegetation to grow back. The department also gave Aeschbach until the end of 2022 to implement a number of practices to prevent runoff into the stream. The county, as it does in every agricultural standards case, offered to share the costs of the necessary improvements, records show.

A letter from Aeschbach to the county, obtained by the Examiner, shows that he responded by getting mad at the continued enforcement actions against him.

“I will NOT tolerate your continued harassment and threats to me and I will take action against you beginning with your supervisor and as high as I need to go,” Aeschbach wrote about the staff member assigned to the case in the June 5, 2020, letter. “You have lied to me, you are completely unorganized and uneducated in your field and you lack people skills and follow through.”

He continued: “I have no trust in you and no respect for you any longer. The county would be better served to remove you from this project and put someone capable in your place and send you off to some needed training.”

Through 2021, Aeschbach continued to push back on the county’s requirements. That December, county employees drove by the farm to see that the temporary fence was gone and there were cows again standing in the stream. Aeschbach said a power outage that occurred while he was out of town allowed the cattle to get out. He told the county that it didn’t make sense to replant the vegetation in December in Wisconsin.



📷 The cattle on the property are kept in a feedlot with little to no vegetation. (Dane County Land and Water Resources Department)

Two years into its involvement in the case, the county decided to issue a citation for violating the agricultural standards and handed the case to the Dane County corporation counsel. Throughout 2022, the county has been trying to persuade Aeschbach to implement the same improvements that have been at issue since the case began.

“If we start an enforcement process, it usually means they’re not in compliance with our county ordinance,” Piaget says.

The department offers planning and technical help in developing solutions, and also offers to share the cost, she adds.

“All of that is always offered to every landowner we work with, whether it’s a voluntary process or in those cases [where] we have a compliance issue,” Piaget says. “So I think some landowners are receptive to that and some are not. That kind of plays into how quickly we can work through an issue and how quickly we can resolve it.”

Piaget acknowledges that “the resolution is taking us a while” because the county has not gotten cooperation from the farm.

“We do have a landowner that’s been challenging to work with,” she says, “and a lot of what we do is trying to educate the landowner or the person we’re working with to explain why we need to do some things, and again, some people are receptive to that and some are not.”

Dane County, aside from the problems in Primrose, has had several agricultural enforcement cases that last for years, records show. The county’s agricultural complaint tracking documents, obtained by the Examiner, show a number of unresolved cases that were initiated in 2019 and 2020.

“It becomes a difficult thing to ultimately bring some type of enforcement action,” says Adam Voskuil, a staff attorney for Midwest Environmental Advocates.

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AGRICULTURE ENVIRONMENT

Farm under county scrutiny for runoff involved in state program for reducing pollution

Water quality trading program meant to reduce phosphorus but trades can go wrong

BY: **HENRY REDMAN** - 7:00 AM

 The Aeschbach farm in Primrose where regulators have been attempting to institute better runoff controls while a nearby village gets pollution credits. (Dane County Land and Water Resources Division)



At the Aeschbach farm in Primrose, the Dane County Land and Water Resources Department [has been trying since 2019](#) to get the property owner Wayne Aeschbach to install a fence preventing the farm's 80 or so dairy and beef cattle from entering the nearby stream and to increase vegetation to prevent runoff.

While Aeschbach has resisted that effort, at the same time, the nearby village of Belleville has made a deal with the farm through the state Department of Natural Resources' water quality trading program, which allows the village to exceed limits on harmful chemicals it dumps into the water by working to reduce the chemicals entering the water at the farm.

The small farm in the rural Dane County town of Primrose, part of the property has been the subject of numerous environmental enforcement actions from county regulators attempting to prevent runoff from the barnyard from entering a nearby stream.

But another part of the property is enrolled in a state program meant to improve water quality and reduce the amount of contaminants entering a watershed.

Trading credits to reduce pollution

The program functions like a carbon credit system, but for harmful chemicals such as phosphorus. A source of pollution, usually from a so-called point source such as a municipal wastewater treatment plant in which the contaminants enter the water from one determined place, has a permit with the DNR outlining the contaminant limit the permit holder can release into the water. At a certain point, it becomes increasingly difficult and more expensive for the permit holder to reduce the pollution through upgrades to the system. Instead, the permit holder can enter into a trade agreement with another entity, often a non-point source of pollution such as a farm, on the same watershed.

The two entities then work together to reduce the pollution from the farm through practices such as turning a field back into grassland or regrading a stream bank to prevent erosion. The pollution reductions achieved at the farm are then applied to the point source polluter, allowing it to meet the terms of its permit.

Yet the agreement between Belleville and the Aeschbach farm shows there can be flaws in a system that creates incentives to target the “lowest hanging fruit” – farms not currently applying best practices for pollution and runoff management. As a result, a program meant to improve water quality can ultimately have a negligible effect at best.



“Let’s presume that the trade involved management of cropland such as manure, fertilizer applications on cropland and that the county is having problems with the farmer plowing too close to the stream or allowing cattle in the

📷 Several complaints have been made to Dane County's animal welfare department over cows standing in deep mud. (Dane County Land and Water Resources Department)

stream,” says Jim Baumann, a retired DNR employee who worked on the program and now

works with the environmental group Wisconsin Green Fire. He adds that the agency does a broad review of the cropland involved in the trade, but there aren't any rules against a trade involving a farm not following the state performance standards.

“It's entirely possible that you could have a situation where the credit generator is generating credits on one part of the farm and not meeting requirements on another part of the farm, I see it as possible and I don't see anything in regulation that says it can't be done,” he says.

The DNR recommends that permit holders looking for trades seek out the heaviest polluting sites on the watershed first.

“You may be aware of a number of significant pollution-generating sites in your watershed; while in other watersheds, you may need to actively seek out these locations,” the agency's [guidance](#) on the trading program states. “If you have several potential sites to choose from, it is recommended to work first with the most significant contributing sites in your watershed. The most significant contributors will likely be able to generate the most cost-effective credits possible.”

The trades can also be lucrative. An agreement between Belleville and a different Primrose farm, according to documents obtained by the Wisconsin Examiner, is set to pay the property owners \$200,000 over ten years.

“Often, when you're siting projects, you're looking for the biggest bang for your buck,” says Scott Laeser, the water program director at Clean Wisconsin. “Generally speaking you're going to find those big reductions in places where a mentality of conservation or conservation farming approaches have not been utilized. In some cases that's lack of awareness; in some cases it's lack of resources. It is fair to say that there is a broad diversity in the way the farming community has approached managing nutrient runoff.”

Looking for the properties that can achieve a lot of phosphorus reduction without much work, because the current practices result in a lot of runoff, are attractive for permit holders looking to find a trade for cheap, Laeser adds.

“Those projects can be really impactful and offer the best opportunity to reduce a lot of phosphorus with less financial outlay and fewer projects,” he says. “If you’re a point source and you can work with ten landowners on ten projects or two landowners on two projects, you’re probably going to take the latter.”

Modeling and oversight

Rob Michaels, a senior attorney at the Environmental Law and Policy Center, has concerns about trading programs in general. Reducing the phosphorus output from a wastewater treatment plant is definitive and measurable, he says. But the trades are made using advanced modeling systems that deal in hypotheticals involving a non-permitted entity that isn’t supposed to be polluting in the first place. What you end up with is a program that aims to improve water quality but with varying reliability.

“You’re allowing pollution that would have to be reduced under a permit for hypothetical or theoretical reductions for varying levels of reliability,” he says.

The DNR uses a modeling program created by UW-Madison, known as [Snap+](#), to estimate the levels of pollution coming from a given field. Michaels says that even though Snap+ is highly technical, it doesn’t involve direct measuring of nutrient runoff in a water system. Because of the use of the model, he’s concerned about the oversight of a program in which the benefits are only measured by a computer.

The models also have some flaws, according to Baumann. The modeling is only done to the edge of the field, but of course the runoff into a neighboring stream is happening beyond that edge, which can cause miscalculations.

“If you wanted to do a trade between a wastewater treatment plant and control pollutants on crop land, in Wisconsin the estimate of pollutants controlled is done through modeling. And modeling isn’t necessarily bad but the load reduction is modeled to



📷 Cows in the trout stream during one of Dane County's first visits to the property. (Dane County

the edge of the field.

Land and Water Resources Department)

That doesn't necessarily mean you're going to get that load reduction all the way to the stream," he says. "Some may guess that often the model load estimates are two, three, maybe even four times higher than that actually reaches the stream ... I think on the ag crop land situations, you don't necessarily get a pound for a pound. You get something less."

The DNR does conduct oversight of the trades, according to Matthew Claucherty, a DNR water resources specialist. The agency reviews and approves each proposed trade, though he says the agreements themselves aren't submitted for approval. After the trade is in place, the permit holder has an annual self-reporting requirement that involves inspections of its practices and a monthly requirement to submit its discharge monitoring reports to the DNR.

The agency also does site visits to conduct audits of the trades, but there isn't enough staff to do every trade, every year, so Claucherty says those are done on a revolving basis. He adds that if a permit holder submits poor annual inspection reports, it would be moved up the list to be audited.

Yet Michaels still believes there are questions surrounding the actual reductions that are being achieved.

"It's a very complicated, clever sounding approach that has some appeal in the abstract and we wouldn't categorically oppose these things in all circumstances," he says. "But the issues about how good, how reliable are the reductions that you're trading for and to what degree are they enforceable, verifiable, to what degree is there actual testing going on ... those are the open questions."

Delays on farm

At the Aeschbach farm, the county has spent years trying to get the property in compliance with local ordinances. Yet in some cases, the existence of the trade agreement with Belleville has actually caused more delays to improving the water quality.

"We have been working with noncompliance issues with [Aeschbach] for a number of years," Amy Piaget, the Dane County conservationist, wrote in an email to the engineer working on Belleville's trading program. "Our understanding is that the landowner has signed an agreement with the village to implement

practices to address barnyard runoff and streambank stabilization. In May of 2020, we issued a notice to the landowner that these practices need to be in place by December 31, 2022. Is the Village still working with this landowner and are the practices expected to be completed by December 31, 2022?"

Aeschbach did not respond to a request for comment. After initially returning an email and phone call, the Belleville village administrator said he was sick and unavailable to comment ahead of publication.



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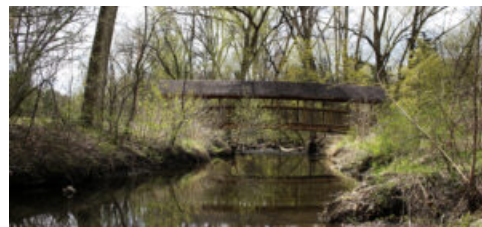
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