

05hr_CRule_05-014_AC-Ag_pt06



Details:

(FORM UPDATED: 07/12/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Agriculture (AC-Ag)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt**
- Clearinghouse Rules ... **CRule**
- Hearing Records ... bills and resolutions
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution)
 - (**ajr** = Assembly Joint Resolution)
 - (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Ruby, Erin

From: Redell, Carol
Sent: Friday, December 09, 2005 3:15 PM
To: Ruby, Erin
Subject: FW: Motion on Clearinghouse Rule CR 05-014 (Livestock Siting)

From: John & Marge Ainsworth [mailto:repains@ezwebtech.com]
Sent: Friday, December 09, 2005 3:05 PM
To: Redell, Carol
Subject: RE: Motion on Clearinghouse Rule CR 05-014 (Livestock Siting)

Carol/Erin/AI

The specific items I would like to see added to the motion include the following:

1. Change the animal unit count to that which is currently used by EPA----this change, I understand, must be done legislatively but the implementation of the rule must be delayed until the proposed legislation becomes effective. The proposed legislation must contain "notwithstanding" language regarding the animal unit count in effect when the siting legislation was passed.
2. Change the "best management practices" designation to something more appropriate. Those listed practices are strictly intended to attempt to reduce odor generation and would probably actually reduce the profitability of the operation thus becoming very poor management. Odor abatement practices or odor mitigation practices may be more appropriate than profit reduction practices or financial failure practices.
3. Clarify the "grandfathered" language so that all current legal structures are protected from required changes.
4. We talked a lot about intent. We were told that what are currently being called best management practices were not intended to regulate odor but only to predict odor generation as best we can at this time. If possible, this should be spelled out very clearly in the language of the rule. The environmentalist's definition of this rule as a "very good first step" is EXTREMELY scary without very clear intent.

John

12/13/2005



Ruby, Erin

From: Cross, William
Sent: Monday, December 12, 2005 10:02 AM
To: Ruby, Erin
Subject: RE: Motion on Clearinghouse Rule CR 05-014 (Livestock Siting)

Erin:

My log says I replied to you BUT no copy appears, so here it is for the first time or the second time!

1. Bobby supports 100% the modifications by Petrowski.
2. She wants a modification that provides cost-sharing to towns and counties who issue conditional use permits for animal units under 500; ie: the Trempealeau County situation. Bobby and Paul Zimmerman said you would know about this.

Bet you're going to be happy when this one finally get done!

BILL C

From: Ruby, Erin
Sent: Friday, December 09, 2005 10:40 AM
To: Rep.Ainsworth; Rep.Gronemus; Rep.Hines; Rep.Loeffelholz; Rep.Molepske; Rep.Nerison; Rep.Parisi; Rep.Petrowski; Rep.Steinbrink; Rep.Suder; Rep.Towns; Rep.Vruwink; Rep.WilliamsM; Rep.Ziegelbauer
Cc: Anderson, John; Berken, Nathan; Christopher, Marc; Cross, William; Deering, Bonnie; Emerson, Anne; Gaston, Geoff; Hilgemann, Luke; Hilton, Stephanie; Hutkowski, Hariah; Jahnke, Carolyn; Junck, Linda; Kostelic, Luanne; Kraak, Maureen; Langan, Casey; Loomans, Scott; Mueller, Virginia (Legislature); Parrott, Douglas; Patronsky, Mark; Peterson, Eric; Pfohl, Mike; Polzin, Cindy; Redell, Carol; 'Scott, Katie'; Shea, Heather; Whitmore, Lori; Zutz, Toby; Ainsworth, John; Gronemus, Barbara; Hines, Jake; Loeffelholz, Gabe; Molepske, Louis (Legislature); Molepske, Louis (Legislature); Nerison, Lee; Parisi, Joe; Petrowski, Jerry; Steinbrink, John; Suder, Scott; Towns, Debi; Vruwink, Amy Sue; Williams, Mary - Legislature
Subject: Motion on Clearinghouse Rule CR 05-014 (Livestock Siting)
Importance: High

In preparation for our executive session on the livestock facilities siting rule, Chairman Ott respectfully requests members of the Assembly Committee on Agriculture to submit items they would like to see added to the basic motion distributed during yesterday's public hearing. Many members indicated an interest in making more specific recommendations for modifications.

All items should be submitted in writing (letter or email) to our office no later than **9:00 a.m. on Tuesday, December 13th**. All submissions will be forwarded to Leg. Council for compilation and then distributed to members for review prior to the exec.

Submissions should be as simple and concise as possible in order to facilitate drafting of the motion.

Please let me know if you have any questions.

Erin

Erin Ruby
Research Assistant
Clerk, Assembly Committee on Agriculture
Office of State Representative Al Ott
608.266.5831
erin.ruby@legis.state.wi.us



Ruby, Erin

From: Hilgemann, Luke
Sent: Monday, December 12, 2005 10:24 AM
To: Ruby, Erin
Cc: Emerson, Anne; Suder, Scott; 'Scott Suder'
Subject: RE: Motion on Clearinghouse Rule CR 05-014 (Livestock Siting)

Erin,

As I am sure you already know, Rep. Suder would like to see the odor regulations removed as currently written. He would also like to see the filing fee rolled back to \$500 from the current \$1000 fee. Scott would also like to have language in the rule to prevent local units of government from interfering with the premise once it passes the qualification process. He would also like a preemption for nuisance lawsuits for farms who have completed the siting process.

I hope his intent on these modifications is clear. If not please feel free to contact us. Thank you!

Best Regards,

Luke Hilgemann
Legislative Assistant
Office of Rep. Scott Suder
Wisconsin's 69th Assembly District
Room 21 North, State Capitol
888.534.0069 or 608.267.0280

From: Ruby, Erin
Sent: Friday, December 09, 2005 10:40 AM
To: Rep.Ainsworth; Rep.Gronemus; Rep.Hines; Rep.Loeffelholz; Rep.Molepske; Rep.Nerison; Rep.Parisi; Rep.Petrowski; Rep.Steinbrink; Rep.Suder; Rep.Towns; Rep.Vruwink; Rep.WilliamsM; Rep.Ziegelbauer
Cc: Anderson, John; Berken, Nathan; Christopher, Marc; Cross, William; Deering, Bonnie; Emerson, Anne; Gaston, Geoff; Hilgemann, Luke; Hilton, Stephanie; Hutkowski, Hariah; Jahnke, Carolyn; Junck, Linda; Kostelic, Luanne; Kraak, Maureen; Langan, Casey; Loomans, Scott; Mueller, Virginia (Legislature); Parrott, Douglas; Patronskey, Mark; Peterson, Eric; Pfohl, Mike; Polzin, Cindy; Redell, Carol; 'Scott, Katie'; Shea, Heather; Whitmore, Lori; Zutz, Toby; Ainsworth, John; Gronemus, Barbara; Hines, Jake; Loeffelholz, Gabe; Molepske, Louis (Legislature); Molepske, Louis (Legislature); Nerison, Lee; Parisi, Joe; Petrowski, Jerry; Steinbrink, John; Suder, Scott; Towns, Debi; Vruwink, Amy Sue; Williams, Mary - Legislature
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Submissions should be as simple and concise as possible in order to facilitate drafting of the motion.

Please let me know if you have any questions.



Ruby, Erin

From: Ruby, Erin
Sent: Monday, December 12, 2005 12:36 PM
To: Patronsky, Mark
Cc: Rodriguez, Charlene
Subject: Suggestions Thus Far

CR 05-014

Rep. Ainsworth:

- Change the animal unit count to that which is currently used by EPA----this change, I understand, must be done legislatively but the implementation of the rule must be delayed until the proposed legislation becomes effective. The proposed legislation must contain "notwithstanding" language regarding the animal unit count in effect when the siting legislation was passed.
- Change the "best management practices" designation to something more appropriate. Those listed practices are strictly intended to attempt to reduce odor generation and would probably actually reduce the profitability of the operation thus becoming very poor management. Odor abatement practices or odor mitigation practices may be more appropriate than profit reduction practices or financial failure practices.
- Clarify the "grandfathered" language so that all current legal structures are protected from required changes.
- We talked a lot about intent. We were told that what are currently being called best management practices were not intended to regulate odor but only to predict odor generation as best we can at this time. If possible, this should be spelled out very clearly in the language of the rule. The environmentalist's definition of this rule as a "very good first step" is EXTREMELY scary without very clear intent.

Rep. Gronemus:

- Bobby supports 100% the modifications by Petrowski.
- She wants a modification that provides cost-sharing to towns and counties who issue conditional use permits for animal units under 500; ie: the Trempealeau County situation. Bobby and Paul Zimmerman said you would know about this.

Rep. Suder:

- Would like to see the odor regulations removed as currently written.
- He would also like to see the filing fee rolled back to \$500 from the current \$1000 fee.
- Scott would also like to have language in the rule to prevent local units of government from interfering with the premise once it passes the qualification process.
- He would also like a preemption for nuisance lawsuits for farms who have completed the siting process.





December 12, 2005

Representative Al Ott
Chair, Assembly Committee on Agriculture
Inter-departmental Mail
Room 310 North, State Capitol

CR 05-014 ?

Dear Chairman Ott:

Capitol:

Post Office Box 8953

Madison, WI 53708-8953

(608) 266-3534

Toll-Free: (888) 534-0096

Fax: (608) 282-3696

Rep.Nerison@legis.state.wi.us

District:

S3035 CTH B

Westby, WI 54667

(608) 634-4562

Thank you for this additional opportunity to comment on ATCP 51 following last week's hearing. I believe that department staff, advisory committee members and all of those involved in this process have done excellent, conscientious work. I do have three suggestions that can improve the rule.

- I support the effort that has already begun to make Wisconsin's method of counting animal units, both for purposes of ATCP 51 and NR 243, consistent with the criteria used by the US EPA. There is no reason for state and federal government not to be speaking the "same language" when administering pollution control programs that have so many overlapping provisions.

- While I think that odor should be addressed in this rule, I think that the committee should continue to work with the department on odor standards. I share the concern of many groups who testified at our hearing and I believe some of their suggestions should be incorporated so that the air scoring system can help, not hinder, livestock expansion.

- I support grandfathering existing structures to the greatest extent possible. Existing laws and administrative rules already apply to these structures and, unless a producer proposes substantially altering a structure, I don't think new regulations need to apply.

I appreciate the thorough way that the committee is considering this rule. I feel positive about this process and I am confident that we are close to having a final product that is agreeable to most people and that is good for the future of Wisconsin agriculture.

Sincerely,

Lee Nerison
State Representative
96th Assembly District



2005
?

Rbl - Ag Committee Public Hearing on ATCP 51

Ward: 90% where we want to be.

Act did not say "include odor"; but it did not preclude from addressing.

- If we don't do it, someone else will.
(i.e. Town of Chilton)

Get it done, but get it done right.

Bronemus - Wants intent of the law spelled out in the rule.

- Do via drafter's notes?

Olsen - Any areas of the rule that leaves the decision subjective?

- Appeals process would be checks + balances.
- Aim is to keep entire process objective.

Subsection - Provides predictability for producers.

Practical + affordable BMPs.

Fair to Neighbors, Local Govt + Producers

Protects the Environment

Will help us grow the milk supply.

Suder - A discussion about odor should occur, but this is not the appropriate place to do it.

- An unelected body made these decisions.
- Odor is not in the legislation, so it shouldn't be in the bill.
- "The legislature needs to reassert its own power."
- Please remove the odor index.

Rod - If odor were not in the rule, regardless of the odor situation on a farm, local govt. would have to approve a permit to expand.

- We don't solve problems by ignoring them.

Brown - What About Cost Sharing?

Rod - Nothing in this rule prevents cost sharing from being offered, but it is not required.

Ainsworth - Concerned about animal units.

Supposed to use "peer reviewed" science. What science supports the odor index?

- Rod -
- ① Used Body of work from University of MN.
 - Published in 12 scientific journals
 - ② Responded to public hearing comments to adapt this model to Wisconsin.

Yarons - Is the permit permanent?
Does it stay w/ the farm in the event of sale?

Pool - Even if the permit expires, the reference points are locked in.

Al - This issue should be addressed.

Bruins, Mize, Quam, Waller -

"United front" in opposition to the rules.
- As drafted, does not accomplish goals of the legislation.

Different issues for different size operations.

* Over 1000: Expensive BMPs

* Under 500: No assurance of cost sharing

* 500-1000: Incremental Growth

① Supports odor being addressed in rule - how it's done is of concern.

② Animal Units

③ Existing Structures - Grandfathering

④ Cost Sharing for pre-existing ordinances under 500

Position has been the same since last March.

Committed to continuing the process

Barry Rohde - The odor issue is a void that needs to be filled.

Sudler - How did you go from legislation w/out the word odor to proposing a rule that includes it?

WI Bankers Assoc. - Rule is close to being reasonable.

Bill Pielsticker - Odor has been the single greatest concern when siting facilities.

Andrew Hanson: WEA -

- Return odor curves to where they were.
- Remove 2500 ft. exemption.
- Remove credit for prevailing winds.
- Add BMPs.

Matt Stohn: WI Counties Assoc.

Fee Issue - if cap is lowered, they will not support the rule.

Statutes + case law - fee must bear significant relationship to services.

- Limits potential for abuse.

Must be able to recoup cost of notification, which is a provision requested by the realtors.

Stuebelman - WI Lawyers Assoc.

- The law contains a strong statement of intent.

- Order must be addressed.

- Local courts could adopt a nuisance ordinance (i.e. noise) related to order if it's not included in rule. Right back where we started.

- Will continue to support this rule w/ the understanding that there needs to be accountability for producers.

- Time limit on applicability of application may be appropriate.

Dick Cates -

- Order is not in the language of the bill.

However

The bill directs the Dept. to set standards for siting.

- It's up to the dept to decide what those standards are.



December 21, 2005

MOTION

The Assembly Committee on Agriculture, pursuant to s. 227.19 (4) (b) 2., Stats., requests the Department of Agriculture, Trade and Consumer Protection to consider modifications to Clearinghouse Rule 05-014, relating to livestock facility siting, to address the following, including the attached committee members' comments:

- Modify the provisions of the proposed rule related to odor.
- Make additional changes and clarify language regarding treatment of existing structures.
- Add references to legislative intent.
- Require notice to nearby property owners and residents as part of the application.
- Clarify the definition of "animal unit" that is used in the proposed rule.
- Clarify the requirement of cost-sharing for facilities less than 500 animal units.

If the Department of Agriculture, Trade and Consumer Protection does not agree to consider modifications to Clearinghouse Rule 05-014 in a letter addressed to the chairperson of the Assembly Committee on Agriculture, or fails to respond in writing to this request for modification, by 5:00 p.m., December 27, 2005, the Assembly Committee on Agriculture objects to Clearinghouse Rule 05-014 pursuant to s. 227.19 (4) (d) 6., Stats., on the grounds that the proposed rule is arbitrary and capricious, and imposes an undue hardship.





Al Ott

State Representative • 3rd Assembly District

December 21, 2005

Secretary Rod Nilsestuen
Dept. of Agriculture, Trade & Consumer Protection
P.O. Box 8911
Madison, WI 53718-8911
(Transmitted Via E-mail)

Dear Secretary Nilsestuen,

Please find attached a motion adopted by the Assembly Committee on Agriculture relative to Clearinghouse Rule 05-014. The Committee approved the motion 13-0.

The Committee respectfully requests the Department to consider modifications to this rule as outlined in the motion and written comments provided by committee members.

Please respond, in writing, as to your intent to consider modifications by 5:00 p.m. on Tuesday, December 27th. Should the Department fail to respond or refuse the Committee's request, the motion provides that the Committee will object to the rule.

I sincerely appreciate the work of the Department thus far on this rule. As you move forward, I would encourage you and Department staff to continue to have open and honest dialogue with my office and members of the committee.

Please do not hesitate to contact my office with any questions or concerns.

Sincerely,

Al Ott
State Representative
Chair, Assembly Committee on Agriculture

Attachments





**STATE OF WISCONSIN
OFFICE OF STATE REPRESENTATIVE BARBARA GRONEMUS**

P.O. BOX 8952
MADISON, WISCONSIN 53708-8952
608-266-7015
TOLL-FREE 1-888-534-0091
FAX: 608-282-3691
E-MAIL: rep.gronemus@legis.state.wi.us

DISTRICT ADDRESS:
P.O. BOX 676
WHITEHALL, WI 54773-0676
715-538-4130
FAX: 715-538-2119

MEMORANDUM

**TO: CHAIRMAN REPRESENTATIVE AL OTT
MEMBERS – ASSEMBLY COMMITTEE
ON AGRICULTURE**

**FROM: REPRESENTATIVE BARBARA GRONEMUS
RANKING MEMBER – ASSEMBLY COMMITTEE
ON AGRICULTURE**

DATE: DECEMBER 21, 2005

**RE: CLEARINGHOUSE RULE 05-014
Relating to livestock facility siting, and affecting small
business.**

Mr. Chairman and Fellow Committee Members:

Regretfully, due to an eye doctor appointment previously scheduled and which can't be cancelled, I am unable to be with you for Executive Session action on the Livestock Siting Rule noted.

Personally, I feel it is unwise for DATCP or this committee to proceed with the promulgation of Clearinghouse Rule 05-014 until the Legislature, our committee and DATCP is aware of just what the federal regulations and our own DNR NR243 regulations will be and how they will relate to or cause serious conflict with the provisions of CRO5-14. To have all the work that has gone into CRO5-14 be invalidated by federal and/or DNR regulations would be a devastating situation!

However, realizing the process and procedures of Clearinghouse rules, and this one in particular, I urge you to adopt the modifications being proposed by Representatives Ainsworth, Petrowski and Towns, and the modification I have proposed that provides clarification as to the status for cost-sharing to counties and towns with ordinances for under 500 animal units.





State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

December 23, 2005

The Honorable Al Ott
State Representative
Chair, Assembly Committee on Agriculture
P.O. Box 8953
Madison, WI 53708

Dear Representative Ott:

This letter responds to your December 21, 2005 letter containing the Assembly Committee on Agriculture request to the Department to consider modifications to Clearinghouse Rule 05-014 relating to livestock facility siting. The motion adopted by the committee during the executive session held on December 21, 2005 requests the following modifications to the rule:

- Adjustments to the provisions relating to odor
- Changes and clarifying language regarding treatment of existing structures.
- Adding references to legislative intent.
- Adding provisions requiring notification to nearby property owners and residents as part of the application.
- Clarifying the definition of "animal unit" that is used in the proposed rule.
- Clarifying the requirement of cost-sharing for facilities less than 500 animal units.

The Department agrees to thoughtfully consider the modifications proposed by the Assembly Committee on Agriculture, as well as the comments submitted by committee members.

Sincerely,

Rod Nilsestuen
Secretary

Agriculture generates \$51.5 billion for Wisconsin





JOHN AINSWORTH

STATE REPRESENTATIVE • 6TH ASSEMBLY DISTRICT

CHAIRMAN:

COMMITTEE ON TRANSPORTATION

February 15, 2006

Representative Al Ott, Chairman
Assembly Committee on Agriculture
Room 323 North – State Capitol
Madison, Wisconsin 53708

Dear Al:

I would like to repeat that I was *not* involved in any of the aforementioned discussions of whether or not odor was to be considered in Clearinghouse Rule 05-014.

I am, however, probably beginning to realize how those who were involved in that discussion are feeling. I am feeling duped. When this committee last met on this rule, I expressed grave concerns over the animal unit count being used in Wisconsin and how it differs from the count used by the E.P.A. These differing methods of counting animal units could subject Wisconsin's soon-to-be-average farmers to more strict regulations than farmers in other states.

During the Assembly Agriculture Committee hearing on the rule, I offered to draft legislation which would bring Wisconsin's animal unit count in line with that used by E.P.A. I was discouraged from doing so as, I was told, Senator Kapanke already had such legislation drafted. I signed on to the Senator's bill as did the author, Representative Ward, of the siting bill and the Chairman of this committee.

I left the hearing on December 21, 2005, with the understanding that this rule would not be back before us until Senator Kapanke's bill was enacted into law. I am sure there are others who left that hearing with the same understanding.

At a public hearing of Senator Kapanke's bill, all producer groups either testified or registered in favor of the bill. Non-producers, mostly environmentalists it appears, excluding DATCP and DNR, testified in opposition to the bill but were outnumbered by those who appeared or registered in favor.

The bill appears dead in committee. Those who seemed to be in favor of Senate Bill 504 now appear to be comfortably curled in the lap of the environmentalists.

This rule and the bill which required its writing are sincerely intended to help protect and nurture Wisconsin's animal agriculture, however, the procedure used to arrive at the position we are in today was bizarre. I feel boxed in. If we take no action, the rule with its more restrictive animal unit count will become law. If we object to the rule, it goes to JCRAR which may not give it the time or consideration it deserves. It seems fruitless to once again seek modifications which have already been denied.

In my opinion, the rule is now in as good a form as it is likely to ever be without the necessary change in Statute. Secretary Nilsestuen now appears to have been correct when he said we would end up where he thinks we should be. I feel more obligated to represent the position of Wisconsin producers, as stated in their February 14th letter to us, but now feel powerless to do so.

Given the choice, I would instruct the Department of Agriculture, Trade & Consumer Protection to hold the rule until the statute affecting the animal unit count is altered. Without that choice, I would vote to reject the rule and hope that JCRAR would do all in their power to delay implementation until NR 243 is reviewed. At that point, we could possibly influence the change in the animal unit count as it affects both rules.

Sincerely,



JOHN AINSWORTH
State Representative
6th Assembly District

JA/cr

cc: Speaker John Gard
Representative Mark Gottlieb, 60th Assembly District

Senate

Record of Committee Proceedings

Committee on Agriculture and Insurance

Senate Bill 504

Relating to: determining the size of a livestock operation for the applicability of the livestock facility siting law, water quality regulation of livestock operations, granting rule-making authority, and providing an exemption from emergency rule procedures.

By Senators Kapanke, Brown and Olsen; cosponsored by Representatives Ott, Ward, Petrowski, Musser, Nerison, Ainsworth and Towns.

January 13, 2006 Referred to Committee on Agriculture and Insurance.

January 18, 2006 **PUBLIC HEARING HELD**

Present: (7) Senators Kapanke, Kedzie, Brown, Olsen,
 Erpenbach, Hansen and Miller.

Absent: (0) None.

Appearances For

- Paul Zimmerman, Madison — WI Farm Bureau

Appearances Against

- Andrew Hanson, Madison — Midwest Environmental Advocates
- Rod Nilsestuen, Madison — DATCP
- Gordon Stevenson, Madison — DNR
- Judy Treml, Luxemburg

Appearances for Information Only

- None.

Registrations For

- Terry Quam, Madison — WI Cattlemen's Assoc
- Ron Kuehn, Madison — WI Cattlemen
- Mike Wehler, Madison — WI Pork Assoc
- Amy Winter, Madison — Capitol Strategies, LLC
- John Umhoefer — WI Cheese Makers Association
- Judy Keller, Madison — WI Cheesemakers Assn
- Laurie Fischer, Oneida — Dairy Business Association
- Bob Welch — WI Corn Growers
- Bill Hoffman — WI Corn Growers
- Bob Oleson — WI Corn Growers

Registrations Against

- Caryl Terrell, Madison — Sierra Club
- Karen Etter-Hale, Madison — Madison Audobon Society
- Anne Sayers, Madison — WI League of Conservation Voters
- Rachel Canter, Whitefish Bay — Self
- Gina Steinke, Juneau — Self
- Jennifer Giegerich, Madison — WISPIRG
- Christa Westerberg, Stoughton — Self
- Katie Nekola, Madison — Clean WI

John Perlich
Committee Clerk



WISCONSIN FARM BUREAU. MEMO

TO: MEMBERS OF THE ASSEMBLY AGRICULTURE COMMITTEE
MEMBERS OF THE SENATE AGRICULTURE AND INSURANCE
COMMITTEE

FROM: PAUL ZIMMERMAN *PZ*

SUBJECT: ATCP 51 – STATE STANDARDS FOR LIVESTOCK SITING

DATE: FEBRUARY 14, 2006

Attached for your information is a copy of the letter the livestock industry submitted to DATCP Secretary Nilsestuen and the DATCP Board supporting final adoption of ATCP 51.

On behalf of the members of the Wisconsin Farm Bureau Federation, I thank you for your assistance in working with the livestock organizations to improve to final rule. WFBF truly appreciates your support of the livestock industry.

WFBF encourages you to approve ATCP 51 as proposed by DATCP.

If you have any questions or comments, please contact me at 608-828-5708 or pzimmerman.fbcenter@wfbf.com.

February 8, 2006

Secretary Rod Nilsestuen
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, Wisconsin 53708

Dear ^{Rod} Secretary Nilsestuen,

RE: ATCP 51 – Livestock Facility Siting

The Dairy Business Association, the Wisconsin Cattlemen's Association, the Wisconsin Farm Bureau Federation, Jennie-O Turkey Store, Inc., the Wisconsin Pork Association, and Gold'n Plump Poultry appreciate the opportunity to provide our comments on the revised final draft rule ATCP 51.

The above mentioned groups support final adoption of the rule by the DATCP Board with the proposed changes being suggested by department staff. These changes include a definition for separate species facilities and a modification in the definition of "related livestock facilities" to be consistent with DNR's definition in NR 243.

The livestock industry believes that it is time to move forward and adopt the rule. However, we are committed to monitoring the impacts of livestock siting on our industry to see if any adjustments are needed. The livestock groups are pleased that the DATCP Board has requested monthly updates the first year and annual updates thereafter. This will allow DATCP, industry, local governments and the general public to stay informed on the implementation of state standards for the siting of livestock operations.

The livestock groups wish to highlight our support for the following changes being proposed by the Department in response to the modifications suggested by the Senate and Assembly Agriculture Committees:

1. We support the changes made to the odor / air emissions portion of the rule including recognizing additional odor control practices, removing the "predicted odor" cap, revising the definition of "bottom fill," and exempting structures that have limited to no impact on odor generation. Further, the livestock industry is pleased with the provision allowing a producer to use the initial "odor score" for future expansion applications.

2. We support the changes made to address separate species facilities. This will be of assistance to the poultry industry. We further support the removal of the 750' separation requirement where the aggregated facility is less than 1,000 animal units.

3. We support the clarification that an existing operation that is required by a local unit of government to be permitted can expand up to 20% before a permit is required. This is consistent with the governing statute and legislative intent.

4. We support the change in definition of a "high-use building" to exclude farms that have employees from being considered a high-use area.

5. We support the provision requiring local units of government to notify adjacent landowners of a pending application for siting of a livestock operation.

6. We are pleased that there is a commitment from DNR to DATCP to utilize the odor management practices established in this rule as a basis for emissions regulations being considered by DNR in NR 445.

7. We support the modifications to existing manure storage structures to allow expansion parallel to the property line for situations where the current structure is located within the 350 foot setback.

Only after the Legislature requested modifications did DATCP propose additional revisions to ATCP 51. It is the livestock industry's belief that in the future these types of issues ideally should be addressed at the agency level.

As ATCP 51 goes forward, there are four areas that the livestock groups are concerned about and will be working to address. The livestock industry wants you to be aware of them.

1. ATCP 51 incorporates by reference most of the new 2005 Wisconsin version of NRCS technical standard 590, Nutrient Management. It is our understanding the DATCP sometime in 2006 will propose to update existing ATCP 50 to reference this updated standard as well. Further, it is our understanding the DNR sometime this spring will be proposing its final version of NR 243, which will include nutrient management standards as well. The livestock industry is committed to be involved in these discussions to ensure consistency among regulations that are practical and workable for farmers.

2. The livestock industry is committed to pursuing efforts to modify the way animal units are calculated and counted in this state. Wisconsin should not be more restrictive than the federal requirements if we want to promote the growth of our industry. This comment is particularly apt in the discussion concerning revised NR 243. One of the legislative goals is to encourage growth in the 500 – 1000 animal unit range. As ATCP 51 is implemented, we respectfully request the DATCP to monitor where and what type of growth is occurring.

3. The rule requires a level of inspection and compliance of existing facilities before a permit for new facilities or expansions is granted. We are very interested in seeing how this existing facility approval program will work in practice and the cost incurred by producers for compliance.

4. The livestock industry will be monitoring the effects of livestock siting in areas where the local unit of government had a pre-existing threshold lower than 500 animal units to see what the impacts of ATCP 51 are on livestock farms under their jurisdiction. It is our belief that these farms should be offered cost sharing for the water quality practices required by DATCP as part of livestock siting. But the industry is willing to see what actually happens locally before pursuing this issue further.

Thank you for the opportunity to submit our comments.

Sincerely,

John Vrieze
Dairy Business Association

Terry Quam
Wisconsin Cattlemen's Association

Bill Bruins
Wisconsin Farm Bureau Federation

Mike Wehler
Wisconsin Pork Association

Gary Matthys, Vice-President of Operations
Jennie-O Turkey Store, Inc.

Mike Helgeson, CEO
Gold'n Plump Poultry

Cc: DATCP Board
Representative Dave Ward
Representative Al Ott
Senator Dan Kapanke

*B for all
2/8/06*



CR 05-014?

* Hearing for Modified ATP 51 - Scheduled for 2/16

2006?

Name	OK to Cancel for Tomorrow?	Need to Reschedule?
Nerison	Yes	No
Ainsworth	Yes	No
Petrowski	*Currently out of state - Flying in tomorrow. Expected to be at the capitol around 11:15 a.m. (Under normal weather conditions) *The Rep. called later in the day requesting that I email him a summary of the modified rule. (sent 2/15 - 3:48 p.m.)	?
X Hines	Yes	No
X Suder	Yes - <i>if that's what other members would like to do.</i> *He would be here, however, if we held the hearing tomorrow as planned.	YES
Williams	*Had not planned to attend due to the passing of her mother.	*I did not contact as the Rep. had not planned to attend.
X Loeffelholz	Yes	No
X Towns	Yes	No
Gronemus	Yes *Bobby indicated to Al she would likely head home and not be at the hearing before I got the chance to call her office.	"Probably Not" *Per Bill Cross. Told him to let me know if something changed.
X Vruwink	Yes	No
Molepske	Yes	No
Ziegelbauer	Yes	No
Steinbrink	Yes	No
Parisi	Yes	No

X = Contacted me to inquire if planned to go ahead w/ the hearing.



(Prior to making calls)

• Hines

• Loeffelholz

• Towns

• Vruwink

Indicated they would not attend due to weather prior to my contacts.

• Suder - Inquiry of status only. Did not indicate inability to make it on Thurs.



SCOTT SUDER

State Representative • 69th Assembly District

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Madison, WI 53708-8953
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www.legis.state.wi.us/assembly/asm69/news

February 20, 2006

State Representative Al Ott, Chairman
Assembly Committee on Agriculture
Room 323 North, State Capitol
Madison, WI 53708

Dear Representative Ott:

I am writing this letter to once again convey my objections to the odor regulations that are included in the final draft of Clearinghouse Rule 05-014, the Wisconsin Livestock Siting Rule. As you know, I was not involved in any of the final discussions on whether or not odor would be included in the final version of the rule and strongly objected to its inclusion.

As you also know from our previous discussions on this matter, I have some serious concerns on the provisions of the odor rules concerning the way single animal units are counted and most importantly the stark contrast between the Wisconsin model and the current counting methods used by the E.P.A for these purposes. In fact, it is my strong belief that if we enact the current siting rule which contains these differing counting methods we could subject Wisconsin's family farms to stricter odor regulations than farmers in other states. In doing so, we would be placing Wisconsin farmers at a distinct disadvantage in today's increasingly competitive agricultural markets. Moreover, I feel obligated to once again point out the striking fact that odor standards were never a part of the original enabling legislation and thus should never have been included in this rule in the first place. While I appreciate that the Department desperately wants to regulate odor, the fact is that the Legislature never gave this bureaucracy the power to do so. I firmly believe that allowing an unelected body to "interpret" law in this fashion sets a dangerous precedent for future legislation which gives similar rule-making authority to agencies, thus handing over unprecedented power to legislate to an unelected group of individuals with little or no accountability to the public.

Furthermore, as you may recall during the committee's last meeting on the proposed rule, I fully supported Representative Ainsworth's call for new legislation that would bring Wisconsin's animal unit count in line with the E.P.A model. We were told at that time that our concerns would be met by legislation which Senator Kapanke had already drafted. Unfortunately it appears that Sen. Kapanke's legislation is stalled in committee and is unlikely to receive action to fix this problem before the siting rule goes into effect.

I join Representative Ainsworth in calling for the Department of Agriculture, Trade, and Consumer Protection (DATCP) to temporarily delay the final implementation of the siting rule until current state law can be altered to reflect the changes suggested in Sen. Kapanke's legislation. Without this important change to the current siting rule draft, I would vote to reject the rule in its entirety and request it be sent to the Joint Committee for the Review of Administrative Rules in hopes that the members of the committee could delay the siting rule until these concerns have been met. Unfortunately it appears that you are not going to re-schedule last week's committee hearing to review the final rule in a blatant attempt to prevent such a motion/vote by concerned members of this committee.

In the interests of continuing Wisconsin's long standing dedication to protecting our agricultural heritage, I hope that you will join me in making these changes to the current rule. I thank you in advance for considering my request and I look forward to receiving your reply. If you should have any further questions on this issue, please do not hesitate to contact me at any time.

Sincerely,


Scott Suder

State Representative
Wisconsin's 69th Assembly District

Cc: Speaker John Gard

Rod Nilsestuen, Secretary Wisconsin Department of Agriculture, Trade, and Consumer Protection

Assembly Committee Assignments:

Criminal Justice, Chairman • Rural Development, Vice Chairman • Corrections and the Courts
Transportation • Agriculture • Law Revision • Rural Economic Development Board



CR 05-014 ?
Date ?

- * Rep. Jerry Petrowski and I would request that the modifications to ATCP 51 include changes to the following issues within the rule. This request is not intended to limit modifications to these issues, but merely requests inclusion of these issues.

Thank you,

- * Rep. Debi Towns

COMPLETE GRANDFATHERING OF LIVESTOCK STRUCTURES THAT ARE NOT BEING EXPANDED

Existing livestock structures are not grandfathered. The rule applies to and requires producers to incur costs regarding existing livestock structures that are not proposed to be expanded or modified as part of the expansion that is subject to the local approval. This was not the intent of the siting law. Local approvals to expand a farm do not involve an assessment of facilities that are not a subject of the local approval. The statute reads that the department “shall promulgate rules specifying standards for siting and expanding livestock facilities”. Wis. Stat. § 93.90(2)(a). This applies to new or expanding structures, not existing structures not proposed to be modified or expanded. The rules’ approach will impede growth not foster it.

By way of example, if a small dairy farmer wants to supplement his dairy income by constructing two turkey barns to raise turkeys triggering the siting law, the local approval is subject to the farmer assessing the status of his pre-existing manure lagoon for the dairy operation which is wholly unrelated to the purpose of the expansion or the requested local approval. This constitutes nothing other than a “regulatory reach” which is neither consistent with the sought after local approval nor consistent with the legislative intent upon passage of 2003 Wisconsin Act 235.

The rule should be amended to indicate that the new standards created by the ATCP 51 apply only to that portion of the livestock facility or structure that constitutes the expansion subject to the local approval. Importantly as well, if this change is not made, we are concerned about scenarios whereby certain existing facilities’ status as legal non-conforming uses under zoning law will be jeopardized. See e.g. 51.01(12); 51.18(1) and (2); 51.20(2)).

The final rule should cross-reference the definition of “expansion” to Wis. Stat. § 93.90(3)(e) which allows 20% incremental expansion. See 51.01(13) and Wis. Stat. § 93.90(3)(e).

MODIFY DEFINITION OF “AFFECTED NEIGHBOR”

Newly created definition of “Affected neighbor” for purposes of the odor score calculation should be modified to reduce its applicability to 1,500 feet from the currently proposed ½ mile radius. See 51.01(2).

REVISION OF THE ANIMAL UNIT CALCULATION

A concern of producers throughout this rulemaking process has been the application of the nutrient management provisions of NRCS 590 to facilities that previously have been able to receive cost sharing from other state and local regulations that can apply these standards. In addition, livestock groups have been continually concerned about the use of a mix animal unit calculation as a trigger for expansion. For instance, currently the DNR is proposing to change the mixed animal unit calculation which if adopted mandates farms with few animal units to comply with the odor standards. The rule should adopt the single Federal Animal Unit calculation that EPA requires whereby each species is counted individually.

IMPROVE DEFINITION OF “KARST FEATURE”

“Karst feature” is poorly defined. Final rule should clarify that a “Karst feature” is one that in fact does provide a direct conduit to groundwater (not one that is “likely to”, but may not) to remove subjectivity from this determination. See 51.01(16).

IMPROVE DEFINITION OF “LIVESTOCK STRUCTURE”

Feed storage facilities and milking parlors, including holding areas, should not be included in the definition of “livestock structure” as they are not intended to confine livestock on any permanent basis. Moreover, feed storage structures vary widely and should not be covered by this rule. Temporary shelters and sunbreaks, not designed for the long-term confinement of livestock, should also not be defined as a “livestock structure” subject to this rule. See 51.01(19).

IMPROVE DEFINITION OF “OPERATOR”

The final draft rule’s definition of “operator” is drafted too narrowly. The definition should be amended to include the person that either applies for or holds the local approval or who owns, manages, or controls the livestock facility and all legal entities owned, managed or controlled by such persons. See 51.01(28); See also, 51.01(2).

IMPROVE DEFINITION OF “PROPERTY LINE”

The definition of “Property line” should not apply to “persons” that own, manage, control or meet the definition of “operator” (as suggested to be revised above) of the livestock facility. Specifically, the definition’s use of the phrase “different persons” should be replaced with the concept of “unrelated persons or entities” to recognize the use of business entities in the livestock industry (such as limited liability companies, family farm corporations and the like, each of which have a status as a unique person under law). In other words, even though a livestock operation and property may be owned by differing corporate entities, LLCs, LLPs, and the like, they nonetheless may be still be related for purposes of the application of a property line for the rule’s setback purposes. See 51.01(33).

IMPROVE DEFINITION OF “SUBSTANTIALLY ALTERED”

Final draft rule results in the new standards being applied to existing facilities that make “alterations” (minor/substantial) to the facility that are short of the statutorily-provided “trigger” of 20% expansions. Definition of “substantially altered” should be amended to clarify that it applies only to *expansions* of livestock structures or increases in animal units. The statute does not mention anything about developing state standards for the “alteration” or “material change” of a livestock structure. The Department’s rule should only apply to situations where a new livestock facility is being sited for the first time or where an existing livestock facility is being expanded by 20%. See 51.01(38).

CLARIFICATION ON EXISTING WASTE STORAGE STRUCTURE

§ ATCP 51.12(2) must be clarified so that an existing waste storage structure that was located within the setback area prior to the effective date of the setback requirement, may be expanded away from the property line or public road to which the local setback applies, so as to avoid an ambiguity existing between 51.12(2) and 51.12(1)(d). This clarification should be drafted in 51.12(2)(b).

REMOVE “REASONABLY SUBSTANTIATE”

The “reasonably substantiate” standard proposed in 51.16(1)(b) should be removed. This standard is contrary to both the legislative intent and underlying policy of the Livestock Facility Siting Law which was to create a certain level of standardization and certainty in the permitting process. This is particularly so when DATCP certified professionals prepare and certify the accuracy of the information provided. Local officials are not in a position to render this judgment and the language guts the legislative intent. Simply put, this a subjective standard and is ripe for mischief as applied in certain local contexts.

STRIKE ALL PHRASES OF “CREDIBLE AND INTERNALLY CONSISTENT”

Relatedly, the rule’s requirement that information in the application be “credible and internally consistent” injects too much discretion and subjective opinion into the process and hence the phrase should be stricken wherever it appears. The language is problematic and the concept of who decides what is “credible” with respect to an application creates an unnecessary loophole given that the application worksheets require certification by the applicant and/or a credentialed professional. This certification is sufficient for presumptive truth in other programs and should be here as well. The application, based on the worksheets, should rise or fall of its own merits and the rule should not attempt to create a legal standard which could conflict with the standard the Legislature adopted in Wis. Stat. § 93.90 (4)(d), Stats.

CLARIFY ACRES FOR PURPOSES OF NUTRIENT MANAGEMENT CALCULATION

Section 51.16(1)(c) of the final rule should be clarified to make clear that the operator does not have to own all the acres for purposes of nutrient management calculation in order to qualify for the exemption. Specifically, the reference to “acres” in para. (c) should be followed by the words “either owned, leased or available pursuant to agreement”.

RE-DRAFT EXEMPTION FOR OPERATORS HOLDING WPDES PERMITS

The exemption provided in 51.16(4), 51.18(7), and 51.20(10) for operators holding WPDES permits is helpful but must be redrafted. WPDES permits do not incorporate animal unit capacity limitations. Rather, WPDES permits are issued based upon design plans provided as part of the permit application and issuance process. WPDES permits do not contain any sort of animal unit “cap”.

REDUCE APPLICATION FEE FOR PRODUCERS

The application fee a political subdivision is authorized to charge was doubled to \$1,000. This should be maintained at \$500 as originally drafted.

ODOR MANAGEMENT STANDARD

- July 2004, WDNR adopts revisions to Ch. NR 445, Wis. Admin. Code (Wisconsin’s air toxics rule) and includes emissions of hazardous air contaminants associated with agricultural wastes in the rule.
- Rule provided a three-year exemption (i.e., July 2007) to applicability to agricultural operations.
- Exemption period granted in part due to ongoing rule development in the context of livestock siting (ATCP 51, Wis. Admin. Code) and the pendency of US EPA’s National Air Quality Agreement for Livestock Operations.
- **Rule acknowledged a preference for the adoption of Best Management Practices (“BMPs”) as a means to control airborne emissions:**

(c) The owner or operator of a source of emissions of hazardous air contaminants associated with agricultural waste shall be deemed in compliance with all requirements, limitations and conditions in this chapter provided best management practices, as approved by the department, for the handling of agriculture waste are implemented at the source.

Note: NR 445 was not developed with the purpose of regulating emissions of hazardous air contaminants associated with agricultural waste or byproducts. The department believes that using best management practices is the preferred approach to regulate and control emissions from these types of sources. Accordingly, the department intends to participate in the development of best management practices to regulate and control emissions from such sources within 36 months of July 1, 2004.

- BMP preference is consistent with science which shows that control of emissions and airborne particulate matter has positive impact on odor control, such that the BMPs are coextensive (i.e., effective to respond to concerns of both odor and air emissions from livestock operations).
 - * ATCP 51's proposed odor management standards, proposed in the context of the livestock siting rule, is an opportunity to develop the BMPs that will serve to fulfill the requirements of NR 445, as applied to agricultural waste.
 - * Opportunity exists now to develop one set of standards and BMPs to address both issues: odor mitigation for purposes of livestock siting and air emission BMPs for purposes of NR 445.
 - * Advantage to producers is one set of acceptable BMPs or control strategies; advantage to regulators is WDNR's ability to incorporate into NR 445 by reference the BMPs already developed in ATCP 51 without undertaking separate resource-consuming rulemaking.

What is required:

1. Eliminate the proposal to use the Minnesota offset model for predicted odor, as it is not based on science.
2. Expand the list of BMPs designed to be acceptable control strategies for emissions from livestock operations, and develop a method to facilitate the addition of new, innovative management practices, such as manure separators.
3. Redefine the odor management standards to be emission management standards addressing both the reduction of nuisance odor and the reduction of airborne emissions from livestock operations.
4. Seek WDNR concurrence in the coextensive approach so that producers will have one comprehensive list of flexible BMPs from which to choose.

CLARIFY THAT THE PERMIT IS ASSIGNED TO THE FARM, NOT THE PRODUCER & THAT THERE IS A PERMANENCY TO APPROVAL.

There was discussion at the hearing regarding the permit itself. The rule needs define that the permit is somehow attached to that farm, and that the permit would transfer with a sale of the property. It was clear that this impacts the value of the real estate as a working farm and the lenders will view instability in maintaining that approval as an increase in risk. As a result, there would likely be a negative impact on leveraging capital if the land use is uncertain. I would like to see the permit be permanent.

It was never clarified exactly who was to be responsible for recording or holding the permit. Nor, is it clear who will inform the unaffiliated neighboring property buyers about the protection provided to the producer holding a permit.

COST SHARING

The livestock siting legislation states that counties or townships with pre-existing ordinances with a threshold lower than 500 animal units can continue. However, the municipalities still must provide cost-sharing for the nonpoint provisions. ATCP 51 does not say this.

WASTE AND NUTRIENT MANAGEMENT (Worksheet 3)

It's clear from the worksheets that if you have a WPDES permit that you do need to fill out worksheet 3. However, in order to receive a WPDES permit, your farm must also have completed a NRCS 590 plan. There are farms that have invested the time and expense in a 590 plan, but are not required (based on their size) to secure a WPDES permit. These 590 plans are signed by a state-certified engineer. **The rule should exempt any applicant from worksheet 3 if they have a 590 plan.**