

WISCONSIN STATE  
LEGISLATURE  
COMMITTEE HEARING  
RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on  
Agriculture and  
Insurance  
(SC-AI)

File Naming Example:

Record of Comm. Proceedings ... RCP

- > 05hr\_AC-Ed\_RCP\_pt01a
- > 05hr\_AC-Ed\_RCP\_pt01b
- > 05hr\_AC-Ed\_RCP\_pt02

COMMITTEE NOTICES ...

> Committee Hearings ... CH (Public Hearing Announcements)

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> Committee Reports ... CR

> \*\*

> Executive Sessions ... ES

> \*\*

> Record of Comm. Proceedings ... RCP

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INFORMATION COLLECTED BY COMMITTEE  
CLERK FOR AND AGAINST PROPOSAL

> Appointments ... Appt

> \*\*

> Clearinghouse Rules ... CRule

> **05hr\_CRule\_05-014\_SC-AI\_pt02**

> Hearing Records ... HR (bills and resolutions)

> \*\*

> Miscellaneous ... Misc

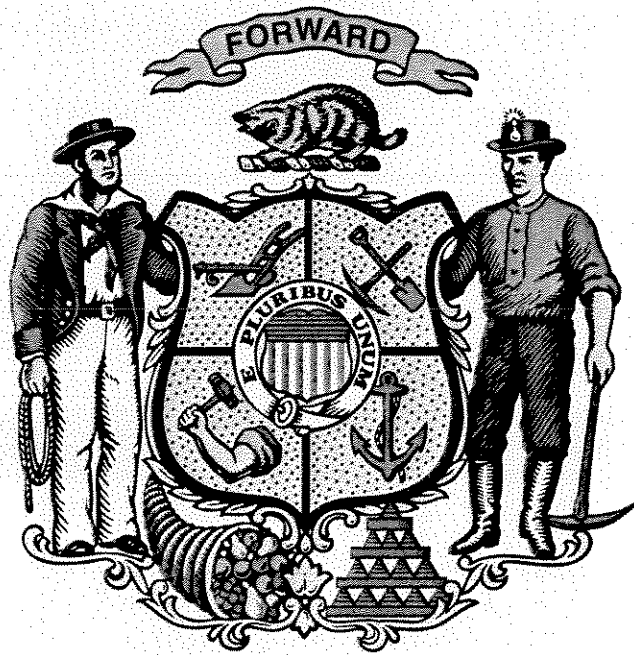
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December 8, 2005

## 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.

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.

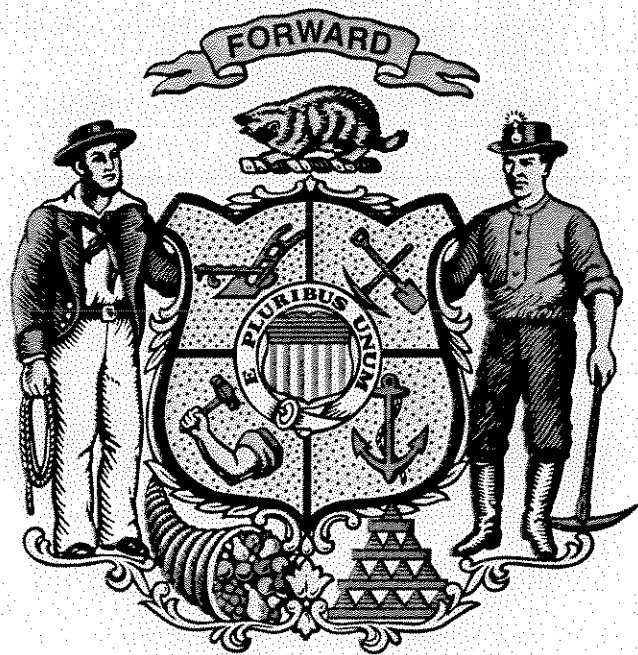


December 8, 2005

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*Testimony of*

Jim Raymond of M&I Bank  
&  
Jeremey Shepherd

**Representing the Wisconsin Bankers Association**

*Before the*

Assembly Committee on Agriculture  
Senate Committee on Agriculture and Insurance

*in*

Opposition to Clearinghouse Rule 05-014

Dec. 8, 2005

Chairman Kapanke, Chairman Ott and Members of the Senate and Assembly Ag Committees, my name is Jeremey Shepherd. I am the new director of legislative affairs for the Wisconsin Bankers Association. With me today is Mr. Jim Raymond, vice president of agriculture lending at M&I Bank in Janesville and past chair of the Wisconsin Bankers Association (WBA) Agriculture Bankers Section. Mr. Raymond and I are testifying today in opposition to the Department of Agriculture, Trade and Consumer Protection (DATCP) Clearinghouse Rule 05-014, relating to livestock facility siting, and affecting small business.

The WBA represents more than 25,000 bank employees in the state and banks that range from \$15 million in assets to multi-billion dollar institutions.

Through their agriculture lending programs and small business projects, Wisconsin bankers have played a vital role in the economic development of hundreds of rural communities throughout Wisconsin. WBA is here today because of our strong support for the agriculture industry and to address our concerns with odor and water standards as proposed by DATCP's livestock facility siting rule.

Specifically, the air and water management standards outlined in Clearinghouse Rule 05-014 require costly practices to be implemented for many of the family farm expansion projects that our bank members finance, WBA is very concerned about the detrimental effect the rule will have on those expansion plans.

4721 SOUTH BILTMORE LANE  
MADISON, WI 53718

P. O. Box 8880  
MADISON, WI 53708-8880

608-441-1200  
FAX 608-661-9381

[www.wisbank.com](http://www.wisbank.com)

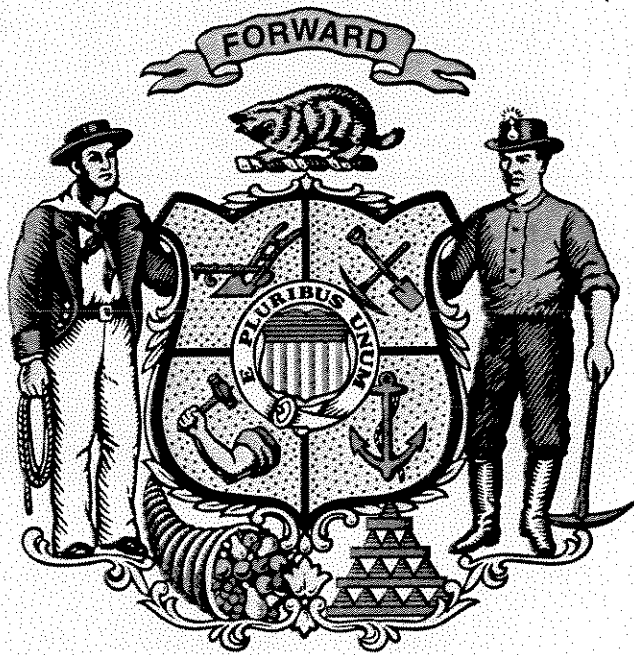
WBA Testimony  
December 8, 2005  
Page Two

Our members are often asked to leverage equity and loan money for a new or expanded operation based on an expectation of increased revenues generated by greater amounts of product sold. Expensive odor and water control systems will be viewed by lenders as a non-performing asset that in many cases requires a much higher level of equity than a performing asset will. Moreover, as a result of implementing odor and water control systems that meet the proposed standards, the cost of production will increase. This will result in a need to generate more income, which may likely come from adding more livestock.

WBA and its members are sensitive to protecting the environment, but the odor and water standards as proposed by DATCP impact those who can least afford it: mid-sized livestock businesses. Given economic pressures of cost increases in fuel, fertilizer, and other inputs, these producers will be faced with the reality of needing to grow their business to compete. This segment of the industry simply cannot afford additional burdensome regulatory requirements.

WBA commend the Legislature, Governor and Department in bringing siting issues to the forefront through legislation and rulemaking. The positive impact on local communities will be realized by providing specific guidance to local governments to use in determining livestock siting locations.

We appreciate your consideration of our comments, and those of the farmers in Wisconsin, as you work to finalize Clearinghouse Rule 05-014. WBA urges you to work with livestock groups and others representing agriculture to craft a final rule that allows agriculture to thrive in this state while meeting the needs of the public at large.





# Wisconsin Towns Association

Richard J. Stadelman, Executive Director  
W7686 County Road MMM  
Shawano, Wis. 54166

Tel. (715) 526-3157  
Fax: (715) 524-3917

To: Members of Assembly Agriculture Committee  
Members of Senate Committee on Agriculture and Insurance  
From: Richard J. Stadelman, Executive Director  
Re: Proposed ATCP 51, Clearinghouse Rule 05-014; - Support  
Relating to Livestock Facility Siting Standards and Procedures  
Date: December 8, 2005

Wisconsin Towns Association supports the proposed ATCP 51 draft rule relating to livestock facility siting standards and procedures. We believe that this draft rule, as a whole, meets the directions given by the legislature in Sec. 93.90 (2) (b) of Wisconsin Statutes to the Department of Agriculture, Trade, and Consumer Protection (DATCP). We believe the draft rule is *“protective of public health and safety; practical and workable; cost-effective; objective; based on available scientific information that has been subjected to peer review; designed to promote the growth and viability of animal agriculture in this state; designed to balance the economic viability of farm operations with protecting natural resources and other community interests; and usable by officials of political subdivisions.”*

While we support the draft rule as written, we do not oppose additional modifications which would clarify and modify some concerns identified by some interest groups, but would oppose major changes to the draft which would not be consistent with the balance in the objectives stated above that the DATCP has presented in this draft. We would oppose any significant changes, for example a change which would drop any odor standards or modify the odor standards in such a way as to eliminate any means to measure and account for size and proximity of the facility.

It is important to point out that the development of both this law and the proposed rule has been a compromise of various interests to achieve certain goals for these various interests. From local government, we see the law and rule as a means to retain local control over the planning and zoning (or licensing) of the “livestock facilities subject to the law and rule” while reducing the conflict local officials were subjected to in making these local decisions. We see the law and rules providing the livestock industry predictability and certainty in proposing, permitting, construction, and operation of “livestock facilities subject to the law and rule.” We believe that the standards will for the community as a whole and neighbors in particular protect public health and community interests. There are various aspects of the law and the proposed rule that through compromise balance this wide range of interests, yet provide a workable procedure and set of workable and reasonable standards to apply.

Examples of the balance and compromises included in both the law and the rule:

(1) The law provides local governments may still plan and zone for livestock in local plans and zoning ordinances, but must follow the state standards for those topics included in ATCP 51, thus reducing the arbitrary standards and conditions some local officials were being asked to impose. Further the law, allows preexisting ordinances (as of July 19, 2003) to be grandfathered for lower thresholds than the state law of 500 animal units for new and expanding facilities.

(2) The law provides local governments must approve applications that meet state standards. The law and rule establish fixed time lines for local government to act. Further the law provides a state review board of the decisions on state standards.

(3) The law applies to new and expanding livestock facilities over 500 animal units in general. Existing facilities that do not expand more than 20% over the number of animal units on the effective date of the rule, will not be subject to any requirements. In addition some aspects of the rule, such as the odor management standard, do not apply to expanding facilities until they reach 1,000 animal units.

(4) The rule "grandfathers" existing structures, and allows them to expand (but no closer to property lines), while new facilities must meet the 350 foot setback for new waste storage facilities. The rule creates a "reciprocal setback" for future expansions of permitted facilities once permitted under the law and rule.

Next, I want to address why having reasonable state standards, in particular the odor management standards, are so important to the balance of this rule. One of the most consistent objections from neighbors from new and expanding facilities (generally over 500 animal units) throughout the state has been the impact on the neighbors and their property.

Some concerns have been expressed that the potential for water contamination exists from manure storage facility failures or manure spills in general. These issues have been protected in this rule using the existing WPDES standards wherever possible. The history of the application of these WPDES standards in Wisconsin has been sound over the years, and therefore such concerns are not generally warranted.

Some concerns though that are not addressed in any existing standards are the odors generated from large livestock facilities from the housing, feedlots, and manure storage facilities. These impacts have been studied across the nation and are acknowledged by most of the livestock groups as a "problem" for some existing facilities and thus raised as objections by neighbors to new and expanding facilities. **The key to the draft rule is that DATCP has developed a means to create a predictive model based upon size; proximity; and design/operation of the facility which will manage the odor in a responsible manner.** It needs to be emphasized that the draft rule does not mandate that new and expanding facilities (subject to the rule) will not have odor. What it does require is that for the size of the proposed facility in relation to the proximity of non-affiliated residents, the design and operation

of the facility as to the housing and feeding of livestock, and manure handling and storage, the facility must manage the odor generated to a predictive level through the use of known best management practices, giving the facility owner a wide range of options.

A permitted livestock facility will have the protections of the law and Wisconsin's right to farm law, without the current threat of unreasonable conditions of operation or vague standards of odor measurement. The predictive model of the rule is much sounder than trying to use some odor measurement tool.

In fact, one of the strongest benefits to livestock facility operations that will be permitted under this law and rule, once in place, is that once permitted, the proximity for the facility at time of first being permitted will be the "setback" number for future expansions. This has been known in other states as a "reciprocal setback." This protection will reduce conflict for future expansions of once permitted facilities, as long as they are designed and operated as originally permitted, and as required by the additional expansion, without having to move existing facilities.

While our Association supports the odor management standard as written, we have heard some of the industry groups concern about the unknown of a new odor management standard. We do not oppose the draft rule being modified slightly to include some additional best management practices that are not currently listed. We do not oppose the modification of the rule to use animal unit counts as the basis for applying the predictive model to the housing facilities. We would oppose changing the rule to change the predictive model for the waste storage facility from the square footage to an animal unit count. Surface area of the waste storage facility is the largest generator of odor from most of the new and expanding livestock facilities.

Our Association agrees that the potential conflict due to changes in the NR 243 animal unit definitions should be resolved if at all possible, as it applies to this rule (ATCP 51). Our Association is comfortable with the projections of 50 to 70 facilities being subject to this law and rule under current NR243 animal unit counts. We are not asking to change the animal unit weighting to apply to more facilities. We do not believe different species (such as poultry counts and dairy counts) should be totaled on one facility unless they are using the same manure storage facility. The community generally looks at a turkey barn and dairy barn on the same farm as two different operations and can distinguish in their minds the impacts separately from each.

Our Association can support using the ATCP 51 odor standards to the greatest extent possible as the basis for the new and revised air emission standards that are to be developed under NR 445. Consistency between all rules as it applies to a facility makes sense, rather than having multiple standards and possible conflicting standards apply.

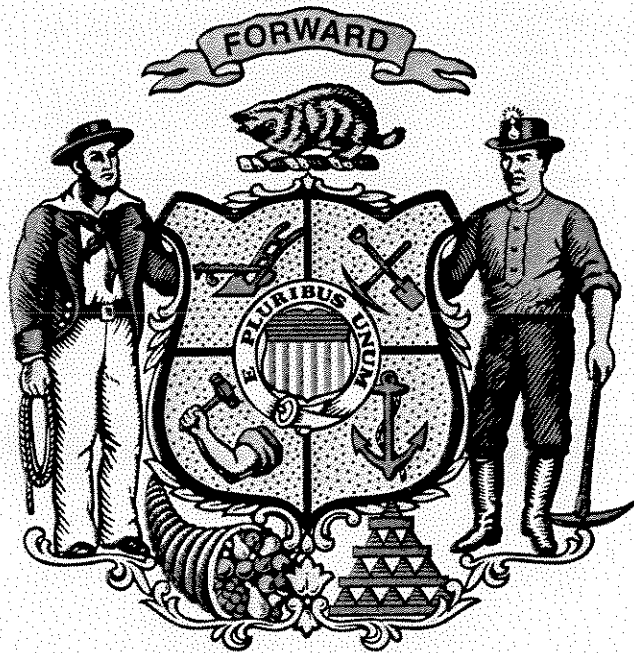
We do not believe that local governments should be required to provide cost sharing for any water quality requirements that may apply to new and expanding livestock facilities, including in communities or counties which may have pre-existing

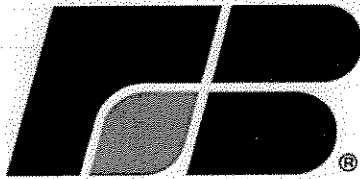
ordinances prior to July 19, 2003. Livestock facilities should be expected to build these costs in their design and operational costs to protect the environment and public health and safety. We do not believe that there will be a substantial number of local pre-existing ordinances with lower thresholds than 500 animal units, that will continue to be enforced. We believe that many of the existing ordinances will be increased to 500 animal units for the minimum threshold.

We ask that you recognize that local governments will have some costs in administering the law and rule. The draft rule allows local governments to charge costs up to \$1,000 maximum. It should be pointed out that current law, Sec. 66.0628 (2) of Wis. Statutes, "any fee that is imposed by a political subdivision shall bear a reasonable relationship to the service for which the fee is imposed." Therefore, although the maximum fee may be \$1,000, not all local governments will in fact charge the maximum. We request that the rule not be changed in regard to maximum fees.

While this rule has not been completed as fast as some had hoped, the delay to review the draft rule, the continued discussions between various interest groups and legislators has been of substantial value. It has improved the comfort level and understanding of many who had raised doubts about various aspects. However, it is important that the rule be acted upon in an expeditious manner at this time. In recent months, new and expanding facilities are being proposed, designed, and even constructed. The benefits of the law and rule to reduce conflict, to give predictability and certainty to the livestock industry, and to insure that the viability of animal agriculture in Wisconsin is maintained warrant action by the legislature and the DATCP now. We ask the legislature to support this rule in principle and return the draft to DATCP without specific directions for minor modifications, primarily for clarification purposes. We specifically ask the legislature not to try to rewrite significant standards, especially with regard to the odor management standard.

Thank you for your consideration of our views on this important matter to Wisconsin and particularly the rural parts of our state.





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**WISCONSIN FARM BUREAU® MEMO**

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**TO:** MEMBERS OF THE ASSEMBLY AND SENATE AGRICULTURE COMMITTEES  
**FROM:** BILL BRUINS  
**SUBJECT:** ATCP 51: LIVESTOCK SITING ISSUES  
**DATE:** DECEMBER 8, 2005

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Hello. I am Bill Bruins, President of the Wisconsin Farm Bureau Federation. I am appearing before you today to testify in opposition to ATCP 51 as currently drafted.

In addition, I am joined by Mike Wehler, representing the Wisconsin Pork Association, Terry Quam, representing the Wisconsin Cattlemen's Association, John Vrieze, representing the Dairy Business Association, and Kevin Griswold, a dairy farmer from Ixonia. We are appearing together to emphasize the unity the livestock groups have in opposition to ATCP 51, as drafted.

The Wisconsin livestock industry actively supported the livestock siting legislation last session and were pleased that the law was passed. We continue to support the concept of the legislation which was to grow the livestock industry while balancing the needs of rural residents. Specifically, the legislation directs the administrative rule to do the following:

- Protective of public health and safety
- Practical and workable

- Cost – effective

- Objective

- Based on available scientific information that has been subjected to peer review

- Designed to promote the growth and viability of animal agriculture in this state

- Designed to balance the economic viability of farm operations with protecting natural resources and other community interests

- Usable by officials of political subdivisions

ATCP 51, as drafted does not accomplish this. To illustrate, livestock siting establishes four different categories of livestock producers, assuming their local unit of government adopts state standards for the siting of livestock operation.

First are producers over 1000 animal units. Before livestock siting, these producers were required to get a WPDES permit from DNR. Livestock siting does not change this. These producers will continue to go through the WPDES permit process. In addition, ATCP 51 would subject them to odor standards via the odor scoring system. It should

be noted that this was one of the reasons that the legislation was passed in the first place, to address concerns residents and local officials had about odor.

Second are producers under 500 animal units that are in a township or county that had an existing conditional use permit at some level below 500 animal units. The legislation specifies that this lower number can remain, but the local unit of government must adopt the standards developed by DATCP, subject to cost sharing.

Third are producers under 500 animal units that are in a township or county that did not have a conditional use permit requirement under 500 animal units. The legislation prohibits these townships or counties from establishing a threshold below 500 animal units.

Forth are producers between 500 and 1000 animal units. ATCP 51 requires them to meet all the nonpoint pollution performance standards contained in NR 151 plus the technical standards contained in ATCP 50. Prior to livestock siting, these producers were required to receive cost sharing from the nonpoint program for compliance. The bottom line is that livestock siting basically eliminates cost sharing for producers between 500 and 1000 animal units.

The livestock industry believes that ATCP 51 discourages the growth of the livestock industry between 500 - 1000 animal units and requires many producers over 1000 animal units to install costly odor mitigation BMP's in order to expand.

That is why WFBF is suggesting the following changes to ATCP 51, to help grow all parts of the livestock industry.

#### Air Quality / Odor

Support having air quality / odor addressed in ATCP 51

Concerned about current air scoring system

Based on square footage / animal unit should be a factor

Need to ensure it's compatible with future NR 445 regulations

Need to add additional BMP's based upon Purdue research

Cost to comply for some sites / predictive odor score

#### Animal Units

Support partnering NR 243 animal unit changes with ATCP 51

Wisconsin is more restrictive than EPA by using mixed animal unit calculations

Propose changing NR 243 to use EPA method and animal unit calculations for determining animal units on a farm (i.e. the largest single animal unit calculation would then be the number used for determining if ATCP 51 or NR 243 applies). Livestock siting legislation says DATCP must use NR 243 animal unit calculation methods. That's why NR 243 needs to be changed at the same time.

Note: This change would also help address the concern raised by the poultry industry about existing dairy or beef farms not wanting to add a chicken or turkey barn because their existing livestock operation would then have to be brought into compliance. This is an issue for Gold-n-Plump and Jenny-O The Turkey Store.

## Existing Structures

Support grandfathering in existing structures from the nonpoint cross compliance requirements. There are existing laws and regulations available to address these issues. This is an important item for the beef industry.

## Pre-existing Ordinances

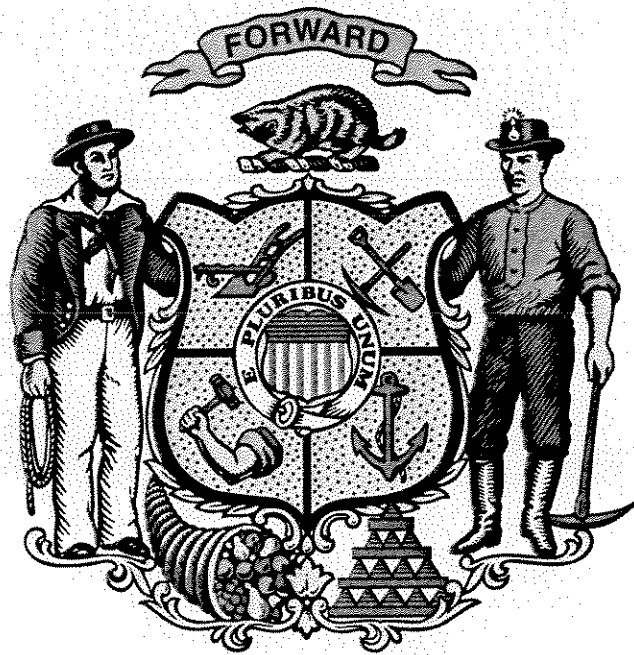
The livestock siting legislation states that counties or townships with pre-existing ordinances with a threshold lower than 500 animal units can continue. However, the municipalities still must provide cost-sharing for the nonpoint provisions. ATCP 51 does not say this.

These concerns are not new. The livestock groups have been expressing them since the public hearing last March. In addition, the concerns were presented to the DATCP board in September. The livestock groups also requested that DATCP not adopt ATCP 51 at that time in order for the livestock groups to continue to work with DATCP on these outstanding issues. Our request was denied and we were told to seek our changes in the legislature. So on behalf of the WFBF, I respectfully request that both committees send ATCP 51 back to DATCP for modifications to address the above mentioned issues.

In closing, I believe that an agreement can be reached and I am committed to working with you, Representative Ward, local units of government and DATCP to achieve a standard that fulfills the intent of the legislation: to grow Wisconsin's livestock industry at all levels.

Thank you for your time and consideration.







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December 8<sup>th</sup>, 2005

Assembly Agriculture Committee  
Senate Agriculture Committee

Re: Dairy Business Association of Wisconsin, Inc. – Comments on Proposed ATCP 51, Wis. Admin. Code (Final Draft September 15, 2005)

Set forth below and herein are the comments of the Dairy Business Association of Wisconsin, Inc. (“DBA”) concerning proposed Ch. ATCP 51, Wis. Admin. Code. DBA is a state-wide non-profit organization of dairy producers, vendors, allied industry partners and professionals collectively working to assure that dairy producers, large and small, remain an active, thriving part of Wisconsin’s economy, communities and food chain. The dairy industry is a \$20.6 billion annual business to Wisconsin and DBA’s mission is to promote the growth and success of all dairy farms in Wisconsin by fostering a positive business and political environment.

DBA appreciates the opportunity to provide the Senate and Assembly Agriculture committees its detailed review comments and appreciates the working relationship DBA has enjoyed with the Legislature. DBA thanks the Department of Agriculture, Trade and Consumer Protection and its staff for its hard work and efforts in developing the proposed rule. DBA remains committed to continuing to work with the Legislature, DATCP and other stakeholders to address the concerns and comments set forth below and herein. DBA remains committed to helping Wisconsin’s livestock industry grow and thrive.

DBA participated extensively in the legislative process resulting in the adoption of Wisconsin’s landmark Livestock Facility Siting Law contained in 93.90, Wis. Stats. Ed Larson, a founding member of DBA, served as a livestock member of the Department’s Advisory Committee on Siting of Livestock Facilities. DBA representatives participated actively in the development of proposed ATCP 51 and its members and representatives attended each and every public hearing DATCP held on the proposed rule in March offering oral comments. Most importantly, however, DBA undertook an effort to actually apply the proposed rule to many of its producer member operations, “field testing” the rule to determine its impacts, both positive and negative. DBA’s comments, therefore, are not only reflective of the opinion of its entire membership, but are perhaps the most informed comments about the *actual impacts* of the proposed rule on existing operations desiring to expand.

We explain this “as applied” approach inasmuch as DBA’s comments focus on the rule’s ability to meet several of the Legislature’s key directives. We remind the Legislature that the statute compels (See, 93.90(2)(b), Stats.) that this rule be:

Practical and workable;

Cost effective;

Objective;



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Based on available scientific information that has been subjected to peer review; and,

Designed to promote the growth and viability of animal agriculture in the state.

The rule must be tested against these legislative directives at every turn.

In addition to and in concert with the narrative comments offered below, we attach hereto livestock's mark up of the Hearing Draft ATCP 51 rule text providing further suggested changes to the rule along with livestock's letter to Secretary Nilsestuen dated September 7, 2005 from the Wisconsin Farm Bureau Federation, Dairy Business Association, Wisconsin Pork Association and the Wisconsin Cattlemen's Association which expressed their continuing concern with the current draft of Wis. Admin. Code ATCP 51, Livestock Facility Siting, as proposed by the Department of Agriculture, Trade and Consumer Protection.

### **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).



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### 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 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



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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 CONSISTANT"

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.



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### 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”.

### REDRAFT 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.

### 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.



## KEEPING THE COWS IN WISCONSIN™

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:

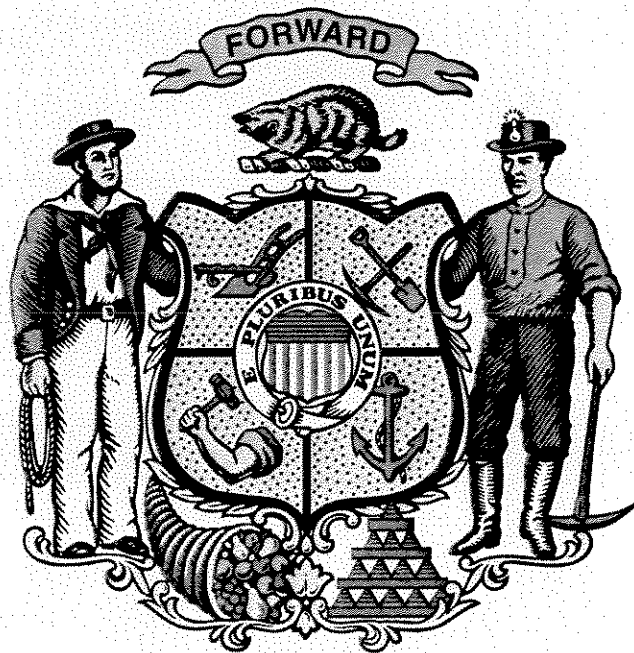
1. Expand the list of BMPs designed to be acceptable control strategies for emissions from livestock operations.
2. Redefine the odor management standards to be emission management standards addressing both the reduction of nuisance odor and the reduction of airborne emissions from livestock operations.
3. Seek WDNR concurrence in the coextensive approach so that producers will have one comprehensive list of flexible BMPs from which to choose.

Very truly yours,

DAIRY BUSINESS ASSOCIATION

Laurie Fischer, Executive Director

cc (w/encl.): DBA Board of Directors  
Representative David Ward  
Speaker John Gard







State of Wisconsin  
Jim Doyle, Governor

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

Legislative Hearing on ATCP 51  
December 8, 2005

### Secretary Rod Nilsestuen's Prepared Remarks

Thank you for the opportunity to address your committees today.

Your dedication to growing the Wisconsin livestock industry has both an immediate and a long term impact on the Wisconsin way of life. You have passed, and the Governor has signed, more ground-breaking legislation and invested more dollars to ensure the future of farming than at any time since W.D. Hoard was Governor in 1889.

Today I am here to talk specifically about one of those ground-breaking laws because it impacts so much of what we are and what we can be. Key to re-invigorating the livestock industry in this state is providing greater certainty for expansion.

The livestock siting law began more than three years ago when I appointed a diverse group of citizens and asked them to work to find common ground. They worked tirelessly under the leadership of former Agriculture Secretary Gary Rohde. Their recommendations formed the basis of the siting legislation – a bill that was passed by your committees and the full Legislature with bi-partisan support and signed by the Governor.

We are on the brink of realizing the goals of that legislation. In my thirty years of work in public decision-making, I have never been involved in any process that had this magnitude of citizen and stakeholder input and been so open and transparent. We pursued steps to ensure fair and responsible rule making including engaging a panel of technical experts to help develop the siting standards; reconvening the Rohde committee to review proposed standards, obtaining comments from more than 500 citizens at 12 public hearings around the state. The DATCP Board's unanimous approval of the draft final rule is a reflection of the outstanding process we followed and the high quality of the final product.

Today you are holding a hearing on the final draft of the livestock facility siting rule. As you listen and deliberate, I ask you to keep the following comments in mind:

#### 1 – **The rules are workable.**

We listened to your concerns and the concerns of industry and worked hard to revise the rule to make them more workable. We made dozens of changes after the public hearings including:

- Easing setback requirements including grandfathering existing structures that do not meet the setbacks
- Reducing the number of siting standards

*Agriculture generates \$51.5 billion for Wisconsin*

- Simplifying local administration
- Significantly revising the odor standard.

**2 – The rules, if adopted, virtually assure an applicant approval if the form is filled out accurately and meets the requirements.**

If I were a livestock farmer preparing an expansion in a municipality that has ordinances governing facility siting, I would want these rules passed as soon as possible and I would immediately fill out my application and get my permit as a protection for the future. The rule guarantees facilities a permit in less than 4 months if the standards are met.

**3 – The livestock facility siting rule will give the predictability and consistency needed to grow the livestock industry.**

Without the rule, we will continue with a crazy quilt of dozens of conflicting local siting regulations and standards, and long and costly siting processes.

I believe the standards and procedures included in the final draft rule are reasonable and that the final draft rule meets the policy goals of the siting law.

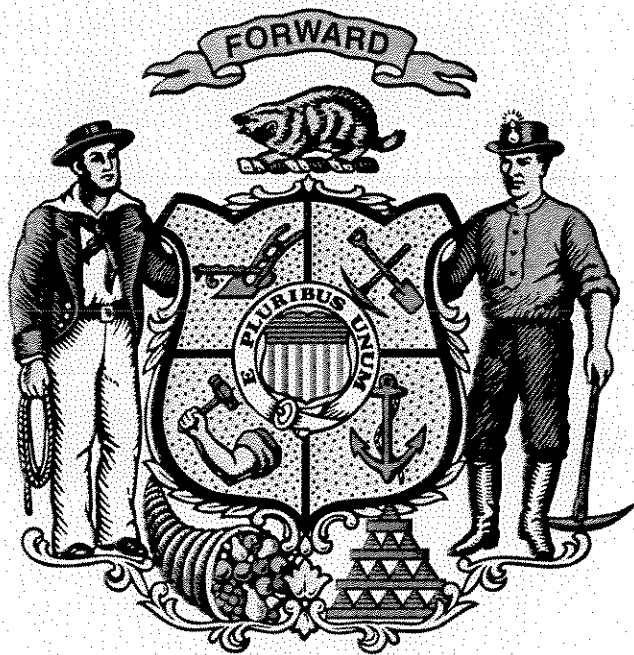
The final draft rule will:

- maintain the state's commitment to protect the air and water
- reduce conflict in local communities; and
- provide predictability for livestock producers to modernize and grow.

My department has made a commitment to continue research on new and innovative best management practices to reduce odor and air emissions, beginning with a \$1.3 million grant project. We have also committed to an extensive outreach and training program, monthly progress reports on rule implementation to our Board, and annual rule reviews. We will make rule changes if needed.

In the end, Wisconsin agriculture and really all of Wisconsin will benefit by having standards that are predictable, fair and balanced for producers and for their neighbors. This rule is the cornerstone in our continuing efforts to grow Wisconsin's livestock industry.

Thank you for your time and for your efforts during this long and difficult process.



# Midwest Environmental ADVOCATES

*pro bono publica*

**Assembly Committee on Agriculture  
Senate Committee on Agriculture and Insurance**

**Clearinghouse Rule 05-014, Proposed ATCP 51**

**Written Testimony of Andrew C. Hanson, Staff Attorney  
Midwest Environmental Advocates, Inc.  
December 8, 2005**

Honorable Members of the Committees:

My name is Andrew C. Hanson. I am a staff attorney with Midwest Environmental Advocates, a nonprofit environmental law center that provides technical assistance and legal representation to communities working for clean air, clean water, and clean government. I am pleased to provide written testimony on the Wisconsin Department of Agriculture, Trade, and Consumer Protection's ("DATCP's") proposed ATCP 51, Clearinghouse Rule 05-014. Thank you in advance for considering this testimony in your deliberations.

By way of background, Midwest Environmental Advocates believes that agriculture is an essential element of Wisconsin's economy and encourages policies designed to keep farmers on the land and producing healthy and abundant food. Midwest Environmental Advocates also believes that the public health and environmental impacts of any business, agricultural, industrial or otherwise, must be controlled and mitigated to ensure the protection of both public and private property rights.

To that end, Midwest Environmental Advocates has provided legal representation and technical assistance to communities and rural families that have been disproportionately affected by odors, air pollution, and groundwater and surface water pollution by some of the largest livestock operations in Wisconsin. Our goal has been to mitigate or eliminate those severe environmental and public health impacts and the future risk of any continuing impacts.

We understand some individuals representing large scale animal feeding operations believe that DATCP should not enact an odor standard in ATCP 51 and that the proposed odor standard is too stringent, despite that approximately 90% of all expanding livestock operations

are expected to pass without implementation of any best management practices. This is also in spite of the fact that there is a great deal of flexibility in the provisions of proposed ATCP 51.14.

As to the first contention, we recommend that DATCP proceed with promulgation of an odor standard, though with one that is significantly more protective of public health and private property rights than that currently proposed. Odor from manure storage facilities and cattle confinement facilities is the primary reason for land use conflicts between large scale animal feeding operations and neighbors. And, these land use conflicts were the primary justification for enacting 2003 Wisconsin Act 235, the Livestock Facility Siting Law. Without an effective and meaningful odor standard, much of DATCP's efforts in preparing this standard, and those of its technical advisory committee, will have been wasted and no land use conflicts will be resolved. In short, no growth in the dairy industry will have occurred because land use conflicts will persist without a strong and effective odor standard.

As to the second contention, we remain very concerned with the Odor Standard as proposed in ATCP 51.14. In addition to being practical, workable, and cost effective, the Odor Standard is required to be protective of public health. Wis. Stat. § 93.90(2)(b). However, we do not believe that the Odor Standard will either be sufficiently protective of public health or private property rights or serve its intended purpose of resolving land use conflicts among residences and odors from large scale animal feeding operations.

First, we note that proposed ATCP 51.14(2)(c) completely exempts all livestock structures that are located more than 2,500 feet from the nearest affected neighbor. This makes little, if any, sense in light of the fact that the total odor score may still exceed the thresholds identified in ATCP 51.14 even despite the 2,500 foot distance. Further, this exemption rewards the largest and wealthiest operations that are able to buy property around them. It is also discourages Smart Growth planning by relying on livestock operations to buy property, rather than by relying on local governments to provide proper zoning. Finally, it discourages technological innovation in odor control practices by relying more heavily on separation distances. It is that technological innovation that will ultimately drive down compliance costs by encouraging large livestock operations to find better, cheaper solutions to odor problems.

Second, ATCP 51.14(6) provides that if an operator obtains local approval for a livestock facility, an operator seeking approval for a further expansion of the same livestock facility may

use distances to the same affected neighbors, even if other neighbors have located closer to the livestock facility.

We understand DATCP's reasoning behind this provision in apparently attempting to prevent residential development near the livestock operation. However, ATCP 51.14(6) is problematic because the locally approved expansion may cause nuisance odors to enter and trespass on nearby properties. If so, ATCP 51.14(6) takes away the property rights of the nearby affected neighbors and grants those rights to the livestock facility. If the livestock operation causes nuisance odors, as evidenced by the Odor Standard according to the distance from the nearest "actual" affected neighbor, this represents an unconstitutional taking of property without just compensation by DATCP. See *Bormann v. Kossuth County Board of Supervisors*, 584 N.W.2d 309 (Iowa 1998); *Gacke v. Pork Xtra*, 2004 Iowa Sup. LEXIS 193 at \*11; *Buchanon v. Simplot Feeders Limited Partnership*, 952 P.2d 610 (Wash. 1998). More importantly, aside from presenting constitutional problems, ATCP 51.14(6) will set the stage for continued land use conflicts in Wisconsin unless there is some effort by a local government to prevent residential sprawl on productive farmland. We propose that this Committee direct DATCP to eliminate ATCP 51.14(6), and instead refocus on ensuring implementation of Smart Growth and sound land use planning. The answer to urban sprawl and the loss of farmland is not to take away the property rights of rural landowners. We are concerned that this is exactly what ATCP 51.14(6) will do.

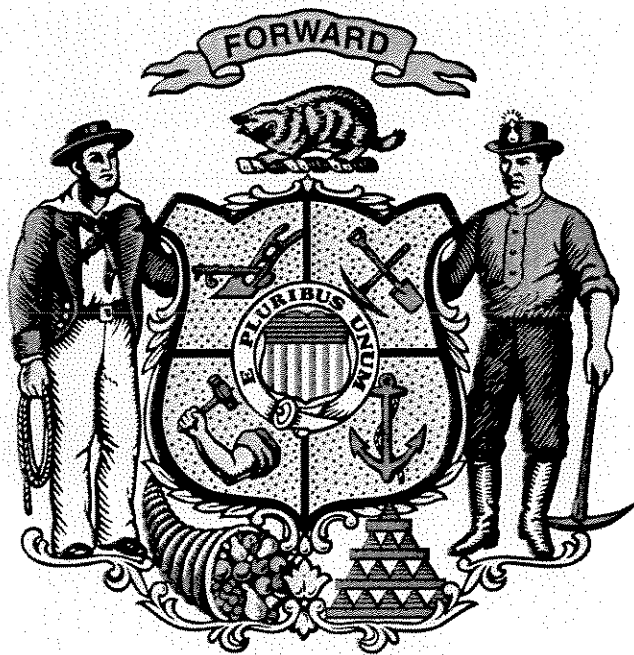
Third, we are also concerned that the odor threshold curves have been made less restrictive to accommodate objections from large scale animal feeding operations. In short, ATCP 51.14 proposes that people tolerate more days of offensive odor in a given month, which in turn will fuel more land use conflicts where odors are particularly offensive and persistent. In fact, we understand that 90% of operations will comply with the Odor Standard without addition of any controls whatsoever. However, this may not resolve the land use conflict based on "problem" odors. This is unfortunate, given the intended purpose of the Odor Standard. We propose that this committee direct DATCP to return the odor threshold curves to the levels when initially proposed in ATCP 51.

Fourth, we understand the Odor Standard grants a 30% credit to facility where affected neighbors are located upward of the prevailing wind direction from the facility. However, there will inevitably be instances in which the wind does not follow prevailing wind patterns. We

propose that this credit be eliminated to ensure that the public health objective of the Odor Standard is met.

Fifth, we are very concerned that the Odor Standard does not account for wind speed. Low windspeeds are responsible for more offensive odors. As a result, livestock operations located in topographies where wind speeds are generally low will have the most offensive odors. The Odor Standard should be clarified or refined to account for wind speeds as exacerbating annoyance thresholds.

In closing, we urge this Committee to direct DATCP to not only retain the Odor Standard in proposed ATCP 51, but to strengthen it to ensure that it meets the public health objectives of Act 235. Thank you again for carefully considering this testimony in your deliberations.





# PIELSTICKER PHOTOS

[www.naturesportfolio.com](http://www.naturesportfolio.com)

Ph: 608-592-4718  
E-mail: [billpiel@merr.com](mailto:billpiel@merr.com)

8045 Crystal Lake Rd.  
Lodi, WI 53555-9539

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December 8, 2005

To: Wisconsin Assembly Committee on Agriculture, and the  
Wisconsin Senate Committee on Agriculture and Insurance

Thank you for this opportunity to comment on Clearinghouse Rule 05-014, or the Livestock Facility Siting Rules. Despite the fact that I am Chair of the Wisconsin Council of Trout Unlimited, I am not authorized to speak on behalf of Wisconsin Trout Unlimited on this matter. As an organization, Trout Unlimited is less likely to get involved upfront on a siting decision, but more likely to get involved at the back end of the process, the manure end. For that reason, Wisconsin Trout Unlimited submitted comments to the DNR on revisions to NR 243, and we will make comments on the findings of the Manure Management Task Force.

I speak for myself on the siting rules, based on my experience living in rural areas, my own involvement in agriculture and natural resource issues, and as a member of the advisory committee that provided the basis for the Livestock Facility Siting legislation, and that reviewed and made recommendations for the rules to implement that legislation.

I have been challenged by some in the environmental community as to why I am involved in a process that pre-empts local decision making on siting of CAFOs. My response is that I don't see size as the key issue. Especially from a water quality perspective, the cumulative impact of numerous small livestock operations likely causes more harm to water quality than the impact of these highly regulated livestock operations. Problems like manure spills or excessive runoff can be larger at large operations, and that is why I support the water quality provisions contained in the siting rules. However, I am disappointed the legislation and rules do not, as does our neighboring state of Illinois, require at least a minimum demonstration of management capacity for all but the smallest livestock producers in the state.

When it comes to odor, however, size often is an issue: odor from the operation, odor from the manure lagoon, and odor from land-spread liquid manure. You don't have to be large operation to cause offensive odors, but the movement from daily haul to liquid manure and the increase in volume of animal fertilizer as an operation grows certainly increases the risk of nasty smells. When you combine this risk with the fact that many towns and counties in this state have ignored the tools of land use planning to limit residential growth in rural areas, you have a recipe for serious conflict.

There are some who will tell you that since odor (generally) isn't a health issue, it doesn't belong in these rules. I say that it does, for it is a quality of life issue for many people in this state. In fact, prior to the recent contamination of groundwater and private wells with manure, odor has been the single greatest concern that has driven opposition to large livestock operations in this state.

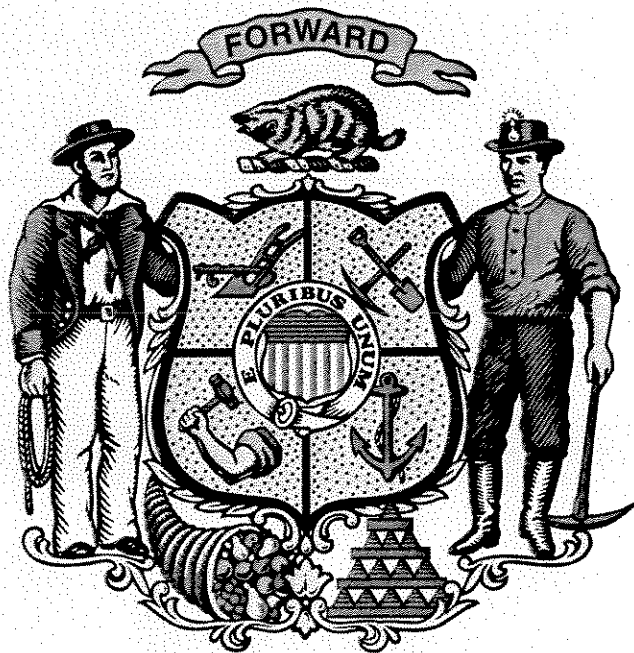
The good news is that there are various structural and management tools that can address the issue of offensive odors from livestock operations. These, coupled with the recognition that neighbors should expect a certain number of "bad odor days" each year, form the basis for the odor standard contained in these rules. I have to laugh at the continuing efforts by some to remove the odor standard from the rule. The standard is substantially weaker than the standard developed by the technical panel for the advisory committee, and weaker than the standard the advisory committee supported just less than one year ago. Even in its watered-down form, I believe it will be a useful, possibly critical tool, for addressing the legitimate concerns of those who live near an expanding livestock operation.

The advisory committee worked long and hard coming to a consensus on recommendations for legislation, and later on recommendations for the implementing rules. I am disappointed that the odor standard endorsed by the advisory committee has been reduced to the point that few facilities will have to make substantial efforts to meet the standard. Even so, I oppose the efforts to remove the odor standard, or to make substantive changes to the rules package as a whole.

The advisory committee spent many long hours accommodating many interests and concerns in order to produce a coherent package. I ask you to resist the efforts by some to remove particular items or issues they object to. The advisory committee heard the same requests and complaints that you are hearing and rejected them. You should do the same.

Respectfully,

William J. Pielsticker



W20402 Sacia Road  
Galesville, WI 54630  
December 8, 2005

RE: Wis. Senate and Assembly Joint Committee hearing on Feedlot Siting

TO WHOM IT MAY CONCERN:

The current feedlot ordinances in place as in Trempealeau County have a serious deficiency.

The ability of feedlot operator to apply for a variance from the ordinance requirements currently allows expansion beyond the limits specified in the ordinance and in the face of serious ongoing odor and other operational problems. In Galesville, this has resulted in a serious disregard for public safety.

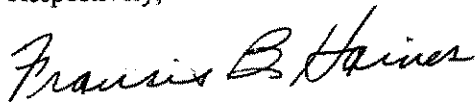
The override by variance or other means cannot be allowed if an operation is already operating beyond permitted setbacks and /or there are standing ongoing operational problems. The provisions of any siting ordinance must contain "safety stops" that automatically prevent consideration of a variance until all questions are cleared.

The rules for granting of a variance need to be clarified as currently an influential applicant can sway a committee beyond the use of reason.

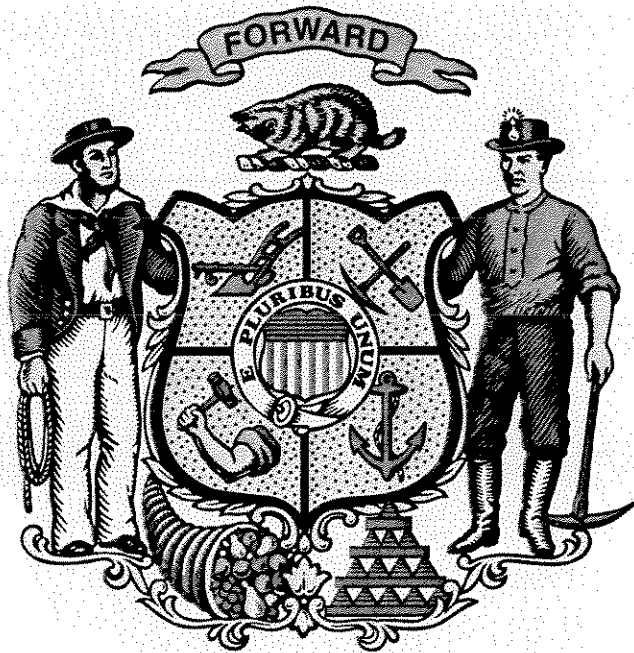
There must also be a clarification of liability when an operation causes personal or property damage as the result of a variance being granted under duress conditions.

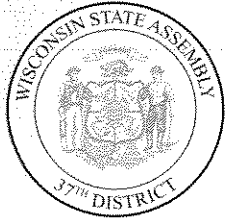
Your considerations on the use of variances to sidestep feedlot ordinances is of the utmost importance to public safety and is the core issue of sound siting rules and manure management legislation.

Respectively,



Francis B. Haines





State Representative

# David Ward

*Vice-Chair: Joint Committee on Finance*

**TO:** Representative Al Ott, Chairperson  
Senator Dan Kapanke, Chairperson  
Members, Wisconsin State Assembly Committee on Agriculture  
Members, Wisconsin State Senate Committee on Agriculture and Insurance

**FROM:** State Representative David Ward  
37<sup>th</sup> Assembly District

**DATE:** December 8, 2005

**RE:** DATCP Livestock Siting Rule, ATCP 51

Thank you Chairpersons Ott and Kapanke and members of the Assembly and Senate Committees on Agriculture (and Insurance) for allowing me to speak today regarding the Department of Agriculture, Trade, and Consumer Protection's rule, ATCP 51, relating to siting livestock facilities. This rule is a result of legislation sponsored by Senator Dale Schultz and myself, 2003 Assembly Bill 868 (AB 868), which was signed by Governor Doyle as Wisconsin Act 235.

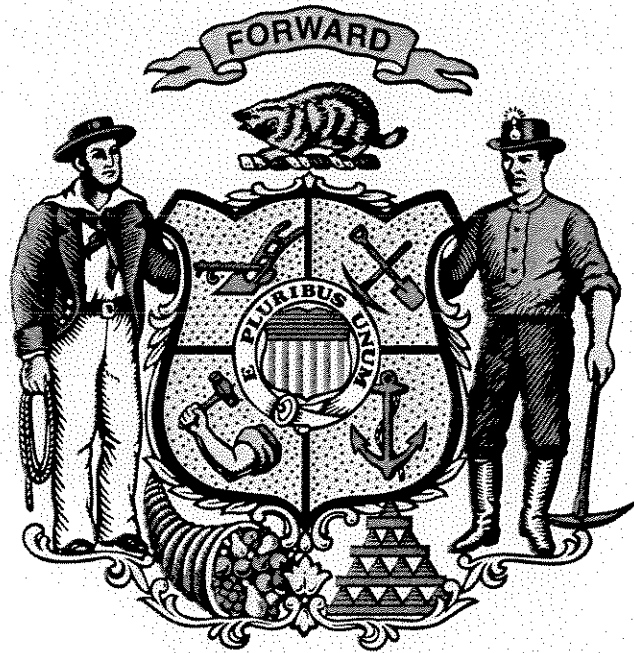
The Department has done an excellent job of moving this issue forward, even prior to passage of AB 868. With the formation of the Advisory Committee on Siting Livestock Facilities, the DATCP "Technical Panel," followed by another review by the Advisory Committee and ultimately the acceptance by the DATCP Board, an unprecedented effort has been made on behalf of the Legislature and the Department in bringing all affected parties together in a cooperative effort to resize, reshape and grow the livestock industry in a responsible manner.

Upon passage of this legislation, I made the commitment to myself, due to the extraordinary bipartisan working relationship and respect for the legislative process, NOT to micromanage the Department's rule-writing process; however, I did offer input and followed the rule through its development.

I understand there have been some members of the Legislature who are concerned with the results of portions of the product before you, particularly the odor standard. Odor is an issue that must be addressed as an act of protection for Wisconsin producers and citizens. If the agricultural community chooses not to address this issue, I am certain restrictions much more stringent will be imposed upon them in the near future. However, in regard to the rule as it currently stands, I feel there will need to be a number of changes made to the odor standard as well as other portions of the rule.

As you may be aware, the federal government recently changed the method by which animal units are calculated. Wisconsin is now faced with potentially adopting the federal standards. While this issue is to be addressed by the Department of Natural Resources (DNR) in NR 243, it will significantly impact ATCP 51. Despite the fact NR 243 is in the hands of the DNR, I believe we need to take this into serious consideration as we move forward on ATCP 51. I would urge both Secretaries Nilsestuen and Hassett to work in partnership and accept the federal standards in calculating animal units.

Again, thank you for allowing me to testify. I'd like to thank you, the Department and all interested groups for their tireless work on, and interest in, this issue. I look forward to working with the Committees to make this product even better. I would be happy to answer any questions now, or anytime at your convenience.



12-8-05

Public Hearing  
CR 05-014 - Ag. Citing

Rep. Word -

Assur. Ab 868 - 76-20

Sender passed on voice work  
Peer review science

2004 Act 235 -

Back to DATCP for me writing

ODOR - key component municipalities  
most tackle before Cels/ ~~etc~~ do

Animal units - DATCP + EPA coming  
up w/ new plans

NR 243 - animal units calculation

Questions

Grandmas - Intent ~~with~~ must be  
written into rule

Doc. Knes -

Towns - Why odor not written into legislation?

- NO Science

- Review odor every 4yrs

Olsen - Concerns of subjective interpretation  
of permit by people who review?

- Appeals process @ end of permitting  
process

- 7 member state appeal board

- 2 year process odor Significant Order -  
- Not smoke into rule

Luther - Industry regulated that says  
can't put odor in air?

Dave Schmidt - Direct relation of  
air emissions to odor

Preventive level of odor

Commits operator to adopted practices

Time extensions -

Miller -

Brown - Farmers who want to expand but  
haven't used best mgmt practices  
or been cited for ~~violations~~  
violations.

★ Modification of law revised of NR 243

Cost sharing -

OK -

Answerth - Animal Unit Count  
Peer Reviewed Science? Who reviewed?  
How reviewed?

- odor Standard

of Mgmt

MN OFFSET MODEL



Sec. Nilsson - DATCP

- Predictability for producers that want to  
expand

- Can they expand

- Is it fair to neighbors of operation

- Impact on groundwater

- Are guidelines for Gov  
local units of gov

- water, air, + soil quality

- Cost of permitting process

Questions

Towns - Herb's intent?

We need more milk + more animals

for cheese + processing

Calumet county - 2 year moratorium

Kaplanee - Standards of rule - objectiveness  
problems

- Clear guidelines + rules plus appeals  
process

Sider - Where, when, + how should odor  
discussion occur -

- Agencies circumvent legislative

Ober - Not in legislation shouldn't be in rules

Basins, storage + open lot

Dispersion of odor

operator control

Customize model for wet farm houses

540 ppt -

Adjustment for wind direction

variable distance

Lower ammonia levels

More best mgmt practices

Mgmt credits - ~~not~~

Preventive odor cap

Hins -

What is answer to odor if removed  
from Rule??

90% of farms have passed

Luther -

Towns - Rule does not measure air emissions? NO

Sider - True Pre-emption



~~Farm~~ Farm Army, DBA, Cattlemen, Park Producers

Bill Barry - oppose as drafted

John Viscet

Oscar - how is it interpreted?

Citing Board - Makeup

- Towns + ~~counties~~ counties

- Enviro Community (1)

- Farm Org (1)

- Secretary of DNRCA appointments (3)

Cost effective BMPs

X animal units

X feet from neighbors

Mike Wehler - Park Producers  
oppose rule

Derry Quam - Cattlemen

Kenn Griswold -

List of BMPs - Pick from list or

~~Cost Effective~~ <sup>Strong</sup>

Cost effective  
Individual operations

Oscar, ~~trans~~ Granddaddy + animal units

Explicit about changes

Gary Rhode - in favor

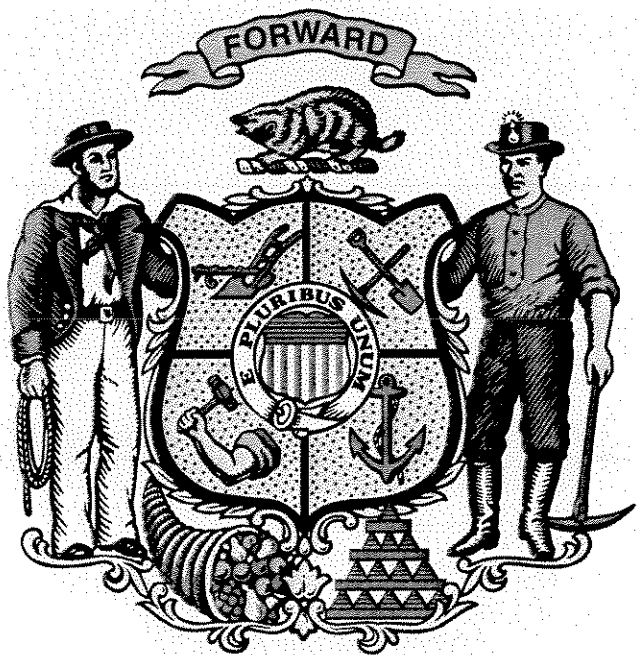
W Bankers Assoc

Expand BMPs

Matt Spahr - with Carriers Assoc

No fee change in rule

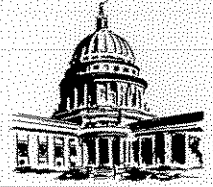
Notification requirement



# Dan Kapanke

Wisconsin State Senator - 32nd District

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December 09, 2005

Secretary Rod Nilsestuen  
Department of Agriculture, Trade, and Consumer Protection  
P.O. Box 8911  
Madison, WI 53718-8911

Dear Secretary Nilsestuen:

Please find enclosed a motion adopted by the Senate Committee on Agriculture and Insurance relative to Clearinghouse Rule 05-014. The Committee approved the motion by a vote of 5-2.

The Committee respectfully requests the Department to consider modifications of this rule.

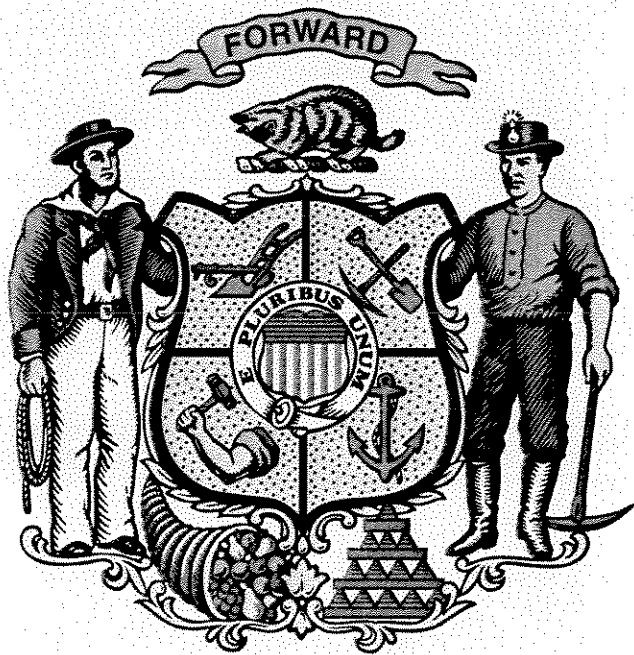
I would greatly appreciate a response, in writing, from the Department by 5:00 p.m., December 27, 2005. Should the Department fail to respond or refuse the Committee's request, the motion provides that the Committee will object to the rule on the grounds that the proposed rule is arbitrary and capricious, and imposes an undue hardship.

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

Sincerely,

Dan Kapanke,  
Chair, Senate Committee on Agriculture and Insurance  
Senator  
32<sup>nd</sup> District

Enclosure





State of Wisconsin  
Jim Doyle, Governor

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

December 23, 2005

The Honorable Dan Kapanke  
State Senator  
Chair, Senate Committee on Agriculture and Insurance  
P.O. Box 7882  
Madison, WI 53707-7882

Dear Senator Kapanke:

This letter responds to your December 9, 2005 letter containing the Senate Committee on Agriculture and Insurance request to the Department to consider modifications to Clearinghouse Rule 05-014 relating to livestock facility siting.

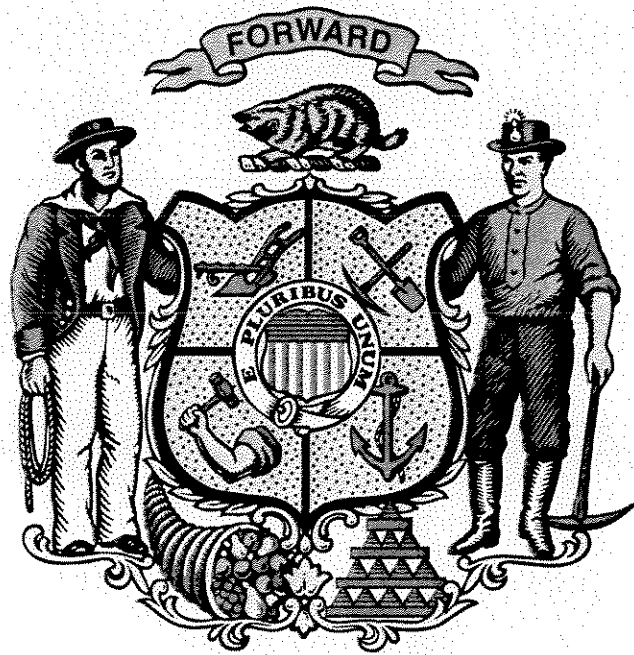
The Department agrees to thoughtfully consider the modification request.

Sincerely,

Rod Nilsestuen  
Secretary

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2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • [Wisconsin.gov](http://Wisconsin.gov)



*MAK*

# Proposed Modifications to ATCP 51

January 23, 2006

## Modify Odor Management Standard

- Eliminate the "predicted odor" cap. *- No Standard - TR BMP*
- Recognize and give credit for additional odor control practices.
- Refine and improve the calculation of odor score by exempting structures that have a limited impact on odor: holding areas, milking parlors, feed alleys, calf hutches (if no more than 1000), and up to 4 independent housing structures. *+ 6 points - No comment by customer the facility*
- Revise the definition of the "bottom fill" odor control practice. *7. include - Tons*
- Give credit for optional, supplementary odor control plans. *EX 67208 -*
- Clarify instructions in the odor management worksheet, to make it even more user-friendly.
- Modify terminology, using "odor control practices" instead of "best management practices." *- ANSWERED*
- Add a note indicating DATCP commitment to refine the rule as appropriate based on review of rule implementation and research findings. *- Pioneer - Discovery Farm - other research*

*Bump plus, Add OMS*

*PS TO ATCP for Training*

## Add References to Legislative Intent

- Add notes related to "legislative intent" (quoted from Livestock Facility Siting Law).

## Require Notice to Adjacent Property Owners

- Require local government to notify adjacent property owners within 14 days after local government determines that siting application is complete (but before granting or denying application). The notice must be in the exact form shown in the rule (Appendix C). The notice must be in writing, by first class mail. The local government may recover its reasonable costs from the applicant (subject to \$1,000 cap on all charges to applicant).

## Clarify Definition of Animal Units

- Clarify that "animal units" are calculated according to DNR rules as they existed when the Livestock Facility Siting Law was enacted.
- Change rule to give favorable treatment to "separate species facilities" (see below)

## Clarify the Requirement of Cost-Sharing

- No revisions. This rule does not change current law related to cost-sharing or limit cost-sharing in any way. DATCP cannot change current law related to cost-sharing (statutes and DNR rules).

## Clarify and Change Treatment of Existing Livestock Facilities

- Treat a “separate species facility” as a separate livestock facility, even if it is owned by the same person and located on the same land as another livestock facility. In order to be treated as a separate livestock facility, a “separate species facility” must meet all these criteria:
  - It must have only one type of livestock (cattle, swine, poultry, sheep or goats), found in no other part of the livestock facility.
  - It must have no more than 500 “animal units.”
  - Its animal housing and manure storage structures must be located at least 750 ft. from comparable structures used a livestock facility to which it is related. (so it can be treated separately for purposes of odor score calculations).
- Expand a key “grandfather” exemption for waste storage structures within 350 ft. of road or property line. Operator may add new structure, within setback area, if it is no closer to the road or property line than a “grandfathered” existing structure, and no larger than the existing structure.
- Allow an existing livestock facility (of any size) to add a “separate species facility” (up to 500 “animal units”) without a local permit in most cases (see above).

## Strengthens “right-to-farm” protection against nuisance claims and encroaching development

- Clarify that a local approval remains in effect, despite a change in ownership of the livestock facility, as long as the new operator does not materially violate the agreed terms of approval.
- Establish that a local approval generally remains in effect regardless of when or whether the livestock operator exercises the full authority granted by the approval (operator may expand in stages). However, a local government may withdraw local approval if the operator does not at least do all of the following within 2 years after the local approval is granted:
  - **Begin** populating the new or expanded livestock facility.
  - **Begin** constructing any new or substantially altered animal housing or waste storage facilities that the operator proposed in the application for local approval.
- Clarify that the operator may use prior “odor score” reference points regardless of any change in livestock facility ownership since the prior approval, and regardless of the amount of time that has passed since the prior approval.
- Require local governments to give the successful applicant a copy of the approved application (including maps with odor reference points), marked “approved.” An operator may record this with the register of deeds (and convey it to a subsequent owner) in order to document odor reference points for future expansions.



*Draft*  
**Requested Modifications to the Rule – 1/27/06 revised draft**

\*\* items are Legislative requests

Requested Modifications	Outcome
<b>PROPOSED CHANGES TO THE ODOR STANDARD</b>	
Revise definition for the “bottom fill” best management practice	Revised definition in Appendix A
**Include a “road map” within the language of the rule that explains the process we will use to make any future changes to the odor standard	Revised rule, 51.14 (Note)
**Eliminate odor standard based on predictive model	Will monitor standard performance through application reviews and will amend model if needed.
Eliminate predicted odor cap	Revised rule, 51.14 (1), 51.14 (4), and Appendix A
**Redefine odor standard to be air emission management standard	Standard is titled “Odor and Air Emissions” in rule 51.14, however, no air emissions standards have been promulgated by DNR at this time.
**Seek DNR concurrence on using odor control practices as the starting point for air emission practices	Received letter from DNR, will distribute to affected parties
Calculate odor generation for housing using animal units not sq. feet	Continue to calculate odor generation using sq. feet but add exemption for minor housing structures.
**Add odor control practices	Revised Appendix A to include additional odor control practices and an odor management plan option
Separate management score from separation score	Revised 51.14 Note and Appendix A
Clarify directions in odor standard to ensure accuracy	Revised Appendix A and electronic spreadsheet to clarify directions
Exempt minor independent housing structures	Revised Appendix A to allow applicants to exempt up to four minor housing structures, including up to 1000 calf hutches.
Exclude holding areas, milking parlors and feed alleys from odor generation calculation for animal housing.	Revised Appendix A to clarify exclusions
Add element for windspeed	Will consider for CIG research project and future rule revisions
**Pre-empt local governments from passing more stringent odor standards	Statute allows more stringent standards, but it will be difficult for local governments to meet the criteria required for more stringent odor standards. Will monitor standard performance and revise rule if necessary.
**Change name from odor BMPs to odor control practices	Revised in rule 51.14 (5) and Appendix A

## PROPOSED CHANGES TO RULE - GENERAL

**Add references to Legislative intent	Revised rule, introductory note
**Require notice to affected neighbors	Revised rule, 51.30 (Note)
**Clarify or change animal unit count to EPA method	Revised rule 51.01 (4), definition of AU
**Lower fees back to \$500	Statute allows reasonable fee, but must show reasonable relationship to the service
Add specified representatives to the appeals board	Consider appeals board make-up through appointment process or statutory change
Add language to clarify how modifications to a permitted facility will be handled.	Revised rule 51.02 (Note) and 51.34 (4)
Require local governments to affix an approved copy of the application, including maps, to the permit to allow operators to document odor reference points.	Revised rule 51.34 (3)(b)
**Insert language in rule that prevents local units of government from interfering with the premise once it passes the qualification process.	Revised rule 51.06 (3). Local governments may monitor and enforce permits, but may not withdraw permits for facilities that "exercise" the permit.
**Include preemption from nuisance lawsuits for farms that have completed the siting process	Facilities permitted under this rule will have strong right-to-farm and anti-nuisance arguments
**Clarify the requirement of cost-sharing for facilities less than 500 AU	Added note to rule analysis (page 4).
**Clarify that permit runs with the land (move 51.02 <i>NOTE</i> ) and that there is a permanency to approval	Revised rule 51.06 (3) to clarify permanency of the permit and what it means to "exercise" the permit.
**Provide special cost-sharing allocation to towns/counties that permit facilities under 500 AU	Counties may use existing SWRM funding for this purpose. Dairy and livestock tax credits are available directly to producers.

## PROPOSED CHANGES TO EXEMPTIONS

**Grandfather all legal existing structures – only apply standards to the portion of the livestock facility that expands	Revised rule 51.01 (2), 51.01 (17) and 51.01 (38) to add exemption for separate species facility. Clarified 51.13 (Note)
**Clarify how to use WPDES permit to meet standards	Included in 51.06 (1)(b) and Note

## PROPOSED CHANGES TO DEFINITIONS

<p><i>Clarify definitions of:</i></p> <p>Bedrock</p> <p>**Karst</p> <p>**Affected neighbor (to 1500 feet)</p> <p>**Livestock structure</p> <p>**Operator</p> <p>**Property line</p> <p>**Substantially altered</p> <p>High Use Building</p>	<p>Added definition to rule 51.01 (6)</p> <p>Retained widely used definition</p> <p>Retained definition</p> <p>Retained definition</p> <p>Retained definition</p> <p>Retained widely used definition</p> <p>Retained widely used definition</p> <p>Revised definition in rule 51.01 (16) (e)</p>
**Remove references to "reasonably substantiate" and "credible and internally consistent"	Local government may review the application for accuracy and consistency

## PROPOSED CHANGES TO WASTE STORAGE AND NUTRIENT MANAGEMENT

\*\*Allow applicants to turn in a NM plan that meets the NRCS 590 (September 2005) that covers both the existing and the entire expanded facility in lieu of checklist

Checklist is needed to create presumption of compliance (helps "guarantee" local approval). Checklist is easy, especially if operator already has a nutrient management plan

\*\*Clarify existing waste storage may be expanded and that a new waste storage may be built the same distance from a road or property line as an adjacent waste storage structure as long as the new storage does not exceed the size of the existing adjacent structure.

Included in rule--51.13 (2)(b) and 51.13 (2)(c)

\*\*Clarify acres for purposes of NM calculation

Included in rule--51.16 (2)(c)



## Livestock Facility Siting Rule (ATCP 51)

*Orbit*

A *separate species facility* may be treated as a separate livestock facility (not part of a related livestock facility) if certain conditions are met. Thus, an existing livestock facility (such as a dairy facility) may add a *separate species facility* (such as a poultry facility) without triggering local permit requirements in most cases. In order to be treated as a separate livestock facility, a *separate species facility* must meet all of the following criteria:

1. It must have only one type of livestock (cattle, swine, poultry, sheep or goats), and that type may not be found on the related facility. Thus, cattle and poultry operations may be treated separately, but dairy and beef cattle operations may not (because both include "cattle"). Milking cows, calves, heifers and steers are all "cattle." Turkeys, ducks, geese and chickens are all "poultry."
2. It must have no more than 500 "animal units."
3. Its animal housing and manure storage structures (if any) must be located at least 750 ft. from animal housing and manure structures used by the related facility (so it can be treated separately for purposes of odor score calculations).

### Examples of separate species facilities:

- In a community that regulates at 500 "animal units," if an existing 450 "animal unit" dairy facility adds a 450 "animal unit" poultry facility, neither facility will need a permit (neither facility reaches the permit threshold).
- In a community that regulates at 500 "animal units," if an existing 700 "animal unit" dairy facility adds a 450 "animal unit" poultry facility, neither facility will need a permit (the new poultry facility is under the permit threshold, and the existing dairy facility has not expanded).
- In a community that regulates at 300 "animal units" (grandfathered ordinance), if an existing 450 "animal unit" dairy facility adds a 450 "animal unit" poultry facility, the new poultry facility will need a permit but the existing dairy facility will not.
- An operator of a 1,600 "animal unit" cattle feedlot may not divide the feedlot into 4 parts, and claim that no local permit is required because each part has fewer than 500 "animal units."

For more information about the livestock siting program, please contact:

Jennifer Heaton-Amrhein, Livestock Siting Program Manager  
 Department of Agriculture, Trade, and Consumer Protection  
 P.O. Box 8911  
 Madison, WI 53708-8911  
 608-224-4613  
 jennifer.heaton-amrhein@datcp.state.wi.us



## Livestock Facility Siting Rule (ATCP 51)

### What livestock facilities are covered under ATCP 51?

ATCP 51 covers new and expanding *livestock facilities* over 500 animal units in local jurisdictions that have a permit requirement (unless the local government set a lower threshold prior to July 19, 2003). Facilities must expand animal units by at least 20% to trigger the permit requirement. An expansion means an increase in the maximum number of "animal units" kept at the facility for at least 90 days in any 12-month period and may or may not involve the construction or alteration of livestock structures.

#### Examples of expansions (if local government requires permit)

- A 490 animal unit facility may expand to 588 animal units without a permit, even if the local permit threshold is 500 animal units.
- A 600 animal unit facility may expand to 720 animal units without a permit.
- A 490 animal unit facility wishing to expand to 750 animal units will be expanding by more than 20% and will need a permit.
- A 600 animal unit facility that wishes to expand to 1000 animal units will be expanding by more than 20% and will need a permit.

Applies only to new or expanding livestock facilities, and only in local jurisdictions that have a local permit requirement. If there is no local permit requirement, a livestock facility is not covered.

### What is a livestock facility?

*Livestock facilities* are feedlots, dairy farms or other operations where livestock will be fed, confined, maintained, or stabled for a total of 45 days or more in any 12-month period. The facility includes all of the tax parcels of land on which the facility is located, but does not include a pasture or winter grazing area.

*Related livestock facilities* are livestock facilities that are owned or managed by the same person, and related to each other in at least one of the following ways:

1. They are located on the same tax parcel or adjacent tax parcels of land;
2. They use one or more of the same livestock structures to collect or store manure;
3. At least a portion of their manure is applied on the same tax parcel of land.

Related livestock facilities (other than "separate species facilities") are collectively treated as a single livestock facility, for purposes of local approval.