Judith B. Robson
Wisconsin State Senator

May 14, 2002

Mrs. Nancy Knies
9707 West National Avenue, #26
Milwaukee, WI 53727

Thank you for your recent letter regarding section Trans 102.14(1)(e) of the state administrative code.

You asked for documentation regarding the promulgation of this part of the administrative code. This rule provision was published by the Revisor of Statutes in January 1997 in Administrative Register #493; the rule went into effect on February 1, 1997.

If you have not already done so, I suggest that you contact Senator Peggy Rosenzweig, who represents the part of Milwaukee in which you live. Senator Rosenzweig should be able to research the legislative history of this rule and provide that information to you. You can reach Senator Rosenzweig by mail at P.O. Box 7882, Madison, WI 73707.

I hope this information is helpful to you.

Sincerely,

Senator Judith Robson
15th Senate District

JR:da

State Capitol, Post Office Box 7882, Madison, WI 53707-7882 • Telephone (608) 266-2253
District Address: 2411 East Ridge Road, Beloit, WI 53511
Toll-free 1-800-334-1468 • E-Mail: sen.robson@legis.state.wi.us

May 6, 2002

Senator Judith B. Robson **and**
Joint Comm. for Review of Adm. Rules
State Capitol
P. O. Box 7882
Madison, Wis. 53707-7882

Subject: Driver's License Reservation of Rights and Trans. Rule 102.14

Dear Senator Robson:

I received your letter of April 18 in response to mine of March 15, 2002. Your letter addressed the following which I find most unsettling and unresponsive to my conerns:

1. "A statutory framework within which the committee operates". This was explained as the procedure required to suspend an agency rule, i.e., suspension of rule, introduction of legislation in assembly and senate and signature of the governor. This is the very procedure required for hundreds of bills introduced each year. Why would one more bill be too much work?

Upon checking Stat. 227.26 which you cited, I find you did not follow required statutory procedure with regard to my complaint.

> Stat. 227.26(2)(c) states: "*Public hearings*. The COMMITTEE (my emph.) shall hold a public hearing to investigate any complaint with respect to a rule if it considers the complaint meritorious and worthy of attention."

Upon your own admission, you did not submit my complaint to the committee since you stated it would be "unlikely" to be able to help and "It is quite possible that the committee would not suspend the rule". A decision by the committee would have resulted in a Yes or No as opposed to an Unlikely. If the **constitutional violations** I reiterated are not considered "meritorious and worthy of attention," for what purpose does the statute, or the committee for that matter, exist? You, the committee, and every legislator are elected as *constitutional officers* and, having taken oaths to uphold the constitutions prior to being seated, your duty is to insure constitutional government and is mandated to be your highest priority. Thus, every statute and rule **must** comply with the rights guaranteed under the constitutions. When a violation is revealed to the committee, it is **their** duty as a whole to consider the matter. If you did indeed reply to my complaint without input from the committee, not only was that decision unstatutory, but presumptuous. My complaint was addressed to **the committee** and requires comment by same.

2. "Legislature's determination" and "Legislature's view". Rather than addressing the Rule in light of the constitutions which the legislature is mandated to obey, it appears you are trying to convince me that the legislature can effect any rule **it** deems appropriate by referencing driving as a *privilege* as opposed to a right. Barron's Law Dictionary defines as follows:

> Privilege. An advantage not enjoyed by all, a particular or peculiar benefit enjoyed by a person...beyond the common advantages of other citizens, an exceptional or extraordinary exemption; or an immunity held beyond the course of the law.

A privilege, then, is defined as being advantageous or of benefit to some, but not all. Instead, the matter of driving accomplishes exactly the opposite and applies to every Wisconsin driver. A driver's license does not exempt or afford an immunity but, in effect, demands forced consent to waive rights. The roads are paid for and maintained by **the public** for the purpose of using and their use cannot be conditioned upon waiving rights. The very concept is repugnant and beyond the authority of the legislature.

Whether defined as a privilege OR a right, the fact remains that such an ordinary and necessary occurrence

cannot require waiving constitutionally guaranteed rights. This is not MY view, but the view of the constitutions.

> Wisconsin Constitution at Article I, Section 8: "No person may be ... compelled .... to be a witness against himself or herself." See also Fourth Amendment

Witnessing against myself is providing evidence. Whatever would you call a forced blood, urine or breath sample other than *evidence or witnessing against myself?* Regardless of what others choose to do, I do not choose to voluntarily provide evidence against myself and the constitutions state I have the right not to. If the legislature may simply "determine" that obtaining a license to drive suspends one or two rights, what will prevent it from suspending others by "determination" or "view"? The courts disagree with your view:

> Goverment may not prohibit or control the conduct of a person for reasons that infringe upon constitutionally guaranteed freedoms. Smith vs U.S. 502 F2d 512.

> The privilege is not limited to testimony, as ordinarily understood, but extends to every means by which one may be compelled to produce information which may incriminate. Boyd vs United States, Brown vs Walker, 161 U.S. 591; Wilson vs U.S. 221 U.S. 612, et al.

> Fifth amendment provision that individual cannot be compelled to be witness against himself cannot be abridged. Miranda vs State of Arizona, 380 U.S. 436

However, that is not to say such samples could not obtained by *due process of law* as *d*efined in the following:

> Wisconsin Constitution at Article I, Section 11: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized". Also see Fourth Amendment.

Your letter reveals your disdain for both Sections 8 and 11 (and concomitant Fourth and Fifth Amendments), for you state:

> "These statutes embody the Legislature's determination that driving on state roads is a privilege and not a right and that in return for exercising the privilege of driving, each person has given consent for alcohol testing if a law enforcement officer has reasonable suspicion that a person is intoxicated."

> "Your view that you can withhold consent to alcohol testing is in conflict with the Legislature's view."

Note the highest court's ruling:

> "We find it intolerable that one constitutional right should have to be surrendered in order to assert another." Simmons vs U.S. 390 at 389 (1968).

Yet it is your contention that to enjoy a mere privilege, I must surrender both my right against self-incrimination **and** procurement of a warrant to seize evidence or my person. While you state the legislature may deprive me of my rights upon the *mere suspicion* of a police officer, I am unable to find those words in Section 11. That section demands a warrant based upon **probable cause** (not mere suspicion) and supported by oath or affirmation. One does not take an oath to himself or determine probable cause. **That** duty is given exclusively to the judicial branch of government. **Every** search or seizure, to be constitutional except when voluntarily agreed to, requires a warrant, and no mention is made of convenience or expediency or *privilege*. The courts themselves have ruled that only one person may waive rights, i.e., the person invoking them. Not even a lawyer may invoke rights in the stead of his client. Thus, the rights I

choose to invoke are mine **exclusively** and the legislature lacks any authority whatsoever to relinquish them in my stead.

Rule 102.14(1)(e) violates both the federal and state constitutions and Wisconsin statutes as follows:

1. It resolves that my signature has an effect upon both my driving ability and public safety.

2. It demands that I waive my rights to liberty, to acting as a witness against myself, and give consent to a warrantless search and/or seizure.

3. It does not enforce any statute since there is no statute prohibiting a reservation of rights on the driver's license. The only pertinent statutory requirement is that the DMV obtains a facsimile of my signature which I am willing to give.

4. It conflicts with Statute 343.06 wherein the legislature stated its reasons for the DMV to refuse to issue a license. A reservation of rights is not a listed reason. The DOT has made "law" beyond its authority.

5. Statute 343.17(1) states that the department **shall issue** a license to **every qualified applicant who has paid the required fees.** No statute states that qualification is determined by signature or a reservation of rights.
In fact, the determination that one is qualified for a driver's license is made **before** the license is produced and a signature demanded. The DOT has exceeded its authority and ignored published legislative intent.

6. The rule is arbitrary and capricious. You did not even attempt to supply a reason for the Rule. Because doctors and priests are signing a title in conjunction with their names does not constitute a reason to deny a written reservation of rights. **Failure to object timely is fatal.** In the event of a court case, I would very probably be fined as frivolous for advancing an argument that I did not mean to waive my rights when I signed the license without a reservation. The prosecution would merely point out the published statutes which inform me signing a license constitutes a waiver of rights. It is therefore imperative that the court be informed of my prior intentions and have them in written form.

7. The Rule does not comply with the constitutional mandate at Article IV, Section 17 which states:

> (1) The style of all laws of the state shall be, "The people of the state of Wisconsin, represented in senate and assembly, do enact as follows."
> (2) No law shall be enacted except by bill. No law shall be in force until published.

I have a copy of Chapter Trans. 102 "Operator's Licenses and Identification Cards". As opposed to the statutes which are for public consumption and notification, Trans. 102 states it is an "Unofficial Text" entitled Department of Transportation. Consequently, that document has no authority to compel me to act in a manner against my own interests. It is not an **official** document for public consumption.

Moreover, as a constitutional officer, your duty is to insure constitutional government and not protect the bureaucracy over the interests of the public.

Therefore, if the Committee does not take immediate steps to suspend and reverse the Rule, please furnish me with the necessary documentation proving that Rule 102.14(1)(e) was properly and constitutionally enacted by the law-making body of Wisconsin.

I look forward to your most prompt response and thank you in advance.

Very truly,

Mrs. Nancy Knies
9707 W. National Ave. #26
West Allis, Wisconsin 53727

State Senator
James R. Baumgart

State Capitol: P. O. Box 7882, Madison, WI 53707-7882 • Telephone (608) 266-2056
Toll-free: 1-888-295-8750 • E-Mail: sen.baumgart@legis.state.wi.us

May 1, 2002

Senator Judy Robson
State Capitol, Room 15 South
HAND DELIVERED

Dear Senator Robson:

Thank you for your letter regarding your concerns over extending the emergency rule for Chronic Wasting Disease. First, allow me to agree that we ought not subvert the authority of the Joint Committee for Review of Administrative Rules. The Committee's authority to review all rules, emergency or otherwise, as well as providing the public with an opportunity to comment is of the utmost importance.

However with that said, I am concerned that the permanent rules will be extremely controversial and working out the details may very well prohibit the Department of Agriculture, Trade and Consumer Protection from promulgating the permanent rules before the emergency rules run out, regardless of how diligently the department works. As you indicate the statutes allow for emergency rules to be in effect for a maximum of 270 days. Therefore, in the interest of providing DATCP with the tools to protect our deer herd from the spread of CWD there is a great deal of merit to adding language to the budget adjustment bill that will allow JCRAR to extend the rules past the 270 day maximum laid out by the statutes. Your committee will have complete control over granting this additional extension but will allow you to do so notwithstanding the current statutory requirements.

It is my hope that this proposal will be acceptable and I look forward to hearing from you.

Sincerely,

JIM BAUMGART
State Senator
9th Senate District

JB/ph

W165 N9487 Lexington Drive
Menomonee Falls, WI 53051-1448
April 12, 2002

The Honorable Judith B. Robson
Wisconsin State Senate
Room 15 South
State Capitol
PO Box 7882
Madison, WI 53707-7882

Dear Senator Robson:

On April 11, 2002, the Department of Agriculture, Trade and Consumer Protection Board approved chapter ATCP 80, Wisconsin Administrative Code, final draft rule. This rule should be arriving for review by the Senate Standing Committee For Administrative Rules in a few days.

The department did a fine job in updating this very important rule, but in my opinion, some very significant changes and additions were left out.

To lend some credibility to my comments, I have enclosed my personal résumé. In 1999, during my employment with DATCP, I was asked by the Bureau of Food Safety and Inspection Director C. Thomas Leitzke to begin the revisions of chapters ATCP 60 and 80. After my retirement in May 2000, I worked in an advisory capacity with David G. Myers of Foremost Farms USA Cooperative with the revisions of chapters ATCP 60 and 80 from industry's point of view. Many of the changes in the final draft revisions of chapters ATCP 60 and 80 were written by me.

The last major revision of chapter ATCP 80 was in 1994. Because of the difficulty any agency has creating or revising administrative rules, and because it has taken DATCP more than three years to complete the current revision, I feel that it is absolutely imperative that the best rule possible be put in place. With that thought in mind, I am presenting to the committee changes and additions to chapter ATCP 80 that are not included in the current final draft rule, but that I feel are essential. All of these changes appeared in some of the early revision drafts. Many of them were included in the draft that went to hearing in November and December 2001.

I respectfully request that the committee object to the revision of chapter ATCP 80 as written and that the rule be sent back to DATCP with the directive to include the changes and additions that I have suggested or provide sound reasons why they should not be included.

I would honored to appear before your committee to answer questions or provide additional information and details that would assist in determining the merits of my request.

Thank you for your consideration.

Sincerely,

Neal E. Sanders
(262) 251-5626
E-Mail: sandfam@execpc.com

Encls.

NEAL E. SANDERS

W165 N9487 Lexington Drive
Menomonee Falls, Wisconsin 53051-1448
(262) 251-5626
E-Mail: sandfam@execpc.com

CURRENT STATUS

May 2000 to Present

Retired.

PROFESSIONAL EXPERIENCE

March 1999 to May 2000

Wisconsin Department of Agriculture, Trade and Consumer Protection
Madison, Wisconsin

REGULATORY SPECIALIST 3. Provide essential support for compliance activities, systems and people in the Division of Food Safety. Responsible for researching and developing of the division's compliance and enforcement policies and procedures, evaluating cases for referral for enforcement action and coordinating the management of those cases. Coordinate the development and implementation of enforcement actions in cooperation with division managers, department's legal counsel, the Department of Justice, district attorneys, and local law enforcement entities. Serve as a primary source of information for division staff on understanding the division's laws, conducting investigations and developing cases. Also serve as the key liaison with the Office of Legal Counsel and business and consumer groups on issues of compliance, enforcement and state law.

June 1992 to March 1999

Wisconsin Department of Agriculture, Trade and Consumer Protection
Madison, Wisconsin

COMPLIANCE CHIEF, FOOD. Function as the primary compliance officer for the Bureau of Food Safety and Inspection. Supervise two regulation compliance investigators assigned to the bureau. Coordinate the development and implementation of the bureau's enforcement policies and procedures. Manage compliance cases which includes reviewing, evaluating and analyzing cases for the purpose of making referrals to district attorneys or the Department of Justice. Coordinate the development and implementation of enforcement actions in cooperation with division managers, department's legal counsel, the Department of Justice, district attorneys, and local law

enforcement entities. Develop, coordinate and provide inspection, enforcement and compliance training to bureau staff and city/county agents of the Division of Food Safety.

January 1972 to June 1992

Wisconsin Department of Agriculture, Trade and Consumer Protection
Madison and Milwaukee, Wisconsin

FOOD AND TRADE INSPECTOR I & II. Conduct inspections of grade A and grade B dairy farms, dairy plants, bulk milk weigher and samplers, bulk milk tanker trucks, grocery stores, bakeries, confectioneries, canning factories, breweries, grade A milk distributors, fresh and smoked fish processors, soda water beverage manufacturers, bottled water processors, food warehouses and other related food handling operations to determine compliance with applicable laws, regulations and standards concerning sanitation, ingredient standards for processed products and product label validity. Sample various raw and finished food products for laboratory analysis and composition to determine if the product is adulterated and if the food meets composition standards and label claims. Discuss the results of inspections and investigations with appropriate persons and follow-up with enforcement action as determined when non-compliance has been determined.

April 1969 to January 1972

City of Milwaukee Health Department
Milwaukee, Wisconsin

DAIRY SANITARIAN I & II. Conduct sanitary inspections of grade A dairy farms, dairy plants, bulk milk haulers, and bulk milk tanker trucks to determine compliance with applicable laws, regulations and standards concerning sanitation, ingredient standards for processed grade A dairy products and product label validity.

June 1961 to April 1969

Roger W. Berg
Waukesha, Wisconsin

DAIRY FARMER. Began working part-time while in college defraying educational expenses. Assumed full time capacity in May of 1965 after graduation from college and again in July of 1968 after separation from military service. Became a partner in the management and operation of a 50 cow, 400 acre grade A dairy farm.

EDUCATION

1961 to 1965

University of Wisconsin
Madison, Wisconsin

BACHELOR OF SCIENCE DEGREE, DAIRY SCIENCE

1957 to 1961

Waukesha South High School
Waukesha, Wisconsin

HIGH SCHOOL DIPLOMA

MILITARY

September 1965 to July 1968

United States Army
Various locations in the United States and the Republic of South Vietnam

FIELD ARTILLERY OFFICER. Rank: 1st Lieutenant. Engage in the supervision and firing of a 105 mm howitzer artillery battery in training and combat situations. Earned the Purple Heart and Bronze Star for Merit.

LICENSES

Registered Sanitarian

STATE OF WISCONSIN, NO. SR 345, 1971 TO PRESENT

Certified Retail Food Establishment Survey Officer

FEDERAL FOOD AND DRUG ADMINISTRATION, 1985 - 1987

ORGANIZATIONS

Lutheran Church of the Prince of Peace
Menomonee Falls, Wisconsin

Held a number of leadership roles in the congregation including three two year terms as executive director and chairman of a recently completed $400,000 remodeling and building project. Currently serving as president of the congregation.

Friends of the Milwaukee Public Museum
Milwaukee, Wisconsin

Zoological Society of Milwaukee County
Milwaukee, Wisconsin

University of Wisconsin Alumni Association (WAA)
Madison, Wisconsin

Wisconsin Agriculture and Life Sciences Alumni Association (WALSAA)
Madison, Wisconsin

National Rifle Association (NRA)
Fairfax, Virginia

Ducks Unlimited, Sussex/Lisbon Chapter
Sussex, Wisconsin

State Historical Society of Wisconsin
Madison, Wisconsin

Wisconsin Waterfowl Association, Kettle Moraine Chapter
West Bend, Wisconsin

PERSONAL INTERESTS

Family and church oriented activities, cooking, theater, movies, music, home remodeling, landscaping, football, baseball, softball, and hunting

REFERENCES

Personal and professional references are available and will be furnished upon request.

SUGGESTED CHANGES AND ADDITIONS TO CHAPTER ATCP 80
FINAL DRAFT RULE

CHANGE 1

ATCP 80.20(3) is repealed and created to read:

ATCP 80.20(3) MILK COLLECTION FREQUENCY FROM DAIRY FARMS. (a) If milk from a grade A or grade B dairy farm violates an applicable standard under s. ATCP 60.15 on any single test, milk from that farm shall collected at least once every 2 days until a subsequent test shows that the milk from that dairy farm no longer violates the standard. This paragraph does not require a milk hauler or dairy plant to collect milk if milk collection would violate ch. ATCP 60.

(b) A dairy plant operator receiving milk from a dairy farm shall immediately notify the milk hauler and milk producer whenever milk from that dairy farm must be collected more frequently in order to comply with sub (a). No dairy plant operator may receive milk collected in violation of sub. (a).

THE REASON FOR CHANGE 1

The change above incorporates identical language found in s. ATCP 82.10(1). Including this language in ch. ATCP 80 clearly informs the dairy plant operator what needs to be done under certain conditions when a violation of s. ATCP 60.15 occurs and eliminates the need for the operator to reference two separate administrative rules.

CHANGE 2

ATCP 80.20(7) & (8) are renumbered ATCP 80.20(10) & (11)

ATCP 80.20(4) is renumbered ATCP 80.20(7)

ATCP 80.20(4) is created to read:

ATCP 80.20(4) REJECTION OF MILK SHIPMENTS. If the bacterial count or somatic cell count on any samples collected, tested and reported under ss. ATCP 60.17, 60.18 or 60.20, exceeds the grade B quality level under ss. ATCP 60.15(2) or (4), 8 times in any consecutive 12 samples reported, the dairy plant operator shall reject all further shipments of milk from the producer's dairy farm until at least 4 samples of milk from that dairy farm collected at not less than 24 hour intervals are tested and found to have a bacteria count or somatic cell count that does not exceed the grade B quality level under ss. ATCP 60.15(2) or (4). Rejected milk shall not be collected or commingled with milk from any other producer. If milk is rejected by a dairy plant operator under this subsection, the producer shall not ship milk to any other dairy plant until milk from that dairy farm is tested and found to have 4 consecutive bacteria or somatic cell counts from samples collected at not less than 24 hour intervals that do not exceed the quality level under ss. ATCP 60.15(2) or (4).

Note: Bacteria and somatic cell counts used under this section must be obtained after **[revisor inserts effective date of rule].**

THE REASON FOR THE CHANGE 2

The change above restricts a dairy plant operator from purchasing milk from a milk producer with a history of producing substandard milk. Under the current rules, a dairy plant can continue to purchase milk indefinitely from a milk producer with an established history of producing substandard milk, provided the requirements of ss. ATCP 60.18(5) and 60.20(6) are met. Under this proposed change, most milk producers would have at least 8 months from the time the rule becomes effective before the dairy plant operator would be required to reject milk under this section. This should provide the milk producer and the dairy plant ample opportunity to work together to solve any milk quality problems and thus prevent rejection of the producer's milk supply by the dairy plant.

Chapters ATCP 70 (Food Processing Plants) and ATCP 75 (Retail Food Establishments) require the food and ingredients received for processing to be safe, wholesome and unadulterated and to comply with applicable standards. It just makes sense that the raw milk supply received by dairy plant operators to manufacture ready-to-eat dairy products should also meet a similar standard.

CHANGE 3

ATCP 80.20(5) is renumbered ATCP 80.20(8)

ATCP 80.20(5) is created to read:

ATCP 80.20(5) TESTING BULK LOADS. The operator of every dairy plant receiving bulk loads of raw milk shall perform a drug residue test under s. ATCP 60.19(2) on every bulk load of raw milk received at that dairy plant. No dairy plant operator shall receive bulk loads of raw milk into the dairy plant until that milk is found to be negative for a drug residue. A milk shipment received in cans is considered a bulk load.

THE REASON FOR CHANGE 3

The change above incorporates language found in s. ATCP 60.19(2). Including this language in ch. ATCP 80 clearly informs the dairy plant operator of the need to test every bulk load of raw milk received at the dairy plant for a drug residue and eliminates the need for the operator to reference two separate administrative rules.

CHANGE 4

ATCP 80.20(6) is renumbered ATCP 80.20(9)

ATCP 80.20(6) is created to read:

ATCP 80.20(6) BULK MILK TANKER DELIVERIES. (a) No dairy plant operator shall receive any fluid milk or dairy products transported in a bulk milk tanker unless the bulk milk tanker operator holds a current license for that bulk milk tanker under s.97.21(2)(a), Stats, and s. ATCP 82.02(1).

(b) No dairy plant operator shall receive any grade A milk or fluid milk products transported in a bulk milk tanker unless the bulk milk tanker operator holds, in addition to the license under par. (a), a current grade A permit for that bulk milk tanker under s. 97.21(2)(b), Stats., and s. ATCP 82.02(7).

THE REASON FOR CHANGE 4

The change above is word for word from the final draft rule. It is included here to make it easier to follow the other suggested changes in s. ATCP 80.20.

CHANGE 5

ATCP 80.22(5)(a) is repealed and created to read:

ATCP 80.22(5)(a) A dairy plant operator may not reprocess, for use in any dairy product, packaged dairy products that have left the custody of the dairy plant or that have originated from any other dairy plant. This does not prohibit any of the following:

1. The use, as ingredients, of packaged or bulk dairy products that are specifically manufactured for use as ingredients in other dairy products.

2. Reprocessing dry milk and dry milk products returned to the dairy plant provided that the product's inner packaging is intact.

3. Reprocessing dairy products collected from a packaging defoamer system or drained from processing equipment at the end of the run, if those products are collected and handled in a sanitary manner, held at a temperature of 45° F. (7° C.) or less, and repasturized.

4. Reprocessing cheese and butter products that are returned for failure to meet grade or color standards provided that the products' inner packaging is intact and there is no evidence of product or temperature abuse.

5. Reprocessing specifically authorized in writing by the department, under conditions specified by the department.

THE REASON FOR CHANGE 5

Section ATCP 80.22(5)(a) of the final draft rule only applies to packaged grade A dairy products and this makes no sense at all. If it is unacceptable to allow the reprocessing of grade A dairy products, it only seems logical that it is unacceptable to reprocess any dairy product, with the exceptions included above. Once any dairy product has left the custody of the dairy plant, the dairy plant operator has no knowledge where that product has been, what abuse or potential contamination it may have been exposed to or unsanitary conditions it may have been kept under.

Chapters ATCP 70 (Food Processing Plants) and ATCP 75 (Retail Food Establishments) have rather severe restrictions on the reprocessing of food that has left the custody of the processor. It stands to reason that restrictions also need to be made on the reprocessing of **any** dairy product that leaves the custody of the dairy plant operator.

The change above would apply to **all** dairy products.

CHANGE 6

ATCP 80.22(5)(b) is amended to read:

ATCP 80.22(5)(b) A dairy plant operator shall discard any packaged ~~grade A~~ dairy products that are returned to a dairy plant by a wholesaler or retailer except as provided in sub. (a). Pending disposal, ~~grade A~~ dairy products shall be kept in an area which is clearly designated as a holding area for returned products. The holding area shall be separate from other areas used for receipt, storage or processing of dairy products.

THE REASON FOR CHANGE 6

The change above is a corresponding change as a result of Change 5. If the changes are made to s. ATCP 80.22(5)(a), the changes above must also be made and vise versa.

CHANGE 7

ATCP 80.24(2) is amended to read:

ATCP 80.24(2) MILK HELD AT DAIRY PLANT; BACTERIAL COUNT. The bacterial count of grade A milk held at a dairy plant prior to pasteurization ~~may~~ shall not exceed 300,000 per ml. The bacterial count of grade B milk held at a dairy plant prior to pasteurization ~~may~~ shall not exceed ~~750,000~~ 500,000 per ml.

THE REASON FOR CHANGE 7

The changes of the "mays" to "shalls" below makes the section clearer and stronger. Changing the bacterial count of grade B milk to 500,000 per milliliter makes sense when considering that the immediate response level for producer milk under s. ATCP 60.18(5), final draft rule is being lowered to 750,000 per ml. In today's modern dairy industry, there is no valid reason for grade B raw milk in a dairy plant to have a bacteria count that would exceed 500,000 per ml.

CHANGE 8

ATCP 80.24(3)(b) is amended to read

ATCP 80.24(3)(b) The coliform count of pasteurized dairy products~~, other than cultured products,~~ may not exceed 10 per milliliter or gram.

THE REASON FOR CHANGE 8

Without the change above, ch. ATCP 80 does not agree with the Grade A Pasteurized Milk Ordinance (PMO), Recommendations of the United States Public Health Service/Food and Drug Administration. The PMO standard only applies to grade A pasteurized milk and milk products but there is no reason why this standard should not apply to all pasteurized milk and milk products in ch. ATCP 80.

CHANGE 9

ATCP 80.24(4) is renumbered ATCP 80.24(5)

ATCP 80.24(4) is created to read:

ATCP 80.24(4) UNPASTEURIZED DAIRY PRODUCTS. The coliform count of dairy products manufactured from unpasteurized milk or milk products under s. ATCP 80.40(2)(d) shall not exceed 1,000 per milliliter or gram.

THE REASON FOR CHANGE 9

The current rule and the final draft rule of ch. ATCP 80 do not include a coliform standard for dairy products manufactured from unpasteurized milk. Coliform counts are an indication of fecal contamination of a product and serve as a valuable indicator of product contamination from filth. It makes no sense not to have a standard. The change above establishes such a standard.

CHANGE 10

ATCP 80.56(4) is repealed and recreated to read:

ATCP 80.56(4) (1) Except as provided under sub. (2), a dairy plant operator shall report to the department the results of any microbiological product test or laboratory analysis which indicates that any ready-to-eat dairy product produced by that dairy plant operator contains pathogenic organisms or toxins. The operator may report orally, electronically or in writing.

(2) Exemption. A dairy plant operator is not required to report the test results under sub (1) if all of the following apply:

(a) The ready-to-eat dairy product is identified by a product code or production lot number.

(b) The dairy plant operator has not yet distributed any of the ready-to-eat dairy products represented by the product code or production lot number, but retains direct control over all of that ready-to-eat dairy product.

THE REASON FOR CHANGE 10

The current rule requires a dairy plant operator to report the results to the department of any microbiological test on a pasteurized or ready-to-eat dairy product that confirms the presence of a pathogenic organism or toxin in that product. The change above places the same reporting requirements on a dairy plant operator that currently exist in chs. ATCP 70 (Food Processing Plants) and ATCP 75 (Retail Food Establishments).

CHANGE 11

ATCP 80.56(5) is created to read:

ATCP 80.56(5) Vitamin assay test results conducted on fortified dairy products under s. ATCP 80.24(5) within 10 business days after the test has been completed.

THE REASON FOR CHANGE 11

The current rule does not provide a reporting requirement for a dairy plant to report vitamin assay test results conducted on fortified dairy products under s. ATCP 80.24(5). The change above corrects this omission. (The current s. ATCP 80.24(4) was renumbered to s. ATCP 80.24(5) at the top of page 7 of this document.)

CHANGE 12

ATCP 80.60(1)(b) is amended to read:

ATCP 80.60(1)(b) Interference with lawful inspection, collection of photographic or other evidence or sampling by the department or certifying agency, or refusal to permit lawful inspection, collection of photographic or other evidence or sampling by the department or certifying agency as referenced in s.97.12(1). Stats.

THE REASON FOR CHANGE 12

The current rule is does not fully disclose the department's authority under s. 97.12(1), Stats. The change above more accurately reflects the department's authority and eliminates the need for the dairy plant operator to reference both the administrative rule and a state statute.

March 15, 2002

Joint Committee for Review of
Administrative Rules
P. O. Box 7882
Madison, Wisconsin 53707

Gentlemen:

For eight years, I was issued a Wisconsin driver's license with a reservation of rights next to my signature. The last time I attempted to renew, the DMV refused to issue a license containing a reservation citing Trans. Rule 102.14. This rule basically states that nothing may be added to one's signature.

In my attempt to obtain a license, I have contacted, without success, the DOT, DMV, governor, lieutenant governor, Scott Walker, Peggy Rosenzweig, Anthony Staskunas and Messrs. Breske and Stone who are on the Transportation Committee.

Obtaining a driver's license without a reservation of rights constitutes an agreement to the conditions stated in the statutes and all rules pertaining to such a license. Some of those statutes constitute a waiver of my rights under the constitution and I am not aware, nor could I be, of all the rules promulgated by bureaus with regard to a license. I would feel much more comfortable KNOWING and having others KNOW that all my rights under the constitution remain intact, unquestionable and are to be honored at all times. I refer to the Wisconsin Constitution at Article I, Sections 8 and 11 which assure me that prior to an arrest or seizure of my person or possessions, a warrant will be acquired based upon probable cause; and that my right against acting as a witness against myself will not be violated.

In that regard and strictly as examples, I point out two statutes which are violative of Sections 8 and 11. Statute 343.305(2) states that **consent** to furnish samples of blood, breath and urine is **implied**. Statute 343.305(3)(b) states that one **incapable of withdrawing consent is deemed to have given consent**. I would not, under any circumstances, voluntarily consent to either condition nor would I consent to a warrantless search of my person, car or effects. Lest you think my concern is unfounded, the following did happen to me.

I was stopped by a police officer in a municipality in which I had lived for seventeen years for an alleged license plate violation. After displaying my driver's license (without a reservation), I was surrounded by four police cars, handcuffed and searched (by a male

officer) as were my purse and car. I was locked up for several hours until the judge was summoned at which time he conducted a hearing in a back room of city hall without public access and where a friend I had telephoned was unable to find me or attend the hearing. The statutes mandate that any hearing must take place in a public courtroom as provided by the taxpayers. The police officer had my car towed to a private storage lot. At the trial, the judge refused to allow me to complete my questioning of the officer, refused to let me testify in my own behalf and refused to accept the proof I proffered showing a receipt in payment of the license plate.

This episode exhibits the following violations of my rights and the statutes:

1. I showed the officer a card received from the DOT showing that a license plate was issued to my car and duly paid for. His refusal to accept this proof violated Stat. 341.04.
2. The current statutes at that time stated a woman could not be arrested for that alleged violation. The officer ignored the statute.
3. The officer failed to obtain a warrant to search me and my belongings as constitutionally required. .
4. The officer failed to obtain a warrant to seize my person and incarcerate me, also in violation of the constitution.
5. The hearing was mandated by statute to be held in a public courtroom but was held in a room without public access.
6. The statutes state an impounded vehicle must be taken to the **nearest** appropriate place to remove it from the street. Instead, he had the vehicle towed past my own home, past a public parking lot and to a private lot. The excuse given was that the car was parked on a road where it could be a danger to others. However, the officer would not let me move it off the street, nor would he move it himself although he was statutorily authorized to do so.
7. The municipal judge refused to allow me to question the officer in violation of having witnesses for my defense.
8. The judge refused to allow me to testify in my own behalf as constitutionally required.

Not only was I forced to go through a second trial in a circuit court but was then forced to sue the city for the return of my car which took six weeks, during which time I was without transportation.

I believe it is prudent to guard against a similar violation of my rights. There is a saying which seems appropriate: "If it isn't documented, it didn't happen." In any traffic stop, the first contact is a police officer who immediately demands production of a driver's license; the second would be a court. By displaying a reservation of rights on the driver's license, the officer is informed **at that time and place** that I invoke **all** my rights. He is therefore **forewarned** to not violate my rights; and to obtain a warrant based upon probable cause in the event of a search or seizure. Without such reservation, it becomes a matter of "she said", "he said" for the court, which must decide who is telling the truth. I contend the court will believe the officer under the belief he has nothing to gain, forgetting he may have to justify his actions. With a reservation of rights on the license itself, the court has

written proof that I invoked my rights **timely** and the officer knew it at the time.

Reasons for This Committee to Negate Trans. 102.14(1)(c)

1. The DOT/DMV is only authorized to make rules necessary to carry out general legislative purposes. The purpose of the DOT/DMV is to insure the safety of the public. Its authority to implement traffic signals, stop signs, parking, etc. is not questioned. The manner in which I write my signature has no effect upon either safety or the public. The rule does not carry out legislative purposes as there is no statute preventing me from reserving my rights or dictating the manner of my signature.

2. DOT/DMV rules must comply with laws the legislature has enacted. Statute 343.17 authorizes the issuance of drivers licenses and states at 343.17(3)5 that the license must contain a facsimile of the applicant's usual signature. The Legislature has not statutorily prohibited an addition or reservation to that signature. The Department exceeded its authority by adding the rule and making a determination as to what my usual signature must be and/or precluding an endorsement to insure my rights. When signing any government or other forms which I feel may jeopardize my rights or compel me to sign against my will, my signature contains a reservation.

3. The legislature does not have authority to prevent or preclude me from reserving my rights in written form. Each legislator took an oath to uphold the constitution prior to taking office. While the constitution assures me my rights are secured, Statute 343.305 negates rights with the words "implied" and "deemed" **unless a timely objection is made**. A reservation of rights is that timely objection. A signature without reservation constitutes a waiver of rights **in written form by virtue of my signature on the license.**

4. The Trans. 102.14 rule does not comply with legislative intent. If the legislature had intended to prohibit a reservation of rights on the license, a statute would have been enacted so stating. To the contrary, Statute 343.17(1) states: The department **shall issue** an operator's license and endorsements, as applied for, to **every qualified applicant** who has paid the required fees. A qualified applicant means one having the ability to drive a car and paid the fees. If "qualification" depended upon a signature, the Legislature would have stated so by statute.

5. The Rule exhibits an absence of statutory authority. The Legislature defines persons not to be licensed in Statute 343.06. Nothing contained in that statute constitutes disqualification for issuance of a driver's license to me. If the Legislature intended a signature to disqualify an applicant, it would be stated in this statute. Thus, the rule exceeds legislative intent.

6. The rule is arbitrary and capricious. The Department is unable to state a **viable reason** for the rule, other than to say that some were signing "Dr." of "Fr." before their signatures which, in itself, has no bearing on ability to drive or safety of the public nor any effect on the public in general. In fact, the rule was initiated by Barbara Bird, legislative attorney. It is indeed frivolous to compare a reservation of rights with a title before one's name. It is a fact that for many years, I carried a license containing a

reservation of rights and it had no effect on me, my driving ability, or the public. It is therefore a rule that makes no sense, has no purpose, and violates my right to preserve my rights in written form.

I therefore request that this committee take whatever action is necessary to rescind/revoke the signature rule of Trans. 102.14. Thank you for your prompt response.

Very truly,

Mrs. Nancy Knies
97607 W. National Ave. #26
West Allis, Wisconsin 53227

DOWP CR

To: Members of the Senate Committee on Health, Utilities, Veterans and Military Affairs

From: Tom Engels, Director of Government Affairs
Pharmacy Society of Wisconsin

Re: Clearinghouse Rule 157

The Pharmacy Society of Wisconsin (PSW) represents over 2000 Wisconsin pharmacists and pharmacy technicians all of whom take a great deal of pride in the quality of care they offer to patients. PSW objects to a provision of Clearinghouse Rule 157 that allows the Wisconsin Pharmacy Examining Board (PEB) to mandate up to 6 contact hours of the 30 hours of continuing education (CE) requirement to be completed on a specific topic area(s). PSW supports the remaining provisions of CR 157

The six-hour mandate is problematic because:

1. **Pharmacists should be allowed to choose the areas in which they would like to complete their CE requirement.**

Pharmacy practice is quite diverse and pharmacists may have very different continuing education needs depending on where they are employed. They should have the freedom to select those programs that best meet their needs based on their practice.

2. **PSW strongly supports a current practice of the PEB to require specific CE requirements on a case-by-case basis as related to complaints against licensees.**

Presumably one of the ways that the PEB might select a specific topic area would be to focus on an area that had been involved in recent cases/complaints against practitioners. The need for continuing education in this specific area for these practitioners, who are a minority of the 4000+ licensed pharmacists practicing in Wisconsin, would be imposed upon all Wisconsin licensed pharmacists if this rule were adopted. The lack of competence in a particular area of pharmacy practice for a few practitioners should not be presumed for all practitioners. PSW supports remedial education for those cases where a problem is determined by the PEB.

3. **If the PEB chooses a mandatory topic area not specifically listed pharmacists would not know whether a program will meet the topic requirement or not.**

The American Council on Pharmaceutical Education (ACPE) (the national accreditation body for pharmacy CE providers) has approved codes for provider programs using only 4 categories of subject matter:

01- Drug Therapy – Covers all programs that address drugs and/or drug therapy related to disease states
02 - AIDS related – Covers all programs that address therapeutic, legal, social, ethical or psychological issues related to the understanding and treatment of patients with AIDS.
03 - Pharmacy Law – Covers all programs that address federal, state or local laws and/or regulations affecting the practice of pharmacy.

04 - General – Covers all programs that address topics relevant to the practice of pharmacy excluding those classified as topics related to drug therapy, AIDS and law.

Pharmacists will call the provider of the CE to determine if a program meets the Wisconsin PEB requirements. CE providers in turn will call the Wisconsin Dept of Regulation and Licensing. The Department and/or the PEB will then have to review the program to see if it contains information on the specified topic requirement. Who will decide if the program contains sufficient information and detail to meet the requirement? Based upon what criteria? It is our understanding that the Department would not be able to handle this additional responsibility. While local ACPE-approved providers may be able to work with the PEB to ensure that programs offered meet the requirements, there are over 350 ACPE-approved providers across the country that can offer CE to Wisconsin pharmacists.

4. **This mandate would be unique to Wisconsin and create bureaucratic confusion for license holders.**

Wisconsin would be the only state in the nation to have as a requirement for licensure-mandated hours arbitrarily set by a pharmacy board. While other states may require certain hours of continuing education, they do so by establishing those hours and topics in rules or state statutes. No state allows a simple majority of the pharmacy board (4 in Wisconsin) to unilaterally determine specific education requirements for all license holders.

Clear understanding among pharmacist license holders and uniform enforcement of the proposed rules would be difficult, if not impossible for license holders, unless the Dept of Regulation and Licensing or the PEB review the programs for content prior to their offering. This would make Wisconsin's licensure renewal process cumbersome and unnecessarily bureaucratic.

Therefore, PSW respectfully requests this committee recommend that the 6-hour requirement for specific educational requirements be removed from this rule. PSW supports the PEB's current mandatory CE requirement of 30-hours every two years. But **mandatory areas** of programming are in our opinion unnecessary and onerous. Pharmacists should be allowed to determine the areas they will individually pursue based upon their own individual needs and desires.

DAW 10

Cornelia M. Gordon-Hempe
5413 Trempealeau Trail
Madison, WI 53705

February 14, 2002

Senator Judith Robson
State Capitol, Room 15 South
P.O. Box 7882
Madison, WI 53707-7882

Dear Judy,

Enclosed is the letter to Rep. Wasserman regarding Clearing House Rule 01-094 which pertains to the Social Worker Training Certificate internship and which I discussed with you recently.

Yours sincerely,

Cornelia Gordon-Hempe

Cornelia M. Gordon-Hempe
5413 Trempealeau Trail
Madison, WI 53705

February 1, 2002

Representative Sheldon Wasserman, M.D.
State Capitol, Room 111 North
P.O. Box 8953
Madison, WI 53708

Re: Clearing House Rule 01-094

Dear Representative Wasserman:

I write regarding Clearing House Rule 01-094. If passed, this rule would require social worker training certificate holders to serve an internship that involves a minimum of four hundred supervised hours. On Monday, January 28, 2002, the Assembly Committee on Health (of which you, of course, are a member) referred the proposed rule to the Joint Committee for Review of Administrative Rules.

This rule was drafted by the Social Worker Section of the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors and is unanimously supported by the Section. I have served two full terms on that Board and was chair of the Social Worker Section for nine and half years until my recent resignation.

I am concerned with what I am told was the response of your committee chair to a question you asked about the proposed rule. My understanding is that you inquired whether there was any disagreement about the rule between the social work profession and the Social Worker Section. I am advised that the chair's response, surely through inadvertence or lack of sufficient information, was confusing at best and erroneous at worst, for it seemed to imply a rift between the Social Worker Section and the social worker profession on this rule.

The flat truth is that both the social work profession (as represented by the National Association of Social Workers[1]) and the Social Worker Section strongly support this proposed rule. There is no disagreement about the need for the rule among experienced professional social workers in the field and the Social Worker Section. We all regard it as an essential measure for the protection of the public.

Here's why.

Experienced, professional social workers and their social worker colleagues on the Social

---

[1]Testimony of NASW Executive Director Marc Herstand to the Assembly Committee on Health, December, 2001, and confirmed by Mr. Herstand to me in a telephone call February 1, 2002.)

Worker Section (and including the public member) believe that persons who wish to become social workers at the basic level but who have not majored in social work should have the same amount of direct supervised exposure to clients as experienced by the persons who have majored in social work. The clients with whom they will work are often families with abused and neglected children, children under probationary supervision, battered spouses, and the elderly in nursing homes. Learning to communicate and intervene effectively with highly vulnerable and fragile clients is an absolute prerequisite of being able to provide them with meaningful assistance.

The Council on Social Work Education (CSWE), a body composed of social work educators which accredits social work programs, has deemed four hundred hours to be the minimum number of internship hours that offer students sufficient exposure to vulnerable clients and the time to develop their intervention skills. Internships of lesser duration may very well cause new social workers to make inappropriate and unfortunate decisions which result in a heavy and painful human cost. It is a cost our society can ill afford and should not have to incur.

Currently there are three alternative routes to obtaining a basic level social work certificate:

> 1) a) Earn a bachelor's degree in social work (BSW) work from an accredited college or university, which includes a specifically defined internship of at least 400 hours as part of the BSW degree. Persons who have done so are then required to b) pass both a state jurisprudence and a national social work examination.
>
> 2) a) Earn a bachelor's degree in psychology, sociology, criminal justice or other human service degree approved by the Social Worker Section and b) complete four specified social work courses, and c) be employed for a year under the supervision of a certified social worker who holds a bachelor's or master's degree in social work, and d) pass both a state jurisprudence and national social work examination.
>
> 3) a) Earn a bachelor's degree in psychology, sociology, criminal justice or other human service degree approved by the Social Worker Section and b) complete four specified social work courses, and c) complete an internship of an unspecified number of hours, and d) pass both a state jurisprudence and national social work examination.

The rule proposed by the Social Worker Section would make uniform the internship requirements for both social work and non-social work majors. Internships such as these (or more stringent) are common features of many respected professions including medicine, nursing, law and education. Their sole justification is protection of the public.

While there is no disagreement about the proposed rule among social work professionals, there is disagreement about the proposed rule between the Social Worker Section and a very few human service, but non-social work university departments. This disagreement has found expression largely in the critical comments of Richard Salem, a sociology professor at UW-Whitewater, who seems to perceive the proposed rule as somehow threatening to his own academic area. Professor Salem has been a frequent visitor to our section meetings, virtually always opposing any refinements to the social worker training certificate proposed by the section. Apparently he has also been a frequent visitor to your committee chair as well, for the last time Professor Salem spoke to our section he bragged that Representative Underheim would do anything legislatively that he asked. Inasmuch as we have thus far found Representative Underheim to be both fair and intelligent, we were inclined to dismiss the professor's boast as overcharged hyperbole.

Finally, it is fair to note that not all colleges and universities with human service programs leading to the training certificate have objected to the proposed rule. For instance, after learning of the proposed rule last summer, Upper Iowa University mandated its human service majors to complete internships of the duration the section proposed. Upper Iowa University has worked very cooperatively with the Social Worker Section to craft its training certificate program to the concerns of the profession.

Yours sincerely,

Cornelia M. Gordon-Hempe

Cornelia M. Gordon-Hempe, ACSW, CISW, CICSW

cc: Rep. Gregg Underheim
Oscar Herrera,
Douglas Knight, Chair, Social Worker Section
Marc Herstand, Executive Director, NASW-WI
Rep. Frank Urban
Rep. Dan Schoof
Rep. Tim Carpenter
Rep. Pedro Colon
Rep. John La Fave
Rep. Rep. Jennifer Shilling
Rep. DuWayne Johnsrud
Rep. Judy Krawczyk
Rep. Frank Lasse
Rep. MaryAnn Lippert
Rep. Mark Miller
Rep. Steve Wieckert
Rep. Luther Olson
Rep. Rep. Lorraine Seratti
Rep. Scott Walker

Tommy G. Thompson
Governor

Jennifer Reinert
Secretary

State of Wisconsin
Department of Workforce Development

OFFICE OF THE SECRETARY
201 East Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
Telephone: (608) 266-7552
Fax: (608) 266-1784
http://www.dwd.state.wi.us/
e-mail: DWDSEC@dwd.state.wi.us

October 26, 2000

The Honorable Judith Robson, Co-Chair
Joint Committee for Review of Administrative Rules
15 South, State Capitol
Madison, WI 53707

The Honorable Glenn Grothman, Co-Chair
Joint Committee for Review of Administrative Rules
15 North, State Capitol
Madison, WI 53708

Dear Co-Chairpersons Robson and Grothman:

Please find attached a copy of LRB-0163/1 that the Department of Workforce Development had drafted for introduction in the 2001-02 legislative session. We respectfully request that the Joint Committee for Review of Administrative Rules introduce the bill on the Department's behalf.

The statutory change proposed in LRB-0163/1 is the result of a meeting of JCRAR last spring. The Committee was reviewing Emergency Rule 290.155 relating to the annual adjustment of the threshold for applicability of the prevailing wage rate. The Committee recommended and the Department agreed, that in lieu of adjusting the threshold each year via emergency rule, a method be adopted that does not require completion of this process each year.

LRB-0163/1 proposes to make the annual adjustments by publication in the Wisconsin Administrative Register. We have sent copies of the proposed legislation to various interest groups for their feedback. Staff from the Division of Equal Rights are available to meet with committee members to discuss this proposal and any feedback received from interested parties.

Currently, data from the Engineering News Record is used for setting the threshold amount each year (currently $34,000 for a single-trade public works project and $168,000 for a multiple-trade public works project). This will not change under LRB-0163/1.

Please contact Kimberly Markham, DWD Legislative Liaison, at 267-3200 if you have any questions or would like to schedule a meeting to discuss this proposal. We look forward to working with the Committee to pursue this legislation.

Sincerely,

Jennifer Reinert
Secretary

Cc: Members, Joint Committee for Review of Administrative Rules
Sheehan Donoghue, Equal Rights Administrator
Kimberly Markham, Legislative Liaison
Elaine Pridgen, Administrative Rules Coordinator

AYRES ASSOCIATES

Scott C. Wilson, PS, CPSS/SC
Manager - Remediation Services
(608) 249-0471
E-mail: wilson.s@ayres-msn.com

Engineers/Photogrammetrists/Scientists/Surveyors
2445 Darwin Road, Madison, WI 53704-3186
FAX (608) 249-2806

GRAEF ANHALT SCHLOEMER and Associates Inc.

Graef, Anhalt, Schloemer & Associates, Inc.
Engineers & Scientists

Jerome S. Chudzik, P.E.
Vice President

(414) 266-9049
jerry.chudzik@gasai.com

One Honey Creek Corporate Center
125 South 84th Street, Suite 401
Milwaukee, Wisconsin 53214-1470
(414) 259-1500 fax (414) 259-0037

WACE Wisconsin Association of Consulting Engineers

Carol L Godiksen
Executive Director
Wisconsin Association of Consulting Engineers

131 W Wilson Street, Suite 502
Madison, WI 53703-3259

(608) 257-WACE (9223)
FAX: (608) 257-0009

5/7/01

represent bus int that do project design

Scott - Ayres Assoc. multi-disciplinary, 400 empees, 6 states. His ~~former~~ focus is remediation.

chair PECFA liaison cmte

Jerry - multidisciplinary firm. Ill & WI.

- concerns re PECFA:
  - bidding of professional services.
  - opposed.
  - now cannot get info from Comm re satisfaction w/ process.
    - did own survey of firms through round 8 (now in round 12)
  - issues: communication, sites not closed fast enough, no cost savings

- no other agency hires consultants through competitive bids. professional services are not bid.

- FL alternative (equiv of PECFA): 2 choices -
  1) hire own consultant subject to institutional cost controls
  2) give up control, turn over to state, state collects sites by geo area & extent of need. state do RFP for multiple sites at once. State hires 1 consultant for multiple projects. subject to other cost controls.

Jerry Water Grants - owner selected consultant, negotiated scope of work & cost, state approved before work done. prior reviewed allowed cost control. contractors only get pre-approved amount, not actual expenses contingencies capped at given %

- other models offer better ways to both contain costs & get quality work.
  - their argument is that will ~~[illegible]~~ cost less in the long run b/c will get fewer initial mistakes - fewer multiple clean-ups at same site.

- Comm should also get rid of known firms that do bad work.

- many member firms stopped doing PECFA b/c of bidding process.

→ request JCRAR hrg on this issue.

Solutions

- mediation for appeals. appeals not being completed.