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Details:

(FORM UPDATED: 07/12/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Agriculture (AC-Ag)

COMMITTEE NOTICES ...

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

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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

CR 05-014 ?

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 of Wisconsin
Jim Doyle, Governor

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

Legislative Hearing on ATCP 51
December 8, 2005

CR 05-014

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.



Livestock Facility Siting Rule (ATCP 51)

Key Revisions to Final Draft Livestock Facility Siting Rule

Revises research-based odor standard, mainly to address farmer concerns

- Retains complete exemption for expanding facilities under 1,000 animal units (AU) and new facilities under 500 AU.
- Adds complete exemption for facilities more than 2,500 feet from nearest affected neighbors.
- Allows more odor (uses less restrictive "odor curves").
- Provides a lower, more accurate odor generation number for large manure lagoons.
- Reduces odor estimates for livestock housing facilities.
- Clearly defines "affected neighbors" for purposes of odor score calculations.
- Calculates separation distance more fairly by using weighted average.
- Gives credit if neighboring development is low-density (same credit applies to future expansions, even if there has been more encroaching development).
- Gives credit of up to 30% for favorable wind direction.
- Expands and clarifies management practices that operator can use to improve odor score. Allows for innovative practices not yet identified.
- Simplifies "cluster" option (e.g. helps farmers with separate milking and heifer facilities).
- Expands local discretion to grant permit (only works in favor of farmer).
- Clarifies that odor scores may not be used as a nuisance standard.
- Refines odor standards based on testing of real farm scenarios provided by farm groups.
- Establishes positive scoring system.
- Acknowledges that odor management may also help control air pollution emissions.
- Gives credit for required employee training and incident response plans (eliminates "good neighbor" practices that do not actually reduce odor).
- Allows more than 90% of existing facilities to pass, even if they install no new odor management practices. Others can pass by adding odor management practices (farmer chooses practices).
- Simplifies odor worksheet (and provides convenient automated spreadsheet option). Farmer can check the numbers (and refine plans if necessary) before applying.
- Guarantees local approval for those who meet standard.

Changes setback requirements, mainly to address farmer concerns

- Eliminates state setbacks in favor of more lenient local setbacks (except for new manure storage facilities). Caps local setbacks (100-200 ft. *maximum*, depending on circumstances).
- Adds 350 ft. setback for new manure storage.
- "Grandfathers" existing structures, *and allows them to expand* (but no closer to property line).

Eliminates some standards, to address farmer concerns

- Eliminates odor management standard for manure spreading.
- Eliminates plan for handling dead animals.



Livestock Facility Siting Rule (ATCP 51)

Modifies nutrient management standard, to address farmer concerns

- Excludes some parts of federal standard.
- Does not allow more stringent local standards.

Modifies runoff standards, to address farmer concerns

- Reduces coverage of high moisture feed storage (now only feed over 70% moisture).
- Simplifies subsurface runoff collection requirements (no major retrofit required).
- Eliminates construction site erosion control standards (they are already required by DNR)

Clarifies local administration, to address farmer concerns

- Local governments **MUST APPROVE** application that meets state standards (cannot add standards or information requirements unless they meet narrow *statutory* exceptions).
- Prohibits regulation below 500 AU unless local ordinance, adopted prior to July 19, 2003, specifies lower threshold in terms of "*animal units*."
- Clarifies protection for existing livestock facilities (they can expand by 20% without a local permit, even if the expanded facility exceeds 500 AU). A facility that already holds a permit can expand to the limit specified by that permit ("animal units" or reasonable capacity of previously approved animal housing).
- Requires local government to determine completeness of an application within 14 days (local government must act on complete application within 90 days).
- Encourages local governments to consider extenuating circumstances (such as weather problems) when responding to apparent permit violations

Modifies definitions, to address farmer concerns

- Provides exemption for "winter grazing" areas.
- Eliminates "same nutrient management plan" as basis for treating multiple facilities as a single facility.
- Adds definition for "persons" to recognize corporate and other farm entities.
- Modifies definition of "substantially altered" livestock structure, so that fewer structures fall within the definition ("substantially altered" structures are subject to higher standards than unaltered structures).

Strengthens DATCP oversight

- Requires local governments to submit copies of ordinances and permit applications to DATCP.
- DATCP will review permit activity monthly during first year (DATCP will report to DATCP Board).
- DATCP will review standards annually for first 4 years (not just every 4 years, as required by statute). Will consult with advisory committee that includes farmers.

Addresses community needs

- Allows local government to apply state standards for first 6 months without incorporating standards in ordinance. But after 6 month "grace period," local government can no longer deny permits unless it has incorporated the state standards in its ordinance (at least by reference).
- Increases maximum allowed permit fee to \$1,000 (local government must set fee in ordinance).
- Requires that livestock structures be set back from wells, consistent with NR 812 and NR 811

ATCP 51 ODOR MANAGEMENT WORKSHEET

The Odor Management Worksheet contains a mathematical model for predicting nuisance odor from livestock facilities. The model was developed by DATCP at the recommendation of the ATCP 51 Technical Expert Panel (see attachment for listing of the panel).

The core of the model was based on the Odor From Feedlots Setback Estimation Tool (OFFSET), developed by the University of Minnesota, Department of Biosystems and Agricultural Engineering, copyright 2002 Regents of the University of Minnesota. OFFSET was developed by the research team of Professor Larry Jacobson, along with Extension Engineers David Schmidt and Susan Wood. OFFSET and evaluations of OFFSET have been published in more than six scientific journals, including Air and Waste Management and American Society of Agricultural Engineering.

The key components of OFFSET that are incorporated in the Odor Management Worksheet are:

- Odor generation from the three primary sources of farmstead odor: manure storage, animal housing, and animal lots.
- Odor dispersion as expressed by odor annoyance-free curves.
- Odor control technologies or BMPs.

DATCP's Odor Management Worksheet employs the following modifications and additions to OFFSET, some of which were developed by the ATCP 51 Technical Expert Panel and others by DATCP engineering staff, in consultation with the authors of the OFFSET model:

- Wind direction adjustment
- Weighted average or representative distance
- Lower odor annoyance-free curves
- Control factors for an additional 15 Wisconsin specific odor control BMPs
- Management credit adjustments
- Predicted odor cap

Livestock Facilities Siting Project
Technical Expert Panel Members
April 2004

- **Tom Hunt**, Co-Chair. Director of Research, Pioneer Farm, UW Platteville.
- **Ed Odgers**, Co-Chair. Agricultural Engineer. Section Chief of the DATCP, ARM Conservation Engineering Section, Land and Water Management Bureau. Expertise in manure management and technical standards development.
- **Tom Bauman**. Water Resources Engineer, Runoff Management Section, Watershed Management Bureau, DNR. Expertise in technical and permitting aspects of manure and livestock facilities management.
- **Larry Bundy**. Soil Scientist. Professor, UW Madison Soils Department. Expertise in soils and nutrient management, and phosphorous transport.
- **Paul Burns**. Minnesota Department of Agriculture. Expertise in odor control.
- **Jerry Halverson**. Conservation Engineering Technician. Soil and Water Conservation Department, Manitowoc County. Expertise in the planning, design and construction of manure management and livestock housing facilities.
- **Brian Holmes**. Agricultural Engineer. Biological Systems Engineering, UW and UWEX, Madison. Expertise in manure and livestock facilities planning and design as well as odor abatement.
- **Pat Murphy**. State Resource Conservationist, NRCS. Member of the State Technical Committee. Expertise in comprehensive farmstead and nutrient planning. Member of the DATCP Advisory Committee on Siting Livestock Facilities.
- **Eileen Pierce**. Section Chief, Monitoring Section, Air Monitoring bureau, DNR. Expertise in air management.
- **Bill Stangel**. Agronomist. Private consultant for farmers. Member, Wisconsin Association of Agronomy. Expertise in nutrient management and manure application.
- **Jim Van Den Berg**. Consultant, Robert E. Lee and Associates Inc. Manager of Technical Services with expertise in planning, design, and construction of manure management and livestock housing facilities.

OFFSET

Odor From Feedlots Setback Estimation Tool

Larry Jacobson, David Schmidt, and Susan Wood

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Introduction

When discussing odor problems related to animal agriculture, the following questions often arise:

- How far does odor travel?
- Are animal numbers or animal species accurate predictors of nuisance odors?
- How much odor control is needed to solve an odor problem from an existing facility?
- Can the odor impact from a new facility be predicted?

Answers to these questions are as varied as the people having the discussion. Until now, scientific methods to predict odor impacts did not exist. This publication discusses a new tool that has been developed at the University of Minnesota to answer some of these questions. The tool, "Odor From Feedlots Setback Estimation Tool" (OFFSET), is the result of four years of extensive data collection and field testing. It is a simple tool designed to help answer the most basic questions about odor impacts from livestock and poultry facilities.

OFFSET is designed to estimate average odor impacts from a variety of animal facilities and manure storages. These estimations are useful for rural land use planners, farmers, or citizens concerned about the odor impact of existing, expanding, or new animal production sites. OFFSET is based on odor measurements from Minnesota farms and Minnesota climatic conditions. As such, the use of OFFSET for estimating odor impacts in other geographic areas should be done with caution and through consultation with the authors of this publication.

Getting Started

The amount of odor emitted from a particular farm is a function of animal species, housing types, manure storage and handling methods, the size of the odor sources, and the implementation of odor control technologies. However, the impact of these odors on the surrounding neighborhood or community is a function of both the amount of odor emitted and the weather conditions. Weather conditions strongly influence the movement and dilution of odors. Odor impact includes the strength of the odors and the frequency and duration of the odor events. OFFSET combines odor emission measurements with the average weather conditions to estimate the strength and frequency of odor events at various distances from a given farm.

Figure 1. Prediction of odor problems is important as rural and non-rural areas converge.



Odor Formula Worksheet

From the University of Minnesota odor study:

$$D = aE^b$$

Where: D = separation distance in miles
 E = total odor emission number, no units
 a,b = weather influence factors for various odor frequency requirements, no
 units

(values listed in Table below)

Weather influence factors with various odor annoyance-free frequencies

Weather condition	1	2	3	4	5	6	7(extrapolated)
Odor annoyance-free frequency (%)	99	98	97	96	94	91	89
a	0.118	0.063	0.040	0.024	0.018	0.010	0.0068
b	0.513	0.537	.0540	0.584	0.583	0.626	0.666
r ²	0.998	0.998	0.996	0.995	0.999	0.997	----

For a given distance (D), the amount of odor emissions (E) that can be dissipated under various weather conditions can be expressed as:

$$D = aE^b$$

$$D/a = E^b$$

$$(D/a)^{1/b} = E$$

$$E = (D/a)^{1/b}$$

Inserting values from the above Table for the 89% odor annoyance-free frequency curve:

$$E = (D/0.0068)^{1/0.666}$$

$$E = (D/0.0068)^{1.5} \text{ with } D \text{ expressed in miles, or}$$

$$E = (D/36)^{1.5} \text{ with } D \text{ expressed in feet}$$

Example:

A non-affiliated residence is located 250 feet downwind of a livestock housing structure. What is the maximum odor emission number (E) that will result in annoyance-free odor conditions 89% of the time between the months of April and October?

D = 250 feet solve for E:

$$E = (D/36)^{1.5}$$

$$E = (250/36)^{1.5}$$

$$E = 6.9^{1.5}$$

$$E = 18$$

If this facility is a dairy freestall barn, how large can it be and how many animals can it house if stocked at a typical animal density of 65 square feet per animal unit (91 square feet per cow)?

From the University of Minnesota odor study, the odor emission factor for dairy freestall barns is 4. This means that every 10,000 square feet of freestall emits 4 odor factors. If the maximum odor emission factor allowed is 18, then the largest freestall would be 45,000 square feet.

$$18/4 \times 10,000 = 4.5 \times 10,000 = 45,000 \text{ ft}^2$$

$$45,000 \text{ ft}^2 / 65 \text{ ft}^2 \text{ per A.U.} = 692 \text{ Animal Units, or at } 1.4 \text{ A.U. / cow,}$$

495 cows

Note: If there are other odor sources on a livestock facility, such as lots or waste storage, these must be accounted for as well when calculating separation distances from non-affiliated occupied structures. Also, 80 basic management points (and an optional 20 advanced management points) are issued to producers who adopt certain management practices. These points act as credits that offset odor emission factors one-for-one.





WISCONSIN FARM BUREAU® MEMO

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

CR 05-014 ?

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.



**Midwest Environmental
ADVOCATES**
pro bono publico

**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.





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
37th Assembly District

DATE: December 8, 2005

RE: DATCP Livestock Siting Rule, ATCP 51

CR 05-014

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.



Wisconsin Towns Association

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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;
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.





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.

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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.



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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