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WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

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Assembly

(Assembly, Senate or Joint)

Committee on ... Agriculture (AC-Ag)

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt**
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 - (**sb** = Senate Bill) (**sr** = Senate Resolution)
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- (**ajr** = Assembly Joint Resolution)
(**sjr** = Senate Joint Resolution)

**STATEMENT OF
WISCONSIN FARMERS UNION**

**Presented to the
Assembly Committee on Agriculture
And
Senate Committee on Agriculture & Insurance**

**Revisions to NR 243
Related to animal feeding operations.**

**August 3, 2006
9:00 a.m.
411 South
State Capitol**

Statement of the Wisconsin Farmers Union to the Assembly Committee on Agriculture and the Senate Committee on Agriculture & Insurance on August 3, 2006 regarding NR 243.

On behalf of the nearly 2,000 family farm members of the Wisconsin Farmers Union, I would like to thank you for the opportunity to provide written and oral comments on the proposed rules for Chapter NR 243 regulating CAFO manure handling and storage.

First of all, Wisconsin Farmers Union (WFU) is a member-driven organization committed to enhancing the quality of life for family farmers, rural communities and all citizens through educational opportunities, cooperative endeavors and civic engagement.

My name is Walter Lueder and I am a director for the Wisconsin Farmers Union and represented Farmers Union on the Wisconsin Manure Management Task Force. I am here today to provide testimony from the Wisconsin Farmers Union.

In a nutshell we support the proposed rules as being reasonable and workable. However, there are many misconceptions about these rules in the countryside.

1) Manure Storage:

Some people interpret this rule that all farms, no matter what size, will have to have manure storage for 180 days. As we read the rules, it appears that the requirement of 180 days storage is for **liquid** manure for large CAFAOs only. The other requirement would be if a smaller-sized CAFO is located near a stream and has had discharge problems, they may be required to obtain a discharge permit requiring storage.

2) **Manure Application:**

We understand that on January 1, 2008 large CAFOs (farms with 1,000 animal units or larger) will be prohibited during February and March to apply solid or liquid manure to avoid accidental manure runoff or if there was a prediction of .25 inches of rain within a 24-hour period during winter.

However, during these months, large CAFOs could choose to **stack solid** manure. It is our understanding that this ruling does not apply to farms under 1,000 animal units with the exception of any size farm that may have had manure spill issues and have been required to obtain a permit.

3) **Farm Size:**

The rules outline two options to count animal units. We understand that the rules apply only to 1,000 animal units, which would be about a 700 cow dairy herd. According to the 2004 Wisconsin Agricultural Statistics only 1.3% of our farms were in the 500+ head size which is about 200 operations out of the 15,900 herds. It seems the majority of farms will not be affected by this ruling.

What Farmers Union would like to see rather than forcing manure pits and other heavily capitalized systems for manure storage, is that we continue to look for more cost effective ways to store manure or to convert it to energy. With the volatility in milk prices, escalating input and energy costs, farmers cannot begin to pay for on-farm storage no matter what size. What is the longevity and long-term

safety of manure pits or large storage systems? There should be a more visionary approach to manure and how it is handled. It should be viewed as an asset, not a liability.

It will be necessary that any change in manure handling and storage rules be clearly outlined to the farmers. There are so many agencies having a stake in manure handling from the DNR, to USDA, to DATCP, to EPA, to NRCS, that it would make sense if the linkages between these agencies and the rules imposed upon farmers and landowners be connected. It's difficult to understand, especially at a time when there is undue stress on the farmers for much needed income, health insurance, and crop and livestock losses due to drought conditions that many counties are experiencing. They need clear a explanation of what these rules mean and who they affect prior to implementation.

In conclusion, farmers want the right to farm and manage their resources but they do not want to pollute the land the water that their children enjoy. We're the best stewards of the land and water. These rules, if implemented as written, would ensure a good reputation for animal agriculture in Wisconsin, clean lakes, rivers and groundwater and a healthy ecological system.

Thank you for the opportunity to speak today.





Testimony of

Mike Myers
&
Jeremy Shepherd

Representing the Wisconsin Bankers Association

Before the

WISCONSIN SENATE AND ASSEMBLY AGRICULTURE COMMITTEES

in

Opposition of Clearinghouse Rule 05-075 (Ch. NR 243, WI Admin. Code)

August 3, 2006

Chairman Kapanke, Chairman Ott and Members of the Senate and Assembly Agriculture Committees, my name is Jeremy Shepherd. I am the director of legislative affairs for the Wisconsin Bankers Association (WBA). With me today is Mr. Mike Myers, vice president of First National Bank of Platteville, who is the past chairman of the WBA Agriculture Bankers Section. We are testifying today in opposition to the proposed Department of Natural Resources (DNR) Clearinghouse Rule 05-075, relating to NR 243 - animal feeding operations.

Through their agricultural lending programs and small business projects, Wisconsin bankers have played a vital role in the economic development of hundreds of rural communities throughout the state. WBA is here today because of our strong support for the agriculture industry and our desire to see a positive rule put into place that will protect the environment, but at the same time, make sure burdensome regulations and costly mandates are not unjustly put on our producers. Excessive regulations on these producers can easily have negative effects on not only the agriculture industry, but our state's overall economy as well.

WBA is concerned that this rule is unnecessarily far more stringent on Wisconsin's livestock producers than what they must comply with at the federal level. Given the amount of competition our farmers face in today's global marketplace and the economic pressures of cost increases in fuel, fertilizer, and other inputs, we believe state government should not be imposing \$33 million worth of new regulations on the agricultural industry.

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WBA members are often asked to leverage equity and loan money to livestock operations based on an expectation of increased revenues generated by greater amounts of product sold. Additional costly regulations and mandates on Wisconsin producers are counter-productive to the success of our banks' loans.

More specifically, WBA has concerns about the nutrient management standards, or 590 "plus" standards, in the rule. Having three different standards will be confusing to producers and again, is far more stringent and expensive than other agency's rules. WBA believes the state should be using the same 590 standard for all of its rules.

Finally, we have concerns with mandating storage and nutrient application restrictions based on calendar seasons rather than site-specific and weather-specific considerations. This could possibly lead to producers overloading their nutrient levels, rather than allowing farmers to manage their applications based on approved performance standards.

WBA urges the Legislature and the DNR to continue to work with the producer 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. We believe the work done on the Department of Agriculture, Trade & Consumer Protection livestock siting rule, this past spring, can be used as an example of compromise and resolution in during what often times is a tough rule-making process.

If we can be of any assistance in this process, please feel free to contact Mike Myers at (608) 348-7777; mmyers@fnbplatteville.com or Jeremey Shepherd at (608) 441-1215; jshepherd@wisbank.com.

We appreciate your consideration of WBA's comments, and those of the producers in Wisconsin, as you work to finalize NR 243 (Clearinghouse Rule 05-075).

The Wisconsin Bankers Association (WBA) is the state's largest financial industry trade association, representing 300 commercial banks and savings institutions, their nearly 2,300 branch offices and 27,000 employees.



**Assembly Committee on Agriculture and
Senate Committee on Agriculture and Insurance
Legislative Hearing on NR 243 Revisions
Thursday, August 3, 2006, 9:00 AM, Room 411 South State Capitol**

**Testimony of Gregory M. Farnham in support of revisions
to NR 243 Animal Feeding Operations**

I spent my business career in the dairy and food industries. In the early 1980's I served on the executive committee of the International Dairy Federation in Brussels, Belgium, and was a member of the U.S. national committee to the federation. In 1987 I testified before the U.S. Trade Representative at a Washington, D.C. hearing on dairy and food commodities. And for a number of years my company sponsored research projects at the Center for Dairy Research of UW-Madison.

I'm semi-retired and own a 400-acre farm on a lake in central Dodge County. Much of the farmland is in CRP and wetland conservation practices and we sharecrop acreage with a neighbor to raise corn and hay for the horses. I am a member of the Wisconsin Farm Bureau Federation.

I support steps to strengthen the NR 243 regulation to more effectively protect our surface water and groundwater resources. I believe that our experiences with manure runoff problems across much of the state tell us that the existing set of regulations and manure management practices are not working. In this regard I believe we need help. At least this is the case in Dodge County.

Over the past five years I've volunteered time as a citizen monitor of water quality and have been directly involved in a number of manure runoff problems that have occurred within proximity of the lake. I've been in court on behalf of our lake management district to seek redress of manure contamination of a lake tributary as a result of runoff from a large dairy CAFO. I've taken numerous water samples from lake and tributaries for analyses of fecal coliform, Salmonella and E. coli bacteria; the protozoan genera Cryptosporidium and Giardia; and the pathogenic strain E. coli 0157. These data are used by our county public health department and state Bureau of Environmental Health to assess public health risk and the degree of environmental contamination. And, I've had the unenviable task of taking samples from black, smelly water in an agricultural ditch that was polluted by leachate from leaking feed storage bunkers at a CAFO.

In January 2005 a number of my neighbors in the Town of Oak Grove, near Juneau, had their private wells contaminated by manure runoff that had percolated into groundwater following a warm period. Manure from a large dairy farm CAFO had been spread on frozen ground in that area a month earlier. Three wells had to be abandoned and other wells required extensive chlorination. Several children became ill from drinking manure-contaminated water and one older couple, retired farmers themselves, was sick for a week with intestinal problems. I had the two wells at my home and farm tested for bacteriological quality.

This past winter several wells near Beaver Dam and Randolph were contaminated by runoff of manure that had been spread on frozen ground and subsequently melted. Lake Emily, north of Fox Lake, has had problems with runoff of land-spread dairy manure. Lost Lake, south of Beaver Dam, has a continual problem with pig manure contamination resulting from poor management practices at a large hog farm nearby. And, in the northeast part of the county near Brownsville and Lomira a combination of sinkholes and shallow soils, more extensive land application of livestock manure and rural development has created conditions of reoccurring groundwater contamination, failed wells and nonpotable well water.

These scenarios and associated problems are repeated in many parts of our state, as evidenced by fifty-two reported manure events in one year. We are harming our neighbors and the rural communities within which our farms are located. And in my view the problems will only get worse, not better. According to the recent issue of Dairy Herd Management, dairy cow numbers in the state have increased by over 8,000 this past year. While this is good news for our dairy producers, it increases the risk of more serious runoff problems. And, the new livestock siting rules, while sensible from the standpoint of supporting an economically healthy, growing industry, have effectively eliminated most local zoning efforts to protect public health of local residents and our water resources. We have put at risk the health of our rural citizens, especially children, older adults and those with suppressed immune systems.

So what do we do?

(?) Some producer organizations would appear to have us roll back existing regulations and divert our attention from problems at CAFO operations. Indeed I was chagrined to read a statement by a farm leader alleging that geese were responsible for the extensive well contaminations in the

Town of Morrison, Brown County. Such an approach asks us to close our eyes to the facts, roll the dice and hope for the best.

Other industry leaders advocate delaying state mandated practices in favor of additional research and more education for the farmer and operator. An industry executive wrote me regarding this issue and said, in part: “[We] plan to continue to fund Discovery Farm research and to facilitate the educational process to assure that our pristine waters remain that way.”

Firstly, most of our public waters stopped being pristine a long time ago. This fact has persuaded the state over the years to establish many water regulations to protect human health and water resources. Secondly, while research and education are important components of long-term solutions, common sense tells me that they alone won’t stop manure contamination of our waters. If my car is leaking oil on the garage floor, I need to either tighten the drain plug or move the car if I want to stop the oil mess. Reading a book on auto mechanics or attending an automotive seminar won’t get the job done.

Another farm lobbyist with whom I spoke contended that “there is little consistent information from one site to another site [of manure contamination]” and advocated no state action.

On the contrary, the data of manure runoff events that are detailed in the report of the state manure management task force appear to me to be quite consistent. Indeed, the task force acknowledged the serious problems resulting from manure spreading on frozen and snow-covered fields and improper spreading practices near waterways.

Can’t we be guided by our common sense in these issues?

Since winter spreading appears to be the major source of runoff events, winter spreading plans are needed, including manure storage so as to allow for winter spreading moratoria at especially risky times.

Application of manure too close to sinkholes and well heads poses a substantial risk to groundwater. Improved restrictions are needed to protect public health.

Application of manure too close to waterways poses a substantial risk to surface waters. Improved restrictions on setbacks and application methods are needed.

Carelessness and disregard by a few operators jeopardize the reputations of all producers. Most farmers are good stewards of our land and water. The few who aren't invite increased scrutiny and enforcement actions.

The proposed revisions to NR 243, as approved by the Natural Resources Board, appear to me to identify common sense practices that address public health and natural resource needs, while remaining supportive of healthy and prosperous dairy and livestock industries.

I support the revisions to NR 243.

A handwritten signature in black ink that reads "Greg Farnham". The signature is written in a cursive style with a horizontal line underneath the name.

Gregory M. Farnham
Waterdown Farms
Juneau, Wisconsin



**Testimony of Andrew C. Hanson, Midwest Environmental Advocates
Before the Joint Committee on Agriculture**

Adoption of Board Order WT-21-05 Repeal and Recreation of ch. NR 243, Wis. Adm. Code

August 3, 2006

Honorable members of the Committee, thank you for the opportunity to testify before you today regarding the Wisconsin Department of Natural Resources' revisions to its water pollution regulations for concentrated animal feeding operations ("CAFOs").

Midwest Environmental Advocates, Inc. is a nonprofit environmental law center that provides technical assistance and legal representation to communities and families working for clean air, clean water, and a clean government. In the interest of public health, we urge you to finalize those revisions today. If you request modifications to the rule today, we urge you to request the DNR to accelerate the timelines for compliance, particularly with regard to winter spreading restrictions and manure storage requirements.

This testimony will address four key issues raised by the DNR's proposed revisions:

1. Winter Spreading Restrictions and Manure Storage Requirements
2. Duty to Apply for WPDES Permits
3. Mixed Animal Unit Calculation
4. Agricultural Stormwater Exemption

A discussion of these issues follows.

1. Winter Spreading and Manure Storage

As you know, several of Wisconsin's drinking water sources, streams, and lakes in the past several years have suffered from an increasing number of manure spills, poisoned wells, fishkills and suffocating algal blooms. The DNR has attributed many of these problems to Medium and Large CAFOs.

Between July 1, 2004 and June 30, 2005, there were 52 manure spills. Many more have occurred since then. About 74% of the 52 manure spills occurred as the result of land application of liquid or solid manure, rather than manure pit overflows or barnyard runoff. Most of those spills (32) occurred in February and March. About 85% of the manure spills occurred

when the ground was either frozen or covered with snow. One quarter of the manure spills resulted from solid manure, but most of the spills (60%) were caused by liquid manure. Most spills (39) were caused by animal feeding operations that are not directly regulated by the Department of Natural Resources (DNR). Nine spills were caused by 7 Concentrated Animal Feeding Operations (“CAFOs”), which are issued discharge permits by the DNR.

While 17% of the manure spills caused fishkills in valuable fisheries around the state, an alarming 20% of manure spills contaminated the wells of rural property owners, threatening public health and putting lives at risk. Most of the well contamination events occurred on the Niagra Escarpment, an area of relatively shallow bedrock and high water table covering a large portion of eastern Wisconsin, including but not limited to Manitowoc, Kewaunee, Brown, and Door Counties.

Over the course of the 2004 and 2005 calendar years, there have been 34 private wells contaminated in northeastern or east-central Wisconsin resulting from what the DNR believes was the land application of manure. In several of the 34 instances in 2004 and 2005, people – including children - have gotten sick from drinking manure-contaminated water, and several rural families have had to bear the cost of drilling new, deeper wells even if the current well met state construction standards. Setting aside medical expenses associated with the illnesses, a new well can cost thousands of dollars. This is an unreasonable financial burden to place on a rural family, and an insult to rural Wisconsinites who know that a safe drinking water supply is critical to health and survival.

In many instances, whether the spill was caused by a Large CAFO or a Medium CAFO, the liquid manure applications appeared to conform to the letter, if not the intent, of current manure spreading standards. This indicates that these standards are far too weak to protect public health and water resources.

There are approximately 150 Large CAFOs in Wisconsin, representing less than one tenth of one percent of the 30,000 livestock farms in the state. However, these Large CAFOs generate more than 10% of the animal waste generated by those operations. These facts, combined with the public health risks of applying liquid manure on frozen and snow-covered ground and the vast quantity of liquid manure that must be disposed of, more than adequately justify the DNR’s proposal to restrict surface application of liquid manure on frozen and snow-

covered ground by Large CAFOs and completely prohibit it in February and March. These facts also justify the requirement that Large CAFOs have six months of manure storage, a requirement already imposed or soon to be imposed by several other states, including Minnesota, Michigan, Indiana, Ohio and Illinois.

While it is true that not all liquid manure spreading on frozen and snow-covered ground will result in a contaminated well or a destroyed fishery, the past several years in Wisconsin have shown that the risk is so great that the DNR's new minimum requirements for manure spreading and manure storage are needed.

We liken the DNR's effort to the enactment of seatbelt safety laws. Choosing not to wear a seatbelt when you step behind the wheel of a car does not necessarily guarantee that the driver will get into a car accident. However, as a society we have collectively decided that the risk of accidents, and the risk of losing someone's life, is so great and the damage is so easily preventable that we require everyone to wear seatbelts. The same is true with the DNR's manure spreading restrictions and manure storage requirement. The risk is simply too great to allow it to continue, and this risk is easily prevented.

The DNR is proposing to continue to allow surface applications of liquid manure on frozen and snow-covered ground until 2010 for existing CAFOs. The U.S. EPA expressed concern that the DNR should not wait until 2010 before the manure spreading restrictions apply. (See DNR Response to Comments Document, pp. 8-9). We agree with U.S. EPA. The liquid manure spreading restrictions should apply immediately to all operations that already have 6 months of manure storage, and should apply no later than 2008 for those CAFO's that do not have that storage capacity and need time to finance and construct it.

CAFOs are not hamstrung by the February to March ban on surface applications of liquid manure. First, CAFOs can surface apply liquid manure at other times in the winter if the ground is not frozen or covered with snow. Second, despite our objections, CAFOs can still apply liquid manure during February and March if they can incorporate or inject the manure into the soil.

Given that there are almost always thaws during February and March during which the ground softens, enabling incorporation or injection, CAFOs will likely be able to apply liquid manure during this time period. Finally, CAFOs are allowed emergency applications to avoid pit overtoppings. The exception is designed precisely for when "mother nature does not cooperate,"

as with heavy rainfalls or prolonged storms that preclude safe and timely land application of liquid manure.

2. Duty to Apply

Some agribusiness lobby groups have pressured the DNR to exempt them from regulation until after there has been a discharge of pollutants to surface waters. (See DNR Response to Comment Document at p. 21, 29) With the recent track record of manure spills contaminating wells and killing fish, CAFOs should be supervised to ensure their private business does not harm our public waters. The agribusiness lobby's position would completely undo 20 years of DNR regulation of CAFOs, and would hinder the DNR's ability to prevent manure spills before they occur. Further, both Michigan and Minnesota, two neighboring states, require all CAFOs to apply for pollution discharge permits and other states require those permits based on the "potential to discharge."

More importantly, the DNR has accumulated evidence that all CAFOs discharge manure and associated pollutants, like nitrates, to groundwater. According to the DNR, studies show that nitrates in manure leach to groundwater either from manure storage pits that have a designed leakage rate to groundwater or from areas where manure is applied on land. (See DNR Response to Comments Document, p. 30). The facts show that CAFOs discharge to groundwater and, based on the past several years of data collected by the DNR, to surface water through runoff and leaching. Therefore, a permit is required. These facts cannot be changed or obscured by rewriting the administrative code to create needless confusion.

3. Mixed Animal Units

Like other states, the DNR has proposed to retain its mixed animal unit calculation method for determining when a CAFO must apply for a WPDES permit. Recently, the EPA has lowered its standards by counting only one type of animal to decide if a farm confines enough animals to be called a "CAFO" and, therefore, whether the livestock operation needs a water pollution permit (for dairy, over 700 mature milking cows, or 1,000 smaller heifers).

In Wisconsin, farms have several types of livestock (including cows, heifers, and calves). As a result, the DNR uses a "mixed animal calculation" to determine when a CAFO needs a

water pollution permit. The mixed animal type calculation accounts for the variable amount of manure generated by different livestock types (cow vs. calf vs. heifer). The mixed animal calculation is based on “animal units or AUs” - the equivalency factor for determining the number of animals at an operation. Until recently, the EPA used the mixed animal calculation to determine when a livestock operation reached the 1,000 AU threshold, and therefore became a Large CAFO.

However, the EPA has adopted the weaker “single animal type” method that excludes some animals from the total count, exempting some operations from regulation. Switching to the EPA’s weaker “single animal type” standard would mean that the DNR loses the ability to monitor up to 15% of the 145 CAFOs in Wisconsin, increasing the risk of manure spills and poor manure management. It is important to note that both Minnesota and Iowa use the “mixed animal unit” calculation, rather than the U.S. EPA’s weaker “single animal type” calculation. (*See* DNR Response to Comments Document, p. 22). As a result, Wisconsin will not become a “regulatory island,” as some agribusiness groups suggest.

Further, maintaining the DNR’s method for calculating the number of animals at a CAFO is more equitable. For example, assume a livestock operation has 600 mature milking cows (less than 1,000 AUs) and 900 heifers (also less than 1,000 AUs). However, this operation is not required to obtain a DNR discharge permit despite that, cumulatively, it must manage and dispose of more waste than an operation with 700 mature milk cows (1,000 AUs), which would certainly be regulated by the DNR. And, most dairy operations in Wisconsin have both heifers and milking cows. Under the EPA proposal, the milking cows and heifers are not combined, which would exempt a significant number of CAFOs in Wisconsin from regulation.

4. Agricultural Stormwater Exemption

In Proposed NR 243.14 and in the definitions section in Proposed NR 243.03, the DNR has included a concept known as the “Agricultural Stormwater Exemption.” This exemption, which did not exist in the initial draft of the proposal presented to you in 2005, exempts precipitation-related discharges from the requirements of the federal Clean Water Act. As a result, those precipitation-related manure spills are not violations of the Act. 40 C.F.R. §

1342(l). This is true even where a trout stream may be decimated, or where a number of private wells are contaminated.

In the DNR's proposal, "agricultural stormwater" is defined to include, for WPDES permitted operations, "precipitated related discharge of manure or process wastewater pollutants to surface waters from a land application area that may occur after the owner or operator of the CAFO has land applied the manure or process wastewater in compliance with nutrient management requirements of this chapter and the terms and conditions of the WPDES permit." Proposed NR 243.03(2)(b). This provision could have the effect of exempting catastrophic manure spills and well contaminations from enforcement under the WPDES permit program, and undermines Wisconsin's water resources and public health.

We strenuously object to inclusion of an agricultural stormwater exemption in the DNR's proposed rules. However, at a minimum, and to be consistent with Proposed NR 243.14(2)(b)(4), the definition should also include the following text: "and the runoff occurs as a result of a rain event that is equal to or greater than a 25-year, 24-hour rain event." This makes clear that a precipitation-related discharge is only exempt when it occurs as the result of a 25-year, 24-hour rain event.

Conclusion

In closing, we urge you not to object to these rules today with an accelerated time for compliance with the frozen ground and manure storage requirements. We further urge you to resist any effort to weaken or water down these important rules in response to pressure from special interest agribusiness lobby groups. Thank you again for the opportunity to testify before you today.



Aug 3, 2006

Wisconsin Wildlife Federation

Testimony of the Wisconsin Wildlife Federation Before the Legislative Agriculture Committees On NR 243

Chairman Kapanke, Chairman Ott and Committee Members, thank you very much for the opportunity to testify here today on behalf of the Wisconsin Wildlife Federation. The Federation is composed of 144 hunting, fishing and trapping groups located throughout the State of Wisconsin. Our affiliate groups have over 100,000 members. We are dedicated to conservation education and the advancement of strong conservation policies.

The Wisconsin Wildlife Federation supports NR 243 because it will reduce the potential of liquid manure runoff into Wisconsin's lakes and streams from the 150 largest animal operations in the state. The DNR has spent over 48 months developing these rules with a very extensive public involvement process, properly bending over backwards to obtain the input from the agricultural and conservation communities. Frankly, it is our position that the DNR may have gone too far in drafting these rules to meet the requests of the agricultural community. Nonetheless, in light of the serious environmental and health problems caused by the runoff of liquid manure into waters of this state, we support the rapid adoption of these rules.

These rules are being adopted pursuant to the Federal and State Clean Water Acts. These rules are not to be agricultural rules, they are to be water quality rules. They are specifically adopted pursuant to chapter 281 of the statutes governing protection of water quality. In Section 281.11, the full legislature has stated that all rules adopted under this chapter shall be "liberally construed" in favor of the protection of the ground and surface waters of the state.

The Federation represents the broad base of Wisconsin's hunting, fishing and trapping community. We are deeply concerned over the large number of liquid manure runoff incidents that have occurred in the last few years, several of which have been caused by the 150 largest animal operations. Numerous streams have had their fisheries seriously damaged. This is of great concern for the hunters, anglers and trappers of this state who have fought for clean water for many decades. We invest heavily in these streams, paying a substantial amount of our \$69 million a year in hunting, fishing and trapping license fees to improve the fish and wildlife habitat in these streams. We do not want to see our hard-earned dollars being wasted by the runoff of liquid manure contrary to state and federal law.

Beyond impact on our streams and lakes, we do not want to see our neighbors' wells contaminated, their families getting sick and their savings accounts drained because of

the failure of large farm operations taking the necessary precautions to keep their liquid manure on their own property. Many of us here today are parents and grandparents. Who among us would not be totally outraged if our child or grandchild became deathly ill because our neighbor contaminated our drinking water because she or he did not take the necessary precautions to prevent liquid manure from getting into our well. As you deliberate on this rule, we hope that you agree that there is no more fundamental responsibility of all of state government including the DNR and your committees than to protect the health and lives of the people of the state. The seriously damaged streams and contaminated wells of recent years are absolute proof that the absence of these proposed NR 243 regulations are jeopardizing citizen health and valuable public natural resources.

Lastly, all of you are greatly concerned over the protection of property rights. The general principle of the protection of property rights is that you should be able to do on your land whatever you wish as long as you do not harm the property or personal rights of others. However the failure of some of these largest farms to keep their liquid manure on their own property is damaging the private property and personal rights of their neighbors and is damaging the public property rights of Wisconsin streams and fisheries. Please approve these rules to protect private and public property rights in Wisconsin.

Thank you very much for the opportunity to testify here today on behalf of the Wisconsin Wildlife Federation.

Submitted by George Meyer
Executive Director
Wisconsin Wildlife Federation

August 3, 2006





**Testimony of John Vrieze – President of the Dairy Business Association
2487 County Road G, Emerald, Wisconsin
Phone: 715-265-7715
Assembly and Senate Joint Hearing – August 3, 2006
Regarding the Proposed Repeal and Recreation of Ch. NR.243, Wis. Admin. Code WT-21-05**

Good Morning. My name is John Vrieze and I am the dairy producer and the President of the Dairy Business Association, Inc. (“DBA”). Set forth below and herein are DBA’s comments concerning the Wisconsin Department of Natural Resources’ (“WDNR”) proposed and recreation of Ch. NR 243, Wis. Admin. Code applicable to animal feeding operations. DBA is a state-wide non-profit organization of dairy producers, vendors, allied industry partners and professionals collectively working to assure that dairy producers, large and small, remain an active, thriving part of Wisconsin’s economy, communities and food chain.

We thank the Department for the significant commitment of staff time since 2003 in developing this proposed rule. We further thank the Department for the following positive developments reflected in the current version of the proposed rule, many of which were developed in response to comments offered during the summer/fall 2005 comment period:

- The Department’s inclusion of an agricultural stormwater exemption is an important development and step toward bringing the rule in conformance with federal law. However, the definition remains too restrictive and should be expanded to be consistent with federal law (see below);
- Significant flexibility is provided for the use of headland stacking of stackable manure. This is a positive development which will assist producers in attaining a

performance-based nutrient management standard rather than a proscriptive regulatory approach (see below);

- The variance procedure reflects the flexibility required in this program and is consistent with other agency programs and codes;
- We continue to support and appreciate the Department's work with agricultural producers to adopt innovative, emerging technologies and regulatory flexibility as reflected by the references to the environmental results/Green Tier program as well as the Department's efforts to develop a general permit for livestock operations.
- We are encouraged that the code now allows use of field- or tract-specific phosphorous limitation compliance approach rather than mandating a whole farm requirement to select from among the two phosphorous limitation approaches.

Despite these improvements, the rule remains overly confusing, complex and confounding and we are gravely concerned about Wisconsin livestock operators' ability to comply with this rule. The rule should strive to maintain Wisconsin's federally enforceable permit program pursuant to the Clean Water Act so as to maintain delegated authority. Indeed, the Department cites the 2003 federal rulemaking as the basis for repealing and recreating Chapter NR 243 Wis. Admin Code. However, the rule should not be so complex and so overreach the federal program so as to make noncompliance nearly assured in the regulatory community.

There are numerous instances where the Department's proposed rule is inconsistent with the federal program resulting in Wisconsin being a regulatory island for livestock producers. Although Wisconsin has abundant surface waters and varied topography, it is contrary to Governor Doyle's Grow Wisconsin Initiative to create regulatory barriers via administrative rules that put Wisconsin producers on an unfair and uneven playing field as compared with other states who are similarly charged with implementing regulations applicable to this class of point sources under the Federal Water Pollution Control Act ("Clean Water Act") Indeed, the Wisconsin Legislature has mandated that all rules promulgated by the Department related to point source discharges "shall comply with and not exceed" the requirements of the Clean Water Act and its implementing regulations. In

several instances and as acknowledged by the Department, the proposed rule violates the legislative intent as reflected in the plain language of 283.11 (2) because the Department's proposed rule exceeds the requirements of the federal regulations. This inconsistency with the federal program includes:

- | • Maintaining the mixed animal unit/aggregating animal unit calculation.
- | • Requiring large concentrated animal feeding operations to apply for a permit when there is no actual discharge of pollutants from the production area of the facility
- | • Exceeding the inspection, monitoring and recordkeeping requirements of the federal rule.
- | • Mandating a minimum of six month's storage capacity for liquid manure.
- | • Mandating a minimum of 2 month's storage capacity for solid manure if choosing not to headland stack for the entire frozen-snow covered period.

Specific examples follow:

- The "Duty to Apply" issue. The Department attempts to distinguish this rule from the holding of the *Waterkeeper Alliance v. U.S. EPA*, 399 F. 3d 486 (2nd Cir. 2005) case by asserting that all CAFOs which confine greater than 1,000 animal units that either store or land apply manure result in an actual discharge requiring a permit. See § 243.03(12), NR 243.11(3) and explanatory note at NR 243.12(1). However, the Department's position is unsustainable because, taken to its logical extreme, all livestock operations that store or landspread manure result in an actual discharge of pollutants thereby requiring all of the operations in the state to obtain a WPDES permit. As recently as April 20, 2006, U.S. EPA confirmed the impact of the *Waterkeeper Alliance* case:

“It is true that, in light of the Second Circuit decision, the Clean Water Act does not require a CAFO to obtain an NPDES permit if the CAFO does not discharge or propose discharge. The agency has consistently communicated to states that, under Section 510 of the Clean Water Act and 40 CFR 123.1(I)(2), while they may operate a program with a greater scope of coverage than required by the Clean Water Act, the additional coverage is not a part of the federally approved program and requirements proposed pursuant to that greater scope of coverage are not federally enforceable and are only imposed under state law.”

- 590 “Plus” Nutrient Restrictions. Although the proposed rule incorporates by reference the September 2005 Wisconsin version of NRCS 590 as its nutrient management standard, the rule is actually out of sync with this nutrient management standard resulting in multiple nutrient management standards in the state. The Livestock Siting Law incorporates the nutrient management standards of 590 (see ATCP 51, Wis. Admin. Code). Chapter ATCP 50 of the Wisconsin Administrative Code is in the process of being revised to similarly incorporate this updated nutrient management standard. For another state agency to adopt a conflicting nutrient management standard results in a confusing and confounding regulatory landscape which should be avoided. There are numerous instances where the proposed rule goes well beyond what the Standards Oversight Counsel (SOC) -- a panel of experts and stakeholder representations -- determined to be appropriate and necessary for nutrient management planning and resource protection as reflected in the updated version of 590.
- Mandating Minimum Storage. The rule mandates minimum storage duration for manure (180 days for liquid manure; 60 days for solid manure with headland stacking options). Mandating manure storage is a primary driver for the \$33 million cost estimate the Department places on this rule package. The Department seeks to impose an additional \$33 million on the

industry at a point where milk prices continue to edge toward historic lows. The federal rules require that federally enforceable delegated states' rules mandate "adequate" manure storage. U.S. EPA has not mandated a prescriptive storage duration because it recognizes that nutrient management standards are "performance-based" standards in that nutrient management plans are site-specific, responding to crop rotation and yields, soil conditions, topography and distance from sensitive receptors such as surface waters and wetlands. Wisconsin's version of 590 contains resource protection criteria to minimize the potential for impacts to surface waters, groundwaters and other sensitive receptors. (See NRCS, Wis. Nutrient Management Code 590, 9/05.) This allows producers to develop a site- and operation-specific management plan to meet the nutrient management and resource protection objectives of 590. Mandating a minimum amount of manure storage without regard to site-specific or operation-specific conditions is a step backward toward the Department's "command and control" regulatory approach of the 80's and a departure from performance-based regulation reflected in other Department programs. Mandating storage and implementing nutrient application restrictions based on a calendar rather than site-specific and weather-specific considerations sets us up for a concentrated period of nutrient application in the spring, which will likely result in nutrient overload and greater incidence of acute events, rather than allowing regulated parties to manage their nutrient management practices pursuant to the performance-based nutrient management standards.

- Recordkeeping and Inspection. The rule exceeds federal recordkeeping and inspection requirements as outlined at Exhibit B. (7)
- "Deputizing" Local Authorities to Enforce This Rule. As currently drafted, the rule arguably compels the Department to issue NODs upon the request of a local governmental unit. See NR 243.24(2) & (3) and explanatory notes. We believe it is very possible to have 72 or more different interpretations of this rule if local units of government are "deputized" to

make decisions related to NODs. This constitutes an “end- run” around the cost-share exemption for compliance with the non-point program on smaller operations in direct conflict with the Legislature’s mandate contained in Chapter 281.16(3)(e), Stats.

- Aggregated Animal Units Calculation. The rule should abandon its animal unit calculation approach of aggregating animal units and simply adopt the federal numbers and approach. Although the Department’s solution to its historic, out-of-step practice of aggregating animal units in light of the revised federal numbers is artful, it continues to establish Wisconsin as a “regulatory island.” DNR says Wisconsin has chosen to revise its NR 243 rule because EPA revised its rule in early 2003. Minnesota, the land of 10,000 lakes has chosen to not revise its rule but to incorporate the federal revisions under an NPDES general permit. Minnesota is a major livestock state and we believe we need to be competitive with our neighboring states. Minnesota does not prohibit solid or liquid manure applications on frozen or snow-covered ground.

Iowa has withdrawn its NPDES CAFO rules for CAFOs with animals in total confinement. They have adopted new rules for open feedlots. They contend as EPA does that operations in total confinement do not discharge from the animal production area. Iowa does not regulate application of manure on frozen or snow covered ground.

Illinois has a general permit with provisions addressing the revised federal regulations. Illinois regulates operations that meet the federal definition of a CAFO. Applications are allowed on frozen or snow covered ground if they do not produce runoff. Both Illinois and Minnesota have storage requirements for new operations built after a time certain date.

Michigan does not use the mixed animal unit calculation and do not prohibit application on frozen and snow covered ground unless the ground is upslope

from surface waters. They do require a nutrient management plan. They utilize NRCS to determine length of liquid manure storage or six months otherwise.

We have recapped our Border States rules to show how different and more stringent Wisconsin's proposed rule is. We believe we are in a competitive environment and that operations will move or avoid states that limit their ability to compete. The new Ag Siting rule gives us an opportunity, this rule could discourage expansion in Wisconsin.

- Simply adopting the federal approach would simplify the rule and by the estimates of the DNR only approximately 11 farms would drop out of the regulatory program.
- Given the foregoing the Dairy Business Association opposes the rule as it is currently written and asks the Senate and Assembly Agriculture Committees to send the rule back to the DNR for modifications. Regulations should be practical, reasonable, and achievable. NR243 needs to be consistent with ATCP51 and NRCS 590. Consistency will increase compliance.

Thank you.





Wisconsin State Assembly

P.O. BOX 8952 • MADISON, WI 53708

August 9, 2006

Representative Alvin Ott
Chair, Assembly Committee on Agriculture
323 North, State Capitol
Madison, WI

HAND DELIVERED

Dear Chair Ott:

Pursuant to your memo to Assembly Agriculture Committee members dated August 4, 2006, listed herein are our concerns with NR 243 as currently presented to the Agriculture Committee.

1. The requirement that would curtail spreading due to a weather FORECAST must be eliminated. Farmers simply do not have the option of stopping their scheduled work due to a weather forecast. Forecasts are unreliable and are not geographically precise. Perhaps the 'Oregon' computer program would be workable. We need the opportunity to examine and discuss this possible option.
2. We must use the EPA method of counting animal units. There is no sound reason why Wisconsin farmers should be subjected to more restrictive counts than the farmers of any other state. When the Senate Agriculture Committee failed to act on this issue, as promised, during the ag siting rule discussion with DATCP, we were told it would be addressed during the NR 243 rewrite. We must address the definition of "animal unit" under NR 243 to clarify the ag siting rule.
3. More research and information is needed on tile line discharges.
4. The definition of "saturated soil" must be clearly defined and easily recognized if it is a term to be used in this rule. Perhaps we would find that the "Oregon system" can provide a definition of "saturated soil" if we have the opportunity to discuss it.
5. The definition of "substantial discharge" must be clearly defined and easily recognized if it is a term to be used in this rule. NR 243 as presented to the Committee would give the DNR the opportunity to require permits for any farm of any size if it has

-continue-

“substantial discharge”. To allow the DNR to relieve themselves of the burden of cost sharing by requiring permits for a farm of any size if it has “substantial discharge”, without defining “substantial discharge” is just not feasible. Presently the DNR must help pay the bill for any required improvements in small and medium farms. NR 243 as proposed will motivate the DNR to permit all farms and therefore allow them to demand repairs at full cost to the farmers or face being shut down.

6. The days of storage and winter spreading portion of NR 243 pose many questions. The rule could require all farmers to stack their manure during winter months which may cause problems when spreading begins in the spring. With all farmers potentially spreading their winter stockpile in spring we could be facing problems with greater runoff than if we had allowed for customized manure management programs. And with the diversity of climate and soil conditions throughout Wisconsin a one-size-fits-all rule doesn't seem feasible.

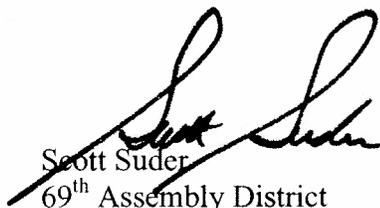
7. The water quality testing expert must appear before the committee, as promised, in order to explain if they indeed diagnosed the well contamination as entirely from a single dairy animal source.

We look forward to a COMMITTEE discussion of the desired change to NR 243.

Sincerely,



John Ainsworth
6th Assembly District



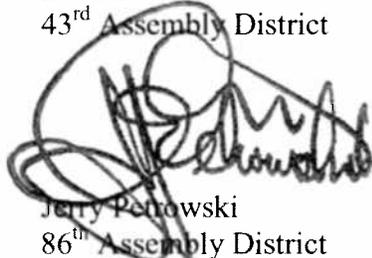
Scott Suder
69th Assembly District



Debi Towns
43rd Assembly District



Mary Williams
87th Assembly District



Jerry Petrowski
86th Assembly District





August 17, 2006

Representative Al Ott
Chair, Assembly Committee on Agriculture
Interdepartmental Mail
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Rep.Nerison@legis.state.wi.us

District:

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Westby, WI 54667

(608) 634-4562

Dear Chairman Ott:

I appreciated the opportunity for committee members to learn about the proposed revisions to the DNR's Chapter 243 of Administrative Code. Committee members shared concerns that we have with these rules during that hearing and I would like to take this opportunity to put some of my concerns into writing so that we can continue to consider them as the committee deliberates.

The department's reliance on hard dates for when winter spreading may or may not take place seems arbitrary. Eliminating those dates would continue to allow farmers to apply manure when soil and snow cover conditions permit. It would be unfortunate if a farmer whose storage is near capacity were to have to wait for an arbitrary date at a time when conditions are good for manure application.

I am concerned that relying on weather forecasts as a legal guide for when manure can be applied will create a false sense of security. Obviously, we all understand that forecasting the weather is as much of an art as it is a science and it is not an exact one. It is presumptuous to assume that more than a half-inch of rain will not fall if it is not in the forecast. Farmers already consider many factors such as soil moisture, field location, slope, and more in addition to the weather forecast. It would be better not to imply that these decisions can be based solely on the weather forecast.

While I understand the advantages and disadvantages to Wisconsin's current mixed animal unit method of calculating the number of animal units on a farm, I do want to continue discussing this provision. Regardless of whether-or-not this rule is the place where we will reach an agreement, it is only through continued discussion that this issue can be resolved.

The expected implementation date of 2010 should not be advanced as some suggested at our hearing. This is a broad and expansive rule with many changes and early implementation is not practical.

At our hearing we learned that up to 20 percent of currently permitted farms may need to increase their storage capacity. I am concerned that, from a practical standpoint, increased capacity may not be necessary on all of these farms. Since storage is a significant financial investment, the committee should investigate this further and consider add more flexibility to the rule where possible. Nonpoint source pollution rules already address the storage of solid manure in a way that may be sufficient for farms of all sizes.

The committee should pay special attention to the various nutrient management standards that apply to farmers. Farmers may be able to deal with this matrix, but I am not convinced that they should have to. Additionally, this complexity is worse for other professionals who farmers need to work with when they are making business decisions, such as bankers.

I anticipate that there are other concerns which merit discussion with the agency. I don't consider my list to be all-inclusive and I hope that we will try to consider ways to resolve as many of these dilemmas as possible.

I do appreciate areas where this rule is creating flexibility in management programs with variances and by allowing innovations. It may be possible to do this more often.

Again, thank you for agreeing to continue working with the DNR so that we can make improvements to these proposed medications to NR 243. I look forward to working with you and certainly want to offer my time and help as this process continues.

Sincerely,

A handwritten signature in cursive script that reads "Lee Nerison".

Lee Nerison
State Representative
96th Assembly District





WISCONSIN STATE REPRESENTATIVE
Louis J. Molepske, Jr.
71ST ASSEMBLY DISTRICT

August 18, 2006

P. Scott Hassett, Secretary
Department of Natural Resources
101 South Webster Street
Madison, WI 53703

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

Re: Revisions to NR 243, relating to animal feeding operations

Secretaries Hassett and Nilsestuen

I support over four years of work that have gone into Natural Resources Rule 243. I find no instance where the "stakeholders" have been left without an appropriate venue for input into the final rule language, and I find it very difficult to accept the need for further delay for "clarification" purposes. I am reminded that NR 243 was unanimously approved by the State's Natural Resources Board, a board that is comprised of individuals with differing political ideology. Like you, I listened to the many voices interested in this important rule, and I learned that Wisconsin needs to regulate those businesses that produce, store and spread large quantities of manure.

I also learned that this rule, though vast in scope, covers a limited number of businesses in this state, roughly 150 CAFOs (existing or planned) that produce higher concentrations of manure per acre than traditional family animal operations in Wisconsin. I also heard testimony by our State's paid regulatory authorities (DATCP, DNR) that of these 150 operations less than 25 CAFOs would be immediately affected by the rule due to existing noncompliance. In other words, over 84% of the CAFO businesses in Wisconsin are currently in compliance with NR 243.

In light of the number of unauthorized liquid manure discharges into our State's lakes, rivers, streams and groundwater and moreover, the expectation by DATCP itself that CAFOs are the future of animal agriculture in Wisconsin, implementation of NR 243 must occur in a timely manner, preferably by 2008.

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The Departments of Natural Resources and Agriculture, Trade and Consumer Protection have an obligation to protect the public's access and use of groundwater. DNR and DATCP are charged with protecting the health and safety of Wisconsinites and regulating the quality standards of the water Wisconsinites drink –this is their number one consumer obligation.

I was troubled by the outcome of the hearing on NR 243, as it seems to have evolved into allowing large businesses the option to externalize a cost of doing business onto other land owners and innocent parties. Private business should not expect regulation, but when a business that produces potentially hazardous wastes fails to comply with basic industry standards then the State is required to amend that which is averse to societal and governmental expectations. The 25 or less CAFOs have had their chance to amend their current business model and any further delay or externalization of costs in the form of manure discharges by these or future noncompliant CAFOs is without justification.

I find many voices supportive of this rule. From the desperate voices of Wisconsin families that have had their private wells contaminated without recourse to the industry's own representative voice in the Wisconsin Farmers Union, when it stated on August 3, 2006 that "[t]hese rules, if implemented as written, would ensure a good reputation for animal agriculture in Wisconsin, clean lakes, rivers and groundwater and a healthy ecological system." I hear these voices in the larger context of water quality and protection of the health and safety of all Wisconsinites. The Assembly and Senate Agriculture committees, DATCP and DNR must not fail Wisconsinites' basic expectation that one's well-water is safe to drink without costly filtration nor should our government leave a landowner or water user wondering whether millions of gallons of liquid manure are safely contained or discharged.

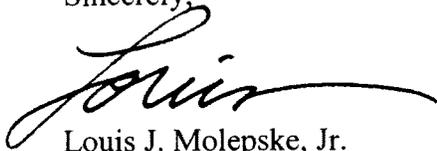
With this in mind I suggest the following:

- NR 243 is a groundwater protection rule first and foremost and it should be the number one concern by those that draft and implement it.
- Requiring winter storage of manure is an appropriate request of CAFOs in Wisconsin due to our long winters and potential freeze-thaw occurrences which substantially accelerate lateral movements of manure from private fields after winter applications of manure.
- Requiring six months of manure storage seems to be an industry standard based upon testimony and should not be weakened without substantial reassurances by DNR and DATCP that technologies or industry practices will be used to minimize unauthorized manure movement to a degree of the highest caliber.
- Authorized discharge of manure must be based on scientific criteria that lead to the lowest occurrence of unauthorized manure discharge and movement. These criteria are regulatory in nature and should be departmentally produced and administered.
- Wisconsin has a history of protecting its natural resources and using them wisely for the benefit of all residents. I expect NR 243 to uphold this tradition by not

externalizing a cost of doing business, namely manure storage and management onto unsuspecting homeowners and businesses.

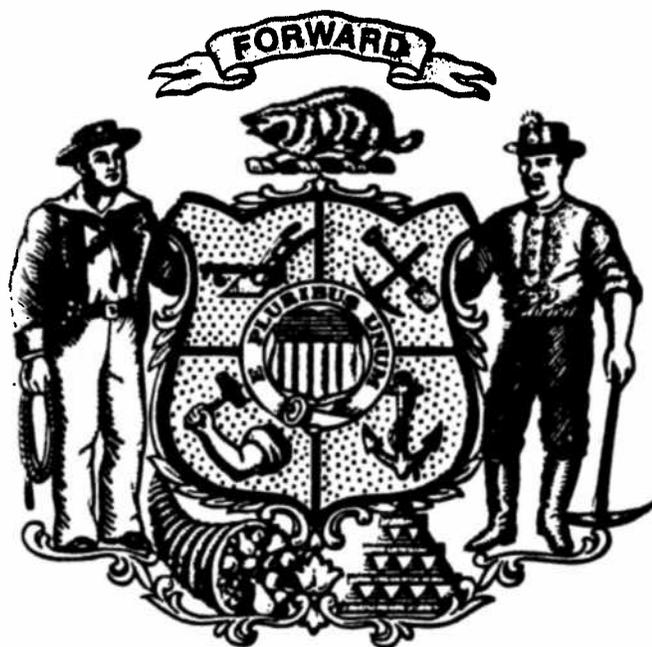
I respectfully ask the Departments of Natural Resources and Agriculture and Consumer Protection to consider my statements as outlined above, and I hope that the Joint Committee for Review of Administrative Rules will demonstrate their commitment to protecting the public's right to clean drinking water, water recreation, hunting and fishing and basic property rights expectations by approving NR 243 without substantial modifications that side with less groundwater protection standards.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis", with a long, sweeping underline that extends to the right.

Louis J. Molepske, Jr.
State Representative
71st Assembly District

LJM/srh



Ruby, Erin

** Followed up 10/16 Because I hadn't heard anything.
-> Did not want materials at this time.*

From: Ruby, Erin
Sent: Wednesday, October 11, 2006 3:40 PM
To: 'Lisa Jodar'
Subject: RE: open records request ...

Ms. Jodar,

Thank you for your email message. My name is Erin Ruby, and I clerk the Assembly Committee on Agriculture.

Committees are not required under Assembly rules to record or keep transcripts of proceedings. It is done on occasion, but committee hearings are generally not recorded or are transcripts kept.

The committee record for the public hearing held on August 3, 2006 consists of the Notice of Public Hearing, Record of Committee Proceedings (a complete list of all those testifying on Clearinghouse Rule 05-075 and registering a position on the rule), and copies of any materials or written testimony provided to the committee at the hearing. The August 3rd hearing was held in conjunction with the Senate Committee on Agriculture.

I can send you electronic copies of the Notice of Public Hearing and Record of Committee Proceedings, but the written materials and testimony provided to the committee during the hearing would need to be photocopied and mailed. The Assembly Chief Clerk charges 10 cents/page for copies provided under an open records request. I would estimate there are about 100 pages of material.

Please let me know if you would like any of these materials. I'm happy to answer any questions you may have as well.

Sincerely,

*Erin Ruby
Research Assistant
Clerk, Assembly Committee on Agriculture
Office of State Representative Al Ott
608.266.5831
erin.ruby@legis.wisconsin.gov*

From: Lisa Jodar [mailto:jodar.lisa@co.calumet.wi.us]
Sent: Wednesday, October 11, 2006 2:26 PM
To: Rep.Ott
Subject: open records request ...

Dear Mr. Ott: I request a transcript or recording of the Wisconsin Assembly's Agriculture Committee proceedings held on or about August 3, 2006. If possible, I would appreciate an estimate of the cost to obtain such transcript or recording of that meeting. I thank you for your consideration in this matter.

Lisa A. Jodar, Legal Assistant
Calumet County Corporation Counsel
920-849-1443
lisa@co.calumet.wi.us

Lisa Jodar

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