

WISCONSIN STATE  
LEGISLATURE  
COMMITTEE HEARING  
RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on  
Agriculture and  
Insurance  
(SC-AI)

File Naming Example:

Record of Comm. Proceedings ... RCP

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

COMMITTEE NOTICES ...

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

➤ \*\*

➤ Committee Reports ... CR

➤ \*\*

➤ Executive Sessions ... ES

➤ \*\*

➤ Record of Comm. Proceedings ... RCP

➤ \*\*

INFORMATION COLLECTED BY COMMITTEE  
CLERK FOR AND AGAINST PROPOSAL

➤ Appointments ... Appt

➤ \*\*

➤ Clearinghouse Rules ... CRule

➤ **05hr\_CRule\_05-014\_SC-AI\_pt01**

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

➤ \*\*

➤ Miscellaneous ... Misc

➤ \*\*

**ATCP 51**  
**Livestock Facility Siting**

**Proposed Adjustments to Final Draft Rule**

**1. Adjust Definition of "Related Livestock Facilities" -- ATCP 51.01(36)**

*Page 36, line 25. Modify as follows:*

"(c) At least a portion of their manure is applied to the same ~~tax parcel of land~~  
landspreading acreage."

**2. Adjust Definition of "Separate Species Facility" -- ATCP 51.01(38)**

*Page 37, lines 24 to 28. Substitute the following:*

"(c) Its livestock housing and manure storage structures, if any, are separate from the livestock housing and manure storage structures used by livestock facilities to which it is related under sub. (36).

(d) It meets one of the following criteria:

1. Its livestock housing and manure storage structures, if any, are located at least 750 feet from the nearest livestock housing or manure storage structure used by a livestock facility to which it is related under sub. (36).

2. It and the other livestock facilities to which it is related under sub. (36) have a combined total of fewer than 1,000 animal units.

**3. Allow Voluntary Application of Odor Standard to Facilities that Need a Permit but Are Exempt from the Odor Standard -- ATCP 51.14(2)**

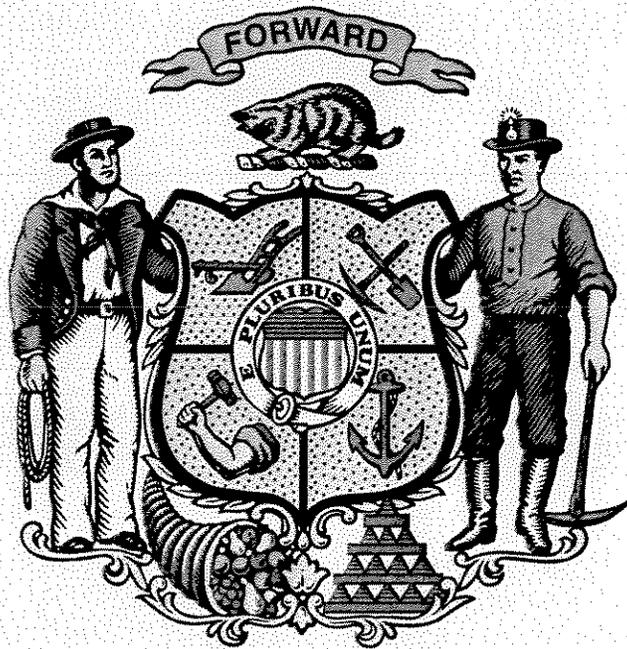
*Page 50, lines 22-23. Modify as follows:*

"(2) The odor standard in sub. (1) does not apply to any of the following livestock facilities unless the facility operator voluntarily completes and submits worksheet 2 or the equivalent spreadsheet output with the operator's application for local approval:

**4. Correct Erroneous Reference -- ATCP 51.18(4)**

*Page 58, lines 14-15 and lines 22-23. Modify as follows:*

"...NRCS technical guide closure of waste impoundments standard 360 (~~June 2001~~ December 2002)."



## Perlich, John H.

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**Subject:** FW: Modifications to Clearinghouse Rule 05-014 (Livestock Facilities Siting Standards)

**Attachments:** Cover Letter.pdf; ATCP 51-Revised Final Draft2 (2-8-06).doc; Appendix A.pdf; Appendix B.pdf; Appendix C.pdf; Environmental Assessment.pdf; DATCP Board Letter from Kapanke, Ott, Schultz, Ward.pdf; Testimony from Groups at DATCP Board (2.8.06).pdf

Please find attached DATCP's response to the Senate Committee on Agriculture and Insurance's request for modifications to Clearinghouse Rule 05-014 (Livestock Facilities Siting Standards).

The modified rule is divided into six separate attachments:

- 1) **Cover Letter to the Committees Outlining Changes to the Rule** (13 pages)
- 2) **Text of Clearinghouse Rule 05-014** (73 pages) *[Please note the text shows all changes made from the previous draft, which contributes to its length]*
- 3) **Appendix A - Application & Worksheets** (26 pages)
- 4) **Appendix B - NRCS 590** (13 pages)
- 5) **Appendix C - Notice to Adjacent Property Owners** (3 pages)
- 6) **Environmental Assessment** (26 pages)



Cover Letter.pdf  
(670 KB)



Appendix A.pdf (1  
MB)



Appendix B.pdf  
(650 KB)



Appendix C.pdf  
(104 KB)



Also included is a letter supporting the modifications made by the agency for Senators Kapanke and Schultz and Representatives Ott and Ward. I've also attached a pdf document with testimony presented to the DATCP Board.



DATCP Board Letter  
from Kapanke...



Testimony from  
Groups at DATCP...

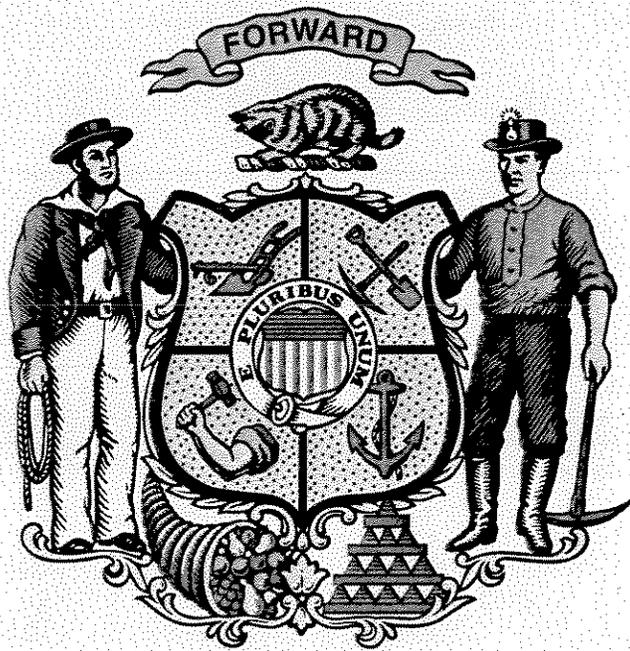
The rule is now before the committee for a 10 day review period. Committee jurisdiction on the modified rule ends at 5:00 p.m. Thursday, February 23rd.

The Senate Committee will hold a hearing only if members have further problems/concerns with the modified rule

Feel free to contact me with any questions.

## John H. Perlich

Office of Senator Dan Kapanke  
32nd District  
608-266-5490  
800-385-3385  
john.perlich@legis.state.wi.us



✓ Odor

Pre-emption  
Adding BMPs

✓ Animal Units →

New Legislation

✓ Grandfathering (Clarify language)

- Existing structures
- Clarify Substantially Altered
- Grandfather CAW-D

✓ ~~State of Property~~ =  
App / Permit follow

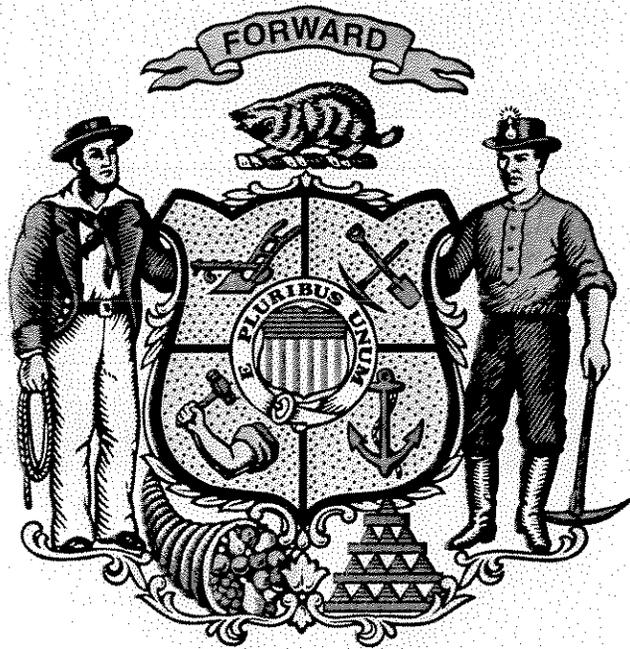
~~Make up of review board~~

✓ Cost-Sharing

based on availability of money —

✓ Certainty of Once Permit is  
IN place

(Flexible)





## Livestock Facility Siting Rule (ATCP 51)

Doesn't reflect discussion since rule has been referred

### 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

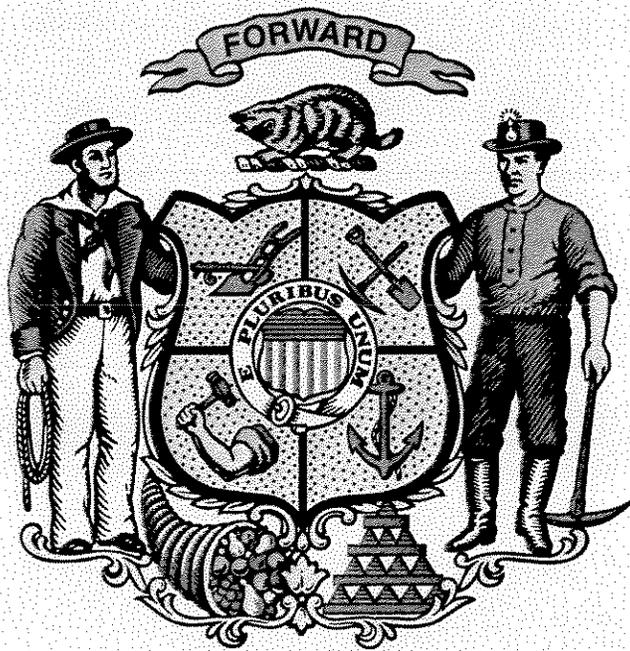
- Provides exemption for "winter grazing" areas.
- Eliminates "same nutrient management plan" as basis for treating multiple facilities as a single facility.
- Adds definition for "persons" to recognize corporate and other farm entities.
- Modifies definition of "substantially altered" livestock structure, 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





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)?

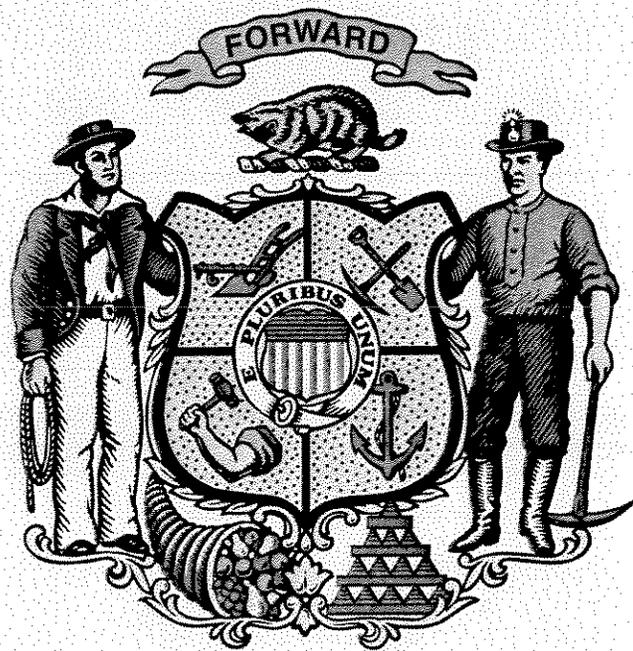
From the University of Minnesota odor study, the odor emission factor for dairy freestall barns is 4. This means that every 10,000 square feet of freestall emits 4 odor factors. If the maximum odor emission factor allowed is 18, then the largest freestall would be 45,000 square feet.

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

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

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.



## 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?

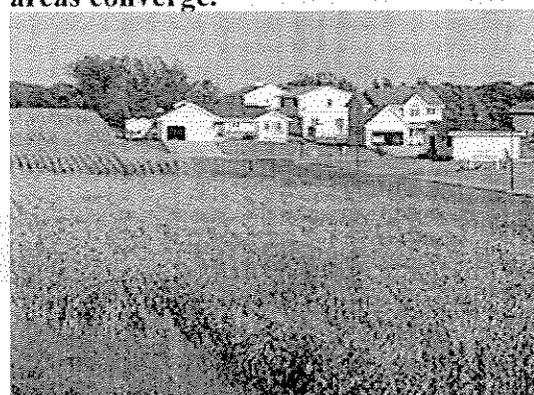
Answers to these questions are as varied as the people having the discussion. Until now, scientific methods to predict odor impacts did not exist. This publication discusses a new tool that has been developed at the University of Minnesota to answer some of these questions. The tool, "Odor From Feedlots 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.

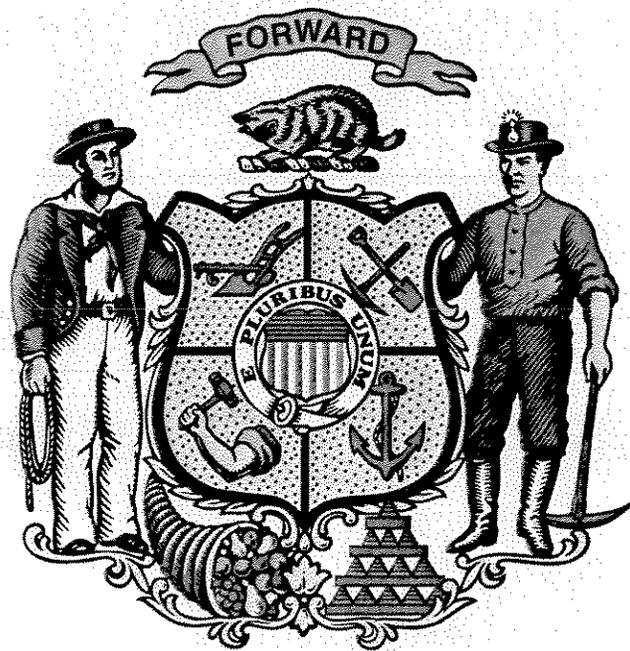
OFFSET is designed to estimate average odor impacts from a variety of animal facilities and manure storages. These estimations are useful for rural land use planners, farmers, or citizens concerned about the odor impact of existing, expanding, or new animal production sites. OFFSET is based on odor measurements 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.**





September 7, 2005

**VIA HAND DELIVERY  
AND EMAIL TRANSMISSION**

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

RE: Proposed Livestock Facility Siting Administrative Rule, ATCP 51

Dear Secretary Nilsestuen:

We are writing on behalf of the Wisconsin Farm Bureau Federation, the Wisconsin Pork Association, the Wisconsin Cattlemen's Association and the Dairy Business Association, to express our continuing concern with the current draft of Wis. Admin. Code § ATCP 51, Livestock Facility Siting, as proposed by the Department of Agriculture, Trade and Consumer Protection (the Department).

As you know, each of these groups provided the Department with extensive written comments during the public comment period in April 2005, and numerous producer representatives provided oral comments to the Department at the March public hearings. On August 8, 2005 we received the Department's draft in response to those comments. On August 16, eight days later, all of the livestock groups met for several hours to review the revised draft. We realized that we still had numerous unresolved concerns. Therefore, our producer leaders met with you on August 19 to express our concerns about the rule's potential negative impact on the growth of Wisconsin's livestock industry. You instructed us to provide more detail. On Friday, September 2, we received the Department's final draft of ATCP 51. Since our meeting on the 19<sup>th</sup>, we have worked together to create specific recommendations that reflect our comments on the original rule.

One of our chief concerns with this rule has been the air quality issue associated with livestock siting. We learned last week, that the Department received a **\$646,945 Conservation Innovation Grant from the federal government to conduct "Wisconsin's Dairy and Livestock Air Emission/Odor Project."** We congratulate the Department on their leadership shown on making the application and receiving this grant. The Department now has the opportunity to study the criteria used to measure odor and air emissions on Wisconsin livestock operations. In light of this, we suggest an amendment to the air quality section of the rule that will provide producers with a flexible approach to comply with air quality requirements until your scientific research provides a more specific model that can be implemented in the rule.

Accordingly, we are providing you and your Board with very specific information regarding our concerns with the rule and our explanation for those concerns. This information includes this cover memo and a revised draft of ATCP 51. These documents

Secretary Rod Nilsestuen  
September 7, 2005  
Page 2

illustrate our chief concerns with the rule and our proposed changes to the rule that will address these concerns.

#### A. Our Guiding Principles

We were guided by the following basic principles, all of which were main themes from our written comments submitted in April, as we drafted changes to this rule:

- All new livestock structures must comply with all of the provisions in the rule;
- All expanding livestock structures must comply with all of the provisions of the rule *except* with regard to property line/roadway setbacks. In that case, an expanding livestock structure, including a manure storage structure, may expand back from, or parallel to, their existing footprint; and
- All existing livestock structures that *are not being expanded* will not be affected by this rule. They are truly grandfathered and protected from additional regulation or modification unless they are being expanded.

In many respects, the Department's latest draft of ATCP 51 is consistent with these basic principles. However, as described in detail below, in several key respects, it is not.

#### B. Key Changes Made to the Department's August 30<sup>th</sup> Draft of ATCP 51

##### 1. Protection from Excessive Setback Requirements for All Expanding Livestock Structures

First, we amended section 51.12 of the draft to ensure that all new or expanded livestock structures, including manure storage structures, will be subject to the same maximum setback distances.

In your most recent rule draft, the setback protection for manure storage structures was not as great as those for other livestock structures (*i.e.*, the maximum setback was at least 350' for manure structures, but 100 – 200 feet for other structures.) However, the definition of "livestock structure" includes a manure storage structure.

We have amended the rule to treat *all livestock structures* identically such that a new or expanded manure storage structure can be linked to an existing manure storage structure if the new structure is built behind or parallel to an existing structure. This amendment allows farmers to more efficiently and cost-effectively build additional manure storage, while maintaining consistency with regard to setback distances for all livestock structures.

##### 2. Complete Grandfathering of Livestock Structures that are NOT Being Expanded

Existing livestock structures *that are not being expanded* should be completely grandfathered under this rule. We agree that if a farmer adds animal units and a new barn

to house them, then all of the provisions of ATCP 51 should apply to that new barn. However, any existing livestock structure that does not need to be expanded or remodeled due to the addition of those animal units, should not have to comply with the provisions of the rule because no local approval is needed for that pre-existing structure since it is not part of the expansion. This will make compliance with ATCP 51 significantly more cost-effective for expanding operations and will protect the status of any existing structures that are legal, non-conforming uses.

Accordingly, we changed the following provisions:

- a. Revised definition of "expanded livestock facility" to include "only those livestock structures in the expanded facility that are new or expanded as a part of an application filed under ss. ATCP 51.30(1) to(3)." See ATCP 51.01(12).
- b. Created definitions of "expanded livestock structure" and "new livestock structure" in order to clarify those structures that must comply with the provisions under the rule. See ATCP 51.01(13) and (25).
- c. Throughout the rule, we made it clear that the provisions only apply to "new or expanded" livestock structures. These changes protect existing structures that are not being expanded. See ATCP 51.12 (setbacks), 51.14 (air quality), 51.18 (waste storage facilities) and 51.20 (runoff management).

### 3. Revision of the Animal Unit Calculation

As you know, a major concern of livestock producers throughout this rulemaking process has been the application of the nutrient management provisions of NRCS 590 to facilities that have 500 - 1,000 animal units in a way that only previously applied to facilities *over* 1,000 animal units (i.e., CAFOs) prior to this creation of this rule. The effect of this rule is that very expensive nutrient management practices will be required for medium-sized operations without cost-sharing, when there are other state and local regulations that can apply these same standards to these mid-sized operations *with* cost-sharing (e.g., nonpoint source pollution laws and local manure management regulations).

In addition, livestock groups have been continually concerned about the use of a mixed animal unit calculation as a trigger for an "expansion" under this rule. For example, a small dairy farmer who decides to add turkeys to his operation can easily trigger an "expansion" under this rule that will apply the rule provisions not only to the new turkey portion of his operation, but also to his small (under 500 animal units) existing dairy structures.

We do not believe that these results were the intent of this rule. Accordingly, we have amended the application of this rule to expansions over 500 animal units within a

particular animal category. (See our revised definition of "animal unit" and revised *Appendix A, worksheet 1*). Calculating animal units in this manner is consistent with the federal animal feeding operation rules adopted by the Environmental Protection Agency. See 40 CFR 122.23.

4. Creation of Air Quality Management Provisions that Address BOTH Odors and Air Emissions

One of the most important changes requested by livestock producers who testified and provided written comments to the Department during the public comment period, is the creation of best management practices that will address *air quality* – that is, odor AND air emissions. The reason that this is so critical to livestock producers is because the Department of Natural Resources has granted agriculture a 3-year exemption from air quality standards in Wis. Admin. Code § NR 445, while best management practices intended to address air emissions are developed. We anticipated using the livestock siting rulemaking process to develop these air emission BMPs or, at a minimum, set up a structure whereby these BMPs could be developed. Yet, this rulemaking has failed to do so.

We believe that the livestock siting rule was intended to be a "one stop shop" for permitting of new and expanding livestock operations. If only odor is addressed and the air emissions issue is overlooked, this rule is incomplete and creates the risk that if livestock producers have to apply for a separate air permit from the DNR to address air emissions, then that permit will require inconsistent or contradictory BMPs when compared to those created under the siting rule.

Accordingly, we recommend that the proposed odor management model contained in the current draft of the rule be replaced with a more flexible, but scientifically tested, set of BMP's that are intended to allow producer flexibility, while requiring them to manage odor *and* air emissions. In addition, we request that this matrix be tested, reviewed and updated as Wisconsin-specific information becomes available through the study conducted with the Conservation Innovation Grant money marked to study odor and air emissions on livestock operations in Wisconsin.

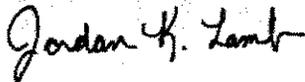
We have amended section 51.14 of the rule to address "air quality" and have created a new BMP matrix in *Appendix A, worksheet 2* to impose air quality requirements on all applicants for a permit under this rule.

Secretary Rod Nilsestuen  
September 7, 2005  
Page 5

**C. Conclusion**

It has been said recently that livestock producers have received the benefit of most of the revisions to this proposed rule. Therefore, no additional revisions should be made. We believe that this argument is indefensible when this is a rule that is designed to regulate the business of producing livestock in Wisconsin with the intent of *growing* the livestock industry in Wisconsin. Each of the above-proposed additional revisions are intended to balance the practical needs of producers in terms of economic ability to grow a business, and their continued recognition for the need for increased local control over the siting of livestock operations. We believe that our proposal does accomplish this goal.

Sincerely,



Jordan K. Lamb, Wisconsin Pork Association and Wisconsin Cattlemen's Association

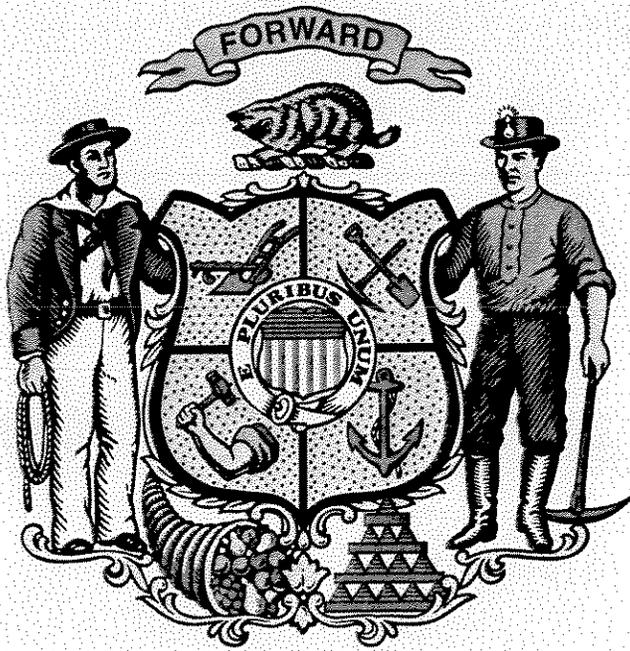
*/s/ Paul Zimmerman*

Paul Zimmerman, Wisconsin Farm Bureau Federation

*/s/ Laurie Fischer*

Laurie Fischer, Dairy Business Association

cc. Judy Ziewacz, Deputy Secretary, DATCP  
Members of the DATCP Board  
Representative David Ward  
Senator Dale Schultz  
Representative Al Ott  
Senator Dan Kapanke





*Citizens State Bank of Loyal* <sup>NOV 05 2005</sup>  
"Community Owned - Community Minded"

Main Office • 400 N. Main Street • P.O. Box 218 • Loyal, WI 54446

Granton Station • 110 Maple Street • P.O. Box 129 • Granton, WI 54436 Neillsville Station • 2 Boon Blvd. • P.O. Box 30 • Neillsville, WI 54456

October 27, 2005

Senator Dan Kapanke  
104 South, State Capital  
Madison, WI 53702

Re: ATCP 51

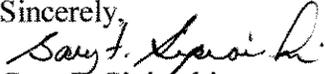
Dear Mr. Kapanke,  
I am concerned about the odor management standards included in ATCP 51.

I have testified at many hearing and sent letters of caution concerning odor standards being a part of livestock siting. It appears that the odor issue is once being considered as part of the siting rules.

The issue of odor is far too subjective to be able to draw a fair or firm conclusion. My biggest concern is the potential amount of dollars that farms will have to spend to achieve a non defined standard. Many family farms need all available dollars that they have to invest in productive assets on their farms. Regardless of the spikes that we have seen in milk prices the five year average is the same milk price as we had in 1980. Expenses have increased substantially in 25 years. Thus family farms continue to be squeezed with tighter and tighter margins. At this time all dairy producers are trying to figure out how they will be able to afford additional manure storage that appears to be an unavoidable additional investment.

We as a lender are helping dairy producers as much as we can. There is a point where too much debt per cow for any investment reason is an unsound decision. If an investment generates gross income the decisions are easier. Non income generating investments have to be watched carefully.

The long term future and survivability of this important industry could very well hang in the shadow of rules like ATCP 51. The research on these types of issues is just getting underway. Let's give science a chance to make the first call. In the mean time the odor guidelines need to be kept out of siting.

Sincerely,  
  
Gary F. Sipiorski  
President, Citizens State Bank of Loyal

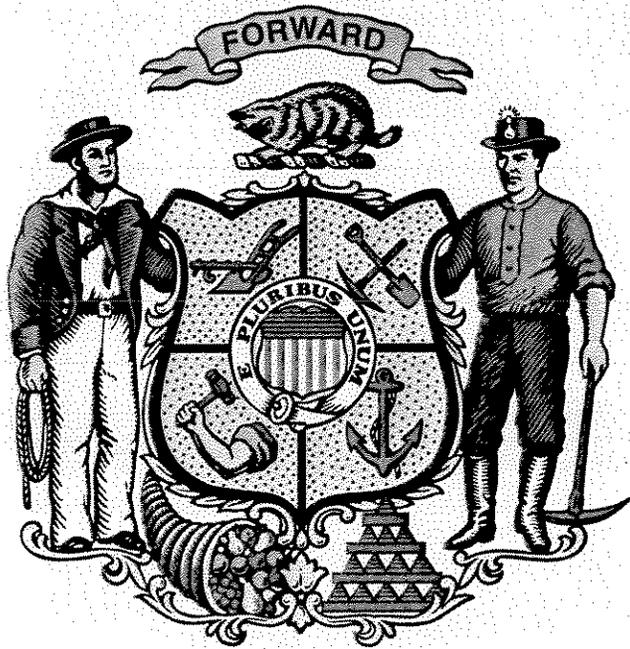
CC: Daryll Lund, President/CEO Community Bankers of Wisconsin

Loyal - Phone: (715) 255-8526 • Fax (715) 255-9315 • Toll Free: (800) 599-8399

Granton - Phone: (715) 238-7169 • Fax: (715) 238-8412

Neillsville - Phone: (715) 743-7494 • Fax (715) 743-7495 • Toll Free: (866) 743-7494

Website: [www.csbloval.com](http://www.csbloval.com) • Email: [csb@csbloval.com](mailto:csb@csbloval.com)



## OBrien, John

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**From:** Nilsestuen, Rod J DATCP  
**Sent:** Monday, November 21, 2005 4:43 PM  
**To:** Kapanke, Dan  
**Subject:** Livestock Siting

**Attachments:** HEADLINE--Chilton.doc

Senator Kapanke,

I'm looking forward to meeting with you tomorrow to discuss the Livestock Siting Rule. I thought, if you had not yet seen it, that the attached story of pitched conflict and a proposed livestock moratorium in Calumet County would be of interest and concern to you.

In many ways, this story capsulizes the fundamental underlying need for the siting rule: to greatly reduce local conflict and controversy which stymies agricultural growth. I believe after literally thousands of hours of work and discussions and hundreds of meetings with ag groups and other stakeholders, that this rule will now meet the three basic tests needed if it is to be effective and stand the test of time and challenges:

- Provide predictability for farm families who wish to grow and local governments which must make decisions.
- Must provide guidelines which are fair and balanced for both farmers and their neighbors.
- Is flexible enough to work in the many different situations and farm settings across the state allowing a wide variety of practical and results-based approaches and Best Management Practices (BMP's).

Of course, the siting rule is not a silver bullet for the future of our dairy and livestock industries. But, together with the many other measures\* that have received such strong bipartisan legislative support and by providing a shield (through use of clear standards) against endless conflict and controversy, this rule strengthens our state's commitment to providing the best possible dairy and livestock environment.

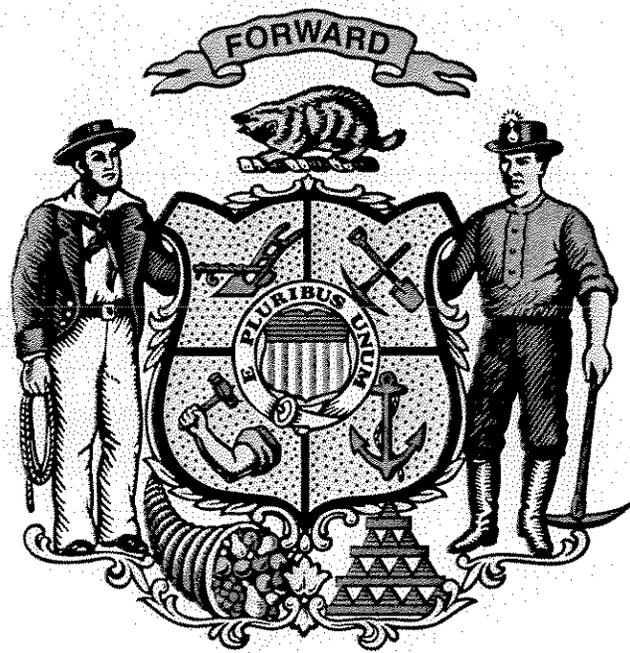
Again, I look forward to meeting with you.

- \*\$50,000 dairy investment credit
- \$50,000 livestock investment credit
- Dairy Business Innovation Center
- Upper Midwest's lowest ag property taxes
- Construction of the Veterinary Diagnostic Laboratory
- Creation of Agricultural Innovation Teams
- And many more

Rod Nilsestuen



HEADLINE--Chilton.  
doc (41 KB)



# Dan Kapanke

Wisconsin State Senator - 32nd District

Senator Dave Hansen  
Room 319 South  
State Capitol



## MEMORANDUM

Office of Senator Dan Kapanke

TO: Members of the Senate Committee on Agriculture and Insurance

FROM: Senator Dan Kapanke, Chair, Senate Committee on Agriculture and Insurance

DATE: November 30, 2005

RE: Executive Action Paper Ballot on **CR 05-014**

Please consider the following bill and vote on the motion below. **Return this ballot to Senator Dan Kapanke, Room 104 South, no later than 4 p.m. Friday, December 9, 2005.** Committee members' ballots not received by the deadline will be marked as not voting.

### **CR05-014**

### **Clearinghouse Rule 05-014**

The state of Wisconsin department of agriculture, trade and consumer protection proposes the following order to create ch. ATCP 51; relating to livestock facility siting, and affecting small business.

### MOTION

The Senate Committee on Agriculture and Insurance, pursuant to s. 227.19 (4) (b) 2., Stats., requests the Department of Agriculture, Trade and Consumer Protection to consider modifications to Clearinghouse Rule 05-014, relating to livestock facility siting.

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

Aye \_\_\_\_\_

No X \_\_\_\_\_

Signature \_\_\_\_\_

*Dave Hansen*

# Dan Kapanke

Wisconsin State Senator - 32nd District

Senator Mark Miller  
Room 106 South  
State Capitol



## MEMORANDUM

Office of Senator Dan Kapanke

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Aye \_\_\_\_\_

No  \_\_\_\_\_

Signature

A handwritten signature in black ink that reads "Mark Miller". The signature is written over a horizontal line.

# Dan Kapanke

Wisconsin State Senator - 32nd District

Senator Neal Kedzie  
Room 313 South  
State Capitol



## MEMORANDUM

## Office of Senator Dan Kapanke

TO: Members of the Senate Committee on Agriculture and Insurance

FROM: Senator Dan Kapanke, Chair, Senate Committee on Agriculture and Insurance

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Aye

No

Signature \_\_\_\_\_

*Neal J. Kedzie*

# Dan Kapanke

Wisconsin State Senator - 32nd District



## MEMORANDUM

Office of Senator Dan Kapanke

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Aye   X  

No           

Signature           

*Daniel E. Kapanke*

# Dan Kapanke

Wisconsin State Senator - 32nd District



**MEMORANDUM**

**Office of Senator Dan Kapanke**

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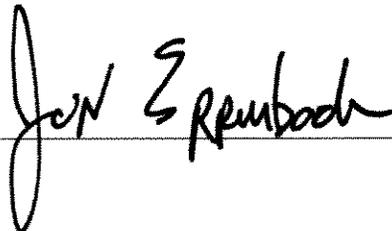
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Aye   X   No \_\_\_\_\_

Signature \_\_\_\_\_



# Dan Kapanke

Wisconsin State Senator - 32nd District

Senator Ron Brown  
Room 409 South  
State Capitol



## MEMORANDUM

Office of Senator Dan Kapanke

TO: Members of the Senate Committee on Agriculture and Insurance

FROM: Senator Dan Kapanke, Chair, Senate Committee on Agriculture and Insurance

DATE: November 30, 2005

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Aye  No

Signature \_\_\_\_\_

A handwritten signature in cursive script that reads "Ron Brown".

# Dan Kapanke

Wisconsin State Senator - 32nd District

Senator Luther Olsen  
Room 5 South  
State Capitol



## MEMORANDUM

Office of Senator Dan Kapanke

TO: Members of the Senate Committee on Agriculture and Insurance

FROM: Senator Dan Kapanke, Chair, Senate Committee on Agriculture and Insurance

DATE: November 30, 2005

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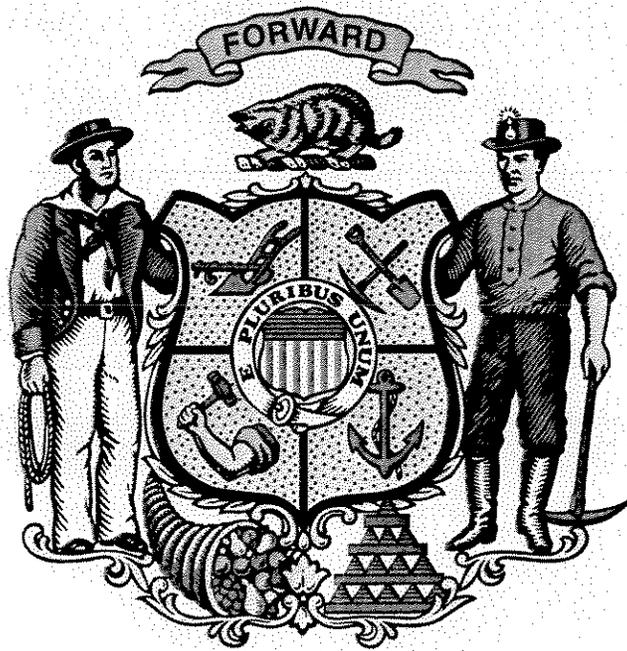
Aye

X

No

Luther Olsen

Signature





**Wisconsin Federation of Cooperatives**

131 West Wilson Street, Suite 400, Madison, WI 53703  
Phone: 608.258.4400 Fax 608.258.4407 www.wfcmac.org wfcmac@wfcmac.org

DATE: December 7, 2005

TO: Members, Senate Committee on Agriculture & Insurance  
Assembly Committee on Agriculture

FROM: Bill Oemichen, President & CEO *Bill Oemichen*  
John Manske, Government Affairs Director *jm*

RE: Testimony on Rule 05-014

The Wisconsin Federation of Cooperatives appreciates the opportunity to present our views on proposed Rule 05-014, relating to livestock siting. I regret that a prior meeting commitment with our state's Members of Congress will prevent me from speaking at the joint hearing of the two committees. However, I hope you will still take our comments into consideration during your deliberations. As you know, we represent the cooperatives that market more than 90% of the milk produced in this state, as well as a number of beef marketing cooperatives as well.

WFC's overriding concern is to ensure Wisconsin remains in the top two states for dairy production. You know well the challenges we in the dairy industry have faced as we have witnessed an average of three dairy operations leaving the industry daily. This had led to our cooperative milk processing plants operating at less than full capacity. Of course, the shortage of milk has had a substantial impact on the economies of local areas where plants have been closed and on the state's overall economy as well.

We are committed to keeping Wisconsin as the nation's leading cheese producer. We were very pleased the Legislature joined us in this commitment by enacting the Dairy Investment Tax Credit, a law that has already encouraged at least \$120 million in reinvestment by dairy producers in their operations. However, we also know that our ability to modernize is effected greatly by state and local environmental and land use regulations. For this reason, we were very pleased as well last session when you enacted the state's new Livestock Siting Statute. That law was initiated by organizations motivated to strengthen the future for the Wisconsin livestock industry by bringing greater uniformity and predictability to the government regulation of this industry. WFC and its cooperative members were pleased to be an early and consistent supporter of the legislation that became 2003 Wisconsin Act 235 and we were particularly heartened by the broad cross section of agriculture and government policy-makers that were leading and supporting the legislative effort.

WFC again indicates our appreciation for the efforts you and other Wisconsin policy and agriculture leaders are making to ensure that the rule does what was intended by Act 235. As you may know, WFC submitted recommendations to DATCP in early April, 2005 on the proposed rule and our letter raised some concerns regarding some of the proposed provisions. However we were impressed with the willingness of DATCP leadership to make many positive changes to the Rule in response to stakeholder input. Setback requirements, odor standards, runoff standards and numerous other important aspects of the rule proposal were changed to acknowledge the valued input of farmers who appeared in huge numbers at the public hearings. One of the most important step in our view was the testing of the odor scoring at farms, both currently WPDES-permitted and those volunteered by organizations. This resulted in rule changes that will help assure that 90-percent or more of the farms that face siting approval obtain passing scores and this change is vital to the future of our state's dairy industry.

Other changes we support include:

- ✓ Providing a positive scoring system,
- ✓ Allowing for the complete exemption for facilities more than 2,500 feet from the nearest affected neighbors,
- ✓ Crediting up to 30% for favorable wind direction,
- ✓ Clarifying that an odor score may not be used as a nuisance standard,
- ✓ Grandfathering existing structures for setback purposes,
- ✓ Capping local setbacks, and
- ✓ Allowing for credits for innovative practices not yet identified and guarantees local approval for those who meet the standard.

This last provision enhancement is key because the viability of our state's dairy industry depends in large part on whether modernizing dairy producers believe they will participate in a predictable review process that makes clear what is to be expected of them. This predictability allows dairy producers to determine whether or not they can meet the necessary standards before they invest their time and capital into the modernization project. This predictability will give Wisconsin a significant advantage over other states in modernizing our dairy industry because this predictability is missing in many other states.

The rule is not perfect and, yet, we caution the Committees to not let "perfect" be the enemy of "good." The proposed odor provisions have been little tested and need to be closely monitored to ensure they are not acting to hinder, rather than to support, the modernization of a financially healthy and environmentally friendly dairy industry. Moreover, we question the distinction in the odor standard exemption based on the number of animal units for new and expanding operations.

Once again, WFC's priority objective is to ensure Wisconsin maintains its status and reputation as "America's Dairyland" by creating an environment that encourages new and expanding livestock operations. While we are aware that there are some who believe that the rule before you falls short of attaining the goals spelled out in Act 235, we have not been convinced that the rule referred to your committees will jeopardize positive siting decisions by existing or newly-locating producers, nor will it endanger the valued and necessary investments in the dairy and other livestock industries so necessary for a healthy livestock sector. We believe that the Livestock Facility Siting Review Board (LFSRB) can play a key role when an "aggrieved" party results from a siting decision outcome, although only experience will show how often this step is utilized.

When the DATCP Board unanimously advanced the rule to the legislature, they added process steps that are going to help ensure that their citizen board knows just what impact the rule is having. We understand the rule will be monitored closely, including DATCP staff providing the Board monthly activity reports on rule implementation. We think this close monitoring is necessary and desirable from everyone's perspective. Furthermore, DATCP has committed to odor research and a vigorous training and outreach effort. We are confident these, along with other steps, will ensure the rule follows the intent of Act 235.

WFC appreciates the hard work you and others have done to advocate for dairy and other livestock industries and to advance legislation during the previous and existing legislative sessions to strengthen Wisconsin's diverse agricultural sector. We applaud your efforts and we hope you too believe that "the best is yet to come" for Wisconsin's agriculture.

Thank you for the opportunity to submit comments on behalf of the Wisconsin Federation of Cooperatives at today's hearing.