

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

> **

Name:

> Clearinghouse Rules ... CRule

> **

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

> **

> Miscellaneous ... Misc

> **05hr_SC-AI_Misc_pt02**



BOB ZIEGELBAUER

STATE REPRESENTATIVE • TWENTY FIFTH ASSEMBLY DISTRICT
February 25, 2004

«Title» «FirstName» «LastName»
«Address1»
«City», «State» «PostalCode»

Dear «Title» «LastName»:

Thank you for contacting me in regard to your views on the "Livestock Siting Bill", AB 868, which would create statewide standards for the siting and expansion of livestock facilities to help counties and townships plan for agriculture and protect the environment. A summary of the bill is enclosed.

As you may know, AB 868 was introduced on February 19, 2004 as a result of the work of the 21-member Advisory Committee on Livestock Facility Siting appointed by Department of Agriculture, Trade and Consumer Protection (DATCP) Secretary Rod Nilsestuen, which included farmers, representatives of local government, conservationists and environmentalists. The proposal also has the support of Governor Doyle. The Assembly Committee on Agriculture, and the Senate Committee on Agriculture, Financial Institutions and Insurance held a joint hearing on AB 868 on February 23, 2004. The Assembly Committee has now scheduled a vote on AB 868 on Thursday, February 26th at 11:00 a.m.

Agriculture is and has been an important part of our Wisconsin heritage. Not only has it played a central role in the economic history of our state, but its success is also essential to our future prosperity. I believe that AB 868 goes a long way toward providing the kind of balance between agricultural interests and those who may feel inconvenienced or are concerned by the impact of larger farm facilities. This bill will allow Wisconsin to continue to see growth in this vital industry in a way that recognizes the impact of agricultural facilities on the environment of their neighbors.

In my view, a bill like AB 868 is necessary in order to provide for an orderly, dependable, objective process that both agriculture and its neighbors can rely on for fair decisions. As you look at the bill, I believe you will find that it provides the kind of even-handed oversight to the local land use process that can ensure that both entrepreneurs in agriculture and their neighbors will be given a fair shake in a consistent way throughout the state. I believe that this kind of certainty is essential for orderly economic growth and wise land use decision-making.

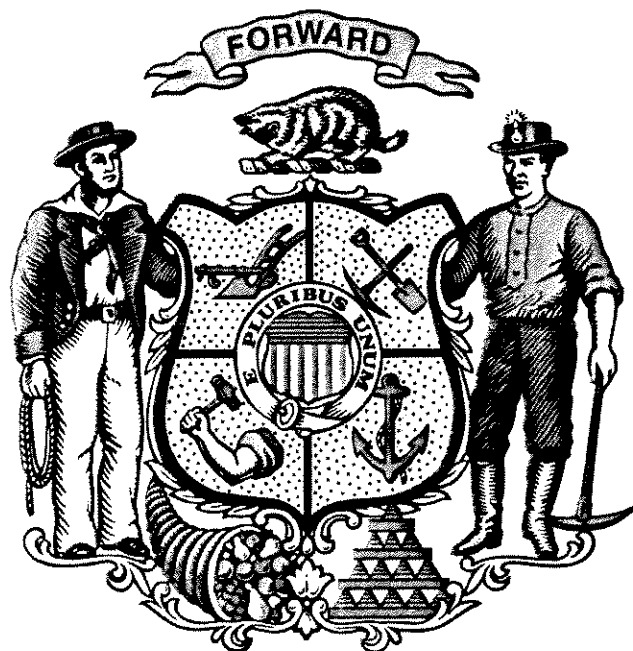
I expect the bill will be voted on by the full Legislature in the near future. I intend to support it at that time. Again, thank you for taking the time to contact me. As always, please do not hesitate to call me with any additional thoughts you may have on this or on any other issue of importance to you.

Sincerely,

Bob Ziegelbauer
State Representative
25th Assembly District

Enclosures
BZ/lwk
STATE CAPITOL: P.O. BOX 8953, MADISON, WI 53708-8953 • (608) 266-0315 • TOLL FREE: 1-888-529-0025
FAX (608)-266-0316 or (608) 282-3625 • HOME PAGE: www.bobziegelbauer.com • E-MAIL: bob.ziegelbauer@legis.state.wi.us
DISTRICT: 1213 S. 8TH STREET, P.O. BOX 325, MANITOWOC, WI 54221-0325
MANITOWOC OFFICE: (920) 684-6783 • HOME: (920) 684-4362

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**WISCONSIN LEGISLATIVE COUNCIL
ACT MEMO**

2003 Wisconsin Act 235 [2003 Assembly Bill 868]	Livestock Facility Siting
2003 Acts: www.legis.state.wi.us/2003/data/acts/	Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm

The establishment of a new or the expansion of an existing livestock facility may be subject to regulation by a political subdivision (city, village, town, or county). A livestock facility is a place where animals used in the production of food, fiber, or other animal products are confined. A political subdivision may regulate livestock facilities through its zoning ordinance or through other regulations. 2003 Wisconsin Act 235 creates a framework of statutes and administrative rules to define appropriate local regulations regarding the siting and expansion of livestock facilities.

The framework for applying local zoning ordinances to a livestock facility siting or expansion is set forth in the statutory language of Act 235. (Local zoning ordinances primarily determine where a use of land, such as a livestock facility, may be established, expanded, or maintained.) The framework for local regulation of livestock facility siting or expansion other than by zoning will be established by rule by the Department of Agricultural, Trade and Consumer Protection (DATCP). (These other regulations relate primarily to how a livestock facility is constructed and operated.)

Act 235 directs DATCP to establish "state standards" for livestock facilities that will provide the framework for local regulation (other than zoning) of livestock facilities. The state standards will relate to such matters as best management practices and performance standards for a livestock facility. The state standards will include existing standards for livestock facilities that are adopted by cross-reference and new standards developed specifically for this purpose by DATCP. Any new standards promulgated by DATCP must be protective of public health and safety, cost-effective, based on available scientific information that has been subjected to peer review, designed to promote animal agriculture, and designed to balance the economic viability of farm operations with natural resources protection and community interests. DATCP is directed to review the state standards at least once every four years. DATCP is also directed to appoint a committee of experts to advise in the promulgation and review of the rules, and to promulgate the initial rules within 12 months after the effective date of the Act (which is April 28, 2004).

This memo provides a brief description of the Act. For more detailed information,
consult the text of the law and related legislative documents.

The basic concept of Act 235 is that a political subdivision may not disapprove or prohibit a livestock facility siting or expansion unless the political subdivision determines that at least one of the specific allowable reasons set forth in the statute for disapproval or prohibition of a livestock facility siting or expansion applies.

Act 235 authorizes a political subdivision to disapprove or prohibit a livestock facility siting or expansion under its *zoning ordinance*, if any of the following apply:

- The site of the livestock facility is in a zoning district that is not an agricultural zone.
- The site is located in an agricultural zoning district and the proposed new or expanded livestock facility is prohibited. However, if a smaller livestock facility would be allowed in that zone, the political subdivision must also have an agricultural zone elsewhere within its jurisdiction where livestock facilities are permitted with no limit on size.
- The proposed livestock facility siting or expansion violates shoreland, floodplain, wetlands, or storm water zoning ordinances.

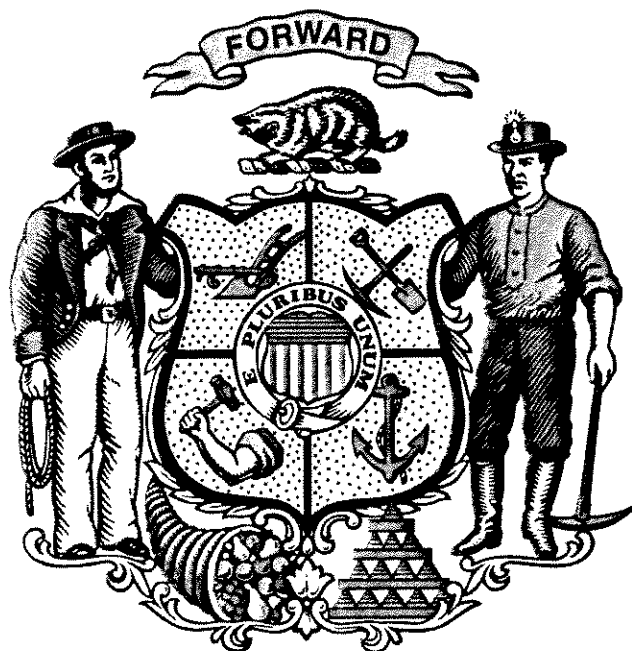
Act 235 authorizes a political subdivision to apply the *state standards* or *local regulations* to disapprove or prohibit a livestock facility siting or expansion if the facility will have 500 or more animal units (an animal unit is the number of livestock with waste production equivalent to one beef steer) and any of the following apply:

- The facility does not comply with the state standards.
- The facility violates a requirement adopted by the political subdivision that is more stringent than the state standards if the political subdivision makes specific findings of fact to show that the requirement is necessary for public health or safety, is based on reasonable and scientifically defensible findings of fact, and is adopted before the application is submitted.

Under limited circumstances, based on preexisting ordinances, a political subdivision can disapprove or prohibit proposed siting or expansion that will be less than 500 animal units, using the state standards or more stringent local regulations.

Act 235 requires political subdivisions to take action on applications for approval of a livestock facility siting or expansion within set time periods. The political subdivision must determine that an application is complete or that more information is needed within 45 days after receiving the application. The political subdivision must either approve or disapprove the application no more than 90 days after determining that the application is complete. The approval time limit may be extended for cause.

Act 235 creates a livestock facility siting review board, which is attached to DATCP. This seven-member board, upon appeal by an aggrieved person, reviews the hearing record and written materials considered by the political subdivision in making its decision to approve or disapprove the application. The livestock facility siting review board determines whether the political subdivision correctly applied the state standards and based its decision to approve or disapprove the application on any of the allowable reasons under Act 235. An "aggrieved person" is the applicant or a person who lives within two miles of the livestock facility or owns land within two miles of the livestock facility. The board must make its decision within 60 days after receiving a certified copy of the record of the political subdivision's decision. If it determines that the challenge is valid, the board reverses the decision of the political subdivision.



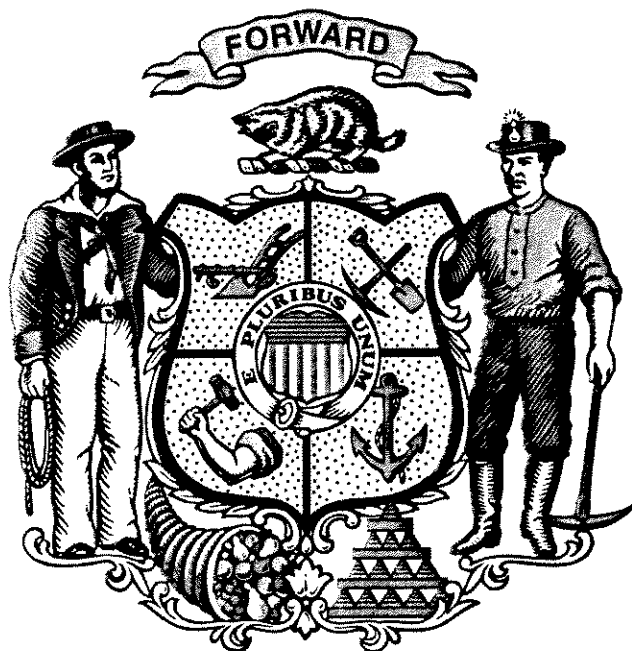
The decision of the siting review board may be appealed to circuit court, which bases its review on the evidence in the record prepared by the political subdivision.

Effective Date: The Act takes effect on April 28, 2004.

Prepared by: Mark C. Patronsky, Senior Staff Attorney


April 27, 2004

MCP:rv:jal:kms



February 8, 2006

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

Dear Secretary  Nilsestuen,

RE: ATCP 51 – Livestock Facility Siting

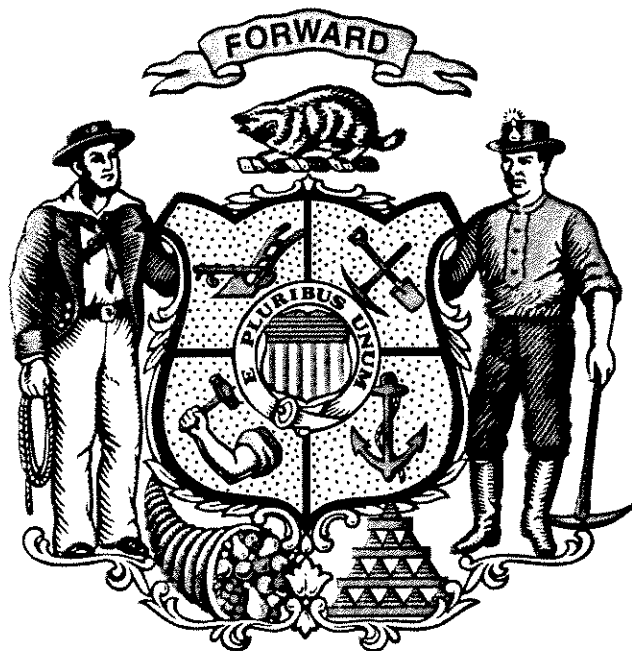
The Dairy Business Association, the Wisconsin Cattlemen's Association, the Wisconsin Farm Bureau Federation, Jennie-O Turkey Store, Inc., the Wisconsin Pork Association, and Gold'n Plump Poultry appreciate the opportunity to provide our comments on the revised final draft rule ATCP 51.

The above mentioned groups support final adoption of the rule by the DATCP Board with the proposed changes being suggested by department staff. These changes include a definition for separate species facilities and a modification in the definition of "related livestock facilities" to be consistent with DNR's definition in NR 243.

The livestock industry believes that it is time to move forward and adopt the rule. However, we are committed to monitoring the impacts of livestock siting on our industry to see if any adjustments are needed. The livestock groups are pleased that the DATCP Board has requested monthly updates the first year and annual updates thereafter. This will allow DATCP, industry, local governments and the general public to stay informed on the implementation of state standards for the siting of livestock operations.

The livestock groups wish to highlight our support for the following changes being proposed by the Department in response to the modifications suggested by the Senate and Assembly Agriculture Committees:

1. We support the changes made to the odor / air emissions portion of the rule including recognizing additional odor control practices, removing the "predicted odor" cap, revising the definition of "bottom fill," and exempting structures that have limited to no impact on odor generation. Further, the livestock industry is pleased with the provision allowing a producer to use the initial "odor score" for future expansion applications.



Perlich, John H.

From: OBrien, John
Sent: Monday, April 10, 2006 6:22 AM
To: Perlich, John H.
Subject: FW: Confirmation Hearing

From: Jerry Gaska [mailto:drjerry@dairyhealthservices.com]
Sent: Sunday, April 09, 2006 12:25 PM
To: Sen.Kapanke
Subject: Confirmation Hearing

April 9, 2006

Dear Senator Kapanke:

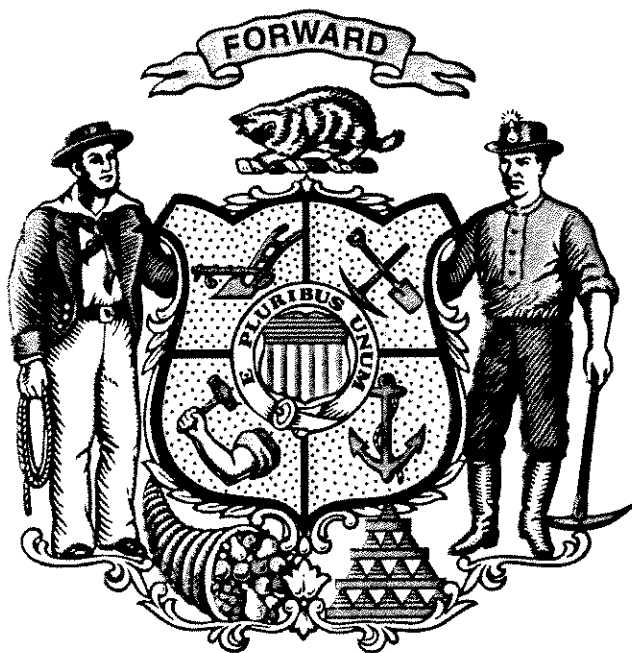
I have been nominated to serve on the Livestock Facility Siting Review Board. I understand that a confirmation hearing is scheduled for Thursday, April 13th. Unfortunately, I will be unable to attend this hearing. Last fall, I agreed to chaperone the Columbus High School band and choir trip to New York City. We will be gone from Sunday, April 9th through Friday April 14th. I have provided Jennifer Heaton-Amrhein, the Livestock Siting Program Manager some alternative dates when I will be available for a hearing. I will be contacting you upon my return to introduce myself and answer any questions you may have prior to the hearing. I regret any inconvenience that my lack of availability for the scheduled hearing may cause and look forward to meeting you and serving on the Livestock Facility Siting Review Board.

Thank you,

Jerry Gaska, DVM
Gaska Dairy Health Services, S.C.
W11366 Behan Rd
Columbus, WI 53925

Office: 920-623-2656
Home: 920-623-2943
Mobile: 920-210-2656
Email: drjerry@dairyhealthservices.com

04/13/2006



Perlich, John H.

From: Richard Stadelman [wtowns1@frontiernet.net]
Sent: Tuesday, September 12, 2006 4:39 PM
To: skctownona@charter.net
Cc: Sen.Kapanke
Subject: Livestock Siting

Dear Sue,

I am surprised that you have just heard about the ATCP 51 and the livestock siting legislation. Our Association has been working on this for over four years. We have had several articles in the WTA magazine and convention workshops in 2004 and 2005. I spent time at the 2006 WTA District meetings explaining what was going on this year, and we did a series of four sessions in May on this topic around the state. In addition we have been putting articles from DATCP in our monthly magazine on implementation issues for the last six or seven months.

But here is what you really need to hear, about four years ago, two key legislators introduced legislation to preempt (that means take away all local control over large and expanding livestock facilities). Wisconsin Towns Association and Wisconsin Counties Association opposed the bill, but were advised by key legislative leaders that if we didn't work to come up with a compromise that we would face passage of a complete preemption bill.

Since that time the DATCP created a livestock task force, which I served on from July, 2003 through the end of December, 2003. A bill was introduced in early 2004, which was passed in early March 2004 to create Sec. 93.90 of Wis. Statutes. Since that time the DATCP has been working to develop state standards for new and expanding livestock facilities. The ATCP 51 rule became effective early this summer.

Local governments retain the authority to ban new and expanding livestock facilities in non-ag zones, and limited ag zones, as long as they have areas where such facilities are allowed, regardless of size. Local governments retain the authority to require the new and expanding facilities to meet the state standards as developed under ATCP 51. Local governments retain the right to adopt more stringent standards if the local government can demonstrate that more stringent standards are reasonable and scientifically defensible and necessary to protect public health or safety. (See Sec. 93.90 (3) of Wis. Statutes).

I am not saying that local government did not give up some power over new and expanding livestock facilities, but the end result retains significant powers if the local governments want to exercise them. Also the end result is better than a complete preemption with no local permits and only state approvals as was proposed over four years ago.

In sense, that if you were at a meeting of the County Land Conservation Department, in La Crosse County you heard from Don Franke. I have had several meetings over the last three to four years at which Mr. Franke was present. I perceive his view is that the Towns and Counties Association should never have come to any compromise and fought out whether state preemption should take over or not. I believe the end result is a compromise and better than risking a complete state takeover of the control of new and expanding livestock facilities.

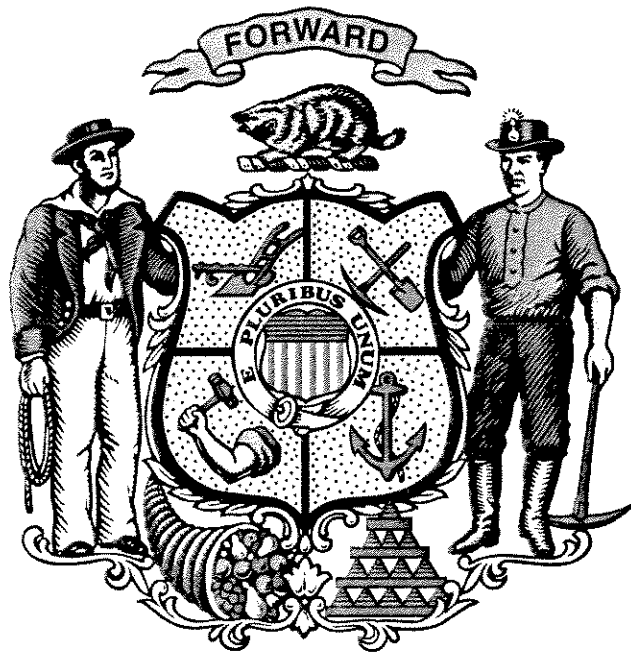
I want to urge you to review the DATCP website on "Livestock Facility Siting." It is at <http://www.datcp.state.wi.us/index.html>

The link is on the right hand side near the bottom under "Siting Livestock Operations."

There are many fact sheets and background papers on what local government can do at this website.

I would suggest that your town consult with a local attorney and consider using your zoning power or at the minimum licensing power under Sec. 93.90 to the maximum extent possible.

Lastly, I would welcome a telephone call from you at your convenience to discuss the bill history, and what authority local government retained. I will be at meetings the next two days, but expect to be in the Shawano office (715) 526-3157 to talk more if you want to call.
Rick Stadelman Executive Director Wisconsin Towns Association



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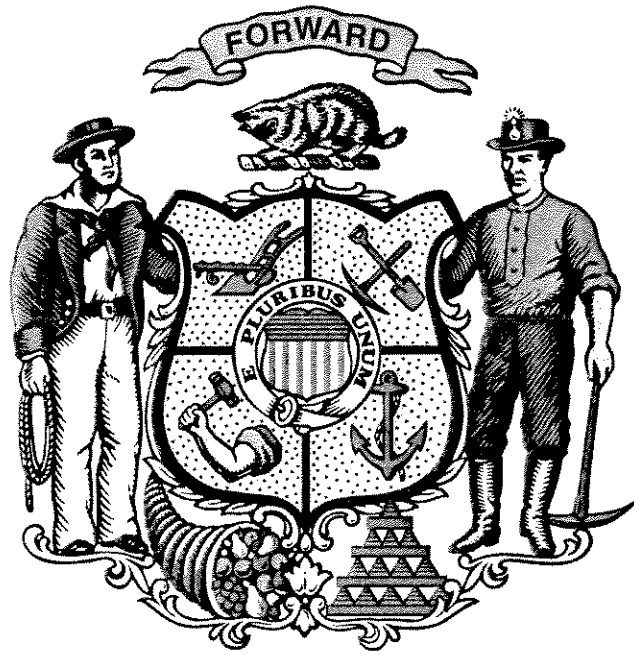
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Rick Stadelman Executive Director Wisconsin Towns Association



Perlich, John H.

To: pawlisch@cwpb.com
Subject: NR 243 Column

Attachments: Of Clean Water and Sustainable Agriculture.doc



Of Clean Water and
Sustainable...

NR 243, An Overview
A Column by State Senator Dan Kapanke

On April 14, 2003, the United States Environmental Protection Agency (EPA) finalized regulations for Concentrated Animal Feeding Operations (CAFO). Under state law and as part of the Department of Natural Resources (DNR) agreement with the EPA to implement the National Pollutant Discharge Elimination System (NPDES) permit program under the auspices of the Wisconsin Pollutant Discharge Elimination System (WPDES), the DNR was required to update its administrative rules to reflect changes in federal regulations. The revisions to ch. NR 243 adopted by the DNR and forwarded to the Wisconsin Legislature as Clearinghouse Rule (CR) 05-075 are meant to bring Wisconsin into compliance with federal CAFO regulations and also include other changes to the WPDES permit program.

As part of the DNR modifications to ch. NR 243, the Department convened an internal team of staff as well as a 20-member Technical Advisory Committee (TAC), made up of stakeholders to provide input, guidance and direction to the process. The TAC met 14 times between 2003-2005 to address the issues of land application of manure on frozen/snow covered ground, six months storage requirement for liquid manure, phosphorous-based nutrient management requirements, and restriction of land application activities near surface waters. The proposed modifications to ch. NR 243 were not based on a true consensus of TAC members, but the DNR was of the belief that it was now time to move along with the rule-making process. Thus began the public hearing portion of the process even though questions still remained as to whether the proposed requirements are too restrictive or not restrictive enough and whether they meet federal requirements.

The DNR held five hearings throughout the state with a total of 875 people testifying on the proposed rule; the DNR also received 374 comment letters. Approximately 1200 people commented on the rule to the DNR, but these numbers are only of contacts to the agency and do not show constituent contacts received by individual legislative offices. The interest shown in this rule is a perfect example of why the Senate Committee on Agriculture and Insurance acted as it did to request further work on CR 05-075 to address concerns raised by ALL stakeholders, especially so that Wisconsin does not become a regulatory island in relation surrounding states.

On August 3, 2006 the Senate Committee on Agriculture and Insurance and the Assembly Committee on Agriculture held a joint public hearing on CR 05-075. After seven and a half hours of testimony, the Senate Committee entered into executive session to address concerns raised by the DNR, the Department of Agriculture, Trade and Consumer Protection (DATCP), as well as the agriculture and environmental communities. The concerns raised by the testimony led the Committee to understand the rule needed further work to protect groundwater while at the same time promoting the states number one industry, agriculture.

The Committee did not reject the rule, but asked for general modifications to seek common ground amongst stakeholders. These general modifications were requested by the Committee on a 5-2 vote. The DNR agreed to accept the request so agencies and stakeholders might continue to work on the issues raised throughout the

hearing.

During testimony, Russell Rasmussen, Director, Bureau of Watershed Management, DNR, indicated the proposal was not perfect and there was a “willingness” to address concerns raised by stakeholders during 7.5 hours of testimony. ^{that}

Through this modification process, DNR and DATCP representatives, farmers, and environmentalists will continue to have open^{and} frank discussions to ensure safe, potable drinking water for our citizens^{while} at the same time supporting the state’s farmers. (7)

There are a number of issues that arose frequently during the testimony. DATCP testified that CR 05-075 might be in conflict with livestock siting regulations that went in to effect earlier this year. According to Kathy Pielsticker, DATCP Agricultural Resource Management Division Administrator, the rule would “create uncertainty” for the agriculture community, indicating that NR 243 needed to be made uniform with regulations for non-point pollution and nutrient management contained in ATCP 50, 51, and federal NRCS 590 rules. (7)

Wisconsin Discovery Farms Co-director Fred Madison summed up much of the testimony when he testified about the weather provision in the rule, noting^{that} runoff can be a problem anytime during winter. “Establishing calendar dates in the administrative rules...is not necessary,” stated Dr. Madison. Instead the farmers need to look at farming systems, soil moisture and time of year as more reliable factors in assessing runoff risk, not arbitrary calendar dates and forecasting.

It was inaccurate for the environmental community to imply the Committee’s actions indicated that it was not interested in protecting Wisconsin citizens. As it is our responsibility, the Committee is working to promote a comprise and enact good public policy that both protects the waters of the state and ensures that best management practices are implemented by the farm community as it relates to manure storage and prevention of groundwater discharges.

As we continue through the rule-making process, the Legislature and the public need to realize that Wisconsin has experienced a significant loss of farm operations in the past two decades. Many agriculture stakeholders contend that some of this loss is due to regulations that agribusiness in surrounding states are not held to. As Chairman of the Senate Committee on Agriculture and Insurance, it is my duty to help secure the future of agriculture and the billions of dollars it brings to our state’s economy. We need to work as a team to make certain that Wisconsin’s dairy industry is able to compete in a global environment and that we remain America’s Dairyland. For this to happen, we must make sure that the agriculture community is operating on a level playing field while at the same time protecting the state’s waterways and ensuring potable drinking water for all Wisconsin citizens for generations to come.

The DNR admits in the agency’s *Environmental Assessment for Department Administrative Rules Related to Modifications of ch. NR 243, Wis. Admin. Code* dated May 26, 2005, “there may be controversy associated with the proposed requirements for CAFOs...There continue (*sic*) to be divergent views among stakeholder groups on what constitutes practices that are protective of water quality, especially as they relate to design requirements for solid and liquid manure storage, phosphorus-based nutrient management requirements and restrictions on manure and process wastewater applications of frozen or snow covered ground.” If as noted above, the agency agrees that the rule has certain controversial aspects, for which there is disagreement among the experts, it is the responsibility of the Senate Committee on Agriculture and Insurance to address these issues with concerned stakeholders.

I appreciate the opportunity to explain the complex reasons the agencies and the committees reached agreement on the need for modifications to NR 243.

John H. Perlich

Clerk, Senate Committee on Agriculture and Insurance

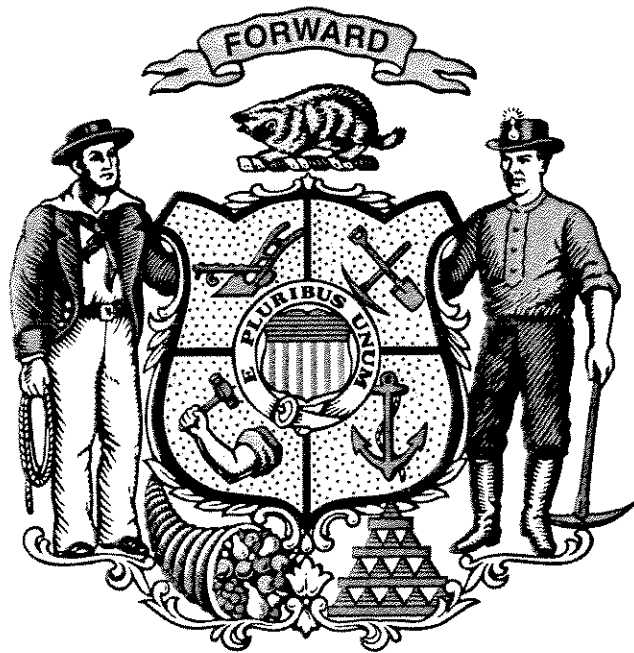
Office of Senator Dan Kapanke

32nd District

608-266-5490

800-385-3385

john.perlich@legis.state.wi.us



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Christ Contracting w/ ProSides

Cristine
Chris

Bob Conlin

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Allen Patete

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Medical TRENDS -

Small employers -

Cheng Pte