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Details: Single Page Testimony (no dividers)

(FORM UPDATED: 07/12/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Agriculture (AC-Ag)

COMMITTEE NOTICES ...

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

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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



WISCONSIN LEGISLATURE

P.O. BOX 8952 · MADISON, WI 53708

June 29, 2006

Mr. Russell A. Rasmussen
Department of Natural Resources
101 South Webster Street
Madison, WI 53703

Dear Mr. Rasmussen:

As you know, the proposed rule on animal feeding operations, which repeals and recreates ch. NR 243, Wis. Adm. Code, has been referred to the Senate Committee on Agriculture and Insurance and the Assembly Committee on Agriculture. We have begun the process of reviewing and analyzing this rule so that we are prepared to engage in a thorough discussion regarding the rule in the joint hearing of our committees.

There are a number of challenges in coming to an understanding of the proposed rule. One of these challenges is that the department chose to repeal and recreate the entire chapter, which makes it difficult to identify the differences between the current rule and the proposed rule. Another challenge is that the department does not use language in the proposed rule that is readily traceable to the corresponding provisions in the federal rules.

Therefore, we request your assistance in this process. It would be very useful if your staff could prepare a side-by-side comparison, in column form, consisting of a description of the provisions in current ch. NR 243, a description of the proposed changes to the current rule, and a description of the federal rule language that either corresponds with the proposed rule or that is the source of authority for the proposed rule. To be fully useful, this comparison would include not only a description of the provisions, but also specific citations that will enable us to find the rule text that corresponds with the descriptions.

We understand and appreciate that this project will entail a substantial amount of effort. However, we assure you that this will be a document that is widely distributed and that will help to focus and clarify the debate on the proposed rule. This document obviously needs to be prepared in advance of the public hearing. If you can have the document available to us by approximately July 21st, we would appreciate it.

Thank you for your assistance.

Sincerely,

Senator Dan Kapanke, Chair
Senate Committee on Agriculture
and Insurance

Representative Alvin Ott, Chair
Assembly Committee on Agriculture

cc: Scott Hassett, Secretary, Department of Natural Resources



Dan Kapanke

Wisconsin State Senator - 32nd District



July 5, 2006

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

SUBJECT: Meeting Request on Clearinghouse Rule 05-075

Dear Secretary Hassett:

By this letter, I am requesting a meeting with the Secretary of the Department of
*Agriculture, Trade, and Consumer Protection regarding the following clearinghouse rule:

05-075	Relating to Animal Feeding Units
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Pursuant to s. 227.19 (4) (b) 1.a., this will extend our review period for another 30 days from today's date. The extra time to consider this rule will be very helpful.

I look forward to discussing this issue with you and will have my staff contact your office to schedule this meeting.

Sincerely,

A handwritten signature in cursive script that reads "Dan Kapanke".

Dan Kapanke
Senator
32nd District
Chair, Senate Committee on Agriculture and Insurance

CC: David Lovell – Legislative Council, 401 East Main
Jeff Renk – Assistant Chief Clerk
Representative Alvin Ott – 323 North State Capitol



Al Ott

State Representative • 3rd Assembly District

July 17, 2006

Secretary Scott Hassett
Department of Natural Resources
101 S. Webster Street
Madison, WI 53702

Dear Secretary Hassett,

Please find enclosed a copy of a hearing notice, published July 17th, regarding Clearinghouse Rule 05-075.

Publication of this notice extends the Assembly Committee on Agriculture's jurisdiction for review of this rule by 30 days.

As you will note, a joint Assembly and Senate hearing on the rule is scheduled for Thursday, August 3rd at 9:00 a.m.

Please do not hesitate to contact me if you have any questions. I look forward to continuing to work with Department staff on this issue.

Sincerely,

Al Ott
State Representative
Chair, Assembly Committee on Agriculture

AO:en

August 3, 2006

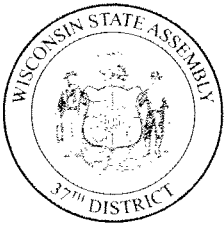
Recommendations for Proposed NR 243

- Recommend that **at a minimum** the proposed NR 243 should be accepted by the legislature in its current form.
- The proposed NR 243 in its current form includes **excellent** groundwater protection standards. In order to adequately protect the health and safety of the citizens using groundwater for drinking water, these standards **CANNOT** and should not be removed.
- The proposed NR 243 could be strengthened by extending the restrictions on application of animal waste during winter months to including the months of **December 1st through April 1st** (rather than February through March).
- In areas of thin soils and fractured bedrock with features visible at the surface, manure application should be **incorporated immediately** – i.e. same day (rather than 48 or 72 hours).

Reasons for Support of Proposed NR 243

- Over **1000** wells have been sampled through the voluntary citizen sampling program or through the newborn baby program through the County LWCD and Health Departments.
- The County has data as far back as 1979.
- To date:
 - **36%** of the samples have come back **bacteria unsafe**.
 - **24%** come back **unsafe** with **nitrate** levels **above** the health standard of **10 ppm**.
 - **31%** come back with **elevated nitrates** indicating human activities on the land are starting to effect groundwater quality.
 - Of all the samples taken, **over 47%** of the samples have tested **unsafe** for drinking.
- Testing results correspond with thin soils over fractured bedrock.
- Predominate land use in these sensitive areas is **dairy farming**.
- Manure and fertilizer applications are the **primary** source of groundwater contamination in the county.
- Currently, there are **4 permitted farms** in the County with the expectation of that number to **double or triple** in the next **five** years.
- It is **essential** for public health and safety that these operations have **specific** standards to abide by in order to protect drinking water quality.

Patrick Laughrin
Calumet County Supervisor
Chair, Calumet County Land & Water Conservation Committee



State Representative

David Ward

Vice-Chair: Joint Committee on Finance

DATE: August 3, 2006

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

FROM: State Representative David Ward
37th Assembly District

RE: Proposed Administrative Rule NR 243

As you listen to testimony and consider action on the Department of Natural Resource's (DNR) proposed administrative rule, NR 243, I'd like to express concerns I have with the rule as it currently stands.

Our past two legislative sessions have revitalized Wisconsin's commitment to agriculture. We've recognized how vital this industry is to our state and have successfully worked in a bipartisan fashion to pass initiatives in an effort to support agriculture into the future. I am concerned this rule will hinder the progress we've achieved.

As stated by the Department of Agriculture, Trade and Consumer Protection (DATCP), there are a few, but very important matters in NR 243 in need of change to bring consistency to related rules at DATCP.

I'm also concerned about the cost of the six-month storage provision. Manure storage is one of the most costly portions of a farm, from planning through construction. The financial burden this places on producers has the affect of jeopardizing many family farms.

The livestock siting administrative rule, ATCP 51, requires constant revision to evaluate viability and incorporate new technologies into best management practices. I would also encourage committee members to request a similar provision in NR 243, using data and tested practices from our Wisconsin Agriculture Stewardship Initiative's Discovery Farms.

It's been my long-standing position this rule should be administered by DATCP, not the DNR, as this rule significantly affects animal agriculture. While I understand this cannot be changed, it's my hope the DNR will work in a full-faith effort with DATCP to resolve these matters and ensure animal agriculture continues to grow in Wisconsin. If we fail to support our agriculture community, family farms will have no option but to go out of business or leave the state, thereby leaving our land open to practices much less friendly toward the environment.

Thank you for your time and consideration of my concerns. Please do not hesitate to contact me if you have any questions.

NR243 Hearing Testimony
August 3, 2006
Karen Endres
Endres Berryridge Farms LLC
Waunakee, WI

Good morning, thank you for allowing me to speak to you today regarding NR243. My name is Karen Endres and I come to you today as a dairy producer from Waunakee and as a representative of one of the states largest dairy cooperatives, Alto Dairy. I encourage you to make significant changes to this rule because as it is today, it will be an economic burden to dairy producers of all sizes in our state.

On our 3rd generation dairy farm we milk 300 cows and if we did have a runoff event we could be subject to NR243. Our farm is owned and operated by Steve, Jeff and Randy Endres and our families. We have made significant investments over the last 10 years to modernize our farm and continue to protect our natural resources. We have eliminated 5 sources of direct run-off through covering our heifer yards, removing our old cow yards, improving our buildings eaves troughs/gutters, building water retention ponds and building a new manure pit. We were fortunate to have cost-sharing dollars through the Federal EQIP program or all of this would not have been possible. One of the biggest flaws in the NR243 rule is the lack of cost sharing. This is especially critical for smaller farms.

You will hear others today discuss the weather forecasting issue and the 590 plus nutrient restrictions so I am going to focus my comments on another flaw, the "duty to apply" issue. You have mandated that all rules developed by the DNR related to point source discharges "shall comply with and not exceed" the requirements of the Clean Water Act and its implementing regulations. That is simply not the case in this proposed rule and it violates 283.11(2)(a) of the Statutes.

In the Waterkeeper Alliance v. US EPA case it provides that only CAFOs that have an actual discharge of pollutants have a duty to apply for a permit. DNR claims that all CAFOs which confine greater than 1,000 animal units that either store manure in earthen pits or land apply manure result in an actual discharge which requires a WPDES or CAFO permit. This position is unsustainable because, taken to its logical extreme, by DNR's own reasoning then ALL livestock operations that store manure in ground or land spread manure have an actual discharge of pollutants thereby requiring all such operations in the state to obtain a WPDES permit. This will set-up small producers for either stringent CAFO-like regulation by the DNR or lawsuits by activists groups. As a dairy producer who recycles our nutrients onto our land to maintain the fertility of our soil and grow crops to feed our animals, I completely disagree with the DNR's irresponsible presumption. As a 3rd generation dairy producer it is our goal to protect the land and keep it healthy for generations to come.

We compete in a global dairy market. The cheese made from our milk and sold to consumers across the nation competes with cheese from California, Texas, New Mexico, Idaho and the World. Regulatory policies that unnecessarily increase the costs of production for our producers will put them at a competitive disadvantage. As you know, the dairy industry brings \$21 billion to our state's economy each year. More than 99% of the dairy farms in the state are family owned and these family businesses would be put at a disadvantage if you don't make changes to this rule and prevent DNR from putting livestock producers on a regulatory island in the global marketplace.

Thank you for your time and I look forward to answering your questions.



August 3, 2006

8045 Crystal Lake Rd.
Lodi, WI 53555-9539
Ph: 608.592.4718
billpiel@merr.com

To: Chairman Ott, Chairman Kapanke, and Members of the Assembly Agriculture Committee and the Senate Agriculture and Insurance Committee

Re: CR 05-075 - Revisions to NR 243

The Wisconsin Council of Trout Unlimited, representing 4500 members in 22 chapters statewide, supports the DNR's revision of NR 243. These rules, adopted unanimously by the Natural Resources Board, are an important step in preventing both chronic and acute pollution of both groundwater and surface waters of the state.

Acute incidents leading to serious water contamination and fish kills, as seen in 2004 and 2005, are unfortunate reminders that we have not done enough to protect the states waters. The restrictions on winter spreading of liquid manure contained in this rule are a necessary step to accomplish that. A logical corollary to these restrictions is the requirement for 6 months of storage capacity for liquid manure for the states' largest livestock producers, a standard most of them already meet. In fact, many already have up to a year's storage to provide greater flexibility in dealing with changing crop rotations and weather conditions, and to insure the animal nutrients are kept on the land and out of the states waters.

Short of headline-grabbing fish kills, chronic impairment of our lakes, rivers and streams continues to degrade water quality and fisheries in much of the state. The nutrient management requirements in this rule are another necessary step towards correcting this condition. Additional funding and more robust implementation of the polluted runoff rules also is needed, but that is outside your purview here.

The Wisconsin Council of Trout Unlimited also endorses the use of mixed animal units calculations to determination when a producer is required to apply for a DNR permit. We remind you that the goal of this program is to protect water quality, and the appropriate focus is on handling of manure. The DNR's existing mixed animal unit approach best accounts for total manure production and handling requirements from an individual operation regardless of the mix of livestock and should continue to be the standard here, just as it is in other Midwestern states and in California.

Thank you.

Bill Pielsticker, Chair
Wisconsin State Council of Trout Unlimited

Jim Hlaban, Vice-Chair
N5967 Murray Rd.,
Ogdensburg, WI 54962

Jeff Ware, Secretary
14092 Spring Valley Rd.
Fennimore, WI 53809

Larry Meicher, Treasurer
5258 Salisbury Rd.
Rio, WI 53960

August 3, 2006

To: Members of the Senate and Assembly Agricultural Committee

Hello. My name is Kevin Griswold. I am a dairy farmer from Jefferson County, currently milking 450 cows. I am currently planning on an expansion project that will hopefully double the cow numbers of my dairy farm.

My farm has been using a 590 nutrient management plan for several years. We work very hard to have a positive impact with our community and the environment around us.

Because we are expanding, I will be applying for a CAFO permit in the very near future.

I have several concerns with the proposed changes to NR-243:

- 1) The requirement of 2 months storage of solid manure. This is very excessive. For my planned expansion, the cost of 2 months storage is approximately \$120,000. That is just for the solid manure storage. I do believe it is important to avoid spreading manure before times of potential runoff. Obviously, the springtime thaw should be a time to avoid, However, this could easily be avoided with as little as 3 weeks storage. There are some years when we are already planting our alfalfa fields in early March. These fields are great users of the nutrients from manure.
- 2) Not being able to apply manure based on a 70% or 50% chance of precipitation from PREDICTIONS from the National Weather Service. There are several factors we use to guide us in our manure applications: Threat of precipitation, temperature of soil, soil moisture, is there surface protection(cover crop or crop residue),slope of field, soil conditions etc. To single out one factor and say that it is the only factor that matters is irresponsible. We continue to learn more about what is causing runoff. I believe education of farmers will be much more effective than legislation against farmers.
- 3) The over restriction of NR-243 beyond what is needed by the federal EPA's requirements. This will make it harder for us to produce milk and be competitive with other parts of the country.

I strongly believe in having a positive impact on the environment that surrounds me. I am constantly looking at ways of improving my farming methods. I DO NOT believe the above mentioned changes to NR-243 will help me accomplish those goals.

Thank you for your time.

Kevin Griswold
N8812 River Valley Rd
Ixonla, WI 53036
262-569-5688



John Muir Chapter

Sierra Club - John Muir Chapter
222 South Hamilton Street, Suite 1, Madison, Wisconsin 53703-3201
Telephone: (608) 256-0565 Fax: (608) 256-4562
E-mail: john.muir.chapter@sierraclub.org Website: wisconsin.sierraclub.org

Joint Legislative Committee on Agriculture Hearing
Testimony on NR243
August 3, 2006

(2) Chairmen Senator O'Brien, Representative Ott, and Members of the Joint Legislative Committee on Agriculture.

For the record: my name is Carla Klein, Statewide Director for the Wisconsin Sierra Club. I appreciate the opportunity to speak to you today on this important issue affecting our citizen's health and the environment.

The Sierra Club would like to go on record in support of the new protections proposed to NR 243. Sierra Club members believe these changes will go a long way in addressing the serious health and environmental threats posed by manure from giant factory farms.

The proposal contains several good provisions such as setbacks, vegetative buffers and the ban on surface application of liquid manure during the highest risk periods of February and March. We believe these basic protections to public health should be implemented sooner than deadline currently proposed. When citizens' health and the environment are so dramatically being threatened, four years is too long to implement change. Even one contaminated well or one sick individual due to manure contamination is too much.

We also support the proposed requirements that all "new source" and "existing source" CAFOs have at least 180 days of liquid manure storage. Again we are concerned that the proposed change gives existing source CAFOs until January 1, 2010 to obtain 180 day storage. Currently 80% of existing CAFOs in Wisconsin already have six month of manure storage.

Giving factory farms YEARS to comply with the law is unacceptable. The storage process is an important and necessary step in controlling manure contamination discharges but it is not rocket science. The deadline should be moved up to January 1, 2008. Wisconsin citizens deserve this basic health and environmental protection to prevent further well contamination and polluted streams.

On behalf of our 15,000 members I thank you for the opportunity to comment on the proposed rule revisions to Chapter NR 243. We respectfully request you vote to approve these revisions with the expedited implementation date.

Sincerely,

Carla Klein
Chapter Director
Wisconsin, John Muir Chapter, Sierra Club

Remember to Support the Sierra Club through your workplace giving campaign!
The John Muir Chapter is proud to be a member of





RIVER ALLIANCE of Wisconsin

Testimony to the Senate and Assembly Agriculture Committees Regarding NR 243

August 3, 2006

The River Alliance of Wisconsin is a nonprofit, nonpartisan river conservation organization representing 2,700 individuals and over 200 organizations and businesses who care about the health and quality of Wisconsin's flowing waters.

We urge you to approve the rules before you today. There is no dispute that when liquid manure is spread on frozen ground, it *will* run off with a sudden thaw or rain storm. The Wisconsin Discovery Farms project provides clear evidence, along with DNR's own documentation of manure spills in the state, that land application of liquid manure in February and March poses the greatest risk of running off into streams and percolating to groundwater.

A ban on spreading when the manure cannot be incorporated, and providing sufficient storage to hold manure, is a science-based and common sense approach to managing this problem.

We strongly support requiring *at least* 6 months of storage. We know that nearly 980% of existing permitted livestock farms already have 6 months or more of storage. It is not unreasonable to require the remaining 20 or so farms to abide by this rule.

We support the rule as written with one exception – the timeline for compliance with the spreading ban and storage capacity. There is no reason the vast majority of operations with sufficient storage should have to wait until 2010 to implement it. It would be good environmental protection AND good business for the livestock community to avoid a catastrophe and implement these two elements of the proposed rule by 2008. Furthermore, one to two years is a perfectly reasonable timeline for the remaining CAFOs to construct sufficient storage and comply with the spreading ban.

The dairy and livestock industry are important contributors the economy and culture of Wisconsin. But the waters of Wisconsin are EVERYONE'S, and the importance of clean water to ALL aspects of the Wisconsin economy – from beer-making to bass fishing – is immeasurable. These rules are a good step toward balancing the needs of agriculture and the need of the rest of us for clean water. After four years of research, debate, and give and take on all sides, please move forward today, and approve the rules before you.

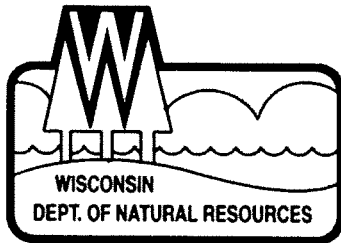
Everyone deserves healthy rivers

August 3, 2006

MOTION

Moved, that the Senate Committee on Agriculture and Insurance, pursuant to s. 227.19 (4) (b) 2., Stats., requests the Department of Natural Resources to consider modifications to Clearinghouse Rule 05-075, relating to animal feeding operations.

If the Department of Natural Resources does not agree to consider modifications to Clearinghouse Rule 05-075, in a letter addressed to the chair of the Senate Committee on Agriculture and Insurance, or fails to respond in writing to this request for modification, by 5:00 p.m., August 7, 2006, the Senate Committee on Agriculture and Insurance objects to Clearinghouse Rule 05-075, 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.



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

August 4, 2006

Honorable Dan Kapanke, Chair
Senate Committee on Agriculture and Insurance
Room 104 South
State Capitol

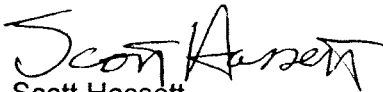
Re: Clearinghouse Rule No. 05-075
Animal feeding operations

Dear Senator Kapanke:

In response to your Committee's request on August 3, 2006, the Department of Natural Resources agrees to consider modifications to Clearinghouse Rule No. 05-075 relating to animal feeding operations.

As required by s. 227.19(4)(b), Stats., the Department will notify your Committee when a decision has been made on the proposed modifications.

Sincerely,


Scott Hassett
Secretary

cc: Rep. Al Ott
Russ Rasmussen – WT/2
Tom Baumann – WT/2
Greg Hill – WT/2
Robin Nyffeler – LS/5
Carol Turner – LS/5



Al Ott

State Representative • 3rd Assembly District

MEMORANDUM

TO: Assembly Committee on Agriculture

FROM: Rep. Al Ott, Chair

DATE: August 4, 2006

RE: Executive Session Cancellation & Request for Comments

As you may already know, the Senate Committee on Agriculture and Insurance entered into Executive Session following yesterday's joint public hearing, and approved a general motion requesting the Department of Natural Resources (DNR) to consider modifications to proposed NR 243.

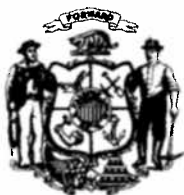
This morning, the DNR formally agreed to consider the committee's request. A copy of the motion and the Department's response is included with this memo for your review.

Due to the Senate's action, and because I understand the difficulty of bringing members back together for an executive session, I have decided to cancel our planned meeting for next Wednesday.

I do, however, want members to have the opportunity to express their concerns and provide modification recommendations to the Department. To that end, I would ask that you please submit your detailed recommendations and comments, in writing, to my office by Friday, August 18th. We will, in turn, make your comments part of the committee record, and provide your submissions to DNR for consideration as they work to modify the rule.

My office will remain in close contact with the Department as they move forward in crafting modifications. We will continue to encourage their cooperation with stakeholders, DATCP, and legislators in this effort.

Your patience during yesterday's long, and sometimes difficult, hearing is greatly appreciated. Please do not hesitate to contact me if you have any questions, or would like to discuss this matter further.



BOB ZIEGELBAUER

STATE REPRESENTATIVE • TWENTY FIFTH ASSEMBLY DISTRICT

August 7, 2006

Rep. Al Ott, Chair
Assembly Committee on Agriculture
323-North

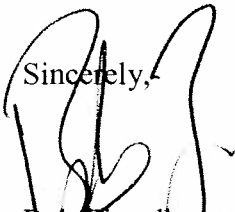
RE: NR 243, Relating to animal feeding operations

Dear Rep. Ott:

Thank you for the notice that due to the Senate's action you have decided to cancel this Wednesday's Executive Session on the proposed NR 243, and instead, asked for the Assembly Agriculture Committee's recommendations on this proposed rule.

I do support NR 243 as submitted, but since the rule is going back to the Department I agree with the consensus for revision and improvement of the rule standards relating to predictions based on weather forecasting.

As always, feel free to call me anytime if you wish to discuss this further. Again, thank you for asking for our recommendations.

Sincerely,


Bob Ziegelbauer
State Representative
25th Assembly District

BZ/lwk

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

PRINTED ON RECYCLED PAPER

August 14, 2006

Scott Hassett, Secretary, WI Dept. of Natural Resources
Senator Dan Kapanke, Chair, Senate Agriculture Committee
Rep. Alvin Ott, Chair, Assembly Agriculture Committee

Dear Senator Kapanke, Representative Ott, and Secretary Hassett:

In light of the Senate Agriculture Committee's action a week ago Thursday to send back for revisions the draft NR 243 rules governing manure management by large-scale livestock farms, our organizations strongly urge you to convene stakeholders from agriculture and conservation groups and technical experts from DNR and DATCP to revise the rule so that it satisfies concerns from the farm community and does not compromise the water quality protections that the rule would provide. We urge that the stakeholder group be convened in late August, and complete its work by November 15 so that the new rule could be in effect by January 1.

There probably is not a single conservation-and-agriculture issue that affects more people than manure contamination of streams, lakes and groundwater. Developing the rule this far has taken four years, and many of its key provisions are not supposed to be implemented until 2010. More delay will continue to allow more contaminated wells, health problems, and fish kills.

We are willing to work quickly and diligently with the DNR and DATCP, legislative representatives and farm organizations to make the rule work for agriculture AND for public health and clean water. Upon the formation of the stakeholder group, we will contact the DNR secretary's office with the names of representatives of the conservation community willing and able to contribute to the stakeholder effort that we propose.

Sincerely,

Denny Caneff, Executive Director
River Alliance of Wisconsin

George Meyer, Executive Director
Wisconsin Wildlife Federation

Peter Murray, Executive Director
WI Association of Lakes

Melissa Mallot, Water Pgm. Director
Clean Wisconsin

Jeff Smith, Legislative Chair
Trout Unlimited

Kerry Schumann, Executive Director
WI League of Conservation Voters

Jennifer Giegerich, State Director
WISPIRG

Andrew Hanson, Staff Attorney
Midwest Environmental Advocates

Carla Klein, Chapter Director
Sierra Club John Muir Chapter

Cc: Pat Henderson; DATCP Secretary Rodney Nilsestuen

Ruby, Erin

From: Rep.Ott
Sent: Monday, August 21, 2006 8:26 AM
To: Hassett, P. Scott
Cc: Smith, Amber M.; Schlaefel, Mary W. (DNR); Ambs, Todd L; Rasmussen, Russell A.; Stevenson, Gordon R.; Henderson, Patrick - Office of Governor Jim Doyle; Patton, Christopher - Office of Governor Jim Doyle
Subject: Assembly Committee on Agriculture Comments Regarding NR 243
Attachments: Scan001.PDF



Scan001.PDF (238 KB)

Secretary Hassett,

Please find attached copies of comments received from members of the Assembly Committee on Agriculture regarding proposed NR 243.

Following the Senate Committee's action on the rule, I requested members of my committee to submit, in writing, their comments and concerns about the rule in order to be helpful as the Department moves forward with their consideration of modifications. (It is my understanding that Rep. Molepske has submitted his comments directly to the Department.)

Should your staff have any questions regarding the attached comments, they should feel free to contact my office or the individual members directly.

I look forward to continuing to work with the Department on this rule.

Sincerely,

Al Ott
State Representative
3rd Assembly District
Chair, Assembly Committee on Agriculture

AO:er

CC: DATCP
Committee Members
Mark Patrosky

NR 243 Testimony
Franklin Fetter

Date ?

My name is Frank Fetter. I have a Master's Degree in Water Resources Management from UW-Madison, and have been working in the field of water resource management for 11 years.

In 2005, I was the Executive Director of the Upper Sugar River Watershed Association, based in Mount Horeb. On the final Saturday of February 2005, I received a voice mail from the president of the USRWA, Steve Haak. Steve has been a farmer all his life, and in the seven years I have known him, I had seen him deal with crop failure, low milk prices, and other common misfortunes of farming with merely a shrug. However, I had never heard so much emotion in his voice as I did on that Saturday morning.

"We have a real disaster on our hands here, Frank. Looks like we have a massive fish kill, and it looks like the whole West Branch is dead."

He was referring to the West Branch of the Sugar River, the stream that flows through his farm and a resource that he and other local farmers had been working to restore for over twenty years.

Just four months before, we had celebrated the removal of the West Branch from the Federal Impaired Waters, or 303(d), list. Steve and I were eagerly awaiting the start of the early trout season on this stream; this stream was shaping up to be one of the best spring creek trout fisheries in southern Wisconsin, if not the entire Midwest.

The fish kill was caused by combination of poor and nonexistent regulations coupled with a poor decision. Another farmer upstream of Steve Haak's farm, was talked into allowing his liquid manure to be spread on frozen, snow covered ground less than 48 hours before a forecast thaw. The massive influx of liquid manure that got into the West Branch as a result of that thaw decimated at least six miles of stream, and killed over 200 brown, brook and rainbow trout.

Steve and I helped collect those fish; many of which would have been the trout of a lifetime for many avid trout anglers. It made me sick to see how much effort and hard work - not to mention taxpayer dollars - was destroyed in a matter of days. I took extensive photos and video of what we experienced, and would be happy to share it with any of the committee members.

Which brings me to the reason why I asked to speak to you today. The manure runoff that was responsible for the West Branch fish kill came not from a CAFO, but a smaller dairy operation. Further, once the farmer was made aware of what was happening, he made a heroic effort to undo the damage that had begun, and was actually successful in mitigating what may have been a much larger fish kill.

That said, at least six miles of the West Branch of the Sugar River suffered, and will not fully recover for several years at a minimum. I shudder to think of the extent of the environmental damage had the runoff been the exponentially larger amount one could expect from a CAFO. Instead of runoff from a dairy with a couple of hundred cows, we could be talking about runoff from at least ten times that many. Were that the case, I might be here testifying about a SIXTY mile fish kill; a fish kill on not only the West Branch, but the main stem of the Sugar River; maybe a fish kill that affected the Lower Pecatonica and even the Rock Rivers. I might be talking about the public health, economic and environmental effects on communities such as Belleville, Albany, Brodhead...Perhaps even Rockford.

Liquid manure is an extremely valuable resource when properly applied to farm fields. However, when it gets into our water resources, it becomes poison; plain and simple. It becomes not just a hazard to the health of fish and other aquatic life, but it becomes a public health problem as well.

I believe that we can have it both ways; successful, concentrated animal feeding operations, and healthy water resources. The proposed NR243 rules are a positive step in that direction.

Thank you.

Franklin F. Fetter,
1100 Spellman Street
Mount Horeb, WI 53572

Date ?

To Members of the Wisconsin Legislature:

I am writing to express my concern with the changes proposed to Department of Natural Resources Administrative Rule, **NR 243, animal feeding operations**. NR 243 has been referred to the Senate and Assembly Agriculture Committees and will have a public hearing on August 3, 2006. **I am writing to request that the Legislature send this rule back to the DNR for further revisions.**

I am primarily concerned about the following provisions in the proposed rule:

- **Nutrient Management:** NR 243 adds additional requirements to current NRCS nutrient management standard 590. This makes the 590 version in NR 243 *inconsistent* with the 590 standards that already exist in Ag Siting (ATCP 51) and current nutrient management requirements (ATCP 50). These inconsistencies include: mandatory minimum storage (180 days for liquid and 60 days for solid manure); how processed waste water is handled; application of manure based on weather forecasts; phosphorus applications on fields with greater than 100ppm; land application of liquid and solid manure restricted when the ground is frozen or snow covered; manure cannot be applied in February or March in most cases; restrictions for application to tiled fields; and additional groundwater restrictions. One size fits all does not take into account the needs of individual operations. **We request that NR 243 include the same version of NRCS 590 as is required in other Wisconsin laws.**
- **Duty to Apply:** The EPA's federal rule is being revised to reflect a recent court decision to require large CAFO's to apply for a WPDES permit *only* if they actually discharge or propose to discharge manure. Wisconsin presumes a discharge and imposes a duty to apply for a permit regardless of actual or proposed discharge. **We request that Wisconsin reflect the federal rule and require a permit only for actual or proposed discharges.**

I request that the rule be sent back to the DNR for revisions to allow farmers more options to comply with the rule. I have no objection to meeting a water quality standard. Rather, I would oppose the "one size fits all" approach taken by this rule.

Thank you for your consideration.

Name: Harry Parr

Member of the Wisconsin Cattlemen's Association

Address: E 11625 Hwy Rd P LaFarge, WI

Type of Farming Operation: Cow/Calving

No Date

13.565



13.565 Legislative review of certain rules. Upon referral of any proposed rule relating to animal waste treatment to the presiding officers of each house of the legislature under s. 227.19 (2), the presiding officers shall refer it to a senate and an assembly committee concerned with agriculture. The committees shall hold a public hearing to review the proposed rule.

13.565 - ANNOT.



History: 1971 c. 335; 1975 c. 418; 1977 c. 26 s. 75; 1977 c. 325, 377, 418, 447; 1979 c. 154; 1981 c. 20; 1985 a. 182 s. 57.

Hayfman - 1971 AB 1545