



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Bradley M. Pfaff, Secretary

DATE: July 10, 2019

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Bradley Pfaff, Secretary
Sara Walling, Administrator, Agricultural Resource Management Division

SUBJECT: Wisconsin Livestock Facility Siting, modifies Wis. Admin. Code Ch. ATCP 51 (Hearing Draft Rule)

PRESENTED BY: Agricultural Resource Management Division

REQUESTED ACTION:

At the July 10, 2019 meeting of the Board of Agriculture, Trade and Consumer Protection ("Board"), the Department of Agriculture, Trade and Consumer Protection ("Department") will ask the Board to authorize public hearings on a proposed rule revising ch. ATCP 51, related to livestock facility siting.

SUMMARY

Background

This rule:

- Updates the water quality standards, including related Natural Resources Conservation Service ("NRCS") technical standards, to ensure consistency with provisions in NR 151 and ATCP 50, including incorporation of the 2017 NRCS standard for waste storage structures, 2015 NRCS standard for nutrient management, the 2017 NRCS standard for waste treatment, and the 2016 NRCS standard for vegetated treatment areas.
- Modifies standards (subch. II of ATCP 51) consistent with the requirements in Wis. Stat. § 93.90(2), based on the technical recommendations of the 2014 and 2018 Technical Expert Committees and stakeholder input. Key changes include modifications to setback and odor standards.
- Modifies the procedures (subchs. I and III of ATCP 51) that local governments must follow in issuing a siting permit under a zoning or licensing ordinance including those used to determine completeness of siting applications, modifications to siting permits, the use of checklists to monitor facility compliance, and the fees local governments charge for permit modifications.
- Modifies local permit application forms and worksheets to reflect changes in requirements and to ensure that they are clear, complete, and elicit information that documents compliance with applicable siting standards.
- Makes other changes, clarifications and updates as necessary to improve implementation of the siting rule, consistent with the requirements in Wis. Stat. § 93.90(2).

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Contents of this Rule

The following is an analysis of the rule by topics.

Livestock Facilities, Structures, and other Definitions

This rule clarifies that a livestock facility includes the livestock, livestock structures, and parcels on land upon which livestock facility is located, except for pastures and winter grazing areas. Storage structures designed exclusively for process wastewater are excluded from the setback requirements that apply to manure storage structures.

This rule makes changes to definitions related to the prior odor standard, including elimination of the definition for affected neighbor and high use building, and modifications to the definition for waste storage structure to exclude solid manure from setback and odor requirements.

The definition of related facilities is expanded to cover process wastewater storage and transfer using or sharing the same structures, or same field for land application.

To achieve consistency with the nonpoint rules (ATCP 50 and NR 151), this rule adds or adjusts definitions of key terms such as manure, pasture, process wastewater, significant discharge, and waste transfer system.

Ordinances and Permits Filed with the Department

This rule will require local governments to electronically submit new or revised ordinances or permits to the Department whenever it incorporates standards from this rule in a local ordinance, enacts more stringent local ordinance standards, or takes official action on a permit application.

Duration of Local Approval

A livestock operator must begin constructing all new or expanded livestock housing or waste storage structures within 2 years after the local approval is granted, except where the construction of a proposed structure is required to control a discharge, in which the construction must be completed within 6 months of a permit approval.

Application for Local Approval

To obtain local approval, an operator must complete the *application form* and *worksheets* that are made part of this rule. The application materials have been modified to incorporate the changes described in this rule summary.

Key changes to the application materials include:

- On the site map, the applicant must assign unique identifiers to show all existing and proposed livestock structures, and use these unique identifiers when referencing livestock structures in the application worksheets.

- Odor Management Plans will be retooled and the application will contain new criteria for developing acceptable plans.
- The applicant's acknowledgement of other laws will be removed from the application.
- Odor management standard (worksheet 2) will be modified to reflect the new system for managing odor.
- Waste and nutrient management (worksheet 3) will change to reflect the method for estimating the amount of manure generated from a facility to better correspond with nutrient management planning, add cropland performance standards, and eliminate the nutrient management planning exemption for operations under 500 Animal Units ("AUs").
- Waste storage facilities (worksheet 4) will change requirements regarding closure of manure storage structures.
- Runoff management (worksheet 5) will be revised to reflect changes in managing runoff related to animal lots, feed storage, and milking center wastewater.

State and Local Standards

This rule clarifies that a local government may not grant a variance to exempt a livestock facility from complying with the state standards, except that it may reduce setback requirements.

Local governments are provided the authority to impose additional manure spreading restrictions consistent with applicable performance standards and prohibitions in ch. NR 151 without making the public health and safety findings for adoption of more stringent local standards but cannot use this authority to adopt a targeted standard that does not apply to the geographic area under the political subdivision's jurisdiction.

Property Line and Road Setbacks

Except for manure storage and certain types of housing, this rule retains property line and road setback requirements for livestock structures for facilities under 2,500 animal units and increases the maximum property line and road setback to 300 feet for facilities with 2,500 animal units or more.

This rule:

- Establishes minimum property line setbacks for manure storage structures based on the size of the livestock facility.
- Establishes minimum property line setbacks for certain types of livestock housing based on the size of the livestock facility.

If a livestock facility is organized in one or more clusters (a grouping of livestock structures separated from another grouping by a 1,000 or more feet), the livestock facility may follow the setback requirements based on the AUs in each cluster. This option is not available if manure is comingled among clusters.

This rule retains provisions that allow limited expansion of manure storage and housing structures within setback areas, as long as the expansion is away from the property line or public road right-of-way to which the local setback applies. In addition, as noted below, this rule allows operators to reduce setbacks for new or expanded manure storage and certain types of housing structures through the implementation of odor control practices and if adjacent properties are in cropland.

Odor Management; Livestock Structures

This rule provides for the phase out of the odor standard, originally adopted in 2006. In its place, this rule adopts a system of setbacks for high odor sources (manure storage and certain types of housing). Under the new system, operators will not be required to address odor from low odor sources such as animal lots and freestall barns. With its emphasis on setbacks, the new system is similar to odor management approaches in surrounding states, and it uses most of the odor control practices originally developed for the 2006 odor standard.

For livestock operations issued a permit prior to the effective date of this rule revision, they must continue to meet the requirements of the odor standard in their permits. When they are granted a new local approval, they are released from these requirements unless they have manure storage located within 600 feet of the facility's property line or livestock housing located within 400 feet of the facility's property line. In this case, they need to develop an odor management plan for these structures, and the plan should incorporate odor control practices which the operator agreed to implement as part of a local approval granted before the effective date of the rule change unless the operator provides a financial or other justification for discontinuation of the practice. Livestock facilities seeking local approval for the first time after adoption of this rule revision will not need to complete an odor management plan for existing manure storage and livestock housing, unless these structures are located within the separation distances discussed above.

For new or expanded manure storage structures and certain types of livestock housing, the new odor standard requires that operators meet setback distances determined using OFFSET. Livestock operators may earn credit for odor control practices in the form of reductions to setback requirements, allowing construction within the setback areas. The rule no longer supports certain low credit odor control practices that are not reliable, difficult to document or have uncertain effectiveness including diet manipulation, windbreaks (includes manmade berms), and chemical or biological additives. Worksheet 2 has been modified to enable operators to document odor control practices and calculate the reduced setbacks based on installation and maintenance of these practices. Worksheet 2 includes revised specifications for the odor control practices that the operator must meet to claim a credit.

Waste and Nutrient Management

To achieve maximum consistency with nonpoint rules, this rule will require operators to have and follow a nutrient management plan that complies with ATCP 50. The 2015 NRCS 590 Standard is now the basis for nutrient management plans. In addition, this rule adds requirements that livestock operators comply with NR 151 cropland performance standards related to soil erosion, a tillage setback, and the phosphorus index.

Regarding nutrient management plans, this rule clarifies that a plan must account for all land applications of manure and related waste generated by the maximum number of animal units authorized by a permit or other local approval. For the purposes of determining waste generation, this rule and related Worksheet 3 now use the Wisconsin Conservation Planning Technical Note WI-1 (February, 2016) to estimate quantities of manure.

Worksheet 3 will require that operators attach map(s) showing the land where waste will be applied and any restrictions limiting the application of waste to that land. Additional documentation may be required by the local government to verify that rental land is available.

A new nutrient management checklist is incorporated to document compliance with the 2015 NRCS 590 Standard.

This rule eliminates the option for livestock facilities under 500 AUs to avoid a nutrient management plan if the operation has an adequate land base.

This rule clarifies that local governments may require all operators with siting permits (including livestock facilities with over 1,000 AUs known as Concentrated Animal Feeding Operations “CAFOs”) to submit documentation related to annual nutrient management updates, and monitor an operator’s compliance with a nutrient management plan. Under Wis. Admin. Code § ATCP 50.04(3)(gm), a nutrient management plan must be reviewed annually to determine whether the plan accurately reflects the planned cropping, tolerable soil loss, nutrient application rates, and application methods, and shall be updated by a nutrient management planner when necessary to reflect changes to planned activities.

Waste Storage Facilities

This rule clarifies that new or expanded waste storage structures, designed solely for storage of process wastewater, must meet NRCS technical guide waste storage facility standard 313 or ch. NR 213, whichever applies.

Changes to the waste storage facility Worksheet 4 require the operator to identify all existing, modified, and new storage facilities by a unique identifier.

For existing storage facilities, which can only be used if properly certified, this rule makes changes in how evaluations must be conducted. It provides more flexibility for certification by creating a document-only option (e.g. manure storage ordinance certification) for a facility constructed within the last 3 years according to then-existing NRCS standards, and visual inspections for any facility constructed within the last 10 years according to then-existing NRCS standards. However more effective inspection and documentation requirements apply to older storage facilities including the need to empty the facility before inspection. A full investigation of an emptied storage should verify that the bottom of structure corresponds with built plans, if any, or has adequate separation distance to groundwater. If there is no reliable documentation, a full inspection including test pits may be required, and a local government may request a written report documenting the methods used for evaluation and the findings in support of the

conclusions reached in the evaluation. The rule also requires that the operator perform subsequent evaluations at certain intervals after an initial evaluation is conducted.

New or substantially altered waste storage structures and transfers systems must be designed and constructed according to these:

- NRCS technical guide manure storage facility standard 313 (October, 2017R) and related liner standards. (NRCS 520, 521 and 522)
- NRCS technical guide manure transfer standard 634 (January, 2014).

This rule will require that an operator close an existing waste storage facility that cannot be certified as safe to use.

This rule clarifies the options for a local government to monitor compliance including verification that a new or modified waste storage facility is constructed according to specifications. In addition to inspections, the local government may require applicants to submit documentation verifying that new and substantially altered facilities are constructed according to technical standards.

Runoff Management

Every new or substantially altered animal lot must be designed and constructed according to NRCS technical guide vegetated treatment area standard 635 (January, 2016R). This standard may require operators to install roofing or route runoff to storage in place of using a vegetated treatment area.

Existing animal lots may still use the *BARNY* runoff model to predict annual phosphorus runoff from the animal lot. A lot may still qualify as existing with minor alterations, which are now more clearly defined in this rule. Under this rule, operations must meet the more demanding annual discharge standard of less than 5 lbs. of phosphorus, if the animal lot is located within:

- 1,500 feet from navigable lakes, ponds and flowages
- 450 feet from wetlands and navigable streams and rivers
- 750 feet from conduits to groundwater
- 450 feet from surface inlets that discharge to navigable waters
- 225 feet from channelized flow (i.e., a drainage area of ≥ 5 acres)
- 225 feet from subsurface drains

Structures located outside the boundaries indicated above may meet the runoff standard by documenting a discharge of less than 15 lbs. of phosphorus annually.

This rule clarifies the prohibition against direct runoff from animal lots to any direct conduit to groundwater (such as a sinkhole) and now includes runoff to surface waters of the state.

While this rule holds livestock operations to a standard of no significant discharge, it does make changes in runoff standards for animal lots, as well as feed storage areas, to account for the U.S. Environmental Protection Agency's "no discharge" standard for animal feeding operations, and

changes in the NRCS technical standards designed to implement the federal “no discharge” standard.

This rule substantially changes requirements for feed storage facilities. Existing buildings, bunkers, or paved areas used to store feed must be evaluated to determine whether they meet technical standards, are in good repair and do not have signs of a significant discharge. A local government may request a written report documenting the methods used for evaluation and the findings in support of the conclusions reached in the evaluation. New operating requirements for existing feed storage include the diversion of clean water and collection and storage of leachate and initial runoff.

Every new or substantially altered feed storage structure, including any unroofed building, bunker or paved area used for feed storage or handling, now must be designed, constructed and maintained in accordance with NRCS technical guide waste treatment standard 629 (January, 2017), with the leachate and contaminated runoff from such storage structures being collected and stored for future land application, or treated in accordance with NRCS technical guide vegetated treatment area standard 635 (September, 2016R).

If a new or expanded feed storage structure is less than one acre and not located in or near a sensitive area, the new or altered portions of feed storage structure must meet design requirements for the floor of the structure, but may manage runoff in any manner that avoids a significant discharge.

To ensure consistency with the prohibition against significant discharges in the nonpoint rules (see Wis. Admin Code § NR 151.055), this proposed rule reflects current standards and practices for managing milkhouse wastewater. Storing waste is required except for small operations that generate less than 500 gallons of milking center wastewater daily.

Existing clean water diversion requirements related to feed storage have been expanded to be consistent with NR 151, which requires diversion if structures are located within 300 feet of wetlands and 500 feet from any conduit to groundwater.

CAFO Permit Substitutions

This proposed rule more clearly defines how CAFOs can demonstrate compliance with siting standards based on a Wisconsin Pollutant Discharge Elimination System (“WPDES”) permit. Because the Department of Natural Resources (“DNR”) does not issue CAFO permits with a maximum number of animal units, this rule eliminates the requirement that CAFOs provide WPDES permits documenting the same number of animal units as sought for local approval under the siting rule. This rule still allows CAFOs to demonstrate compliance with the nutrient management requirements based on a WPDES permit, but imposes more specific requirements to submit a nutrient management checklist that was previously submitted to DNR as long as the nutrient management plan covers the same or greater number of animal units than the number for which the operator seeks local approval. CAFOs also must demonstrate compliance with the siting standards related to manure storage and runoff management by submitting plans and specifications approved by DNR for relevant livestock structures. Also, the applicant must

certify that the livestock facility has met all WPDES permit conditions, and does not have any WPDES permit violations.

Permit Modifications

This rule establishes a clear framework to allow permit modifications for expanding livestock facilities previously granted local approval. This rule specifically:

- Limits the fee to \$500 or less.
- Sets criteria to qualify for a permit modification for livestock operators who plan either to (1) construct or alter one or more livestock structures without increasing the maximum number of animal units housed on the livestock operation or (2) increase the maximum number of animal units by up to 20 percent (but in no case increase more than 1000 animal units) without constructing or altering any livestock structures.
- Establishes a procedure for processing modifications that simplifies the steps (e.g. no written decision with findings) and reduces the waiting time to no more 45 days.

Complete Application

In making a completeness determination regarding an application for local approval, a local government will be required to use a Department-approved form to document specific items that are missing from the application. Items on the checklist not identified by the local government are deemed complete, and an applicant is only required to submit additional materials identified by the local government on the checklist to receive a completeness determination.

Terms of Approval

After a local government receives an application, the local government shall notify the applicant that prior to a final decision on the application construction activities at the livestock facility shall be limited to grading.

Upon approval of an application, a local government may only impose conditions related to an operator's compliance with the standards authorized in subch. II of ATCP 51. Any conditions attached to a local approval must be described in the final written decision granting the approval.

Compliance Monitoring

This rule clarifies the options for a local government to monitor compliance, including verification that a new or modified waste storage facility is constructed according to specifications. In addition to inspections, the local government may require submission of a construction plan, drawings reflecting design changes made during construction, and documentation certifying that the facility was installed in accordance with technical standards.

Standards Incorporated by Reference

Pursuant to Wis. Stat. § 227.21, the Department intends to request permission from the Attorney General to incorporate the following standards by reference in this rule, without reproducing the complete standards in this rule:

- NRCS technical guide waste storage facility standard 313 (October, 2017R) NRCS technical guide composting facility standard 317 (January, 2017).
- NRCS technical guide waste facility closure standard 360 (May, 2018).
- NRCS technical guide anaerobic digester standard 366 (January, 2018).
- NRCS technical guide roofs and covers standard 367 (April, 2016).
- NRCS technical guide windbreak/shelterbelt establishment standard 380 (October, 2016).
- NRCS technical guide pond sealing or lining – compacted soil treatment 520 (October, 2017R)
- NRCS technical guide pond sealing or lining – geomembrane or geosynthetic clay liner 521 (October 2017R)
- NRCS technical guide pond sealing or lining – concrete 522 (October, 2017R)
- , NRCS technical guide nutrient management standard 590 (December, 2015).
- NRCS technical guide feed management standard 592 (October, 2017).
- NRCS technical guide waste treatment standard 629 (January, 2017).
- NRCS technical guide waste separation facility standard 632 (April, 2014).
- NRCS technical guide waste transfer standard 634 (January, 2014).
- NRCS technical guide vegetated treatment area standard 635 (September, 2016R).
- NRCS Wisconsin Conservation Planning Technical Note WI-1, “Nutrient Management” (February, 2016) and July 2016 Appendix 1

Copies of these standards may be obtained from NRCS, and will be on file with the Department and Legislative Reference Bureau. Copies are not reproduced in this rule.

Economic Impact

The rule will primarily impact new or expanding livestock operations that must receive local approvals (“permits”) under siting ordinances currently administered by 120 local governments (mostly towns). Based on the issuance of 150 permits during the first 11 years of ATCP 51 implementation, the Department anticipates that 150 livestock facilities, many of which qualify as “small businesses,” will need first-time permits or permit renewals over the next 10 years. Among this group, the most significantly impacted will be approximately 55 operations that average 800 animal units in size, but are too small to be regulated as Concentrated Animal Feeding Operations (“CAFOs”) under DNR WPDES permits.

This rule will have no more than a moderate impact on farmers, including “small businesses.” To a limited extent, increased costs for non-CAFOs will be offset by the benefits from changes to the proposed rule, including permit modifications and protections against unfair use of completeness determinations. The rule will have a slight but positive impact on businesses that work with livestock operations, including nutrient management planners, farm supply and

service businesses, soil testing laboratories, agricultural engineers, and contractors installing farm conservation practices.

Environmental Impact

The environmental effects of this rule are positive but small in scope given the limited number of livestock operations affected. This rule retains the features of original version of ATCP 51, including a local option to adopt more stringent standards to address local conditions. In addition, it includes new and modified standards, including the most current technical standards developed by NRCS, designed to better protect water quality and prevent soil loss. These updates, along with other changes, will:

- Implement new NRCS technical standards for manure storage and application that will better protect surface and groundwater.
- Incorporate cropland performance standards related to the phosphorous index and the tillage setback incorporated into NR 151 and ATCP 50.
- Require more effective evaluations of storage facilities to allow for their continued use.
- Require closure of manure storage facilities that cannot be safely operated incorporated into NR 151 and ATCP 50.
- More effectively control process wastewater discharges from feed storage structures consistent with the latest NRCS technical standards.
- More effectively control runoff from animal lots consistent with the latest NRCS technical standards.

The change in odor standard will simplify the management of odor without a measurable change in the level of odor protection. It will continue to support the use of odor control practices by farms. Odor management plans will offer a new feature to address verified complaints about odor problems. It is likely that increases in setbacks may reduce some nuisance impacts related to light, noise, and dust from certain livestock structures.

Federal and Surrounding State Programs

Federal Programs

Nearly half of livestock operations affected by this rule are also subject to regulation under the federal Clean Water Act. Under delegated authority from EPA, the DNR adopted Wis. Admin. Code ch. NR 243 (“NR 243”), to regulate water pollution discharges from livestock facilities. Under NR 243, CAFOs must obtain a DNR WPDES permit. CAFOs must meet standards designed to ensure that the proposed livestock facility will not pollute surface water or groundwater, and may use approvals from DNR to show compliance with Department standards for the issuance of local siting permits, including standards for nutrient management, waste storage facilities, and runoff management (the standards parallel WPDES permit standards, and have a similar purpose, although WPDES standards are stricter in some respects). To qualify for a siting permit, a WPDES permit holder must also demonstrate compliance with Department standards for location of livestock structures on property and odor management, which are not covered by a WPDES permit.

NRCS, a branch of the United States Department of Agriculture (“USDA”), develops technical standards for the design and installation of conservation practices, including the NRCS 590 standard for nutrient management. Modified for use in Wisconsin, these technical standards are the foundation for NRCS programs such as the Environmental Quality Incentives Program (“EQIP”) and the Conservation Stewardship Program (“CSP”). To promote consistency, state and local governments have incorporated the same technical standards into cost-share, regulatory and other programs. Not only are these technical standards part of ATCP 51, they are critical to the nonpoint rules (ATCP 50 and NR 151) and DNR's WPDES permitting program for CAFOs.

In addition to EQIP and CSP, USDA operates the following programs that may provide incentive payments to help livestock producers implement conservation practices, including practices that may help livestock producers meet livestock facility siting standards under this rule:

- Conservation Reserve Program (“CRP”).
- Conservation Reserve Enhancement Program (“CREP”).
- Agricultural Conservation Easement Program (“ACEP”).

Federal law establishes reporting and other requirements for livestock facilities related to air emissions. For example, large operations must report certain types of releases to local and state agencies, as directed by the Emergency Planning and Community Right-to-Know Act. EPA also has authority to respond to citizen complaints or requests for assistance from state or local government agencies to investigate releases of hazardous substances from farms. Federal law does not directly cover odor management on livestock facilities.

Surrounding State Programs

Like Wisconsin, the four surrounding states each have state requirements for new and expanding livestock operations related to facility construction, runoff control, and manure management. Except for Minnesota, these states have enacted laws that pre-empt or standardize local regulation of livestock facilities with the goal of providing a more uniform and predictable regulatory environment for farm businesses.

Illinois

In 1996, Illinois enacted a Livestock Management Facilities Act (“LMFA”) to create a state framework for regulation of livestock facilities. LMFA, which was updated in 1998, 1999, and 2007, was expressly adopted to provide a framework for the livestock industry to expand while establishing environmental and other safeguards. While Illinois law precludes counties from regulating agricultural uses such as livestock facilities, it allows a county to request a public informational meeting about a proposed livestock facility and submit advisory, non-binding recommendations related to the facility’s compatibility with surrounding land uses, odor control, traffic patterns, and other factors. Depending on their size and other factors, livestock facilities may be subject to state requirements for waste storage design, setback distances, odor control for certain structures, certification of livestock managers, waste management plans, and reporting of released wastes. Required setback distances for new facilities are scaled by size, starting at 1,320 feet for facilities under 1000 AUs.

Iowa

In 2002, Iowa enacted legislation requiring that proposed confined feeding operations meet state standards related to building setbacks, manure storage construction, manure management plans, and air quality (air quality standards are still being developed). In place of local permitting of livestock facilities, Iowa counties have the option of requiring that producers achieve a passing score on the state-approved “Master Matrix,” an assessment tool that identifies practices designed to minimize to air, water, and community impacts. State standards for new and expanding facilities include different construction requirements for formed and unformed waste storage structures, and requirements involving manure application related to annual plan updates and phosphorus management. The size of the operation, and type of construction (new or expansion) determine applicable standards such as setbacks, which range from 750 to 3,000 feet.

Michigan

In 1999, Michigan provided “right to farm” protections for farmers who meet “generally accepted agricultural management practices” (“GAAMPS”). The Right to Farm Act (“RFTA”) prevents local governments from adopting ordinances that prohibit farming protected under state law, and protects farmers who comply with GAAMPS against nuisance actions. While other GAAMPs may apply to livestock operations, new and expanding livestock facilities must follow GAAMPs for site selection and odor control, and develop plans that comply with these standards. Most farms need to receive state verification of GAAMP compliance to maintain RFTA protections and avoid other state actions. Site planning includes meeting setback requirements and evaluation of odor management practices. Setbacks can range from 125 to 1,500 feet, depending on the facility size, type of construction (e.g. new or expansion) and type of neighbors, and may be reduced if odor management practices are employed. Odor management plans also may be required. Operations must have a plan to properly manage and utilize manure, and design storage facilities according to technical standards. Producers must also prepare emergency action and other plans. Michigan maintains a compliance system to verify and correct problems to ensure that farms remain in compliance with GAAMPs.

Minnesota

The Minnesota Pollution Control Agency administers rules regulating livestock feedlots, and may delegate authority to counties to administer this program. State feedlot standards cover liquid manure storage systems, water quality setbacks, expansion limitations, and air emissions. Operation and maintenance standards cover discharges from feedlots and feed storage, and land application of manure. The extent of a livestock facility’s obligations depends on its size, and other factors such as pollution risks.

In addition, Minnesota is among the states that still allow local permitting of livestock facilities using conditional use permits. Permits issued under local ordinances may impose requirements related to facility size including size caps, minimum acreage requirements, setbacks from neighboring land uses, and odor management. According to a *2007 Summary of Animal-Related Ordinances*, 32 county zoning ordinances used simple setback standards, while 22 used a sliding scale. The most common setback from single family residences was ¼ mile, while ½ mile was the common setback for more dense land uses such as schools. Twelve counties addressed odor using the Odor From Feedlots Setback Estimation Tool (“OFFSET”), which estimates odor

impacts based on livestock type, facility size and type, separation distances, and odor control practices. These counties either incorporated OFFSET into their ordinances or use OFFSET as part of their planning process to predict odor to help determine separation distances. The survey showed that 20 counties limited the number of animals housed in a feedlot, setting caps between 1,500 to 5,000 AUs. Minnesota has enacted legislation requiring reciprocal setbacks of non-farm land uses whenever a local jurisdiction requires livestock facility setbacks. Wisconsin has no comparable requirement. Reciprocal setbacks are designed to protect livestock facilities, once approved, against encroaching development.

Data and Analytical Methodologies

This rule incorporates and is consistent with performance and conservation practice standards developed as part of recent revisions to ATCP 50 and NR 151. In addition, this rule follows the practice of the nonpoint rules by referencing the most current technical standards developed by NRCS for installation of conservation practices, including the incorporation of the 2015 standard for nutrient management planning. In developing technical and other standards, the responsible government agencies have followed similar methodologies to ensure the use of the best available science, address feasibility considerations, and secure input for stakeholders. For example, the most recent nutrient management standard incorporated into ATCP 50 underwent a rigorous process of development spearheaded by NRCS with technical assistance from agronomists, farmers, UW scientists, and agency staff. The NRCS technical standards for manure storage and runoff management that are incorporated into this rule, underwent the same rigorous and balanced process as part of their development. As with the original 2006 version of ATCP 51, this rule revision relies on OFFSET in developing the framework for managing odors and establishing setbacks. As mandated under Wis. Stat. § 93.90(2)(d), the Department received advice on two occasions from a technical expert committee for improvement of the standards in the siting rule. Their first recommendations were incorporated in this draft rule, and their second recommendations were used to make modifications in the draft rule. While the experts approached their assignment from a scientific perspective, their recommendations considered economic and other factors listed in Wis. Stat. § 93.90 (2) (b) relevant to the development of siting standards. The Department also received stakeholder feedback on the draft rule in listening sessions conducted in the fall of 2017.

Next Steps

If the Board authorizes public hearings on this rule, the Department will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the Wisconsin Administrative Register. Between August 1 and August 31, 2019, the Department plans to hold four public hearings with sessions in the following locations: Eau Claire, Wausau, Oshkosh, Madison. Rule comments will be accepted up to two weeks after the last public hearing is held on the rule.

**PROPOSED ORDER
OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

The Wisconsin Department of Agriculture, Trade and Consumer Protection proposes the following permanent rule ***to repeal*** ATCP 51.01 (2) and (Note), ATCP 51.01 (11) (Note), ATCP 51.01 (13) (Note), ATCP 51.01 (16), ATCP 51.01 (26) (Note), ATCP 51.12 (6) (Note), ATCP 51.30 (3) (Note), and ATCP 51.34 (3) (a) (Note) ***to renumber*** ATCP 51.06 (2) (intro.), (a) and (b), ***to amend*** ch. ATCP 51 (intro.) (Note), ATCP 51.01 (5) (Note), ATCP 51.01 (7), ATCP 51.01 (19), ATCP 51.01 (21)(intro.), ATCP 51.01 (23), ATCP 51.01 (24), ATCP 51.01 (29), ATCP 51.01 (33), ATCP 51.01 (36) (b) and (c), ATCP 51.01 (42), ATCP 51.01 (43), ATCP 51.01 (44), ATCP 50.02 (b) (Note), ATCP 51.04 (Note), ATCP 51.08 (1) (b) (Note), ATCP 51.10 (1) ATCP 51.10 (3) (d) (Note), ATCP 51.10 (4), ATCP 51.30 (5), ATCP 51.34 (3) (a), ATCP 51.34 (4) (intro.), ATCP 51.34 (4) (b) 2., and ATCP 51.34 (5) (a) 2. and 3.; ***to repeal and recreate*** ATCP 51.01 (39), ATCP 51.08 (2), ATCP 51.10 (2) and (Note), ATCP 51.12 (1) and (2), ATCP 51.14, ATCP 51.16, ATCP 51.18, ATCP 51.20, ATCP 51.30 (4) and (Note), ATCP 51.34 (4) (a), ATCP 51.34 (5) (b) and (c), Chapter ATCP 51, Appendix A, Application Form and Worksheets, Chapter ATCP 51, Appendix B, Request for Modification of a Local Approval, and Chapter ATCP 51, Appendix C, Notice To Adjacent Property Owners; ***and to create*** ATCP 51.01 (19m) and (Note), ATCP 51.01 (23m), ATCP 51.01 (33m), ATCP 51.01 (38m), ATCP 51.01 (44m), ATCP 51.06 (b), ATCP 51.10 (4) (Note), ATCP 51.12 (2m) (a) and (b) and (Note), ATCP 51.30 (1) (Note), ATCP 51.30 (4m), ATCP 51.34 (4m), and ATCP 51.34 (5) (a) 3. (Note), ***relating to*** livestock facility siting and affecting small business.

**Analysis Prepared by the Department of
Agriculture, Trade and Consumer Protection**

First adopted in May 2006, Wis. Admin. Code ch. ATCP 51 (“ATCP 51”) established the statewide framework of standards and procedures required to implement Wisconsin’s livestock facility siting law, Wis. Stat. § 93.90. The requirements only apply to livestock operators located in jurisdictions that have adopted ordinances requiring permits for new or expanding livestock facilities that exceed a certain size (commonly 500 animal units).

The Department of Agriculture, Trade and Consumer Protection (“Department”) is required to review Wis. Admin. Code Ch. ATCP 51 every four years in accordance with Wis. Stat. § 93.90(2)(c). To this end, the Department convened a Technical Expert Committee (“TEC”) that provided recommendations regarding changes to ATCP 51.

The proposed rule is intended to ensure consistency among related rules (Wis. Admin. Code chs. NR 151 and ATCP 50, respectively referred to as “NR 151” and “ATCP 50”), which were revised to implement a new nutrient management technical standard and additional farm runoff standards designed to better control discharges of process wastewater, and meet phosphorus index targets for nutrient management. The ATCP 51 revision also addresses issues arising out of the mandatory four year review of this rule. The proposed revision retains the essential regulatory framework, including the core water quality standards. Improvements in standards are intended to advance the statutory goal of “providing uniform regulation of livestock facilities” and better balance the factors listed in Wis. Stat. § 93.90(2)(b), which the Department must use to establish state standards. The rule revisions reflect the recommendations of the TEC, which originally conducted its review in 2014 and then was reconvened in 2018 to provide input regarding the draft rule.

Statutes Interpreted

Statutes interpreted: Wis. Stats. §§ 92.05(3)(c) and (k), 93.90 and 281.16(3)(b).

Statutory Authority

Statutory authority: Wis. Stats. §§ 93.07(1), 92.05(3)(c) and (k), 92.14(8), 93.90(2) and 281.16(3)(b).

Explanation of Agency Authority

The Department has general authority to adopt rules interpreting statutes under its jurisdiction (*see* Wis. Stat. § 93.07(1)). The Department is specifically authorized to adopt farm conservation standards (*see* Wis. Stats. §§ 92.05(3)(k) and 281.16(3)(b)). Under Wis. Stat. § 93.90, the Department must do all of the following by rule:

- Develop and update water quality, odor, setback, and other standards for new or expanding livestock facilities that require a permit or other local approval. The standards may incorporate, and may not conflict with, current statutes and rules regulating livestock operations including the performance standards, conservation practices, and technical standards that apply under nonpoint source pollution programs.

- Review ATCP 51 standards and other requirements at least every four years, in consultation with a committee of experts.
- Evaluate whether existing or proposed standards are: (1) protective of public health or safety; (2) practical and workable; (3) cost-effective; (4) objective; (5) based on scientific information; (6) designed to promote the growth and viability of animal agriculture; (7) designed to balance the economic viability of farm operations with natural resource protection and other community interests; and (8) usable by local officials.
- Develop and update application materials and other submissions that livestock operators must provide when applying for local approval, to show that a new or expanding livestock facility will comply with the standards adopted by the Department.
- Specify the information that a local government must include in its decision making record. A local decision must include findings of fact, and must be based on information in the record. This record will be important if an aggrieved party appeals the local government's decision.

Related Statutes and Rules

This rule is related to Wis. Stats. §§ 92.05 (3) (c) and (k), 92.14 (8), 92.15, 92.16, 281.16 (3), and ch. 283, and rules promulgated under these statutes including the nonpoint source pollution control rules, ATCP 50 and NR 151 (collectively referred to as the “nonpoint rules”).

Plain Language Analysis

General Background

This rule:

- Updates the water quality standards, including related Natural Resources Conservation Service (“NRCS”) technical standards, to ensure consistency with provisions in NR 151 and ATCP 50, including incorporation of the 2017 NRCS standard for waste storage structures, 2015 NRCS standard for nutrient management, the 2017 NRCS standard for waste treatment, and the 2016 NRCS standard for vegetated treatment areas.
- Modifies standards (subch. II of ATCP 51) consistent with the requirements in Wis. Stat. § 93.90(2), based on the technical recommendations of the 2014 and 2018 Technical Expert Committees and stakeholder input. Key changes include modifications to setback and odor standards.
- Modifies the procedures (subchs. I and III of ATCP 51) that local governments must follow in issuing a siting permit under a zoning or licensing ordinance including those used to determine completeness of siting applications, modifications to siting permits, the use of checklists to monitor facility compliance, and the fees local governments charge for permit modifications.
- Modifies local permit application forms and worksheets to reflect changes in requirements and to ensure that they are clear, complete, and elicit information that documents compliance with applicable siting standards.
- Makes other changes, clarifications and updates as necessary to improve implementation of the siting rule, consistent with the requirements in Wis. Stat. § 93.90(2).

Contents of this Rule

The following is an analysis of the rule by topics.

Livestock Facilities, Structures, and other Definitions

This rule clarifies that a livestock facility includes the livestock, livestock structures, and parcels on land upon which livestock facility is located, except for pastures and winter grazing areas. Storage structures designed exclusively for process wastewater are excluded from the setback requirements that apply to manure storage structures.

This rule makes changes to definitions related to the prior odor standard, including elimination of the definition for affected neighbor and high use building, and modifications to the definition for waste storage structure to exclude solid manure from setback and odor requirements.

The definition of related facilities is expanded to cover process wastewater storage and transfer using or sharing the same structures, or same field for land application.

To achieve consistency with the nonpoint rules (ATCP 50 and NR 151), this rule adds or adjusts definitions of key terms such as manure, pasture, process wastewater, significant discharge, and waste transfer system.

Ordinances and Permits Filed with the Department

This rule will require local governments to electronically submit new or revised ordinances or permits to the Department whenever it incorporates standards from this rule in a local ordinance, enacts more stringent local ordinance standards, or takes official action on a permit application.

Duration of Local Approval

A livestock operator must begin constructing all new or expanded livestock housing or waste storage structures within two years after the local approval is granted, except where the construction of a proposed structure is required to control a discharge, in which the construction must be completed within six months of a permit approval.

Application for Local Approval

To obtain local approval, an operator must complete the *application form* and *worksheets* that are made part of this rule. The application materials have been modified to incorporate the changes described in this rule summary.

Key changes to the application materials include:

- On the site map, the applicant must assign unique identifiers to show all existing and proposed livestock structures, and use these unique identifiers when referencing livestock structures in the application worksheets.

- Odor Management Plans will be retooled and the application will contain new criteria for developing acceptable plans.
- The applicant’s acknowledgement of other laws will be removed from the application.
- Odor management standard (worksheet 2) will be modified to reflect the new system for managing odor.
- Waste and nutrient management (worksheet 3) will change to reflect the method for estimating the amount of manure generated from a facility to better correspond with nutrient management planning, add cropland performance standards, and eliminate the nutrient management planning exemption for operations under 500 Animal Units (“AUs”).
- Waste storage facilities (worksheet 4) will change requirements regarding closure of manure storage structures.
- Runoff management (worksheet 5) will be revised to reflect changes in managing runoff related to animal lots, feed storage, and milking center wastewater.

State and Local Standards

This rule clarifies that a local government may not grant a variance to exempt a livestock facility from complying with the state standards, except that it may reduce setback requirements.

Local governments are provided the authority to impose additional manure spreading restrictions consistent with applicable performance standards and prohibitions in ch. NR 151 without making the public health and safety findings for adoption of more stringent local standards but cannot use this authority to adopt a targeted standard that does not apply to the geographic area under the political subdivision’s jurisdiction.

Property Line and Road Setbacks

Except for manure storage and certain types of housing, this rule retains property line and road setback requirements for livestock structures for facilities under 2,500 animal units and increases the maximum property line and road setback to 300 feet for facilities with 2,500 animal units or more.

This rule:

- Establishes minimum property line setbacks for manure storage structures based on the size of the livestock facility.
- Establishes minimum property line setbacks for certain types of livestock housing based on the size of the livestock facility.

If a livestock facility is organized in one or more clusters (a grouping of livestock structures separated from another grouping by a 1,000 or more feet), the livestock facility may follow the setback requirements based on the AUs in each cluster. This option is not available if manure is comingled among clusters.

This rule retains provisions that allow limited expansion of manure storage and housing structures within setback areas, as long as the expansion is away from the property line or public

road right-of-way to which the local setback applies. In addition, as noted below, this rule allows operators to reduce setbacks for new or expanded manure storage and certain types of housing structures through the implementation of odor control practices.

Odor Management; Livestock Structures

This rule provides for the phase out of the odor standard, originally adopted in 2006. In its place, this rule adopts a system of setbacks for high odor sources (manure storage and certain types of housing). Under the new system, operators will not be required to address odor from low odor sources such as animal lots and freestall barns. With its emphasis on setbacks, the new system is similar to odor management approaches in surrounding states, and it uses most of the odor control practices originally developed for the 2006 odor standard.

For livestock operations issued a permit prior to the effective date of this rule revision, they must continue to meet the requirements of the odor standard in their permits. When they are granted a new local approval, they are released from these requirements unless they have manure storage located within 600 feet of the facility's property line or livestock housing located within 400 feet of the facility's property line. In this case, they need to develop an odor management plan for these structures, and the plan should incorporate odor control practices which the operator agreed to implement as part of a local approval granted before the effective date of the rule change unless the operator provides a financial or other justification for discontinuation of the practice. Livestock facilities seeking local approval for the first time after adoption of this rule revision will not need to complete an odor management plan for existing manure storage and livestock housing, unless these structures are located within the separation distances discussed above.

For new or expanded manure storage structures and certain types of livestock housing, the new odor standard requires that operators meet setback distances determined using OFFSET. Livestock operators may earn credit for odor control practices in the form of reductions to setback requirements, allowing construction within the setback areas. The rule no longer supports certain low credit odor control practices that are not reliable, difficult to document or have uncertain effectiveness including diet manipulation, windbreaks (includes manmade berms), and chemical or biological additives. Worksheet 2 has been modified to enable operators to document odor control practices and calculate the reduced setbacks based on installation and maintenance of these practices. Worksheet 2 includes revised specifications for the odor control practices that the operator must meet to claim a credit.

Waste and Nutrient Management

To achieve maximum consistency with nonpoint rules, this rule requires operators to have and follow a nutrient management plan that complies with ATCP 50. The 2015 NRCS 590 Standard is now the basis for nutrient management plans. In addition, this rule adds requirements that livestock operators comply with NR 151 cropland performance standards related to soil erosion, a tillage setback, and the phosphorus index.

Regarding nutrient management plans, this rule clarifies that a plan must account for all land applications of manure and related waste generated by the maximum number of animal units

authorized by a permit or other local approval. For the purposes of determining waste generation, this rule and related Worksheet 3 now use the Wisconsin Conservation Planning Technical Note WI-1 (February, 2016) to estimate quantities of manure.

Worksheet 3 will require that operators attach map(s) showing the land where waste will be applied and any restrictions limiting the application of waste to that land. Additional documentation may be required by the local government to verify that rental land is available.

A new nutrient management checklist is incorporated to document compliance with the 2015 NRCS 590 Standard.

This rule eliminates the option for livestock facilities under 500 AUs to avoid a nutrient management plan if the operation has an adequate land base.

This rule clarifies that local governments may require all operators with siting permits (including livestock facilities with over 1,000 AUs known as Concentrated Animal Feeding Operations “CAFOs”) to submit documentation related to annual nutrient management updates, and monitor an operator’s compliance with a nutrient management plan. Under Wis. Admin. Code § ATCP 50.04(3)(gm), a nutrient management plan must be reviewed annually to determine whether the plan accurately reflects the planned cropping, tolerable soil loss, nutrient application rates, and application methods, and shall be updated by a nutrient management planner when necessary to reflect changes to planned activities.

Waste Storage Facilities

This rule clarifies that new or expanded waste storage structures, designed solely for storage of process wastewater, must meet NRCS technical guide waste storage facility standard 313 or ch. NR 213, whichever applies.

Changes to the waste storage facility Worksheet 4 require the operator to identify all existing, modified, and new storage facilities by a unique identifier.

For existing storage facilities, which can only be used if properly certified, this rule makes changes in how evaluations must be conducted. It provides more flexibility for certification by creating a document-only option (e.g. manure storage ordinance certification) for a facility constructed within the last three years according to then-existing NRCS standards, and visual inspections for any facility constructed within the last ten years according to then-existing NRCS standards. However, more effective inspection and documentation requirements apply to older storage facilities, including the need to empty the facility before inspection. A full investigation of an emptied storage should verify that the bottom of structure corresponds with built plans, if any, or has adequate separation distance to groundwater. If there is no reliable documentation, a full inspection including test pits may be required, and a local government may request a written report documenting the methods used for evaluation and the findings in support of the conclusions reached in the evaluation. The rule also requires that the operator perform subsequent evaluations at certain intervals after an initial evaluation is conducted.

New or substantially altered waste storage structures and transfers systems must be designed and constructed according to the following standards:

- NRCS technical guide manure storage facility standard 313 (October, 2017R) and related liner standards. (NRCS 520, 521 and 522)
- NRCS technical guide manure transfer standard 634 (January, 2014).

This rule will require that an operator close an existing waste storage facility that cannot be certified as safe to use.

This rule clarifies the options for a local government to monitor compliance including verification that a new or modified waste storage facility is constructed according to specifications. In addition to inspections, the local government may require applicants to submit documentation verifying that new and substantially altered facilities are constructed according to technical standards.

Runoff Management

Every new or substantially altered animal lot must be designed and constructed according to NRCS technical guide vegetated treatment area standard 635 (January, 2016R). This standard may require operators to install roofing or route runoff to storage in place of using a vegetated treatment area.

Existing animal lots may still use the *BARNY* runoff model to predict annual phosphorus runoff from the animal lot. A lot may still qualify as existing with minor alterations, which are now more clearly defined in this rule. Under this rule, operations must meet the more demanding annual discharge standard of less than five lbs. of phosphorus, if the animal lot is located within:

- 1,500 feet from navigable lakes, ponds and flowages
- 450 feet from wetlands and navigable streams and rivers
- 750 feet from conduits to groundwater
- 450 feet from surface inlets that discharge to navigable waters
- 225 feet from channelized flow (i.e., a drainage area of ≥ 5 acres)
- 225 feet from subsurface drains

Structures located outside the boundaries indicated above may meet the runoff standard by documenting a discharge of less than 15 lbs. of phosphorus annually.

This rule clarifies the prohibition against direct runoff from animal lots to any direct conduit to groundwater (such as a sinkhole) and now includes runoff to surface waters of the state.

While this rule holds livestock operations to a standard of no significant discharge, it does make changes in runoff standards for animal lots, as well as feed storage areas, to account for the U.S. Environmental Protection Agency's "no discharge" standard for animal feeding operations, and changes in the NRCS technical standards designed to implement the federal "no discharge" standard.

This rule substantially changes requirements for feed storage facilities. Existing buildings, bunkers, or paved areas used to store feed must be evaluated to determine whether they meet technical standards, are in good repair and do not have signs of a significant discharge. A local government may request a written report documenting the methods used for evaluation and the findings in support of the conclusions reached in the evaluation. New operating requirements for existing feed storage include the diversion of clean water and collection and storage of leachate and initial runoff.

Every new or substantially altered feed storage structure, including any unroofed building, bunker or paved area used for feed storage or handling, now must be designed, constructed and maintained in accordance with NRCS technical guide waste treatment standard 629 (January, 2017), with the leachate and contaminated runoff from such storage structures being collected and stored for future land application, or treated in accordance with NRCS technical guide vegetated treatment area standard 635 (September, 2016R).

If a new or expanded feed storage structure is less than one acre and not located in or near a sensitive area, the new or altered portions of feed storage structure must meet design requirements for the floor of the structure, but may manage runoff in any manner that avoids a significant discharge.

To ensure consistency with the prohibition against significant discharges in the nonpoint rules (see Wis. Admin. Code § NR 151.055), this proposed rule reflects current standards and practices for managing milkhouse wastewater. Storing waste is required except for small operations that generate less than 500 gallons of milking center wastewater daily.

Existing clean water diversion requirements related to feed storage have been expanded to be consistent with NR 151, which requires diversion if structures are located within 300 feet of wetlands and 500 feet from any conduit to groundwater.

CAFO Permit Substitutions

This proposed rule more clearly defines how CAFOs can demonstrate compliance with siting standards based on a Wisconsin Pollutant Discharge Elimination System (WPDES) permit. Because the Department of Natural Resources (“DNR”) does not issue CAFO permits with a maximum number of animal units, this rule eliminates the requirement that CAFOs provide WPDES permits documenting the same number of animal units as sought for local approval under the siting rule. This rule still allows CAFOs to demonstrate compliance with the nutrient management requirements based on a WPDES permit, but imposes more specific requirements to submit a nutrient management checklist that was previously submitted to DNR as long as the nutrient management plan covers the same or greater number of animal units than the number for which the operator seeks local approval. CAFOs also must demonstrate compliance with the siting standards related to manure storage and runoff management by submitting plans and specifications approved by DNR for relevant livestock structures. Also, the applicant must certify that the livestock facility has met all WPDES permit conditions, and does not have any WPDES permit violations.

Permit Modifications

This rule establishes a clear framework to allow permit modifications for expanding livestock facilities previously granted local approval. This rule specifically:

- Limits the fee to \$500 or less.
- Sets criteria to qualify for a permit modification for livestock operators who plan either to (1) construct or alter one or more livestock structures without increasing the maximum number of animal units housed on the livestock operation or (2) increase the maximum number of animal units by up to 20 percent (but in no case increase more than 1000 animal units) without constructing or altering any livestock structures.
- Establishes a procedure for processing modifications that simplifies the steps (e.g. no written decision with findings) and reduces the waiting time to no more 45 days.

Complete Application

In making a completeness determination regarding an application for local approval, a local government will be required to use a Department-approved form to document specific items that are missing from the application. Items on the checklist not identified by the local government are deemed complete, and an applicant is only required to submit additional materials identified by the local government on the checklist to receive a completeness determination.

Terms of Approval

After a local government receives an application, the local government shall notify the applicant that prior to a final decision on the application construction activities at the livestock facility shall be limited to grading.

Upon approval of an application, a local government may only impose conditions related to an operator's compliance with the standards authorized in subch. II of ATCP 51. Any conditions attached to a local approval must be described in the final written decision granting the approval.

Compliance Monitoring

This rule clarifies the options for a local government to monitor compliance, including verification that a new or modified waste storage facility is constructed according to specifications. In addition to inspections, the local government may require submission of a construction plan, drawings reflecting design changes made during construction, and documentation certifying that the facility was installed in accordance with technical standards.

Standards Incorporated by Reference

Pursuant to Wis. Stat. § 227.21, the Department intends to request permission from the Attorney General to incorporate the following standards by reference in this rule, without reproducing the complete standards in this rule:

- NRCS technical guide waste storage facility standard 313 (October, 2017R) NRCS technical guide composting facility standard 317 (January, 2017).

- NRCS technical guide waste facility closure standard 360 (May, 2018).
- NRCS technical guide anaerobic digester standard 366 (January, 2018).
- NRCS technical guide roofs and covers standard 367 (April, 2016).
- NRCS technical guide windbreak/shelterbelt establishment standard 380 (October, 2016).
- NRCS technical guide pond sealing or lining – compacted soil treatment 520 (October, 2017R).
- NRCS technical guide pond sealing or lining – geomembrane or geosynthetic clay liner 521 (October, 2017R).
- NRCS technical guide pond sealing or lining – concrete 522 (October, 2017R).
- NRCS technical guide nutrient management standard 590 (December, 2015).
- NRCS technical guide feed management standard 592 (October, 2017).
- NRCS technical guide waste treatment standard 629 (January, 2017).
- NRCS technical guide waste separation facility standard 632 (April, 2014).
- NRCS technical guide waste transfer standard 634 (January, 2014).
- NRCS technical guide vegetated treatment area standard 635 (September, 2016R).
- NRCS Wisconsin Conservation Planning Technical Note WI-1, “Nutrient Management” (February, 2016) and July 2016 Appendix 1.

Copies of these standards may be obtained from NRCS, and will be on file with the Department and Legislative Reference Bureau. Copies are not reproduced in this rule.

Summary of, and Comparison with, Existing or Proposed Federal statutes and Regulations

Nearly half of livestock operations affected by this rule are also subject to regulation under the federal Clean Water Act. Under delegated authority from EPA, the DNR adopted Wis. Admin. Code ch. NR 243 (“NR 243”) to regulate water pollution discharges from livestock facilities. Under NR 243, CAFOs must obtain a DNR WPDES permit. CAFOs must meet standards designed to ensure that the proposed livestock facility will not pollute surface water or groundwater, and may use approvals from DNR to show compliance with Department standards for the issuance of local siting permits, including standards for nutrient management, waste storage facilities, and runoff management (the standards parallel WPDES permit standards, and have a similar purpose, although WPDES standards are stricter in some respects). To qualify for a siting permit, a WPDES permit holder must also demonstrate compliance with Department standards for location of livestock structures on property and odor management, which are not covered by a WPDES permit.

NRCS, a branch of the United States Department of Agriculture (“USDA”), develops technical standards for the design and installation of conservation practices, including the NRCS 590 standard for nutrient management. Modified for use in Wisconsin, these technical standards are the foundation for NRCS programs such as the Environmental Quality Incentives Program (“EQIP”) and the Conservation Stewardship Program (“CSP”). To promote consistency, state and local governments have incorporated the same technical standards into cost-share, regulatory and other programs. Not only are these technical standards part of ATCP 51, they are critical to the nonpoint rules (ATCP 50 and NR 151) and DNR's WPDES permitting program for CAFOs.

In addition to EQIP and CSP, USDA operates the following programs that may provide incentive payments to help livestock producers implement conservation practices, including practices that may help livestock producers meet livestock facility siting standards under this rule:

- Conservation Reserve Program (CRP).
- Conservation Reserve Enhancement Program (CREP).
- Agricultural Conservation Easement Program (ACEP).

Federal law establishes reporting and other requirements for livestock facilities related to air emissions. For example, large operations must report certain types of releases to local and state agencies, as directed by the Emergency Planning and Community Right-to-Know Act. EPA also has authority to respond to citizen complaints or requests for assistance from state or local government agencies to investigate releases of hazardous substances from farms. Federal law does not directly cover odor management on livestock facilities.

Comparison with Rules in Adjacent States

Like Wisconsin, the four surrounding states each have state requirements for new and expanding livestock operations related to facility construction, runoff control, and manure management. Except for Minnesota, these states have enacted laws that preempt or standardize local regulation of livestock facilities with the goal of providing a more uniform and predictable regulatory environment for farm businesses.

Illinois

In 1996, Illinois enacted a Livestock Management Facilities Act (“LMFA”) to create a state framework for regulation of livestock facilities. LMFA, which was updated in 1998, 1999, and 2007, was expressly adopted to provide a framework for the livestock industry to expand while establishing environmental and other safeguards. While Illinois law precludes counties from regulating agricultural uses such as livestock facilities, it allows a county to request a public informational meeting about a proposed livestock facility and submit advisory, non-binding recommendations related to the facility’s compatibility with surrounding land uses, odor control, traffic patterns, and other factors. Depending on their size and other factors, livestock facilities may be subject to state requirements for waste storage design, setback distances, odor control for certain structures, certification of livestock managers, waste management plans, and reporting of released wastes. Required setback distances for new facilities are scaled by size, starting at 1,320 feet for facilities under 1,000 AUs.

Iowa

In 2002, Iowa enacted legislation requiring that proposed confined feeding operations meet state standards related to building setbacks, manure storage construction, manure management plans, and air quality (air quality standards are still being developed). In place of local permitting of livestock facilities, Iowa counties have the option of requiring that producers achieve a passing score on the state-approved “Master Matrix,” an assessment tool that identifies practices designed to minimize to air, water, and community impacts. State standards for new and expanding facilities include different construction requirements for formed and unformed waste storage structures, and requirements involving manure application related to annual plan updates

and phosphorus management. The size of the operation, and type of construction (new or expansion) determine applicable standards such as setbacks, which range from 750 to 3,000 feet.

Michigan

In 1999, Michigan provided “right to farm” protections for farmers who meet “generally accepted agricultural management practices” (“GAAMPS”). The Right to Farm Act (“RFTA”) prevents local governments from adopting ordinances that prohibit farming protected under state law, and protects farmers who comply with GAAMPS against nuisance actions. While other GAAMPS may apply to livestock operations, new and expanding livestock facilities must follow GAAMPS for site selection and odor control, and develop plans that comply with these standards. Most farms need to receive state verification of GAAMP compliance to maintain RFTA protections and avoid other state actions. Site planning includes meeting setback requirements and evaluation of odor management practices. Setbacks can range from 125 to 1,500 feet, depending on the facility size, type of construction (e.g. new or expansion) and type of neighbors, and may be reduced if odor management practices are employed. Odor management plans also may be required. Operations must have a plan to properly manage and utilize manure, and design storage facilities according to technical standards. Producers must also prepare emergency action and other plans. Michigan maintains a compliance system to verify and correct problems to ensure that farms remain in compliance with GAAMPS.

Minnesota

The Minnesota Pollution Control Agency administers rules regulating livestock feedlots, and may delegate authority to counties to administer this program. State feedlot standards cover liquid manure storage systems, water quality setbacks, expansion limitations, and air emissions. Operation and maintenance standards cover discharges from feedlots and feed storage, and land application of manure. The extent of a livestock facility’s obligations depends on its size, and other factors such as pollution risks.

In addition, Minnesota is among the states that still allow local permitting of livestock facilities using conditional use permits. Permits issued under local ordinances may impose requirements related to facility size including size caps, minimum acreage requirements, setbacks from neighboring land uses, and odor management. According to the *2007 Summary of Animal-Related Ordinances*, 32 county zoning ordinances used simple setback standards, while 22 used a sliding scale. The most common setback from single family residences was ¼ mile, while ½ mile was the common setback for more dense land uses such as schools. Twelve counties addressed odor using the Odor From Feedlots Setback Estimation Tool (“OFFSET”), which estimates odor impacts based on livestock type, facility size and type, separation distances, and odor control practices. These counties either incorporated OFFSET into their ordinances or used OFFSET as part of their planning process to predict odor to help determine separation distances. The survey showed that 20 counties limited the number of animals housed in a feedlot, setting caps between 1,500 to 5,000 AUs. Minnesota has enacted legislation requiring reciprocal setbacks of non-farm land uses whenever a local jurisdiction requires livestock facility setbacks. Wisconsin has no comparable requirement. Reciprocal setbacks are designed to protect livestock facilities, once approved, against encroaching development.

Summary of Factual Data and Analytical Methodologies

This rule incorporates and is consistent with performance and conservation practice standards developed as part of recent revisions to ATCP 50 and NR 151. In addition, this rule follows the practice of the nonpoint rules by referencing the most current technical standards developed by NRCS for installation of conservation practices including the incorporation of the 2015 standard for nutrient management planning. In developing technical and other standards, the responsible government agencies have followed similar methodologies to ensure the use of the best available science, address feasibility considerations, and secure input for stakeholders. For example, the most recent nutrient management standard incorporated into ATCP 50 underwent a rigorous process of development spearheaded by NRCS with technical assistance from agronomists, farmers, UW scientists, and agency staff. The NRCS technical standards for managing runoff from animal lots and feed storage, which are incorporated into this rule, underwent the same rigorous and balanced process as part of their development. As with the original 2006 version of ATCP 51, this rule revision relies on OFFSET in developing the framework for managing odors and establishing setbacks. As mandated under Wis. Stat. § 93.90(2)(d), the Department received advice from a technical expert committee (“TEC”) for improvement of the standards in the siting rule in 2015 and 2019. While the experts approached their assignment from a scientific perspective, their recommendations considered economic and other factors listed in Wis. Stat. § 93.90 (2) (b) relevant to the development of siting standards. The proposed rule reflects the TEC recommendations including the endorsement of key changes to control odor with setbacks and management plans, options for managing runoff from new or expanded feed storage, and improvements to the manner in which the draft rule addresses evaluations of existing manure storage structures.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

In preparing its analysis and supporting documentation, the Department consulted with stakeholders, considered the 2015 and 2019 final reports of the TEC, and estimated costs using a methodology similar to the one used when ATCP 51 was originally adopted in 2006.

Effects on Small Business

The proposed rule changes will have a very limited impact on farms statewide, affecting less than one percent of livestock operations in the state. Based on past trends in the livestock industry and local permitting activity, which may not be predictive of future activity, it is estimated that in the next ten years the revised rule will impact no more than 150 new or expanding livestock facilities statewide that are issued local permits for the first time or are reissued permits [100 new permits (10 per year) plus 70 permit reissuances (7 per year) minus 20 that will seek more than one permit reissuance]. Since this rule change is anticipated to have virtually no impacts on 85 new and expanding livestock facilities that are CAFOs, and are required by their DNR permits to meet the higher water quality standards in the revised siting rule, its impact will be most significant for approximately 55 non-CAFOs. It is estimated that the affected livestock operations, nearly all of which are small businesses, will incur an additional \$1.05 to \$1.16 million in annual costs to comply with the changes in this rule revision over a 10 year period.

This rule will have a small, but positive impact on businesses other than livestock operators. Those businesses, many of which are small businesses, include nutrient management planners, soil testing laboratories, farm supply organizations, agricultural engineering practitioners, and contractors installing farm conservation practices.

The Initial Regulatory Flexibility Analysis, which accompanies this rule, provides a more complete analysis of the issue, including a detailed breakdown of increased costs for livestock operators.

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Place Where Comments Are To Be Submitted and Deadline for Submission

Questions and comments related to this rule may be directed to:

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Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this draft rule is approved by the Board of Agriculture, Trade and Consumer Protection.

**CHAPTER ATCP 51
LIVESTOCK FACILITY SITING**

- 1 **SECTION 1.** Ch. ATCP 51 (intro.) (Note) is amended to read:
- 2 This chapter is adopted under authority of ss. 93.07 (1) and 93.90 (2), Stats. This chapter
- 3 interprets Wisconsin’s livestock facility siting law, s. 93.90, Stats., which is an enactment of
- 4 statewide concern for the purpose of providing uniform regulation of livestock facilities.

1 According to the livestock facility siting law, a county, town, city or village (“political
2 subdivision”) may not prohibit or disapprove a new or expanded livestock facility of any size
3 unless one of the following applies:

4 The site is located in a zoning district that is not an agricultural zoning district.

5 The site is located in an agricultural zoning district where the livestock facility is
6 prohibited. A prohibition, if any, must be clearly justified on the basis of public health or safety.

7 The livestock facility siting law limits exclusionary zoning based solely on livestock facility size.

8 The proposed livestock facility violates a valid local ordinance adopted under certain
9 state laws related to shoreland zoning, floodplain zoning, construction site erosion control or
10 stormwater management.

11 The proposed livestock facility violates a local building, electrical or plumbing code that
12 is consistent with the state building, electrical or plumbing code for that type of facility.

13 The proposed livestock facility will have 500 or more “animal units” (or will exceed a
14 lower permit threshold incorporated in a local *zoning* ordinance prior to July 19, 2003), and the
15 proposed facility violates one of the following:

- 16 • A state livestock facility siting standard adopted by the department under this
17 chapter.
- 18 • A more stringent local ordinance standard enacted prior to the siting application. The more
19 stringent local standard must be based on reasonable and scientifically defensible findings of
20 fact, adopted by the local jurisdiction, which clearly show that the standard is necessary to
21 protect public health or safety.

22 Some, but not all, political subdivisions require local approval of new or expanded

1 livestock facilities. The livestock facility siting law *does not require* local approval. But *if* local
2 approval is required, the political subdivision must grant or deny approval based on this chapter.
3 A political subdivision may not consider other siting criteria, or apply standards that differ from
4 this chapter, except as provided in the livestock facility siting law or this chapter.

5 The department must review the livestock facility siting standards under this chapter
6 at least once every 4 years (see s. 93.90 (2) (c), Stats.). ~~The department will review the standards~~
7 ~~at least annually during the first 4 years of rule implementation. The department will track local~~
8 ~~siting applications and decisions (see s. ATCP 51.34 (5)), and will review that information at~~
9 ~~least monthly during the first year of rule implementation.~~

10 The livestock facility siting law includes the following statements of legislative
11 intent:

12 ~~“This [law] is an enactment of statewide concern for the purpose of providing~~
13 ~~uniform regulation of livestock facilities.”~~

14 ~~“...[T]he department shall consider whether [livestock facility siting standards]~~
15 ~~are all of the following:~~

- 16 • ~~Protective of public health or safety.~~
- 17 • ~~Practical and workable.~~
- 18 • ~~Cost-effective.~~
- 19 • ~~Objective.~~
- 20 • ~~Based on available scientific evidence that has been subjected to peer review.~~
- 21 • ~~Designed to promote the growth and viability of animal agriculture in this state.~~
- 22 • ~~Designed to balance the economic viability of farm operations with protecting natural~~
23 ~~resources and other community interests.~~

1 • ~~Usable by officials of political subdivisions.”~~

2 **SECTION 2.** ATCP 51.01 (2) and (Note) is repealed.

3 **SECTION 3.** ATCP 51.01 (5) (Note) is amended to read:

4 The BARNY model is a commonly used computer model that predicts nutrient runoff
5 from animal lots. ~~Copies of the BARNY model are on file with the department, the secretary of~~
6 ~~state and the legislative reference bureau.~~ An Excel computer spreadsheet version is available at
7 www.datep.state.wi.us-livestocksiting.wi.gov

8 **SECTION 4.** ATCP 51.01 (7) is amended to read:

9 “~~Certified agricultural engineering~~ conservation engineering practitioner” means a
10 ~~agricultural engineering~~ person who is certified as a conservation engineering practitioner ~~who is~~
11 ~~certified~~ under s. ATCP 50.46 with a rating under s. ATCP 50.46 (5) that authorizes the
12 practitioner to certify every matter that the practitioner certifies under this chapter.

13 **SECTION 5.** ATCP 51.01 (11) (Note) is repealed.

14 **SECTION 6.** ATCP 51.01 (13) (Note) is repealed.

15 **SECTION 7.** ATCP 51.01 (16) is repealed.

16 **SECTION 8.** ATCP 51.01 (19) is amended to read:

17 “Livestock facility” means a feedlot, dairy farm or other operation where livestock are or
18 will be fed, confined, maintained or stabled for a total of 45 days or more in any 12-month
19 period. A “livestock facility” includes the livestock, livestock structures, and all of the tax
20 parcels of land on which the facility is located, but does not include a pasture or winter grazing
21 area. Related livestock facilities are collectively treated as a single “livestock facility” for
22 purposes of this chapter, except that an operator may elect to treat a separate species facility as a
23 separate “livestock facility.”

1 **SECTION 9.** ATCP 51.01 (19m) and (Note) are created to read:

2 “Livestock housing” means a livestock structure with a roof and walls used to confine
3 livestock but does not include calf hutches. For the purposes of ss. ATCP 51.12 and 51.14,
4 livestock housing is classified as Category 1 or 2 based on estimated odor generation. Category 1
5 housing encompasses pork gestation / farrow / nursery with slatted floor, and pork finishing with
6 slatted floor. Category 2 encompasses dairy housing with alley flush system; beef housing with
7 slatted floor; pork finishing scrape systems to storage; pork pull plug to storage; and poultry
8 (layers) and ducks.

9 **Note:** Housing classifications are based on the odor generation numbers for specific
10 housing types in Appendix A of ch. ATCP 51, Worksheet 2, Chart 2 published in the
11 Administrative Register, April 2006, No. 604.

12 **SECTION 10.** ATCP 51.01 (21) (intro.) is amended to read:

13 “Local approval” means an approval, required by local ordinance, of a new or expanded
14 livestock facility. “Local approval” includes a license, permit, permit modification, special
15 exception, conditional use permit or other form of local authorization. “Local approval” does not
16 include any of the following:

17 **SECTION 11.** ATCP 51.01 (23) is amended to read:

18 “Manure” ~~means excreta from livestock kept at a livestock facility. “Manure” includes~~
19 ~~livestock bedding, water, soil, hair, feathers, and other debris that becomes intermingled with~~
20 ~~livestock excreta in normal manure handling operations~~ has the meaning given in s. ATCP 50.01
21 (20).

22 **SECTION 12.** ATCP 51.01 (23m) is created to read:

1 “Manure storage structure” means a waste storage structure designed and operated
2 primarily to store manure. For the purposes of ss. ATCP 51.12 (2) and 51.14, “manure storage
3 structure” does not include any of the following:

4 (a) A structure used to collect and store waste under a livestock housing facility.

5 (b) A manure digester consisting of a sealed structure in which manure is subjected to
6 managed biological decomposition.

7 (c) A structure designed, constructed and operated solely for the purpose of collecting
8 and storing agricultural wastewater including leachate and contaminated runoff from
9 stored feed.

10 (d) A structure designed, constructed, and operated solely for the purpose of storing
11 manure with 12 percent solids or more.

12 Note: See s. NR 243.03 (32).

13 **SECTION 13.** ATCP 51.01 (24) is amended to read:

14 “Minor alteration” of a ~~livestock structure~~ an animal lot means a repair or improvement
15 ~~in the construction of an existing livestock structure that does not result in a substantially altered~~
16 ~~livestock structure~~ that may include lot management such as cleaning; shaping, seeding and other
17 non-structural changes to address flow issues; and installation of conservation practices such as
18 roof gutters, diversions, surface inlets, underground outlets, and gravel spreaders.

19 **SECTION 14.** ATCP 51.01 (26) (Note) is repealed.

20 **SECTION 15.** ATCP 51.01 (29) is amended to read:

21 “Pasture” ~~means land on which livestock graze or otherwise seek feed in a manner that~~
22 ~~maintains the vegetative cover over all of the grazing or feeding area~~ has the meaning given in s.
23 NR 151.015 (15m).

1 **SECTION 16.** ATCP 51.01 (33) is amended to read:

2 “Property line” means a line that separates parcels of land owned by different persons.
3 For purposes of applying setbacks, property lines are measured from livestock structures to the
4 parcel or other property boundary separating land owned by different persons.

5 **SECTION 17.** ATCP 51.01 (33m) is created to read:

6 "Process wastewater" has the meaning given in s. NR 243.03 (53).

7 **SECTION 18.** ATCP 51.01 (36) (b) and (c) is amended to read:

8 (b) They use or share one or more of the same livestock structures to collect, transfer or
9 store manure, or process wastewater.

10 (c) ~~At least a portion~~ Any of their manure or process wastewater is applied to the same
11 landspreading acreage.

12 **SECTION 19.** ATCP 51.01 (38m) is created to read:

13 “Significant discharge” means a discharge of process wastewater as defined in s. NR
14 151.055 (3).

15 **SECTION 20.** ATCP 51.01 (39) is repealed and recreated to read:

16 “Site that is susceptible to groundwater contamination” has the meaning given in s. NR
17 151.015 (18).

18 **SECTION 21.** ATCP 51.01 (42) is amended to read:

19 “Waste” means manure, milking center waste, leachate, contaminated runoff and other
20 organic waste generated by a livestock facility.

21 **SECTION 22.** ATCP 51.01 (43) is amended to read:

22 “Waste storage facility” means one or more waste storage structures. “Waste storage
23 facility” includes waste transfer systems consisting of stationary equipment and piping used to

1 load or unload a waste storage structure if the equipment is specifically designed for that purpose
2 and is an integral part of the facility. “Waste storage facility” does not include equipment used
3 to apply waste to land.

4 **SECTION 23.** ATCP 51.01 (44) is amended to read:

5 “Waste storage structure” means a waste storage impoundment made by constructing
6 embankments, excavating a pit or dugout, or fabricating a structure. “Waste storage structure”
7 does not include waste transfer systems and equipment used to apply waste to land. ~~For~~
8 ~~purposes of ss. ATCP 51.12 (2) and 51.14, “waste storage structure” does not include any of the~~
9 ~~following:~~

10 ~~(a) A structure used to collect and store waste under a livestock housing facility.~~

11 ~~(b) A manure digester consisting of a sealed structure in which manure is subjected to~~
12 ~~managed biological decomposition.~~

13 **SECTION 24.** ATCP 51.01 (44m) is created to read:

14 “Waste transfer system” is a system of conduits or permanent equipment used to convey
15 wastes from a source to another location such a waste storage structure, treatment facility,
16 loading area or cropland. If a transfer system is designed to retain wastes for longer than 30 days,
17 then the system shall be classified as a waste storage structure.

18 **SECTION 25.** ATCP 51.02 (1) (b) (Note) is amended to read:

19 Some, but not all, political subdivisions require local approval of new or expanded
20 livestock facilities. ~~The livestock facility siting law does not require local approval. But if~~ If
21 local approval is required, the political subdivision must grant or deny approval based on this
22 chapter. A political subdivision may not require local approval for new or expanded livestock
23 facilities smaller than 500 animal units, except as specifically authorized by the livestock facility

1 siting law and this chapter. This chapter does not grant authority nor limit a political
2 subdivision's authority to regulate the raising of small numbers of livestock (i.e. hobby farms)
3 for non-commercial purposes where the activity generates less than \$6,000 in gross annual
4 income. A political subdivision may not consider other siting criteria, or apply standards that
5 differ from this chapter, except as provided in the livestock facility siting law or this chapter.

6 ~~A political subdivision may not require local approval for new or expanded livestock~~
7 ~~facilities smaller than 500 animal units, except as specifically authorized by the livestock facility~~
8 ~~siting law and this chapter. A political subdivision may apply a lower size threshold adopted by~~
9 ~~ordinance prior to July 19, 2003 if that threshold is expressed as a specific number of animals or~~
10 ~~animal units. A local threshold expressed in locally defined "animal units" may meet this test,~~
11 ~~because it effectively indicates a specific number of animals, even if the local ordinance~~
12 ~~definition of "animal units" differs from the definition in this chapter. However the local~~
13 ~~application and approval process must use the "animal units" definition in this chapter.~~

14 ~~Local approvals under this chapter "run with the land." See s. ATCP 51.08. They~~
15 ~~normally continue to apply, despite changes in ownership, as long as subsequent owners do not~~
16 ~~violate the terms of the local approval. Some ordinances might require a pro forma permit~~
17 ~~transfer with each transfer of ownership, but that transfer may not ordinarily limit the scope of~~
18 ~~approval.~~

19 ~~A livestock operator is not required to obtain local approval under this chapter for the~~
20 ~~construction, repair or improvement of livestock structures, unless the operator also adds "animal~~
21 ~~units" for which local approval is required (local building codes and manure storage ordinances~~
22 ~~may apply). However, a political subdivision may withdraw a local approval granted under this~~
23 ~~chapter if the livestock operator does any of the following (see s. ATCP 51.34 (4)):~~

1 ~~• Without local authorization, alters the approved livestock facility in a way that~~
2 ~~materially violates the terms of the local approval.~~

3 ~~• Alters the approved livestock facility so that the altered facility violates the standards in~~
4 ~~subch. II.~~

5 **SECTION 26.** ATCP 51.04 (Note) is amended to read:

6 This section accounts for normal day-to-day and seasonal variations in livestock
7 numbers, as livestock are born, received, moved and marketed. See s. 93.90 (3) (f), Stats.

8 Under this chapter, an applicant for local approval must specify the number of “animal
9 units” for which the applicant seeks authorization. If the application is approved, the approval
10 authorizes that number of “animal units.” The authorized number is the maximum number of
11 “animal units” that may be kept on 90 or more days in any 12-month period. A livestock operator
12 may not exceed that authorized number without further local approval.

13 ~~“Animal unit” equivalents, for different species and types of livestock, are shown in~~
14 ~~Appendix A, worksheet 1 (animal units). The “animal unit” equivalents are based on s. NR~~
15 ~~243.03 (3) as it existed on April 27, 2004 (the date on which the livestock facility siting law,~~
16 ~~2003 Wis. Act 235, was published). See s. 93.90 (1m) (a), Stats., and s. ATCP 51.01 (4).~~

17 **SECTION 27.** ATCP 51.06 (2) (intro.), (a) and (b) are renumbered ATCP 51.06 (2) (a),
18 1. and 2.

19 **SECTION 28.** ATCP 51.06 (2) (b) is created to read:

20 (b) A livestock operator may apply for modification under s. ATCP 51.34 (5) to expand
21 a previously approved livestock facility

22 **SECTION 29.** ATCP 51.08 (1) (b) (Note) is amended to read:

1 For example, if a livestock operator gets local approval under this chapter to expand from
2 400 “animal units” (existing) to 900 “animal units”, the livestock operator may implement the
3 approved expansion over a period of time chosen by the livestock operator. The operator does
4 not lose the approval merely because the operator implements the expansion in gradual stages, or
5 fails to expand by the full amount authorized. ~~However, the operator must at least begin the~~
6 ~~expansion within 2 years, or face possible loss of approval. See sub. (2).~~ While the operator has
7 flexibility in constructing livestock structures and populating with livestock, the operator is
8 subject to the requirements in sub. (2).

9 **SECTION 30.** ATCP 51.08 (2) is repealed and recreated to read:

10 (a) Except as provided in par. (b), a political subdivision may withdraw a local approval
11 granted under this chapter unless the livestock operator does all of the following within 2 years
12 after a local approval is granted:

13 1. Begins populating the approved livestock facility.

14 Note: At the time an application for approval is submitted, a livestock operator must
15 have the land base to implement a nutrient management plan for the maximum number of animal
16 units requested in the application, and does not have 2 years to acquire the necessary land base
17 through rental agreements or otherwise.

18 2. Begins construction on every new or expanded livestock housing structure, and every
19 new or expanded waste storage structure, proposed in the application for local approval.

20 (b) Within 6 months of a local approval, a political subdivision may require an operator
21 to complete construction of one or more conservation practices identified in the application if
22 these practices are needed to control a documented discharge from an existing or altered animal
23 lot or waste storage structure.

1 **SECTION 31.** ATCP 51.10 (1) is amended to read:

2 Except as provided in sub. (2) or (3), a political subdivision shall grant or deny local
3 approvals and permit modifications covered by this chapter based on the standards in this
4 subchapter.

5 **SECTION 32.** ATCP 51.10 (2) and (Note) are repealed and recreated to read:

6 (a) STATE STANDARDS INCORPORATED IN LOCAL ORDINANCE. Beginning on
7 November 1, 2006, a political subdivision may not deny a local approval covered by this chapter
8 unless the political subdivision incorporates by local ordinance the standards in this subchapter
9 and the application requirements in subch. III. A local ordinance may incorporate the standards
10 and application requirements by reference, without reproducing them in full.

11 (b) Except as provided in s. ATCP 51.12, a political subdivision may not grant a variance
12 to exempt a livestock facility from complying with the state standards required under this
13 chapter.

14 **SECTION 33.** ATCP 51.10 (3) (d) (Note) is amended to read:

15 ~~See s. 93.90 (3) (ar) s. 92.15, Stats.~~ A political subdivision shall obtain separate state
16 approval to impose requirements that exceed state water quality standards or practices.

17 **SECTION 34.** ATCP 51.10 (4) is amended to read:

18 Within 30 days after a political subdivision enacts an ordinance provision under sub. (2)
19 or (3), the political subdivision shall electronically file a copy of the ordinance provision with the
20 department. Failure to file the ordinance provision with the department does not invalidate the
21 ordinance provision.~~The political subdivision shall file the ordinance provision, by mail, fax or e-~~
22 ~~mail, at the following applicable address:~~

23 ~~Wisconsin Department of Agriculture,~~

1 ~~Trade and Consumer Protection~~
2 ~~Agricultural Resource Management Division~~
3 ~~Bureau of Land and Water Resources~~
4 ~~P.O. Box 8911~~
5 ~~Madison, WI 53708-8911~~
6 ~~Fax: (608) 224-4615~~
7 ~~E-mail: datcp.state.wi.us~~

8 **SECTION 35.** ATCP 51.10 (4) (Note) is created to read:

9 This website, livestocksiting.wi.gov, has instructions for electronic filing with the
10 department.

11 **SECTION 36.** ATCP 51.12 (1) and (2) are repealed and recreated to read:

12 (1) **PROPERTY LINE AND ROAD SETBACKS; GENERAL.** Livestock structures
13 shall comply with local ordinance requirements related to setbacks from property lines and
14 public roads, except that no local setback requirement may do any of the following:

15 (a) Require a livestock structure to be set back more than 100 feet from any property line
16 or public road right-of-way, except as provided in sub. (2), if the livestock facility will have
17 fewer than 1,000 animal units.

18 (b) Require a livestock structure to be set back more than 200 feet from any property
19 line, or more than 150 feet from any public road right-of-way, except as provided in sub. (2), if
20 the livestock facility will have between 1,000 and 2,499 animal units or more.

21 (c) Require a livestock structure to be set back more than 300 feet from any property line,
22 or more than 200 feet from any public road right-of-way, except as provided in sub. (2), if the
23 livestock facility will have 2,500 animal units or more.

1 (d) Prevent the use of a livestock structure that was located within the setback area prior
2 to the effective date of the setback requirement, except that operator may be required to address
3 the livestock structure in an odor management plan under s. ATCP 51.14 (1).

4 (e) Prevent the expansion of a livestock structure that was located within the setback area
5 prior to the effective date of the setback requirement, unless the expansion:

6 1. Results in 20 percent or more increase in the area of the structure as it existed on the
7 effective date of the rule [LRB inserts], or

8 2. Is toward the property line or public road right-of-way to which the local setback
9 applies.

10 Note: Many local jurisdictions have established basic property line and road setback
11 requirements by ordinance. Setbacks vary depending on local circumstances, and often reflect
12 years of local experience. Subsection (1) honors local setback requirements, provided that the
13 setbacks do not exceed the limits specified in sub. (1). Nothing in sub. (1) precludes a political
14 subdivision from granting a variance to reduce setback requirements, provided the political
15 subdivision's ordinance includes a variance provision adopted under authority other than s.
16 93.90, Stats. See, e.g. ss. 59.694, 60.10, 61.35, and 62.23, Stats.

17 (2) MANURE STORAGE AND LIVESTOCK HOUSING STRUCTURES; MORE
18 RESTRICTIVE SETBACKS. (a) Except as provided in par. (d), a manure storage structure may
19 not be located within:

20 1. 600 feet of any property line, if the livestock facility will have fewer than 1,000 animal
21 units.

22 2. 1,000 feet of any property line, if the livestock facility will have between 1,000 to
23 2,499 animal units.

1 3. 1,400 feet of any property line, if the livestock facility will have between 2,500 to
2 3,999 animal units.

3 4. 1,700 feet of any property line, if the livestock facility will have between 4,000 to
4 4,999 animal units, and 200 additional feet for every 1,000 animal units above 4,000, but not to
5 exceed 2,500 feet.

6 (b) Except as provided in par. (d), Category 1 livestock housing may not be located
7 within:

8 1. 600 feet of any property line, if the livestock facility will have fewer than 1,000 animal
9 units.

10 2. 1,000 feet of any property line, if the livestock facility will have between 1,000 to
11 2,499 animal units.

12 3. 1,450 feet of any property line, if the livestock facility will have between 2,500 to
13 3,999 animal units.

14 4. 1,700 feet of any property line, if the livestock facility will have 4,000 or more animal
15 units.

16 (c) Except as provided in par. (d), Category 2 livestock housing may not be located
17 within:

18 1. 400 feet of any property line, if the livestock facility will have fewer than 1,000 animal
19 units.

20 2. 700 feet of any property line, if the livestock facility will have between 1,000 to 2,499
21 animal units.

22 3. 1,000 feet of any property line, if the livestock facility will have between 2,500 to
23 3,999 animal units.

1 4. 1,200 feet of any property line, if the livestock facility will have 4,000 or more animal
2 units.

3 Note: To the extent that livestock structure is not covered by the more restrictive setback
4 in sub. (2), it must meet the general requirements in sub. (1). For example, a dairy freestall barn
5 at a livestock facility under 1,000 animal units must be 100 feet from the public road right of
6 way unless a political subdivision establishes a lower setback.

7 (d) A manure storage or housing structure may be located within the setbacks specified in
8 pars. (a), (b) and (c) if any of the following apply:

9 1. The location of the manure storage and housing structure complies with a local
10 ordinance or a variance granted under that local ordinance that specifies a shorter setback that is
11 specific to manure storage or housing structures.

12 Note: If authorized in a local ordinance, a political subdivision may grant a variance to
13 reduce a manure storage setback under appropriate conditions. For example, a reduction may be
14 granted if a manure storage structure is located on land adjacent to a separate parcel owned by a
15 different person who consents to the reduction.

16 2. The manure storage or housing structure existed prior the effective date of the rule
17 [LRB inserts], or the structure is expanded by no more than 20 percent of its surface area as it
18 existed on the effective date of the rule [LRB inserts] and no part of expansion is closer to the
19 property line to which the local setback applies.

20 3. A new or expanded manure storage or housing structure is located at a reduced
21 setback distance authorized in Appendix A, Worksheet 2 based on the applicant's commitment to
22 install and maintain odor control practices.

23 **SECTION 37.** ATCP 51.12 (2m) (a) and (b) and (Note) are created to read:

1 (2m) CLUSTERS. (a) Except as provided in par. (b), if the livestock structures in a
2 livestock facility regulated under a single local approval are divided among 2 or more clusters,
3 such that no cluster is located closer than 1,000 feet to any other cluster, an operator may
4 determine the setback distances for livestock structures in each cluster based on the animal units
5 kept at each location, rather than the animal units at for the entire livestock facility.

6 (b) This treatment does not apply to any cluster that handles or stores manure generated
7 by animals located in another cluster.

8 Note: For example, a dairy operator may establish two setbacks for each cluster at a
9 dairy facility that includes a milking operation (cluster 1) and a heifer facility (cluster 2) located
10 1,000 feet (or more) from each other. If the heifer facility has a manure storage facility for 200
11 animal units and accepts no manure from the 1,200 head milking operation, the heifer facility
12 may use the 600 foot setback for manure storage facilities on operations under 1,000 animal
13 units.

14 **SECTION 38.** ATCP 51.12 (6) (Note) is repealed.

15 **SECTION 39.** ATCP 51.14 is repealed and recreated to read:

16 (1) **PREEXISTING ODOR STANDARD.** (a) A livestock facility operating under a
17 local approval granted prior to the effective date of the rule [LRB inserts] must honor all
18 commitments in its local approval to maintain the necessary odor control practices to achieve a
19 passing odor score.

20 Note: The operator's commitments are documented in Appendix A of ch. ATCP 51,
21 Worksheet 2, as published in the Administrative Register, April 2006, No. 604.

22 (b) Except as provided in (2) (b), if a previously approved livestock facility is granted a
23 local approval including a permit modification on or after the effective date of the rule [LRB

1 inserts], the livestock facility is released from its commitments under the preexisting odor
2 standard for all livestock structures located at the livestock facility on the date of its application
3 for subsequent local approval.

4 Note: A livestock facility released from its commitments may be required to prepare an
5 odor management plan for existing structures under par. (c). All livestock facilities with new or
6 expanded livestock structures must meet the setback requirements in s. ATCP 51.12. In addition,
7 an applicant may complete Worksheet 2 to reduce setbacks for new or expanded waste storage
8 facilities and housing.

9 Note: The spreadsheet equivalent of Appendix A, Worksheet 2, Table A available on the
10 department's website at livestocksiting.wi.gov, may be submitted in place of Worksheet 2, Table
11 A.

12 (2) ODOR MANAGEMENT PLAN. (a) A livestock facility must submit an odor
13 management plan that addresses the following livestock structures located at the livestock
14 facility at the time of its application for a local approval:

- 15 1. Any manure storage structure located within 600 feet of any property line.
- 16 2. Any livestock housing located within 400 feet of any property line.

17 (b) The odor management plan shall identify management practices that the livestock
18 facility must follow to control odor from each manure storage structure and livestock housing
19 located within the separation distance defined in par. (a) 1. and 2. The plan should incorporate
20 odor control practices which the operator agreed to implement as part of a local approval granted
21 before the effective date of the rule [LRB inserts] unless the operator provides a financial or
22 other justification for discontinuation of the practice.

1 Note: The plan may include practices to reduce dust, practices to reduce odor from
2 nearby livestock structures such as animal lots, practices used to reduce odor from dead animals,
3 activities to reduce community conflict, and water conservation practices that control odor.

4 (c) A political subdivision may request that a livestock operator update an odor
5 management plan if the political subdivision receives a verified odor-related complaint from a
6 property owner adjacent to the livestock facility.

7 (3) NEW ODOR MANAGEMENT STANDARD. (a) In any application for local
8 approval or permit modification submitted on or after the effective date of the rule [LRB inserts],
9 a livestock operation must comply with the setback requirements in s. ATCP 51.12 for all new or
10 expanded livestock structures identified in its application.

11 (b) All applicants must complete Appendix A, Worksheet 2 to establish setbacks for new
12 or expanded manure storage and Category 1 and 2 livestock housing, and surface area of manure
13 storage and Category 1 and 2 livestock housing located on the livestock facility at the time of the
14 application for a local approval. This information will determine whether:

15 1. Existing livestock structures located within a setback area may be expanded, without
16 the need for odor control practices. See ss. ATCP 51.12 (1) (e) and (2) (d).

17 2. New or expanded livestock structures will need to implement odor control practices to
18 reduce required setbacks. See sub. (3).

19 Note: The spreadsheet equivalent of Appendix A, Worksheet 2, Table A available on the
20 department's website at livestocksiting.wi.gov, may be submitted in place of Worksheet 2, Table
21 A.

1 (4) SETBACK REDUCTIONS FOR ODOR CONTROL PRACTICES. (a) In
2 determining the setback for new or expanded manure storage and Category 1 and 2 livestock
3 housing, an operator may reduce the required setback based on the following:

4 1. Odor control practices, identified in Appendix A, Worksheet 2, which the operator
5 agrees to implement. For each odor control practice, the operator may claim the setback
6 reduction specified in Appendix A, Worksheet 2.

7 2. An odor control practice not identified in Appendix A, Worksheet 2 if the department
8 pre-approves a setback reduction for that practice. The operator shall claim the pre-approved
9 setback reduction according to the procedure specified in par. (b).

10 (b) An operator seeking department approval under par. (a) 2. shall submit a written
11 request to the department that includes:

12 1. A clear description of the odor control practice for which the operator seeks an
13 approved credit.

14 2. Scientific evidence to substantiate the efficacy of the odor control practice under
15 relevant conditions.

16 (c) The department may approve a setback reduction for an odor control practice under
17 par. (a) 2. if, in the department's opinion, there is adequate scientific evidence to show that under
18 relevant conditions the practice will result in odor reduction commensurate with the approved
19 credit. The department shall grant or deny the request within 90 days after the department
20 receives the request. The department's approval may include specifications for installation and
21 operation of the innovative odor control practice.

22 (5) PRESUMPTION. For purposes of local approval, a livestock facility is presumed
23 to comply with this section if the application for local approval complies with s. ATCP 51.30.

1 **SECTION 40.** ATCP 51.16 is repealed and recreated to read:

2 **Nutrient management and cropland standards.** (1) NUTRIENT

3 MANAGEMENT STANDARD. (a) A livestock operator must have and follow a nutrient
4 management plan that complies with s. ATCP 50.04 (3).

5 (b) The nutrient management plan shall account for all land applications of manure and
6 related waste generated by the maximum number of animal units authorized by a local approval.

7 Note: The Wisconsin NRCS technical guide nutrient management standard 590
8 (December, 2015) is incorporated into s. ATCP 50.04. The Wisconsin Conservation Planning
9 Technical Note WI-1 (February, 2016) shall be used to estimate the quantity of manure
10 generated. Appendix A, Worksheet 3 includes the Technical Note's estimation tool.

11 Note: While the application of process wastewater and other industrial wastes is regulated
12 under ch NR.214, the nutrients from these sources when applied to fields must be accounted for
13 in a nutrient management plan developed in accordance with this section.

14 (2) CROPLAND PERFORMANCE STANDARDS. (a) An operator shall implement
15 conservation practices that achieve compliance with cropland performance standards under ss.
16 NR 151.02, 151.03, and 151.04, in effect on the effective date of the rule [LRB inserts].

17 (b) An operator is required to establish a minimum tillage setback of 5 feet.

18 Note: A political subdivision may require a setback greater than 5 feet and less than 20
19 feet if it follows procedures in s. ATCP 50.04 (4) but this increased setback cannot be
20 incorporated into a local approval.

21 (c) An operator may meet the phosphorus index standard under s. NR 151.04 by
22 following s. ATCP 50.04 (3).

1 (3) DEMONSTRATION OF COMPLIANCE (a) An applicant demonstrates compliance
2 with the requirements of this section by submitting:

3 1. A waste and nutrient management worksheet (Appendix A, Worksheet 3) signed by
4 the livestock operator.

5 2. A nutrient management checklist (Appendix A, Worksheet 3, Part D) signed by both
6 the livestock operator and a qualified nutrient management planner other than the operator.

7 a. A nutrient management planner qualified under s. ATCP 50.48, other than the
8 livestock operator, shall answer each checklist question. The planner shall have reasonable
9 documentation to substantiate each answer, but neither the planner nor the operator is required to
10 submit that documentation with the checklist.

11 b. A political subdivision may ask a nutrient management planner to submit the
12 documentation that the planner relied upon to substantiate the planner's answer to one or more
13 questions on the nutrient management checklist under par. (a) 2. The political subdivision may
14 deny local approval if the planner's documentation does not reasonably substantiate the answer.

15 3. Maps of fields that will receive nutrient applications with NRCS standard 590
16 spreading restrictions identified on the maps.

17 (b) In lieu of submitting the checklist required by par. (a) 2., an operator who holds a
18 WPDES permit for the livestock facility may submit a nutrient management checklist previously
19 submitted to DNR if the all of the following are met:

20 1. The nutrient management plan covers the same or greater number of animal units than
21 the number for which the operator seeks local approval.

22 2. The WDPES permit and the nutrient management plan are current.

1 3. The livestock facility is in compliance with all WPDES permit conditions related to the
2 nutrient management plan.

3 (4) (a) Manure spreading restrictions in s. NR 151.075 and other performance standards
4 are based on reasonable and scientifically defensible findings of fact that clearly show that such
5 requirements are necessary to protect public health or safety.

6 (b) A political subdivision may impose manure spreading restrictions included in
7 applicable performance standards and prohibitions in ch. NR 151 by referencing par. (a) to meet
8 the requirements in s. ATCP 51.10 (3) (c)-(d) for adoption of more stringent local standards
9 except that a political subdivision may not use this authority to adopt a targeted standard that
10 does not apply to the geographic area under the political subdivision's jurisdiction.

11 (5) PRESUMPTION. For purposes of local approval, an operator is presumed to comply
12 with this section if the application for local approval complies with s. ATCP 51.30.

13 (6) NUTRIENT MANAGEMENT UPDATES. The political subdivision may:

14 (a) Require an operator to submit annual updates to a nutrient management plan as
15 necessary, to maintain compliance with s. ATCP 50.04 (3).

16 (b) Monitor an operator's compliance with a nutrient management plan.

17 Note: Political subdivisions may require operators to submit a department-approved
18 checklist to document nutrient management plan updates meeting the most current standards.

19 **SECTION 41.** ATCP 51.18 is repealed and recreated to read:

20 **Waste storage facilities.** (1) (a) DESIGN, CONSTRUCTION AND
21 MAINTENANCE; GENERAL. All waste storage facilities for a livestock facility shall be
22 designed, constructed and maintained to minimize the risk of structural failure, and to minimize
23 the potential for waste discharge to surface water or groundwater. A waste storage facility may

1 not lack structural integrity or have significant leakage. An unlined earthen waste storage
2 facility may not be located on a site that is susceptible to groundwater contamination.

3 Note: A “site that is susceptible to groundwater contamination” is defined in s. ATCP
4 51.01 (39).

5 (b) The requirements in this section apply to facilities designed, constructed and used
6 primarily for the storage of manure or primarily for the storage of agriculture wastewater
7 including leachate and contaminated runoff from stored feed.

8 (2) DEMONSTRATION OF COMPLIANCE. (a) An applicant demonstrates
9 compliance with the requirements of this section by submitting:

10 1. A waste storage facilities worksheet (Appendix A, Worksheet 4), signed by registered
11 professional engineer or certified conservation engineering practitioner who:

12 a. Certifies that each existing storage facility meets applicable standards in sub. (4).

13 b. Submits construction plans and specifications for any new or substantially altered
14 facility, and certifies that each substantially altered or new storage facility meets applicable
15 standards in sub. (5).

16 c. Submits a plan for any waste storage facility that must be closed, and that plan meets
17 applicable standards in sub. (6).

18 (b) In lieu of submitting the certification required by par. (a), an applicant may:

19 1. Rely on a WPDES permit issued for the livestock facility if the applicant:

20 a. Certify that the livestock operation’s WPDES permit is current and the livestock
21 operation is in compliance with all conditions and requirements in WPDES.

1 b. Submit DNR plan and specification approval for any new or substantially altered waste
2 storage facility of the same size and type as those proposed for the new or expanded livestock
3 facility.

4 c. Submit DNR approval or other determination authorizing continued use of any existing
5 and unaltered waste storage facilities.

6 2. Submit a local approval granted under an ordinance adopted under s. 92.16, Stats., and
7 engineering documentation showing that a facility was constructed within the last 3 years in
8 accordance with then-existing NRCS standards.

9 3. Submit a DNR approval of a waste facility designed for storage of agricultural
10 wastewater and other related products under ch. NR 213.

11 Note: If an applicant is not able to submit the documentation required in subd. 1., 2. or 3.
12 for any storage facility located on the proposed livestock facility, the applicant must have a
13 qualified person complete the certification in par. (a) for that facility.

14 (3) PRESUMPTION. For purposes of local approval, an operator is presumed to comply
15 with this section if the application for local approval complies with s. ATCP 51.30.

16 (4) EXISTING FACILITIES. (a) A registered professional engineer or certified
17 conservation engineering practitioner shall certify that each existing waste storage facility (not
18 including waste transfer systems) meets one of the following:

19 1. The facility was constructed within the last 10 years according to then-existing NRCS
20 standards, and a visual inspection of the facility shows no apparent signs of structural failure or
21 significant leakage.

1 2. The facility is older than 10 years, was constructed according to NRCS standards that
2 existed at the time of construction, and a visual inspection of the emptied facility shows no
3 apparent signs of structural failure or significant leakage.

4 3. The construction standards for the facility cannot be verified from reliable
5 documentation, a full investigation of the facility was performed, and this investigation
6 established that the facility is in good condition and repair, shows no apparent signs of structural
7 failure or significant leakage, and is located on a site at which the soils and separation distances
8 to groundwater meeting the requirements for the appropriate liner type referenced in NRCS
9 technical guide waste storage facility standard 313 (October, 2017R) and related liner standards
10 specified in sub. (5).

11 Note: A full investigation includes emptying facilities of their contents, especially
12 earthen-lined structures, to allow for complete inspection and evaluation. The full investigation
13 of an emptied storage should verify that the bottom of structure corresponds with as-built plans,
14 if any, or has adequate separation distance to groundwater. It also includes test pits or borings
15 when there is no reliable documentation regarding a facility's separation distances to
16 groundwater or bedrock.

17 Note: An evaluation should be completed in accordance with a department-approved
18 evaluation flow chart, which is available at this website, livestocksiting.wi.gov.

19 (b) A political subdivision may request a written report documenting the methods used
20 for evaluation and the findings in support of the conclusions reached in the evaluation.

21 (c) At the time that a livestock operator submits an application for local approval of
22 livestock facility expansion, a structure previously evaluated under this subsection must be re-
23 evaluated according to the following schedule:

1 1. If the structure is 15 years old or less, the structure must be reevaluated if the prior
2 evaluation is more than 10 years old.

3 2. If the structure is more than 15 years old, the structure must be reevaluated if the prior
4 evaluation is more than 5 years old.

5 (5) NEW OR SUBSTANTIALLY ALTERED FACILITIES. A registered professional
6 engineer or certified conservation engineering practitioner shall certify that the design
7 specifications for each new or substantially altered waste storage facility (including waste
8 transfer systems) complies with applicable standards:

9 (a) NRCS technical guide waste storage facility standard 313 (October, 2017R), and
10 related liner standards, NRCS technical guide pond sealing or lining – compacted soil treatment
11 520 (October, 2017R), NRCS technical guide pond sealing or lining – geomembrane or
12 geosynthetic clay liner 521 (October, 2017R) and NRCS technical guide pond sealing or lining –
13 concrete 522 (October, 2017R).

14 Note: Compost facilities should be designed and operated to meet the requirements of WI
15 NRCS CPS Composting Facility (Code 317).

16 (b) NRCS technical guide manure transfer standard 634 (January, 2014).

17 Note: A political subdivision may accept a certification to a standard newer than those
18 listed in par. (a) and (b).

19 (6) CLOSED FACILITIES. (a) If an existing waste storage facility is not certified under
20 sub. (4), and no design is submitted for its alteration, the applicant shall submit a closure plan
21 that complies with par. (b), and must close the facility within 2 years of the issuance of a local
22 approval unless the political subdivision requires an earlier closure based on imminent threat to
23 public health, aquatic life, or groundwater.

1 (b) A registered professional engineer or certified conservation engineering practitioner
2 shall certify that the closure plan complies with NRCS technical guide closure of waste
3 impoundments standard 360 (March, 2013).

4 Note: Under s. NR 151.05 (3) and (4), an operator must normally close a manure storage
5 facility if the facility has not been used for 24 months, or poses an imminent threat to public
6 health, aquatic life or groundwater. If a waste storage facility is abandoned or not properly
7 closed, a political subdivision may seek redress under ss. 66.0627 or 254.59, Stats., as
8 appropriate.

9 (7) FACILITY OPERATION. (a) All manure storage facilities in existence as of
10 October 1, 2002 that pose an imminent threat to public health, fish and aquatic life, or
11 groundwater shall be upgraded, replaced, or abandoned in accordance with s. NR 151.05 (4) (b).

12 (b) Levels of materials in storage facilities may not exceed the margin of safety level as
13 defined in ch. NR 151.

14 (c) There shall be no mixing or storage of human waste or septage with animal manure on
15 a dairy farm.

16 Note: Worksheet 3 must document waste generation, including waste storage capacity,
17 consistent with Worksheet 4. Capacity must be adequate for reasonably foreseeable needs.

18 (8) DEVIATION FROM DESIGN SPECIFICATIONS. (a) Local approval of a
19 livestock facility does not authorize an operator to populate the approved livestock facility if the
20 construction, alteration or closure of a waste storage facility deviates materially, and without
21 express authorization from the political subdivision, from the design specifications or closure
22 plan included in the application for local approval.

1 (b) A political subdivision may do all of the following to verify that waste storage
2 facilities are constructed according to design specifications included in the application for local
3 approval:

4 1. Conduct inspections consistent with legal authority.

5 2. Require submission of a drawing reflecting design changes made during construction
6 and documentation certifying that the facility was installed in accordance with technical
7 standards.

8 Note: See s. ATCP 50.56 (3) (b) 2. This chapter does not limit the application of local
9 waste storage ordinances adopted under s. 92.16, Stats. If the operator's livestock facility has
10 been approved under a siting ordinance, the operator is responsible for remaining in compliance
11 with setback, odor and other standards in this chapter when building a manure storage structure
12 permitted under a local waste storage ordinance.

13 **SECTION 42.** ATCP 51.20 is repealed and recreated to read:

14 **Runoff management.** (1) NEW OR SUBSTANTIALLY ALTERED ANIMAL
15 LOTS. Livestock operators with new or substantially altered animal lots shall collect and store
16 manure and contaminated runoff for future land application, or construct animal lots to manage
17 runoff in compliance with NRCS technical guide vegetated treatment area standard 635
18 (September, 2016).

19 (2) EXISTING ANIMAL LOTS. (a) If manure and runoff from existing animal lots are
20 not collected and stored for future land application, the applicant must document that the
21 predicted average annual phosphorus runoff, from each existing animal lot to the end of the
22 runoff treatment area, as determined by the BARNY model, shall be less than the following
23 applicable amount:

- 1 1. Fifteen pounds if the edge of the animal lot is not located within any of the following:
- 2 a. 1,500 feet from navigable lakes, ponds and flowages
- 3 b. 450 feet from wetlands and navigable streams and rivers
- 4 c. 750 feet from direct conduits to groundwater
- 5 d. 450 feet from surface inlets that discharge to navigable waters
- 6 e. 225 feet from channelized flow (i.e., a drainage area of ≥ 5 acres)
- 7 f. 225 feet from subsurface drains

- 8 2. 5 pounds if the edge of the animal lot is located within any of the features identified in
- 9 subd. 1.

10 Note: The BARNY model is a computer model that predicts nutrient runoff from animal

11 lots. An Excel computer spreadsheet version of BARNY is available at livestocksiting.wi.gov.

12 Applicants must provide outputs from the BARNY model to document compliance with this

13 requirement.

14 (b) A livestock operator may make minor alterations to an existing animal lot to meet the

15 runoff standards in par. (a).

16 (c) Animal lots shall have no direct runoff to surface waters of the state or to a direct

17 conduit to groundwater.

18 Note: See ss. NR 151.08 (4) and ATCP 50.04 (1). A direct conduit to groundwater may

19 include, for example, a sinkhole.

20 (3) PROCESS WASTEWATER. A livestock facility shall have no significant discharge

21 of process wastewater to waters of the state or to a direct conduit to groundwater.

1 (4) FEED STORAGE (a) For the purposes of the requirements in this section, a feed
2 storage structure includes any building, bunker, or paved area used for feed storage or handling,
3 but does not include silos, storage bags, and grain bins.

4 (b) An existing feed storage structure may be used, without substantial alteration, to store
5 or handle feed if a registered professional engineer or certified conservation engineering
6 practitioner certifies that the structure:

7 1. Was constructed according to applicable NRCS standards that existed at the time of
8 construction, or in the absence of documentation to support this, the structure is located on a site
9 with soils and separation distances that comply with Tables 1, 2 or 3 in NRCS technical guide
10 waste treatment standard 629 (January, 2017).

11 Note: The type of structure determines which table must be used to document
12 compliance.

13 2. Is in good condition and repair.

14 3. Shows no apparent signs of structural failure, significant leakage, or significant
15 discharges to surface water.

16 Note: An evaluation should be completed in accordance with a department-approved
17 evaluation flow chart, which is available at this website, livestocksiting.wi.gov.

18 4. The political subdivision may request a written report documenting the methods used
19 for evaluation and the findings of the evaluation.

20 (c) An existing feed storage structure must be operated and maintained to:

21 1. Divert clean water from entering the structure or paved area.

22 2. Collect and store surface discharge of leachate from stored feed and initial runoff
23 volume of 0.20 inches from each precipitation event before it leaves the structure or paved area,

1 if the structure or paved area covers more than one acre. Collected leachate shall be stored and
2 disposed of in a manner that prevents discharge to waters of the state.

3 3. Prevent leachate and contaminated runoff from infiltrating below the storage structure.

4 4. Avoid accumulation of debris in the loading area.

5 5. Ensure proper functioning of collection and treatment areas.

6 (d) A new or substantially altered feed storage structure shall comply with both of the
7 following except as provided in par. (e):

8 1. The storage structure shall be designed, constructed and maintained in accordance with
9 NRCS waste treatment technical standard 629 (January, 2017).

10 2. Leachate and contaminated runoff from storage structure shall be collected and stored
11 for future land application, or treated in accordance with NRCS vegetated treatment area
12 technical standard 635 (September, 2016R).

13 (e) If a new or expanded feed storage structure is less than one acre, the design for the
14 new structure, or the new portion of the expanded structure, is only required to meet the
15 applicable Table 1, 2 or 3 of NRCS waste treatment technical standard 629 (January, 2017) if
16 each of following are met:

17 1. The proposed structure is not located within any of the separation distances in sub. (2)

18 (a) 1. a. to f.

19 2. A registered professional engineer or certified conservation engineering practitioner
20 certifies that:

21 a. The structure is designed to collect and store all leachate from stored feed and an initial
22 runoff volume of 0.20 inches from each precipitation event.

1 b. The site area including the proposed structure and surrounding land is not located on
2 soils with a high potential for leaching contaminants to groundwater.

3 c. Conditions at the site area and the design of storage area are such that runoff from a
4 25-year, 24-hour precipitation event will not result in a significant discharge to waters of the
5 state.

6 Note: Runoff from feed storage must be controlled to prevent a significant discharge to
7 waters of the state. Livestock operators are responsible for meeting this requirement if they
8 follow the design standard in par. (d). In addition, livestock operators are subject to federal
9 discharge standards that may be more restrictive than state standards.

10 (f) For the purposes of meeting the one acre size requirement in pars. (c) and (e), 2 or
11 more feed storage structures at the same livestock facility shall be treated as a single storage
12 structure if runoff from any structure converges or meets with runoff from another structure
13 within the separation distances in sub. (2) (a) 1. a. to f. If 2 or more structures are related in this
14 manner, each of the structures must individually meet the separation distances in sub. (2) (a) 1. a.
15 to f.

16 (5) MILKING CENTER WASTEWATER. (a) For the purposes of the requirements in
17 this section, milking center wastewater consists of wash water used to clean the milk harvesting
18 and milk cooling equipment, and other contaminated sources of wastewater (water softener) and
19 wash water used to clean the floors and walls. Wastewater from the floor of the holding area,
20 clean discharge water sources (plate cooler, roof water) and sanitary wastewater (toilets, sinks,
21 clothes laundry) must be excluded from the treatment system.

22 (b) Milking center wastewater shall be transferred to a waste storage facility or other
23 structure that meets the design criteria of NRCS waste facility storage technical standard 313

1 (October, 2017R) and related liner standards specified in s. ATCP 51.18 (5), except as provided
2 in par. (c).

3 (c) If a livestock facility generates less than 500 gallons of milking center wastewater
4 daily and does not store the wastewater for an extended period, the livestock operation may use
5 the treatment practices described in NRCS waste treatment technical standard 629 (January,
6 2014).

7 (6) CLEAN WATER DIVERSION. Clean water shall be diverted away from contacting
8 animal lots, waste storage facilities, and manure piles within 1,000 feet of a navigable lake, 300
9 feet of a navigable stream or wetlands, 300 feet from wetlands connected to navigable lake or
10 stream, or 500 feet from a direct conduit to groundwater.

11 Note: See ss. NR 151.06 and ATCP 50.04 (1). Runoff may be diverted by means of
12 earthen diversions, curbs, gutters, waterways, drains or other practices, as appropriate.

13 (7) OVERFLOW OF WASTE STORAGE FACILITIES. A livestock facility shall be
14 designed, constructed and maintained to prevent overflow of waste storage facilities.

15 Note: Under s. ATCP 51.18 (5), waste storage capacity must be adequate to meet
16 reasonably foreseeable storage needs, based on the operator's waste and nutrient management
17 strategy under s. ATCP 51.16. See also ss. NR 151.08 (2) and ATCP 50.04 (1).

18 (8) UNCONFINED MANURE PILES. A livestock facility may not have any
19 unconfined manure piles within 1,000 feet of a navigable lake or 300 feet of a navigable stream.

20 Note: See ss. NR 151.08 (3) and ATCP 50.04 (1).

21 (9) LIVESTOCK ACCESS TO SURFACE WATERS OF THE STATE. A livestock
22 facility shall be designed, constructed and maintained to prevent unrestricted livestock access to
23 surface waters of the state, if that access will prevent adequate vegetative cover on banks

1 adjoining the water. This subsection does not prohibit a properly designed, installed and
2 maintained livestock crossing or machinery crossing.

3 Note: See ss. NR 151.08 (5) and ATCP 50.04 (1).

4 (10) DEMONSTRATION OF COMPLIANCE. (a) An applicant demonstrates
5 compliance with the requirements of this section by submitting a runoff management worksheet
6 (Appendix A, Worksheet 5), signed by a registered professional engineer or certified
7 conservation engineering practitioner and the applicant, certifying that the existing, substantially
8 altered and new structures and practices meet applicable standards in subs. (1) to (9).

9 (b) In lieu of submitting certification required by par. (a), an operator who holds a
10 WPDES permit may submit the following documentation from DNR to cover one or more
11 structures:

12 1. Plan and specification approval for new or substantially altered animal lots or feed
13 storage structures.

14 2. Compliance determinations for existing animal lots or feed storage structures.

15 (11) PRESUMPTION. For purposes of local approval, a livestock facility is presumed
16 to comply with this section if the application for local approval complies with s. ATCP 51.30.

17 (12) DEVIATION FROM DESIGN SPECIFICATIONS. (a) Local approval of a
18 livestock facility does not authorize an operator to populate the approved livestock facility if the
19 construction or alteration of an animal lot or feed storage structure deviates materially, and
20 without express authorization from the political subdivision, from design specifications included
21 in the application for local approval.

1 (b) A political subdivision may do all of the following to verify that animal lots and feed
2 storage structures are constructed according to design specifications included in the application
3 for local approval:

- 4 1. Conduct inspections consistent with legal authority.
- 5 2. Require submission of a construction plan, a drawing reflecting design changes made
6 during construction and documentation certifying that the facility was installed in accordance
7 with technical standards.

8 Note: A deviation under sub. (12) does not invalidate a local approval, but does prevent
9 the livestock operator from populating the approved livestock facility until the deviation is
10 rectified or approved.

11 **SECTION 43.** ATCP 51.30 (1) (Note) is created to read:

12 The department-approved form is available at livestocksiting.wi.gov.

13 **SECTION 44.** ATCP 51.30 (3) (Note) is repealed.

14 **SECTION 45.** ATCP 51.30 (4) and (Note) is repealed and recreated to read:

15 **LOCAL FEES.** (a) A political subdivision may charge:

16 1. A full application fee established by local ordinance, not to exceed \$1,000, to offset the
17 political subdivision's costs to review and process an application under sub. (1).

18 2. A fee for permit modification under ATCP 51.34 (4m) not to exceed \$500.

19 Note: Under s. 66.0628, Stats., any fee imposed by a political subdivision must bear a
20 reasonable relationship to the service for which the fee is imposed.

21 (b) A political subdivision may not require an applicant to pay any fee, or post any bond
22 or security with the political subdivision, except as provided in par. (a).

23 **SECTION 46.** ATCP 51.30 (4m) is created to read:

1 PRE-APPROVAL SITE PREPARATION. After a political subdivision receives an
2 application under sub. (1), the political subdivision may notify the applicant that prior to a final
3 decision on an application for local approval, activities at the livestock facility shall be limited to
4 grading and other site preparation.

5 **SECTION 47.** ATCP 51.30 (5) is amended to read:

6 COMPLETE APPLICATION. Within 45 days after a political subdivision receives an
7 application under sub. (1), the political subdivision shall notify the applicant whether the
8 application ~~contains everything required~~ meets the requirements under subs. (1) to (4). If the
9 political subdivision determines that the application is not complete, the notice shall specifically
10 describe what else is needed. Incomplete, it must complete a department-approved checklist to
11 identify every item needed to make the application complete and provide a copy of the
12 completed checklist to the applicant. Items not identified in the checklist are deemed complete
13 and an applicant is only required to submit additional materials identified in the checklist to
14 receive a completeness determination. Within 14 days after the applicant has ~~provided~~
15 ~~everything required~~ met the requirements under subs. (1) to (4), the political subdivision shall
16 notify the applicant that the application is complete. A notice of completeness does not
17 constitute an approval of the proposed livestock facility.

18 **SECTION 48.** ATCP 51.34 (3) (a) is amended to read:

19 WRITTEN DECISION. (a) A political subdivision shall issue its decision under subs.
20 (1) or (2) in writing. The decision shall be based on written findings of fact included in the
21 decision. The findings of fact shall be supported by evidence in the record under s. ATCP 51.36.
22 Findings may be based on presumptions created by this chapter. A political subdivision may only
23 impose conditions related to an operator's compliance with the standards authorized in subch. II

1 of ATCP 51. Any conditions attached to a local approval must be described in the final written
2 decision granting the approval. Nothing in this chapter precludes a political subdivision from
3 entering into a voluntary agreement with a permit applicant outside the scope of ch. ATCP 51.

4 **SECTION 49.** ATCP 51.34 (3) (a) (Note) is repealed.

5 **SECTION 50.** ATCP 51.34 (4) (intro.) is amended to read:

6 TERMS OF APPROVAL. (intro.) An approval under sub. (1) is conditioned on the
7 operator's compliance with subch. II and representations made in the application for approval.
8 ~~This chapter does not limit a~~ A political subdivision's authority to do any of the following
9 subdivision may:

10 **SECTION 51.** ATCP 51.34 (4) (a) is repealed and recreated to read:

11 (a) Monitor compliance with applicable standards under subch. II using any of the
12 following methods:

13 1. Require an operator to certify, on an annual or less frequent basis, compliance with
14 applicable standards under subch. II. Political subdivisions shall provide livestock operators a
15 department-approved checklist to self-certify compliance.

16 2. Inspect locally-approved livestock facilities consistent with legal authority. If
17 conducting inspections, a political subdivision shall use a department-approved compliance
18 checklist to document the results of inspections.

19 Note: A political subdivision may request documentation that manure and nutrients were
20 applied according to a nutrient management plan, s. ATCP 51.16, a livestock structure was
21 installed according to standards, ss. ATCP 51.18 (8) and 51.20 (11), and activities identified in a
22 training and other required plan were conducted in accordance with that plan.

23 **SECTION 52.** ATCP 51.34 (4) (b) 2. is amended to read:

1 The operator, without authorization from the political subdivision, fails to honor relevant
2 commitments made in the application for local approval. ~~A political subdivision may not~~
3 ~~withhold authorization, under this subdivision, for reasonable changes that maintain compliance~~
4 ~~with the standards in subch. II.~~

5 **SECTION 53.** ATCP 51.34 (4m) is created to read:

6 MODIFICATION (a) As an alternative to procedures to ss. ATCP 51.30 and 51.32, a
7 livestock operator with a local approval granted in accordance with sub. (1) may apply for a
8 modification of that local approval under either of the following conditions:

9 1. The livestock operator plans to construct or alter one or more livestock structures
10 without increasing the maximum number of animal units authorized in the most recent local
11 approval issued under sub. (1).

12 2. The livestock operator plans to increase the maximum number of animal units without
13 constructing or altering any livestock structures, and all of the following apply:

14 a. The planned increase in animal units will not exceed 20 percent of the maximum
15 number of animal units authorized in the most recent local approval issued under sub. (1), but in
16 no case may the increase exceed 1,000 animal units.

17 b. The livestock operator has not previously received a permit modification to increase
18 animal units above the maximum number of animal units authorized in the most recent local
19 approval issued under sub. (1)

20 c. The livestock operator submits a revised Worksheets 1 and 3 to account for increases
21 in manure generated.

22 (b) The livestock operator requests modification by completing and submitting all of the
23 following:

1 1. Request for Modification of a Local Approval (Appendix B).

2 Note: Appendix B contains instructions for completing the request for permit
3 modification, including options to complete Worksheet 5. The department-approved form is
4 available at livestocksiting.wi.gov.

5 2. Applicable worksheets from Appendix A documenting that the livestock facility, as
6 modified, will maintain compliance with the standards in subch. II of ch. ATCP 51.

7 3. Additional documentation to establish compliance with any local standards adopted in
8 a political subdivision's ordinance in accordance with s. ATCP 51.10 (3).

9 (c) The political subdivision may only charge the permit modification fee prescribed in s.
10 ATCP 51.30 (4) and shall provide notice of the modification to adjacent property owners in
11 accordance with s. ATCP 51.30 (6), but is not required to take any other actions under s. ATCP
12 51.30 to process a permit modification.

13 Note: A livestock operator may submit a full application under (1) to secure the right to a
14 completeness determination and presumption of compliance established under s. 93.90 (4) (d),
15 Stats.

16 (d) A political subdivision must grant or deny a modification request within 45 days after
17 the livestock operator's submission of a complete application, and is not required to follow the
18 procedures in s. ATCP 51.32.

19 (e) A political subdivision shall record its decision on the requested modification by
20 completing Appendix B, and is not required to issue a written decision under s. ATCP 51.34 (3)
21 unless it denies the requested modification.

22 (f) A political subdivision may not withhold approval of modification request for changes
23 that maintain compliance with the standards in subch. II.

1 **SECTION 54.** ATCP 51.34 (5) (a) 2. and 3. are amended to read:

2 2. ~~File~~ Electronically file with the department a copy of the final application or permit
3 modification granted or denied, if the political subdivision has granted or denied an application
4 under this section. The copy shall include all of the worksheets, maps and other attachments
5 included in the application, except that it is not required to include engineering design
6 specifications.

7 3. ~~File~~ Electronically file with the department a copy of the political subdivision's final
8 notice or order withdrawing a local approval under sub. (4) (b) or s. ATCP 51.08 (2), if the
9 political subdivision has withdrawn a local approval.

10 **SECTION 55.** ATCP 51.34 (5) (a) 3. (Note) is created to read:

11 This website, livestocksiting.wi.gov, has instructions for electronic filing with the
12 department.

13 **SECTION 56.** ATCP 51.34 (5) (b) and (c) are repealed and recreated to read:

14 (b) Failure to comply with par. (a) does not invalidate a political subdivision's decision to
15 grant or deny an application for local approval, or to withdraw a local approval.

16 **SECTION 57.** Chapter ATCP 51, Appendix A, Application Form and Worksheets is
17 repealed and recreated, as attached hereto.

18 **SECTION 58.** Chapter ATCP 51, Appendix B, NRCS nutrient management technical
19 standard 590 (September, 2005) is repealed and recreated as Chapter ATCP 51, Appendix B,
20 Request for Modification of a Local Approval, as attached hereto.

21 **SECTION 59.** Chapter ATCP 51, Appendix C, Notice To Adjacent Property Owners is
22 repealed and recreated, as attached hereto.

23 **SECTION 60. EFFECTIVE DATE AND INITIAL APPLICABILITY.**

1 **(1)** Except as provided in sub. (2), this rule takes effect on the first day of the month
2 following publication in the Wisconsin administrative register, as provided under s. 227.22 (2)
3 (intro.), Stats. (2) This rule first applies to small businesses as defined in s. 227.114 (1), Stats.,
4 on the first day of the third month commencing after the rule publication date, as required by s.
5 227.22 (2) (e), Stats.

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Brad Pfaff, Secretary

Appendix A

Application for Local Approval



Wisconsin Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911
(608) 224-4630
(608) 224-4500



**Wisconsin Department of
Agriculture, Trade and
Consumer Protection**

2811 Agriculture Drive, PO Box 8911,
Madison WI 53708-8911
Phone: (608) 224-4630 or (608) 224-
4500

Permitting Authority must complete

Application #:

Date Application Received:

Date Completeness Determined:

Date Notice Sent to Applicant:

Date Notice Sent to Adjacent Landowners:

Decision Date:

Approved or Disapproved:

Application for Local Approval

Wis. Stat. § 93.90

New or Expanded Livestock Facility

Wis. Admin. Code ch. ATCP 51

1. Legal Name of Applicant (Business Entity):

2. Type of Business Entity: check one

Individual Corporation Partnership Cooperative LLC
 Trust Other Describe:

3. Other names, if any, under which applicant does business (list all):

4. Contact Person

Name:

Phone:

E-mail:

5. Business Address:

Street Address:

City/Village/Town:

County:

State:

Zip:

6. Principal Owners or Officers:

Name:

Title:

Phone:

Address:

City:

State:

Zip:

Name:

Title:

Phone:

Address:

City:

State:

Zip:

Name:

Title:

Phone:

Address:

City:

State:

Zip:

7. Description of Proposed Livestock Facility

Check one:

New Livestock Facility

Expanded Livestock Facility

Premises ID Yes No

Address of Proposed
Livestock Facility:

City/Village/Town:

County:

State:

Zip:

Town #:

Range # (E or W)

Section #

¼ Section #

8. Total Animal Units

Enter total animal units from **worksheet 1**:

Total Animal Units: _____. This is the maximum livestock facility size for which the applicant requests approval at this time. All worksheets must be prepared based on this maximum listed size.

9. Area Map of Livestock Facility

Attach a scale map or aerial photo of the proposed livestock facility and surrounding area. The map or photo must be appropriately sized and marked, so that it clearly and legibly shows all of the following:

- All existing and proposed (new or altered) livestock structures.
- The area lying within 2 miles of any of the livestock structures. Show all existing buildings, property lines, roadways, and navigable waters within that area.
- Topographic lines at 10 ft. elevation intervals.
- Map scale and north direction indicator.

10. Site Map of Livestock Facility

Attach a scale map or aerial photo of the proposed livestock facility site. The map or photo shall be appropriately sized and marked, so that it clearly and legibly shows all of the following:

- All existing and proposed (new or altered) livestock structures. Label each livestock structure with a unique identifier that includes a description of the structure type (manure storage, housing, lot, feed storage, waste transfer system), and if proposed indicates whether the structure is new or altered. For example, "existing manure storage 1" would identify that a manure storage structure is existing and the first of a certain number of manure storage structures at the livestock facility. Include the unique identifier for each structure, when completing all relevant worksheets.
- The area lying within 1,000 ft. of any of the livestock structures. Show all existing buildings, property lines, roadways, navigable waters, and known karst features within that area.
- Topographic lines, at 2 ft. elevation intervals, for the area within 300 feet of the livestock structures.

11. Location of Livestock Structures

The applicant certifies that:

- All livestock structures (including storage structures that collect non-manure waste) must comply with applicable local property line and road setbacks. See ATCP 51.12(1). **Note:** Worksheet 2 must be completed to document the setbacks for all manure storage and Category 1 and 2 Livestock Housing.
- All manure storage and Category 1 and 2 livestock housing structures comply with setbacks in ATCP 51.12(2). **Note:** *Odor control practices documented in Worksheet 2 may reduce setbacks.*
- All livestock structures comply with applicable local shoreland, wetland, and floodplain zoning ordinances (copies available from local government).
- Wells comply with the Wisconsin well code (NR 811 and 812). New or substantially altered livestock structures are separated from existing wells (including neighbors' wells) by setback distances required in NR 811 and 812.

12. Employee Training Plans (Required of all applicants)

Attach an Employee Training Plan for employees who will work at the *livestock facility*. Applicant determines plan contents, as long as the plan identifies all of the following:

- Training topics including, at a minimum, nutrient management, odor management, manure management and waste handling, maintenance of odor control practices, runoff management, and environmental incident response (Training on employee safety should be included in these topics).
- The number and job categories of employees to be trained.
- The form and frequency of training, which at a minimum must include a plan for at least one training per year.
- Training presenters (these may include *livestock facility* managers, consultants or professional educators).
- A system for taking and recording attendance.
- A system for documenting and retaining records of completed trainings (Permitting authorities may request to inspect these records).

13. Environmental Incident Response Plan (Required of all applicants)

Attach an Environmental Incident Response Plan for the *livestock facility*. Applicant determines plans contents, as long as the plan identifies all of the following:

- Types of environmental incidents covered. These must include, at a minimum, overflows and spills from waste storage facilities, catastrophic system failures, manure spills during transport and application, movement of manure during or after application, catastrophic mortality disposal emergency, and odor complaints.
- The name and business telephone number of at least one individual who will handle public questions and concerns related to environmental incidents.
- The names and telephone numbers of first responders (e.g. DNR, fire departments, excavation contractors)
- Incident response procedures, including emergency response, recordkeeping and reporting requirements.
- A system for documenting and retaining records involving environmental incidents. (Permitting authorities may request to inspect these records).

14. Odor Management Plan

Attach an odor management plan if the livestock facility has any existing manure storage located within 600 feet of any property line or any existing livestock housing located within 400 feet of any property line.

- The plan shall identify management practices that the livestock facility must follow to control odor from each manure storage structure and livestock housing located within the separation distances. The plan must incorporate odor control practices identified in a local approval granted before [the effective date of this rule revision] unless a financial or other justification for discontinuing the practice is provided to the permitting authority.
- In the case of a new or expanded manure storage structure and livestock housing that cannot be constructed without odor control practices to reduce setback requirements, the operator may reference Worksheet 2 in place of describing the odor control practices in the plan.
- The plan also may include practices to reduce dust, practices to reduce odor from nearby livestock structures such as animal lots, practices used to reduce odor from dead animals, activities to reduce community conflict, and water conservation practices that control odor.
- A system for documenting and retaining records concerning the operation and maintenance of odor control practices (Permitting authorities may request to inspect these records).

15. Narrative

Include narrative describing the new or expanded livestock facility, including the new or altered livestock structures using unique identifiers and the manure management system that will be implemented at the livestock facility.

16. Worksheets

Complete worksheets as required (follow instructions on each worksheet) and attach to application.

Worksheet 1 – Animal Units.

Worksheet 2 – Odor Management.

Worksheet 3 – Waste and Nutrient Management. If you meet the requirements for an exemption, check the appropriate box on this worksheet, and provided necessary documentation and certification with this application.

Worksheet 4 – Waste Storage Facilities. If you meet the requirements for an exemption, check the appropriate box on this worksheet, and provided necessary documentation and certification with this application.

Worksheet 5 – Runoff Management. If you meet the requirements for an exemption, check the appropriate box on this worksheet, and provided necessary documentation and certification with this application.

Authorized Signature:

I (we) certify that the information contained in this application (including worksheets and all attachments) is complete and accurate to the best of my knowledge.

Signature of Applicant # 1 or Authorized Representative #1

Date

Print Name

Title

Signature of Applicant # 2 or Authorized Representative # 2

Date

Print Name

Title



Wisconsin Department of Agriculture, Trade and Consumer Protection
 2811 Agriculture Drive, PO Box 8911, Madison WI 53708-8911
 Phone: (608) 224-4630 or (608) 224-4500

Worksheet 1 - Animal Units

Instructions: Use this worksheet to determine the number of animal units for which you request approval. You may request approval for a number that is large enough to accommodate current and potential future expansions. If the local government approves the requested number of animal units, that is the maximum number that you may keep for 90 days or more in any 12-month period. You may not exceed that number without additional approval.

To complete this worksheet:

1. Identify each type of livestock that you might keep at the proposed facility. Enter the maximum number of animals of each type that you might keep for at least 90 days in any 12-month period.
2. Multiply the number of animals of each type by the relevant Animal Unit Factor to obtain animal units of each type.
3. Sum the animal units for all livestock types to obtain the Total Animal Units for which you request approval.

Livestock Type		Animal Unit Factor	Animal Units For Proposed Facility	
<i>Example – Milking & Dry Cows</i>			<i>1.4 x</i>	<i>800 = 1120 AU</i>
Dairy Cattle	Milking and Dry Cows	1.4	1.4 x	=
	Heifers (800 lbs. to 1200 lbs.)	1.1	1.1 x	=
	Heifers (400 lbs. to 800 lbs.)	0.6	0.6 x	=
	Calves (up to 400 lbs.)	0.2	0.2 x	=
Beef	Steers or Cows (600 lbs. to market)	1.0	1.0 x	=
	Calves (under 600 lbs.)	0.5	0.5 x	=
	Bulls (each)	1.4	1.4 x	=
Swine	Pigs (55 lbs. to market)	0.4	0.4 x	=
	Pigs (up to 55 lbs.)	0.1	0.1 x	=
	Sows (each)	0.4	0.4 x	=
	Boars (each)	0.5	0.5 x	=
Poultry	Layers (each)	0.01	0.01 x	=
	Broilers (each)	0.005	0.005 x	=
	Broilers – continuous overflow watering	0.01	0.01 x	=
	Layers or Broilers - liquid manure system	0.033	0.033 x	=
	Ducks – wet lot (each)	0.2	0.2 x	=
	Ducks - dry lot (each)	0.01	0.01 x	=
	Turkeys (each)	0.018	0.018 x	=
Sheep (each)	0.1	0.1 x	=	
Goats (each)	0.1	0.1 x	=	
Total Animal Units for Which Applicant Requests Approval			=	

Signature of Applicant or Authorized Representative _____

Date _____



Wisconsin Department of Agriculture, Trade and Consumer Protection

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Phone: (608) 224-4630 or (608) 224-4500

Worksheet 2 – Odor Management

Instructions: This worksheet must be completed for proposed (new and altered) manure storage structures and livestock housing with higher potential to generate odor referred to as Category 1 and 2 livestock housing.

For existing structures that are being expanded by 20 percent or more in surface area and new construction, this worksheet determines whether the structure meets the applicable property line setbacks. This worksheet enables livestock operators to reduce applicable setback distances by installing and maintaining odor control practices consistent with the "Odor Control Practice Specifications."

If livestock structures are located in clusters, an applicant may determine the setback distances for structures based on the animal units kept at each cluster. This option is not available if the clusters are separated by less than 1000 feet or a livestock structure in one cluster receives manure from animals in another cluster.

In addition to this worksheet, livestock operators must:

- Certify that livestock structures comply with the property line and public road right-of-way setbacks established by local ordinance. (See Application, #11). This certification covers compliance with (a) local setbacks for new or expanded livestock structures not covered by this worksheet including animal lots, feed storage, and livestock housing not covered under Categories 1 and 2, and (b) public road right-of-way setbacks for all livestock structures, a setback requirement not addressed by this worksheet.
- Submit an odor management plan for the following existing structures located on the livestock facility at the time of application for local approval: manure storage located within 600 feet of a property line and Category 1 and 2 livestock housing located within 400 feet of a property line (See Application, #14 – Odor Management Plan for instructions).

To complete this worksheet, follow Steps 1-5, entering information into Tables A and B for each Category 1 and 2 livestock housing and Tables C and D for each manure storage structure on the proposed facility that meet either of the following conditions:

1. Proposed for new construction
2. Proposed for expansion by 20 percent or more in surface area

Note: You may use a convenient automated spreadsheet of Table A if you prefer. The spreadsheet, which includes instructions for completing it, is available at the department's website: <http://www.livestocksiting.wi.gov>. Whether you use the paper version of Table A or its spreadsheet equivalent, you must submit a copy with this completed worksheet.

By signing this worksheet, the applicant or authorized representative certifies that the information provided in this worksheet is true, complete, and accurate, and further agrees to install and maintain the odor control practices identified in Tables B and D, in accordance with the specifications listed in this worksheet.

Signature of Applicant or Authorized Representative

Date

Step 1: Enter the maximum number of Animal Units from Worksheet #1: _____

Step 2: Enter the following information for expanding (20 percent or more) and new Category 1 and 2 livestock housing into Table A, Columns:

- A. Enter the type of Category 1 and 2 livestock housing. Refer to Chart 1 for housing types that qualify as Category 1 and 2.
- B. Enter the unique identifier for each housing, as referenced on the facility map.
- C. Enter the surface area of each housing being proposed.
- D. For housing that are proposed for expansion by 20 percent or more, enter the existing surface area.
- E. Enter the appropriate property line setback from Chart 1 based on the number of Animal Units listed in Step #1.
- F. If each setback distance listed under Column E will be met without the use of odor control practices, enter the planned distance to property line. This distance cannot be less than the distance in Column E.

Table A

A: Category 1 and 2 housing	B: Unique ID (from map)	C: Square Footage	D: Pre-expansion Square Footage	E: Setback for Housing Built After [date of rule revision] or Expanding by 20 Percent or Greater (feet)	F: Planned Distance to Property Line, No Odor Control Practices (feet)

Chart 1: Minimum Property Line Setbacks for New and Expanded (>20%) Category 1 and 2 Livestock Housing

Type of Structure	Animal Unit (AU) Capacity	Property Line Setback
Category 1 livestock housing: <ul style="list-style-type: none"> • Pork gestation/farrow/nursery with slatted floor (includes floor and pit below) • Pork finishing with slatted floor (includes floor and pit below) 	<1,000 AU	600 feet
	1,000 AU - <2,500 AU	1,000 feet
	2,500 AU - <4,000 AU	1,450 feet
	4,000 AU or more	1,700 feet
Class 2 livestock housing: <ul style="list-style-type: none"> • Dairy housing with Alley Flush • Beef Housing with slatted floor • Pork Finishing scrape systems to storage and pull plug to storage • Poultry Layers • Ducks (liquid) 	<1,000 AU	400 feet
	1,000 AU - <2,500 AU	700 feet
	2,500 AU - <4,000 AU	1,000 feet
	4,000 AU or more	1,200 feet

*May use clusters to determine AU capacity

Step 3: If you are installing and implementing any of the odor control practices in Chart 2 at livestock housing listed in Table A, enter the following information into Table B, Columns:

- A. Enter the unique identifier for each housing that will operate odor control practices.
- B. Enter the setback distance from Table A, Column E that corresponds to each listed housing.
- C. Enter the control practice from Chart 2 that will be installed and implemented.
- D. Enter a second control practice, if any.

- E. Enter a third control practice, if any.
- F. Referring to Chart 3, calculate the total reduction distance credited toward a setback reduction, and enter.
- G. Subtracting Column F from Column B, enter the reduced setback distance.
- H. Enter the planned distance to property line. This distance cannot be less than the distance in Column G.

Table B

A: Unique ID (from map)	B: Setback Distance from Table A, Column E (feet)	C: 1 st Control Practice	D: 2 nd Control Practice	E: 3 rd Control Practice	F: Total Reduction Distance from Chart 3 (feet)	G: Reduced Setback Distance (feet)	H: Planned Distance to Property Line with Odor Control (feet)

Chart 2: Category 1 and 2 Livestock Housing Odor Control Practices		
Control Practice	Effectiveness	Level
Bio-filter / Bioscrubbers	High	1
Wet Scrubber with bleach or other chemicals	High	1
Vegetable oil sprinkling (for swine only)	High	1
Wet Scrubber with water	Medium	2
Recirculated flush water	Medium	2
Treated water flush	Medium	2
Poultry Dryer Belt System	Medium	2
Air Dam (for swine only)	Medium	2

Chart 3: Category 1 and 2 Livestock Housing Setback Reductions

Type of Structure	Practice Effectiveness in Chart 2	Level 1 reduction distance	Level 2 reduction distance
Category 1 livestock housing:* <ul style="list-style-type: none"> • Pork gestation/farrow/nursery with slatted floor (includes floor and pit below) • Pork finishing with slatted floor (includes floor and pit below) 	Level 1, may combine with Level 2	250 feet	150 feet
	Level 2		200 feet
Category 2 livestock housing:* <ul style="list-style-type: none"> • Dairy housing with alley flush • Beef housing with slatted floor • Pork finishing scrape systems to storage, and pull plug to storage • Poultry Layers • Ducks (liquid) 	Level 1, may combine with Level 2	175 feet	100 feet
	Level 2		125 feet

* Setbacks may not be reduced below the maximum allowable setback distances that apply to all livestock housing by a local ordinance (e.g. <1,000 AU = 100 feet; 1,000 AU - <2,500 AU = 200 feet; 2,500 AU or more = 300 feet).

Step 4: Enter the following information for expanding (20 percent or more) and new manure storage structures into Table C, Columns:

- A. Enter the unique identifier for each manure storage structure, as referenced on the facility map.
- B. Enter the surface area of each manure storage structure being proposed.
- C. For structures that are proposed for expansion by 20 percent or more, enter the existing surface area.
- D. Enter the appropriate property line setback from Chart 4 based on the number of Animal Units listed in Step #1.
- E. If each setback distance listed under Column D will be met without the use of odor control practices, enter the planned distance to property line. The distance cannot be less than the distance in Column D.

Table C

A: Unique ID (from map)	B: Square Footage	C: Pre-expansion Square Footage	D: Setback for Storage Built After [date of rule revision] or Expanding by 20 Percent or Greater (feet)	E: Planned Distance to Property Line, No Odor Control Practices (feet)

Chart 4: Minimum Property Line Setbacks for New and Expanded (>20%) Manure Storage

Type of Structure	Animal Unit (AU) Capacity*	Property Line Setback
Earthen or other storage	<1,000 AU	600 feet
	1,000 AU -2,500 AU	1,000 feet
	2,500 AU - <4,000 AU	1,400 feet
	>4,000 AU	1,700 feet, plus 200 feet for every 1,000 AU over 4,000 AU; but no more 2,500 feet total setback

*May use clusters to determine AU capacity

Step 5: If you are installing and implementing any of the odor control practices in Chart 5 at manure storage listed in Table C, enter the following information into Table D, Columns:

- A. Enter the unique identifier for each manure storage structure that will operate odor control practices.
- B. Enter the setback distance from Table C, Column D that corresponds to each listed structure.
- C. Enter the control practice from Chart 5 that will be installed and implemented.
- D. Enter a second control practice, if any.
- E. Enter a third control practice, if any.
- F. Referring to Chart 6, calculate the total reduction distance credited toward a setback reduction, and enter.
- G. Subtracting Column F from Column B, enter the reduced setback distance.
- H. Enter the planned distance to property line. This distance cannot be less than the distance in Column G.

Table D

A: Unique ID (from map)	B: Setback Distance from Table A, Column F (feet)	C: 1 st Control Practice	D: 2 nd Control Practice	E: 3 rd Control Practice	F: Total Reduction Distance from Chart 3 (feet)	G: Reduced Setback Distance (feet)	H: Planned Distance to Property Line with Odor Control (feet)

Chart 5: Manure Storage Odor Control Practices

Control Practice	Effectiveness	Level
Wastewater Treatment	High	1
Impermeable cover	High	1
Compost	High	1
Natural crust	Medium	2
Bio cover	Medium	2
Geotextile cover	Medium	2
Anaerobic digestion	Medium	2
Manure Solids Separation and Reduction (Higher efficiency)	Medium	2

Chart 6: Manure Storage Setback Reductions

Type of Structure & Facility Size	Practice Effectiveness in Chart 5	Level 1 reduction distance	Level 2 reduction distance
Uncovered earthen or other open manure storage structure for facility less than 4,000 AU*	Level 1, may combine with Level 2	500 feet	150 feet
	Level 2		300 feet
Uncovered earthen or other open manure storage structure for facility 4,000 or more AU*	Level 1, may combine with Level 2	1,000 feet	300 feet
	Level 2		600 feet

* Setbacks may not be reduced below 350 feet for facilities under 1,000 AUs; for facilities 1,000 to <2,500 AUs, setbacks may not be reduced below 500 feet; and for facilities over 2,500 AUs, setbacks may not be reduced below 750 feet.

Odor Control Practice Specifications

Odor control practices identified in Chart 3 and 6 must meet the following specifications, and must be operated and serviced as needed to maintain effectiveness over time. The following odor control practices are organized by the source of odor they are designed to control and include the level of effectiveness of the odor control practice. If a livestock operator seeks DATCP approval for unlisted practices, DATCP may include specifications for the practice as part of its approval.

Livestock Housing

Bio-filter (High) – Vent air from animal housing areas through a bio-filter consisting of compost and wood chips, mixed at a rate of 30:70 to 50:50 (ratio by weight of compost to wood chips). The mixture must be at least 40% moisture by weight. The bio-filter must be 10" to 18" thick, and must have an area of at least 50 to 85 sq. ft. per 1000 cu. ft. per minute (cfm) of airflow. If a bio-filter treats less than 75 percent of the exhaust air from a housing structure, the operator cannot claim credit for this practice without requesting that the department approve a setback reduction for an innovative practice.

Bioscrubbers (High): Install a scrubber system that operates in a manner similar to a bio-filter in that bacteria growing on biomass within the scrubber converts ammonia into nitrate and nitrite. Nitrogen in the water has to be kept below levels that will inhibit bacteria. They tend to use 8 to 10 times more water than acid scrubbers. The ammonia removal efficiency averages approximately 70%, and the odor removal efficiency averages 50%. Appropriate maintenance includes skimming of solids and replacement of water. If a bioscrubber treats less than 75 percent of the exhaust air from a housing structure, the operator cannot claim credit for this practice without requesting that the department approve a setback reduction for an innovative practice.

Wet Scrubbers-Chemical Acid scrubbers (High): Install scrubbers to trap alkaline material, such as ammonia, in a sulfuric acid solution that is circulated over a packed bed at a pH of 2 to 4. The ammonia removal efficiency tends to be over 90%, while the odor removal rate is around 30%. This same technology can be used with a base solution if hydrogen sulfide was the targeted chemical for removal. If a web scrubber treats less than 75 percent of the exhaust air from a housing structure, the operator cannot claim credit for this practice without requesting that the department approve a setback reduction for an innovative practice.

Vegetable oil sprinkling (High) – Sprinkle vegetable oil on floors in animal housing areas (swine) each day. Apply oil at start-up rate of approximately 40 milliliters per square meter per day (mL/m²-day) in the first 1-2 days of each production cycle. During the remainder of each production cycle, apply oil at maintenance rate of 5 mL/m²-day. Avoid oil applications to pens near fans, to areas near heaters, and to areas surrounding feeders.

Wet Scrubbers-Water (Medium) – Install exhaust air filtration systems to remove dust particles and ammonia from animal housing or under building waste storage facilities. These systems consist of a treated paper or fabric media, minimally 6" thick, through which the exhaust air passes and over which recirculated water flows. To adequately capture solid particles and absorb ammonia, the media (including film of water) must have a face area of at least 15 square feet for every 10,000 cubic feet per minute of exhaust air flow, and there must be a minimum of 3 gallons per minute of recirculated water flowing over that portion of the media to keep it continuously wetted. Accumulated solids must be skimmed off the recirculation water reservoir on a weekly basis, and the water must be replaced when its pH reaches 8.2. The discarded water must be sent to manure storage, and then land applied according to an approved nutrient management plan. If a web scrubber treats less than 75 percent of the exhaust air from a housing structure, the operator cannot claim credit for this practice without requesting that the department approve a setback reduction for an innovative practice.

Recirculated water flush (Medium) – Use recirculated wastewater to flush manure from floors of animal housing areas into collection or waste storage facilities. Flush at least 3 times a day, and more often if necessary, to prevent manure from drying and sticking to floors. Flush velocity must be adequate to remove manure solids effectively. To qualify for a higher odor control credit (as compared to a conventional alley flushed barn), the wastewater must meet either of the following definitions of recirculated: returned to the flush alley immediately, or after being stored for no more than 3 days, such that it remains in an aerobic state.

Treated water flush (Medium) – Use treated manure effluent to flush manure from floors of animal housing areas into collection or waste storage facilities. Flush at least 3 times a day, and more often if necessary, to prevent manure from drying and sticking to floors. Flush velocity must be adequate to remove manure solids

effectively. Flush with waste storage effluent must be treated by a recognized means such as solid separation and reduction or other equally effective approach.

Poultry Dryer Belt System (Medium) – Install a manure conveyance and treatment system for poultry layer operations that consists of a series of conveyor belts configured to receive the litter and then immediately pass it through a positively ventilated air chamber. The residence time of the litter in the air chamber must be sufficient to thoroughly dry it, and thereby prevent it from becoming anaerobic when stored. The dried litter must be stored in a facility separate from the animal housing.

Air Dam (Medium) – Erect and maintain a wall placed at the end of positively ventilated animal housing, in close proximity to the exhaust. The barrier must be of sufficient height and width to deflect the exhaust air and odor plume (typically 10' x 10' for each fan).

Manure Storage

Wastewater Treatment (High) – Install and use a physical, chemical or biological process that removes the majority of contaminants from the waste stream, resulting in a liquid effluent meeting surface water discharge standards.

Impermeable cover (High) – Cover the entire surface of waste storage structure with an impermeable barrier that prevents gas from escaping. The cover must meet NRCS technical guide roofs and covers standard 367 (April 2016). Gas must be drawn off, and either treated, used for energy production, or flared off.

Compost (High) – Aerobically treat solid or semi-solid manure to create compost in accordance with NRCS Technical Standard Composting Facility 317 (January 2017). Compost must be sited and properly managed to control odors, including regular turnings, as detailed in the technical standard.

Natural crust (Medium) – Maintain a natural crust of dry manure on the surface of stored manure. The natural crust must cover 80% of the surface area of the stored manure, 80% of the time between the months of April and October. Organic bedding material must be used, sand bedding will not produce an adequate natural crust.

Bio-cover (Medium) – Cover the surface of waste storage structure with an 8" to 12" thick blanket of dry wheat, barley or good quality straw. The blanket must cover 80% of the waste surface 80% of the time between the months of April and October. Add to the blanket as necessary to maintain the required cover.

Geotextile cover (Medium) – Cover the surface of waste storage structure with a geotextile membrane that is at least 2.4 mm thick. The membrane must cover 80% of the surface of the structure between the months of April and October.

Anaerobic digestion (Medium) – Subject manure to managed biological decomposition within a sealed oxygen-free container ("digester"). Anaerobic digestion must meet design and operational standards necessary to achieve adequate odor control as listed in NRCS Technical Standard Anaerobic Digester 366 (January, 2018), including requirements for solids concentration, flow rates, retention time, and minimum temperatures.

Solids Separation and Reduction (Medium) – Reduce the solid content of stored manure with solid capture efficiency of more than 50% through mechanical separation, multi-tiered pits or other means. Mechanical separation systems must meet the requirements in NRCS Technical Standard Waste Separation Facility 632 (April 2014). Solids content in multi-tiered pits must be as measured after the stored manure has been thoroughly mixed.



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Worksheet 3 - Waste and Nutrient Management

Instructions. Complete and sign Parts A, B and C of this worksheet. Part D must be completed and signed by a *qualified nutrient management planner* (the applicant must also sign) unless the exemption applies.

Exemption.

You do not need to complete and submit Worksheet 3, Part D if you check the box and initial the certification and acknowledgement.

Attached is a copy of the most recent nutrient management plan checklist related to (an initial application) (an annual update) (a permit renewal) [Strike all that do not apply] of *WPDES* permit for the livestock facility.

____ (Initial) By checking the box above and initialing this worksheet, the applicant certifies that the most current nutrient management plan covers the same or greater number of animal units than the number requested in this application, the *WPDES* permit and the nutrient management plan are current, and the livestock facility has met all *WPDES* permit conditions related to the nutrient management plan. The applicant further acknowledges that the applicant is responsible for providing supporting documentation to verify that the conditions for permit substitution are satisfied, and that the plan meets the applicable technical standards.

Part A. Waste Generation

Complete the following table¹ to provide an annual estimate of manure generated.

The estimate must be prepared by a qualified nutrient management planner other than operator, and must capture the manure generated by the maximum number of animal units for which the approval is requested. The planner must account for all waste generated, must determine the livestock facility's capacity to store waste, and develop a nutrient management plan that adequately reflects the livestock facility's storage capacity and includes an adequate land base for manure applications.

The table's source is the *Wisconsin Conservation Planning Technical Note WI-1* (Feb. 2016), which reproduced the table from another publication, *Midwest Plan Service publication number MWPS-18 "Manure Characteristics" Section 1 (2000)*. Consult the *Technical Note* for guidance in completing this table. The guidance in the *Technical Note* includes the following:

Solid volumes are as excreted. The liquid dairy and beef values are computed from the MWPS daily production and have approximately equal nutrient values annually as solid manure. MWPS liquid dairy and beef factors are multiplied by 1.8 and 3.2 respectively. Dilution on your operation may be substantially different. Use manure analysis and manure storage volumes to determine manure production whenever possible.

To the extent that the guidance in the *Technical Note* is not consistent with the requirements of ch. ATCP 51, ATCP 51 requirements should be followed.

¹ In lieu of completing this table, attach a manure tracking report prepared using SnapPlus <http://snapplus.wisc.edu/>.

Manure estimate using MWPS-18 "Manure Characteristics"												
Animal	Size	Daily Manure Production To Apply						Annual Manure Production To Apply				
		Solid		Liquid				Number x	Daily x	365 Day x	%	=
	Lbs	Lbs/day	ft ³ /day	MWPS ft ³ /day x WI dairy & beef dilution factor	ft ³ /day & WI dilution	MWPS gal./day x WI dairy & beef dilution factor	gal./day & WI dilution	of Head	Total Tons or Gal.	Total	Collected	Collected Tons or Gal.
Dairy												
Calf	150	13	0.200	.21*1.8=	.37	1.53*1.8=	2.80					
Calf	250	21	0.320	.33*1.8=	.60	2.47*1.8=	4.50					
Heifer	750	65	1.000	1.03*1.8=	1.85	7.70*1.8=	13.8					
Lact. Cows	1000	106	1.700	1.71*1.8=	3.07	12.7*1.8=	23.0					
	1400	148	2.400	2.38*1.8=	4.28	17.7*1.8=	32.0					
Dry Cows	1000	82	1.300	1.30*1.8=	2.35	9.7*1.8=	18.0					
	1400	115	1.820	1.82*1.8=	3.33	13.6*1.8=	25.0					
Beef												
Calf	450	26	0.420	.415*3.2=	1.3	3.1*3.2=	9.9					
High Forage	750	62	1.000	1.00*3.2=	3.2	7.5*3.2=	24.0					
High Forage	1100	92	1.400	1.48*3.2=	4.8	11*3.2=	35.0					
High Energy	750	54	0.870	.87*3.2=	2.7	6.5*3.2=	20.8					
High Energy	1100	80	1.260	1.27*3.2=	4.1	9.5*3.2=	30.5					
Beef Cow	1000	63	1.000	1.00*3.2=	3.2	7.5*3.2=	24.0					
Swine												
Nursery Pig	25	2.7	0.040		.04		.30					
Grow-Finish Pig	150	9.5	0.150		.17		1.20					
Gestating Sow	275	7.5	0.120		.14		1.00					
Sow & Litter	375	22.5	0.360		.42		3.00					
Boar	350	7.2	0.120		.14		1.00					
Poultry /												
Other												
Layers	4	0.26	0.004		.004		.03					
Broilers	2	0.18	0.003		.003		.02					
Turkeys	20	0.9	0.014		.015		.11					
Duck	6	0.33	0.005		.006		.04					
Sheep	100	4	0.060		.055		.40					
Horse	1000	50	0.800		.827		5.98					

Part B – Land Base for Applying Nutrients

1. What percentage of the manure and waste identified in Part A will be:

- Applied to land: _____%.
- Processed and sold as commercial fertilizer, under a fertilizer license: _____%.
- Disposed of in other ways: _____%. Describe: _____

2. Total acres of cropland currently available for land application (owned, rented, or landspreading agreement):

3. Attach map(s) showing the land where waste will be applied and any restrictions limiting the application of waste to that land. Additional documentation may be required by the political subdivision to verify that rental land is available.

Part C – Cropland Performance Standards

The applicant (operator) certifies that the livestock facility is in compliance, or shall implement conservation practices that achieve compliance, with the following requirements, and makes a commitment that the livestock facility will remain in compliance with these cropland performance standards:

- Control soil erosion on all fields covered by the nutrient management plan to remain at or below the T-value as specified in ATCP 50.04(2).
- Maintain of an average a phosphorus index of 6 or less over an accounting period and an annual phosphorus index of less than 12, as defined NR 151.04(2)(a), for all fields included in the nutrient management plan.

Part D – Nutrient Management Checklist

The checklist Part D must be completed, unless you claim the exemption by checking the box and initialing the certification and acknowledgement at the beginning of this worksheet. Part D must be completed and signed by a *qualified nutrient management planner* (the applicant must also sign).

Applicant affirms that the information provided in Parts A, B and C is accurate.

Signature of Applicant or Applicant's Authorized Representative

Date



Wisconsin Department of Agriculture, Trade and Consumer Protection
 Division of Agricultural Resource Management
 Bureau of Land and Water Resources
 PO Box 8911, Madison WI 53708-8911, Phone: 608-224-4605

Use this form to check nutrient management (NM) plans for compliance with the WI NRCS 2015-590 Standard.

Nutrient Management Checklist *Wis. Stat. §92.05(3) (k), Wis. Admin. Code §ATCP50.04(3) and Ch. 51*

COUNTY	DATE PLAN SUBMITTED	GROWING SEASON YEAR PLAN IS WRITTEN FOR (from harvest to harvest)	
TOWNSHIP: (T. N.)	RANGE: (R. E., W).	CHECK ONE: <input type="checkbox"/> Initial Plan or <input type="checkbox"/> Updated Plan	
NAME OF FARM OPERATOR RECEIVING NM PLAN First Name LastName		FARM NAME (OPTIONAL)	
STREET ADDRESS		CITY	BUSINESS PHONE () -
REASON THE PLAN WAS DEVELOPED: Click and choose. (Ordinance, NR 243 WPDES or NOD, DATCP-FP or cost share (cs), DNR-cs, USDA-cs, Other)		STATE	ZIP
CROPLAND ACRES (OWNED & RENTED)			
RENTED FARM(S) LANDOWNER NAME(S) AND ACREAGE: add sheet(s) if needed			
WAS THE PLAN WRITTEN IN SNAPPLUS? <input type="checkbox"/> YES <input type="checkbox"/> NO		If yes, which software version, if known?	
CHECK PLANNER'S QUALIFICATION: Click and choose. (1. NAICC-CPCC, 2. ASA-CCA, 3. SSSA-Soil Scientist, 4. DATCP approved training course, 5. Other approved by DATCP)			
NAME OF QUALIFIED NUTRIENT MANAGEMENT PLANNER First Name Last Name		BUSINESS PHONE () -	
STREET ADDRESS		CITY	STATE ZIP

Use header sections to add comments. Mark NA in the shaded sections if no manure is applied.

1. Does the plan include the following nutrient application requirements to protect surface and groundwater?			
<i>This section applies to fields and pastures. If no manure is applied, check NA for 1.c., 1.h., 1.i., 1.n., 1.o., 1.q., 1.s.</i>			
a. Determine field nutrient levels from soil samples analyzed by a DATCP certified laboratory.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. For fields or pastures with mechanical nutrient applications, determine field nutrient levels from soil samples collected within the last 4 years according to 590 Standard (590) and UWEX Pub. A2809, Nutrient Application Guidelines for Field, Vegetable, and Fruit Crops in Wisconsin (A2809) typically collecting 1 sample per 5 acres of 10 cores. Soil tests are not required on pastures that do not receive mechanical applications of nutrients if either of the following applies: 1. The pasture average stocking rate is one animal unit per acre or less at all times during the grazing season. 2. The pasture is winter grazed or stocked at an average stocking rate of more than one animal unit per acre during the grazing season, and a nutrient management plan for the pasture complies with 590 using an assumed soil test phosphorus level of 150 PPM and organic matter content of 6%.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. For livestock siting permit approval, collect and analyze soil samples meeting the requirements above in 1. b., excluding pastures, within 12 months of approval and revise the nutrient management plan accordingly. Until then, either option below maybe used: 1. Assume soil test phosphorus levels are greater than 100 ppm soil test P, OR 2. Use preliminary estimates analyzed by a certified DATCP laboratory with soil samples representing > 5 ac/sample.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Identify all fields' name, boundary, acres, and location.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Use the field's previous year's legume credit and/or applications, predominant soil series, and realistic yield goals to determine the crop's nutrient application rates consistent with A2809 for ALL forms of N, P, and K.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Make no winter applications of N and P fertilizer, except on grass pastures and winter grains.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Document method used to determine application rates. Nutrients shall not runoff during or immediately after application.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Identify in the plan that adequate acreage is available for manure produced and/or applied.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Apply a single phosphorus (P) assessment using either the P Index or soil test P management strategy to all fields within a tract when fields receive manure or organic by-products during the crop rotation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j. Use complete crop rotations and the field's critical soil series to determine that sheet and rill erosion estimates will not exceed tolerable soil loss (T) rates on fields that receive nutrients.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k. Use contours; reduce tillage; adjust the crop rotation; or implement other practices to prevent ephemeral erosion; and maintain perennial vegetative cover to prevent reoccurring gullies in areas of concentrated flow.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l. Make no nutrient applications within 8' of irrigation wells or where vegetation is not removed.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m. Make no nutrient applications within 50' of all direct conduits to groundwater, unless directly deposited by gleaning/pasturing animals or applied as starter fertilizer to corn.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No	NA
n. Make no untreated manure applications to areas within 1000' of a community potable water well or within 100' of a non-community potable water well (ex. church, school, restaurant) unless manure is treated to substantially eliminate pathogens.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
o. Make no manure applications to areas locally delineated by the Land Conservation Committee or in a conservation plan as areas contributing runoff to direct conduits to groundwater unless manure is substantially buried within 24 hours of application.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p. Make no applications of late summer or fall commercial N fertilizer to the following areas UNLESS needed for establishment of fall seeded crops OR to meet A2809 with a blended commercial fertilizer. Commercial fertilizer N applications shall not exceed 36 lbs. N/acre on: <ul style="list-style-type: none"> Sites vulnerable to N leaching PRW Soils (P=high permeability, R= bedrock < 20 inches, or W= wet < 12 inches to apparent water table); Soils with depths of 5 feet or less to bedrock; Area within 1,000 feet of a community potable water well. On P soils , when commercial N is applied for full season crops in spring and summer , follow A2809 and apply one of the following: <ol style="list-style-type: none"> A split or delayed N application to apply a majority of crop N requirement after crop establishment. Use a nitrification inhibitor with ammonium forms of N. Use slow and controlled release fertilizers for a majority of the crop N requirement applied near the time of planting. 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
q. Limit manure applications in late summer or fall using the lesser of A2809 or the following 590 rates on PRW Soils . <u>Use ≤ 120 lbs. available N/acre on:</u> P and R soils on all crops, except annual crops. Additionally, manure with ≤ 4% dry matter (DM) wait until after soil temp. < 50°F or Oct. 1, and use either a nitrification inhibitor OR surface apply and do not incorporate for at least 3 days. W soils or combo. W soils on all crops. Additionally, manure with ≤ 4% DM on <u>all crops</u> use at least one of the following: <ol style="list-style-type: none"> Use a nitrification inhibitor; Apply on an established cover crop, an overwintering annual, or perennial crop; Establish a cover crop within 14 days of application; Surface apply & don't incorporate for at least 3 days; Wait until after soil temp. < 50°F or Oct. 1. <u>Use ≤ 90 lbs. available N/acre on:</u> P and R soils on annual crops wait until after soil temp. < 50°F or Oct. 1. Additionally, manure with ≤ 4% DM use either a nitrification inhibitor OR surface apply and do not incorporate for at least 3 days. W soils or combination W soils receiving manure with ≤ 4% DM on <u>all crops</u> .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
r. Use at least one of the following practices on non-frozen soils for all nutrient applications within Surface Water Quality Management Area (SWQMA) = 1000' of lakes/ponds or 300' of rivers: <ol style="list-style-type: none"> Maintain > 30% cover after nutrient application; Effective incorporation within 72 hours of application; Establish crops prior to, at, or promptly following application; Install/maintain vegetative buffers or filter strips; Have at least 3 consecutive years no-till for applications to fields with < 30% residue (silage) and apply nutrients within 7 days of planting. 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
s. Limit mechanical applications to 12,000 gals/acre of unincorporated liquid manure or organic by-products with 11% or less dry matter where subsurface drainage is present OR within SWQMA . Wait a minimum of 7 days between sequential applications AND use one or more of the practice options on non-frozen soils listed in 1.r.1. through 1.r.5.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. When frozen or snow-covered soils prevent effective incorporation, does the plan follow these requirements for winter applications of all mechanically applied manure or organic by-products? *This section doesn't apply to winter gleaning/pasturing meeting 590 N and P requirements.*

If no manure is applied, check NA for 2.a. through 2.g..

	Yes	No	NA
a. Identify manure quantities planned to be spread during the winter , or the amount of manure generated in 14 days, whichever is greater. <i>For daily haul systems, assume 1/3 of the manure produced annually will need to be winter applied.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Identify manure storage capacity for each type applied and stacking capacity for manure ≥ 16% DM if permanent storage does not exist.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Show on map and make no applications within the SWQMA .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Show on map and make no surface applications of liquid manure during February and March where Silurian dolomite is within 60 inches of the soils surface OR where DNR Well Compensation funds provided replacement water supplies for wells contaminated with livestock manure.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Show on map and make no applications of manure within 300 feet of direct conduits to groundwater .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Do not exceed the P removal of the following growing season's crop when applying manure. Liquid manure applications are limited to 7,000 g/acre . All winter manure applications are not to exceed 60 lbs. of P2O5/acre .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Make no applications of manure to fields with concentrated flow channels unless using two of the following: <ol style="list-style-type: none"> Contour buffer strips or contour strip cropping; Leave all crop residue and no fall tillage; Apply manure in intermittent strips on no more than 50% of field; Apply manure on no more than 25% of the field waiting a minimum of 14 days between applications; Reduce manure app. rate to 3,500 gal. or 30 lbs. P2O5, whichever is less; No manure application within 200 feet of all concentrated flow channels; Fall tillage is on the contour and slopes are lower than 6%. Make no applications to slopes greater than 6% (soil map units with C, D, E, and F slopes) unless the plan documents that no other accessible fields are available for winter spreading AND two of the options 2.g.1. through 2.g.5. are used.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

I certify that the plan represented by the answers on this checklist complies with Wisconsin's NRCS 2015-590 NM Standard or is otherwise noted.

Qualified NM planner signature	NAICC-Certified Professional Crop Consultant, ASA-Certified Crop Adviser, or SSSA-Soil Scientist	Date
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Qualified NM farmer-planner or Authorized farm operator signature receiving and understanding the plan	Date	Signature if reviewed for quality assurance	Date
--	------	---	------



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 2811 Agriculture Drive, PO Box 8911, Madison WI 53708-8911
 Phone: (608) 224-4630 or (608) 224-4500

Worksheet 4 - Waste Storage Facilities

Instructions. This worksheet must account for every structure that stores or transfers manure or process wastewater on the proposed livestock facility, and must be signed by the applicant. A registered engineer or conservation engineering practitioner must sign unless the applicant qualifies for an exemption for all structures. If an applicant is unable to submit the documentation required to claim an exemption for one or more structures, applicable sections of the worksheet must be completed to demonstrate compliance.

Exemptions.

_____ (Initial) By initialing this worksheet, checking one or more boxes below, and submitting the required documentation, the applicant is certifying:

- The following existing, substantially altered or new facilities were reviewed and approved by DNR as part of the *WPDES* permit (identify by unique identifiers listed on the site map: _____). In support of this submission, the applicant (1) provides copies of applicable plan and specification approvals or other determinations for waste storage facilities of the same size and type as those proposed for the new or expanded livestock facility, and (2) certifies that the *WPDES* permit is current, and that the livestock facility is in compliance with all *WPDES* permit conditions and requirements.
- The following existing, substantially altered or new facilities (list by unique identifier as noted on the site map: _____) was approved by DNR for storage of agricultural wastewater and other related products under NR 213. (DNR approval is attached.)
- The following existing facilities (list by unique identifier as noted on the site map: _____) was constructed within the last 3 years in accordance with then-existing NRCS standards, as documented by the attached as-built plan or local approval under a s. 92.16 ordinance.

Section A: New or Substantially Altered Facilities. The following storage facilities and transfer systems (identify by unique identifiers listed on the site map: _____) comply with applicable NRCS Technical Guide Standards: 313 (October, 2017R), 520 (October, 2017R), 521 (October, 2017R), 522 (October, 2017R) and 634 (January, 2014), as documented by the attached design specifications.

Section B: Existing Storage Facilities Retained. The following storage facilities will continue in use without being substantially altered. Each facility meets one of the following:

- The facility (identify by unique identifiers listed on the site map: _____) was constructed within the last 10 years according to then-existing NRCS technical standards, and a visual inspection of the facility shows no apparent signs of structural failure or significant leakage.
- The facility (identify by unique identifiers listed on the site map: _____) was constructed over 10 years ago according to then-existing NRCS technical standards, and a visual inspection of the emptied facility shows no apparent signs of structural failure or significant leakage.
- The construction standard of facility identify by unique identifiers listed on the site map: _____ cannot be verified from reliable document, a full investigation of the facility was performed, and this investigation established that the facility is in good condition and repair, shows no apparent signs of structural failure or significant leakage, and is located on a site at which the soils and separation distances to groundwater meeting the requirements for the appropriate liner type referenced in NRCS technical guide manure storage facility standard 313 October, 2017R) and the related liner standards listed in Section A.

Section C: Facilities That Must Be Closed. Closure is required for the following facilities (identify by unique identifiers listed on the site map: _____), and the attached closure plans comply with NRCS Technical Guide Standard 360 (May, 2018).

Section D: Facility Operation. The applicant (operator) certifies that that livestock facility is in compliance with the following requirements and will remain in compliance as long as the facility is permitted:

1. All manure storage facilities in existence as of October 1, 2002 that pose an imminent threat to public health, fish and aquatic life, or groundwater shall be upgraded, replaced, or abandoned in accordance with s. NR 151.05(4)(b).
2. Levels of materials in storage facilities may not exceed the margin of safety level as defined in s. NR 243.03(37).

If not in compliance, the applicant must submit plans for achieving compliance.

 Signature of Applicant or Applicant's Authorized Representative Date

Professional Engineer's
 Embossed Seal

 Print Name of Engineer (include WI License No.) or Certified Practitioner

 Signature of Engineer or Practitioner Date

 Name of Firm and Address



Wisconsin Department of Agriculture, Trade and Consumer Protection
 2811 Agriculture Drive, PO Box 8911, Madison WI 53708-8911
 Phone: (608) 224-4630 or (608) 224-4500

Worksheet 5 - Runoff Management

Instructions. This worksheet must account for all sources of runoff including animal lots, feed storage structures, and milking centers on the proposed livestock facility, and must be signed by the applicant. A registered engineer or conservation engineering practitioner must sign unless the applicant qualifies for an exemption for all structures. If an applicant is unable to submit the documentation required to claim an exemption for one or more structures, applicable sections of the worksheet must be completed to demonstrate compliance.

Exemptions.

_____ (Initial) By initialing this worksheet, checking one or more boxes below, and submitting the required documentation, the applicant is certifying:

The following existing, substantially altered or new facilities animal lots or feed structure structures were reviewed and approved by DNR as part of the WPDES permit (identify by unique identifiers listed in the site map):

_____. In support of this submission, the applicant (1) provides copies of applicable plan and specification approvals or other determinations that cover animal lots or storage structures of the same size and type as those proposed for the new or expanded livestock facility, and (2) certifies that the WPDES permit is current, and that the livestock facility is compliance with all WPDES permit conditions and requirements.

Part A: Animal Lots¹

1. General. The applicant (operator) certifies that no animal lot has direct runoff to surface waters of the state or discharges to any direct conduit to groundwater, and makes a commitment that the proposed livestock facility will have no such runoff or discharge from any animal lot.

2. New or Substantially Altered Animal Lots. The following new or substantially altered animal lots (identify by unique identifiers listed on the site map: _____) will collect and store animal lot runoff for future land application or will be constructed according to the attached design specifications that comply with *NRCS Technical Guide Standard 635* (September, 2016R).

3. Existing Animal Lots Near Sensitive Areas. The following animal lots (identify by unique identifiers listed on the site map: _____) are located within 1,500 feet of navigable lakes, ponds, and flowages; 450 feet of wetlands and navigable streams and rivers; 750 feet of conduits to groundwater; 450 feet of surface inlets that discharge to navigable waters; 225 feet of channelized flow; and 225 feet of subsurface drains (measured from the edge of the animal lot). According to the *BARNY runoff model*, each of these animal lots has (or with minor alterations² will have) predicted average annual phosphorus runoff of less than 5 lbs. per year (measured at the end of the treatment area).

4. Other Existing Animal Lots. The following animal lots (identify by unique identifiers listed on the site map: _____) are NOT located within 1,500 feet of navigable lakes, ponds, and flowages; 450 feet of wetlands and navigable streams and rivers; 750 feet of conduits to groundwater; 450 feet of surface inlets that discharge to navigable waters; 225 feet of channelized flow; and 225 feet of subsurface drains (measured from the edge of the animal lot). According to the *BARNY runoff model*, each animal lot has (or with minor alterations³ will have), a treatment area that reduces phosphorus runoff to an average of less than 15 lbs. per year (measured at the end of the treatment area).

Part B: Process Wastewater

1. General. The applicant (operator) certifies that all existing livestock structures have no significant discharge of process wastewater to waters of the state or to a direct conduit to groundwater, and makes a commitment that the proposed livestock facility will have no such discharge from any livestock structure.

¹ Treat multiple lots as one animal lot if runoff from the animal lots drains to the same treatment area or if runoff from the animal lot treatment areas converges or reaches the same surface water within 200 feet of any of those treatment areas.

² "Minor alterations" of an animal lot means a repair or improvement that may include lot management such as cleaning; shaping, seeding and other non-structural changes to address flow issues, and installation of conservation practices such as roof gutters, diversions, surface inlets, underground outlets, and gravel spreaders.

Part C: Feed Storage (buildings, bunkers, paved areas)

1. Existing Feed Storage Structures.¹ The following feed storage structures (identify by unique identifiers listed on the site map: _____) meet the criteria for continued use:

- (a) They have been designed and constructed according to applicable NRCS standards that existed at the time of construction or in the absence of documentation to support this, they are located on a site with soils and separation distances that comply with Tables 1, 2, or 3 in NRCS Technical Guide Standard 629 (January, 2017).
- (b) They are in good condition and repair.
- (c) They show no apparent signs of structural failure, significant leakage, or significant discharges to surface water.

2. For each structure identified in the applicant (operator) agrees to operate and maintain structures as follows: divert clean water from entering each of the structures, collect and store surface discharge of leachate from stored feed and initial runoff volume of 0.2 inches from each precipitation event before it leaves structures or paved areas covering more than one acre, prevent collected leachate from discharging to waters of the state, prevent leachate and contaminated runoff from infiltrating below the storage structure, avoid accumulation of debris in the loading area, and ensure proper functioning of collection and treatment areas.

Note: Structures with roofs are not required to divert clean water as required, or collect and store runoff from precipitation events.

3. New and Substantially Altered Feed Storage Structures that are One Acre or More.

The following feed storage structures (identify by unique identifiers listed on the site map: _____)

- (a) Are designed according to the attached specifications to comply with NRCS Technical Guide Standard 629 (January, 2017), and
- (b) Will manage leachate and contaminated runoff by collecting and storing for future land application or treating the runoff in accordance with NRCS Technical Guide Standard 635 (September, 2016R).

4. New and Expanded Feed Storage Structures Less than One Acre.

The following feed storage structures (identify by unique identifiers listed on the site map: _____) are:

- (a) Less than one acre in size.
- (b) **Not** located within 1,500 feet of navigable lakes, ponds, and flowages; 450 feet of wetlands and navigable streams and rivers; 750 feet of conduits to groundwater; 450 feet of surface inlets that discharge to navigable waters; 225 feet of channelized flow; and 225 feet of subsurface drains.
- (c) Designed or constructed with storage floors that meet the applicable Table 1, 2, or 3 of NRCS Technical Guide Standard 629 (January, 2017), as indicated by the attached designs.
- (d) Designed or constructed to collect and store all leachate from stored feed and an initial runoff volume of 0.20 inches from each precipitation event, as indicated by the attached designs.
- (e) Located in areas that do not have soils with a high potential for leaching contaminants to groundwater.
- (f) Located on sites with conditions such that runoff from a 25-year, 24-hour precipitation event will not result in a significant discharge to waters of the state.

5. Operation and Maintenance

New and substantially altered feed storage shall be operated and maintained in accordance with NRCS Technical Guide Standard 629 (January, 2017), and NRCS Technical Guide Standard 635 (September, 2016R).

Part D: Milking Center Wastewater

Check if all of the milking center wastewater is transferred to a waste storage facility or another structure that meets the design criteria of NRCS waste facility storage technical standard 313.

If any such wastewater is not stored, the applicant and engineer certify that the livestock facility generates less than 500 gallons of wastewater daily, does not store the wastewater for an extended period, and is implementing the treatment practices described in NRCS waste treatment technical standard 629 (January, 2019).

¹ For the purposes of the requirements in this section, a feed storage structure includes any building, bunker, or paved area used for feed storage or handling, but does not include silos, storage bags, and grain bins.

Part E: Nonpoint Pollution Standards

The applicant (operator) certifies that that livestock facility is in compliance with the following requirements and will remain in compliance as long as the facility is permitted:

- (a) Runoff is diverted from contact with animal lots, waste storage facilities, paved feed storage areas or manure piles within 300 ft. of a stream or 1,000 ft. of a lake.
- (b) No unconfined manure pile are located within 300 ft. of a stream or 1,000 ft. of a lake.
- (c) There is no overflow of waste storage facilities.
- (d) Access of livestock is restricted to waters of the state, as necessary to maintain adequate vegetative cover on banks adjoining the water (this does not apply to properly designed, installed and maintained livestock or farm equipment crossings).

If not in compliance, the applicant may submit plans for achieving compliance.

Signature of Applicant or Applicant's Authorized Representative

Date

Professional Engineer's
Embossed Seal

Print Name of Engineer (include WI License No.) or Certified Practitioner

Signature of Engineer or Practitioner

Date

Name of Firm and Address

Appendix B

Request for Modification of a Local Approval



Wisconsin Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911
(608) 224-4630
(608) 224-4500

Introduction

Use this form to request a modification of a local approval ("permit") previously issued for a *new* or *expanded* livestock facility (cattle, swine, poultry, sheep or goats). Successive modifications of a local approval are permissible

You must meet eligibility requirements to request a modification of your local approval. You may request a modification under one of these conditions:

- A livestock facility is planning to construct or alter one or more livestock structures without increasing the maximum number of animal units authorized in the most recent full approval.
- A livestock facility is planning to increase the maximum number of animal units without constructing or altering any livestock structures, provided that:
 - a. The increase in animal units will not exceed 20 percent of, and in no case increase by 1,000 above, the maximum number of animal units authorized in the most recent full approval.
 - b. The livestock facility has not previously received a permit modification to increase animal units above the maximum number authorized in the most recent full approval.

Completing the Request

A livestock operator requests a permit modification by completing the request form and attaching the required application materials. As part of completing the request form, you must verify that the proposed expansion of the livestock facility meets the eligibility requires for a permit modification. You also must provide information related to the most recent full approval you received from the permitting authority including the number of maximum animal units authorized by the local approval. Your most recent full approval refers to a local approval based on the submission of a full application and approval under the procedures in subch. III of ATCP 51 (see ss. ATCP 51.30 through 51.36). In addition, you will need to account for previous modifications to your most recent full approval.

Your request must include all relevant worksheets from Appendix A, documenting that the livestock facility, as modified, will maintain compliance with the standards in subch. II of ATCP 51.

The permitting authority may request that you provide additional documentation showing that you meet any local standards adopted in their ordinance. A local government has *very limited* authority to modify the standards by local ordinance (modifications, if any, must be reflected in the local version of this application form).

Maps

You must submit updated area and site maps if there are changes in structures, buildings or other physical characteristics involving the area where your livestock facility is located. Indicate any changes by marking up the original map submissions you provided with your most recently approved full application for a permit for a new or expanded livestock facility.

If you are increasing land for spreading manure, you will need to submit additional maps showing the owned and rented land where manure will be applied (see Worksheet 3).

Plan submissions

You need to submit an *Odor Management Plan* if you do not have a plan on-file that meets the new standard. You may also need to submit a modified *Employee Training Plan* if you have made changes in your operation that require an update. You should review your *Environmental Incident Response Plan* to determine if it is current.

Narrative

Complete a short narrative describing the proposed changes for which you are seeking local approval. The narrative should describe the changes that appear on the site and area maps and describe the operation's management of manure.

Worksheets

Complete and submit all relevant worksheets that apply to your modification request, following the instructions on each worksheet (except for the differences noted below):

Animal units (Worksheet 1)

You must complete this worksheet if your proposal is to add animal units. You must specify the maximum number of *animal units* that you will keep at a new or expanded livestock facility. If the local government approves your requested number, this will be the maximum number that you may keep for 90 days or more in any 12-month period.

Odor management (Worksheet 2)

You must submit this worksheet if your proposal is to add or alter qualifying livestock structures. At minimum, worksheet 2 should be completed to document the surface area of existing manure storage structures and certain housing types. (This will allow you limited expansion of these facilities without adding odor control practices if these facilities are located within required setbacks.) If manure storage structures or certain housing structures are being built within setback requirements (see Charts 2 and 3 of Worksheet 2), Worksheet 2 must be completed to claim setback reductions. Note: Odor management plans may be required, in addition to this worksheet (see Request form, # 11).

Waste and nutrient management (Worksheet 3)

You must complete this worksheet if your proposal requires that you increase the land base for spreading manure as a result of an increase in animal units or if your proposal is to add or alter a manure storage structure. You will need to include an updated nutrient management plan checklist that covers the manure generated from the maximum number of animal units authorized under your full siting permit, or as modified due to an increase in animal units.

Waste storage facilities (Worksheet 4)

You must complete this worksheet if your proposal includes the construction or expansion of manure storage, waste transfer or other waste storage structures. You may be required to evaluate existing structures that have not been addressed in earlier applications.

Runoff management (worksheet 5)

You must complete this worksheet depending on the nature of the changes you are making to your livestock operation. For example, if you are only expanding an animal lot, then parts A and E need to be completed. You do not need to complete the parts that pertain to process wastewater, feed storage, milking center waste runoff system. Use the request for modification form to indicate which parts you completed.

If the Wisconsin Department of Natural Resources (*DNR*) has issued a Wisconsin Pollutant Discharge Elimination System (*WPDES*) permit for your proposed livestock facility, you may provide a certification and supporting documentation in lieu of completing Worksheets 3, 4 and 5 if you meet the requirements for substitution. A *WPDES* permit does not affect the requirements for completing Worksheets 1 and 2.

Fees

The fee for a permit modification cannot exceed \$500. A local government may NOT charge any other fee, or require you to post any bond or security.

Review Process

As an alternative to submitting a full application for approval, a request for modification offers a streamlined process for updating a permit issued for your facility. There are fewer procedures to follow and a local government must grant or deny a request for a permit modification within 45 days after it receives the request. Permit modifications do not include procedural protections required when livestock operator submits a full application using Appendix A. In particular, permit modifications do not include a completeness determination and a presumption of compliance with siting standards that arise based on a completeness determination.

If the permit modification request is approved, a local government must indicate its approval in the section on the request form reserved for permitting authority to complete. The local government must provide a copy of the approved application, marked "approved."

Appeal of Local Decision

If you do not agree with local decision on your permit request, you may file a full application with the local government, and gain the protection of a completeness determination and possible hearing. You also may have appeal rights regarding the decision on your modification request; however, it is not clear that Livestock Facility Siting Board will have jurisdiction.



**Wisconsin Department of
Agriculture, Trade and
Consumer Protection**
2811 Agriculture Drive, PO Box 8911,
Madison WI 53708-8911
Phone: (608) 224-4622 or (608) 224-
4500

Request for Modification of Local Approval

Wis. Admin. Code ch. ATCP 51

Permitting Authority Completes

Date Request Received: ___/___/___

Confirm Applicant Submissions:

Date of Most Recent Full Approval: ___/___/___

Maximum AUs approved: _____

Modification Dates (complete all that apply): ___/___/___
___/___/___

Date Notice Sent to Adjacent Landowners: ___/___/___

Date of Decision Regarding

Modification Request: ___/___/___

Decision:

Approved with conditions:

Denied

1. Legal Name of Applicant (Business Entity):

2. Contact Person:

Name:

Phone:

E-mail:

3. Business Address:

Street Address:

City/Village/Town:

County:

State:

Zip:

5. Description of Proposed Livestock Facility

Address of Livestock Facility:

5. Eligibility

The applicant verifies that the livestock facility is eligible for a permit modification for one of the following reasons:

- The livestock facility will increase the number of animal units by no more than 20 percent or 1,000 animal units above the maximum number authorized in the most recent full approval issued by the political subdivision.
- The livestock facility will construct or alter livestock structures without increasing the maximum number of animal units authorized in the most recent full approval issued by the political subdivision.

6. Permit Approval and Modifications

Date of most recent full approval: ___/___/___

Permit number or identifier: _____

Maximum number of animal units authorized at time of full approval: _____ AUs

Application (continued)

7. Total Animal Units

If you are adding animal units, use **worksheet 1** to calculate total animal units:

Total Animal Units: _____. This is the maximum livestock facility size for which the applicant requests approval at this time. All worksheets must be prepared based on this maximum listed size.

8. Area Map of Livestock Facility

If livestock structures are modified or added, update the scale map or aerial photo submitted with your most recent application for full approval. The updated map or photo must retain the scale and topographic lines of the original map submitted by the livestock operator, and clearly and legibly show all of the following:

- All existing and proposed livestock structures.
- The area lying within 2 miles of any of the livestock structures. Show all existing buildings, property lines, roadways, and navigable waters within that area.

9. Site Map of Livestock Facility

If livestock structures are modified or added, update the scale map or aerial photo submitted with your most recent application for full approval. The updated map or photo must retain the scale and topographic lines of the original map submitted, and clearly and legibly shows all of the following:

- All existing and proposed livestock structures. Label each livestock structure with a unique identifier that includes a description of the structure type (waste storage, housing, lot, feed storage, waste transfer system), and indicates whether the structure is proposed (new or altered). For example, "waste storage 1" would identify that a waste storage structure is existing and the first of a certain number of waste storage structures at the livestock facility. Include the unique identifier for each structure, when completing all relevant worksheets.
- The area lying within 1,000 ft. of any of the livestock structures. Show all existing buildings, property lines, roadways, navigable waters, and known karst features within that area.

10. Location of new or modified Livestock Structures

The applicant certifies that:

- All livestock structures (including storage structures that collect non-manure waste) must comply with applicable local property line and road setbacks. See ATCP 51.12(1).
- All manure storage and Category 1 and 2 livestock housing structures comply with setbacks in ATCP 51.12(2), and Worksheet 2 is completed to document the setbacks for these structures. **Note:** *Odor control practices documented in Worksheet 2 may reduce setbacks.*
- All livestock structures comply with applicable local shoreland, wetland, and floodplain zoning ordinances (copies available from local government).

Wells comply with the Wisconsin well code (NR 811 and 812). New or substantially altered livestock structures are separated from existing wells (including neighbors' wells) by setback distances required in NR 811 and 812.

Application (continued)

11. Plans

Check all the following boxes that apply if you are submitting a modified or new plans. The plans must meet the requirements under each of the three sections.

Employee Training Plan

Applicant determines plan contents, as long as the plan identifies all of the following:

- Training topics including, at a minimum, nutrient management, odor management, manure management and waste handling, maintenance of odor control practices, runoff management, and environmental incident response. (Training on employee safety should be included in these topics)
- The number and job categories of employees to be trained.
- The form and frequency of training, which at a minimum must include a plan for at least one training per year.
- Training presenters (these may include *livestock facility* managers, consultants or professional educators).
- A system for taking and recording attendance.
- A system for documenting and retaining records of completed trainings (Permitting authorities may request to inspect these records).

Environmental Incident Response Plan

Applicant determines plans contents, as long as the plan identifies all of the following:

- Types of environmental incidents covered. These must include, at a minimum, overflows and spills from waste storage facilities, catastrophic system failures, manure spills during transport and application, movement of manure during or after application, catastrophic mortality disposal emergency, and odor complaints.
- The name and business telephone number of at least one individual who will handle public questions and concerns related to environmental incidents.
- The names and telephone numbers of first responders (e.g. DNR, fire departments, excavation contractors)
- Incident response procedures, including emergency response, recordkeeping and reporting requirements.
- A system for documenting and retaining records involving environmental incidents. (Permitting authorities may request to inspect these records).

Odor Management Plan (submit if you do not have a plan on file that meets the new standard)

Odor management plans required if the livestock facility has manure storage located within 600 feet of any property line or animal housing located within 400 feet of any property line.

- The plan shall identify management practices that the livestock facility must follow to control odor from each manure storage structure and livestock housing located within the separation distances. The plan may include odor control practices identified in a local approval granted before [the effective date of this rule revision].
- In the case of a new or expanded manure storage structure and livestock housing that cannot be constructed without odor control practices to reduce setback requirements; the operator may reference Worksheet 2 in place of describing the odor control practices in the plan.
- The plan also may include practices to reduce dust, practices to reduce odor from nearby livestock structures such as animal lots, practices used to reduce odor from dead animals, activities to reduce community conflict, and water conservation practices that control odor.
- A system for documenting and retaining records concerning the operation and maintenance of odor control practices (Permitting authorities may request to inspect these records).

12. Narrative

Include a narrative describing the new or expanded livestock facility, including the new or altered livestock structures using unique identifiers and the manure management system that will be implemented at the livestock facility.

13. Worksheets

Check each of the following worksheets that are submitted with this application:

Worksheet 1 – Animal Units.

Worksheet 2 – Odor Management.

Worksheet 3 – Waste and Nutrient Management.

Worksheet 4 – Waste Storage Facilities.

Worksheet 5 – Runoff Management.

Check all parts that you must complete based on the changes in your livestock operation:

Part A: Animal Lots

Part B: Process Wastewater

Part C: Feed Storage

Part D: Milking Center Wastewater

Part E: Nonpoint Pollution Standards

Authorized Signature:

I (we) certify that the information contained in this application (including worksheets and all attachments) is complete and accurate to the best of my knowledge.

Signature of Applicant # 1 or Authorized Representative #1

Date

Print Name

Title

Signature of Applicant # 2 or Authorized Representative # 2

Date

Print Name

Title

Appendix C
NOTICE TO ADJACENT PROPERTY OWNERS
STATE OF WISCONSIN -- LIVESTOCK FACILITY SITING
Wis. Stats. § 93.90; Wis. Adm. Code ch. ATCP 51

_____ (“political subdivision”) has received an application from _____ (“applicant”) to approve a new or expanded livestock facility located at _____.

The application form and worksheets, which are prescribed by state law, describe the proposed facility in detail including how the applicant will comply with state siting standards relating to:

- Property line and road setbacks.
- Odor management.
- Waste and nutrient management.
- Waste storage facilities.
- Runoff management.

The application materials may be viewed (by visiting this website: _____ (at this address during normal business hours: _____) [~~strike what does not apply~~].

The boxes checked below describe the political subdivision’s procedures for making a decision on this application:

- The political subdivision notified the applicant that its full application was complete on _____. Under state law, the political subdivision must normally grant or deny the application within 90 days after that date.
- Based on a completeness determination, the political subdivision must approve the application unless it finds, based on other clear and convincing evidence, that the application fails to meet state standards.
- A political subdivision must grant or deny a request to modify an existing local approval within 45 days after the livestock operator’s submission of a complete application.
- Interested persons may submit comments and information, in writing, by _____.
- The political subdivision will hold a public hearing on this matter, and will publish a hearing notice in the normal manner.

An applicant, or a person who resides or owns land within 2 miles of the proposed livestock facility, may appeal the political subdivision’s decision to the Wisconsin Livestock Facility Siting Review Board. Any appeal must be filed within 30 days after the political subdivision’s final decision (includes any decisions made as part of a local administrative review process).

On the back side of this notice, you will find a short summary of state livestock facility siting requirements. For more information, you may call _____ or visit the state website at <http://livestocksiting.wi.gov>

State Livestock Facility Siting Requirements (For New or Expanded Livestock Operations that Need a Local Permit)

Standard	Applies to	Specific Requirements
General Information (see main application)	All applicants	<ul style="list-style-type: none"> • Describe proposed livestock operation in detail including a narrative • Show maximum number of “animal units” proposed • Document compliance with state siting standards
Setbacks (see site map)	All applicants	<ul style="list-style-type: none"> • Require that livestock structures meet local setbacks (cannot exceed state maximums of 100 to 300 feet depending on size) • Require setbacks for new and expanding manure storage and certain housing types ranging from 400 to greater than 2,500 feet depending on the facility’s size • Allow setback reductions based on odor control practices • Grandfather existing structures and allows limited expansion of structures away from property lines • Must comply with existing water quality setbacks (wetland, floodplain, well setbacks)
Odor Management (see worksheet)	All applicants, with a focus on livestock operations that have: <ul style="list-style-type: none"> • Manure storage or housing structures near their property lines, or • New or expanded manure storage or housing structures that do not meet setbacks without odor control practices 	<ul style="list-style-type: none"> • Remain in compliance with odor standard incorporated into existing permit (released when a subsequent approval is granted for an expansion) • Must have an odor management plan if existing storage within 600 feet of property line or existing housing is within 400 feet • May be asked to update odor management plan if political subdivision receives verified odor complaint • Document reductions in setbacks for new and expanded manure storage and high odor housing structures based on odor control practices
Waste and Nutrient Management (see worksheet)	All applicants	<ul style="list-style-type: none"> • Document amount of manure and other waste that will be generated by the proposed livestock facility • Describe how wastes will be managed (e.g. composting, land spreading) • Identify land receiving manure with any spreading restrictions • Submit a checklist showing documenting a plan to manage manure and nutrient applications to meet crop needs while minimizing risks to water resources • Comply with performance standards for soil erosion, tillage setbacks and phosphorus management
Waste Storage Facilities (see worksheet)	All applicants with waste storage structures (manure storage is not required)	<ul style="list-style-type: none"> • Construct new and expanded storage structures according to technical standards • Certify that existing structures are safe (not leaking or failing) • Close structures that are not safe • Operate structures according to performance standards
Runoff Management (see worksheet)	All applicants	<ul style="list-style-type: none"> • Prevent significant discharges from animal lots, feed storage, and milking center waste • Certify that feed storage structures are safe (not leaking or failing) • Meet phosphorus discharge standards for existing animal lots • Design new and expanded animal lots and feed storage to the latest technical standards (exceptions apply) • Meet performance standards for clean water diversion, overflow from waste storage, unconfined manure piles and overgrazing of streambanks
Training and Incident Response Plans	All applicants	<ul style="list-style-type: none"> • Develop employee training (manure and odor mgmt.) • Develop incident response plan (spills and odor events)

EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Repeal Modification

2. Administrative Rule Chapter, Title and Number

ATCP 51, Livestock Facility Siting

3. Date Rule promulgated and/or revised; Date of most recent Evaluation

Wis. Admin. Code ch. ATCP 51 ("ATCP 51") first became effective on May 1, 2006, and has not been substantively modified since. Department of Agriculture, Trade and Consumer Protection ("Department") is required by rule to formally evaluate the rule every four years. In 2014, the Department initiated a formal evaluation of the rule in accordance with s. 93.90 (2) (c), Stats., and the evaluation included recommendations from a technical expert committee (TEC) provided in the fall of 2015. In 2018, the Department reconvened the same group of experts to review a draft rule that incorporated its 2015 recommendations.

4. Plain Language Analysis of the Rule, its Impact on the Policy Problem that Justified its Creation and Changes in Technology, Economic Conditions or Other Factors Since Promulgation that alter the need for or effectiveness of the Rule.

The siting rule established a uniform framework of standards and procedures required to implement Wisconsin's livestock facility siting law, Wis. Stat. § 93.90. The law is intended to provide a clear and predictable system of local regulation of livestock facilities that would protect communities and improve the business environment for the livestock industry. The rule requirements only apply to livestock operators located in jurisdictions that have adopted ordinances requiring permits for new or expanding livestock facilities that exceed a certain size (commonly 500 animal units).

In fulfillment of its duties prescribed under Wis. Stat. § 93.90(2)(c) and (d), the Department conducted two reviews of ATCP 51 (receiving TEC input and recommendations in 2015 and 2019). The TEC's 2014 review of ATCP 51 identified the need for consistency among related rules (chs. NR 151 and ATCP 50). The review, including input from stakeholders, also identified improvements in procedures and standards. Based on TEC recommendations and other input, the Department proposed revisions built around existing regulatory framework, including the core water quality and odor control practices. To the extent that the rule revision makes changes, improvements in standards are intended to advance the statutory goal of "providing uniform regulation of livestock facilities" and better balance the factors listed in Wis. Stat. § 93.90(2)(b), which the Department must use to establish state standards. In 2018, the Department convened the same group to provide input concerning a draft rule. The 2019 TEC report endorsed key changes proposed in the draft rule, and recommended changes to improve key facets of the draft rule including setbacks, manure storage construction and evaluation, and runoff management.

5. Describe the Rule's Enforcement Provisions and Mechanisms

The Department is required by statute to develop and update standards and procedures that local governments must follow if they have ordinances requiring local permits for new and expanding livestock facilities. Specifically, Wis. Stat. § 93.90(2)(a), directs the Department to develop state standards that are consistent with "rules promulgated under ss. 92.05 (3) (c) and (k), 92.14 (8), 92.16, and 281.16 (3) and ch. 283," and do not conflict with those rules. In developing and revising these standards, the Department must properly balance the factors identified in Wis. Stat. § 93.90(2)(b), including protection of public health or safety, cost-effectiveness, and usability by local governments. Under Wis. Stat. § 93.90(2)(e), the Department is required to develop application materials that local governments must use to determine if a proposed livestock facility complies with applicable state standards. Local governments are required to submit copies of local ordinances and their decisions on permit applications submitted under their ordinances. While the Department collects and reports on these submissions, it has no authority to approve local ordinances or otherwise address the legality of local actions. Since the siting rule is locally administered, and only implemented in jurisdictions that have adopted ordinances to require siting permits, there may be local variations regarding permit enforcement and appeal mechanisms. In addition, Wis. Stat. § 93.90(5) created the Livestock Facility Siting Review Board for livestock operators and aggrieved neighbors to appeal a local permit decision on the grounds that a local government incorrectly

EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

applied livestock facility siting standards under chapter ATCP 51 or violated the Livestock Facility Siting Law, Wis. Stat. § 93.90.

-
- | | |
|--|---|
| 6. Repealing or Modifying the Rule Will Impact the Following
(Check All That Apply) | <input checked="" type="checkbox"/> Specific Businesses/Sectors |
| <input type="checkbox"/> State's Economy | <input type="checkbox"/> Public Utility Rate Payers |
| <input checked="" type="checkbox"/> Local Government Units | <input checked="" type="checkbox"/> Small Businesses |
-

7. Summary of the Impacts, including Compliance Costs, identifying any Unnecessary Burdens the Rule places on the ability of Small Business to conduct their Affairs.

Impact on Business Sectors

The rule changes will have a very limited impact on farms statewide, affecting less than 1 percent of livestock operations in the state. Based on the issuance of 150 permits during the first 11 years of ATCP 51 implementation, the Department estimates over the next ten years that the revised rule will impact no more than 150 new or expanding livestock facilities statewide that are issued local permits for the first time or are reissued permits [100 new permits (10 per year) plus 70 permit reissuances (7 per year) minus 20 that will seek more than one permit reissuance]. Since the rule change will have virtually no impacts on 85 new and expanding livestock facilities that are Concentrated Animal Feeding Operations ("CAFOs") and are required by their DNR permits to meet the higher water quality standards in the revised siting rule, its impact will be most significant for approximately 55 non-CAFOs. It is estimated that the affected livestock operations, nearly all of which are small businesses, will incur an additional \$1.05 to \$1.16 million in annual costs to comply with the changes in the rule revision over a 10 year period.

The rule will have a small, but positive impact on livestock-related businesses. Those businesses, many of which are small businesses, include nutrient management planners, soil testing laboratories, farm supply organizations, agricultural engineering practitioners, and contractors installing farm conservation practices.

The Regulatory Flexibility Analysis, which accompanies this rule, provides a more complete analysis of the issue, including a detailed breakdown of increased costs for livestock operators, a copy of the analysis is attached in answer to question #14).

The Department has made the following rule modifications to limit or offset any unnecessary burdens on livestock operators:

- Enhancements to authorize permit modifications that will reduce permitting steps and costs related to the expansion of a permitted livestock facility.
- Expanding livestock facilities may use permit modifications to defer costs related to runoff management upgrades until they must submit a full application for a siting permit.
- The fee structure retains the \$1000 charge for a full permit and adds a \$500 lower cost fee for livestock operations seeking a permit modification.
- The transition to a new system of setbacks and odor control practices will be eased because livestock facilities operating under the original odor management system have already increased setbacks beyond the minimum and installed odor control practices to obtain a passing odor score.
- Exclusion of new or expanded structures used to store solid manure from the higher setbacks imposed on manure storage structures.
- The concept of clusters is repurposed to enable operations to use lower setbacks based on animal units within a cluster, and not based on the animals housed at the entire livestock facility.
- The revised Worksheet 2 (odor management) simplifies the process of determining compliance, no longer requires worksheet calculations for low odor sources such as animal lots and dairy housing, and allows farmers to use more

EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

flexible odor management plans to address odors from existing manure storage and other structures with higher odor sources.

- Grandfathering provisions that allow operators to expand manure storage and housing within a setback without the need to add additional odor control practices.
- Clarification of local authority to reduce setback requirements through the use of variances.
- As a result of uniform standards across conservation programs, livestock operators have opportunities to achieve compliance with the new siting standards through other programs. For example, a livestock operator may come into compliance with the 2015 nutrient management standard and other updated standards by participating in other programs such as the farmland preservation program.
- A lower cost option is provided for existing animal lots to meet standards for barnyard runoff control, enabling minor alterations, and allowing continued use and improvement of vegetated treatment areas.
- A lower cost option is provided for small feed storage facilities to meet runoff control standards.
- Delays in processing applications will be reduced by changes including tighter requirements for local governments to make determinations regarding an incomplete application for a siting permit.
- Clarification of the procedures for a CAFO to substitute its DNR permit in place of application worksheets, and modification requiring a CAFO permit holder to certify that the nutrient management plan covers the same size facility.
- All operators of non-CAFOs remain eligible for cost-sharing to install practices to comply with the siting rule.

State and Local Government

This rule is expected to have no net impact on local and state governments. Since few local governments issue permits and counties are the most active permitting authorities, local governments should be able to absorb the changes as part of routine changes in program administration. On the state level, the initial requirement for staff can be handled by adjustments in assignments.

Local Governments

The net effect of the rule on local governments will produce no measurable fiscal impacts. For the limited number of jurisdictions that have adopted a local siting ordinance, few will issue more than one permit. However, everyone will need to understand changes in state requirements and make adjustments in their administrative process to implement changes required by this rule. Counties, which issue the most permits of all local governments, have access to conservation staff with experience in making adjustments to incorporate revisions in the technical standards as part of their administration of manure storage ordinances and implementation of state performance standards. Some changes such as the clarification of the process of permit modifications and simplification of the odor standard should reduce workload, while other changes including completion of compliance determination checklists add responsibilities. Rule changes will be incorporated into the required application forms used by local governments to process permit requests, simplifying implementation at the local level.

Local governments may be required to amend their ordinances to implement certain changes including permit modifications and setback changes. The Department will provide statewide training to local government staff, livestock operators and consultants to properly apply the new standards and correctly use the new forms. County land conservation Department staff and agricultural agents can incorporate information on livestock facility siting into their Land and Water Resource Management plans and annual work plans, and use Department staffing grants to cover some costs of program administration. The rule should simplify the process of permitting by eliminating the more complex standard related to odor management. There may be additional work to review compliance with updated standards related to feed storage and animal lots. For some local governments, the maximum fees may not be adequate to recover their costs for processing permit applications. The proposed rule will reduce the uncertainty in the administration and enforcement of

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siting permits, facilitating local efforts to implement the siting requirements. In the end, local governments have the flexibility to determine the amount of work they will perform in processing applications and enforcing permits.

State Government

Because the proposed rule modifies requirements that are locally implemented, the Department would provide targeted support to local governments. The proposed rule does not increase the workload or add new responsibilities related to the livestock facility siting review board. With short-term changes in work assignments, existing Department staff can develop needed support materials, and provide education and technical assistance for local governments, farmers and consultants to implement the changes. No other increases in state costs are anticipated.

8. List of Small Businesses, Organizations and Members of the Public that commented on the Rule and its Enforcement and a Summary of their Comments.

Ben Beardmore from Monroe commented that the rule needs to make livestock facilities accountable for road damage, depressed property values, and lost tourism and recreation, and should not be encouraging dairy expansions in a time of low milk prices.

Marathon County Conservation Planning and Zoning (CPZ) Department submitted technical comments on the proposed rule including concerns about the use of odor control practices to reduce setback requirements.

Kim Dupre of Saint Croix County commented that the proposed rule did not adequately account for the costs to the community from manure-contaminated water, noting that rural landowners have to spend their own money to pay for bottled water, new wells, and water filtration systems.

Saint Croix County Community Development Committee and Department identified proposed changes that improved the rule including increased standards for feed storage, closure of unsafe manure storage, cropland performance standards and incentives for greater odor control. The primary concern raised in the comment focused on the need for higher maximum fees: \$1,000 for permit modifications, \$2,000 for full permit applications.

These four comments raise economic issues, some of which are within the scope of DATCP's authority to address through the rule (e.g. fees) and some of which are beyond the DATCP's authority (e.g. depressed property values). Comments relating to procedural or technical issues are best addressed through the public comment process.

9. Did the Agency consider any of the following Rule Modifications to reduce the impact of the Rule on Small Businesses in lieu of repeal?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe: Low cost compliance options for smaller livestock facilities and other accommodations described in answer to question # 7.

10. Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

11. Chapter 20, Stats. Appropriations Affected 20.115(7)(qd)

12. Fiscal Effect of Repealing or Modifying the Rule

- No Fiscal Effect
- Indeterminate
- Increase Existing Revenues
- Decrease Existing Revenues
- Increase Costs
- Could Absorb Within Agency's Budget
- Decrease Cost

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13. Summary of Costs and Benefits of Repealing or Modifying the Rule

The livestock facility siting law was designed to provide predictable, uniform and a less burdensome framework to site new and expanded livestock facilities while protecting water and air quality. With its changes, this rule strikes a fair balance among the competing goals listed in Wis. Stat. § 93.90(2)(b). The integrity, credibility and local acceptance of the rule depends on periodic and systematic rule updates to reflect the best science and capture other needed changes.

By accommodating the needs of the livestock industry, the revised rule supports economic development, and sustains contributions from Wisconsin's agriculture sector, which generate more than \$88.3 billion in economic activity and 413,500 jobs. (Contribution of Agriculture to the Wisconsin Economy: Updated for 2012 by Steven C. Deller, <http://wp.aae.wisc.edu/wfp/contribution-of-agriculture-to-the-wisconsin-economy/>). However, a small group of affected livestock operators will assume additional costs as identified in answer to question # 7.

The revised standards in the siting rule will ensure consistency among related rules (NR 151 and ATCP 50) and local regulations of manure storage, provide improvements that better protect water quality, manage odor using a less complex system, and shore up local administration of the law. Consistency among program requirements reduces complexity and improves compliance. The revised standards for managing runoff from animal lots and feed storage are more protective of natural resources. The new nutrient management standard will reduce the risks of spreading manure during the winter and in environmentally sensitive areas. The changes to the odor standard provide the same protection against odor but will be less complex, more transparent and easier to implement. A full discussion of environmental benefits is provided in the Environmental Assessment prepared in connection with this rule.

While local governments will need to make adjustments in their local siting programs to incorporate new requirements, in the end the changes in state requirements will simplify and clarify local administration of siting ordinances. As noted above, the odor standard will be simplified. By better defining permit modifications, the new rule will reduce the time needed to process permits for expanding livestock operations. Clarifications regarding variances and permit monitoring will improve local administration of siting ordinances.

14. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No

15. Long Range Implications of Repealing or Modifying the Rule

While the siting rule creates a positive operating environment for livestock facilities, livestock facilities will face implementation costs which the Department has projected over 10 years (See attachment provided in answer to # 14). These costs are incremental, manageable, and can be absorbed as part of the costs of doing business for livestock operations. The additional costs are not triggered until a livestock facility is built or expanded, allowing operators to plan for added expenses. For every livestock facility over 1,000 animal units, the new siting standards for water quality are the same as the requirements for DNR CAFO permits, and will not impose any new requirements (see # 16 below). Several new requirements are consistent with recent changes to state and local conservation programs. A number of programs with significant farmer participation, from county manure storage permits to tax credits claimed under Farmland Preservation ("FPP"), require that farmers have nutrient management plans for their cropland and build manure storage structures. Federal and state cost-sharing and incentive payments regularly incorporate new technical standards as a condition for farmers to receive funding. Likewise local manure storage ordinances have adopted the newest technical standards. The reality is that a livestock operation applying for its first permit under siting rule may already have been required to upgrade the farm's nutrient management plan to receive cost-sharing or claim a FPP tax credit under the Farmland Preservation Program. Many of the non-CAFOs operating under siting permits are closing in on a 1000 animal units and will need to make the investment in more effective runoff technology to meet the "no discharge" standard in a DNR CAFO permit.

16. Compare With Approaches Being Used by Federal Government

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Nearly half of livestock operations affected by this rule are also subject to regulation under the federal Clean Water Act. Under delegated authority from U.S. Environmental Protection Agency ("EPA"), DNR adopted Wis. Admin. Code ch. NR 243 ("NR 243") to regulate water pollution discharges from livestock facilities. Under NR 243, livestock facilities with over 1,000 animal units, known as CAFOs, must obtain a DNR WPDES permit. CAFOs must meet standards designed to ensure that the proposed livestock facility will not pollute surface water or groundwater, and may use approvals from DNR to show compliance with Department standards for the issuance of local siting permits, including standards for nutrient management, waste storage facilities and runoff management (the standards parallel WPDES permit standards, and have a similar purpose, although WPDES standards are more restrictive in certain key respects). To qualify for a siting permit, a WPDES permit holder must also demonstrate compliance with Department standards for livestock structures, location on property, and odor management, which are not covered by a WPDES permit.

The Natural Resources Conservation Service ("NRCS"), a branch of the United States Department of Agriculture ("USDA"), develops technical standards for the design and installation of conservation practices, including the NRCS 590 standard for nutrient management. Modified for use in Wisconsin, these technical standards are the foundation for NRCS programs such as the Environmental Quality Incentives Program ("EQIP") and the Conservation Stewardship Program ("CSP"). To promote consistency, state and local governments have incorporated the same technical standards into cost-share, regulatory and other programs. Not only are these technical standards part of ATCP 51, they are critical to the nonpoint rules (ATCP 50 and NR 151) and DNR's WPDES permitting program for CAFOs.

In addition to EQIP and CSP, USDA operates the following programs that may provide incentive payments to help livestock producers implement conservation practices, including practices that may help livestock producers meet livestock facility siting standards under this rule:

- Conservation Reserve Program ("CRP").
- Conservation Reserve Enhancement Program ("CREP").
- Agricultural Conservation Easement Program ("ACEP").

Federal law establishes reporting and other requirements for livestock facilities related to air emissions. For example, large operations must report certain types of releases to local and state agencies, as directed by the Emergency Planning and Community Right-to-Know Act. EPA also has authority to respond to citizen complaints or requests for assistance from state or local government agencies to investigate releases of hazardous substances from farms. Federal law does not directly cover odor management on livestock facilities.

17. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Like Wisconsin, the four surrounding states each have state requirements for new and expanding livestock operations related to facility construction, runoff control and manure management. All four states except for Minnesota have enacted laws that pre-empt or standardize local regulation of livestock facilities with the goal of providing a more uniform and predictable regulatory environment for farm businesses.

Illinois

In 1996, Illinois enacted a Livestock Management Facilities Act (LMFA) to create a state framework for regulation of livestock facilities. LMFA, which was updated in 1998, 1999 and 2007, was expressly adopted to provide a framework for the livestock industry to expand while establishing environmental and other safeguards. While Illinois law precludes counties from regulating agricultural uses such as livestock facilities, it allows a county to request a public informational meeting about a proposed livestock facility and submit an advisory, non-binding recommendations related to the facility's compatibility with surrounding land uses, odor control, traffic patterns and other factors. Depending on their size and other factors, livestock facilities may be subject to state requirements for waste storage design, setback

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distances, odor control for certain structures, certification of livestock managers, waste management plans, and reporting of released wastes. Required setback distances for new facilities are scaled by size, starting at 1320 feet for facilities under 1000 Animal Units (AUs).

Iowa

In 2002, Iowa enacted legislation requiring that proposed confined feeding operations meet state standards related to building setbacks, manure storage construction, manure management plans, and air quality (air quality standards are still being developed). In place of local permitting of livestock facilities, Iowa counties have the option of requiring that producers achieve a passing score on the state-approved "Master Matrix," an assessment tool that identifies practices designed to minimize air, water and community impacts. State standards for new and expanding facilities include different construction requirements for formed and unformed waste storage structures, and requirements involving manure application related to annual plan updates and phosphorus management. The size of the operation, and type of construction (new or expansion) determine applicable standards such as setbacks, which range from 750 to 3,000 feet.

Michigan

In 1999, Michigan provided "right to farm" protections for farmers who meet "generally accepted agricultural management practices" (GAAMPs). The Right to Farm Act (RFTA) prevents local governments from adopting ordinances that prohibit farming protected under state law, and protects farmers who comply with GAAPS against nuisance actions. While other GAAMPs may apply to livestock operations, new and expanding livestock facilities must follow GAAMPs for site selection and odor control, and develop plans that comply with these standards. Most farms need to receive state verification of GAAMP compliance to maintain RFTA protections and avoid other state actions. Site planning includes meeting setback requirements and evaluation of odor management practices. Setbacks can range from 125 to 1500 feet, depending on the facility size, type of construction (e.g. new or expansion) and type of neighbors, and may be reduced if odor management practices are employed. Odor management plans also may be required. Operations must have a plan to properly manage and utilize manure, and design storage facilities according to technical standards. Producers must also prepare emergency action and other plans. Michigan maintains a complaint system to verify and correct problems to ensure that farms remain in compliance with GAAMPs.

Minnesota

The Minnesota Pollution Control Agency administers rules regulating livestock feedlots, and may delegate authority to counties to administer this program. State feedlot standards cover liquid manure storage systems, water quality setbacks, expansion limitations, and air emissions. Operation and maintenance standards cover discharges from feedlots and feed storage, and land application of manure. The extent of a livestock facility's obligations depends on its size, and other factors such as pollution risks.

In addition, Minnesota is among the states that still allow local permitting of livestock facilities using conditional use permits. Permits issued under local law may impose requirements related to facility size including size caps, minimum acreage requirements, setbacks from neighboring land uses, and odor management. According to a 2007 Summary of Animal-Related Ordinances, 32 county zoning ordinances used simple setback standards, while 22 used a sliding scale. The most common setback from single family residences was ¼ mile, while ½ mile was the common setback for more dense land uses such as schools. Twelve counties addressed odor using the Odor From Feedlots Setback Estimation Tool (OFFSET), which estimates odor impacts based on livestock type, facility size and type, separation distances and odor control practices. These counties either incorporated OFFSET into their ordinances or use OFFSET as part of their planning process to predict odor to help determine separation distances. The survey showed that 20 counties limited the number of animals housed in a feedlot, setting caps between 1,500 to 5,000 AUs. Minnesota has enacted legislation requiring reciprocal setbacks of non-farm land uses whenever a local jurisdiction requires livestock facility setbacks

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(Wisconsin has no comparable requirement). Reciprocal setbacks are designed to protect livestock facilities, once approved, against encroaching development.

18. Contact Name Richard Castelnuovo, Section Chief, Resource Management and Engineering	19. Contact Phone Number 608-224-4608
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Wisconsin Department of Agriculture,
Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: Livestock Facility Siting
Adm. Code Reference: ATCP 51
Rules Clearinghouse #: TBD
Department Docket #: 15-R-12

Rule Description

General

First adopted in May 1, 2006, Wis. Admin. Code Ch. ATCP 51 ("ATCP 51") established a uniform framework of standards and procedures required to implement Wisconsin's livestock facility siting law, Wis. Stat. § 93.90. The ATCP 51 requirements only apply to livestock operators located in jurisdictions that have adopted ordinances requiring permits for new or expanding livestock facilities that exceed a certain size (commonly 500 animal units). The Department of Agriculture, Trade and Consumer Protection ("Department") must review Wis. Admin. Code Ch. ATCP 51 every four years to ensure that the goals of the law are being achieved.

This proposed rule revision is intended to ensure consistency among related rules (Wis. Admin. Code Chs. NR 151 and ATCP 50), which were revised to implement a new nutrient management technical standard and additional farm runoff control standards designed to improve the control of discharges of process wastewater, and meet phosphorus index targets for nutrient management. The ATCP 51 revision also addresses issues arising out of the four year review of the rule. The proposed revision retains the essential regulatory framework, including the core water quality standards. Improvements in standards are intended to advance the statutory goal of "providing uniform regulation of livestock facilities" and better balance the factors listed in Wis. Stat. § 93.90(2)(b), which the Department must use to establish state standards. The rule revisions reflect the recommendations of the technical expert committee (TEC), which originally conducted its review in 2014 and then was reconvened in 2018 to provide input regarding the draft rule.

Small Businesses Affected

The rule will primarily impact new or expanding livestock operations that must receive local approvals ("permits") under siting ordinances currently administered by 120 local governments (mostly towns). The proposed rule anticipates that 150 livestock facilities, many of which qualify as "small businesses", will need first-time permits or permit renewals over the next 10 years. The most significantly impacted among this group will be 55 operations that average 800 animal units in size, but are too small to be regulated as Concentrated Animal Feeding Operations ("CAFOs") by the Department of Natural Resources ("DNR"). The rule will have a slight but positive impact on businesses that work with livestock operations, including nutrient management planners, farm supply and service businesses, soil testing laboratories, agricultural engineers, and contractors installing farm conservation practices.

Livestock Operators

The proposed rule revision will have very limited impact on farms statewide, affecting less than 1 percent of Wisconsin livestock operations that raise cattle, swine, poultry, sheep and goats (2012 Census data: 46,034 farms with livestock, consisting of 29,908 farms with cattle and calves; 2,270 with hogs; 8,847 with layers and broilers; 2,590 with sheep and lamb; and 2419 with goats). Over the next ten years, it is estimated that the revised siting rule will impact no more than 150 new or expanding livestock facilities statewide that are issued local permits for the first time or are reissued permits [100 new permits (10 per year) plus 70 permit reissuance (7 per year) minus 20 that will seek more than one permit reissuance]. As noted above, the rule change will have virtually no impacts on 85 new and expanding livestock facilities [50 new permits and 35 of the permit reissuances] that are CAFOs, and are required by their DNR permits to meet the higher water quality standards in the revised siting rule.

The following considerations and assumptions were used in determining the nature and extent of impacts of this rule revision on new and expanding livestock operations:

1. Within the first 11 years of the siting rule's implementation, local governments approved 150 livestock facilities (24 facilities received more than one approval to cover expansions).
2. Based on past trends in the livestock industry and local permitting activity, which may not be predictive of future activity, it is estimated that the total number of permitted facilities in the next ten years will increase by 100 to reach a total of 250. In addition, 50 livestock facilities will seek at least one renewal of their permits based on facility expansions. The following assumptions support the forecasted slowdown in the rate of new permit issuances, and the increase in the rate of permit reissuances:
 - a. While the number of siting ordinances adopted by local governments may grow to more than 175 within the next 10 years, most of the jurisdictions adopting ordinances will issue no permits or at most one permit.
 - b. A limited number of counties including Jefferson, Manitowoc, Shawano, Trempealeau, and Walworth will issue 80 percent of permits, and in the future more of their activity will involve reissuance of permits for facilities seeking approval for expansions.
3. Of the estimated 100 new permits, 50 percent will involve livestock facilities with more than 1000 Animal Units "AUs" and 70 percent of the 50 facilities seeking permit reissuance will exceed 1000 AUs. By the terms of their DNR CAFO permits, these 85 facilities will be required to meet the nutrient management, manure storage and runoff management standards that meet or exceed those proposed in the siting rule, and will not incur additional costs to implement the new system for setbacks and odor management.
4. Of the estimated 65 non-CAFOs affected by the changes, 10 of the facilities will receive more than one permit during the 10 year period. Livestock operations issued multiple permits will meet many of compliance obligations with their first permits, and will encounter fewer compliance responsibilities with successive permits.
 - a. Every applicant for a siting permit has submitted a nutrient management plan checklist and none have relied on the exemption from nutrient management plan requirements.
5. Over the next ten years, 55 non-CAFOs will have the greatest exposure to cost increases triggered by the rule revision.

6. Over time, livestock operations have become subject to newer performance and technical standards as the result of updates in state and local conservation programs. For example, county manure storage ordinances are requiring that construction and substantial alteration of manure storage meet the latest technical standards adopted by NRCS.

Based on the assumptions listed above, it is estimated that the affected livestock operations will incur an additional \$1.05-\$1.16 million in annual costs to comply with the changes in the rule revision over a 10 year period. Appendix A details the annual breakdown of these costs. The rule revision includes specific accommodations to offset or limit the costs that may be incurred by the non-CAFOs that are most significantly impacted.

Recordkeeping and New Skills Required

In considering impacts, the Department must evaluate additional reporting or record-keeping requirements imposed on livestock operators. The rule revision adds no new standards that livestock operators must meet. The changes to some standards will reduce the burden on farmers. For example, the proposed rule revision simplifies the odor standard and reduce recordkeeping requirements related to documentation of odor control practices. Low odor sources such as animal lots and dairy housing are no longer included in worksheet calculations. Also, simplification of the odor standard will enable farmers to complete the worksheets, including an odor management plan, without the help of consultants. The availability of permit modifications should reduce the paperwork needed to obtain a permit for the expansion of livestock facility. The option to selectively implement the runoff standards should help farmers reduce the paperwork to secure local permits for a planned expansion.

In some cases, changes to certain standards such as the nutrient management standard will increase recordkeeping. Regarding nutrient management, the Department provides funding to maintain NM planning software, SNAP-Plus, which includes planning tools that will reduce time and expense needed to prepare a compliant plan.

Whether the challenge involves recordkeeping or new skills, the demands of this rule should be viewed in the larger context of the many programs in which farmers participate. In a world of ever increasing conservation requirements, all livestock operations, whether they are CAFOs or not, are accustomed to making changes to address new requirements imposed by a range of state and local programs affecting these businesses. With new requirements often come additional recordkeeping. Changes in common programs such as county manure storage permits and participation in the farmland preservation program have triggered increased recordkeeping related to the updated requirements for nutrient management plans. Cost-share and other programs regularly incorporate newer technical standards, raising the costs of conservation practices, and often triggering increased recordkeeping.

By its nature, the business of farming requires that farmers be skilled at managing changes triggered by the need to incorporate new technologies, respond to changing conditions, or modify production methods. In changing bedding and feeding systems for livestock, for example, a farmer must work through a challenging series of steps to deploy new equipment and change management practices, and may use adaptive management techniques to overcome challenges. The skills and experience gained in these settings help farmers manage newly installed conservation practices such as feed storage runoff control systems. Nonetheless, there is a learning curve that farmers must negotiate. In the case of nutrient management, farmers may need to build their skills with computers to take advantage of tools such as SNAP-Plus.

Overall Impact on Farmers

The changes in the siting rule will fall mostly on a small group of non-CAFOs that seek local permits for facilities with new or expanded animal lots and feed storage structures. The changes in the odor standard will simplify compliance with odor requirements for livestock operators. The Department believes that recordkeeping and other increased responsibilities will not place unreasonable demands on farmers, and will be offset by changes that reduce the burden on farmers. In general, livestock operators should be able to incorporate the costs as part of financing changes in their operations, and any additional requirements should not be a decisive factor in an operator's decision to build or expand their operations.

The Department has included the following provisions that will limit or offset costs created by the rule changes:

- Enhancements to authorize permit modifications that will reduce permitting steps and costs related to the expansion of a permitted livestock facility.
- Expanding livestock facilities may use permit modifications to defer costs related to runoff management upgrades until they must submit a full application for a siting permit.
- The fee structure retains the \$1000 maximum charge for a full permit and adds a reduced fee of \$500 for livestock operations seeking a permit modification.
- The transition to a new system of setbacks and odor control practices will be eased, because livestock facilities operating under the original odor management system have already increased setbacks beyond the minimum and installed odor control practices to obtain a passing odor score.
- Exclusion of new or expanded structures used to store solid manure from the higher setbacks imposed on manure storage structures.
- The concept of clusters is repurposed to enable operations to use lower setbacks based on animal units within a cluster, and not based on the animals housed at the entire livestock facility.
- The revised Worksheet 2 (odor management) simplifies the process of determining compliance, no longer requires worksheet calculations for low odor sources such as animal lots and dairy housing, and allows farmers to use more flexible odor management plans to address odors from existing manure storage and other structures with higher odor sources.
- Grandfathering provisions will allow operators to expand manure storage and housing within a setback without the need to add additional odor control practices.
- Clarification of local authority to reduce setback requirements through the use of variances.
- As a result of uniform standards across conservation programs, livestock operators have opportunities to achieve compliance with the new siting standards through other programs. For example, a livestock operator may come into compliance with the 2015 nutrient management standard and other updated standards by participating in other programs such as the farmland preservation program.
- A lower cost option is provided for existing animal lots to meet standards for barnyard runoff control, enabling minor alterations, and allowing continued use and improvement of vegetated treatment areas.
- A lower cost option is provided for small feed storage facilities to meet runoff control standards.

- Delays in processing applications will be reduced by changes including tighter requirements for local governments to make determinations regarding an incomplete application for a siting permit.
- Clarification of the procedures for a CAFO to substitute its DNR permit in place of worksheets, and modification requiring a CAFO permit holder to certify that the nutrient management plan covers the same size facility.
- All operators of non-CAFOs remain eligible for cost-sharing to install practices to comply with the siting rule. Enhancements to authorize permit modifications that will reduce permitting steps and costs related to the expansion of a permitted livestock facility.

Non-Farm Businesses

This rule has the following impacts on entities (a number of which qualify as “small businesses.”) that do business with livestock operations covered by the siting rule.

Crop consultants and other professional planners, farm supply and service businesses, soil test laboratories, and manure-haulers. This proposed rule will minimally increase the demand for entities that provide cropland related services to farmers. It will require more extensive services from professional nutrient management planners who must help farmers implement a more complicated nutrient management plan. Only third-party planners qualified under Wis. Admin. Code § ATCP 50.48 may prepare nutrient management plans for livestock operations permitted under the siting rule. These consultants must understand and follow record keeping requirements related to soil types, soil tests, crop nutrient requirements including University of Wisconsin recommendations, nutrient applications, nutrient contents of manure, nutrient application scheduling, and other matters related to nutrient management. This rule will not necessarily change the demand for manure hauling services, but may increase demand for soil testing. Nutrient management plans must be based on soil tests conducted by certified laboratories.

Agricultural engineering and construction contractors. This proposed rule will marginally increase demand for engineered conservation practices. Operators of new and expanded livestock facilities may need more engineered solutions to deal with runoff from animal lots and feed storage. Operators of expanded livestock facilities will need engineering expertise to demonstrate that existing structures meet technical standards and to design modifications for structures to bring them into compliance.

Lenders. This proposed rule will benefit lenders working with livestock facilities that are subject to local regulation of new and expanded livestock facilities. In addition to removing the uncertainties related to local permitting, lenders will benefit by gaining greater security on their farm loans because livestock operations will meet standards that protect against environmental problems and avoid nuisance complaints based on odor.

Recordkeeping and New Skills Required for Non-Farm Businesses

This rule revision does not directly trigger increased reporting, bookkeeping or other procedures for non-farm businesses.

Business professionals will need to enhance their skills to help farmers implement the siting standards; however, these professionals will likely take these actions for reasons other than this rule. Engineers and nutrient management planners must keep pace with the latest technical

standards to meet the needs of customers and protect themselves from liability. As noted previously, the rule changes will make standards consistent across government programs, making it inevitable that these professionals stay current. Moreover, certain professionals such as engineers and certified crop advisors are required to update their skills to retain their registration or certification.

Reporting, Bookkeeping and other Procedures

To the extent that this rule requires reporting, bookkeeping or other procedures, the Department’s analysis is included in the prior sections covering impacts on farmers and non-farm businesses.

Professional Skills Required

To the extent that this rule requires changes in professional skills, the Department’s analysis is included in the prior sections covering impacts on farmers and non-farm businesses.

Accommodation for Small Business

The Department has taken actions to identify compliance and reporting effects of these rule changes, including securing feedback from members of stakeholder groups (which included small business owners and organizations) and a technical expert committee of professionals who work with farms of all sizes. Regarding the group most significantly impacted, non-CAFOs, the rule includes accommodations previously described in the section summarizing the overall impacts on livestock operations.

Conclusion

This rule will have no more than a moderate impact on farmers, including “small businesses.” To a limited extent, increased costs for non-CAFOs will be offset by the benefits from changes to the proposed rule, including permit modifications and protections against unfair use of completeness determinations. Other businesses may slightly benefit from these rule changes.

Dated this _____ day of _____, 2019.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Sara Walling, Administrator
Division of Agricultural Resource Management

APPENDIX A: Estimate of Annual Costs Triggered by Siting Rule Changes over 10 Year Period

Standard	Annual Costs	Under 1000 Animal Units (gray shading=no cost)	Over 1000 Animal Units (gray shading=no cost)
Odor Management- New and expanded facilities	\$3,000- \$37,500	10 facilities are expected need an odor control practice related to manure storage, taking into consideration lower setbacks for facilities adjacent to cropland. The estimated costs will range between: <i>Low:</i> Natural Crust-\$3,000 (Dry matter additions) <i>High:</i> Cover-\$37,500.00 (\$.75/sq. ft. x 50,000 sq ft) No costs are projected for odor management plans, if required, since they can be prepared by landowners and are not necessarily require to continue older control practices.	None of the livestock facilities should incur additional costs to comply with the change in setbacks and odor management for the following reasons: 1. A number of facilities do not need odor control practices to meet the setback requirements. 2. The facilities would have had to install one or more odor practices to earn passing score under the previous odor standard.
Upgrade of Nutrient Management Plans	\$9,000	25 livestock facilities will be directly impacted since they are not subject to other laws or programs (e.g. CAFO permits or FPP tax credits) that require the upgraded standard. Based on an average of 800 animal units and 1200 acres of spreadable land, these facilities will spend \$3 per acre more to comply or \$3,600 per operation.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Waste Storage	\$0	No additional costs can be attributed to the siting rule since all new construction will be designed by private consultants using the new 313 standards--which is the standard for receiving most county manure storage permits--and it is not possible to determine which construction will occur in sensitive areas.	In addition to county manure storage permits, CAFOs with new construction are using the new standard for various reasons, and therefore no additional costs are attributable to the siting rule.
Waste Storage- Closure	\$12,000- \$20,000	8 livestock facilities must spend between \$15,000 and \$25,000 to close substandard structures.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Animal Lot Runoff--New or substantial altered	\$100,000- \$125,000	10 livestock facilities will need to meet the new runoff standards for new lots, and the estimated costs for a 10,000 square foot lot will range between: <i>Low:</i> Roof to divert water-\$100,000 <i>High:</i> New or expanded storage to hold runoff-\$125,000	Required under CAFO permit and therefore no additional costs based on the siting rule.
Animal Lot Runoff-- Existing	\$9,900- \$46,200	33 (60 percent of 55) livestock facilities must add practices to pass the barnyard evaluation, and estimated upgrade costs for a 10,000 square foot lot will range between: <i>Low:</i> Clean water diversion-\$3,000 for berm <i>High:</i> Roof gutters at \$10,000 and VTA improvement at \$4,000. No costs are attributed to management changes such as added cleaning.	Required under CAFO permit and therefore no additional costs
Feed Storage- Pad and Runoff collection-- New and expanded bunkers, paved areas and related structures but not bags	\$860,810	35 livestock facilities must meet new standard, but 10 will qualify for the lower cost option based on 1 acre of feed storage, and 30 must meet higher standards based on 2.5 acres of feed storage. • 10 facilities would incur an additional \$43,560 (\$1.00 per sq ft. more based on 1 acre) to upgrade their pad surface compared to requirements in the previous rule, and \$20,000 to collect and pump leachate. • 25 facilities would incur an additional \$108,900 (\$1.00 per sq ft. more based on 2.5 acres) to upgrade their pad surface compared to the requirements in the previous rule and \$210,000 to add storage to collect leachate and runoff from 2.5 acres of feed storage.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Feed Storage-- Existing bunkers, paved areas and related structures but not bags	\$59,800	Livestock facilities will incur the following costs to evaluate and upgrade their existing facilities: • 55 facilities will incur costs engineering evaluation of storage at \$600 per evaluation. • 20 facilities will install clean water diversion at \$2,000 each. • 35 facilities must spend \$15,000 each to enhance their system to collect runoff from feed storage over 1 acre.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Other Runoff Control Standards	0	Managing milkhouse wastewater should not incur additional costs. Nor are there additional costs to comply with the tillage setback. By complying with the NRCS 590 standard, operations will control soil erosion to T and meet the Phosphorus Index.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Annual Costs	\$1,054,510-\$1,158,310		
Ten year Costs	\$10,545,100-\$11,583,100		

Wisconsin Department of Agriculture, Trade and Consumer Protection

Preliminary Environmental Assessment

Rule Subject: Livestock Facility Siting
Administrative Code Reference: ATCP 51
Rules Clearinghouse #: TBD
DATCP Docket #: 15-R-12

This environmental assessment is required by Wis. Admin. Code § ATCP 3.02.

Nature and Purpose of Proposed Rule

First adopted in May 2006, Wis. Admin. Code ch. ATCP 51 (“ATCP 51”) established the statewide framework of standards and procedures required to implement Wisconsin’s livestock facility siting law, Wis. Stat. § 93.90. The rule only applies to livestock operators located in jurisdictions that have adopted ordinances requiring permits for new or expanding livestock facilities that exceed a certain size (commonly 500 animal units). Every four years the Department of Agriculture, Trade and Consumer Protection (“Department”) must review ATCP 51, including securing advice from a Department-appointed committee of experts, to ensure that this rule meets goals in Wis. Stat. § 93.90.

The proposed rule is intended to ensure consistency among related rules (Wis. Admin. Code chs. NR 151 and ATCP 50, respectively referred to as “NR 151” and “ATCP 50”), and will incorporate changes in related rules, which implement a new nutrient management technical standard and additional farm runoff control standards designed to better control discharges of process wastewater, and meet phosphorus index targets for nutrient management. The ATCP 51 revision also addresses issues arising out of the four year review of the siting rule. The proposed revision retains the essential regulatory framework, including the core water quality standards. Improvements in standards and permitting procedures are intended to advance the statutory goal of “providing uniform regulation of livestock facilities” and better balance the factors listed in Wis. Stat. § 93.90 (2) (b), which the Department must use to establish state standards. The rule revisions reflect the recommendations of the technical expert committee (TEC), which originally conducted its review in 2014 and then was reconvened in 2018 to provide input regarding a draft rule developed by the Department.

Foreseeable Environmental Effects

The environmental effects of this rule are positive but small in scope given the limited number of livestock operations affected. This rule retains key features of the original version of ATCP 51 including manure management standards that protect water quality and reduce odor, and a local option to adopt more stringent standards to address local conditions. In addition, this rule implements new and modified standards, including the most current technical standards developed by United States Department of Agriculture’s Natural Resources Conservation Service (“NRCS”),

designed to better protect water quality and prevent soil loss. These updates, along with other changes, will:

- Incorporate the 2017 NRCS waste storage standard that provides additional protection for storage structures built in environmentally sensitive areas.
- Implement stronger protections for surface and groundwater when applying manure, as required by the 2015 version of the NRCS 590 Nutrient Management Standard (“NRCS 590 standard”).
- Incorporate cropland performance standards related to the phosphorous index and the tillage setback.
- Require effective evaluations of storage facilities to allow continued use.
- Require closure of manure storage facilities that cannot be safely operated.
- More effectively control process wastewater discharges from feed storage structures, which is consistent with the latest NRCS technical standards.
- More effectively control runoff from animal lots consistent with the latest NRCS technical standards.

With the adoption of the newest NRCS 590 standard, nutrient management plans will address the following restrictions and prohibitions designed to protect water quality particularly in environmental sensitive landscapes:

- Prohibiting nutrient applications within 50’ of all direct conduits to groundwater (previously only applied to wells) where only grazing and a limited amount of corn starter fertilizer may be applied.
- Prohibiting applications of manure within 100’ of a non-community well, which includes schools, restaurants, churches, and within 1000’ of a community well, unless the manure is treated to reduce pathogen content.
- Prohibiting winter nutrient applications within 300’ of all direct conduits to groundwater, unless manure is directly deposited by gleaning or pasturing animals. This setback increased from the 200’ setback in the 2005-590 NM Standard.
- Prohibiting liquid manure application in February or March on Well Compensation Areas designated by Department of Natural Resources (“DNR”), or on fields with Silurian Dolomite bedrock within 5’ of the surface.
- Limiting manure nitrogen (“N”) applications in late summer or fall using the lower application rate of either the current 2012 version of UW Pub. A2809 or 2015-590 NM Standard available N per acre rate for the situation on sites vulnerable to N leaching high permeability (“P”) soils, or rock (“R”) soils with < 20 inches to bedrock, or wet (“W”) soils with < 12 inches to apparent water table (“PRW Soils”).
- Limiting winter manure applications when frozen or snow-covered soils prevent effective incorporation. The NM plan must limit these applications when slopes are > 6% and if fields have concentrated flow areas using two crop management practices listed in the winter application section of the 2015-590 NM Standard.
- Prohibiting manure applications to areas locally delineated by a Land Conservation Committee as areas contributing runoff to direct conduits to groundwater, unless manure is substantially buried within 24 hours of application.

- Late summer or fall commercial N fertilizer applications are limited in regard to areas within 1,000 feet of a community well, 5 feet or less over bedrock, sites vulnerable to N leaching high permeability (“P”) soils, rock (“R”) soils with < 20 inches to bedrock, or wet (“W”) soils with < 12 inches to apparent water table; rates needed for establishment of fall seeded crops or to meet UWEX Pub. A2809 with a blended fertilizer. The fall N rate was increased from 30 to 36 lbs. of N per acre to match common blended fertilizers if other nutrients are needed.

The change in the odor standard will simplify the management of odor without a measurable change in the level of odor protection. It will continue to support the use of odor control practices by farms. Odor management plans will offer a new feature to address verified complaints about odor problems. It is likely that increases in setbacks may reduce some nuisance impacts related to light, noise, and dust from certain livestock structures. Certain communities will have a streamlined manner for adopting targeted performance standards such as s. NR 151.075 to protect drinking water wells.

Persons or Groups That May Be Affected by the Rule

Town, County, or other Political Subdivisions. This proposed rule affects only political subdivisions that voluntarily elect to regulate livestock facility siting through conditional use permits, licenses, and other forms of approval. As of 2019, 135 towns, counties, and other political subdivisions have adopted siting ordinances. Most towns that adopt ordinances will issue only one permit, with many issuing no permits. Over the next ten years, it is likely that no more than 30 to 40 local governments will adopt new siting ordinances. Over the next ten years, local governments are expected to issue the same number of permits issued during the first 11 years of ATCP 51’s implementation. Many of the 150 permits issued in the next ten years will be issued by a select group of counties including Jefferson, Manitowoc, Shawano, Trempealeau, and Walworth.

See the *Fiscal and Economic Impact Analysis Estimate* for an analysis of costs that political subdivisions may incur as a result of this proposed rule.

Livestock Farmers. This proposed rule affects only a small subset of farmers who plan new or expanded livestock facilities in jurisdictions that require a local permit, license, or approval for such activity. Based on historical permitting by local governments, it is estimated that no more than 150 new or expanding livestock facilities will be impacted over a ten year period, and more than half of these operations are Concentrated Animal Feeding Operations (“CAFOs”), which must meet the new siting requirements to comply with their DNR permits. About 55 non-CAFOs will be most significantly impacted by this rule, and they may need to invest over \$100,000 in new runoff management practices. The *Regulatory Flexibility Analysis* includes an analysis of costs for livestock farmers and the other affected businesses described below.

Crop Consultants and other Professional Planners, Farm Supply, and Service Businesses, Soil Test Laboratories and Manure-Haulers. This proposed rule will minimally increase business for entities that provide cropland related services to farmers. Nutrient management planners will spend more time and charge more for developing plans under this rule. This rule will not

necessarily change demand for manure hauling services, but may increase demand for soil testing.

Agricultural Engineering and Construction Contractors. This rule will marginally increase demand for engineered conservation practices. Operators of new or expanded livestock facilities will need for more engineered solutions to deal with runoff from animal lots and feed storage. Operators of expanded livestock facilities will need engineering expertise to demonstrate that existing structures meet technical standards and to design modifications for structures to bring them into compliance.

Lenders. This rule will benefit lenders that do business with livestock facilities, because it eliminates uncertainties in siting new or expanded livestock facilities.

General Public. The general public will benefit from this rule as a result of increases in farm-focused natural resource protection.

Significant Economic, Social, or Cultural Effects

Economic Effects

Less than 1 percent of Wisconsin's livestock operators will be affected by the rule. The rule will not have a significant effect on agricultural production, the sale or distribution of agricultural products including dairy products, or on the overall economy of this state. While the rule's impact will fall on a small subset of livestock operators, the demands of this rule should be viewed in the larger context of the many programs in which farmers participate. Several new requirements are consistent with recent changes to state and local conservation programs. Changes in common programs such as county manure storage permits and participation in the farmland preservation program have triggered increased recordkeeping related to the updated requirements for nutrient management plans. Cost-share and other programs regularly incorporate newer technical standards, raising the costs of conservation practices, and often triggering increased recordkeeping. In general, livestock operators should be able to incorporate any increased costs resulting from this rule into their business plans and any additional costs should not be a decisive factor in an operator's decision to build or expand their operations.

The rule will result in a slight economic benefit for the businesses professionals such as engineers and nutrient management planners who assist operators with new or expanding livestock facilities.

Setbacks and odor control practices should reduce the nuisance impact of livestock operations on neighbors. While these improvements translate into economic benefits for surrounding neighbors and the community in general, they are not easily quantified, particularly in light of the small group of affected operators.

Social and Cultural Effects

The rule will be neutral in terms of social and cultural effects. The improvements in water quality protections and the continued use of odor control practices may make livestock operations more acceptable to communities. Increased setbacks may reduce nuisance impacts related to light, noise, and dust from production area. The scope of the rule does not address high profile issues such as water usage and management of competing water needs, traffic and road impacts, separation of conflicting land uses (e.g. residential and farms), impacts on land values, and possible disruptions in rural communities created by fewer and larger farms and increased use of migrant labor.

Controversial Public Issues

By the nature of the rule's scope, rule changes primarily focus on new water quality standards which better manage manure from locally permitted livestock operations. While improved standards will protect water in areas immediately surrounding permitted farms, the improved standards on the whole will do little to make improvements statewide, because only livestock operations in jurisdictions that have adopted siting ordinances are required to comply.

As discussed above, the rule does not cover the full impacts of larger livestock operations, nor does it mitigate certain impacts at the level desired by some groups. Despite changes in setbacks, the siting law is a limited tool to manage land use conflicts. Some community members may believe the rule's enhanced standards related to manure and feed management are not sufficient to address local concerns. While ATCP 51 offers communities a pathway to adopt more stringent local standards, local groups may find this option challenging, even with changes adopted in the proposed rule to streamline adoption of certain performance standards as local requirements.

Some livestock operators may be frustrated by the increased management responsibilities, particularly if they have made a conscious effort to operate below the 1,000 animal unit threshold for CAFO permits. The new siting standards are getting closer to the standards that apply to CAFOs, and will require additional investments of time and dollars to implement.

The Department expects to receive public feedback during the hearing and comment process and will consider whether to make changes to the final rule to address public concerns.

Alternatives to this Rule

No Action

Not promulgating the rule would cause the Department to have performance standards and prohibitions, conservation practices, and technical standards in conflict with other related rules such as NR 151 and ATCP 50. Under Wis. Stat. § 93.90 (2) (a), the Department is obligated to promulgate rules specifying standards for siting and expanding livestock facilities, and ensure that its rules are not in "conflict with rules promulgated under §§ 92.05 (3) (c) or (k), 92.14 (8), 92.16, or 281.16 (3) or ch. 283." Inconsistent standards would cause local governments to have requirements in their siting ordinances that are not in conformance with Wis. Stat. § 92.15, which

authorizes local “regulations of livestock operations that are consistent with and do not exceed the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 (3). Stats.”

The Department would be falling short in its duty to develop and maintain the siting standards, which correctly balance the criteria identified in Wis. Stat. § 93.90 (2) (b). For example, older standards incorporated into the siting rule in 2006 may be rooted in technically outdated concepts and not satisfy the criterion that requires that standards be based on the latest peer reviewed research and science.

Taking no action also disregards the results of the rule review the Department conducted to fulfill its duties under Wis. Stat. § 93.90 (2) (c). In addition, the Department would be dismissing the advice it was required to secure from a technical expert committee (TEC) under Wis. Stat. § 93.90 (2) (d). The TEC has provided two sets of recommendations, the first in 2015 to improve the siting standards and the second in 2019 based on its review of a draft rule that incorporated its 2015 recommendations.

Lastly, local governments and livestock operators would be required to follow outdated rule provisions, including technical standards that do not provide improved environmental benefits, and may not adequately address stakeholder needs. Failure to update technical standards will result in inconsistent treatment of farmers who must follow one standard for one program and another standard for a different program.

Modify Rule Provisions

The Department could modify the proposed rule provisions. However, the Department is constrained by a number of factors. This rule was developed in consultation with government agencies, organizations, and industry groups. The rule is the product of an extensive review process. The statutory framework for the rule, including the consistency requirement, directs certain outcomes. Nonetheless, this rule includes specific accommodations to address the needs of the most impacted groups and represents a fair balance between the business concerns and the need for natural resource protection. It also reflects modifications recommended by the TEC in its 2019 review of a draft rule. The Department may make changes to the final version of the rule based on comments and testimony received during public hearings.

Additional Measures to Mitigate Adverse Environmental Effects

The Department does not anticipate any adverse environmental effects as a result of this rule. Therefore, no additional measures will be needed to mitigate any adverse environmental effects.

Conclusion

This rule is intended to ensure consistency among related rules (NR 151 and ATCP 50) and technical standards that apply to livestock operations, resulting in uniform standards for protecting water quality, addressing issues arising out of the mandatory four year reviews of the siting rule, and making improvements to advance the statutory goal of “providing uniform regulation of

livestock facilities” and better balance the factors listed in Wis. Stat. § 93.90 (2) (b). Overall, this rule will have a positive effect on the environment. There are no preferable alternatives to this rule. This rule is not a “major action significantly affecting the quality of the environment,” for purposes of Wis. Stat. § 1.11. No environmental impact statement is required under Wis. Stat. § 1.11, or Wis. Admin. Code ch. ATCP 3.

Signed this _____ day of _____, 2019.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Sara Walling, Administrator
Division of Agricultural Resource Management

Chapter ATCP 51

LIVESTOCK FACILITY SITING

Subchapter I — Definitions and General Provisions

- ATCP 51.01 Definitions.
- ATCP 51.02 Scope of this chapter.
- ATCP 51.04 Animal units.
- ATCP 51.06 Local approval of existing livestock facilities.
- ATCP 51.08 Duration of local approval.

Subchapter II — Livestock Facility Siting Standards

- ATCP 51.10 Livestock facility siting standards; general.
- ATCP 51.12 Livestock structures; location on property.

- ATCP 51.14 Odor and air emissions.
- ATCP 51.16 Nutrient management.
- ATCP 51.18 Waste storage facilities.
- ATCP 51.20 Runoff management.

Subchapter III — Application and Approval

- ATCP 51.30 Application.
- ATCP 51.32 Timely action on application.
- ATCP 51.34 Granting or denying an application.
- ATCP 51.36 Record of decision-making.

Note: This chapter is adopted under authority of ss. 93.07 (1) and 93.90 (2), Stats. This chapter interprets Wisconsin's livestock facility siting law, s. 93.90, Stats., which is an enactment of statewide concern for the purpose of providing uniform regulation of livestock facilities. According to the livestock facility siting law, a county, town, city or village ("political subdivision") may not prohibit or disapprove a new or expanded livestock facility of any size unless one of the following applies:

- The site is located in a zoning district that is not an agricultural zoning district.
- The site is located in an agricultural zoning district where the livestock facility is prohibited. A prohibition, if any, must be clearly justified on the basis of public health or safety. The livestock facility siting law limits exclusionary zoning based solely on livestock facility size.

- The proposed livestock facility violates a valid local ordinance adopted under certain state laws related to shoreland zoning, floodplain zoning, construction site erosion control or stormwater management.

- The proposed livestock facility violates a local building, electrical or plumbing code that is consistent with the state building, electrical or plumbing code for that type of facility.

- The proposed livestock facility will have 500 or more "animal units" (or will exceed a lower permit threshold incorporated in a local zoning ordinance prior to July 19, 2003), and the proposed facility violates one of the following:

- A state livestock facility siting standard adopted by the department under this chapter.
- A more stringent local ordinance standard enacted prior to the siting application. The more stringent local standard must be based on reasonable and scientifically defensible findings of fact, adopted by the local jurisdiction, which clearly show that the standard is necessary to protect public health or safety.

Some, but not all, political subdivisions require local approval of new or expanded livestock facilities. The livestock facility siting law does not require local approval. But if local approval is required, the political subdivision must grant or deny approval based on this chapter. A political subdivision may not consider other siting criteria, or apply standards that differ from this chapter, except as provided in the livestock facility siting law or this chapter.

The department must review the livestock facility siting standards under this chapter at least once every 4 years (see s. 93.90 (2) (c), Stats.).

Subchapter I — Definitions and General Provisions

ATCP 51.01 Definitions. In this chapter:

(1) "Adjacent" means located on land parcels that touch each other, or on land parcels that are separated only by a river, stream, or transportation or utility right-of-way.

(3) "Animal lot" means a feedlot, barnyard or other outdoor facility where livestock are concentrated for feeding or other purposes. "Animal lot" does not include a pasture or winter grazing area. Two or more animal lots at the same livestock facility constitute a single animal lot, for purposes of this chapter, if runoff from the animal lots drains to the same treatment area under s. ATCP 51.20 (2) or if runoff from the animal lot treatment areas converges or reaches the same surface water within 200 feet of any of those treatment areas.

(4) "Animal unit" has the meaning that was given in s. NR 243.03 (3) as of April 27, 2004.

Note: See s. 93.90 (1m) (a), Stats., and s. ATCP 51.04, "Animal unit" equivalents, for different species and types of livestock. The "animal unit" equivalents are shown in Appendix A, worksheet 1 (animal units). The "animal unit" equivalents are based on s. NR 243.03 (3) as it existed on April 27, 2004 (the date on which the livestock facility siting law, 2003 Wis. Act 235, was published).

(5) "BARNY model" means the NRCS "Evaluation System to Rate Feedlot Pollution Potential," ARM-NC-17 (April 1982 version with modifications as of August 2005).

Note: The BARNY model is a commonly used computer model that predicts nutrient runoff from animal lots. An Excel computer spreadsheet version is available at livestock.snr.usd.edu.

(6) "Bedrock" means the top of the shallowest layer of a soil profile that consists of consolidated rock material or weathered-in-place material, more than 50% of the volume of which will be retained on a 2 mm soil sieve.

(7) "Certified conservation engineering practitioner" means a person who is certified as a conservation engineering practitioner under s. ATCP 50.46 with a rating under s. ATCP 50.46 (5) that authorizes the practitioner to certify every matter that the practitioner certifies under this chapter.

(8) "Cluster" means any group of one or more livestock structures within a livestock facility.

(9) "Complete application for local approval" means an application that contains everything required under s. ATCP 51.30 (1) to (4).

(10) "Department" means the Wisconsin department of agriculture, trade and consumer protection.

(11) "Direct runoff" has the meaning given in s. NR 151.015 (7).

Deleted: Note: The odor score calculation under s. ATCP 51.14 is based, in part, on the proximity and density of "affected neighbors." See Appendix A, worksheet 2. ¶

Deleted: Copies of the BARNY model are on file with the department, the secretary of state and the legislative reference bureau.

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Deleted: The department will review the standards at least annually during the first 4 years of rule implementation. The department will track local siting applications and decisions (see s. ATCP 51.34 (5)), and will review that information at least monthly during the first year of rule implementation. ¶

Deleted: The livestock facility siting law includes the following statements of legislative intent: ¶

"This [law] is an enactment of statewide concern for the purpose of providing uniform regulation of livestock facilities." ¶

"[T]he department shall consider whether [livestock facility siting standards] are all of the following: ¶

- Protective of public health or safety; ¶
- Practical and workable; ¶
- Cost-effective; ¶
- Objective; ¶
- Based on available scientific evidence that has been subjected to peer review; ¶
- Designed to promote the growth and viability of animal agriculture in this state; ¶
- Designed to balance the economic viability of farm operations with protecting natural resources and other community interests; ¶
- Usable by officials of political subdivisions." ¶

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Deleted: (2) "Affected neighbor" means, for purposes of the odor score calculation under s. ATCP 51.14, a residence or high-use building located within 2,500 feet of any livestock structure at a proposed livestock facility. "Affected neighbor" does not include a residence or high-use building owned by any of the following: ¶

(a) The livestock facility operator. ¶

(b) A person who affirmatively agrees to have the residence or high-use building excluded from the odor score calculation under s. ATCP 51.14.

(12) "DNR" means the Wisconsin department of natural resources.

(13) "Expanded livestock facility" means the entire livestock facility that is created by the expansion, after May 1, 2006, of an existing livestock facility. "Expanded livestock facility" includes all livestock structures in the expanded facility, regardless of whether those structures are new, existing or altered.

(14) "Expansion" means an increase in the largest number of animal units kept at a livestock facility on at least 90 days in any 12-month period. The acquisition of an existing livestock facility, by the operator of an adjacent livestock facility, does not constitute an "expansion" unless that operator increases the largest number of animal units kept at the combined livestock facilities on at least 90 days in any 12-month period.

Note: See s. ATCP 51.04.

(15) "Fine soil particles" means soil particles that pass through a # 200 soil sieve.

Note: See s. NR 151.002 (33).

(17) "Karst feature" means an area or superficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater. "Karst feature" may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.

(18) "Livestock" means domestic animals traditionally used in this state in the production of food, fiber or other animal products. "Livestock" includes cattle, swine, poultry, sheep and goats. "Livestock" does not include equine animals, bison, farm-raised deer, fish, captive game birds, raptors, camelids or mink.

(19) "Livestock facility" means a feedlot, dairy farm or other operation where livestock are or will be fed, confined, maintained or stabled for a total of 45 days or more in any 12-month period. A "livestock facility" includes the livestock, livestock structures, and all of the tax parcels of land on which the facility is located, but does not include a pasture or winter grazing area. Related livestock facilities are collectively treated as a single "livestock facility" for purposes of this chapter, except that an operator may elect to treat a separate species facility as a separate "livestock facility."

Note: See definition of "related livestock facilities" in sub. (16) and "separate species facility" in sub. (38).

(19m) "Livestock housing" means a livestock structure with a roof and walls used to confine livestock but does not include calf hutches. For the purposes of ss. ATCP 51.12 and 51.14, livestock housing is classified as Category 1 or 2 based on estimated odor generation. Category 1 housing encompasses pork gestation / farrow / nursery with slatted floor, and pork finishing with slatted floor. Category 2 encompasses dairy housing with alley flush system; beef housing with slatted floor; pork finishing scrape systems to storage; pork pull plug to storage; poultry (layers) and ducks.

Note: Housing classifications are based on the odor generation numbers for specific housing types in Appendix A of ch. ATCP 51, Worksheet 2, Chart 2 published in the Administrative Register, April 2006, No. 601.

(20) "Livestock structure" means a building or other structure used to house or feed livestock, to confine livestock for milking, to confine livestock for feeding other than grazing, to store livestock feed, or to collect or store waste generated at a livestock facility. "Livestock structure" includes a barn, milking parlor, feed storage facility, feeding facility, animal lot or waste storage facility. "Livestock structure" does not include a pasture or winter grazing area, a fence surrounding a pasture or winter grazing area, a livestock watering or feeding facility in a pasture or winter grazing area, or a machine shed or like facility that is not used for livestock.

(21) "Local approval" means an approval, required by local ordinance, of a new or expanded livestock facility. "Local approval" includes a license, permit, permit modification, special exception, conditional use permit or other form of local authorization. "Local approval" does not include any of the following:

(a) An approval required by a political subdivision within the scope of its authority under s. 59.692, 59.693, 60.627, 61.351, 61.354, 62.231, 62.234 or 87.30, Stats.

Note: See s. 93.99 (3) (a) 3, Stats. The statutes listed in par. (a) pertain to shoreline zoning, floodplain zoning, construction site erosion control and stormwater management.

(b) An approval required under a local building, electrical or plumbing code, if the standards for approval are consistent with standards established under the state building, electrical or plumbing code for that type of facility.

Note: See s. 93.99 (3) (a) 4, Stats.

(22) "Local ordinance" or "local code" means an ordinance enacted by a political subdivision.

(23) "Manure" has the meaning given in s. ATCP 50.01 (20).

(23m) "Manure storage structure" means a waste storage structure designed and operated primarily to store manure. For the purposes of ss. ATCP 51.12 (2) and 51.14, "manure storage structure" does not include any of the following:

(a) A structure used to collect and store waste under a livestock housing facility.

(b) A manure digester consisting of a sealed structure in which manure is subjected to managed biological decomposition.

(c) A structure designed, constructed and operated solely for the purpose of collecting and storing agricultural wastewater including leachate and contaminated runoff from stored feed.

(d) A structure designed, constructed, and operated solely for the purpose of storing manure with 12 percent solids or more.

Note: See s. NR 213.03 (22).

(24) "Minor alteration" of an animal lot means a repair or improvement that may include lot management including cleaning; shaping, seeding and other non-structural changes to address flow issues; and installation of conservation practices such as roof gutters, diversions, surface inlets, underground outlets, and gravel spreaders. (25) "Navigable waters" has the meaning given in s. 30.01 (4m), Stats.

(26) "New livestock facility" means a livestock facility that will be used as a livestock facility for the first time, or for the

Deleted: Note: Under s. NR 151.015 (7), "direct runoff" means a discharge of a significant amount of pollutants to waters of the state resulting from any of the following practices:¶

- (a) Runoff from a manure storage facility.¶
- (b) Runoff from an animal lot that can be predicted to reach surface waters of the state through a defined or channelized flow path or man-made conveyance.¶
- (c) Discharge of leachate from a manure pile.¶
- (d) Seepage from a manure storage facility.¶
- (e) Construction of a manure storage facility in permeable soils, or over fractured bedrock, without a liner designed according to s. NR 154.04 (3).¶

Deleted: Note: This chapter applies to local approvals of new or expanded livestock facilities that will have 500 or more animal units (or will exceed a lower permit threshold incorporated in a local zoning ordinance prior to July 19, 2003). See s. ATCP 51.02. Although this chapter covers all livestock structures in an "expanded livestock facility," existing structures are subject to less rigorous standards than new or expanded structures, and are completely exempt from certain requirements.¶

Deleted: (16) "High-use building" means any of the following buildings:¶

- (a) A residential building that has at least 6 distinct dwelling units.¶
- (b) A restaurant, hotel, motel or tourist rooming house that holds a permit under s.

Deleted: 97.605, Stats.¶
(c) A school classroom building.¶
(d) A hospital or licensed care facility.¶
(e) A non-farm business or workplace that is normally occupied, during at least 40 hours of each week of the year, by customers or employed workers.

Deleted: means excreta from livestock kept at a livestock facility. "Manure" includes livestock bedding, water, soil, hair, feathers, and other debris that becomes intermingled with livestock excreta in normal manure handling operations.

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first time in at least 5 years. "New livestock facility" does not include an expanded livestock facility if any portion of that facility has been used as a livestock facility in the preceding 5 years.

(27) "NRCS" means the natural resource conservation service of the United States department of agriculture.

(28) "Operator" means a person who applies for or holds a local approval for a livestock facility.

(29) "Pasture" ~~has the meaning given in s. NR 151.015 (15m).~~

(30) "Person" means an individual, corporation, partnership, cooperative, limited liability company, trust or other legal entity.

(31) "Political subdivision" means a city, village, town or county.

(32) "Populate" means to add animal units for which local approval is required.

(33) "Property line" means a line that separates parcels of land owned by different persons. ~~For purposes of setbacks, property lines are measured from livestock structures to the parcel or other property boundary separating land owned by different persons.~~

(33m) "Process wastewater" ~~has the meaning given in s. NR 243.03 (53).~~

(34) "Qualified nutrient management planner" means a person qualified under s. ATCP 50.48.

(35) "Registered professional engineer" means a professional engineer registered under ch. 443, Stats.

(36) "Related livestock facilities" means livestock facilities that are owned or managed by the same person, and related to each other in at least one of the following ways:

- (a) They are located on the same tax parcel or adjacent tax parcels of land.

Note: A mere acquisition of a neighboring livestock facility does not constitute an "expansion" unless more animal units are added to the combined facilities.

See sub. (14).

- (b) They use or share one or more of the same livestock structures to collect, transfer or store manure, or process wastewater.

- (c) Any of their manure or process wastewater is applied to the same landspreading acreage.

Note: Compare definition of "animal feeding operation" under s. NR 243.03 (2). "Related livestock facilities" are treated as a single livestock facility for purposes of local approval, except that a "separate species facility" may be treated as a separate livestock facility. See subs. (19) and (38).

(37) "Runoff" means storm water or precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.

(38) "Separate species facility" means a livestock facility that meets all of the following criteria:

- (a) It has only one of the following types of livestock, and that type of livestock is not kept on any other livestock facility to which the separate species facility is related under sub. (36):
 1. Cattle.

- 2. Swine.
- 3. Poultry.
- 4. Sheep.
- 5. Goats.

Note: For purposes of par. (a), cattle and poultry are different "types" of livestock, but dairy and beef cattle are livestock of the same "type" ("cattle"). Milking cows, heifers, calves and steers (all "cattle") are livestock of the same "type." Turkeys, ducks, geese and chickens are livestock of the same "type" ("poultry").

- (b) It has no more than 500 animal units.

- (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.

(38m) "Significant discharge" means a discharge of process wastewater as defined in s. NR 151.055 (3).

(39) "Site that is susceptible to groundwater contamination" ~~has the meaning given in s. NR 151.015 (18).~~

Note: See s. NR 151.015 (18).

(40) "Substantially altered" livestock structure means a livestock structure that undergoes a material change in construction or use, including any of the following material changes:

- (a) An increase in the capacity of a waste storage facility.
- (b) The addition of a liner to a waste storage facility.
- (c) An increase of more than 20% in the area or capacity of a livestock structure used to house, feed or confine livestock, or to store livestock feed.
- (d) An increase of more than 20% in the number of animal units that will be kept in a livestock structure on at least 90 days in any 12-month period.

(41) "Unconfined manure pile" means a quantity of manure at least 175 cubic feet in volume that covers the ground surface to a depth of at least 2 inches, but does not include any of the following:

- (a) Manure that is confined within a manure storage facility, livestock housing structure or barnyard runoff control facility.
- (b) Manure that is covered or contained in a manner that prevents storm water access and direct runoff to surface water or leaching of pollutants to groundwater.

(42) "Waste" means manure, milking center waste, leachate, contaminated runoff and other organic waste generated by a livestock facility.

(43) "Waste storage facility" means one or more waste storage structures. "Waste storage facility" includes waste transfer systems consisting of stationary equipment and piping

Deleted: Note: This chapter applies to local approvals of *new or expanded* livestock facilities that will have 500 or more animal units (or will exceed a lower permit threshold incorporated in a local zoning ordinance prior to July 19, 2003). See s. ATCP 51.02.

Deleted: means land on which livestock graze or otherwise seek feed in a manner that maintains the vegetative cover over all of the grazing or feeding area

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- (a) An area within 250 feet of a private well. §
- (b) An area within 1,000 feet of a municipal well. §
- (c) An area within 300 feet upslope or 100 feet downslope of a karst feature. §
- (d) A channel with a cross-sectional area equal to or greater than 3 square feet that flows to a karst feature. §
- (e) An area where the soil depth to groundwater or bedrock is less than 2 feet. §
- (f) An area where none of the following separates the ground surface from groundwater and bedrock: §
 1. A soil layer at least 2 feet deep that has at least 40% fine soil particles. §
 2. A soil layer at least 3 feet deep that has at least 20% fine soil particles. §
 3. A soil layer at least 5 feet deep that has at least 10% fine soil particles.

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used to load or unload a waste storage structure if the equipment is specifically designed for that purpose and is an integral part of the facility. "Waste storage facility" does not include equipment used to apply waste to land.

(44) "Waste storage structure" means a waste storage impoundment made by constructing embankments, excavating a pit or dugout, or fabricating a structure. "Waste storage structure" does not include waste transfer systems and equipment used to apply waste to land.

~~(44m) "Waste transfer system" is a system of conduits or permanent equipment used to convey wastes from a source to another location such as a waste storage structure, treatment facility, loading area or cropland. If a transfer system is designed to retain wastes for longer than 30 days, then the system shall be classified as a waste storage structure.~~

(45) "Waters of the state" has the meaning given in s. 283.01 (20), Stats.

(46) "Winter grazing area" means cropland or pasture where livestock feed on dormant vegetation or crop residue, with or without supplementary feed, during the period October 1 to April 30. "Winter grazing area" does not include any of the following:

(a) An area, other than a pasture, where livestock are kept during the period from May 1 to September 30.

(b) An area which at any time has an average of more than 4 livestock animal units per acre.

(c) An area from which livestock have unrestricted access to navigable waters of the state, such that the livestock access prevents adequate vegetative cover on banks adjoining the water.

(d) An area in which manure deposited by livestock causes nutrient levels to exceed standards in s. ATCP 51.16.

(47) "WPDES permit" means a Wisconsin pollutant discharge elimination system permit issued by DNR under ch. NR 243.

History: CR 05-014; cr. Register April 2006 No. 604, eff. 5-1-06; correction in (16) (b) made under s. 13.92 (4) (b) 7, Stats., Register January 2017 No. 733.

ATCP 51.02 Scope of this chapter. (1) This chapter applies to local approvals of the following livestock facilities:

(a) A new or expanded livestock facility that will have 500 or more animal units.

(b) A new or expanded livestock facility that will exceed a lower size threshold, for a special exception or conditional use permit, if the threshold is expressed in terms of a specific number of animals or animal units and was incorporated in a local zoning ordinance prior to July 19, 2003.

Note: Same, but not all, political subdivisions require local approval of new or expanded livestock facilities. If local approval is required, the political subdivision must grant or deny approval based on this chapter. A political subdivision may not require local approval for new or expanded livestock facilities smaller than 500 animal units, except as specifically authorized by the livestock facility siting law and this chapter. This chapter does not grant authority nor limit a political subdivision's authority to regulate the raising of small numbers of livestock (i.e. hobby farms) for non-commercial purposes where the activity generates less than \$4,000 in gross annual income. A political subdivision may not consider other siting criteria, or apply standards that differ

from this chapter, except as provided in the livestock facility siting law or this chapter.

(2) This chapter does not apply to any of the following:
(a) Livestock facilities other than those in sub. (1) that require local approval.

(b) An approval required by a political subdivision within the scope of its authority under s. 59.692, 59.693, 60.627, 61.351, 61.354, 62.231, 62.234 or 87.30, Stats.

Note: See s. 93.90 (1) (a) 3., Stats. The statutes listed in par. (b) pertain to shoreland zoning, floodplain zoning, construction site erosion control and stormwater management.

(c) An approval required under a local building, electrical or plumbing code, if the standards for approval are consistent with standards established under the state building, electrical or plumbing code for that type of facility.

Note: See s. 93.90 (3) (a) 4., Stats.
History: CR 05-014; cr. Register April 2006 No. 604, eff. 5-1-06.

ATCP 51.04 Animal units. In this chapter, and in every local approval or application for local approval under this chapter, the number of animal units kept or authorized at a livestock facility means the maximum number of animal units that are or may be kept on at least 90 days in any 12-month period.

Note: This section accounts for normal day-to-day and seasonal variations in livestock numbers, as livestock are born, received, moved and marketed. See s. 93.90 (3) (f), Stats.

Under this chapter, an applicant for local approval must specify the number of "animal units" for which the applicant seeks authorization. If the application is approved, the approval authorizes that number of "animal units." The authorized number is the maximum number of "animal units" that may be kept on 90 or more days in any 12-month period. A livestock operator may not exceed that authorized number without further local approval.

History: CR 05-014; cr. Register April 2006 No. 604, eff. 5-1-06.

ATCP 51.06 Local approval of existing livestock facilities. (1) GENERAL. Except as provided in sub. (2), a local ordinance may not require local approval under this chapter for any of the following:

(a) A livestock facility that existed before May 1, 2006 or before the effective date of the local approval requirement.

(b) A livestock facility that the political subdivision has already approved. A prior approval for the construction of a livestock facility implies approval for the maximum number of animal units that the approved livestock facility was reasonably designed to house, except as otherwise clearly provided in the approval. Prior approval of a single livestock structure, such as a waste storage structure, does not constitute prior approval of an entire livestock facility.

Note: For example, if a political subdivision has already approved construction of a livestock facility that was reasonably designed to house up to 600 "animal units," that approval authorizes the operator to keep up to 600 "animal units" at that facility (even if the scope of approval is not explicitly stated in terms of "animal units").

(2) EXPANSIONS. (a) A local ordinance may require local approval under this chapter for the expansion of a pre-existing or previously approved livestock facility under sub. (1) if the number of animal units kept at the expanded livestock facility will exceed all of the following:

Deleted: A political subdivision may not require local approval for new or expanded livestock facilities smaller than 500 animal units, except as specifically authorized by the livestock facility siting law and this chapter. A political subdivision may apply a lower size threshold adopted by ordinance prior to July 19, 2003 if that threshold is expressed as a specific number of animals or animal units. A local threshold expressed in locally-defined "animal units" may meet this test, because it effectively indicates a specific number of animals, even if the local ordinance definition of "animal units" differs from the definition in this chapter. However the local application and approval process must use the "animal units" definition in this chapter.

Local approvals under this chapter "run with the land." See s. ATCP 51.08. They normally continue to apply, despite changes in ownership, as long as subsequent owners do not violate the terms of the local approval. Some ordinances might require a *pro forma* permit transfer with each transfer of ownership, but that transfer may not ordinarily limit the scope of approval.

A livestock operator is *not* required to obtain local approval under this chapter for the construction, repair or improvement of livestock structures, unless the operator also adds "animal units" for which local approval is required (local building codes and manure storage ordinances may apply). However, a political subdivision may withdraw a local approval granted under this chapter if the livestock operator does any of the following (see s. ATCP 51.34 (4)).

- Without local authorization, alters the approved livestock facility in a way that materially violates the terms of the local approval.
- Alters the approved livestock facility so that the altered facility violates the standards in subch. II.

Deleted: For purposes of ss. ATCP 51.12 (2) and 51.14, "waste storage structure" does not include any of the following:

- Deleted:** (a) A structure used to collect and store waste under a livestock housing facility.
- (b) A manure digester consisting of a sealed structure in which manure is subjected to managed biological decomposition.

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Deleted: Animal unit" equivalents, for different species and types of livestock, are shown in *Appendix A, worksheet 1 (animal units)*. The "animal unit" equivalents are based on s. NR 243.03 (3) as it existed on April 27, 2004 (the date on which the livestock facility siting law, 2003 Wis. Act 2 ... [1]

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1. The applicable size threshold for local approval under s. ATCP 51.02 (1).

2. The maximum number previously approved or, if no maximum number was previously approved, a number that is 20% higher than the number kept on May 1, 2006 or on the effective date of the approval requirement, whichever date is later.

Note: Consider the following examples:

Example 1: Suppose that a local ordinance enacted after May 1, 2006 requires local approval for livestock facilities with 500 or more "animal units." "Local approval is not required" for a livestock facility that already has 600 "animal units" on the local ordinance effective date, unless the facility expands to more than 720 "animal units." The number of "animal units" kept on the ordinance effective date means the largest number kept on at least 90 days in the 12 months prior to the ordinance effective date (rev. s. 93.90 (3) (a), Stats.).

Example 2: Suppose that a local ordinance enacted prior to July 19, 2003 requires local approval of livestock facilities with 400 or more "animal units." An expansion from 200 "animal units" (existing facility) to 450 "animal units" (expanded facility) will require local approval, unless the political subdivision has already given its approval. If the political subdivision has already approved construction of a livestock facility that is designed to house up to 450 "animal units," the operator does not need further local approval unless the operator proposes to exceed 450 "animal units."

History: CR 05-014; cr. Register April 2006 No. 604, eff. 5-1-06.

(b) A livestock operator may apply for modification under s. ATCP 51.34 (5) to expand a previously approved livestock facility.

ATCP 51.08 Duration of local approval. (1) Except as provided in sub. (2) or s. ATCP 51.34 (4), a local approval under this chapter:

(a) Runs with the land and remains in effect despite a change in ownership of the livestock facility or the land on which it is located.

Note: Some local ordinances may require a pro forma permit transfer with each transfer of ownership, but that transfer may not limit the scope of the prior approval.

(b) Remains in effect regardless of the amount of time that elapses before the livestock operator exercises the authority granted by the approval, and regardless of whether the livestock operator exercises the full authority granted by the approval.

Note: For example, if a livestock operator gets local approval under this chapter to expand from 400 "animal units" (existing) to 900 "animal units", the livestock operator may implement the approved expansion over a period of time chosen by the livestock operator. The operator does not lose the approval merely because the operator implements the expansion in gradual stages, or fails to expand by the full amount authorized.

While the operator has flexibility in constructing livestock structures and populating with livestock, the operator is subject to the requirements in sub. (2).

(2) (a) Except as provided in par. (b), a political subdivision may withdraw a local approval granted under this chapter unless the livestock operator does all of the following within 2 years after a local approval is granted:

1. Begins populating the approved livestock facility.

Note: At the time an application for approval is submitted, a livestock operator must have the land base to implement a nutrient management plan for the maximum number of animal units requested in the application, and does not have two years to acquire the necessary land base through rental agreements or otherwise.

2. Begins construction on every new or expanded livestock housing structure, and every new or expanded waste storage structure, proposed in the application for local approval.

(b) Within 6 months of a local approval, a political subdivision may require an operator to complete construction of one or more conservation practices identified in the application if these practices are needed to control a documented discharge from an existing or altered animal lot or waste storage livestock structure.

(3) If a local approval is appealed, the local approval is deemed to be granted for purposes of sub. (2) when the appeal is concluded. Withdrawal of a local approval under sub. (2) does not prevent a livestock operator from obtaining a new local approval under this chapter.

Note: A political subdivision should exercise sound judgment in deciding whether to withdraw a local approval under sub. (2). The political subdivision may consider extenuating circumstances, such as adverse weather conditions, that may affect an operator's ability to comply. A political subdivision should give the operator prior notice, and a reasonable opportunity to demonstrate compliance, before withdrawing a local approval.

History: CR 05-014; cr. Register April 2006 No. 604, eff. 5-1-06.

Subchapter II — Livestock Facility Siting Standards

ATCP 51.10 Livestock facility siting standards; general. (1) STATE STANDARDS APPLY. Except as provided in sub. (2) or (3), a political subdivision shall grant or deny local approvals and permit modifications covered by this chapter based on the standards in this subchapter.

(2) (a) STATE STANDARDS INCORPORATED IN LOCAL ORDINANCE. Beginning on November 1, 2006, a political subdivision may not deny a local approval covered by this chapter unless the political subdivision incorporates by local ordinance the standards in this subchapter and the application requirements in subch. III. A local ordinance may incorporate the standards and application requirements by reference, without reproducing them in full.

(b) Except as provided in s. ATCP 51.12, a political subdivision may not grant a variance to exempt a livestock facility from complying with the state standards required under this chapter.

(3) MORE STRINGENT LOCAL STANDARDS. A political subdivision may not apply local standards that are more stringent than the standards in this subchapter unless all of the following apply:

(a) The political subdivision is authorized to adopt the local standards under other applicable law.

(b) The political subdivision enacted the standards by local ordinance, before the livestock facility operator filed the application for local approval.

(c) The political subdivision enacted the standards based on reasonable and scientifically defensible findings of fact adopted by the political subdivision's governing authority.

(d) The findings of fact under par. (c) clearly show that the standards are needed to protect public health or safety.

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- Deleted: The livestock facility siting law, s. 93.90, Stats., limits the reasons for which a political subdivision may deny local approval. For the first 6 months after the effective date of this chapter, from May 1, 2006 to November 1, 2006, a political subdivision may deny local approval based on standards in this chapter without incorporating those standards by local ordinance. See sub. (1). Sub. (2) applies beginning on November 1, 2006.
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Note: See s. 92.15, Stats. A political subdivision shall obtain separate state approval to impose requirements that exceed state water quality standards or practices.

(4) ORDINANCE PROVISIONS FILED WITH DEPARTMENT. Within 30 days after a political subdivision enacts an ordinance provision under sub. (2) or (3), the political subdivision shall electronically file a copy of the ordinance provision with the department. Failure to file the ordinance provision with the department does not invalidate the ordinance provision.

Note: This website, livestock.dnr.wis.gov, has instructions for electronic filing with the department.

History: CR 05-014; cr. Register April 2006 No. 604, eff. 5-1-06.

ATCP 51.12 Livestock structures; location on property. (1) PROPERTY LINE AND ROAD SETBACKS; GENERAL. Livestock structures shall comply with local ordinance requirements related to setbacks from property lines and public roads, except that no local setback requirement may do any of the following:

(a) Require a livestock structure to be set back more than 100 feet from any property line or public road right-of-way, except as provided in sub. (2), if the livestock facility will have fewer than 1,000 animal units.

(b) Require a livestock structure to be set back more than 200 feet from any property line, or more than 150 feet from any public road right-of-way, except as provided in sub. (2), if the livestock facility will have between 1,000 and 2,499 animal units.

(c) Require a livestock structure to be set back more than 300 feet from any property line, or more than 200 feet from any public road right-of-way, except as provided in sub. (2), if the livestock facility will have 2,500 animal units or more.

(d) Prevent the use of a livestock structure that was located within the setback area prior to the effective date of the setback requirement, except that operator may be required to address the livestock structure in an odor management plan under s. ATCP 51.14 (1).

(e) Prevent the expansion of a livestock structure that was located within the setback area prior to the effective date of the setback requirement, unless the expansion:

1. Results in 20 percent or more increase in the area of the structure as it existed on (the effective date of the rule), or
2. Is toward the property line or public road right-of-way to which the local setback applies.

Note: Many local jurisdictions have established basic property line and road setback requirements by ordinance. Setbacks vary depending on local circumstances, and often reflect years of local experience. Subsection (1) honors local setback requirements, provided that the setbacks do not exceed the limits specified in sub. (1). Nothing in sub. (1) precludes a political subdivision from granting a variance to reduce setback requirements, provided the political subdivision's ordinance includes a variance provision adopted under authority other than s. 93.90, Stats. See, e.g., ss. 59.694, 60.10, 61.35, and 62.23, Stats.

(2) MANURE STORAGE AND LIVESTOCK HOUSING STRUCTURES; MORE RESTRICTIVE SETBACKS. (a) Except as provided in par. (d), a manure storage structure may not be located within:

1. 600 feet of any property line, if the livestock facility will have fewer than 1,000 animal units.

2. 1,000 feet of any property line, if the livestock facility will have between 1,000 to 2,499 animal units.

3. 1,400 feet of any property line, if the livestock facility will have between 2,500 to 3,999 animal units.

4. 1,700 feet of any property line, if the livestock facility will have between 4,000 to 4,999 animal units, and 200 additional feet for every 1,000 animal units above 4,000, but not to exceed 2,500 feet.

(b) Except as provided in par. (d), Category 1 livestock housing may not be located within:

1. 600 feet of any property line, if the livestock facility will have fewer than 1,000 animal units.

2. 1,000 feet of any property line, if the livestock facility will have between 1,000 to 2,499 animal units.

3. 1,450 feet of any property line, if the livestock facility will have between 2,500 to 3,999 animal units.

4. 1,700 feet of any property line, if the livestock facility will have 4,000 or more animal units.

(c) Except as provided in par. (d), Category 2 livestock housing may not be located within:

1. 400 feet of any property line, if the livestock facility will have fewer than 1,000 animal units.

2. 700 feet of any property line, if the livestock facility will have between 1,000 to 2,499 animal units.

3. 1,000 feet of any property line, if the livestock facility will have between 2,500 to 3,999 animal units.

4. 1,200 feet of any property line, if the livestock facility will have 4,000 or more animal units.

Note: To the extent that a livestock structure is not covered by the more restrictive setback in sub. (2), it must meet the general requirements in sub. (1). For example, a dairy freestall barn at a livestock facility under 1,000 animal units must be 100 feet from the public road right-of-way unless political subdivision establishes a lower setback.

(d) A manure storage or housing structure may be located within the setbacks specified in pars. (a), (b), and (c) if any of the following apply:

1. The location of the manure storage and housing structure complies with a local ordinance or a variance granted under that local ordinance that specifies a shorter setback that is specific to manure storage or housing structures.

Note: If authorized in a local ordinance, a political subdivision may grant a variance to reduce a manure storage setback under appropriate conditions. For example, a reduction may be granted if a manure storage structure is located on land adjacent to a separate parcel owned by a different person who consents to the reduction.

2. The manure storage or housing structure existed prior to (effective date of the rule revision) or the structure is expanded by no more than 20 percent of its surface area as it existed on (the effective date of the rule) and no part of expansion is closer to the property line to which the local setback applies.

3. A new or expanded manure storage or housing structure is located at a reduced setback distance authorized in Appendix A, Worksheet 2 based on the applicant's commitment to install and maintain odor control practices. (2m) CLUSTERS. (a) Except

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~~Deleted: , by mail, fax or e-mail, at the following applicable address: Wisconsin Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, Bureau of Land and Water Resources, P.O. Box 8911, Madison, WI 53708-8911, Fax: (608) 224-4615, E-mail: datcp.state.wi.us~~

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~~Deleted: (c) The waste storage structure is a single new waste storage structure constructed no closer to the relevant property line or public road than a waste storage structure that existed on the same tax parcel prior to May 1, 2006, provided that the new structure is no larger than the existing structure and is located within 50 feet of the existing structure.~~

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~~Note: See definition of "waste storage structure" in s. ATCP 51.01 (44) ¶~~

as provided in par. (b), if the livestock structures in a livestock facility regulated under a single local approval are divided among 2 or more clusters, such that no cluster is located closer than 1,000 feet to any other cluster, an operator may determine the setback distances for livestock structures in each cluster based on the animal units kept at each location, rather than the animal units at for the entire livestock facility.

(b) This treatment does not apply to any cluster that handles or stores manure generated by animals located in another cluster.

Note: For example, a dairy operator may establish two setbacks for each cluster at a dairy facility that includes a milking operation (cluster 1) and a heifer facility (cluster 2) located 1000 feet or more from each other. If the heifer facility has a manure storage facility for 200 animal units and accepts no manure from the 1200 head milking operation, the heifer facility may use the 600 foot setback for manure storage facilities on operations under 1000 animal units.

(3) NAVIGABLE WATERS AND WETLANDS. A livestock facility shall comply with an applicable shoreland or wetland zoning ordinance that is enacted within the scope of authority granted under s. 59.692, 61.351 or 62.231, Stats.

Note: Essentially all navigable waters are now protected by ordinances that require building setbacks of 75 feet or more (depending on the ordinance). Zoning restrictions, if any, typically apply to new or enlarged structures. A zoning ordinance applies for purposes of sub. (3) if it is enacted within the scope of statutory authority under s. 59.692, 61.351 or 62.231, Stats., even if it is also enacted under other authority.

(4) FLOODPLAIN. A livestock facility shall comply with an applicable floodplain zoning ordinance that is enacted within the scope of statutory authority under s. 87.30, Stats.

Note: County or local zoning ordinances currently apply to many, but not all, waterways (not all waterways have mapped floodplains). Zoning restrictions, if any, typically apply to new or enlarged structures. A zoning ordinance applies for purposes of sub. (4) if it is enacted within the scope of statutory authority under s. 87.30, Stats., even if it is also enacted under other authority.

(5) WELLS. (a) Wells in a livestock facility shall comply with chs. NR 811 and 812.

(b) Except as provided in par. (c), new or substantially altered livestock structures shall be separated from existing wells by the distances required in chs. NR 811 and 812, regardless of whether the livestock facility operator owns the land on which the wells are located.

(c) Paragraph (b) does not prohibit the alteration of a livestock structure that existed on May 1, 2006, unless that alteration reduces the distance between the livestock structure and an existing well.

Note: DNR rules under chs. NR 811 and 812 spell out well construction and well location standards to protect water supplies. Violation of well setback requirements in ch. NR 811 or 812 may prevent use of a well. DNR may grant appropriate variances, as provided in chs. NR 811 and 812.

(6) PRESUMPTION. For purposes of local approval, a livestock facility is presumed to comply with this section if the application for local approval complies with s. ATCP 51.30.

History: CR 05-014; cr. Register April 2006 No. 694, eff. 3-1-06.

ATCP 51.14 Odor. (1) **PREEXISTING ODOR STANDARD.** (a) A livestock facility operating under a local approval granted prior to [the effective date of this rule revision] must honor all commitments in its local approval to maintain the necessary odor control practices to achieve a passing odor score.

Note: The operator's commitments are documented in Appendix A of ch. ATCP 51, Worksheet 2, as published in the Administrative Register, April 2006, No. 694.

(b) Except as provided in (2) (b), if a previously approved livestock facility is granted a local approval including a permit modification on or after [the effective date of this rule revision], the livestock facility is released from its commitments under the preexisting odor standard for all livestock structures located at the livestock facility on date of its application for subsequent local approval.

Note: A livestock facility released from its commitments may be required to prepare an odor management plan for existing structures under par. (c). All livestock facilities with new or expanded livestock structures must meet the setback requirements in s. 51.12. In addition, an applicant may complete Worksheet 2 to reduce setbacks for new and expanded waste storage facilities and housing.

Note: The spreadsheet equivalent of Appendix A, Worksheet 2, Table A available on the department's website at livestock.siting.wi.gov, may be submitted in place of Worksheet 2, Table A.

(2) **ODOR MANAGEMENT PLAN.** (a) A livestock facility must submit an odor management plan that addresses the following livestock structures located at the livestock facility at the time of its application for a local approval:

1. Any manure storage structure located within 600 feet of any property line.

2. Any livestock housing located within 400 feet of any property line.

(b) The odor management plan shall identify management practices that the livestock facility must follow to control odor from each manure storage structure and livestock housing located within the separation distance defined in par. (a) 1. and 2. The plan should incorporate odor control practices which the operator agreed to implement as part of a local approval granted before the effective date of the rule [LRB insert] unless the operator provides a financial or other justification for discontinuation of the practice.

Note: The plan may include practices to reduce dust practices to reduce odor from nearby livestock structures such as animal lots, practices used to reduce odor from dead animals, activities to reduce community conflict, and water conservation practices that control odor.

(c) A political subdivision may request that a livestock operator update an odor management plan if the political subdivision receives a verified odor-related complaint from a property owner adjacent to the livestock facility.

(3) **NEW ODOR MANAGEMENT STANDARD.** (a) In any application for local approval or permit modification submitted on or after [the effective date of this rule revision], a livestock operation must comply with the setback requirements in s. ATCP 51.12 for all new or expanded livestock structures identified in its application.

(b) All applicants must complete Appendix A, Worksheet 2 to establish setbacks for new and expanded manure storage and Category 1 and 2 livestock housing, and surface area of manure storage and Category 1 and 2 livestock housing located on the livestock facility at the time of the application for a local approval. This information will determine whether:

1. Existing livestock structures located within a setback area may be expanded, without the need for odor control practices. See ss. 51.12 (1)(c) and (2)(d).

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Deleted: Note: Under s. ATCP 51.30, an application must be complete, credible and internally consistent. The application must include an area map, a site map, and a certification that the livestock facility complies with this section (see Appendix A). A local approval is conditioned upon compliance in fact (see s. ATCP 51.34 (4)). The presumption in sub. (6) may be rebutted by clear and convincing evidence in the record (see s. ATCP 51.34 and 51.36).†

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2. New or expanded livestock structures will need to implement odor control practices to reduce required setbacks. See sub. (3).

Note: The spreadsheet equivalent of Appendix A, Worksheet 2, Table A available on the department's website at livestockatg.wis.gov, may be submitted in place of Worksheet 2, Table A.

(4) SETBACK REDUCTIONS FOR ODOR CONTROL PRACTICES. (a) In determining the setback for new and expanded manure storage and Category 1 and 2 livestock housing, an operator may reduce the required setback based on the following:

1. Odor control practices, identified in Appendix A, Worksheet 2, which the operator agrees to implement. For each odor control practice, the operator may claim the setback reduction specified in Appendix A, Worksheet 2.

2. An odor control practice not identified in Appendix A, Worksheet 2 if the department pre-approves a setback reduction for that practice. The operator shall claim the pre-approved setback reduction according to the procedure specified in par. (b).

(b) An operator seeking department approval under sub. (a) 2. shall submit a written request to the department that includes:

- 1. A clear description of the odor control practice for which the operator seeks an approved credit.
2. Scientific evidence to substantiate the efficacy of the odor control practice under relevant conditions.

(c) The department may approve a setback reduction for an odor control practice under par. (a) 2. if, in the department's opinion, there is adequate scientific evidence to show that under relevant conditions the practice will result in odor reduction commensurate with the approved credit. The department shall grant or deny the request within 90 days after the department receives the request. The department's approval may include specifications for installation and operation of the innovative odor control practice.

(5) PRESUMPTION. For purposes of local approval, a livestock facility is presumed to comply with this section if the application for local approval complies with s. ATCP 51.30.

History: CR 03-014, cr. Register April 2006 No. 694, eff. 5-1-06.

ATCP 51.16 Nutrient management and cropland standards. (1) NUTRIENT MANAGEMENT STANDARD. (a) A livestock operator must have and follow a nutrient management plan that complies with s. ATCP 50.04 (3).

(b) The nutrient management plan shall account for all land applications of manure and related waste generated by the maximum number of animal units authorized by a local approval.

Note: The Wisconsin NRCS Nutrient Management Technical Standard 590 (December, 2015) is incorporated into s. ATCP 50.04. The Wisconsin Conservation Planning Technical Note W-1 (February, 2016) shall be used to estimate the quantity of manure generated. Appendix A, Worksheet 3 includes the Technical Note's estimation tool.

Note: While the application of process wastewater and other industrial wastes is regulated under ch. NR 214, the nutrients from these sources when applied to fields must be accounted for in a nutrient management plan developed in accordance with this section. (2) CROPLAND

PERFORMANCE STANDARDS. (a) An operator shall implement conservation practices that achieve compliance with cropland performance standards under ss. NR 151.02, 151.03, and 151.04, in effect on (effective date of the rule revision).

(b) An operator is required to establish a minimum tillage setback of 3 feet.

Note: A political subdivision may require a setback greater than 3 feet and less than 20 feet if it follows procedures in s. ATCP 50.04 (4) but this increased setback cannot be incorporated into a local approval.

(c) An operator may meet the phosphorus index standard under s. NR 151.04 by following s. ATCP 50.04 (3).

(3) DEMONSTRATION OF COMPLIANCE. (a) An applicant demonstrates compliance with the requirements of this section by submitting:

1. A waste and nutrient management worksheet (Appendix A, Worksheet 3) signed by the livestock operator.

2. A nutrient management checklist (Appendix A, Worksheet 3, Part D) signed by both the livestock operator and a qualified nutrient management planner other than the operator.

a. A nutrient management planner qualified under s. ATCP 50.48, other than the livestock operator, shall answer each checklist question. The planner shall have reasonable documentation to substantiate each answer, but neither the planner nor the operator is required to submit that documentation with the checklist.

b. A political subdivision may ask a nutrient management planner to submit the documentation that the planner relied upon to substantiate the planner's answer to one or more questions on the nutrient management checklist under par. (a) 2. The political subdivision may deny local approval if the planner's documentation does not reasonably substantiate the answer.

3. Maps of fields that will receive nutrient applications with NRCS standard 590 spreading restrictions identified on the maps.

(b) In lieu of submitting the checklist required by par. (a) 2., an operator who holds a WPDES permit for the livestock facility may submit a nutrient management checklist previously submitted to DNR if the all of the following are met:

1. The nutrient management plan covers the same or greater number of animal units than the number for which the operator seeks local approval.

2. The WPDES permit and the nutrient management plan are current.

3. The livestock facility is in compliance with all WPDES permit conditions related to the nutrient management plan.

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~~(4) (a) Manure spreading restrictions in s. NR 151.075 and other performance standards are based on reasonable and scientifically defensible findings of fact that clearly show that such requirements are necessary to protect public health or safety.~~

~~(b) A political subdivision may impose manure spreading restrictions included in applicable performance standards and prohibitions in ch. NR 151 by referencing par. (a) to meet the requirements in s. ATCP 51.10 (3) (c)-(d) for adoption of more stringent local standards except that a political subdivision may not use this authority to adopt a targeted standard that does not apply to the geographic area under the political subdivision's jurisdiction.~~

~~¶(6) PRESUMPTION. For purposes of local approval, an operator is presumed to comply with this section if the application for local approval complies with s. ATCP 51.30.~~

~~¶(6) NUTRIENT MANAGEMENT UPDATES. The political subdivision may:~~

~~(a) Require an operator to submit annual updates to a nutrient management plan, as necessary, to maintain compliance with ATCP 50.04 (3).~~

~~(b) Monitor an operator's compliance with a nutrient management plan.~~

~~Note: Political subdivisions may require operators to submit a department-approved checklist to document nutrient management plan updates meeting the most current standard.~~

~~History: CR 05-014; cr. Register April 2006 No. 604, eff. 5-1-06.~~

~~**ATCP 51.18 Waste storage facilities.** (1) (a) DESIGN, CONSTRUCTION AND MAINTENANCE; GENERAL. All waste storage facilities for a livestock facility shall be designed, constructed and maintained to minimize the risk of structural failure, and to minimize the potential for waste discharge to surface water or groundwater. A waste storage facility may not lack structural integrity or have significant leakage. An unlined earthen waste storage facility may not be located on a site that is susceptible to groundwater contamination.~~

~~Note: A "site that is susceptible to groundwater contamination" is defined in s. ATCP 51.01 (39).~~

~~(b) The requirements in this section apply to facilities designed, constructed and used primarily for the storage of manure or primarily for the storage of agriculture wastewater including leachate and contaminated runoff from stored feed.~~

~~(2) DEMONSTRATION OF COMPLIANCE. (a) An applicant demonstrates compliance with the requirements of this section by submitting:~~

~~1. A waste storage facilities worksheet (Appendix A, Worksheet 4), signed by registered professional engineer or certified conservation engineering practitioner who:~~

~~a. Certifies that each existing storage facility meets applicable standards in sub. (4).~~

~~b. Submits construction plans and specifications for any new or substantially altered facility, and certifies that each~~

~~substantially altered or new storage facility meets applicable standards in sub. (5).~~

~~c. Submits a plan for any waste storage facility that must be closed, and that plan meets applicable standards in sub. (6).~~

~~(b) In lieu of submitting the certification required by par. (a), an applicant may:~~

~~1. Rely on a WPDES permit issued for the livestock facility if the applicant:~~

~~a. Certifies that the livestock operation's WPDES permit is current and the livestock operation is in compliance with all conditions and requirements in WPDES.~~

~~b. Submits DNR plan and specification approval for any new or substantially altered waste storage facility of the same size and type as those proposed for the new or expanded livestock facility.~~

~~c. Submits DNR approval or other determination authorizing continued use of any existing and unaltered waste storage facilities.~~

~~2. Submit a local approval granted under an ordinance adopted under s. 92.16, Stats., and engineering documentation showing that a facility was constructed within the last 3 years in accordance with then-existing NRCS standards.~~

~~3. Submit a DNR approval of a waste facility designed for storage of agricultural wastewater and other related products under ch. NR 213.~~

~~Note: If an applicant is not able to submit the documentation required in sub. 1., 2. or 3. for any storage facility located on the proposed livestock facility, the applicant must have a qualified person complete the certification in par. (a) for that facility.~~

~~(3) PRESUMPTION. For purposes of local approval, an operator is presumed to comply with this section if the application for local approval complies with s. ATCP 51.30.~~

~~¶(4) EXISTING FACILITIES. (a) A registered professional engineer or certified conservation engineering practitioner shall certify that each existing waste storage facility (not including waste transfer systems) meets one of the following:~~

~~1. The facility was constructed within the last 10 years according to then-existing NRCS standards, and a visual inspection of the facility shows no apparent signs of structural failure or significant leakage.~~

~~2. The facility is older than 10 years, was constructed according to NRCS standards that existed at the time of construction, and a visual inspection of the emptied facility shows no apparent signs of structural failure or significant leakage.~~

~~3. The construction standards for the facility cannot be verified from reliable documentation, a full investigation of the facility was performed, and this investigation established that the facility is in good condition and repair, shows no apparent signs of structural failure or significant leakage, and is located on a site at which the soils and separation distances to groundwater meeting the requirements for the appropriate liner type referenced in NRCS technical guide, waste storage facility standard 313 (October, 2017R) and related liner standards specified in sub. (5).~~

~~Deleted: (c) Paragraph (a) does not apply to a livestock facility with fewer than 500 animal units unless the operator's ratio of acres to animal units, calculated according to Appendix A, worksheet 3, part B, is less than 1.5 for dairy and beef cattle, 1.0 for swine, 2.0 for sheep and goats, 2.5 for chickens and ducks, and 5.5 for turkeys.¶ Note: A waste and nutrient management worksheet (Appendix A, worksheet 3) must accompany every application for local approval. Among other things, the worksheet shows the operator's ratio of acres to animal units under par. (c). ¶~~ [15]

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Note: ~~▲ A full investigation includes examining facilities of their contents, especially earthen-lined structures, to allow for complete inspection and evaluation. The full investigation of an earthen storage should verify that the bottom of structure corresponds with as-built plans, if any, or has adequate separation distance to groundwater. It also includes test pits or borings, when there is no reliable documentation regarding a facility's separation distances to groundwater or bedrock.~~

Note: ~~An evaluation should be completed in accordance with a department-approved evaluation flow chart, which is available at this website, livestockinsg.wis.gov.~~

~~(b) A political subdivision may request a written report documenting the methods used for evaluation and the findings in support of the conclusions reached in the evaluation.~~

~~(c) At the time that a livestock operator submits an application for local approval of livestock facility expansion, a structure previously evaluated under this subsection must be reevaluated according to the following schedule:~~

~~1. If the structure is 15 years old or less, the structure must be reevaluated if the prior evaluation is more than 10 years old.~~

~~2. If the structure is more than 15 years old, the structure must be reevaluated if the prior evaluation is more than 5 years old.~~

~~▲ (6) NEW OR SUBSTANTIALLY ALTERED FACILITIES. A registered professional engineer or certified conservation engineering practitioner shall certify that the design specifications for each new or substantially altered waste storage facility (including waste transfer systems) complies with applicable standards:~~

~~(a) NRCS technical guide waste storage facility standard 313 (October, 2017R), and related liner standards, NRCS technical guide pond sealing or lining - compacted soil treatment 520 (October, 2017R), NRCS technical guide pond sealing or lining - geomembrane or geosynthetic clay liner 521 (October, 2017R) and NRCS technical guide pond sealing or lining - concrete 522 (October, 2017R).~~

Note: ~~Compost facilities should be designed and operated to meet the requirements of WI NRCS CPS Composting Facility (Code 317).~~

~~(b) NRCS technical guide manure transfer standard 634 (January, 2014).~~

Note: ~~A political subdivision may accept a certification to a standard newer than those listed in par. (a) and (b). (6) CLOSED FACILITIES.~~

~~(a) If an existing waste storage facility is not certified under sub. (4), and no design is submitted for its alteration, the applicant shall submit a closure plan that complies with par. (b), and must close the facility within two years of the issuance of a local approval unless the political subdivision requires an earlier closure based on imminent threat to public health, aquatic life, or groundwater.~~

~~(b) A registered professional engineer or certified conservation engineering practitioner shall certify that the closure plan complies with NRCS technical guide closure of waste impoundments standard 369 (March, 2013). Note: Under s. NR 151.05 (3) and (4), an operator must normally close a manure storage facility if the facility has not been used for 24 months, or poses an imminent threat to public health, aquatic life or groundwater.~~

~~If a waste storage facility is abandoned or not properly closed, a political subdivision may seek redress under s. 66.0627 or 234.39, Stats., as appropriate.~~

~~(7) FACILITY OPERATION. (a) All manure storage facilities in existence as of October 1, 2002 that pose an imminent threat to public health, fish and aquatic life, or groundwater shall be upgraded, replaced, or abandoned in accordance with s. NR 151.05 (4) (b).~~

~~(b) Levels of materials in storage facilities may not exceed the margin of safety level as defined in ch. NR 151.~~

~~(c) There shall be no mixing or storage of human waste or septic with animal manure on a dairy farm.~~

Note: ~~Worksheet 3 must document waste generation, including waste storage capacity, consistent with Worksheet 4. Capacity must be adequate for reasonably foreseeable needs.~~

~~▲ (8) DEVIATION FROM DESIGN SPECIFICATIONS. (a) Local approval of a livestock facility does not authorize an operator to populate the approved livestock facility if the construction, alteration or closure of a waste storage facility deviates materially, and without express authorization from the political subdivision, from the design specifications or closure plan included in the application for local approval. (b) A political subdivision may do all of the following to verify that waste storage facilities are constructed according to design specifications included in the application for local approval:~~

~~1. Conduct inspections consistent with legal authority.~~

~~2. Require submission of a drawing reflecting design changes made during construction and documentation certifying that the facility was installed in accordance with technical standards.~~

Note: ~~See ATCP 50.50 (1) (b) 2.~~

~~This chapter does not limit the application of local waste storage ordinances adopted under s. 92.16, Stats. If the operator's livestock facility has been approved under a siting ordinance, the operator is responsible for remaining in compliance with setback, odor and other standards in this chapter when constructing new storage structure permitted under a local waste storage ordinance.~~

~~History: CR 05-014; cr. Register April 2006 No. 604, eff. 5-1-06.~~

~~ATCP 51.20 Runoff management. (1) NEW OR SUBSTANTIALLY ALTERED ANIMAL LOTS. Livestock operators with new or substantially altered animal lots shall collect and store manure and contaminated runoff for future land application, or construct animal lots to manage runoff in compliance with NRCS technical guide vegetated treatment area standard 635 (September, 2016).~~

~~(2) EXISTING ANIMAL LOTS. (a) If manure and runoff from existing animal lots are not collected and stored for future land application, the applicant must document that the predicted average annual phosphorus runoff, from each existing animal lot to the end of the runoff treatment area, as determined by the BARNY model, shall be less than the following applicable amount:~~

~~1. Fifteen pounds if the edge of the animal lot is not located within any of the following:~~

~~a. 150 feet from navigable lakes, ponds and flowages~~

~~b. 450 feet from wetlands and navigable streams and rivers~~

~~c. 750 feet from direct conduits to groundwater~~

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~~(e) The facility is in good condition and repair, shows no apparent signs of structural failure or significant leakage, is located entirely above ground, and is located on a site at which the soils comply with NRCS technical guide manure storage facility standard 313, table 3 (November, 2004).~~

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d. 450 feet from surface inlets that discharge to navigable waters
 e. 225 feet from channelized flow (i.e., a drainage area of ≥ 5 acres)
 f. 225 feet from subsurface drains
 2. Five pounds if ~~the edge of the animal lot is located within any of the features identified in subd. 1.~~

Note: The BARNY model is a computer model that predicts nutrient runoff from animal lots. An Excel computer spreadsheet version of BARNY is available at livestocksting.wi.gov. Applicants must provide outputs from the BARNY model to document compliance with this requirement.

(b) A livestock operator may make minor alterations to an existing animal lot to meet the runoff standards in par. (a).

(c) Animal lots shall have no direct runoff to surface waters of the state or to a direct conduit to groundwater.

Note: See ss. NR 151.08 (4) and ATCP 50.04 (1). A direct conduit to groundwater may include, for example, a sinkhole.

(3) PROCESS WASTEWATER. A livestock facility shall have no significant discharge of process wastewater to waters of the state or to a direct conduit to groundwater.

(4) FEED STORAGE. (a) For the purposes of the requirements in this section, a feed storage structure includes any building, bunker, or paved area used for feed storage or handling, but does not include silos, storage bags, and grain bins.

(b) An existing feed storage structure may be used, without substantial alteration, to store or handle feed if a registered professional engineer or certified conservation engineering practitioner certifies that the structure:

1. Was constructed according to applicable NRCS standards that existed at the time of construction, or in the absence of documentation to support this, the structure is located on a site with soils and separation distances that comply with Tables 1, 2 or 3 in NRCS Technical Guide Waste Treatment Standard 629 (January, 2017).

Note: The type of structure determines which table must be used to document compliance.

2. Is in good condition and repair.

3. Shows no apparent signs of structural failure, significant leakage, or significant discharges to surface water.

Note: An evaluation should be completed in accordance with a department-approved evaluation flow chart, which is available at this website, livestocksting.wi.gov.

4. The political subdivision may request a written report documenting the methods used for evaluation and the findings of the evaluation.

(c) An existing feed storage structure must be operated and maintained to:

1. Divert clean water from entering the structure or paved area.

2. Collect and store surface discharge of leachate from stored feed and initial runoff volume of 0.20 inches from each precipitation event before it leaves the structure or paved area, if the structure or paved area covers more than one acre.

Collected leachate shall be stored and disposed of in a manner that prevents discharge to waters of the state.

3. Prevent leachate and contaminated runoff from infiltrating below the storage structure.

4. Avoid accumulation of debris in the loading area.

5. Ensure proper functioning of collection and treatment areas.

(d) A new or substantially altered feed storage structure shall comply with both of the following except as provided in par. (e):

1. The storage structure shall be designed, constructed and maintained in accordance with NRCS waste treatment technical standard 629 (January, 2017).

2. Leachate and contaminated runoff from storage structure shall be collected and stored for future land application or treated in accordance with NRCS vegetated treatment area technical standard 635 (September, 2016R).

(e) If a new or expanded feed storage structure is less than one acre, the design for the new structure, or the new portion of the expanded structure, is only required to meet the applicable Table 1, 2 or 3 of NRCS waste treatment technical standard 629 (January, 2017) if each of the following are met:

1. The proposed structure is not located within any of the separation distances in sub. (2) (a) 1. a. to f.

2. A registered professional engineer or certified conservation engineering practitioner certifies that:

a. The structure is designed to collect and store all leachate from stored feed and an initial runoff volume of 0.20 inches from each precipitation event.

b. The site area including the proposed structure and surrounding land is not located on soils with a high potential for leaching contaminants to groundwater.

c. Conditions at the site area and the design of storage area are such that runoff from a 25-year, 24-hour precipitation event will not result in a significant discharge to waters of the state.

Note: Runoff from feed storage must be controlled to prevent a significant discharge to waters of the state. Livestock operators are responsible for meeting this requirement if they follow the design standard in par. (d). In addition, livestock operators are subject to federal discharge standards that may be more restrictive than state standards.

(f) For the purposes of meeting the one acre size requirement in pars. (c) and (e), two or more feed storage structures at the same livestock facility shall be treated as a single storage structure if runoff from any structure converges or meets with runoff from another structure within the separation distances in sub. (2) (a) 1. a. to f. If two or more structures are related in this manner, each of structures must individually meet the separation distances in sub. (2) (a) 1. a. to f.

(5) Milking Center Wastewater. (a) For the purposes of the requirements in this section, milking center wastewater consists of wash water used to clean the milk harvesting and milk

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cooling equipment and other contaminated sources of wastewater (water softener) and wash water used to clean the floors and walls. Wastewater from the floor of the holding area, clean discharge water sources (plate cooler, roof water) and sanitary wastewater (toilets, sinks, clothes laundry) must be excluded from the treatment system.

(b) Milking center wastewater shall be transferred to a waste storage facility or other structure that meets the design criteria of NRCS waste facility storage technical standard 313 (October, 2017R) and related liner standards specified in s. ATCP 51.18 (5), except as provided in par. (c).

(c) If a livestock facility generates less than 500 gallons of milking center wastewater daily and does not store the wastewater for an extended period, the livestock operation may use the treatment practices described in NRCS waste treatment technical standard 629 (January, 2014).

(6) CLEAN WATER DIVERSION. Clean water shall be diverted away from contacting animal lots, waste storage facilities, and manure piles within 1,000 feet of a navigable lake, 300 feet of a navigable stream or wetlands, 300 feet from wetlands connected to navigable lake or stream, or 500 feet from a direct conduit to groundwater.

Note: See ss. NR 151.06 and ATCP 50.04 (1). Runoff may be diverted by means of earthen diversions, curbs, gutters, waterways, drains or other practices, as appropriate.

(7) OVERFLOW OF WASTE STORAGE FACILITIES. A livestock facility shall be designed, constructed and maintained to prevent overflow of waste storage facilities.

Note: Under s. ATCP 51.18 (5), waste storage capacity must be adequate to meet reasonably foreseeable storage needs, based on the operator's waste and nutrient management strategy under s. ATCP 51.16. See also ss. NR 151.08 (2) and ATCP 50.04 (1).

(8) UNCONFINED MANURE PILES. A livestock facility may not have any unconfined manure piles within 1,000 feet of a navigable lake or 300 feet of a navigable stream.

Note: See ss. NR 151.08 (3) and ATCP 50.04 (1).

(9) LIVESTOCK ACCESS TO SURFACE WATERS OF THE STATE. A livestock facility shall be designed, constructed and maintained to prevent unrestricted livestock access to surface waters of the state, if that access will prevent adequate vegetative cover on banks adjoining the water. This subsection does not prohibit a properly designed, installed and maintained livestock crossing or machinery crossing.

Note: See ss. NR 151.08 (5) and ATCP 50.04 (1).

(10) DEMONSTRATION OF COMPLIANCE. (a) An applicant demonstrates compliance with the requirements of this section by submitting a runoff management worksheet (Appendix A, Worksheet 5), signed by a registered professional engineer or certified conservation engineering practitioner and the applicant, certifying that the existing, substantially altered and new structures and practices meet applicable standards in subs. (1) - (9).

(b) In lieu of submitting certification required by par. (a), an operator who holds a WPDES permit may submit the following documentation from DNR to cover one or more structures:

1. Plan and specification approval for new or substantially altered animal lots or feed storage structures.

2. Compliance determinations for existing animal lots or feed storage structures.

(11) PRESUMPTION. For purposes of local approval, a livestock facility is presumed to comply with this section if the application for local approval complies with s. ATCP 51.30.

(12) DEVIATION FROM DESIGN SPECIFICATIONS. (a) Local approval of a livestock facility does not authorize an operator to populate the approved livestock facility if the construction or alteration of an animal lot or feed storage structure deviates materially, and without express authorization from the political subdivision, from design specifications included in the application for local approval.

(b) A political subdivision may do all of the following to verify that animal lots and feed storage structures are constructed according to design specifications included in the application for local approval:

- 1. Conduct inspections consistent with legal authority.
- 2. Require submission of a construction plan, a drawing reflecting design changes made during construction and documentation certifying that the facility was installed in accordance with technical standards.

Note: A deviation under sub. (12) does not invalidate a local approval, but does prevent the livestock operator from populating the approved livestock facility until the deviation is rectified or approved.

History: CR 05-011; cr. Register April 2006 No. 604, eff. 3-1-06.

Subchapter III — Application and Approval

ATCP 51.30 Application. (1) GENERAL. If local approval is required for a new or expanded livestock facility, a person seeking local approval shall complete and file with the political subdivision the application form shown in Appendix A. The application shall include all of the information required by Appendix A and attached worksheets, including any authorized modifications made by the political subdivision under sub. (2). The information contained in the application shall be credible and internally consistent.

Note: The department approved form is available at livestock.dnr.wis.gov.

(2) LOCAL MODIFICATIONS. A political subdivision may not alter the application form shown in Appendix A and attached worksheets, or require any additional information, except that a political subdivision may require information needed to determine compliance with local ordinance standards authorized under s. ATCP 51.10 (3) or 51.12 (1).

(3) ADDITIONAL COPIES. A political subdivision may require an applicant to submit up to 4 duplicate copies of the original application under sub. (1). Each duplicate copy shall include all of the worksheets, maps and other attachments included in the application, except that it is not required to include engineering design specifications.

(4) LOCAL FEES. (a) A political subdivision may charge:

1. A full application fee established by local ordinance, not to exceed \$1,000, to offset the political subdivision's costs to review and process an application under sub. (1).

2. A fee for permit modification under s. ATCP 51.34 (4m) not to exceed \$500.

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