

## ATCP 51 – 2017 Draft Rule

Document sections correlate to the section numbers in the ATCP 51 draft which was posted and released for comment in June 2017.

Sections	Comments
§3	Animal lot definition includes areas of >50 calf hutches and requires them to meet updated runoff standards. The threshold should be increased for to allow for adequate flexibility in meeting standards with their existing facilities given that even smaller farms have higher numbers of calf hutches.
§30 - 1	51.08(2)(a)1. Note – States operator must have land base to implement the NMP for max number of AUs in the application at the time the application is submitted. Should be removed unless specifically required elsewhere so the farmer has flexibility to retain land in accordance with his plans to construct and populate a new or expanded livestock facility.
§30 - 2	51.08(2)(b) – Gives political subdivision the authority to require the construction of conservation practices if there is a documented discharge. Should be removed or amended because it would be problematic if political subdivision’s directions conflict with DNR compliance schedule or CAFO permit requirements.
§36 & §39	Existing odor scoring system and setbacks should be maintained to allow for flexibility in siting new facilities or allowing existing facilities to expand in Wisconsin’s rural landscape.
§36 - 1	If adding additional tiers is necessary, they should be based off tiers that already exist in law and regulation. (i.e. <1000 AU, 1000 AU – 5720 AU (CAFO GP#), >5720 AU (CAFO GP#).
§ 36 – 2	Proposed 51.12(1)(e) – retain existing language in ATCP 51.12(1)(d) to ensure operators will be utilize existing investments in livestock facilities and not include the 20% expansion component the draft rule contains.
§36-3	Language should be added that setbacks for manure storage structures shall be measured from the inside of the structure where the manure is held.
§37	The separation distance between clusters in the rule should be kept at 750’.
§39	Odor Scoring (Also includes §§ 2,7 & 9 where existing definitions are removed and the new livestock housing definition is created) Existing odor standard should be retained but odor control practices could be updated.
§39 - 1	Proposed 51.14(2)(c) should not be included in any rule revision because it provides an additional opportunity for hostile neighbors to push for increased requirements on farms especially when seasonally expected odors are a given.
§40-1	Proposed 51.16(3)(b)3. – Should be removed or reworded so an unrelated open enforcement matter does not preclude an operator’s flexibility to move forward with a project.
§40-2	Proposed 51.16(5) – Language can be tightened up by removing sub. (b) because it’s repetitive with proposed ATCP 51.34(4)(a) where political subdivisions can monitor compliance with permit. Language below is drafted by eliminating sub. (b) and incorporating the note into the rule language. “(5) NUTRIENT MANAGEMENT UPDATES. The political subdivision may require an operator to submit annual updates to a nutrient management plan as necessary using a DATCP-approved checklist, to maintain compliance with ATCP 51.04(3) and to document nutrient management plan updates meeting the most current standards.” – note removed.
§41-1	Proposed 51.18(2)(b)2. – Should consider increasing number of years from the proposed 3 if the manure facility was constructed under an existing ordinance with applicable standards.
§41-2	Proposed 51.18(4)(b) – Includes new requirement for facility older than 10 years inspect emptied facility. For above ground structures, the “emptied” requirement is not necessary.
§41-3	Proposed 51.18(4)(c) – Includes new requirement for facilities with no verifiable documentation to show it was constructed to then existing NRCS standards to perform “full

	investigation.” Should remove full investigation and make it consistent with the rest of rule without adding in a potentially subjective “full investigation.” Language could be changed to “The construction standards for the facility cannot be verified from reliable documentation, and a visual inspection of the emptied facility shows 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 (January, 2014).”
§41-4	Proposed 51.18(8)(b) – Language should be revised by eliminating superfluous legal inspection language found later in the draft rule. No need to be add additional permissive language throughout the rule. Revised to: “(b) A political subdivision may require submission of a drawing reflecting design changes made during construction and documentation certifying that the facility was installed in accordance with technical standards to verify that waste storage facilities are constructed according to specifications included in the application for local approval.”
§42	The revised and additional runoff management standards are not consistent with the standards found in related rules governing runoff management. Related rules need to be consistent to ensure operators and their consultants know and understand what standards to comply with.
§42-1	Proposed 51.20(6) – Draft language is confusing and doesn’t make sense. It is intuitive to keep clean water clean so additional setbacks or setbacks at all for that matter are not needed. <u>Keep existing language or remove section in its entirety.</u>
§42-2	Proposed 51.20(12)(b) – – Language should be revised by eliminating superfluous legal inspection language found later in the draft rule. No need to be add additional permissive language throughout the rule. Revised to: “(b) A political subdivision may require submission of a construction plan, a drawing reflecting design changes made during construction and documentation of a drawing reflecting design changes made during construction and documentation certifying that the facility was installed in accordance with technical standards to verify that animal lots and feed storage structures are constructed according to specifications included in the application for local approval.”
§48	The new added language should be revised towards specificity. Last sentence is intuitive and not needed. By including the last sentence, the language sounds permissive which could be setting by a situation where a political subdivision may think it can hold a side agreement over an applicant’s head. Language could be updated to: “...A political subdivision may only impose conditions <del>related to</del> that require an operator’s compliance with the standards authorized in subch. II of ATCP 51. Any conditions attached to a local approval must be <del>described</del> listed in the final written decision granting the approval. <del>Nothing in the siting rule precludes a political subdivision from entering into a voluntary agreement with a permit applicant outside the scope of ATCP 51.</del> ”
§51-1	Lists two methods for political subdivision to monitor compliance: 1) operator certification with DATCP approved checklist 2) inspect with legal authority using DATCP approved checklist. – Could be changed to “either/or” language to remove the opportunity for a hostile locality to contradict earlier certification. Although it is intuitive; with permissive legal authority inspection language, does the department need to be prepared to have a resource available to political subdivisions describing what legal authority they have to inspect facilities?
§51-2	Remove the note after draft 51.34(4)(a). Political subdivisions have the authority to monitor compliance, which is found in respective sections, no need to be repetitive. The note in this section also seems to expand beyond what would be included in the department approved checklist for NMP compliance.
§52	Existing language should be retained to keep political subdivisions from being difficult when the farm is meeting the standards set out in rule but had to adjust plans slightly because of other externalities.