



## Wisconsin Land+Water Conservation Association

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### **WI Land+Water Comments on the Proposed Revision to Livestock Facility Siting Rule ATCP 51**

*Comments delivered by executive director Matt Krueger on August 22, 2019*

WI Land+Water is a statewide non-profit membership organization that supports the efforts of 450 land conservation committee supervisors and 350 conservation department staff in counties across the state. Our members exhibit balanced leadership as they work with farmers, producers, and landowners to meet their land management objectives, while at the same time complying with baseline conservation expectations and standards.

If there is a conservation workforce in the state that is more professional, accountable, and credible than our members, I'm not aware of it. WI Land+Water's comments on the proposed rule revision draw from the lived, on-the-ground experiences of these professional conservationists as they have worked to implement the current livestock siting rule at the local level.

WI Land+Water is supportive of updating the rule, and there is good reason to do so. Importantly, it incorporates common-sense updates to the rule that haven't been made for 13 years. In doing so, it ensures consistency with other important rules and technical standards that have been updated since, such as NR 151 Runoff Management, ATCP 50 Soil and Water Resource Management, NRCS 590 Nutrient Management, and NRCS 313 Waste Storage. These standards are vital tools to ensuring farms are managed responsibly, and in ways that are protective of water quality—an obvious and growing concern in Wisconsin.

The revised rule also importantly accounts for an agricultural industry that has changed on a large scale, in ways that we could not have envisioned when approving the current rule, back in 2006. Large operations may now feature manure treatment infrastructure, such as digesters and compressed gasification facilities on-site, which are not considered in the current rule. In order to ensure that Wisconsin agriculture remains productive and viable, and lives up to the quality assurance processes built into the rule, some revisions need to be made.

**WI Land+Water supports the following provisions of the revised rule:**

- Eliminating selected odor-scoring provisions that weren't supported by science, such as providing credits for having a nutrient management plan.

- Requiring the evaluation of existing manure storage structures for leaks, integrity, and safety. (Worksheet 4 – Waste Storage Facilities)
- Requiring manure storage facilities to meet liner specifications defined in NRCS 313 standard if no documentation is available as to what standard it was built to.
- Requiring control of leachate runoff for <70% moisture feed storages, which is consistent with waste storage provisions (use, storage, compliance) in the current rule.

**There are several additional provisions that WI Land+Water recommends incorporating into the revised rule, which will improve its implementation at the local level:**

**1. Provide better assurances for annual license review at the town level**

There is limited capacity and expertise to review licenses at the town level. WI Land+Water recommends an annual self-certification requirement or onsite review that a farmer would be required to submit, to ensure towns are provided with up-to-date information on an annual basis.

**2. Require a license for herds larger than 500 animal units (AUs), without the grandfathering exemptions in the current rule**

Agriculture is currently trending toward consolidation of herds and facilities, and we should expect that trend to continue. WI Land+Water recommends requiring farms to get a license when they exceed or plan to exceed 500 AUs, and to stop grandfathering in facilities that were over 500 AUs prior to May 1, 2006.

From the practical viewpoint of implementing the rule locally, the grandfathering provision creates significant challenges. Namely, the further we get from 2006, the more difficult it is to track or prove what constitutes a 20% expansion from 2006 herd numbers. Facilities were not required to submit AU numbers to the county or the state to verify their facility's livestock population, at the rule's inception in 2006. Thirteen years later, accurately determining 2006 herd numbers is very difficult, without prior documentation by the facility owner and also with changeover in local conservation staff, and the related loss of institutional knowledge about specific facilities.

**3. Create an improved process for license modifications or updates**

There is a need to streamline and simplify the expansion process for facilities with an existing license. Under the current rule, farms may stay at the same number of AUs, but buildings, manure storage facilities and the like can expand without a mechanism that accounts for these expansions and provides, via the rule, the appropriate level of oversight.

Additionally, under the odor-scoring provisions of the current rule, a "satellite" manure facility can be considered a secondary "cluster" at time of a facility license application. However, adding satellite manure facilities under a modification scenario provides only limited guidance, and doesn't require notification of adjacent neighbors, town clerk, etc., which is required under a new license

application. In these instances, WI Land+Water recommends requiring notification of adjacent landowners and town clerks during modification process.

4. Apply reasonable and fair license fee increases

License fees have not been increased since 2006, yet the time and expense it takes for local governments to sufficiently review license applications has increased in time, and in complexity. The current maximum fee under ATCP 51 is \$1,000. This amount is inadequate to cover staff time to complete application reviews, and covers only 20-30% of county and town costs to administer a license application or review. These local governments recognize that not all costs will be recoverable through a fee, but current fees are inadequate, and should be increased. A fee structure based on either herd size or facility square footage thresholds could be appropriate.

5. Incorporate annual monitoring requirements into licenses

The time and effort that is placed upon ensuring adequate licensing of livestock facilities is for naught, if compliance with the license is not ensured. WI Land+Water recommends at least annual monitoring to ensure compliance with the provisions of the license.

6. Consider whether the license threshold for farms should be lowered to 300 animal units

This would be consistent with federal National Pollutant Discharge Elimination Systems (NPDES) permitting requirements, and would make sense for Wisconsin DATCP and DNR to be in alignment with federal partners and regulations.

County conservation staff, the “boots on the ground” implementers of conservation programs, have observed and documented over the past two decades that smaller facilities (fewer than 500 AUs) can also be part of nuisance and use-conflict problems in some cases. It is to the benefit of local communities and to agricultural facilities to ensure that all farms with the potential to create these issues be held to a standard that allows them to operate in ways that are compatible with their surrounding community.

WI Land+Water appreciates the opportunity to provide input on this important matter, and looks forward to continuing to participate in the rule revision process.



Clean Wisconsin Comments on Proposed Revisions to ATCP 51  
September 11, 2019  
Scott Laeser, Water Program Director, Clean Wisconsin

Thank you for the opportunity to comment on the proposed changes to ATCP 51, Wisconsin's Living Facility Siting Law. Clean Wisconsin is a non-profit environmental advocacy group focused on clean water, clean air, and clean energy issues. We were founded almost fifty years ago and have 20,000 members and supporters around the state. Clean Wisconsin employs scientists, policy experts, and legal staff to protect and improve our air and water resources.

I am Clean Wisconsin's Water Program Director, and my wife and I also own and operate an organic produce farm outside Argyle, WI. The proposed changes to ATCP 51 will impact both our water resources and our rural landscape and communities. Clean Wisconsin believes the modest changes these revisions make to ATCP 51 help advance the dual goals of supporting agricultural operations and protecting water quality in Wisconsin in the midst of a rapidly changing agricultural sector. Consolidation and a challenging agricultural economy are leading to fewer, larger farms on the landscape, which presents different challenges for local governments. The proposed updates to ATCP 51 will help local governments confront these challenges and could be further improved with additional changes.

This rule update incorporates important new technical standards, like NRCS 313, 590, and 635, that better reflect our knowledge about appropriate agricultural practices to protect water. We cannot continue to rely on outdated standards included in a rule last updated 13 years ago when we know there are better practices to follow.

The Livestock Facility Siting Law as written and currently implemented too strictly constrains local governments' ability to protect citizens' health and safety. We realize the totality of this problem cannot be addressed in this rule revision, but we are supportive of the proposed rule update's inclusion of language laying out the public health and safety findings of fact necessary to support adoption of the new NR 151 targeted performance standards to help local governments in the areas covered by these standards protect public health and safety.

An additional revision we would like to see become part of this update is the end of the grandfathering provision that exempted facilities with over 500 animal units before 2006 from needing a license. With rapid changes in the agricultural sector and the trend towards fewer, larger herds, we believe it is important for all larger herds to come under the umbrella of the law and to permit local governments to work with their large livestock operators to balance the growth of agricultural facilities with other community concerns.

The current law also does not allow local governments to appropriately recover the costs of administering the rule through fees on facilities permitted and overseen. A frequently cited example is the steep costs Green County was burdened with in reviewing and approving a large

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operation in its jurisdiction. While this update cannot fully address these challenges, Clean Wisconsin believes a more appropriate fee structure could be added to help local governments recover more of the costs of administering and reviewing permits. This could be a graduated fee structure based on the size of the farm applying.

In the Year of Clean Drinking Water, making these modest updates to ATCP 51 is one among many important actions that align government tools with the broadly articulated goals of making sure Wisconsin residents have access to clean water while supporting a prosperous agricultural community.

Thank you for the opportunity to comment on the proposed ATCP 51 changes. Clean Wisconsin looks forward to working with the department towards a future where clean water and thriving agriculture exist side by side.

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## ENVIRONMENTAL LAW & POLICY CENTER

Protecting the Midwest's Environment and Natural Heritage

September 13, 2019

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*Submitted electronically*

Dear Mr. Clayton,

The Environmental Law and Policy Center (ELPC), on behalf of itself and its members, respectfully submits these comments on the Proposed Order of the State of Wisconsin Department of Agriculture, Trade and Consumer Protection Adopting Clearinghouse Rule CR 19-098 ("Proposed ATCP Order"). ELPC is the Midwest's leading public interest environmental legal advocacy organization and works to protect the environment and public health.

Numerous studies have linked Concentrated Animal Feeding Operations ("CAFOs") to declines in water quality, including the eutrophication of streams and lakes, algal blooms, and contamination of groundwater drinking wells with nitrates and bacteria.<sup>1</sup> These impacts can vary widely depending on local conditions of geology, geomorphology, crop cover, and hydrology. That makes CAFO siting decisions particularly important for local communities.

While the Proposed ATCP Order improves the siting process in key respects, it also contains some gaps that we urge you to fill in the final order. ELPC endorses the comments submitted by the Wisconsin Farmers Union and Midwest Environmental Advocates, but emphasizes the following three points for your consideration.

- **Communities Should Have Adequate Resources for Siting Decisions**

The current limit to the permit fee charge of \$1,000 burdens local governments by preventing them from collecting necessary resources to adequately review applications. Large, complicated

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<sup>1</sup> Jones, C.S., et al. "Livestock manure driving stream nitrate." *Ambio* 48 (2019): 1143; Hooda, P. S., et al. "A review of water quality concerns in livestock farming areas." *Science of the Total Environment* 250.1-3 (2000): 143-167; Rothenberger, M.B., et al. "Long-term effects of changing land use practices on surface water quality in a coastal river and lagoonal estuary." *Environmental Management* 44.3 (2009): 505-523.

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facilities require thorough examination by experts, and such a review can cost a political subdivision over \$40,000 for a single permit. ELPC agrees with the Wisconsin Farmers Union's suggestion that the fee limit be increased to allow the "recovery of reasonable and actual costs incurred by the political subdivision in the course of the permit review."

- **Communities Should Have Adequate Time for Siting Decisions**

The Proposed ATCP Order would shorten the period for localities to consider applications to modify CAFO permits from 90 days to 45 days. This change would unduly restrict the ability of local governments to evaluate applications and curtail public participation in CAFO siting. That is because an increase in the number of animal units at an existing CAFO can pose the same environmental and public health risks as the construction of a new CAFO; those risks come from increased manure production, which is purely a function of animal units. Indeed, areas with high a density of CAFOs and manure are often burdened by poor water quality already, and therefore expansion leading to greater density of manure generation may be even more dangerous than new CAFO construction. There is no reason to reduce the time that localities are given to evaluate CAFO expansion applications from that in current regulations. The final order should also preserve the provisions of ATCP 51.32, which allow localities a full 90 days to make a decision on an application.

- **Land Base Siting Should Consider Agronomic and Geologic Factors**

We applaud the Proposed ATCP Order for tying acreage requirements for the land base of a CAFO to its total animal units in ATCP 51. To realize the full promise of that change, however, the final rule should also expressly allow local governments to consider agronomic and geologic factors – particularly, existing soil phosphorus concentrations and depth-to-bedrock – when evaluating the land base necessary to safely implement any facility's nutrient management plan. We note that recent updates to NR 151 allow counties in eastern Wisconsin that have experienced widespread well contamination to consider these factors in regulating manure spreading. Other communities should not have to wait for their water to be contaminated in order to put such reasonable safeguards in place.

We appreciate the Department's efforts to update its CAFO siting rule. To better protect public health and the environment, however, we urge you to incorporate the changes identified above into the final rule. Thank you for your consideration of these comments.

Respectfully submitted,  
/s/ Robert Michaels  
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**Comments of Michael Fields Agricultural Institute on Proposed Changes to Livestock Siting Rule, ATCP 51  
September 12, 2019**

My name is Margaret Krome, Policy Program Director for the Michael Fields Agricultural Institute, which is located in East Troy, Wisconsin. We are a non-profit organization with the mission to nurture the ecological, social and economic resilience of food and farming systems through education, research, policy, and market development.

I am submitting the Institute's comments regarding proposed changes to ATCP 51, the Livestock Siting Rule. It's to the credit of the Board for the Department of Agriculture, Trade, and Consumer Protection (DATCP) that it approved sending the proposed revisions to Rule ATCP 51 out for public hearings. This ought to happen every four years, and this is the first time since the law's passage in 2006 that good process has been followed. In those 13 years, many farmers, citizens, and communities that have lived with the Rule's consequences and have formed opinions, both favorable and unfavorable. There have been changes in DATCP, DNR and NRCS water quality standards and new technologies that need to be accounted for in ATCP 51. We think the ATCP Board wisely recognized that democracy requires full transparency in public processes, we hope the Department upholds this expectation of the law four years from now, and we are pleased to submit comments on this proposed Rule.

We support many aspects of the proposed rule, have concerns with some, and propose some adjustments.

One area in which we strongly support changes reflected in the proposed rule regards the Odor Standard. I happened to have served on the ATCP Board during the period of development of our state's Livestock Siting Law and ATCP 51, and I served on the Livestock Siting Committee that developed it. There were certain ways in which I felt that we improved upon prevailing siting practice at the time, but one in which I felt we missed the mark egregiously pertained to the Odor Standard. As we were testing the then-draft Rule, I remember meeting with DATCP staff to apply the Rule to the example of an actual dairy farm. When it came to the Odor Standard, it passed easily. Testing the sensitivity of the model, we shortened the setback repeatedly, to essentially no setback at all, and it still passed. When I saw that the model representing the Odor Standard was actually incapable of failing the farm under any



hypothetical circumstances, I realized that the Rule as we passed it would certainly need revisions. Thus, Michael Fields Agricultural Institute strongly supports proposed changes to the Odor Standard, including having setbacks determined from neighbors' property line, regardless of current uses of those properties, and additional setbacks made possible for particularly large proposed facilities. It is overdue to adjust the Odor Standard to remove extraneous elements that currently undermine its efficacy. We support the proposed Rule's providing the means for a neighbor to bring an odor complaint, which could trigger a mandatory odor management plan; we encourage clarifying that others than immediate neighbors can do so, and that localities have recourse in fines and permit revocation if problems are not corrected.

We support language bringing ATCP 51 in line with the changes in NRCS and DNR technical standards related to nutrient management, runoff management, and waste storage facilities. We support allowing local officials to monitor compliance either by requiring self-audits by the permit-seeker or by adhering to an agreed-on checklist for inspections.

One of the biggest frustrations with the rule has been the requirement that localities provide scientific studies demonstrating that more stringent standards are necessary to "protect public health and safety" before being able to provide standards more protective of local needs than those provided in ATCP 51. We are pleased that the proposed Rule provides the means for local government to require additional restrictions on manure-spreading where needed, without having to prove "public health and safety" concerns. But manure-spreading is only one area where local governments need to be able to respond to problems experienced by their residents. The proposed Rule does not sufficiently clarify exactly what air or water quality concerns can and cannot constitute a public health and safety concern. Such clarification is needed for local governments to be able to meet the needs of their residents without undertaking scientific studies and exhausting financial resources that few of them have.

The Institute supports some additional changes:

While we support increasing setback requirements, they need to be larger than proposed and with no exceptions. For example, the proposed 200-300 foot setback for livestock facilities with 2,500 or more animal units would be very insufficient to mitigate impacts of very large facilities on neighbors. Setbacks should be commensurate with the size of the operation. We also oppose the provision allowing an existing operation to expand a structure or manure storage by as much as 20% without being obliged to adhere to the setbacks. Given the significant and increasing size of many operations, a 20% increase could be very substantial, and we feel that no operation should only be allowed to expand an existing structure unless it complies with setback requirements. We also oppose offering smaller setbacks for clustering of odor-producing facilities on a farm.

Local governments should be able to recover costs by charging higher license fees than \$1,000; they routinely spend much more than that on reviewing permits.

The proposed rule provides a process to modify existing permits, which could be used for expansions of up to 20% of existing animal units. Given the significant and increasing size of many operations in the state, this seems very unwise, as it could allow for additions of many hundreds, and even potentially over a thousand animal units. If this provision is retained, there should be a limit of numbers of animal units, no more than 300 animal units, that triggers a full permit application.

License modifications (e.g., changes in manure handling or feeding facilities) should require notification by farmers proposing such modifications.

We support requiring permit applicants to demonstrably have manure-spreading agreements or own the amount of land required to accommodate the maximum number of possible animal units envisioned by the application

Thank you for your consideration of our views.

Margaret Krome, Policy Program Director  
Michael Fields Agricultural Institute