



State of Wisconsin  
Governor Tony Evers

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

**DATE:** October 24, 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 (Final Draft Rule)**

**PRESENTED BY:** Agricultural Resource Management Division

**REQUESTED ACTION:**

At the November 7, 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 approve the final draft rule revising ch. ATCP 51, related to livestock facility siting.

**SUMMARY**

*Background*

This rule:

- Reflects revisions necessary to address the technical and implementation issues raised through three 4-year technical committee review processes, twelve statewide public hearings including verbal testimony from over 160 Wisconsin citizens and 465 written comments submitted to the department, as well as dozens of conversations with interested and potentially impacted parties to arrive at workable compromise to achieve multiple, diverse goals.
- 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 public 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 application completeness determinations, permit modifications, and the use of checklists to monitor facility compliance.

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- 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. In addition, the table attached to this memo summarizes the changes made to the final draft rule in response to the public comments received by the Department during the official comment period.

#### **Definitions**

This rule clarifies that a livestock facility includes the livestock and livestock structures, in addition to the parcels of land on which a livestock facility is located.

To apply general setback requirements to buildings used to incinerate or compost dead livestock, the rule modifies the definition of livestock structure.

The rule defines types of livestock housing that are subject to the setback and odor requirements.

The rule excludes structures designed exclusively for process wastewater or to store solid manure from the setback and odor requirements that apply to manure storage structures.

Due to the proposed changes to the odor standard, this rule eliminates the definition of affected neighbor, while modifying the definition of high use building to include high use areas.

To achieve consistency with the nonpoint rules, NR 151 and ATCP 50, this rule adds to 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 requires local governments to submit electronic copies of ordinances and permits to the Department, rather than by mail.

#### **Duration of Local Approval**

If a proposed structure is required to control a documented discharge, a livestock operator must complete the construction of the structure within 1 year of a permit approval.

## **Application for Local Approval**

The standardized application materials in the rule appendices have been modified to incorporate the changes described in this rule summary. Key changes to the application materials include:

- Odor Management Plans are retooled and the application contains new criteria for developing acceptable plans.
- The odor management standard (worksheet 2) is modified to reflect the new system for managing odor and revised specifications for odor control practices.
- The waste and nutrient management standard (worksheet 3) reflects 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).
- The waste storage facilities standard (worksheet 4) reflects requirements regarding closure of manure storage structures and engineering evaluations of existing manure storage structures.
- The runoff management standard (worksheet 5) is revised to reflect changes in managing runoff related to animal lots, feed storage, and milking center wastewater.
- The addition of an application for permit modifications (Appendix B).

## **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 the Silurian bedrock performance standards in ch. NR 151.075 by referencing the public health and safety findings for adoption of more stringent local standards in the rule, but cannot use this authority to adopt a targeted standard that does not apply to the geographic area under the local government's jurisdiction.

## **Property Line and Road Setbacks**

This rule increases the maximum property line and road setbacks that can be adopted by local ordinance to 300 feet for livestock structures at facilities with 2,500 or more animal units, while retaining setback requirements at facilities with fewer than 2,500 animal units.

For expanded livestock facilities, the rule establishes property line setbacks for manure storage structures and certain types of livestock housing that increase in distance based on facility size. For new livestock facilities, the rule sets property line setbacks for these structures at the same distance as setbacks that apply to the largest-tiered facility size (6,000 animal units or more). To meet these setbacks, the rule allows operators to demonstrate ownership of land under different legal arrangements.

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 land is in cropland.

If a livestock facility is organized in one or more clusters (a grouping of livestock structures separated from another grouping by 1,320 feet or more), the livestock facility may follow the setback requirements based on the animal units in each cluster. This option is not available if one cluster handles or stores manure generated by animals in another cluster.

This rule allows 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.

### **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 manure storage and certain types of livestock housing that are high odor sources. Under the new system, operators are not 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.

Livestock facilities that were issued a permit prior to the effective date of this rule revision 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 maintain odor control practices that were implemented as part of the previous local approval.

Livestock facilities seeking local approval for the first time after adoption of this rule revision will only need to complete an odor management plan for existing manure storage and livestock housing that are located within the separation distances noted above.

For new or expanded manure storage structures and certain types of livestock housing, the new odor standard requires that operators meet the setbacks discussed above. Livestock operators may earn credit for odor control practices in the form of reductions to setback requirements. The rule no longer supports certain low credit odor control practices that are unreliable, 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 receive a reduced setback by documenting the use of odor control practices or that parcels adjacent to the facility are in cropland.

## **Waste and Nutrient Management**

To achieve consistency with related rules, this rule cross-references provisions in ATCP 50 that require livestock operators to have and follow a nutrient management plan in accordance with the 2015 NRCS 590 standard, and comply with performance standards related to soil erosion, a tillage setback, and the phosphorus index.

The rule clarifies that livestock operators must have a nutrient management plan that accounts for all land applications of manure and related waste generated by the maximum number of animal units authorized by a permit. 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.

This rule clarifies that local governments may require operators to submit documentation related to annual nutrient management updates, and monitor an operator's compliance with a nutrient management plan. Under s. ATCP 50.04(3), 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 updates the design and construction standard for new or substantially altered waste storage structures in accordance with NRCS technical guide manure storage facility standard 313 (October, 2017R) and related liner standards (NRCS 520, 521 and 522), and for transfer systems in accordance with NRCS technical guide manure transfer standard 634 (January, 2014).

This rule clarifies that new or expanded waste storage structures designed solely for storage of manure or process wastewater must meet the NRCS waste storage facility standard 313.

This rule makes changes to engineering evaluations of existing storage facilities, which must be certified for continued use. 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.

The rule adds requirements for more effective evaluations of older storage facilities, including an inspection of an emptied storage to verify that the bottom of structure corresponds with as-built plans, if any, or has adequate separation distance to groundwater and bedrock. If a storage facility has no design documentation, an investigation may be required that includes soil test pits or borings around the perimeter of the facility. 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 existing manure storage be reevaluated upon the issuance of a new permit or permit modification at certain time intervals based on the age of the structure and timing of last evaluation.

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

This rule clarifies that local governments may monitor compliance to verify that a new or substantially altered waste storage facility is constructed according to the design specifications submitted as part of the application for local approval.

### **Runoff Management**

The rule updates the runoff control standard for new or substantially altered animal lots in accordance with the 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.

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 the state standard of no significant discharge, it does make changes in runoff standards for animal lots and feed storage structures to account for the U.S. Environmental Protection Agency's "no discharge" standard for animal feeding operations, and subsequent updates to NRCS technical standards that are designed to implement the federal "no discharge" standard.

This rule changes requirements for feed storage structures. Existing bunkers or paved areas used to store or handle feed with 40% or higher moisture content 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.

This rule requires that new or substantially altered feed storage structures must be designed, constructed and maintained in accordance with NRCS technical guide waste treatment standard 629 (January, 2017). Also, leachate and contaminated runoff must be 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 an environmentally sensitive area, the new or altered portions of the 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.

This rule clarifies that local governments may monitor compliance to verify that a new or substantially altered animal lot or feed storage structure is constructed according to the design specifications submitted as part of the application for local approval.

### **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. As noted earlier, the rule clarifies that a livestock operator must have a nutrient management plan that accounts for all land applications of manure and related waste generated by the maximum number of animal units authorized by a permit. Because the Department of Natural Resources (“DNR”) does not issue CAFO permits with a maximum number of animal units, this rule allows an applicant to submit a nutrient management checklist that was previously submitted to DNR if the nutrient management plan covers the same or greater number of animal units authorized by a permit. Also, CAFOs can demonstrate compliance with the siting standards related to manure storage and runoff management by submitting DNR plan and specification approvals for the relevant livestock structures. 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. Specifically, the rule:

- Sets criteria to qualify for a permit modification when planning either to: 1) construct or alter one or more livestock structures without increasing the maximum number of animal units housed at the facility, or 2) increase the maximum number of animal units once by up to 20 percent (but in no case increase more than 800 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 than 45 days.

### **Application**

This rule requires local governments to use a Department-approved checklist to document specific items that are missing from an application for local approval. 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.

This rule removes both the cap placed on an application fee established by local ordinance and the prohibition to requiring a bond or other financial security through a local ordinance.

## **Terms of Approval**

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

This rule clarifies that local governments may only impose conditions as part of a local approval that are related to an operator's compliance with the standards authorized in subch. II of ATCP 51, and any conditions attached to the permit must be described in the final written decision.

## **Compliance Monitoring**

This rule clarifies the options for a local government to monitor compliance. A DATCP-approved checklist must be used if a local government chooses to inspect a facility or require a facility operator to self-certify compliance.

### ***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 waste storage facility standard 313 (January, 2014)
- 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 adopted by 134 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 65 operations that average 800 animal units in size, but are too small to be regulated as Concentrated Animal Feeding Operations (“CAFOs”) by the DNR.

This rule will have no more than a moderate impact on farmers, including “small businesses.” The increased costs for non-CAFOs will be limited or 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 land applications of manure that will better protect surface and groundwater.
- Incorporate cropland performance standards related to the phosphorous index and the tillage setback, consistent with requirements in 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, consistent with requirements in 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. 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 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. To qualify for a siting permit, a WPDES permit holder must also demonstrate compliance with Department standards for location of livestock structures 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. Federal law does not directly regulate 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  $\frac{1}{4}$  mile, while  $\frac{1}{2}$  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 three occasions from a technical expert committee for improvement of the standards in the siting 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 received stakeholder feedback on the draft rule in listening sessions conducted in the fall of 2017. Furthermore, the Department received public input on the hearing draft rule during the official comment period in August and September of 2019. The Department considered all public comment in making changes resulting in this final draft rule.

### ***Next Steps***

If the Board approves the final draft rule, the Department will refer the final draft rule and related documents to the Office of the Governor for written approval. Upon approval by the Governor, the Secretary of the Department will approve the referral packet for legislative review. The Department will submit the legislative referral packet to the Chief Clerk of each house of the Wisconsin Legislature and to the Joint Committee for the Review of Administrative Rules. At that time, the Department will send a notice announcing the referral to the Legislative Reference Bureau for publication in the Wisconsin Administrative Register.

## Livestock Facility Siting Rule Revision: Comparisons to the Final Draft Rule

ATCP 51	Hearing Draft Rule	Final Draft Rule
<b>Definitions</b>		
• N/A	• N/A	• Livestock structures include buildings used to “incinerate or compost dead livestock.” As a result, the general setbacks apply.
<b>Duration of Local Approval</b>		
• N/A	• Construction of a runoff control that will resolve a documented discharge, must be completed within 6 months of permit approval.	• Construction of the runoff control must be completed within 1 year of permit approval.
<b>Setbacks and Odor Management Standards</b>		
<ul style="list-style-type: none"><li>• Maximum setbacks for livestock structures range from 100 to 200 feet from property line or public road right of way, depending on Animal Units</li><li>• Maximum setback for manure storage is 350 feet from property line or public road right of way</li><li>• Odor score applies to manure storage, livestock housing, and animal lots</li></ul>	<ul style="list-style-type: none"><li>• General setbacks for livestock structures range from 100 to 300 feet (maximum) from property line or public road right of way, depending on Animal Units</li><li>• The odor score is eliminated</li><li>• The rule establishes setbacks based on odor generation. For manure storage and high odor housing, setbacks range from 600 to 2,500 feet from property line<ul style="list-style-type: none"><li>○ Allows reduced setbacks for installation and maintenance of odor control practices</li><li>○ Eliminates ineffective and hard to document odor control practices</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Maintains the general setbacks for livestock structures</li><li>• For manure storage and high odor housing at expanded livestock facilities, setbacks are reduced and range from 350 to 1,450 feet from property line.</li><li>• For new livestock facilities, the maximum property line setbacks apply to manure storage and high odor housing:<ul style="list-style-type: none"><li>○ 1,050 feet for Category 2 livestock housing</li><li>○ 1,450 feet for manure storage and Category 1 livestock housing</li></ul></li><li>• Allows reduced setbacks for Category 1 and 2 livestock housing and manure storage, for installation and maintenance of odor control practices, including reductions for situations in which parcels adjacent to the facility:<ul style="list-style-type: none"><li>○ Are zoned for agricultural use or not zoned</li><li>○ Do not have residences or high-use buildings within 660 feet of the facility’s property line</li></ul></li><li>• Producers can document ownership of land under different legal arrangements, effectively expanding the prevailing</li></ul>

<b>ATCP 51</b>	<b>Hearing Draft Rule</b>	<b>Final Draft Rule</b>
		property line for measuring setbacks. See next row for details.
<ul style="list-style-type: none"><li>• Property line defined as a line that separates parcels of land owned by different persons.</li></ul>	<ul style="list-style-type: none"><li>• Property line definition is expanded to clarify that for setbacks property lines are measured from livestock structures to the parcel or other property boundary separating land owned by different persons.</li></ul>	<ul style="list-style-type: none"><li>• Property line definition is unchanged</li><li>• For the purposes of meeting the property line setbacks from manure storage and high odor housing, the facility owner can demonstrate common ownership or control of adjacent parcels by providing the following:<ul style="list-style-type: none"><li>◦ Documentation showing the facility operator holds fee title to the parcel</li><li>◦ Documentation showing the facility operator holds an ownership interest in the parcel in common ownership under a legal business organization</li><li>◦ Documentation showing the facility operator holds an easement or other legal interest in the parcel</li></ul></li></ul>
<ul style="list-style-type: none"><li>• Odor management plans are optional, earning 20 points towards a passing odor score.</li></ul>	<ul style="list-style-type: none"><li>• Odor management plans are required and must include the odor control practices the facility committed to as part of a permit issued under the original rule, unless the operator provides financial or other justification for discontinuing the practice.</li><li>• Local governments can request an updated plan based on a “verified odor complaint” from an adjacent property owner.</li></ul>	<ul style="list-style-type: none"><li>• Odor management plans are required and must include odor control practices the facility committed to as part of a permit issued under the original rule.</li><li>• The “verified odor complaint” provision is deleted.</li></ul>

<b>ATCP 51</b>	<b>Hearing Draft Rule</b>	<b>Final Draft Rule</b>
<b><i>Runoff Management Standard</i></b>		
<ul style="list-style-type: none"> <li>Runoff controls required at new or substantially altered feed storage structures that store or handle high moisture feed (&gt;70%)</li> </ul>	<ul style="list-style-type: none"> <li>Runoff controls required at new and substantially altered feed storage structures</li> <li>New and substantially altered feed storage structures that are less than one acre in size and located in areas at low risk of a significant discharge to waters of the state are exempt from having to meet the latest vegetated treatment area standard.</li> </ul>	<ul style="list-style-type: none"> <li>Runoff controls required at new or substantially altered feed storage structures that store or handle feed with 40% or more moisture (excludes low moisture feed)</li> <li>Retains provision that new and substantially altered feed storage structures that are less than one acre in size and located in areas at low risk of a significant discharge to waters of the state are exempt from having to meet the latest vegetated treatment area standard.</li> </ul>
<b><i>Waste Storage Facilities Standard</i></b>		
<ul style="list-style-type: none"> <li>Protects groundwater from existing manure storage leaks and failures by requiring visual inspections when 10 years-old or older.</li> </ul>	<ul style="list-style-type: none"> <li>When older than 10 years-old, require visual inspection of an emptied pit to verify structural integrity and bottom of structure.</li> <li>When not constructed to technical standards (older pits), require visual inspection of an emptied pit, and test pits and soil borings to verify the bottom of structure and adequate separation distance from groundwater in comparison to the NRCS 313 standard dated 2017.</li> <li>Allows local governments to request written report on the methods and results of the investigation.</li> <li>Requires re-evaluation of structure upon issuance of a new permit or permit modification at different time intervals.</li> </ul>	<ul style="list-style-type: none"> <li>Clarifies that pits are to be emptied to the “extent possible.” If emptying or entering an underbarn pit or slurry store is not feasible, alternative methods including test pits and soil borings can be used to check that the pit is not significantly leaking.</li> <li>The NRCS 313 standard dated 2014 shall be used to check for adequate separation distance from groundwater.</li> <li>Allows local governments to request written report on the methods and results of the investigation.</li> <li>Requires re-evaluation of structure upon issuance of a new permit or permit modification at different time intervals.</li> </ul>
<b><i>Local Implementation</i></b>		
<ul style="list-style-type: none"> <li>Does not clarify a process for permit modifications</li> </ul>	<ul style="list-style-type: none"> <li>Clarifies the use of permit modifications either for new or altered livestock structures, or one time addition of up 20%</li> </ul>	<ul style="list-style-type: none"> <li>Clarifies the use of permit modifications either for new or altered livestock structures, or one time addition of up 20% more animal units but no more</li> </ul>

<b>ATCP 51</b>	<b>Hearing Draft Rule</b>	<b>Final Draft Rule</b>
	more animal units but no more than 1000 animal units.	than 800 animal units.
• Local fees are capped at \$1,000	• Local fees are capped at \$1,000, and permit modifications are capped at \$500	• Due to the lack of statutory authority, the rule will no longer limit local fees
• Restricts local governments from requiring financial assurance	• Restricts local governments from requiring financial assurance	• Due to the lack of statutory authority, the rule will no longer prohibit local governments from requiring financial assurance
• The rule does not limit local government's ability to monitor permit compliance	• The draft rule requires use of a DATCP-approved checklist when monitoring permit compliance through self-certification or inspections	• Unchanged from the hearing draft 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 (intro.) (Note), ATCP 51.01 (2) and (Note), ATCP 51.01 (11) (Note), ATCP 51.01 (13) (Note), ATCP 51.01 (26) (Note), ATCP 51.04 (Note), ATCP 51.08 (1) (b) (Note), ATCP 51.10 (2) (Note), ATCP 51.12 (6) (Note), ATCP 51.30 (3) (Note), ATCP 51.30 (4) and (Note), and ATCP 51.34 (3) (a) (Note) ***to renumber*** ATCP 51.06 (2) (intro.), (a) and (b), ***to amend*** ATCP 51.01 (5) (Note), ATCP 51.01 (7), ATCP 51.01 (16), ATCP 51.01 (19), ATCP 51.01 (20), 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) (intro.), ATCP 51.06 (2) (intro), ATCP 51.08 (2) (a) (b), ATCP 51.10 (1), ATCP 51.10 (2), ATCP 51.10 (4), ATCP 51.30 (5), ATCP 51.30 (6), 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 51.02 (1) (b) (Note), ATCP 51.12 (1) and (2), ATCP 51.14, ATCP 51.16, ATCP 51.18, ATCP 51.20, 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) and (Note), ATCP 51.01 (33m), ATCP 51.01 (38m), ATCP 51.01 (44m), ATCP 51.06 (2) (b), ATCP 51.10 (4) (Note), ATCP 51.12 (2m) and (Note), ATCP 51.30 (1) (Note), ATCP 51.30 (4m), ATCP 51.34 (4m), ATCP 51.34 (5) (a) 3. (Note), and Chapter ATCP 51, Appendix D,

Flowcharts for Engineering Evaluations; ***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 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 in 2018. 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. 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.

***Statutes Interpreted***

Statutes interpreted: Wis. Stats. §§ 93.90.

***Statutory Authority***

Statutory authority: Wis. Stats. §§ 93.90(2), 93.07(1), 92.05(3)(c).

***Explanation of Agency Authority***

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)(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”), and NR 243.

### ***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. The rule also includes exceptions to compliance with these standards, based on farm size and circumstances.
- 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 public 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 application completeness determinations, permit modifications, and the use of checklists to monitor facility compliance.
- 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.

## **Definitions**

This rule clarifies that a livestock facility includes the livestock and livestock structures, in addition to the parcels of land on which a livestock facility is located.

To apply general setback requirements to buildings used to incinerate or compost dead livestock, the rule modifies the definition of livestock structure.

The rule defines types of livestock housing that are subject to the setback and odor requirements.

The rule excludes structures designed exclusively for process wastewater or to store solid manure from the setback and odor requirements that apply to manure storage structures.

Due to the proposed changes to the odor standard, this rule eliminates the definition of affected neighbor, while modifying the definition of high use building to include high use areas.

To achieve consistency with the nonpoint rules, NR 151 and ATCP 50, this rule adds to 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 requires local governments to submit electronic copies of ordinances and permits to the Department, rather than in paper form.

## **Duration of Local Approval**

If a proposed structure is required to control a documented discharge, a livestock operator must complete the construction of the structure within 1 year of a permit approval.

## **Application for Local Approval**

The standardized application materials in the rule appendices have been modified to incorporate the changes described in this rule summary. Key changes to the application materials include:

- Odor Management Plans are retooled and the application contains new criteria for developing acceptable plans.
- The odor management standard (worksheet 2) is modified to reflect the new system for managing odor and revised specifications for odor control practices.
- The waste and nutrient management standard (worksheet 3) reflects 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).
- The waste storage facilities standard (worksheet 4) reflects requirements regarding closure of manure storage structures and engineering evaluations of existing manure storage structures.

- The runoff management standard (worksheet 5) is revised to reflect changes in managing runoff related to animal lots, feed storage, and milking center wastewater.
- The addition of an application for permit modifications (Appendix B).

## **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 may impose additional manure spreading restrictions consistent with the Silurian bedrock performance standards in ch. NR 151.075 by referencing the public health and safety findings for adoption of more stringent local standards in the rule, but cannot use this authority to adopt a targeted standard that does not apply to the geographic area under the local government's jurisdiction.

## **Property Line and Road Setbacks**

This rule increases the maximum property line and road setbacks that can be adopted by local ordinance to 300 feet for livestock structures at facilities with 2,500 or more animal units, while retaining setback requirements at facilities with fewer than 2,500 animal units.

For expanded livestock facilities, the rule establishes property line setbacks for manure storage structures and certain types of livestock housing that increase in distance based on facility size. For new livestock facilities, the rule sets property line setbacks for these structures at the same distance as setbacks that apply to the largest-tiered facility size (6,000 animal units or more). To meet these setbacks, the rule allows operators to demonstrate ownership of land under different legal arrangements.

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 land is in cropland.

If a livestock facility is organized in one or more clusters (a grouping of livestock structures separated from another grouping by 1,320 feet or more), the livestock facility may follow the setback requirements based on the animal units in each cluster. This option is not available if one cluster handles or stores manure generated by animals in another cluster.

This rule allows 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.

## **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 manure storage and certain types of livestock housing that are high odor sources. Under the new system, operators are not 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.

Livestock facilities that were issued a permit prior to the effective date of this rule revision 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 maintain odor control practices that were implemented as part of the previous local approval.

Livestock facilities seeking local approval for the first time after adoption of this rule revision will only need to complete an odor management plan for existing manure storage and livestock housing that are located within the separation distances noted above.

For new or expanded manure storage structures and certain types of livestock housing, the new odor standard requires that operators meet the setbacks discussed above. Livestock operators may earn credit for odor control practices in the form of reductions to setback requirements. The rule no longer supports certain low credit odor control practices that are unreliable, 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 receive a reduced setback by documenting the use of odor control practices or that parcels adjacent to the facility are in cropland.

## **Waste and Nutrient Management**

To achieve consistency with related rules, this rule cross-references provisions in ATCP 50 that require livestock operators to have and follow a nutrient management plan in accordance with the 2015 NRCS 590 standard, and comply with performance standards related to soil erosion, a tillage setback, and the phosphorus index.

The rule clarifies that livestock operators must have a nutrient management plan that accounts for all land applications of manure and related waste generated by the maximum number of animal units authorized by a permit. 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.

This rule clarifies that local governments may require operators to submit documentation related to annual nutrient management updates, and monitor an operator's compliance with a nutrient management plan. Under s. ATCP 50.04(3), 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 updates the design and construction standard for new or substantially altered waste storage structures in accordance with NRCS technical guide manure storage facility standard 313 (October, 2017R) and related liner standards (NRCS 520, 521 and 522), and for transfer systems in accordance with NRCS technical guide manure transfer standard 634 (January, 2014).

This rule clarifies that new or expanded waste storage structures designed solely for storage of manure or process wastewater must meet the NRCS waste storage facility standard 313.

This rule makes changes to engineering evaluations of existing storage facilities, which must be certified for continued use. 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.

The rule adds requirements for more effective evaluations of older storage facilities, including an inspection of an emptied storage to verify that the bottom of structure corresponds with as-built plans, if any, or has adequate separation distance to groundwater and bedrock. If a storage facility has no design documentation, an investigation may be required that includes soil test pits or borings around the perimeter of the facility. 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 existing manure storage be reevaluated upon the issuance of a new permit or permit modification at certain time intervals based on the age of the structure and timing of last evaluation.

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

This rule clarifies that local governments may monitor compliance to verify that a new or substantially altered waste storage facility is constructed according to the design specifications submitted as part of the application for local approval.

## **Runoff Management**

The rule updates the runoff control standard for new or substantially altered animal lots in accordance with the NRCS technical guide vegetated treatment area standard 635 (January, 2016R). The rule also includes a provision allowing for a CAFO to utilize its approval from DNR to demonstrate compliance with runoff control requirements.

Livestock operators may still use vegetated treatment areas or other runoff controls to address runoff from existing animal lots. A lot may undergo minor alterations, which are now more clearly defined in the rule, to still qualify as existing rather than substantially altered.

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.

This rule changes requirements for feed storage structures. Existing bunkers or paved areas used to store or handle feed with 40% or higher moisture content 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.

This rule requires that new or substantially altered feed storage structures must be designed, constructed and maintained in accordance with NRCS technical guide waste treatment standard 629 (January, 2017). Also, leachate and contaminated runoff must be 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 an environmentally sensitive area, the new or altered portions of the 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.

This rule clarifies that local governments may monitor compliance to verify that a new or substantially altered animal lot or feed storage structure is constructed according to the design specifications submitted as part of the application for local approval.

## **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. As noted earlier, the rule clarifies that a livestock operator must have a nutrient management plan that accounts for all land applications of manure and related waste generated by the maximum number of animal units authorized by a permit. Because the Department of Natural Resources (DNR) does not issue CAFO permits with a maximum number of animal units, this rule allows an applicant to submit a nutrient management checklist that was previously submitted to DNR if the nutrient management plan covers the same or greater number of animal units authorized by a permit. Also, CAFOs can demonstrate compliance with the siting standards related to manure storage and runoff management by submitting DNR plan and specification approvals for the relevant livestock structures. 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. Specifically, the rule:

- Sets criteria to qualify for a permit modification when planning either to: 1) construct or alter one or more livestock structures without increasing the maximum number of animal units housed at the facility, or 2) increase the maximum number of animal units once by up to 20 percent (but in no case increase more than 800 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 than 45 days.

## **Application**

This rule requires local governments to use a Department-approved checklist to document specific items that are missing from an application for local approval. 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.

This rule removes both the cap placed on an application fee established by local ordinance and the prohibition to requiring a bond or other financial security through a local ordinance.

## **Terms of Approval**

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

This rule clarifies that local governments may only impose conditions as part of a local approval that are related to an operator's compliance with the standards authorized in subch. II of ATCP 51, and any conditions attached to the permit must be described in the final written decision.

## **Compliance Monitoring**

This rule clarifies the options for a local government to monitor compliance. A DATCP-approved checklist must be used if a local government chooses to inspect a facility or require a facility operator to self-certify compliance.

### ***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 waste storage facility standard 313 (January, 2014)
- 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. These facilities are referred to as Concentrated Animal Feeding Operations (CAFOs). A CAFO may use approvals from DNR to show compliance with Department standards for the issuance of local siting permits. 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.

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 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  $\frac{1}{4}$  mile, while  $\frac{1}{2}$  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 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 three

occasions from a technical expert committee for improvement of the standards in the siting 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 received stakeholder feedback on the draft rule on numerous occasions, including 12 public hearings held in August and September of 2019. Furthermore, the Department received written comments during the official comment period in August and September of 2019. The Department considered all public comment in making changes resulting in this final draft rule.

#### ***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 limited impact on a small number of 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 125 new or expanding livestock facilities statewide that are issued local permits for the first time or are reissued permits [50 new permits (5 per year) plus 75 permit reissuances (7.5 per year)]. It is estimated that the affected livestock operations, nearly all of which are small businesses, will incur an additional \$1.05 to \$1.14 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 Final 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.

#### ***Department Contact***

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Madison, WI 53708-8911  
Telephone (608) 224-4630  
E-Mail: [Christopher.Clayton@Wisconsin.gov](mailto:Christopher.Clayton@Wisconsin.gov)

***Place Where Comments Are To Be Submitted and Deadline for Submission***

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

Chris Clayton  
Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911  
Telephone (608) 224-4630  
E-Mail: [Christopher.Clayton@Wisconsin.gov](mailto:Christopher.Clayton@Wisconsin.gov)

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.

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**CHAPTER ATCP 51  
LIVESTOCK FACILITY SITING**

**SECTION 1.** Ch. ATCP 51 (intro.) (Note) is repealed.

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

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

The BARNY model is a commonly used computer model that predicts nutrient runoff from animal lots. ~~Copies of the BARNY model are on file with the department, the secretary of state and the legislative reference bureau.~~ An Excel computer spreadsheet version is available at [www.datcp.state.wi.us/livestocksiting.wi.gov](http://www.datcp.state.wi.us/livestocksiting.wi.gov)

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

“Certified agricultural conservation engineering practitioner” means a agricultural engineering person who is certified as a conservation engineering practitioner who is certified 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.

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

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

**SECTION 7.** ATCP 51.01 (16) is amended to read:

“High-use building or area” 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. 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.
- (f) Areas containing playgrounds, public beaches or parks, or municipal boundaries.

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

“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.”

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

“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; and 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. 604.

**SECTION 10.** ATCP 51.01 (20) is amended to read:

“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, or to incinerate or compost dead livestock. “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.

**SECTION 11.** ATCP 51.01 (21) (intro.) is amended to read:

“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:

**SECTION 12.** ATCP 51.01 (23) is amended to read:

“Manure” 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~~ has the meaning given in s. ATCP 50.01 (20).

**SECTION 13.** ATCP 51.01 (23m) and (Note) is created to read:

“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 243.03(32)

**SECTION 14.** ATCP 51.01 (24) is amended to read:

“Minor alteration” of ~~a livestock structure~~ an animal lot means a repair or improvement ~~in the construction of an existing livestock structure that does not result in a substantially altered livestock structure 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.~~

**SECTION 15.** ATCP 51.01 (26) (Note) is repealed.

**SECTION 16.** ATCP 51.01 (29) is amended to read:

~~"Pasture" 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 has the meaning given in s. NR 151.015 (15m).~~

**SECTION 17.** ATCP 51.01 (33) is amended to read:

"Property line" means a line that separates parcels of land owned by different persons.

~~For purposes of applying setbacks, property lines are measured from livestock structures to the parcel or other property boundary separating land owned by different persons.~~

**SECTION 18.** ATCP 51.01 (33m) is created to read:

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

**SECTION 19.** ATCP 51.01 (36) (b) and (c) is amended to read:

- (b) They use or share one or more of the same livestock structures to collect, transfer or store manure, or process wastewater.
- (c) At least a portion Any of their manure or process wastewater is applied to the same landspreading acreage.

**SECTION 20.** ATCP 51.01 (38m) is created to read:

"Significant discharge" means a discharge of process wastewater as defined in s. NR 151.055 (3).

**SECTION 21.** ATCP 51.01 (39) is repealed and recreated to read:

"Site that is susceptible to groundwater contamination" has the meaning given in s. NR 151.015 (18).

**SECTION 22.** ATCP 51.01 (42) is amended to read:

"Waste" means manure, milking center waste, leachate, contaminated runoff and other organic waste generated by a livestock facility.

**SECTION 23.** ATCP 51.01 (43) is amended to read:

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

**SECTION 24.** ATCP 51.01 (44) (intro.) is amended to read:

“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. ~~For purposes of ss. ATCP 51.12 (2) and 51.14, “waste storage structure” does not include any of the following:~~

**SECTION 25.** ATCP 51.01 (44m) is created to read:

“Waste transfer system” is a system of conduits or permanent equipment used to convey wastes from a source to another location such 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.

**SECTION 26.** ATCP 51.02 (1) (b) (Note) is repealed and recreated to read:

Some, 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 consider other siting criteria, or apply standards that differ from this chapter, except as provided in the livestock facility siting law or this chapter.

**SECTION 27.** ATCP 51.04 (Note) is repealed.

**SECTION 28.** ATCP 51.06 (2) (intro.), (a) and (b) are renumbered ATCP 51.06 (2) (a), 1. and 2.

**SECTION 29.** ATCP 51.06 (2) Intro is amended to read:

(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:

(a) 1. The applicable size threshold for local approval under s. ATCP 51.02 (1).

(b) 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.

**SECTION 30.** ATCP 51.06 (2) (b) is created to read:

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

**SECTION 31.** ATCP 51.08 (1) (b) (Note) is repealed.

**SECTION 32.** ATCP 51.08 (2) (a) and (b) are amended to read:

(2) (a) Except as provided in par. (b), ~~A~~ 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:

(a) 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 2 years to acquire the necessary land base through rental agreements or otherwise.~~

(b) 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 one year 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 livestock structure.

**SECTION 33.** ATCP 51.10 (1) is amended to read:

(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.

**SECTION 34.** ATCP 51.10 (2) is amended to read:

(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 a local ordinance and specific to setbacks 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.

**SECTION 35.** ATCP 51.10 (2) (Note) is repealed.

**SECTION 36.** ATCP 51.10 (4) is amended to read:

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. ~~The political subdivision shall file the ordinance provision, 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: datep.state.wi.us

**SECTION 37.** ATCP 51.10 (4) (Note) is created to read:

This website, [livestocksiting.wi.gov](http://livestocksiting.wi.gov), has instructions for electronic filing with the department.

**SECTION 38.** ATCP 51.12 (1) and (2) are repealed and recreated to read:

(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) Except as provided in sub. (2), 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) Except as provided in sub. (2), 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) Except as provided in sub. (2), 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 more than a 20 percent increase in the area of the structure as it existed on the [effective date of the rule (LRB inserts)], or
2. Is toward the property line or public road right-of-way to which the local setback applies.

(2) MANURE STORAGE AND LIVESTOCK HOUSING SETBACKS. (a) In determining property lines for the purposes of this sub-section, the livestock facility operator may demonstrate legal ownership of adjacent parcels by providing any of the following:

1. Written documentation showing the livestock facility operator holds fee title,
2. Written documentation from a family member demonstrating ownership by fee title and providing written consent for the parcel to be included as part of the livestock facility,
3. Written documentation showing the livestock facility operator holds an ownership interest in the parcel in common ownership under a legal business organization, or

4. Written documentation showing the livestock facility operator holds an easement or other legal interest in property, which allows the person to undertake cropping, livestock management, land disturbing construction activity, or maintenance of storm water BMPs on the property. A rental or lease agreement is not sufficient to demonstrate ownership.

(b) Except as provided in par. (e), a manure storage structure may not be located within:

1. 350 feet of any property line or public road right of way, if the expanded livestock facility will have fewer than 1,000 animal units.

2. 650 feet of any property line, if the expanded livestock facility will have between 1,000 to 2,499 animal units.

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

4. 1,250 feet of any property line, if the expanded livestock facility will have between 4,000 to 5,999 animal units.

5. 1,450 feet of any property line for the following:

a. An expanded livestock facility that will have 6,000 or more animal units.

b. Any new livestock facility.

(c) Except as provided in par. (e), Category 1 livestock housing may not be located within:

1. 350 feet of any property line, if the expanded livestock facility will have fewer than 1,000 animal units.

2. 650 feet of any property line, if the expanded livestock facility will have between 1,000 to 2,499 animal units.

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

4. 1,250 feet of any property line, if the expanded livestock facility will have between 4,000 to 5,999 animal units.

5. 1,450 feet of any property line for the following:

a. An expanded livestock facility that will have 6,000 or more animal units.

b. Any new livestock facility.

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

1. 250 feet of any property line, if the expanded livestock facility will have fewer than 1,000 animal units.

2. 450 feet of any property line, if the expanded livestock facility will have between 1,000 to 2,499 animal units.

3. 700 feet of any property line, if the expanded livestock facility will have between 2,500 to 3,999 animal units.

4. 900 feet of any property line, if the expanded livestock facility will have between 4,000 to 5,999 animal units.

5. 1,050 feet of any property line for the following:

a. An expanded livestock facility that will have 6,000 or more animal units.

b. Any new livestock facility.

(e) A manure storage or Category 1 or 2 housing structure may be located within the setbacks specified in pars. (b), (c), and (d) if any of the following apply;

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

2. The manure storage or housing structure existed prior to [the effective date of the rule (LRB inserts)], 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 (LRB inserts)] and no part of the 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.

**SECTION 39.** ATCP 51.12 (2m) is created to read:

(2m) CLUSTERS. (a) Except 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 1,320 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 1,320 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 350 foot setback for manure storage facilities on operations under 1000 animal units.

(c) ATCP 51.12 (6) (Note) is repealed.

(d) ATCP 51.14 is repealed and recreated to read:

(1) PREEXISTING ODOR STANDARD. (a) A livestock facility operating under a local approval granted prior to the [effective date of the rule (LRB inserts)] must honor all commitments in its local approval to maintain compliance.

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

(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 inserts)] 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.

(3) NEW ODOR MANAGEMENT STANDARD. (a) In any application for local approval or permit modification submitted on or after [the effective date of the rule (LRB inserts)], 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.

(4) SETBACK REDUCTIONS FOR ODOR CONTROL PRACTICES. (a) In determining the setback for new or 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 par. (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.

(d) Any setback for new or expanded manure storage structures that is reduced to 350 feet, as identified in Appendix A, Worksheet 2, or less than 350 feet as specified in a local ordinance, shall apply to any property line or public road right of way.

(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.

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

**ATCP 51.16 Nutrient management and Farm Conservation Practices.** (1) A livestock operator shall comply with s. ATCP 50.04 (3).

(2) 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 technical guide nutrient management standard 590 (December, 2015) is incorporated into s. ATCP 50.04. The Wisconsin Conservation Planning Technical Note WI-1 (February, 2016) shall be used to estimate the quantity of manure generated. Appendix A, Worksheet 3 includes the Technical Note's estimation tool. The Technical note allows applicants to enter their manure hauling records into SnapPlus, for more precise waste estimation.

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.

(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 comply with s. ATCP 50.48 (6).
  - b. A political subdivision may ask a nutrient management planner to submit records kept in accordance with s. ATCP 50.48 (6).

(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 WDPES 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.

(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.

(5) 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 demonstrate compliance with s. ATCP 50.04 (3).

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

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

**ATCP 51.18 Waste storage facilities.** (1) 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. 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.

Note: See s. NR 151.05 and s. NR 151.015 (18).

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

1. Submitting 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. Certify that the livestock operation's WPDES permit is current and the livestock operation is in compliance with all conditions and requirements in the WPDES permit.
  - b. Submit 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. Submit 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.

(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 complete an evaluation in accordance with *Appendix D* and 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 then-existing NRCS standards, and shows no apparent signs of structural failure or significant leakage as demonstrated by a visual inspection of the emptied facility, to the extent possible based on liner type. If emptying or entering an underbarn or slurry store facility is not feasible, a subsurface soils investigation shall be conducted to check for significant leakage as demonstrated by a visual inspection of the emptied facility, to the extent possible based on liner type. If emptying or entering an underbarn or slurry store facility is not feasible, alternative methods of checking for significant leakage shall be conducted such as soil test pits or borings around the perimeter of the facility.

3. The construction standards for the facility cannot be verified from reliable documentation, and the facility is in good condition and repair, shows no apparent signs of structural failure or significant leakage as demonstrated by a visual inspection of the emptied

facility to the extent possible based on liner type, and is located on a site with soils and separation distances that comply with Tables 1, 2, 3, 4, or 5 in NRCS technical guide waste storage facility standard 313 (January, 2014).

(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 a livestock facility expansion or a request for a permit modification that proposes the construction or expansion of a waste storage facility, a structure previously evaluated under this subsection must be re-evaluated 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.

(5) NEW OR SUBSTANTIALLY ALTERED FACILITIES. A registered professional engineer or certified conservation engineering practitioner shall certify design specifications for:

(a) New or substantially altered waste storage facility in accordance with 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) New or substantially altered waste transfer systems in accordance with 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) FACILITY CLOSURE. (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 2 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 360 (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 ss. 66.0627 or 254.59, Stats., as appropriate.

(7) FACILITY OPERATION. (a) Existing manure storage facilities shall comply with s. NR 151.05 (4).

(b) There shall be no mixing or storage of human waste or septage 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 s. ATCP 50.56 (3) (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 building a manure storage structure permitted under a local waste storage ordinance.

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

**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, 2016R).

(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, as measured along the treatment flow path:
  - a. 1,500 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
  - d. 450 feet from surface inlets that discharge to navigable waters
  - e. 225 feet from channelized flow (i.e., a drainage area of  $\geq 5$  acres)
  - f. 225 feet from subsurface drains
2. 5 pounds if the edge of the animal lot is located within any of the features identified in subd. 1., as measured along the treatment flow path.

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 [livestocksiting.wi.gov](http://livestocksiting.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 bunker or paved area used to store or handle feed with a 40% or higher moisture content, but does not include silos, storage bags, grain bins, commodity sheds, and mixing bays.

(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, [livestocksiting.wi.gov](http://livestocksiting.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 one acre or more. 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 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: Livestock operators may be 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), runoff from two or more feed storage structures at the same livestock facility are allowed to converge if:

1. The structures meet the separation distances in sub. (2) (a) 1. A. to f. and
2. The total surface area of the structures is less than one acre.

(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 cooling equipment, and other contaminated sources of wastewater and wash water used to clean the floors and walls. Wastewater from the floor of the holding area, clean discharge water sources and sanitary wastewater 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) to (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.

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

The department-approved form is available at [livestocksiting.wi.gov](http://livestocksiting.wi.gov).

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

**SECTION 45.** ATCP 51.30 (4) and (Note) is repealed.

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

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

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

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

**SECTION 48.** ATCP 51.30 (6) is amended to read:

(6) NOTICE TO ADJACENT PROPERTY OWNERS. Within 14 days after a political subdivision issues a notice under sub. (5), the political subdivision shall mail a completed written copy of the notice in *Appendix C* to the recorded owner of each parcel of land that is adjacent to the proposed livestock facility. The political subdivision shall mail the notice by first class mail. A political subdivision shall mail the notice by first class mail. A political subdivision may recover from the livestock facility operator ~~under sub (4) (a)~~, its reasonable cost to prepare and mail notices under this subsection. ~~The sum of the costs charged to the livestock operator under this subsection and sub. (4) (a) may not exceed the maximum amount specified in sub. (4) (a).~~ Failure to comply with the notice requirement under this subsection does not invalidate a political subdivision's

approval of a proposed livestock facility, or create a cause of action by a property owner against the political subdivision.

**SECTION 49.** ATCP 51.34 (3) (a) is amended to read:

(3) WRITTEN DECISION. (a) A political subdivision shall issue its decision under subs. (1) or (2) in writing. The decision shall be based on written findings of fact included in the decision. The findings of fact shall be supported by evidence in the record under s. ATCP 51.36. Findings may be based on presumptions created by this chapter. A political subdivision 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. Nothing in this chapter precludes a political subdivision from entering into a voluntary agreement with a permit applicant outside the scope of ch. ATCP 51.

**SECTION 50.** ATCP 51.34 (3) (a) (Note) is repealed.

**SECTION 51.** ATCP 51.34 (4) (intro.) is amended to read:

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

**SECTION 52.** ATCP 51.34 (4) (a) is repealed and recreated to read:

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

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

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

Note: A political subdivision may request documentation that manure and nutrients were applied according to a nutrient management plan, s. ATCP 51.16, a livestock structure was installed according to standards, ss. ATCP 51.18 (8) and 51.20 (11), and activities identified in a training and other required plan were conducted in accordance with that plan. Department approved checklists are available at [livestocksiting.wi.gov](http://livestocksiting.wi.gov).

**SECTION 53.** ATCP 51.34 (4) (b) 2. is amended to read:

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

**SECTION 54.** ATCP 51.34 (4m) is created to read:

(4m) MODIFICATION (a) As an alternative to procedures to ss. ATCP 51.30 and 51.32, a livestock operator with a local approval granted in accordance with sub. (1) may apply for a modification of that local approval under either of the following conditions:

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

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

a. The planned increase in animal units will not exceed 20 percent of the maximum number of animal units authorized in the most recent local approval issued under sub. (1), but in no case may the increase exceed 800 animal units.

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

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

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

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

Note: Appendix B contains instructions for completing the request for permit modification, including options to complete Worksheet 5. The department-approved form is available at [livestocksiting.wi.gov](http://livestocksiting.wi.gov).

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

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

(c) The political subdivision shall provide notice of the modification to adjacent property owners in accordance with s. ATCP 51.30 (6), but is not required to take any other actions under s. ATCP 51.30 to process a permit modification.

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

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

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

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

**SECTION 55.** ATCP 51.34 (5) (a) 2. and 3. are amended to read:

2. File Electronically file with the department a copy of the final application or permit modification granted or denied, if the political subdivision has granted or denied an application under this section. The 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.

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

**SECTION 56.** ATCP 51.34 (5) (a) 3. (Note) is created to read:

Instructions for filing with the department can be found at [livestocksiting.wi.gov](http://livestocksiting.wi.gov).

**SECTION 57.** ATCP 51.34 (5) (b) and (c) are repealed and recreated to read:

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

**SECTION 58.** Chapter ATCP 51, Appendix A, Application Form and Worksheets is repealed and recreated, as attached hereto.

**SECTION 59.** Chapter ATCP 51, Appendix B, NRCS nutrient management technical standard 590 (September, 2005) is repealed and recreated as Chapter ATCP 51, Appendix B, Request for Modification of a Local Approval, as attached hereto.

**SECTION 60.** Chapter ATCP 51, Appendix C, Notice To Adjacent Property Owners is repealed and recreated, as attached hereto.

**SECTION 61.** Chapter ATCP 51, Appendix D, Flowcharts for Engineering Evaluations is created, as attached hereto.

**SECTION 62. EFFECTIVE DATE AND INITIAL APPLICABILITY.**

(1) This rule takes effect on the first day of the third month following publication in the Wisconsin administrative register, as provided under s. 227.22 (2) (intro.), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Brad Pfaff, Secretary

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# 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 or (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

<input type="checkbox"/> Individual	<input type="checkbox"/> Corporation	<input type="checkbox"/> Partnership	<input type="checkbox"/> Cooperative	<input type="checkbox"/> LLC
<input type="checkbox"/> Trust	<input type="checkbox"/> 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:
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**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:
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Town #	Range # (E or W)	Section #	1/4 Section #
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## 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.
- Map scale and north direction indicator.

## 11. Location of Livestock Structures

The applicant certifies that:

- All livestock structures (including storage structures that collect non-manure waste) 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].
- 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.

## Application (continued)

### **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**  
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## 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:

- 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.
- Multiply the number of animals of each type by the relevant Animal Unit Factor to obtain animal units of each type.
- Sum the animal units for all livestock types to obtain the Total Animal Units for which you request approval.

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

Signature of Applicant or Authorized Representative

Date \_\_\_\_\_



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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 more than 20 percent in surface area and new construction, this worksheet determines whether the structure meets the applicable property line setbacks, and in limited cases, applicable public road right-of-way 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" and when land adjacent to the facility's property line is in cropland.

If livestock structures are located in clusters (a grouping of one or more livestock structures within a livestock facility), an applicant may determine the setback distances for those structures based on the animal units kept at each cluster. This option is not available if the clusters are separated by less than 1,320 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 local property line and public road right-of-way setbacks for all new or expanded livestock structures not covered by this worksheet, including animal lots, feed storage, and livestock housing not defined as Categories 1 and 2 livestock housing.
- 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 more than 20 percent in surface area

*Note:* You may use a convenient automated spreadsheet of the tables in this worksheet, if you prefer. The spreadsheet, which includes instructions for completing it, is available at the department's website:  
<http://livestocksiting.wi.gov>. If using the spreadsheet equivalent, you must submit a copy with this signed 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 (more than 20 percent) 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 is proposed for expansion by more than 20 percent of the surface area, 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 (type)	B: Unique ID (from map)	C: Square Footage	D: Pre-expansion Square Footage (if applicable)	E: Setback for Housing Built After [date of rule revision] or Expanding by >20% (feet)	F: Planned Distance to Property Line, No Odor Control Practices (feet) (if applicable)

**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"> <li>• Pork gestation/farrow/nursery with slatted floor (includes floor and pit below)</li> <li>• Pork finishing with slatted floor (includes floor and pit below)</li> </ul>	<1,000 AU	350 feet
	1,000 AU - <2,500 AU	650 feet
	2,500 AU - <4,000 AU	1,000 feet
	4,000 AU - <6,000 AU	1,250 feet
	6,000 AU or more	1,450 feet
	All new facilities	1,450 feet
Category 2 livestock housing: <ul style="list-style-type: none"> <li>• Dairy housing with Alley Flush</li> <li>• Beef Housing with slatted floor</li> <li>• Pork Finishing scrape systems to storage and pull plug to storage</li> <li>• Poultry Layers</li> <li>• Ducks (liquid)</li> </ul>	<1,000 AU	250 feet
	1,000 AU - <2,500 AU	450 feet
	2,500 AU - <4,000 AU	700 feet
	4,000 AU - <6,000 AU	900 feet
	6,000 AU or more	1,050 feet
	All new facilities	1,050 feet

Note: See worksheet instructions for determining AU capacity based on clusters.

**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. Based on the odor control practices claimed in Columns C and D, enter the reduced setback distance shown in Chart 3. The setbacks in Chart 3 are final distances that are calculated for you.
- F. Enter the planned distance to property line. This distance cannot be less than the distance in Column E.

**Table B**

A: Unique ID (from map)	B: Setback Distance from Table A, Column E (feet)	C: 1 <sup>st</sup> Control Practice	D: 2 <sup>nd</sup> Control Practice	E: Reduced Setback Distance from Chart 3 (feet)	F: 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
Parcels adjacent to the livestock facility that meet the following conditions: 1. Are zoned for agricultural use or not zoned 2. Do not have residences or high-use buildings or areas within 660 feet of the facility's property line	Medium	2

Note: Applicants may seek DATCP approval to reduce the required setback distance through use of an odor control practice not identified in Chart 2 by following the process under s. ATCP 51.14(4)(b).

<b>Chart 3: Setback Distances Resulting from Implementation of Practices from Chart 2</b>				
<b>Category 1: Animal Unit (AU) Capacity</b>	<b>Using a Level 1 Practice from Chart 2</b>	<b>Using a Level 1 &amp; Level 2 Practice from Chart 2</b>	<b>Using a Level 2 Practice from Chart 2</b>	<b>Using two Level 2 Practices from Chart 2</b>
<1,000 AU	Reduced setback is not available.			
1,000 - <2,500 AU	350 feet	350 feet	350 feet	350 feet
2,500 - <4,000 AU	650 feet	550 feet	800 feet	720 feet
4,000 - <6,000 AU	820 feet	700 feet	1,000 feet	900 feet
6,000 AU or more	950 feet	825 feet	1,160 feet	1,050 feet
All new facilities	950 feet	825 feet	1,160 feet	1,050 feet
<b>Category 2: Animal Unit (AU) Capacity</b>	<b>Using a Level 1 Practice from Chart 2</b>	<b>Using a Level 1 &amp; Level 2 Practice from Chart 2</b>	<b>Using a Level 2 Practice from Chart 2</b>	<b>Using two Level 2 Practices from Chart 2</b>
<1,000 AU	Reduced setback is not available.			
1,000 - <2,500 AU	240 feet	240 feet	240 feet	240 feet
2,500 - <4,000 AU	460 feet	390 feet	560 feet	500 feet
4,000 - <6,000 AU	600 feet	500 feet	720 feet	640 feet
6,000 AU or more	700 feet	600 feet	850 feet	760 feet
All new facilities	700 feet	600 feet	850 feet	760 feet

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

- Enter the unique identifier for each manure storage structure, as referenced on the facility map.
- Enter the surface area of each manure storage structure being proposed.
- For structures that are proposed for expansion by more than 20 percent, enter the existing surface area.
- Enter the appropriate property line setback from Chart 4 based on the number of Animal Units listed in Step #1.
- 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 (Max Operating Level)	C: Pre-expansion Square Footage (if applicable)	D: Setback for Storage Built After [date of rule revision] or Expanding by >20% (feet)	E: Planned Distance to Property Line, No Odor Control Practices (feet) (if applicable)

**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	350 feet*
	1,000 AU - <2,500 AU	650 feet
	2,500 AU - <4,000 AU	1,000 feet
	4,000 AU - <6,000 AU	1,250 feet
	6,000 AU or more	1,450 feet
	All new facilities	1,450 feet

\* Under s. ATCP 51.12(2)(b)1., this setback applies to the property line or public road right-of-way.

Note: See worksheet instructions for determining AU capacity based on clusters.

**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:**

- Enter the unique identifier for each manure storage structure that will operate odor control practices.
- Enter the setback distance from Table C, Column D that corresponds to each listed structure.
- Enter the control practice from Chart 5 that will be installed and implemented.
- Enter a second control practice, if any.
- Based on the odor control practices claimed in Columns C and D, enter the reduced setback distance shown in Chart 6. The setbacks in Chart 6 are final distances that are calculated for you.
- Enter the planned distance to property line. This distance cannot be less than the distance in Column E.

**Table D**

A: Unique ID (from map)	B: Setback Distance from Table C, Column D (feet)	C: 1 <sup>st</sup> Control Practice	D: 2 <sup>nd</sup> Control Practice	E: Reduced Setback Distance from Chart 6 (feet)	F: 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
Parcels adjacent to the livestock facility that meet the following conditions: 1. Are zoned for agricultural use or not zoned 2. Do not have residences or high-use buildings or areas within 660 feet of the facility's property line	Medium	2
Note: Applicants may seek DATCP approval to reduce the required setback distance through use of an odor control practice not identified in Chart 2 by following the process under s. ATCP 51.14(4)(b).		

**Chart 6: Setback Distances Resulting from Implementation of Practices from Chart 5**

Animal Unit (AU) Capacity	Using a Level 1 Practice from Chart 5	Using a Level 1 & Level 2 Practice from Chart 5	Using a Level 2 Practice from Chart 5	Using two Level 2 Practices from Chart 5
<1,000 AU	Reduced setback is not available.			
1,000 - <2,500 AU	350 feet*	350 feet*	350 feet*	350 feet*
2,500 - <4,000 AU	650 feet	550 feet	800 feet	720 feet
4,000 - <6,000 AU	820 feet	700 feet	1,000 feet	900 feet
6,000 AU or more	950 feet	825 feet	1,160 feet	1,050 feet
All new facilities	950 feet	825 feet	1,160 feet	1,050 feet

\* To be consistent with s. ATCP 51.12(2)(b)1., this reduced setback applies to the property line or public road right-of-way.

# 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/m<sup>2</sup>-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/m<sup>2</sup>-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 the 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 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 Conservation Practice Standard Roofs and Covers 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 Guide Conservation Practice 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 Guide Conservation Practice 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 Guide Conservation Practice 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, submit the attachment 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 a *WPDES* permit issued by the DNR 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 Worksheet 1 of 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 responsibility 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 table<sup>1</sup> to provide an annual estimate of manure generated.**

The estimate must be prepared by a qualified nutrient management planner other than the 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, including 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, the requirements in ATCP 51 should be followed.

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

Worksheet 3 (continued)

<b>Manure estimate using MWPS-18 "Manure Characteristics"</b>													
<b>Animal</b>	<b>Size</b>	<b>Daily Manure Production To Apply</b>							<b>Annual Manure Production To Apply</b>				
		Lbs	Solid		Liquid			Number of Head	Daily Total	365 Day Total	% Collected	=	Total Collected Tons or Gal.
		Lbs/day	ft <sup>3</sup> /day	WI dairy & beef dilution factor	MWPS ft <sup>3</sup> /day x WI dilution	WI dairy & beef dilution factor	MWPS gal./day x WI dilution						
<b>Dairy</b>													
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						
<b>Beef</b>													
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						
<b>Swine</b>													
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						
<b>Poultry /</b>													
<b>Other</b>													
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						

Source: Midwest Plan Service publication number MWPS-18 "Manure Characteristics" Section 1, copyright 2000. Solid volumes are as excreted. The liquid dairy and beef values are computed from the WMPs daily production and have approximately equal nutrient values annually as solid manure. MWPS liquid dairy and beef factors are multiplied by 1.9 and 3.2 respectively. Dilution on your operation may be substantially different. Use manure analysis and manure storage volumes to determine production whenever possible.

Actual data from hauling logs and actual manure analysis, if available, can be entered into SnapPlus.

Manure quantities are likely to be more accurate estimated from storage size (see below).

What is the manure storage pit size? \_\_\_\_\_ gallons or tons?

Multiply pit size X number of times emptied/yr \_\_\_\_\_ = Total annual manure collection

## **Part B – Land Base for Applying Nutrients**

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

- a. Applied to land: \_\_\_\_\_ %.
- b. Processed and sold as commercial fertilizer, under a fertilizer license: \_\_\_\_\_ %.
- c. 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 with the following standards or shall implement conservation practices that achieve compliance, and will remain in compliance as long as the facility is permitted:

1. 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).
2. Maintain an average 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.

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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

**Part D**

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

**Nutrient Management Checklist**

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)			BUSINESS PHONE ( ) -
STREET ADDRESS		CITY	STATE	ZIP
REASON THE PLAN WAS DEVELOPED: <b>Click and choose.</b> (Ordinance, NR 243 WPDES or NOD, DATCP-FP or cost share (cs), DNR-cs, USDA-cs, Other)			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: <b>Click and choose.</b> (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.

<b>1. Does the plan include the following nutrient application requirements to protect surface and groundwater?</b>		
<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 <b>certified laboratory</b> .	<input type="checkbox"/>	<input type="checkbox"/>
b. For fields or pastures with mechanical nutrient applications, determine field nutrient levels from <b>soil samples</b> collected within the last <b>4 years</b> according to 590 Standard (590) and UWEX Pub. A2809, <i>Nutrient Application Guidelines for Field, Vegetable, and Fruit Crops in Wisconsin</i> (A2809) typically collecting <b>1 sample per 5 acres</b> of 10 cores. Soil tests are not required on <b>pastures</b> 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"/>
c. For <b>livestock siting permit approval</b> , 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"/>
d. <b>Identify all fields'</b> name, boundary, acres, and location.	<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 <b>nutrient application rates consistent with A2809 for ALL forms of N, P, and K</b> .	<input type="checkbox"/>	<input type="checkbox"/>
f. Make no <b>winter applications of N and P fertilizer</b> , except on grass pastures and winter grains.	<input type="checkbox"/>	<input type="checkbox"/>
g. Document method used to determine <b>application rates</b> . Nutrients shall not runoff during or immediately after application.	<input type="checkbox"/>	<input type="checkbox"/>
h. Identify in the plan that <b>adequate acreage</b> is available for manure produced and/or applied.	<input type="checkbox"/>	<input type="checkbox"/>
i. Apply a single phosphorus (P) assessment using either the <b>P Index</b> or <b>soil test P</b> 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"/>
j. Use <b>complete crop rotations</b> and the field's <b>critical soil</b> series to determine that sheet and rill erosion estimates will not exceed <b>tolerable soil loss (T)</b> rates on fields that receive nutrients.	<input type="checkbox"/>	<input type="checkbox"/>
k. Use contours; reduce tillage; adjust the crop rotation; or implement other practices to <b>prevent ephemeral erosion</b> ; and maintain perennial vegetative cover to <b>prevent reoccurring gullies</b> in areas of concentrated flow.	<input type="checkbox"/>	<input type="checkbox"/>
l. Make no nutrient applications within <b>8'</b> of <b>irrigation wells</b> or where <b>vegetation is not removed</b> .	<input type="checkbox"/>	<input type="checkbox"/>
m. Make no nutrient applications within <b>50'</b> of <b>all direct conduits to groundwater</b> , unless directly deposited by gleaning/pasturing animals or applied as starter fertilizer to corn.	<input type="checkbox"/>	<input type="checkbox"/>

	<b>Yes</b>	<b>No</b>	<b>NA</b>
n. Make no <b>untreated manure applications</b> to areas within 1000' of a <b>community potable water well</b> or within 100' of a <b>non-community potable water well</b> (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 <b>locally delineated</b> 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 <b>late summer or fall commercial N fertilizer</b> 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"> <li>• Sites vulnerable to N leaching <b>PRW Soils</b> (P=high permeability, R= bedrock &lt; 20 inches, or W= wet &lt; 12 inches to apparent water table);</li> <li>• Soils with depths of 5 feet or less to bedrock;</li> <li>• Area within 1,000 feet of a community potable water well.</li> </ul> On <b>P soils</b> , when <b>commercial N is applied</b> for full season crops in <b>spring and summer</b> , follow A2809 and apply one of the following: <ol style="list-style-type: none"> <li>1. A split or delayed N application to apply a majority of crop N requirement after crop establishment.</li> <li>2. Use a nitrification inhibitor with ammonium forms of N.</li> <li>3. Use slow and controlled release fertilizers for a majority of the crop N requirement applied near the time of planting.</li> </ol>	<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 <b>PRW Soils</b> . <i>Use ≤ 120 lbs. available N/acre on:</i> <p><b>P and R soils</b> on <u>all crops, except annual crops</u>. Additionally, manure with ≤ 4% dry matter (DM) wait until after soil temp. &lt; 50°F or Oct. 1, and use either a nitrification inhibitor OR surface apply and do not incorporate for at least 3 days.</p> <p><b>W soils or combo. W soils</b> on <u>all crops</u>. Additionally, manure with ≤ 4% DM on <u>all crops</u> use at least one of the following:               <ol style="list-style-type: none"> <li>1. Use a nitrification inhibitor; 2. Apply on an established cover crop, an overwintering annual, or perennial crop; 3. Establish a cover crop within 14 days of application; 4. Surface apply &amp; don't incorporate for at least 3 days; 5. Wait until after soil temp. &lt; 50°F or Oct. 1.</li> </ol>   <i>Use ≤ 90 lbs. available N/acre on:</i> <p><b>P and R soils</b> on <u>annual crops</u> wait until after soil temp. &lt; 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.</p> <p><b>W soils or combination W soils</b> receiving manure with ≤ 4% DM on <u>all crops</u>.</p> </p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
r. Use at least one of the following practices on <b>non-frozen soils for all nutrient applications</b> within <b>Surface Water Quality Management Area (SWQMA)</b> = 1000' of lakes/ponds or 300' of rivers: <ol style="list-style-type: none"> <li>1. Maintain &gt; 30% cover after nutrient application;</li> <li>2. Effective incorporation within 72 hours of application;</li> <li>3. Establish crops prior to, at, or promptly following application;</li> <li>4. Install/maintain vegetative buffers or filter strips;</li> <li>5. Have at least 3 consecutive years no-till for applications to fields with &lt; 30% residue (silage) and apply nutrients within 7 days of planting.</li> </ol>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
s. Limit mechanical applications to <b>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</b> . 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? <i>This section doesn't apply to winter gleaning/pasturing meeting 590 N and P requirements.</i>  <i>If no manure is applied, check NA for 2.a. through 2.g..</i> <ol style="list-style-type: none"> <li>a. Identify <b>manure quantities planned to be spread during the winter</b>, 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></li> <li>b. Identify <b>manure storage capacity</b> for each type applied and stacking capacity for manure ≥ 16% DM if permanent storage does not exist.</li> <li>c. Show on map and make no applications within the <b>SWQMA</b>.</li> <li>d. Show on map and make no surface applications of liquid manure during <b>February and March</b> where <b>Silurian dolomite</b> is within 60 inches of the soils surface OR where <b>DNR Well Compensation</b> funds provided replacement water supplies for wells contaminated with livestock manure.</li> <li>e. Show on map and make no applications of manure within <b>300 feet of direct conduits to groundwater</b>.</li> <li>f. Do not exceed the P removal of the following growing season's crop when applying manure. Liquid manure applications are limited to <b>7,000 g/acre</b>. All winter manure applications are not to exceed <b>60 lbs. of P2O5/acre</b>.</li> <li>g. Make no applications of manure to fields with <b>concentrated flow channels</b> unless using two of the following:               <ol style="list-style-type: none"> <li>1. Contour buffer strips or contour strip cropping;</li> <li>2. Leave all crop residue and no fall tillage;</li> <li>3. Apply manure in intermittent strips on no more than 50% of field;</li> <li>4. Apply manure on no more than 25% of the field waiting a minimum of 14 days between applications;</li> <li>5. Reduce manure app. rate to 3,500 gal. or 30 lbs. P2O5, whichever is less;</li> <li>6. No manure application within 200 feet of all concentrated flow channels;</li> <li>7. Fall tillage is on the contour and slopes are lower than 6%.</li> </ol>           Make no applications to <b>slopes greater than 6%</b> (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.         </li> </ol>	<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
Qualified NM farmer-planner or Authorized farm operator signature receiving and understanding the plan		Date
Signature if reviewed for quality assurance		Date



## 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 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 the same waste storage facilities 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 county manure storage 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 Conservation Practice 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 to the extent possible based on liner type shows no apparent signs of structural failure or significant leakage; or if emptying or entering an underbarn or slurry store is not feasible, alternative methods of checking for significant leakage shall be conducted, such as soil test pits or borings.
- The construction standard of the facility (identify by unique identifiers listed on the site map: \_\_\_\_\_) cannot be verified from a reliable document, and the facility is in good condition and repair, shows no apparent signs of structural failure or significant leakage as demonstrated by a visual inspection of the emptied facility to the extent possible based on liner type, and is located on a site with soils and separation distances that comply with Tables 1, 2, 3, 4, or 5 in NRCS Technical Guide Conservation Practice Standard Manure Storage Facility 313 (January, 2014).

**Section C: Facility Closure.** 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 Conservation Practice Standard Waste Facility Closure 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 the same animal lots or storage structures 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 Lots<sup>1</sup>

**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 manure and contaminated runoff for future land application or will be constructed according to the attached design specifications that comply with NRCS Technical Guide Conservation Practice Standard Vegetated Treatment Area 635 (September, 2016R).

**3. Existing Animal Lots Near Sensitive Areas.** The edge of 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 along the treatment flow path). According to the BARNY runoff model, each of these animal lots has (or with minor alterations<sup>2</sup> will have) predicted average annual phosphorus runoff of less than 5 lbs. (measured at the end of the treatment area).

**4. Other Existing Animal Lots.** The edge of 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 along the treatment flow path). According to the BARNY runoff model, each of these animal lots has (or with minor alterations<sup>2</sup> will have), predicted average annual phosphorus runoff of less than 15 lbs. (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.

<sup>1</sup> 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.

<sup>2</sup> "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 (bunkers, paved areas)

**1. Existing Feed Storage Structures.**<sup>1</sup> 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 Conservation Practice Standard Waste Treatment 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 at the livestock facility, 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 one acre or more, 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, 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: \_\_\_\_\_) are:

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

### 4. New and Expanded Feed Storage Structures that are 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) **Not** located such that runoff from one structure converges or meets with runoff from another structure 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.
- (d) Designed or constructed with storage floors that meet the applicable Table 1, 2, or 3 of NRCS Technical Guide Conservation Practice Standard Waste Treatment 629 (January, 2017), as indicated by the attached designs.
- (e) 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.
- (f) Located in areas that do not have soils with a high potential for leaching contaminants to groundwater.
- (g) 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 Conservation Practice Standard Waste Treatment 629 (January, 2017), and NRCS Technical Guide Conservation Practice Standard Vegetated Treatment Area 635 (September, 2016R).

<sup>1</sup> For the purposes of the requirements in this section, a feed storage structure includes any bunker or paved area used to store or handle feed with a 40% or higher moisture content, but does not include silos, storage bags, grain bins, commodity sheds, and mixing bays.

## 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 Technical Guide Conservation Practice Standard Waste Storage Facility 313 (October, 2017R).

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 Technical Guide Conservation Practice Standard Waste Treatment 629 (January, 2017).

## 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) There are no unconfined manure piles 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).

\_\_\_\_\_  
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).

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

1. 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.
2. 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 800 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. In completing the request form, you must verify that the proposed expansion of the livestock facility meets the eligibility requirements for a permit modification. You also must provide information related to the most recent full approval you received from the permitting authority, including the maximum number of 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). Also, you may 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 (modified standards, 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 base 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. (You are allowed limited expansions of these facilities without adding odor control practices if these facilities are located within required setbacks.) If manure storage structures or certain livestock housing structures are being built within setback requirements (see Charts 1 and 4 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 of Worksheet 5 require completion based on the changes proposed to the livestock operation.

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 certify compliance with the water quality standards in ATCP 51 by providing supporting documentation in lieu of completing Worksheets 3, 4 and 5, according to the requirements for permit substitutions. A WPDES permit does not affect the requirements for completing Worksheets 1 and 2.

## **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 the procedural protections required

when a 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 based on the 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  
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2811 Agriculture Drive, PO Box 8911,  
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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:
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Phone:	E-mail:
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3. Business Address:	Street Address:
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City/Village/Town:	County:	State:	Zip:
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#### 4. Description of Proposed Livestock Facility

Address of Livestock Facility:
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#### 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 800 animal units above the maximum number authorized in the most recent full approval issued by the political subdivision, without constructing or altering any livestock structures; and the operator has not previously received a permit modification to increase animal units.
- 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: _____
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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 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 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 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.

**Application (continued)****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>

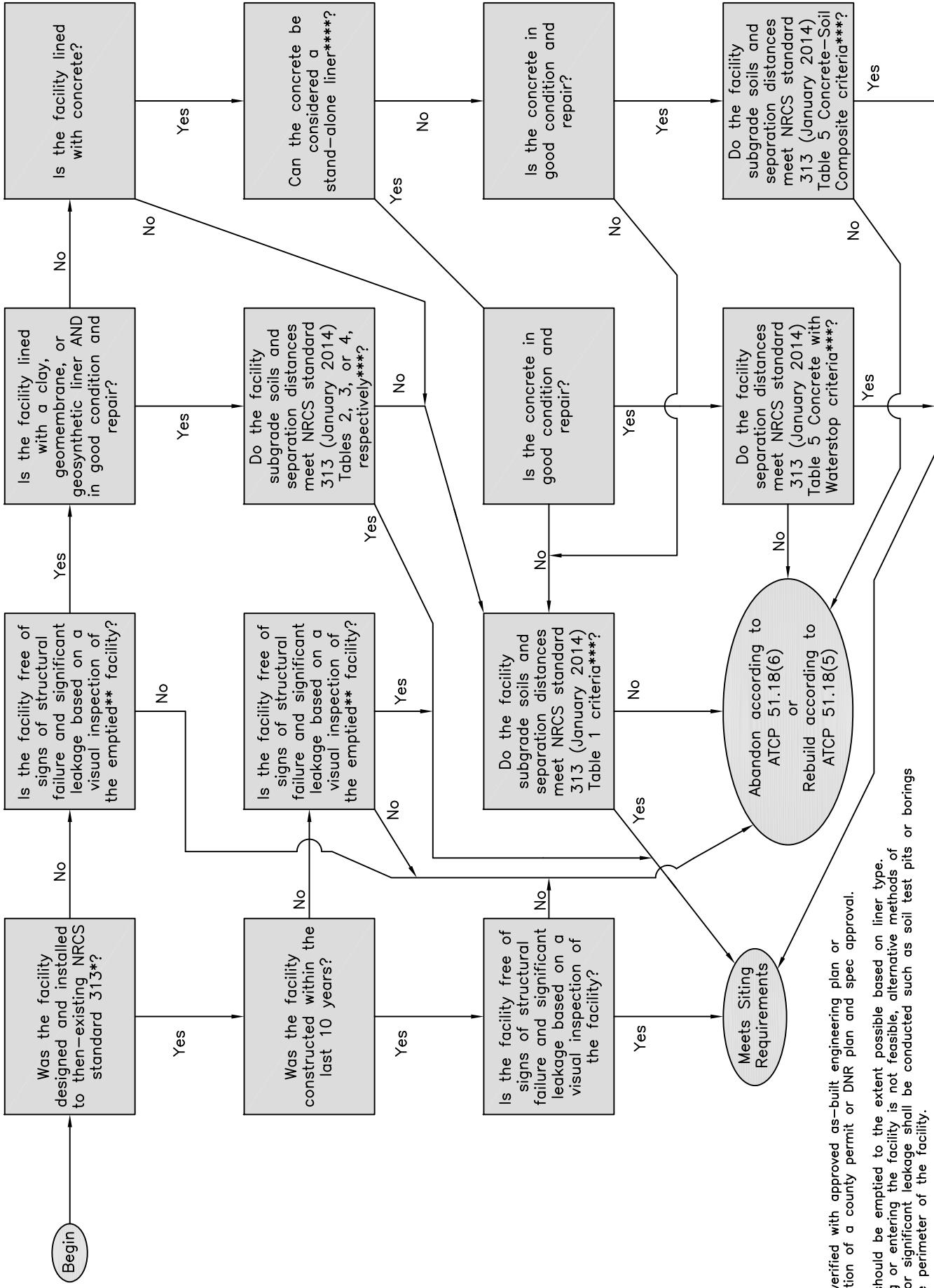
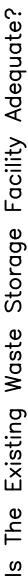
State Livestock Facility Siting Requirements (For New or Expanded Livestock Operations that Need a Local Permit)		
Standard	Applies to	Specific Requirements
General Information (see main application)	All applicants	<ul style="list-style-type: none"> <li>Describe proposed livestock operation in detail including a narrative</li> <li>Show maximum number of “animal units” proposed</li> <li>Document compliance with state siting standards</li> </ul>
Setbacks (see site map)	All applicants	<ul style="list-style-type: none"> <li>Require that livestock structures meet local setbacks (cannot exceed state maximums of 100 to 300 feet depending on size)</li> <li>Require setbacks for new and expanding manure storage and certain housing types ranging from 250 to 1,450 feet depending on the facility’s size</li> <li>Allow setback reductions based on odor control practices</li> <li>Grandfather existing structures and allows limited expansion of structures away from property lines</li> <li>Must comply with existing water quality setbacks (wetland, floodplain, well setbacks)</li> </ul>
Odor Management (see worksheet)	All applicants, with a focus on livestock operations that have: <ul style="list-style-type: none"> <li>Manure storage or housing structures near their property lines, or</li> <li>New or expanded manure storage or housing structures that do not meet setbacks without odor control practices</li> </ul>	<ul style="list-style-type: none"> <li>Must have an odor management plan if existing storage within 600 feet of property line or existing housing is within 400 feet</li> <li>Odor management plan must account for control practices implemented as part of a permit issued under original livestock siting rule</li> <li>Document reductions in setbacks for new and expanded manure storage and high odor housing structures based on odor control practices and land adjacent to facility in cropland</li> </ul>
Waste and Nutrient Management (see worksheet)	All applicants	<ul style="list-style-type: none"> <li>Document amount of manure and other waste that will be generated by the proposed livestock facility</li> <li>Describe how wastes will be managed (e.g. composting, land spreading)</li> <li>Identify land receiving manure with any spreading restrictions</li> <li>Submit a checklist documenting a plan to manage manure and nutrient applications to meet crop needs while minimizing risks to water resources</li> <li>Comply with performance standards for soil erosion, tillage setbacks and phosphorus management</li> </ul>
Waste Storage Facilities (see worksheet)	All applicants with waste storage structures (manure storage is not required)	<ul style="list-style-type: none"> <li>Construct new and expanded storage structures according to technical standards</li> <li>Certify that existing structures are safe (not leaking or failing)</li> <li>Close structures that are not safe</li> <li>Operate structures according to performance standards</li> </ul>
Runoff Management (see worksheet)	All applicants	<ul style="list-style-type: none"> <li>Prevent significant discharges from animal lots, feed storage, and milking center waste</li> <li>Certify that feed storage structures are safe (not leaking or failing)</li> <li>Meet phosphorus discharge standards for existing animal lots</li> <li>Design new and expanded animal lots and feed storage to the latest technical standards (exceptions apply)</li> <li>Meet performance standards for clean water diversion, overflow from waste storage, unconfined manure piles and overgrazing of streambanks</li> </ul>
Training and Incident Response Plans	All applicants	<ul style="list-style-type: none"> <li>Develop employee training (manure and odor mgmt.)</li> <li>Develop incident response plan (spills and odor events)</li> </ul>

## Appendix D

# Flowcharts for Engineering Evaluations



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\* typically verified with approved as-built engineering plan or documentation of a county permit or DNR plan and spec approval.

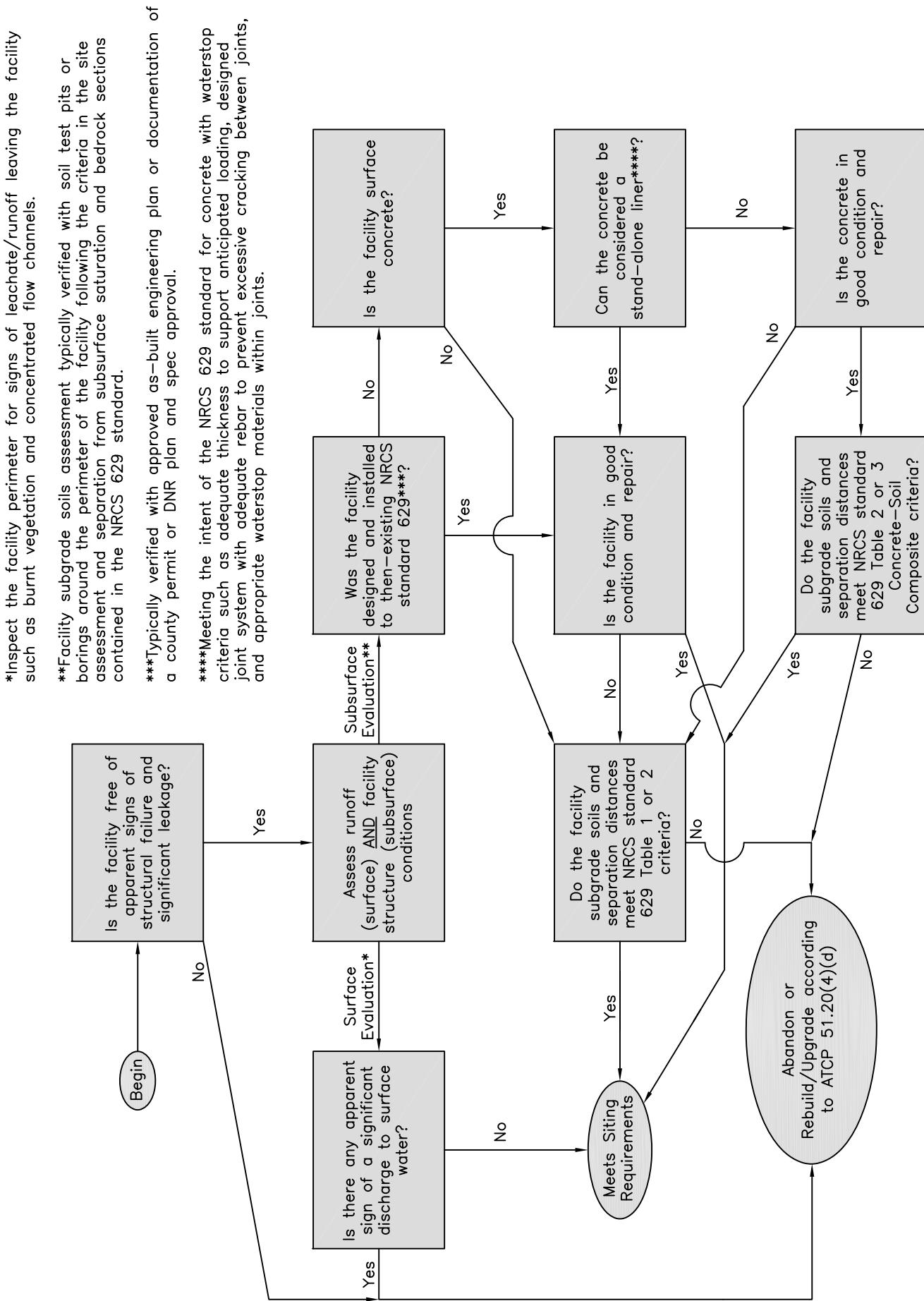
\*\*Facility should be emptied to the extent possible based on liner type. If emptying or entering the facility is not feasible, alternative methods of

\*\*\* facility should be emptied to the extent possible, alternative methods of checking for significant leakage shall be conducted such as soil test pits or borings.

\*\*\*\*Typically verified with soil test pits or borings around the perimeter of the facility following the criteria in the site assessment and separation from subsurface saturation or bedrock sections

\*\*\*\*Meeting the intent of the NRCS 313 (January 2014) standard for concrete with waterstop criteria such as adequate thickness to support anticipated loading, designed joint system with adequate rebar to prevent excessive cracking between joints, and appropriate waterstop materials within joints.

Is The Existing Feed Storage Facility Adequate?



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

## **Final Environmental Assessment**

**Rule Subject:** Livestock Facility Siting  
**Administrative Code Reference:** ATCP 51  
**Rules Clearinghouse #:** 19-098  
**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 land 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.

- Limiting late summer or fall commercial N fertilizer applications 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. 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 13 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 several of the new siting requirements as part of their DNR permits. About 65 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 slightly increase business for entities that provide cropland related services to farmers. Nutrient management planners will spend more time to develop 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 slightly increase demand for engineered conservation practices. Operators of new or expanded livestock facilities will 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 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 agri-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. However, water quality protections and setbacks are both lower than those requested by impacted communities, so the improvements may not be

sufficient to make the large livestock operations 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 help protect water in areas immediately surrounding permitted farms, the improved standards on the whole will do little to make improvements statewide, because only a small subset of livestock operations in the small number of 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. Other community members are frustrated that the rule and standards do not address a broader set of concerns, including road and noise impacts. 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.

### ***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 community and 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 and significant changes the department made 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. The revised rule results in uniform standards for protecting water quality, addresses issues arising out of the mandatory four year reviews of the siting rule, makes improvements to advance the statutory goal of “providing uniform regulation of livestock facilities” and better balances 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

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

## **Regulatory Flexibility Analysis**

<b>Rule Subject:</b>	Livestock Facility Siting
<b>Adm. Code Reference:</b>	ATCP 51
<b>Rules Clearinghouse #:</b>	19-098
<b>Department Docket #:</b>	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 recently to implement updated technical standard and additional performance standards. The ATCP 51 revision also addresses issues arising out of the multiple, four-year technical reviews of the rule. Updates to 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.

### *Small Businesses Affected*

The rule will primarily impact new or expanding livestock operations that must receive local approvals (permits) under siting ordinances currently adopted by 134 local governments (mostly towns). The proposed rule anticipates that 125 livestock facilities, many of which qualify as "small businesses," will need first-time permits or permit reissuances over the next 10 years. The most significantly impacted among this group will be farms with 6,000 animal units or more, and new, greenfield facilities. 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 an impact on less than 1 percent of Wisconsin livestock operations that raise cattle, swine, poultry, sheep and goats, due to the limited number of municipalities that have adopted a livestock siting ordinance and its applicability to farms over 500 animal units. 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 due to an expansion. This number is an estimate based on

the number of permits issued to date, number of municipalities with ordinances, and a demonstrated trend in the number of animal units per farm, dairy in particular, increasing.

*Dairy Herd Census Data:*

*2017 Census Data: 1383 farms with more than 200 cows (39 more than 2,500)*

*2012 Census Data: 1202 farms with more than 200 cows (25 more than 2,500)*

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 13 years of the siting rule's implementation, local governments approved 180 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 50 to reach a total of 230. In addition, 75 livestock facilities will seek at least one reissuance 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 50 new permits, 50 percent will involve livestock facilities with more than 1000 Animal Units (AUs). Also, 80 percent of the 75 facilities seeking permit reissuance will exceed 1000 AUs. By the terms of their DNR CAFO permits, these 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. These farms may incur additional costs to implement odor reduction practices to meet the setback requirements.
4. Livestock operations issued multiple permits will meet many of compliance obligations with their first permits, and will encounter fewer compliance responsibilities with successive permits.
5. Livestock operations have become subject to the latest 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-\$1.14 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 facilities that are non-CAFOs (<1,000 AUs).

## 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.

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.

## Overall Impact on Farmers

The changes in the siting rule will proportionally affect a farm based on number of animal units. 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 will be in a position to determine long-term expansion plans, including the land needed, and understand the requirements based on the farm's animal units.

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 transition to a new system of setbacks and odor control practices will be eased for farms under 1000 AUs, as well as currently permitted farms, 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 revised Worksheet 2 (odor management) simplifies the process of determining compliance 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.
- 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.

## **Non-Farm Businesses**

This rule has the following impacts on a variety of entities, of which many qualify as small businesses.

*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, including nutrient management planning. Nutrient management planning is already required of all CAFOs.

*Agricultural engineering and construction contractors.* This proposed rule will marginally increase demand for engineered conservation practices. Operators of new and expanded livestock facilities will 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 help protect against nuisance complaints.

### 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), a technical expert committee of professionals who work with farms of all sizes, and members of the public.

#### ***Conclusion***

This rule will have no more than a moderate impact on current farm operations, including “small businesses.” To a limited extent, increased costs may 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)
<b>Odor Management- New and expanded facilities</b>	\$3,000-\$37,500	<p>10 facilities are expected to 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:</p> <p><b>Low:</b> Natural Crust-\$3,000 (Dry matter additions) <b>High:</b> Cover-\$37,500.00 (\$.75/sq. ft. x 50,000 sq ft)</p> <p>No costs are projected for odor management plans, if required, since they can be prepared by landowners and are not necessarily required to continue older control practices.</p> <p>In terms of meeting setbacks, the one-time costs of acquiring additional land that might be needed to meet the largest setbacks is highly variable. The department has reduced the setbacks in the final draft rule—and clarified how to measure to property lines—which should minimize land acquisition needs for this purpose, particularly for applicants in this smallest size category.</p>	<p>It is unknown if any livestock facilities will incur additional costs to comply with the change in setbacks and odor management for the following reasons:</p> <ol style="list-style-type: none"> <li>1. A number of facilities will not need odor control practices to meet the setback requirements.</li> <li>2. Other facilities already would have had to install one or more odor practices or acquire additional land to earn a passing score under the previous odor standard.</li> </ol> <p>The cost of acquiring additional land that might be needed to meet the largest setbacks is highly variable. The department has reduced the setbacks in the final draft rule—and clarified how to measure to property lines—which should minimize land acquisition needs for this purpose. Facilities over 6000 animal units and new facilities may need additional land to meet a setback requirement.</p>
<b>Upgrade of Nutrient Management Plans</b>	\$7,200	20 livestock facilities that are not subject to other laws or programs (e.g. CAFO permits, FPP tax credits, manure storage ordinances) will be directly impacted by 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
<b>Waste Storage -- New</b>	\$0	No additional costs can be attributed to the revised siting rule for new construction since it will be designed using the 2017 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 2017 313 standard for various reasons, and therefore no additional costs are attributable to the siting rule.
<b>Waste storage -- Existing</b>		There should not be additional evaluation costs for existing manure storage facilities older than 10 years. Evaluation of existing storage is required under the current siting rule; the revised rule simply clarifies what type of evaluation is expected.	There should not be additional evaluation costs for existing manure storage facilities older than 10 years. Evaluations of existing storage are required under the current siting rule; the revised rule simply clarifies what type of evaluation is expected.
<b>Waste Storage-Closure</b>	\$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.
<b>Animal Lot Runoff—New or substantial altered</b>	\$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: <b>Low:</b> Roof to divert water-\$100,000 <b>High:</b> New or expanded storage to hold runoff-\$125,000	Required under CAFO permit and therefore no additional costs based on the siting rule.
<b>Animal Lot Runoff—Existing</b>	\$7,200-\$33,600	24 (60 percent of 40) non-CAFO livestock facilities must add practices to pass the barnyard evaluation, and estimated upgrade costs for a 10,000 square foot lot will range between: <b>Low:</b> Clean water diversion-\$3,000 for berm <b>High:</b> Roof gutters at \$10,000 and VTA improvement at \$4,000. No costs attributed to management changes such as added cleaning.	Required under CAFO permit and therefore no additional costs
<b>Feed Storage-Pad and Runoff collection—New and expanded bunkers, paved areas and related structures but not bags</b>	\$860,810	<p>35 livestock facilities must meet new standard, but 10 will qualify for the lower cost option based on 1 acre of feed storage, and 25 must meet higher standards based on 2.5 acres of feed storage.</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>	Required under CAFO permit and therefore no additional costs based on the siting rule.
<b>Feed Storage— Existing bunkers, paved areas and related structures but not bags</b>	\$59,800	Livestock facilities will incur the following costs to evaluate and upgrade their existing facilities: <ul style="list-style-type: none"> <li>• 55 facilities will incur costs engineering evaluation of storage at \$600 per evaluation.</li> <li>• 20 facilities will install clean water diversion at \$2,000 each.</li> <li>• 35 facilities must spend \$15,000 each to enhance their system to collect runoff from feed storage over 1 acre.</li> </ul>	Required under CAFO permit and therefore no additional costs based on the siting rule.
<b>Other Runoff Control Standards</b>	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.
<b>Annual Costs</b>	<b>\$1,050,010-\$1,143,910</b>		
<b>Ten year Costs</b>	<b>\$10,500,100-\$11,439,100</b>		



**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

1. Type of Estimate and Analysis <input type="checkbox"/> Original <input checked="" type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date October 23, 2019
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) ATCP 51, Livestock Facility Siting, 19-098	
4. Subject Livestock Facility Siting	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected 20.115(7)(qd)
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input checked="" type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). <b>\$1.05 to \$1.15 million annually over ten years</b>	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule The livestock facility 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.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. Over 620 organizations, small businesses, local governments, farmers, agricultural businesses and service providers and community members commented on the hearing draft rule.	

Some of these comments raised economic issues, some of which DATCP was able to address (e.g. fees, cost to comply

## **ADMINISTRATIVE RULES** **Fiscal Estimate & Economic Impact Analysis**

with standards) and some of which are beyond the DATCP's authority (e.g. depressed property values).

See attached for a summary of the hearing comments.

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**13. Identify the Local Governmental Units that Participated in the Development of this EIA.**

The Wisconsin Towns Association, Wisconsin Counties Association and Wisconsin Land and Water Association participated in the revision of this rule and this EIA. Several individual counties and towns also provided input into the rule and provided public comment on the hearing draft rule.

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**14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)**

### **Impact on Business Sectors**

The rule changes will have a limited impact on a small number of farms statewide, affecting less than 1 percent of livestock operations in the state. Based on the issuance of 180 permits during the first 13 years of ATCP 51 implementation, the Department estimates over the next ten years that the revised rule will impact no more than 125 new or expanding livestock facilities statewide that are issued local permits for the first time or are reissued permits [50 new permits, plus 75 permit reissuances]. It is estimated that the affected livestock operations, many of which are small businesses, will incur an additional \$1.05 to \$1.14 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. Demand for these services may increase somewhat from livestock operations seeking a livestock siting permit.

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.

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 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 revised Worksheet 2 (odor management) simplifies the process of determining compliance 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 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.

## **ADMINISTRATIVE RULES** **Fiscal Estimate & Economic Impact Analysis**

- 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. In addition, because the maximum permit application fee has been removed, local governments issuing permits can set fees that cover their costs to issue a permit. However, all fees must be reasonable and related to the actual costs of issuing the permits. The state has no additional costs as a result of this rule revision.

### 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, removing the maximum application fee will help to recover their costs for processing permit applications. The proposed rule will reduce the uncertainty in the administration and enforcement of siting permits, facilitating local efforts to implement the siting requirements. In the end, local

## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

governments have the flexibility to determine the amount of work they will perform in processing applications and enforcing permits. Failure to adopt the rule could impact local governments who might receive less property tax revenue as the Department of Revenue has calculated a loss in property value of up to 13% for property owners within 1 mile of a large animal feeding operation.

#### 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.

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#### 15. Benefits of Implementing the Rule and Alternative(s) to Implementing 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 generates more than \$104.8 billion in economic activity and 435,717 jobs. (Contribution of Agriculture to the Wisconsin Economy: Updated for 2019 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.

The revised standards in the siting rule will ensure consistency among related rules (NR 151, ATCP 50 and NR 243) 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 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.

If this revised rule is not adopted, the existing siting rule will remain in place. This means that local governments will be issuing siting permits based on outdated standards, which are less protective of human health, safety and the environment. As a result, local conflicts based on the siting of livestock operations will continue to escalate.

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#### 16. Long Range Implications of Implementing 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 to be a total of \$1.05 to \$1.14 million annually. 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

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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.

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### 17. Compare With Approaches Being Used by Federal Government

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.

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Federal law does not directly regulate odor management on livestock facilities.

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### 18. 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. 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.

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#### Iowa

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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.

19. Contact Name

Jennifer Heaton-Amrhein

20. Contact Phone Number

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**ADMINISTRATIVE RULES**  
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**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)  
Impact on Business Sectors

The rule changes will have a limited impact on a small number of farms statewide, affecting less than 1 percent of livestock operations in the state. Based on the issuance of 180 permits during the first 13 years of ATCP 51 implementation, the Department estimates over the next ten years that the revised rule will impact no more than 125 new or expanding livestock facilities statewide that are issued local permits for the first time or are reissued permits [50 new permits, plus 75 permit reissuances]. It is estimated that the affected livestock operations, many of which are small businesses, will incur an additional \$1.05 to \$1.14 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. Demand for these services may increase somewhat from livestock operations seeking a livestock siting permit.

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.

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 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 revised Worksheet 2 (odor management) simplifies the process of determining compliance 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 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.
- 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.

## **ADMINISTRATIVE RULES** **Fiscal Estimate & Economic Impact Analysis**

- 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.
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### 2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Wisconsin Livestock Siting database with data on issued permits from 2006- to present

Wisconsin Agricultural Statistics Services Annual Statistics

Agricultural engineering firms' estimates of costs to install practices

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### 3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- 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 accomodations as described in number 4, below.

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### 4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The department has established lower standards and compliance options for new and expanding livestock facilities under 1000 animal units. These lower standards include decreased setback/odor management requirements and lower cost options for runoff control from animal lots and feed storage. Additionally, livestock facilities under 1000 animal units remain eligible for cost-sharing to implement conservation practices that might be needed to comply with the siting rule. Also, all expanding livestock facilities are allowed to grandfather in non-conforming existing structures. Finally, the rule also clarifies the process for permit modifications and inspections, while should reduce costs. All of these provisions will reduced the compliance costs for small businesses.

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### 5. Describe the Rule's Enforcement Provisions

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 does not hold 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 applied livestock facility siting standards under chapter ATCP 51 or violated the Livestock Facility Siting Law, Wis. Stat. § 93.90.

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

- Yes
  - No
-

**ADMINISTRATIVE RULES**  
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# **Department of Agriculture, Trade and Consumer Protection**

## **Proposed Livestock Facility Siting (ATCP 51)**

### **Public Hearing Summary October 2019**

#### **HEARING ATTENDANCE:**

**380 people attended and 161 people testified** at one or more of the 12 public hearings conducted in August and September, 2019. The breakdown of attendance and testimony is shown in Table 1 below. In addition, the Department received an additional **463** written comments for a **total of 624 hearing comments** on the hearing draft rule. Oral testimony and written comments primarily came from farmers, agricultural organizations and agricultural service providers; local governments and local government organizations; non-farming community members; and environmental organizations.

The Department received a very broad range of testimony and comments related to several of the major issues included in the hearing draft rule. For example, DATCP received hundreds of comments that the proposed setbacks should be decreased as well as hundreds of comments that the proposed setbacks should be increased. The Department also received a substantial amount of testimony and comments related to issues over which DATCP has no authority. If appropriate, the Department forwarded these comments to a different agency; however, some of the issues would require a statutory change. The Department was guided by the requirement to balance the eight criteria listed in Wis. Stat. § 93.90, in both responding to the comments, as well as decision-making for the proposed final draft rule. The Department's response to comments received can be found on pages 2-12 of this document.

**Table 1: Attendance and Testimony at Public Hearings**

Location	Attended	Testified	Percent Testifying
Oshkosh – afternoon	31	14	45.2
Oshkosh – evening	14	7	50
Eau Claire – afternoon	46	20	43.5
Eau Claire – evening	21	9	42.8
Wausau – afternoon	28	14	50
Wausau – evening	5	2	40
Madison – afternoon	65	24	36.9
Madison – evening	20	11	55
Onalaska -- afternoon	40	18	45
Onalaska -- evening	12	2	16.6
Spooner -- afternoon	75	26	34.6
Spooner -- evening	23	14	50
<b>TOTALS</b>	<b>380</b>	<b>161</b>	<b>42.4</b>

## **Major comments/suggested changes and Department Response to ATCP 51 Hearing Draft**

<b>Comment/Suggested Change</b>	<b>Department Response</b>
Thank you to DATCP Board for the hearings	The Department appreciates the public participating in the hearings and providing thoughtful feedback. We received a total of 624 comments from individuals and organizations on the hearing draft rule.
Producers should have been/should be part of technical committee	The livestock siting law under Wis. Stat. §§ 93.90 (2)(c) and (d), requires the Department to convene a committee of experts to advise the Department on the promulgation of rules. The committee members and advisors included agricultural engineers, agronomists, county conservationists, and soil scientists from the private sector, university, and state agencies. Meetings were publicly noticed. Before convening the technical expert committees in 2010 and 2014, the Department invited farm/livestock groups, government agency groups, and environmental/citizen groups to participate in separate listening sessions to gage how the rule was working and what changes were needed. Based on the feedback from stakeholders, the Department narrowed the issues that were appropriate for the technical committee to address. Because the Department prepared a hearing draft rule in 2017, the 2018 technical committee's goal was to determine whether recommendations made during the prior 4-year review needed updating and technical developments had occurred since the drafting of the 2017 hearing draft rule. Based on public hearing feedback, should the Department convene a committee in the future, new and additional committee members will be added.
Make rules and requirements statewide	This would require a change to statute, not ATCP 51. The livestock facility siting law, Wis. Stat. § 93.90, does not require all local governments to issue permits for siting livestock facilities.
Standards should be the regulatory floor, not ceiling. Allow more local control and more stringent local standards for certain areas.	The livestock facility siting law, Wis. Stat. § 93.90, mandates that the state standards adopted in ATCP 51 be the standards used by local governments, unless the local governments adopt more stringent standards based on scientifically defensible findings of facts adopted prior to receiving an application for approval. (93.90 (3)(a)5. and 6. or 93.90 (3)(ar)1. and 2.) The law would need to be changed for ATCP 51 to be the minimum standards.

<b>Comment/Suggested Change</b>	<b>Department Response</b>
Discontinue grandfathering of facilities that exceeded 500 AU prior to 2006 because the further we get from 2006, the harder it is to know the baseline number of AU on the farms if no inventory was done.	This would require a change to statute, not ATCP 51. Under Wis. Stat. § 93.90(3), the livestock facility siting law established a minimum permit threshold for new and expanding livestock facilities of 500 animal units, unless a local jurisdiction had a lower AU threshold in place prior to July 19, 2003. In addition, the law established special conditions for expanding livestock facilities, which precludes a local government from requiring a siting permit until the number of animal units at a facility will increase more than 20 percent from the largest number of animal units kept at the facility before adopting a local siting ordinance. The livestock siting law does not include a mechanism for local governments to survey farms for the number of animal units.
Decrease permit size to 300 AU to be consistent with general permit threshold	This would require a change to statute, not ATCP 51. Under Wis. Stat. § 93.90(3), the livestock facility siting law established a minimum permit threshold for new and expanding livestock facilities of 500 animal units, unless a local jurisdiction had a lower AU threshold in place prior to July 19, 2003. In addition, the law established special conditions for expanding livestock facilities, which precludes a local government from requiring a siting permit until the number of animal units at a facility will increase more than 20 percent from the largest number of animal units kept at the facility before adopting a local siting ordinance. The livestock siting law does not include a mechanism for local governments to survey farms for the number of animal units.
Rule should allow a longer time period for completeness determination	This would require a change to statute, not ATCP 51. Under Wis. Stat. § 93.90 (4)(a), the livestock facility siting law sets a 45 day notification deadline for completeness determinations.
Require local governments to give notification of a complete application to landowners within 2 miles of a new or expanding livestock facility.	ATCP 51.30(6) requires local governments to give notice to landowners adjacent to a livestock facility as part of the application review process. However, this requirement is meant as a courtesy, since the political subdivision procedure under Wis. Stat. s. 93.90(4) does not require it. Under s. 93.90(5), the livestock siting law gives aggrieved persons the authority to challenge a local government decision on a siting application on specific grounds. The statutory definition of “aggrieved person” includes persons living or owning land within two miles of a livestock facility proposed to be sited or expanded.
Department has misinterpreted s. 93.90 (3)(a)2.	The Department has deleted the ATCP 51 (intro)(Note) in the final draft rule.

<b>Comment/Suggested Change</b>	<b>Department Response</b>
The rule does not meet the legislative intent of the livestock facility siting law.	The Department weighed and balanced the eight criteria for developing the final draft rule, as required under Wis. Stat. § 93.90(2)(b).
Expand the group that can submit “verified odor-related complaints” to local permitting authorities to include renters and property users, in addition to adjacent landowners.	The Department deleted this provision from the final draft rule due to the ambiguity of a “verified odor-related complaint.” Local governments have the authority to monitor permit compliance and can address any odor complaints made against a farm through means such as confirming the use of any commitments made to install odor control practices and making a request to update and follow the facility’s odor management plan.
Effective date should be the same for everyone, so use the effective date for small businesses, the 1 <sup>st</sup> day of the 3rd month after publication.	DATCP will delay the effective date of the rule for all applicants as allowed under 227.22 (2)(b).
Duration of local approval—requiring all new or expanded livestock housing or waste storage construction to begin within 2 years of approval is not workable. 51.08 (2)	This specific requirement has not changed from the existing ATCP 51. If there is a documented discharge, the proposed final draft rule has changed to require a fix in 1 year rather than 6 months.
Amend definitions of “livestock housing” and “site susceptible to groundwater”	The proposed final draft rule refers to the definition of site susceptible to groundwater in NR 151.015(18). No change to the definition of livestock housing.
In new definition for “waste transfer system” 50.01 (44) need more in rule.	New and substantially altered waste transfer systems are required to be built to NRCS 634.
Keep permit modification language	The hearing draft rule allowed a facility to apply for a permit modification to construct or alter livestock structures without the addition of Animal Units (AU) or to increase AU <20% or 1000 AU—whichever is less—with changes to livestock structures. The Department received comments supporting the permit modification language, as well as comments requesting changes to the permit modification language, specifically, limiting the allowable AU expansion above the maximum number in the most recent local approval to 300 AU. The Department has modified the rule to allow permit modifications under 20% expansion, not to exceed 800 AU.
Do not allow permit modifications for <20% expansion; base modifications on AU not %	

Comment/Suggested Change	Department Response
Tighten up language on enforcement to ensure local governments cannot be arbitrary/DATCP cannot delegate enforcement authority/Ensure local government consistency. Listed concerns in 51.14, 51.16, 51.18, 51.20, and 51.34/should require credentials to monitor NM plan.	The current ATCP 51 is silent on local government monitoring of the livestock facility siting permits they issue. Local governments have enforcement authority for permits they issue under existing law. The final draft rule clarifies the process local governments can use to monitor permit compliance. For instance, local governments must use a DATCP-approved checklist or allow livestock operators to self-certify compliance using a DATCP-approved checklist. The Department does not have the authority to delegate local governments' authority to monitor their permits to a third party.
Remove language indicating local governments can monitor compliance. Reinstate notes.	
Monitoring should be done by local government or a third party.	
Charge fee of \$1 AU or remove application fee/increase fee cap to cover actual costs of local government based on nonmetallic mining law	The Department has reviewed these issues and found that the livestock facility law does not give the Department express authority, as required under Act 21 (Wis. Stat. §227.10(2m), to set a permit application fee or prohibit financial guarantees. Therefore, DATCP has removed these provisions to be consistent with the authority it is granted under state law. Local governments' authority under state law Wis. Stat. § 66.0628(2), states that any fee that is imposed by a political subdivision shall bear a reasonable relationship to the service for which the fee is imposed.
Require financial security/guarantees from permittees	
Economic analysis does not consider all costs to comply. Rule changes are not cost-effective.	The economic analysis has been updated to reflect the proposed final draft rule. The Department believes the proposed rule changes have balanced the costs of livestock facility operators with those of local governments and property owners.
Change language on vegetative treatment areas (VTA) – extremely expensive/cost-prohibitive, reduces capacity of storage, hard on roads. Also, exceeds rulemaking authority. Setbacks are higher than NRCS 635.	The Department revised the proposed final draft rule to defer to DNR and the CAFO permit for how CAFO operators must meet this standard. CAFOs have the option to substitute an approval from the DNR as part of an operation's WPDES permit in lieu of meeting the standard in the draft rule for this standard and two others.
Separation distances from end of VTA to environmentally sensitive areas are greater than those in NRCS 635. Setbacks seem much higher than required in NR 812 and Standard 635. (51.20 (2)(a))	No change. The separation distances included in the rule are actually consistent with those in NRCS 635 and NR 812. The difference in the numbers is related to where the measuring occurs to and from.

<b>Comment/Suggested Change</b>	<b>Department Response</b>
Use feed storage definition included in NRCS 629	The definition for feed storage was modified in the proposed final draft rule to better align with the definition in the NRCS 629 standard.
Do not incorporate NRCS 629. It requires storing low nutrient content water, reduces solid content of manure storage and exacerbates the liquid manure problem.	No change. The Department has incorporated NRCS 629, which is the standard for waste treatment.
Significant discharge for process wastewater is already regulated by DNR. If it remains in the rule, the provision should define the term “significant discharge” so that interpretation is not left to local authorities.	This requirement is consistent with the performance standards in NR 151.
Add language referring to 51.20 (2)(c), 51.20 (4)(d)(1), 51.20 (8) “and will be constructed to prevent exceedances of groundwater quality standards in Ch. NR 140”	No change. DATCP reviewed the proposed rule language and believes it covers requirements to protect groundwater.
In plain language, VTA standard is not a design standard for animal lots and barnyards. It is a design standard for water quality.	DATCP changed the language in the plain language rule analysis to reflect that the NRCS 635 standard is meant to help protect water quality.
Need to be more consistent with NR 151, ATCP 50, and NR 243.	No change. DATCP reviewed the proposed rule language and believes it is as consistent as possible.
CAFO Permit substitution is confusing (51.20(10)(b))	DATCP reviewed the proposed rule language and believes the WPDES permit substitution language and process are clear.
51.12 (1)(a-d) Should be more clear that general setbacks apply to all structures except Category 1 and Category 2 livestock housing	No change. The Department reviewed the language and believes it is clear to what structures the general setbacks apply.
51.14 Odor – practices are cost prohibitive. Also, timeframe for innovative practice determination should be reduced from 90 days to 45 days.	No change. The Department believes 90 days is a reasonable timeframe, however, it will attempt to make determinations as soon as possible.

<b>Comment/Suggested Change</b>	<b>Department Response</b>
Decrease setbacks/don't measure from property lines/ keep existing odor standard /setbacks will result in unwanted variance process/ OFFSET model is going away, but still used to determine setbacks (ATCP 51.12 (2)(a-d))	The current odor scoring system has been in place since ATCP 51 was first adopted in 2006. The technical expert committees convened in 2010, 2014 and 2018 determined that some odor reductions practices in the model were found to actually increase odor and other practices did not decrease odor as much as had been calculated in the model. Also, the addition of points for an odor management plan and an emergency response plan allowed large structures to be sited very close to neighbors despite producing significant odor. The hearing draft rule proposed eliminating the existing odor worksheet and replacing it with setbacks, combine with credits for odor reduction practices. The hearing draft rule also measured these setbacks from the property line. In the proposed final draft rule, the Department decreased the proposed setbacks from the hearing draft rule and continues to provide credits for odor reduction practices. The proposed final draft rule also includes a new odor control practice allowed for structures located where the adjacent property is cropland. The proposed final draft rule continues to measure setbacks from the property line, which is consistent with the existing rules' setbacks for manure storage and animal housing structures. The proposed final draft rule provides additional clarification on how to measure the setbacks to allow for property use under different legal ownership but controlled by the facility owner to be considered part of the same "property." Local governments maintain the ability to set lesser setback distances. Local communities maintain the ability to adopt more stringent standards under the livestock facility siting law Wis. Stat. § 93.90 (3)(a) 5. and 6., if they adopt scientifically defensible findings of fact showing those more stringent standards are necessary to protect public health or safety.
Increase setbacks/keep measuring from property lines/don't allow odor credits/tighten odor and air emission regulations/allow local governments to exceed setbacks/include setbacks for feed storage structures  Definition of Property lines in 51.01 (33)	
Consider other sources of odor and noise (crematoriums, dead animal composting sites, landspreading, fans)	The final draft rule includes buildings used to incinerate or compost dead livestock in the definitions of livestock structures that must meet general setbacks.
Object to the categorization of structures as category 1 or 2, and the differences in setbacks. (51.12 (2) and 51.01(19.m)	No change. The setback distances for livestock structures in the final draft rule are based on science, including the OFFSET output model. These types of structures already have different odor generation scores in the existing ATCP 51.
Remover clustering provisions that allow more lenient setbacks. Also, this language is confusing.	The only change is to expand the separation distance to 1,320 feet. This provision is similar to the clustering provision allowed in the existing ATCP 51.

<b>Comment/Suggested Change</b>	<b>Department Response</b>
Don't allow expansion of existing grandfathered structures	No change. ATCP 51 currently allows expansion of grandfathered structures, so long as those structures do not encroach upon the setback. The hearing draft rule and final draft rule both limit expansion to 20% of surface area for structures located within setbacks. Not allowing producers to expand non-conforming structures at all would severely limit use of existing facilities.
Need guidelines for turkey manure odors	Turkey housing is included in the setback requirements.
Require all dead animal carcasses to be rendered daily. No composting facilities on site.	No change. ATCP 51 is a livestock facility siting rule and does not include authority to require a facility to render carcasses.
Require regular testing of air quality both on and offsite for ammonia, hydrogen sulfide, methane and particulate matter	This comment has been forwarded to DNR, which has regulatory authority over air emissions.
Request an extension to the rule revision process to enable time to get the odor/setback revisions right. Need to include more sources of odor, etc.	This would require a change to statute. There is no procedure under Wis. Stats. § 227.135(5), which allows an extension to a rule scope.
Include language that all prior odor control practices are incorporated to the same extent as required under the prior permit. Do not allow financial or other justification to avoid implementation of practices. 51.14 (2) (b)	The proposed final draft rule includes changes that require existing permittees to meet all odor reduction commitments. Financial justification for not meeting an odor reduction commitment has been deleted from the proposed final draft rule.
In note where it describes what the odor plan "may" include, change it to what the practices "shall" include. 51.14 (2) (b) (note)	No change.
51.10 (2)(b) does not allow any variances for using/modifying existing structures built to the conservation practice in place at the time of construction.	The proposed final draft rule includes language that explains when a variance is allowed.
Add language to ATCP 51.18 (1)(a) to reference NR 140	The proposed final draft rule revised 51.18 (1) combined sections (a) and (b). No reference to NR 140 was added.
Engineered structures built to old standards should not be held to new engineering standards (51.18)(4)(a)3.	DATCP modified the proposed final draft rule to clarify that engineered structures such as manure storage will be evaluated to their original design standards, not the newest design standards. Existing storage that was not built to a standard will be evaluated against the 2014 NRCS 313 standard.

<b>Comment/Suggested Change</b>	<b>Department Response</b>
Amend manure storage investigation note under 51.18 (4) (Note)	The note was deleted in the proposed final draft rule.
Manure storage evaluation/inspection should not require full emptying of the facility and in some cases cannot be completely emptied without damaging the liner (51.18 (4))	The language in the proposed final draft rule was amended to say that the storage should be emptied “to the extent possible.” Also, language was added to provide alternative inspection methods when emptying a pit would be dangerous or otherwise not feasible.
Support new manure storage evaluation requirements, and should apply to ALL manure storage, not just those over 10 years.	DATCP modified the proposed final draft rule to include a tiered system of manure storage evaluation based on the age of the structure.
Waste storage capacity should be at least 18 months	No change. Design of a livestock facility’s manure storage, including capacity, is a business decision in many cases, and a permitting issue for CAFO sized farms. ATCP 51 establishes the manure storage design engineering requirements, but allows the facility to determine its capacity based on available acreage for manure application, NM plan, and other factors.
Any new liquid waste storage tank should be of a double hull design.	The NRCS 313 standard is the adopted waste storage facility standard in Wisconsin. If the standard is updated, the Department can consider proposing the updated standard be included in ATCP 51 at that time.
All open lagoon manure storage should be prohibited and all existing open lagoon storage should be upgraded to a closed or covered system/digestor/pelletized/processed with microbes.	No change. The livestock facility siting law, Wis. Stat. § 93.90, requires the Department consider eight criteria when establishing standards. The Department does not believe this change would meet the balancing test among the 8 criteria, especially in the area of associated costs.
Prohibit all leakage in manure storage, not just significant leakage.	The Department has adopted the NRCS 313 waste storage standard. This standard requires manure storage be designed to prohibit significant leakage.
Don’t like to use the term waste (51.01 (42))	Existing technical standards referenced in ATCP 51 use the term “waste.”
Require that WPDES permits actually be current and in compliance rather than certified to be current and in compliance.	No change. An applicant certifying the WPDES permit is current and in compliance is equivalent to it being current and in compliance.
Add language referring to NR 151.07 and other performance standards and reference to NR 140 to ATCP 51.16 (4)	References to performance standards are included in the proposed final draft rule.

<b>Comment/Suggested Change</b>	<b>Department Response</b>
Concerned that a local government, in cases where documentation does not exist about how existing manure storage pits were constructed, may request a written report documenting methods used for evaluation and the findings in support of the evaluation.	No change. The flowchart included in the proposed final draft rule may assist local governments in understanding the evaluation process and minimize additional requests for this information.
Re-phrase note language under 51.16 (4) (1) Note	Note has been deleted in the proposed final draft rule.
Require contracts for landspreading as part of NM plan and adequate land base	No change. The proposed final draft rule requires that applicants demonstrate adequate land base to cover the same or greater number of animal units than the number for which the operator seeks approval.
Require composting of manure	No change. ATCP 51 is a livestock facility siting rule and does not include operational standards such as requiring facilities to compost manure.
Nutrient Management plans should require more acres per animal unit	The 2015 NRCS 590 standard is the adopted nutrient management standard in Wisconsin. If the standard is updated in the future, it will likely be incorporated in ATCP 50, which is referenced in ATCP 51.
Nutrient Management regulations have proven inadequate to protect drinking water	The state's Nutrient Management 590 standard is an agronomic standard that includes some water quality protections if implemented properly. Local communities can adopt more stringent standards under the livestock facility siting law Wis. Stat. § 93.90 (3)(a) 5. and 6., if they adopt scientifically defensible findings of fact showing those more stringent standards are necessary to protect public health or safety.
Any spray of liquid manure should be injected with a coulter type system. Spray of liquid manure should be prohibited.	No change. ATCP 51 is a livestock facility siting rule and requires compliance with the nutrient management requirements in ATCP 50. A prohibition on spraying liquid manure is not included in ATCP 50 or the underlying statutory authority.
All properties in the NM plan and facility site should be required to have monitoring wells at a minimum depth to groundwater to provide early warning of contamination.	No change. The livestock facility siting law, Wis. Stat. § 93.90, requires the Department to consider eight criteria when establishing standards. The Department does not believe this requirement would meet the balance test among the 8 criteria, specifically regarding cost.

<b>Comment/Suggested Change</b>	<b>Department Response</b>
Any operation requiring any type of high capacity well should be required to install a water treatment facility.	No change. The livestock facility siting law, Wis. Stat. § 93.90, requires the Department to consider eight criteria when establishing standards. The Department does not believe this requirement would meet the balance test among the 8 criteria, specifically regarding cost.
Clarify process for adopting more stringent standards	The Department will work with stakeholder groups to provide increased technical assistance on how to implement the livestock siting law and rule.
Require 6 <sup>th</sup> worksheet related to local road and other town infrastructure impacts	No change. The Department will consider this request in the future.
Require a 7 <sup>th</sup> worksheet addressing health and safety risks for facilities over 1000 AUs	No change. The Department will consider this request in the future.
Driftless area should have more stringent standards already set by the state or be allowed to prohibit CAFOs altogether.	Local communities can adopt more stringent standards under Wis. Stat. § 93.90 (3)(a) 5. and 6., if they adopt scientifically defensible findings of fact showing those more stringent standards are necessary to protect public health or safety. Also, Wis. Stat. § 93.90 (3) (b), allows local governments to limit livestock facilities by size as long as they have at least one zoning district that allows livestock facilities of all sizes. Finally, Wis. Stat. § 93.90 (3) (c), allows local governments to prohibit livestock facilities of all sizes if they adopt scientifically defensible findings of fact showing that the prohibition is necessary to protect public health and safety.
Need a standard to consider noise from fans – large, 24 hour operations	The setback provisions for animal housing are in the rule to address this concern.
Cap size of CAFOS, moratorium on all new CAFOS and CAFO expansion, no CAFOS on sand, no CAFOS within certain distance of protected wildlife areas/waterways	The Department has no authority under state law to address these issues in ATCP 51. Comments related to DNR authority have been forwarded to that agency, while others would require the legislature to make a law change.
Large farms decrease property values—13% reduction in property value for those living within 1 mile of a farm >4000 AU	The Department has included these comments as part of the economic impact statement and considered the economic impact on neighboring properties as part of the decision making behind the recommended setback.
Right to Farm law needs to be modified	ATCP 51 is an administrative code adopted under the authority Wis. Stat. § 93.90. Changes to the “Right to Farm” law will require a statutory change by the Legislature.

<b>Comment/Suggested Change</b>	<b>Department Response</b>
Remove from section 1(intro) (Note) of rule: The proposed rule violates a local building, electrical or plumbing code, etc. . .	The note has no legal bearing and this statement has been removed from the proposed final draft rule.
Do all structures need to meet the updated standards or can existing structures meet the standards in place at the time of construction?	Existing, nonexpanding structures are grandfathered in if they meet the standards that were in place at the time of construction.
Provide cost-sharing to CAFO operators who voluntarily install/retrofit non-required practices at the request of the community and neighbors.	No cost-sharing is provided to livestock siting permit applicants to meet standards. Applicants are able to participate in and potentially receive financial assistance from a variety of voluntary conservation programs including those run by counties and NRCS as well as Producer-Led watershed groups.
Limit a single facility to one permit application per year. An incomplete application resubmitted would be considered a new application.	The livestock facility siting law under Wis. Stat. § 93.90, does not provide explicit authority for DATCP to limit livestock siting applicants to 1 submittal/year.
Require state approval of local siting ordinances before they take effect.	The livestock facility siting law under Wis. Stat. § 93.90, does not provide explicit authority for DATCP to approve local ordinances before they take effect.
Worksheet 3 – Need a place to document actual MWPS data on the worksheets	Worksheet 3 has been amended in the proposed final rule to reflect the ability to use actual MWPS data. Applicants completing a nutrient management plan using SnapPlus can enter their actual data in that program.
Worksheet 5 – Definition of feed storage should not include structures storing covered feed with less than 40% moisture	The proposed final draft rule has been amended to clarify that the definition of feed storage does not apply to structures covering feed with less than 40% moisture.
Permit should run with operator, not land. No grandfathering. A new operator should have to come in compliance with existing standards to operate.	The Department has amended the language so the livestock siting permit cannot be transferred to a new livestock facility owner.

## 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.

**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, 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 [livestocksiting.wi.gov](http://livestocksiting.wi.gov).

(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).

(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 (32).

(16) "High-use building or area" means any of the following:

- (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. 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.

(f) Areas containing playgrounds, public beaches or parks,  municipal boundaries.

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**(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 swallows.

**(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, ratites, 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. (36) 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 Appendix A of ch. ATCP 51, Worksheet 2, Chart 2 published in the Administrative Register, April 2006, No. 604.

**(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, to collect or store waste generated at a livestock facility, or to incinerate or compost dead livestock. "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. 93.90 (3) (a) 3., Stats. The statutes listed in par. (a) pertain to shoreland 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. 93.90 (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 243.03 (32).

**(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 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 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:** Some, 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* 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 (3) (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.

**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 800 "animal units," that approval authorizes the operator to keep up to 800 "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:

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 (see s. 93.90 (3) (e), 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.

(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.

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 one year 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 a local ordinance and specific to setbacks 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.

**Note:** See s. 93.90 (3) (ar), Stats.

(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, [livestocksiting.wi.gov](http://livestocksiting.wi.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) Except as provided in sub. (2), 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) Except as provided in sub. (2), 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) Except as provided in sub. (2), 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 more than a 20 percent 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.

**(2) MANURE STORAGE AND LIVESTOCK HOUSING SETBACKS.**

(a) In determining property lines for the purposes of this sub-section, the livestock facility operator may demonstrate legal ownership of adjacent parcels by providing any of the following:

1. Written documentation showing the livestock facility operator holds fee title,

2. Written documentation from a family member demonstrating ownership by fee title and providing written consent for the parcel to be included as part of the livestock facility,

3. Written documentation showing the livestock facility operator holds ownership interest in a parcel in common ownership under a legal business organization, or

4. Written documentation showing the livestock facility operator holds an easement or other legal interest in property, which allows the person to undertake cropping, livestock management, land disturbing construction activity, or maintenance of storm water BMPs on the property. A rental or lease agreement is not sufficient to demonstrate ownership.

(b) Except as provided in par. (e), a manure storage structure may not be located within:

1. 350 feet of any property line or public road right of way, if the expanded livestock facility will have fewer than 1,000 animal units.

2. 650 feet of any property line, if the expanded livestock facility will have between 1,000 to 2,499 animal units.

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

4. 1,250 feet of any property line, if the expanded livestock facility will have between 4,000 to 5,999 animal units.

5. 1,450 feet of any property line for the following:

a. An expanded livestock facility that will have 6,000 or more animal units.

b. Any new livestock facility.

c. Except as provided in par. (e), Category 1 livestock housing may not be located within:

1. 350 feet of any property line, if the expanded livestock facility will have fewer than 1,000 animal units.

2. 650 feet of any property line, if the expanded livestock facility will have between 1,000 to 2,499 animal units.

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

4. 1,250 feet of any property line, if the expanded livestock facility will have between 4,000 to 5,999 animal units.

5. 1,450 feet of any property line for the following:

a. An expanded livestock facility that will have 6,000 or more animal units.

b. Any new livestock facility.

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

1. 250 feet of any property line, if the expanded livestock facility will have fewer than 1,000 animal units.

2. 450 feet of any property line, if the expanded livestock facility will have between 1,000 to 2,499 animal units.

3. 700 feet of any property line, if the expanded livestock facility will have between 2,500 to 3,999 animal units.

4. 900 feet of any property line, if the expanded livestock facility will have between 4,000 to 5,999 animal units.

5. 1,050 feet of any property line for the following:

a. An expanded livestock facility that will have 6,000 or more animal units.

b. Any new livestock facility.

(e) A manure storage or Category 1 or 2 housing structure may be located within the setbacks specified in pars. (b), (c), and (d) if any of the following apply:

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

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 the 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 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 1,320 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 1,320 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 350 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. 604, eff. 5-1-06.

**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 compliance.

(b) Except as provided in par. (2) (b), if a previously approved livestock facility is granted a local approval 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.

(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 subd. (a) 1. and 2. The plan shall 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 inserts].**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.

(3) ODOR MANAGEMENT STANDARD. (a) In any application for local approval 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.

**Note:** The spreadsheet equivalent of Appendix A, Worksheet 2, Table A available on the department's website at [livestocksiting.wi.gov](http://livestocksiting.wi.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 subd. (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 subd. (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 05-014: cr. Register April 2006 No. 604, eff. 5-1-06.

**ATCP 51.16 Nutrient management and Farm Conservation Practices.** (1) A livestock operator shall comply with s. ATCP 50.04.

(2) 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 WI-1 (February, 2016) shall be used to estimate the quantity of manure generated. Appendix A, Worksheet 3 includes the

Technical Note's estimation tool. The Technical note allows applicants to enter their manure hauling records into SnapPlus, for more precise waste estimation.

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) 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 comply with s. ATCP 50.48(6).

b. A political subdivision may ask a nutrient management planner to submit records kept in accordance with s. ATCP 50.48(6).

(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 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.

(3) (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.

(4) 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.

(5) NUTRIENT MANAGEMENT UPDATES. The political subdivision may:

(a) Require an operator to submit annual updates to a nutrient management plan as necessary, to demonstrate compliance with ATCP 50.04.

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

**History:** CR 05-014: cr. Register April 2006 No. 604, eff. 5-1-06.

**ATCP 51.18 Waste storage facilities.** (1) 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. 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.

**Note:** See s. NR 151.05 and s. NR 151.015(18).

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

1. Submitting 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 the WPDES permit.

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.

**(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 complete an evaluation in accordance with *Appendix D* and 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 then-existing NRCS standards, and shows no apparent signs of structural failure or significant leakage as demonstrated by a visual inspection of the emptied facility, to the extent possible based on liner type. If emptying or entering an underbarn or slurry store facility is not feasible, alternative methods of checking for significant leakage shall be conducted such as soil test pits or borings around the perimeter of the facility.

3. The construction standards for the facility cannot be verified from reliable documentation, and the facility is in good condition and repair, shows no apparent signs of structural failure or significant leakage as demonstrated by a visual inspection of the emptied facility to the extent possible based on liner type, and is located on a site with soils and separation distances that comply with Tables 1, 2, 3, 4, or 5 in NRCS technical guide waste storage facility standard 313 (January, 2014).

(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 a livestock facility expansion or a request for a permit modification that proposes the construction or expansion of a waste storage facility, 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.

**(5) NEW OR SUBSTANTIALLY ALTERED FACILITIES.** A registered professional engineer or certified conservation engineering practitioner shall certify design specifications for:

(a) New or substantially altered waste storage facility in accordance with 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) New or substantially altered waste transfer systems in accordance with 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) FACILITY CLOSURE.** (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 360 (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 254.59, Stats., as appropriate.

**(7) FACILITY OPERATION.** (a) Existing manure storage facilities shall comply with s. NR 151.05 (4).

(b) There shall be no mixing or storage of human waste or septage 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 50.56 (3) (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, 2016R*).

(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, as measured along the treatment flow path:
  - a. 1,500 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
  - d. 450 feet from surface inlets that discharge to navigable waters
  - e. 225 feet from channelized flow (i.e., a drainage area of  $\geq 5$  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., as measured along the treatment flow path.

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 [livestocksiting.wi.gov](http://livestocksiting.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.

Note: See s. NR 151.055.

(4) FEED STORAGE (a) For the purposes of the requirements in this section, a feed storage structure includes any bunker or paved area used to store or handle feed with a 40% or higher moisture content, but does not include silos, storage bags, grain bins, commodity sheds, and mixing bays.

(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 completes an evaluation in accordance with *Appendix D* and 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, [livestocksiting.wi.gov](http://livestocksiting.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.

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, if the structure covers one acre or more. 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:** 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), runoff from two or more feed storage structures at the same livestock facility are allowed to converge if:

1. The structures meet the separation distances in sub. (2) (a)
1. a. to f., and
2. The total surface area of the structures is less than one acre.
- d. :

**(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 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 05-014: cr. Register April 2006 No. 604, eff. 5-1-06.

### **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 [livestocksiting.wi.gov](http://livestocksiting.wi.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.

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

**(5) COMPLETE APPLICATION.** Within 45 days after a political subdivision receives an application under sub. (1), the political subdivision shall notify the applicant whether the application meets the requirements under subs. (1) to (3). If the political subdivision determines that the application is incomplete, it must complete a department-approved checklist to identify every item needed to make the application complete and provide a copy of the completed checklist to the applicant. Items not identified in the checklist are deemed complete and an applicant is only required to submit additional materials identified in the checklist to receive a completeness determination. Within 14 days after the applicant has met the requirements under subs. (1) to (3), the political subdivision shall notify the applicant that the application is complete. A notice of completeness does not constitute an approval of the proposed livestock facility.

**Note:** See s. 93.90 (4) (a), Stats.

**(6) NOTICE TO ADJACENT PROPERTY OWNERS.** Within 14 days after a political subdivision issues a notice under sub. (5), the political subdivision shall mail a completed written copy of the notice in *Appendix C* to the recorded owner of each parcel of land that is adjacent to the proposed livestock facility. The political subdivision shall mail the notice by first class mail. A political subdivision may recover from the livestock facility operator its reasonable cost to prepare and mail notices under this subsection. Failure to comply with the notice requirement under this subsection does not invalidate a political subdivision's approval of a proposed livestock facility, or create a cause of action by a property owner against the political subdivision.

**History:** CR 05-014: cr. Register April 2006 No. 604, eff. 5-1-06.

**ATCP 51.32 Timely action on application. (1)**  
**GENERAL.** Except as provided in sub. (2), a political subdivision shall grant or deny an application under s. ATCP

51.30 (1) within 90 days after the political subdivision gives notice under s. ATCP 51.30 (5) that the application is complete.

**(2) TIME EXTENSION.** (a) A political subdivision may extend the time limit in sub. (1) for good cause, including any of the following:

1. The political subdivision needs additional information to act on the application.
2. The applicant materially modifies the application or agrees to an extension.

(b) A political subdivision shall give an applicant written notice of any extension under par. (a). The notice shall state the reason for the extension, and shall specify the extended deadline date by which the political subdivision will act on the application.

**Note:** See s. 93.90(4) (d) and (e), Stats.

**History:** CR 05-014: cr. Register April 2006 No. 604, eff. 5-1-06.

**ATCP 51.34 Granting or denying an application.**

**(1) GRANTING AN APPLICATION.** Except as provided in sub. (2), a political subdivision shall grant an application under s. ATCP 51.30 (1) if all of the following apply:

(a) The application complies with s. ATCP 51.30.

(b) The application contains sufficient credible information to show, in the absence of clear and convincing information to the contrary, that the proposed livestock facility meets or is exempt from the standards in subch. II. To the extent that a standard under subch. II vests discretion in a political subdivision, the political subdivision may exercise that discretion.

**Note:** See s. 93.90 (4) (d), Stats.

**(2) DENYING AN APPLICATION.** A political subdivision may deny an application under s. ATCP 51.30 if any of the following apply:

(a) The application fails to meet the standard for approval under sub. (1).

(b) The political subdivision finds, based on other clear and convincing information in the record under s. ATCP 51.36, that the proposed livestock facility fails to comply with an applicable standard under subch. II.

**(3) WRITTEN DECISION.** (a) A political subdivision shall issue its decision under sub. (1) or (2) in writing. The decision shall be based on written findings of fact included in the decision. The findings of fact shall be supported by evidence in the record under s. ATCP 51.36. Findings may be based on presumptions created by this chapter. A political subdivision may only impose conditions related to an operator's compliance with the standards authorized in subch. II of ch. ATCP 51. Any conditions attached to a local approval must be described in the final written decision granting the approval. Nothing in this chapter precludes a political subdivision from entering into a voluntary agreement with a permit applicant outside the scope of ch. ATCP 51.

(b) If a political subdivision grants an application for local approval, the political subdivision shall issue the local approval to the applicant in writing. The local approval shall include a duplicate copy of the approved application, marked "approved."

The 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.

**Note:** A successful applicant may wish to record the approval documentation under par. (b) with the register of deeds, and convey the documentation to any subsequent purchaser of the livestock facility.

**(4) TERMS OF APPROVAL.** An approval under sub. (1) is conditioned on the operator's compliance with subch. II and representations made in the application for approval. A political subdivision may:

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

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

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

**Note:** The department approved checklists are available at [livestocksiting.wi.gov](http://livestocksiting.wi.gov).

**Note:** A political subdivision may request documentation that manure and nutrients were applied according to a nutrient management plan, s. ATCP 51.16, a livestock structure was installed according to standards, ss. ATCP 51.18 (8) and 51.20 (11), and activities identified in training and other required plans were conducted in accordance with that plan. (b) Withdraw an approval, or seek other redress provided by law, if any of the following apply:

1. The operator materially misrepresented relevant information in the application for local approval.

2. The operator, without authorization from the political subdivision, fails to honor relevant commitments made in the application for local approval.3. The livestock facility fails to comply with applicable standards in subch. II.

**Note:** A political subdivision should exercise sound judgment in deciding whether to take compliance action under sub. (4) (b). The political subdivision may consider extenuating circumstances, such as adverse weather conditions, that may affect an operator's ability to comply. A political subdivision may also consider the nature and seriousness of the violation, whether the violation was intentional or accidental, the operator's compliance history, consistency of enforcement, and whether the problem can be resolved without formal enforcement. Before taking compliance action, a political subdivision should give the operator notice and a reasonable opportunity to demonstrate compliance.

**(4m) MODIFICATION** (a) As an alternative to procedures to ss. ATCP 51.30 and 51.32, a livestock operator with a local approval granted in accordance with sub (1) may apply for a modification of that local approval under either of the following conditions:

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

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

a. The planned increase in animal units will not exceed 20 percent of the maximum number of animal units authorized in the most recent local approval issued under sub. (1), but in no case may the increase exceed 800 animal units.

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

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

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

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

**Note:** Appendix B contains instructions to complete a request for permit modification, including options to complete Worksheet 5. The department-approved form is available at [livestocksiting.wi.gov](http://livestocksiting.wi.gov).

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

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

(c) The political subdivision shall provide notice of the modification to adjacent property owners in accordance with s. ATCP 51.30 (6), but is not required to take any other actions under s. ATCP 51.30 to process a permit modification.

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

(d) A political subdivision must grant or deny a modification request within 45 days after the livestock operator's submission of a complete application, and is not required to follow the procedures in s. 51.32 except provided in sub. 1.

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

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

**(5) NOTICE TO DEPARTMENT.** (a) Within 30 days after political subdivision grants or denies an application under this section, or withdraws an approval under sub. (4) (b) or s. ATCP 51.08 (2), the political subdivision shall do all of the following:

1. Give the department written notice of its action.

2. Electronically file with the department a copy of the final application granted or denied, if the political subdivision has granted or denied an application under this section. The 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.

3. Electronically file with the department a copy of the political subdivision's final notice or order withdrawing a local

approval under sub. (4) (b) or s. ATCP 51.08 (2), if the political subdivision has withdrawn a local approval.

**Note:** This website, [livestocksiting.wi.gov](http://livestocksiting.wi.gov), has instructions for electronic filing with the department.

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

**History:** CR 05-014: cr. Register April 2006 No. 604, eff. 5-1-06.

**ATCP 51.36 Record of decision-making.** A political subdivision shall keep a complete written record of its decision-making related to an application under s. ATCP 51.30. The political subdivision shall keep the record for at least 7 years following its decision. The record shall include all of the following:

(1) The application under s. ATCP 51.30 (1), and all subsequent additions or amendments to the application.

(2) A copy of any notice under s. ATCP 51.30 (5), and copies of any other notices or correspondence that the political subdivision issues in relation to the application.

(3) A record of any public hearing related to the application. The record may be in the form of an electronic recording, a transcript prepared from an electronic recording, or a direct transcript prepared by a court reporter or stenographer. The record shall also include any documents or evidence submitted by hearing participants.

**Note:** Municipal law normally determines whether a hearing is required. *See*, generally, ch. 68, Stats.

(4) Copies of any correspondence or evidentiary material that the political subdivision considered in relation to the application.

(5) Minutes of any board or committee meeting held to consider or act on the application.

(6) The written decision required under s. ATCP 51.34 (3).

(7) Other documents that the political subdivision prepared to document its decision or decision-making process.

(8) A copy of any local ordinance cited in the decision.

**History:** CR 05-014: cr. Register April 2006 No. 604, eff. 5-1-06.