State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: July 7, 2017

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
John Petty, Administrator, Agricultural Resource Management Division

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

PRESENTED BY: Agricultural Resource Management Division

REQUESTED ACTION:

At the July 20, 2017 meeting of the Board of Agriculture, Trade and Consumer Protection ("Board"), the Department of Agriculture, Trade and Consumer Protection ("Department") will ask the Board to authorize public hearings on a proposed rule revising ch. ATCP 51, related to livestock facility siting.

SUMMARY

Background

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

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

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

Rule Content

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 2015 NRCS standard for nutrient management, and the 2016 NRCS standards for waste treatment and 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 Technical Expert Committee and stakeholder input. Key changes include modifications to setback and odor standards.
- Modifies the procedures (subchs. I and III of ATCP 51) that local governments must follow in issuing a siting permit under a zoning or licensing ordinance including those used to determine completeness of siting applications, modifications to siting permits, the use of checklists to monitor facility compliance, and the fees local governments charge for permit modifications.
- Modifies local permit application forms and worksheets to reflect changes in requirements and to ensure that they are clear, complete, and elicit information that documents compliance with applicable siting standards.
- Makes other changes, clarifications, and updates as necessary to improve implementation of the siting rule, consistent with the requirements in Wis. Stat. § 93.90(2).

Contents of this Rule

The following provides a more detailed analysis by topic.

Livestock Facilities, Structures, and other Definitions

This rule clarifies that a livestock facility includes the livestock, livestock structures, and parcels on land upon which livestock facility is located, except for pastures and winter grazing areas. It excludes a concentration of 50 or fewer calf hutches from the definition of an animal lot. Concentrations of more than 50 hutches must meet setback and runoff management standards. Storage structures designed exclusively for process wastewater are excluded from the design and setback requirements that apply to manure storage structures.

This rule eliminates definitions related to the prior odor standard, including affected neighbor and high use building.

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

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

Ordinances and Permits Filed with the Department

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

Duration of Local Approval

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

Application for Local Approval

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

Key changes to the application materials include:

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

State 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.

Property Line and Road Setbacks

This rule retains property line and road setback requirements for livestock structures, except manure storage and certain types of housing.

This rule:

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

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

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

Odor Management; Livestock Structures

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

For livestock operations issued a permit prior to the effective date of this rule revision, they must continue to meet the requirements of the odor standard in their permits. They are released from these requirements if they are granted a new local approval. However, they need to develop an odor management plan if 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. Livestock facilities seeking local approval for the first time after adoption of this rule revision will not need to complete an odor management plan for existing manure storage and livestock housing, unless these structures are located within the separation distances discussed above.

For new and expanding manure storage structures and certain types of livestock housing, the new odor standard provides operators credit for odor control practices in the form of a reductions to setback requirements. Livestock operators may use these reductions to allow construction within the new setback areas. Worksheet 2 has been modified to enable operators to document odor control practices and calculate the reduced setbacks based on installation and maintenance of these practices. Worksheet 2 includes revised specifications for the odor control practices that the operator must meet to claim a credit.

Waste and Nutrient Management

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

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

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

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

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

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

Waste Storage Facilities

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

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

For existing storage facilities, which can only be used if properly certified, this rule 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, as well as visual inspections for any facility constructed within the last 10 years according to then-existing NRCS standards. However, more extensive inspection and documentation requirements apply to older storage facilities including the need to empty the facility before inspection. If there is no reliable documentation, a full inspection including test pits may be required.

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

- NRCS technical guide manure storage facility standard 313 (January 2014).
- NRCS technical guide manure transfer standard 634 (January 2014).

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

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

Runoff Management

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

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

- 1500 feet from navigable lakes, ponds and flowages
- 450 feet from wetlands and navigable streams and rivers
- 750 feet from conduits to groundwater
- 450 feet from surface inlets that discharge to navigable waters,
- 225 feet from channelized flow (i.e., a drainage area of $\geq$ 5 acres)
- 225 feet from subsurface drains

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

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

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

This rule substantially changes requirements for feed storage facilities. Existing buildings, bunkers, or paved areas used to store feed must be evaluated to determine whether they meet technical standards, are in good repair, and do not have signs of a significant discharge. New operating requirements for existing feed storage include the diversion of clean water and collection and storage of leachate and initial runoff.

Every new or substantially altered feed storage structure, including any unroofed building, bunker, or paved area used for feed storage or handling, now must be designed, constructed, and maintained in accordance with NRCS technical guide waste treatment standard 629 (January, 2017), with the leachate and contaminated runoff from such storage structures being collected and stored for future land application, or treated in accordance with NRCS technical guide vegetated treatment area standard 635 (September, 2016). The use of simple vegetated treatment areas to manage runoff is a less viable option for operations over 500 AUs.

If a new or expanded feed storage structure is less than one acre and not located in or near a sensitive area, the new or altered portions of feed storage structure must meet design requirements for the floor of the structure, but may manage runoff in any manner that avoids a significant discharge. This is a low-cost option that is intended to hold down costs for non-CAFOs that build new or expanded feed storage structures.

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

Existing clean water diversion requirements have been expanded to require diversion if structures are located within 300 feet of wetlands and 500 feet from any conduit to groundwater.

CAFO Permit Substitutions

This proposed rule more clearly defines how CAFOs can demonstrate compliance with siting standards based on a Wisconsin Pollutant Discharge Elimination System ("WPDES") permit. Because the Department of Natural Resources ("DNR") does not issue CAFO permits with a maximum number of animal units, this rule eliminates the requirement that CAFOs provide

WPDES permits documenting the same number of animal units as sought for local approval under the siting rule. This rule still allows CAFOs to demonstrate compliance with the nutrient management requirements based on a WPDES permit, but imposes more specific requirements to submit a nutrient management checklist that was previously submitted to DNR as long as the nutrient management plan covers the same or greater number of animal units than the number for which the operator seeks local approval. CAFOs also must demonstrate compliance with the siting standards related to manure storage and runoff management by submitting plans and specifications approved by DNR for relevant livestock structures. Also, the applicant must certify that the livestock facility has met all WPDES permit conditions, and does not have any WPDES permit violations.

Permit Modifications

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

- Limits the fee to $500 or less.
- Sets criteria to qualify for a permit modification (e.g. operation does not exceed 30 percent, cumulatively, of the maximum number of animal units authorized in the most recent full application approved by the local government).
- Requires compliance with all standards contained in each worksheet except for Worksheet 5 where a livestock operator may complete only those parts of the worksheet that apply to the changes being planned for proposed livestock operation.
- Establishes a procedure for processing modifications that simplifies the steps (e.g. no written decision with findings) and reduces the waiting time to no more 45 days.

Complete Application

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

Terms of Approval

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

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

Compliance Monitoring

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

Standards Incorporated by Reference

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

- NRCS technical guide manure storage facility standard 313 (January, 2014).
- NRCS technical guide composting facility standard 317 (January, 2017).
- NRCS technical guide waste facility closure standard 360 (March, 2013).
- NRCS technical guide anaerobic digester standard 366 (August, 2011).
- NRCS technical guide roofs and covers standard 367 (April, 2016).
- NRCS technical guide windbreak/shelterbelt establishment standard 380 (October, 2016).
- NRCS technical guide nutrient management standard 590 (December, 2015).
- NRCS technical guide feed management standard 592 (July, 2016).
- 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, 2016).
- NRCS Wisconsin Conservation Planning Technical Note WI-1, "Nutrient Management" (February, 2016).

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

Economic Impact

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

This rule will have no more than a moderate impact on farmers, including "small businesses." To a limited extent, increased costs for non-CAFOs will be offset by the benefits from changes to the proposed rule, including permit modifications and protections against unfair use of

completeness determinations. The rule will have a slight but positive impact on businesses that work with livestock operations, including nutrient management planners, farm supply and service businesses, soil testing laboratories, agricultural engineers, and contractors installing farm conservation practices.

Environmental Impact

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

- Implement stronger protections for surface and groundwater when applying manure, as required by the 2015 version of the NRCS 590 nutrient management standard ("NRCS 590 standard").
- Incorporate cropland performance standards related to the phosphorous index and the tillage setback incorporated into NR 151 and ATCP 50.
- Require more effective evaluations of storage facilities to allow continued use.
- Require closure of manure storage facilities that cannot be safely operated incorporated into NR 151 and ATCP 50.
- More effectively control process wastewater discharges from feed storage structures consistent with the latest NRCS technical standards.
- More effectively control runoff from animal lots consistent with the latest NRCS technical standards.

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

Federal and Surrounding State Programs

Federal Programs

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

permit, a WPDES permit holder must also demonstrate compliance with Department standards for location of livestock structures on property and odor management, which are not covered by a WPDES permit.

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

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

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

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

Surrounding State Programs

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

Illinois

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

certain structures, certification of livestock managers, waste management plans, and reporting of released wastes. Required setback distances for new facilities are scaled by size, starting at 1,320 feet for facilities under 1000 AUs.

Iowa

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

Michigan

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

Minnesota

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

In addition, Minnesota is among the states that still allow local permitting of livestock facilities using conditional use permits. Permits issued under local ordinances may impose requirements related to facility size including size caps, minimum acreage requirements, setbacks from neighboring land uses, and odor management. According to a *2007 Summary of Animal-Related Ordinances*, 32 county zoning ordinances used simple setback standards, while 22 used a sliding

scale. The most common setback from single family residences was ¼ mile, while ½ mile was the common setback for more dense land uses such as schools. Twelve counties addressed odor using the Odor From Feedlots Setback Estimation Tool ("OFFSET"), which estimates odor impacts based on livestock type, facility size and type, separation distances, and odor control practices. These counties either incorporated OFFSET into their ordinances or use OFFSET as part of their planning process to predict odor to help determine separation distances. The survey showed that 20 counties limited the number of animals housed in a feedlot, setting caps between 1,500 to 5,000 AUs. Minnesota has enacted legislation requiring reciprocal setbacks of non-farm land uses whenever a local jurisdiction requires livestock facility setbacks. Wisconsin has no comparable requirement. Reciprocal setbacks are designed to protect livestock facilities, once approved, against encroaching development.

Data and Analytical Methodologies

This rule incorporates and is consistent with performance and conservation practice standards developed as part of recent revisions to ATCP 50 and NR 151. In addition, this rule follows the practice of the nonpoint rules by referencing the most current technical standards developed by NRCS for installation of conservation practices, including the incorporation of the 2015 standard for nutrient management planning. In developing technical and other standards, the responsible government agencies have followed similar methodologies to ensure the use of the best available science, address feasibility considerations, and secure input from stakeholders. For example, the most recent nutrient management standard incorporated into ATCP 50 underwent a rigorous process of development spearheaded by NRCS with technical assistance from agronomists, farmers, UW scientists, and agency staff. The NRCS technical standards for managing runoff from animal lots and feed storage, which are incorporated into this rule, underwent the same rigorous and balanced process as part of their development. As with the original 2006 version of ATCP 51, this rule revision relies on OFFSET in developing the framework for managing odors and establishing setbacks. As mandated under Wis. Stat. § 93.90(2)(d), the Department received advice from an expert committee for improvement of the standards in the siting rule, and its recommendations included updating technical standards. 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.

Next Steps

If the Board authorizes public hearings on this rule, the Department will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the Wisconsin Administrative Register. Between September 7 and September 22, 2017, the Department plans to hold four public hearings with afternoon and evening sessions in the following locations: Eau Claire, Wausau, Oshkosh, Jefferson. Rule comments will be accepted up to two weeks after the last public hearing is held on the rule.

DATCP Docket No. 15-R-12
Clearinghouse Rule No.

Proposed Hearing Draft
July 7, 2017

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

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

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

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

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

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

Statutes Interpreted

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

Statutory Authority

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

Explanation of Agency Authority

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

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

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

Related Statutes and Rules

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

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 2015 NRCS standard for nutrient management, and the 2016 NRCS standards for waste treatment and 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 Technical Expert Committee and stakeholder input. Key changes include modifications to setback and odor standards.
- Modifies the procedures (subchs. I and III of ATCP 51) that local governments must follow in issuing a siting permit under a zoning or licensing ordinance including those used to determine completeness of siting applications, modifications to siting permits, the use of checklists to monitor facility compliance, and the fees local governments charge for permit modifications.
- Modifies local permit application forms and worksheets to reflect changes in requirements and to ensure that they are clear, complete, and elicit information that documents compliance with applicable siting standards.
- Makes other changes, clarifications and updates as necessary to improve implementation of the siting rule, consistent with the requirements in Wis. Stat. § 93.90(2).

Contents of this Rule

The following is an analysis of the rule by topics.

Livestock Facilities, Structures, and other Definitions

This rule clarifies that a livestock facility includes the livestock, livestock structures, and parcels on land upon which livestock facility is located, except for pastures and winter grazing areas. It excludes a concentration of 50 or fewer calf hutches from the definition of an animal lot. Concentrations of 50 or more hutches must meet setback and runoff management standards. Storage structures designed exclusively for process wastewater are excluded from the design and setback requirements that apply to manure storage structures.

This rule eliminates definitions related to the prior odor standard, including affected neighbor, and high use building.

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

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

Ordinances and Permits Filed with the Department

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

Duration of Local Approval

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

Application for Local Approval

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

Key changes to the application materials include:

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

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

State 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.

Property Line and Road Setbacks

This rule retains property line and road setback requirements for livestock structures, except manure storage and certain types of housing.

This rule:

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

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

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

Odor Management; Livestock Structures

This rule provides for the phase out of the odor standard, originally adopted in 2006. In its place, this rule adopts a system of setbacks for high odor sources (manure storage and certain types of

housing). Under the new system, operators will not be required to address odor from low odor sources such as animal lots. With its emphasis on setbacks, the new system is similar to odor management approaches in surrounding states and continues to use odor control practices originally developed for the 2006 odor standard.

For livestock operations issued a permit prior to the effective date of this rule revision, they must continue to meet the requirements of the odor standard in their permits. They are released from these requirements if they are granted a new local approval. However, they need to develop an odor management plan if 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. Livestock facilities seeking local approval for the first time after adoption of this rule revision will not need to complete an odor management plan for existing manure storage and livestock housing, unless these structures are located within the separation distances discussed above.

For new or expanded manure storage structures and certain types of livestock housing, the new odor standard provides operators credit for odor control practices in the form of a reductions to setback requirements. Livestock operators may use these reductions to allow construction within the new setback areas. Worksheet 2 has been modified to enable operators to document odor control practices and calculate the reduced setbacks based on installation and maintenance of these practices. Worksheet 2 includes revised specifications for the odor control practices that the operator must meet to claim a credit.

Waste and Nutrient Management

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

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

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

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

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

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

Waste Storage Facilities

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

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

For existing storage facilities, which can only be used if properly certified, this rule provides more flexibility for certification by creating a document-only option (e.g. manure storage ordinance certification) for a facility constructed within the last 3 years according to then-existing NRCS standards, and visual inspections for any facility constructed within the last 10 years according to then-existing NRCS standards. However more effective inspection and documentation requirements apply to older storage facilities including the need to empty the facility before inspection. If there is no reliable documentation, a full inspection including test pits may be required.

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

- NRCS technical guide manure storage facility standard 313 (January 2014).
- NRCS technical guide manure transfer standard 634 (January 2014).

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

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

Runoff Management

Every new or substantially altered animal lot must be designed and constructed according to NRCS technical guide vegetated treatment area standard 635 (January, 2016). This standard

may require operators to install roofing or route runoff to storage in place of using a vegetated treatment area.

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

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

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

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

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

This rule substantially changes requirements for feed storage facilities. Existing buildings, bunkers, or paved areas used to store feed must be evaluated to determine whether they meet technical standards, are in good repair and do not have signs of a significant discharge. New operating requirements for existing feed storage include the diversion of clean water and collection and storage of leachate and initial runoff.

Every new or substantially altered feed storage structure, including any unroofed building, bunker or paved area used for feed storage or handling, now must be designed, constructed and maintained in accordance with NRCS technical guide waste treatment standard 629 (January, 2017), with the leachate and contaminated runoff from such storage structures being collected and stored for future land application, or treated in accordance with NRCS technical guide vegetated treatment area standard 635 (September, 2016). The use of simple vegetated treatment areas to manage runoff is a less viable option for operations over 500 AUs.

If a new or expanded feed storage structure is less than one acre and not located in or near a sensitive area, the new or altered portions of feed storage structure must meet design requirements for the floor of the structure, but may manage runoff in any manner that avoids a significant discharge. This is a low-cost option that is intended to hold down costs for non-CAFOs that build new or expanded feed storage structures.

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

Existing clean water diversion requirements have been expanded to require diversion if structures are located within 300 feet of wetlands and 500 feet from any conduit to groundwater.

CAFO Permit Substitutions

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

Permit Modifications

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

- Limits the fee to $500 or less.
- Sets criteria to qualify for a permit modification (e.g. operation does not exceed 30 percent, cumulatively, of the maximum number of animal units authorized in the most recent full application approved by the local government).
- Requires compliance with all standards contained in each worksheet except for Worksheet 5 where a livestock operator may complete only those parts of the worksheet that apply to the changes being planned for proposed livestock operation.
- Establishes a procedure for processing modifications that simplifies the steps (e.g. no written decision with findings) and reduces the waiting time to no more 45 days.

Complete Application

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

Terms of Approval

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

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

Compliance Monitoring

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

Standards Incorporated by Reference

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

- NRCS technical guide manure storage facility standard 313 (January, 2014).
- NRCS technical guide composting facility standard 317 (January, 2017).
- NRCS technical guide waste facility closure standard 360 (March, 2013).
- NRCS technical guide anaerobic digester standard 366 (August, 2011).
- NRCS technical guide roofs and covers standard 367 (April, 2016).
- NRCS technical guide windbreak/shelterbelt establishment standard 380 (October, 2016).
- NRCS technical guide nutrient management standard 590 (December, 2015).
- NRCS technical guide feed management standard 592 (July, 2016).
- 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, 2016).
- NRCS Wisconsin Conservation Planning Technical Note WI-1, "Nutrient Management" (February, 2016).

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

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

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

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

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

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

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

Comparison with Rules in Adjacent States

Like Wisconsin, the four surrounding states each have state requirements for new and expanding livestock operations related to facility construction, runoff control, and manure management. Except for Minnesota, these states have enacted laws that 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 1,000 AUs.

Iowa

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

Michigan

In 1999, the 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 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.

Summary of Factual Data and Analytical Methodologies

This rule incorporates and is consistent with performance and conservation practice standards developed as part of recent revisions to ATCP 50 and NR 151. In addition, this rule follows the practice of the nonpoint rules by referencing the most current technical standards developed by NRCS for installation of conservation practices including the incorporation of the 2015 standard for nutrient management planning. In developing technical and other standards, the responsible government agencies have followed similar methodologies to ensure the use of the best available science, address feasibility considerations, and secure input for stakeholders. For example, the most recent nutrient management standard incorporated into ATCP 50 underwent a rigorous process of development spearheaded by NRCS with technical assistance from agronomists, farmers, UW scientists, and agency staff. The NRCS technical standards for managing runoff from animal lots and feed storage, which are incorporated into this rule, underwent the same rigorous and balanced process as part of their development. As with the original 2006 version of ATCP 51, this rule revision relies on OFFSET in developing the framework for managing odors and establishing setbacks. As mandated under Wis. Stat. § 93.90(2)(d), the Department received advice from an expert committee for improvement of the standards in the siting rule, and its recommendations included updating technical standards. 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.

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 final report of the Technical Expert Committee, and estimated costs using a methodology similar to the one used when ATCP 51 was originally adopted in 2006.

Effects on Small Business

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

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

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

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Place Where Comments Are To Be Submitted and Deadline for Submission

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

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

CHAPTER ATCP 51
LIVESTOCK FACILITY SITING

SECTION 1. Ch. ATCP 51 (intro.) (Note) is amended to read:

This chapter is adopted under authority of ss. 93.07 (1) and 93.90 (2), Stats. This chapter interprets Wisconsin's livestock facility siting law, s. 93.90, Stats., which is an enactment of statewide concern for the purpose of providing uniform regulation of livestock facilities. According to the livestock facility siting law, a county, town, city or village ("political subdivision") may not prohibit or disapprove a new or expanded livestock facility of any size unless one of the following applies:

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

The site is located in an agricultural zoning district where the livestock facility is prohibited. A prohibition, if any, must be clearly justified on the basis of public health or safety. The livestock facility siting law limits exclusionary zoning based solely on livestock facility size.

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

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

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

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

Some, but not all, political subdivisions require local approval of new or expanded livestock facilities. The livestock facility siting law *does not require* local approval. But *if* local approval is required, the political subdivision must grant or deny approval based on this chapter. A political subdivision may not consider other siting criteria, or apply standards that differ from this chapter, except as provided in the livestock facility siting law or this chapter.

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

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

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

~~"…[T]he department shall consider whether [livestock facility siting standards] are all of the following:~~

- ~~Protective of public health or safety.~~
- ~~Practical and workable.~~
- ~~Cost-effective.~~
- ~~Objective.~~
- ~~Based on available scientific evidence that has been subjected to peer review.~~
- ~~Designed to promote the growth and viability of animal agriculture in this state.~~
- ~~Designed to balance the economic viability of farm operations with protecting natural resources and other community interests.~~
- ~~Usable by officials of political subdivisions."~~

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

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

"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, areas with concentrations of 50 or fewer calf hutches, 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.

SECTION 4. 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

SECTION 5. ATCP 51.01 (7) is amended to read:

"Certified ~~agricultural engineering~~ 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 6. ATCP 51.01 (13) (Note) is repealed.

SECTION 7. ATCP 51.01 (16) is repealed.

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 (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 11. 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 12. ATCP 51.01 (23m) is created to read:

"Manure storage structure" means a waste storage structure designed and operated primarily to store manure.

SECTION 13. 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 14. ATCP 51.01 (26) (Note) is repealed.

SECTION 15. 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 16. 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 17. ATCP 51.01 (33m) is created to read:

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

SECTION 18. 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 19. ATCP 51.01 (38m) is created to read:

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

SECTION 20. 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 21. 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 22. 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" includes a manure storage structure but does not include any of the following:

SECTION 23. ATCP 51.01 (44) (c) is created to read:

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

SECTION 24. 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 25. ATCP 51.02 (b) (Note) is amended to read:

Some, but not all, political subdivisions require local approval of new or expanded livestock facilities. ~~The livestock facility siting law does not require local approval. But if~~ If local approval is required, the political subdivision must grant or deny approval based on this chapter. A political subdivision may not require local approval for new or expanded livestock facilities smaller than 500 animal units, except as specifically authorized by the livestock facility siting law and this chapter. This chapter does not grant authority nor limit a political subdivision's authority to regulate the raising of small numbers of livestock (i.e. hobby farms) for non-commercial purposes where the activity generates less than $6,000 in gross annual income. A political subdivision may not consider other siting criteria, or apply standards that differ from this chapter, except as provided in the livestock facility siting law or this chapter.

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

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

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

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

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

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

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

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

~~"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). See s. 93.90 (1m) (a), Stats., and s. ATCP 51.01 (4).~~

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

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

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

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

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

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

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

1. Begins populating the approved livestock facility.

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

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

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

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

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

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

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

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

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

SECTION 34. 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: datcp.state.wi.us~~

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

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

SECTION 36. 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) Require a livestock structure to be set back more than 100 feet from any property line or public road right-of-way, except as provided in sub. (2), if the livestock facility will have fewer than 1,000 animal units.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The manure storage or housing structure existed prior 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 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 37. ATCP 51.12 (2m) (a) and (b) and (Note) are 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 1,000 feet to any other cluster, an operator may determine the setback distances for livestock structures in each cluster based on the animal units kept at each location, rather than the animal units at for the entire livestock facility.

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

Note: For example, a dairy operator may establish two setbacks for each cluster at a dairy facility that includes a milking operation (cluster 1) and a heifer facility (cluster 2) located 1,000 feet (or more) from each other. If the heifer facility has a manure storage facility for 200 animal units and accepts no manure from the 1200 head milking operation, the heifer facility may use the 600 foot setback for manure storage facilities on operations under 1,000 animal units.

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

SECTION 39. 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 the necessary odor control practices to achieve a passing odor score.

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

(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.

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

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

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

1. Any manure storage structure located within 600 feet of any property line.

2. Any livestock housing located within 400 feet of any property line.

(b) The odor management plan shall identify management practices that the livestock facility must follow to control odor from each manure storage structure and livestock housing located within the separation distance defined in par. (a) 1. and 2.

Note: The plan may include odor control practices identified in a local approval granted before the effective date of the rule [LRB inserts]. 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.

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

(3) NEW ODOR MANAGEMENT STANDARD. (a) In any application for local approval or permit modification submitted on or after the effective date of 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 for new or expanded manure storage and Category 1 and 2 livestock housing, and surface area of manure storage and Category 1 and 2 livestock housing located on the livestock facility at the time of the application for a local approval. This information will determine whether:

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

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

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

(4) SETBACK REDUCTIONS FOR ODOR CONTROL PRACTICES. (a) ln 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.

(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:

Nutrient management and cropland standards. (1) NUTRIENT MANAGEMENT STANDARD. (a) A livestock operator must have and follow a nutrient management plan that complies with s. ATCP 50.04(3).

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

Note: The Wisconsin NRCS 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.

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

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

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

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

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

(3) DEMONSTRATlON OF COMPLlANCE (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 ATCP 50.48, other than the livestock operator, shall answer each checklist question. The planner shall have reasonable documentation to substantiate each answer, but neither the planner nor the operator is required to submit that documentation with the checklist.

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

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

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

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

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

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

(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 maintain compliance with s. ATCP 50.04(3).

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

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

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

Waste storage facilities. (1) (a) DESIGN, CONSTRUCTION AND MAINTENANCE; GENERAL. All waste storage facilities for a livestock facility shall be designed, constructed and maintained to minimize the risk of structural failure, and to minimize the potential for waste discharge to surface water or groundwater. A waste storage facility may not lack structural integrity or have significant leakage. An unlined earthen waste storage facility may not be located on a site that is susceptible to groundwater contamination.

Note: A "site that is susceptible to groundwater contamination" is defined in s. ATCP 51.01 (39).

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

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

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

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

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

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

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

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

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

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.

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

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

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

(a) 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.

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

(c) The construction standards for the facility cannot be verified from reliable documentation, a full investigation of the facility was performed, and this investigation

established that the facility is in good condition and repair, shows no apparent signs of structural failure or significant leakage, and is located on a site at which the soils and separation distances to groundwater meeting the requirements for the appropriate liner type referenced in NRCS technical guide manure storage facility standard 313 (January, 2014).

Note: A full investigation includes emptying facilities of their contents, especially earthen-lined structures, to allow for complete inspection and evaluation. It also includes test pits or borings when there is no reliable documentation regarding a facility's separation distances to groundwater or bedrock.

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

1. NRCS technical guide manure storage facility standard 313 (January, 2014).

2. 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 sub. 1 and 2.

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

(b) A registered professional engineer or certified conservation engineering practitioner shall certify that the closure plan complies with NRCS technical guide closure of waste impoundments standard 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) 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 NR 151.05(4)(b).

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

(c) 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 building a manure storage structure. permitted under a local waste storage ordinance.

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

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 comply with NRCS technical guide vegetated treatment area standard 635 (September, 2016).

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

1. Fifteen pounds if the edge of the animal lot is not located within any of the following:

a. 1,500 feet from navigable lakes, ponds and flowages

b. 450 feet from wetlands and navigable streams and rivers

c. 750 feet from 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.

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. 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) A livestock facility shall have no significant discharge of process wastewater to waters of the state or to a direct conduit to groundwater.

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

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

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

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

2. Is in good condition and repair.

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

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

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

2. Collect and store surface discharge of leachate from stored feed and initial runoff volume of 0.20 inches from each precipitation event before it leaves the structure or paved area, if the structure or paved area covers more than one acre. Collected leachate shall be stored and disposed of in a manner that prevents discharge to waters of the state.

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

4. Avoid accumulation of debris in the loading area.

5. Ensure proper functioning of collection and treatment areas.

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

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

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

(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.-f.

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

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

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

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

Note: Runoff from feed storage must be controlled to prevent a significant discharge to waters of the state. Livestock operators are responsible for meeting this requirement if they

follow the design standard in par. (d). In addition, livestock operators are subject to federal discharge standards that may be more restrictive than state standards.

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

(5) MILKING CENTER WASTEWATER. (a) For the purposes of the requirements in this section, milking center wastewater consists of wash water used to clean the milk harvesting and milk 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 (January, 2014) 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.

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

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

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

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

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

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

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

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

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

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

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:

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 everything required~~ 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 51.34 (3) (a) is amended to read:

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 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 49. ATCP 51.34 (3) (a) (Note) is repealed.

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

TERMS OF APPROVAL. (intro.) 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 51. 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 was conducted in accordance with that plan.

SECTION 52. 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 53. ATCP 51.34 (4m) is created to read:

MODIFICATION (a) As an alternative to procedures to sec. 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.

(b) A livestock operator may apply for one or more modifications if the total increase in the number of animal units housed on the livestock operation does not exceed 30 percent of the maximum number authorized in the most recent local approval issued under sub. (1).

(c) A livestock operator may not request a modification if the modification would require that the operator complete four or more worksheets.

(d) The livestock operator requests modification by completing and submitting:

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.

2. Applicable worksheets from Appendix A documenting that the livestock facility, as modified, will maintain compliance with the standards in subch. II of ATCP 50.

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

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

(f) 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.

(g) 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.

(h) 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.

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

SECTION 54. 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 55. ATCP 51.34 (5) (a) 3. (Note) is created to read:

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

SECTION 56. 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 57. Chapter ATCP 51, Appendix A, Application Form and Worksheets is repealed and recreated, as attached hereto.

SECTION 58. 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 59. Chapter ATCP 51, Appendix C, Notice To Adjacent Property Owners is repealed and recreated, as attached hereto.

SECTION 60. EFFECTIVE DATE AND INITIAL APPLICABILITY.

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

(2) This rule first applies to small businesses as defined in s. 227.114(1), Stats., on the first day of the third month commencing after the rule publication date, as required by s. 227.22(2)(e), Stats.

Dated this _____day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

Appendix A

Application for Local Approval

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

arm-lwr- 11/04

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. Adm. Code ch. ATCP 51

1. Legal Name of Applicant (Business Entity):

2. Type of Business Entity: check one

☐ Individual	☐ Corporation	☐ Partnership	☐ Cooperative	☐ LLC
☐ Trust	☐ Other	Describe:		

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

4. Contact Individual:	Name:
Phone:	E-mail:

5. Business Address: Street Address:

City/Village/Town:	County:	State:	Zip:

6. Principal Owners or Officers (list if applicant is an entity other than an individual):

Name:	Title:	Phone:	
Address:	City:	State:	Zip:
Name:	Title:	Phone:	
Address:	City:	State:	Zip:
Name:	Title:	Phone:	
Address:	City:	State:	Zip:

7. Description of Proposed Livestock Facility

Check one: ☐ New Livestock Facility ☐ Expanded Livestock Facility		Premises ID ☐ Yes ☐ No
Address of Proposed Livestock Facility:		
City/Village/Town:	County:	State: Zip:
Town # / Range # (E or W)	Section #	¼ Section #

8. Total Animal Units

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

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

9. Area Map of Livestock Facility

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

- All existing and proposed (new or altered) livestock structures. 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, use the identifier "new manure storage 2" to indicate that a proposed manure storage structure is new and the second of a certain number of manure storage structures at the facility. The structure must be listed by its unique identifier in all relevant worksheets.
- The area lying within 2 miles of any of the livestock structures. Show all existing buildings, property lines, roadways, and navigable waters within that area.
- Topographic lines at 10 ft. elevation intervals.
- Map scale and north direction indicator.

10. Site Map of Livestock Facility

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

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

11. Location of Livestock Structures

The applicant certifies that:

- All livestock structures comply with applicable local property line and road setbacks. See ATCP 51.12(1). **Note**: *Includes storage structures designed, constructed and operated to collect non-manure waste.*
- 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 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.

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 facility.

16. Worksheets

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

Worksheet 1 – Animal Units.

Worksheet 2 – Odor Management.

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

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

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

Authorized Signature:

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

Signature of Applicant # 1 or Authorized Representative #1 — Date

Print Name — Title

Signature of Applicant # 2 or Authorized Representative # 2 — Date

Print Name — Title

arm-lwr-

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

Worksheet 1 - *Animal Units*

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

To complete this worksheet:

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

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

Signature of Applicant or Authorized Representative

Date

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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 2 – Odor Management

Instructions: This worksheet addresses property line setbacks for certain livestock structures with higher potential to generate odor.

In conjunction with this worksheet, an operator must certify that livestock structures proposed for the livestock facility comply with the property line and public road right-of-way setbacks established by local ordinance. (See Application, #11). These local setbacks apply to new or expanded livestock structures not covered by this worksheet including animal lots, feed storage, and livestock housing not covered under Categories 1 and 2. The certification also covers public road right-of-way setbacks for all livestock structures, a setback requirement not addressed by this worksheet.

More restrictive property line setbacks in this worksheet apply to new and expanded Category 1 and 2 livestock housing, and manure storage structures. These setbacks do not apply to livestock structures existing at the time of a permit application or to those structures expanding by less than 20 percent. Use this worksheet to determine if all manure storage structures, and Category 1 and 2 livestock housing structures meet property line setbacks. This worksheet enables livestock operators to reduce certain setback distances by installing and maintaining odor control practices according to the "Odor Control Practice Specifications." Also, this worksheet documents the baseline area for certain livestock structures to allow future expansion of less than 20 percent without requiring odor control practices

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

In addition to this worksheet, livestock facilities must submit an odor management plan that covers the following structures existing at the time of application for local approval: manure storage located within 600 feet of a property line and livestock housing located within 400 feet of a property line. (See Application, #14 – Odor Management Plan for instructions.)

TO COMPLETE THIS WORKSHEET, FOLLOW THESE STEPS:

Step 1: Complete Table A for each Category 1 and 2 livestock housing and manure storage structure on the proposed facility.

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

Step 2: Based on Table A, list (by the structure's unique identifier) each Category 1 and 2 livestock housing structure that meets the setback requirements in Chart 1:

A. Without odor control practices: _____

B. With odor control practices: _____

Step 3: Based on Table A, list (by the structure's unique identifier) each manure storage structure that meets the setback requirements in the Chart 4:

A. Without odor control practices: _____

B. With odor control practices: _____

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 Table A, in accordance with the specifications listed in this worksheet.

_____ _____

Signature of Applicant or Authorized Representative Date

Livestock Facility:
Location:

Table A: Odor Management Spreadsheet, Version 1.0

05/18/17

Part 1. Number of Animal Units =

Part 2. Category 1 and 2 Livestock Housing

Column A: Unique ID	Column B: Housing description	Column C: Square Footage (Ft.2)	Column D: Pre-expansion Square Footage ($Ft.^2$)	Column E: Setback Distance (Ft.)	Column F: 1st Control Practice	Column G: Reduction (Ft.)	Column H: 2nd Control Practice	Column I: Reduction (Ft.)	Column J: 3rd Control Practice	Column K: Reduction (Ft.)	Column L: 4th Control Practice	Column M: Reduction (Ft.)	Column N: Reduced Setback (Ft.)	Column O: Distance To Property Line (Ft.)

Part 3. Manure Storage

Column A: Unique ID	Column B: Storage description	Column C: Surface Area (Ft.2)	Column D: Pre-expansion Surface Area ($Ft.^2$)	Column E: Setback Distance (Ft.)	Column F: 1st Control Practice	Column G: Reduction (Ft.)	Column H: 2nd Control Practice	Column I: Reduction (Ft.)	Column J: 3rd Control Practice	Column K: Reduction (Ft.)	Column L: 4th Control Practice	Column M: Reduction (Ft.)	Column N: Reduced Setback (Ft.)	Column O: Distance To Property Line (Ft.)

TO COMPLETE TABLE A FOR CATEGORY 1 AND 2 LIVESTOCK HOUSING, FOLLOW THESE STEPS:

Step 1: In Table A, Part 1, enter the number of animal units for which you are seeking local approval.

Step 2: In Table A, Part 2, enter basic information for all Category 1 and 2 livestock housing structures.

- Complete Column A by entering the unique identifier for each structure
- Complete Column B by writing "1" or "2" to note the category of housing, and "Existed" or "New" as of [date of rule]. (e.g. write "1 – New" for Category 1 housing built after [date of rule]).
- Complete Column C by entering the total square footage that will be occupied by livestock as proposed in the application for local approval. (Do not include feed alley, holding areas, or milking parlors.)
- Complete Column D only for each expanded structure, by entering the occupied square footage of the structure before expansion.

Step 3: For each structure that existed as of [date of rule] or square footage will be expanded less than 20 percent, enter the distance from the structure to the property line into Column O and stop here.

Step 4: For each structure that will be *newly constructed or expanded by 20 percent or more square footage,* enter the applicable setback distance.

- Using the number of animal units entered into Table A, Part 1, refer to Chart 1 (below) and select the appropriate setback distance.
- Enter that distance into Column E for each of these structures.

Chart 1: Category 1 and 2 Livestock Housing Minimum Setbacks

Type of Structure	Animal Unit (AU) Capacity	Property Line Setback
Category 1 livestock housing: • Pork gestation/farrow/nursery with slatted floor (includes floor and pit below) • Pork finishing with slatted floor (includes floor and pit below)	<1,000 AU	600 feet
	1,000 AU - <2,500 AU	1000 feet
	2,500 AU - <4,000 AU	1450 feet
	4,000 AU or more	1700 feet
Class 2 livestock housing: • Dairy housing with Alley Flush • Beef Housing with slatted floor • Pork Finishing scrape systems to storage and pull plug to storage • Poultry Layers • Ducks (liquid)	<1,000 AU	400 feet
	1,000 AU - <2,500 AU	700 feet
	2,500 AU - <4,000 AU	1000 feet
	4,000 AU or more	1200 feet

Step 5: If a structure will meet the setback requirement in Column E, enter the distance from the structure to the property line into Column O and stop here.
For structures without odor control practices, the distance to the property line in Column O shall be equal to or greater than the required setback distance in Column E.

Step 6: For any new or expanded structure, identify and list odor control practices, if needed, to reduce setback distances.
Please refer to the "Odor Control Practice Specifications" in this worksheet for details regarding installation and maintenance of each practice, including the level of effectiveness.

- Refer to Chart 2 (below) and select the practices you will install and maintain. For each structure, you may install up to four odor control practices.
- Write each practice into Columns F, H, J, and L; in order from high to medium to low level of effectiveness.

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
Diet manipulation	Low	3
Air Dam (for swine only)	Low	3
Windbreak (includes manmade berms)	Low	3
Chemical or biological additives	Low	3
Frequent cleaning of animal housing area	Low	3

Step 7: Enter the setback reduction distances that apply to each odor control practice listed in Table A.

- Refer to Chart 3 (below) and write the setback reduction distances into Columns G, I, K, and M.

Chart 3: Category 1 and 2 Livestock Housing Setback Reductions

Type of Structure	Practice Effectiveness in Chart 2	Level 1 reduction distance	Level 2 reduction distance	Level 3 reduction distance
Category 1 livestock housing:* • Pork gestation/farrow/nursery with slatted floor (includes floor and pit below) • Pork finishing with slatted floor (includes floor and pit below)	Level 1, may combine with Level 2 and/or Level 3	250 feet	150 feet	50 feet**
	Level 2 may combine with Level 3		200 feet	50 feet**
	Only Level 3			75 feet**
Category 2 livestock housing:* • Dairy housing with alley flush • Beef housing with slatted floor • Pork finishing scrape systems to storage, and pull plug to storage • Poultry Layers • Ducks (liquid)	Level 1, may combine with Level 2 and/or Level 3	175 feet	100 feet	50 feet**
	Level 2 may combine with Level 3		125 feet	50 feet**
	Only Level 3			75 feet**

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

** For each additional level 3 practice, the applicant may reduce the setback distance by 50 feet (e.g. up to 225 feet total if installing four Level 3 practices).

Step 8: Calculate the reduced setback requirement for each structure in Table A due to installing and maintaining odor control practices.

- Across each row listing odor control practices in Table A, add the individual setback reduction distances that are entered into Columns G, I, K, and M.
- Subtract the total distance (Columns G + I + K + M) from the Setback Distance in Column E.

- Enter the result into Column N **or** one of the following distances into Column N, **whichever is greater***:
    - For facilities <1,000 AU = 100 feet; for facilities 1,000 AU - <2,500 AU = 200 feet; and for facilities 2,500 AU or more = 300 feet. (*Setbacks may not be reduced below the maximum allowable setback distances that apply to all livestock housing by a local ordinance.)

Step 9: If a structure will meet the reduced setback requirement in Column N, enter the distance from the structure to the property line into Column O. For structures with odor control practices, the distance to property line in Column O shall be equal to or greater than the reduced setback distance in Column N.

TO COMPLETE TABLE A FOR MANURE STORAGE STRUCTURES, FOLLOW THESE STEPS:

Step 1: In Table A, Part 2, enter the number of animal units for which you are seeking local approval.

Step 2: In Table A, Part 2, enter basic information for all manure storage structures.

- Complete Column A by entering the unique identifier for each structure.
- Complete Column B by writing "Existed" or "New" as of [date of rule].
- Complete Column C by entering the total surface area of each structure as proposed in the application for local approval. Measure the exposed surface area of the manure when the structure is at its maximum operation level (do not include 2' free board).
- Complete Column D only for each expanded structure, by entering the total surface area of the structure before expansion.

Step 3: For each structure that existed as of [date of rule] or surface area will be expanded less than 20 percent, enter the distance from the structure to the property line into Column O and stop here.

Step 4: For each structure that will be *newly constructed or expanded by 20 percent or more surface area,* enter the applicable setback distance.

- Using the number of animal units entered into Table A, Part 1, refer to Chart 4 (below) and select the appropriate setback distance.
- Enter that distance into Column E for each of these structures.

Chart 4: Manure Storage Minimum Setbacks

Type of Structure	Animal Unit (AU) Capacity	Property Line Setback
Earthen or other storage	<1,000 AU	600 feet
	1,000 AU -2,500 AU	1000 feet
	2,500 AU - <4,000 AU	1400 feet
	>4,000 AU	1700 feet, plus 200 feet for every 1000 AU over 4,000 AU; but no more 2500 feet total setback

Step 5: If a structure will meet the setback requirement in Column E, you may enter the distance from the structure to the property line into Column O and stop here.
For structures without odor control practices, the distance to the property line in Column O shall be equal to or greater than the required setback distance in Column E.

Step 6: For any new or expanded structure, identify and list odor control practices, if needed, to reduce setback distances.

Please refer to the "Odor Control Practice Specifications" in this worksheet for details regarding installation and maintenance of each practice, including the level of effectiveness.

- Document the odor control practices you will install for structures listed in Table A.
  - Refer to Chart 5 (below) and select the practices you will install and maintain. For each structure, you may install up to four odor control practices.
  - Write each practice into Columns F, H, J, and L; in order from high to medium to low level of effectiveness.

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
Bottom fill	Low	3
Chemical or biological additives	Low	3
Manure Solids Separation and Reduction (Lower efficiency)	Low	3
Windbreak (includes man-made berms)	Low	3

Step 7: Enter the setback reduction distances that apply to each odor control practice listed in Table A.

- Refer to Chart 6 (below) and write the setback reduction distances into Columns G, I, K, and M.

Chart 6: Manure Storage Setback Reductions

Type of Structure & Facility Size	Practice Effectiveness in Chart 5	Level 1 reduction distance	Level 2 reduction distance	Level 3 reduction distance
Uncovered earthen or other open manure storage structure for facility less than 4,000 AU*	Level 1, may combine with Level 2 and/or Level 3	500 feet	150 feet	75 feet**
	Level 2 may combine with Level 3		300 feet	75 feet**
	Only Level 3			100 feet**
Uncovered earthen or other open manure storage structure for facility 4,000 or more AU*	Level 1, may combine with Level 2 and/or Level 3	1000 feet	300 feet	100 feet**
	Level 2 may combine with Level 3		600 feet	100 feet**
	Only Level 3			150 feet**

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

** For each additional level 3 practice, the applicant may reduce the setback distance by 75 or 100 feet, depending on the number of animal units (e.g. up to 325 or 450 feet total if installing four Level 3 practices).

Step 8: Calculate the reduced setback requirement for each structure in Table A due to installing and maintaining odor control practices.

- Across each row in listing odor control practices in Table A, add the individual setback reduction distances that are entered into Columns G, I, K, and M.
- Subtract the total distance (Columns G + I + K + M) from the Setback Distance in Column E.
- Enter the result into Column N **or** one of the following distances into Column N, **whichever is greater***:
    - For facilities <1,000 AU = 350 feet; for facilities 1,000 AU - <2,500 AU = 500 feet; and for facilities 2,500 AU or more = 750 feet. (*Setbacks may not be reduced below the preceding distances.)

Step 9: If a structure will meet the reduced setback requirement in Column N, enter the distance from the structure to the property line into Column O. For structures with odor control practices, the distance to property line in Column O shall be equal to or greater than the reduced setback distance in Column N.

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. Livestock operators may seek DATCP approval for unlisted practices, and 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 the bio-filter treats less than 100 percent of the exhaust air from a housing structure, the multiplier must be reduced proportionately. For example, if only half the total ventilation air passes through the filter, the odor control credit would be 45% (50% x 90% multiplier).

Bioscrubbers (High): Bioscrubbers work much like 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 to10 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.

Wet Scrubbers-Chemical Acid scrubbers (High): These scrubbers 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.

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^2-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^2-day. Avoid oil applications to pens near fans, to areas near heaters, and to areas surrounding feeders.

Wet Scrubbers-Water (Medium) – Exhaust air filtration systems designed to remove dust particles and ammonia from animal housing and/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 the web scrubber treats less than 100 percent of

the exhaust air from a housing structure, the effectiveness level must be reduced. For example, if only half of the exhaust air is scrubbed, than the odor control credit would be 25% (50% x 50% multiplier).

Recirculated water flush (Medium) – Use fresh 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 an odor control credit of 50% (as compared to a conventional alley flushed barn), the wastewater must be 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) – 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.

Diet manipulation (Low) –Develop and maintain a feed management plan in accordance with NRCS Feed Management Standard 592 (July 2016) that specifically identifies odor management as a planning goal, and describes specific feed management practices that will achieve this goal. The plan shall be periodically reviewed and revised based on measurement of a practice's effectiveness (e.g. testing for Milk Urea Nitrogen (MUN) levels to assess the actual nutrient uptake by the animal, for dairy operations).

Air Dam (Low) – 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).

Windbreak (Low) – Maintain a solid or porous windbreak, 10 to 50 feet from the odor source, which reduces forward momentum of airflow and vertically disperses the odor plume. The windbreak shall be extend at least 50' beyond both ends of the animal housing. A windbreak may be constructed of vegetation or other materials. Vegetation windbreaks must contain at least 3 rows of trees and shrubs, of both fast and slow-growing species, that are well suited for the site. Windbreaks must be designed and constructed according to NRCS Technical Guide Standard 380 – Windbreaks and Shelterbelts (October 2016).

Chemical or biological additives (Low) – Apply, to stored manure, chemical or biological additives that are scientifically proven to be effective in reducing odor from that manure when applied under applicable conditions and in applicable amounts. An additive's effectiveness must be supported by independent research or other credible evidence. Written documentation shall be prepared describing the amount and frequency of chemical or biological additions.

Frequent cleaning of animal housing area (Low) – Scrape and remove manure from animal housing areas at least 3 times a day.

Manure Storage

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

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

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

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

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

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

Anaerobic digestion (Medium) – Subject manure to managed biological decomposition within a sealed oxygen-free container ("digester"). Anaerobic digestion must meet design and operational standards necessary to achieve adequate odor control as listed in NRCS Technical Standard Anaerobic Digester 366 (August 2011), including requirements for solids concentration, flow rates, retention time, and minimum temperatures.

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

Bottom fill (Low) – Add manure to a liquid *manure storage structure* from the bottom so as to limit disturbance to the surface of the stored manure.

Chemical or biological additives (Low) – Apply, to stored manure, chemical or biological additives that are scientifically proven to be effective in reducing odor from that manure when applied under applicable conditions and in applicable amounts. An additive's effectiveness must be supported by independent research or other credible evidence. Written documentation shall be prepared describing the amount and frequency of chemical or biological additions.

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

Windbreak (Low) – Maintain a solid or porous windbreak, 10 to 50 feet from the odor source, which reduces forward momentum of airflow and vertically disperses the odor plume. The windbreak shall extend at least 50' beyond both ends of the *waste storage facility*. A windbreak may be constructed of vegetation or other materials. Vegetation windbreaks must contain at least 3 rows of trees and shrubs, of both fast and slow-growing species, that are well suited for the site. Windbreaks must be designed and constructed according to NRCS Technical Guide Standard Windbreaks and Shelterbelts 380 (October 2016).

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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).

Exemption.

You do not need to complete Parts A and B if you check the box and initial the certification and acknowledgement.

☐ In place of Worksheet 3, Part D, I enclose 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 my *WPDES* permit.

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

Part A. Waste Generation

Complete the following table[1] to provide an annual estimate of manure generated.

The estimate must be prepared a qualified nutrient management planner other than operator, and must be for maximum number of animal units that by livestock at the proposed facility. 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 is adequate for available storage capacity and land base available 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 the siting rule, the requirements of the siting rule should be followed.

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

Manure estimate using MWPS-18 "Manure Characteristics"

Animal	Size	Daily Manure Production To Apply						Annual Manure Production To Apply				
	Lbs	Solid		Liquid				Number x	Daily	x 365 Day	x %	= Total
		Lbs/day	ft³/day	MWPS ft³/day x WI dairy & beef dilution factor	ft³/day & WI dilution	MWPS gal./day x WI dairy & beef dilution factor	gal./day & WI dilution	of Head	Total **Tons or Gal.**	Total	Collected	Collected **Tons or Gal.**
Dairy												
Calf	150	13	0.200	.21*1.8=	.37	1.53*1.8=	2.80					
Calf	250	21	0.320	.33*1.8=	.60	2.47*1.8=	4.50					
Heifer	750	65	1.000	1.03*1.8=	1.85	7.70*1.8=	13.8					
Lact. Cows	1000	106	1.700	1.71*1.8=	3.07	12.7*1.8=	23.0					
	1400	148	2.400	2.38*1.8=	4.28	17.7*1.8=	32.0					
Dry Cows	1000	82	1.300	1.30*1.8=	2.35	9.7*1.8=	18.0					
	1400	115	1.820	1.82*1.8=	3.33	13.6*1.8=	25.0					
Beef												
Calf	450	26	0.420	.415*3.2=	1.3	3.1*3.2=	9.9					
High Forage	750	62	1.000	1.00*3.2=	3.2	7.5*3.2=	24.0					
High Forage	1100	92	1.400	1.48*3.2=	4.8	11*3.2=	35.0					
High Energy	750	54	0.870	.87*3.2=	2.7	6.5*3.2=	20.8					
High Energy	1100	80	1.260	1.27*3.2=	4.1	9.5*3.2=	30.5					
Beef Cow	1000	63	1.000	1.00*3.2=	3.2	7.5*3.2=	24.0					
Swine												
Nursery Pig	25	2.7	0.040		.04		.30					
Grow-Finish Pig	150	9.5	0.150		.17		1.20					
Gestating Sow	275	7.5	0.120		.14		1.00					
Sow & Litter	375	22.5	0.360		.42		3.00					
Boar	350	7.2	0.120		.14		1.00					
Poultry / Other												
Layers	4	0.26	0.004		.004		.03					
Broilers	2	0.18	0.003		.003		.02					
Turkeys	20	0.9	0.014		.015		.11					
Duck	6	0.33	0.005		.006		.04					
Sheep	100	4	0.060		.055		.40					
Horse	1000	50	0.800		.827		5.98					

Part B – Land Base for Applying Nutrients

1. What percentage of the manure and waste identified in Part A will be:
   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, or shall implement conservation practices that achieve compliance, with the following requirements, and makes a commitment that the livestock facility will remain in compliance with these cropland performance standards:

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 of an average a phosphorus index of 6 or less over an accounting period and an annual phosphorus index of less than 12, as defined NR 151.04(2)(a), for all fields included in the nutrient management plan.

Part D – Nutrient Management Checklist

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

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

_____ _____
Signature of Applicant or Applicant's Authorized Representative Date

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

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

Nutrient Management Checklist

Sec. 92.05(3)(k), Wis. Stats. ATCP 50.04(3) & 51 Wis. Admin. Codes

COUNTY	DATE PLAN SUBMITTED	GROWING SEASON YEAR PLAN IS WRITTEN FOR	(from harvest to harvest)
TOWNSHIP: (T. N.) RANGE: (R. E., W).		CHECK ONE: ☐ Initial Plan or ☐ Updated Plan	

NAME OF FARM OPERATOR RECEIVING NM PLAN First Name LastName	FARM NAME (OPTIONAL)	BUSINESS PHONE ( ) -

STREET ADDRESS	CITY	STATE	ZIP

RELEVANT REASON THE PLAN WAS DEVELOPED: Click and choose. (Ordinance, NR 243 WPDES or NOD, DATCP-FP or cost share (cs), DNR-cs, USDA-cs, Other)	CROPLAND ACRES (OWNED & RENTED)
RENTED FARM(S) LANDOWNER NAME(S) AND ACREAGE: add sheet(s) if required	

WAS THE PLAN WRITTEN IN SNAPPLUS? ☐ YES ☐ NO If yes, which software version, if known?

CHECK PLANNER'S QUALIFICATION: Click and choose.
(1. NAICC-CPCC, 2. ASA-CCA, 3. SSSA-Soil Scientist, 4. DATCP approved training course, 5. Other approved by DATCP)

NAME OF QUALIFIED NUTRIENT MANAGEMENT PLANNER First Name Last Name	BUSINESS PHONE ( ) -

STREET ADDRESS	CITY	STATE	ZIP

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

1. Does the plan include the following nutrient application requirements to protect surface and groundwater?

This section applies fields and pastures. If no manure is applied, check NA for 1c., 1.h., 1.i., 1.n., 1.o., 1.q., 1.s.	Yes	No	NA
a. Determine field nutrient levels from soil samples analyzed by a DATCP **certified laboratory**.	☐	☐	☐
b. For fields or pastures with mechanical nutrient applications, determine field nutrient levels from **soil samples** collected within the last **4 years** according to Std. 590 and UW Pub. A2809, *Nutrient Application Guidelines for Field, Vegetable, and Fruit Crops in Wisconsin* typically collecting **1 sample per 5 acres** of 10 cores. Soil tests are not required on **pastures** that do not receive mechanical applications of nutrients if either of the following applies: 1. The pastures are stocked at an average stocking rate of one animal unit per acre or less at all times during the grazing season. 2. The pastures are 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 pastures complies with 590 using an assumed soil test phosphorus level of 150 PPM and organic matter content of 6%.	☐	☐	☐
c. For **livestock siting permit approval**, the applicant must 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.	☐	☐	☐
d. **Identify all field's** name, boundary, acres, and location.	☐	☐	☐
e. Use the field's previous year's legume credit and/or applications, predominant soil series, and realistic yield goals to determine the crop's nutrient **application rates consistent with UW Pub. A 2809 for ALL forms of N, P, and K.**	☐	☐	☐
f. Make no **winter applications of N and P** fertilizer, except on grass pastures and winter grains.	☐	☐	☐
g. Document methods used to determine **application rates.** Nutrients shall not runoff during or immediately after application.	☐	☐	☐
h. Identify in the plan and narrative that **adequate acreage** is available for manure produced and/or applied.	☐	☐	☐
i. Apply a single phosphorus (P) assessment using either the **P Index** or **soil test P** management strategy to all fields within a tract when fields receive manure or organic by-products during the crop rotation.	☐	☐	☐
j. Use **complete crop rotations** and the field's **critical soil** series to determine that sheet and rill erosion estimates will not exceed **tolerable soil loss** (T) rates on fields that receive nutrients.	☐	☐	☐
k. Use contours; reduced tillage; adjust the crop rotation; or implement other practices to **prevent ephemeral erosion**; and maintain perennial vegetative cover to **prevent reoccurring gullies** in areas of concentrated flow.	☐	☐	☐
l. Make no nutrient applications within 8' of **irrigation** wells or where **vegetation is not removed.**	☐	☐	☐
m. Make no nutrient applications within **50' of all direct conduits to groundwater**, unless directly deposited by gleaning/pasturing animals or applied as starter fertilizer to corn.	☐	☐	☐

	Yes	No	NA
n. Make no **untreated manure applications** to areas within 1000' of a **community potable water well** or within 100' of a **non-community potable water well** (ex. church, school, restaurant) unless manure is treated to substantially eliminate pathogens.	☐	☐	☐
o. Make no manure applications to areas **locally delineated** by the Land Conservation Committee or in a conservation plan as areas contributing runoff to direct conduits to groundwater unless manure is substantially buried within 24 hours of application.	☐	☐	☐
p. Make no applications of **late summer or fall commercial N fertilizer** to the following areas UNLESS needed for establishment of fall seeded crops or to meet UWEX Pub. A2809 with a blended commercial fertilizer. N applied in a blended commercial fertilizer shall not exceed 36 lbs. N/acre on: • Sites vulnerable to N leaching **PRW Soils** (P=high permeability, R= bedrock < 20 inches, or W= wet < 12 inches to apparent water table); • Soils with depths of 5 feet or less to bedrock; • Area within 1,000 feet of a community potable water well. On **P soils, when commercial N is applied** for full season crops in **spring and summer**, follow A2809 and apply one of the following: 1. A split or delayed N application to apply a majority of crop N requirement after crop establishment. 2. Use a nitrification inhibitor with ammonium forms of N. 3. Use slow and controlled release fertilizers for a majority of the crop N requirement applied near the time of planting.	☐	☐	☐
q. Limit manure applications in late summer or fall using A2809 and the following 590 levels, whichever is less, on **PRW Soils.** ***Use ≤ 120 lbs. available N/acre on:*** **P and R soils** on *all crops, except annual crops*. Additionally, manure with ≤ 4% dry matter (DM) wait until after soil temp. < 50°F or Oct. 1. use either a nitrification inhibitor OR surface apply and do not incorporate for 3 days. **W soils or combo. W soils** on *all crops.* Additionally, manure with ≤ 4% DM on *all crops* use at least one of these practices: **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 & don't incorporate for at least 3 days; **5.** Wait until after soil temp. < 50°F or Oct. 1. ***Use ≤ 90 lbs. available N/acre on:*** **P and R soils** on *annual crops* wait until after soil temp. < 50°F or Oct. 1. Additionally, manure with ≤ 4% DM use either a nitrification inhibitor OR surface apply and do not incorporate for 3 days. **W soils or combination W soils** manure with ≤ 4% DM on *all crops*.	☐	☐	☐
r. Use one or more of the following practices on **non-frozen soils** for all nutrient applications including manure, or organic by-products w/ >11% dry matter within **Surface Water Quality Management Area (SWQMA)** 1000' of lakes/ponds or 300' of rivers: **1.** Maintain > 30% cover after nutrient application; **2.** Effective incorporation within 72 hrs. of application; **3.** Establish crops prior to, at, or promptly following application; **4.** Install/maintain vegetative buffers or filter strips; **5.** Have at least 3 consecutive years no-till for applications to fields with < 30% residue (silage) and apply nutrients within 7 days of planting.	☐	☐	☐
s. Limit mechanical applications to **12,000 gals/acre** of **unincorporated liquid manure with 11% or less dry matter where subsurface drainage is present or within SWQMA** 1000' of lakes/ponds or 300' of rivers. Wait a min. of **7** days between sequential applications AND use one or more of the practices on non-frozen soils listed in (1.r. practices **1.** to **5.**).	☐	☐	☐

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

If no manure is applied, check NA.	Yes	No	NA
a. Identify **manure quantities planned to be spread during the winter**, or the amount of manure generated in 14 days, whichever is greater. *For daily haul systems, assume 1/3 of the manure produced annually will need to be winter applied.*	☐	☐	☐
b. Identify manure storage capacity for each type applied and stacking capacity for manure ≥ 16% DM if permanent storage does not exist.	☐	☐	☐
c. Show on map and make no applications within the **SWQMA.**	☐	☐	☐
d. Show on map and make no surface applications of liquid manure during **February and March** where **Silurian dolomite** is within 60 inches of the soils surface *or* where **DNR Well Compensation** funds provided replacement water supplies for wells contaminated with livestock manure.	☐	☐	☐
e. Show on map and make no applications of manure within **300 feet** of **direct conduits to groundwater.**	☐	☐	☐
f. Do not exceed the **P** removal of the following growing season's crop when applying manure. Liquid manure applications are limited to **7,000 g/acre.** All winter manure applications are not to exceed **60 lbs. of P2O5/acre.**	☐	☐	☐
g. Make no applications of manure to fields where ***concentrated flow channels are present*** unless 2 of the following are used: **1.** Contour buffer strips or contour strip cropping; **2.** Leave all crop residue and no fall tillage; **3.** Apply manure in intermittent strips on no more than 50% of field; 4. Apply manure on no more than 25% of the field waiting a minimum of 14 days between applications; **5.** Reduce manure app. rate to 3,500 gal. or 30 lbs. P2O5, whichever is less; **6.** No manure application within 200 feet of all concentrated flow channels; **7.** Fall tillage is on the contour and slopes are lower than 6%. Make no applications to **slopes greater than 6%** (C,D,E,F) 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.**) above are implemented.	☐	☐	☐

I certify that the plan represented by the answers on this checklist complies with Wisconsin's NRCS 2015-S90 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

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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 not able to submit the documentation required to claim an exemption for any storage facility located on the proposed livestock facility, each applicable section of the worksheet must be completed.

Exemptions.

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

☐ The following existing, substantially altered or new facilities were reviewed and approved by DNR as part of the *WPDES* permit (identify by unique identifiers listed on the site map: _____). In support of this submission, the applicant (1) provides copies of applicable plan and specification approvals or other determinations for waste storage facilities of the same size and type as those proposed for the new or expanded livestock facility, and (2) certifies that the WDPES permit is current, and that the livestock facility is in compliance with all WPDES permit conditions and requirements.

☐ The following existing, substantially altered or new facilities (list by unique identifier as noted on the site map: _____) was approved by DNR for storage of agricultural wastewater and other related products under NR 213. (DNR approval is attached.)

☐ The following existing facilities (list by unique identifier as noted on the site map: _____) was constructed within the last 3 years in accordance with then-existing NRCS standards, as documented by the attached as-built plan or local approval under a s. 92.16 ordinance.

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

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

☐ The facility (identify by unique identifiers listed on the site map: _____) was constructed within the last 10 years according to then-existing NRCS technical standards, and a visual inspection of the facility shows no apparent signs of structural failure or significant leakage.

☐ The facility (identify by unique identifiers listed on the site map: _____) was constructed over 10 years ago according to then-existing NRCS technical standards, and a visual inspection of the emptied facility shows no apparent signs of structural failure or significant leakage.

☐ The construction standard of facility identify by unique identifiers listed on the site map: _____) cannot be verified from reliable document, a full investigation of the facility was performed, and this investigation established that the facility is in good condition and repair, shows no apparent signs of structural failure or significant leakage, and is located on a site at which the soils and separation distances to groundwater meeting the requirements for the appropriate liner type referenced in NRCS technical guide manure storage facility standard 313 (January, 2014).

Section C: Facilities That Must Closed. Closure is required for following facilities (identify by unique identifiers listed on the site map: _____), and the attached closure plans comply with NRCS Technical Guide Standard 360 (March, 2013).

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 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 (see previous sections).

_____ _____
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

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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 not able to submit the documentation required to claim an exemption for any storage facility located on the proposed livestock facility, each applicable part of the worksheet must be completed.

Exemptions.
_____ (Initial) By initialing this worksheet, checking one or more boxes below, and submitting the required documentation, the applicant is certifying:
☐ The following existing, substantially altered or new facilities animal lots or feed structure structures were reviewed and approved by DNR as part of the WPDES permit (identify by unique identifiers listed in the site map): _____. In support of this submission, the applicant (1) provides copies of applicable plan and specification approvals or other determinations that cover animal lots or storage structures of the same size and type as those proposed for the new or expanded livestock facility, and (2) certifies that the WDPES permit is current, and that the livestock facility is compliance with all WPDES permit conditions and requirements.

Part A: Animal Lots[1]

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

2. **Existing *Animal Lots* Near Sensitive Areas.** The following animal lots (identify by unique identifiers listed on the site map: _____) are located within 1,500 feet of navigable lakes, ponds, and flowages; 450 feet of wetlands and navigable streams and rivers; 750 feet of conduits to groundwater; 450 feet of surface inlets that discharge to navigable waters; 225 feet of channelized flow; and 225 feet of subsurface drains (measured from the edge of the animal lot). According to the BARNY runoff model, each of these animal lots has (or with minor alterations[2] will have) predicted average annual phosphorus runoff of less than 5 lbs. per year (measured at the end of the treatment area).

3. **Other Existing *Animal Lots.*** The following animal lots (identify by unique identifiers listed on the site map: _____) are NOT located within 1,500 feet of navigable lakes, ponds, and flowages; 450 feet of wetlands and navigable streams and rivers; 750 feet of conduits to groundwater; 450 feet of surface inlets that discharge to navigable waters; 225 feet of channelized flow; and 225 feet of subsurface drains (measured from the edge of the animal lot). According to the *BARNY runoff model*, each *animal lot* has (or with minor alterations[3] will have), a treatment area that reduces phosphorus runoff to an average of less than 15 lbs. per year (measured at the end of the treatment area).

4. 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 discharges from any animal lot. The engineer or certified practitioner certifies that any engineered designs to control runoff from animal lots meet NRCS or other applicable technical standards as noted above.

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 discharges from any livestock structure. The engineer or certified practitioner certifies that any engineered designs to control or manage process wastewater meet NRCS or other applicable technical standards as noted below.

---

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

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

Part C: Feed Storage

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

(a) They been designed and constructed according to applicable NRCS standards that existed at the time of construction or in the absence of documentation to support this, they are located on a site with soils and separation distances that comply with Tables 1, 2, or 3 in *NRCS* Technical Guide Standard 629 (January, 2017).

(b) They are in good condition and repair.

(c) They show no apparent signs of structural failure, significant leakage, or significant discharges to surface water.

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

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

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

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

(a) Are designed according to the attached specifications to comply with NRCS Technical Guide Standard 629 (January, 2017), and

(b) Will manage leachate and contaminated runoff by collecting and storing for future land application or treating the runoff in accordance with NRCS Technical Guide Standard 635 (September, 2016).

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

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

(a) Less than one acre in size.

(b) **Not** located within 1,500 feet of navigable lakes, ponds, and flowages; 450 feet of wetlands and navigable streams and rivers; 750 feet of conduits to groundwater; 450 feet of surface inlets that discharge to navigable waters; 225 feet of channelized flow; and 225 feet of subsurface drains.

(c) Designed or constructed with storage floors that meet the applicable Table 1, 2, or 3 of NRCS Technical Guide Standard 629 (January, 2017),

(d) Designed or constructed to collect and store all leachate from stored feed and an initial runoff volume of 0.20 inches from each precipitation event.

(e) Located in areas that do not have soils with a high potential for leaching contaminants to groundwater.

(f) Located on sites with conditions such that runoff from a 25-year, 24-hour precipitation event will not result in a significant discharge to waters of the state.

(Attach design specifications or other documentation in support of the above.)

Part D: Milking Center Wastewater

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

If any such wastewater is not stored, the applicant and engineer certify that the livestock facility generates less than 500 gallons of wastewater daily, does not store the wastewater for an extended period, and is implementing the treatment practices described in NRCS waste treatment technical standard 629 (January, 2014).

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

Part E: Nonpoint Pollution Standards

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

(a) Runoff is diverted from contact with animal lots, waste storage facilities, paved feed storage areas or manure piles within 300 ft. of a stream or 1,000 ft. of a lake.

(b) No unconfined manure pile are located within 300 ft. of a stream or 1,000 ft. of a lake.

(c) There is no overflow of waste storage facilities.

(d) Access of livestock is restricted to waters of the state, as necessary to maintain adequate vegetative cover on banks adjoining the water (this does not apply to properly designed, installed and maintained livestock or farm equipment crossings).

If not in compliance, the applicant may submit plans for achieving compliance (see previous sections).

_____ _____

Signature of Applicant or Applicant's Authorized Representative Date

Professional Engineer's Embossed Seal

_____

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

_____ _____

Signature of Engineer or Practitioner Date

_____

Name of Firm and Address

Appendix B

Request for Modification of a Local Approval

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

Introduction

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

You must meet eligibility requirements to request a modification of your local approval. You may not request a modification under any of these conditions:

- A livestock facility cannot use one or more modifications to increase the number of animal units by 30 percent or more above the maximum number authorized in the most recent full approval.
- The changes to the livestock facility require the completion of four or more worksheets to secure approval.

You may request a permit modification if your proposal fits into the following scenarios:

- Addition of animals, no construction of livestock structures, and increase land base for a nutrient management plan.
- Addition of animals, no construction, addition or change in odor control practices, and increase land base for a nutrient management plan.
- Addition of animals; construction or expansion of any two of structures-- housing, waste storage or transfer, or animal lots; and increase land base for a nutrient management plan.
- No addition of animals, and construction or expansion of any number of structures including housing, waste storage or transfer, or animal lots.
- No addition of animals, and addition or change in an odor control practice

A political subdivision may review and approve modification requests that vary from these scenarios as long as the requests do not violate the basic eligibility requirements.

Completing the Request

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

Your request must include all relevant worksheets from Appendix A, documenting that the livestock facility, as modified, will maintain compliance with the standards in subch. II of ATCP 50.

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

Maps

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

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

Plan submissions

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

Narrative

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

Worksheets

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

Animal units (Worksheet 1)

You must complete this worksheet if your proposal includes the addition of 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 but you are only required to complete what is needed based on the livestock structures that are part of the livestock facility. At minimum, worksheet 2 should be completed to document the surface area of existing manure storage structures and certain housing types. (This will allow you limited expansion of these facilities without adding odor control practices if these facilities are located within required setbacks.) If manure storage structures or certain housing structures are being built within setback requirements (see Charts 2 and 3 of Worksheet 2), Worksheet 2 must be completed to claim setback reductions. A livestock operator may submit a permit modification to voluntarily adopt the new standard for odor management. 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. 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 siting permit, as modified.

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

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

Fees

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

Review Process

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

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

Appeal of Local Decision

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

arm-lwr-

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

Request for Modification of Local Approval

Wis. Admin. Code ch. ATCP 51

Permitting Authority Completes

Date Request Received: __/__/____

Confirm Applicant Submissions:
Date of Most Recent Full Approval: __/__/___
Maximum AUs approved: _____
Modification Dates (complete all that apply): __/__/___
__/__/___,

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

Date of Decision Regarding Modification Request: __/__/____

Decision:
☐ Approved with conditions;
☐ Denied

1. Legal Name of Applicant (Business Entity):

2. Contact Person:	Name:
Phone:	E-mail:

3. Business Address: Street Address:

City/Village/Town:	County:	State:	Zip:

5. Description of Proposed *Livestock Facility*

Address of *Livestock Facility*:

5. Eligibility

The applicant verifies that the livestock facility is eligible for a permit modification (you are disqualified unless both boxes are checked):

☐ The proposed changes to the livestock facility, in combination with prior modifications, will not increase the number of animal units by 30 percent or more above the maximum number authorized in the most recent full approval issued by the political subdivision.

☐ The changes to the livestock facility do not require that the operator complete four or more worksheets to secure approval.

6. Permit Approval and Modifications

Date of must recent full approval: __/__/____	Permit number or identifier: _____
Maximum number of animal units authorized at time of full approval: _____ AUs	
☐ First modification approved (check only if applies)	Date of modification: __/__/____
☐ Second modification approved (check only if applies)	Date of modification: __/__/____
☐ Third modification approved (check only if applies)	Date of modification: __/__/____

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). **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.

Application (continued)

11. Plans

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

☐ **Employee Training Plan**

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

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

☐ **Environmental Incident Response Plan**

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

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

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

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

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

12. Narrative

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

13. Worksheets

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

☐ **Worksheet 1 – Animal Units.**

☐ **Worksheet 2 – Odor Management.** This must be submitted, regardless of changes to the livestock operation, unless you previously submitted a worksheet meeting the new standard.

☐ **Worksheet 3 – Waste and Nutrient Management.** If you meet the requirements for an exemption, check the appropriate box on this worksheet, and provide 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 provide 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.

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 applicable state siting standards relating to:

- Odor management.
- Property line and road setbacks.
- Manure management.
- Manure 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 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. An appeal, if any, must be filed within 30 days.

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)		
Requirement	Applies to	Provisions
Application and Worksheets	All applicants	• Describes proposed livestock operation in detail including a narrative • Shows number of "animal units" (AU) proposed • Documents compliance with state siting standards
Setbacks (see site map)	All applicants	• Requires that livestock structures meet local setbacks (cannot exceed state maximums of 100 to 300 feet depending on size) • Requires setbacks for new and expanding manure storage and certain housing types ranging from 400 to 2,500 feet depending on the facility size • Setbacks may be reduced by odor control practices. • Grandfathers existing structures and allows limited expansion away from property line • Must comply with existing water quality setbacks (wetland, floodplain, well setbacks)
Odor Management (see worksheet)	All applicants, with a focus on livestock operations that have: • Manure storage or housing structures near their property lines, or • New or expanded manure storage or housing structures that cannot meet setbacks without odor control practices	• Remain in compliance with odor standard incorporated into existing permit (released when a subsequent approval is granted for an expansion) • Must have an odor management plan if existing storage within 600 feet of property line or existing housing is within 400 feet • Update odor management plan if political subdivision receives verified odor complaint • Document reductions in setbacks for new and expanded manure storage and high odor housing structures based on odor control practices
Waste and Nutrient Management (see worksheet)	All applicants	• Documents amount of manure and other waste that will be generated. • Describes how wastes will be managed (e.g. composting, land spreading) • Identifies land for manure spreading including restrictions • Requires a checklist showing that the operation has a plan to manage the application of manure and other nutrients to meet crop needs while minimizing risks to water resources. • Comply with performance standards for tillage setbacks and phosphorus management
Waste Storage Facilities (see worksheet)	All applicants with manure storage structures	• Construct new and expanded storage structures according to technical standards. • Certify that existing structures are safe (not leaking or failing) • Close structures that are not safe • Operate structures according to performance standards
Runoff Management (see worksheet)	All applicants	• Prevent significant discharges from animal lots, feed storage, and milking center waste • Certify that feed storage are safe (not leaking or failing) • Meet discharge standards for existing animal lots • Design new and expanded animal lots, and feed storage to the latest technical standards (exceptions apply) • Meet state nonpoint pollution standards
Training and Response Plans	All applicants	• Develop incident response plan (spills and odor events) • Develop employee training (manure and odor mgmt.)

Wisconsin Department of Agriculture,
Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

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

Rule Description

General

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

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

Small Businesses Affected

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

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

Livestock Operators

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

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

1. Within the first 11 years of the siting rule's implementation, local governments approved 150 livestock facilities (24 facilities received more than one approval to cover expansions).
2. Based on past trends in the livestock industry and local permitting activity, which may not be predictive of future activity, it is estimated that the total number of permitted facilities in the next ten years will increase by 100 to reach a total of 250. In addition, 50 livestock facilities will seek at least one renewal of their permits based on facility expansions. The following assumptions support the forecasted slowdown in the rate of new permit issuances, and the increase in the rate of permit reissuances:
    a. While the number of siting ordinances adopted by local governments may grow to more than 175 within the next 10 years, most of the jurisdictions adopting ordinances will issue no permits or at most one permit.
    b. A limited number of counties including Jefferson, Manitowoc, Shawano, Trempealeau, and Walworth will issue 80 percent of permits, and in the future more of their activity will involve reissuance of permits for facilities seeking approval for expansions.
3. Of the estimated 100 new permits, 50 percent will involve livestock facilities with more than 1000 Animal Units "AUs" and 70 percent of the 50 facilities seeking permit reissuance will exceed 1000 AUs. By the terms of their DNR CAFO permits, these 85 facilities will be required to meet the nutrient management, manure storage and runoff management standards that meet or exceed those proposed in the siting rule, and will not incur additional costs to implement the new system for setbacks and odor management.
4. Of the estimated 65 non-CAFOs affected by the changes, 10 of the facilities will receive more than one permit during the 10 year period. Livestock operations

issued multiple permits will meet many of compliance obligations with their first permits, and will much lower burdens with successive permits. .

   a. Every applicant for a siting permit has submitted a nutrient management plan checklist and none have relied on the exemption from nutrient management plan requirements.

5. Over the next ten years, 55 non-CAFOs will have the greatest exposure to cost increases triggered by the rule revision.

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

Recordkeeping and New Skills Required

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

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

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

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

Overall Impact on Farmers

The changes in the siting rule will fall mostly on a small group of non-CAFOs that seek local permits for facilities with new or expanded animal lots and feed storage structures. The changes in the odor standard will simplify compliance with odor requirements for livestock operators. The Department believes that recordkeeping and other increased responsibilities will not place unreasonable demands on farmers, and will be offset by changes that reduce the burden on farmers. In general, livestock operators should be able to incorporate the costs as part of financing changes in their operations, and any additional requirements should not be a decisive factor in an operator's decision to build or expand their operations.

The Department has included the following provisions that will limit or offset costs created by the rule changes:

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

- Grandfathering provisions will allow operators to expand manure storage and housing within a setback without the need to add additional odor control practices.
- Clarification of local authority to reduce setback requirements through the use of variances.
- As a result of uniform standards across conservation programs, livestock operators have opportunities to achieve compliance with the new siting standards through other programs. For example, a livestock operator may come into compliance with the 2015 nutrient management standard and other updated standards by participating in other programs such as the farmland preservation program.
- A low 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 low 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 removed the requirement that the CAFO permit must be for the same size facility.
- All operators of non-CAFOs remain eligible for cost-sharing to install practices to comply with the siting rule. Enhancements to authorize permit modifications that will reduce permitting steps and costs related to the expansion of a permitted livestock facility.

Non-Farm Businesses

This rule has the following impacts on entities (a number of which qualify as "small businesses.") that do business with livestock operations coved by the siting rule.

Crop consultants and other professional planners, farm supply and service businesses, soil test laboratories, and manure-haulers. This proposed rule will minimally increase the demand for entities that provide cropland related services to farmers. It will require more extensive services from professional nutrient management planners who must help farmers implement a more complicated nutrient management plan. Only third-party planners qualified under Wis. Admin. Code § ATCP 50.48 may prepare nutrient management plans for livestock operations permitted under the siting rule. These consultants must understand and follow record keeping requirements related to soil types, soil tests, crop nutrient requirements including University of Wisconsin recommendations, nutrient applications, nutrient contents of manure, nutrient application scheduling, and other matters related to nutrient management. This rule will not necessarily change the demand for manure hauling services, but may increase demand for soil testing. Nutrient management plans must be based on soil tests conducted by certified laboratories.

Agricultural engineering and construction contractors. This proposed rule will marginally increase demand for engineered conservation practices. Operators of new and expanded livestock facilities may need more engineered solutions to deal with runoff from animal lots and feed storage. Operators of expanded livestock facilities will need engineering expertise to demonstrate that existing structures meet technical standards and to design modifications for structures to bring them into compliance.

Lenders. This proposed rule will benefit lenders working with livestock facilities that are subject to local regulation of new and expanded livestock facilities. In addition to removing the uncertainties related to local permitting, lenders will benefit by gaining greater security on their farm loans because livestock operations will meet standards that protect against environmental problems and avoid nuisance complaints based on odor.

Recordkeeping and New Skills Required for Non-Farm Businesses

This rule revision does not directly trigger increased reporting, bookkeeping or other procedures for non-farm businesses.

Business professionals will need to enhance their skills to help farmers implement the siting standards; however, these professionals will likely take these actions for reasons other than this rule. Engineers and nutrient management planners must keep pace with the latest technical standards to meet the needs of customers and protect themselves from liability. As noted previously, the rule changes will make standards consistent across government programs, making it inevitable that these professionals stay current. Moreover, certain professionals such as engineers and certified crop advisors are required to update their skills to retain their registration or certification.

Reporting, Bookkeeping and other Procedures

To the extent that this rule requires reporting, bookkeeping or other procedures, the Department's analysis is included in the prior sections covering impacts on farmers and non-farm businesses.

Professional Skills Required

To the extent that this rule requires changes in professional skills, the Department's analysis is included in the prior sections covering impacts on farmers and non-farm businesses.

Accommodation for Small Business

The Department has taken actions to identify compliance and reporting effects of these rule changes, including securing feedback from members of stakeholder groups (which included small business owners and organizations) and a technical advisory committee of professional who work with farms of all sizes. Regarding the group most significantly

impacted, non-CAFOs, the rule includes accommodations previously described in the section summarizing the overall impacts on livestock operations.

Conclusion

This rule will have no more than a moderate impact on farmers, including "small businesses." To a limited extent, increased costs for non-CAFOs will be offset by the benefits from changes to the proposed rule, including permit modifications and protections against unfair use of completeness determinations. Other businesses may slightly benefit from these rule changes.

Dated this 14th day of July, 2017.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
John Petty, Administrator
Division of Agricultural Resource Management

APPENDIX A: Estimate of Annual Costs Triggered by Siting Rule Changes over 10 Year Period			
Standard	**Annual Costs**	**Under 1000 Animal Units** (gray shading=no cost)	**Over 1000 Animal Units** (gray shading=no cost)
Odor Management-New and expanded facilities	$3,150-$37,500	The change in setbacks and odor management will not require many farms to add additional practices; however, 10 facilities will need to install a practice related to manure storage. The estimated costs will range between: ***Low***: Windbreak-$3,150 ($4.50/ft @ 700 ft) ***High***: Cover-$37,500.00 ($.75/sq. ft. x 50,000 sq ft) There is no cost associated with odor management plans, if required, since they can be prepared by landowners and do not mandate practices.	None of the facilities should incur additional costs to comply with the change in setbacks and odor management for the following reasons: 1. A number of livestock facilities do not need odor control practices to meet the setback requirements. 2. The livestock facilities would have had to install one or more odor practices to earn passing score under the previous odor standard.
Upgrade of Nutrient Management Plans	$9,000	25 livestock facilities will be directly impacted since they are not required by other laws or program participation (e.g manure storage ordinances or FPP tax credits) to follow the upgraded standard. Based on average of 800 animal units and 1200 acres of spreadable land, each of these facilities will spend $3 per acre more to comply or $3,600 per operation.	Required under CAFO permit and therefore no additional costs based on the siting rule
Waste Storage	$0	No changes to this standard, and no new costs associated with clarification of evaluation procedures.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Waste Storage-Closure	$12,000-$20,000	8 livestock facilities must spend between $15,000 and $25,000 to close substandard structures.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Animal Lot Runoff—New or substantial altered	$$100,000-$ 125,000	10 livestock facilities will need to meet the new runoff standards for new lots, and the estimated costs for a 10,000 square foot lot will range between: ***Low***: Roof to divert water-$100,000 ***High***: New or expanded storage to hold runoff-$125,000	Required under CAFO permit and therefore no additional costs based on the siting rule.
Animal Lot Runoff—Existing	$9,900-$46,200	33 (60 percent of 55) livestock facilities must add practices to pass the barnyard evaluation, and estimated upgrade costs for a 10,000 square foot lot will range between: ***Low***: Clean water diversion-$3,000 for berm ***High***: 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
Feed Storage-Pad and Runoff collection—New and expanded bunkers, paved areas and related structures but not bags	$860,810	35 livestock facilities must meet new standard, but 10 will qualify for the lower cost option based on 1 acre of feed storage, and 30 must meet higher standards based on 2.5 acres of feed storage. • 10 facilities would incur an additional $43,560 ($1.00 per sq ft. more based on 1 acre) to upgrade their pad surface compared to requirements in the previous rule, and $20,000 to collect and pump leachate. • 25 facilities would incur an additional $108,900 ($1.00 per sq ft. more based on 2.5 acres) to upgrade their pad surface compared to the requirements in the previous rule and $210,000 to add storage to collect leachate and runoff from 2.5 acres of feed storage.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Feed Storage—Existing bunkers, paved areas and related structures but not bags	59,800	Livestock facilities will incur the following costs to evaluate and upgrade their existing facilities: • 55 livestock facilities will incur costs engineering evaluation of storage at $600 per evaluation. • 20 facilities must install clean water diversion at $2,000 each. • 35 facilities must spend $15,000 each to enhance their system to collect runoff from feed storage over 1 acre.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Other Runoff Control Standards	0	Managing milkhouse wastewater should not incur additional costs. Nor are there additional costs to comply with the tillage setback. By complying with the NRCS 590 standard, operations will control soil erosion to T and meet the Phosphorus Index.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Annual Costs	**$1,054,660-$1,158,310**		
Ten year Costs	**$10,546,600-$11,583,100**		

Wisconsin Department of Agriculture, Trade and Consumer Protection

Preliminary Environmental Assessment

Rule Subject:	**Livestock Facility Siting**
Administrative Code Reference:	**ATCP 51**
Rules Clearinghouse #:	**TBD**
DATCP Docket #:	**15-R-12**

This environmental assessment is required by Wis. Admin. Code §ATCP 3.02.

Nature and Purpose of Proposed Rule

First adopted in May 2006, Wis. Admin. Code ch. ATCP 51 ("ATCP 51") established the statewide framework of standards and procedures required to implement Wisconsin's livestock facility siting law, Wis. Stat. § 93.90. The rule only applies to livestock operators located in jurisdictions that have adopted ordinances requiring permits for new or expanding livestock facilities that exceed a certain size (commonly 500 animal units). Every four years the Department of Agriculture, Trade and Consumer Protection ("Department") must review ATCP 51, including securing advice from a Department-appointed committee of experts, to ensure that this rule meets goals in Wis. Stat. § 93.90.

The proposed rule is intended to ensure consistency among related rules (Wis. Admin. Code chs. NR 151 and ATCP 50, respectively referred to as "NR 151" and "ATCP 50"), and will incorporate changes in related rules, which implement a new nutrient management technical standard and additional farm runoff control standards designed to better control discharges of process wastewater, and meet phosphorus index targets for nutrient management. The ATCP 51 revision also addresses issues arising out of the four year review of the siting rule. The proposed revision retains the essential regulatory framework, including the core water quality standards. Improvements in standards and permitting procedures are intended to advance the statutory goal of "providing uniform regulation of livestock facilities" and better balance the factors listed in Wis. Stat. § 93.90(2)(b), which the Department must use to establish state standards.

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:

- Implement stronger protections for surface and groundwater when applying manure, as required by the 2015 version of the NRCS 590 Nutrient Management Standard ("NRCS 590 standard").
- Incorporate cropland performance standards related to the phosphorous index and the tillage setback.
- Require effective evaluations of storage facilities to allow continued use.
- Require closure of manure storage facilities that cannot be safely operated.
- More effectively control process wastewater discharges from feed storage structures, which is consistent with the latest NRCS technical standards.
- More effectively control runoff from animal lots consistent with the latest NRCS technical standards.

With the adoption of the newest NRCS 590 standard, nutrient management plans will address the following restrictions and prohibitions designed to protect water quality particularly in environmental sensitive landscapes:

- Prohibiting nutrient applications within 50' of all direct conduits to groundwater (previously only applied to wells) where only grazing and a limited amount of corn starter fertilizer may be applied.
- Prohibiting applications of manure within 100' of a non-community well, which includes schools, restaurants, churches, and within 1000' of a community well, unless the manure is treated to reduce pathogen content.
- Prohibiting winter nutrient applications within 300' of all direct conduits to groundwater, unless manure is directly deposited by gleaning or pasturing animals. This setback increased from the 200' setback in the 2005-590 NM Standard.
- Prohibiting liquid manure application in February or March on Well Compensation Areas designated by Department of Natural Resources ("DNR"), or on fields with Silurian Dolomite bedrock within 5' of the surface.
- Limiting manure nitrogen ("N") applications in late summer or fall using the lower application rate of either the current 2012 version of UW Pub. A2809 or 2015-590 NM Standard available N per acre rate for the situation on sites vulnerable to N leaching high permeability ("P") soils, or rock ("R") soils with < 20 inches to bedrock, or wet ("W") soils with < 12 inches to apparent water table ("PRW Soils").
- Limiting winter manure applications when frozen or snow-covered soils prevent effective incorporation. The NM plan must limit these applications when slopes are > 6% and if fields have concentrated flow areas using two crop management practices listed in the winter application section of the 2015-590 NM Standard.
- Prohibiting manure applications to areas locally delineated by a Land Conservation Committee as areas contributing runoff to direct conduits to groundwater, unless manure is substantially buried within 24 hours of application.
- Late summer or fall commercial N fertilizer applications are limited in regard to areas within 1,000 feet of a community well, 5 feet or less over bedrock, sites vulnerable to N leaching high permeability ("P") soils, rock ("R") soils with < 20 inches to bedrock, or wet ("W") soils with < 12 inches to apparent water table; rates needed for establishment of fall seeded crops or to meet UWEX Pub. A2809 with a blended fertilizer. The fall N rate was

increased from 30 to 36 lbs. of N per acre to match common blended fertilizers if other nutrients are needed.

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

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 2017, 119 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 local governments will adopt new siting ordinances. Over the next ten years, local governments are expected to issue the same number of permits issued during the first 11 years of ATCP 51's implementation.

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 livestock facilities will be impacted over a 10 year period, and more than half of these operations are Concentrated Animal Feeding Operations ("CAFOs"), which must meet the new siting requirements to comply with their DNR permits. About 55 non-CAFOs will be most significantly impacted by this rule, and they may need to invest over $100,000 in new runoff management practices. The *Regulatory Flexibility Analysis* includes an analysis of costs for livestock farmers and the other affected businesses described below.

Crop Consultants and other Professional Planners, Farm Supply, and Service Businesses, Soil Test Laboratories and Manure-Haulers. This proposed rule will minimally increase business for entities that provide cropland related services to farmers. Nutrient management planners will spend more time and charge more for developing plans under this rule. This rule will not necessarily change demand for manure hauling services, but may increase demand for soil testing.

Agricultural Engineering and Construction Contractors. This rule will marginally increase demand for engineered conservation practices. Operators of new or expanded livestock facilities will have a need for more engineered solutions to deal with runoff from animal lots and feed storage. Operators of expanded livestock facilities will need engineering expertise to demonstrate that existing structures meet technical standards and to design modifications for structures to bring them into compliance.

Lenders. This rule will benefit lenders that do business with livestock facilities, because it eliminates uncertainties in siting new or expanded livestock facilities.

General Public. The general public will benefit from this rule as a result of increases in farm-focused natural resource protection.

Significant Economic, Social, or Cultural Effects

Economic Effects

Less than 1 percent of Wisconsin's livestock operators will be affected by the rule. The rule will not have a significant effect on agricultural production, the sale or distribution of agricultural products including dairy products, or on the overall economy of this state. While the rule's impact will fall on a small subset of livestock operators, the demands of this rule should be viewed in the larger context of the many programs in which farmers participate. Several new requirements are consistent with recent changes to state and local conservation programs. Changes in common programs such as county manure storage permits and participation in the farmland preservation program have triggered increased recordkeeping related to the updated requirements for nutrient management plans. Cost-share and other programs regularly incorporate newer technical standards, raising the costs of conservation practices, and often triggering increased recordkeeping. In general, livestock operators should be able to incorporate any increased costs resulting from this rule into their business plans and any additional costs should not be a decisive factor in an operator's decision to build or expand their operations.

The rule will result in a slight economic benefit for the businesses professionals such as engineers and nutrient management planners who assist operators with new or expanding livestock facilities.

Setbacks and odor control practices should reduce the nuisance impact of livestock operations on neighbors. While these improvements translate into economic benefits, they are not easily quantified, particularly in light of the small group of affected operators.

Social and Cultural Effects

The rule will be neutral in terms of social and cultural effects. The improvements in water quality protections and the continued use of odor control practices may make livestock operations more acceptable to communities. Increased setbacks may improve nuisance impacts related to light, noise, and dust from production area. The scope of the rule does not address high profile issues such as water usage and management of competing water needs, traffic and road impacts, separation of conflicting land uses (e.g. residential and farms), impacts on land values, and possible disruptions in rural communities created by fewer and larger farms and increased use of migrant labor.

Controversial Public Issues

By the nature of the rule's scope, rule changes primarily focus on new water quality standards which better manage manure from locally permitted livestock operations. While improved standards will protect water in areas immediately surrounding permitted farms, the improved standards on the whole will do little to make improvements statewide, because only livestock operations in jurisdictions that have adopted siting ordinances are required to comply.

As discussed above, the rule does not cover the full impacts of larger livestock operations, nor does it mitigate certain impacts at the level desired by some groups. Despite changes in setbacks, the siting law is a limited tool to manage land use conflicts. Some community members may believe the rule's enhanced standards related to manure and feed management are not sufficient to address local concerns. While ATCP 51 offers communities a pathway to adopt more stringent local standards, local groups may find this option challenging.

Some livestock operators may be frustrated by the increased management responsibilities, particularly if they have made a conscious effort to operate below the 1,000 animal unit threshold for CAFO permits. The new siting standards are getting closer to the standards that apply to CAFOs, and will require additional investments of time and dollars to implement.

The Department expects to receive public feedback during the hearing and comment process and will consider whether to make changes to the final rule to address public concerns.

Alternatives to this Rule

No Action

Not promulgating the rule would cause the Department to have performance standards and prohibitions, conservation practices, and technical standards in conflict with other related rules such as NR 151 and ATCP 50. Under Wis. Stat. § 93.90(2)(a), the Department is obligated to promulgate rules specifying standards for siting and expanding livestock facilities, and ensure that its rules are not in "conflict with rules promulgated under §§ 92.05 (3) (c) or (k), 92.14 (8), 92.16, or 281.16 (3) or ch. 283." Inconsistent standards would cause local governments to have requirements in their siting ordinances that are not in conformance with Wis. Stat. § 92.15, which authorizes local "regulations of livestock operations that are consistent with and do not exceed the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 (3). Stats."

The Department would be falling short in its duty to develop and maintain the siting standards, which correctly balance the criteria identified in Wis. Stat. § 93.90(2)(b). For example, older standards incorporated into the siting rule in 2006 may be rooted in technically outdated concepts and not satisfy the criterion that requires that standards be based on the latest peer reviewed research and science.

Taking no action also disregards the results of the rule review the Department conducted to fulfill its duties under Wis. Stat. § 93.90 (2)(c). In addition, the Department would be dismissing

the advice it was required to secure from a technical expert committee under Wis. Stat. § 93.90 (2)(d).

Lastly, local governments and livestock operators would be required to follow outdated rule provisions, including technical standards that do not provide improved environmental benefits, and may not adequately address stakeholder needs. Failure to update technical standards will result in inconsistent treatment of farmers who must follow one standard for one program and another standard for a different program.

Modify Rule Provisions

The Department could modify the proposed rule provisions. However, the Department is constrained by a number of factors. This rule was developed in consultation with government agencies, organizations, and industry groups. The rule is the product of an extensive review process. The statutory framework for the rule, including the consistency requirement, directs certain outcomes. Nonetheless, this rule includes specific accommodations to address the needs of the most impacted groups and represents a fair balance between the business concerns and the need for natural resource protection. The Department may make changes to the final version of the rule based on comments and testimony received during public hearings.

Additional Measures to Mitigate Adverse Environmental Effects

The Department does not anticipate any adverse environmental effects as a result of this rule. Therefore, no additional measures will be needed to mitigate any adverse environmental effects.

Conclusion

This rule is intended to ensure consistency among related rules (NR 151 and ATCP 50) resulting in uniform standards for protecting water quality, addressing issues arising out of the mandatory four year review of the siting rule, and making improvements to advance the statutory goal of "providing uniform regulation of livestock facilities" and better balance the factors listed in Wis. Stat. § 93.90(2)(b). Overall, this rule will have a positive effect on the environment. There are no preferable alternatives to this rule. This rule is not a "major action significantly affecting the quality of the environment," for purposes of Wis. Stat. § 1.11. No environmental impact statement is required under Wis. Stat. § 1.11, or Wis. Admin. Code Ch. ATCP 3.

Signed this 10th day of July, 2017.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
John Petty, Administrator
Division of Agricultural Resource Management

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2050 (C04/2012)

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EXISTING ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis
☐ Repeal ☒ Modification

2. Administrative Rule Chapter, Title and Number
ATCP 51, Livestock Facility Siting

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

Wis. Admin. Code ch. ATCP 51 ("ATCP 51") first became effective on May 1, 2006, and has not been substantively modified since. In 2014, the department initiated a formal evaluation of the rule in accordance with s. 93.90 (2) (c), Stats., and the evaluation included recommendations from a technical expert committee provided in the fall of 2015.

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

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

In fulfillment of its duties prescribed under Wis. Stat. § 93.90(2)(c) and (d), the department conducted a review of ATCP 51 (receiving input from an expert technical committee). The 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. The proposed revision retains the essential regulatory framework, including the core water quality and odor control practices. 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), the department must use to establish state standards.

5. Describe the Rule's Enforcement Provisions and Mechanisms

The department is required by statute to develop and update standards and procedures that local governments must follow if they have ordinances requiring local permits for new and expanding livestock facilities. Specifically, Wis. Stat. § 93.90(2)(a), directs the department to develop state standards that are consistent with "rules promulgated under ss. 92.05 (3) (c) and (k), 92.14 (8), 92.16, and 281.16 (3) and ch. 283," and do not conflict with those rules. In developing and revising these standards, the department must properly balance the factors identified in Wis. Stat. § 93.90(2)(b), including protection of public health or safety, cost-effectiveness, and usability by local governments. Under Wis. Stat. § 93.90(2)(e), the department must 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 permit approvals issued under their ordinances. While the department collects and reports on these submissions, it has no authority to 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.

6. Repealing or Modifying the Rule Will Impact the Following (Check All That Apply)
☐ State's Economy
☒ Local Government Units
☒ Specific Businesses/Sectors
☐ Public Utility Rate Payers
☒ Small Businesses

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

Impact on Business Sectors

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

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

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

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

- Enhancements to authorize permit modifications that will reduce permitting steps and costs related to the expansion of a permitted livestock facility.
- Expanding livestock facilities may use permit modifications to defer costs related to runoff management upgrades until they must submit a full application for a siting permit.
- The fee structure retains the $1000 charge for a full permit and adds a $500 lower cost fee for livestock operations seeking a permit modification.
- The transition to a new system of setbacks and odor control practices will be eased because livestock facilities operating under the original odor management system have already increased setbacks beyond the minimum and installed odor control practices to obtain a passing odor score.
- The concept of clusters is repurposed to enable operations to use lower setbacks based on animal units within a cluster, and not based on the animals housed at the entire livestock facility.
- The revised Worksheet 2 (odor management) simplifies the process of determining compliance, no longer requires worksheet calculations for low odor sources such as animal lots and dairy housing, and allows farmers to use more flexible odor management plans to address odors from existing manure storage and other structures with higher odor sources.
- Grandfathering provisions that allow operators to expand manure storage and housing within a setback without the need to add additional odor control practices.
- Clarification of local authority to reduce setback requirements through the use of variances.
- As a result of uniform standards across conservation programs, livestock operators have opportunities to achieve compliance with the new siting standards through other programs. For example, a livestock operator may come into compliance with the 2015 nutrient management standard and other updated standards by participating in other programs such as the farmland preservation program.

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- 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 removal of the requirement that the CAFO permit must be for the same size facility.
- All operators of non-CAFOs remain eligible for cost-sharing to install practices to comply with the siting rule.

State and Local Government

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

Local Governments

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

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

State Government

Because the proposed rule modifies requirements that are locally implemented, the department would provide targeted support to local governments. The proposed rule does not increase the workload or add new responsibilities related to the livestock facility siting review board. With short-term changes in work assignments, existing department staff can develop needed support materials, and provide education and technical assistance for local governments, farmers and

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consultants to implement the changes. No other increases in state costs are anticipated

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

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

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

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

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

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

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

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

10. Fund Sources Affected	11. Chapter 20, Stats. Appropriations Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG ☐ SEG-S	20.115(7)(qd)

12. Fiscal Effect of Repealing or Modifying the Rule

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

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

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

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

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

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

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

☒ Yes ☐ No

15. Long Range Implications of Repealing or Modifying the Rule

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

16. Compare With Approaches Being Used by Federal Government

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).

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To qualify for a siting permit, a WPDES permit holder must also demonstrate compliance with Department standards for livestock structures, location on property, and odor management, which are not covered by a WPDES permit.

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

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

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

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

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

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

Illinois

In 1996, Illinois enacted a Livestock Management Facilities Act (LMFA) to create a state framework for regulation of livestock facilities. LMFA, which was updated in 1998, 1999 and 2007, was expressly adopted to provide a framework for the livestock industry to expand while establishing environmental and other safeguards. While Illinois law precludes counties from regulating agricultural uses such as livestock facilities, it allows a county to request a public informational meeting about a proposed livestock facility and submit an advisory, non-binding recommendations related to the facility's compatibility with surrounding land uses, odor control, traffic patterns and other factors. Depending on their size and other factors, livestock facilities may be subject to state requirements for waste storage design, setback distances, odor control for certain structures, certification of livestock managers, waste management plans, and reporting of released wastes. Required setback distances for new facilities are scaled by size, starting at 1320 feet for facilities under 1000 Animal Units (AUs).

Iowa

In 2002, Iowa enacted legislation reqniring 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

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

Minnesota

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

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

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APPENDIX A: Estimate of Annual Costs Triggered by Siting Rule Changes over 10 Year Period			
Standard	**Annual Costs**	**Under 1000 Animal Units** (gray shading=no cost)	**Over 1000 Animal Units** (gray shading=no cost)
Odor Management-New and expanded facilities	$3,150-$37,500	The change in setbacks and odor management will not require many farms to add additional practices; however, 10 facilities will need to install a practice related to manure storage. The estimated costs will range between: ***Low***: Windbreak-$3,150 ($4.50/ft @ 700 ft) ***High***: Cover-$37,500.00 ($.75/sq. ft. x 50,000 sq ft) There is no cost associated with odor management plans, if required, since they can be prepared by landowners and do not mandate practices.	None of the facilities should incur additional costs to comply with the change in setbacks and odor management for the following reasons: 1. A number of livestock facilities do not need odor control practices to meet the setback requirements. 2. The livestock facilities would have had to install one or more odor practices to earn passing score under the previous odor standard.
Upgrade of Nutrient Management Plans	$9,000	25 livestock facilities will be directly impacted since they are not required by other laws or program participation (e.g manure storage ordinances or FPP tax credits) to follow the upgraded standard. Based on average of 800 animal units and 1200 acres of spreadable land, each of these facilities will spend $3 per acre more to comply or $3,600 per operation.	Required under CAFO permit and therefore no additional costs based on the siting rule
Waste Storage	$0	No changes to this standard, and no new costs associated with clarification of evaluation procedures.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Waste Storage-Closure	$12,000-$20,000	8 livestock facilities must spend between $15,000 and $25,000 to close substandard structures.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Animal Lot Runoff—New or substantial altered	$$100,000-$ 125,000	10 livestock facilities will need to meet the new runoff standards for new lots, and the estimated costs for a 10,000 square foot lot will range between: ***Low***: Roof to divert water-$100,000 ***High***: New or expanded storage to hold runoff-$125,000	Required under CAFO permit and therefore no additional costs based on the siting rule.
Animal Lot Runoff—Existing	$9,900-$46,200	33 (60 percent of 55) livestock facilities must add practices to pass the barnyard evaluation, and estimated upgrade costs for a 10,000 square foot lot will range between: ***Low***: Clean water diversion-$3,000 for berm ***High***: 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
Feed Storage-Pad and Runoff collection—New and expanded bunkers, paved areas and related structures but not bags	$860,810	35 livestock facilities must meet new standard, but 10 will qualify for the lower cost option based on 1 acre of feed storage, and 30 must meet higher standards based on 2.5 acres of feed storage. • 10 facilities would incur an additional $43,560 ($1.00 per sq ft. more based on 1 acre) to upgrade their pad surface compared to requirements in the previous rule, and $20,000 to collect and pump leachate. • 25 facilities would incur an additional $108,900 ($1.00 per sq ft. more based on 2.5 acres) to upgrade their pad surface compared to the requirements in the previous rule and $210,000 to add storage to collect leachate and runoff from 2.5 acres of feed storage.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Feed Storage—Existing bunkers, paved areas and related structures but not bags	59,800	Livestock facilities will incur the following costs to evaluate and upgrade their existing facilities: • 55 livestock facilities will incur costs engineering evaluation of storage at $600 per evaluation. • 20 facilities must install clean water diversion at $2,000 each. • 35 facilities must spend $15,000 each to enhance their system to collect runoff from feed storage over 1 acre.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Other Runoff Control Standards	0	Managing milkhouse wastewater should not incur additional costs. Nor are there additional costs to comply with the tillage setback. By complying with the NRCS 590 standard, operations will control soil erosion to T and meet the Phosphorus Index.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Annual Costs	**$1,054,660-$1,158,310**		
Ten year Costs	**$10,546,600-$11,583,100**		