

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

- 1 The state of Wisconsin department of agriculture, trade and consumer protection proposes the
2 following order to create ch. ATCP 51; relating to livestock facility siting, and affecting small
3 business.

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

The Livestock Facility Siting Law (s. 93.90, Stats., created by 2003 Wis. Act 235) is designed to facilitate the siting of new and expanded livestock facilities in Wisconsin. The law establishes a general statewide framework for local approval of new or expanded livestock facilities.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) proposes this rule to implement the Livestock Facility Siting Law. This rule applies to local approval of new or expanded facilities that will have 500 or more “animal units” (or will exceed a lower permit threshold established by a local *zoning* ordinance prior to July 19, 2003). DATCP estimates that this rule will apply to approximately 50-70 local siting applications each year.

Statutory Authority

Statutory authority: ss. 93.07(1), 92.05(3)(k), 93.90(2) and 281.16(3)(b), Stats.
Statutes interpreted: ss. 92.05(3)(k), 93.90 and 281.16(3)(b), Stats.

DATCP has general authority to adopt rules interpreting statutes under its jurisdiction (*see* s. 93.07(1), Stats.). DATCP is specifically authorized to adopt farm conservation standards (*see* ss. 92.05(3)(k) and 281.16(3)(b), Stats.). Under the Livestock Facility Siting Law, DATCP must do all of the following by rule:

- Specify standards for new or expanded livestock facilities that require local approval. The standards may incorporate, and may not conflict with, current regulations related to nonpoint source pollution from farms. DATCP must do all of the following related to the standards that it adopts:

- Consider whether the 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) be usable by local officials.
- Develop the standards in consultation with a committee of experts (DATCP has done so).
- Review the standards every 4 years after it adopts them.
- Specify the information that a livestock operator must include when applying for local approval, to show that a new or expanded livestock facility will comply with the standards adopted by DATCP.
- 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.

Background: The Livestock Facility Siting Law

General

Under the Livestock Facility Siting Law, a county, town, city or village (“political subdivision”) *may not disapprove or prohibit* a proposed livestock facility siting or expansion *of any size* unless one of the following applies:

- The site is located in a non-agricultural zoning district.
- The site is located in an agricultural zoning district where the livestock facility is prohibited. The zoning 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 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 adopted by 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 DATCP (this rule).*

- A more stringent local standard that predates the siting application. The more stringent local standard must be based on reasonable and scientifically defensible findings of fact, adopted by the political subdivision, which clearly show the standard is necessary to protect public health or safety.

Animal Units

The Livestock Facility Siting Law defines “animal unit” for purposes of the law. The number of animals constituting an “animal unit” varies by livestock species. For example, one milking dairy cow equals 1.4 “animal units.” A beef animal over 600 lbs. equals 1.0 “animal unit.” A pig over 55 lbs. equals 0.4 “animal units.” A laying chicken equals 0.01 “animal unit.”

The law recognizes that the number of animals at a livestock facility typically varies throughout the year, as animals are born, received, moved and marketed. For purposes of the Livestock Facility Siting Law and this rule, the number of “animal units” kept at a livestock facility means *the largest number of “animal units” that will be at the facility on at least 90 days in any 12-month period.*

Local Approval

Many, 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 rule. A political subdivision may *not* consider other siting criteria, or apply standards that differ from this rule, except that the political subdivision may:

- Apply less restrictive “setback” requirements that are specified as numerical standards in the local ordinance.
- Apply more stringent local ordinance standards that predate the siting application, if the standards are based on reasonable and scientifically defensible findings of fact. The findings must clearly show the standards are necessary to protect public health or safety.

To qualify for local approval, an operator must meet the standards in this rule, regardless of whether the applicant receives cost-sharing. *However, a political subdivision may provide cost-sharing if it wishes.*

Application and Local Decision

An application for local approval must include information specified in this rule. If an application contains the required information, and credibly demonstrates compliance with the standards for approval, the political subdivision *must approve* the application unless it finds, based on other clear and convincing evidence in the record, that the application fails to meet the standards. The political subdivision must issue its decision within 90 days after it receives a complete application (it may extend the deadline for good cause).

A political subdivision must make a record of its decision making process. The record must include the application for local approval, a record of any public hearing (local law normally determines whether a hearing is required), and other documents and evidence considered (this rule provides more specifics). A political subdivision must make its decision based on written findings of fact that are supported by evidence in the record.

Appeal to Livestock Facility Siting Review Board

The Livestock Facility Siting Law provides a new option for “aggrieved persons” to appeal a local siting decision (it does not limit any existing right that any person may have to challenge a decision in court). An “aggrieved person” means an applicant, or a person who resides or owns land within 2 miles of the proposed livestock facility.

An “aggrieved person” may appeal a local decision to the state Livestock Facility Siting Review Board (“Board”). The Board consists of 7 members, appointed by the DATCP Secretary subject to Senate confirmation, for staggered 5-year terms. The Board includes one member representing towns, one member representing counties, one member representing environmental interests, one member representing livestock farming interests, and 3 other members. The Board is attached to DATCP for administrative purposes, but exercises independent decision making authority.

An aggrieved person may appeal a political subdivision’s decision within 30 days after the political subdivision issues the decision (or, if the aggrieved person pursues a local administrative appeal process, within 30 days after that process is complete). The aggrieved person may challenge the local decision on the grounds that it incorrectly applied DATCP standards or violated the Livestock Facility Siting Law.

When an appeal is filed, the Board must notify the political subdivision. Within 30 days after the political subdivision receives this notice, it must file a certified copy of its decision making record with the Board. The Board must review the local decision based on the evidence in the local record (the Board will not hold a new hearing or accept new evidence). The Board must make its decision within 60 days after it receives the certified local record (it may extend the deadline for good cause).

If the Board determines the challenge is valid, it must reverse the decision of the political subdivision. An aggrieved person may enforce the Board’s decision in court, if that becomes necessary. An “aggrieved person” or *the political subdivision* may appeal the Board’s decision to circuit court. In any appeal to circuit court, the court must review the Board’s decision based on the evidence in the local record (the court will not hold a new hearing or accept new evidence).

Background: Nutrient Management

Nutrient management can prevent excessive nutrient applications that may result in water pollution. Under *current* DATCP rules (ATCP 50, Wis. Adm. Code), all farmers who apply manure or commercial fertilizer to croplands (not just livestock operators) must have and follow a nutrient management plan. This requirement takes effect on January 1, 2005 in certain watersheds and on January 1, 2008 elsewhere. Enforcement is generally contingent on cost-sharing.

Under current DATCP rules, a *qualified nutrient management planner* must prepare a nutrient management plan. A farmer may prepare his or her own plan if the farmer is qualified under current rules. A plan must be based on soil tests conducted by a DATCP-certified laboratory. Nutrient applications may not exceed the amounts required to achieve applicable crop fertility levels recommended by the University of Wisconsin (there are limited exceptions).

Current DATCP rules incorporate nutrient management standards published by the Natural Resource Conservation Service of the United States Department of Agriculture (“NRCS”). The current rules incorporate outdated NRCS standards based on nitrogen, not phosphorus. NRCS is proposing revised standards based on nitrogen *and phosphorus* (phosphorus is a key nonpoint source pollutant). DATCP is proposing a separate nutrient management rule (not *this* rule) to incorporate the revised NRCS standards for all farms (not just livestock operations), subject to current cost-sharing requirements.

Under *this* rule, manure applications from an approved livestock facility must comply with the revised NRCS standards if the facility has 500 or more animal units. The operator must comply regardless of cost-sharing, and regardless of whether DATCP nutrient management rules would otherwise apply prior to January 1, 2008.

Background: DNR Water Quality Permits

Under the federal Clean Water Act, certain concentrated animal feeding operations are regulated as water pollution “point sources.” DNR regulates these operations by permit, under authority delegated by the United States Environmental Protection Agency. Under current DNR rules (NR 243, Wis. Adm. Code), livestock operations with 1,000 or more “animal units” must hold a “point source” pollution discharge permit (“WPDES permit”) from DNR. DNR may also require smaller operations to obtain a permit, if those operations discharge pollution directly to waters of the state.

A WPDES permit addresses many of the same concerns that arise in the local approval process. For example, a WPDES permit holder must comply with strict standards related to waste management and storage, nutrient management and runoff. However, a WPDES permit does not address other issues of local concern such as odor, property line setbacks and disposal of dead animals.

This rule minimizes duplication between the local approval process and the WPDES permit process. If an applicant for local approval holds a WPDES permit for the *same proposed livestock facility* (and for an equal or greater number of “animal units”), the applicant is exempt from standards under this rule related to waste management and storage, nutrient management and runoff. The applicant is *not* exempt from rule provisions related to odor management, property line setbacks or disposal of dead animals.

The Contents of this Rule

Livestock Facilities Covered by This Rule

This rule does *not* apply to all livestock facilities. It applies *only* to the following facilities *if a local ordinance requires local approval*:

- *New or expanded* livestock facilities that will have 500 or more animal units.
- *New or expanded* livestock facilities that will exceed a lower size threshold specified in a local *zoning* ordinance prior to July 19, 2003.

An “expanded livestock facility” means the entire facility (including new and existing livestock structures) created by an “expansion.” An “expansion” means *an increase in the largest number of “animal units” kept at a livestock facility* on at least 90 days in any 12-month period.

This rule does *not* apply to the construction, repair or improvement of structures at an existing livestock facility if there is no increase in “animal units,” or if the number of “animal units” in the expanded facility does not exceed the threshold at which local approval is required (local building codes and manure storage ordinances may apply).

Combined Livestock Facilities

Two or more livestock facilities are considered a single livestock facility, for purposes of this rule, if the *same individual or business entity* owns all of the facilities and *any* of the following apply:

- The facilities are located on *adjacent* tax parcels (the mere acquisition of a neighboring facility does not constitute an *expansion* unless the purchaser adds “animal units” to the combined facilities).
- The *same structures* are used to collect or store manure or other waste from the facilities.
- Manure or other waste from the facilities is applied to the *same land*, or under the *same nutrient management plan*.

Type of Livestock

This rule applies to facilities that keep *cattle, swine, poultry, sheep or goats*. This rule does *not* apply to facilities that keep only horses, farm-raised deer, fish, captive game birds, ratites (such as ostriches or emus), camelids (such as llamas or alpacas) or mink.

State Standards Incorporated in Local Ordinance

A political subdivision may not disapprove a proposed livestock facility based on standards in this rule unless the political subdivision incorporates the standards in its local ordinance. A political subdivision may incorporate the standards by reference, without reproducing them in full in the local ordinance.

Local Approval of Existing Livestock Facilities

A *new* local ordinance (enacted *on or after* the effective date of this rule) may not require approval for a pre-existing livestock facility, but may require approval for an *expanded* facility if the number of “animal units” increases by more than 20% compared to number kept on the *ordinance effective date*. Local approval is governed by standards under this rule.

If an existing livestock facility is covered by an existing local ordinance (enacted *prior to* the effective date of this rule), an expansion will need local approval if *any* the following apply (local approval is governed by standards under this rule):

- The expanded facility exceeds, for the first time and without prior local approval, the relevant size threshold at which local approval is required (for example, if a livestock facility expands from 375 to 425 “animal units” and the local threshold enacted prior to July 19, 2003 is 400 “animal units”).
- The expansion exceeds the express limit of a prior local approval (for example, if a livestock facility previously approved for up to 800 “animal units” expands to 900 “animal units”).
- The number of “animal units” kept at the expanded facility exceeds by more than 20% the number kept on the rule effective date (for example, if the local threshold is 500 “animal units” and the facility expands from 600 to 900 “animal units”).

Application for Local Approval

To obtain local approval, an operator must complete the *application form* and *worksheets* attached to this rule. An application must be complete, credible and internally consistent. The *application form* and *worksheets* elicit key information to show compliance with the siting standards in this rule.

If an application contains the information required by this rule, the political subdivision *must approve* the proposed livestock facility unless the political subdivision finds, based on other clear and convincing evidence in the local record, that the facility fails to meet the siting standards in this rule. By spelling out clear application requirements and approval standards, this rule adds certainty to the application and decision-making process.

An application for local approval must include all of the following (see *application form* and *worksheets* attached):

- Information about the applicant.
- *A description of the proposed livestock facility*, including the types of livestock and the number of “animal units” for which the applicant seeks approval. The applicant must calculate animal units according to an *animal units worksheet (worksheet 1)*. The application must show the *maximum* number of “animal units” the applicant proposes to keep on at least 90 days during any 12-month period. If the political subdivision approves the proposed livestock facility, this is the number of “animal units” approved (the operator may not exceed this number without further approval).
- *An area map*. The area map must show a 2-mile radius around the proposed facility (with topographic lines at 10-foot elevation intervals). The map must show all current and proposed livestock structures, property lines, roads, houses, buildings, residential and commercial zoning districts, residential subdivisions, public parks and navigable waters within that area.
- *A site map*. The site map must show a 1,000 foot radius around the proposed facility (with topographic lines at 2-foot elevation intervals for the area within 300 feet of livestock structures). The map must show current and proposed livestock structures, property lines, roads, buildings, residential and commercial zoning districts, residential subdivisions, public parks, wells, navigable waters and any direct conduits to groundwater. The applicant must certify that livestock structures will comply with applicable property line and water quality setbacks in this rule (see below).
- The following *worksheets*:
 - *Animal units* (worksheet 1).
 - *Odor management* (worksheet 2).
 - *Waste and nutrient management* (worksheet 3).
 - *Waste storage facilities* (worksheet 4).
 - *Runoff management* (worksheet 5).
 - *Mortality management* (worksheet 6).

An applicant who holds a WPDES permit from DNR for the *same proposed livestock facility* (and the same or greater number of animal units) is not required to submit worksheets 3, 4 and 5, but must submit worksheets 1, 2 and 6.

The application form includes a *notice of other laws* that may apply to livestock operations. The notice makes the applicant aware of these laws. But except as specifically provided in this rule, the listed laws are *not* used as standards for local siting decisions (other compliance and enforcement mechanisms apply).

A political subdivision may not alter the application form (except for limited purposes specified in this rule). A political subdivision may charge a reasonable application fee, not to exceed \$500, to offset its costs to review and process the application. A political subdivision may *not* charge any other fee, or require the applicant to post any bond or security with the political subdivision.

Property Line Setbacks

New livestock structures, and livestock structures enlarged by more than 20%, must comply with property line setbacks under this rule. *Livestock structures* include things like barns, milking parlors, feed storage facilities, feeding facilities, animal lots and waste storage facilities, but do *not* include things like machine sheds, pastures, or fences around pastures. The following setbacks apply, unless a local ordinance specifies shorter setbacks:

- The structures must be located at least 100 feet from property lines and roads.
- The structures must be located at least 200 feet from property lines other than roads, and 150 feet from roads, if the livestock facility will have 1,000 or more animal units.

Water Quality Setbacks

This rule does not create new water quality setbacks, but requires compliance with the following applicable laws:

- *Shoreland and wetland zoning ordinances.* Essentially all navigable waters are now protected by ordinances that require building setbacks of 75 feet or more (depending on the ordinance). Restrictions typically apply to new or enlarged structures.
- *Floodplain zoning ordinances.* Floodplain ordinances apply to many, but not all, waterways (not all waterways have mapped floodplains). Restrictions typically apply to new or enlarged structures.
- *State well code.* The state well code (NR 812) sets well construction and well location standards to protect water supplies. Requirements typically apply to new or enlarged structures. DNR may grant variances.

Odor Management; Livestock Structures

The following livestock facilities must have a positive “adjusted odor index,” calculated according to the *odor management worksheet (worksheet 2)* that accompanies an application for local approval:

- A *new* livestock facility with more than 500 “animal units.”
- An *expanded* livestock facility with more than 1,000 “animal units.”

The “adjusted odor index” indicates the likelihood of objectionable odors from livestock structures, based on:

- The type of livestock.
- The types, sizes and locations of livestock structures.
- Distances from *high odor* livestock structures (such as waste storage facilities) to affected neighbors.
- *Odor management* and *good neighbor* practices the applicant will implement.

An applicant can avoid an otherwise negative “odor index” by implementing *odor management* practices (to reduce odors) and *good neighbor* practices (which do not reduce odor but may reduce conflicts with neighbors). These practices, and their assigned weight, are listed in the *odor management worksheet* (the applicant chooses which practices to implement). A political subdivision may also grant some discretionary credit, if it wishes to do so.

Odor management practices include, but are not limited to, dispersion distances from *high odor livestock structures* to the nearest “non-affiliated residence” or “high public use area.” The longer the distance, the better. If the owner of the nearest residence agrees in writing, the operator may measure the distance to the next closest residence (and so on). A “high public use area” means an incorporated area; a commercial zoning district; a residential subdivision; a residential zoning district that includes at least 5 lots of less than 1.5 acres each; a residential facility that has 5 or more dwelling units; a licensed restaurant; a school building; a hospital or licensed care facility; or a public picnic area, camping area, sports field or playground.

If an operator obtains local approval, based on an “odor index” reflecting distances to the nearest (non-consenting) residence and “high public use area” at the time of approval, that approval remains in effect even if subsequent development moves closer to the livestock facility. If an operator seeks later approval for a *further expansion* of an approved livestock facility, the operator may claim dispersion distances from the expanded livestock structures *to the same initial reference points* despite any development that has encroached on the livestock facility in the interim. This rule thus provides some protection against encroaching development, without regulating that development directly.

If livestock structures are divided into 2 or more “clusters” (for example, a milking facility and a separate heifer facility) that are separated by more than 500 feet (1,000 feet if any of the “clusters” has 500 or more “animal units”), the operator may calculate a separate “odor index” for each “cluster.”

Odor Management; Land Application of Stored, Untreated Liquid Manure

A livestock operator must use at least one of the following practices when applying *untreated liquid manure that has been stored for at least 7 days*:

- Inject the manure directly into the soil.
- Incorporate the manure into the soil within 48 hours (or as soon as weather permits).
- Cover the manure with vegetative residue within 48 hours (or as soon as weather permits).
- Apply the manure at least 500 feet from the nearest “non-affiliated residence” and from the nearest “high public use area” (distances do not apply if owner consents in advance to manure application).
- Apply the manure during only 2 weeks of the year (at least 500 feet from the nearest “high public use area.”)
- Comply with an odor management plan approved by the political subdivision (operator proposes plan). A plan might include, for example, advance notice to neighbors or avoiding applications at sensitive times.
- Comply with less restrictive manure application odor setbacks enacted by local ordinance.

This rule does *not* regulate application of fresh manure (stored less than 7 days), solid or heavily bedded manure, or manure that is effectively treated to reduce odor (such as by anaerobic digestion or substantial dilution).

Waste and Nutrient Management

A livestock operator must manage manure and other waste responsibly, according to standards in this rule. A *waste and nutrient management worksheet (worksheet 3)* must accompany every application for local approval. The completed *worksheet* must include all of the following:

- The types and amounts of manure and other organic waste that the livestock facility will generate *when fully populated*.
- The types and amounts of waste that the operator will store, the waste storage facilities and methods that the operator will use, the intended duration of waste storage, and the capacity of waste storage facilities.
- The final disposition of waste by landspreading or other means.
- The acreage available to the operator for landspreading (adequate acreage helps prevent excessive nutrient applications).

- A map showing where the operator proposes to landspread nutrients.
- A *nutrient management checklist*. This checklist is *not* required for a livestock facility with fewer than 500 “animal units” unless the operator’s ratio of acres to “animal units” is less than 1.5 for dairy and beef cattle, 1.0 for swine, 2.0 for sheep and goats, 2.5 for chickens and ducks, and 5.5 for turkeys (these “quick test” ratios are based on the phosphorus content of manure from the respective species).

A qualified nutrient management planner must complete the *nutrient management checklist* (if required). The planner must answer key questions to show that the livestock operation will comply with NRCS nutrient management standards (proposed NRCS standards based on nitrogen *and phosphorus*). However, a livestock operator is *not* required to submit a complete nutrient management plan with the application for local approval.

The nutrient management planner must have documentation to support the planner’s answers to checklist questions. The planner is not required to submit that documentation with the checklist. But the political subdivision may ask the planner to submit the planner’s documentation for one or more answers, as necessary.

An operator is not required to complete a *waste and nutrient management worksheet*, or comply with nutrient management requirements under this rule, if the operator holds a WPDES permit from DNR for the *same proposed livestock facility* (and for the same or greater number of “animal units”). The operator may submit a copy of the WPDES permit in lieu of a *waste and nutrient management worksheet*.

Waste Storage Facilities

Waste storage facilities must meet standards in this rule, to provide reasonable assurance against leakage or structural failure. A *waste storage facility worksheet (worksheet 4)*, signed by a registered professional engineer or certified agricultural engineering practitioner, must accompany an application for local approval.

- ***Existing waste storage facilities.*** The *worksheet* must certify that each existing facility meets one of the following standards (an existing facility is not required to meet standards for new construction, unless it is substantially altered):
 - The facility is constructed of concrete or steel, or both, was constructed within the last 10 years according to then-existing NRCS standards, and shows no apparent signs of leakage or structural failure.
 - The facility was constructed within the last 3 years according to then-existing NRCS standards, and shows no apparent signs of leakage or structural failure.
 - The facility was constructed according to NRCS standards that existed at the time of construction, is in good condition and repair, and shows no apparent signs of leakage or structural failure.

- The facility is in good condition and repair, shows no apparent signs of leakage or structural failure, and is located on a site at which the soils and separation distances to groundwater comply with *NRCS technical guide manure storage facility standard 313, table 1 (November, 2004)*.
- The facility is in good condition and repair, shows no apparent signs of leakage or structural failure, is located entirely above ground, and is located on a site at which the soils comply with *NRCS technical guide manure storage facility standard 313, table 5 (November, 2004)*.
- ***New or substantially altered facilities.*** *New or substantially altered* waste storage facilities must be designed and constructed according to the following technical standards:
 - *NRCS technical guide manure storage facility standard 313 (November, 2004)*.
 - *NRCS technical guide manure transfer standard 634 (November, 2004)*.

The *worksheet* must include design specifications, and must certify that the design specifications comply with the NRCS standards. Construction may not deviate materially from the design specifications without local authorization.

- ***Closed facilities.*** If an operator *closes* a waste storage facility, the operator must have and follow a closure plan that complies with *NRCS technical guide closure of waste impoundments standard 360 (June 2001)*. The *worksheet* must include the closure plan, and must certify that the plan complies with the NRCS standard. According to DNR rules, an operator must normally close a manure storage facility if it has not been used for 24 months or if it poses an imminent threat to public health, aquatic life or groundwater.
- ***Storage capacity.*** The *worksheet* must certify the overall capacity of waste storage facilities. Capacity must be adequate for reasonably foreseeable waste storage needs, based on the applicant’s waste and nutrient management strategy (see above). There may be no overflow of waste storage facilities.

An operator who holds a WPDES permit from DNR for the *same proposed livestock facility* (and for the same or greater number of “animal units”) is exempt from the waste storage facility standards under this rule. The operator may submit a copy of the WPDES permit in lieu of a *waste storage facility worksheet*.

Runoff Management

To qualify for local approval, a livestock facility must comply with standards to prevent polluted runoff. A *runoff management worksheet (worksheet 5)* must accompany the application for local approval. A registered professional engineer or certified agricultural engineering practitioner must sign the *worksheet*.

- ***New or substantially altered animal lots.*** Every *new or substantially altered animal lot* must be designed and constructed according to *NRCS technical guide wastewater treatment strip standard 635 (January, 2002)*. The *worksheet* must include design specifications, and must certify that the specifications comply with the NRCS standard. Construction may not vary materially from design specifications without local authorization.
- ***Existing animal lots.*** The *worksheet* must certify that each *existing* animal lot will meet the following standards without alteration, or with minor alterations specified in the worksheet:
 - The predicted annual phosphorus runoff from the animal lot (calculated according to the *BARNY* feedlot model at the end of the runoff treatment area) must be less than 5 lbs. if the animal lot is located within 1,000 feet of a navigable lake or 300 feet of a navigable stream.
 - The predicted annual phosphorus runoff from the animal lot (calculated according to the *BARNY* feedlot model at the end of the runoff treatment area) must be less than 15 lbs. if the animal lot is *not* located within 1,000 feet of a navigable lake or 300 feet of a navigable stream.
 - There may be no direct runoff from the feedlot to any direct conduit to groundwater (such as a sinkhole).
- ***Feed storage facilities.*** Feed storage facilities must comply with the following requirements (the *worksheet* must certify compliance):
 - *General.* All feed storage must be managed to prevent significant discharge of leachate or polluted runoff to waters of the state (fermented feed leachate is an especially potent water pollutant).
 - *Existing storage of high moisture feed.* Surface water runoff must be diverted from existing paved areas and bunkers used to store or handle feed with a 65% or higher moisture content. Surface discharge of leachate from the high-moisture feed must be collected (and properly disposed of) before it leaves any paved area that covers more than one acre.
 - *New or substantially storage of high moisture feed.* New or substantially altered feed storage structures (including buildings, bunkers, silos and paved areas used to store or handle feed) must meet standards in this rule if they are used to store or handle feed that has a moisture content of 65% or more. Surface water runoff must be diverted from entering the feed storage structure. Leachate must be collected before it leaves the structure. The structure must sit at least 3 feet above groundwater and bedrock. If the structure covers more than 10,000 square feet, and is located in a “water quality management area” (near surface waters or in area susceptible to groundwater contamination), it must have a subsurface system to collect leachate that may leak through the (cracked) floor of the structure. The *worksheet* must include design specifications and certify compliance.

- **Clean water diversion.** Runoff from a livestock facility must be diverted from contact with animal lots, manure storage facilities, feed storage areas and manure piles within 1,000 feet of a navigable lake or 300 feet of a navigable stream. Runoff may be diverted by means of earthen diversions, curbs, gutters, waterways, drains or other practices, as appropriate.
- **Overflow of Manure Storage Facilities.** A livestock facility must be designed, constructed and maintained to prevent overflow of manure storage facilities.
- **Unconfined manure piles.** A livestock facility may not have any unconfined manure piles within 1,000 feet of a navigable lake or within 300 feet of a navigable stream.
- **Livestock access to waters of the state.** A livestock facility may not have unrestricted livestock access to waters of the state, if that access will prevent adequate vegetative cover on banks adjoining the water. This does not prohibit properly designed livestock or farm machinery crossings.
- **Construction runoff.** If the construction of a new or expanded livestock facility will disturb more than one acre of land, the operator must have a construction site erosion control plan (per current DNR rules).

An operator who holds a WPDES permit from DNR for the *same proposed livestock facility* (and for the same or greater number of “animal units”) is exempt from the runoff management standards in this rule. The operator may submit a copy of the WPDES permit in lieu of a *runoff management worksheet*.

Mortality Management

A *mortality management worksheet (worksheet 6)* must accompany an application for local approval. The *worksheet* must describe the operator’s plan for disposing of livestock that die at the livestock facility. This rule does not regulate the method of disposal (other laws may apply).

Complete Application

Within 45 days after a political subdivision receives an application, it must notify the applicant whether the application is complete. If the application is not complete, the notice must describe the additional information needed. As soon as the applicant provides all of the required information, the political subdivision must notify the applicant that the application is complete. This notice does not constitute an approval of the proposed livestock facility.

Timely Action on Application

A political subdivision must grant or deny an application within 90 days after the political subdivision gives notice that the application is complete. A political subdivision may extend this time limit for good cause, including any of the following:

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

A political subdivision must give written notice of any extension. The notice must specify the reason for the extension, and must specify the extended deadline date by which the political subdivision will act on the application.

Granting or Denying an Application

A political subdivision *must approve* a proposed livestock facility if all of the following apply:

- The application complies with this rule and is complete.
- The application contains sufficient credible information to show, in the absence of clear and convincing information to the contrary, that the proposed livestock facility meets the standards specified in this rule. The *application form* and *worksheets* are designed to elicit the necessary information, so that a complete application creates a *presumption of approval*.

A political subdivision may deny an application if any of the following apply:

- The application, on its face, fails to meet the standard for approval (see above).
- The political subdivision finds, based on other clear and convincing information in the record, that the proposed livestock facility does not comply with applicable standards in this rule.

A political subdivision must issue its decision in writing. The decision must be based on written findings of fact supported by evidence in the record.

Terms of Approval

A local approval is conditioned on the livestock operator's compliance with the standards in this rule, and with commitments made in the application for local approval. This rule does not limit a political subdivision's authority to monitor compliance, or to suspend local approval or seek other redress provided by law if the political subdivision finds any of the following:

- The livestock operator materially misrepresented relevant information in the application, or materially failed to honor commitments made in the application without authorization from the political subdivision.
- The livestock facility fails to comply with applicable standards under this rule.

Record of Decision Making

A political subdivision must keep a complete written record of its decision making related to an application for local approval under this rule. The political subdivision must keep the record for at least 7 years following its decision. The record must include all of the following:

- The application, including all worksheets and other attachments.
- Any notice or correspondence that the political subdivision issues in relation to the application, including a notice of completeness or incompleteness.
- An electronic recording or professional transcript of any public hearing related to the application (local law determines whether a hearing is required).
- Copies of any documents, correspondence or evidentiary material received or considered by the political subdivision in relation to the application.
- Minutes of any board or committee meeting held to consider the application.
- The written decision of the political subdivision.
- Other documents prepared by the political subdivision to document its decision or decision making process.
- A copy of any local ordinance cited in the decision.

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP will request permission from the attorney general and revisor of statutes 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 (November, 2004).*
- *NRCS technical guide manure transfer standard 634 (November, 2004).*
- *NRCS technical guide closure of waste impoundments standard 360 (June 2001).*
- *NRCS technical guide wastewater treatment strip standard 635 (January 2002).*
- *The BARNY Model (An Evaluation System to Rate Feedlot Pollution Potential, ARM-NC-17), published by NRCS (April 1982).*

Copies of these standards may be obtained from NRCS, and will be on file with DATCP, the Secretary of State and the Revisor of Statutes. Copies are not reproduced in this rule.

This rule also incorporates a *proposed* draft of *NRCS technical guide nutrient management standard 590 (draft proposed for adoption in November, 2005)*. A copy of the *proposed* standard is reproduced as *Appendix B* to this rule.

Fiscal Impact

This rule will have a significant fiscal impact on DATCP and local units of government. DATCP estimates that the Livestock Facility Siting Law and this rule will add the following annual costs:

- State costs of \$155,000 annually. This includes:
 - DATCP costs to establish and administer the Livestock Facility Siting Review Board (which is attached to DATCP for administrative purposes).
 - DATCP costs to administer this rule. This includes information and technical assistance to livestock operators and political subdivisions.
- Aggregate local costs of \$5,000 to \$70,000 annually (*statewide costs for all political subdivisions*). This assumes a cost of \$600 to \$1,500 per local approval, and 50-70 local approvals per year. This cost will be offset by savings related to more orderly, less contentious, approval proceedings. But costs and savings will vary between political subdivisions. Under this rule, a political subdivision may charge an application fee of up to \$500 to offset its costs to review and process an application. This rule does not *require* local approval of livestock facilities (that is a matter of local policy).

The Livestock Facility Siting Law provided no additional staff or appropriations to administer the law or this rule. A complete fiscal estimate is attached.

Business Impact

This rule will have a significant impact on livestock businesses in this state. This rule will facilitate the orderly growth and modernization of Wisconsin's critical livestock industry by providing a clearer, more uniform, more objective and more predictable local approval process.

This rule directly affects only a small number of livestock operators – those who voluntarily choose to build new or expanded livestock facilities in jurisdictions that require local approval. The affected facilities will typically have over 500 “animal units” (some smaller facilities may be affected, in local jurisdictions that had lower permit thresholds prior to July 19, 2003).

DATCP estimates that this rule will directly affect only about 50-70 livestock facilities per year. But the rule will have a significant impact in those cases. It will also have a long-term, indirect impact on the growth and development of the state's livestock industry as a whole. The rule will facilitate more orderly planning, more appropriate siting choices, more predictability for livestock operators and their lenders, and more efficient and environmentally sustainable industry development.

Prior to the Livestock Facility Siting Law, some individual livestock operators spent hundreds of thousands of dollars on *unsuccessful applications* for local siting approval. When local approval was denied, the operators lost income opportunities. Other operators, though ultimately successful, incurred extraordinary (and often unnecessary) costs and delays.

Contentious local proceedings have exacted a heavy emotional toll on livestock operators and their families, and harmed community relations. The unpredictability of local approval has discouraged lending and capital investment.

New and expanding operations will need to comply with regulations spelled out in this rule. This may add costs for some new or expanding operations, but will also save costs related to local siting disputes and litigation. Operators will be able to evaluate compliance needs before applying for local approval, and will be able to plan their investments accordingly.

DATCP has developed *preliminary cost estimates* for livestock facilities directly affected by this rule. DATCP estimates the following average cost (or savings) range per siting, by livestock facility size category:

Under 500 “animal units:”	(\$15,500 savings) to \$18,500
500 to 1,000 “animal units:”	(\$46,150 savings) to \$48,200
Over 1,000 “animal units:”	(\$163,590 savings) to \$159,000

Based on reports of livestock siting disputes prior to the Livestock Facility Siting Law, DATCP believes that the *net costs* of this rule may actually be much lower, and that savings may actually be much higher. Net costs may also be offset, in some cases, by government cost-sharing grants. An applicant for local approval is not ordinarily entitled to cost-sharing for conservation practices needed to comply with this rule. *However a political subdivision may provide cost-sharing if it wishes.*

This rule affects local approval of livestock facilities that will have 500 or more “animal units” (or that will exceed a lower threshold established by local zoning ordinance prior to July 19, 2003). Many of these operators are “small businesses” as defined in s. 227.114(1), Stats. This rule will have a significant economic impact on affected small businesses, and is therefore subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats. That provision automatically delays a rule’s applicability to small businesses by 2 months, compared to the effective date for other businesses. A complete business impact analysis, including a small business analysis (“initial regulatory flexibility analysis”) is attached.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules specifying their rule enforcement policy for small businesses. DATCP has not incorporated a small business enforcement policy in this rule, but will propose a separate rule on that subject. This rule does not directly regulate small business (there is no direct DATCP enforcement against small business). This rule merely establishes standards and procedures for *local* approval of new and expanded livestock facilities.

Environmental Impact

This rule will protect the environment by establishing clear environmental protection standards for new and expanded livestock facilities that require local approval. This rule will protect neighboring land uses by establishing reasonable odor management standards and property line setbacks. It will protect surface water and groundwater quality by incorporating existing water quality setbacks, and by establishing reasonable standards related to waste management, waste storage, nutrient management and runoff control.

This rule will ensure that applicants for local approval are aware of other environmental laws that may apply, even though those laws are not incorporated as standards for local approval under this rule (other compliance and enforcement mechanisms apply). A complete environmental assessment is attached.

Federal Regulation

This rule addresses local regulation of livestock facility siting. There are no federal regulations that address this topic directly. But the following federal programs have an impact on livestock facilities in this state, including livestock facilities covered by this rule:

Federal Clean Water Act

Under the federal Clean Water Act, certain livestock facilities are subject to federal regulation as water pollution “point sources.” DNR regulates these operations by permit (WPDES permit), under authority delegated from the United States Environmental Protection Agency (EPA). DNR rules are contained in ch. NR 243, Wis. Adm. Code.

WPDES permit requirements do not ordinarily apply to livestock facilities with fewer than 1,000 “animal units.” However, DNR may require smaller facilities to obtain WPDES permits if the facilities discharge pollutants directly to waters of the state. DNR regulations focus on water quality concerns, and do not address other issues (such as odor control and property line setbacks) that may be of concern to local government.

This rule harmonizes local approval of livestock operations with the WPDES permit program, but is not identical to DNR rules. For example:

- This rule applies to livestock facilities that have at least 500 animal units (or exceed a lower threshold established by a local zoning ordinance prior to July 19, 2003). This reflects the scope of the Livestock Facility Siting Law, which differs from that of the Clean Water Act and DNR rules.
- This rule includes water quality-related standards that are reasonably consistent with DNR standards. However, this rule also addresses odor management, property line setbacks and other local concerns that are not addressed by DNR.

- This rule incorporates updated NRCS nutrient management standards based on nitrogen *and phosphorus*. DNR is also proposing to incorporate phosphorus-based NRCS standards under the WPDES program.
- This rule defines livestock facilities and “animal units” consistent with DNR rules, to the extent permitted by the Livestock Facility Siting Law.
- This rule includes criteria for determining when 2 or more livestock facilities must be treated as a single facility for purposes of local approval. These criteria are similar to the criteria that DNR uses in the WPDES program.
- If an applicant for local approval holds a WPDES permit for the *same proposed livestock facility* (and for an equal or greater number of “animal units”), the applicant is exempt from standards in this rule related to water quality, waste management, waste storage facilities and runoff management. The applicant is *not* exempt from provisions related to odor management, property line setbacks and disposal of dead animals.

Federal Nutrient Management Standards

NRCS has adopted nutrient management standards for farms. *NRCS does not enforce these as mandatory standards* (except for farms that receive cost-share funding from NRCS). However, DNR rules incorporate them as *mandatory standards* for livestock facilities with WPDES permits. DATCP rules also incorporate them as *mandatory standards* for Wisconsin farms (not just livestock facilities).

NRCS is proposing updated nutrient management standards, based on nitrogen *and phosphorus*. DATCP is proposing a separate rule (not this rule) to incorporate the updated NRCS standards in DATCP nutrient management rules (DNR may do the same). This rule also incorporates the updated NRCS standards.

Federal Clean Air Act

Under the federal Clean Air Act, certain livestock facilities may be subject to federal air quality regulations. DNR administers air pollution control requirements under authority delegated from the United States Environmental Protection Agency (EPA). DNR has not yet regulated air emissions from livestock facilities to any significant degree, but is considering possible regulations related to pollutants such as hydrogen sulfide and ammonia.

This rule establishes livestock facility siting standards related to odor. This rule does not regulate air pollutants as such, but odor management may have a positive impact on air quality. Property line and road setbacks may also reduce potential exposure to air pollutants.

Federal Conservation Incentives

The United States Department of Agriculture administers a number of federal programs that offer voluntary conservation incentives to farmers (including livestock operators):

- The Environmental Quality Incentives Program (EQIP) offers cost-sharing for conservation improvements, including nutrient management plans, manure storage improvements and others.
- Other programs, such as the Conservation Reserve Program (CRP), the Conservation Reserve Enhancement Program (CREP), the Wetlands Reserve Program (WRP), the Wildlife Habitat Improvement Program (WHIP) and the Conservation Security Program (CSP) also provide cost-sharing and other incentives for conservation practices that may help livestock operators meet the standards under this rule.

Regulation in Surrounding States

According to a leading publication, many states have limited local zoning controls over livestock facilities (*Planning and Zoning for Concentrated Animal Feeding Operations*, American Planning Association, 1999). Among states bordering Wisconsin, there is an apparent trend toward state regulation that pre-empts or standardizes local regulation. State standards can address important concerns such as runoff control and odor management, while providing a more uniform and predictable regulatory environment for farm businesses.

Illinois

In 1996, Illinois enacted a law (Illinois Compiled Statutes, Chapter 510, Act 77, Sections 77/1 et seq.) providing for state regulation of livestock facility siting. The law was an apparent response to demand for government oversight of an industry characterized by higher concentrations of confined animals. The law provided for local input, but restricted local zoning regulation of livestock facilities.

Michigan

In 1999, the Michigan legislature directed the creation of “generally accepted agricultural management practices” for the siting of livestock facilities. The Michigan Department of Agriculture certifies compliance with these best management practices. No state permit is required, but a compliance certification gives the livestock operator protection against lawsuits alleging that the livestock facility constitutes a “nuisance.” Local governments are precluded from adopting or enforcing any regulation that conflicts with state siting standards.

Iowa

In 2002, Iowa enacted livestock facility siting legislation, requiring livestock facilities to meet state standards related to building setbacks, manure management plans, manure application and air quality (air quality standards are still being developed). Local regulation is limited. However, counties may require livestock facilities to achieve a passing score on a “master matrix” that imposes higher standards related to air, water and community impacts.

- 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 standard that predates 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.

Subchapter I

DEFINITIONS AND GENERAL PROVISIONS

ATCP 51.01 Definitions. In this chapter:

(1) “Adjacent” livestock facilities means livestock facilities that are located on adjacent tax parcels, or on tax parcels that are separated only by a river, stream, or transportation or utility right-of-way.

(2) “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.

(3) “Animal unit” has the meaning given in s. NR 243.03(3).

1 **NOTE:** See s. 93.90(1m)(a), Stats., and s. ATCP 51.04. Animal unit equivalents, for
2 different species and types of livestock, are shown in *Appendix A, worksheet 1*
3 (*animal units*).
4

5 **(4)** “*BARNY* model” means the NRCS “Evaluation System to Rate Feedlot Pollution
6 Potential,” ARM-NC-17 (April, 1982).

7 **NOTE:** The *BARNY* model is a commonly used computer model that predicts nutrient
8 runoff from animal lots. Copies of the *BARNY* model are on file with the
9 department, the secretary of state and the revisor of statutes. An Excel computer
10 spreadsheet version is available on the NRSC Wisconsin website (engineering
11 directory).
12

13 **(5)** “Certified agricultural engineering practitioner” means an agricultural engineering
14 practitioner who is certified in the relevant job class under s. ATCP 50.46.

15 **(6)** “Cluster” means any group of one or more livestock structures within a proposed
16 livestock facility.

17 **(7)** “Complete” application for local approval means an application that contains
18 everything required under ss. ATCP 51.30(1) to (3).

19 **(8)** “Department” means the Wisconsin department of agriculture, trade and consumer
20 protection.

21 **(9)** “Direct runoff” has the meaning given in s. NR 151.015(7).

22 **(10)** “DNR” means the Wisconsin department of natural resources.

23 **(11)** “Expanded livestock facility” means the entire livestock facility that is created by
24 the expansion, after *[revisor inserts effective date of this chapter]*, of an existing livestock
25 facility. “Expanded livestock facility” includes all livestock structures in the expanded facility,
26 regardless of whether those structures are new, existing or altered.

27 **NOTE:** This chapter applies to local approvals of *new or expanded* livestock facilities
28 that will have 500 or more animal units (or will exceed a lower permit threshold
29 incorporated in a local *zoning* ordinance prior to July 19, 2003). See s. ATCP
30 51.02.

1
2 **(12)** “Expansion” means an increase in the largest number of animal units kept at a
3 livestock facility on at least 90 days in any 12-month period. The acquisition of an existing
4 livestock facility, by the operator of an adjacent livestock facility, does not constitute an
5 “expansion” unless that operator increases the largest number of animal units kept at the
6 combined livestock facilities on at least 90 days in any 12-month period.

7 ***NOTE:*** See s. ATCP 51.04.

8 **(13)** “Fine soil particles” means soil particles that pass through a # 200 soil sieve.

9 ***NOTE:*** See s. NR 151.002(32).

10 **(14)** “High public use area” means any of the following:

11 (a) An incorporated area.

12 (b) A residential use zoning district that includes at least 5 residential parcels of less than
13 1.5 acres.

14 (c) A commercial use zoning district.

15 (d) A residential subdivision.

16 (e) A residential building that has 5 or more dwelling units.

17 (f) A licensed restaurant.

18 (g) A school building.

19 (h) A hospital or licensed care facility.

20 (i) That portion of a public park that is designated or equipped as a picnic area, camping
21 area, sports field or playground.

22 **(15)** “Karst feature” means an area or superficial geologic feature subject to bedrock
23 dissolution so that it is likely to provide a conduit to groundwater. “Karst feature” may include

1 caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or
2 swallets.

3 (16) “Liquid” manure, as used in s. ATCP 51.14(2), means manure comprised of not
4 more than 12% solids.

5 (17) “Livestock” means domestic animals traditionally used in this state in the
6 production of food, fiber or other animal products. “Livestock” includes bovine animals, swine,
7 poultry, sheep and goats. “Livestock” does not include equine animals, farm-raised deer, fish,
8 captive game birds, ratites, camelids or mink.

9 (18) “Livestock facility” means a feedlot, dairy farm or other operation where livestock
10 are or will be fed, confined, maintained or stabled for a total of 45 days or more in any 12-month
11 period. A “livestock facility” includes all of the tax parcels on which the facility is located, but
12 does not include a tax parcel used only for pasture. Two or more livestock facilities constitute a
13 single livestock facility, for purposes of this chapter, if the same person owns or manages all of
14 the facilities and any of the following apply:

15 (a) The facilities are adjacent.

16 **NOTE:** A mere acquisition of a neighboring livestock facility does not constitute an
17 “expansion” unless more animal units are added to the combined facilities. See
18 sub. (12).

19
20 (b) Common livestock structures are used to collect or store manure or other waste from
21 the facilities.

22 (c) Manure or other waste from the facilities is applied to the same tax parcel of land, or
23 under the same nutrient management plan.

24 **NOTE:** Compare definition of “animal feeding operation” under s. NR 243.03(2).

1 **(19)** “Livestock structure” means a building or other structure used to house or feed
2 livestock, to confine livestock for milking, to confine livestock for feeding other than grazing, to
3 store livestock feed, or to collect or store waste generated at a livestock facility. “Livestock
4 structure” includes a barn, milking parlor, feed storage facility, feeding facility, animal lot or
5 waste storage facility. “Livestock structure” does not include a pasture, a fence surrounding a
6 pasture, a livestock watering facility in a pasture, or a machine shed or like facility that is not
7 used for livestock.

8 **(20)** “Local approval” means an approval, required by local ordinance, of a new or
9 expanded livestock facility. “Local approval” includes a license, permit, special exception,
10 conditional use or other form of local authorization. “Local approval” does not include any of
11 the following:

12 (a) An approval required by a political subdivision within the scope of its authority under
13 s. 59.692, 59.693, 60.627, 61.351, 61.354, 62.231, 62.234 or 87.30, Stats.

14 **NOTE:** See s. 93.90(3)(a)3., Stats. The statutes listed in par. (a) pertain to shoreland
15 zoning, floodplain zoning, construction site erosion control and stormwater
16 management.

17
18 (b) An approval required under a local building, electrical, plumbing or sanitation code,
19 if the standards for approval are consistent with standards established under the state building,
20 electrical, plumbing or sanitation code for that type of facility.

21 **NOTE:** See s. 93.90(3)(a)4., Stats.

22 **(21)** “Local ordinance” or “local code” means an ordinance adopted by a political
23 subdivision.

1 **(22)** “Manure” means excreta from livestock kept at a livestock facility. “Manure”
2 includes livestock bedding, water, soil, hair, feathers, and other debris that becomes intermingled
3 with livestock excreta in normal manure handling operations.

4 **(23)** “Minor alteration” of a livestock structure means a repair or improvement in the
5 construction of an existing livestock structure that does not result in a substantially altered
6 livestock structure.

7 **(24)** “Navigable waters” has the meaning given in s. 30.01(4m), Stats.

8 **(25)** “New livestock facility” means a livestock facility that will be used as a livestock
9 facility for the first time, or for the first time in at least 5 years. “New livestock facility” does not
10 include an expanded livestock facility if any portion of that facility has been used as a livestock
11 facility in the preceding 5 years.

12 **NOTE:** This chapter applies to local approvals of *new or expanded* livestock facilities
13 that will have 500 or more animal units (or will exceed a lower permit threshold
14 incorporated in a local *zoning* ordinance prior to July 19, 2003). See s. ATCP
15 51.02.
16

17 **(26)** “Non-affiliated residence” means a residential structure other than a residential
18 structure owned by one of the following:

19 (a) The livestock facility operator, or a member of the operator’s immediate family.

20 (b) An owner, officer or employee of the livestock facility operator, or a member of the
21 immediate family of any of those persons.

22 (c) A person who agrees, in writing, that the residential structure will not be treated as a
23 “non-affiliated residence.”

24 **(27)** “NRCS” means the natural resource conservation service of the United States
25 department of agriculture.

26 **(28)** “Nutrient management plan” means a plan that complies with s. ATCP 50.04(3).

1 **(29)** “Operator” means a person who applies for or holds a local approval for a livestock
2 facility.

3 **(30)** “Pasture” means land on which livestock graze or otherwise seek feed in a manner
4 that maintains the vegetative cover over all of the grazing or feeding area, and where the
5 vegetative cover is the primary food source for the livestock.

6 **(31)** “Political subdivision” means a city, village, town or county.

7 **(32)** “Populate” means to add animal units for which local approval is required.

8 **(33)** “Property line” means a line that separates tax parcels of land owned by different
9 persons.

10 **(34)** “Qualified nutrient management planner” means a person qualified under s. ATCP
11 50.48.

12 **(35)** “Registered professional engineer” means a professional engineer registered under
13 ch. 443, Stats.

14 **(36)** “Runoff” means storm water or precipitation including rain, snow, ice melt or
15 similar water that moves on the land surface via sheet or channelized flow.

16 **(37)** “Site that is susceptible to groundwater contamination” means any of the following:

17 (a) An area within 250 feet of a private well.

18 (b) An area within 1,000 feet of a municipal well.

19 (c) An area within 300 feet upslope or 100 feet downslope of a karst feature.

20 (d) A channel with a cross-sectional area equal to or greater than 3 square feet that flows
21 to a karst feature.

22 (e) An area where the soil depth to groundwater or bedrock is less than 2 feet.

1 (f) An area where none of the following separates the ground surface from groundwater
2 and bedrock:

- 3 1. A soil layer at least 2 feet deep that has at least 40% fine soil particles.
- 4 2. A soil layer at least 3 feet deep that has at least 20% fine soil particles.
- 5 3. A soil layer at least 5 feet deep that has at least 10 % fine soil particles.

6 **NOTE:** See s. NR 151.015(18).

7 **(38)** “Substantially altered” livestock structure means a livestock structure that
8 undergoes a material change in construction or use, such as one of the following material
9 changes:

- 10 (a) An increase in the capacity of a waste storage facility.
- 11 (b) The addition of a liner to a waste storage facility.
- 12 (c) An increase of more than 20% in the area or capacity of a livestock structure used to
13 house, feed or confine livestock, or to store livestock feed.
- 14 (d) An increase of more than 20% in the number of animal units that will be kept in a
15 livestock structure on at least 90 days in any 12-month period.
- 16 (e) A material change made to accommodate a different species of livestock.

17 **(39)** “Unconfined manure pile” means a quantity of manure at least 175 cubic feet in
18 volume that covers the ground surface to a depth of at least 2 inches, but does not include any of
19 the following:

- 20 (a) Manure that is confined within a manure storage facility, livestock housing facility or
21 barnyard runoff control facility.
- 22 (b) Manure that is covered or contained in a manner that prevents storm water access and
23 direct runoff to surface water or leaching of pollutants to groundwater.

1 **(40)** “Untreated” manure, as used in s. ATCP 51.14(2), means manure that has not been
2 subjected to composting, de-watering, digestion, dilution or other treatment that effectively
3 reduces odor.

4 **(41)** “Waste” means manure, milking center waste and other organic waste generated by
5 a livestock facility.

6 **(42)** “Waste storage facility” means one or more waste storage structures. “Waste
7 storage facility” includes stationary equipment and piping used to load or unload a waste storage
8 structure if the equipment is specifically designed for that purpose and is an integral part of the
9 facility. “Waste storage facility” does not include equipment used to apply waste to land.

10 **(43)** “Waste storage structure” means a waste storage impoundment made by
11 constructing embankments, excavating a pit or dugout, or fabricating a structure. “Waste storage
12 structure” does not include equipment used to apply waste to land.

13 **(44)** “Water quality management area” means any of the following:

14 (a) The area within 1,000 feet from the ordinary high-water mark of a navigable lake,
15 pond or flowage, other than a glacial pothole lake.

16 (b) The area within 1,000 feet of the high-water mark of a navigable glacial pothole lake.

17 (c) The area within 300 feet from the ordinary high-water mark of a navigable river or
18 stream.

19 (d) A site that is susceptible to groundwater contamination or that has the potential to be
20 a direct conduit for contamination to reach groundwater.

21 **NOTE:** See s. 281.16(1)(g), Stats., and s. NR 151.01(24).

22 **(45)** “Waters of the state” has the meaning given in s. 283.01(20), Stats.

1 **(46)** “WPDES permit” means a Wisconsin pollution discharge elimination system permit
2 issued by DNR under ch. NR 243.

3 **ATCP 51.02 Scope of this chapter. (1)** This chapter applies to local approvals of the
4 following livestock facilities:

5 (a) A new or expanded livestock facility that will have 500 or more animal units.

6 (b) A new or expanded livestock facility that will exceed a lower size threshold, for a
7 special exception or conditional use permit, that is incorporated in a local zoning ordinance prior
8 to July 19, 2003.

9 **NOTE:** Local approvals covered by this chapter normally “run with the land” (per
10 zoning law and other applicable law). They normally continue to apply, despite
11 changes in ownership, as long as subsequent owners do not violate the terms of
12 the local approval. Some ordinances might require a *pro forma* permit transfer
13 with each transfer of ownership, but that transfer should not ordinarily limit the
14 scope of approval.

15
16 **(2)** This chapter does not apply to any of the following:

17 (a) Livestock facilities other than those in sub. (1) that require local approval.

18 (b) An approval required by a political subdivision within the scope of its authority
19 under s. 59.692, 59.693, 60.627, 61.351, 61.354, 62.231, 62.234 or 87.30, Stats.

20 **NOTE:** See s. 93.90(3)(a)3., Stats. The statutes listed in par. (b) pertain to shoreland
21 zoning, floodplain zoning, construction site erosion control and stormwater
22 management.

23
24 (c) An approval required under a local building, electrical, plumbing or sanitation code,
25 if the standards for approval are consistent with standards established under the state building,
26 electrical, plumbing or sanitation code for that type of facility.

27 **NOTE:** See s. 93.90(3)(a)4., Stats.

28 **ATCP 51.04 Animal units.** In this chapter, and in every local approval or application
29 for local approval under this chapter, the number of animal units kept or authorized at a livestock

1 facility means the maximum number of animal units that are or may be kept on at least 90 days
2 in any 12-month period.

3 **NOTE:** ATCP 51.04 accounts for normal day-to-day and seasonal variations in
4 livestock numbers, as livestock are born, received, moved and marketed. *See s.*
5 *93.90(3)(f), Stats.*

6
7 Under this chapter, an applicant for local approval must specify the number of
8 “animal units” for which the applicant seeks authorization. If the application is
9 approved, the approval authorizes that number of “animal units.” The authorized
10 number is the maximum number of “animal units” that may be kept on 90 or more
11 days in any 12-month period. A livestock operator may not exceed that
12 authorized number without further local approval.

13
14 **ATCP 51.06 Local approval of existing livestock facilities. (1) NEW LOCAL**
15 **ORDINANCE.** A local ordinance enacted on or after *[revisor inserts effective date of this chapter]*
16 may not require local approval of a livestock facility that exists on the effective date of the
17 ordinance, but may require local approval under this chapter for the expansion of that livestock
18 facility if the number of animal units kept at the expanded livestock facility will be at least 500
19 and will exceed by more than 20 percent the number kept on the ordinance effective date.

20 **NOTE:** For example, suppose that a new local ordinance requires local approval for
21 livestock facilities with 500 or more “animal units.” Local approval is *not*
22 required for a livestock facility that already has 600 “animal units” on the local
23 ordinance effective date, unless the facility expands to more than 720 “animal
24 units.” Local approval is *not* required for a livestock facility that expands from
25 200 “animal units” (existing facility) to 400 “animal units” (expanded facility).
26 The number of “animal units” kept on the ordinance effective date means the
27 number kept on at least 90 days in the 12 months prior to the ordinance effective
28 date (see s. 93.90(3)(e), Stats.).

29
30 **(2) EXISTING LOCAL ORDINANCE.** A local ordinance that exists on *[revisor inserts*
31 *effective date of this chapter]* may require local approval under this chapter for the expansion of
32 a livestock facility that exists on *[revisor inserts effective date of this chapter]* if any of the
33 following apply:

1 (a) The expanded livestock facility will exceed, for the first time and without prior local
2 approval, the applicable size threshold for local approval under s. ATCP 51.02(1).

3 **NOTE:** For example, suppose that an existing local ordinance (enacted prior to July 19,
4 2003) requires local approval of livestock facilities with 400 or more “animal
5 units.” An expansion from 375 “animal units” (existing facility) to 425 “animal
6 units” (expanded facility) will require local approval, unless the political
7 subdivision has already given its approval. An expansion from 200 “animal
8 units” (existing facility) to 300 “animal units” (expanded facility) will *not* require
9 local approval.

10
11 (b) The expanded livestock facility will exceed the applicable size threshold for local
12 approval under s. ATCP 51.02(1) and will exceed the express scope of a prior local approval.

13 **NOTE:** For example, suppose that under an existing local ordinance a livestock facility
14 was approved for up to 800 “animal units” (express limit specified in the local
15 approval). An expansion from 800 “animal units” (existing facility) to 900
16 “animal units” (expanded facility) will require additional local approval.

17
18 (c) The expanded livestock facility will exceed the applicable size threshold for local
19 approval under s. ATCP 51.02(1), is not expressly authorized by any prior local approval, and
20 will have at least 20 percent more animal units than the livestock facility that existed *[revisor*
21 *inserts effective date of this chapter]*.

22 **NOTE:** For example, suppose that an existing livestock facility is covered by an existing
23 local ordinance and has 600 “animal units.” Local approval is required if the
24 livestock facility expands to more than 720 “animal units” (unless the expansion
25 is expressly authorized by a prior local approval).

26 27 **Subchapter II**

28 **LIVESTOCK FACILITY SITING STANDARDS**

29 **ATCP 51.10 Livestock facility siting standards; general. (1) STATE STANDARDS**
30 **APPLY.** Except as provided in sub. (2) or (3), a political subdivision shall grant or deny local
31 approvals covered by this chapter based on the standards in this subchapter.

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

6 **(3) MORE STRINGENT LOCAL STANDARDS.** A political subdivision may not apply local
7 standards that are more stringent than the standards in this subchapter unless all of the following
8 apply:

9 (a) The political subdivision is authorized to adopt the local standards under other
10 applicable law.

11 (b) The standards were enacted by local ordinance before the livestock facility operator
12 filed the application for local approval.

13 (c) The standards were enacted under par. (b) on the basis of reasonable and
14 scientifically defensible findings of fact adopted by the political subdivision's governing
15 authority.

16 (d) The findings of fact under par. (c) clearly show that the standards are needed to
17 protect public health or safety.

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

19 **ATCP 51.12 Livestock structures; property line and water quality setbacks.**

20 **(1) PROPERTY LINES AND ROADS.** (a) Except as provided in par. (b), new livestock structures
21 and livestock structures whose surface area is enlarged by more than 20% shall be located:

22 1. At least 100 feet from property lines and public roadways if the livestock facility will
23 have fewer than 1,000 animal units.

1 2. At least 200 feet from property lines and at least 150 feet from public roadways if the
2 livestock facility will have 1,000 or more animal units.

3 (b) A political subdivision may apply shorter setbacks from livestock structures to
4 property lines or public roadways if it has incorporated those setbacks in a local ordinance as
5 numerical standards.

6 **(2) NAVIGABLE WATERS AND WETLANDS.** A livestock facility shall comply with an
7 applicable shoreland or wetland zoning ordinance that is enacted within the scope of authority
8 granted under s. 59.692, 61.351 or 62.231, Stats.

9 **NOTE:** Essentially all navigable waters are now protected by county or local ordinances
10 that require building setbacks of 75 feet or more (depending on the ordinance).
11 Zoning restrictions, if any, typically apply to *new or enlarged structures*. A
12 zoning ordinance applies for purposes of sub. (2) if it is enacted within the scope
13 of statutory authority under s. 59.692, 61.351 or 62.231, Stats., even if it is also
14 enacted under other authority.
15

16 **(3) FLOODPLAIN.** A livestock facility shall comply with an applicable floodplain zoning
17 ordinance that is enacted within the scope of statutory authority under s. 87.30, Stats.

18 **NOTE:** County or local zoning ordinances currently apply to many, but not all,
19 waterways (not all waterways have mapped floodplains). Zoning restrictions, if
20 any, typically apply to *new or enlarged structures*. A zoning ordinance applies
21 for purposes of sub. (3) if it is enacted within the scope of statutory authority
22 under s. 87.30, Stats., even if it is also enacted under other authority.
23

24 **(4) WELL PROTECTION.** A livestock facility shall comply with applicable requirements in
25 ch. NR 812.

26 **NOTE:** DNR rules under ch. NR 812 spell out well construction and well location
27 standards to protect water supplies. Requirements, if any, typically apply to *new*
28 *or enlarged structures* that include or may affect wells. DNR may grant
29 appropriate variances, as provided in ch. NR 812.
30

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

1 **NOTE:** Under s. ATCP 51.30, an application must be complete, credible and internally
2 consistent. The application must include an area map, a site map, and a
3 certification that the livestock facility complies with this section (*see Appendix A*).
4 A local approval is conditioned upon compliance in fact (*see s. ATCP 51.34(4)*).
5 The presumption in sub. (5) may be rebutted by clear and convincing evidence in
6 the record (*see s. ATCP 51.34 and 51.36*).
7

8 **ATCP 51.14 Odor management. (1) LIVESTOCK STRUCTURES.** (a) Except as
9 provided in par. (c), the following livestock facilities shall have an adjusted odor index,
10 calculated according to *Appendix A, worksheet 2*, of zero or more:

- 11 1. A new livestock facility with 500 or more animal units.
- 12 2. An expanded livestock facility with 1,000 or more animal units.

13 **NOTE:** The *adjusted odor index* includes credits for odor management practices and
14 “good neighbor” practices. *See Appendix A, worksheet 2.*
15

16 **NOTE:** The department will work to coordinate odor and air emissions field research
17 with DNR, the Wisconsin agricultural stewardship initiative (WASI), the
18 University of Wisconsin (UW) “pioneer farm,” Wisconsin “discovery farms,” and
19 the UW college of agricultural and life sciences. DATCP will consider research
20 results when it reviews this chapter at least once every 4 years (*see s. 93.90(2)(c)*,
21 *Stats.*).
22

23 (b) If all of the livestock structures in a livestock facility are divided among 2 or more
24 clusters, such that no cluster is located closer than 500 feet to any other cluster and no closer than
25 1,000 feet to any other cluster that has 500 or more animal units, an operator may choose to
26 calculate an odor index under par. (a) for each cluster rather than for the entire livestock facility.
27 The adjusted odor index for each cluster shall comply with par. (a).

28 **NOTE:** For example, a dairy operator can take advantage of par. (b) if a proposed dairy
29 facility includes a milking operation (cluster 1) and a heifer facility (cluster 2)
30 located 600 feet from each other, provided that each “cluster” has fewer than 500
31 “animal units.” If either “cluster” has more than 500 “animal units,” the operator
32 may not take advantage of par. (b) unless the “clusters” are separated by at least
33 1,000 feet.
34

1 (c) A political subdivision may in its discretion approve an adjusted odor index that is
2 less than zero but not less than negative 30. If a political subdivision exercises its discretionary
3 authority under this paragraph, its written decision under s. ATCP 51.34(3) shall state the reason
4 or reasons for that exercise of discretionary authority.

5 **NOTE:** For example, a political subdivision may exercise its discretionary authority
6 under par. (c) based on factors such as community tolerance, local land use plans,
7 or the applicant's past reputation for good management and community relations.
8 A political subdivision is not required to exercise its discretionary authority under
9 par. (c). The livestock facility siting review board may not reverse a political
10 subdivision's decision to exercise, or not exercise, its discretionary authority
11 under par. (c).
12

13 (d) If an operator seeks later local approval for further expansion of an approved
14 livestock facility, the operator may calculate an odor index for that approval using distances to
15 the same non-affiliated residence and high public use area used in calculating the odor index for
16 the initial approval, even if other non-affiliated residences and high public use areas have located
17 closer to the livestock facility in the intervening time period.

18 **NOTE:** The odor index calculation in *Appendix A, worksheet 2* is partly based on
19 distances to the nearest "non-affiliated residence" and "high public use area."
20 Paragraph (d) gives a livestock operator some protection against the effects of
21 encroaching development, without regulating that development directly.
22

23 **(2) APPLYING STORED, UNTREATED LIQUID MANURE TO LAND.** A person shall use at least
24 one of the following practices when applying untreated liquid manure, from a livestock facility
25 approved under this chapter, that has been stored for at least 7 days:

26 (a) Inject the manure directly into the soil.

27 (b) Incorporate the manure into the soil within 48 hours after application or, if weather
28 does not permit incorporation within 48 hours, as soon as weather permits.

29 (c) Cover the manure with vegetative residue within 48 hours after application or, if
30 weather does not permit covering within 48 hours, as soon as weather permits.

1 (d) Apply the manure at least 500 feet from the nearest non-affiliated residence and from
2 the nearest high public use area. These distance requirements do not apply to a residence or high
3 public use area whose owner consents in advance to the manure application.

4 (e) Apply the manure during not more than 2 periods of 7 consecutive days each year,
5 not closer than 500 feet to any high public use area.

6 (f) Apply the manure according to an odor management plan approved by the political
7 subdivision.

8 (g) Apply the manure according to manure application odor setbacks, specified by local
9 ordinance, that are shorter than the distances specified in par. (d).

10 **NOTE:** Subsection (2) *does not apply* to solid or heavily bedded manure, fresh liquid
11 manure (stored less than 7 days), or stored liquid manure that is subjected to
12 treatment (such as anaerobic digestion or substantial dilution) that effectively
13 reduces odor.

14
15 An operator who chooses the option listed in par. (f) must include a proposed
16 odor management plan with the application for local approval. See *Appendix A,*
17 *worksheet 2.* The odor management plan may include odor limiting practices or
18 “good neighbor” practices, or both. “Good neighbor practices” might include for
19 example, giving prior notice of applications or avoiding applications at sensitive
20 times.

21
22 **(3) PRESUMPTION.** For purposes of local approval, a livestock facility is presumed to
23 comply with this section if the application for local approval complies with s. ATCP 51.30.

24 **NOTE:** Under s. ATCP 51.30, an application must be complete, credible and internally
25 consistent. The application must include, among other things, a worksheet that
26 shows compliance with this section. See *Appendix A, worksheet 2.* Local
27 approval is conditioned upon compliance in fact (*see* s. ATCP 51.34(4)). The
28 presumption in sub. (3) may be rebutted by clear and convincing evidence in the
29 record (*see* s. ATCP 51.34 and 51.36).

30
31 **ATCP 51.16 Nutrient management. (1) NUTRIENT MANAGEMENT STANDARD. (a)**

32 Except as provided in par. (c):

1 1. Land applications of waste, from a livestock facility approved under this chapter, shall
2 comply with NRCS nutrient management technical standard 590 (November, 2005) shown in
3 *Appendix B*.

4 2. A nutrient management checklist, shown in *Appendix A, worksheet 3, part C*, shall
5 accompany an application for local approval. A qualified nutrient management planner, other
6 than the livestock operator, shall answer each checklist question. The planner shall have
7 reasonable documentation to substantiate each answer, but neither the planner nor the operator is
8 required to submit that documentation with the checklist.

9 **NOTE:** A livestock operator is *not* required to submit a complete nutrient management
10 plan with an application for local approval. Both the operator and the qualified
11 nutrient management planner must sign the nutrient management checklist. See
12 *Appendix A, worksheet 3, part C*.

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

18 (c) Paragraph (a) does not apply to a livestock facility with fewer than 500 animal units
19 unless the operator's ratio of acres to animal units, calculated according to *Appendix A,*
20 *worksheet 3, part B*, is less than 1.5 for dairy and beef cattle, 1.0 for swine, 2.0 for sheep and
21 goats, 2.5 for chickens and ducks, and 5.5 for turkeys.

22 **NOTE:** A *waste and nutrient management worksheet (Appendix A, worksheet 3)* must
23 accompany every application for local approval. Among other things, the
24 *worksheet* shows the operator's ratio of acres to animal units under par. (c). If a
25 livestock facility qualifies for exemption under par. (c), the operator is not
26 required to submit a *nutrient management checklist* under par. (a). The ratios
27 stated in par. (c) are based on the phosphorus content of manure from the
28 respective livestock species.
29

1 (2) PRESUMPTION. For purposes of local approval, an operator is presumed to comply
2 with sub. (1) if the application for local approval complies with s. ATCP 51.30.

3 **NOTE:** Under s. ATCP 51.30, an application must be complete, credible and internally
4 consistent. The application must include, among other things, a *waste and*
5 *nutrient management worksheet (Appendix A, worksheet 3)*. The completed
6 *worksheet* must include all of the following:
7

- 8 • The types and amounts of manure and other organic waste that the facility will
9 generate when fully populated.
- 10 • The types and amounts of waste to be stored, the waste storage facilities and
11 methods to be used, the duration of waste storage, and waste storage capacity.
- 12 • The final disposition of waste by landspreading or other means.
- 13 • The acreage currently available for landspreading.
- 14 • A map showing where waste will be applied to land.
- 15 • A *nutrient management checklist* if required under sub. (1).

16
17 Local approval is conditioned upon compliance in fact (*see* s. ATCP 51.34(4)).
18 The presumption in sub. (2) may be rebutted by clear and convincing evidence in
19 the record (*see* s. ATCP 51.34 and 51.36).
20

21 (3) NUTRIENT MANAGEMENT UPDATES. An operator may update nutrient management
22 plans and practices as necessary, consistent with sub. (1)(a)1.

23 **NOTE:** This section does not require an operator to file updates with a political
24 subdivision. But it does not limit local authority to request updates or monitor
25 compliance with sub. (1)(a)1. *See* s. ATCP 51.34(4).
26

27 (4) EXEMPTION. This section does not apply if all of the following apply:

28 (a) The operator holds a WPDES permit for the same proposed livestock facility, and
29 that permit authorizes a number of animal units that is equal to or greater than the number for
30 which the operator seeks local approval.

31 (b) The operator submits a copy of the WPDES permit with the operator's application
32 for local approval.

33 **ATCP 51.18 Waste storage facilities. (1) DESIGN, CONSTRUCTION AND MAINTENANCE;**
34 **GENERAL.** All waste storage facilities for a livestock facility shall be designed, constructed and

1 maintained to minimize the risk of structural failure, and to minimize the potential for waste
2 discharge to surface water or groundwater. A waste storage facility may not lack structural
3 integrity or have significant leakage. An unlined earthen waste storage facility may not be
4 located on a site that is susceptible to groundwater contamination.

5 **NOTE:** A “site that is susceptible to groundwater contamination” is defined in s. ATCP
6 51.01(37).
7

8 **(2) EXISTING FACILITIES.** For purposes of local approval, an existing waste storage
9 facility is presumed to comply with sub. (1) if a registered professional engineer or certified
10 agricultural engineering practitioner certifies one of the following in the application for local
11 approval:

12 (a) The facility is constructed of concrete or steel or both, was constructed within the last
13 10 years according to then-existing NRCS standards, and shows no apparent signs of structural
14 failure or significant leakage.

15 (b) The facility was constructed within the last 3 years according to then-existing NRCS
16 standards, and shows no apparent signs of structural failure or significant leakage.

17 (c) The facility was constructed according to NRCS standards that existed at the time of
18 construction, is in good condition and repair, and shows no apparent signs of structural failure or
19 significant leakage.

20 (d) The facility is in good condition and repair, shows no apparent signs of structural
21 failure or significant leakage, and is located on a site at which the soils and separation distances
22 to groundwater comply with *NRCS technical guide manure storage facility standard 313, table 1*
23 *(November, 2004)*.

24 (e) The facility is in good condition and repair, shows no apparent signs of structural
25 failure or significant leakage, is located entirely above ground, and is located on a site at which

1 the soils comply with *NRCS technical guide manure storage facility standard 313, table 5*
2 *(November, 2004)*.

3 **NOTE:** According to s. ATCP 51.30, an application for local approval must include a
4 certification under sub. (2) for each existing waste storage facility. *See Appendix*
5 *A, worksheet 4 (waste storage facilities)*.
6

7 **(3) NEW OR SUBSTANTIALLY ALTERED FACILITIES.** For purposes of local approval, a new
8 or substantially altered waste storage facility is presumed to comply with sub. (1) if all of the
9 following apply:

10 (a) The application for local approval includes design specifications for the facility.

11 (b) A registered professional engineer or certified agricultural engineering practitioner
12 certifies that the design specifications comply with all of the following:

13 1. *NRCS technical guide manure storage facility standard 313 (November, 2004)*.

14 2. *NRCS technical guide manure transfer standard 634 (November, 2004)*.

15 **NOTE:** According to s. ATCP 51.30, an application for local approval must include the
16 design specifications and certification to which sub. (3) refers. *See Appendix A,*
17 *worksheet 4 (waste storage facilities)*.
18

19 **(4) CLOSED FACILITIES.** If a waste storage facility is closed as part of the construction or
20 expansion of a livestock facility, the closure shall comply with *NRCS technical guide closure of*
21 *waste impoundments standard 360 (June 2001)*. A closure is presumed to comply with this
22 subsection, for purposes of local approval, if the application for local approval includes the
23 closure plan and certification required under s. ATCP 51.30.

24 **NOTE:** According to s. ATCP 51.30, an application for local approval must identify any
25 waste storage facilities to be closed. The application must include a closure plan
26 for each identified facility. A registered professional engineer or certified
27 agricultural engineering practitioner must certify that the closure plan complies
28 with *NRCS technical guide closure of waste impoundments standard 360 (June*
29 *2001)*. *See Appendix A, worksheet 4 (waste storage facilities)*.
30

1 Under s. NR 151.05(3) and (4), an operator must normally close a manure storage
2 facility if the facility has not been used for 24 months, or poses an imminent
3 threat to public health, aquatic life or groundwater.

4
5 If a waste storage facility is abandoned or not properly closed, a political
6 subdivision may seek redress under s. 66.0627 or 254.59, Stats., as appropriate.

7
8 **(5) STORAGE CAPACITY.** (a) The waste storage capacity of a livestock facility, not
9 counting any excess storage capacity required for open waste storage facilities under par. (b),
10 shall be adequate for reasonably foreseeable storage needs based on the operator's waste and
11 nutrient management strategy under s. ATCP 51.16.

12 **NOTE:** Section ATCP 51.20(5) prohibits overflow of waste storage facilities. See also
13 s. NR 151.08(2) and ATCP 50.04(1).

14
15 (b) An operator shall at all times maintain, in every open waste storage facility, unused
16 storage capacity equal to the greater of the following volumes:

- 17 1. One foot multiplied by the top area of the storage facility.
18 2. The volume of rain that would accumulate in the manure storage facility from a 25-
19 year 24-hour storm.

20 **NOTE:** The required excess storage capacity in par. (b), often called "freeboard
21 storage," provides a safety factor to prevent manure storage overflow in the
22 event of a major rain event.

23
24 (c) The waste storage capacity of a livestock facility is presumed to comply with this
25 subsection, for purposes of a local approval, if the application for local approval complies with s.
26 ATCP 51.30.

27 **NOTE:** Under s. ATCP 51.30, an application must be complete, credible and internally
28 consistent. An application must include a *waste and nutrient management*
29 *worksheet* (*worksheet 3*, signed by the operator and a qualified nutrient
30 management planner) and a *waste storage facility worksheet* (*worksheet 4*, signed
31 by a registered professional engineer or certified agricultural engineering
32 practitioner). *Worksheet 3* must identify waste storage needs, based on the
33 operator's landspreading and waste disposal strategy. *Worksheet 3* must also

1 show waste storage *capacity*, consistent with *worksheet 4*. Capacity must be
2 adequate for reasonably foreseeable needs.

3
4 **(6) DEVIATION FROM DESIGN SPECIFICATIONS.** Local approval of a livestock facility does
5 not authorize an operator to populate that approved livestock facility if the construction,
6 alteration or closure of a waste storage facility deviates materially, and without express
7 authorization from the political subdivision, from the design specifications or closure plan
8 included in the application for local approval.

9 **NOTE:** A political subdivision may inspect waste storage facilities to verify that they are
10 constructed according to specifications included in the application for local
11 approval. This section *does not require or prohibit* local inspection.

12
13 This chapter does not limit the application of local waste storage ordinances,
14 except in connection with the approval of a new or expanded livestock facility.
15 For example, if a livestock operator constructs a new waste storage structure
16 without adding “animal units” for which local approval is required, the
17 construction must comply with the local waste storage ordinance if any.

18
19 But if a livestock operator proposes to add “animal units” *and* construct a new
20 waste storage structure, to create an “expanded livestock facility” for which local
21 approval is required, the waste storage standards in this chapter are controlling.
22 A political subdivision may not disapprove the expansion, except for reasons
23 provided under this chapter.

24
25 **(7) EXEMPTION.** This section does not apply if all of the following apply:

26 (a) The operator holds a WPDES permit for the same proposed livestock facility, and
27 that permit authorizes a number of animal units that is equal to or greater than the number for
28 which the operator seeks local approval.

29 (b) The operator includes a copy of the WPDES permit with the operator’s application
30 for local approval.

31 **ATCP 51.20 Runoff management. (1) NEW OR SUBSTANTIALLY ALTERED ANIMAL**
32 **LOTS.** New or substantially altered animal lots shall comply with *NRCS technical guide*
33 *wastewater treatment strip standard 635 (January 2002)*.

1 **(2) EXISTING ANIMAL LOTS.** (a) The predicted average annual phosphorus runoff from
2 each existing animal lot to the end of the runoff treatment area, as determined by the *BARNY*
3 model, shall be less than the following applicable amount:

4 1. Fifteen pounds if no part of the animal lot is located within 1,000 feet of a navigable
5 lake or 300 feet of a navigable stream.

6 2. Five pounds if any part of the animal lot is located within 1,000 feet of a navigable
7 lake or 300 feet of a navigable stream.

8 **NOTE:** The *BARNY* model is a computer model that predicts nutrient runoff from animal
9 lots. Copies of the *BARNY* model are on file with the department, the secretary of
10 state and the revisor of statutes. An Excel spreadsheet version may be obtained
11 from the NRCS Wisconsin website (engineering directory).

12
13 (b) Runoff from an animal lot may not discharge to any direct conduit to groundwater.

14
15 **NOTE:** See NR 151.08(4) and ATCP 50.04(1). A direct conduit to groundwater may
16 include, for example, a sinkhole.

17
18 **(3) FEED STORAGE.** (a) Feed storage shall be managed to prevent any significant
19 discharge of leachate or polluted runoff from stored feed to waters of the state.

20 (b) If an existing paved area may be used, without substantial alteration, to store or
21 handle feed with a 65% or higher moisture content:

22 1. Surface water runoff shall be diverted from entering the paved area.

23 2. Surface discharge of leachate from stored feed shall be collected before it leaves the
24 paved area, if the paved area covers more than one acre. Collected leachate shall be stored and
25 disposed of in a manner that prevents discharge to waters of the state.

26 **NOTE:** Feed leachate is a potentially serious water pollutant. Paved areas include paved
27 feed storage bunkers and handling areas. Collected leachate may, for example, be
28 transferred to waste storage and applied to land at agronomic rates.

29

1 (c) A new or substantially altered feed storage structure, including any building, bunker,
2 silo or paved area used for feed storage or handling, shall be designed, constructed and
3 maintained to the following standards if it may used to store or handle feed with a 65% or higher
4 moisture content:

5 1. Surface water runoff shall be diverted from entering the feed storage structure.

6 2. Surface discharge of leachate shall be collected before it leaves the feed storage
7 structure.

8 3. The top of the feed storage structure floor shall be at least 3 vertical feet from
9 groundwater and bedrock.

10 4. If the feed storage structure covers more than 10,000 square feet and is located in a
11 water quality management area, it shall have an effective subsurface system to collect leachate
12 that may leak through the structure floor. The system shall consist of drainfill material, a tile
13 drainage network within the drainfill material, and an effective sub-liner as specified in *Appendix*
14 *A, worksheet 5, section II.C.*

15 **NOTE:** See definition of “water quality management area” in s. ATCP 51.01(44).

16 5. Collected leachate shall be stored and disposed of in a manner that prevents discharge
17 to surface water or groundwater.

18 **NOTE:** Collected leachate may, for example, be transferred to waste storage and applied
19 to land at agronomic rates.

20
21 **(4) CLEAN WATER DIVERSION.** Runoff from a livestock facility shall be diverted from
22 contact with animal lots, manure storage facilities, paved feed storage areas and manure piles
23 within 1,000 feet of a navigable lake or 300 feet of a navigable stream.

24 **NOTE:** See NR 151.06 and ATCP 50.04(1). Runoff may be diverted by means of
25 earthen diversions, curbs, gutters, waterways, drains or other practices, as
26 appropriate.

1
2 **(5) OVERFLOW OF WASTE STORAGE FACILITIES.** A livestock facility shall be designed,
3 constructed and maintained to prevent overflow of waste storage facilities.

4 **NOTE:** Under s. ATCP 51.18(5), waste storage capacity must be adequate to meet
5 reasonably foreseeable storage needs, based on the operator’s waste and nutrient
6 management strategy under s. ATCP 51.16. See also NR 151.08(2) and ATCP
7 50.04(1).
8

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

11 **NOTE:** See NR 151.08(3) and ATCP 50.04(1).

12 **(7) LIVESTOCK ACCESS TO WATERS OF THE STATE.** A livestock facility shall be designed,
13 constructed and maintained to prevent unrestricted livestock access to waters of the state, if that
14 access will prevent adequate vegetative cover on banks adjoining the water. This subsection
15 does not prohibit a properly designed, installed and maintained livestock crossing or machinery
16 crossing.

17 **NOTE:** See NR 151.08(5) and ATCP 50.04(1).

18 **(8) CONSTRUCTION RUNOFF.** If the construction or expansion of a livestock facility will
19 disturb more than one acre of land, the operator of the facility shall have and implement a
20 construction site erosion control plan that complies with s. NR 151.11(6).

21 **NOTE:** Under s. NR 151.11(6), a construction site erosion control plan must include all
22 of the following:

- 23
- 24 • Best management practices that are designed to achieve an 80% reduction in
25 construction runoff, compared to no controls. If an 80% reduction is not
26 possible, the plan must explain why and must provide for the maximum
27 practicable reduction.
- 28
- 29 • Sediment controls to do all of the following, where practical and appropriate:
30
 - 31 ▪ Prevent the tracking of sediment onto roads and other paved surfaces.
 - 32 ▪ Prevent the discharge of sediment as part of site de-watering.

- 1 ▪ Protect separate storm drain structures from receiving sediment.
- 2
- 3 • The operator must manage the use of construction materials to prevent water
- 4 pollution from those materials.
- 5

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

8 **NOTE:** Under s. ATCP 51.30, an application must be complete, credible and internally
9 consistent. An applicant must submit a *runoff management* worksheet signed by
10 the applicant and a registered professional engineer or certified agricultural
11 engineering practitioner (*see Appendix A, worksheet 5*). The *worksheet* shows
12 presumptive compliance with this section. Local approval is conditioned upon
13 compliance in fact (*see sub. (10) and s. ATCP 51.34(4)*). The presumption of
14 compliance may be rebutted by clear and convincing evidence in the record (*see s.*
15 *ATCP 51.34 and 51.36*).

16

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

22 **NOTE:** A political subdivision may inspect animal lots or feed storage structures to
23 verify that they are constructed according to specifications included in the
24 application for local approval. This section *does not require or prohibit* local
25 inspection.

26

27 **(11) EXEMPTION.** This section does not apply if all of the following apply:

28 (a) The operator holds a WPDES permit for the same proposed livestock facility, and
29 that permit authorizes a number of animal units that is equal to or greater than the number for
30 which the operator seeks local approval.

31 (b) The operator includes a copy of the WPDES permit with the operator's application
32 for local approval.

33

1 **Subchapter III**

2 **APPLICATION AND APPROVAL**

3 **ATCP 51.30 Application. (1) GENERAL.** A person seeking local approval for a new or
4 expanded livestock facility shall complete and file, with the political subdivision, the application
5 form shown in *Appendix A*. The application shall include all of the information required by
6 *Appendix A* and attached *worksheets*, including any authorized modifications made by the
7 political subdivision under sub. (2). The information contained in the application shall be
8 credible and internally consistent.

9 **(2) LOCAL MODIFICATIONS.** A political subdivision may not alter the application form
10 shown in *Appendix A* and attached worksheets, except that a political subdivision may require
11 information needed to determine compliance with local ordinance standards authorized under s.
12 ATCP 51.10(3), 51.12(1)(b) or 51.14(2)(g).

13 **(3) LOCAL FEES. (a)** A political subdivision may charge an application fee established
14 by local ordinance, not to exceed \$500, to offset the political subdivision's costs to review and
15 process the application.

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

18
19 **(b)** A political subdivision may not require an applicant to pay any fee, or post any bond
20 or security with the political subdivision, except as provided in par. (a).

21 **NOTE:** If a waste storage facility is abandoned or not properly closed, a political
22 subdivision may seek redress under s. 66.0627 or 254.59, Stats., as appropriate.
23 However, a political subdivision may not require an applicant for local approval
24 to post any bond or security with the application.
25

26 **(4) COMPLETE APPLICATION.** Within 45 days after a political subdivision receives an
27 application under sub. (1), the political subdivision shall notify the applicant whether the

1 application contains everything required under subs. (1) to (3). If the application is not complete,
2 the notice shall specifically describe what else is needed. As soon as the applicant has provided
3 everything required under subs. (1) to (3), the political subdivision shall notify the applicant that
4 the application is complete. A notice of completeness does not constitute an approval of the
5 proposed livestock facility.

6 **NOTE:** See s. 93.90(4)(a), Stats.
7

8 **ATCP 51.32 Timely action on application. (1) GENERAL.** Except as provided in sub.
9 (2), a political subdivision shall grant or deny an application under s. ATCP 51.30(1) within 90
10 days after the political subdivision gives notice under s. ATCP 51.30(4) that the application is
11 complete.

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

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

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

19 **NOTE:** See ss. 93.90(4)(d) and (e), Stats.
20

21 **ATCP 51.34 Granting or denying an application. (1) GRANTING AN APPLICATION.**
22 Except as provided in sub. (2), a political subdivision shall grant an application under s. ATCP
23 51.30(1) if all of the following apply:

- 24 **(a)** The application complies with s. ATCP 51.30.

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

5 **NOTE:** See s. 93.90(4)(d), Stats.
6

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

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

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

13 **(3) WRITTEN DECISION.** A political subdivision shall issue its decision under sub. (1) or
14 (2) in writing. The decision shall be based on written findings of fact included in the decision.
15 The findings of fact shall be supported by evidence in the record under s. ATCP 51.36.

16 **NOTE:** The Wisconsin Livestock Facility Siting Law, s. 93.90, Stats., provides a new
17 option for “aggrieved persons” to appeal a local livestock facility siting decision.
18 The law does not limit any existing right that any person may have to challenge a
19 local decision in court.
20

21 Under the Livestock Facility Siting Law, an “aggrieved person” may appeal a
22 local decision to the state Livestock Facility Siting Review Board (“Board”). An
23 “aggrieved person” means a applicant for local approval, or a person who resides
24 or owns land within 2 miles of the proposed livestock facility.
25

26 An aggrieved person may appeal a political subdivision’s decision within 30 days
27 after the political subdivision issues the decision (or, if the aggrieved person
28 pursues a local administrative appeal process, within 30 days after that process is
29 complete). The aggrieved person may challenge the local decision on the
30 grounds that it incorrectly applied livestock facility siting standards under this
31 chapter, or violated the Livestock Facility Siting Law.
32

1 When an appeal is filed, the Board must notify the political subdivision. Within
2 30 days after the political subdivision receives this notice, it must file a certified
3 copy of its decision making record under s. ATCP 51.36 with the Board. The
4 Board must review the local decision based on the evidence in the local record
5 (the Board will not hold a new hearing or accept new evidence). The Board must
6 make its decision within 60 days after it receives the certified local record (it may
7 extend the deadline for good cause).
8

9 If the Board determines that the challenge is valid, it must reverse the decision of
10 the political subdivision. The Board's decision is binding on the political
11 subdivision (once any court appeal of the decision is completed, or the appeal
12 time lapses). If the political subdivision fails to comply with the Board's
13 decision, an aggrieved person may bring a court action to enforce the Board's
14 decision.
15

16 An aggrieved person *or the political subdivision* may appeal the Board's decision
17 to circuit court. The circuit court must review the Board's decision based on the
18 evidence in the local record.
19

20 **(4) TERMS OF APPROVAL.** An approval under sub. (1) is conditioned on the operator's

21 compliance with subch. II and representations made in the application for approval. This chapter
22 does not limit a political subdivision's authority to do any of the following:

- 23 (a) Monitor compliance.
- 24 (b) Suspend or revoke an approval, or seek other redress provided by law, if the political
25 subdivision finds any of the following:

26 1. The operator materially misrepresented relevant information in the application for
27 local approval, or materially failed to honor relevant commitments made in the application
28 without authorization from the political subdivision.

- 29 2. The livestock facility fails to comply with applicable standards in subch. II.

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

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

3 **(2)** A copy of any notice under s. ATCP 51.30(4), and copies of any other notices or
4 correspondence that the political subdivision issues in relation to the application.

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

9 ***NOTE:*** Local law normally determines whether a hearing is required.

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

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

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

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

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

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

4 **(2)** This rule first applies to small businesses as defined in s. 227.114(1), Stats., on the
5 first day of the third month commencing after the rule publication date, as required by s.
6 227.22(2)(e), Stats.

Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary

Appendix A

APPLICATION FORM AND WORKSHEETS