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Details:

(FORM UPDATED: 07/12/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Agriculture (AC-Ag)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt**
 - Clearinghouse Rules ... **CRule**
 - Hearing Records ... bills and resolutions
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution)
 - Miscellaneous ... **Misc**
- (**ajr** = Assembly Joint Resolution)
(**sjr** = Senate Joint Resolution)

**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) usable by local officials.
- Develop the standards in consultation with a committee of experts (DATCP has done so).
- Review the standards at least every 4 years after it adopts them (DATCP will review the standards at least annually during the first 4 years).
- 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 to do so.*

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 (municipal 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 unnecessary and 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 took effect on January 1, 2005 in certain watersheds and takes effect 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” pollutant 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 other rule provisions, such as those related to odor management or property line setbacks.

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 created by an “expansion,” including both new and existing livestock structures (this rule specifies less rigorous standards for existing structures). 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* 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*.

Livestock Types

This rule applies to facilities that keep *cattle, swine, poultry, sheep or goats*. This rule does *not* apply to facilities that keep only horses, bison, 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 apply the standards in this rule, beginning on the effective date of this rule. However, beginning 6 months after the effective date of this rule, a political subdivision may not disapprove a proposed livestock facility based on standards in this rule unless the political subdivision has also incorporated the standards in its local ordinance. A political subdivision may incorporate the standards by reference, without reproducing them in full in the local ordinance.

Ordinances Filed with DATCP

Whenever a political subdivision incorporates standards from this rule in a local ordinance, or enacts more stringent local ordinance standards, the political subdivision must file copies of relevant ordinance provisions with DATCP. However, failure to file copies does not, by itself, invalidate the ordinance provisions.

Local Approval of Existing Livestock Facilities

Generally speaking, a political subdivision may not require local approval under this rule for any of the following:

- A livestock facility that existed before the effective date of this rule, or before the effective date of the local approval requirement.
- A livestock facility that the political subdivision has already approved. Prior approval for the construction of a livestock facility implies approval for the maximum number of “animal units” that the approved facility was reasonably designed to house (unless the approval specifies a different maximum number of “animal units”). Prior approval of a single structure, such as a waste storage structure, does not constitute prior approval of an entire livestock facility.

A political subdivision may require local approval under this rule for the expansion of a pre-existing or previously-approved livestock facility if the number of “animal units” at the expanded facility will exceed all of the following:

- The applicable size threshold for local approval under this rule.

- The maximum number of “animal units” previously approved or, if no maximum number was previously approved, a number that is 20 percent higher than the number kept on the effective date of this rule or the on the effective date of the local approval requirement, whichever date is later.

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, buildings and navigable waters within that area. The map must identify residences and “high-use buildings” and must indicate which of those buildings (if any) are owned by the applicant or by persons who have agreed to exclude the buildings from odor score calculations under this rule.
- *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, wells, navigable waters and any direct conduits to groundwater. The applicant must certify that livestock structures will comply with applicable property line, road and water quality setbacks in this rule (see below). The map must identify residences and “high-use buildings” and must indicate which of those buildings (if any) are owned by

the applicant or by persons who have agreed to exclude the buildings from odor score calculations under this rule.

- *An environmental incident response plan* to deal with manure spills and odor complaints.
- *An employee training plan* for manure management and odor control.
- 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).

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 and 2.

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 \$1,000, 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. A political subdivision may require an applicant to file up to 4 duplicate copies of the application form and worksheets (but not other attachments).

Property Line and Road Setbacks

This rule addresses property line and road setback requirements for livestock structures.

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, winter grazing areas, or fences around pastures or winter grazing areas.

Many political subdivisions have established property line and road setback requirements by ordinance. Setbacks vary depending on local circumstances, and often reflect years of local experience. Under this rule, livestock structures must normally comply with local setbacks. However, a local setback requirement may *not* do any of the following:

- Require a setback of more than 100 feet from any property line, or more than 100 feet from a public road right-of-way, if the livestock facility will have fewer than 1,000 animal units.

- Require a setback of more than 200 feet from any property line, or more than 150 feet from a public road right-of-way, if the livestock facility will have 1,000 or more animal units.
- Prevent the use or expansion of a livestock structure that was located within the setback area prior to the effective date of the setback requirement, except that the setback may prevent further expansion in the direction of the property line or road.

Under this rule, no *waste storage structure* may be located within 350 feet of a property line or public road right-of-way. This setback requirement *does not apply* to existing waste storage structures, except that an existing structure within 350 feet of a property line or road may not expand *toward* that property line or road.

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 811 and 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

This rule establishes odor management standards for livestock facilities, except that the standards *do not apply* to any of the following:

- A new livestock facility with fewer than 500 “animal units.”
- An expanded livestock facility with fewer than 1,000 “animal units.”
- A livestock facility located at least 2,500 feet from the nearest “affected neighbor.”

If odor management standards apply, an applicant for local approval must complete an *odor management worksheet (worksheet 2)*. An applicant may use a convenient automated spreadsheet in lieu of the *worksheet* (the spreadsheet is available on DATCP’s website). The spreadsheet and *worksheet* yield identical results.

The *odor management worksheet* (spreadsheet) determines a “predicted odor” and total “odor score” for the livestock facility. The facility must achieve both of the following:

- A “predicted odor” of not more than 350 (except that a political subdivision may, *in its discretion*, approve a facility with a “predicted odor” of 350 to 380).
- An “odor score” of at least 500 (except that a political subdivision may, *in its discretion*, approve a facility with an “odor score” of 470 to 500).

“Predicted odor” is based on livestock types, livestock structure sizes and types, and odor management practices used to limit odor. The applicant receives an appropriate credit for each odor management practice, listed in the *worksheet*, which the applicant agrees to implement. DATCP may pre-approve credits for *other* odor management practices if DATCP concludes that those practices will provide odor reduction commensurate with the approved credits (this rule specifies an approval process).

Total “odor score” considers, in addition to “predicted odor,” *the proximity and density of “affected neighbors”* (the further the distance, and the lower the density, the better the “odor score”). “*Affected neighbors*” are residences or “high-use buildings” *other than* those owned by the applicant or by persons who agree to be excluded from odor calculations. A “high-use building” is any of the following:

- A school, hospital or licensed care facility.
- A hotel or restaurant.
- A multi-unit residential facility (6 or more dwelling units).
- A business or workplace that is normally occupied, during at least 40 hours of each week, by customers or employed workers.

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 750 feet, the operator may calculate a separate “predicted odor” and “odor score” for each “cluster.” Each “cluster” must meet the odor management standards.

If an operator seeks local approval for the *expansion* of a livestock facility for which the operator holds a prior local approval *under this rule*, the operator may calculate an order score by reference to the same “affected neighbors” referenced in the the prior approval. The operator is *not* required to consider new development that has encroached on the livestock facility since that prior approval. This rule thus provides some protection against encroaching development, without regulating that development directly.

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, other than the applicant, 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 based on nitrogen and phosphorus (this rule incorporates NRCS standards by reference, *except for certain provisions*). 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* runoff 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* runoff 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 animal lot 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 70% 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 altered 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 70% 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, 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, waste 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 waste 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.

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*.

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. Within 14 days after 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 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.

Notice to DATCP

Within 30 days after a political subdivision grants or denies an application for local approval, the political subdivision must notify DATCP of its decision. The political subdivision must provide DATCP with a copy of the application and *worksheets* that it considered (but not attached documents such as engineering specifications, maps or aerial photos). Failure to give notice or provide copies to DATCP does not, by itself, invalidate a local decision.

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP has requested 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 windbreak standard 380 (June 2002).*

- *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 version with modifications as of August 2005).*

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 *NRCS technical guide nutrient management standard 590 (September, 2005)*, except for certain portions of the standard. A copy of the NRCS 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. DATCP will need to reassign staff from other programs, because it has received no additional appropriation for this purpose.
- 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 \$1,000 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 to do so.*

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 operations 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 when 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 currently incorporates phosphorus-based nutrient management requirements under the WPDES program, and may incorporate updated NRCS standards in WPDES rules (NR 243).
- This rule defines livestock facilities and “animal units” consistent with DNR rules, to the extent required or 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 or property line setbacks.

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, *except for certain provisions*. For example, this rule does *not* incorporate NRCS provisions that would give political subdivisions authority to require more restrictive nutrient management standards for individual farms (the Livestock Facility Siting Law limits local authority to establish more restrictive requirements for proposed livestock facilities).

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.

Minnesota

Minnesota is among the states that still allow local land use control over livestock facilities. In 2000, Minnesota adopted new state regulations (Minn. R. ch. 7020) related to the collection, transportation, storage, processing and disposal of livestock manure. The extent of the regulation depends on the size of the livestock facility, and other factors such as pollution risks. The state shares program responsibility with local governments, and recognizes local zoning authority.

The Minnesota Department of Agriculture published two handbooks to provide guidance to local government: *Planning for Agricultural Land Preservation in Minnesota*, and *Planning and Zoning for Animal Agriculture in Minnesota* (1996). Wisconsin and Michigan relied on these works as resources when developing similar publications.

Minnesota also pioneered efforts to model odor impacts of livestock facilities. The Minnesota OFFSET model estimates odor impacts based on livestock type, facility size and type, separation distances and odor management practices. The model is backed by scientific research conducted at the University of Minnesota. A number of Minnesota jurisdictions have incorporated OFFSET into their zoning or feedlot ordinances. The odor management standards in this rule are based, in substantial part, on the OFFSET model.

Minnesota has enacted legislation requiring reciprocal setbacks of non-farm land uses whenever a local jurisdiction requires livestock facility setbacks (Wisconsin has no comparable requirement). Reciprocal setbacks are designed to protect livestock facilities, once approved, against encroaching development.

Despite these efforts, a 2004 report by the Minnesota *Governor's Task Force on the Competitiveness of Minnesota's Agricultural Industry* finds a “lack of predictability and uniformity in the siting process at the local level.” The report recommends, among other things, a review and modification of local planning and zoning laws.

1
2 SECTION 1. Chapter ATCP 51 is created to read:

3 **Chapter ATCP 51**

4 **LIVESTOCK FACILITY SITING**

5 **NOTE:** This chapter is adopted under authority of ss. 93.07(1) and 93.90(2), Stats. This
6 chapter interprets Wisconsin's livestock facility siting law, s. 93.90, Stats.
7 According to the livestock facility siting law, a county, town, city or village
8 ("political subdivision") may not prohibit or disapprove a new or expanded
9 livestock facility of any size unless one of the following applies:

- 10
- 11 • The site is located in a zoning district that is not an agricultural zoning district.
 - 12
 - 13 • The site is located in an agricultural zoning district where the livestock facility
14 is prohibited. A prohibition, if any, must be clearly justified on the basis of
15 public health or safety. The livestock facility siting law limits exclusionary
16 zoning based solely on livestock facility size.
 - 17
 - 18 • The proposed livestock facility violates a valid local ordinance adopted under
19 certain state laws related to shoreland zoning, floodplain zoning, construction
20 site erosion control or stormwater management.
 - 21
 - 22 • The proposed livestock facility violates a local building, electrical or
23 plumbing code that is consistent with the state building, electrical or plumbing
24 code for that type of facility.
 - 25
 - 26 • The proposed livestock facility will have 500 or more "animal units" (or will
27 exceed a lower permit threshold incorporated in a local *zoning* ordinance prior
28 to July 19, 2003), and the proposed facility violates one of the following:
29
 - 30 ▪ *A state livestock facility siting standard adopted by the department under*
31 *this chapter.*
 - 32
 - 33 ▪ A more stringent local ordinance standard enacted prior to the siting
34 application. The more stringent local standard must be based on
35 reasonable and scientifically defensible findings of fact, adopted by the
36 local jurisdiction, which clearly show that the standard is necessary to
37 protect public health or safety.
 - 38

39 Some, but not all, political subdivisions require local approval of new or
40 expanded livestock facilities. The livestock facility siting law *does not require*
41 local approval. But *if* local approval is required, the political subdivision must
42 grant or deny approval based on this chapter. A political subdivision may *not*

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

3
4 The department must review the livestock facility siting standards under this
5 chapter at least once every 4 years (*see* s. 93.90(2)(c), Stats.). The department
6 will review the standards at least annually during the first 4 years of rule
7 implementation. The department will track local siting applications and decisions
8 (*see* s. ATCP 51.34(5)), and will review that information at least monthly during
9 the first year of rule implementation.

10 11 **Subchapter I**

12 13 **DEFINITIONS AND GENERAL PROVISIONS**

14
15 **ATCP 51.01 Definitions.** In this chapter:

16 (1) “Adjacent livestock facilities” means livestock facilities that are located on land
17 parcels that touch each other, or on land parcels that are separated only by a river, stream, or
18 transportation or utility right-of-way.

19 (2) “Affected neighbor” means, for purposes of the odor score calculation under s. ATCP
20 51.14, a residence or high-use building located within 2,500 feet of any livestock structure at a
21 proposed livestock facility. “Affected neighbor” does not include a residence or high-use
22 building owned by any of the following:

23 (a) The livestock facility operator.

24 (b) A person who affirmatively agrees to have the residence or high-use building
25 excluded from the odor score calculation under s. ATCP 51.14.

26 **NOTE:** The odor score calculation under s. ATCP 51.14 is based, in part, on the
27 proximity and density of “affected neighbors.” *See Appendix A, worksheet 2.*

28
29 (3) “Animal lot” means a feedlot, barnyard or other outdoor facility where livestock are
30 concentrated for feeding or other purposes. “Animal lot” does not include a pasture or winter
31 grazing area. Two or more animal lots at the same livestock facility constitute a single animal
32 lot, for purposes of this chapter, if runoff from the animal lots drains to the same treatment area

1 under s. ATCP 51.20(2) or if runoff from the animal lot treatment areas converges or reaches the
2 same surface water within 200 feet of any of those treatment areas.

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

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

7
8 (5) “*BARNY* model” means the NRCS “Evaluation System to Rate Feedlot Pollution
9 Potential,” ARM-NC-17 (April 1982 version with modifications as of August 2005).

10 **NOTE:** The *BARNY* model is a commonly used computer model that predicts nutrient
11 runoff from animal lots. Copies of the *BARNY* model are on file with the
12 department, the secretary of state and the revisor of statutes. An Excel computer
13 spreadsheet version is available at www.datcp.state.wi.us.

14
15 (6) “Certified agricultural engineering practitioner” means an agricultural engineering
16 practitioner who is certified under s. ATCP 50.46 with a rating under s. ATCP 50.46(5) that
17 authorizes the practitioner to certify every matter that the practitioner certifies under this chapter.

18 (7) “Cluster” means any group of one or more livestock structures within a livestock
19 facility.

20 (8) “Complete application for local approval” means an application that contains
21 everything required under ss. ATCP 51.30(1) to (3).

22 (9) “Department” means the Wisconsin department of agriculture, trade and consumer
23 protection.

24 (10) “Direct runoff” has the meaning given in s. NR 151.015(7).

25 **NOTE:** Under s. NR 151.015(7), “direct runoff” means a discharge of a significant
26 amount of pollutants to waters of the state resulting from any of the following
27 practices:

28
29 (a) Runoff from a manure storage facility.

- (b) Runoff from an animal lot that can be predicted to reach surface waters of the state through a defined or channelized flow path or man-made conveyance.
- (c) Discharge of leachate from a manure pile.
- (d) Seepage from a manure storage facility.
- (e) Construction of a manure storage facility in permeable soils, or over fractured bedrock, without a liner designed according to s. NR 154.04(3).

(11) “DNR” means the Wisconsin department of natural resources.

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

NOTE: This chapter applies to local approvals of *new or expanded* livestock facilities that 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). *See* s. ATCP 51.02. Although this chapter covers all livestock structures in an “expanded livestock facility,” existing structures are subject to less rigorous standards than new or expanded structures.

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

NOTE: See s. ATCP 51.04.

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

NOTE: See s. NR 151.002(32).

(15) “High-use building” means any of the following buildings:

- (a) A residential building that has at least 6 distinct dwelling units.

1 (b) A restaurant, hotel, motel or tourist rooming house that holds a permit under s.
2 254.64, Stats.

3 (c) A school classroom building.

4 (d) A hospital or licensed care facility.

5 (e) A business or workplace that is normally occupied, during at least 40 hours of each
6 week of the year, by customers or employed workers.

7 (16) "Karst feature" means an area or superficial geologic feature subject to bedrock
8 dissolution so that it is likely to provide a conduit to groundwater. "Karst feature" may include
9 caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or
10 swallets.

11 (17) "Livestock" means domestic animals traditionally used in this state in the
12 production of food, fiber or other animal products. "Livestock" includes cattle, swine, poultry,
13 sheep and goats. "Livestock" does not include equine animals, bison, farm-raised deer, fish,
14 captive game birds, ratites, camelids or mink.

15 (18) "Livestock facility" means a feedlot, dairy farm or other operation where livestock
16 are or will be fed, confined, maintained or stabled for a total of 45 days or more in any 12-month
17 period. A "livestock facility" includes all of the land parcels on which the facility is located, but
18 does not include a pasture or winter grazing area. Two or more livestock facilities constitute a
19 single livestock facility, for purposes of this chapter, if the same person owns or manages all of
20 the facilities and any of the following apply:

21 (a) The facilities are adjacent livestock facilities.

22 **NOTE:** A mere acquisition of a neighboring livestock facility does not constitute an
23 "expansion" unless more animal units are added to the combined facilities.
24 See sub. (13).
25

1 (b) Common livestock structures are used to collect or store manure or other waste from
2 the facilities.

3 (c) Manure or other waste from the facilities is applied to the same parcel of land.

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

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

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

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

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

21
22 (b) An approval required under a local building, electrical or plumbing code, if the
23 standards for approval are consistent with standards established under the state building,
24 electrical or plumbing code for that type of facility.

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

1 **(21)** “Local ordinance” or “local code” means an ordinance enacted by a political
2 subdivision.

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

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

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

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

14 **NOTE:** This chapter applies to local approvals of *new or expanded* livestock facilities
15 that will have 500 or more animal units (or will exceed a lower permit threshold
16 incorporated in a local *zoning* ordinance prior to July 19, 2003). See s. ATCP
17 51.02.
18

19 **(26)** “NRCS” means the natural resource conservation service of the United States
20 department of agriculture.

21 **(27)** “Operator” means a person who applies for or holds a local approval for a livestock
22 facility.

23 **(28)** “Pasture” means land on which livestock graze or otherwise seek feed in a manner
24 that maintains the vegetative cover over all of the grazing or feeding area.

25 **(29)** “Person” means an individual, corporation, partnership, cooperative, limited
26 liability company, trust or other legal entity.

1 (30) “Political subdivision” means a city, village, town or county.

2 (31) “Populate” means to add animal units for which local approval is required.

3 (32) “Property line” means a line that separates parcels of land owned by different
4 persons.

5 (33) “Qualified nutrient management planner” means a person qualified under s. ATCP
6 50.48.

7 (34) “Registered professional engineer” means a professional engineer registered under
8 ch. 443, Stats.

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

11 (36) “Site that is susceptible to groundwater contamination” means any of the following:

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

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

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

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

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

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

20 1. A soil layer at least 2 feet deep that has at least 40% fine soil particles.

21 2. A soil layer at least 3 feet deep that has at least 20% fine soil particles.

22 3. A soil layer at least 5 feet deep that has at least 10 % fine soil particles.

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

1 (37) “Substantially altered” livestock structure means a livestock structure that
2 undergoes a material change in construction or use, including any of the following material
3 changes:

4 (a) An increase in the capacity of a waste storage facility.

5 (b) The addition of a liner to a waste storage facility.

6 (c) An increase of more than 20% in the area or capacity of a livestock structure used to
7 house, feed or confine livestock, or to store livestock feed.

8 (d) An increase of more than 20% in the number of animal units that will be kept in a
9 livestock structure on at least 90 days in any 12-month period.

10 (38) “Unconfined manure pile” means a quantity of manure at least 175 cubic feet in
11 volume that covers the ground surface to a depth of at least 2 inches, but does not include any of
12 the following:

13 (a) Manure that is confined within a manure storage facility, livestock housing facility or
14 barnyard runoff control facility.

15 (b) Manure that is covered or contained in a manner that prevents storm water access and
16 direct runoff to surface water or leaching of pollutants to groundwater.

17 (39) “Waste” means manure, milking center waste and other organic waste generated by
18 a livestock facility.

19 (40) “Waste storage facility” means one or more waste storage structures. “Waste
20 storage facility” includes stationary equipment and piping used to load or unload a waste storage
21 structure if the equipment is specifically designed for that purpose and is an integral part of the
22 facility. “Waste storage facility” does not include equipment used to apply waste to land.

1 **(41)** “Waste storage structure” means a waste storage impoundment made by
2 constructing embankments, excavating a pit or dugout, or fabricating a structure. “Waste storage
3 structure” does not include equipment used to apply waste to land. For purposes of ss. ATCP
4 51.12(2) and 51.14, “waste storage structure” does not include any of the following:

5 (a) A structure used to collect and store waste under an animal housing facility.

6 (b) A manure digester consisting of a sealed structure in which manure is subjected to
7 managed biological decomposition.

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

9 **(43)** “Winter grazing area” means cropland or pasture where livestock feed on dormant
10 vegetation or crop residue, with or without supplementary feed, during the period October 1 to
11 April 30. “Winter grazing area” does not include any of the following:

12 (a) An area, other than a pasture, where livestock are kept during the period from May 1
13 to September 30.

14 (b) An area which at any time has an average of more than 4 livestock animal units per
15 acre.

16 (c) An area from which livestock have unrestricted access to navigable waters of the
17 state, such that the livestock access prevents adequate vegetative cover on banks adjoining the
18 water.

19 (d) An area in which manure deposited by livestock causes nutrient levels to exceed
20 standards in ATCP 51.16.

21 **(44)** “WPDES permit” means a Wisconsin pollutant discharge elimination system permit
22 issued by DNR under ch. NR 243.

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

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

4 (b) A new or expanded livestock facility that will exceed a lower size threshold; for a
5 special exception or conditional use permit, if the threshold is expressed in terms of a specific
6 number of animals or animal units and was incorporated in a local zoning ordinance prior to July
7 19, 2003.

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

14
15 A political subdivision may *not* require local approval for new or expanded
16 livestock facilities smaller than 500 animal units, except as specifically authorized
17 by the livestock facility siting law and this chapter. A political subdivision may
18 apply a lower size threshold adopted by ordinance prior to July 19, 2003 *if that*
19 *threshold is expressed as a specific number of animals or animal units.* A local
20 threshold expressed in locally-defined “animal units” may meet this test, because
21 it effectively indicates a specific number of animals, even if the local ordinance
22 definition of “animal units” differs from the definition in this chapter. However
23 the local application and approval process must use the “animal units” definition
24 in this chapter.

25
26 Local approvals covered by this chapter normally “run with the land” (per zoning
27 law and other applicable law). They normally continue to apply, despite changes
28 in ownership, as long as subsequent owners do not violate the terms of the local
29 approval. Some ordinances might require a *pro forma* permit transfer with each
30 transfer of ownership, but that transfer should not ordinarily limit the scope of
31 approval.

32
33 **(2)** This chapter does not apply to any of the following:

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

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

1 **NOTE:** See s. 93.90(3)(a)3., Stats. The statutes listed in par. (b) pertain to shoreland
2 zoning, floodplain zoning, construction site erosion control and stormwater
3 management.
4

5 (c) An approval required under a local building, electrical or plumbing ~~or sanitation~~
6 code, if the standards for approval are consistent with standards established under the state
7 building, electrical or plumbing code for that type of facility.

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

9 **ATCP 51.04 Animal units.** In this chapter, and in every local approval or application
10 for local approval under this chapter, the number of animal units kept or authorized at a livestock
11 facility means the maximum number of animal units that are or may be kept on at least 90 days
12 in any 12-month period.

13 **NOTE:** ATCP 51.04 accounts for normal day-to-day and seasonal variations in
14 livestock numbers, as livestock are born, received, moved and marketed. See s.
15 93.90(3)(f), Stats.
16

17 Under this chapter, an applicant for local approval must specify the number of
18 “animal units” for which the applicant seeks authorization. If the application is
19 approved, the approval authorizes that number of “animal units.” The authorized
20 number is the maximum number of “animal units” that may be kept on 90 or more
21 days in any 12-month period. A livestock operator may not exceed that
22 authorized number without further local approval.
23

24 **ATCP 51.06 Local approval of existing livestock facilities. (1) GENERAL.** Except as
25 provided in sub. (2), a local ordinance may not require local approval under this chapter for any
26 of the following:

27 (a) A livestock facility that existed before *[revisor inserts effective date of this chapter]*
28 or before the effective date of the local approval requirement.

29 (b) A livestock facility that the political subdivision has already approved. A prior
30 approval for the construction of a livestock facility implies approval for the maximum number of
31 animal units that the approved livestock facility was reasonably designed to house, except as

1 otherwise clearly provided in the approval. Prior approval of a single livestock structure, such as
2 a waste storage structure, does not constitute prior approval of an entire livestock facility.

3 **NOTE:** For example, if a political subdivision has already approved construction of a
4 livestock facility that was reasonably designed to house up to 800 “animal units,”
5 that approval authorizes the operator to keep up to 800 “animal units” at that
6 facility (even if the scope of approval is not explicitly stated in terms of “animal
7 units”).
8

9 **(2) EXPANSIONS.** A local ordinance may require local approval under this chapter for the
10 expansion of a pre-existing or previously approved livestock facility under sub. (1) if the number
11 of animal units kept at the expanded livestock facility will exceed all of the following:

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

13 (b) The maximum number previously approved or, if no maximum number was
14 previously approved, a number that is 20% higher than the number kept on *[revisor inserts*
15 *effective date of this chapter]* or on the effective date of the approval requirement, whichever
16 date is later.

17 **NOTE:** Consider the following examples:
18

19 **Example 1:** Suppose that a local ordinance enacted after *[revisor inserts*
20 *effective date of this chapter]* requires local approval for livestock facilities with
21 500 or more “animal units.” Local approval is *not* required for a livestock facility
22 that already has 600 “animal units” on the local ordinance effective date, unless
23 the facility expands to more than 720 “animal units.” The number of “animal
24 units” kept on the ordinance effective date means the largest number kept on at
25 least 90 days in the 12 months prior to the ordinance effective date (*see s.*
26 *93.90(3)(e), Stats.*).
27

28 **Example 2:** Suppose that a local ordinance enacted prior to July 19, 2003
29 requires local approval of livestock facilities with 400 or more “animal units.” An
30 expansion from 200 “animal units” (existing facility) to 450 “animal units”
31 (expanded facility) will require local approval, unless the political subdivision has
32 already given its approval. If the political subdivision has already approved
33 construction of a livestock facility that is designed to house up to 450 “animal
34 units,” the operator does not need further local approval unless the operator
35 proposes to exceed 450 “animal units.”
36