

# **05hr\_CRule\_05-014\_AC-Ag\_pt02c**



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)

1 **Subchapter II**

2 **LIVESTOCK FACILITY SITING STANDARDS**

3 **ATCP 51.10 Livestock facility siting standards; general. (1) STATE STANDARDS**

4 APPLY. Except as provided in sub. (2) or (3), a political subdivision shall grant or deny local  
5 approvals covered by this chapter based on the standards in this subchapter.

6 **(2) STATE STANDARDS INCORPORATED IN LOCAL ORDINANCE.** Beginning on *[revisor*  
7 *inserts date that is 6 months after the effective date of this chapter]*, a political subdivision may  
8 not deny a local approval covered by this chapter unless the political subdivision incorporates by  
9 local ordinance the standards in this subchapter and the application requirements in subch. III. A  
10 local ordinance may incorporate the standards and application requirements by reference,  
11 without reproducing them in full.

12 **NOTE:** The livestock facility siting law, s. 93.90, Stats., limits the reasons for which a  
13 political subdivision may deny local approval. For the first 6 months after the  
14 effective date of this chapter, from *[revisor inserts effective date of this chapter]*  
15 to *[revisor inserts date that is 6 months after the effective date of this chapter]*, a  
16 political subdivision may deny local approval based on standards in this chapter  
17 without incorporating those standards by local ordinance. See sub. (1). But sub.  
18 (2) applies beginning on *[revisor inserts date that is 6 months after the effective*  
19 *date of this chapter]*.

20  
21 **(3) MORE STRINGENT LOCAL STANDARDS.** A political subdivision may not apply local  
22 standards that are more stringent than the standards in this subchapter unless all of the following  
23 apply:

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

26 (b) The political subdivision enacted the standards by local ordinance, before the  
27 livestock facility operator filed the application for local approval.

1 (c) The political subdivision enacted the standards based on reasonable and scientifically  
2 defensible findings of fact adopted by the political subdivision's governing authority.

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

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

6 **(4) ORDINANCE PROVISIONS FILED WITH DEPARTMENT.** Within 30 days after a political  
7 subdivision enacts an ordinance provision under sub. (2) or (3), the political subdivision shall file  
8 a copy of the ordinance provision with the department. Failure to file the ordinance provision  
9 with the department does not invalidate the ordinance provision. The political subdivision shall  
10 file the ordinance provision, by mail, fax or e-mail, at the following applicable address:

11 Wisconsin Department of Agriculture, Trade and Consumer Protection  
12 Agricultural Resource Management Division  
13 Bureau of Land and Water Resources  
14 P.O. Box 8911  
15 Madison, WI 53708-8911  
16 Fax: (608) 224-4615  
17 E-mail: ordinance@datcp.wi.gov  
18

19 **ATCP 51.12 Livestock structures; location on property. (1) PROPERTY LINE AND**  
20 **ROAD SETBACKS; GENERAL.** Livestock structures shall comply with local ordinance requirements  
21 related to setbacks from property lines and public roads, except that no local setback requirement  
22 may do any of the following:

23 (a) Require a livestock structure to be set back more than 100 feet from any property  
24 line, or more than 100 feet from any public road right-of-way, if the livestock facility will have  
25 fewer than 1,000 animal units.

1 (b) Require a livestock structure to be set back more than 200 feet from any property  
2 line, or more than 150 feet from any public road right-of-way, if the livestock facility will have  
3 1,000 animal units or more.

4 (c) Prevent the use of a livestock structure that was located within the setback area prior  
5 to the effective date of the setback requirement.

6 (d) Prevent the expansion of a livestock structure that was located within the setback  
7 area prior to the effective date of the setback requirement, other than an expansion toward the  
8 property line or public road to which the local setback applies.

9 **NOTE:** Many local jurisdictions have established basic property line and road setback  
10 requirements by ordinance. Setbacks vary depending on local circumstances, and  
11 often reflect years of local experience. Subsection (1) honors local setback  
12 requirements, provided that the setbacks do not exceed the limits specified in  
13 sub. (1).  
14

15 **(2) MANURE STORAGE STRUCTURE; SETBACK.** A waste storage structure may not be  
16 located within 350 feet of any property line, or within 350 feet of the nearest point of any public  
17 road right-of-way, unless one of the following applies:

18 (a) A local ordinance specifies a shorter setback that is specific to waste storage facilities  
19 or waste storage structures:

20 (b) The waste storage structure existed prior to *[revisor inserts effective date of this*  
21 *chapter]*. This paragraph does not authorize an expansion, toward a property line or public road  
22 right-of-way, of a waste storage structure that is located within 350 feet of that property line or  
23 public road right-of-way.

24 **NOTE:** See definition of “waste storage structure” in s. ATCP 51.01(42).  
25

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

4           **NOTE:** Essentially all navigable waters are now protected by ordinances that require  
5 building setbacks of 75 feet or more (depending on the ordinance). Zoning  
6 restrictions, if any, typically apply to *new or enlarged structures*. A zoning  
7 ordinance applies for purposes of sub. (3) if it is enacted within the scope of  
8 statutory authority under s. 59.692, 61.351 or 62.231, Stats., even if it is also  
9 enacted under other authority.

10           **(4) FLOODPLAIN.** A livestock facility shall comply with an applicable floodplain zoning  
11 ordinance that is enacted within the scope of statutory authority under s. 87.30, Stats.  
12

13           **NOTE:** County or local zoning ordinances currently apply to many, but not all,  
14 waterways (not all waterways have mapped floodplains). Zoning restrictions, if  
15 any, typically apply to *new or enlarged structures*. A zoning ordinance applies  
16 for purposes of sub. (4) if it is enacted within the scope of statutory authority  
17 under s. 87.30, Stats., even if it is also enacted under other authority.

18           **(5) WELLS.** (a) Wells in a livestock facility shall comply with chs. NR 811 and 812.  
19

20           (b) Except as provided in par. (c), new or substantially altered livestock structures shall  
21 be separated from existing wells by the distances required in chs. NR 811 and 812, regardless of  
22 whether the livestock facility operator owns the land on which the wells are located.

23           (c) Paragraph (b) does not prohibit the alteration of a livestock structure that existed on  
24 *[revisor inserts effective date of this chapter]*, unless that alteration reduces the distance between  
25 the livestock structure and an existing well.

26           **NOTE:** DNR rules under chs. NR 811 and 812 spell out well construction and well  
27 location standards to protect water supplies. Violation of well setback  
28 requirements in ch. NR 811 or 812 may prevent use of a well. DNR may grant  
29 appropriate variances, as provided in chs. NR 811 and 812.

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

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. (6) 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 and air emissions. (1) ODOR STANDARDS.** Except as provided in  
9       subs. (2) to (4), a livestock facility shall have a predicted odor of not more than 350, and an odor  
10      score of at least 500. The operator shall calculate the predicted odor and odor score according to  
11      *Appendix A, worksheet 2*, or by using the equivalent spreadsheet provided on the department's  
12      website. An application for local approval shall include *worksheet 2* or the spreadsheet output.

13      **NOTE:** The spreadsheet equivalent of *Appendix A, worksheet 2* is available on the  
14      department's website at <http://www.datcp.state.wi.us/index>.  
15

16      *Predicted odor* considers odor generation and odor management practices, but  
17      does not consider the proximity and density of "affected neighbors." Total *odor*  
18      *score* considers odor generation, odor management practices, and the proximity  
19      and density of "affected neighbors." See *Appendix A, worksheet 2*.  
20

21      *Predicted odor* and total *odor score* are predictive estimates. The standards in  
22      sub. (1) apply only for purposes of local livestock facility siting decisions under  
23      this chapter. Failure to comply with a standard in sub. (1) does not constitute  
24      evidence of a public or private nuisance, negligence, or a taking of property.  
25

26      Odor management practices may also control air pollution emissions. The  
27      department will work to coordinate odor and air emissions field research with  
28      DNR, the Wisconsin agricultural stewardship initiative (WASI), and the  
29      University of Wisconsin. The department will consider research results when it  
30      reviews this chapter at least once every 4 years (see s. 93.90(2)(c), Stats.). As part  
31      of its review, the department will consult with an advisory committee that  
32      includes representatives of livestock producers, local government and  
33      environmental interests.  
34

35      **(2) EXEMPTIONS.** The odor standards in sub. (1) do not apply to any of the following:

36      (a) A new livestock facility with fewer than 500 animal units.

37      (b) An expanded livestock facility with fewer than 1,000 animal units.

1 (c) A livestock facility in which all livestock structures will be located at least 2,500 ft.  
2 from the nearest affected neighbor.

3 **NOTE:** “Affected neighbors” (ATCP 51.01(2)) are residences or “high-use buildings”  
4 (ATCP 51.01(15)) *other than* those owned by the livestock operator or by  
5 persons who agree to be excluded from odor score calculations under sub. (1).  
6

7 **(3) CLUSTERS.** If all of the livestock structures in a livestock facility are divided among  
8 2 or more clusters, such that no cluster is located closer than 750 feet to any other cluster, an  
9 operator may choose to calculate an odor score under sub. (1) for each cluster rather than for the  
10 entire livestock facility. Each cluster shall comply with the odor standards in sub. (1).

11 **NOTE:** For example, a dairy operator can take advantage of sub. (3) if a proposed dairy  
12 facility includes a milking operation (cluster 1) and a heifer facility (cluster 2)  
13 located 800 feet from each other.  
14

15 **(4) LOCAL DISCRETIONARY CREDIT.** (a) Notwithstanding sub. (1), a political subdivision  
16 may in its discretion do any of the following:

17 1. Approve a livestock facility with a predicted odor of more than 350, provided that the  
18 predicted odor does not exceed 380.

19 2. Approve a livestock facility with an odor score of less than 500, provided that the odor  
20 score is not less than 470.

21 (b) If a political subdivision exercises its discretionary authority under par. (a), its  
22 written decision under s. ATCP 51.34(3) shall state the reason or reasons for that exercise of  
23 discretionary authority.

24 (c) The livestock facility siting review board may not review any of the following under  
25 s. 93.90(5), Stats:

26 1. A political subdivision’s exercise, or refusal to exercise, discretionary authority under  
27 par. (a).

1           2. The adequacy of the political subdivision's stated reasons under par. (b) for exercising  
2 discretionary authority under par. (a).

3           **NOTE:** A political subdivision *must* approve a livestock facility that meets the odor  
4 standards under sub. (1), assuming that the facility meets other livestock facility  
5 siting standards under this chapter (*see* ATCP 51.34(1)).  
6

7           A political subdivision may *not* approve a livestock facility that fails to meet the  
8 odor standards under sub. (1), except that the political subdivision may exercise  
9 its discretionary authority under sub. (4)(a) in favor of an applicant if it chooses to  
10 do so. For example, a political subdivision may exercise its discretionary  
11 authority under sub. (4)(a) based on factors such as community tolerance, the  
12 applicant's near attainment of a standard, innovative odor control practices, local  
13 land use plans, or the applicant's past reputation for good management and  
14 community relations.  
15

16           **(5) CREDITS FOR ODOR MANAGEMENT PRACTICES.** In the calculation of predicted odor  
17 under sub. (1), an operator may claim credit for all of the following:

18           (a) Odor management practices, identified in *Appendix A, worksheet 2*, which the  
19 operator agrees to implement. For each odor management practice, the operator may claim a  
20 credit specified in *Appendix A, worksheet 2*.

21           (b) An odor management practice not identified in *Appendix A, worksheet 2* if the  
22 department pre-approves a credit for that practice. The operator shall claim the pre-approved  
23 credit according to the procedure specified in *Appendix A, worksheet 2*.

24           (c) An operator seeking department approval under par. (b) shall submit all of the  
25 following to the department in writing:

26           1. A clear description of the odor management practice for which the operator seeks an  
27 approved credit.

28           2. Scientific evidence to substantiate the efficacy of the odor management practice under  
29 relevant conditions.



1 (d) The department may approve a credit for an odor management practice under par. (b)  
2 if, in the department's opinion, there is adequate scientific evidence to show that under relevant  
3 conditions the practice will result in odor reduction commensurate with the approved credit. The  
4 department shall grant or deny the request within 90 days after the department receives the  
5 request.

6 **NOTE:** An odor management practice credit under sub. (5) is expressed, in the predicted  
7 odor calculation in *Appendix A, worksheet 2*, as a multiplier value (the *lower* the  
8 multiplier, the greater the benefit to the livestock operator).  
9

10 (6) FUTURE REFERENCE POINTS. Whenever an operator seeks local approval for the  
11 expansion of a livestock facility previously approved under this chapter, the operator may  
12 calculate an odor score under sub. (1) by reference to the same affected neighbors referenced in  
13 the odor score calculation for the prior local approval. The operator is not required to include, in  
14 the new odor score calculation, an affected neighbor that was not referenced in the odor score  
15 calculation for the prior local approval.

16 **NOTE:** The odor score calculation in *Appendix A, worksheet 2* is partly based on the  
17 proximity and density of "affected neighbors" (*see* ATCP 51.01(2)). Subsection  
18 (6) gives an operator some protection against the effects of encroaching  
19 development, without regulating that development directly.  
20

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

23 **NOTE:** Under s. ATCP 51.30, an application must be complete, credible and internally  
24 consistent. The application must include, among other things, a worksheet (or  
25 equivalent spreadsheet output) that shows compliance with this section. *See*  
26 *Appendix A, worksheet 2*. Local approval is conditioned upon compliance in fact  
27 (*see* s. ATCP 51.34(4)). The presumption in sub. (7) may be rebutted by clear  
28 and convincing evidence in the record (*see* s. ATCP 51.34 and 51.36).  
29

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

31 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 (September, 2005), except for  
3 sections V.A.2.b(2), V.D, V.E and VI.

4           **NOTE:** NRCS nutrient management technical standard 590 (September, 2005) is  
5           reprinted in *Appendix B*. The following sections of the reprinted standard do *not*  
6           apply for purposes of this chapter:

7  
8           V.A.2.b(2), related to additional requirements imposed by local conservation  
9           plans.

10          V.D, related to additional criteria to minimize N and particulate air emissions.

11          V.E, related to additional criteria to protect the physical, chemical and biological  
12          condition of the soil.

13          VI, related to discretionary considerations.

14  
15          2. A nutrient management checklist, shown in *Appendix A, worksheet 3, part C*, shall  
16 accompany an application for local approval. A qualified nutrient management planner, other  
17 than the livestock operator, shall answer each checklist question. The planner shall have  
18 reasonable documentation to substantiate each answer, but neither the planner nor the operator is  
19 required to submit that documentation with the checklist.

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

24  
25          (b) A political subdivision may ask a nutrient management planner to submit the  
26 documentation that the planner relied upon to substantiate the planner's answer to one or more  
27 questions on the nutrient management checklist under par. (a)2. The political subdivision may  
28 deny local approval if the planner's documentation does not reasonably substantiate the answer.

29          (c) Paragraph (a) does not apply to a livestock facility with fewer than 500 animal units  
30 unless the operator's ratio of acres to animal units, calculated according to *Appendix A*,

1 *worksheet 3, part B*, is less than 1.5 for dairy and beef cattle, 1.0 for swine, 2.0 for sheep and  
2 goats, 2.5 for chickens and ducks, and 5.5 for turkeys.

3 **NOTE:** A *waste and nutrient management worksheet (Appendix A, worksheet 3)* must  
4 accompany every application for local approval. Among other things, the  
5 *worksheet* shows the operator's ratio of acres to animal units under par. (c).  
6

7 Paragraph (c) is an exemption, not a requirement, for livestock facilities. If a  
8 livestock facility qualifies for exemption under par. (c), the operator is *not*  
9 required to submit a *nutrient management checklist* under par. (a). The ratios  
10 stated in par. (c) are based on the phosphorus content of manure from the  
11 respective livestock species.  
12

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

15 **NOTE:** Under s. ATCP 51.30, an application must be complete, credible and internally  
16 consistent. The application must include, among other things, a *waste and*  
17 *nutrient management worksheet (Appendix A, worksheet 3)*. The completed  
18 *worksheet* must include all of the following:  
19

- 20 • The types and amounts of manure and other organic waste that the facility will  
21 generate when fully populated.
- 22 • The types and amounts of waste to be stored, the waste storage facilities and  
23 methods to be used, the duration of waste storage, and waste storage capacity.
- 24 • The final disposition of waste by landspreading or other means.
- 25 • The acreage currently available for landspreading.
- 26 • A map showing where waste will be applied to land.
- 27 • A *nutrient management checklist* if required under sub. (1).  
28

29 Local approval is conditioned upon compliance in fact (*see* s. ATCP 51.34(4)).  
30 The presumption in sub. (2) may be rebutted by clear and convincing evidence in  
31 the record (*see* s. ATCP 51.34 and 51.36).  
32

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

35 **NOTE:** This subsection does not require an operator to file updates with a political  
36 subdivision, but neither does it limit local authority to request updates or monitor  
37 compliance with sub. (1)(a)1. *See* s. ATCP 51.34(4).  
38

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

1 (a) The operator holds a WPDES permit for the same proposed livestock facility, and  
2 that permit is based on housing for a number of animal units that is equal to or greater than the  
3 number for which the operator seeks local approval.

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

6 **ATCP 51.18 Waste storage facilities. (1) DESIGN, CONSTRUCTION AND MAINTENANCE;**  
7 **GENERAL.** All waste storage facilities for a livestock facility shall be designed, constructed and  
8 maintained to minimize the risk of structural failure, and to minimize the potential for waste  
9 discharge to surface water or groundwater. A waste storage facility may not lack structural  
10 integrity or have significant leakage. An unlined earthen waste storage facility may not be  
11 located on a site that is susceptible to groundwater contamination.

12 **NOTE:** A "site that is susceptible to groundwater contamination" is defined in s. ATCP  
13 51.01(37).

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

18 (a) The facility is constructed of concrete or steel or both, was constructed within the last  
19 10 years according to then-existing NRCS standards, and shows no apparent signs of structural  
20 failure or significant leakage.

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

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

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

8 (e) The facility is in good condition and repair, shows no apparent signs of structural  
9 failure or significant leakage, is located entirely above ground, and is located on a site at which  
10 the soils comply with *NRCS technical guide manure storage facility standard 313, table 5*  
11 *(November, 2004)*.

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

15  
16 (3) NEW OR SUBSTANTIALLY ALTERED FACILITIES. For purposes of local approval, a new  
17 or substantially altered waste storage facility is presumed to comply with sub. (1) if all of the  
18 following apply:

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

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

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

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

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

27

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

6           **NOTE:** According to s. ATCP 51.30, an application for local approval must identify any  
7 waste storage facilities to be closed. The application must include a closure plan  
8 for each identified facility. A registered professional engineer or certified  
9 agricultural engineering practitioner must certify that the closure plan complies  
10 with *NRCS technical guide closure of waste impoundments standard 360* (June  
11 2001). See *Appendix A, worksheet 4 (waste storage facilities)*.  
12

13           Under s. NR 151.05(3) and (4), an operator must normally close a manure storage  
14 facility if the facility has not been used for 24 months, or poses an imminent  
15 threat to public health, aquatic life or groundwater.  
16

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

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

23           **NOTE:** Section ATCP 51.20(5) prohibits overflow of waste storage facilities. See also  
24 s. NR 151.08(2) and ATCP 50.04(1).  
25

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

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

1           **NOTE:** The required excess storage capacity in par. (b), often called “freeboard  
2           storage,” provides a safety factor to prevent manure storage overflow in the  
3           event of a major rain event.  
4

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

8           **NOTE:** Under s. ATCP 51.30, an application must be complete, credible and internally  
9           consistent. An application must include a *waste and nutrient management*  
10          *worksheet* (*worksheet 3*, signed by the operator and a qualified nutrient  
11          management planner) and a *waste storage facility worksheet* (*worksheet 4*, signed  
12          by a registered professional engineer or certified agricultural engineering  
13          practitioner). *Worksheet 3* must identify waste storage needs, based on the  
14          operator’s landspreading and waste disposal strategy. *Worksheet 3* must also  
15          show waste storage *capacity*, consistent with *worksheet 4*. Capacity must be  
16          adequate for reasonably foreseeable needs.  
17

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

23          **NOTE:** A political subdivision may inspect waste storage facilities to verify that they are  
24          constructed according to specifications included in the application for local  
25          approval. This section *does not require or prohibit* local inspection. A deviation  
26          under sub. (6) does not invalidate a local approval, but does prevent the livestock  
27          operator from populating the approved livestock facility until the deviation is  
28          rectified or approved.  
29

30          This chapter does not limit the application of local waste storage ordinances,  
31          except in connection with the approval of a new or expanded livestock facility.  
32          For example, if a livestock operator constructs a new waste storage structure  
33          without adding “animal units” for which local approval is required, the  
34          construction must comply with the local waste storage ordinance if any.  
35

36          But if a livestock operator proposes to add “animal units” *and* construct a new  
37          waste storage structure, to create an “expanded livestock facility” for which local  
38          approval is required, the waste storage standards in this chapter are controlling.

1 A political subdivision may not disapprove the expansion, except for reasons  
2 provided under this chapter.

3  
4 (7) EXEMPTION. This section does not apply if all of the following apply:

5 (a) The operator holds a WPDES permit for the same proposed livestock facility, and  
6 that permit is based on housing for a number of animal units that is equal to or greater than the  
7 number for which the operator seeks local approval.

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

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

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

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

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

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

24  
25 (b) Runoff from an animal lot may not discharge to any direct conduit to groundwater.

26  
27 **NOTE:** See NR 151.08(4) and ATCP 50.04(1). A direct conduit to groundwater may  
28 include, for example, a sinkhole.  
29



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

3           (b) If an existing paved area may be used, without substantial alteration, to store or  
4 handle feed with a 70% or higher moisture content:

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

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

9           **NOTE:** Feed leachate is a potentially serious water pollutant. Paved areas include paved  
10 feed storage bunkers and handling areas. Collected leachate may, for example, be  
11 transferred to waste storage and applied to land at agronomic rates.  
12

13           (c) A new or substantially altered feed storage structure, including any building, bunker,  
14 silo or paved area used for feed storage or handling, shall be designed, constructed and  
15 maintained to the following standards if it may used to store or handle feed with a 70% or higher  
16 moisture content:

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

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

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

22           4. If the feed storage structure covers more than 10,000 square feet, it shall have an  
23 effective subsurface system to collect leachate that may leak through the structure floor. The  
24 system shall consist of drainfill material, a tile drainage network, and an effective sub-liner as  
25 specified in *Appendix A, worksheet 5, section II.C.*

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

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

5  
6           **(4) CLEAN WATER DIVERSION.** Runoff from a livestock facility shall be diverted from  
7 contact with animal lots, waste storage facilities, paved feed storage areas and manure piles  
8 within 1,000 feet of a navigable lake or 300 feet of a navigable stream.

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

12  
13           **(5) OVERFLOW OF WASTE STORAGE FACILITIES.** A livestock facility shall be designed,  
14 constructed and maintained to prevent overflow of waste storage facilities.

15           **NOTE:** Under s. ATCP 51.18(5), waste storage capacity must be adequate to meet  
16           reasonably foreseeable storage needs, based on the operator's waste and nutrient  
17           management strategy under s. ATCP 51.16. See also NR 151.08(2) and ATCP  
18           50.04(1).

19  
20           **(6) UNCONFINED MANURE PILES.** A livestock facility may not have any unconfined  
21 manure piles within 1,000 feet of a navigable lake or 300 feet of a navigable stream.

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

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

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

1           **(8) PRESUMPTION.** For purposes of local approval, a livestock facility is presumed to  
2 comply with this section 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. An applicant must submit a *runoff management* worksheet signed by  
5 the applicant and a registered professional engineer or certified agricultural  
6 engineering practitioner (*see Appendix A, worksheet 5*). The *worksheet* shows  
7 presumptive compliance with this section. Local approval is conditioned upon  
8 compliance in fact (*see sub. (4) 9*) and s. ATCP 51.34(4)). The presumption of  
9 compliance may be rebutted by clear and convincing evidence in the record (*see s.*  
10 *ATCP 51.34 and 51.36*).  
11

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

17           **NOTE:** A political subdivision may inspect animal lots or feed storage structures to  
18 verify that they are constructed according to specifications included in the  
19 application for local approval. This section *does not require or prohibit* local  
20 inspection. A deviation under sub. (9) does not invalidate a local approval, but  
21 does prevent the livestock operator from populating the approved livestock  
22 facility until the deviation is rectified or approved.  
23

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

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

28           (b) The operator includes a copy of the WPDES permit with the operator's application  
29 for local approval.  
30  
31

1 **Subchapter III**

2 **APPLICATION AND APPROVAL**

3 **ATCP 51.30 Application. (1) GENERAL.** If local approval is required for a new or  
4 expanded livestock facility, a person seeking local approval shall complete and file with the  
5 political subdivision the application form shown in *Appendix A*. The application shall include all  
6 of the information required by *Appendix A* and attached *worksheets*, including any authorized  
7 modifications made by the political subdivision under sub. (2). The information contained in the  
8 application shall be 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, or require any additional information, except that  
11 a political subdivision may require information needed to determine compliance with local  
12 ordinance standards authorized under s. ATCP 51.10(3) or 51.12(1).

13 **(3) ADDITIONAL COPIES.** A political subdivision may require an applicant to submit up to  
14 4 duplicate copies of the original application and worksheets under sub. (1), except that a  
15 political subdivision may not require an applicant to submit duplicate copies of attachments such  
16 as engineering design specifications, maps or aerial photos.

17 **NOTE:** A political subdivision must file one duplicate copy of the final application and  
18 worksheets with the department, within 30 days after the political subdivision  
19 grants or denies that application. *See* s. ATCP 51.34(5).  
20

21 **(4) LOCAL FEES. (a)** A political subdivision may charge an application fee established  
22 by local ordinance, not to exceed \$1,000, to offset the political subdivision's costs to review and  
23 process an application under sub. (1).

24 **NOTE:** Under s. 66.0628, Stats., any fee imposed by a political subdivision must bear a  
25 reasonable relationship to the service for which the fee is imposed.  
26

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

3 **NOTE:** If a waste storage facility is abandoned or not properly closed, a political  
4 subdivision may seek redress under s. 66.0627 or 254.59, Stats., and other law as  
5 appropriate. However, a political subdivision may not require an applicant for  
6 local approval to post any bond or security with the application.  
7

8 **(5) COMPLETE APPLICATION.** Within 45 days after a political subdivision receives an  
9 application under sub. (1), the political subdivision shall notify the applicant whether the  
10 application contains everything required under subs. (1) to (4). If the application is not complete,  
11 the notice shall specifically describe what else is needed. Within 14 days after the applicant has  
12 provided everything required under subs. (1) to (4), the political subdivision shall notify the  
13 applicant that the application is complete. A notice of completeness does not constitute an  
14 approval of the proposed livestock facility.

15 **NOTE:** See s. 93.90(4)(a), Stats.  
16

17 **ATCP 51.32 Timely action on application. (1) GENERAL.** Except as provided in sub.  
18 (2), a political subdivision shall grant or deny an application under s. ATCP 51.30(1) within 90  
19 days after the political subdivision gives notice under s. ATCP 51.30(5) that the application is  
20 complete.

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

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

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

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

2  
3           **ATCP 51.34 Granting or denying an application. (1) GRANTING AN APPLICATION.**

4       Except as provided in sub. (2), a political subdivision shall grant an application under s. ATCP  
5       51.30(1) if all of the following apply:

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

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

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

12  
13          **(2) DENYING AN APPLICATION.** A political subdivision may deny an application under s.  
14       ATCP 51.30 if any of the following apply:

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

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

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

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

26  
27               Under the Livestock Facility Siting Law, an “aggrieved person” may appeal a  
28               local decision to the state Livestock Facility Siting Review Board (“Board”). An

1 “aggrieved person” means an applicant for local approval, or a person who resides  
2 or owns land within 2 miles of the proposed livestock facility.  
3

4 An aggrieved person may appeal a political subdivision’s decision within 30 days  
5 after the political subdivision issues the decision (or, if the aggrieved person  
6 pursues a local administrative appeal process, within 30 days after that process is  
7 complete). The aggrieved person may challenge the local decision on the  
8 grounds that it incorrectly applied livestock facility siting standards under this  
9 chapter, or violated the Livestock Facility Siting Law.  
10

11 When an appeal is filed, the Board must notify the political subdivision. Within  
12 30 days after the political subdivision receives this notice, it must file a certified  
13 copy of its decision making record under s. ATCP 51.36 with the Board. The  
14 Board must review the local decision based on the evidence in the local record  
15 (the Board will not hold a new hearing or accept new evidence). The Board must  
16 make its decision within 60 days after it receives the certified local record (it may  
17 extend the deadline for good cause).  
18

19 If the Board determines that the challenge is valid, it must reverse the decision of  
20 the political subdivision. The Board’s decision is binding on the political  
21 subdivision (once any court appeal of the decision is completed, or the appeal  
22 time lapses). If the political subdivision fails to comply with the Board’s  
23 decision, an aggrieved person may bring a court action to enforce the Board’s  
24 decision.  
25

26 An aggrieved person *or the political subdivision* may appeal the Board’s decision  
27 to circuit court. The circuit court must review the Board’s decision based on the  
28 evidence in the local record.  
29

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

33 (a) Monitor compliance.

34 (b) Suspend or revoke an approval, or seek other redress provided by law, if the political  
35 subdivision finds any of the following:

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

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

2           **NOTE:** A political subdivision should exercise sound judgment in deciding whether to  
3           take compliance action under sub. (4). The political subdivision may consider  
4           extenuating circumstances, such as adverse weather conditions, that may affect an  
5           operator's ability to comply. A political subdivision may also consider the nature  
6           and seriousness of the violation, whether the violation was intentional or  
7           accidental, the operator's compliance history, consistency of enforcement, and  
8           whether the problem can be resolved without formal enforcement.  
9

10           **(5) NOTICE TO DEPARTMENT.** (a) Within 30 days after a political subdivision grants or  
11           denies an application under this section, the political subdivision shall do all of the following:

12           1. Give the department written notice of its action.

13           2. File with the department a copy of the final application under s. ATCP 51.30 on which  
14           the political subdivision acted. The copy shall include the completed application form and  
15           worksheets, but need not include attachments such as engineering design specifications, maps or  
16           aerial photos.

17           (b) A political subdivision shall submit the information required under pars. (a) and (b),  
18           by mail or fax, to the following address:

19           Wisconsin Department of Agriculture, Trade and Consumer Protection  
20           Agricultural Resource Management Division  
21           Bureau of Land and Water Resources  
22           P.O. Box 8911  
23           Madison, WI 53708-8911  
24           Fax (608) 224-4615  
25

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

28           **ATCP 51.36 Record of decision-making.** A political subdivision shall keep a  
29           complete written record of its decision-making related to an application under s. ATCP 51.30.  
30           The political subdivision shall keep the record for at least 7 years following its decision. The  
31           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(5), 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 court reporter or stenographer. The record shall also include any  
8 documents or evidence submitted by hearing participants.

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

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

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

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

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

18           **(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