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Details:

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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**
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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt**
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  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
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Department of Agriculture, Trade and Consumer Protection

Final Draft

Livestock Facility Siting Rule
Business Impact Analysis
[includes a small business analysis]

August 2005

General Overview and Rule Description

The proposed rule is designed to implement the livestock facility siting law (2003 Act 235). This law creates a new legal framework that will be superimposed on zoning and other local ordinances for the purpose of reducing the regulatory burdens on farmers seeking to site and expand livestock facilities. The new law is a response to a patchwork of local ordinances that may apply inconsistent standards, impose surprise conditions on applicants, and authorize procedures that result in unnecessary delay. Unpredictable, time-consuming and costly local regulations impose barriers to the siting and expansion of livestock facilities that ultimately impact Wisconsin's competitiveness in attracting and retaining a strong livestock industry. The new regulations will provide for uniform siting standards to protect the public and natural resources and fair procedures to ensure that the standards are uniformly applied in a timely manner.

The law will require political subdivisions to meet certain deadlines in reviewing applications to site or expand livestock facilities. Local officials will need to apply state standards when making decisions under local ordinances to approve or deny a livestock producer's application. Except for limited cases, local officials cannot use other standards or conditions to review a siting or expansion proposal. The law requires that local officials develop a formal record that documents their decision on an application for local approval. This record must include a written decision based on findings of fact based on evidence. The law also creates a livestock facility siting review board (LFSRB) with authority to review local decisions to approve or deny an application to site or expand a livestock facility. The Department of Agriculture, Trade, and Consumer Protection's (DATCP) proposed rules will provide the following components to implement the new law: state standards for siting and expanding livestock facilities, information and documentation that must be provided in an application in order to demonstrate that a proposed livestock facility siting or expansion complies with state standards, and information and documentation that must be included in a record of decision making. Once implemented, the new law will reduce the unpredictability, inconsistent treatment and costs associated with siting or expanding livestock facilities under current local regulations.

Businesses Affected by the Rule

This rule will primarily affect livestock operators who need local approval to establish new or proposed livestock facilities with 500 or more animal units[1]. This rule will not ordinarily affect other livestock operators, except in political subdivisions that have established lower permit thresholds prior to July 19, 2003. Other businesses affected to a lesser degree are private crop

[1] According to USEPA, an animal unit is equivalent to 1000 pounds of live weight body mass.

consultants, farm cooperatives and farm supply organizations that perform nutrient management planning. The rule also affects businesses that haul manure, and contractors and engineers who may design and install conservation practices.

Nearly all the farmers affected by this rule can be categorized as small businesses. A "small business," as defined in s. 227.114(1), Stats., means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full time employees or which has gross annual sales of less than $5,000,000. The other businesses affected by rule also typically fall within the category of small businesses. The following sections analyze the impacts on businesses by type beginning with farmers.

Livestock Operators

While the overall impact of the law and DATCP's implementing regulations will enhance the business climate for livestock operators, the proposed rule requires that a livestock operator seeking local approval complete a more extensive application to gain the benefits of the new law. Specifically, a complete application entitles a livestock operator to a presumption of compliance with the siting standards. To gain this advantage, a livestock operator may incur additional upfront costs not currently required to secure local approval. There may be new costs to evaluate existing facilities, install practices to manage odor and develop nutrient management plan. The proposed rule seeks to minimize the potential impacts on smaller operations by excluding new or expanded facilities under 1000 animal units from certain requirements, including compliance with odor management standards. By streamlining the approval process and removing unanticipated standards and conditions, the proposed rule will result in cost-savings for applicants. Table 1 (page 10) summarizes both potential new costs and savings. This table is organized by size of operations to illustrate how impacts may vary by size.

The proposed rule only applies to a limited class of farmers who voluntarily plan new construction or expansion of livestock facilities of 500 or more animal units (unless a lower threshold applies through the grandfathering provision described earlier). Within this group, only those who are subject to local approval requirements will be affected by the rule. Based on department estimates, more fully explained in the Fiscal Estimate, approximately 50-70 farmers will be subject to local approval requirements each year. The proposed rule will not change the responsibility of livestock operations with more than 1000 animal units to secure Wisconsin Pollutant Discharge Elimination System (WPDES) permits from the Department of Natural Resources (DNR). However, a permit applicant may be able to rely on a WPDES permit to comply with siting standards related to water quality.

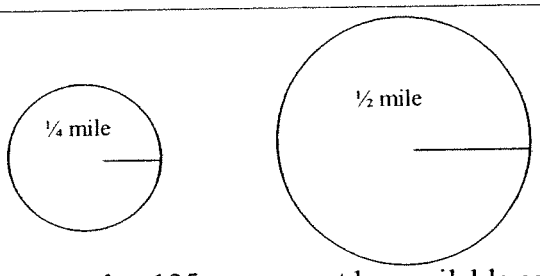
The primary purpose of the rule is to implement the law designed to correct certain unfavorable aspects of local regulations facing farmers who make business decisions to build or expand livestock facilities. Local approval requirements add a level of unpredictability, uncertainty, delay and cost to the complex process of siting or expanding a livestock facility. These concerns make it difficult to plan for the future and secure financing to build or expand livestock facilities.

There are several aspects of local requirements that create concerns for farmers seeking to invest in new or expanded operations. Political subdivisions may impose requirements that are not reasonable. For example, an ordinance can require a conditional use permit for operations that house cattle and veal calves but allow a dairy operation of the same size without requiring a permit. Some towns have considered imposing absolute size limitations on facilities.

In addition, there are ordinances that require compliance with standards for nutrient management, buffers, setbacks, or other environmental standards that are not based on current science. Compliance obligations can impose significant costs on farmers without necessarily generating commensurate public benefits. For example, an ordinance that requires mandatory buffers imposes a requirement in an area where the state is still struggling to establish a defensible standard. Installation of a buffer imposes a direct cost on a farmer to remove land from agricultural production. This cost has been quantified in ATCP 50, which establishes a minimum rate of compensation based on the rental rate for the land, number of areas affected and the years the land is taken out production.

Particularly in the case of setbacks, there can be extreme variability in regulation from one jurisdiction to another. A 2000 Minnesota survey of ordinances found that regulations varied widely in terms of setbacks and other requirements for siting operations. In the case of setbacks, required separation distances among 28 counties ranged from 500 ft. to 10,560 ft., or from less than 1/10th of a mile to 2 miles (p. 10).[2] Similar variations exist in ordinances enacted by Wisconsin counties and towns as suggested by the results of a 2001 survey conducted by DATCP. A summary of the survey is set forth in the department's *Livestock Guidance: Local Planning for Livestock Operations in Wisconsin* ("Livestock Guidance")[3] and supporting documentation is available from the department. As is the case with other siting requirements, setback distances may be based more on local preference than sound science.

Separation distances can have a profound impact on the ability to site a livestock facility. As the following example shows, a small increase in separation distances can remove a significant amount of acreage from use as a livestock operation.



A setback of a ¼ mile means that 125 acres must be available as a buffer, while ½ mile setback (twice as big) requires over 500 acres. (Livestock Guidance, p. 11)

Differences in residential setback requirements can have quantifiable impact on the opportunities to expand. A Nebraska study of Cuming County showed that a ½ mile setback left only 4% of the county available for livestock expansion, while ¼ mile setback allowed expansion in 39% of the county.[4] GIS modeling in Manitowoc County shows similar impacts based on setbacks. Variations

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[2] Minnesota Department of Agriculture. 2000. *Summary of Animal-Related Ordinances in Minnesota Counties*, available at http://www.mda.state.mn.us/agdev/animalordinancesummary.pdf .

[3] Wisconsin DATCP, 2003. *Livestock Guidance*, p.i, available at http://www.datcp.state.wi.us/arm/agriculture/land-water/ag_planning/pdf/ar-pub-1141.pdf

[4] Henry, C. and Arnold, J.. 2004. *Land Area Available in Cuming County to Expand Livestock Operations based on Zoning Setback Requirement. In Manure Matters*, Volume 10, Number 5 available at http://manure.unl.edu/archive.html

in setback distances impose different costs on a farmer. For example, in the case of manure application, a farmer will spend more to incorporate manure if it is necessary to meet larger setback distances for surface applied manure.[5]

Odor concerns are often the driving force behind the regulatory requirements imposed on livestock operations such as setbacks, conditional use standards, size limitations and minimum size requirements. In their search for solutions to control odor, local officials have grasped at options without the benefit of science-based approaches. In assessing the variation in local regulation in its 2000 survey, the Minnesota Department of Agriculture pointed out that the benefits of an ongoing project to develop an odor rating system (eventually introduced as OFFSET), "The odor rating system may soon be available to assist counties in establishing fair, effective and consistent separation distances between feedlot facilities and surrounding land uses."(p. 10) Underlying this statement is the assumption that odor regulation without a scientific basis may not be fair, consistent or effective. In Wisconsin, political subdivisions have established initial setbacks that range from 100 to 1000 feet and conditioned permits on increased setbacks with the aim of addressing odor and related concerns. In contrast to Minnesota county ordinances, no Wisconsin ordinances have incorporated a research-based model using a scientific method to impose odor setbacks or other control measures.

A significant source of unpredictability is related to the conditional use permits used by many towns and counties to regulate new and expanded facilities. In a 2001 survey, DATCP found that towns and counties that regulate through conditional use permits (CUP) set thresholds for a permit that may range from 150 to 2100 animal units. (DATCP Guide, p. i) A subsequent study found additional variation in CUP thresholds based on the size of livestock operation and the operation's proximity to other land uses. Not only do thresholds vary, the standards for CUP permits are vague or subject to change. This means that applicants do not know in advance the ground rules for approval. They have no assurance that they will receive a permit if they meet accepted siting standards. The decision-making process for a permit, which invariably involves a public hearing, is fraught with uncertainty and emotion. Local officials may not appreciate the procedural steps that must be followed to properly decide a permit application. After a livestock operator applies for a conditional use permit, counties and other local governments are free to impose requirements and conditions without limitation. Individualized permit requirements may include increased setbacks, additional monitoring, odor control measures, and financial responsibility requirements. Local governments have imposed conditions that require farmers to build facilities such as manure storage structures beyond specifications required to protect the environment. These additional requirements oblige farmers to assume very real additional costs with only marginal gains in protection. There are cases where permit applicants are not allowed to operate unless they meet financial responsibility requirements that are not uniformly demanded of every applicant. The lack of uniform standards creates opportunities to impose unfair burdens and exacerbate problems with untimely review of applications.

Existing permitting procedures allow local governments to delay review of applications by holding multiple public hearings. In the open ended setting of public hearings, farmers are forced to address a moving target of expectations about what is acceptable. Public hearings can contribute to the intense acrimony that may accompany permit proceedings. There are documented cases of producers enduring more than two years of hearings and appeals to obtain a final decision on a

[5] Fleming, R. The Economic Impact of Setback Requirements on Land Application of Manure. *Land Economics*; 75(November) 110-124.

permit application.[6] The uncertainty and delay, combined with the prospect of controversy and confrontation, has become a significant deterrent for potential applicants.[7]

Protracted proceedings and court appeals translate into real costs to farmers seeking local approval. Some costs are more quantifiable than others. It is possible to calculate the costs of a engineer retained as a expert for public hearing to rebut an unanticipated condition using past examples and hourly charges. For example, an applicant may pay $1,000-$3,000 to retain an engineering firm to rebut claims that a proposal does not adequately protect groundwater. The added legal expenses to defend applicants at public hearing or in court can be calculated using rates of $100-200 hour. While it is difficult to put a price tag on the full cost of delays created by open-ended review of applications, examples of real costs Wisconsin livestock operators have incurred are provided in Appendix B.

Compliance Costs

As an overlay to existing local regulation, Act 235 and its required state standards imposes requirements only on those farmers whose operations already are regulated locally. Farmers subject to local regulations typically have been required to meet standards related to manure management, water quality protection, and odor reduction in the form of setbacks. When the new livestock facility siting law becomes effective, farmers will still need to meet basic compliance requirements imposed by local authorities. In this respect, they will face no new compliance costs.

However, there will be additional costs for farmers to comply with new state standards at the time of application. All permit applicants can expect additional costs to complete the application and worksheets. They may need to retain engineering assistance for this purpose. These costs will depend on the nature of the project including the size of the operation. For new facilities, the costs should be included in the total costs to design and construct new structures. For a dairy expansion to 500 animal units, it would not be unusual to incur additional costs of $1,500-$2,000 to prepare the application, including costs for certification of any existing animal lots and storage structures.

To implement the new system of state requirements, political subdivisions may raise fees to cover their costs but the proposed rule will restrict fee increases. Political subdivisions may incur new costs to handle additional paperwork required under the law, to expedite processing of permit applications, and compile an adequate record of decision making. It may be difficult to distinguish fee increases attributable to the livestock facility siting law as compared to other factors, as counties recently have been raising their fees to recover costs that were once absorbed by the county. For example, Dane County is currently evaluating an independent fee hike for manure storage facility permits to $500.[8]

In addition, applicants will have added compliance responsibilities in regard to manure and odor management. While there are many variables associated with determining costs, it is particularly difficult to estimate costs in the case of odor management, because applicants have the flexibility to

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[6] See e.g. Rock County farm denied permit, Janesville Gazette, November 5, 2004, available at http://www.gazetteextra.com/larsonacres110504.asp (Dec. 2, 2004)

[7] Governor Tim Pawlenty's Advisory Task Force. 2004. *Report on the Competitiveness of Minnesota's Animal Agriculture Industry*, available at http://www.governor.state.mn.us/documents/MNAgricultureReport.pdf

[8] Editorial: Manure matters, *Capital Times*, August 9, 2004 (opposition to proposal to require farmers with more than five costs to pay $500 for a permit to build a manure storage facility).

meet new requirements by using separation distance and other management practices to control odor. Applicants who are seeking to expand their livestock facilities may need to make unplanned improvements to existing manure storage structures or to control runoff from existing barnyard facilities.

Odor Management

Current ordinances largely rely on separation distances to manage odor. In the past, proposed facility expansions could not go forward if they could not meet setback distances. The new rule requires that new facilities over 500 animal units and expanded facilities over 1000 units must demonstrate acceptable levels of odor through the odor management standard. This provides more flexibility in addressing odors by allowing farmers to adopt best management practices to compensate for less than adequate separation distance. These practices, which will primarily address odors from animal housing, manure storage and open lots, may add to an applicant's costs. The practices control odor by reducing odor generation, decreasing emissions, and/or increasing dispersion. Many factors, including the type and size of a livestock operation, will determine the practices that may be appropriate for odor control. Applicants for local approval will have options to manage odor consistent with their manure management systems.

Practices vary in their effectiveness in controlling odor. They also range in cost. Low cost practices such as windbreaks may already be in place or not significantly add to a farmer's daily cost of production. Diet manipulation may have low initial costs but may have unintended effects on productivity. Higher cost practices, such as a methane digester, may require a considerable initial investment and significantly increase the cost of production as reflected in the cost per hundredweight of milk or other measure.[9] Digesters and other practices must be fitted together, and must fit within the production system of a particular operation. Some practices will only work with specific production systems, and each practice has a different effect on controlling odor. An article discussing New York odor control treatment methods for dairy operations estimates that annual costs for odor control practices can range from $30 per cow for windrow composting to $492 per cow for a fixed film anaerobic digester. Larger operations may be able to amortize odor management costs over more animals.[10] This is consistent with an EPA study of regulatory changes which shows that larger dairies could better absorb the costs of new regulation, and moderate sized dairies would have an incentive to modernize.[11]

Farmers who incorporate odor control practices may actually find ways to improve their profitability. Whether or not they adopt odor control practices, farmers incur basic costs to store and spread manure. When they make changes to control odor, farmers may adopt innovations such as diet manipulation. According to Garcia et. al (2003), diet manipulation and other practices may improve milk production, milk quality, and/or cow longevity, resulting in a source of additional net

[9] Garcia, A., K. Tjardes, H. Stein, C. Ullery, S. Pohl, C. Schmit. 2003. *Recommended strategies for odor control in dairy operations*, available at http://agbiopubs.sdstate.edu/articles/ESS803-D.pdf

[10] Wright, Peter E. and S. Inglis. 2001. *Comparing Odor Control Treatment Methods on New York Dairy Farms.* Presented at the 2001 ASAE Annual International Meeting July 30- August 1, Paper No. 01-2235 ASAE 2950 Niles Road St. Joseph, MI, available at http://www.manuremanagement.cornell.edu/Docs/235Paper012235.htm

[11] Outlaw J. et al. 1993. Impacts of Dairy Waste Management Regulations, AFPC Policy Working Paper 93-4. College Station, Texas: Agricultural and Food Policy Center, Texas A&M University, quoted (page 42) in the *Generic Environmental Impact Statement on Animal Agriculture in Minnesota Final Technical Working Paper* on Topics D, E & F: Economic Structures, Profitability & External Costs, available at http://www.eqb.state.mn.us/geis/TWP_Economic.pdf

revenue rather than a cost to a farmer. A 2003 study of two New York dairy farms that installed anaerobic digesters to control odors found that these operations reduced their basic manure handling costs. An 850 dairy cow operation reduced its annual manure handling costs from $71 to $53 per cow, gaining benefits from electric sales and savings, heat savings and use of solids. A 675 cow operation used the digester as a launching pad for new and profitable business opportunities, adding capacity to process outside food waste and dry food products.[12]

Even if farmers are not subject to odor management standards under the livestock facility siting law, they have separate incentives to better manage odors; namely, acting as good neighbors, and avoiding legal actions based on nuisance claims. A recently settled lawsuit, *Nelson v. Matsche Farms, Inc.*, demonstrates the liability risks for farmers who do not adequately manage odor and other related nuisances.[13] As a result of a February 2003 confidential settlement of this nuisance case, the plaintiff neighbors transferred ownership of their property to the farmer.

Nutrient Management

Local ordinances typically require a nutrient management plan as a condition for siting or expanding a livestock facility. The proposed rule will impose a new standard for nutrient management that may limit manure applications based on phosphorous, as opposed to nitrogen. The impacts of this change will differ based on the type of operation involved. The standard generally will apply to proposed facilities with 500 or more animal units. The following examples suggest the range of potential impact. A dairy operation with 500 milking cows can meet the phosphorous needs for a crop rotation of 2 years corn and 3 years alfalfa without building soil phosphorous levels by using fall applications of incorporated manure on 2nd year corn and prior to seeding alfalfa. To meet the phosphorous standard, this operation will need the same acreage for manure spreading--approximately 1,327 acres to apply 11,000 gallons per acre twice every 5 years—as it requires under the current nutrient management standard. On the other side of the spectrum, a poultry operation of 50,000 broilers will meet the phosphorus needs for a crop rotation of 3 years corn and 1 year soybeans without building soil test phosphorous by a 5-ton-per-acre fall application of incorporated manure on 2nd year corn. Under the current nutrient management standard, only 330 acres are needed to meet the nitrogen needs of this crop rotation, assuming that the operation managed soil loss using increased tillage to incorporate manure. Under the new standard, this operation would need 1,314 acres to apply 5 tons of manure per acre once every 4 years.

These examples are consistent with farm level studies analyzed by USDA as part of a recent evaluation of costs to land apply manure.[14] This analysis found that farm production costs will generally be greater under a phosphorus-based standard than a nitrogen-based standard. It recognized that the gap in the costs would shrink if farmers are allowed to accumulate phosphorous in the soil for future crops. It also recognized that costs vary based on animal type and farm

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[12] Wright, P. and Inglis, S. 2003. *An Economic Comparison of Two Anaerobic Digestion Systems on Dairy Farms.* Presented at the 2003 ASAE Annual International Meeting July 27-30, Paper No. 03-4154 ASAE 2950 Niles Road St. Joseph, MI, available at http://www.manuremanagement.cornell.edu/Docs/ASAE03MatlinkDDI.htm

[13] Hanson, A. 2002. *Brewing Land Use Conflicts: Wisconsin's Right to Farm Law*, Wisconsin Lawyer Vol. 75, No. 12, available at http://www.wisbar.org/wislawmag/2002/12/hanson.html

[14] Ribaudo, M. et al. 2003. *Manure Management for Water Quality: Costs to Animal Feeding Operations of Applying Manure Nutrients to Land.* Agricultural Economic Report No. (AER824), pp. iv, available at http://www.ers.usda.gov/publications/aer824/

location. In general, higher costs are the result of greater concentrations of phosphorus in manure than of nitrogen, relative to crop nutrient needs. This means that farmers must find more land to spread manure to meet a phosphorous standard. If more land is needed, farmers will incur added costs for manure hauling, which represents the most significant part of the costs in meeting the standard.[15] A number of other factors contribute to a producer's ultimate costs including the type of manure handling system.[16] The willingness of cropland owners to accept manure is a critical variable in determining transportation and spreading costs.[17] Data also indicates that smaller operations may incur lower costs than larger operations.[18]

There are several reasons why the move to a phosphorous-based standard may not be significant for farmers seeking to site or expand livestock facilities. First, any facility that exceeds 1000 animal units already needs to meet a phosphorous-based standard to secure a WPDES permit from the DNR. Second, farmers receiving federal cost-share dollars for nutrient management or manure storage construction must meet a phosphorous-based standard for nutrient management. Third, DATCP plans to upgrade its state standard for nutrient management in a companion rule (ATCP 50) to impose phosphorous limitations as part of nutrient management. This new state standard will have immediate impact on farmers who receive state cost-share dollars for manure storage facilities.

Existing Structures

Some applicants may face additional and unplanned costs if they intend to incorporate existing manure storage structures, open lots and feed storage into their expansion plans. Those planning an expansion often include upgrades to structures to accommodate increased animal numbers or improve the efficiency of their operation. For example, a dairy farmer may decide to move from a solid to a liquid handling system for manure, necessitating a host of structural changes. Where such changes are part of an expansion plan, a farmer accounts for the costs of bringing altered facilities into compliance with the latest standards. The proposed rule will not affect the actions of these farmers.

It will have an impact on a smaller group of farmers that intend to retain structures without alterations. At the low end of costs, this group may hire professionals to certify that existing structures meet the new standards. In many cases, farmers in this group will have retained engineering assistance for their expansion and will not have difficulties meeting this requirement. However, a few applicants may be required to make improvements to meet the standards. For facilities with open lots, farmers may have to install practices to better control runoff. Improvements will vary based on the nature of the operation and management options required to achieve acceptable runoff control. Within this framework, the farmer will have options. To divert clean water, a farmer might install gutters and downspouts at a cost of $2.25 per foot and then pay an additional 7% for maintenance. To treat runoff, a small size dairy operation may install a

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[15] Innes, R. 1999. Regulating Livestock Waste. *Choices*. (Second quarter) pp. 14-19.

[16] Daugherty et. al, *Liquid Dairy Waste Transport and Land Application Cost Comparisons Considering Herd Size, Transport Distance, and Nitrogen versus Phosphorus Application Rates*. Presented at the 2003 ASAE Annual International Meeting July 27-30, Paper No. 01-2263 ASAE 2950 Niles Road St. Joseph, MI, available at http://wastemgmt.ag.utk.edu/adams%20asae%20paper.pdf

[17] Fleming, R, Babcock, B. and Wang, E. 1998. Resource or Waste? The Economics of Swine Manure Storage and Management. *Review of Agricultural Economics* , Vol. 20, pp. 96-113, 1998

[18] Ribaudo, M. et al. Manure Management for Water Quality, p. 31

vegetated filter at a cost of $0.35 per square foot. For a 75 cow dairy, the farmer might install a 12,000 square foot treatment area at cost of $3,000 or $4.00 per cow annually over a ten year period. To capture solids from the lot, a farmer may install a settling basin which costs about $3.70 square foot for the concrete outlet, excluding site preparation. For operations with 1000 or more animal units, annual costs per animal will be no more than $2.01.[19]

As part of their expansion, many farmers plan to upgrade manure storage to account for manure from more animals and provide flexibility in spreading manure. For those farmers who will retain a storage structure, they may need to make unplanned changes if the structure does not meet current standards. The potential expenses will vary depending on the nature of the problem and the options for solving the problem. For structures with a compromised liner, for example, farmers will pay $1000-$2000 to clean and prepare the site for inspection and repair. This price may include simple repairs to mend tears in a membrane liner or patch joints in a concrete tank. More extensive repairs could approach the cost of a new structure. In the case of a new storage structure with a membrane liner, the cost might range from $0.64-1.38 per cubic foot of storage.[20]

Cost Savings

To the extent that the livestock facility siting law creates new costs, it may also generate cost-savings for applicants. Farmers will no longer be forced to demonstrate compliance with standards not specified in the ordinance. Nor will they face standards that not defensible based on science. The law will also eliminate local compliance obligations written into ordinances if political subdivisions cannot justify the requirement on public health and safety grounds. Once they demonstrate compliance with the siting standards in their application, they will not incur additional legal and expert costs later in the review process to address new concerns.

With a more predictable and timely permitting process, applicants should experience less uncertainty and fewer delays in gaining local approval. This will reduce transaction costs related to obtaining local approval.[21] While applicants can anticipate more upfront costs associated with permit applications, they also will spend less to justify their proposal during the application review process. In connection with hearings, for example, they will not need to engage expert assistance to defend against claims outside the scope of the standards in the application. If they need to appeal a decision about their application, they have the option of pursuing a less costly and more timely review before the LFSRB.

Summary

In summary, the group of farmers subject to the proposed rule is a small subset of livestock operators. The proposed rule affects those livestock operators who voluntarily decide to build new or expanded livestock facilities only in jurisdictions that have local approval requirements. Those

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[19] NRCS. 2000. *Costs Associated with Development and Implementation of Comprehensive Nutrient Management Plans (CNMP): Part I - Nutrient Management, Land Treatment, Manure and Wastewater Handling and Storage, and Recordkeeping*, available at www.nrcs.usda.gov/technical/land/pubs/cnmp1.html

[20] Janni, K. 2002. *Upgrading and Modernizing Dairy Facilities and Manure Handling.* Professor and Extension Engineer Biosystems, available at http://www.ansci.umn.edu/dairy/dairydays/2002/janni1.pdf

[21] Tefertiller, K., C. Jauregui, C. and Olexa, M. 1998. *Impact of the Regulatory Environment Farmers Facing Florida Dairy Farmers*. Cir 1208, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, available at http://www.aglawcenter.ifas.ufl.edu/EDISPubs/FlDairyReg/DairyRegs.pdf

farmers who are not subject to local siting regulation will incur no additional costs as result of the livestock facility siting law. Table 1 summarizes the range of potential costs, savings and avoided costs for new and expanded livestock facilities by livestock facility size.

Table 1: Range of Net Total Costs to Operators

	Under 500 AU	500-1000 AU	Over 1000 AU
Potential New Costs	$1500 to $24,000	$3850 to $109,700	$4410 to $185,000
Potential Savings and Avoided Costs	($17,000) to ($4500)	($50,000) to ($8000)	($168,000) to ($25,000)
Net Total Costs[22]	**($15,500 savings) to $19,500 costs**	**($46,150 savings) to $101,700 costs**	**($163,590 savings) to $160,000 costs**

Attached as an appendix, Table A provides more detail to support the figures in Table 1. Table B includes examples of actual costs incurred by livestock operators under current law without the changes proposed in the rule. These costs will be avoided under the new regulatory framework.

Crop consultants, farm cooperatives, farm supply organizations, and manure-haulers

This rule will marginally increase the demand for professional nutrient management planning and other related services provided to farmers. While farmers can qualify to write their own nutrient management plans, they will likely retain professional services for several reasons. Greater expertise is required to develop plans to meet a phosphorous-based standard. Using a professional also allows a farmer to devote more time to other elements of facility proposal that must be completed to gain local approval of a proposed siting or expansion.

This rule will increase demand for manure hauling services. The small group of affected farmers will have greater transportation requirements to meet new requirements of a phosphorous-based nutrient management plan. They will hire commercial manure haulers to apply their manure on appropriate fields. This industry should realize increased revenue and business from farmers.

This rule will not appreciably affect the sale of commercial fertilizers or demand for soil testing services. To the extent that there is some impact, more nutrient management planning may increase the need for soil testing and reduce sales of commercial fertilizers

There will be increased demand for new services delivered by trained professionals particularly in the area of odor management. Farmers will need expert assistance to assess their capacity to generate odor and identify management solutions to control odor. This will create business opportunities for professionals in these fields as well as agricultural engineering.

Construction contractors

This rule will affect construction contractors who install livestock conservation practices. This rule does not substantially alter construction standards, nor does it impose any new contractor reporting or record keeping requirements. But this rule may slightly increase demand for construction services.

[22] The numbers in parentheses indicate a potential net savings for some operations.

Agricultural Engineering Practitioners

This rule may marginally increase demand for agricultural engineers and engineering practitioners. Certain conservation practices must be designed by licensed engineers or certified engineering practitioners, to ensure safety and effective performance.

Accommodation for Small Business

DATCP has worked extensively with farmers and their representatives to minimize adverse effects on small business. Farmers and members of farm organizations constituted nearly 1/3 of the membership of the livestock facility siting advisory committee that provided recommendations for the legislation and input on the rule draft. The panel that provided recommendations for technical standards was required to consider practicality and other factors of concern to small businesses. DATCP also held numerous public hearings throughout the state, prepared simplified information materials, and incorporated the concerns of small businesses in drafting the rule.

Conclusion

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 local approval process. However, new and expanding operations will need to comply with regulations spelled out in this rule. This will likely add costs for new or expanding operations, but some of these costs will be offset by savings resulting from a more predictable and fair local decision making process.

This rule will have a significant economic impact on small businesses, and is therefore subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats. (Delays rule application to small businesses by 2 months, compared to effective date for other businesses).

Dated this 25 day of August, 2005

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
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Agricultural Resource Management Division

Appendix

Table A: Estimated Livestock Expansion Total Costs

	Standard	Under 500 Animal Units	500-1000 Animal Units	Over 1000 Animal Units
Potential Costs	**Odor Management--New**	Not required	***Low*** $975 (increased cleaning); $592 (700ft windbreak) ***High*** $52,500 ($.75 x 70,000 sq ft membrane cover)	***Low*** $1500 (increased cleaning); $910 (700ft windbreak) ***High*** $128,000 ($1.00 x 128,000 sq ft membrane cover and gas collection)
	Odor Management ---Existing	Not required	Not required	***Low*** $1500 (increased cleaning); $910 (700ft windbreak) ***High*** $36,000 ($1.00 x 36,000 sq ft membrane cover) to $128,000 ($1.00 x 128,000 sq ft membrane cover)
	Nutrient Management Plans	Not required if adequate land base available	Additional implementation costs: ***Low*** $2000-$4000 ($4 per AU) ***High*** $10,000-$20,000 ($10 per AU)	Required.** No additional design or construction costs
	Waste Storage-New	Required.** No additional design or construction costs	Required.** No additional design or construction costs	Required.** No additional design or construction costs
	Waste Storage-Existing	Additional evaluation and certification cost: $ 500-$1200. Potential upgrade costs: ***Low*** $1000 (minor repairs) ***High*** $28,000-$144,000 (Full rebuild with liner)	Additional inspection and certification cost: $ 700-$1500 Potential upgrade costs: ***Low*** $1500(minor repairs) ***High*** $144,000-$283,000 (Full rebuild with liner)	Required.** No additional design or construction costs
	Animal Lot Runoff-New	No additional design or construction costs*	No additional design or construction costs*	Required.** No additional design or construction costs
	Animal Lot Runoff-Existing	Additional evaluation and certification cost: $ 250-$500. Potential upgrade costs: ***Low*** $500 (diversion) ***High*** $5000 (treatment strip)	Additional evaluation and certification cost: $ 300-$600 Potential upgrade costs: ***Low*** $750 (diversion) ***High*** $7000 (treatment strip)	Required.** No additional design or construction costs
	Feed Storage-Existing	Additional evaluation and certification cost: $ 250-$500 Potential upgrade costs: ***Low*** $500 (diversion) ***High*** $4000-$8000 (surface collection system)	Additional evaluation and certification cost: $ 300-$600. Potential upgrade costs: ***Low*** $500(diversion) ***High*** $6000-$10,000(surface collection system)	Required.** No additional design or construction costs
	Feed Storage-Runoff-New	Additional evaluation and certification cost: $ 250-$500. Potential upgrade costs: ***Low*** $500(diversion) ***High*** $25,000(liner, collection system)	Additional inspection and certification cost: $ 300-$600 Potential upgrade costs: ***Low*** $750 (diversion) ***High*** $55,000 (liner, collection system)	Required.** No additional design or construction costs
	Other Runoff Controls	Required.* No additional design or construction costs	Required.* No additional design or construction costs	Required.** No additional design or construction costs
	Application Costs	***Low*** $0 ***High*** $1000	***Low*** $0 ***High*** $1000	***Low*** $0 ***High*** $1000
Potential Savings and Avoided Costs	**Non-essential Practices**	Buffers $1000-$2000 ($1 ft x 1000 ft Financial Responsibility Bond $500-$2000 Other $1000-$5000	Buffers $1,000-$2,000 ($1 ft x 1000 ft) Financial Responsibility Bond $3000-$5000 Other $5000-$10,000	Buffers $1000-$2000 ($1 ft x 1000 ft) Financial Responsibility Bond $5000-$10,000 Other $10,000-$40,000
	Services	Engineering-$1000-$4000 ($100-$200 per hour) Legal $1000-$4000 ($100-$200 per hour)	Engineering-$2000-$8000 ($100-$200 per hour) Legal $2000-$25,000 ($100-$200 per hour)	Engineering-$4000-$16,000 ($100-$200 per hour) Legal $5000-$100,000 ($100-$200 per hour)

* Required by s. 281.16(3), Stats. and ch. NR 151 and ATCP 50, Wis. Admin. Code
** Required by ch. NR 243, Wis. Admin. Code

Appendix

Table A Discussion

Table A shows the estimate range of net costs for operators to implement the proposed livestock facility siting standards. It includes 1) potential new costs, such as application fees and engineering services, and 2) potential avoided costs, such as legal fees, expert testimony fees and construction costs related to unnecessary design elements. A summary of total net costs, representing the difference between the potential new costs and the potential avoided costs, is provided as part of the main analysis, p 10.

These are key assumptions used in developing Table A:

- The size of operations considered in this analysis range from 100 to 2000 animal units (AU).
- The ranges are based on a typical proposal for a new or expanded facility that includes construction of a new manure storage, and modification of existing animal lots and feed storage.
- The potential and avoided costs shown in Table A represent only incremental costs to implement the proposed rule, and are based on DATCP's internal cost estimates.
- DATCP's cost estimate does not include base costs incurred to meet existing legal obligations or ordinance requirements.
- The ranges assume no cost-sharing is provided to operators.

Appendix

Table B: Examples of livestock facility expansion costs without state standards

	Costs	Included in Costs	Other Issues
Farm A	$2000	Expert testimony fees	Does not include costs the partners incurred from taking off several days from farming duties to prepare for hearings.
Farm B	$10,000	Not reported	Many challenges in process, but the worst were emotional.
Farm C	$17,000	Not reported	Residents wanted an ordinance restricting the size of operations.
Farm D	$20,000	Portion of town's legal fees; expert testimony fees	Many public hearings. Community was allowed to add a large number of permit conditions. Town can add new conditions to the permit every two years.
Farm E	$65,000	Legal fees and expert testimony	Permit was denied after numerous public hearings. Had to switch counties to one that did not require a permit.
Farm F	$85,000	Expenses incurred during permitting process, including engineering assistance.	Emotional strain was worse than financial aspect.
Farm G	$106,000	Legal fees and expert testimony	Received permit that was found to be void. Has not received another permit. In addition, may be fined $50-$500 per day for noncompliance.
Farm H	$125,000	Legal fees, expert testimony, and manure digester	Permit denied on non-scientific concerns, despite adequate land base, nutrient management plan, digester, and government engineering assistance.
Farm I	$200,000	Legal fees and expert testimony	Two lawsuits not completed. Producer said he will move out of state before he ever goes through this again.
Farm J	$350,000	Construction of engineered practices	Unreasonable engineering conditions imposed with no scientific rationale. Also sustains $19,000 in additional costs annually due to permit requirements.
Farm K	$420,000	Legal fees and purchase of two homes	Successfully challenged county ordinance that restricted operation size.

Note: Eleven operators provided information related to their costs to receive a local permit to expand their livestock facility. These costs ranged from $2000 to over $400,000, with an average cost of $120,000. Two of these example expansions have spent over $100,000 each but have not yet received a permit. Table 1 provides a sample of these operations, their costs, and other issues they faced during the process.

Department of Agriculture, Trade and Consumer Protection

Final Draft

Livestock Facility Siting Rule
Environmental Assessment

August 2005

Division Affected: Agricultural Resource Management
Rule Number: ATCP 51, relating to livestock facility siting.

Clearinghouse Rule Number: 05-014

HISTORY AND BACKGROUND

1. ***Rule number and title:*** ATCP 51, relating to livestock facility siting.

[X] New Rule
[ ] Modification of Existing Rule

2. ***Statutory Authority***

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

3. ***Summarize the history of this proposed rule and the reason the rule was developed:***

The Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") proposes this rule to implement Wisconsin's Siting Law (s. 93.90, Stats., created by 2003 Wis. Act 235). The legislature enacted the Livestock Facility Siting Law ("Siting Law") to provide a more predictable framework for local decisions to approve or deny proposals for new and expanded livestock facilities. The legislation was a response to concerns about the impact of local regulation on future of the livestock industry. It was designed to remedy both the reality and perception that local decision-making was not timely, was based on standards that were not grounded in sound science, and imposed conditions not specified in ordinances.

State standards are at the core of this new regulatory framework. The Siting Law requires that DATCP develop state standards that political subdivisions must follow if they regulate the siting of new and expanded livestock facilities. To develop the standards, DATCP was required to convene a panel of experts to make recommendations based on the best available science and other considerations. The panel made of representatives from the private and public sector recommended the following standards to protect water quality and control odors: odor management from facilities and land application of manure, waste and nutrient management, waste storage, runoff control (animal lots, feed storage), and mortality management. The panel

delivered its recommendations in the form of a preliminary draft rule that included an application for local approval and worksheets. The panel's work product was reviewed by the advisory committee that originally developed recommendations for the legislation. The siting standards were incorporated into the hearing draft of the rule that was subject to public hearing.

Subsequent to public hearings, DATCP made changes to the proposed siting standards. The siting standards incorporated in the final draft rule include: odor management, waste and nutrient management, waste storage, and runoff control (animal lots, feed storage).

4. *Description of this proposed rule*

A. *Objective of proposed rule*

This proposed rule implements the legislative directives to DATCP in the Siting Law. The law requires DATCP to adopt, by rule, standards for siting and expanding livestock facilities. This proposed rule implements the requirement to specify the information that a livestock operator must include when applying for local approval, in order to show that a new or expanded livestock facility will comply with the siting standards adopted. It also specifies the information that a political subdivision must include in its decision making record, as required by the Siting Law.

(1) Environmental Objectives

The primary environmental objective of this proposed rule is to create state standards that protect water quality and control odor. The standards will provide new levels of protection for the environment based on the best available science. In developing these standards, DATCP was required to consider the protection of public and health safety among a set of factors set forth in s. 93.90(2), Stats. The standards will protect water quality by requiring that manure is properly handled, stored and applied to land. The standards will control runoff related to animal lots and feed storage. The runoff protections incorporate these existing standards: clean water diversion from animal lots and other structures, the prohibition against unconfined manure stacks near waterways, restriction on streambank grazing to ensure adequate vegetative cover, overflow prevention from storage structures, and construction site erosion control. The standards will control odor from facilities through best management practices and separation distances. The rule will also require that new and expanded livestock facilities meet property line and water quality setbacks and that new manure storage facilities meet additional setbacks from roads and property lines.

(2) Programmatic/Administrative Objectives

This proposed rule will establish a predictable, efficient and fair framework for political subdivisions to grant local approvals involving new and expanded livestock facilities. Superimposed over local regulatory system, this framework rationalizes the siting process while preserving local control in the area of land use planning and zoning. Science-based standards, set at the state level, will provide local officials much-needed guidance in grant local approvals for livestock facilities. For livestock farmers, the standards will provide greater certainty about the requirements necessary to modernize and expand their operations. With clear deadlines for

processing applications, the new law reduces delay and the accompanying uncertainty. Finally, this proposed rule establishes the ground work for the Livestock Facility Siting Review Board ("Board") to conduct its review of local decisions involving new and expanded livestock facilities.

These changes will enable Wisconsin livestock producers to make the necessary investment to remain competitive in an ever-changing agricultural climate. Without modernization and growth, the state will not have enough raw products such as milk to support cheese makers and other processors. The livestock industry is extremely important to the Wisconsin economy, contributing 51.5 billion annually and supporting 426,000 jobs.

B. Summarize the key assumptions on which this proposed rule is based:

This proposed rule is based on these assumptions:

- Political subdivisions play a central function in land use planning and zoning, and this role must be preserved.
- Local facility siting decisions can be improved by uniform state standards formulated based on considerations such as practicality and protection of public health and safety.
- Science-based standards developed with input from a technical panel can effectively protect water quality and reduce odor.
- To protect public health and safety, political subdivisions may need to apply unique standards when making local decisions, but these need to be specified in ordinances.
- Applicants seeking approval for facility siting or expansion receive fairer treatment if local decision-making authority is limited to state standards and conditions specified in ordinances.
- Delays and uncertainty regarding local decision-making burden applicants seeking local approval, and create disincentives to invest in modern livestock operations.
- An adequate decision making record is essential to review local decisions to grant or deny approval.
- The creation of a review board provides a less costly and effective means to ensure that political subdivisions properly apply state siting standards.

C. Provide a summary of procedures required by this proposed rule:

(1) Requirements the public will have to follow:

For livestock operations located in the jurisdictions that regulate livestock facility siting, this proposed rule requires that livestock operations meet state standards when they plan to build or expand livestock facilities. While these requirements generally apply to new and expanded livestock facilities over 500 animal units, smaller facilities may be required to comply if the local ordinance contains a lower threshold for regulation that is "grandfathered" into law. An applicant demonstrates compliance with state and local standards specified in the ordinance by completing a DATCP-approved application and worksheets. Applicants must complete worksheets to show:

- the maximum number of animals of each type that will be housed at the proposed livestock facility for at least 90 days during any 12-month period.
- best management practices (including separation distances) that will be used to manage odor from animal housing, waste storage, and animal lots if new facility is proposed for 500 or more animal units or a expanded facility is proposed for 1000 or more animal units.
- compliance with all property line and water quality setbacks.
- the amount of manure and related waste the facility will generate annually, the maximum amount of storage to hold this waste, the total annual amount of manure and other waste that the applicant proposes to apply to land, the land base needed to spread this waste, and the land base available for spreading.
- a checklist demonstrating nutrient management planning if the proposed facility is 500 or more animal units or does not have an adequate land base available for spreading.
- compliance of new, substantially altered and existing waste storage facilities with standards to prevent overflow and leaks
- compliance with new, substantially altered and existing animal lots and feed storage structures with standards to control runoff and discharges to groundwater.
- the applicant is aware of other laws, listed in the attachment, that may apply to livestock facilities (vehicle weight limits, chemical bulk storage laws, etc.).

As part of the application, the applicant must include information necessary to demonstrate compliance with any local requirements in the ordinance necessary to protect public health and safety.

By submitting a complete application that demonstrates compliance, the applicant shifts the burden to the political subdivision to show why the proposed facility does not meet standards and should not be approved. The political subdivision must grant a local approval if there is not sufficient evidence in the record to rebut the presumption of compliance for the standards created by a completed application.

The applicant for local approval and others who meet the law's definition of "aggrieved" parties have the option to seek review of a local decision before the Livestock Facility Siting Review Board ("Board"). An aggrieved party has 30 days to appeal a local decision. The aggrieved person may challenge the local decision on the grounds that it incorrectly applied DATCP standards or violated the Siting Law. The Board has 60 days to review the local decision based on the evidence in the local record (the Board will not hold a new hearing or accept new evidence). An aggrieved person or the political subdivision may appeal the Board's decision to circuit court.

Once issued, a permit authorizes the applicant to house the number of animal units requested in the application unless another number is used. Once an application is approved, the operator may not exceed the authorized number without another local approval. Local approval is conditioned on continued compliance with required standards, and representations made in the application for local approval.

(2) Requirements counties and other political subdivisions will have to follow:

The Siting Law does not mandate that a county, town or other political subdivision adopt a permit, license or similar approval for new and expanded facilities. Political subdivisions that elect not to regulate in this area are not subject to the siting standards and decision making procedures in this proposed rule. Even if they do not require local approval of new and expanded livestock facilities, political subdivisions may use planning and zoning tools to control future development and land uses including new and expanded livestock facilities. Whether or not they require local approval for new and expanded livestock facilities, political subdivisions may independently regulate livestock facilities by adopting ordinances under authority related to shoreland zoning, floodplain zoning, construction site erosion control or stormwater management.

If a political subdivision elects to use a permit or similar approval to regulate new and expanded livestock facilities, they must conform with rule requirements related to the standards. First, it must regulate at a threshold of 500 animal units unless it had a local ordinance in place as of July 19, 2003 with a lower threshold. If a political subdivision does not have an ordinance that meets the "grandfathering" requirement, it may *not* require a zoning or other approval for a livestock facility smaller than 500 animal units in any agricultural use district or unzoned area. Second, local approval decisions must be based on siting standards in this proposed rule. A political subdivision may not disapprove a proposed livestock facility based on the standards in this rule unless it incorporates the standards in its local ordinance. A political subdivision may not apply more stringent standards unless those standards are necessary to protect public health or safety, are based on reasonable and scientifically defensible findings of fact, and are incorporated in the local ordinance prior to the date of the siting application. The findings must clearly show that the standards are necessary to protect public health or safety.

Third, a political subdivision must use the DATCP approved application and worksheets in making its decision to approve or deny a new or expanded livestock facility. It may modify the application to require additional information that is necessary to show compliance with local ordinance standards that are allowed under the Siting Law. Applicants can be charged a reasonable fee to cover its costs, but they cannot be required to post bonds or provide other proof of financial responsibility. If a waste storage facility is abandoned or not properly closed, however, a political subdivision retains the authority to seek redress under s. 66.0627 or 254.59, Stats., as appropriate.

Fourth, a political subdivision must follow procedural requirements for reviewing the application and making its decision. Within 45 days after it receives an application for local approval, a political subdivision must determine whether the application is complete and notify the applicant. Once the application is complete, a political subdivision is required to make its decision within 90 days, unless it extends the deadline for good cause. If the application contains the information required by DATCP rules, 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.

Fifth, a political subdivision must make its decision based on written findings of fact that are supported by evidence in the record. This written decision must be part of the records maintained by the political subdivision. The record of decision making includes the application for local approval, a record of any public hearing (public hearing requirements, if any, are determined by local law), and copies other documents received or issued in connection with the application.

A local decision may be challenged by aggrieved parties by filing an appeal. In addition to traditional appeals to courts, aggrieved parties may file an appeal with the Board. The Board's decision is binding on the political subdivision (once any court appeal of the decision is completed, or the appeal time lapses). If the political subdivision fails to comply with the Board's decision, an aggrieved person may bring a court action to enforce the Board's decision.

(3) Requirements DATCP will have to follow:

DATCP is required to develop and maintain standards for siting new and expanded livestock facilities. The standards may incorporate, and may not conflict with, current regulations related to nonpoint source pollution from farms. In developing standards, DATCP was required to consult with a panel of experts. During the development process, DATCP and the panel had to consider whether the standards were (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) and usable by local officials. DATCP has completed these requirements in preparing this proposed rule. In addition to reviewing the standards every 4 years, DATCP should provide education and technical assistance to political subdivisions to ensure proper application.

To ensure consistent implementation of the siting standards, DATCP must specify the information that a livestock operator must include when applying for local approval, in order to show that a new or expanded livestock facility will comply with the siting standards. This will be accomplished by mandating the use of department-approved application and worksheets.

Through rulemaking, DATCP must specify the information that a political subdivision 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 political subdivision's decision.

The Siting Law attaches the Board to DATCP for administrative purposes. DATCP must provide staff to coordinate the meetings of the Board, advise the Board on legal matters and prepare decisions and other official documents.

D. Identify and explain implicit or explicit exemptions to this proposed rule and explain why they are exempt (e.g., what similar activities or entities would not be affected):

This proposed rule does not cover farmers seeking to site or expand livestock facilities in

jurisdictions that do not regulate this activity. These farmers are exempt because the law is designed as an overlay to existing and future local regulation of livestock siting. If no local regulation exists, there is no mechanism to implement the new state siting standards. Farmers in jurisdiction that do not regulate siting are still subject to other legal requirements including compliance with state agricultural performance standards and WPDES permits issued by DNR for facilities over 1000 animal units.

This proposed rule interprets the Siting Law to apply only to domestic animals traditionally used in this state in the production of food, fiber or other animal products. It covers livestock facilities that raise cattle, swine, poultry, sheep and goats. It 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.

Consistent with the law's intent to preserve local authority, this proposed rule recognizes local authority to regulate proposed livestock facility siting or expansion on the following grounds:

- The site is located in a non-agricultural zoning district.
- The site is located in an agricultural zoning district that prohibits the livestock facility (as long as the specific requirements in the law are met).
- The site fails to meet separate health and safety standards specified in a local ordinance.
- The proposed livestock facility violates a local ordinance properly adopted under a state law related to shoreland zoning, floodplain zoning, construction site erosion control or stormwater.
- 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.

In similar vein, this proposed rule recognizes local power to regulate new and expanded livestock facilities smaller than 500 animal units in certain cases. Under the Siting Law, political subdivisions may impose a lower permit threshold as long as this threshold was adopted by local ordinance prior to July 19, 2003. This approach is consistent with the law's function as an overlay to local authority. However, this proposed rule excludes proposed facilities smaller than 500 animal units from specific requirements related to nutrient management and odor control. Limiting application of the standards in these cases is consistent with technical panel's recommendations for standards designed primarily for adoption by facilities of 500 or more animal units, and recognizes economic reality facing smaller facilities that are forced to comply with a broad range of standards. By exempting expanding facilities less than 1000 animal units from the odor management standard, this rule recognizes the unique burdens facing operations that have not made the leap to permitted status under the WPDES program.

This proposed rule incorporates and interprets the limitation of the Siting Law regarding treatment of an existing facility. Generally speaking, a local ordinance may *not* require a permit for a livestock facility that already exists on the effective date of the ordinance, but may require a permit for future expansions to the extent allowed under the rule. Normal seasonal fluctuations in animal numbers to not constitute an "expansion" (the rule provides specifics).

This proposed rule does not affirmatively mandate cost-sharing for applicants who might otherwise be entitled to cost-sharing under ATCP 50 if they are required to change an existing facility to comply with state agricultural performance standards. Under ss. 92.07(2), 92.105(1), 92.15(4), 93.90(3)(d) and 281.16(3)(c), Stats., and ss. ATCP 50.08 and NR 151.095(5)(b), Wis. Adm. Code, a political subdivision must normally offer cost-sharing if it *requires* an operator to install conservation practices at an existing livestock facility that is otherwise unchanged. This proposed rule does not require an offer of cost-sharing for a new or expanded facility, even if the operator must install conservation practices to obtain a local permit for that facility. However, the political subdivision *may* offer cost-sharing to a permit applicant, if the political subdivision is able and willing to do so.

5. Specifically identify those governmental units, industries, organizations, and other parties that would be affected by this proposed rule. Explain how each would be affected:

Town, county or other political subdivisions. This proposed rule affects only political subdivisions that voluntarily elect to regulate livestock facility siting through conditional use permits, licenses and other forms of approval. They must meet new requirements on top of the basic permitting steps previously imposed on applicants for local approval. They may encounter new costs to process applications in a timely manner and prepare a more extensive record of decision making. There may be peripheral impact on the workload of county conservation staff who will be critical local resources to provide technical assistance in implementing the siting standards.

See Section 10 B of this assessment and the Fiscal Impact Estimate for a more extensive analysis of costs that political subdivisions may incur as a result of this proposed rule.

Livestock Farmers. This proposed rule affects only a small subset of farmers who plan new and expand livestock in jurisdictions that require local permit, license or approval for such activity. As indicated in the Fiscal Impact Estimate, DATCP estimates that 50-70 proposed facilities each year will be covered the new law. All livestock farmers will benefit from the new law and DATCP's implementing regulations which will enhance the business climate for new and expanded livestock facilities. When implemented, the law will create a predictable, more fair approval process with clear deadlines for local decisions. It provides an alternative to courts to seek less costly and timelier review of local approval decisions. However, this proposed rule may add additional costs for those new and expanded livestock facilities that must obtain local approval. For example, applicants for local approve may need to spend more for engineering review of existing structures and installation of measures to control odors. However, added costs may be offset by savings created by the new law. For example, applicants may have lower attorney fees and compliance costs related to unanticipated requirements imposed after a complete application is submitted. For many farmers, the cost of preparing and following a nutrient management plan may be offset by the savings a farmer realizes in lower costs for purchased fertilizers.

See Business Impact Analysis for a more extensive analysis of costs for livestock farmers and the other affected businesses described below.

Crop consultants, farm cooperatives, farm supply organizations, and manure-haulers
This rule will marginally increase the demand for professional nutrient management planning and other related services provided to the small group of livestock farmers covered by the law. This rule will increase demand for manure hauling services. The small group of affected farmers will have greater transportation requirements to meet new requirements of P-based nutrient management plan. There will demand for new services delivered by trained professionals particularly in the area of odor management.

Construction contractors: This rule will may have a small effect on demand for construction services.

Agricultural Engineering Practitioners: This rule may marginally increase demand for agricultural engineers and engineering practitioners. Operators of new and expanded livestock facilities will require installation of structures and practices designed by licensed engineers or certified engineering practitioners. Operators of expanded facilities will need engineering expertise to demonstrate that existing structures meet technical standards and to design modifications for structures to come into compliance.

6. List agencies, groups, and individuals contacted regarding this proposed rule.

As required by law, DATCP convened a technical panel to provide recommendations concerning the state siting standards. The panel included university researchers, government experts, conservation officials, and private consultants. Experts were recruited from DATCP, the Department of Natural Resources, and the Natural Resource Conservation Service (NRCS). The panel had expertise in barnyard runoff control, feed storage, manure storage facilities, nutrient management, and odor management. The work of the panel was enhanced by the participation of an expert from Minnesota to provide information about state of the art methods for odor management. The panel met from June to October 2004 to prepare its recommendations which were presented to DATCP in the form of preliminary draft rule including an application for approval and worksheets.

DATCP brought together the Livestock Facility Siting Advisory Committee in November and December 2004 to review the expert panel's recommendations. The 21-member advisory committee was first convened to provide recommendations regarding reform of the local approval process for new and expanded livestock facilities. The advisory committee was selected to represent the diverse interests of those affected by the issue of livestock facility siting. The town and county associations as well as zoning and conservation staff represented the interests of political subdivision. Farmers and representatives from the key farm organizations served on the committee. Committee members were appointed to advance environmental interests. The committee also had staff from government agencies and university educators with stake in this issue.

As part of its deliberations on the preliminary draft of the rule, the advisory committee solicited input from farm groups, environmentalists and others to fully understand the impact of the new

standards and other rule requirements. Rule provisions were modified to address the concerns of different interests groups including farm groups and local government organizations.

7. List the existing administrative code (affected or replaced by this proposed rule):

A new ch. ATCP 51, Wis. Adm. Code, is created through this proposed rule.

8. List department directives and/or publications this proposed rule would affect. Specify changes necessary if this proposed rule is adopted.

This proposed rule requires that DATCP coordinate revision of the nutrient management standard to ensure that the new siting standards incorporate the latest nutrient management standard. DATCP is working with NRCS, DNR and others to revise NRCS technical standard 590 to better address phosphorous management. As the state agency responsible for nutrient management, DATCP is preparing to revise ATCP 50 to incorporate the new NRCS 590 standard and make other changes to advance the state of nutrient management.

Administered in accordance with agency directives, the land and water resource bureau within DATCP oversees and operates a number of programs that may be impacted by the new law. Under the Farmland Preservation Program, political subdivisions must submit changes to exclusive agricultural zoning (EAZ) ordinances for approval by DATCP and the Land and Water Conservation Board. Political subdivisions may revise their EAZ ordinances to incorporate the siting standards and make other changes in response to the new siting law. The bureau is responsible for reviewing and in certain cases approving local ordinances that regulate manure storage and other agricultural activities. Political subdivisions are likely to seek more assistance from the bureau to review and comment on existing and proposed ordinances that may be impacted by the new law. The bureau manages a grants program that provides counties with cost-share dollars for voluntary installation of conservation practices. DATCP will review its policies and procedures to ensure that bureau programs provide maximum practical support for the implementation of the new rules for livestock facility siting.

DATCP has published two planning guides to assist political subdivisions and others to develop sound policies and programs to promote agriculture. One guide focuses on agriculture planning with a section on livestock agriculture. The other guide focuses on local planning and regulation of livestock facilities. These two publications will be reviewed to determine their continued usefulness in light of the new law. DATCP will consider revision and republication of these materials.

9. If a specific physical and/or biological setting would be directly affected by this proposed rule, briefly describe the type and extent to the affected area:

This proposed rule affects a small group of new and expanded livestock facilities (50 to 70 per year) that are subject to local permits or other similar approval process. The geographic areas where the law will apply are not necessarily characterized by particular physical or biological conditions. However, some local regulation may be adopted to safeguard environmentally

sensitive or vulnerable areas. It is uniformly the case that the areas with local livestock regulation are primarily rural landscapes composed of farmland, non-farm houses and natural areas. This proposed rule will ensure that livestock operations grow and modernize in ways that protect the environment in these areas. With its emphasis on water quality protection, the new siting standards will afford significant protection to surface water and areas susceptible to groundwater pollution.

CONSEQUENCES

10. Beneficial and adverse environmental impacts of this proposed rule:

A. Identify and briefly describe anticipated direct and indirect impacts on the physical and biological environment:

Direct Effects

Even though a limited number of livestock facilities are covered, this proposed rule will positively affect the physical and biological environment in the short- and long-term. As recommended by the expert panel and later modified by the advisory committee AND datcp, the siting standards protect air and water quality from the impacts of livestock facilities that are not properly designed, constructed and operated. Unregulated facilities may pose risks to surface water from improperly applied manure, runoff from animal lots and feed storage, and overflowing waste storage facilities. They also may create groundwater risks as a result of leaking waste storage facilities, and runoff that finds its way to sinkholes and other groundwater conduits. Potential sources of pollution include nutrients (phosphorus and nitrogen), bacteria, sediment and organic matter. The biological environment of a waterbody can be impaired by organic matter that can drastically reduce dissolved oxygen levels, nutrient loads that can result in eutrophication, or high ammonia concentrations that can be lethal to aquatic species.

The siting standards minimize the adverse impacts on air quality. Objectionable odors may be generated by livestock housing, waste storage areas, lagoons, and field application of wastes. While offensive odors may rise to the level of a nuisance, they are distinct from air pollutants such as ammonia and hydrogen that have been linked to public health concerns.[1] Regulation of air pollutants is not the direct focus of the siting standards.

Applicants for local approval must meet siting standards by demonstrating compliance with the following requirements designed to protect water quality. Applicants are required to meet existing water quality setbacks in local shoreland, wetland and floodplain ordinances, and state well protection codes. They must document that they have adequate land to apply the manure they generate. Facilities of 500 or more animal units or those without an adequate land base

[1] University of Iowa Environmental Health Sciences Research Center. 2002. Iowa concentrated animal feeding operation air quality study, available at http://www.public-health.uiowa.edu/ehsrc/CAFOstudy.htm

must complete a checklist that demonstrates that they can manage nutrients in accordance with technical standards. As part of this checklist, applicants must use soil test results or other values to determine manure applications.

Applicants must show that all waste storage structures can operate without risk of failure or discharges. For new and substantially altered waste storage structures, applicants must design and construct these structures according to NRCS technical standards 313 and 634. Applicants must evaluate existing facilities to establish that these facilities can operate without risk of failure or discharges. Where appropriate, they also must close storage structures according to NRCS standard 360. Applicants are required to show that they have storage capacity adequate to meet their needs based on anticipated waste the facility will generate.

Applicants must control runoff from animal lots by meeting NRCS technical standard 635 for new and substantially altered lots. They must evaluate existing facilities using the BARNY model to show acceptable phosphorous runoff. A higher level of control is required if a lot is near surface water. No lot can have discharges to sinkholes or other conduits to groundwater. For buildings, bunkers and paved areas used to store high moisture feed, applicants must divert clean water from the structure, and collect and treat leachate. New and substantially altered structures must be built at least 3 feet above groundwater and bedrock. If the structure covers more than 10,000 square feet, it must have a system to collect leachate that may leak through the floor of the structure (if the floor cracks, for example).

The siting standards require livestock operators to follow certain practices near waterways: divert clean water from animal lots and other structures, not maintain unconfined manure stacks near waterways, prevent overflow from waste storage, restrict grazing on streambanks to ensure adequate vegetative cover.

The siting standards require that applicants manage odor from the production area of facilities. They must meet a setback requirement for newly-constructed manure storage structures. If an applicant proposes a new facility of 500 or more animal units or expanded facility of 1000 or more animal units, the applicant must demonstrate that the proposed production facilities (animal housing, animal lots and waste storage) will have acceptable odor levels. Odors levels are predicted using a model that considers predicted odor generated, practices used to reduce odor and distance. The first step in the model requires that the applicant calculate the facility's odor generation based on the size of proposed structures. The applicant may need to implement best management practices to reduce odor if the facility generates too much odor or does not have adequate separation distance from its neighbors.

It is worth noting that the control of odors may be effective in controlling air pollutants such as ammonia and hydrogen sulfide. For example, permeable covers also reduce ammonia emissions from manure storage structures. Likewise biofilters installed to reduce odors from housing can significantly reduce hydrogen sulfide and ammonia emissions.[2] Practices such as incorporation

[2] Jacobson, L. et al. 1998. Odor Control For Animal Agriculture, BAEU-17, available at http://www.bae.umn.edu/extens/aeu/baeu17.html

and injection can reduce emissions of ammonia. However, in some cases, other practices such as composting may increase volatilization of ammonia.

This rule will protect the environment by establishing clear environmental protection standards for new and expanded livestock facilities that require local approval. It also will ensure that applicants for local approval are aware of other environmental laws that may apply, even though those laws are not incorporated as standards for local approval under this rule (other compliance and enforcement mechanisms apply).

Indirect Effects

Installed conservation practices not only improve resources in the immediate area, but resources located "downstream" from these areas benefit indirectly to the extent that runoff pollution is reduced. In areas where best management practices have been installed to reduce odor, down-wind areas will benefit from lower odor levels. Installed practices may have secondary benefits at a particular facility site. For example, a farmer who better utilizes manure as part of a nutrient management plan will build soil quality in farm fields and will apply less chemical fertilizers.

New or expanded livestock facilities will typically include new or substantially altered structures. Construction activities and operation of structures may create secondary impacts with potentially adverse impacts on the environment. Through proper evaluation of site conditions and conservation options, a livestock operator and conservation professional can select appropriate practices to reduce the potential for negative impacts. For example, locating waste storage away from surface water can reduce the impact of manure overflows or spills. To a large degree, the siting standards incorporate requirements that seek to mitigate these impacts. Adverse environmental impacts may result from improper design and installation of practices. The siting standards require that an engineer or practitioner verify that structures are designed according to established technical standards, and that applicants follow those designs during construction. This proposed rule also allows political subdivisions to monitor compliance and take enforcement actions.

In rare cases, certain negative impacts are unavoidable. Unusual storm events can cause manure runoff from the best-designed animal lots. By virtue of its construction, a new lot produces runoff risks that would not exist if the facility were never built. Larger manure storage structures required for expanded livestock facilities may increase the risk of catastrophic events such as a large manure spill. Proper design, construction, and maintenance reduce these risks. Local enforcement combined with state regulation of facilities over 1000 animal units can further reduce the risks associated with these potential events.

On balance, new and expanded livestock operations built according to the siting standards will have positive benefits.

Cumulative Effects

It is difficult to gauge the cumulative effects of compliance with the siting standards. Each year the number of facilities affected by the siting standards is a fraction of the livestock operations in the state. In addition, these livestock operations may be covered by other regulatory and cost-sharing programs. DATCP and DNR offer grants to counties and others to install conservation practices on farms. NRCS provides funds for cost sharing conservation practices through programs such as the Environmental Quality Incentives Program. The advent of new programs such as the Conservation Security Program (CSP) is increasing the funding for conservation. CSP is designed to reward the best conservation stewards in the most environmentally sensitive areas, promising new levels of environmental performance. CSP and other green payments are likely to grow in the future, replacing farm subsidy programs as the means to support famers

In the complex interaction of conservation programs, the siting standards will make targeted but important contributions to the overall quality of the environment. As with any environmental program, these contributions will not be fully realized in the immediate future. Longer, indirect effects will be improvements to habitat, increased populations of desirable fish species, increased water clarity, and a more balanced aquatic ecosystem.

B. Identify and briefly describe anticipated direct and indirect economic impacts. Attach a copy of the administrative rule, fiscal estimate, and fiscal estimate worksheet.

(1) Overview

This proposed rule is designed to implement the Siting Law. This legislation creates a new legal framework that will be superimposed on zoning and other local ordinances for the purpose of reducing the regulatory burdens on farmers seeking to site and expand livestock facilities. This new law is a response to a patchwork of local ordinances that may apply unreasonable standards, unfairly impose conditions on applicants, and authorize procedures that result in unnecessarily delay. Unpredictable, time-consuming and costly local regulations impose barriers to the siting and expansion of livestock facilities. By correcting the shortcomings of local regulation, the new law and the implementing regulations should provide a more conducive environment for modernization of existing facilities and construction of new facilities. This growth provides the milk and other raw products required by processors who do business in this state. The failure to expand the supply of raw products may result in the loss of the processing capacity in this state.

(2) Cost to political subdivision operations:

DATCP estimates implementation of this proposed rule will have some impact on political subdivisions. Political subdivisions have the option to regulate livestock facility siting, and if they assume this responsibility they may incur basic costs associated with regulation. They must process permit applications according to specific timelines, conduct hearings as required, develop and maintain files for each application, deny and or approve permits based on standards, and monitor compliance with permits. For those political subdivisions that voluntary regulate, they

may encounter new costs to implement the standards and procedures required under the siting law. For example, the required application and worksheets may involve more paperwork than applications previously used by political subdivisions. Political subdivisions may recover costs through fees charged applicants for local approval but the proposed rule caps the fees that may be charged. Siting standards benefit political subdivisions by providing scientifically-based criteria to evaluate proposed livestock facilities. For more detailed cost analysis, see the attached Fiscal Impact Estimate for this proposed rule.

(3) Impact on state and local economies:

This proposed rule is designed to remove impediments to modernization and expansion of the livestock industry. An improved climate for growth in the industry will make the state more competitive, and provide opportunities to grow the state's economy. New or expanded livestock facilities may have different impacts on local economies. In nearly every area where local approval is required, there will be increased demand for land to spread manure. There will be slightly increased demand for goods and services necessary implement the siting standards. This will benefit businesses who meet these needs. As the livestock industry changes and facilities increase in size, there are certain impacts that are independent of whether the local jurisdiction regulates livestock facility siting. In some areas, larger facilities may purchase feeder livestock, feed and other supplies from local sellers. In other areas, larger facilities may bypass local venders. Larger facilities create employment opportunities, offering positions that pay above the minimum wage. This new workforce can be expected to spend earnings at businesses where the facilities are located. A more detailed discussion of these benefits is provided in the Business Impact Analysis.

(4) Economic impact on individuals:

(a) Cost analysis. A very small group of farmers is subject to this proposed rule; operators who voluntarily decide to build new or expanded livestock facilities but only if only if they are subject to local approval requirements. Those farmers subject to local siting regulation may incur higher costs to comply with the standards. The new legal framework for local approval provides benefits that may offset these costs. The Business Impact Analysis provides a detailed discussion of the costs.

(b) Requirements of the rule. This proposed rule requires that livestock producers meet siting standards for new and expanded livestock facilities if they are subject to local approval requirements. Applicants may also need to meet local requirements in ordinances necessary to protect public health and safety. They may receive cost-sharing to comply with approval requ9irements, but are not entitled to cost-sharing. (see ATCP 50 and NR 151, Wis. Admin. Code) They will need to follow specified procedures for submitting an application for local approval, including the use of approved forms and worksheets. Section 10 A discusses the standards livestock operators must meet if they are subject to local approval requirements.

(c) Conclusions. Given the requirements of the rule presented above and the assumptions and estimates from the cost analysis, the following conclusions can be drawn:

The costs for implementing state standards are incremental. Currently operators subject to local regulation incur costs to receive local approval. Any increase in costs must be considered in light of the benefits of the law. These benefits include reduced legal fees, more certainty about the application process, and no surprise costs for compliance. In end, livestock operators will have a more favorable climate to build and modernize, allowing them to make business decisions based on legitimate concerns such as lifestyle choices and greater profitability.

C. Identify and briefly describe anticipated direct and indirect impacts on the social and cultural environment (lifestyle) of the parties affected by the proposal:

Through certain features such as requirements for training and response plans, this proposed rule addresses certain social impacts related to livestock facilities. However, it does not address the full range of potentially negative consequences of new and expanded livestock operations. Without effective local planning and zoning, new and expanded livestock operations may be located in rural areas with growing residential development. These different land uses may create conflict. New landowners who do not farm for a living may be offended by the by-products of animal agriculture such as odor that would be accepted by farm neighbors. Slower farm machinery may compete with commuters for road space. The siting standards in this proposed rule will reduce impacts from odors and water pollution, but political subdivisions must effectively plan and zone to reduce sources of potential conflict.

Many social and cultural concerns about livestock operations are reflected in discussions about the impact of new and expanded livestock facilities on neighboring property values. However existing research has not accurately captured or measured the impacts on property values. On the basis of a literature review, a recent Iowa study concluded that too little research and inconsistencies within studies hamper our ability to draw conclusions about the impact of feedlots on property values.[3] While this Iowa study itself found property values were negatively influenced by proximity to livestock facilities, there is contradictory evidence from a Minnesota study that unexpectedly found a "positive proximity effect" for neighboring residential properties - primarily for newer, higher priced homes located away from small towns and nearer feedlots. The authors of this Minnesota study offer some possible explanations for this result such as workers living close to facilities. There is evidence that larger, modern facilities may incorporate design and practices that reduce impact of odor on property values, while smaller operations are older and have less effective management systems.

The siting standards address the most significant perceived negative impacts from livestock facility siting. According to a Manitowoc County survey regarding livestock facilities, water quality, manure management and odor were the top three perceived concerns.[4] This rule will

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[3] Joseph A. Herriges, Silvia Secchi, Bruce A. Babcock. 2003. *Living with Hogs in Iowa: The Impact of Livestock Facilities on Rural Residential Property Values*. CARD Working Paper #03-WP 342, http://www.econ.iastate.edu/research/webpapers/paper_10683.pdf

[4] Animal agriculture and land use conflicts hit home, Hoard's Dairyman, April 25, 2004, http://www.hoards.com/.

protect neighboring land uses by establishing property line and road setbacks. In addition, operators of new and expanded facilities over a certain size are required to achieve acceptable odor from production facilities by using best management practices and separation from non-affiliated neighbors. To adequately control odor, livestock operators may install a range of practices from windbreaks to manure storage covers. By incorporating water quality setbacks and imposing standards related to waste storage and land application, this proposed rule impose requirements that will reduce water pollution risks, including the potential for well contamination. Required standards prevent runoff from entering sinkholes, ensure that existing storage structures do not leak, and require application of manure according to plan that minimizes risks to groundwater.

Consistent with the Siting Law, this proposed rule allows local authorities to effectively plan and zone. Communities can use the planning process to map out future land use and development. Comprehensive plans can create separate places for agriculture and rural residential development. They can avoid conflicting land use by controlling residential development in areas dedicated to farming. The law allows political subdivisions to create zoning districts to exclude livestock operations under specific conditions. Political subdivisions can restrict new and expanded facilities in areas zoned for non-agricultural development. Political subdivisions also retain the power to regulate the construction of facilities under the following local laws: shoreland zoning, floodplain zoning, construction site erosion control, stormwater management. Political subdivisions may reject a proposed livestock facility if it violates a local building, electrical or plumbing code that is consistent with the state building, electrical or plumbing code for that type of facility.

Some social and cultural impacts are an outgrowth of larger economic forces driving the livestock industry. This proposed rule does not address issues such as the changing labor force. As family farms grow in size, they need outside labor. The demand for this labor creates opportunities for immigrant workers. Rural communities have little control over these changes and must adapt. The influx of new workers presents challenges but may also revitalize economically moribund areas. These issues are beyond the scope of the legislation and proposed rule, and must be addressed through other local, state and federal programs and policies. While it may help less efficient farms modernize, the law will not resolve concerns related to consolidation of processors and other changes in the industry.

D. Identify and briefly describe anticipated direct and indirect impacts on the availability and use of energy (s.1. 12, Stats.):

This proposed rule will not significantly impact the availability or use of energy. Independent of this proposed rule, the trend in the industry is toward more concentrated and larger livestock operations. While these new facilities will be more efficient users, they will consume more energy. By requiring more sophisticated odor management, this proposed rule may spur methane digestion and other innovative technologies designed to capture energy from manure.

11. Identify which of the impacts are adverse impacts that cannot be avoided if this proposed rule is implemented:

This proposed rule does not adequately address the conflict created by residential development in areas of prime farmland. Instead it preserves local authority to control this development to avoid conflicts with livestock facilities. For the purposes of odor management, the rule does include a provision that protects the right to expand a permitted facility despite the encroachment of residential development. This provision creates an incentive to impose setbacks that restrict residential development near livestock facilities. In this and other areas, political subdivisions retain responsibility to manage impacts and conflicts. For example, political subdivisions will need to use their authority to protect roads from damage and debris.

This proposed rule will require that livestock operators subject to local approval spend more upfront costs in preparing and submitting a completed application to the approving jurisdiction. They will be required to demonstrate compliance with new standards for odor management and feed storage. They will need expert assistance to show that existing structures can be operated without water quality risks. The burdens may be greater for expansions as opposed to new facilities. Even with modifications, this proposed rule cannot fully ameliorate these burdens, which to a certain extent are a necessary consequence of a system designed to create more predictability. Increased application requirements are unavoidable because the information provided in the application has taken on new legal significance. The new framework creates a presumption of compliance when an operator submits a complete application. While these additional costs may influence business decisions to build new or expanded facilities, individuals can adapt and will have access to financial resources to cover these costs. Since they will be seeking private financing for new and expanded livestock faculties, they can roll cost increases into loans. They also may have opportunities to finance practices with government cost-share grants.

12. Identify irreversible and irretrievable commitments of resources required or implied if this proposed rule is implemented.

None anticipated at this time.

ALTERNATIVES

13. Identify and briefly describe and discuss the environmental and administrative impacts of alternatives to this proposed rule, including the following:

A. Not promulgating this proposed rule (be specific in explaining environmental and programmatic impacts of doing nothing):

Not promulgating this proposed rule would cause DATCP to be in violation of state statutes. DATCP is required to adopt rules to implement the Livestock Siting Law, including standards for new and expanded livestock facilities. Without these rules, there could be significant disruption in the local approval of new and expanded livestock facilities. Political subdivisions that regulate livestock facility siting would be unable to enforce existing ordinances. In such a climate of uncertainty, livestock operators would delay and terminate plans to build new or expanded

facilities. From an environmental standpoint, new and expanded facilities would be designed, constructed, and operated without the benefit of science-based standards developed to protect air and water quality.

B. Legislative modification of existing statutes to accomplish the objective of this proposed rule:

This is not a viable alternative because the legislative process is not well-suited to the development of siting standards for new and expanded facilities. The siting standards—the centerpiece of this rule--are technical and complex in nature. They cannot be developed without the input of technical experts working in a collaborative environment to allow resolution of competing considerations. The standards necessary to implement the Siting Law must be thoroughly evaluated, using field testing and other methods to test assumptions, and making necessary revisions to reflect the results of the evaluation process. The standards must be periodically reviewed and potentially updated. Unlike the legislative process, DATCP rule making has the capacity to effectively address these concerns. Furthermore, the proposed rule provisions are not the type of administrative detail that is typically included in statutes. In fact, the legislation itself reflects a clear intention for the siting standards to be developed through rulemaking. It specifically sets forth the criteria and procedures DATCP must follow in developing the rule.

Having said this, the Legislature may be in position to address issues incidental to the promulgation of siting standards. For example, the Legislature could modify the law's grandfathering provision to further the Siting Law's intent to improve predictability and uniformity in local regulation. The grandfathering provision contributes to a lack of uniformity by allowing political subdivisions to apply siting standards to facilities under 500 animal units if the political subdivision had an ordinance with a lower threshold in effect before July 19, 2003.

C. Modify this proposed rule (alternatives to this proposed rule to satisfy known or obvious concerns of interested parties and the impacts that would result):

Alternatives to this proposed rule include:

Provide more flexibility for livestock operators to meet siting standards. This alternative was suggested during the review of the preliminary draft rule. Farmers and farm groups raised legitimate concerns that the siting standards may unnecessarily hamper efforts to modernize existing facilities and may impose burdensome obligations on facilities smaller than 1000 animal units. DATCP has attempted to accommodate these concerns where appropriate. In particular, it has created more flexibility for expanding operations to meet standards. In the area of odor management, this proposed rule recognizes the limitations of existing science and the realities of existing land use patterns. It 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.

However, increased flexibility carried to an extreme means that the siting standards cannot achieve their essential purpose: to ensure approval of proposals that are appropriate for a particular site, and to withhold approval of facilities that cannot be constructed without creating significant risks to air and water quality.

Limit the impact of the "grandfathering" provision that authorizes regulation of smaller facilities. The Siting Law created an exception authorizing local approval for livestock facilities under 500 animal units if the local ordinance has a lower size threshold adopted prior to July 19, 2003. By and large, the siting standards are designed for larger facilities. These facilities also have the resources to implement the standards. Through modifications of the standards, this proposed rule attempts to reduce the impact on smaller facilities. For example, operations under 500 animal units are not uniformly required to prepare a complete nutrient management plan. They demonstrate compliance by showing that they have adequate land to apply wastes generated by the operation. Also, smaller operations are not required to meet the odor management standard. However, by creating a minimum setback for new manure storage structures, this proposed rule ensures neighbors a minimum level of protection.

Include additional standards for new and expanded facilities. The siting standards in this proposed rule are based on the recommendations of an expert panel, as required by s. 93.90(2)(d), Stats. The standards are the product of a panel with expertise in air and water quality. They also reflect a balance of the factors set forth in s. 93.90(2)(b), Stats. Adding standards outside the areas of air and water quality raises challenges and concerns. There may not be adequate science or other justification to support the creation of additional standards. Furthermore, the panel convened by DATCP did not have the expertise to develop these standards in other areas. By adding other standards, this proposed rule might frustrate key factors related to creation of the standards. Additional standards might impose barriers to the growth and viability of animal agriculture, and may create a more cumbersome administrative process for political subdivisions. However, the Siting Law allows political subdivisions to impose more stringent standards as part of the local approval process if those standards are justified to protect public health and safety, and are included an ordinance.

Allow political subdivisions more authority to control livestock facility siting. Political subdivisions are concerned that the proposed rule will restrict important areas of regulation necessary to advance local interests. To a large extent, the Siting Law retains considerable local control. The law's limits on local discretion were necessary to create a more predictable and fair framework for local approval. Providing greater authority would compromise the key purpose of the law: to create a standardized process for local approval. Within their allowed authority, political subdivisions have considerable power to respond to key issues such as roads and land use conflicts, as discussed in Section 10C. The law also recognized the power of political subdivisions to create unique standards more stringent than those in the proposed rule if certain conditions are met.

EVALUATION

14. Discuss each category using additional sheets or pertinent information if necessary. Specifically identify those factors which may distinguish this proposed rule as a major action significantly affecting the quality of the human environment.

A. Secondary Effects: To what extent would this proposed rule result in other events or actions which may significantly affect the environment? Identify the parties affected by secondary effects in item 5.

This proposed rule may cause political subdivisions to reduce or eliminate local approval requirements for new and expanded livestock facilities. Because facilities under 500 animal units are exempted from several siting standards, local officials may decide to raise the regulatory threshold in existing ordinances up to 500 animal units. Because of the higher level of local regulation required under this proposed rule, particularly in the area of odor management, some jurisdictions with zoning and other regulation may decide to discontinue regulation of livestock facility siting. If a proposed facility is located in a jurisdiction that raises the threshold for regulation or discontinues local approval entirely, the new or expanded facility may no longer be required to meet siting standards. This may result in new or expanded facilities that generate unacceptable levels of odor, and fail to manage manure in ways that protect water quality. Impacts may be felt by neighbors of these livestock facilities. Natural resources in these areas may be at risk. These potential risks may not materialize for several reasons. State permitting requirements apply to livestock facilities over a 1000 animal units, requiring that these facilities meet water quality standards regardless of local approval requirements. There are other ordinances and legal remedies that may be available to address concerns before they become problems. It should also be noted that this possible outcome will be counterbalanced by political subdivisions that see opportunities in the new law and decide to adopt new ordinances requiring local approval for new and expanded livestock facilities.

To the extent that this proposed rule facilitates the siting of larger livestock operations, it may create the potential for environmental problems of a larger magnitude than those created by smaller operations. This proposed rule minimizes these risks by requiring compliance with water quality standards. In contrast to the compliance requirements under NR 151 and ACTP 50, livestock operators must comply with siting standards regardless of the availability of cost-sharing.

B. New Environmental Effects: To what extent would this proposed rule result in new physical, biological, or socio-economic impacts?

This proposed rule will not significantly increase new impacts.

C. Geographically Scarce Resources: To what extent would this proposed rule affect existing environmental features that are scarce, either locally or statewide?

Specific scarce resources that this proposed rule would affect are not known at this time. As noted earlier, local regulation determines if the siting standards apply in a particular area. Political subdivisions may adopt local approval requirements for any number of reasons including the protection of scarce resources. Whatever the motive of political subdivisions in enacting livestock facility siting ordinances, applicants cannot obtain required local approval unless their livestock structures meet technical standards designed to protect the environment. Compliance with water and air quality standards may benefit some scarce environmental resources, but we do not know which specific resources may be involved at this time.

D. Precedent: To what extent would this proposed rule establish a new precedent affecting future policy decisions:

This proposed rule sets new precedent for minimum standards for new and expanded livestock facilities. The siting standards may serve as benchmarks for all new and expanded livestock facilities, even if these facilities are not subject to local regulation. The standard related to odor management may be used to resolve nuisance complaints. In large measure, this proposed rule incorporates or builds on existing water quality standards for manure storage and other aspects of a livestock operation. The standards may affect the interpretation of the NR 151 agricultural performance standards as applied to existing facilities.

This proposed rule will influence the regulatory choices of counties and other local governments. The proposed rule may cause political subdivisions to evaluate and revise their regulatory approaches related to livestock facilities. The standards in the proposed rule will shape the interpretation and application of manure storage and other ordinances that regulate livestock facilities. See 14A above for a more detailed discussion of this point.

Counties and other local governments may reexamine and revise their policies and procedures regarding cost-share offers to farmers. They may, but do not have to, offer livestock operators cost-share dollars to meet the siting standards. Affected governments may revise programs and policies to facilitate this cost-sharing.

E. Consistency with Plans: To what extent is this proposed rule consistent or inconsistent with local, state, or national long-range plans or policies?

This proposed rule is consistent with the legislative directives in ch. 93, Stats., and with DATCP's mission statement.

To DATCP's knowledge, this proposed rule is consistent with other plans and policies that have been proposed or adopted by local, state, and national agencies and groups. For example, the rule is consistent with new program directions for nutrient management being developed at the federal level. By incorporating state agricultural performance standards, this proposed rule is consistent with the policy directions for the control of agricultural runoff and protection of groundwater. This proposed rule is consistent with state economic development plans such as Grow Wisconsin. It also is compatible with "Smart Growth" planning, retaining the authority of political subdivisions to develop and modify comprehensive plans to effectively address land use

and other issues.

F. Exercise of Discretion: The law which authorizes or is interpreted by this proposed rule will provide for varying degrees of discretion to be used by DATCP in formulating the policies and procedures contained in the rule. In some cases, DATCP is bound by or limited to federal rules or regulations dealing with the same issues. To what extent is this proposed rule limited by Wisconsin or federal statutes or regulations?

This proposed rule interprets ch. 93, Stats., relating to the siting and expansion of certain livestock facilities, local zoning ordinances relating to livestock facilities, creating a Livestock Facility Siting Review Board, and granting rule–making authority. Chapter 93 limits DATCP discretion particularly in developing standards for new and expanded livestock facilities as part of the rule. The statute specifically provides that DATCP may not promulgate rules under this paragraph that conflict with rules promulgated under s. 92.05 (3) (c) or (k), 92.14 (8), 92.16, or 281.16 (3) or ch. 283, Stats. The rules promulgated under these authorities incorporate NRCS technical standards for nutrient management, waste storage structures, runoff control, and other practices.

G. Other: Identify and describe (or cross-reference) other relevant factors which relate to the effects of this proposed rule on the quality of the human environment (e.g., foreclose future options, socio-cultural impacts, cumulative impacts to affect entities, visual impacts, and irreversible commitments of resources):

As noted previously, this proposed rule only addresses new and expanded facilities in jurisdictions requiring local approval. They must meet water quality and odor management standards to obtain local approval. This proposed rule does not require new and expanded livestock facilities to comply with standards if they are not locally regulated. Nor does it require existing livestock facilities to comply with standards. Political subdivisions retain the choice to opt in or out of local regulation, and thus become subject to the standards in the proposed rule. For the most part, this proposed rule does not address social and cultural issues such as conflicts with residential development and road usage issues. Political subdivisions retain the authority to manage these potential impacts and conflicts.

CONCLUSION

This assessment finds that the proposed creation of chapter ATCP 51 would have no significant adverse environmental impact and is not a major state action significantly affecting the quality of the human environment. It is expected that this proposed rule will have a positive impact on the quality of air and water. Alternatives to this proposed rule, discussed in this assessment, will not

reach program goals as effectively as this proposed rule. No environmental impact statement is necessary under S. 1.11 (2), Stats.

Signed this 25 day of August, 2005

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
BY

Kathy F. Pielsticker, Administrator
Agricultural Resource Management Division

Preliminary Training Plan for Livestock Facility Siting Law and Rule

Phase	Description	Tentative Timeframe
Phase 1:	Send out needs assessment to targeted audiences. The assessment is designed to identify the concerns and anticipated needs of affected groups and organizations. These results will help to design more effective training materials.	August 19 – September 7
Phase 2:	When possible, and where there is interest from targeted groups or organizations, we will attend fall meetings. Attendance at these meeting will be primarily to provide an overview and status of the rules. The training schedule below provides a list of the meetings that we are currently aware of and the dates for which we are scheduled to speak.	September - March
Phase 3:	Set up more specific training for targeted groups. The following have been identified as the main targets for training: • Producers/Livestock Operators • Local Governments • Service Providers (provide service to local government and to producers/livestock operators) • Business interests including developers, realtors, builders, bankers, etc. Based upon the results of the needs assessment for these groups, training will be developed to meet the specific concerns and needs of each of these groups. Development of written materials for distribution.	January – April

Note: In cooperation with UW-Cooperative Extension, we will provide training workshops to assist the targeted groups with understanding the proposed rule. We will be communicating with the county CNRED and Agriculture agents to provide them with the information they need to best assist landowners and municipal governments in their counties. A teleconference is scheduled for the end of September with county extension agents. Future work sessions for training curriculum are tentatively scheduled.

Training Schedule for Livestock Facility Siting Rule

Group/Organization	Type of Meeting	Date	Presenter	Location
Wisconsin Counties Association	Annual Conference	September 19	Richard	Midwest Airlines Center, Milwaukee, WI
Calumet County	Informational	October 6	Sara and Jenni	Calumet County
Wisconsin Federation of Cooperatives	Informational	October 10	Sent materials for distribution	
Wisconsin Towns Association	Annual Convention	October 17	Jenni and Coreen	Country Springs Hotel and Conference Center, Stevens Point
County Code Administrators	Fall Conference	October 21	Richard	Waupaca, Best Western
Community Bankers		October 26	Jenni	Holiday Inn, Wausau
Professional Dairy Producers of Wisconsin	Dairy Policy Summit	November 3	Dave	Madison
Dairy Business Association	Business meeting	November 30-December 1*		Madison
Wisconsin Association of Professional Agricultural Consultants	New Horizons Seminar	December 8*		Madison
Wisconsin Land and Water Conservation Association	Annual Conference	December 8	Table Display – All of us	Eau Claire, The Plaza
Ag Fertilizer Conference		January 18-19	Jenni or Coreen	Alliant Energy Center
Wisconsin Realtors Association	Winter Convention	January 23-25, 2006*		Lac de Flambeau
ETN (UW-Extension Local Government Center)	Statewide	January 25	Richard	Statewide
Wisconsin Cattlemens Association	Winter Conference	February 17-18, 2006 (tentative)*		Dodgeville
Wisconsin Association of Land Conservation Employees	Professional Improvement Conference	March 1 – 3, 2006	Richard, Jenni?	Madison, Concourse Hotel
NE WI UWEX Ag Lenders/Farm Managers Conference		March 3, 2006	Coreen?	Liberty Hall, Kimberly

*Not yet invited or confirmed.

*What about local NRCS workgroups?

Written materials

Effective written training and informational materials will be developed as a part of Phase Three. These materials will enhance training and provide farmers, organizations and local governments with reference materials to aid in understanding and implementation of the proposed rule. These materials will also serve to inform and educate other stakeholder groups, including other state and federal agencies, environmental groups, and business organizations, in ATCP 51 and the proposed rule.

Examples of written materials:

- Checklists that help both applicants and applicant reviewers walk through the applicant process step-by-step.

- Fact sheets on the proposed rule.

- Update of existing publications that deal with livestock operations in Wisconsin, specifically; "Planning for Agriculture in Wisconsin: A Guide for Communities" and "Livestock Guidance: Local Planning for Livestock Operations in Wisconsin."

- Development of a short, attractive published piece to provide general information on the rules – particularly as they may relate to environmental interests.

- Development of website training modules to help explain the application process.

- Newsletter articles for monthly, semi-annual, and/or annual distribution.

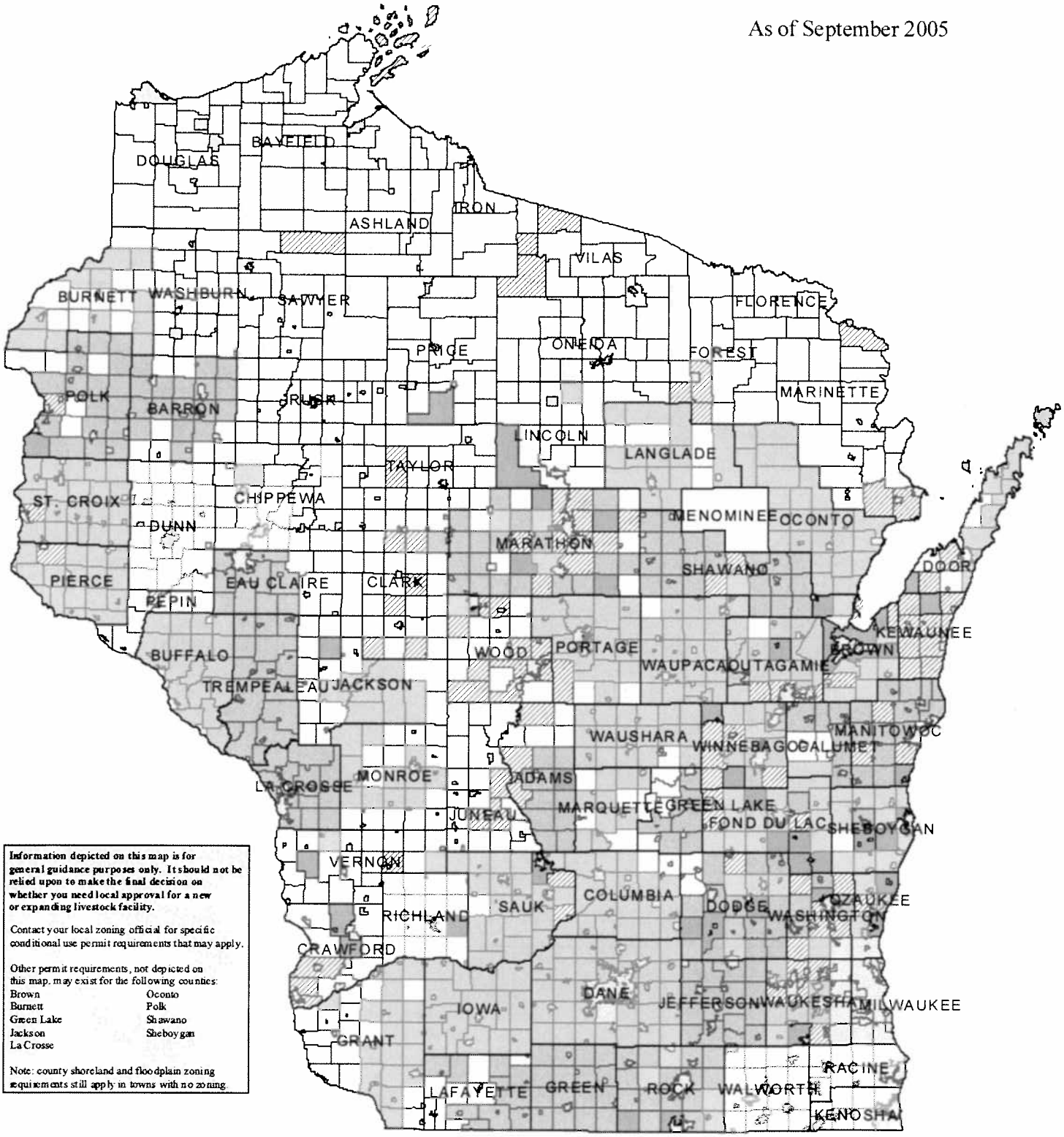
Timeline to Establish Livestock Facility Siting Review Board

Updated November 1, 2005

Timeline	Activity	Who
By September 15, 2005	Seek nominations from Wisconsin Towns Association, Wisconsin Counties Association, environmental organizations and statewide agricultural organizations. • Write and send letter to organizations seeking nominations. • Write and send press release.	Program Manager prepare for Secretary's Signature
By November 30, 2005	Receive all nominations	Program Manager
By December 15, 2005	Select members from among nominations, select 3 additional members and assign staggered 5-year terms	Secretary
By December 31, 2005	Notify selected members	Secretary, with follow-up letter
By January 15, 2005	Send nominations to Senate for confirmation	Secretary
By March 1, 2006	Senate confirms nomimees	Senate
By April 1, 2006	Hold organizational meeting and select officers • Explain law, rules, and role of Board • Discuss by-laws and rules of procedure	Program Manager, Legal, Secretary, Board
By June 1, 2006	Approve by-laws and rules of procedure	Board
By June 30, 2006	Board ready to review siting decisions	

Livestock Facility Siting Conditional Use Permit (CUP) Requirements and Thresholds: Prior to the Adoption of ATCP 51

As of September 2005



Information depicted on this map is for general guidance purposes only. It should not be relied upon to make the final decision on whether you need local approval for a new or expanding livestock facility.

Contact your local zoning official for specific conditional use permit requirements that may apply.

Other permit requirements, not depicted on this map, may exist for the following counties:

Brown	Oconto
Burnett	Polk
Green Lake	Shawano
Jackson	Sheboygan
La Crosse	

Note: county shoreland and floodplain zoning requirements still apply in towns with no zoning.

Legend

County Zoning CUP Thresholds
- CUP Required for > 500 AU
- CUP Required for < 500 AU

Town Zoning CUP Thresholds
- CUP Required for > 500 AU
- CUP Required for < 500 AU

- Town Zoning: No CUP Requirements
- County Zoning: No CUP Requirements
- County Zoning: Unknown CUP Requirements
- Town Zoning: Unknown CUP Requirements
- No Zoning
- City/Village

1:2,400,000

0 5 10 20 30 40 Miles

Data Sources: DATCP Town Survey, DATCP EAZ Ordinance Survey, County Zoning Ordinances, and 1998 UW-Extension report entitled "An Inventory of Land Use Plans in Wisconsin".

Map Created 6/30/2005 (Last updated 9/16/2005)

Livestock Facility Siting Scenarios (ATCP 51)

These scenarios apply *if your local government has a livestock siting ordinance.* *IF THERE IS NO LOCAL ORDINANCE, NO LOCAL PERMIT IS REQUIRED.*

New or Expanded	Animal Units (AU)	DNR Permit (1000 AU or more)?	Local ordinance permit threshold[1]	Expanded more than 20%?[2]	Local permit required?	Must Complete Worksheets?				
						1 Animal Units	2 Odor	3 Waste & Nutrient Mgmt	4 Waste Storage	5 Runoff
1. Expand	1500 to 3000	Yes	500 AU	Yes	**YES**	Yes	Yes	No[3]	No[3]	No[3]
2. Expand	1300 to 1500	Yes	500 AU	No	**NO**[2]	No	No	No	No	No
3. Expand	300 to 450	No	500 AU	Yes	**NO**	No	No	No	No	No
4. Expand	300 to 450	No	***400 AU***[1]	Yes	**YES**	Yes	***No***	Yes[4]	Yes	Yes
5. Expand	480 to 550	No	500 AU	No	**NO**	No	No	No	No	No
6. Expand	480 to 600	No	500 AU	Yes	**YES**	Yes	***No***	Yes	Yes	Yes
7. Expand	600 to 700	No	500 AU	No	**NO**[2]	No	No	No	No	No
8. Expand	600 to 900	No	500 AU	Yes	**YES**	Yes	***No***	Yes	Yes	Yes
9. New	450	No	500 AU	NA	**NO**	No	No	No	No	No
10. New	550	No	500 AU	NA	**YES**	Yes	Yes	Yes	Yes	Yes
11. New	1500	Yes	500 AU	NA	**YES**	Yes	Yes	No[3]	No[3]	No[3]

[1] Local siting ordinance may not regulate below 500 "animal units" unless adopted prior to July 19, 2003.
[2] A *pre-existing* facility may expand by 20% without a local permit, *unless existing permit sets size limit.*
[3] May submit DNR permit in lieu of worksheet.
[4] Exempt from part C, if acreage minimally adequate to handle manure (see worksheet).

Livestock Facility Siting Rule (ATCP 51)

Prior to ATCP 51 – Real examples of expansion costs

Farm	Costs	Included in Costs	Other Issues
Farm A	$2000	Expert testimony fees	Does not include costs the partners incurred from taking off several days from farming duties to prepare for hearings. **Permit granted.**
Farm B	$10,000	Not reported	**Permit granted.** Many challenges in process, but the worst were emotional.
Farm C	$17,000	Not reported	Residents wanted an ordinance restricting the size of operations. **Permit granted.**
Farm D	$20,000	Portion of town's legal fees; expert testimony fees	Many public hearings. Community was allowed to add a large number of permit conditions. **Permit granted.** Town can add new conditions to the permit every two years.
Farm E	$65,000	Legal fees and expert testimony	**Permit denied** after numerous public hearings. Had to switch counties to one that did not require a permit.
Farm F	$85,000	Expenses incurred during permitting process, including engineering assistance.	**Permit granted.** Emotional strain was worse than financial aspect.
Farm G	$106,000	Legal fees and expert testimony (costs incomplete, case still pending)	Received permit that was found to be void. Has not received another permit. In addition, may be fined $50-$500 per day for noncompliance. **Permit denied.** Lawsuit still pending.
Farm H	$125,000	Legal fees, expert testimony, and manure digester	**Permit denied** on non-scientific concerns, despite adequate land base, nutrient management plan, digester, and government engineering assistance.
Farm I	$200,000	Legal fees and expert testimony	Two lawsuits not completed. Producer said he will move out of state before he ever goes through this again.
Farm J	$350,000	Construction of engineered practices	Unreasonable engineering conditions imposed with no scientific rationale. Also sustains $19,000 in additional costs annually due to permit requirements. **Permit granted.**
Farm K	$420,000	Legal fees and purchase of two homes	Successfully challenged county ordinance that restricted operation size. **Permit granted.**

Note: Eleven operators provided information related to their costs to receive a local permit to expand their livestock facility. These costs ranged from $2000 to over $400,000, with an average cost of $120,000. Two of these example expansions have spent over $100,000 each but have not yet received a permit. Table 1 provides a sample of these operations, their costs, and other issues they faced during the process.

Livestock Facility Siting Rule (ATCP 51)

Common Misconceptions About the Livestock Facility Siting Rule

The Livestock Facility Siting Rule will eliminate the growth of livestock operations in Wisconsin.

The opposite is true. The siting rule will promote the growth of livestock operations throughout the state by creating a consistent and predictable process for farmers that guarantees a permit if an application is properly completed. Under the current regulatory system, livestock operations face potentially expensive, and in many cases, arbitrary local permitting processes with no guarantees.

The odor standard will make it especially difficult to grow mid-size dairy operations.

Most mid-size dairy operations will not be required to meet the odor standards in the proposed rule. The rule recognizes the special challenges faced by expanding mid-size dairies and for this reason, the odor standard only applies to expanding facilities over 1000 AU.

Odor from livestock facilities cannot be measured.

It is possible to measure odor from livestock facilities. The techniques in the rule used to measure odor—and ways to control or reduce odor-- have been extensively researched by the University of Minnesota and others. Additionally, all of the odor management practices included in the odor standard have been proven to reduce or control odor through peer-reviewed science. The department has made a commitment to continue research on odor and air emissions and recently was awarded a $1.3 million grant for this purpose.

Wisconsin is the only state where farms are regulated for odor.

To date, at least 25 other states provide guidance, or have policies and laws, designed to control and manage odor from livestock facilities. In some instances, states allow local governments to pass odor management regulations. In many of these states, setbacks are used to control odors. These setbacks, which can start at 1/2 mile, would not work on Wisconsin's landscape. The odor standard in the rule accounts for Wisconsin specific needs and, through consideration of factors other than separate distance, provides flexibility to producers.

The setback requirements are unfair to livestock operators.

The setback requirements in the rule provide options to livestock operators and local government. It does not set state-mandated setback requirements. Instead, the rule establishes a state maximum which local governments may not exceed. In many cases, these local setbacks are lower than the state maximums. The rule also allows expansion of existing structures if this expansion does not encroach on setbacks.

The siting rule does not allow a farmer to use existing structures as part of an expansion.

The rule does allow farmers to use existing animal lots and other structures even if these structures do not meet local setback requirements. In fact, farmers even have the right to expand these existing structures as long as the expansion does not encroach on a road or property line.

Existing structures cannot be used unless they meet new standards.

Farmers are not required to tear up existing structures to meet siting requirements. The siting rule only requires that existing structures meet what is already law. Farmers must show that animal lots will not have significant discharges and that manure storage structures will not fail or leak. Meeting standards to prevent a leaking manure storage structure protects farmers from legal problems.