



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

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

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

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

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

***Statutory Authority***

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

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

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

- Consider whether the standards are (1) protective of public health or safety; (2) practical and workable; (3) cost-effective; (4) objective; (5) based on scientific information; (6) designed to promote the growth and viability of animal agriculture; (7) designed to balance the economic viability of farm operations with natural resource protection and other community interests; and (8) usable by local officials.
- Develop the standards in consultation with a committee of experts (DATCP has done so).
- Review the standards at least every 4 years after it adopts them (DATCP will review the standards at least annually during the first 4 years).
- Specify the information that a livestock operator must include when applying for local approval, to show that a new or expanded livestock facility will comply with the standards adopted by DATCP.
- Specify the information that a local government must include in its decision making record. A local decision must include findings of fact, and must be based on information in the record. This record will be important if an aggrieved party appeals the local government's decision.

***Background: The Livestock Facility Siting Law***

**General**

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

- The site is located in a non-agricultural zoning district.
- The site is located in an agricultural zoning district where the livestock facility is prohibited. The zoning prohibition, if any, must be clearly justified on the basis of public health or safety. The Livestock Facility Siting Law limits exclusionary zoning based solely on livestock facility size.
- The proposed livestock facility violates a valid local ordinance adopted under certain state laws related to shoreland zoning, floodplain zoning, construction site erosion control or stormwater management.
- The proposed livestock facility violates a building, electrical or plumbing code that is consistent with the state building, electrical or plumbing code for that type of facility.

- The proposed livestock facility will have 500 or more “animal units” (or will exceed a lower permit threshold adopted by local zoning ordinance prior to July 19, 2003), and the proposed facility violates one of the following:
  - *A state livestock facility siting standard adopted by DATCP (this rule).*
  - A more stringent local standard that predates the siting application. The more stringent local standard must be based on reasonable and scientifically defensible findings of fact, adopted by the political subdivision, which clearly show the standard is necessary to protect public health or safety.

## **Animal Units**

The Livestock Facility Siting Law defines “animal unit” for purposes of the law. The law defines “animal units” by reference to DNR rules. This rule clarifies that the law defines “animal units” by reference to DNR rules as they existed on the effective date of the law.

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

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

## **Local Approval**

Many, but not all, political subdivisions require local approval of new or expanded livestock facilities. The Livestock Facility Siting Law *does not require* local approval. But *if* local approval is required, the political subdivision must grant or deny approval based on this rule. A political subdivision may *not* consider other siting criteria, or apply standards that differ from this rule, except that the political subdivision may:

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

To qualify for local approval, an operator must meet the standards in this rule, regardless of whether the applicant receives cost-sharing (*see s. 93.30(3)(ae), Stats.*). *However, a political subdivision may provide cost-sharing if it wishes to do so. This rule does not alter current state law related to cost-sharing. Under current state law:*

- A political subdivision may approve a new or expanded livestock facility, without offering cost-sharing for that facility, if the facility will have 500 "animal units" or more (*see s. 93.30(3)(d), Stats.*).
- Cost-sharing for new or expanded livestock facilities under 500 "animal units" is governed by *current* state nonpoint pollution law and DNR rules (NR 151). DATCP cost-sharing rules cross-reference DNR rules.
- Generally speaking, current law requires cost-sharing only if a state or local government entity *requires* an operator to discontinue or modify an *existing* livestock facility to comply with state nonpoint water pollution standards. An operator is not necessarily entitled to cost-sharing if the operator voluntarily constructs or expands a livestock facility. But if an operator has a right to cost-sharing under current state law, that right remains intact under this rule.

### **Application and Local Decision**

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

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

### **Appeal to Livestock Facility Siting Review Board**

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

An "aggrieved person" may appeal a local decision to the state Livestock Facility Siting Review Board ("Board"). The Board consists of 7 members, appointed by the DATCP Secretary subject to Senate confirmation, for staggered 5-year terms. The Board includes one member

representing towns, one member representing counties, one member representing environmental interests, one member representing livestock farming interests, and 3 other members. The Board is attached to DATCP for administrative purposes, but exercises independent decision making authority.

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

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

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

### ***Background: Nutrient Management***

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

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

Current DATCP rules incorporate nutrient management standards published by the Natural Resource Conservation Service of the United States Department of Agriculture ("NRCS"). The current rules incorporate outdated (1999) NRCS standards based on nitrogen, not phosphorus: ~~NRCS is proposing has adopted (2005) revised standards based on nitrogen and phosphorus (phosphorus is a key nonpoint source pollutant).~~ DATCP is proposing a separate nutrient

management rule (not *this* rule) to incorporate the revised NRCS standards for all farms (not just livestock operations), subject to current cost-sharing requirements.

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

### ***Background: DNR Water Quality Permits***

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

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

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

### ***The Contents of this Rule***

#### **Livestock Facilities Covered by This Rule**

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

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

An "expansion" means an increase in the largest number of "animal units" kept at a livestock facility on at least 90 days in any 12-month period. An "expanded livestock facility" means the entire facility created by an "expansion," including both new and existing livestock structures (this rule specifies less rigorous standards for existing structures). However, existing structures are subject to less rigorous standards, and are completely exempt from some requirements. An "expansion" means an increase in the largest number of "animal units" kept at a livestock facility on at least 90 days in any 12-month period.

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

### Livestock Types

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

### Combined Related Livestock Facilities

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

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

"Related livestock facilities" are collectively treated as a single livestock facility, for purposes of this rule, except that an operator may elect to treat a "separate species facility" as a *separate livestock facility* (see below). "Related livestock facilities" are facilities that are owned or managed by the same person, and related to each other in at least one of the following ways:

- They are located on the same tax parcel or adjacent tax parcels of land (the mere acquisition of a neighboring facility does not constitute an *expansion* unless the purchaser adds "animal units" to the combined facilities).
- They share at least one livestock structure to collect or store manure.



- At least some of their manure is applied to the same landspreading acreage.

### Separate Species Facilities

An operator may elect to treat a "separate species facility" as a *separate livestock facility*, for purposes of this rule, even though it is related to another facility owned by the same operator. For example, if the operator of a 450 "animal unit" dairy facility adds a 450 "animal unit" poultry facility, the operator may elect to treat the poultry facility as a *separate livestock facility* (not an expansion of the dairy facility) if certain conditions are met. This will avoid the need for a local permit if, for example, a local permit is required at 500 "animal units."

In order to be treated as a separate livestock facility (not part of a related facility), a "separate species facility" must meet all of the following criteria:

- It must have only one type of livestock (cattle, swine, poultry, sheep or goats), and that type may not be found on the related facility. Thus, cattle and poultry operations may be treated separately, but dairy and beef cattle operations may not (because both include "cattle.") Milking cows, calves, heifers and steers are all "cattle." Turkeys, ducks, geese and chickens are all "poultry."
- It must have no more than 500 animal units.
- Its livestock housing and manure storage structures must be separate from livestock housing and manure storage structures used by the related facility.
- It must meet one of the following criteria:
  - Its livestock housing and manure storage structures are located at least 750 feet from livestock housing and manure storage structures used by the related facility (so it can be treated separately for purposes of odor score calculations).
  - It and the related facility have a combined total of fewer than 1,000 animal units.

### Livestock Types

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

### **State Standards Incorporated in Local Ordinance**

A political subdivision may apply the standards in this rule, beginning on the effective date of this rule. However, beginning 6 months after the effective date of this rule, a political subdivision may not disapprove a proposed livestock facility based on standards in this rule

unless the political subdivision has also incorporated the standards in its local ordinance. A political subdivision may incorporate the standards by reference, without reproducing them in full in the local ordinance.

### **Ordinances Filed with DATCP**

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

### **Local Approval of Existing Livestock Facilities**

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

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

~~• The existing (unchanged) portion of a livestock facility that merely adds a separate species facility. (See above.)~~

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

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

### **Duration of Local Approval**

A local approval under this rule “runs with the land.” The approval remains in effect, despite a change in ownership of the livestock facility, as long as the new operator does not violate the terms of the local approval.

Generally speaking, a local approval remains in effect regardless of when or whether the livestock operator exercises the full authority granted by the approval. For example, if an operator gets local approval to expand from 400 “animal units” (existing) to 900 “animal units,” the operator may implement the approved expansion over a period of time chosen by the operator. The operator does not lose the approval merely because the operator implements the expansion in gradual stages, or fails to expand by the full amount authorized.

However, an operator must do all of the following within 2 years after the local approval is granted, or the political subdivision may withdraw the approval:

- Begin populating the new or expanded livestock facility.
- Begin constructing all of the new or expanded livestock housing or waste storage structures proposed in the application for local approval.

### **Application for Local Approval**

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

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

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

- Information about the applicant.
- A *description of the proposed livestock facility*, including the types of livestock and the number of “animal units” for which the applicant seeks approval. The applicant must calculate animal units according to an *animal units worksheet (worksheet 1)*. The application must show the *maximum* number of “animal units” the applicant proposes to keep on at least 90 days during any 12-month period. If the political subdivision approves

the proposed livestock facility, this is the number of “animal units” approved (the operator may not exceed this number without further approval).

- *An area map.* The area map must show a 2-mile radius around the proposed facility (with topographic lines at 10-foot elevation intervals). The map must show all current and proposed livestock structures, property lines, roads, buildings and navigable waters within that area. The map must identify residences and “high-use buildings” within 2,500 ft. of the livestock facility, and must indicate which of those buildings (if any) are owned by the applicant or by persons who have agreed to exclude the buildings from odor score calculations under this rule.
- *A site map.* The site map must show a 1,000 foot radius around the proposed facility (with topographic lines at 2-foot elevation intervals for the area within 300 feet of livestock structures). The map must show current and proposed livestock structures, property lines, roads, buildings, wells, navigable waters and any direct conduits to groundwater. The applicant must certify that livestock structures will comply with applicable property line, road and water quality setbacks in this rule (see below). The map must identify residences and “high-use buildings” and must indicate which of those buildings (if any) are owned by the applicant or by persons who have agreed to exclude the buildings from odor score calculations under this rule.
- *An environmental incident response plan* to deal with manure spills and odor complaints.
- *An employee training plan* for manure management and odor control.
- The following *worksheets*:
  - *Animal units* (worksheet 1).
  - *Odor management* (worksheet 2).
  - *Waste and nutrient management* (worksheet 3).
  - *Waste storage facilities* (worksheet 4).
  - *Runoff management* (worksheet 5).

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

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

A political subdivision may not alter the application form (except for limited purposes specified in this rule). A political subdivision may charge a reasonable application fee, not to exceed

\$1,000, to offset its costs to review and process the application. A political subdivision may *not* charge any other fee, or require the applicant to post any bond or security with the political subdivision.

A political subdivision may require an applicant to file up to 4 duplicate copies of the application form and worksheets (but not other attachments), including worksheets, maps and documents (other than engineering design specifications) included in the application. The political subdivision must file one duplicate copy of each application with DATCP, and must return another duplicate copy of each *approved* application (marked "approved") to the applicant.

### **Property Line and Road Setbacks**

This rule addresses property line and road setback requirements for livestock structures. *Livestock structures* include things like barns, milking parlors, feed storage facilities, feeding facilities, animal lots and waste storage facilities, but do *not* include things like machine sheds, pastures, winter grazing areas, or fences around pastures or winter grazing areas.

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

- Require a setback of more than 100 feet from any property line, or more than 100 feet from a public road right-of-way, if the livestock facility will have fewer than 1,000 animal units.
- Require a setback of more than 200 feet from any property line, or more than 150 feet from a public road right-of-way, if the livestock facility will have 1,000 or more animal units.
- Prevent the use or expansion of a livestock structure that was located within the setback area prior to the effective date of the setback requirement, except that the setback may prevent further expansion in the direction of the property line or road.

This rule establishes a longer setback requirement for waste storage structures than for other livestock structures. Under this rule, no *waste storage structure* may be located within 350 feet of a property line or public road right-of-way. This setback requirement *does not apply* to existing waste storage structures, except that an existing structure within 350 feet of a property line or road may not expand *toward* that property line or road. If an existing waste storage structure is located within the 350-ft. setback area, the operator may construct one new waste storage structure within the setback area, provided that the new structure is no larger than the existing structure, is no further than 50 ft. from the existing structure, and is no closer to the road or property line than the existing structure.

## Water Quality Setbacks

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

- *Shoreland and wetland zoning ordinances.* Essentially all navigable waters are now protected by ordinances that require building setbacks of 75 feet or more (depending on the ordinance). Restrictions typically apply to new or enlarged structures.
- *Floodplain zoning ordinances.* Floodplain ordinances apply to many, but not all, waterways (not all waterways have mapped floodplains). Restrictions typically apply to new or enlarged structures.
- *State well code.* The state well code (NR 811 and 812) sets well construction and well location standards to protect water supplies. Requirements typically apply to new or enlarged structures. DNR may grant variances.

## Odor Management; Livestock Structures

This rule establishes odor management standards for livestock facilities, except that the standards do not apply to any of the following unless the operator voluntarily submits an odor management worksheet.

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

If odor management standards apply, an applicant for local approval must complete an *odor management worksheet (worksheet 2)*. An applicant may use a convenient automated spreadsheet in lieu of the *worksheet* (the spreadsheet is available on DATCP’s website). The spreadsheet and *worksheet* yield identical results. An operator may voluntarily submit an odor management worksheet, even though a worksheet would not otherwise be required, in order to establish reference points for future expansions (see below).

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

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



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

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

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

The *odor management worksheet* (spreadsheet) determines an "odor score" for the livestock facility. The facility must achieve an "odor score" of at least 500 (except that a political subdivision may, *in its discretion*, approve a facility with an "odor score" of 470 to 500). The "odor score" is based on all of the following:

- *Predicted odor generation:* This is based on the type of livestock, and the nature and size of livestock structures.
- *Odor control practices:* The applicant receives an appropriate credit for each odor control practice, listed in the *worksheet*, which the applicant agrees to implement. DATCP may pre-approve credits for *other* odor control practices if DATCP concludes that those practices will provide odor reduction commensurate with the approved credits (this rule specifies an approval process).
- *Proximity and density of "affected neighbors"* (the further the distance, and the lower the density, the better the "odor score"). "Affected neighbors" are residences or "high-use buildings" *other than* those owned by the applicant or by persons who agree to be excluded from odor calculations. A "high-use building" is any of the following.
  - A school, hospital or licensed care facility.
  - A hotel or restaurant.
  - A multi-unit residential facility (6 or more dwelling units).
  - A non-farm business or workplace that is normally occupied, during at least 40 hours of each week, by customers or employed workers.

If livestock structures are divided into 2 or more “clusters” (for example, a milking facility and a separate heifer facility) that are separated by more than 750 feet, the operator may calculate a separate “predicted odor” and “odor score” for each “cluster.” Each “cluster” must meet the odor management standards.

If an operator seeks local approval for the *expansion* of a livestock facility for which the operator holds a political subdivision has given a prior local approval *under this rule*, the operator may calculate an “odor score” by reference to the same “affected neighbors” referenced in the prior approval. The operator is *not* required to consider new development that has encroached on the livestock facility since that prior approval. The operator may use the prior reference points regardless of any change in livestock facility ownership since the prior approval, and regardless of the amount of time that has passed since the prior approval. This rule thus provides some protection protects the livestock operator against encroaching development without regulating that development directly.

### **Waste and Nutrient Management**

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

- The types and amounts of manure and other organic waste that the livestock facility will generate *when fully populated*.
- The types and amounts of waste that the operator will store, the waste storage facilities and methods that the operator will use, the intended duration of waste storage, and the capacity of waste storage facilities.
- The final disposition of waste by landspreading or other means.
- The acreage available to the operator for landspreading (adequate acreage helps prevent excessive nutrient applications).
- A map showing where the operator proposes to landspread nutrients.
- A *nutrient management checklist*. This checklist is *not* required for a livestock facility with fewer than 500 “animal units” unless the operator’s ratio of acres to “animal units” is less than 1.5 for dairy and beef cattle, 1.0 for swine, 2.0 for sheep and goats, 2.5 for chickens and ducks, and 5.5 for turkeys (these “quick test” ratios are based on the phosphorus content of manure from the respective species).

A qualified nutrient management planner, other than the applicant, must complete the *nutrient management checklist* (if required). The planner must answer key questions to show that the livestock operation will comply with NRCS nutrient management standards based on nitrogen



and phosphorus (this rule incorporates NRCS standards by reference, *except for* certain provisions). However, a livestock operator is *not* required to submit a complete nutrient management plan with the application for local approval.

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

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

### **Waste Storage Facilities**

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

- ***Existing waste storage facilities.*** The *worksheet* must certify that each existing facility meets one of the following standards (an existing facility is *not* required to meet standards for new construction, unless it is substantially altered):
  - The facility is constructed of concrete or steel, or both, was constructed within the last 10 years according to then-existing NRCS standards, and shows no apparent signs of leakage or structural failure.
  - The facility was constructed within the last 3 years according to then-existing NRCS standards, and shows no apparent signs of leakage or structural failure.
  - The facility was constructed according to NRCS standards that existed at the time of construction, is in good condition and repair, and shows no apparent signs of leakage or structural failure.
  - The facility is in good condition and repair, shows no apparent signs of leakage or structural failure, and is located on a site at which the soils and separation distances to groundwater comply with *NRCS technical guide manure storage facility standard 313, table 1 (November, 2004)*.
  - The facility is in good condition and repair, shows no apparent signs of leakage or structural failure, is located entirely above ground, and is located on a site at which the soils comply with *NRCS technical guide manure storage facility standard 313, table 5 (November, 2004)*.
- ***New or substantially altered facilities.*** *New or substantially altered* waste storage facilities must be designed and constructed according to the following technical standards:

- *NRCS technical guide manure storage facility standard 313 (November, 2004).*
- *NRCS technical guide manure transfer standard 634 (November, 2004).*

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

- ***Closed facilities.*** If an operator *closes* a waste storage facility, the operator must have and follow a closure plan that complies with *NRCS technical guide closure of waste impoundments standard 360 (June 2000, December 2002)*. The *worksheet* must include the closure plan, and must certify that the plan complies with the NRCS standard. According to DNR rules, an operator must normally close a manure storage facility if it has not been used for 24 months or if it poses an imminent threat to public health, aquatic life or groundwater.
- ***Storage capacity.*** The *worksheet* must certify the overall capacity of waste storage facilities. Capacity must be adequate for reasonably foreseeable waste storage needs, based on the applicant's waste and nutrient management strategy (see above). There may be no overflow of waste storage facilities.

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

### **Runoff Management**

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

- ***New or substantially altered animal lots.*** Every *new or substantially altered animal lot* must be designed and constructed according to *NRCS technical guide wastewater treatment strip standard 635 (January, 2002)*. The *worksheet* must include design specifications, and must certify that the specifications comply with the NRCS standard. Construction may not vary materially from design specifications without local authorization.
- ***Existing animal lots.*** The *worksheet* must certify that each *existing* animal lot will meet the following standards without alteration, or with minor alterations specified in the *worksheet*:
  - The predicted annual phosphorus runoff from the animal lot (calculated according to the *BARNY* runoff model at the end of the runoff treatment area) must be less than 5 lbs. if

the animal lot is located within 1,000 feet of a navigable lake or 300 feet of a navigable stream.

- The predicted annual phosphorus runoff from the animal lot (calculated according to the *BARNY* runoff model at the end of the runoff treatment area) must be less than 15 lbs. if the animal lot is *not* located within 1,000 feet of a navigable lake or 300 feet of a navigable stream.
- There may be no direct runoff from the animal lot to any direct conduit to groundwater (such as a sinkhole).
- ***Feed storage facilities.*** Feed storage facilities must comply with the following requirements (the *worksheet* must certify compliance):
  - *General.* All feed storage must be managed to prevent significant discharge of leachate or polluted runoff to waters of the state (fermented feed leachate is an especially potent water pollutant).
  - *Existing storage of high moisture feed.* Surface water runoff must be diverted from existing paved areas and bunkers used to store or handle feed with a 70% or higher moisture content. Surface discharge of leachate from the high-moisture feed must be collected (and properly disposed of) before it leaves any paved area that covers more than one acre.
  - *New or substantially altered storage of high-moisture feed.* New or substantially altered feed storage structures (including buildings, bunkers, silos and paved areas used to store or handle feed) must meet standards in this rule if they are used to store or handle feed that has a moisture content of 70% or more. Surface water runoff must be diverted from entering the feed storage structure. Leachate must be collected before it leaves the structure. The structure must sit at least 3 feet above groundwater and bedrock. If the structure covers more than 10,000 square feet, it must have a subsurface system to collect leachate that may leak through the (cracked) floor of the structure. The *worksheet* must include design specifications and certify compliance.
- ***Clean water diversion.*** Runoff from a livestock facility must be diverted from contact with animal lots, waste storage facilities, feed storage areas and manure piles within 1,000 feet of a navigable lake or 300 feet of a navigable stream. Runoff may be diverted by means of earthen diversions, curbs, gutters, waterways, drains or other practices, as appropriate.
- ***Overflow of manure storage facilities.*** A livestock facility must be designed, constructed and maintained to prevent overflow of waste storage facilities.
- ***Unconfined manure piles.*** A livestock facility may not have any unconfined manure piles within 1,000 feet of a navigable lake or within 300 feet of a navigable stream.

- **Livestock access to waters of the state.** A livestock facility may not have unrestricted livestock access to waters of the state, if that access will prevent adequate vegetative cover on banks adjoining the water. This does not prohibit properly designed livestock or farm machinery crossings.

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

### **Complete Application**

Within 45 days after a political subdivision receives an application, it must notify the applicant whether the application is complete. If the application is not complete, the notice must describe the additional information needed. Within 14 days after the applicant provides all of the required information, the political subdivision must notify the applicant that the application is complete. This notice does not constitute an approval of the proposed livestock facility.

### **Notice to Adjacent Landowners**

Within 14 days after a political subdivision notifies an applicant that the application is complete, the political subdivision must notify adjacent landowners of the application. The political subdivision must mail a written notice to each adjacent landowner. The political subdivision must use the notice form shown in *Appendix C*. The notice describes state livestock facility siting standards and the approval process that the political subdivision must follow.

The political subdivision may charge the notice cost to the applicant as part of the application fee (there is an overall fee cap of \$1,000). Failure to give notice does not invalidate the approval of a livestock facility, or create a cause of action against a political subdivision.

### **Timely Action on Application**

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

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

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

## Granting or Denying an Application

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

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

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

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

A political subdivision must issue its decision in writing. The decision must be based on written findings of fact supported by evidence in the record. If the political subdivision approves the application, it must give the applicant a duplicate copy of the approved application, marked "approved." The duplicate copy must include worksheets, maps and other documents (other than engineering specifications) included in the application.

## Terms of Approval

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

- The livestock operator materially misrepresented relevant information in the application; or
  - The livestock operator, without authorization from the political subdivision, materially failed to honor commitments made in the application without authorization from the political subdivision. A political subdivision may not withhold authorization for reasonable changes that maintain compliance with the standards in this rule.
- The livestock facility fails to comply with applicable standards under this rule.

## Record of Decision Making

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

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

## Notice to DATCP

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

## *Standards Incorporated by Reference*

Pursuant to s. 227.21, Stats., DATCP has requested permission from the attorney general and revisor of statutes to incorporate the following standards by reference in this rule, without reproducing the complete standards in this rule:

- *NRCS technical guide manure storage facility standard 313 (November, 2004).*
- *NRCS technical guide manure transfer standard 634 (November, 2004).*
- *NRCS technical guide closure of waste impoundments standard 360 (~~June 2001~~ December 2002).*
- *NRCS technical guide windbreak standard 380 (June 2002).*
- *NRCS technical guide wastewater treatment strip standard 635 (January 2002).*
- *The BARNY Model (An Evaluation System to Rate Feedlot Pollution Potential, ARM-NC-17), published by NRCS (April 1982 version with modifications as of August 2005).*

Copies of these standards may be obtained from NRCS, and will be on file with DATCP, the secretary of state and the revisor of statutes. Copies are not reproduced in this rule.

This rule also incorporates *NRCS technical guide nutrient management standard 590 (September, 2005)*, except for certain portions of the standard. A copy of the NRCS standard is reproduced as *Appendix B* to this rule.

### ***Fiscal Impact***

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

- State costs of \$155,000 annually. This includes:
  - DATCP costs to establish and administer the Livestock Facility Siting Review Board (which is attached to DATCP for administrative purposes).
  - DATCP costs to administer this rule. This includes information and technical assistance to livestock operators and political subdivisions. DATCP will need to reassign staff from other programs, because it has received no additional appropriation for this purpose.
- Aggregate local costs of \$5,000 to \$70,000 annually (*statewide costs for all political subdivisions*). This assumes a cost of \$600 to \$1,500 per local approval, and 50-70 local approvals per year. This cost will be offset by savings related to more orderly, less contentious, approval proceedings. But costs and savings will vary between political subdivisions. Under this rule, a political subdivision may charge an application fee of up to \$1,000 to offset its costs to review and process an application. This rule does not *require* local approval of livestock facilities (that is a matter of local policy).

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

## *Business Impact*

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

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

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

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

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

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

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

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

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



practices needed to comply with this rule. *However a political subdivision may provide cost-sharing if it wishes to do so.*

This rule affects local approval of livestock facilities that will have 500 or more “animal units” (or that will exceed a lower threshold established by local zoning ordinance prior to July 19, 2003). Many of these operations are “small businesses” as defined in s. 227.114(1), Stats.

This rule will have a significant economic impact on affected small businesses, and is therefore subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats. That provision automatically delays a rule’s applicability to small businesses by 2 months, compared to the effective date for other businesses. A complete business impact analysis, including a small business analysis (“initial regulatory flexibility analysis”) is attached.

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

### ***Environmental Impact***

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

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

### ***Federal Regulation***

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

#### **Federal Clean Water Act**

Under the federal Clean Water Act, certain livestock facilities are subject to federal regulation as water pollution “point sources.” DNR regulates these operations by permit (WPDES permit),

under authority delegated from the United States Environmental Protection Agency (EPA). DNR rules are contained in ch. NR 243, Wis. Adm. Code.

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

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

- This rule applies to livestock facilities that have at least 500 "animal units" (or exceed a lower threshold established by a local zoning ordinance prior to July 19, 2003). This reflects the scope of the Livestock Facility Siting Law, which differs from that of the Clean Water Act and DNR rules.
- This rule includes water quality-related standards that are reasonably consistent with DNR standards. However, this rule also addresses odor management, property line setbacks and other local concerns that are not addressed by DNR.
- This rule incorporates updated NRCS nutrient management standards based on nitrogen *and phosphorus*. DNR currently incorporates phosphorus-based nutrient management requirements under the WPDES program, and may incorporate updated NRCS standards in WPDES rules (NR 243).
- This rule defines livestock facilities and "animal units" consistent with DNR rules, to the extent required or permitted by as required by the Livestock Facility Siting Law. However, this rule uses DNR "animal units" as they existed on the effective date of the Livestock Siting Law, so that future DNR rule changes (if any) will not have an adverse impact on the administration of this rule.
- With certain exceptions, this rule defines "livestock facilities" consistent with DNR rules. This rule includes criteria for determining when 2 or more "related" livestock facilities must be treated as a single facility for purposes of local approval. These criteria are similar to the criteria that DNR uses in the WPDES program, except that this rule treats a "separate-species facility" as a separate livestock facility under certain conditions. For example, under this rule, if the operator of a 450 "animal unit" dairy farm adds a 450 "animal unit" poultry operation, the poultry operation will be treated as a separate livestock facility (not an expansion of the dairy operation) if certain conditions are met. This will avoid the need for a local permit if, for example, a local permit is required at 500 "animal units."
- If an applicant for local approval holds a WPDES permit for the *same proposed livestock facility* (and for an equal or greater number of "animal units"), the applicant is exempt from

standards in this rule related to water quality, waste management, waste storage facilities and runoff management. The applicant is *not* exempt from provisions related to odor management or property line setbacks.

### **Federal Nutrient Management Standards**

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

~~NRCS is proposing has adopted updated nutrient management standards, based on nitrogen and phosphorus. DATCP is proposing a separate rule (not this rule) to incorporate the updated NRCS standards in DATCP nutrient management rules (DNR may do the same). This rule also incorporates the updated NRCS standards, except for certain provisions. For example, this rule does not incorporate NRCS provisions that would give political subdivisions authority to require more restrictive nutrient management standards for individual farms (the Livestock Facility Siting Law limits local authority to establish more restrictive requirements for proposed livestock facilities).~~

### **Federal Clean Air Act**

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

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

### **Federal Conservation Incentives**

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

- The Environmental Quality Incentives Program (EQIP) offers cost-sharing for conservation improvements, including nutrient management plans, manure storage improvements and others.
- Other programs, such as the Conservation Reserve Program (CRP), the Conservation Reserve Enhancement Program (CREP), the Wetlands Reserve Program (WRP), the Wildlife Habitat Improvement Program (WHIP) and the Conservation Security Program

(CSP) also provide cost-sharing and other incentives for conservation practices that may help livestock operators meet the standards under this rule.

### ***Regulation in Surrounding States***

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

#### **Illinois**

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

#### **Michigan**

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

#### **Iowa**

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

#### **Minnesota**

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



- The proposed livestock facility violates a local building, electrical or plumbing code that is consistent with the state building, electrical or plumbing code for that type of facility.
- The proposed livestock facility will have 500 or more “animal units” (or will exceed a lower permit threshold incorporated in a local *zoning* ordinance prior to July 19, 2003), and the proposed facility violates one of the following:
  - *A state livestock facility siting standard adopted by the department under this chapter.*
  - A more stringent local ordinance standard enacted prior to the siting application. The more stringent local standard must be based on reasonable and scientifically defensible findings of fact, adopted by the local jurisdiction, which clearly show that the standard is necessary to protect public health or safety.

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

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

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

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

“...[T]he department shall consider whether [livestock facility siting standards] are all of the following:

- Protective of public health or safety.
- Practical and workable.
- Cost-effective.
- Objective.

- Based on available scientific evidence that has been subjected to peer review.
- Designed to promote the growth and viability of animal agriculture in this state.
- Designed to balance the economic viability of farm operations with protecting natural resources and other community interests.
- Usable by officials of political subdivisions.”

## Subchapter I

### DEFINITIONS AND GENERAL PROVISIONS

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

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

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

(a) The livestock facility operator.

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

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

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

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

3 (4) "Animal unit" has the meaning that was given in s. NR 243.03(3) as of April 27,  
4 2004.

5 **NOTE:** See s. 93.90(1m)(a), Stats., and s. ATCP 51.04. "Animal unit" equivalents, for  
6 different species and types of livestock, are shown in *Appendix A, worksheet 1*  
7 *(animal units)*. The "animal unit" equivalents are based on s. NR 243.03(3) as it  
8 existed on April 27, 2004 (the date on which the livestock facility siting law, 2003  
9 Wis. Act 235, was published).

10  
11 (5) "BARNY model" means the NRCS "Evaluation System to Rate Feedlot Pollution  
12 Potential," ARM-NC-17 (April 1982 version with modifications as of August 2005).

13 **NOTE:** The *BARNY* model is a commonly used computer model that predicts nutrient  
14 runoff from animal lots. Copies of the *BARNY* model are on file with the  
15 department, the secretary of state and the revisor of statutes. An Excel computer  
16 spreadsheet version is available at [www.datcp.state.wi.us](http://www.datcp.state.wi.us).

17  
18 (6) "Bedrock" means the top of the shallowest layer of a soil profile that consists of  
19 consolidated rock material or weathered-in-place material, more than 50% of the volume of  
20 which will be retained on a 2 mm soil sieve.

21 (67) "Certified agricultural engineering practitioner" means an agricultural engineering  
22 practitioner who is certified under s. ATCP 50.46 with a rating under s. ATCP 50.46(5) that  
23 authorizes the practitioner to certify every matter that the practitioner certifies under this chapter.

24 (78) "Cluster" means any group of one or more livestock structures within a livestock  
25 facility.

26 (89) "Complete application for local approval" means an application that contains  
27 everything required under ss. ATCP 51.30(1) to (34).



1           **(910)** “Department” means the Wisconsin department of agriculture, trade and consumer  
2 protection.

3           **(1011)** “Direct runoff” has the meaning given in s. NR 151.015(7).

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

- 7
- 8           (a) Runoff from a manure storage facility.
  - 9           (b) Runoff from an animal lot that can be predicted to reach surface waters of  
10 the state through a defined or channelized flow path or man-made  
11 conveyance.
  - 12           (c) Discharge of leachate from a manure pile.
  - 13           (d) Seepage from a manure storage facility.
  - 14           (e) Construction of a manure storage facility in permeable soils, or over  
15 fractured bedrock, without a liner designed according to s. NR 154.04(3).

16           **(1112)** “DNR” means the Wisconsin department of natural resources.

17

18           **(1213)** “Expanded livestock facility” means the entire livestock facility that is created by  
19 the expansion, after *[revisor inserts effective date of this chapter]*, of an existing livestock  
20 facility. “Expanded livestock facility” includes all livestock structures in the expanded facility,  
21 regardless of whether those structures are new, existing or altered.

22           **NOTE:** This chapter applies to local approvals of *new or expanded* livestock facilities  
23 that will have 500 or more animal units (or will exceed a lower permit threshold  
24 incorporated in a local zoning ordinance prior to July 19, 2003). See s. ATCP  
25 51.02. **Although this chapter covers all livestock structures in an “expanded  
26 livestock facility,” existing structures are subject to less rigorous standards than  
27 new or expanded structures, and are completely exempt from certain  
28 requirements**

29

30           **(1314)** “Expansion” means an increase in the largest number of animal units kept at a  
31 livestock facility on at least 90 days in any 12-month period. The acquisition of an existing  
32 livestock facility, by the operator of an adjacent livestock facility, does not constitute an

1 “expansion” unless that operator increases the largest number of animal units kept at the  
2 combined livestock facilities on at least 90 days in any 12-month period.

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

4 **(1415)** “Fine soil particles” means soil particles that pass through a # 200 soil sieve.

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

6 **(1516)** “High-use building” means any of the following buildings:

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

8

9 (b) A restaurant, hotel, motel or tourist rooming house that holds a permit under s.

10 254.64, Stats.

11 (c) A school classroom building.

12 (d) A hospital or licensed care facility.

13 (e) A non-farm business or workplace that is normally occupied, during at least 40 hours  
14 of each week of the year, by customers or employed workers.

15 **(1617)** “Karst feature” means an area or superficial geologic feature subject to bedrock  
16 dissolution so that it is likely to provide a conduit to groundwater. “Karst feature” may include  
17 caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or  
18 swallets.

19 **(1718)** “Livestock” means domestic animals traditionally used in this state in the  
20 production of food, fiber or other animal products. “Livestock” includes cattle, swine, poultry,  
21 sheep and goats. “Livestock” does not include equine animals, bison, farm-raised deer, fish,  
22 captive game birds, ratites, camelids or mink.

23 **(1819)** “Livestock facility” means a feedlot, dairy farm or other operation where  
24 livestock are or will be fed, confined, maintained or stabled for a total of 45 days or more in any

1 12-month period. A "livestock facility" includes all of the land tax parcels of land on which the  
2 facility is located, but does not include a pasture or winter grazing area. Related livestock  
3 facilities are collectively treated as a single "livestock facility" for purposes of this chapter,  
4 except that an operator may elect to treat a separate species facility as a separate "livestock  
5 facility."

6 NOTE: See definition of "related livestock facilities" in sub. (36) and "separate species  
7 facility" in sub. (38).

8  
9 Two or more livestock facilities constitute a single livestock facility, for purposes of this chapter  
10 if the same person owns or manages all of the facilities and any of the following apply:

11 (a) The facilities are adjacent livestock facilities.

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

15  
16 (b) Common livestock structures are used to collect or store manure or other waste from  
17 the facilities.

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

19 NOTE: Compare definition of "animal feeding operation" under s. NR 243.03(2).

20 **(1920)** "Livestock structure" means a building or other structure used to house or feed  
21 livestock, to confine livestock for milking, to confine livestock for feeding other than grazing, to  
22 store livestock feed, or to collect or store waste generated at a livestock facility. "Livestock  
23 structure" includes a barn, milking parlor, feed storage facility, feeding facility, animal lot or  
24 waste storage facility. "Livestock structure" does not include a pasture or winter grazing area, a  
25 fence surrounding a pasture or winter grazing area, a livestock watering or feeding facility in a  
26 pasture or winter grazing area, or a machine shed or like facility that is not used for livestock.

1           ~~(2021)~~ “Local approval” means an approval, required by local ordinance, of a new or  
2 expanded livestock facility. “Local approval” includes a license, permit, special exception,  
3 conditional use permit or other form of local authorization. “Local approval” does not include  
4 any of the following:

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

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

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

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

14           ~~(2122)~~ “Local ordinance” or “local code” means an ordinance enacted by a political  
15 subdivision.  
16

17           ~~(2223)~~ “Manure” means excreta from livestock kept at a livestock facility. “Manure”  
18 includes livestock bedding, water, soil, hair, feathers, and other debris that becomes intermingled  
19 with livestock excreta in normal manure handling operations.

20           ~~(2324)~~ “Minor alteration” of a livestock structure means a repair or improvement in the  
21 construction of an existing livestock structure that does not result in a substantially altered  
22 livestock structure.

23           ~~(2425)~~ “Navigable waters” has the meaning given in s. 30.01(4m), Stats.

24           ~~(2526)~~ “New livestock facility” means a livestock facility that will be used as a livestock  
25 facility for the first time, or for the first time in at least 5 years. “New livestock facility” does not

1 include an expanded livestock facility if any portion of that facility has been used as a livestock  
2 facility in the preceding 5 years.

3 **NOTE:** This chapter applies to local approvals of *new or expanded* livestock facilities  
4 that will have 500 or more animal units (or will exceed a lower permit threshold  
5 incorporated in a local *zoning* ordinance prior to July 19, 2003). See s. ATCP  
6 51.02.

7  
8 **(2627)** "NRCS" means the natural resource conservation service of the United States  
9 department of agriculture.

10 **(2728)** "Operator" means a person who applies for or holds a local approval for a  
11 livestock facility.

12 **(2829)** "Pasture" means land on which livestock graze or otherwise seek feed in a  
13 manner that maintains the vegetative cover over all of the grazing or feeding area.

14 **(2930)** "Person" means an individual, corporation, partnership, cooperative, limited  
15 liability company, trust or other legal entity.

16 **(3031)** "Political subdivision" means a city, village, town or county.

17 **(3132)** "Populate" means to add animal units for which local approval is required.

18 **(3233)** "Property line" means a line that separates parcels of land owned by different  
19 persons.

20 **(3334)** "Qualified nutrient management planner" means a person qualified under s.  
21 ATCP 50.48.

22 **(3435)** "Registered professional engineer" means a professional engineer registered  
23 under ch. 443, Stats.

24 **(36)** "Related livestock facilities" means livestock facilities that are owned or managed  
25 by the same person, and related to each other in at least one of the following ways:

1 (a) They are located on the same tax parcel or adjacent tax parcels of land.

2 NOTE: A mere acquisition of a neighboring livestock facility does not constitute an  
3 "expansion" unless more animal units are added to the combined facilities.

4 See sub. (14).

5  
6 (b) They use one or more of the same livestock structures to collect or store manure.

7 (c) At least a portion of their manure is applied to the same landspreading acreage.

8 NOTE: Compare definition of "animal feeding operation" under s. NR 243.03(2).  
9 "Related livestock facilities" are treated as a single livestock facility for purposes  
10 of local approval, except that a "separate species facility" may be treated as a  
11 separate livestock facility. See subs. (19) and (38).

12  
13 **(3537)** "Runoff" means storm water or precipitation including rain, snow, ice melt or

14 similar water that moves on the land surface via sheet or channelized flow.

15 (38) "Separate species facility" means a livestock facility that meets all of the following  
16 criteria:

17 (a) It has only one of the following types of livestock, and that type of livestock is not  
18 kept on any other livestock facility to which the separate species facility is related under sub.

19 (36):

20 1. Cattle.

21 2. Swine.

22 3. Poultry.

23 4. Sheep.

24 5. Goats.

25 NOTE: For purposes of par. (a), cattle and poultry are different "types" of livestock, but  
26 dairy and beef cattle are livestock of the same "type" ("cattle"). Milking cows,  
27 heifers, calves and steers (all "cattle") are livestock of the same "type." Turkeys,  
28 ducks, geese and chickens are livestock of the same "type" ("poultry").

29  
30 (b) It has no more than 500 animal units.



1 (c) Its livestock housing and manure storage structures, if any, are separate from the  
2 livestock housing and manure storage structures used by livestock facilities to which it is related  
3 under sub. (36).

4 (d) It meets one of the following criteria:

5 1. Its livestock housing and manure storage structures, if any, are located at least 750  
6 feet from the nearest livestock housing or manure storage structure used by a livestock facility to  
7 which it is related under sub. (36).

8 2. It and the other livestock facilities to which it is related under sub. (36) have a  
9 combined total of fewer than 1,000 animal units.

10 **(3639)** "Site that is susceptible to groundwater contamination" means any of the

11 following:

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

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

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

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

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

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

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

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

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

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

1           **(3940)** “Substantially altered” livestock structure means a livestock structure that  
2 undergoes a material change in construction or use, including any of the following material  
3 changes:

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

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

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

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

10           **(3841)** “Unconfined manure pile” means a quantity of manure at least 175 cubic feet in  
11 volume that covers the ground surface to a depth of at least 2 inches, but does not include any of  
12 the following:

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

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

17           **(3942)** “Waste” means manure, milking center waste and other organic waste generated  
18 by a livestock facility.

19           **(4043)** “Waste storage facility” means one or more waste storage structures. “Waste  
20 storage facility” includes stationary equipment and piping used to load or unload a waste storage  
21 structure if the equipment is specifically designed for that purpose and is an integral part of the  
22 facility. “Waste storage facility” does not include equipment used to apply waste to land.



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

- 5 (a) A structure used to collect and store waste under a livestock housing structure.
- 6 (b) A manure digester consisting of a sealed structure in which manure is subjected to  
7 managed biological decomposition.

8 ~~(424)~~ "Waters of the state" has the meaning given in s. 283.01(20), Stats.

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

- 12 (a) An area, other than a pasture, where livestock are kept during the period from May 1  
13 to September 30.
- 14 (b) An area which at any time has an average of more than 4 livestock animal units per  
15 acre.
- 16 (c) An area from which livestock have unrestricted access to navigable waters of the  
17 state, such that the livestock access prevents adequate vegetative cover on banks adjoining the  
18 water.
- 19 (d) An area in which manure deposited by livestock causes nutrient levels to exceed  
20 standards in ATCP 51.16.

21 ~~(447)~~ "WPDES permit" means a Wisconsin pollutant discharge elimination system  
22 permit issued by DNR under ch. NR 243.