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

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

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

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

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

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

25
26 Local approvals covered by under this chapter normally “run with the land” (per
27 zoning law and other applicable law). See ATCP 51.08. They normally continue
28 to apply, despite changes in ownership, as long as subsequent owners do not
29 violate the terms of the local approval. Some ordinances might require a *pro*
30 *forma* permit transfer with each transfer of ownership, but that transfer should
31 may not ordinarily limit the scope of approval.

32
33 A livestock operator is *not* required to obtain local approval under this chapter for
34 the construction, repair or improvement of livestock structures, unless the
35 operator also adds “animal units” for which local approval is required (local
36 building codes and manure storage ordinances may apply). However, a political
37 subdivision may withdraw a local approval granted under this chapter if the
38 livestock operator does any of the following (see s. ATCP 51.34(4)).

- Without local authorization, alters the approved livestock facility in a way that materially violates the terms of the local approval.
- Alters the approved livestock facility so that the altered facility violates the standards in subch. II.

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

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

(b) An approval required by a political subdivision within the scope of its authority

under s. 59.692, 59.693, 60.627, 61.351, 61.354, 62.231, 62.234 or 87.30, Stats.

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

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

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

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

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

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

1 "Animal unit" equivalents, for different species and types of livestock, are shown
2 in Appendix A, worksheet 1 (animal units). The "animal unit" equivalents are
3 based on s. NR 243.03(3) as it existed on April 27, 2004 (the date on which the
4 livestock facility siting law, 2003 Wis. Act 235, was published). See s.
5 93.90(1m)(a), Stats., and s. ATCP 51.01(4).
6

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

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

12 (b) A livestock facility that the political subdivision has already approved. A prior
13 approval for the construction of a livestock facility implies approval for the maximum number of
14 animal units that the approved livestock facility was reasonably designed to house, except as
15 otherwise clearly provided in the approval. Prior approval of a single livestock structure, such as
16 a waste storage structure, does not constitute prior approval of an entire livestock facility.

17 **NOTE:** For example, if a political subdivision has already approved construction of a
18 livestock facility that was reasonably designed to house up to 800 "animal units,"
19 that approval authorizes the operator to keep up to 800 "animal units" at that
20 facility (even if the scope of approval is not explicitly stated in terms of "animal
21 units").
22

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

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

27 (b) The maximum number previously approved or, if no maximum number was
28 previously approved, a number that is 20% higher than the number kept on *[revisor inserts*

1 *effective date of this chapter]* or on the effective date of the approval requirement, whichever
2 date is later.

3 **NOTE:** Consider the following examples:

4
5 **Example 1:** Suppose that a local ordinance enacted after *[revisor inserts*
6 *effective date of this chapter]* requires local approval for livestock facilities with
7 500 or more “animal units.” Local approval is *not* required for a livestock facility
8 that already has 600 “animal units” on the local ordinance effective date, unless
9 the facility expands to more than 720 “animal units.” The number of “animal
10 units” kept on the ordinance effective date means the largest number kept on at
11 least 90 days in the 12 months prior to the ordinance effective date (*see s.*
12 *93.90(3)(e), Stats.*).

13
14 **Example 2:** Suppose that a local ordinance enacted prior to July 19, 2003
15 requires local approval of livestock facilities with 400 or more “animal units.” An
16 expansion from 200 “animal units” (existing facility) to 450 “animal units”
17 (expanded facility) will require local approval, unless the political subdivision has
18 already given its approval. If the political subdivision has already approved
19 construction of a livestock facility that is designed to house up to 450 “animal
20 units,” the operator does not need further local approval unless the operator
21 proposes to exceed 450 “animal units.”
22

23 **ATCP 51.08 Duration of local approval-** (1) Except as provided in subr (2) or s.

24 **ATCP 51.34(4), a local approval under this chapter:**

25 (a) Runs with the land and remains in effect despite a change in ownership of the
26 livestock facility or the land on which it is located.

27 **NOTE:** Some local ordinances may require a *pro forma* permit transfer with each
28 transfer of ownership, but that transfer may not limit the scope of the prior
29 approval.

30
31 (b) Remains in effect regardless of the amount of time that elapses before the livestock
32 operator exercises the authority granted by the approval, and regardless of whether the livestock
33 operator exercises the full authority granted by the approval.

34 **NOTE:** For example, if a livestock operator gets local approval under this chapter to
35 expand from 400 animal units (existing) to 900 animal units, the livestock
36 operator may implement the approved expansion over a period of time chosen by

1 the livestock operator. The operator does not lose the approval merely because
2 the operator implements the expansion in gradual stages, or fails to expand by the
3 full amount authorized. However, the operator must at least *begin* the expansion
4 within 2 years, or face possible loss of approval. See sub. (2).

5
6 (2) A political subdivision may withdraw a local approval granted under this chapter
7 unless the livestock operator does all of the following within 2 years after a local approval is
8 granted:

9 (a) Begins populating the approved livestock facility.

10 (b) Begins construction on every new or expanded livestock housing structure, and every
11 new or expanded waste storage structure, proposed in the application for local approval.

12 (3) If a local approval is appealed, the local approval is deemed to be granted for
13 purposes of sub. (2) when the appeal is concluded. Withdrawal of a local approval under sub. (2)
14 does not prevent a livestock operator from obtaining a new local approval under this chapter.

15 **NOTE:** A political subdivision should exercise sound judgment in deciding whether to
16 withdraw a local approval under sub. (2). The political subdivision may consider
17 extenuating circumstances, such as adverse weather conditions, that may affect an
18 operator's ability to comply. A political subdivision should give the operator
19 prior notice, and a reasonable opportunity to demonstrate compliance, before
20 withdrawing a local approval.

21 22 **Subchapter II**

23 **LIVESTOCK FACILITY SITING STANDARDS**

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

27 **(2) STATE STANDARDS INCORPORATED IN LOCAL ORDINANCE.** Beginning on *[revisor*
28 *inserts date that is 6 months after the effective date of this chapter]*, a political subdivision may
29 not deny a local approval covered by this chapter unless the political subdivision incorporates by

1 local ordinance the standards in this subchapter and the application requirements in subch. III. A
2 local ordinance may incorporate the standards and application requirements by reference,
3 without reproducing them in full.

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

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

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

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

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

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

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

25 (4) ORDINANCE PROVISIONS FILED WITH DEPARTMENT. Within 30 days after a political
26 subdivision enacts an ordinance provision under sub. (2) or (3), the political subdivision shall file
27 a copy of the ordinance provision with the department. Failure to file the ordinance provision

1 with the department does not invalidate the ordinance provision. The political subdivision shall
2 file the ordinance provision, by mail, fax or e-mail, at the following applicable address:

3 Wisconsin Department of Agriculture, Trade and Consumer Protection
4 Agricultural Resource Management Division
5 Bureau of Land and Water Resources
6 P.O. Box 8911
7 Madison, WI 53708-8911
8 Fax: (608) 224-4615
9 E-mail: ordinance@datcp.wi.gov

10
11 **ATCP 51.12 Livestock structures; location on property. (1) PROPERTY LINE AND**

12 **ROAD SETBACKS; GENERAL.** Livestock structures shall comply with local ordinance requirements
13 related to setbacks from property lines and public roads, except that no local setback requirement
14 may do any of the following:

15 (a) Require a livestock structure to be set back more than 100 feet from any property
16 line, or more than 100 feet from any or public road right-of-way, except as provided in sub. (2),
17 if the livestock facility will have fewer than 1,000 animal units.

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

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

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

26 **NOTE:** Many local jurisdictions have established basic property line and road setback
27 requirements by ordinance. Setbacks vary depending on local circumstances, and

1 often reflect years of local experience. Subsection (1) honors local setback
2 requirements, provided that the setbacks do not exceed the limits specified in
3 sub. (1).
4

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

8 (a) A The location of the waste storage structure complies with a local ordinance that
9 specifies a shorter setback that is specific to waste storage facilities or waste storage structures.

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

14 (c) The waste storage structure is a single new waste storage structure constructed no
15 closer to the relevant property line or public road than a waste storage structure that existed on
16 the same tax parcel prior to *[revisor inserts effective date of this chapter]*, provided that the new
17 structure is no larger than the existing structure and is located within 50 feet of the existing
18 structure.

19 **NOTE:** See definition of "waste storage structure" in s. ATCP 51.01(4244).
20

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

24 **NOTE:** Essentially all navigable waters are now protected by ordinances that require
25 building setbacks of 75 feet or more (depending on the ordinance). Zoning
26 restrictions, if any, typically apply to *new or enlarged structures*. A zoning
27 ordinance applies for purposes of sub. (3) if it is enacted within the scope of

1 statutory authority under s. 59.692, 61.351 or 62.231, Stats., even if it is also
2 enacted under other authority.

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

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

11
12 (5) WELLS. (a) Wells in a livestock facility shall comply with chs. NR 811 and 812.

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

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

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

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

26 **NOTE:** Under s. ATCP 51.30, an application must be complete, credible and internally
27 consistent. The application must include an area map, a site map, and a
28 certification that the livestock facility complies with this section (*see Appendix A*).
29 A local approval is conditioned upon compliance in fact (*see s. ATCP 51.34(4)*).
30 The presumption in sub. (6) may be rebutted by clear and convincing evidence in
31 the record (*see s. ATCP 51.34 and 51.36*).
32

1 **ATCP 51.14 Odor and air emissions. (1) ODOR STANDARDS STANDARD.** Except as
2 provided in subs. (2) to (4), a livestock facility shall have a predicted odor of not more than 350,
3 and an odor score of at least 500. The operator shall calculate the predicted odor and odor score
4 according to *Appendix A, worksheet 2*, or by using the equivalent spreadsheet provided on the
5 department's website. An application for local approval shall include *worksheet 2* on the
6 spreadsheet output.

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

9
10 *Predicted odor* considers Odor score is based on predicted odor generation
11 (based on size and type of livestock facility), and odor management control
12 practices, but does not consider and the proximity and density of affected
13 neighbors. *Total odor score* considers odor generation, odor management
14 practices, and the proximity and density of affected neighbors. See *Appendix*
15 *A, worksheet 2.*

16
17 *Predicted odor and total An odor score are is a predictive estimates estimate.* The
18 standards standard in sub. (1) apply applies only for purposes of local livestock
19 facility siting decisions under this chapter. Failure to comply with a the standard
20 in sub. (1) does not constitute evidence of a public or private nuisance,
21 negligence, or a taking of property.

22
23 Odor management control practices may also control air pollution emissions. The
24 department will work to coordinate odor and air emissions field research with
25 DNR, the Wisconsin agricultural stewardship initiative (WASI), and the
26 University of Wisconsin. The department will consider research results when it
27 reviews this chapter at least once every 4 years (see s. 93.90(2)(c), Stats.). As part
28 of its review, the department will consult with an advisory committee that
29 includes representatives of livestock producers, local government and
30 environmental interests. The department will consider amendments to this rule,
31 as appropriate, based on research findings.

32
33 **(2) EXEMPTIONS.** The odor standards standard in sub. (1) do does not apply to any of the
34 following livestock facilities unless the facility operator voluntarily completes and submits
35 worksheet 2 or the equivalent spreadsheet output with the operator's application for local
36 approval.

- 1 (a) A new livestock facility with fewer than 500 animal units.
2 (b) An expanded livestock facility with fewer than 1,000 animal units.
3 (c) A livestock facility in which all livestock structures will be located at least 2,500 ft.
4 from the nearest affected neighbor.

5 **NOTE:** "Affected neighbors" (ATCP 51.01(2)) are residences or "high-use buildings"
6 ~~(ATCP 51.01(4516))~~ other than those owned by the livestock operator or by
7 persons who agree to be excluded from odor score calculations under sub. (1).
8

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

13 **NOTE:** For example, a dairy operator can take advantage of sub. (3) if a proposed dairy
14 facility includes a milking operation (cluster 1) and a heifer facility (cluster 2)
15 located 800 feet from each other.
16

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

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

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

23 (a) Notwithstanding sub. (1), a political subdivision may in its discretion approve a
24 livestock facility with an odor score of less than 500, provided that the odor score is not less than
25 470.

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

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

6 1. A political subdivision's exercise, or refusal to exercise, discretionary authority under
7 par. (a).

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

10 **NOTE:** A political subdivision *must* approve a livestock facility that meets the odor
11 standards standard under sub. (1), assuming that the facility meets other livestock
12 facility siting standards under this chapter. (see ATCP 51.34(1))

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

22
23 (5) CREDITS FOR ODOR MANAGEMENT CONTROL PRACTICES. In the calculation of
24 predicted odor under sub. (1), an operator may claim credit for all of the following:

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

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

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

6 1. A clear description of the odor management control practice for which the operator
7 seeks an approved credit.

8 2. Scientific evidence to substantiate the efficacy of the odor management control
9 practice under relevant conditions.

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

15 **NOTE:** An odor management control practice credit under sub. (5) is expressed, in the
16 predicted odor score calculation in *Appendix A, worksheet 2*, as a multiplier value
17 (the *lower* the multiplier, the greater the benefit to the livestock operator).
18

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

1 (b) Paragraph (a) applies regardless of any change in ownership of the livestock facility
2 since the prior local approval, and regardless of the amount of time that has passed since the
3 prior local approval, provided that the prior local approval has not been lawfully withdrawn for
4 good cause under s. ATCP 51.08(2) or ATCP 51.34(4)(b).

5 **NOTE:** The odor score calculation in *Appendix A, worksheet 2* is partly based on the
6 proximity and density of "affected neighbors" (see ATCP 51.01(2)). An
7 application for local approval documents those "affected neighbor" reference
8 points. Subsection (6) gives protects an operator some protection against the
9 effects of encroaching development, without regulating that development directly.

10
11 A local government must keep a complete record of each local approval for at
12 least 7 years, and must file with DATCP a copy of each approval (including the
13 application on which it was based). The local government must also provide the
14 livestock operator with documentation of the local approval, including the maps
15 on which the approval was based (see s. ATCP 51.34(4)(b)). The approved maps
16 document the "odor score" reference points for purposes of sub. (6).

17
18 The livestock operator can record the local approval (including mapped "odor
19 score" reference points) with the local register of deeds, and can convey the
20 documentation to subsequent purchasers. In those ways, an operator can
21 document previously approved "odor score" reference points for purposes of a
22 subsequent expansion.

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

26 **NOTE:** Under s. ATCP 51.30, an application must be complete, credible and internally
27 consistent. The application must include, among other things, a worksheet (or
28 equivalent spreadsheet output) that shows compliance with this section. See
29 *Appendix A, worksheet 2*. Local approval is conditioned upon compliance in fact
30 (see s. ATCP 51.34(4)). The presumption in sub. (7) may be rebutted by clear
31 and convincing evidence in the record (see s. ATCP 51.34 and 51.36).
32

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

34 Except as provided in par. (c):

1 1. Land applications of waste from a livestock facility approved under this chapter shall
2 comply with NRCS nutrient management technical standard 590 (September, 2005), except for
3 sections V.A.2.b(2), V.D, V.E and VI.

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

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

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

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

13 VI, related to discretionary considerations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **ATCP 51.18 Waste storage facilities. (1) DESIGN, CONSTRUCTION AND MAINTENANCE;**

8 GENERAL. All waste storage facilities for a livestock facility shall be designed, constructed and
9 maintained to minimize the risk of structural failure, and to minimize the potential for waste
10 discharge to surface water or groundwater. A waste storage facility may not lack structural
11 integrity or have significant leakage. An unlined earthen waste storage facility may not be
12 located on a site that is susceptible to groundwater contamination.

13 **NOTE:** A site that is susceptible to groundwater contamination is defined in s. ATCP
14 51.01(2)(34).

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

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

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

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

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

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

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

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

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

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

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

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

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

1
2 (4) CLOSED FACILITIES. If a waste storage facility is closed as part of the construction or
3 expansion of a livestock facility, the closure shall comply with *NRCS technical guide closure of*
4 *waste impoundments standard 360* ~~(June 2001; December 2002)~~. A closure is presumed to
5 comply with this subsection, for purposes of local approval, if the application for local approval
6 includes the closure plan and certification required under s. ATCP 51.30.

7 **NOTE:** According to s. ATCP 51.30, an application for local approval must identify any
8 waste storage facilities to be closed. The application must include a closure plan
9 for each identified facility. A registered professional engineer or certified
10 agricultural engineering practitioner must certify that the closure plan complies
11 with *NRCS technical guide closure of waste impoundments standard 360* ~~(June~~
12 ~~2001; December 2002)~~. See Appendix A, worksheet 4 (*waste storage facilities*).
13

14 Under s. NR 151.05(3) and (4), an operator must normally close a manure storage
15 facility if the facility has not been used for 24 months, or poses an imminent
16 threat to public health, aquatic life or groundwater.
17

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

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

24 **NOTE:** Section ATCP 51.20(5) prohibits overflow of waste storage facilities. See also
25 s. NR 151.08(2) and ATCP 50.04(1).
26

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

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

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

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

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

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

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

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

36 But if a livestock operator proposes to add “animal units” *and* construct a new
37 waste storage structure, to create an “expanded livestock facility” for which local

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

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

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

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

18 **NOTE:** A political subdivision may inspect animal lots or feed storage structures to
19 verify that they are constructed according to specifications included in the
20 application for local approval. This section *does not require or prohibit* local
21 inspection. A deviation under sub. (9) does not invalidate a local approval, but
22 does prevent the livestock operator from populating the approved livestock
23 facility until the deviation is rectified or approved.
24

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

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

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

1 system shall consist of drainfill material, a tile drainage network, and an effective sub-liner as
2 specified in *Appendix A, worksheet 5, section II.C.*

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

5 **NOTE:** Collected leachate may, for example, be transferred to waste storage and applied
6 to land at agronomic rates.
7

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

11 **NOTE:** See NR 151.06 and ATCP 50.04(1). Runoff may be diverted by means of
12 earthen diversions, curbs, gutters, waterways, drains or other practices, as
13 appropriate.
14

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

17 **NOTE:** Under s. ATCP 51.18(5), waste storage capacity must be adequate to meet
18 reasonably foreseeable storage needs, based on the operator's waste and nutrient
19 management strategy under s. ATCP 51.16. See also NR 151.08(2) and ATCP
20 50.04(1).
21

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

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

25 (7) LIVESTOCK ACCESS TO SURFACE WATERS OF THE STATE. A livestock facility shall be
26 designed, constructed and maintained to prevent unrestricted livestock access to surface waters
27 of the state, if that access will prevent adequate vegetative cover on banks adjoining the water.

28 This subsection does not prohibit a properly designed, installed and maintained livestock
29 crossing or machinery crossing.

1 approval is required, the waste storage standards in this chapter are controlling.
2 A political subdivision may not disapprove the expansion, except for reasons
3 provided under this chapter.
4

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

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

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

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

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

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

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

21 **NOTE:** The *BARNY* model is a computer model that predicts nutrient runoff from animal
22 lots. Copies of the *BARNY* model are on file with the department, the secretary of
23 state and the revisor of statutes. An Excel spreadsheet version may be obtained
24 from the NRCS Wisconsin website (engineering directory).
25

26 (b) Runoff from an animal lot may not discharge to any direct conduit to groundwater.
27

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

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

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

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

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

10 **NOTE:** Feed leachate is a potentially serious water pollutant. Paved areas include paved
11 feed storage bunkers and handling areas. Collected leachate may, for example, be
12 transferred to waste storage and applied to land at agronomic rates.
13

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

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

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

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

23 4. If the feed storage structure covers more than 10,000 square feet, it shall have an
24 effective subsurface system to collect leachate that may leak through the structure floor. The

1 Subchapter III

2 APPLICATION AND APPROVAL

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

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

13 **(3) ADDITIONAL COPIES.** A political subdivision may require an applicant to submit up to
14 4 duplicate copies of the original application and worksheets under sub. (1), except that a
15 political subdivision may not require an applicant to submit duplicate copies of attachments such
16 as engineering design specifications, maps or aerial photos. Each duplicate copy shall include
17 all of the worksheets, maps and other attachments included in the application, except that it is not
18 required to include engineering design specifications

19 **NOTE:** A political subdivision must file one duplicate copy of the final application and
20 worksheets attachments with the department, within 30 days after the political
21 subdivision grants or denies that application. See s. ATCP 51.34(5). If the
22 political subdivision approves the application, the political subdivision must give
23 the applicant a copy of the approved application, marked "approved." See s.
24 ATCP 51.34(3)(b). The applicant may wish to record this documentation with the
25 register of deeds, and convey the documentation to any subsequent purchaser of
26 the livestock facility. Among other things, documentation establishes "odor
27 score" reference points for future expansions. See s. ATCP 51.14(6).

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

5 **NOTE:** Under s. 66.0628, Stats., any fee imposed by a political subdivision must bear a
6 reasonable relationship to the service for which the fee is imposed.
7

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

10 **NOTE:** If a waste storage facility is abandoned or not properly closed, a political
11 subdivision may seek redress under s. 66.0627 or 254.59, Stats., and other law as
12 appropriate. However, a political subdivision may not require an applicant for
13 local approval to post any bond or security with the application.
14

15 (5) COMPLETE APPLICATION. Within 45 days after a political subdivision receives an
16 application under sub. (1), the political subdivision shall notify the applicant whether the
17 application contains everything required under subs. (1) to (4). If the application is not complete,
18 the notice shall specifically describe what else is needed. Within 14 days after the applicant has
19 provided everything required under subs. (1) to (4), the political subdivision shall notify the
20 applicant that the application is complete. A notice of completeness does not constitute an
21 approval of the proposed livestock facility.

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

23 (6) NOTICE TO ADJACENT PROPERTY OWNERS. Within 14 days after a political
24 subdivision issues a notice under sub. (5), the political subdivision shall mail a completed written
25 copy of the notice in Appendix C to the recorded owner of each parcel of land that is adjacent to
26 the proposed livestock facility. The political subdivision shall mail the notice by first class mail.
27 A political subdivision may recover from the livestock facility operator, under sub. (4)(a), its

1 reasonable cost to prepare and mail notices under this subsection. The sum of the costs charged
2 to the livestock operator under this subsection and sub. (4)(a) may not exceed the maximum
3 amount specified in sub. (4)(a). Failure to comply with the notice requirement under this
4 subsection does not invalidate a political subdivision's approval of a proposed livestock facility,
5 or create a cause of action by a property owner against the political subdivision.

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

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

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

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

17 **NOTE:** See ss. 93.90(4)(d) and (e), Stats.
18

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

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

23 **(b)** The application contains sufficient credible information to show, in the absence of
24 clear and convincing information to the contrary, that the proposed livestock facility meets or is

1 exempt from the standards in subchapter II. To the extent that a standard under subch. II vests
2 discretion in a political subdivision, the political subdivision may exercise that discretion.

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

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

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

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

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

14 ~~may be based on presumptions created by this chapter.~~

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

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

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

32 When an appeal is filed, the Board must notify the political subdivision. Within
33 30 days after the political subdivision receives this notice, it must file a certified

1 copy of its decision making record under s. ATCP 51.36 with the Board. The
2 Board must review the local decision based on the evidence in the local record
3 (the Board will not hold a new hearing or accept new evidence). The Board must
4 make its decision within 60 days after it receives the certified local record (it may
5 extend the deadline for good cause).
6

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

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

18 (b) If a political subdivision grants an application for local approval, the political
19 subdivision shall issue the local approval to the applicant in writing. The local approval shall
20 include a duplicate copy of the approved application, marked "approved." The duplicate copy
21 shall include all of the worksheets, maps and other attachments included in the application,
22 except that it is not required to include engineering design specifications.

23 NOTE: A successful applicant may wish to record the approval documentation under
24 par. (b) with the register of deeds, and convey the documentation to any
25 subsequent purchaser of the livestock facility. Among other things, the
26 documentation establishes "odor score" reference points for future expansions.
27 See s. ATCP 51.14(6).
28

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

32 (a) Monitor compliance.

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

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

4 2. The operator, without authorization from the political subdivision, fails to honor
5 relevant commitments made in the application for local approval. A political subdivision may
6 not withhold authorization, under this subdivision, for reasonable changes that maintain
7 compliance with the standards in subchapter II.

8 23. The livestock facility fails to comply with applicable standards in subch. II.

9
10 **NOTE:** A political subdivision should exercise sound judgment in deciding whether to
11 take compliance action under sub. (4)(b). The political subdivision may consider
12 extenuating circumstances, such as adverse weather conditions, that may affect an
13 operator's ability to comply. A political subdivision may also consider the nature
14 and seriousness of the violation, whether the violation was intentional or
15 accidental, the operator's compliance history, consistency of enforcement, and
16 whether the problem can be resolved without formal enforcement. Before taking
17 compliance action, a political subdivision should give the operator notice and a
18 reasonable opportunity to demonstrate compliance.
19

20 (5) NOTICE TO DEPARTMENT. (a) Within 30 days after a political subdivision grants or
21 denies an application under this section, or withdraws an approval under sub. (4)(b) or s. ATCP
22 51.08(2), the political subdivision shall do all of the following:

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

24 2. File with the department a copy of the final application under s. ATCP 51.30 on which
25 the political subdivision acted granted or denied, if the political subdivision has granted or
26 denied an application under this section. The copy shall include the completed application form
27 and all of the worksheets, but need not include attachments such as engineering design
28 specifications, maps or aerial photos maps and other attachments included in the application,
29 except that it is not required to include engineering design specifications.

1 3. File with the department a copy of the political subdivision's final notice or order
2 withdrawing a local approval under sub. (4)(b) or s. ATCP 51.08(2), if the political subdivision
3 has withdrawn a local approval.

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

6 Wisconsin Department of Agriculture, Trade and Consumer Protection
7 Agricultural Resource Management Division
8 Bureau of Land and Water Resources
9 P.O. Box 8911
10 Madison, WI 53708-8911
11 Fax (608) 224-4615
12

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

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

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

21 (2) A copy of any notice under s. ATCP 51.30(5), and copies of any other notices or
22 correspondence that the political subdivision issues in relation to the application.

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

Appendix A

APPLICATION FORM AND WORKSHEETS