

05hr_CRule_05-014_AC-Ag_pt08b



Details:

(FORM UPDATED: 07/12/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Agriculture (AC-Ag)

COMMITTEE NOTICES ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 12 (a) The applicable size threshold for local approval under s. ATCP 51.02(1).
13 (b) The maximum number previously approved or, if no maximum number was
14 previously approved, a number that is 20% higher than the number kept on *[revisor inserts*
15 *effective date of this chapter]* or on the effective date of the approval requirement, whichever
16 date is later.

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

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

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

1 **Subchapter II**

2 **LIVESTOCK FACILITY SITING STANDARDS**

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

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

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

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

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

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

26 (b) The political subdivision enacted the standards by local ordinance₁ before the
27 livestock facility operator filed the application for local approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **NOTE:** Under s. ATCP 51.30, an application must be complete, credible and internally
2 consistent. The application must include an area map, a site map, and a
3 certification that the livestock facility complies with this section (*see Appendix A*).
4 A local approval is conditioned upon compliance in fact (*see s. ATCP 51.34(4)*).
5 The presumption in sub. (6) may be rebutted by clear and convincing evidence in
6 the record (*see s. ATCP 51.34 and 51.36*).
7

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 Except as provided in par. (c):

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

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

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

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

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

13 VI, related to discretionary considerations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27

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

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

12
13 Under s. NR 151.05(3) and (4), an operator must normally close a manure storage
14 facility if the facility has not been used for 24 months, or poses an imminent
15 threat to public health, aquatic life or groundwater.

16
17 If a waste storage facility is abandoned or not properly closed, a political
18 subdivision may seek redress under s. 66.0627 or 254.59, Stats., as appropriate.

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

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

25
26 (b) An operator shall at all times maintain, in every open waste storage facility, unused
27 storage capacity equal to the greater of the following volumes:

28 1. One foot multiplied by the top area of the storage facility.

29 2. The volume of rain that would accumulate in the manure storage facility from a 25-
30 year 24-hour storm.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24
25 (b) Runoff from an animal lot may not discharge to any direct conduit to groundwater.
26

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

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

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

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

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

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

12
13 (c) A new or substantially altered feed storage structure, including any building, bunker,
14 silo or paved area used for feed storage or handling, shall be designed, constructed and
15 maintained to the following standards if it may used to store or handle feed with a 70% or higher
16 moisture content:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **NOTE:** Under s. ATCP 51.30, an application must be complete, credible and internally
4 consistent. An applicant must submit a *runoff management* worksheet signed by
5 the applicant and a registered professional engineer or certified agricultural
6 engineering practitioner (*see Appendix A, worksheet 5*). The *worksheet* shows
7 presumptive compliance with this section. Local approval is conditioned upon
8 compliance in fact (*see sub. (4) 2*) and s. ATCP 51.34(4)). The presumption of
9 compliance may be rebutted by clear and convincing evidence in the record (*see s.*
10 *ATCP 51.34 and 51.36*).

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

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

22 **(10) EXEMPTION.** This section does not apply if all of the following apply:
23

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

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

1 **Subchapter III**

2 **APPLICATION AND APPROVAL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (a) Monitor compliance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **NOTE:** Municipal law normally determines whether a hearing is required. See,
10 generally, ch. 68, Stats.
11

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

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

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

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

19 **(8)** A copy of any local ordinance cited in the decision.

1 **EFFECTIVE DATE AND INITIAL APPLICABILITY.** (1) Except as provided in sub. (2), this
2 rule takes effect on the first day of the month following publication in the Wisconsin
3 administrative register, as provided under s. 227.22(2)(intro.).

4 (2) This rule first applies to small businesses as defined in s. 227.114(1), Stats., on the
5 first day of the third month commencing after the rule publication date, as required by s.
6 227.22(2)(e), Stats.

Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary

Appendix A

APPLICATION FORM AND WORKSHEETS