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Chapter ATCP 51

LIVESTOCK FACILITY SITING

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Note: This chapter is adopted under authority of ss. 93.07 (1) and 93.90 (2), Stats. This chapter interprets Wisconsin's livestock facility siting law, s. 93.90, Stats. According to the livestock facility siting law, a county, town, city or village ("political subdivision") may not prohibit or disapprove a new or expanded livestock facility of any size unless one of the following applies:

The site is located in a zoning district that is not an agricultural zoning district.

The site is located in an agricultural zoning district where the livestock facility is prohibited. A prohibition, if any, must be clearly justified on the basis of public health or safety. The livestock facility siting law limits exclusionary zoning based solely on livestock facility size.

The proposed livestock facility violates a valid local ordinance adopted under certain state laws related to shoreland zoning, floodplain zoning, construction site erosion control or stormwater management.

The proposed livestock facility violates a local building, electrical or plumbing code that is consistent with the state building, electrical or plumbing code for that type of facility.

The proposed livestock facility will have 500 or more "animal units" (or will exceed a lower permit threshold incorporated in a local *zoning* ordinance prior to July 19, 2003), and the proposed facility violates one of the following:

- A state livestock facility siting standard adopted by the department under this chapter.
- A more stringent local ordinance standard enacted prior to the siting application. The more stringent local standard must be based on reasonable and scientifically defensible findings of fact, adopted by the local jurisdiction, which clearly show that the standard is necessary to protect public health or safety.

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

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

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

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

"…[T]he department shall consider whether *[livestock facility siting standards]* are all of the following:

- Protective of public health or safety.
- Practical and workable.
- Cost−effective.
- Objective.
- Based on available scientific evidence that has been subjected to peer review.
- Designed to promote the growth and viability of animal agriculture in this state.
- Designed to balance the economic viability of farm operations with protecting natural resources and other community interests.
- Usable by officials of political subdivisions."

Subchapter I — Definitions and General Provisions

ATCP 51.01 Definitions. In this chapter:

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

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

(a) The livestock facility operator.

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

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

(3) "Animal lot" means a feedlot, barnyard or other outdoor facility where livestock are concentrated for feeding or other purposes. "Animal lot" does not include a pasture or winter grazing area. Two or more animal lots at the same livestock facility constitute a single animal lot, for purposes of this chapter, if runoff from the animal lots drains to the same treatment area under s. ATCP 51.20 (2) or if runoff from the animal lot treatment areas converges or reaches the same surface water within 200 feet of any of those treatment areas.

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

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

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

Note: The BARNY model is a commonly used computer model that predicts nutrient runoff from animal lots. Copies of the BARNY model are on file with the department, the secretary of state and the legislative reference bureau. An Excel computer spreadsheet version is available at www.datcp.state.wi.us.

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

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

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

(9) "Complete application for local approval" means an application that contains everything required under s. ATCP 51.30 (1) to (4).

(10) "Department" means the Wisconsin department of agriculture, trade and consumer protection.

(11) "Direct runoff" has the meaning given in s. NR 151.015 (7).

Note: Under s. NR 151.015 (7), "direct runoff" means a discharge of a significant amount of pollutants to waters of the state resulting from any of the following practices:

(a) Runoff from a manure storage facility.

(b) Runoff from an animal lot that can be predicted to reach surface waters of the state through a defined or channelized flow path or man−made conveyance.

(c) Discharge of leachate from a manure pile.

(d) Seepage from a manure storage facility.

(e) Construction of a manure storage facility in permeable soils, or over fractured bedrock, without a liner designed according to s. NR 154.04 (3).

(12) "DNR" means the Wisconsin department of natural resources.

(13) "Expanded livestock facility" means the entire livestock facility that is created by the expansion, after May 1, 2006, of an existing livestock facility. "Expanded livestock facility" includes all livestock structures in the expanded facility, regardless of whether those structures are new, existing or altered.

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

(14) "Expansion" means an increase in the largest number of animal units kept at a livestock facility on at least 90 days in any 12−month period. The acquisition of an existing livestock facility, by the operator of an adjacent livestock facility, does not constitute an "expansion" unless that operator increases the largest number of animal units kept at the combined livestock facilities on at least 90 days in any 12−month period.

Note: See s. ATCP 51.04.

(15) "Fine soil particles" means soil particles that pass through a # 200 soil sieve.

Note: See s. NR 151.002 (32).

(16) "High−use building" means any of the following buildings:

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

(b) A restaurant, hotel, motel or tourist rooming house that holds a permit under s. 254.64, Stats.

(c) A school classroom building.

(d) A hospital or licensed care facility.

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

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

(18) "Livestock" means domestic animals traditionally used in this state in the production of food, fiber or other animal products. "Livestock" includes cattle, swine, poultry, sheep and goats. "Livestock" does not include equine animals, bison, farm−raised deer, fish, captive game birds, ratites, camelids or mink.

(19) "Livestock facility" means a feedlot, dairy farm or other operation where livestock are or will be fed, confined, maintained or stabled for a total of 45 days or more in any 12–month period. A "livestock facility" includes all of the tax parcels of land on which the facility is located, but does not include a pasture or winter grazing area. Related livestock facilities are collectively treated as a single "livestock facility" for purposes of this chapter, except that an operator may elect to treat a separate species facility as a separate "livestock facility."

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

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

(21) "Local approval" means an approval, required by local ordinance, of a new or expanded livestock facility. "Local approval" includes a license, permit, special exception, conditional use permit or other form of local authorization. "Local approval" does not include any of the following:

(a) 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. (a) pertain to shoreland zoning, floodplain zoning, construction site erosion control and stormwater management.

(b) 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.

(22) "Local ordinance" or "local code" means an ordinance enacted by a political subdivision.

(23) "Manure" means excreta from livestock kept at a livestock facility. "Manure" includes livestock bedding, water, soil, hair, feathers, and other debris that becomes intermingled with livestock excreta in normal manure handling operations.

(24) "Minor alteration" of a livestock structure means a repair or improvement in the construction of an existing livestock structure that does not result in a substantially altered livestock structure.

(25) "Navigable waters" has the meaning given in s. 30.01 (4m), Stats.

(26) "New livestock facility" means a livestock facility that will be used as a livestock facility for the first time, or for the first time in at least 5 years. "New livestock facility" does not include an expanded livestock facility if any portion of that facility has been used as a livestock facility in the preceding 5 years.

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

(27) "NRCS" means the natural resource conservation service of the United States department of agriculture.

(28) "Operator" means a person who applies for or holds a local approval for a livestock facility.

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

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

(31) "Political subdivision" means a city, village, town or county.

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

(33) "Property line" means a line that separates parcels of land owned by different persons.

(34) "Qualified nutrient management planner" means a person qualified under s. ATCP 50.48.

(35) "Registered professional engineer" means a professional engineer registered under ch. 443, Stats.

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

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

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

See sub. (14).

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

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

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

(37) "Runoff" means storm water or precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.

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

(a) It has only one of the following types of livestock, and that type of livestock is not kept on any other livestock facility to which the separate species facility is related under sub. (36):

1. Cattle.
2. Swine.
3. Poultry.
4. Sheep.
5. Goats.

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

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

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

(d) It meets one of the following criteria:

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

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

(39) "Site that is susceptible to groundwater contamination" means any of the following:

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

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

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

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

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

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

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

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

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

Note: *See* s. NR 151.015 (18).

(40) "Substantially altered" livestock structure means a livestock structure that undergoes a material change in construction or use, including any of the following material changes:

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

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

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

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

(41) "Unconfined manure pile" means a quantity of manure at least 175 cubic feet in volume that covers the ground surface to a depth of at least 2 inches, but does not include any of the following:

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

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

(42) "Waste" means manure, milking center waste and other organic waste generated by a livestock facility.

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

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

(a) A structure used to collect and store waste under a livestock housing facility.

(b) A manure digester consisting of a sealed structure in which manure is subjected to managed biological decomposition.

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

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

(a) An area, other than a pasture, where livestock are kept during the period from May 1 to September 30.

(b) An area which at any time has an average of more than 4 livestock animal units per acre.

(c) An area from which livestock have unrestricted access to navigable waters of the state, such that the livestock access prevents adequate vegetative cover on banks adjoining the water.

(d) An area in which manure deposited by livestock causes nutrient levels to exceed standards in s. ATCP 51.16.

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

History: CR 05−014: cr. Register April 2006 No. 604, eff. 5−1−06.

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

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

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

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

A political subdivision may *not* require local approval for new or expanded livestock facilities smaller than 500 animal units, except as specifically authorized by the livestock facility siting law and this chapter. A political subdivision may apply a lower size threshold adopted by ordinance prior to July 19, 2003 *if that threshold is*

expressed as a specific number of animals or animal units. A local threshold expressed in locally−defined "animal units" may meet this test, because it effectively indicates a specific number of animals, even if the local ordinance definition of "animal units" differs from the definition in this chapter. However the local application and approval process must use the "animal units" definition in this chapter.

Local approvals under this chapter "run with the land." *See* s. ATCP 51.08. They normally continue to apply, despite changes in ownership, as long as subsequent owners do not violate the terms of the local approval. Some ordinances might require a *pro forma* permit transfer with each transfer of ownership, but that transfer may not ordinarily limit the scope of approval.

A livestock operator is *not* required to obtain local approval under this chapter for the construction, repair or improvement of livestock structures, unless the operator also adds "animal units" for which local approval is required (local building codes and manure storage ordinances may apply). However, a political subdivision may withdraw a local approval granted under this chapter if the 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.

History: CR 05−014: cr. Register April 2006 No. 604, eff. 5−1−06.

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: This section 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.

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

History: CR 05−014: cr. Register April 2006 No. 604, eff. 5−1−06.

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

(a) A livestock facility that existed before May 1, 2006 or before the effective date of the local approval requirement.

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

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

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

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

(b) The maximum number previously approved or, if no maximum number was previously approved, a number that is 20% higher than the number kept on May 1, 2006 or on the effective date of the approval requirement, whichever date is later.

Note: Consider the following examples:

Example 1: Suppose that a local ordinance enacted after May 1, 2006 requires local approval for livestock facilities with 500 or more "animal units." "Local approval is *not* required" for a livestock facility that already has 600 "animal units" on the local ordinance effective date, unless the facility expands to more than 720 "animal units." The number of "animal units" kept on the ordinance effective date means the largest number kept on at least 90 days in the 12 months prior to the ordinance effective date (*see* s. 93.90 (3) (e), Stats.).

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

History: CR 05−014: cr. Register April 2006 No. 604, eff. 5−1−06.

ATCP 51.08 Duration of local approval. (1) Except as provided in sub. (2) or s. ATCP 51.34 (4), a local approval under this chapter:

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

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

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

Note: For example, if a livestock operator gets local approval under this chapter to expand from 400 "animal units" (existing) to 900 "animal units", the livestock operator may implement the approved expansion over a period of time chosen by the livestock operator. The operator does not lose the approval merely because the operator implements the expansion in gradual stages, or fails to expand by the full amount authorized. However, the operator must at least *begin* the expansion within 2 years, or face possible loss of approval. *See* sub. (2).

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

(a) Begins populating the approved livestock facility.

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

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

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

History: CR 05−014: cr. Register April 2006 No. 604, eff. 5−1−06.

Subchapter II — Livestock Facility Siting Standards

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

(2) STATE STANDARDS INCORPORATED IN LOCAL ORDINANCE. Beginning on November 1, 2006, a political subdivision may not deny a local approval covered by this chapter unless the political subdivision incorporates by local ordinance the standards in this subchapter and the application requirements in subch. III. A local

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ordinance may incorporate the standards and application requirements by reference, without reproducing them in full.

Note: The livestock facility siting law, s. 93.90, Stats., limits the reasons for which a political subdivision may deny local approval. For the first 6 months after the effective date of this chapter, from May 1, 2006 to November 1, 2006, a political subdivision may deny local approval based on standards in this chapter without incorporating those standards by local ordinance. *See* sub. (1). But sub. (2) applies beginning on November 1, 2006.

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

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

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

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

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

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

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

Wisconsin Department of Agriculture,
Trade and Consumer Protection
Agricultural Resource Management Division
Bureau of Land and Water Resources
P.O. Box 8911
Madison, WI 53708−8911
Fax: (608) 224−4615
E−mail: ordinance@datcp.state.wi.us

History: CR 05−014: cr. Register April 2006 No. 604, eff. 5−1−06.

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

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

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

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

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

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

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

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

(b) The waste storage structure existed prior to May 1, 2006. This paragraph does not authorize an expansion, toward a property line or public road right−of−way, of a waste storage structure that is located within 350 feet of that property line or public road right−of−way.

(c) The waste storage structure is a single new waste storage structure constructed no closer to the relevant property line or public road than a waste storage structure that existed on the same tax parcel prior to May 1, 2006, provided that the new structure is no larger than the existing structure and is located within 50 feet of the existing structure.

Note: See definition of "waste storage structure" in s. ATCP 51.01 (44).

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

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

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

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

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

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

(c) Paragraph (b) does not prohibit the alteration of a livestock structure that existed on May 1, 2006, unless that alteration reduces the distance between the livestock structure and an existing well.

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

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

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

History: CR 05−014: cr. Register April 2006 No. 604, eff. 5−1−06.

ATCP 51.14 Odor and air emissions. (1) ODOR STANDARD. Except as provided in subs. (2) to (4), a livestock facility shall have an odor score of at least 500. The operator shall calculate the odor score according to *Appendix A, worksheet 2*, or by using the equivalent spreadsheet provided on the department's website. An application for local approval shall include *worksheet 2* or the spreadsheet output.

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

Odor score is based on *predicted odor generation* (based on size and type of livestock facility), odor practices, and the proximity and density of "affected neighbors." *See Appendix A, worksheet 2.*

An *odor score* is a predictive estimate. The standard in sub. (1) applies only for purposes of local livestock facility siting decisions under this chapter. Failure to comply with the standard in sub. (1) does not constitute evidence of a public or private nuisance, negligence, or a taking of property.

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

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

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

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

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

Note: "Affected neighbors" (ATCP 51.01 (2)) are residences or "high−use buildings" (ATCP 51.01 (16)) *other than* those owned by the livestock operator or by persons who agree to be excluded from odor score calculations under sub. (1).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A local government must keep a complete record of each local approval for at least 7 years, and must file with DATCP a copy of each approval (including the application on which it was based). The local government must also provide the livestock operator with documentation of the local approval, including the maps on which the approval was based (*see* s. ATCP 51.34 (3) (b)). The approved maps document the "odor score" reference points for purposes of sub. (6).

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

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

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

History: CR 05−014: cr. Register April 2006 No. 604, eff. 5−1−06.

ATCP 51.16 Nutrient management. (1) NUTRIENT MANAGEMENT STANDARD. (a) Except as provided in par. (c):

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

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

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

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

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

VI, related to discretionary considerations.

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

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

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

(c) Paragraph (a) does not apply to a livestock facility with fewer than 500 animal units unless the operator's ratio of acres to animal units, calculated according to *Appendix A, worksheet 3, part B,* is less than 1.5 for dairy and beef cattle, 1.0 for swine, 2.0 for sheep and goats, 2.5 for chickens and ducks, and 5.5 for turkeys.

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

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

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

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

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

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

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

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

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

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

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

History: CR 05−014: cr. Register April 2006 No. 604, eff. 5−1−06.

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

Note: A "site that is susceptible to groundwater contamination" is defined in s. ATCP 51.01 (39).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Note: Section ATCP 51.20 (5) prohibits overflow of waste storage facilities. *See* also ss. NR 151.08 (2) and ATCP 50.04 (1).

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

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

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

Note: The required excess storage capacity in par. (b), often called "freeboard storage," provides a safety factor to prevent manure storage overflow in the event of a major rain event.

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

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

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

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

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

But if a livestock operator proposes to add "animal units" *and* construct a new waste storage structure, to create an "expanded livestock facility" for which local approval is required, the waste storage standards in this chapter are controlling. A political subdivision may not disapprove the expansion, except for reasons provided under this chapter.

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

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

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

History: CR 05−014: cr. Register April 2006 No. 604, eff. 5−1−06.

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

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

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

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

Note: The *BARNY* model is a computer model that predicts nutrient runoff from animal lots. Copies of the *BARNY* model are on file with the department, the secretary of state and the legislative reference bureau. An Excel spreadsheet version may be obtained from the NRCS Wisconsin website (engineering directory).

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

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

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

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

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

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

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

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

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

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

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

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

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

Note: Collected leachate may, for example, be transferred to waste storage and applied to land at agronomic rates.

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

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

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

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

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

Note: See ss. NR 151.08 (3) and ATCP 50.04 (1).

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

Note: See ss. NR 151.08 (5) and ATCP 50.04 (1).

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

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

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

Note: A political subdivision may inspect animal lots or feed storage structures to verify that they are constructed according to specifications included in the application for local approval. This section *does not require or prohibit* local inspection.

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http://docs.legis.wisconsin.gov/code/admin_code

A deviation under sub. (9) does not invalidate a local approval, but does prevent the livestock operator from populating the approved livestock facility until the deviation is rectified or approved.

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

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

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

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Subchapter III — Application and Approval

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

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

(3) ADDITIONAL COPIES. A political subdivision may require an applicant to submit up to 4 duplicate copies of the original application under sub. (1). Each duplicate copy shall include all of the worksheets, maps and other attachments included in the application, except that it is not required to include engineering design specifications.

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

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

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

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

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

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

Note: See s. 93.90 (4) (a), Stats.

(6) NOTICE TO ADJACENT PROPERTY OWNERS. Within 14 days after a political subdivision issues a notice under sub. (5), the political subdivision shall mail a completed written copy of the notice in *Appendix C* to the recorded owner of each parcel of land that is adjacent to the proposed livestock facility. The political subdivision shall mail the notice by first class mail. A political subdivision may recover from the livestock facility operator, under sub. (4) (a), its reasonable cost to prepare and mail notices under this subsection. The sum of the costs charged to the livestock operator under this subsection and sub. (4) (a) may not exceed the maximum amount specified in sub. (4) (a). Failure to comply with the notice requirement under this subsection does not invalidate a political subdivision's approval of a proposed livestock facility, or create a cause of action by a property owner against the political subdivision.

History: CR 05−014: cr. Register April 2006 No. 604, eff. 5−1−06.

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

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

1. The political subdivision needs additional information to act on the application.

2. The applicant materially modifies the application or agrees to an extension.

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

Note: See s. 93.90(4) (d) and (e), Stats.

History: CR 05−014: cr. Register April 2006 No. 604, eff. 5−1−06.

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

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

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

Note: See s. 93.90 (4) (d), Stats.

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

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

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

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

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

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

An "aggrieved person" may appeal a political subdivision's decision within 30 days after the political subdivision issues the decision (or, if the "aggrieved person" pursues a local administrative appeal process, within 30 days after that process is

complete). The "aggrieved person" may challenge the local decision on the grounds that it incorrectly applied livestock facility siting standards under this chapter, or violated the Livestock Facility Siting Law.

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

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

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

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

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

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

(a) Monitor compliance.

(b) Withdraw an approval, or seek other redress provided by law, if any of the following apply:

1. The operator materially misrepresented relevant information in the application for local approval.

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

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

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

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

1. Give the department written notice of its action.

2. File with the department a copy of the final application granted or denied, if the political subdivision has granted or denied an application under this section. The copy shall include all of the worksheets, maps and other attachments included in the application, except that it is not required to include engineering design specifications.

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

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

Wisconsin Department of Agriculture, Trade
and Consumer Protection
Agricultural Resource Management Division
Bureau of Land and Water Resources
P.O. Box 8911
Madison, WI 53708−8911
Fax (608) 224−4615

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

History: CR 05−014: cr. Register April 2006 No. 604, eff. 5−1−06.

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

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

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

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

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

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

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

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

(7) Other documents that the political subdivision prepared to document its decision or decision−making process.

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

History: CR 05−014: cr. Register April 2006 No. 604, eff. 5−1−06.