

Wisconsin Department of Agriculture, Trade and Consumer Protection

Preliminary Environmental Assessment

Rule Subject: Livestock Facility Siting
Administrative Code Reference: ATCP 51
Rules Clearinghouse #: TBD
DATCP Docket #: 15-R-12

This environmental assessment is required by Wis. Admin. Code § ATCP 3.02.

Nature and Purpose of Proposed Rule

First adopted in May 2006, Wis. Admin. Code ch. ATCP 51 (“ATCP 51”) established the statewide framework of standards and procedures required to implement Wisconsin’s livestock facility siting law, Wis. Stat. § 93.90. The rule only applies to livestock operators located in jurisdictions that have adopted ordinances requiring permits for new or expanding livestock facilities that exceed a certain size (commonly 500 animal units). Every four years the Department of Agriculture, Trade and Consumer Protection (“Department”) must review ATCP 51, including securing advice from a Department-appointed committee of experts, to ensure that this rule meets goals in Wis. Stat. § 93.90.

The proposed rule is intended to ensure consistency among related rules (Wis. Admin. Code chs. NR 151 and ATCP 50, respectively referred to as “NR 151” and “ATCP 50”), and will incorporate changes in related rules, which implement a new nutrient management technical standard and additional farm runoff control standards designed to better control discharges of process wastewater, and meet phosphorus index targets for nutrient management. The ATCP 51 revision also addresses issues arising out of the four year review of the siting rule. The proposed revision retains the essential regulatory framework, including the core water quality standards. Improvements in standards and permitting procedures are intended to advance the statutory goal of “providing uniform regulation of livestock facilities” and better balance the factors listed in Wis. Stat. § 93.90 (2) (b), which the Department must use to establish state standards. The rule revisions reflect the recommendations of the technical expert committee (TEC), which originally conducted its review in 2014 and then was reconvened in 2018 to provide input regarding a draft rule developed by the Department.

Foreseeable Environmental Effects

The environmental effects of this rule are positive but small in scope given the limited number of livestock operations affected. This rule retains key features of the original version of ATCP 51 including manure management standards that protect water quality and reduce odor, and a local option to adopt more stringent standards to address local conditions. In addition, this rule implements new and modified standards, including the most current technical standards developed by United States Department of Agriculture’s Natural Resources Conservation Service (“NRCS”),

designed to better protect water quality and prevent soil loss. These updates, along with other changes, will:

- Incorporate the 2017 NRCS waste storage standard that provides additional protection for storage structures built in environmentally sensitive areas.
- Implement stronger protections for surface and groundwater when applying manure, as required by the 2015 version of the NRCS 590 Nutrient Management Standard (“NRCS 590 standard”).
- Incorporate cropland performance standards related to the phosphorous index and the tillage setback.
- Require effective evaluations of storage facilities to allow continued use.
- Require closure of manure storage facilities that cannot be safely operated.
- More effectively control process wastewater discharges from feed storage structures, which is consistent with the latest NRCS technical standards.
- More effectively control runoff from animal lots consistent with the latest NRCS technical standards.

With the adoption of the newest NRCS 590 standard, nutrient management plans will address the following restrictions and prohibitions designed to protect water quality particularly in environmental sensitive landscapes:

- Prohibiting nutrient applications within 50’ of all direct conduits to groundwater (previously only applied to wells) where only grazing and a limited amount of corn starter fertilizer may be applied.
- Prohibiting applications of manure within 100’ of a non-community well, which includes schools, restaurants, churches, and within 1000’ of a community well, unless the manure is treated to reduce pathogen content.
- Prohibiting winter nutrient applications within 300’ of all direct conduits to groundwater, unless manure is directly deposited by gleaning or pasturing animals. This setback increased from the 200’ setback in the 2005-590 NM Standard.
- Prohibiting liquid manure application in February or March on Well Compensation Areas designated by Department of Natural Resources (“DNR”), or on fields with Silurian Dolomite bedrock within 5’ of the surface.
- Limiting manure nitrogen (“N”) applications in late summer or fall using the lower application rate of either the current 2012 version of UW Pub. A2809 or 2015-590 NM Standard available N per acre rate for the situation on sites vulnerable to N leaching high permeability (“P”) soils, or rock (“R”) soils with < 20 inches to bedrock, or wet (“W”) soils with < 12 inches to apparent water table (“PRW Soils”).
- Limiting winter manure applications when frozen or snow-covered soils prevent effective incorporation. The NM plan must limit these applications when slopes are > 6% and if fields have concentrated flow areas using two crop management practices listed in the winter application section of the 2015-590 NM Standard.
- Prohibiting manure applications to areas locally delineated by a Land Conservation Committee as areas contributing runoff to direct conduits to groundwater, unless manure is substantially buried within 24 hours of application.

- Late summer or fall commercial N fertilizer applications are limited in regard to areas within 1,000 feet of a community well, 5 feet or less over bedrock, sites vulnerable to N leaching high permeability (“P”) soils, rock (“R”) soils with < 20 inches to bedrock, or wet (“W”) soils with < 12 inches to apparent water table; rates needed for establishment of fall seeded crops or to meet UWEX Pub. A2809 with a blended fertilizer. The fall N rate was increased from 30 to 36 lbs. of N per acre to match common blended fertilizers if other nutrients are needed.

The change in the odor standard will simplify the management of odor without a measurable change in the level of odor protection. It will continue to support the use of odor control practices by farms. Odor management plans will offer a new feature to address verified complaints about odor problems. It is likely that increases in setbacks may reduce some nuisance impacts related to light, noise, and dust from certain livestock structures. Certain communities will have a streamlined manner for adopting targeted performance standards such as s. NR 151.075 to protect drinking water wells.

Persons or Groups That May Be Affected by the Rule

Town, County, or other Political Subdivisions. This proposed rule affects only political subdivisions that voluntarily elect to regulate livestock facility siting through conditional use permits, licenses, and other forms of approval. As of 2019, 135 towns, counties, and other political subdivisions have adopted siting ordinances. Most towns that adopt ordinances will issue only one permit, with many issuing no permits. Over the next ten years, it is likely that no more than 30 to 40 local governments will adopt new siting ordinances. Over the next ten years, local governments are expected to issue the same number of permits issued during the first 11 years of ATCP 51’s implementation. Many of the 150 permits issued in the next ten years will be issued by a select group of counties including Jefferson, Manitowoc, Shawano, Trempealeau, and Walworth.

See the *Fiscal and Economic Impact Analysis Estimate* for an analysis of costs that political subdivisions may incur as a result of this proposed rule.

Livestock Farmers. This proposed rule affects only a small subset of farmers who plan new or expanded livestock facilities in jurisdictions that require a local permit, license, or approval for such activity. Based on historical permitting by local governments, it is estimated that no more than 150 new or expanding livestock facilities will be impacted over a ten year period, and more than half of these operations are Concentrated Animal Feeding Operations (“CAFOs”), which must meet the new siting requirements to comply with their DNR permits. About 55 non-CAFOs will be most significantly impacted by this rule, and they may need to invest over \$100,000 in new runoff management practices. The *Regulatory Flexibility Analysis* includes an analysis of costs for livestock farmers and the other affected businesses described below.

Crop Consultants and other Professional Planners, Farm Supply, and Service Businesses, Soil Test Laboratories and Manure-Haulers. This proposed rule will minimally increase business for entities that provide cropland related services to farmers. Nutrient management planners will spend more time and charge more for developing plans under this rule. This rule will not

necessarily change demand for manure hauling services, but may increase demand for soil testing.

Agricultural Engineering and Construction Contractors. This rule will marginally increase demand for engineered conservation practices. Operators of new or expanded livestock facilities will need for more engineered solutions to deal with runoff from animal lots and feed storage. Operators of expanded livestock facilities will need engineering expertise to demonstrate that existing structures meet technical standards and to design modifications for structures to bring them into compliance.

Lenders. This rule will benefit lenders that do business with livestock facilities, because it eliminates uncertainties in siting new or expanded livestock facilities.

General Public. The general public will benefit from this rule as a result of increases in farm-focused natural resource protection.

Significant Economic, Social, or Cultural Effects

Economic Effects

Less than 1 percent of Wisconsin's livestock operators will be affected by the rule. The rule will not have a significant effect on agricultural production, the sale or distribution of agricultural products including dairy products, or on the overall economy of this state. While the rule's impact will fall on a small subset of livestock operators, the demands of this rule should be viewed in the larger context of the many programs in which farmers participate. Several new requirements are consistent with recent changes to state and local conservation programs. Changes in common programs such as county manure storage permits and participation in the farmland preservation program have triggered increased recordkeeping related to the updated requirements for nutrient management plans. Cost-share and other programs regularly incorporate newer technical standards, raising the costs of conservation practices, and often triggering increased recordkeeping. In general, livestock operators should be able to incorporate any increased costs resulting from this rule into their business plans and any additional costs should not be a decisive factor in an operator's decision to build or expand their operations.

The rule will result in a slight economic benefit for the businesses professionals such as engineers and nutrient management planners who assist operators with new or expanding livestock facilities.

Setbacks and odor control practices should reduce the nuisance impact of livestock operations on neighbors. While these improvements translate into economic benefits for surrounding neighbors and the community in general, they are not easily quantified, particularly in light of the small group of affected operators.

Social and Cultural Effects

The rule will be neutral in terms of social and cultural effects. The improvements in water quality protections and the continued use of odor control practices may make livestock operations more acceptable to communities. Increased setbacks may reduce nuisance impacts related to light, noise, and dust from production area. The scope of the rule does not address high profile issues such as water usage and management of competing water needs, traffic and road impacts, separation of conflicting land uses (e.g. residential and farms), impacts on land values, and possible disruptions in rural communities created by fewer and larger farms and increased use of migrant labor.

Controversial Public Issues

By the nature of the rule's scope, rule changes primarily focus on new water quality standards which better manage manure from locally permitted livestock operations. While improved standards will protect water in areas immediately surrounding permitted farms, the improved standards on the whole will do little to make improvements statewide, because only livestock operations in jurisdictions that have adopted siting ordinances are required to comply.

As discussed above, the rule does not cover the full impacts of larger livestock operations, nor does it mitigate certain impacts at the level desired by some groups. Despite changes in setbacks, the siting law is a limited tool to manage land use conflicts. Some community members may believe the rule's enhanced standards related to manure and feed management are not sufficient to address local concerns. While ATCP 51 offers communities a pathway to adopt more stringent local standards, local groups may find this option challenging, even with changes adopted in the proposed rule to streamline adoption of certain performance standards as local requirements.

Some livestock operators may be frustrated by the increased management responsibilities, particularly if they have made a conscious effort to operate below the 1,000 animal unit threshold for CAFO permits. The new siting standards are getting closer to the standards that apply to CAFOs, and will require additional investments of time and dollars to implement.

The Department expects to receive public feedback during the hearing and comment process and will consider whether to make changes to the final rule to address public concerns.

Alternatives to this Rule

No Action

Not promulgating the rule would cause the Department to have performance standards and prohibitions, conservation practices, and technical standards in conflict with other related rules such as NR 151 and ATCP 50. Under Wis. Stat. § 93.90 (2) (a), the Department is obligated to promulgate rules specifying standards for siting and expanding livestock facilities, and ensure that its rules are not in "conflict with rules promulgated under §§ 92.05 (3) (c) or (k), 92.14 (8), 92.16, or 281.16 (3) or ch. 283." Inconsistent standards would cause local governments to have requirements in their siting ordinances that are not in conformance with Wis. Stat. § 92.15, which

authorizes local “regulations of livestock operations that are consistent with and do not exceed the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 (3). Stats.”

The Department would be falling short in its duty to develop and maintain the siting standards, which correctly balance the criteria identified in Wis. Stat. § 93.90 (2) (b). For example, older standards incorporated into the siting rule in 2006 may be rooted in technically outdated concepts and not satisfy the criterion that requires that standards be based on the latest peer reviewed research and science.

Taking no action also disregards the results of the rule review the Department conducted to fulfill its duties under Wis. Stat. § 93.90 (2) (c). In addition, the Department would be dismissing the advice it was required to secure from a technical expert committee (TEC) under Wis. Stat. § 93.90 (2) (d). The TEC has provided two sets of recommendations, the first in 2015 to improve the siting standards and the second in 2019 based on its review of a draft rule that incorporated its 2015 recommendations.

Lastly, local governments and livestock operators would be required to follow outdated rule provisions, including technical standards that do not provide improved environmental benefits, and may not adequately address stakeholder needs. Failure to update technical standards will result in inconsistent treatment of farmers who must follow one standard for one program and another standard for a different program.

Modify Rule Provisions

The Department could modify the proposed rule provisions. However, the Department is constrained by a number of factors. This rule was developed in consultation with government agencies, organizations, and industry groups. The rule is the product of an extensive review process. The statutory framework for the rule, including the consistency requirement, directs certain outcomes. Nonetheless, this rule includes specific accommodations to address the needs of the most impacted groups and represents a fair balance between the business concerns and the need for natural resource protection. It also reflects modifications recommended by the TEC in its 2019 review of a draft rule. The Department may make changes to the final version of the rule based on comments and testimony received during public hearings.

Additional Measures to Mitigate Adverse Environmental Effects

The Department does not anticipate any adverse environmental effects as a result of this rule. Therefore, no additional measures will be needed to mitigate any adverse environmental effects.

Conclusion

This rule is intended to ensure consistency among related rules (NR 151 and ATCP 50) and technical standards that apply to livestock operations, resulting in uniform standards for protecting water quality, addressing issues arising out of the mandatory four year reviews of the siting rule, and making improvements to advance the statutory goal of “providing uniform regulation of

livestock facilities” and better balance the factors listed in Wis. Stat. § 93.90 (2) (b). Overall, this rule will have a positive effect on the environment. There are no preferable alternatives to this rule. This rule is not a “major action significantly affecting the quality of the environment,” for purposes of Wis. Stat. § 1.11. No environmental impact statement is required under Wis. Stat. § 1.11, or Wis. Admin. Code ch. ATCP 3.

Signed this _____ day of _____, 2019.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Sara Walling, Administrator
Division of Agricultural Resource Management