

## EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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### 1. Type of Estimate and Analysis

Repeal     Modification

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### 2. Administrative Rule Chapter, Title and Number

ATCP 51, Livestock Facility Siting

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### 3. Date Rule promulgated and/or revised; Date of most recent Evaluation

Wis. Admin. Code ch. ATCP 51 ("ATCP 51") first became effective on May 1, 2006, and has not been substantively modified since. Department of Agriculture, Trade and Consumer Protection ("Department") is required by rule to formally evaluate the rule every four years. In 2014, the Department initiated a formal evaluation of the rule in accordance with s. 93.90 (2) (c), Stats., and the evaluation included recommendations from a technical expert committee (TEC) provided in the fall of 2015. In 2018, the Department reconvened the same group of experts to review a draft rule that incorporated its 2015 recommendations.

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### 4. Plain Language Analysis of the Rule, its Impact on the Policy Problem that Justified its Creation and Changes in Technology, Economic Conditions or Other Factors Since Promulgation that alter the need for or effectiveness of the Rule.

The siting rule established a uniform framework of standards and procedures required to implement Wisconsin's livestock facility siting law, Wis. Stat. § 93.90. The law is intended to provide a clear and predictable system of local regulation of livestock facilities that would protect communities and improve the business environment for the livestock industry. The rule requirements only apply 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).

In fulfillment of its duties prescribed under Wis. Stat. § 93.90(2)(c) and (d), the Department conducted two reviews of ATCP 51 (receiving TEC input and recommendations in 2015 and 2019). The TEC's 2014 review of ATCP 51 identified the need for consistency among related rules (chs. NR 151 and ATCP 50). The review, including input from stakeholders, also identified improvements in procedures and standards. Based on TEC recommendations and other input, the Department proposed revisions built around existing regulatory framework, including the core water quality and odor control practices. To the extent that the rule revision makes changes, improvements in standards 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. In 2018, the Department convened the same group to provide input concerning a draft rule. The 2019 TEC report endorsed key changes proposed in the draft rule, and recommended changes to improve key facets of the draft rule including setbacks, manure storage construction and evaluation, and runoff management.

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### 5. Describe the Rule's Enforcement Provisions and Mechanisms

The Department is required by statute to develop and update standards and procedures that local governments must follow if they have ordinances requiring local permits for new and expanding livestock facilities. Specifically, Wis. Stat. § 93.90(2)(a), directs the Department to develop state standards that are consistent with "rules promulgated under ss. 92.05 (3) (c) and (k), 92.14 (8), 92.16, and 281.16 (3) and ch. 283," and do not conflict with those rules. In developing and revising these standards, the Department must properly balance the factors identified in Wis. Stat. § 93.90(2)(b), including protection of public health or safety, cost-effectiveness, and usability by local governments. Under Wis. Stat. § 93.90(2)(e), the Department is required to develop application materials that local governments must use to determine if a proposed livestock facility complies with applicable state standards. Local governments are required to submit copies of local ordinances and their decisions on permit applications submitted under their ordinances. While the Department collects and reports on these submissions, it has no authority to approve local ordinances or otherwise address the legality of local actions. Since the siting rule is locally administered, and only implemented in jurisdictions that have adopted ordinances to require siting permits, there may be local variations regarding permit enforcement and appeal mechanisms. In addition, Wis. Stat. § 93.90(5) created the Livestock Facility Siting Review Board for livestock operators and aggrieved neighbors to appeal a local permit decision on the grounds that a local government incorrectly

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applied livestock facility siting standards under chapter ATCP 51 or violated the Livestock Facility Siting Law, Wis. Stat. § 93.90.

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6. Repealing or Modifying the Rule Will Impact the Following (Check All That Apply)
- |  |   |
|--|---|
| <input type="checkbox"/> State's Economy                   | <input checked="" type="checkbox"/> Specific Businesses/Sectors |
| <input checked="" type="checkbox"/> Local Government Units | <input type="checkbox"/> Public Utility Rate Payers             |
|  | <input checked="" type="checkbox"/> Small Businesses            |
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7. Summary of the Impacts, including Compliance Costs, identifying any Unnecessary Burdens the Rule places on the ability of Small Business to conduct their Affairs.

### Impact on Business Sectors

The rule changes will have a very limited impact on farms statewide, affecting less than 1 percent of livestock operations in the state. Based on the issuance of 150 permits during the first 11 years of ATCP 51 implementation, the Department estimates over the next ten years that the revised rule will impact no more than 150 new or expanding livestock facilities statewide that are issued local permits for the first time or are reissued permits [100 new permits (10 per year) plus 70 permit reissuances (7 per year) minus 20 that will seek more than one permit reissuance]. Since the rule change will have virtually no impacts on 85 new and expanding livestock facilities that are Concentrated Animal Feeding Operations ("CAFOs") and are required by their DNR permits to meet the higher water quality standards in the revised siting rule, its impact will be most significant for approximately 55 non-CAFOs. It is estimated that the affected livestock operations, nearly all of which are small businesses, will incur an additional \$1.05 to \$1.16 million in annual costs to comply with the changes in the rule revision over a 10 year period.

The rule will have a small, but positive impact on livestock-related businesses. Those businesses, many of which are small businesses, include nutrient management planners, soil testing laboratories, farm supply organizations, agricultural engineering practitioners, and contractors installing farm conservation practices.

The Regulatory Flexibility Analysis, which accompanies this rule, provides a more complete analysis of the issue, including a detailed breakdown of increased costs for livestock operators, a copy of the analysis is attached in answer to question #14).

The Department has made the following rule modifications to limit or offset any unnecessary burdens on livestock operators:

- Enhancements to authorize permit modifications that will reduce permitting steps and costs related to the expansion of a permitted livestock facility.
  - Expanding livestock facilities may use permit modifications to defer costs related to runoff management upgrades until they must submit a full application for a siting permit.
  - The fee structure retains the \$1000 charge for a full permit and adds a \$500 lower cost fee for livestock operations seeking a permit modification.
  - The transition to a new system of setbacks and odor control practices will be eased because livestock facilities operating under the original odor management system have already increased setbacks beyond the minimum and installed odor control practices to obtain a passing odor score.
  - Exclusion of new or expanded structures used to store solid manure from the higher setbacks imposed on manure storage structures.
  - The concept of clusters is repurposed to enable operations to use lower setbacks based on animal units within a cluster, and not based on the animals housed at the entire livestock facility.
  - The revised Worksheet 2 (odor management) simplifies the process of determining compliance, no longer requires worksheet calculations for low odor sources such as animal lots and dairy housing, and allows farmers to use more
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flexible odor management plans to address odors from existing manure storage and other structures with higher odor sources.

- Grandfathering provisions that allow operators to expand manure storage and housing within a setback without the need to add additional odor control practices.
- Clarification of local authority to reduce setback requirements through the use of variances.
- As a result of uniform standards across conservation programs, livestock operators have opportunities to achieve compliance with the new siting standards through other programs. For example, a livestock operator may come into compliance with the 2015 nutrient management standard and other updated standards by participating in other programs such as the farmland preservation program.
- A lower cost option is provided for existing animal lots to meet standards for barnyard runoff control, enabling minor alterations, and allowing continued use and improvement of vegetated treatment areas.
- A lower cost option is provided for small feed storage facilities to meet runoff control standards.
- Delays in processing applications will be reduced by changes including tighter requirements for local governments to make determinations regarding an incomplete application for a siting permit.
- Clarification of the procedures for a CAFO to substitute its DNR permit in place of application worksheets, and modification requiring a CAFO permit holder to certify that the nutrient management plan covers the same size facility.
- All operators of non-CAFOs remain eligible for cost-sharing to install practices to comply with the siting rule.

### State and Local Government

This rule is expected to have no net impact on local and state governments. Since few local governments issue permits and counties are the most active permitting authorities, local governments should be able to absorb the changes as part of routine changes in program administration. On the state level, the initial requirement for staff can be handled by adjustments in assignments.

### Local Governments

The net effect of the rule on local governments will produce no measurable fiscal impacts. For the limited number of jurisdictions that have adopted a local siting ordinance, few will issue more than one permit. However, everyone will need to understand changes in state requirements and make adjustments in their administrative process to implement changes required by this rule. Counties, which issue the most permits of all local governments, have access to conservation staff with experience in making adjustments to incorporate revisions in the technical standards as part of their administration of manure storage ordinances and implementation of state performance standards. Some changes such as the clarification of the process of permit modifications and simplification of the odor standard should reduce workload, while other changes including completion of compliance determination checklists add responsibilities. Rule changes will be incorporated into the required application forms used by local governments to process permit requests, simplifying implementation at the local level.

Local governments may be required to amend their ordinances to implement certain changes including permit modifications and setback changes. The Department will provide statewide training to local government staff, livestock operators and consultants to properly apply the new standards and correctly use the new forms. County land conservation Department staff and agricultural agents can incorporate information on livestock facility siting into their Land and Water Resource Management plans and annual work plans, and use Department staffing grants to cover some costs of program administration. The rule should simplify the process of permitting by eliminating the more complex standard related to odor management. There may be additional work to review compliance with updated standards related to feed storage and animal lots. For some local governments, the maximum fees may not be adequate to recover their costs for processing permit applications. The proposed rule will reduce the uncertainty in the administration and enforcement of siting permits, facilitating local efforts to implement the siting requirements. In the end, local governments have the

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flexibility to determine the amount of work they will perform in processing applications and enforcing permits.

### State Government

Because the proposed rule modifies requirements that are locally implemented, the Department would provide targeted support to local governments. The proposed rule does not increase the workload or add new responsibilities related to the livestock facility siting review board. With short-term changes in work assignments, existing Department staff can develop needed support materials, and provide education and technical assistance for local governments, farmers and consultants to implement the changes. No other increases in state costs are anticipated.

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#### 8. List of Small Businesses, Organizations and Members of the Public that commented on the Rule and its Enforcement and a Summary of their Comments.

Ben Beardmore from Monroe commented that the rule needs to make livestock facilities accountable for road damage, depressed property values, and lost tourism and recreation, and should not be encouraging dairy expansions in a time of low milk prices.

Marathon County Conservation Planning and Zoning (CPZ) Department submitted technical comments on the proposed rule including concerns about the use of odor control practices to reduce setback requirements.

Kim Dupre of Saint Croix County commented that the proposed rule did not adequately account for the costs to the community from manure-contaminated water, noting that rural landowners have to spend their own money to pay for bottled water, new wells, and water filtration systems.

Saint Croix County Community Development Committee and Department identified proposed changes that improved the rule including increased standards for feed storage, closure of unsafe manure storage, cropland performance standards and incentives for greater odor control. The primary concern raised in the comment focused on the need for higher maximum fees: \$1,000 for permit modifications, \$2,000 for full permit applications.

These four comments raise economic issues, some of which are within the scope of DATCP's authority to address through the rule (e.g. fees) and some of which are beyond the DATCP's authority (e.g. depressed property values). Comments relating to procedural or technical issues are best addressed through the public comment process.

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#### 9. Did the Agency consider any of the following Rule Modifications to reduce the Impact of the Rule on Small Businesses in lieu of repeal?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe: Low cost compliance options for smaller livestock facilities and other accommodations described in answer to question # 7.

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#### 10. Fund Sources Affected

- GPR    FED    PRO    PRS    SEG    SEG-S

11. Chapter 20, Stats. Appropriations Affected  
20.115(7)(qd)

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#### 12. Fiscal Effect of Repealing or Modifying the Rule

- |  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> No Fiscal Effect | <input type="checkbox"/> Increase Existing Revenues | <input type="checkbox"/> Increase Costs                                 |
| <input type="checkbox"/> Indeterminate               | <input type="checkbox"/> Decrease Existing Revenues | <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget |
|  |   | <input type="checkbox"/> Decrease Cost                                  |

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#### 13. Summary of Costs and Benefits of Repealing or Modifying the Rule

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The livestock facility siting law was designed to provide predictable, uniform and a less burdensome framework to site new and expanded livestock facilities while protecting water and air quality. With its changes, this rule strikes a fair balance among the competing goals listed in Wis. Stat. § 93.90(2)(b). The integrity, credibility and local acceptance of the rule depends on periodic and systematic rule updates to reflect the best science and capture other needed changes.

By accommodating the needs of the livestock industry, the revised rule supports economic development, and sustains contributions from Wisconsin's agriculture sector, which generate more than \$88.3 billion in economic activity and 413,500 jobs. (Contribution of Agriculture to the Wisconsin Economy: Updated for 2012 by Steven C. Deller, <http://wp.aae.wisc.edu/wfp/contribution-of-agriculture-to-the-wisconsin-economy/>). However, a small group of affected livestock operators will assume additional costs as identified in answer to question # 7.

The revised standards in the siting rule will ensure consistency among related rules (NR 151 and ATCP 50) and local regulations of manure storage, provide improvements that better protect water quality, manage odor using a less complex system, and shore up local administration of the law. Consistency among program requirements reduces complexity and improves compliance. The revised standards for managing runoff from animal lots and feed storage are more protective of natural resources. The new nutrient management standard will reduce the risks of spreading manure during the winter and in environmentally sensitive areas. The changes to the odor standard provide the same protection against odor but will be less complex, more transparent and easier to implement. A full discussion of environmental benefits is provided in the Environmental Assessment prepared in connection with this rule.

While local governments will need to make adjustments in their local siting programs to incorporate new requirements, in the end the changes in state requirements will simplify and clarify local administration of siting ordinances. As noted above, the odor standard will be simplified. By better defining permit modifications, the new rule will reduce the time needed to process permits for expanding livestock operations. Clarifications regarding variances and permit monitoring will improve local administration of siting ordinances.

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14. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes     No

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15. Long Range Implications of Repealing or Modifying the Rule

While the siting rule creates a positive operating environment for livestock facilities, livestock facilities will face implementation costs which the Department has projected over 10 years (See attachment provided in answer to # 14). These costs are incremental, manageable, and can be absorbed as part of the costs of doing business for livestock operations. The additional costs are not triggered until a livestock facility is built or expanded, allowing operators to plan for added expenses. For every livestock facility over 1,000 animal units, the new siting standards for water quality are the same as the requirements for DNR CAFO permits, and will not impose any new requirements (see # 16 below). Several new requirements are consistent with recent changes to state and local conservation programs. A number of programs with significant farmer participation, from county manure storage permits to tax credits claimed under Farmland Preservation ("FPP"), require that farmers have nutrient management plans for their cropland and build manure storage structures. Federal and state cost-sharing and incentive payments regularly incorporate new technical standards as a condition for farmers to receive funding. Likewise local manure storage ordinances have adopted the newest technical standards. The reality is that a livestock operation applying for its first permit under siting rule may already have been required to upgrade the farm's nutrient management plan to receive cost-sharing or claim a FPP tax credit under the Farmland Preservation Program. Many of the non-CAFOs operating under siting permits are closing in on a 1000 animal units and will need to make the investment in more effective runoff technology to meet the "no discharge" standard in a DNR CAFO permit.

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16. Compare With Approaches Being Used by Federal Government

Nearly half of livestock operations affected by this rule are also subject to regulation under the federal Clean Water Act.

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Under delegated authority from U.S. Environmental Protection Agency ("EPA"), DNR adopted Wis. Admin. Code ch. NR 243 ("NR 243") to regulate water pollution discharges from livestock facilities. Under NR 243, livestock facilities with over 1,000 animal units, known as CAFOs, must obtain a DNR WPDES permit. CAFOs must meet standards designed to ensure that the proposed livestock facility will not pollute surface water or groundwater, and may use approvals from DNR to show compliance with Department standards for the issuance of local siting permits, including standards for nutrient management, waste storage facilities and runoff management (the standards parallel WPDES permit standards, and have a similar purpose, although WPDES standards are more restrictive in certain key respects). To qualify for a siting permit, a WPDES permit holder must also demonstrate compliance with Department standards for livestock structures, location on property, and odor management, which are not covered by a WPDES permit.

The Natural Resources Conservation Service ("NRCS"), a branch of the United States Department of Agriculture ("USDA"), develops technical standards for the design and installation of conservation practices, including the NRCS 590 standard for nutrient management. Modified for use in Wisconsin, these technical standards are the foundation for NRCS programs such as the Environmental Quality Incentives Program ("EQIP") and the Conservation Stewardship Program ("CSP"). To promote consistency, state and local governments have incorporated the same technical standards into cost-share, regulatory and other programs. Not only are these technical standards part of ATCP 51, they are critical to the nonpoint rules (ATCP 50 and NR 151) and DNR's WPDES permitting program for CAFOs.

In addition to EQIP and CSP, USDA operates the following programs that may provide incentive payments to help livestock producers implement conservation practices, including practices that may help livestock producers meet livestock facility siting standards under this rule:

- Conservation Reserve Program ("CRP").
- Conservation Reserve Enhancement Program ("CREP").
- Agricultural Conservation Easement Program ("ACEP").

Federal law establishes reporting and other requirements for livestock facilities related to air emissions. For example, large operations must report certain types of releases to local and state agencies, as directed by the Emergency Planning and Community Right-to-Know Act. EPA also has authority to respond to citizen complaints or requests for assistance from state or local government agencies to investigate releases of hazardous substances from farms. Federal law does not directly cover odor management on livestock facilities.

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### 17. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Like Wisconsin, the four surrounding states each have state requirements for new and expanding livestock operations related to facility construction, runoff control and manure management. All four states except for Minnesota have enacted laws that pre-empt or standardize local regulation of livestock facilities with the goal of providing a more uniform and predictable regulatory environment for farm businesses.

#### Illinois

In 1996, Illinois enacted a Livestock Management Facilities Act (LMFA) to create a state framework for regulation of livestock facilities. LMFA, which was updated in 1998, 1999 and 2007, was expressly adopted to provide a framework for the livestock industry to expand while establishing environmental and other safeguards. While Illinois law precludes counties from regulating agricultural uses such as livestock facilities, it allows a county to request a public informational meeting about a proposed livestock facility and submit an advisory, non-binding recommendations related to the facility's compatibility with surrounding land uses, odor control, traffic patterns and other factors. Depending on their size and other factors, livestock facilities may be subject to state requirements for waste storage design, setback distances, odor control for certain structures, certification of livestock managers, waste management plans, and reporting

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of released wastes. Required setback distances for new facilities are scaled by size, starting at 1320 feet for facilities under 1000 Animal Units (AUs).

### **Iowa**

In 2002, Iowa enacted legislation requiring that proposed confined feeding operations meet state standards related to building setbacks, manure storage construction, manure management plans, and air quality (air quality standards are still being developed). In place of local permitting of livestock facilities, Iowa counties have the option of requiring that producers achieve a passing score on the state-approved “Master Matrix,” an assessment tool that identifies practices designed to minimize to air, water and community impacts. State standards for new and expanding facilities include different construction requirements for formed and unformed waste storage structures, and requirements involving manure application related to annual plan updates and phosphorus management. The size of the operation, and type of construction (new or expansion) determine applicable standards such as setbacks, which range from 750 to 3,000 feet.

### **Michigan**

In 1999, Michigan provided “right to farm” protections for farmers who meet “generally accepted agricultural management practices” (GAAMPS). The Right to Farm Act (RFTA) prevents local governments from adopting ordinances that prohibit farming protected under state law, and protects farmers who comply with GAAPS against nuisance actions. While other GAAMPs may apply to livestock operations, new and expanding livestock facilities must follow GAAMPs for site selection and odor control, and develop plans that comply with these standards. Most farms need to receive state verification of GAAMP compliance to maintain RFTA protections and avoid other state actions. Site planning includes meeting setback requirements and evaluation of odor management practices. Setbacks can range from 125 to 1500 feet, depending on the facility size, type of construction (e.g. new or expansion) and type of neighbors, and may be reduced if odor management practices are employed. Odor management plans also may be required. Operations must have a plan to properly manage and utilize manure, and design storage facilities according to technical standards. Producers must also prepare emergency action and other plans. Michigan maintains a complaint system to verify and correct problems to ensure that farms remain in compliance with GAAMPs.

### **Minnesota**

The Minnesota Pollution Control Agency administers rules regulating livestock feedlots, and may delegate authority to counties to administer this program. State feedlot standards cover liquid manure storage systems, water quality setbacks, expansion limitations, and air emissions. Operation and maintenance standards cover discharges from feedlots and feed storage, and land application of manure. The extent of a livestock facility’s obligations depends on its size, and other factors such as pollution risks.

In addition, Minnesota is among the states that still allow local permitting of livestock facilities using conditional use permits. Permits issued under local may impose requirements related to facility size including size caps, minimum acreage requirements, setbacks from neighboring land uses, and odor management. According to a 2007 Summary of Animal-Related Ordinances, 32 county zoning ordinances used simple setback standards, while 22 used a sliding scale. The most common setback from single family residences was ¼ mile, while ½ mile was the common setback for more dense land uses such as schools. Twelve counties addressed odor using the Odor From Feedlots Setback Estimation Tool (OFFSET), which estimates odor impacts based on livestock type, facility size and type, separation distances and odor control practices. These counties either incorporated OFFSET into their ordinances or use OFFSET as part of their planning process to predict odor to help determine separation distances. The survey showed that 20 counties limited the number of animals housed in a feedlot, setting caps between 1,500 to 5,000 AUs. Minnesota has enacted legislation requiring reciprocal setbacks of non-farm land uses whenever a local jurisdiction requires livestock facility setbacks (Wisconsin has no comparable requirement). Reciprocal setbacks are designed to protect livestock facilities, once

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approved, against encroaching development.

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