

**PROPOSED ORDER
OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

The Wisconsin Department of Agriculture, Trade and Consumer Protection proposes the following permanent rule *to repeal* ATCP 51.01 (2) and (Note), ATCP 51.01 (11) (Note), ATCP 51.01 (13) (Note), ATCP 51.01 (16), ATCP 51.01 (26) (Note), ATCP 51.12 (6) (Note), ATCP 51.30 (3) (Note), and ATCP 51.34 (3) (a) (Note) *to renumber* ATCP 51.06 (2) (intro.), (a) and (b), *to amend* ch. ATCP 51 (intro.) (Note), ATCP 51.01 (5) (Note), ATCP 51.01 (7), ATCP 51.01 (19), ATCP 51.01 (21)(intro.), ATCP 51.01 (23), ATCP 51.01 (24), ATCP 51.01 (29), ATCP 51.01 (33), ATCP 51.01 (36) (b) and (c), ATCP 51.01 (42), ATCP 51.01 (43), ATCP 51.01 (44), ATCP 50.02 (b) (Note), ATCP 51.04 (Note), ATCP 51.08 (1) (b) (Note), ATCP 51.10 (1) ATCP 51.10 (3) (d) (Note), ATCP 51.10 (4), ATCP 51.30 (5), ATCP 51.34 (3) (a), ATCP 51.34 (4) (intro.), ATCP 51.34 (4) (b) 2., and ATCP 51.34 (5) (a) 2. and 3.; *to repeal and recreate* ATCP 51.01 (39), ATCP 51.08 (2), ATCP 51.10 (2) and (Note), ATCP 51.12 (1) and (2), ATCP 51.14, ATCP 51.16, ATCP 51.18, ATCP 51.20, ATCP 51.30 (4) and (Note), ATCP 51.34 (4) (a), ATCP 51.34 (5) (b) and (c), Chapter ATCP 51, Appendix A, Application Form and Worksheets, Chapter ATCP 51, Appendix B, Request for Modification of a Local Approval, and Chapter ATCP 51, Appendix C, Notice To Adjacent Property Owners; *and to create* ATCP 51.01 (19m) and (Note), ATCP 51.01 (23m), ATCP 51.01 (33m), ATCP 51.01 (38m), ATCP 51.01 (44m), ATCP 51.06 (b), ATCP 51.10 (4) (Note), ATCP 51.12 (2m) (a) and (b) and (Note), ATCP 51.30 (1) (Note), ATCP 51.30 (4m), ATCP 51.34 (4m), and ATCP 51.34 (5) (a) 3. (Note), *relating to* livestock facility siting and affecting small business.

**Analysis Prepared by the Department of
Agriculture, Trade and Consumer Protection**

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 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).

The Department of Agriculture, Trade and Consumer Protection (“Department”) is required to review Wis. Admin. Code Ch. ATCP 51 every four years in accordance with Wis. Stat. § 93.90(2)(c). To this end, the Department convened a Technical Expert Committee (“TEC”) that provided recommendations regarding changes to ATCP 51.

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”), which were revised to implement a new nutrient management technical standard and additional farm runoff 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 mandatory four year review of this rule. The proposed revision retains the essential regulatory framework, including the core water quality standards. 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. The rule revisions reflect the recommendations of the TEC, which originally conducted its review in 2014 and then was reconvened in 2018 to provide input regarding the draft rule.

Statutes Interpreted

Statutes interpreted: Wis. Stats. §§ 92.05(3)(c) and (k), 93.90 and 281.16(3)(b).

Statutory Authority

Statutory authority: Wis. Stats. §§ 93.07(1), 92.05(3)(c) and (k), 92.14(8), 93.90(2) and 281.16(3)(b).

Explanation of Agency Authority

The Department has general authority to adopt rules interpreting statutes under its jurisdiction (*see* Wis. Stat. § 93.07(1)). The Department is specifically authorized to adopt farm conservation standards (*see* Wis. Stats. §§ 92.05(3)(k) and 281.16(3)(b)). Under Wis. Stat. § 93.90, the Department must do all of the following by rule:

- Develop and update water quality, odor, setback, and other standards for new or expanding livestock facilities that require a permit or other local approval. The standards may incorporate, and may not conflict with, current statutes and rules regulating livestock operations including the performance standards, conservation practices, and technical standards that apply under nonpoint source pollution programs.

- Review ATCP 51 standards and other requirements at least every four years, in consultation with a committee of experts.
- Evaluate whether existing or proposed standards are: (1) protective of public health or safety; (2) practical and workable; (3) cost-effective; (4) objective; (5) based on scientific information; (6) designed to promote the growth and viability of animal agriculture; (7) designed to balance the economic viability of farm operations with natural resource protection and other community interests; and (8) usable by local officials.
- Develop and update application materials and other submissions that livestock operators must provide when applying for local approval, to show that a new or expanding livestock facility will comply with the standards adopted by the Department.
- Specify the information that a local government must include in its decision making record. A local decision must include findings of fact, and must be based on information in the record. This record will be important if an aggrieved party appeals the local government's decision.

Related Statutes and Rules

This rule is related to Wis. Stats. §§ 92.05 (3) (c) and (k), 92.14 (8), 92.15, 92.16, 281.16 (3), and ch. 283, and rules promulgated under these statutes including the nonpoint source pollution control rules, ATCP 50 and NR 151 (collectively referred to as the “nonpoint rules”).

Plain Language Analysis

General Background

This rule:

- Updates the water quality standards, including related Natural Resources Conservation Service (“NRCS”) technical standards, to ensure consistency with provisions in NR 151 and ATCP 50, including incorporation of the 2017 NRCS standard for waste storage structures, 2015 NRCS standard for nutrient management, the 2017 NRCS standard for waste treatment, and the 2016 NRCS standard for vegetated treatment areas.
- Modifies standards (subch. II of ATCP 51) consistent with the requirements in Wis. Stat. § 93.90(2), based on the technical recommendations of the 2014 and 2018 Technical Expert Committees and stakeholder input. Key changes include modifications to setback and odor standards.
- Modifies the procedures (subchs. I and III of ATCP 51) that local governments must follow in issuing a siting permit under a zoning or licensing ordinance including those used to determine completeness of siting applications, modifications to siting permits, the use of checklists to monitor facility compliance, and the fees local governments charge for permit modifications.
- Modifies local permit application forms and worksheets to reflect changes in requirements and to ensure that they are clear, complete, and elicit information that documents compliance with applicable siting standards.
- Makes other changes, clarifications and updates as necessary to improve implementation of the siting rule, consistent with the requirements in Wis. Stat. § 93.90(2).

Contents of this Rule

The following is an analysis of the rule by topics.

Livestock Facilities, Structures, and other Definitions

This rule clarifies that a livestock facility includes the livestock, livestock structures, and parcels on land upon which livestock facility is located, except for pastures and winter grazing areas. Storage structures designed exclusively for process wastewater are excluded from the setback requirements that apply to manure storage structures.

This rule makes changes to definitions related to the prior odor standard, including elimination of the definition for affected neighbor and high use building, and modifications to the definition for waste storage structure to exclude solid manure from setback and odor requirements.

The definition of related facilities is expanded to cover process wastewater storage and transfer using or sharing the same structures, or same field for land application.

To achieve consistency with the nonpoint rules (ATCP 50 and NR 151), this rule adds or adjusts definitions of key terms such as manure, pasture, process wastewater, significant discharge, and waste transfer system.

Ordinances and Permits Filed with the Department

This rule will require local governments to electronically submit new or revised ordinances or permits to the Department whenever it incorporates standards from this rule in a local ordinance, enacts more stringent local ordinance standards, or takes official action on a permit application.

Duration of Local Approval

A livestock operator must begin constructing all new or expanded livestock housing or waste storage structures within two years after the local approval is granted, except where the construction of a proposed structure is required to control a discharge, in which the construction must be completed within six months of a permit approval.

Application for Local Approval

To obtain local approval, an operator must complete the *application form* and *worksheets* that are made part of this rule. The application materials have been modified to incorporate the changes described in this rule summary.

Key changes to the application materials include:

- On the site map, the applicant must assign unique identifiers to show all existing and proposed livestock structures, and use these unique identifiers when referencing livestock structures in the application worksheets.

- Odor Management Plans will be retooled and the application will contain new criteria for developing acceptable plans.
- The applicant's acknowledgement of other laws will be removed from the application.
- Odor management standard (worksheet 2) will be modified to reflect the new system for managing odor.
- Waste and nutrient management (worksheet 3) will change to reflect the method for estimating the amount of manure generated from a facility to better correspond with nutrient management planning, add cropland performance standards, and eliminate the nutrient management planning exemption for operations under 500 Animal Units ("AUs").
- Waste storage facilities (worksheet 4) will change requirements regarding closure of manure storage structures.
- Runoff management (worksheet 5) will be revised to reflect changes in managing runoff related to animal lots, feed storage, and milking center wastewater.

State and Local Standards

This rule clarifies that a local government may not grant a variance to exempt a livestock facility from complying with the state standards, except that it may reduce setback requirements.

Local governments are provided the authority to impose additional manure spreading restrictions consistent with applicable performance standards and prohibitions in ch. NR 151 without making the public health and safety findings for adoption of more stringent local standards but cannot use this authority to adopt a targeted standard that does not apply to the geographic area under the political subdivision's jurisdiction.

Property Line and Road Setbacks

Except for manure storage and certain types of housing, this rule retains property line and road setback requirements for livestock structures for facilities under 2,500 animal units and increases the maximum property line and road setback to 300 feet for facilities with 2,500 animal units or more.

This rule:

- Establishes minimum property line setbacks for manure storage structures based on the size of the livestock facility.
- Establishes minimum property line setbacks for certain types of livestock housing based on the size of the livestock facility.

If a livestock facility is organized in one or more clusters (a grouping of livestock structures separated from another grouping by a 1,000 or more feet), the livestock facility may follow the setback requirements based on the AUs in each cluster. This option is not available if manure is comingled among clusters.

This rule retains provisions that allow limited expansion of manure storage and housing structures within setback areas, as long as the expansion is away from the property line or public

road right-of-way to which the local setback applies. In addition, as noted below, this rule allows operators to reduce setbacks for new or expanded manure storage and certain types of housing structures through the implementation of odor control practices.

Odor Management; Livestock Structures

This rule provides for the phase out of the odor standard, originally adopted in 2006. In its place, this rule adopts a system of setbacks for high odor sources (manure storage and certain types of housing). Under the new system, operators will not be required to address odor from low odor sources such as animal lots and freestall barns. With its emphasis on setbacks, the new system is similar to odor management approaches in surrounding states, and it uses most of the odor control practices originally developed for the 2006 odor standard.

For livestock operations issued a permit prior to the effective date of this rule revision, they must continue to meet the requirements of the odor standard in their permits. When they are granted a new local approval, they are released from these requirements unless they have manure storage located within 600 feet of the facility's property line or livestock housing located within 400 feet of the facility's property line. In this case, they need to develop an odor management plan for these structures, and the plan should incorporate odor control practices which the operator agreed to implement as part of a local approval granted before the effective date of the rule change unless the operator provides a financial or other justification for discontinuation of the practice. Livestock facilities seeking local approval for the first time after adoption of this rule revision will not need to complete an odor management plan for existing manure storage and livestock housing, unless these structures are located within the separation distances discussed above.

For new or expanded manure storage structures and certain types of livestock housing, the new odor standard requires that operators meet setbacks distances determined using OFFSET. Livestock operators may earn credit for odor control practices in the form of reductions to setback requirements, allowing construction within the setback areas. The rule no longer supports certain low credit odor control practices that are not reliable, difficult to document or have uncertain effectiveness including diet manipulation, windbreaks (includes manmade berms), and chemical or biological additives. Worksheet 2 has been modified to enable operators to document odor control practices and calculate the reduced setbacks based on installation and maintenance of these practices. Worksheet 2 includes revised specifications for the odor control practices that the operator must meet to claim a credit.

Waste and Nutrient Management

To achieve maximum consistency with nonpoint rules, this rule requires operators to have and follow a nutrient management plan that complies with ATCP 50. The 2015 NRCS 590 Standard is now the basis for nutrient management plans. In addition, this rule adds requirements that livestock operators comply with NR 151 cropland performance standards related to soil erosion, a tillage setback, and the phosphorus index.

Regarding nutrient management plans, this rule clarifies that a plan must account for all land applications of manure and related waste generated by the maximum number of animal units

authorized by a permit or other local approval. For the purposes of determining waste generation, this rule and related Worksheet 3 now use the Wisconsin Conservation Planning Technical Note WI-1 (February, 2016) to estimate quantities of manure.

Worksheet 3 will require that operators attach map(s) showing the land where waste will be applied and any restrictions limiting the application of waste to that land. Additional documentation may be required by the local government to verify that rental land is available.

A new nutrient management checklist is incorporated to document compliance with the 2015 NRCS 590 Standard.

This rule eliminates the option for livestock facilities under 500 AUs to avoid a nutrient management plan if the operation has an adequate land base.

This rule clarifies that local governments may require all operators with siting permits (including livestock facilities with over 1,000 AUs known as Concentrated Animal Feeding Operations “CAFOs”) to submit documentation related to annual nutrient management updates, and monitor an operator’s compliance with a nutrient management plan. Under Wis. Admin. Code § ATCP 50.04(3)(gm), a nutrient management plan must be reviewed annually to determine whether the plan accurately reflects the planned cropping, tolerable soil loss, nutrient application rates, and application methods, and shall be updated by a nutrient management planner when necessary to reflect changes to planned activities.

Waste Storage Facilities

This rule clarifies that new or expanded waste storage structures, designed solely for storage of process wastewater, must meet NRCS technical guide waste storage facility standard 313 or ch. NR 213, whichever applies.

Changes to the waste storage facility Worksheet 4 require the operator to identify all existing, modified, and new storage facilities by a unique identifier.

For existing storage facilities, which can only be used if properly certified, this rule makes changes in how evaluations must be conducted. It provides more flexibility for certification by creating a document-only option (e.g. manure storage ordinance certification) for a facility constructed within the last three years according to then-existing NRCS standards, and visual inspections for any facility constructed within the last ten years according to then-existing NRCS standards. However, more effective inspection and documentation requirements apply to older storage facilities, including the need to empty the facility before inspection. A full investigation of an emptied storage should verify that the bottom of structure corresponds with built plans, if any, or has adequate separation distance to groundwater. If there is no reliable documentation, a full inspection including test pits may be required, and a local government may request a written report documenting the methods used for evaluation and the findings in support of the conclusions reached in the evaluation. The rule also requires that the operator perform subsequent evaluations at certain intervals after an initial evaluation is conducted.

New or substantially altered waste storage structures and transfers systems must be designed and constructed according to the following standards:

- NRCS technical guide manure storage facility standard 313 (October, 2017R) and related liner standards. (NRCS 520, 521 and 522)
- NRCS technical guide manure transfer standard 634 (January, 2014).

This rule will require that an operator close an existing waste storage facility that cannot be certified as safe to use.

This rule clarifies the options for a local government to monitor compliance including verification that a new or modified waste storage facility is constructed according to specifications. In addition to inspections, the local government may require applicants to submit documentation verifying that new and substantially altered facilities are constructed according to technical standards.

Runoff Management

Every new or substantially altered animal lot must be designed and constructed according to NRCS technical guide vegetated treatment area standard 635 (January, 2016R). This standard may require operators to install roofing or route runoff to storage in place of using a vegetated treatment area.

Existing animal lots may still use the *BARNY* runoff model to predict annual phosphorus runoff from the animal lot. A lot may still qualify as existing with minor alterations, which are now more clearly defined in this rule. Under this rule, operations must meet the more demanding annual discharge standard of less than five lbs. of phosphorus, if the animal lot is located within:

- 1,500 feet from navigable lakes, ponds and flowages
- 450 feet from wetlands and navigable streams and rivers
- 750 feet from conduits to groundwater
- 450 feet from surface inlets that discharge to navigable waters
- 225 feet from channelized flow (i.e., a drainage area of ≥ 5 acres)
- 225 feet from subsurface drains

Structures located outside the boundaries indicated above may meet the runoff standard by documenting a discharge of less than 15 lbs. of phosphorus annually.

This rule clarifies the prohibition against direct runoff from animal lots to any direct conduit to groundwater (such as a sinkhole) and now includes runoff to surface waters of the state.

While this rule holds livestock operations to a standard of no significant discharge, it does make changes in runoff standards for animal lots, as well as feed storage areas, to account for the U.S. Environmental Protection Agency's "no discharge" standard for animal feeding operations, and changes in the NRCS technical standards designed to implement the federal "no discharge" standard.

This rule substantially changes requirements for feed storage facilities. Existing buildings, bunkers, or paved areas used to store feed must be evaluated to determine whether they meet technical standards, are in good repair and do not have signs of a significant discharge. A local government may request a written report documenting the methods used for evaluation and the findings in support of the conclusions reached in the evaluation. New operating requirements for existing feed storage include the diversion of clean water and collection and storage of leachate and initial runoff.

Every new or substantially altered feed storage structure, including any unroofed building, bunker or paved area used for feed storage or handling, now must be designed, constructed and maintained in accordance with NRCS technical guide waste treatment standard 629 (January, 2017), with the leachate and contaminated runoff from such storage structures being collected and stored for future land application, or treated in accordance with NRCS technical guide vegetated treatment area standard 635 (September, 2016R).

If a new or expanded feed storage structure is less than one acre and not located in or near a sensitive area, the new or altered portions of feed storage structure must meet design requirements for the floor of the structure, but may manage runoff in any manner that avoids a significant discharge.

To ensure consistency with the prohibition against significant discharges in the nonpoint rules (see Wis. Admin. Code § NR 151.055), this proposed rule reflects current standards and practices for managing milkhouse wastewater. Storing waste is required except for small operations that generate less than 500 gallons of milking center wastewater daily.

Existing clean water diversion requirements related to feed storage have been expanded to be consistent with NR 151, which requires diversion if structures are located within 300 feet of wetlands and 500 feet from any conduit to groundwater.

CAFO Permit Substitutions

This proposed rule more clearly defines how CAFOs can demonstrate compliance with siting standards based on a Wisconsin Pollutant Discharge Elimination System (WPDES) permit. Because the Department of Natural Resources (“DNR”) does not issue CAFO permits with a maximum number of animal units, this rule eliminates the requirement that CAFOs provide WPDES permits documenting the same number of animal units as sought for local approval under the siting rule. This rule still allows CAFOs to demonstrate compliance with the nutrient management requirements based on a WPDES permit, but imposes more specific requirements to submit a nutrient management checklist that was previously submitted to DNR as long as the nutrient management plan covers the same or greater number of animal units than the number for which the operator seeks local approval. CAFOs also must demonstrate compliance with the siting standards related to manure storage and runoff management by submitting plans and specifications approved by DNR for relevant livestock structures. Also, the applicant must certify that the livestock facility has met all WPDES permit conditions, and does not have any WPDES permit violations.

Permit Modifications

This rule establishes a clear framework to allow permit modifications for expanding livestock facilities previously granted local approval. This rule specifically:

- Limits the fee to \$500 or less.
- Sets criteria to qualify for a permit modification for livestock operators who plan either to (1) construct or alter one or more livestock structures without increasing the maximum number of animal units housed on the livestock operation or (2) increase the maximum number of animal units by up to 20 percent (but in no case increase more than 1000 animal units) without constructing or altering any livestock structures.
- Establishes a procedure for processing modifications that simplifies the steps (e.g. no written decision with findings) and reduces the waiting time to no more 45 days.

Complete Application

In making a completeness determination regarding an application for local approval, a local government will be required to use a Department-approved form to document specific items that are missing from the application. Items on the checklist not identified by the local government are deemed complete, and an applicant is only required to submit additional materials identified by the local government on the checklist to receive a completeness determination.

Terms of Approval

After a local government receives an application, the local government shall notify the applicant that prior to a final decision on the application construction activities at the livestock facility shall be limited to grading.

Upon approval of an application, a local government may only impose conditions related to an operator's compliance with the standards authorized in subch. II of ATCP 51. Any conditions attached to a local approval must be described in the final written decision granting the approval.

Compliance Monitoring

This rule clarifies the options for a local government to monitor compliance, including verification that a new or modified waste storage facility is constructed according to specifications. In addition to inspections, the local government may require submission of a construction plan, drawings reflecting design changes made during construction, and documentation certifying that the facility was installed in accordance with technical standards.

Standards Incorporated by Reference

Pursuant to Wis. Stat. § 227.21, the Department intends to request permission from the Attorney General to incorporate the following standards by reference in this rule, without reproducing the complete standards in this rule:

- NRCS technical guide waste storage facility standard 313 (October, 2017R) NRCS technical guide composting facility standard 317 (January, 2017).

- NRCS technical guide waste facility closure standard 360 (May, 2018).
- NRCS technical guide anaerobic digester standard 366 (January, 2018).
- NRCS technical guide roofs and covers standard 367 (April, 2016).
- NRCS technical guide windbreak/shelterbelt establishment standard 380 (October, 2016).
- NRCS technical guide pond sealing or lining – compacted soil treatment 520 (October, 2017R).
- NRCS technical guide pond sealing or lining – geomembrane or geosynthetic clay liner 521 (October, 2017R).
- NRCS technical guide pond sealing or lining – concrete 522 (October, 2017R).
- NRCS technical guide nutrient management standard 590 (December, 2015).
- NRCS technical guide feed management standard 592 (October, 2017).
- NRCS technical guide waste treatment standard 629 (January, 2017).
- NRCS technical guide waste separation facility standard 632 (April, 2014).
- NRCS technical guide waste transfer standard 634 (January, 2014).
- NRCS technical guide vegetated treatment area standard 635 (September, 2016R).
- NRCS Wisconsin Conservation Planning Technical Note WI-1, “Nutrient Management” (February, 2016) and July 2016 Appendix 1.

Copies of these standards may be obtained from NRCS, and will be on file with the Department and Legislative Reference Bureau. Copies are not reproduced in this rule.

Summary of, and Comparison with, Existing or Proposed Federal statutes and Regulations

Nearly half of livestock operations affected by this rule are also subject to regulation under the federal Clean Water Act. Under delegated authority from EPA, the DNR adopted Wis. Admin. Code ch. NR 243 (“NR 243”) to regulate water pollution discharges from livestock facilities. Under NR 243, 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 stricter in some respects). To qualify for a siting permit, a WPDES permit holder must also demonstrate compliance with Department standards for location of livestock structures on property and odor management, which are not covered by a WPDES permit.

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.

Comparison with Rules in Adjacent States

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. Except for Minnesota, these states have enacted laws that preempt 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 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 of released wastes. Required setback distances for new facilities are scaled by size, starting at 1,320 feet for facilities under 1,000 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 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 GAAMPS 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 1,500 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 compliance 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 ordinances may impose requirements related to facility size including size caps, minimum acreage requirements, setbacks from neighboring land uses, and odor management. According to the *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 used 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 approved, against encroaching development.

Summary of Factual Data and Analytical Methodologies

This rule incorporates and is consistent with performance and conservation practice standards developed as part of recent revisions to ATCP 50 and NR 151. In addition, this rule follows the practice of the nonpoint rules by referencing the most current technical standards developed by NRCS for installation of conservation practices including the incorporation of the 2015 standard for nutrient management planning. In developing technical and other standards, the responsible government agencies have followed similar methodologies to ensure the use of the best available science, address feasibility considerations, and secure input for stakeholders. For example, the most recent nutrient management standard incorporated into ATCP 50 underwent a rigorous process of development spearheaded by NRCS with technical assistance from agronomists, farmers, UW scientists, and agency staff. The NRCS technical standards for managing runoff from animal lots and feed storage, which are incorporated into this rule, underwent the same rigorous and balanced process as part of their development. As with the original 2006 version of ATCP 51, this rule revision relies on OFFSET in developing the framework for managing odors and establishing setbacks. As mandated under Wis. Stat. § 93.90(2)(d), the Department received advice from a technical expert committee (“TEC”) for improvement of the standards in the siting rule in 2015 and 2019. While the experts approached their assignment from a scientific perspective, their recommendations considered economic and other factors listed in Wis. Stat. § 93.90 (2) (b) relevant to the development of siting standards. The proposed rule reflects the TEC recommendations including the endorsement of key changes to control odor with setbacks and management plans, options for managing runoff from new or expanded feed storage, and improvements to the manner in which the draft rule addresses evaluations of existing manure storage structures.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

In preparing its analysis and supporting documentation, the Department consulted with stakeholders, considered the 2015 and 2019 final reports of the TEC, and estimated costs using a methodology similar to the one used when ATCP 51 was originally adopted in 2006.

Effects on Small Business

The proposed rule changes will have a very limited impact on farms statewide, affecting less than one percent of livestock operations in the state. Based on past trends in the livestock industry and local permitting activity, which may not be predictive of future activity, it is estimated that in the next ten years 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 this rule change is anticipated to have virtually no impacts on 85 new and expanding livestock facilities that are 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 this rule revision over a 10 year period.

This rule will have a small, but positive impact on businesses other than livestock operators. 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 Initial 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.

Department Contact

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Place Where Comments Are To Be Submitted and Deadline for Submission

Questions and comments related to this rule may be directed to:

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Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this draft rule is approved by the Board of Agriculture, Trade and Consumer Protection.

**CHAPTER ATCP 51
LIVESTOCK FACILITY SITING**

- 1 **SECTION 1.** Ch. ATCP 51 (intro.) (Note) is amended to read:
- 2 This chapter is adopted under authority of ss. 93.07 (1) and 93.90 (2), Stats. This chapter
- 3 interprets Wisconsin’s livestock facility siting law, s. 93.90, Stats., which is an enactment of
- 4 statewide concern for the purpose of providing uniform regulation of livestock facilities.

1 According to the livestock facility siting law, a county, town, city or village (“political
2 subdivision”) may not prohibit or disapprove a new or expanded livestock facility of any size
3 unless one of the following applies:

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

5 The site is located in an agricultural zoning district where the livestock facility is
6 prohibited. A prohibition, if any, must be clearly justified on the basis of public health or safety.

7 The livestock facility siting law limits exclusionary zoning based solely on livestock facility size.

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

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

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

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

22 Some, but not all, political subdivisions require local approval of new or expanded

1 livestock facilities. The livestock facility siting law *does not require* local approval. But *if* local
2 approval is required, the political subdivision must grant or deny approval based on this chapter.
3 A political subdivision may not consider other siting criteria, or apply standards that differ from
4 this chapter, except as provided in the livestock facility siting law or this chapter.

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

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

12 ~~“This [law] is an enactment of statewide concern for the purpose of providing~~
13 ~~uniform regulation of livestock facilities.”~~

14 ~~“...[T]he department shall consider whether [livestock facility siting standards]~~
15 ~~are all of the following:~~

- 16 ~~• Protective of public health or safety.~~
- 17 ~~• Practical and workable.~~
- 18 ~~• Cost-effective.~~
- 19 ~~• Objective.~~
- 20 ~~• Based on available scientific evidence that has been subjected to peer review.~~
- 21 ~~• Designed to promote the growth and viability of animal agriculture in this state.~~
- 22 ~~• Designed to balance the economic viability of farm operations with protecting natural~~
23 ~~resources and other community interests.~~

1 • ~~Usable by officials of political subdivisions.”~~

2 **SECTION 2.** ATCP 51.01 (2) and (Note) is repealed.

3 **SECTION 3.** ATCP 51.01 (5) (Note) is amended to read:

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

8 **SECTION 4.** ATCP 51.01 (7) is amended to read:

9 “~~Certified agricultural engineering~~ conservation engineering practitioner” means a
10 ~~agricultural engineering~~ person who is certified as a conservation engineering practitioner ~~who is~~
11 ~~certified~~ under s. ATCP 50.46 with a rating under s. ATCP 50.46 (5) that authorizes the
12 practitioner to certify every matter that the practitioner certifies under this chapter.

13 **SECTION 5.** ATCP 51.01 (11) (Note) is repealed.

14 **SECTION 6.** ATCP 51.01 (13) (Note) is repealed.

15 **SECTION 7.** ATCP 51.01 (16) is repealed.

16 **SECTION 8.** ATCP 51.01 (19) is amended to read:

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

1 **SECTION 9.** ATCP 51.01 (19m) and (Note) are created to read:

2 “Livestock housing” means a livestock structure with a roof and walls used to confine
3 livestock but does not include calf hutches. For the purposes of ss. ATCP 51.12 and 51.14,
4 livestock housing is classified as Category 1 or 2 based on estimated odor generation. Category 1
5 housing encompasses pork gestation / farrow / nursery with slatted floor, and pork finishing with
6 slatted floor. Category 2 encompasses dairy housing with alley flush system; beef housing with
7 slatted floor; pork finishing scrape systems to storage; pork pull plug to storage; and poultry
8 (layers) and ducks.

9 **Note:** Housing classifications are based on the odor generation numbers for specific
10 housing types in Appendix A of ch. ATCP 51, Worksheet 2, Chart 2 published in the
11 Administrative Register, April 2006, No. 604.

12 **SECTION 10.** ATCP 51.01 (21) (intro.) is amended to read:

13 “Local approval” means an approval, required by local ordinance, of a new or expanded
14 livestock facility. “Local approval” includes a license, permit, permit modification, special
15 exception, conditional use permit or other form of local authorization. “Local approval” does
16 not include any of the following:

17 **SECTION 11.** ATCP 51.01 (23) is amended to read:

18 “Manure” ~~means excreta from livestock kept at a livestock facility. “Manure” includes~~
19 ~~livestock bedding, water, soil, hair, feathers, and other debris that becomes intermingled with~~
20 ~~livestock excreta in normal manure handling operations~~ has the meaning given in s. ATCP 50.01
21 (20).

22 **SECTION 12.** ATCP 51.01 (23m) is created to read:

1 “Manure storage structure” means a waste storage structure designed and operated
2 primarily to store manure. For the purposes of ss. ATCP 51.12 (2) and 51.14, “manure storage
3 structure” does not include any of the following:

- 4 (a) A structure used to collect and store waste under a livestock housing facility.
- 5 (b) A manure digester consisting of a sealed structure in which manure is subjected to
6 managed biological decomposition.
- 7 (c) A structure designed, constructed and operated solely for the purpose of collecting
8 and storing agricultural wastewater including leachate and contaminated runoff from
9 stored feed.
- 10 (d) A structure designed, constructed, and operated solely for the purpose of storing
11 manure with 12 percent solids or more.

12 Note: See s. NR 243.03 (32).

13 **SECTION 13.** ATCP 51.01 (24) is amended to read:

14 “Minor alteration” of a ~~livestock structure~~ an animal lot means a repair or improvement
15 ~~in the construction of an existing livestock structure that does not result in a substantially altered~~
16 ~~livestock structure~~ that may include lot management such as cleaning; shaping, seeding and other
17 non-structural changes to address flow issues; and installation of conservation practices such as
18 roof gutters, diversions, surface inlets, underground outlets, and gravel spreaders.

19 **SECTION 14.** ATCP 51.01 (26) (Note) is repealed.

20 **SECTION 15.** ATCP 51.01 (29) is amended to read:

21 “Pasture” ~~means land on which livestock graze or otherwise seek feed in a manner that~~
22 ~~maintains the vegetative cover over all of the grazing or feeding area~~ has the meaning given in s.
23 NR 151.015 (15m).

1 **SECTION 16.** ATCP 51.01 (33) is amended to read:

2 “Property line” means a line that separates parcels of land owned by different persons.

3 For purposes of applying setbacks, property lines are measured from livestock structures to the
4 parcel or other property boundary separating land owned by different persons.

5 **SECTION 17.** ATCP 51.01 (33m) is created to read:

6 “Process wastewater” has the meaning given in s. NR 243.03 (53).

7 **SECTION 18.** ATCP 51.01 (36) (b) and (c) is amended to read:

8 (b) They use or share one or more of the same livestock structures to collect, transfer or
9 store manure, or process wastewater.

10 (c) ~~At least a portion~~ Any of their manure or process wastewater is applied to the same
11 landspreading acreage.

12 **SECTION 19.** ATCP 51.01 (38m) is created to read:

13 “Significant discharge” means a discharge of process wastewater as defined in s. NR
14 151.055 (3).

15 **SECTION 20.** ATCP 51.01 (39) is repealed and recreated to read:

16 “Site that is susceptible to groundwater contamination” has the meaning given in s. NR
17 151.015 (18).

18 **SECTION 21.** ATCP 51.01 (42) is amended to read:

19 “Waste” means manure, milking center waste, leachate, contaminated runoff and other
20 organic waste generated by a livestock facility.

21 **SECTION 22.** ATCP 51.01 (43) is amended to read:

22 “Waste storage facility” means one or more waste storage structures. “Waste storage
23 facility” includes waste transfer systems consisting of stationary equipment and piping used to

1 load or unload a waste storage structure if the equipment is specifically designed for that purpose
2 and is an integral part of the facility. “Waste storage facility” does not include equipment used
3 to apply waste to land.

4 **SECTION 23.** ATCP 51.01 (44) is amended to read:

5 “Waste storage structure” means a waste storage impoundment made by constructing
6 embankments, excavating a pit or dugout, or fabricating a structure. “Waste storage structure”
7 does not include waste transfer systems and equipment used to apply waste to land.—~~For~~
8 ~~purposes of ss. ATCP 51.12 (2) and 51.14, “waste storage structure” does not include any of the~~
9 ~~following:~~

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

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

13 **SECTION 24.** ATCP 51.01 (44m) is created to read:

14 “Waste transfer system” is a system of conduits or permanent equipment used to convey
15 wastes from a source to another location such a waste storage structure, treatment facility,
16 loading area or cropland. If a transfer system is designed to retain wastes for longer than 30 days,
17 then the system shall be classified as a waste storage structure.

18 **SECTION 25.** ATCP 51.02 (1) (b) (Note) is amended to read:

19 Some, but not all, political subdivisions require local approval of new or expanded
20 livestock facilities. ~~The livestock facility siting law does not require local approval. But if~~ If
21 local approval is required, the political subdivision must grant or deny approval based on this
22 chapter. A political subdivision may not require local approval for new or expanded livestock
23 facilities smaller than 500 animal units, except as specifically authorized by the livestock facility

1 siting law and this chapter. This chapter does not grant authority nor limit a political
2 subdivision's authority to regulate the raising of small numbers of livestock (i.e. hobby farms)
3 for non-commercial purposes where the activity generates less than \$6,000 in gross annual
4 income. A political subdivision may not consider other siting criteria, or apply standards that
5 differ from this chapter, except as provided in the livestock facility siting law or this chapter.

6 ~~A political subdivision may not require local approval for new or expanded livestock~~
7 ~~facilities smaller than 500 animal units, except as specifically authorized by the livestock facility~~
8 ~~siting law and this chapter. A political subdivision may apply a lower size threshold adopted by~~
9 ~~ordinance prior to July 19, 2003 if that threshold is expressed as a specific number of animals or~~
10 ~~animal units. A local threshold expressed in locally defined "animal units" may meet this test,~~
11 ~~because it effectively indicates a specific number of animals, even if the local ordinance~~
12 ~~definition of "animal units" differs from the definition in this chapter. However the local~~
13 ~~application and approval process must use the "animal units" definition in this chapter.~~

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

19 ~~A livestock operator is not required to obtain local approval under this chapter for the~~
20 ~~construction, repair or improvement of livestock structures, unless the operator also adds "animal~~
21 ~~units" for which local approval is required (local building codes and manure storage ordinances~~
22 ~~may apply). However, a political subdivision may withdraw a local approval granted under this~~
23 ~~chapter if the livestock operator does any of the following (see s. ATCP 51.34 (4)):~~

1 • ~~Without local authorization, alters the approved livestock facility in a way that~~
2 ~~materially violates the terms of the local approval.~~

3 • ~~Alters the approved livestock facility so that the altered facility violates the standards in~~
4 ~~subch. II.~~

5 **SECTION 26.** ATCP 51.04 (Note) is amended to read:

6 This section accounts for normal day-to-day and seasonal variations in livestock
7 numbers, as livestock are born, received, moved and marketed. See s. 93.90 (3) (f), Stats.

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

13 ~~“Animal unit” equivalents, for different species and types of livestock, are shown in~~
14 ~~Appendix A, worksheet 1 (animal units). The “animal unit” equivalents are based on s. NR~~
15 ~~243.03 (3) as it existed on April 27, 2004 (the date on which the livestock facility siting law,~~
16 ~~2003 Wis. Act 235, was published). See s. 93.90 (1m) (a), Stats., and s. ATCP 51.01 (4).~~

17 **SECTION 27.** ATCP 51.06 (2) (intro.), (a) and (b) are renumbered ATCP 51.06 (2) (a),
18 1. and 2.

19 **SECTION 28.** ATCP 51.06 (2) (b) is created to read:

20 (b) A livestock operator may apply for modification under s. ATCP 51.34 (5) to expand
21 a previously approved livestock facility

22 **SECTION 29.** ATCP 51.08 (1) (b) (Note) is amended to read:

1 For example, if a livestock operator gets local approval under this chapter to expand from
2 400 “animal units” (existing) to 900 “animal units”, the livestock operator may implement the
3 approved expansion over a period of time chosen by the livestock operator. The operator does
4 not lose the approval merely because the operator implements the expansion in gradual stages, or
5 fails to expand by the full amount authorized. ~~However, the operator must at least begin the~~
6 ~~expansion within 2 years, or face possible loss of approval. See sub. (2).~~ While the operator has
7 flexibility in constructing livestock structures and populating with livestock, the operator is
8 subject to the requirements in sub. (2).

9 **SECTION 30.** ATCP 51.08 (2) is repealed and recreated to read:

10 (a) Except as provided in par. (b), a political subdivision may withdraw a local approval
11 granted under this chapter unless the livestock operator does all of the following within 2 years
12 after a local approval is granted:

13 1. Begins populating the approved livestock facility.

14 Note: At the time an application for approval is submitted, a livestock operator must
15 have the land base to implement a nutrient management plan for the maximum number of animal
16 units requested in the application, and does not have 2 years to acquire the necessary land base
17 through rental agreements or otherwise.

18 2. Begins construction on every new or expanded livestock housing structure, and every
19 new or expanded waste storage structure, proposed in the application for local approval.

20 (b) Within 6 months of a local approval, a political subdivision may require an operator
21 to complete construction of one or more conservation practices identified in the application if
22 these practices are needed to control a documented discharge from an existing or altered animal
23 lot or waste storage structure.

1 **SECTION 31.** ATCP 51.10 (1) is amended to read:

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

5 **SECTION 32.** ATCP 51.10 (2) and (Note) are repealed and recreated to read:

6 (a) STATE STANDARDS INCORPORATED IN LOCAL ORDINANCE. Beginning on
7 November 1, 2006, a political subdivision may not deny a local approval covered by this chapter
8 unless the political subdivision incorporates by local ordinance the standards in this subchapter
9 and the application requirements in subch. III. A local ordinance may incorporate the standards
10 and application requirements by reference, without reproducing them in full.

11 (b) Except as provided in s. ATCP 51.12, a political subdivision may not grant a variance
12 to exempt a livestock facility from complying with the state standards required under this
13 chapter.

14 **SECTION 33.** ATCP 51.10 (3) (d) (Note) is amended to read:

15 ~~See s. 93.90 (3) (a)~~s. 92.15, Stats. A political subdivision shall obtain separate state
16 approval to impose requirements that exceed state water quality standards or practices.

17 **SECTION 34.** ATCP 51.10 (4) is amended to read:

18 Within 30 days after a political subdivision enacts an ordinance provision under sub. (2)
19 or (3), the political subdivision shall electronically file a copy of the ordinance provision with the
20 department. Failure to file the ordinance provision with the department does not invalidate the
21 ordinance provision.~~The political subdivision shall file the ordinance provision, by mail, fax or~~
22 ~~e-mail, at the following applicable address:~~

23 ~~Wisconsin Department of Agriculture,~~

1 ~~Trade and Consumer Protection~~
2 ~~Agricultural Resource Management Division~~
3 ~~Bureau of Land and Water Resources~~
4 ~~P.O. Box 8911~~
5 ~~Madison, WI 53708-8911~~
6 ~~Fax: (608) 224-4615~~
7 ~~E-mail: atcp.state.wi.us~~

8 **SECTION 35.** ATCP 51.10 (4) (Note) is created to read:

9 This website, livestocksiting.wi.gov, has instructions for electronic filing with the
10 department.

11 **SECTION 36.** ATCP 51.12 (1) and (2) are repealed and recreated to read:

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

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

18 (b) Require a livestock structure to be set back more than 200 feet from any property
19 line, or more than 150 feet from any public road right-of-way, except as provided in sub. (2), if
20 the livestock facility will have between 1,000 and 2,499 animal units or more.

21 (c) Require a livestock structure to be set back more than 300 feet from any property line,
22 or more than 200 feet from any public road right-of-way, except as provided in sub. (2), if the
23 livestock facility will have 2,500 animal units or more.

1 (d) Prevent the use of a livestock structure that was located within the setback area prior
2 to the effective date of the setback requirement, except that operator may be required to address
3 the livestock structure in an odor management plan under s. ATCP 51.14 (1).

4 (e) Prevent the expansion of a livestock structure that was located within the setback area
5 prior to the effective date of the setback requirement, unless the expansion:

6 1. Results in 20 percent or more increase in the area of the structure as it existed on the
7 effective date of the rule [LRB inserts], or

8 2. Is toward the property line or public road right-of-way to which the local setback
9 applies.

10 Note: Many local jurisdictions have established basic property line and road setback
11 requirements by ordinance. Setbacks vary depending on local circumstances, and often reflect
12 years of local experience. Subsection (1) honors local setback requirements, provided that the
13 setbacks do not exceed the limits specified in sub. (1). Nothing in sub. (1) precludes a political
14 subdivision from granting a variance to reduce setback requirements, provided the political
15 subdivision's ordinance includes a variance provision adopted under authority other than s.
16 93.90, Stats. See, e.g. ss. 59.694, 60.10, 61.35, and 62.23, Stats.

17 (2) MANURE STORAGE AND LIVESTOCK HOUSING STRUCTURES; MORE
18 RESTRICTIVE SETBACKS. (a) Except as provided in par. (d), a manure storage structure may
19 not be located within:

20 1. 600 feet of any property line, if the livestock facility will have fewer than 1,000 animal
21 units.

22 2. 1,000 feet of any property line, if the livestock facility will have between 1,000 to
23 2,499 animal units.

1 3. 1,400 feet of any property line, if the livestock facility will have between 2,500 to
2 3,999 animal units.

3 4. 1,700 feet of any property line, if the livestock facility will have between 4,000 to
4 4,999 animal units, and 200 additional feet for every 1,000 animal units above 4,000, but not to
5 exceed 2,500 feet.

6 (b) Except as provided in par. (d), Category 1 livestock housing may not be located
7 within:

8 1. 600 feet of any property line, if the livestock facility will have fewer than 1,000 animal
9 units.

10 2. 1,000 feet of any property line, if the livestock facility will have between 1,000 to
11 2,499 animal units.

12 3. 1,450 feet of any property line, if the livestock facility will have between 2,500 to
13 3,999 animal units.

14 4. 1,700 feet of any property line, if the livestock facility will have 4,000 or more animal
15 units.

16 (c) Except as provided in par. (d), Category 2 livestock housing may not be located
17 within:

18 1. 400 feet of any property line, if the livestock facility will have fewer than 1,000 animal
19 units.

20 2. 700 feet of any property line, if the livestock facility will have between 1,000 to 2,499
21 animal units.

22 3. 1,000 feet of any property line, if the livestock facility will have between 2,500 to
23 3,999 animal units.

1 4. 1,200 feet of any property line, if the livestock facility will have 4,000 or more animal
2 units.

3 Note: To the extent that livestock structure is not covered by the more restrictive setback
4 in sub. (2), it must meet the general requirements in sub. (1). For example, a dairy freestall barn
5 at a livestock facility under 1,000 animal units must be 100 feet from the public road right of
6 way unless a political subdivision establishes a lower setback.

7 (d) A manure storage or housing structure may be located within the setbacks specified in
8 pars. (a), (b) and (c) if any of the following apply:

9 1. The location of the manure storage and housing structure complies with a local
10 ordinance or a variance granted under that local ordinance that specifies a shorter setback that is
11 specific to manure storage or housing structures.

12 Note: If authorized in a local ordinance, a political subdivision may grant a variance to
13 reduce a manure storage setback under appropriate conditions. For example, a reduction may be
14 granted if a manure storage structure is located on land adjacent to a separate parcel owned by a
15 different person who consents to the reduction.

16 2. The manure storage or housing structure existed prior the effective date of the rule
17 [LRB inserts], or the structure is expanded by no more than 20 percent of its surface area as it
18 existed on the effective date of the rule [LRB inserts] and no part of expansion is closer to the
19 property line to which the local setback applies.

20 3. A new or expanded manure storage or housing structure is located at a reduced
21 setback distance authorized in Appendix A, Worksheet 2 based on the applicant's commitment
22 to install and maintain odor control practices.

23 **SECTION 37.** ATCP 51.12 (2m) (a) and (b) and (Note) are created to read:

1 (2m) CLUSTERS. (a) Except as provided in par. (b), if the livestock structures in a
2 livestock facility regulated under a single local approval are divided among 2 or more clusters,
3 such that no cluster is located closer than 1,000 feet to any other cluster, an operator may
4 determine the setback distances for livestock structures in each cluster based on the animal units
5 kept at each location, rather than the animal units at for the entire livestock facility.

6 (b) This treatment does not apply to any cluster that handles or stores manure generated
7 by animals located in another cluster.

8 Note: For example, a dairy operator may establish two setbacks for each cluster at a
9 dairy facility that includes a milking operation (cluster 1) and a heifer facility (cluster 2) located
10 1,000 feet (or more) from each other. If the heifer facility has a manure storage facility for 200
11 animal units and accepts no manure from the 1,200 head milking operation, the heifer facility
12 may use the 600 foot setback for manure storage facilities on operations under 1,000 animal
13 units.

14 **SECTION 38.** ATCP 51.12 (6) (Note) is repealed.

15 **SECTION 39.** ATCP 51.14 is repealed and recreated to read:

16 (1) **PREEXISTING ODOR STANDARD.** (a) A livestock facility operating under a
17 local approval granted prior to the effective date of the rule [LRB inserts] must honor all
18 commitments in its local approval to maintain the necessary odor control practices to achieve a
19 passing odor score.

20 Note: The operator's commitments are documented in Appendix A of ch. ATCP 51,
21 Worksheet 2, as published in the Administrative Register, April 2006, No. 604.

22 (b) Except as provided in (2) (b), if a previously approved livestock facility is granted a
23 local approval including a permit modification on or after the effective date of the rule [LRB

1 inserts], the livestock facility is released from its commitments under the preexisting odor
2 standard for all livestock structures located at the livestock facility on the date of its application
3 for subsequent local approval.

4 Note: A livestock facility released from its commitments may be required to prepare an
5 odor management plan for existing structures under par. (c). All livestock facilities with new or
6 expanded livestock structures must meet the setback requirements in s. ATCP 51.12. In
7 addition, an applicant may complete Worksheet 2 to reduce setbacks for new or expanded waste
8 storage facilities and housing.

9 Note: The spreadsheet equivalent of Appendix A, Worksheet 2, Table A available on the
10 department's website at livestocksiting.wi.gov, may be submitted in place of Worksheet 2, Table
11 A.

12 (2) ODOR MANAGEMENT PLAN. (a) A livestock facility must submit an odor
13 management plan that addresses the following livestock structures located at the livestock
14 facility at the time of its application for a local approval:

- 15 1. Any manure storage structure located within 600 feet of any property line.
- 16 2. Any livestock housing located within 400 feet of any property line.

17 (b) The odor management plan shall identify management practices that the livestock
18 facility must follow to control odor from each manure storage structure and livestock housing
19 located within the separation distance defined in par. (a) 1. and 2. The plan should incorporate
20 odor control practices which the operator agreed to implement as part of a local approval granted
21 before the effective date of the rule [LRB inserts] unless the operator provides a financial or
22 other justification for discontinuation of the practice.

1 Note: The plan may include practices to reduce dust, practices to reduce odor from
2 nearby livestock structures such as animal lots, practices used to reduce odor from dead animals,
3 activities to reduce community conflict, and water conservation practices that control odor.

4 (c) A political subdivision may request that a livestock operator update an odor
5 management plan if the political subdivision receives a verified odor-related complaint from a
6 property owner adjacent to the livestock facility.

7 (3) NEW ODOR MANAGEMENT STANDARD. (a) In any application for local
8 approval or permit modification submitted on or after the effective date of the rule [LRB inserts],
9 a livestock operation must comply with the setback requirements in s. ATCP 51.12 for all new or
10 expanded livestock structures identified in its application.

11 (b) All applicants must complete Appendix A, Worksheet 2 to establish setbacks for new
12 or expanded manure storage and Category 1 and 2 livestock housing, and surface area of manure
13 storage and Category 1 and 2 livestock housing located on the livestock facility at the time of the
14 application for a local approval. This information will determine whether:

15 1. Existing livestock structures located within a setback area may be expanded, without
16 the need for odor control practices. See ss. ATCP 51.12 (1) (e) and (2) (d).

17 2. New or expanded livestock structures will need to implement odor control practices to
18 reduce required setbacks. See sub. (3).

19 Note: The spreadsheet equivalent of Appendix A, Worksheet 2, Table A available on the
20 department's website at livestocksiting.wi.gov, may be submitted in place of Worksheet 2, Table
21 A.

1 (4) SETBACK REDUCTIONS FOR ODOR CONTROL PRACTICES. (a) In
2 determining the setback for new or expanded manure storage and Category 1 and 2 livestock
3 housing, an operator may reduce the required setback based on the following:

4 1. Odor control practices, identified in Appendix A, Worksheet 2, which the operator
5 agrees to implement. For each odor control practice, the operator may claim the setback
6 reduction specified in Appendix A, Worksheet 2.

7 2. An odor control practice not identified in Appendix A, Worksheet 2 if the department
8 pre-approves a setback reduction for that practice. The operator shall claim the pre-approved
9 setback reduction according to the procedure specified in par. (b).

10 (b) An operator seeking department approval under par. (a) 2. shall submit a written
11 request to the department that includes:

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

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

16 (c) The department may approve a setback reduction for an odor control practice under
17 par. (a) 2. if, in the department's opinion, there is adequate scientific evidence to show that under
18 relevant conditions the practice will result in odor reduction commensurate with the approved
19 credit. The department shall grant or deny the request within 90 days after the department
20 receives the request. The department's approval may include specifications for installation and
21 operation of the innovative odor control practice.

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

1 **SECTION 40.** ATCP 51.16 is repealed and recreated to read:

2 **Nutrient management and cropland standards.** (1) NUTRIENT

3 MANAGEMENT STANDARD. (a) A livestock operator must have and follow a nutrient
4 management plan that complies with s. ATCP 50.04 (3).

5 (b) The nutrient management plan shall account for all land applications of manure and
6 related waste generated by the maximum number of animal units authorized by a local approval.

7 Note: The Wisconsin NRCS technical guide nutrient management standard 590
8 (December, 2015) is incorporated into s. ATCP 50.04. The Wisconsin Conservation Planning
9 Technical Note WI-1 (February, 2016) shall be used to estimate the quantity of manure
10 generated. Appendix A, Worksheet 3 includes the Technical Note's estimation tool.

11 Note: While the application of process wastewater and other industrial wastes is
12 regulated under ch NR.214, the nutrients from these sources when applied to fields must be
13 accounted for in a nutrient management plan developed in accordance with this section.

14 (2) CROPLAND PERFORMANCE STANDARDS. (a) An operator shall implement
15 conservation practices that achieve compliance with cropland performance standards under ss.
16 NR 151.02, 151.03, and 151.04, in effect on the effective date of the rule [LRB inserts].

17 (b) An operator is required to establish a minimum tillage setback of 5 feet.

18 Note: A political subdivision may require a setback greater than 5 feet and less than 20
19 feet if it follows procedures in s. ATCP 50.04 (4) but this increased setback cannot be
20 incorporated into a local approval.

21 (c) An operator may meet the phosphorus index standard under s. NR 151.04 by
22 following s. ATCP 50.04 (3).

1 (3) DEMONSTRATION OF COMPLIANCE (a) An applicant demonstrates compliance

2 with the requirements of this section by submitting:

3 1. A waste and nutrient management worksheet (Appendix A, Worksheet 3) signed by
4 the livestock operator.

5 2. A nutrient management checklist (Appendix A, Worksheet 3, Part D) signed by both
6 the livestock operator and a qualified nutrient management planner other than the operator.

7 a. A nutrient management planner qualified under s. ATCP 50.48, other than the
8 livestock operator, shall answer each checklist question. The planner shall have reasonable
9 documentation to substantiate each answer, but neither the planner nor the operator is required to
10 submit that documentation with the checklist.

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

15 3. Maps of fields that will receive nutrient applications with NRCS standard 590
16 spreading restrictions identified on the maps.

17 (b) In lieu of submitting the checklist required by par. (a) 2., an operator who holds a
18 WPDES permit for the livestock facility may submit a nutrient management checklist previously
19 submitted to DNR if the all of the following are met:

20 1. The nutrient management plan covers the same or greater number of animal units than
21 the number for which the operator seeks local approval.

22 2. The WDPES permit and the nutrient management plan are current.

1 3. The livestock facility is in compliance with all WPDES permit conditions related to the
2 nutrient management plan.

3 (4) (a) Manure spreading restrictions in s. NR 151.075 and other performance standards
4 are based on reasonable and scientifically defensible findings of fact that clearly show that such
5 requirements are necessary to protect public health or safety.

6 (b) A political subdivision may impose manure spreading restrictions included in
7 applicable performance standards and prohibitions in ch. NR 151 by referencing par. (a) to meet
8 the requirements in s. ATCP 51.10 (3) (c)-(d) for adoption of more stringent local standards
9 except that a political subdivision may not use this authority to adopt a targeted standard that
10 does not apply to the geographic area under the political subdivision's jurisdiction.

11 (5) PRESUMPTION. For purposes of local approval, an operator is presumed to comply
12 with this section if the application for local approval complies with s. ATCP 51.30.

13 (6) NUTRIENT MANAGEMENT UPDATES. The political subdivision may:

14 (a) Require an operator to submit annual updates to a nutrient management plan as
15 necessary, to maintain compliance with s. ATCP 50.04 (3).

16 (b) Monitor an operator's compliance with a nutrient management plan.

17 Note: Political subdivisions may require operators to submit a department-approved
18 checklist to document nutrient management plan updates meeting the most current standards.

19 **SECTION 41.** ATCP 51.18 is repealed and recreated to read:

20 **Waste storage facilities.** (1) (a) DESIGN, CONSTRUCTION AND
21 MAINTENANCE; GENERAL. All waste storage facilities for a livestock facility shall be
22 designed, constructed and maintained to minimize the risk of structural failure, and to minimize
23 the potential for waste discharge to surface water or groundwater. A waste storage facility may

1 not lack structural integrity or have significant leakage. An unlined earthen waste storage
2 facility may not be located on a site that is susceptible to groundwater contamination.

3 Note: A “site that is susceptible to groundwater contamination” is defined in s. ATCP
4 51.01 (39).

5 (b) The requirements in this section apply to facilities designed, constructed and used
6 primarily for the storage of manure or primarily for the storage of agriculture wastewater
7 including leachate and contaminated runoff from stored feed.

8 (2) DEMONSTRATION OF COMPLIANCE. (a) An applicant demonstrates
9 compliance with the requirements of this section by submitting:

10 1. A waste storage facilities worksheet (Appendix A, Worksheet 4), signed by registered
11 professional engineer or certified conservation engineering practitioner who:

12 a. Certifies that each existing storage facility meets applicable standards in sub. (4).

13 b. Submits construction plans and specifications for any new or substantially altered
14 facility, and certifies that each substantially altered or new storage facility meets applicable
15 standards in sub. (5).

16 c. Submits a plan for any waste storage facility that must be closed, and that plan meets
17 applicable standards in sub. (6).

18 (b) In lieu of submitting the certification required by par. (a), an applicant may:

19 1. Rely on a WPDES permit issued for the livestock facility if the applicant:

20 a. Certify that the livestock operation’s WPDES permit is current and the livestock
21 operation is in compliance with all conditions and requirements in WPDES.

1 b. Submit DNR plan and specification approval for any new or substantially altered waste
2 storage facility of the same size and type as those proposed for the new or expanded livestock
3 facility.

4 c. Submit DNR approval or other determination authorizing continued use of any existing
5 and unaltered waste storage facilities.

6 2. Submit a local approval granted under an ordinance adopted under s. 92.16, Stats., and
7 engineering documentation showing that a facility was constructed within the last 3 years in
8 accordance with then-existing NRCS standards.

9 3. Submit a DNR approval of a waste facility designed for storage of agricultural
10 wastewater and other related products under ch. NR 213.

11 Note: If an applicant is not able to submit the documentation required in subd. 1., 2. or 3.
12 for any storage facility located on the proposed livestock facility, the applicant must have a
13 qualified person complete the certification in par. (a) for that facility.

14 (3) PRESUMPTION. For purposes of local approval, an operator is presumed to comply
15 with this section if the application for local approval complies with s. ATCP 51.30.

16 (4) EXISTING FACILITIES. (a) A registered professional engineer or certified
17 conservation engineering practitioner shall certify that each existing waste storage facility (not
18 including waste transfer systems) meets one of the following:

19 1. The facility was constructed within the last 10 years according to then-existing NRCS
20 standards, and a visual inspection of the facility shows no apparent signs of structural failure or
21 significant leakage.

1 2. The facility is older than 10 years, was constructed according to NRCS standards that
2 existed at the time of construction, and a visual inspection of the emptied facility shows no
3 apparent signs of structural failure or significant leakage.

4 3. The construction standards for the facility cannot be verified from reliable
5 documentation, a full investigation of the facility was performed, and this investigation
6 established that the facility is in good condition and repair, shows no apparent signs of structural
7 failure or significant leakage, and is located on a site at which the soils and separation distances
8 to groundwater meeting the requirements for the appropriate liner type referenced in NRCS
9 technical guide waste storage facility standard 313 (October, 2017R) and related liner standards
10 specified in sub. (5).

11 Note: A full investigation includes emptying facilities of their contents, especially
12 earthen-lined structures, to allow for complete inspection and evaluation. The full investigation
13 of an emptied storage should verify that the bottom of structure corresponds with as-built plans,
14 if any, or has adequate separation distance to groundwater. It also includes test pits or borings
15 when there is no reliable documentation regarding a facility's separation distances to
16 groundwater or bedrock.

17 Note: An evaluation should be completed in accordance with a department-approved
18 evaluation flow chart, which is available at this website, livestocksiting.wi.gov.

19 (b) A political subdivision may request a written report documenting the methods used
20 for evaluation and the findings in support of the conclusions reached in the evaluation.

21 (c) At the time that a livestock operator submits an application for local approval of
22 livestock facility expansion, a structure previously evaluated under this subsection must be re-
23 evaluated according to the following schedule:

1 1. If the structure is 15 years old or less, the structure must be reevaluated if the prior
2 evaluation is more than 10 years old.

3 2. If the structure is more than 15 years old, the structure must be reevaluated if the prior
4 evaluation is more than 5 years old.

5 (5) NEW OR SUBSTANTIALLY ALTERED FACILITIES. A registered professional
6 engineer or certified conservation engineering practitioner shall certify that the design
7 specifications for each new or substantially altered waste storage facility (including waste
8 transfer systems) complies with applicable standards:

9 (a) NRCS technical guide waste storage facility standard 313 (October, 2017R), and
10 related liner standards, NRCS technical guide pond sealing or lining – compacted soil treatment
11 520 (October, 2017R), NRCS technical guide pond sealing or lining – geomembrane or
12 geosynthetic clay liner 521 (October, 2017R) and NRCS technical guide pond sealing or lining –
13 concrete 522 (October, 2017R).

14 Note: Compost facilities should be designed and operated to meet the requirements of WI
15 NRCS CPS Composting Facility (Code 317).

16 (b) NRCS technical guide manure transfer standard 634 (January, 2014).

17 Note: A political subdivision may accept a certification to a standard newer than those
18 listed in par. (a) and (b).

19 (6) CLOSED FACILITIES. (a) If an existing waste storage facility is not certified under
20 sub. (4), and no design is submitted for its alteration, the applicant shall submit a closure plan
21 that complies with par. (b), and must close the facility within 2 years of the issuance of a local
22 approval unless the political subdivision requires an earlier closure based on imminent threat to
23 public health, aquatic life, or groundwater.

1 (b) A registered professional engineer or certified conservation engineering practitioner
2 shall certify that the closure plan complies with NRCS technical guide closure of waste
3 impoundments standard 360 (March, 2013).

4 Note: Under s. NR 151.05 (3) and (4), an operator must normally close a manure storage
5 facility if the facility has not been used for 24 months, or poses an imminent threat to public
6 health, aquatic life or groundwater. If a waste storage facility is abandoned or not properly
7 closed, a political subdivision may seek redress under ss. 66.0627 or 254.59, Stats., as
8 appropriate.

9 (7) FACILITY OPERATION. (a) All manure storage facilities in existence as of
10 October 1, 2002 that pose an imminent threat to public health, fish and aquatic life, or
11 groundwater shall be upgraded, replaced, or abandoned in accordance with s. NR 151.05 (4) (b).

12 (b) Levels of materials in storage facilities may not exceed the margin of safety level as
13 defined in ch. NR 151.

14 (c) There shall be no mixing or storage of human waste or septage with animal manure
15 on a dairy farm.

16 Note: Worksheet 3 must document waste generation, including waste storage capacity,
17 consistent with Worksheet 4. Capacity must be adequate for reasonably foreseeable needs.

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

1 (b) A political subdivision may do all of the following to verify that waste storage
2 facilities are constructed according to design specifications included in the application for local
3 approval:

- 4 1. Conduct inspections consistent with legal authority.
- 5 2. Require submission of a drawing reflecting design changes made during construction
6 and documentation certifying that the facility was installed in accordance with technical
7 standards.

8 Note: See s. ATCP 50.56 (3) (b) 2. This chapter does not limit the application of local
9 waste storage ordinances adopted under s. 92.16, Stats. If the operator's livestock facility has
10 been approved under a siting ordinance, the operator is responsible for remaining in compliance
11 with setback, odor and other standards in this chapter when building a manure storage structure
12 permitted under a local waste storage ordinance.

13 **SECTION 42.** ATCP 51.20 is repealed and recreated to read:

14 **Runoff management.** (1) NEW OR SUBSTANTIALLY ALTERED ANIMAL
15 LOTS. Livestock operators with new or substantially altered animal lots shall collect and store
16 manure and contaminated runoff for future land application, or construct animal lots to manage
17 runoff in compliance with NRCS technical guide vegetated treatment area standard 635
18 (September, 2016).

19 (2) EXISTING ANIMAL LOTS. (a) If manure and runoff from existing animal lots
20 are not collected and stored for future land application, the applicant must document that the
21 predicted average annual phosphorus runoff, from each existing animal lot to the end of the
22 runoff treatment area, as determined by the BARNY model, shall be less than the following
23 applicable amount:

1 1. Fifteen pounds if the edge of the animal lot is not located within any of the following:

2 a. 1,500 feet from navigable lakes, ponds and flowages

3 b. 450 feet from wetlands and navigable streams and rivers

4 c. 750 feet from direct conduits to groundwater

5 d. 450 feet from surface inlets that discharge to navigable waters

6 e. 225 feet from channelized flow (i.e., a drainage area of ≥ 5 acres)

7 f. 225 feet from subsurface drains

8 2. 5 pounds if the edge of the animal lot is located within any of the features identified in

9 subd. 1.

10 Note: The BARNY model is a computer model that predicts nutrient runoff from animal

11 lots. An Excel computer spreadsheet version of BARNY is available at livestocksiting.wi.gov.

12 Applicants must provide outputs from the BARNY model to document compliance with this

13 requirement.

14 (b) A livestock operator may make minor alterations to an existing animal lot to meet the

15 runoff standards in par. (a).

16 (c) Animal lots shall have no direct runoff to surface waters of the state or to a direct

17 conduit to groundwater.

18 Note: See ss. NR 151.08 (4) and ATCP 50.04 (1). A direct conduit to groundwater may

19 include, for example, a sinkhole.

20 (3) PROCESS WASTEWATER. A livestock facility shall have no significant discharge

21 of process wastewater to waters of the state or to a direct conduit to groundwater.

1 (4) FEED STORAGE (a) For the purposes of the requirements in this section, a feed
2 storage structure includes any building, bunker, or paved area used for feed storage or handling,
3 but does not include silos, storage bags, and grain bins.

4 (b) An existing feed storage structure may be used, without substantial alteration, to
5 store or handle feed if a registered professional engineer or certified conservation engineering
6 practitioner certifies that the structure:

7 1. Was constructed according to applicable NRCS standards that existed at the time of
8 construction, or in the absence of documentation to support this, the structure is located on a site
9 with soils and separation distances that comply with Tables 1, 2 or 3 in NRCS technical guide
10 waste treatment standard 629 (January, 2017).

11 Note: The type of structure determines which table must be used to document
12 compliance.

13 2. Is in good condition and repair.

14 3. Shows no apparent signs of structural failure, significant leakage, or significant
15 discharges to surface water.

16 Note: An evaluation should be completed in accordance with a department-approved
17 evaluation flow chart, which is available at this website, livestocksiting.wi.gov.

18 4. The political subdivision may request a written report documenting the methods used
19 for evaluation and the findings of the evaluation.

20 (c) An existing feed storage structure must be operated and maintained to:

21 1. Divert clean water from entering the structure or paved area.

22 2. Collect and store surface discharge of leachate from stored feed and initial runoff
23 volume of 0.20 inches from each precipitation event before it leaves the structure or paved area,

1 if the structure or paved area covers more than one acre. Collected leachate shall be stored and
2 disposed of in a manner that prevents discharge to waters of the state.

3 3. Prevent leachate and contaminated runoff from infiltrating below the storage structure.

4 4. Avoid accumulation of debris in the loading area.

5 5. Ensure proper functioning of collection and treatment areas.

6 (d) A new or substantially altered feed storage structure shall comply with both of the
7 following except as provided in par. (e):

8 1. The storage structure shall be designed, constructed and maintained in accordance with
9 NRCS waste treatment technical standard 629 (January, 2017).

10 2. Leachate and contaminated runoff from storage structure shall be collected and stored
11 for future land application, or treated in accordance with NRCS vegetated treatment area
12 technical standard 635 (September, 2016R).

13 (e) If a new or expanded feed storage structure is less than one acre, the design for the
14 new structure, or the new portion of the expanded structure, is only required to meet the
15 applicable Table 1, 2 or 3 of NRCS waste treatment technical standard 629 (January, 2017) if
16 each of following are met:

17 1. The proposed structure is not located within any of the separation distances in sub. (2)

18 (a) 1. a. to f.

19 2. A registered professional engineer or certified conservation engineering practitioner
20 certifies that:

21 a. The structure is designed to collect and store all leachate from stored feed and an initial
22 runoff volume of 0.20 inches from each precipitation event.

1 b. The site area including the proposed structure and surrounding land is not located on
2 soils with a high potential for leaching contaminants to groundwater.

3 c. Conditions at the site area and the design of storage area are such that runoff from a
4 25-year, 24-hour precipitation event will not result in a significant discharge to waters of the
5 state.

6 Note: Runoff from feed storage must be controlled to prevent a significant discharge to
7 waters of the state. Livestock operators are responsible for meeting this requirement if they
8 follow the design standard in par. (d). In addition, livestock operators are subject to federal
9 discharge standards that may be more restrictive than state standards.

10 (f) For the purposes of meeting the one acre size requirement in pars. (c) and (e), 2 or
11 more feed storage structures at the same livestock facility shall be treated as a single storage
12 structure if runoff from any structure converges or meets with runoff from another structure
13 within the separation distances in sub. (2) (a) 1. a. to f. If 2 or more structures are related in this
14 manner, each of the structures must individually meet the separation distances in sub. (2) (a) 1. a.
15 to f.

16 (5) MILKING CENTER WASTEWATER. (a) For the purposes of the requirements in
17 this section, milking center wastewater consists of wash water used to clean the milk harvesting
18 and milk cooling equipment, and other contaminated sources of wastewater (water softener) and
19 wash water used to clean the floors and walls. Wastewater from the floor of the holding area,
20 clean discharge water sources (plate cooler, roof water) and sanitary wastewater (toilets, sinks,
21 clothes laundry) must be excluded from the treatment system.

22 (b) Milking center wastewater shall be transferred to a waste storage facility or other
23 structure that meets the design criteria of NRCS waste facility storage technical standard 313

1 (October, 2017R) and related liner standards specified in s. ATCP 51.18 (5), except as provided
2 in par. (c).

3 (c) If a livestock facility generates less than 500 gallons of milking center wastewater
4 daily and does not store the wastewater for an extended period, the livestock operation may use
5 the treatment practices described in NRCS waste treatment technical standard 629 (January,
6 2014).

7 (6) CLEAN WATER DIVERSION. Clean water shall be diverted away from contacting
8 animal lots, waste storage facilities, and manure piles within 1,000 feet of a navigable lake, 300
9 feet of a navigable stream or wetlands, 300 feet from wetlands connected to navigable lake or
10 stream, or 500 feet from a direct conduit to groundwater.

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

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

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

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

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

21 (9) LIVESTOCK ACCESS TO SURFACE WATERS OF THE STATE. A livestock
22 facility shall be designed, constructed and maintained to prevent unrestricted livestock access to
23 surface waters of the state, if that access will prevent adequate vegetative cover on banks

1 adjoining the water. This subsection does not prohibit a properly designed, installed and
2 maintained livestock crossing or machinery crossing.

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

4 (10) DEMONSTRATION OF COMPLIANCE. (a) An applicant demonstrates
5 compliance with the requirements of this section by submitting a runoff management worksheet
6 (Appendix A, Worksheet 5), signed by a registered professional engineer or certified
7 conservation engineering practitioner and the applicant, certifying that the existing, substantially
8 altered and new structures and practices meet applicable standards in subs. (1) to (9).

9 (b) In lieu of submitting certification required by par. (a), an operator who holds a
10 WPDES permit may submit the following documentation from DNR to cover one or more
11 structures:

12 1. Plan and specification approval for new or substantially altered animal lots or feed
13 storage structures.

14 2. Compliance determinations for existing animal lots or feed storage structures.

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

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

1 (b) A political subdivision may do all of the following to verify that animal lots and feed
2 storage structures are constructed according to design specifications included in the application
3 for local approval:

- 4 1. Conduct inspections consistent with legal authority.
- 5 2. Require submission of a construction plan, a drawing reflecting design changes made
6 during construction and documentation certifying that the facility was installed in accordance
7 with technical standards.

8 Note: A deviation under sub. (12) does not invalidate a local approval, but does prevent
9 the livestock operator from populating the approved livestock facility until the deviation is
10 rectified or approved.

11 **SECTION 43.** ATCP 51.30 (1) (Note) is created to read:

12 The department-approved form is available at livestocksiting.wi.gov.

13 **SECTION 44.** ATCP 51.30 (3) (Note) is repealed.

14 **SECTION 45.** ATCP 51.30 (4) and (Note) is repealed and recreated to read:

15 **LOCAL FEES.** (a) A political subdivision may charge:

16 1. A full application fee established by local ordinance, not to exceed \$1,000, to offset the
17 political subdivision's costs to review and process an application under sub. (1).

18 2. A fee for permit modification under ATCP 51.34 (4m) not to exceed \$500.

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

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

23 **SECTION 46.** ATCP 51.30 (4m) is created to read:

1 PRE-APPROVAL SITE PREPARATION. After a political subdivision receives an
2 application under sub. (1), the political subdivision may notify the applicant that prior to a final
3 decision on an application for local approval, activities at the livestock facility shall be limited to
4 grading and other site preparation.

5 **SECTION 47.** ATCP 51.30 (5) is amended to read:

6 COMPLETE APPLICATION. Within 45 days after a political subdivision receives an
7 application under sub. (1), the political subdivision shall notify the applicant whether the
8 application ~~contains everything required~~ meets the requirements under subs. (1) to (4). If the
9 political subdivision determines that the application is not complete, the notice shall specifically
10 describe what else is needed. incomplete, it must complete a department-approved checklist to
11 identify every item needed to make the application complete and provide a copy of the
12 completed checklist to the applicant. Items not identified in the checklist are deemed complete
13 and an applicant is only required to submit additional materials identified in the checklist to
14 receive a completeness determination. Within 14 days after the applicant has ~~provided~~
15 ~~everything required~~ met the requirements under subs. (1) to (4), the political subdivision shall
16 notify the applicant that the application is complete. A notice of completeness does not
17 constitute an approval of the proposed livestock facility.

18 **SECTION 48.** ATCP 51.34 (3) (a) is amended to read:

19 WRITTEN DECISION. (a) A political subdivision shall issue its decision under subs.
20 (1) or (2) in writing. The decision shall be based on written findings of fact included in the
21 decision. The findings of fact shall be supported by evidence in the record under s. ATCP 51.36.
22 Findings may be based on presumptions created by this chapter. A political subdivision may only
23 impose conditions related to an operator's compliance with the standards authorized in subch. II

1 of ATCP 51. Any conditions attached to a local approval must be described in the final written
2 decision granting the approval. Nothing in this chapter precludes a political subdivision from
3 entering into a voluntary agreement with a permit applicant outside the scope of ch. ATCP 51.

4 **SECTION 49.** ATCP 51.34 (3) (a) (Note) is repealed.

5 **SECTION 50.** ATCP 51.34 (4) (intro.) is amended to read:

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

10 **SECTION 51.** ATCP 51.34 (4) (a) is repealed and recreated to read:

11 (a) Monitor compliance with applicable standards under subch. II using any of the
12 following methods:

13 1. Require an operator to certify, on an annual or less frequent basis, compliance with
14 applicable standards under subch. II. Political subdivisions shall provide livestock operators a
15 department-approved checklist to self-certify compliance.

16 2. Inspect locally-approved livestock facilities consistent with legal authority. If
17 conducting inspections, a political subdivision shall use a department-approved compliance
18 checklist to document the results of inspections.

19 Note: A political subdivision may request documentation that manure and nutrients were
20 applied according to a nutrient management plan, s. ATCP 51.16, a livestock structure was
21 installed according to standards, ss. ATCP 51.18 (8) and 51.20 (11), and activities identified in a
22 training and other required plan were conducted in accordance with that plan.

23 **SECTION 52.** ATCP 51.34 (4) (b) 2. is amended to read:

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

5 **SECTION 53.** ATCP 51.34 (4m) is created to read:

6 MODIFICATION (a) As an alternative to procedures to ss. ATCP 51.30 and 51.32, a
7 livestock operator with a local approval granted in accordance with sub. (1) may apply for a
8 modification of that local approval under either of the following conditions:

9 1. The livestock operator plans to construct or alter one or more livestock structures
10 without increasing the maximum number of animal units authorized in the most recent local
11 approval issued under sub. (1).

12 2. The livestock operator plans to increase the maximum number of animal units without
13 constructing or altering any livestock structures, and all of the following apply:

14 a. The planned increase in animal units will not exceed 20 percent of the maximum
15 number of animal units authorized in the most recent local approval issued under sub. (1), but in
16 no case may the increase exceed 1,000 animal units.

17 b. The livestock operator has not previously received a permit modification to increase
18 animal units above the maximum number of animal units authorized in the most recent local
19 approval issued under sub. (1)

20 c. The livestock operator submits a revised Worksheets 1 and 3 to account for increases
21 in manure generated.

22 (b) The livestock operator requests modification by completing and submitting all of the
23 following:

1 1. Request for Modification of a Local Approval (Appendix B).

2 Note: Appendix B contains instructions for completing the request for permit
3 modification, including options to complete Worksheet 5. The department-approved form is
4 available at livestocksiting.wi.gov.

5 2. Applicable worksheets from Appendix A documenting that the livestock facility, as
6 modified, will maintain compliance with the standards in subch. II of ch. ATCP 51.

7 3. Additional documentation to establish compliance with any local standards adopted in
8 a political subdivision's ordinance in accordance with s. ATCP 51.10 (3).

9 (c) The political subdivision may only charge the permit modification fee prescribed in s.
10 ATCP 51.30 (4) and shall provide notice of the modification to adjacent property owners in
11 accordance with s. ATCP 51.30 (6), but is not required to take any other actions under s. ATCP
12 51.30 to process a permit modification.

13 Note: A livestock operator may submit a full application under (1) to secure the right to a
14 completeness determination and presumption of compliance established under s. 93.90 (4) (d),
15 Stats.

16 (d) A political subdivision must grant or deny a modification request within 45 days after
17 the livestock operator's submission of a complete application, and is not required to follow the
18 procedures in s. ATCP 51.32.

19 (e) A political subdivision shall record its decision on the requested modification by
20 completing Appendix B, and is not required to issue a written decision under s. ATCP 51.34 (3)
21 unless it denies the requested modification.

22 (f) A political subdivision may not withhold approval of modification request for changes
23 that maintain compliance with the standards in subch. II.

1 **SECTION 54.** ATCP 51.34 (5) (a) 2. and 3. are amended to read:

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

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

10 **SECTION 55.** ATCP 51.34 (5) (a) 3. (Note) is created to read:

11 This website, livestocksiting.wi.gov, has instructions for electronic filing with the
12 department.

13 **SECTION 56.** ATCP 51.34 (5) (b) and (c) are repealed and recreated to read:

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

16 **SECTION 57.** Chapter ATCP 51, Appendix A, Application Form and Worksheets is
17 repealed and recreated, as attached hereto.

18 **SECTION 58.** Chapter ATCP 51, Appendix B, NRCS nutrient management technical
19 standard 590 (September, 2005) is repealed and recreated as Chapter ATCP 51, Appendix B,
20 Request for Modification of a Local Approval, as attached hereto.

21 **SECTION 59.** Chapter ATCP 51, Appendix C, Notice To Adjacent Property Owners is
22 repealed and recreated, as attached hereto.

23 **SECTION 60. EFFECTIVE DATE AND INITIAL APPLICABILITY.**

1 **(1)** Except as provided in sub. (2), this rule takes effect on the first day of the month
2 following publication in the Wisconsin administrative register, as provided under s. 227.22 (2)
3 (intro.), Stats. (2) This rule first applies to small businesses as defined in s. 227.114 (1), Stats.,
4 on the first day of the third month commencing after the rule publication date, as required by s.
5 227.22 (2) (e), Stats.

Dated this _____ day of _____, 2019.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Bradley M. Pfaff, Secretary
