

Wisconsin Department of Agriculture,
Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: Livestock Facility Siting
Adm. Code Reference: ATCP 51
Rules Clearinghouse #: TBD
Department Docket #: 15-R-12

Rule Description

General

First adopted in May 1, 2006, Wis. Admin. Code Ch. ATCP 51 (“ATCP 51”) established a uniform framework of standards and procedures required to implement Wisconsin’s livestock facility siting law, Wis. Stat. § 93.90. The ATCP 51 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”) must review Wis. Admin. Code Ch. ATCP 51 every four years to ensure that the goals of the law are being achieved.

This proposed rule revision is intended to ensure consistency among related rules (Wis. Admin. Code Chs. NR 151 and ATCP 50), which were revised to implement a new nutrient management technical standard and additional farm runoff control standards designed to improve the control of discharges of process wastewater, and meet phosphorus index targets for nutrient management. The ATCP 51 revision also addresses issues arising out of the four year review of the 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 technical expert committee (TEC), which originally conducted its review in 2014 and then was reconvened in 2018 to provide input regarding the draft rule.

Small Businesses Affected

The rule will primarily impact new or expanding livestock operations that must receive local approvals (“permits”) under siting ordinances currently administered by 120 local governments (mostly towns). The proposed rule anticipates that 150 livestock facilities, many of which qualify as “small businesses”, will need first-time permits or permit renewals over the next 10 years. The most significantly impacted among this group will be 55 operations that average 800 animal units in size, but are too small to be regulated as Concentrated Animal Feeding Operations (“CAFOs”) by the Department of Natural Resources (“DNR”). The rule will have a slight but positive impact on businesses that work with livestock operations, including nutrient management planners, farm supply and service businesses, soil testing laboratories, agricultural engineers, and contractors installing farm conservation practices.

Livestock Operators

The proposed rule revision will have very limited impact on farms statewide, affecting less than 1 percent of Wisconsin livestock operations that raise cattle, swine, poultry, sheep and goats (2012 Census data: 46,034 farms with livestock, consisting of 29,908 farms with cattle and calves; 2,270 with hogs; 8,847 with layers and broilers; 2,590 with sheep and lamb; and 2419 with goats). Over the next ten years, it is estimated that the revised siting 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 reissuance (7 per year) minus 20 that will seek more than one permit reissuance]. As noted above, the rule change will have virtually no impacts on 85 new and expanding livestock facilities [50 new permits and 35 of the permit reissuances] that are CAFOs, and are required by their DNR permits to meet the higher water quality standards in the revised siting rule.

The following considerations and assumptions were used in determining the nature and extent of impacts of this rule revision on new and expanding livestock operations:

1. Within the first 11 years of the siting rule's implementation, local governments approved 150 livestock facilities (24 facilities received more than one approval to cover expansions).
2. Based on past trends in the livestock industry and local permitting activity, which may not be predictive of future activity, it is estimated that the total number of permitted facilities in the next ten years will increase by 100 to reach a total of 250. In addition, 50 livestock facilities will seek at least one renewal of their permits based on facility expansions. The following assumptions support the forecasted slowdown in the rate of new permit issuances, and the increase in the rate of permit reissuances:
 - a. While the number of siting ordinances adopted by local governments may grow to more than 175 within the next 10 years, most of the jurisdictions adopting ordinances will issue no permits or at most one permit.
 - b. A limited number of counties including Jefferson, Manitowoc, Shawano, Trempealeau, and Walworth will issue 80 percent of permits, and in the future more of their activity will involve reissuance of permits for facilities seeking approval for expansions.
3. Of the estimated 100 new permits, 50 percent will involve livestock facilities with more than 1000 Animal Units "AUs" and 70 percent of the 50 facilities seeking permit reissuance will exceed 1000 AUs. By the terms of their DNR CAFO permits, these 85 facilities will be required to meet the nutrient management, manure storage and runoff management standards that meet or exceed those proposed in the siting rule, and will not incur additional costs to implement the new system for setbacks and odor management.
4. Of the estimated 65 non-CAFOs affected by the changes, 10 of the facilities will receive more than one permit during the 10 year period. Livestock operations issued multiple permits will meet many of compliance obligations with their first permits, and will encounter fewer compliance responsibilities with successive permits.
 - a. Every applicant for a siting permit has submitted a nutrient management plan checklist and none have relied on the exemption from nutrient management plan requirements.
5. Over the next ten years, 55 non-CAFOs will have the greatest exposure to cost increases triggered by the rule revision.

6. Over time, livestock operations have become subject to newer performance and technical standards as the result of updates in state and local conservation programs. For example, county manure storage ordinances are requiring that construction and substantial alteration of manure storage meet the latest technical standards adopted by NRCS.

Based on the assumptions listed above, it is estimated that the affected livestock operations will incur an additional \$1.05-\$1.16 million in annual costs to comply with the changes in the rule revision over a 10 year period. Appendix A details the annual breakdown of these costs. The rule revision includes specific accommodations to offset or limit the costs that may be incurred by the non-CAFOs that are most significantly impacted.

Recordkeeping and New Skills Required

In considering impacts, the Department must evaluate additional reporting or record-keeping requirements imposed on livestock operators. The rule revision adds no new standards that livestock operators must meet. The changes to some standards will reduce the burden on farmers. For example, the proposed rule revision simplifies the odor standard and reduce recordkeeping requirements related to documentation of odor control practices. Low odor sources such as animal lots and dairy housing are no longer included in worksheet calculations. Also, simplification of the odor standard will enable farmers to complete the worksheets, including an odor management plan, without the help of consultants. The availability of permit modifications should reduce the paperwork needed to obtain a permit for the expansion of livestock facility. The option to selectively implement the runoff standards should help farmers reduce the paperwork to secure local permits for a planned expansion.

In some cases, changes to certain standards such as the nutrient management standard will increase recordkeeping. Regarding nutrient management, the Department provides funding to maintain NM planning software, SNAP-Plus, which includes planning tools that will reduce time and expense needed to prepare a compliant plan.

Whether the challenge involves recordkeeping or new skills, the demands of this rule should be viewed in the larger context of the many programs in which farmers participate. In a world of ever increasing conservation requirements, all livestock operations, whether they are CAFOs or not, are accustomed to making changes to address new requirements imposed by a range of state and local programs affecting these businesses. With new requirements often come additional recordkeeping. Changes in common programs such as county manure storage permits and participation in the farmland preservation program have triggered increased recordkeeping related to the updated requirements for nutrient management plans. Cost-share and other programs regularly incorporate newer technical standards, raising the costs of conservation practices, and often triggering increased recordkeeping.

By its nature, the business of farming requires that farmers be skilled at managing changes triggered by the need to incorporate new technologies, respond to changing conditions, or modify production methods. In changing bedding and feeding systems for livestock, for example, a farmer must work through a challenging series of steps to deploy new equipment and change management practices, and may use adaptive management techniques to overcome challenges. The skills and experience gained in these settings help farmers manage newly installed conservation practices such as feed storage runoff control systems. Nonetheless, there is a learning curve that farmers must negotiate. In the case of nutrient management, farmers may need to build their skills with computers to take advantage of tools such as SNAP-Plus.

Overall Impact on Farmers

The changes in the siting rule will fall mostly on a small group of non-CAFOs that seek local permits for facilities with new or expanded animal lots and feed storage structures. The changes in the odor standard will simplify compliance with odor requirements for livestock operators. The Department believes that recordkeeping and other increased responsibilities will not place unreasonable demands on farmers, and will be offset by changes that reduce the burden on farmers. In general, livestock operators should be able to incorporate the costs as part of financing changes in their operations, and any additional requirements should not be a decisive factor in an operator's decision to build or expand their operations.

The Department has included the following provisions that will limit or offset costs created by the rule changes:

- Enhancements to authorize permit modifications that will reduce permitting steps and costs related to the expansion of a permitted livestock facility.
- Expanding livestock facilities may use permit modifications to defer costs related to runoff management upgrades until they must submit a full application for a siting permit.
- The fee structure retains the \$1000 maximum charge for a full permit and adds a reduced fee of \$500 for livestock operations seeking a permit modification.
- The transition to a new system of setbacks and odor control practices will be eased, because livestock facilities operating under the original odor management system have already increased setbacks beyond the minimum and installed odor control practices to obtain a passing odor score.
- Exclusion of new or expanded structures used to store solid manure from the higher setbacks imposed on manure storage structures.
- The concept of clusters is repurposed to enable operations to use lower setbacks based on animal units within a cluster, and not based on the animals housed at the entire livestock facility.
- The revised Worksheet 2 (odor management) simplifies the process of determining compliance, no longer requires worksheet calculations for low odor sources such as animal lots and dairy housing, and allows farmers to use more flexible odor management plans to address odors from existing manure storage and other structures with higher odor sources.
- Grandfathering provisions will allow operators to expand manure storage and housing within a setback without the need to add additional odor control practices.
- Clarification of local authority to reduce setback requirements through the use of variances.
- As a result of uniform standards across conservation programs, livestock operators have opportunities to achieve compliance with the new siting standards through other programs. For example, a livestock operator may come into compliance with the 2015 nutrient management standard and other updated standards by participating in other programs such as the farmland preservation program.
- A lower cost option is provided for existing animal lots to meet standards for barnyard runoff control, enabling minor alterations, and allowing continued use and improvement of vegetated treatment areas.
- A lower cost option is provided for small feed storage facilities to meet runoff control standards.

- Delays in processing applications will be reduced by changes including tighter requirements for local governments to make determinations regarding an incomplete application for a siting permit.
- Clarification of the procedures for a CAFO to substitute its DNR permit in place of worksheets, and modification requiring a CAFO permit holder to certify that the nutrient management plan covers the same size facility.
- All operators of non-CAFOs remain eligible for cost-sharing to install practices to comply with the siting rule. Enhancements to authorize permit modifications that will reduce permitting steps and costs related to the expansion of a permitted livestock facility.

Non-Farm Businesses

This rule has the following impacts on entities (a number of which qualify as “small businesses.”) that do business with livestock operations covered by the siting rule.

Crop consultants and other professional planners, farm supply and service businesses, soil test laboratories, and manure-haulers. This proposed rule will minimally increase the demand for entities that provide cropland related services to farmers. It will require more extensive services from professional nutrient management planners who must help farmers implement a more complicated nutrient management plan. Only third-party planners qualified under Wis. Admin. Code § ATCP 50.48 may prepare nutrient management plans for livestock operations permitted under the siting rule. These consultants must understand and follow record keeping requirements related to soil types, soil tests, crop nutrient requirements including University of Wisconsin recommendations, nutrient applications, nutrient contents of manure, nutrient application scheduling, and other matters related to nutrient management. This rule will not necessarily change the demand for manure hauling services, but may increase demand for soil testing. Nutrient management plans must be based on soil tests conducted by certified laboratories.

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

Lenders. This proposed rule will benefit lenders working with livestock facilities that are subject to local regulation of new and expanded livestock facilities. In addition to removing the uncertainties related to local permitting, lenders will benefit by gaining greater security on their farm loans because livestock operations will meet standards that protect against environmental problems and avoid nuisance complaints based on odor.

Recordkeeping and New Skills Required for Non-Farm Businesses

This rule revision does not directly trigger increased reporting, bookkeeping or other procedures for non-farm businesses.

Business professionals will need to enhance their skills to help farmers implement the siting standards; however, these professionals will likely take these actions for reasons other than this

rule. Engineers and nutrient management planners must keep pace with the latest technical standards to meet the needs of customers and protect themselves from liability. As noted previously, the rule changes will make standards consistent across government programs, making it inevitable that these professionals stay current. Moreover, certain professionals such as engineers and certified crop advisors are required to update their skills to retain their registration or certification.

Reporting, Bookkeeping and other Procedures

To the extent that this rule requires reporting, bookkeeping or other procedures, the Department's analysis is included in the prior sections covering impacts on farmers and non-farm businesses.

Professional Skills Required

To the extent that this rule requires changes in professional skills, the Department's analysis is included in the prior sections covering impacts on farmers and non-farm businesses.

Accommodation for Small Business

The Department has taken actions to identify compliance and reporting effects of these rule changes, including securing feedback from members of stakeholder groups (which included small business owners and organizations) and a technical expert committee of professionals who work with farms of all sizes. Regarding the group most significantly impacted, non-CAFOs, the rule includes accommodations previously described in the section summarizing the overall impacts on livestock operations.

Conclusion

This rule will have no more than a moderate impact on farmers, including "small businesses." To a limited extent, increased costs for non-CAFOs will be offset by the benefits from changes to the proposed rule, including permit modifications and protections against unfair use of completeness determinations. Other businesses may slightly benefit from these rule changes.

Dated this _____ day of _____, 2019.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Sara Walling, Administrator
Division of Agricultural Resource Management

APPENDIX A: Estimate of Annual Costs Triggered by Siting Rule Changes over 10 Year Period

Standard	Annual Costs	Under 1000 Animal Units (gray shading=no cost)	Over 1000 Animal Units (gray shading=no cost)
Odor Management- New and expanded facilities	\$3,000- \$37,500	10 facilities are expected need an odor control practice related to manure storage, taking into consideration lower setbacks for facilities adjacent to cropland. The estimated costs will range between: <i>Low:</i> Natural Crust-\$3,000 (Dry matter additions) <i>High:</i> Cover-\$37,500.00 (\$.75/sq. ft. x 50,000 sq ft) No costs are projected for odor management plans, if required, since they can be prepared by landowners and are not necessarily require to continue older control practices.	None of the livestock facilities should incur additional costs to comply with the change in setbacks and odor management for the following reasons: 1. A number of facilities do not need odor control practices to meet the setback requirements. 2. The facilities would have had to install one or more odor practices to earn passing score under the previous odor standard.
Upgrade of Nutrient Management Plans	\$9,000	25 livestock facilities will be directly impacted since they are not subject to other laws or programs (e.g. CAFO permits or FPP tax credits) that require the upgraded standard. Based on an average of 800 animal units and 1200 acres of spreadable land, these facilities will spend \$3 per acre more to comply or \$3,600 per operation.	Required under CAFO permit and therefore no additional costs based on the siting rule
Waste Storage	\$0	No additional costs can be attributed to the siting rule since all new construction will be designed by private consultants using the new 313 standards--which is the standard for receiving most county manure storage permits--and it is not possible to determine which construction will occur in sensitive areas.	In addition to county manure storage permits, CAFOs with new construction are using the new standard for various reasons, and therefore no additional costs are attributable to the siting rule.
Waste Storage-Closure	\$12,000- \$20,000	8 livestock facilities must spend between \$15,000 and \$25,000 to close substandard structures.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Animal Lot Runoff—New or substantial altered	\$100,000- \$125,000	10 livestock facilities will need to meet the new runoff standards for new lots, and the estimated costs for a 10,000 square foot lot will range between: <i>Low:</i> Roof to divert water-\$100,000 <i>High:</i> New or expanded storage to hold runoff-\$125,000	Required under CAFO permit and therefore no additional costs based on the siting rule.
Animal Lot Runoff—Existing	\$9,900- \$46,200	33 (60 percent of 55) livestock facilities must add practices to pass the barnyard evaluation, and estimated upgrade costs for a 10,000 square foot lot will range between: <i>Low:</i> Clean water diversion-\$3,000 for berm <i>High:</i> Roof gutters at \$10,000 and VTA improvement at \$4,000. No costs are attributed to management changes such as added cleaning.	Required under CAFO permit and therefore no additional costs
Feed Storage-Pad and Runoff collection— New and expanded bunkers, paved areas and related structures but not bags	\$860,810	35 livestock facilities must meet new standard, but 10 will qualify for the lower cost option based on 1 acre of feed storage, and 30 must meet higher standards based on 2.5 acres of feed storage. • 10 facilities would incur an additional \$43,560 (\$1.00 per sq ft. more based on 1 acre) to upgrade their pad surface compared to requirements in the previous rule, and \$20,000 to collect and pump leachate. • 25 facilities would incur an additional \$108,900 (\$1.00 per sq ft. more based on 2.5 acres) to upgrade their pad surface compared to the requirements in the previous rule and \$210,000 to add storage to collect leachate and runoff from 2.5 acres of feed storage.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Feed Storage—Existing bunkers, paved areas and related structures but not bags	\$59,800	Livestock facilities will incur the following costs to evaluate and upgrade their existing facilities: • 55 facilities will incur costs engineering evaluation of storage at \$600 per evaluation. • 20 facilities will install clean water diversion at \$2,000 each. • 35 facilities must spend \$15,000 each to enhance their system to collect runoff from feed storage over 1 acre.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Other Runoff Control Standards	0	Managing milkhous wastewater should not incur additional costs. Nor are there additional costs to comply with the tillage setback. By complying with the NRCS 590 standard, operations will control soil erosion to T and meet the Phosphorus Index.	Required under CAFO permit and therefore no additional costs based on the siting rule.
Annual Costs	\$1,054,510-\$1,158,310		
Ten year Costs	\$10,545,100-\$11,583,100		

