



Livestock Facility Siting

Local Governments

What You Need to Know About Livestock Facility Siting

Questions and Answers

Does this law force us to regulate the siting of new or expanding livestock facilities?

No. The livestock facility siting law (s. 93.90) and rule (ATCP 51) do not require local governments to regulate the siting of livestock operations.

Can we impose a moratorium on new livestock operations until a livestock siting ordinance is adopted?

Yes. Under authority of Section 62.23(7)(da) of the Wisconsin Statutes a city, village, or town can impose a moratorium, however it must be for planning purposes and cannot exceed two years.

Can a county impose a moratorium?

Yes. The state does not restrict counties from imposing temporary moratoria, however there is no specific state statute that addresses this issue.

Is there a good reference that covers moratoriums and land use planning and zoning?

Yes. "Guide to Community Planning in Wisconsin" by Brian W. Ohm. It can be accessed on the Web using this link:

<http://www.lic.wisc.edu/shapingdane/resources/planning/library/book/contents.htm>

Can we prohibit new or expanding livestock operations based on their location in a zoning district?

Yes, in certain cases if 1) the facility is located in a nonagricultural district or 2) it is located in an agricultural district and the local government has at least one other agricultural district that allows operations of all sizes, however you must provide public health and safety justifications for the exclusion.

How does this rule affect county manure storage ordinances?

This rule includes standards for manure storage structures. This rule, when it applies, pre-empts inconsistent local manure storage ordinances. Livestock facilities not covered by the rule must comply with the existing local manure storage ordinance.

The siting standards **only** apply to new and expanding livestock facilities in areas that require local approval, and then **only** if the farm will have 500 animal units (AU) or more and has expanded by at least 20% (limited exceptions)

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How does this rule affect local regulation of existing livestock facilities?

Existing livestock facilities are not covered by this rule unless they expand **and** a local permit is required. If local approval is required, an expansion will be required to complete an application if:

- The facility expands by 20% and exceeds 500 animal units in size for the first.
- The expansion exceeds the express limit of a prior local siting permit (for example, if a livestock facility previously approved for up to 800 “animal units” wants to expand to 900 “animal units”).
- The number of “animal units” to be kept at the livestock facility already exceeds the threshold and expands by more than 20% the number kept on the rule effective date (for example, the facility wants to expand from 600 to 900 “animal units”).

What if a facility has a conditional use permit issued under an ordinance in effect before 2006. What happens to those permits?

The siting rule does not affect any conditional use or other permits that have already been issued. Livestock operators must continue to meet the terms of those existing permits. A local government is free to remove conditions in a permit issued under pre-siting ordinances, but it cannot authorize an expansion under that permit. If a livestock operator wishes to expand beyond the level authorized in the old permit, the operator must obtain a new local permit, and the new siting standards and rule would apply.

What options do local governments have to require siting permits?

Counties, towns and other municipalities with zoning can adopt a conditional use permit requirement in their zoning codes. This option provides the most land use control. Counties and towns without zoning, or with a mixture of zoned and unzoned towns, have the option of adopting a licensing permit. The licensing permit requires that applicants meet the siting standards, but would not have any location restrictions that would apply with zoning.

What standards must we use in issuing a permit for new or expanding livestock facilities?

In most cases, local governments will use the state standards required by ATCP 51. A local government may adopt stricter local standards by ordinance, but only if they can be justified based on public health and safety. An ordinance may not include local standards designed to promote public welfare such incompatible uses, but may address public health and safety issues such traffic, noise, and dust.

Does the siting rule apply the same standards to all livestock facilities that must apply for a permit?

No. Requirements may vary, depending on facility size, type and location. In general, this rule has less stringent requirements for livestock facilities with fewer than 1,000 animal units, and has more stringent requirements for new livestock structures (buildings) than existing structures.

State Siting Standards and Worksheets

Animal Units

Odor Management

Waste and Nutrient Management

Waste Storage

Runoff Management



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Can we still require compliance with other local requirements not covered by the new law?

The rules do not affect your authority to prohibit a proposed livestock facility that violates:

- shoreland and floodplain zoning ordinances
- construction site erosion control or stormwater management ordinances
- generally applicable building, electrical or plumbing codes.

Can we charge a fee to process the livestock siting application, or require the applicant to post a bond or other security?

A local government may charge a reasonable fee, not to exceed \$1000, to offset its costs to review and process an application. The fee must be set by local ordinance. A local government may not charge any other fee, or require the applicant to pay any bond or security.

How do we know if livestock operators turn in a complete application?

Local governments must provide livestock operators with the official livestock siting application form. A complete application means all the required components specified in the application form are consistent, credible, accurate, and not missing any information. A checklist is available on the DATCP website to help you review the application.

Can we change the application form prescribed by this rule?

No. All local governments that require local approval of new or expanded livestock facilities will use the same application form. There are, however, some very limited exceptions that allow local governments to add their own requirements to the application to seek information concerning local standards adopted for public health and safety reasons.

How much time do we have to process a siting application?

You must notify an applicant, within 45 days, whether the application is complete. If the application is not complete, then you must tell the applicant what information is needed. After the applicant provides this information, you must notify the applicant within 14 days that the application is complete. You must grant or deny the application within 90 days after giving this notice of completeness. You also must notify adjacent landowners using the DATCP "Notice to Adjacent Landowners" within 14 days of determining the application complete, but before making the approval decision.

Do we have to provide the applicant the reasons for our decision to approve or deny the facility?

Yes. You must issue your decision in writing. The decision must be based on written findings of fact included in the decision. The findings must be supported by evidence in the local record. You must return a copy of the application, with the approval decision clearly marked, to the applicant.

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The decision-making record must include the application for approval, a record of any public hearing, a copy of any local ordinance cited in the decision, and other documents or evidence considered. You must keep the record for at least 7 years.

Can livestock operators or others appeal our decision?

In addition to the other appeal options provided by law, such as internal local processes and circuit court challenges, a person may appeal to the state Livestock Facility Siting Review Board (LFSRB). An LFSRB appeal may be filed by the applicant, or a person who resides or owns land within 2 miles of the proposed livestock facility. Appellants are not required to exhaust the local appeal process before appealing to the Board.

The LFSRB must review the local decision based on the evidence in the local record. The local government must certify its record to the Board within 30 days after it receives notice of the appeal. The Board must make its decision within 60 days after it receives the certified local record.

The appellant or the local government may appeal the Board's decision to circuit court. The court must review the Board's decision based on the evidence in the local record.

Can a producer phase in the building construction and animal population at a permitted facility?

Yes. A livestock operator must exercise rights granted under the permit within two years. A local government may withdraw the permit approval if an operator does not do the following within two years:

- 1) Add at least some animal units
- 2) Begin constructing any proposed facility structures

An operator does not need to add all the animal units or complete the construction of the structures within two years.

Once a siting permit is issued, can a producer modify the permit when animals are later added, rather than submit a new application?

Yes. The siting rule authorizes local governments to grant a reasonable request to modify a permit as long as the livestock operator maintains compliance with the siting standards. A possible modification scenario might involve an operator updating a nutrient management plans to reflect newly added animals.

Can we conduct inspections of the livestock facility?

You may consider including in your ordinance a provision to conduct periodic inspections upon written notice to the livestock facility owner and his or her consent to enter the premises. If the facility owner refuses to give permission for the inspection the local unit government has authority to seek inspection warrants under Sec. 66.0119 of Wis. Statutes. You may also require that permitted facilities submit self-certifications regarding their compliance status. You may charge reasonable fees to pay for the costs of these activities.



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What actions can we take if the facility is not meeting its permit requirements?

The full range of enforcement options is available to you if a livestock facility has not designed, constructed or maintained the facility consistent with the commitments made in its application for a permit. The enforcement options such as stop work orders must be included in your ordinance if you want to use them.

As a first step, you should provide written notice to the facility owner that the facility is not following the practices agreed to in the application. The notice should state a reasonable time to come into compliance and a statement that compliance must be maintained and that a follow up inspection will be conducted.

If noncompliance continues, the ordinance may provide for fines, which can be enforced through the citation procedure under Sec. 66.0113 of Wis. Statutes. The local ordinance may provide that each day of noncompliance after written notice constitutes a separate offense. The authority to fine may be used as leverage to gain compliance, which is the desired outcome.

In lieu of issuing a citation seeking imposition of a fine, the local ordinance may also provide that the local unit of government may seek injunctive relief in circuit court. The injunctive relief would be a court order that the livestock facility comply with the best management practices approved for the facility or the livestock facility owner would be subject to contempt of court and possibly a court order closing the operation of the livestock facility.

Where can I get more information?

For more information about livestock facility siting, please contact Richard Castelnovo at richard.castelnovo@wi.gov (608-224-4608), or Chris Clayton at Christopher.Clayton@wi.gov (608-224-4630).

Also, more information can be found on this Website: <http://livestocksiting.wi.gov>

Information regarding manure storage and other local ordinances can be located on DATCP's Website by searching for these terms.