

(5) **PRELIMINARY APPROVAL OF APPLICATIONS.** The department may give preliminary approval to an application under sub. (3) after evaluating the application under sub. (4) and consulting with the council under sub. (13). The department shall give its preliminary approval in writing. Approval of an application is contingent on the signing of a contract under sub. (6m).

(6) **INFORMATION RELATED TO PROPOSED EASEMENT.** A cooperating entity that receives a preliminary approval under sub. (5) shall submit all of the following to the department:

(a) A copy of the proposed instrument for conveying the agricultural conservation easement.

(b) A professional appraisal of the proposed agricultural conservation easement, other than an appraisal obtained by an owner of the land that would be subject to the proposed agricultural conservation easement.

(c) A statement of the purchase cost of the agricultural conservation easement.

(d) An estimate of the transaction costs that the cooperating entity will incur in connection with the purchase of the proposed agricultural conservation easement.

(e) The record of a complete search of title records that verifies ownership of the land that would be subject to the proposed agricultural conservation easement and identifies any potentially conflicting property interests, including any liens, mortgages, easements, or reservations of mineral rights.

(f) Documentation showing to the satisfaction of the department that any material title defects will be eliminated and any materially conflicting property interests will be subordinated to the proposed agricultural conservation easement or eliminated.

(6d) **SECOND APPRAISAL.** The department shall obtain its own independent appraisal of a proposed agricultural conservation easement for which the department has given preliminary approval under sub. (5) if the fair market value of the proposed agricultural conservation easement is estimated by the department to be more than \$350,000.

(6h) **REVIEW BY JOINT COMMITTEE ON FINANCE.** The department may not enter into a contract under sub. (6m) with respect to the purchase of a proposed conservation easement if the department's share of the purchase costs and transaction costs would exceed \$750,000 unless it first notifies the joint committee on finance in writing of the proposal. If the cochairpersons of the committee do not notify the department within 14 working days after the date of the department's notification that the committee has scheduled a meeting to review the proposal, the department may enter into the contract. If, within 14 working days after the date of the notification by the department, the cochairpersons of the committee notify the department that the committee has scheduled a meeting to review the proposal, the department may enter into the contract only upon approval of the committee. A proposal as submitted by the department is approved unless a majority of the members of the committee who attend the meeting to review the proposal vote to modify or deny the proposal.

(6m) **CONTRACT WITH COOPERATING ENTITY.** Subject to subs. (6d) and (6h), after a cooperating entity complies with sub. (6) and the department determines that the proposed instrument of conveyance complies with sub. (7), the department and the cooperating entity may enter into a written contract that specifies the terms and conditions of the department's participation in the purchase of the proposed agricultural conservation easement. The cooperating entity shall agree to pay the full purchase cost and the transaction costs related to the purchase of the proposed agricultural conservation easement, subject to reimbursement under sub. (9) of the department's agreed upon share of the costs.

(7) **PURCHASE OF EASEMENT.** After a cooperating entity has entered into a contract under sub. (6m), the cooperating entity may, in accordance with the contract, purchase the agricultural conservation easement on behalf of the cooperating entity and the department if the agricultural conservation easement does all of the following:

(a) Prohibits the land subject to the agricultural conservation easement from being developed for a use that would make the land unavailable or unsuitable for agricultural use.

(b) Continues in perpetuity.

(c) Provides that the cooperating entity and the department, on behalf of this state, are both holders of the agricultural conservation easement.

(d) Prohibits any holder of the agricultural conservation easement other than the department from transferring or relinquishing the holder's interest without 60 days' prior notice to the department.

(e) Complies with any other conditions specified in the contract under sub. (6m).

(8) **ACCEPTANCE AND RECORDING OF EASEMENT.** A cooperating entity that purchases an agricultural conservation easement under sub. (7) shall submit the agricultural conservation easement to the department for its acceptance. Upon acceptance by the department, the cooperating entity shall promptly record the agricultural conservation easement and acceptance with the register of deeds of the county in which the land subject to the agricultural conservation easement is located and shall provide to the department a copy of the recorded instrument conveying the agricultural conservation easement, certified by the register of deeds under s. 59.43 (1c) (i).

(9) **PAYMENT.** The department shall reimburse a cooperating entity for the department's agreed upon portion of the purchase cost and transaction costs related to the purchase of an agricultural conservation easement after the cooperating entity does all of the following:

(a) Complies with sub. (8).

(b) Submits documentation showing that any material title defects have been eliminated and any materially conflicting property interests have been eliminated or subordinated to the agricultural conservation easement, as required by the contract under sub. (6m).

(c) Submits proof of the amount of the purchase cost and transaction costs that the cooperating entity has paid, consistent with the contract under sub. (6m).

(10) **TRANSFER OR RELINQUISHMENT OF HOLDER'S INTEREST.** The transfer or relinquishment of another holder's interest does not affect the department's interest in an agricultural conservation easement.

(11) **ENFORCEMENT OF EASEMENT.** The department or any other holder of an agricultural conservation easement purchased under this section may enforce and defend the agricultural conservation easement.

(12) **RECORD OF EASEMENTS.** The department shall maintain a record of all agricultural conservation easements purchased under this section.

(13) **COUNCIL.** The department shall appoint a council under s. 15.04 (1) (c) to advise the department on the administration of this section.

(14) **RULES.** The department shall promulgate a rule, consistent with sub. (1m) (i), relating to allowable transaction costs for the program under this section.

History: 2009 a. 28; 2011 a. 32; 2015 a. 196.

**93.80 Arsenic in wood.** The department, jointly with the department of safety and professional services, shall review scientific evidence to determine whether there is a substantial likelihood that wood treated with copper, chromium, and arsenic is harmful to the environment or to human health.

History: 2001 a. 16; 2011 a. 32.

**93.90 Livestock facility siting and expansion.**

(1) **STATEWIDE CONCERN.** This section is an enactment of statewide concern for the purpose of providing uniform regulation of livestock facilities.

(1m) **DEFINITIONS.** In this section:

(a) “Animal unit” has the meaning given in s. NR 243.03 (3), Wis. Adm. Code.

NOTE: The definition of “animal unit” at NR 243.03 (3), Wis. Adm. Code, was repealed and a definition of “animal unit” was recreated at NR 243.03 (5) by CR 07–075.

(b) “Application for approval” means an application for approval of a livestock facility siting or expansion.

(c) “Board” means the livestock facility siting review board.

(d) “Expansion” means an increase in the number of animals fed, confined, maintained, or stabled.

(e) “Livestock facility” means a feedlot or facility, other than a pasture, where animals used in the production of food, fiber, or other animal products are or will be fed, confined, maintained, or stabled for a total of 45 days or more in any 12–month period. “Livestock facility” does not include an aquaculture facility.

(f) “Political subdivision” means a city, village, town, or county.

**(2) DEPARTMENT DUTIES.** (a) For the purposes of this section, the department shall promulgate rules specifying standards for siting and expanding livestock facilities. In promulgating the rules, the department may incorporate by cross–reference provisions contained in rules promulgated under ss. 92.05 (3) (c) and (k), 92.14 (8), 92.16, and 281.16 (3) and ch. 283. The department may not promulgate rules under this paragraph that conflict with rules promulgated under s. 92.05 (3) (c) or (k), 92.14 (8), 92.16, or 281.16 (3) or ch. 283.

(b) In promulgating rules under par. (a), the department shall consider whether the proposed standards, other than those incorporated by cross–reference, are all of the following:

1. Protective of public health or safety.
- 1m. Practical and workable.
2. Cost–effective.
3. Objective.
4. Based on available scientific information that has been subjected to peer review.
5. Designed to promote the growth and viability of animal agriculture in this state.
6. Designed to balance the economic viability of farm operations with protecting natural resources and other community interests.
7. Usable by officials of political subdivisions.

(c) The department shall review rules promulgated under par. (a) at least once every 4 years.

(d) The secretary shall appoint a committee of experts to advise the department on the promulgation of the rules under par. (a) and on the review of rules under par. (c).

(e) In addition to the rules under par. (a), the department shall promulgate rules that do all of the following:

1. Specify the information and documentation that must be provided in an application for approval in order to demonstrate that a livestock facility siting or expansion complies with applicable state standards under sub. (2) (a).

2. Specify the information and documentation that must be included in a record of decision making under sub. (4) (b).

**(3) POLITICAL SUBDIVISION AUTHORITY.** (a) Notwithstanding ss. 33.455, 59.03 (2) (a), 59.69, 60.10 (2) (i), 60.61, 60.62, 61.34 (1), 61.35, 62.11 (5), 62.23, 66.0415, 92.07 (2), 92.11, and 92.15 (3) (a), a political subdivision may not disapprove or prohibit a livestock facility siting or expansion unless at least one of the following applies:

1. The site is located in a zoning district that is not an agricultural zoning district.
2. The site is located in an agricultural zoning district in which the proposed new or expanded livestock facility is prohibited, subject to pars. (b) and (c).

3. The proposed new or expanded livestock facility violates an ordinance adopted under s. 59.692, 59.693, 60.627, 61.351, 61.353, 61.354, 62.231, 62.233, 62.234, or 87.30.

4. The proposed new or expanded livestock facility violates a building, electrical, or plumbing code that is consistent with the state building, electrical, or plumbing code for that type of facility.

5. The proposed new or expanded livestock facility will have 500 or more animal units and violates a state standard under sub. (2) (a).

6. The proposed new or expanded livestock facility will have 500 or more animal units and violates a requirement that is more stringent than the state standards under sub. (2) (a) if the political subdivision does all of the following:

- a. Adopts the requirement by ordinance before the applicant files the application for approval.

- b. Bases the requirement on reasonable and scientifically defensible findings of fact, adopted by the political subdivision, that clearly show that the requirement is necessary to protect public health or safety.

8. The proposed new or expanded livestock facility will have fewer than 500 animal units but will exceed a size threshold for requiring a special exception or conditional use permit that was incorporated into the political subdivision’s ordinances before July 19, 2003, and the proposed new or expanded livestock facility violates a state standard under sub. (2) (a).

9. The proposed new or expanded livestock facility will have fewer than 500 animal units but will exceed a size threshold for requiring a special exception or conditional use permit that was incorporated into the political subdivision’s ordinances before July 19, 2003, and the proposed new or expanded livestock facility violates a requirement that is more stringent than the state standards under sub. (2) (a) if the political subdivision does all of the following:

- a. Adopts the requirement by ordinance before the applicant files the application for approval.

- b. Bases the requirement on reasonable and scientifically defensible findings of fact, adopted by the political subdivision, that clearly show that the requirement is necessary to protect public health or safety.

(ae) A political subdivision that requires a special exception or conditional use permit for the siting or expansion of any of the following livestock facilities shall require compliance with the applicable state standards under sub. (2) (a) as a condition of issuing the special exception or conditional use permit:

1. A new or expanded livestock facility that will have 500 or more animal units.

2. A new or expanded livestock facility that will have fewer than 500 animal units but that will exceed a size threshold for requiring a special exception or conditional use permit that was incorporated into the political subdivision’s ordinances before July 19, 2003.

(am) Notwithstanding par. (ae), a political subdivision may apply to a new or expanded livestock facility described in par. (ae) 1. or 2., as a condition of issuing a special exception or conditional use permit, a setback requirement that is less stringent than a setback requirement under sub. (2) (a) if the setback requirement is incorporated in the political subdivision’s ordinances as a numerical standard.

(ar) Notwithstanding par. (ae) a political subdivision may apply to a new or expanded livestock facility described in par. (ae) 1. or 2., as a condition of issuing a special exception or conditional use permit, a requirement that is more stringent than the state standards under sub. (2) (a) if the political subdivision does all of the following:

1. Adopts the requirement by ordinance before the applicant files the application for approval.

2. Bases the requirement on reasonable and scientifically defensible findings of fact, adopted by the political subdivision, that clearly show that the requirement is necessary to protect public health or safety.

(b) Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23, a political subdivision may not prohibit a type of livestock facility in an agricultural zoning district based on number of animal units if livestock facilities of that type with fewer animal units are allowed in that zoning district, unless the political subdivision also has an agricultural zoning district in which livestock facilities of that type are permitted or conditional uses without respect to number of animal units.

(c) Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23, a political subdivision may not enact or enforce a zoning ordinance with a category of agricultural district in which livestock facilities are prohibited unless the political subdivision bases that prohibition on reasonable and scientifically defensible findings of fact, adopted by the political subdivision, that clearly show that the prohibition is necessary to protect public health or safety.

(d) Notwithstanding ss. 92.15 (4) and 281.16 (3) (e), a political subdivision that requires compliance with state standards under sub. (2) (a) as a condition of issuing a special exception or conditional use permit for an expanded livestock facility is not required to determine that cost-sharing is available to the operator of the livestock facility for facilities or practices needed to comply with those standards if the livestock facility will have 500 or more animal units.

(e) Notwithstanding ss. 59.69, 60.61, 60.62, 61.35, and 62.23, a political subdivision may not enact a requirement that a person obtain a special exception or conditional use permit for the expansion of a livestock facility that exists when the requirement takes effect, except that a political subdivision may enact a requirement that a person obtain a special exception or conditional use permit for the expansion of a livestock facility that exists when the requirement takes effect if the requirement applies only when the number of animal units that the livestock facility will have after expansion will exceed by more than 20 percent the largest number of animal units that were at the livestock facility for at least 90 days in the 12-month period before the requirement takes effect.

(f) For the purposes of this subsection, the number of animal units that a livestock facility will have is the largest number of animal units that will be fed, confined, maintained, or stabled at the livestock facility on at least 90 days in any 12-month period.

**(4) POLITICAL SUBDIVISION PROCEDURE.** (a) No later than 45 days after a political subdivision receives an application for approval, the political subdivision shall notify the applicant whether the application for approval is complete and, if it is not complete, what information is needed to complete the application for approval. As soon as the applicant has provided all of the required information, the political subdivision shall notify the applicant that the application for approval is complete.

(b) A political subdivision shall make a record of its decision making on an application for approval, including a recording of any public hearing, copies of documents submitted at any public hearing, and copies of any other documents provided to the political subdivision in connection with the application for approval.

(c) A political subdivision shall base its decision on an application for approval on written findings of fact that are supported by the evidence in the record under par. (b).

(d) Except as provided in par. (e), a political subdivision shall approve or disapprove an application for approval no more than 90 days after the day on which it notifies the applicant that the application for approval is complete. If an applicant complies with the rules promulgated under sub. (2) (e) 1. and the information and documentation provided by the applicant is sufficient to establish, without considering any other information or documentation, that the application complies with applicable requirements for approval, the political subdivision shall approve the application unless the political subdivision finds, based on other clear and

convincing information or documentation in the record, that the application does not comply with applicable requirements.

(e) A political subdivision may extend the time limit in par. (d) if the political subdivision needs additional information to determine whether to approve or deny the application for approval, if the applicant makes a material modification to the application for approval, or for other good cause specified in writing by the political subdivision.

**(5) REVIEW OF SITING DECISIONS.** (a) In this subsection “aggrieved person” means a person who applied to a political subdivision for approval of a livestock facility siting or expansion, a person who lives within 2 miles of a livestock facility that is proposed to be sited or expanded, or a person who owns land within 2 miles of a livestock facility that is proposed to be sited or expanded.

(b) An aggrieved person may challenge the decision of a political subdivision on an application for approval on the grounds that the political subdivision incorrectly applied the state standards under sub. (2) (a) that are applicable to the livestock facility siting or expansion or violated sub. (3), by requesting the board to review the decision. An aggrieved person is not required to exhaust the political subdivision’s administrative remedies before requesting review by the board. An aggrieved person shall request a review under this paragraph within 30 days after the political subdivision approves or disapproves the application for approval or, if the aggrieved person chooses to exhaust the political subdivision’s administrative remedies, within 30 days after the final decision in the political subdivision’s administrative review process.

(bm) Upon receiving a request under par. (b), the board shall notify the political subdivision of the request. The political subdivision shall provide a certified copy of the record under sub. (4) to the board within 30 days after the day on which it receives the notice.

(c) Upon receiving the certified copy of the record under par. (bm), the board shall determine whether the challenge is valid. The board shall make its decision without deference to the decision of the political subdivision and shall base its decision only on the evidence in the record under sub. (4) (b). In a case that involves the application of requirements related to water quality, the board shall consult with the department of agriculture, trade and consumer protection or with the department of natural resources concerning the application of the requirements related to water quality. The board shall make its decision within 60 days after the day on which it receives the certified copy of the record under par. (bm), except that the board may extend this time limit for good cause specified in writing by the board.

(d) If the board determines that a challenge is valid, the board shall reverse the decision of the political subdivision. The decision of the board is binding on the political subdivision, subject to par. (e). If a political subdivision fails to comply with a decision of the board that has not been appealed under par. (e), an aggrieved person may bring an action to enforce the decision.

(e) An aggrieved person or the political subdivision may appeal the decision of the board to circuit court. The filing of an appeal does not in itself stay the effect of a decision of the board.

(f) A circuit court to which a decision of the board is appealed under par. (e) shall review the decision of the board based on the evidence in the record under sub. (4) (b).

**History:** 2003 a. 235; 2013 a. 80; 2017 a. 365.

**Cross-reference:** See also ch. ATCP 51, Wis. adm. code.

The Livestock Facility Siting Review Board may reverse individual improper conditions under sub. (5) without reversing a siting or expansion approval in whole, at least in the absence of an argument by the approving municipality or other interested party that the defective conditions could be replaced with proper conditions. *Adams v. State*, 2010 WI App 88, 327 Wis. 2d 676, 787 N.W.2d 941, 09-0608. *Affirmed*. 2012 WI 85, 342 Wis. 2d 444, 820 N.W.2d 404, 09-0608.

By requiring the promulgation of state standards for livestock facility siting, the legislature expressly withdrew, with limited exceptions, the power of political subdivisions to enforce varied and inconsistent livestock facility siting standards, to disapprove livestock facility siting permits, and to condition the grant of a livestock facility siting permit on any requirement other than the state standards. *Adams v. State*, 2012 WI 85, 342 Wis. 2d 444, 820 N.W.2d 404, 09-0608.

23 Updated 21–22 Wis. Stats. **AGRICULTURE, TRADE AND CONSUMER PROTECTION** 93.90

Wisconsin's New Livestock Facility Siting Rule. Lamb. Wis. Law. Feb. 2007.