

An Ordinance Establishing Licensing for Siting Livestock Facilities

The Richland County Board of Supervisors does hereby ordain as follows:

Section 1: AUTHORITY

This Ordinance is adopted under authority of Wisconsin Statutes, section 92.15 and 93.90 and Chapter ATCP 51, Wisconsin Administrative Code.

Section 2: PURPOSE

The purpose of this Ordinance is to establish standards and procedures for siting new and expanded livestock facilities in Richland County.

Section 3: APPLICABILITY

This Ordinance applies only:

- 1) In the unincorporated areas of Richland County
- 2) To new livestock facilities that will have 500 or more animal units.
- 3) To existing livestock facilities that meet any of the following:
 - (a) will have 500 or more animal units after expansion;
 - (b) a facility is expanding the number of livestock by at least 20% more than kept on the effective date of the Ordinance, and there will be 500 or more animal units at the facility
 - (c) expanding beyond the maximum amount of animal units state in their existing license.

Section 4: DEFINITIONS

- 1) "Affected neighbor" means, for purposes of the odor score calculations under ATCP 51.14, a residence or high-use building located within 2,500 feet of any livestock structure at a proposed livestock facility. "Affected neighbor" does not include a residence or high-use building owned by any of the following:
 - (a) The livestock facility operator.
 - (b) A person who affirmatively agrees to have the residence or high-use building excluded from the odor score calculation under ATCP 51.14

- 2) "Aggrieved person" means a person who applied to a political subdivision for approval of a livestock siting or expansion, a person who lives within 2 miles of the 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.

- 3) "Animal unit" has the following meaning:

	Livestock Type	Animal Unit Factor
Dairy Cattle	Milking and Dry Cows	1.4
	Heifers (800 lbs. to 1200 lbs.)	1.1
	Heifers (400 lbs. to 800 lbs.)	0.6
Beef	Calves (up to 400 lbs.)	0.2
	Steer or Cows (600 lbs. to market)	1.0
	Calves (under 600 lbs.)	0.5
	Bulls (each)	1.4
Swine	Pigs (55 lbs. to market)	0.4
	Pigs (up to 55 lbs.)	0.1
	Sow (each)	0.4
Poultry	Boars (each)	0.5
	Layers (each)	0.01
	Broilers (each)	0.005
	Broilers-continuous overflow watering	0.01
	Layers or Broilers-liquid manure system	0.033
	Ducks-wet lot (each)	0.2
	Ducks-dry lot (each)	0.01
	Turkeys (each)	0.018
	Sheep (each)	0.1
	Goat (each)	0.1

- 4) "Expanded livestock facility" means the entire livestock facility that is created by the expansion, after May 1, 2009, of an existing livestock facility. "Expanded livestock facility" includes all livestock structures in the expanded facility, regardless of whether those structures are new, existing or altered.

- 5) "Expansion" means an increase in the largest number of animal units kept at a livestock facility on at least 90 days in any 12-month period. The acquisition of an existing livestock facility, by the operator of an adjacent livestock facility, does not constitute an "expansion" unless that operator increases the largest number of animal units kept at the combined livestock facilities on at least 90 days in any 12-month period.

- 6) "Livestock" means domestic animals traditionally used in this state in the production of food, fiber or other animal products. "Livestock" includes cattle, swine, poultry, sheep and goats. "Livestock" does not include equine animals, bison, farm-raised deer, fish, captive game birds, ratites, camelids or mink.

- 7) "Livestock facility" means a feedlot, dairy farm or other operation where livestock are or will be fed, confined, maintained or stabled for a total of 45 days or more in any 12-month period. A "livestock facility" includes all of the tax parcels of land on which the facility is located except pasture or winter grazed area. Related livestock facilities are collectively treated as a single "livestock facility" for purposes of this chapter except that an operator may elect to treat a separate species facility as a separate "livestock facility."

- 8) "Livestock structure" means a building or other structure used to house or feed livestock, to confine livestock for milking, to confine livestock for feeding other than grazing, to store livestock feed, or to collect or store waste generated at a livestock facility. "Livestock structure" includes a barn, milking parlor, feed storage facility, feeding facility, animal lot or waste storage facility. "Livestock structure" does not include a pasture or winter grazing area, a fence surrounding a pasture or winter grazing area, a livestock watering or feeding facility in a pasture or winter grazing area, or a machine shed or like facility that is not used for livestock.

- 9) "New livestock facility" means a livestock facility that will be used as a livestock facility for the first time, or for the first time in 5 years. "New livestock facility" does not include an expanded livestock facility in the preceding 5 years.

- 10) "Operator" means a person who applies for or holds a local approval for a livestock facility.

- 11) "Person" means an individual, corporation, partnership, cooperative, limited liability company, trust or other legal entity.

- 12) "Populate" means to add animal units for which local approval is required.

- 13) "Waste storage structure" means a waste storage impoundment made by constructing embankments, excavating a pit or dugout, or fabricating a structure. "Waste storage structure" does not include equipment used to apply waste to land. For purposes of ATCP 51.12 (2) and 51.14, "waste storage structure" does not include any of the following:

- (a) A structure used to collect and store waste under a livestock holding facility.
- (b) A manure digester consisting of a sealed structure in which manure is subjected to managed biological decomposition.

- 14) "WPDES permit" means a Wisconsin pollutant discharge elimination system permit issued by the Wisconsin Department of Natural Resources under Chapter NR 243, Wisconsin Administrative Code.

Section 5: LICENSING REQUIREMENT

13) "Waste storage structure" means a waste storage impoundment made by constructing embankments, excavating a pit or dugout, or fabricating a structure. "Waste storage structure" does not include equipment used to apply waste to land. For purposes of ATCP 51.12 (2) and 51.14, "waste storage structure" does not include any of the following:

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Section 5: LICENSING REQUIREMENT

No person shall operate a new or expanded livestock facility without a license granted under this Ordinance.

Section 6: FACILITY STANDARDS

The standards for issuing a license are as follows:

1) The State livestock facility siting standards adopted under ATCP 51, inclusive of all appendixes and worksheets and any future amendments to that Chapter, except as may be noted in this section of the Ordinance, are incorporated by reference in this Ordinance.

2) The following setbacks shall apply to livestock structures:

(a) Property Lines.

Except as provided in paragraph (d) herein, livestock structures must be located a minimum of 100 feet from the property line if the livestock facility will have 500 to 1,000 animal units, and 200 feet from the property line if the livestock facility will have 1,000 or more animal units.

The setback requirement does not prevent the use of expansion of livestock structure that was located within the setback area prior to the effective date of the setback requirement, except that a structure may not be expanded closer to the property line.

(b) Public Road Right-of-way.

Except as provided in paragraph (d) herein, livestock structures must be located a minimum of 100 feet from a public right-of-way if the livestock facility will have 500 to 1,000 animal units, and 150 feet from a public road right-of-way if the livestock facility will have 1,000 or more animal units. The setback requirement does not prevent the use of expansion of a livestock structure that was located within the setback area prior to the effective date of the setback requirement, except that a structure may not be expanded closer to the public right-of-way.

(c) Water Quality Setbacks

(1) Navigable Waters and Wetlands

A livestock facility shall comply with setback and related requirements in Richland County Shoreland Zoning Ordinance 1985-2.

(2) Floodplain

A livestock facility shall comply with setback and related requirements in Richland County Floodplain Zoning Ordinance 1991-2.

(3) Wells

A livestock facility shall comply with well setback and related requirements of Chapters NR 811 and NR 812, Wisconsin Administrative Code. New or substantially altered livestock structures shall be separated from existing wells by the distances required in Chapters NR 811 and NR 812, Wisconsin Administrative Code, regardless of whether the livestock facility operator owns the land on which the wells are located. A livestock facility structure in existence as of the effective date of this Ordinance may be altered as long as the alteration does not reduce the distance between the livestock structure and an existing well.

Community Water Systems:

-Manure stacks or storage structures 1000 feet

Other potable wells:

-Animal yards including calf hutches 50 feet

-Manure hopper or reception tank (liquid tight) 50 feet

-Manure loading area 50 feet

-Manure stack 250 feet

-Manure storage structure

Earthen, excavated or non-liquid tight 250 feet

Fabricated, liquid tight 100 feet

(d) Waste Storage Structure

(1) A new waste storage structure may not be located within 350 feet of a property line, or within 350 feet of the nearest point of any public road right-of-way. A single new waste storage structure may be constructed closer to the property line or public road if a new structure is:

i. Located on the same tax parcel as a waste storage structure in existence before May 1, 2006.

ii. No larger than the existing structure.

iii. No further than 50 feet from the existing structure.

iv. No closer to the road or property lines than the existing structures.

(2) An existing waste storage structure within 350 feet of a property line or public road right-of-way may not expand toward that property line or public road right-of-way.

Section 7: CRITERIA FOR ISSUANCE OF A LICENSE

1) A livestock operator must complete the application form and worksheets prescribed by ATCP 51, including any authorized local modifications. The application form and worksheets demonstrate compliance with standards in ATCP 51 and this Ordinance. The operator must file 4 duplicate copies of the application form, including worksheets, maps and documents (other than engineering design specifications) included in the application.

2) A non-refundable application fee of \$1000 payable to the County of Richland shall accompany any application.

3) Within 45 days after the County receives an application, it shall notify the applicant whether the application is complete. If the application is not complete, the notice shall describe the additional information needed. Within 14 days after the application is complete, the County shall notify the applicant that the application is complete. This notice does not constitute an approval of the proposed livestock facility.

4) Within 14 days after the County notifies an applicant that the application is complete, the County shall notify adjacent landowners of the application by mailing the approved notice form in ATCP 51 to each adjacent landowner.

5) After a complete application has been received, the County shall give notice of a public hearing by a Class 2 notice in The Richland Observer, with the last publication being not less than 1 week before the public hearing.

6) The County shall grant or deny an application within 90 days after the County has received a complete application. The County may extend this time limit for good cause, including any of the following:

(a) The County needs additional information to act on the application.

(b) The applicant materially modifies the application or agrees to an extension.

The County shall give written notice of any extension. The notice shall specify the reason for the extension, and the extended deadline date by which the County will act on the application.

Section 9: RECORD OF DECISION

The County shall issue its decision in writing. The decision shall be based on written findings of fact supported by evidence in the record. Findings may be based in part on the presumptions created by ATCP 51. If the County approves the application, it shall give the applicant a duplicate copy of the approved application, marked "approved". The duplicate copy shall include worksheets, maps and other document (other than the engineering specifications) included in the application. The County Conservationist shall, within 30 days of the County's decision on the application, do all of the following:

1) Give the Department of Agriculture, Trade and Consumer Protection written notice of the County

Section 9: RECORD OF DECISION

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- 1) Give the Department of Agriculture, Trade and Consumer Protection written notice of the County decision.
- 2) File with the Department of Agriculture, Trade and Consumer Protection, a copy of the final application granted or denied, if the County has granted or denied an application under this Ordinance. (The copy shall include all of the worksheets, maps and other attachments included in the application, except that it is not required to include the engineering design specifications.)
- 3) If the County has withdrawn a local approval under this Ordinance it will file a copy of the County's final notice or order withdrawing the local approval with the Department of Agriculture, Trade and Consumer Protection.

Section 10: APPEALS

In addition to other appeal rights provided by law, Wisconsin Statutes, section 93.90 (5), provides that any aggrieved person may request review by the Livestock Facility Siting Review Board of any decision by the County in connection with a permit application. An aggrieved person may challenge the decision on the grounds that the County incorrectly applied the standards under this Ordinance or violated Wisconsin Statutes, section 93.90.

An aggrieved person may request review of any decision of the Livestock Facility Siting Administrator or action by the Land Conservation Committee.

Any appeal brought under this section must be requested within 30 days of the County's approval or disapproval or within 30 days after the decision on appeal before the Land Conservation Committee.

Any appeal to the State Livestock Facility Siting Review Board shall comply with Wisconsin Statutes, section 93.90 and administrative rules of said Board.

Section 11: TRANSFERABILITY OF LICENSE

A license and the privileges granted by this license run with the land approved under the license and remain in effect, despite a change in ownership of the livestock facility, as long as the new operator does not violate the terms of the local approval. An applicant may record with the register of deeds, at the applicant's expense, the duplicate copy of the approved application. The County requests that upon change of ownership of the facility, the new owner of the facility shall file information with the Richland County Land Conservation Department providing pertinent information, including but not limited to such information as the name and address of the new owner and date of transfer of ownership.

Section 12: LICENSE TERM AND MODIFICATIONS

A license and the privileges granted by a license issued under this Ordinance is conditioned on the livestock operator's compliance with the standards in this Ordinance, and with commitments made in the application for a license. The operator may make reasonable changes that maintain compliance with the standards in this Ordinance, and the County shall not withhold authorization for those changes. A violation of the license or a failure to comply with the commitments made in the application may result in suspension and/or termination of the license as provided in Section 14 of this Ordinance.

Section 13: EXPIRATION OF LICENSE

A license remains in effect regardless of the amount of time that elapses before the livestock operator exercises the full authority granted by the approval. However, the County may treat a license as lapsed and withdraw the license if the license holder fails to do all of the following within 2 years after the issuance of the license:

- 1) Begin populating the new or expanded livestock facility
- 2) Begin constructing all of the new or expanded livestock housing or waste storage structures proposed in the application for local approval

Section 14: COMPLIANCE MONITORING

The County shall monitor compliance with the Ordinance as follows:

- 1) Upon notice to the livestock facility owner, request the Richland County Land Conservation Department under Section 5 of this Ordinance to personally view the licensed premises at a reasonable time and date to insure that all commitments of the application as approved are being complied with.
- 2) If the livestock facility owner refuses the Richland County Land Conservation Department the right to view the licensed premises, the Richland County Land Conservation Department may request the assistance of the Sheriff or a deputy Sheriff to obtain an inspection warrant from the Circuit Court to inspect the licensed premises for the purpose of protection of the public health and safety under Wisconsin Statutes, section 66.0119.
- 3) If a licensed premises is found not to be in compliance with the commitments made in the approved application, the Richland County Land Conservation Department shall issue a written notice to the livestock facility owner stating the conditions of non-compliance and directing that compliance of the commitments of the approved application and license be complied with in a reasonable amount of time stated in this written notice.
- 4) If non-compliance of the license conditions as described in the written notice given by the Richland County Land Conservation Department continue past the stated time to comply, the Richland County Land Conservation Department may take further action as provided in this Ordinance, including forfeitures or injunctive relief.
- 5) If the livestock facility owner disputes that the conditions of the license have not been complied with, the livestock facility owner may request a hearing in writing within five day of receipt of the notice of non-compliance. The Richland County Land Conservation Committee shall schedule a meeting within five days to determine if the conditions of the license have been complied with or whether non-compliance of the commitments of the approved application and local approval exists.

Section 15: ADMINISTRATION AND PENALTIES

- 1) The Land Conservation Committee shall administer this Ordinance.
- 2) Any person who violates any of the provisions of this Ordinance, or who knowingly makes any material false statement or knowing omission in any document required to be submitted under the provisions of this Ordinance shall be subject to the following penalties:
 - (a) A forfeiture of \$500.00, plus the applicable surcharges, Court costs, assessments and other costs for each violation.
 - (b) Each day a violation exists or continues shall be considered a separate offense under this Ordinance.
 - (c) The County may seek injunctive relief from the Court against any continuing violation of this Ordinance.
 - (d) The County may suspend or revoke the approval of a license under this Ordinance after due notice to the livestock facility owner and after a public hearing to determine whether the license should be suspended or revoked.
- 3) The Land Conservation Committee shall have discretion to suspend or revoke a license issued under this Ordinance. The Land Conservation Committee shall consider extenuating circumstances such as adverse weather conditions that may affect the operator's ability to comply with this Ordinance.

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 - (b) Each day a violation exists or continues shall be considered a separate offense under this Ordinance.
 - (c) The County may seek injunctive relief from the Court against any continuing violation of this Ordinance.
 - (d) The County may suspend or revoke the approval of a license under this Ordinance after due notice to the livestock facility owner and after a public hearing to determine whether the license should be suspended or revoked.
- 3) The Land Conservation Committee shall have discretion to suspend or revoke a license issued under this Ordinance. The Land Conservation Committee shall consider extenuating circumstances such as adverse weather conditions that may affect the operator's ability to comply with this Ordinance.
- 4) In additions to any other penalty imposed by this Ordinance, the County's reasonable costs of abatement of any public nuisance on the licensed premises by the County may be collected under this Ordinance or Wisconsin Statutes, section 823.06 against the owner of the real estate upon which the public nuisance exists. Such costs of abatement may be recovered against the real estate as a special charge Wisconsin Statutes, section. 66.027 unless paid earlier.
- 5) The Corporation Counsel shall prosecute violations of this Ordinance at the direction of the Land Conservation Committee.

Section 16: SEVERABILITY

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this Ordinance that can be given effect without the invalid provision or application, and to that end, the provisions of this Ordinance are severable.

Section 17: EFFECTIVE DATE

This Ordinance is effective upon its passage and publication.

Dated: May 19, 2009
 Passed: July 21, 2009
 Published: July 30, 2009

**ORDINANCE OFFERED BY THE LAND
 CONSERVATION COMMITTEE**

FOR AGAINST

Ann M. Greenheck, Chairman
 Richland County Board of Supervisors

Virginia Wiedenfeld	X
Paul Kinney	X
James Lewis	X
William Seep	X
Richard Rasmussen	X

ATTEST:
 Victor V. Vlasak
 Richland County Clerk