WISCONSIN'S LIVESTOCK FACILITY SITING LAW AND PROPOSED RULE

Richard Castelnuovo[1], Jennifer Heaton-Amrhein[2], and Coreen Fallat[3]

Abstract

In 2004, Wisconsin enacted the Livestock Facility Siting Law (2003 Act 235) designed to reform local regulation affecting livestock facilities. The law is intended to ensure a more predictable and fairer system of local regulation. While the new law retains local authority to control rural land use through planning and zoning, it mandates that local governments follow state standards and procedures if they require individual approval for new and expanding livestock facilities. Central to the siting law are standards that local governments must apply whenever they make decisions to approve or deny applications for livestock facilities. These state siting standards are being developed through rule making, in accordance with specific requirements set forth in the law. As proposed in the final draft rule, the standards will protect air and water quality, while providing the livestock industry a predictable regulatory framework within which to grow and modernize.

Introduction

The livestock facility siting law is part of a trend among states to standardize and streamline the approval process for new and expanding livestock facilities. Approaches vary among states, but officials share a common concern about improving the business climate for animal agriculture in their states. While it may not be the most critical factor in making a state more competitive, improvements in local regulation can create a more attractive business climate. There is research to suggest that the nature and extent of local regulation can impact business decisions to site or expand livestock facilities (Lazarus, 1999). Furthermore, there is a perception in the farm community that regulation in Midwestern states such as Wisconsin is onerous, inhibiting farmers from building new or expanded livestock facilities (Sands, 2001). In his "Grow Wisconsin" plan, Governor Doyle recognized the connection between growth in the livestock industry and local regulation by writing, "Currently, one of the greatest impediments to the location and expansion of agricultural businesses in our state is uncertainty in local government permitting processes and a myriad of standards that vary by jurisdiction." Since local governments can currently enact their own, distinct regulations, there is the potential for over 1,000 different regulatory schemes throughout the state.

Ensuring the competitiveness of Wisconsin's dairy industry has significant implications for the state's economic well being. Wisconsin's farms and agricultural businesses generate more than $51.5 billion in economic activity and provide jobs for 420,000 people, according to a March 2004 study (Deller, 2004). To maintain its competitiveness, Wisconsin needs to produce more milk to retain processors. The state is likely to meet its need for more milk primarily through the growth of larger dairies.

[1] Chief, Runoff Management Section, Dept. of Agriculture, Trade and Consumer Protection (DATCP), 2811 Agriculture Dr., Madison, WI 53708.
[2] Livestock Facility Siting Progr. Manager, DATCP, 2811 Agriculture Dr., Madison, WI 53708.
[3] Agency Liaison and Training Coordinator, DATCP, 2811 Agriculture Dr., Madison, WI 53708.

> The fact that large dairy operations will be the source of the milk production gains needed to maintain the state's dairy industry is noteworthy because it suggests that efforts to restrict the expansion of larger scale dairy farms may be ill-advised. These actions would most likely curb growth in total milk production in the state and make it difficult for dairy plants to get the supplies of milk they need to stay in business. If this happens, dairy plants could very well shut down their Wisconsin operations. This loss of dairy plants will hurt small and moderate sized dairy operations–just as it does large dairies–because the pay prices for all milk will decline as fewer dairy plants are left in the state to compete for milk. Thus all Wisconsin dairy producers could lose if milk supplies do not increase at the rates needed to keep existing dairy plants operating in the state (Jones, 2002).

The state's agricultural agency, the Department of Agriculture, Trade and Consumer Protection (DATCP) took the initiative to address this important issue. In 2003, DATCP's Secretary convened an advisory committee made up of government representatives, farmers and farm groups, and environmentalists to consider issues related to local livestock regulation. The advisory committee unanimously recognized the need to secure the future of our livestock industry, and developed a series of recommendations that formed the basis of the livestock facility siting law.

Codified at s. 93.90, Stats., the livestock facility siting law provides a more predictable and fairer framework for local decisions to approve or deny the siting of the livestock facility. The law addresses both the reality and perception that local decision-making is not timely, is often based on standards not grounded in sound science, and imposes unpredictable and changing conditions. The law superimposes the following requirements on conditional use permits and other forms of approval used by local governments to regulate the siting of livestock facilities:

a. Precludes regulation of new and expanding livestock facilities under 500 animal units, unless the local government has an ordinance that meets the law's grandfathering provision for use of a lower regulatory threshold.
b. Applies science-based standards in deciding all applications for local approval, and only allows the use of other standards if they are justified based on public health and safety and are specified in an ordinance in advance of the application submittal.
c. Follows clear deadlines for processing applications to reduce delay.
d. Recognizes that a complete application creates a presumption of compliance with the state standards.

Siting Standards

State standards for the siting of new and expanding livestock facilities are at the core of this new regulatory framework. DATCP was required to adopt these standards by rule, making use of current runoff control standards and other laws related to farms. In specifying standards, DATCP had to consider whether the standards were (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) and usable by local officials. See 93.90(2)(b), Stats.

As required by the law, DATCP convened a technical panel to provide recommendations concerning the state siting standards. The panel included university researchers, government experts, conservation officials, and private consultants. Experts were recruited from DATCP, the Department of Natural Resources, and the Natural Resource Conservation Service (NRCS). The panel had expertise in barnyard runoff control, feed storage, manure storage, nutrient management, and odor management. The work of the panel was enhanced by the participation of an expert from Minnesota who provided information on state-of-the-art methods for odor management. The panel met from June to October 2004 to prepare its recommendations, which were presented to the department in the form of a preliminary draft rule including an application for local approval and worksheets. The panel's work product was reviewed by the advisory committee that originally developed recommendations for the legislation. The proposed standards were revised by the advisory committee before being approved for public hearings. The department held twelve public hearings—attended by over 800 people—and received almost 550 oral and written comments. The draft rule was revised based on these public hearing comments.

The proposed siting standards will protect water quality from the impacts of livestock facilities that are not properly designed, constructed and operated. Unregulated facilities may pose risks to surface water from improperly applied manure, runoff from animal lots and feed storage, and overflowing waste storage facilities. They also may create groundwater risks as a result of leaking waste storage facilities, and runoff that finds its way to sinkholes and other groundwater conduits. Potential water pollutants include nutrients (phosphorus and nitrogen), bacteria, sediment and organic matter. The biological environment of a waterbody can be impaired by organic matter. This organic matter can drastically reduce dissolved oxygen levels, increase nutrient loading which can result in eutrophication, and increase ammonia concentrations to levels that can be lethal to aquatic species.

Applicants for local approval must meet siting standards by demonstrating compliance with the following requirements designed to protect water quality. Applicants are required to meet existing water quality setbacks, including those established through local shoreland, wetland and floodplain ordinances and state well protection codes. They must document that they have adequate land to apply the manure they generate. Facilities with 500 or more animal units or those without an adequate land base for manure application must complete a checklist that demonstrates that they can manage nutrients according to technical standards. As part of this checklist, applicants must use soil test results or other values to determine manure applications.

Applicants must show that all waste storage structures can operate without risk of failure or discharges. For new and substantially altered waste storage structures, applicants must design and construct these structures according to NRCS technical standards 313 and 634. Applicants must evaluate existing facilities to establish that these facilities can operate without risk of failure or discharges. Where appropriate, they also must close storage structures according to NRCS standards 360. Applicants are required to show that they have storage capacity adequate to meet their needs based on the facility's anticipated waste generation.

Applicants must control runoff from animal lots by meeting NRCS technical standard 635 for new and substantially altered lots. They must evaluate existing facilities using the BARNY model to show acceptable phosphorous runoff. A higher level of control is required if a lot is near surface water. No lot can have discharges to sinkholes or other conduits to groundwater. For buildings, bunkers and paved areas used to store high moisture feed, applicants must divert clean water from the structure, and collect and treat leachate. New and substantially altered structures must be built at least 3 feet above groundwater and bedrock. In addition, if a structure covers

more than 10,000 square feet, it must have a system to collect leachate that may leak through the structure's floor (if the floor cracks, for example).

The siting standards require livestock operators to follow certain practices near waterways that are consistent with the agricultural performance standards in NR 151, Wis. Admin. Code. These practices require the diversion of clean water from animal lots and other structures, prevent the unconfined stacking of manure near waterways, prevent overflow from waste storage, and restrict grazing on streambanks to ensure adequate vegetative cover.

The proposed siting rule also contains a standard to address the generation of chronic odor by livestock housing, waste storage areas including lagoons, and animal lots. If not properly controlled, odors may become offensive and a source of concern for others within the community. Disputes over odor have, in fact, been a major source of contention in local communities and an issue that has directly effected the approval or denial of the siting or expansion of livestock facilities. Offensive odors are distinct from air pollutants such as ammonia and hydrogen, which are not the direct focus of the siting standards at this time.

Instead, the siting standards as currently proposed require that applicants manage odor from facilities. If an applicant proposes a new facility with 500 or more animal units or an expansion with 1000 or more animal units, the applicant must demonstrate that the proposed production facilities (animal housing, animal lots and waste storage) will have acceptable odor levels. Applicants more than 2500 feet from their neighbors or under the established size thresholds do not have to meet the odor standard. Odors levels are predicted using a model. As the first step in modeling odor, an applicant must calculate the facility's odor generation based on the size of proposed structures. Facilities that generate odor beyond a maximum score must install odor control practices. Depending on the separation distance of the operation from neighbors, an applicant may also need to implement odor control practices to protect neighbors. A local government has additional latitude to award discretionary points to assist an applicant in passing the odor standard, if it wishes to award these points. The final draft rule no longer includes an odor management standard for manure applied to fields.

Although the standard for managing odor included in the proposed rule is not designed to address air pollution, it is worth noting that the control of odors may be effective in controlling pollutants such as ammonia and hydrogen sulfide. For example, impermeable covers can reduce odor generation, and reduce ammonia emissions from manure storage structures. Likewise biofilters installed to reduce odors from housing can significantly reduce hydrogen sulfide and ammonia emissions.[1] However, in other cases, practices such as composting may increase volatilization of ammonia. DATCP has committed to working with the Department of Natural Resources and others to further research in the area of odor and air emission management, and has received a $1.3 million Conservation Innovation Grant from NRCS for this purpose.

In addition to the proposed standards, applicants must also comply with all existing laws that apply to the proposed facility, meet local setbacks (with state maximums) and develop employee training and incident response management plans.

Local Implementation

The state siting law and proposed rule will effect local governments wishing to regulate the siting of livestock facilities through the use of a local conditional use or other siting permits. Livestock operators wishing to site or expand in jurisdictions that do not require local approval

will not need to complete a state application. Local governments that require local approval through conditional use or other siting permits must use the state standards, state application form, and state procedures. If a local government currently has an ordinance that regulates livestock siting, it has six months after the effective date of the siting rule to update its ordinance. In the interim, the local government must use the state standards, application, and procedures if it wishes to continue to regulate livestock siting. The revised ordinance must include the state standards, thresholds, and timelines, and also include any application fee and enforcement provisions. Local governments are able to adopt standards into local ordinance that are more stringent than state standards. To do so, they must adopt written and scientific findings of fact to demonstrate why the more stringent standards are needed to protect public health or safety. After the siting rule is effective, local governments may adopt an ordinance that regulates the siting of livestock facilities at any time, but must use the state threshold, standards, and procedures.

Conclusion

By creating uniform standards for the local regulation of livestock facility siting, the livestock facility siting law and the implementing rule should provide a more conducive environment for modernization of existing facilities and construction of new facilities. Livestock operators will know in advance the requirements they must meet to receive local approval, and will have assurances of approval if they submit a completed application showing that the proposed facility meets the siting standards. Local determinations will be simplified by use of a standard application and worksheets that demonstrate compliance with the siting standards. Because the siting standards are objective and science-based, the participants and the public will have greater confidence in the local approval process. The standards incorporate water quality protections related to manure storage and management, and provide a mechanism to address odor management and feed storage concerns. In their present form, the siting standards address the requirements enumerated in the siting law. These requirements will continue to be touchstones as the standards in the proposed rule are subject to additional review. In the final draft rule, the department has committed to a systematic annual review of standards implementation and local regulatory activity. However the siting standards may change, they will remain central to the implementation of the new legal framework created by the livestock facility siting law.

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Environmental Regulation, Staff Paper 316. University Park, PA: Department of Agricultural Economics and Rural Sociology, Pennsylvania State University. (A seven year study (1988-95) of trends in swine production in 13 states evaluated economic and other factors affecting industry growth. While the study found that economic factors were very significant to industry growth, it also found that growth was more pronounced in states with state required agricultural exemptions to zoning.)

Sands, Laura. 2001. Run for the Border: Onerous Permits Chase Livestock Across State Lines. *Top Producer*. A Farm Journal Publication, [article focuses on the high cost of obtaining a feedlot permit (said to be $50,000 in one in Minnesota case and $70,000 in another), threats of legal action, and negative local attitudes which are causing livestock producers to consider relocating to locations outside the Upper Midwest]

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