



Livestock Facility Siting

Local Governments

What You Need to Know About the 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.

We already regulate the siting of livestock facilities. How does this rule impact the scope of the existing regulations?

If a local ordinance requires a permit to site a new or expanded livestock operation, this rule limits the reasons for which your local government may deny approval. It also establishes timeframes for an approval decision and an appeals process. Local ordinances must be revised to incorporate the siting law.

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 have expanded by at least 20% (limited exceptions)

Do we need to change our ordinance if we wish to continue to require local approval?

Yes. The rule became effective on May 1, 2006¹. If you did not revise your existing ordinance to incorporate the siting standards by Nov. 1, 2006 you can no longer rely on it, or grandfather an animal unit threshold lower than 500 animal units. New ordinances can be adopted at any time.

Do we need to change our ordinance for all types of livestock?

No. This rule applies only to operations that keep cattle, swine, poultry, sheep or goats.

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.

¹ The effective date was July 1, 2006 for facilities with less than 25 employees or less than \$5,000,000 in sales.

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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, for the first time and without prior local approval, the size threshold at which a siting permit is required (typically 500 animal units, unless a lower threshold was grandfathered by Nov. 1, 2006).
- 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”).

Siting Worksheets and Standards

Animal Units

Odor Management

Waste and Nutrient Management

Waste Storage

Runoff Management

We require permit to site new or expanding livestock facilities. What standards do we use?

In most cases, only use the standards required by this rule. A local government may adopt stricter local standards by ordinance, but only if justifiable based on public health and safety.

Do we apply the same standards to all livestock facilities covered by the rule?

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 1000 “animal units”, and has more stringent requirements for new livestock structures (buildings) than existing structures.

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 deny a siting application because of traffic, noise, dust, light, workforce, scenic or lifestyle issues?

No.

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Is this rule going to increase our costs to regulate?

It depends. Local governments that choose to regulate the siting of livestock facilities may encounter new costs to implement the procedures required under the siting law. For example, the required application and worksheets may involve more paperwork than applications previously used. However, local governments may also save money due to the more predictable and less contentious process.

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 the 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 completed and accurate. 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 a requirement to the application if the new requirement is necessary for public health and safety.

How much time do we have to process the 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.

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.

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What if a livestock operator, after obtaining our approval, fails to meet the terms of approval?

A livestock operator must construct and operate the approved facility according to rule standards, and must honor representations made in the application for local approval. You may monitor compliance and suspend your approval, or take other action allowed under your ordinance, if approval conditions are not met. You must approve permit modifications, if the operator continues to comply with standards.

Can a producer incrementally expand their facility?

Yes. A livestock operator must exercise 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.

Can livestock operators or others appeal our decision?

Persons who may appeal include the applicant and people who reside or own land within 2 miles of the proposed livestock facility. Those who choose to appeal can use your internal appeal process, if any, or appeal to the state Livestock Facility Siting Review Board (LFSRB) or court. 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.

For more information about livestock facility siting, please contact the livestock siting staff at 608-224-4613.