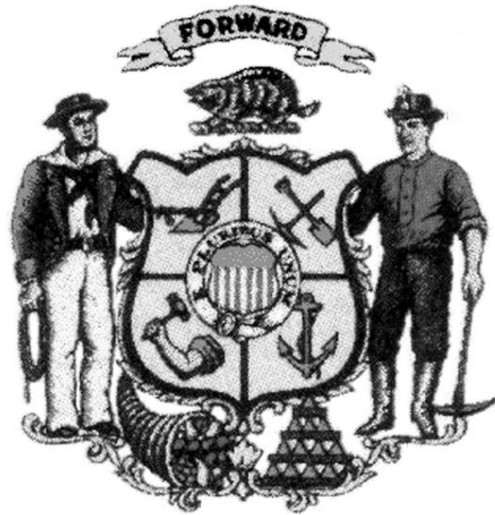


WISCONSIN
Livestock Facility Siting Review Board

BYLAWS



Adopted June 30, 2006
Amended January 18, 2008
Amended January 21, 2011
Amended October 4, 2019

*Wisconsin Department of Agriculture, Trade
and Consumer Protection*
P.O. Box 8911
Madison, WI 53708-8911
(608)224-4622

I. PURPOSE

The Wisconsin Livestock Facility Siting Review Board (Board), which is attached to the Department of Agriculture, Trade and Consumer Protection (DATCP), is responsible for determining whether challenges to local livestock facility siting decisions are valid. Specific authorities and duties are listed in Appendix A.

II. MEMBERS

A. Members

As required by Wis. Stat. § 15.135(1) (a), the Board consists of:

1. A member representing the interests of towns, selected from a list of names submitted by the Wisconsin Towns Association;
2. A member representing the interests of counties, selected from a list of names submitted by the Wisconsin Counties Association;
3. A member representing environmental interests, selected from a list of names submitted by environmental organizations;
4. A member representing livestock farming interests, selected from a list of names submitted by statewide agricultural organizations.
5. Three other members

The members shall be nominated by DATCP's Secretary and, with the advice and consent of the Wisconsin Senate, appointed for 5-year terms.

B. Vacancies

Vacancies shall be filled in accordance with Wis. Stat. § 15.135(1).

<p>The procedures for filling vacancies are as follows. In the event of a vacancy of one of the four designated member seats, DATCP's Secretary will solicit names from the appropriate organization or organizations and choose a member from among the nominees. If one of the at large member seats is vacant, DATCP's Secretary will nominate a member. All nominations are subject to the advice and consent of the Wisconsin Senate.</p>
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C. Terms

The terms of members are for five (5) years and shall expire on May 1.

D. Attendance

If a member is absent at three consecutive meetings without good cause, as determined by the Board, the Board shall bring the matter to the attention of DATCP's Secretary.

E. Oath of Office

Each member shall take and file the official oath prior to assuming office, pursuant to Wis. Stat. § 15.07(7).

III. OFFICERS

At its first meeting in each year, the Board shall elect a chairperson, vice chairperson and secretary, each of whom may be re-elected to successive terms. If an office becomes vacant, the Board may hold a special election at any regularly scheduled board meeting.

IV. AUTHORITIES AND RESPONSIBILITIES

A. Adjudication

The Board has quasi-adjudicatory authority to perform the following functions:

1. Review challenges filed by aggrieved persons with respect to decisions to approve or deny an application for local approval of new or expanded livestock facility.
2. Determine if a challenge is valid, based on whether the decision of the political subdivision incorrectly applied the state standards under Wis. Stat. § 93.90(2) (a) that are applicable to the livestock facility siting or expansion or violated Wis. Stat. § 93.90(3).
3. Affirm the decision of the political subdivision or reverse that decision based on whether or not the challenge is valid.
4. Prepare policy recommendations in connection with individual decisions, and direct transmission of the decisions as necessary.

A detailed description of the adjudicatory procedures is provided in Appendix A.

B. Board Management

The Board has policy and rule making authority to perform the following functions:

1. Establish how the Board will conduct its business, including procedures to review cases.
2. Establish how others interact with the Board.
3. Evaluate and make recommendations regarding the operation and management of the Board.
4. Pursue rulemaking, if needed.

V. DECISION MAKING PROCESSES

A. Functioning in its quasi-adjudicatory capacity, the board will use the procedures outlined in Appendix A.

B. DATCP will support the board as follows:

1. Provide legal and other assistance to explain statutory and rule requirements.
2. Manage case files and communicate about cases, track Board activity and ensure prompt, proper, and timely compliance with the review procedure.
3. Prepare and issue required notices and orders.
4. Schedule and coordinate Board meetings, including preparing the agenda and distributing meeting materials.
5. Provide legal services as required to resolve cases, including preparing draft and final decisions.
6. Provide expert assistance, as needed, on water quality issues.

VI. MEETING PROCEDURES

A. Schedule and Place of Meetings

1. Meetings will be scheduled as required, to handle case deliberation and decisions, and may be cancelled if not needed.
2. Meetings may be held at DATCP's central office in Madison, at other appropriate locations, or by conference call, as determined by the Board.
3. All meetings shall be noticed in accordance with the open meeting statutes, subch. IV of Wis. Stat. ch. 19.

B. Agendas

The agenda shall be prepared by the DATCP staff in consultation with the Board chair, at least 14 calendar days prior to the next scheduled meeting. The agenda and materials will be sent to members, usually via e-mail, at least 10 days prior to the next regularly scheduled meeting, except when a shorter interval is necessary. The agenda shall include:

1. Approval of minutes of the previous meetings(s),
2. Approval of agenda and additions or changes,
3. Actions as authorized by statutes,
4. Other business authorized by law, and
5. Future meetings scheduled.

C. Minutes

Minutes of each meeting shall be taken by DATCP staff and signed by the Board secretary following Board approval. Minutes shall record all Board actions. Minutes shall be sent to members, usually via e-mail. Minutes and all other records of the Board shall be retained as required by law.

D. Board Materials

Materials related to board decisions on individual cases shall be prepared by the Board attorney. Informational materials or materials shall be prepared by DATCP staff or the Board attorney. All Board materials will be distributed by electronic means, except when impractical. Materials shall be mailed to the board at least 10 days prior to the board meeting, and sooner if possible. Staff may distribute certain materials at Board meetings to supplement presentations to the Board, when appropriate.

E. Conduct of Meetings

1. The chair or, in the absence of the chair the vice chair or, in the absence of both, the secretary, or in the absence of all three, any member chosen by the members present, shall call the meetings of the board to order and shall act as chair of the meetings.
2. The board secretary shall act as secretary of all meetings of the board. In the absence of the secretary, the presiding officer may appoint any member present to act as secretary of the meeting. The secretary shall direct the department to prepare minutes of all Board meetings.
3. Any subject matter regarding procedure not covered by these bylaws will be covered by *The Sturgis Standard Code of Parliamentary Procedure*.
4. Meetings shall be conducted in accordance with Wisconsin's open meeting law.

F. Manner of Acting

Except as otherwise expressly provided in these bylaws, action shall be taken by the Board upon a vote of a majority of the members present at a meeting and the same shall be the action of the Board. The voting on all matters at a meeting for which a roll call vote is requested shall be by

yeas and nays and the yeas and nays shall be entered upon the minutes of the meeting. In the case of a tie vote, the motion will fail. Each member is allowed one vote on all motions concerning business of the board.

G. Quorum

Four board members shall constitute a quorum and no formal business may be transacted unless a quorum is present.

H. Conflict of Interest

If a member recognizes that his or her own participation in a particular discussion or vote represents a conflict of interest, that member shall so state publicly and abstain from that discussion or vote. See additional provisions in Appendix A.

VII COMPENSATION AND EXPENSES

Board members who are not employees of state agencies are eligible to receive reimbursement of expenses "incurred in the performance of their duties." The following policy defines the duties of members of the Board, the performance of which establishes eligibility for per diem and expenses.

A. No Prior Approval Required

Board members will receive reimbursement of expenses for attending official meetings of the Livestock Facility Siting Review Board.

B. Prior Approval Required

Board members will receive reimbursement of expenses for attending the following meetings or activities if prior approval has been obtained from the board chair.

Meetings and activities for which prior approval is required are:

1. Attendance at an ATCP Board meeting where presence is requested as part of a report on board activities
2. Other public appearances on behalf of the Board.

VIII. REVIEW OF AND AMENDMENTS TO THE BYLAWS

These bylaws may be altered, amended or repealed and new bylaws may be adopted by an affirmative vote of two-thirds (2/3) of the members present at any regular meeting provided that notice of each proposed change hereof or addition hereto has been delivered personally, or mailed, via electronic or US Mail, to each member at such address as the member shall have designated to the board, not less than 10 days prior to the time of meeting at which the proposed change or addition is to be considered.

Wisconsin Livestock Facility Siting Board Bylaws
Appendix A

For further information, the Department will use the Board's website to convey any changes in procedures or other information. That website is

https://datcp.wi.gov/Pages/About_Us/LivestockSitingReviewBoard.aspx

A. INITIATION OF PROCEEDING

1. Request for review

An aggrieved person, as defined in sec. 93.90, Stats., may initiate a review of proceeding by filing a form,

REQUEST FOR REVIEW OF DECISION REGARDING AN APPLICATION FOR LOCAL APPROVAL that includes all of the following:

- (a) The name and address of the aggrieved person, and the name and address and telephone number of its principal representative, if any.
- (b) A clear and concise statement that the person filing the request meets the definition of aggrieved, s. 93.90(5)(a), Stats.
- (c) The name and address of the political subdivision, including the local administrative body that issued the decision, whose decision is being challenged.
- (d) The date the political subdivision issued the decision that is the subject of the request for review.
- (e) The name and address of the applicant, as listed on lines 1, 4 and 5 of the first page of the Application for Local Approval, if different from the aggrieved person.
- (f) A clear and concise statement of the issue or issues and grounds upon which the aggrieved person is challenging the decision along with the arguments supporting those grounds. The statement of position may not exceed ten (10) 8 1/2" x 11" pages with a font no smaller than 12-point.

The appeal must be sent electronically as a .pdf file or, if necessary, post-marked no later than thirty (30) calendar days from the date that the political subdivision issued the written decision which is the subject of the request for review. A request for review filed after this deadline will not be considered. The Board may require a party to provide additional information to meet the requirements of (a)-(f) above and a request is not complete without meeting these requirements.

2. Docket

Upon receipt of a request for review, Board staff will assign a docket number and create a docket file.

3. Notice of Request for Review

Board staff will provide the following parties-in-interest a **NOTICE OF REQUEST FOR REVIEW**:

- (a) The aggrieved person filing the request for review.
- (b) The applicant, if the request for review was filed by another party.
- (c) The political subdivision that issued the decision.

Board staff will also generate a press release sent to all media outlets that are reasonably calculated to inform anyone who owns, occupies, or has some other legal interest in the property, within two (2) miles of the proposed livestock facility, that the local decision has been appealed to the Board so they may

participate in the proceedings as provided by law. Failure to provide this notice shall not invalidate the appeal process.

The notice shall include:

- (a) A copy of the request for review filed by an aggrieved person.
- (b) The docket number assigned to the request, which shall be used on all papers subsequently filed with the Board.
- (c) A description of the review procedures of the Board, including explanation that the Board may delay its request for the record of decision-making to resolve jurisdictional issues.
- (d) A statement that the political subdivision, or any person meeting the definition of an “aggrieved person”, other than the original aggrieved person making the appeal, may also file a statement of position, with a date by which they must electronically submit or postmark their filing. The statement of position may not exceed ten (10) 8 1/2" x 11" pages with a font no smaller than 12-point. The notice will indicate that the preferred method for submittal is an electronically transmitted .pdf file which can be read and copied easily with current technology.

4. Request for Decision-making Record

As soon reasonably appropriate, Board staff shall send to the political subdivision a **REQUEST FOR CERTIFIED COPY OF DECISION-MAKING RECORD**. The request shall be e-mailed, unless another method is requested by the political subdivision. The political subdivision shall provide a certified copy of the record, as defined in Wis. Admin. Code § ATCP 51.36 to the Board within thirty (30) days after the day on which it receives the request. The request shall include the fact that the certified record shall comply with the following:

- (a) The copy of the record shall be in an electronic searchable portable document format (.pdf) file which can be read and copied easily with current technology.
- (b) The copy of the record shall be organized by date.
- (c) The copy of the record shall include a table of contents or index of all materials submitted as part of the record.
- (d) The electronic recording of any public hearing must be in a digitized format, provided on a medium such as a compact disk (CD) or a portable USB flash drive, which can be read and copied easily with current technology.

Wis. Admin. Code § ATCP 51.36 identifies the following as components of a complete written record of a political subdivision’s decision-making related to an application, pursuant to Wis. Admin. Code § ATCP 51.30:

- (a) The application under Wis. Admin. Code § ATCP 51.30(1), and all subsequent additions or amendments to the application.
- (b) A copy of any notice under Wis. Admin. Code § ATCP 51.30(5), and copies of any other notices or correspondence that the political subdivision issues in relation to the application.
- (c) A record of any public hearing related to the application. The record may be in the form of an electronic recording, a transcript prepared from an electronic recording, or a direct transcript prepared by a court reporter or stenographer. The record shall also include any documents or evidence submitted by hearing participants.

- (d) Copies of any correspondence or evidentiary material that the political subdivision considered in relation to the application.
- (e) Minutes of any board or committee meeting held to consider or act on the application.
- (f) The written decision required under Wis. Admin. Code § ATCP 51.34(3).
- (g) Other documents that the political subdivision prepared to document its decision or decision-making process.
- (h) A copy of any local ordinance cited in the decision.

Note: The political subdivision must receive an application for approval that includes all the information required by Appendix A of the rule [Wis. Admin. Code § ATCP 51.30(1)], issue a notice of complete application and a notice to adjacent property owners [Wis. Admin. Code § ATCP 51.30(5) and (6)], issue a written decision to approve or deny a application [Wis. Admin. Code § ATCP 51.34(3)], and have adopted an ordinance that requires local approval. [Wis. Admin. Code § ATCP 51.10(2)]

A political subdivision that does not comply with the request within 30 days shall be sent a second request. The Board may enforce this requirement using available legal remedies.

5. Board's Decision-making Time

The 60-day requirement for making a final decision shall not commence until the Board has received a certified and complete copy of the decision-making record. Board staff will note when the political subdivision has filed a certified copy of the record. The Board may extend the 60-day time limit for good cause specified by the Board in writing.

B. PRE-DECISION ADMINISTRATIVE PROCEDURES

1. Scheduling

Board counsel shall be provided a copy of the request for review and the certified record. After receipt of the request and record, Board counsel will schedule the matter for consideration at the Board's next available meeting. Board Counsel will arrange for the parties to receive notification about Board review of the request. Board counsel may make any other arrangements to expedite or facilitate review of a case including arrangements for the Board to consult with Department of Agriculture, Trade and Consumer Protection or Department of Natural Resources staff concerning the application of the requirements related to water quality.

2. Requirement for Communications and Documents.

All communications and documents related to a case before the board shall clearly show the title of the proceeding and the docket number. If submitted by any attorney, and preferably by any aggrieved person, all documents shall be electronically transmitted .pdfs that may be read and copied easily with current technology. The e-mail address is: DATCPSitingBoard@wisconsin.gov. All parties are requested to have a single e-mail address for the Board and its staff to utilize for all communications.

All communications, documents and papers submitted to the board by U.S. Mail during any point in a proceeding, shall be submitted to the board at this address:

Livestock Facility Siting Review Board
c/o Wisconsin Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911

Except as otherwise provided in these rules, any document submitted to the board by U.S. Mail, prior to, during, or after hearing shall be submitted with seven (7) copies in addition to the original. All matters submitted to the Board shall be printed, typed or otherwise legibly duplicated. The original of each document submitted shall be signed by an attorney or representative of record for the party, or in case of a party not so represented, by the party itself, or by an officer of the party if it is a corporation or an unincorporated association.

All communications and papers submitted to the Board shall be served on all parties not represented by counsel or upon their agents designated by them or by law. E-mail to the address provided to the Board shall constitute service. Submission upon such counsel or representative shall constitute submission upon the party.

Proof of submission shall be submitted to the board only if the submission is challenged.

3. Statement of Position

By the date specified in the notice, any person who meets the definition of an aggrieved person including the applicant and the political subdivision may file a statement of position that explains why the challenge is or is not valid. A statement of position may not exceed ten (10) 8 1/2" x 11" pages with a font no smaller than 12 point.

Within ten days after the date specified in the notice for filing position statements, any person who has filed a statement of position may submit a response to other position statements. A response may not exceed five (5) 8 1/2" x 11" pages with a font no smaller than 12-point. If a response exceeds five (5) pages, it will not be accepted by the Board.

4. Corrections to Position Statement

If a statement of position is longer than ten (10) pages, the Board will immediately contact the author to state that the statement will not be accepted at its page length. The party will have five (5) days to submit a statement of position within the correct page length.

5. Amicus Briefs

A non-party with an interest in the outcome of the proceedings may request leave from the Board to file an amicus brief. The request will include a statement as to the interest of the person filing the brief and the reasons for the request. The requestor shall attach the amicus brief which may not exceed ten (10) 8 1/2" x 11" pages with a font no smaller than 12-point. The request and attached amicus brief must be submitted by the date specified in the notice for submission of position statements by the parties. If an amicus brief exceeds ten pages, it will not be accepted by the Board.

The Board will vote on whether to grant the request for filing any amicus brief. If the Board grants leave for the filing of any amicus brief, that brief will become part of the record that the Board will consider in making its decision in the case.

C. DECISION-MAKING PROCESS

1. Summary Disposition

At any time during review, a case may be summarily dismissed if a request for review is filed by a person who is not "aggrieved" or if the request does not challenge a matter within the Board's

jurisdiction. A summary disposition of a case will not become final for fifteen days after the decision is made. Within this period, the person who filed the request for review may request that the Board reconsider its summary disposition.

Wis. Stat. § 93.90(5) (b) provides that 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 S. 93.90 (2) (a) that are applicable to the livestock facility siting or expansion or violated Wis. Stat. § 93.90 (3), by requesting the Board to review the decision. An aggrieved person is a person who applied for approval of a livestock facility siting or expansion, a person who lives within two miles of the proposed livestock facility, or a person who owns land within two miles of the proposed livestock facility.

2. Board Review

Board members shall be provided the certified record at least two (2) weeks in advance of the Board's deliberation meeting.

3. Additional Evidence and Argument

No party has a right to submit additional documentary evidence, provide testimony from any witnesses, or present oral argument to the Board. The Board may open the record to receive additional evidence to resolve jurisdictional questions, and may seek oral argument, if members deem it necessary. A party may request oral argument when submitting its position statement.

4. Record of Board Proceedings

A record of Board proceedings in open session shall be made and minutes prepared recording Board actions.

5. Standard of Review

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, pursuant to Wis. Stat. § 93.90(5) (c).

6. Deliberation

Every board meeting will be conducted in open session except that the board may convene in closed session for the specific statutorily authorized purposes “[d]eliberating concerning a case which was the subject of a quasi-judicial hearing before the board.” A closed session will only convene upon proper notice and compliance with procedures. As a matter of policy, the board will vote in open session in regard to any case, unless doing so would compromise the need for the closed session. The board will follow the procedures in Wis. Stat. §§ 19.83 and 19.85(1).

Wis. Stat. § 19.83 requires that every meeting of the Board, as a governmental body, be preceded by a public notice and be held in open session. All discussion at these meetings shall be held and all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session, except as provided in Wis. Stat. § 19.85.

Before convening in closed session, Wis. Stat. § 19.85(1) requires that the Board, as a governmental body, pass a motion, by recorded majority vote, to convene in closed session. If a motion is unanimous, there is no requirement to record the votes individually. No motion to convene in closed session may be

adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under Wis. Stat. § 19.85(1) by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting.

No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session.

As required in Wis. Stat. § 19.85(2), the Board may not commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within twelve (12) hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session.

7. Final Decision

Board staff will prepare a draft final decision for the Board. The Board will notice a meeting to review the draft decision and make any changes, before issuing a final written decision. If the Board's final decision is appealed, the Board's counsel shall certify the Board's decision and record to the circuit court, in consultation with the Board's appellate counsel.

8. Extension of Time

Any time limit prescribed in Wis. Stat. § 93.90(5) may be extended for good cause shown. Extensions may be granted even if a party has not requested an extension. Any such request to extend any time limit shall be in writing and be received at least three (3) business days before the expiration of such time limit. Each party of record will be provided written notice of any extension.

D. RULES OF CONDUCT

1. Communication By and To the Board

No Board member shall communicate, directly or indirectly, with any party or other person outside of the formal proceedings of the board regarding any issue related to the request for review.

No person having knowledge that a request for an appeal hearing has been filed and no party in an appeal shall communicate, directly or indirectly, with any Board member outside of the review process as to the appeal.

Any Board member who receives an ex parte communication in violation of this section shall place on the case record all written communications received, all written responses made, a memorandum stating the substance of all oral communications received and responses made, and the identity of each person from whom the Board member received an ex parte communication. The Board member shall advise all parties that these matters have been placed on the record. Upon request made within ten (10) days after notice of the ex parte communication, any party or other person involved in such ex parte communication desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record.

2. Disqualification and Recusal

A Board member shall be subject to disqualification for bias, prejudice, interest, or any other good cause. Immediately upon becoming aware of facts or circumstances supporting disqualification, a party shall file with Board counsel a motion of disqualification against the Board member. Upon a party's

motion for disqualification, the Board member against whom the motion was filed shall consider the motion and determine whether to disqualify himself or herself. A determination not to disqualify oneself may be overturned by a favorable vote of at least three members of the Board. A person who is disqualified cannot participate in or be present for any aspect of a Board's decision.

Board members, on their own initiative, shall recuse themselves whenever they determine they have irreconcilable conflicts of interest or the appearance of such conflicts of interest. A Board member shall file a written notice of recusal with Board counsel and include sufficient details to understand the basis for recusal.