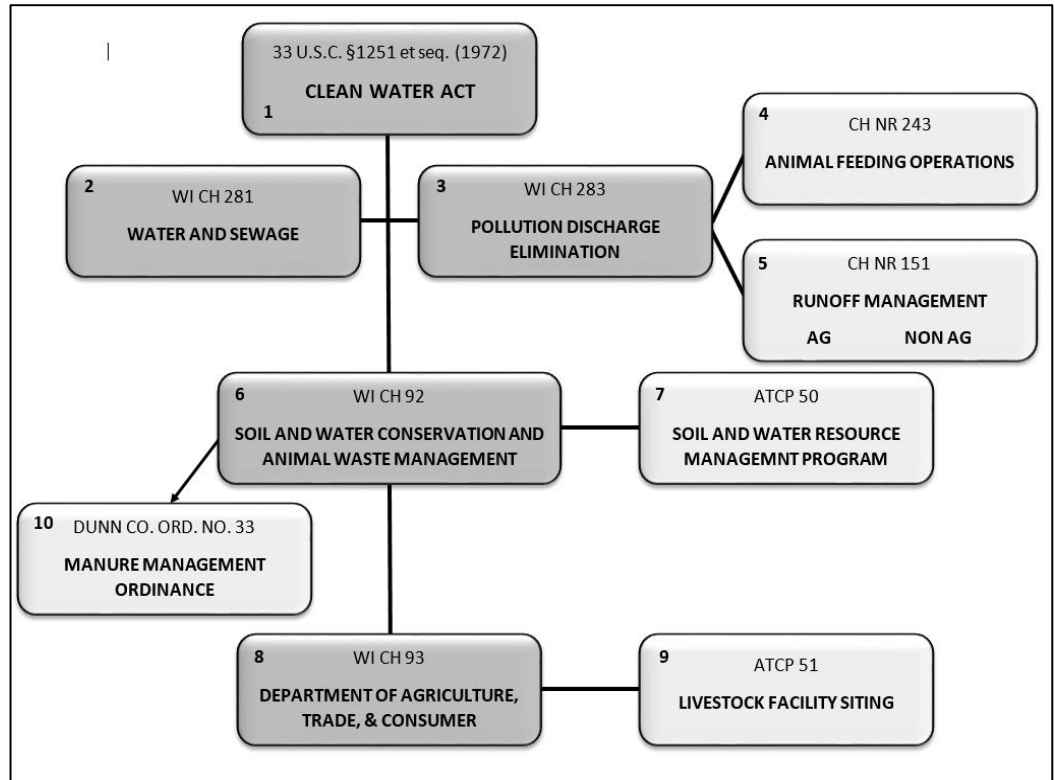


This supplemental overview was prepared for the Dunn County Livestock Operations Study Group (LOSG) in the context of their 2016-2017 study effort. Generally, this overview does not attempt to fully summarize or repeat the LOSG's previous presentations and discussions on the topics herein.

Existing Laws, Rules, and Standards Previously Discussed by the LOSG

- Federal Clean Water Act (Sec 502 Animal Feeding Operations, Section 303d)
- Federal Safe Drinking Water Act (10 ppm nitrate standard)
- **Wisconsin Livestock Facility Siting Law** (ATCP 51; includes odor)
- **WPDES Permits for CAFOs** (NR 243, NR 151)
- Wisconsin Soil & Water Conservation Laws (Wis. Stats. § 92.11 and § 92.15(3)(a))



graphic from Dunn County Land & Water Conservation

- Dunn County Manure Management Ordinance and State codes related to waste and biosolids (NR 214, NR 204, NR 113, NR 151, NR 243)
- NRCS 590 Nutrient Management and NRCS 313 Waste Storage Facility Standards
- State Public Health Enabling Regulations (Wis. Stats. § 59.03, 59.70, 254.51, 254.59)
- Dunn County Human Health Hazard Ordinance
- Wisconsin NR 445 – Control of Hazardous Air Pollutants
- Dunn County Comprehensive Plan and Zoning Ordinance (and shoreland, floodplain, & wetland rules), as well as any city, village, and town plans and ordinances
- Red Cedar River Watershed Plan and Tainter Lake/Lake Menomin TMDL
- Transportation regulations (driveways/access, weight limits, IOH, TIA, ROW use)
- Some other potentially related rules: high capacity well permitting (NR 812), wellhead protection, stormwater management/erosion control, Federal Clean Air Act

Wisconsin's Right-to-Farm Law (Wis. Stats. § 823.08)

- Directs the courts to give favor to agriculture in certain disputes. Provide farmers with protection for lawsuits for the normal consequences of an agricultural activity, such as odors, noise, dust, flies, and slow-moving vehicles.
- The agricultural use is not a nuisance if: (1) the use began before the plaintiff "came to the nuisance" and (2) the agricultural use does not present a substantial threat to public health or safety. To be a nuisance, an activity or use must be unreasonable and cause significant harm.
- The Law does not address changes in the scale or intensity of an agricultural use.

Livestock Facility Siting & CAFO Compliance History

Livestock Facility Site Law Compliance History

Currently, local governments have reported 150 active permits to DATCP under Wisconsin's Livestock Facility Siting Law. Nearly 90 percent of the permitted facilities were dairy operations. The Facility Siting Law is enforced locally; State-level compliance data is not available. According to Chris Clayton, DATCP:

- No facility having filed a complete application to a local government for a siting permit has been denied. A complete application is presumed to be in compliance. In Taylor County, one facility failed to obtain a siting permit, but they also failed to obtain other necessary permits such as a manure storage permit and possibly a CAFO permit. That facility was proposing to locate at a very challenging site that presented numerous issues.
- Of all the siting permits issued, not one has been revoked.

Though no permits have been revoked, this does not mean there has been full compliance. Nutrient management and storage compliance issues are not uncommon. For example, one Wisconsin county recently reported to DATCP that all seven of their facilities have had problems with nutrient management, with three farms having "problems beyond minimal issues." Counties have also reported that annual reporting deadlines are sometimes missed. Odor complaints are also not uncommon, though the operations may be in compliance. Some counties are struggling with limited resources to monitor or enforce compliance.

Perhaps a more important question is how many local governments with siting authority routinely monitor compliance at permitted facilities? DATCP speculates that this number is relatively low. The State's four-year review of the Siting Law encourages improved local monitoring and suggests using compliance checklists.

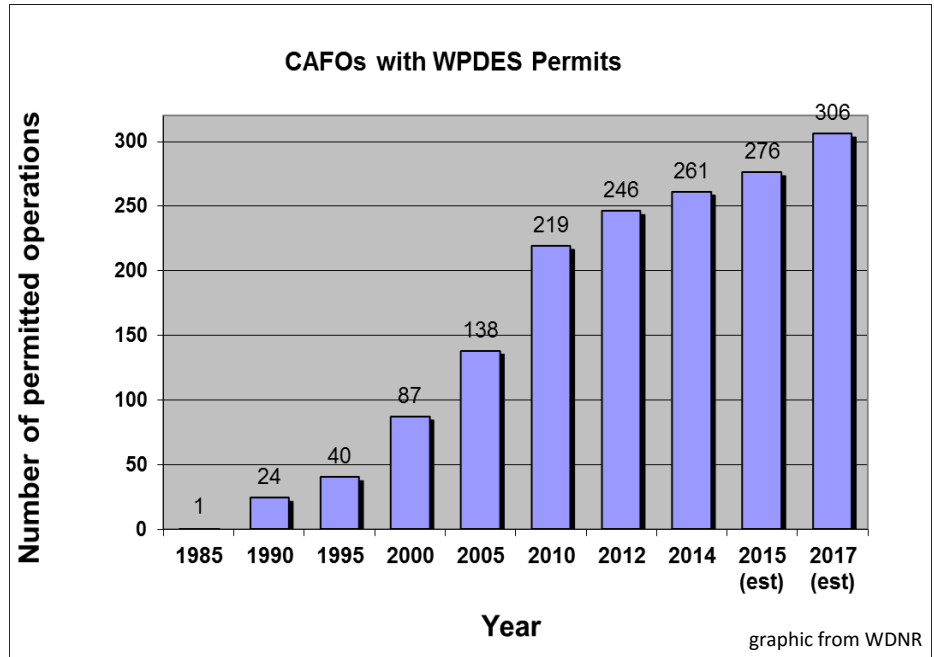
CAFO-WPDES Compliance History

Wisconsin DNR has been receiving about fifteen CAFO applications per year and anticipates there will be over 300 CAFOs with WPDES permits before the end of 2017.

According to data provided by WDNR, from January 2014-December 2016, there were 148 WPDES permit violations at 101 CAFOs or other livestock operations with a WPDES permit; nine (9) violations were at facilities that had not yet been permitted. Seventeen (17) violations were referred or in the process of being referred to the Department of Justice.

The following are the primary WPDES permit violation types from January 2014-December 2016:

- 1 land application and production site discharge violation
- 46 land application violations
- 42 production site violations
- 42 production site discharge/issue violations
- 60 reporting and approval violations



Environmental Analysis as part of a CAFO WPDES Permit

WDNR conducts environmental analysis in compliance with Chapter NR 150 for the issuance, reissuance, revocation and reissuance, or modification of an individual WPDES permit for a CAFO. CAFO permitting falls under NR 150.20(2) *Integrated Analysis Actions*, which means that the environmental analysis is built into the WPDES permit review and approval process; a separate environmental analysis process is not required. For individual CAFO permits, this is primarily accomplished through WDNR review of a standard environmental analysis questionnaire that applicants must complete and provide with their application.

For certain projects, WDNR may require a more robust Environmental Impact Report (EIR) under Wis. Stats. §23.11(5). There have been instances where the applicant has requested an EIR be prepared. Due to the magnitude or complexity of a specific CAFO WPDES permit application, WDNR has decided to follow the more comprehensive Environmental Impact Statement (EIS) process under NR 150.20(4)(b) and NR 150.30 on a very limited number of occasions. This is a case-by-case decision; an EIS is never required for a CAFO WPDES permit.

A Summer 2016 Legislative Audit Bureau report was very critical of WDNR enforcement of WPDES permits, including the following findings:

- WDNR only issued violation notices in 33 of 558 instances serious enough for such citations under DNR policies between 2005 and 2015. Policy enforcement has been inconsistent.
- In many years, inspection goals were being met for fewer than half of the sites. Some inspections were occurring after permits had already been issued.
- There was insufficient time for WDNR to review annual compliance reports, with only 36 of 1,900 CAFO reports electronically recorded as being received. Some permits were administratively extended for years without proper review due to a backlog and staff do not have time to thoroughly monitor.

- Heavy workloads and high turnover in WDNR employees may have contributed to inaction when excessive toxins were detected in monitoring wells at five CAFOs. In three cases, the WDNR was still evaluating the situation as many as 11 years after pollutants were found.

WDNR has been taking action to address the above audit findings, and it is important that Leah Nicol's presentation to the Livestock Operations Study Group on WDNR staffing increases be considered in the context of the above audit findings.

The previous information should not be used to make comparisons between CAFOs and smaller livestock operations regarding regulatory compliance. CAFOs and other livestock operations with a WPDES permit are typically more highly regulated and more closely monitored than operations without such a permit.

Livestock Facility & CAFO Case Law and Legal Actions

Livestock Facility Siting Review Board Decisions

Appeals of local siting decisions can be made to the State Siting Review Board. Reviews can be made on the grounds that the local jurisdiction incorrectly applied State standards based on evidence in the local record. To date, there have been eight such appeals to the Board, which included the following important insights:

- The Board can only review a local decision made on an application, not determine an application's completeness. (Larson Acres, Inc. v. Town of Magnolia, 2006)
- The Board reversed conditions imposed by the Town. Due to high nitrate levels in groundwater, the Town granted a siting permit with seven conditions, including that the town be allowed to conduct monthly water tests on the land and the farmer follow certain crop-rotation strategies. The applicant appealed to the Board. The Board's decision was upheld by the WI Supreme Court in 2012. (Larson Acres, Inc. v. Town of Magnolia, 2007; Adams v. Wisconsin LFSR Bd, 2012)
- The Board will uphold or overturn permits and permit decisions based on nutrient management calculations and plans, such as the accuracy of calculations and the exclusion of the amount of land available to spread projected manure. (Stadler v. Crawford County, 2008; Audrey Van Dyke v. Racine County, 2008)
- The Board has affirmed a permit on the grounds that inconsistencies in the plan did not overcome the presumption of compliance created by the checklist. (Audrey Van Dyke v. Racine County, 2009)

Legal Actions and Decisions

The following are some of the most recent, notable actions regarding CAFOs and livestock facilities in Wisconsin. This is not a comprehensive list, nor is it a robust summary of all pertinent legal actions and case law that would apply. In some other instances, legal action had commenced, but was dropped or settled prior to a court decision. The following is intended to make the Livestock Operation Study Group (LOSG) generally aware of some of the key legal actions for planning purposes, not provide a legal opinion or determine a course of action. Additional research and the opinion of legal counsel are strongly recommended before making policy decisions on any related matters.

Year	Case/Action	Summary
2001	Maple Leaf Farms v. WDNR (Racine Co.)	The Wisconsin Court of Appeals held that the Wisconsin legislature has "clearly and unambiguously" given the DNR authority to regulate off-site landspreading of manure. A concentrated animal feeding operation (CAFO) under s. 283.01 (12) includes not only where the animals are confined, but also the equipment that applies the animal waste to fields outside the confinement area, whether the fields are owned by the CAFO operator or others. Any overapplication of manure by the operator is a discharge under s. 283.01 (5) whether because of runoff to surface waters or percolation to groundwater. DNR has authority to regulate discharges from overapplication of manure from a CAFO regardless of whether the discharge occurs on land owned by the CAFO.
2005	Waterkeeper Alliance, et. al. v. U.S. EPA (Federal)	<p>Some notable findings from the U.S. Court of Appeals include:</p> <ul style="list-style-type: none"> • Upheld EPA’s authority to regulate through NPDES permits the runoff to the waters of the U.S. containing manure that CAFOs have applied to crop fields. • Upheld the EPA’s determination that runoff of manure qualifies as “agricultural storm water” (which is exempt from certain regulations) only where the CAFO has applied the manure to its crops at rates that represent “appropriate agricultural utilization” of the manure nutrients. • The Court vacated rules that allow permitting authorities to issue permits to CAFOs without including the terms of the NMP in the permit and without the NMP being reviewed by the permitting agency and available to the public. The NMPs terms are “effluent limitations” that must be made part of the permit.
2008	State of Wisconsin. et.al. v. Zawistowski, et. al. (Sawyer Co.)	Wisconsin’s Right-to-Farm Law upheld by Wisconsin Court of Appeals, including compensation to defendant for legal fees
2012	Adams v. WI Livestock Facility Siting Board, 2012 WI 85 (Rock Co.)	<p>Supreme Court affirmed the LSFRB decision in the 2007 Larson Acres v. Town of Magnolia appeal by the applicant; see second bullet in LSFB decisions above. This case upheld the State’s legal framework for facility siting and established precedent for the LSFRB’s role.</p> <p>The Supreme Court decision stated that:</p> <p><i>“Our decision does not leave political subdivisions without recourse against polluters. Most importantly, political subdivisions retain authority to bring nuisance abatement actions against polluting farms. See Wis. Stats. § 823.01. More generally, this decision does not speak to political subdivisions’ ability to regulate livestock facility operations. It simply says that the legislature has forbidden them from regulating livestock facility siting except as permitted by the Siting Law.”</i></p>

2014-2015	Village of Black Earth v. Black Earth Meat Market (Dane Co.)	The Court of Appeals found that the Right-to-Farm Law protects agricultural use and agricultural practice from actions for damages or abatement and nothing more. Nothing in the law strips municipalities of any authority they may have to impose forfeitures (penalties), including authority to regulate agricultural use pursuant to their police powers.
2012-2016	Clean Wisconsin, Inc. & Cochart v. WDNR & Kinnard Farms, Inc. (Kewaunee Co.)	<ul style="list-style-type: none"> • Oct 2012 – Neighbors of Kinnard Farms CAFO in Kewaunee County requested WDNR review of WPDES permit for an expansion due to concern with animal waste and groundwater impacts. • 2014 – During a contested case hearing, an Administrative Law Judge ordered conditions as part of the WPDES permit, including groundwater monitoring and a cap on the number of animals based on capacity to store and dispose of lagoons. • 2014-2015 – A variety of appeals took place. • Sept 2015 – WDNR denied it had the authority to include such conditions as part of the WPDES permit. Petitioners appealed to Courts. • July 2016 – In the cited case, the Circuit Court affirmed Clean Wisconsin’s argument that the DNR does have the authority to impose these permit conditions under State and Federal laws. • This case is likely continuing.
2013-2015	The Center for Food Safety, et. al. v. U.S. EPA (Federal)	In 2012, the U.S. EPA withdrew a rule requiring CAFOs to submit reports to EPA. Instead, EPA would rely on other Federal and state data sources. In 2015, a Federal District Court upheld the EPA’s decision.
2015	Wilson Mutual Insurance Co. v. Falk (Washington Co.)	The Wisconsin Supreme Court found that a dairy farmer who allegedly caused groundwater contamination through landspreading was not covered by a farm liability insurance policy. The farmer had an approved nutrient management plan, but claims were made that nearby wells were contaminated. When the farmer turned to his insurance company, but learned that the policy included a pollution exclusion clause. And, as part of the case, the Court found that “just because manure may be beneficial when spread on a field, does not mean it is not a pollutant.”
2015-2017	Golden Sands/Wysocki (Saratoga, Wood Co.)	<ul style="list-style-type: none"> • This project has been in development, legal action, and hotly debated since 2012. Proposed is a 5,300 head dairy with 32 high-capacity wells. • Mar 2015 - Judge ruled in favor of proposed Golden Sands dairy arguing that the proposed CAFO has a right to use the land for agricultural purposes because the building permits were filed and the company’s intentions were made clear before the Town established zoning rules prohibiting agricultural use of the property. Agriculture (and the CAFO) was permitted by zoning at the time that the company applied for its building permit, even though WDNR had

		<p>not yet given its WPDES permit approval. The Town appealed this decision and in March 2017 the Court of Appeals ruled that merely identifying property in a building permit application doesn't result in use rights. The dairy is considering an appeal to the State Supreme Court.</p> <ul style="list-style-type: none"> • Nov 2016 – The Town of Saratoga adopted ordinances giving it new inspection authority and other powers for livestock and manure storage practices (e.g., groundwater contamination limits, NMP compliance, monitoring wells). It is uncertain if this ordinance will stand without changes. WDNR must approve one provision, while Wood County was reviewing the manure storage component. • Dec 2016 – WDNR had not yet released the environmental impact statement, after considerable delay.
2015-2016	Citizen Petition to U.S. EPA regarding Clean Water Act	<p>In October 2015, petitioners represented by Midwest Environmental Advocates, Inc., petitioned the U.S. EPA to enforce State of Wisconsin Compliance with the Clean Water Act through “prompt corrective action” or withdraw the WDNR’s NPDES program authority. This was based on Wisconsin’s limited progress on the 75 discrepancies or issues between State and Federal statutes and rules that EPA identified in its 2011 Legal Authority Review (LAR). EPA has been conducting a review of WDNR permits, along with periodic reviews of progress on the 2011 LAR findings. The outcome of the EPA’s permit file review is expected to be publically available sometime later in 2017.</p>
2011-2016	High Capacity Wells	<ul style="list-style-type: none"> • July 2011 – In Lake Buelah Management District, et. al. v. WDNR, et.al., the Wisconsin Supreme Court ruled the State Constitution gives WDNR "the authority and a general duty to consider whether a proposed high capacity well may harm waters of the state." • May 2016 - Attorney General Brad Schimel issued an opinion stating the WDNR can no longer consider (or require conditions for) the cumulative effects of high-capacity wells on lakes, streams and groundwater when deciding whether to approve new high-capacity wells. • March 2017 – The State Legislature is considering Senate Bill 76 and Assembly Bill 105 that would allow owners of existing wells capable of drawing over 100-thousand gallons a day to repair, replace, or transfer the well to a new owner without a new DNR permit.
various	Federal Actions	<p>There have been numerous petitions, actions, and lawsuits involving the U.S. EPA in recent years regarding CAFOs under the Clean Water Act and Clean Air Act. While too numerous to include here, it is important to keep in mind that such actions could impact State and local permitting and enforcement in the future.</p> <p>While there has been little legal action in Wisconsin regarding air quality</p>

		<p>at livestock operations, there has been some Federal action. Two examples, for which WCWRPC is unaware of the current status:</p> <ul style="list-style-type: none">• In September 2016, a Federal judge dismissed a lawsuit (over a jurisdictional issue) against the EPA under the Clean Air Act. Plaintiffs were asking EPA to begin rulemaking to regulate CAFOs as a point-source of pollution under the Clean Air Act and set performance standards for new and existing facilities. The plaintiffs suggested they would be re-filing their action.• In June 2016, a North Carolina Federal Court found that a lawsuit over ammonia emissions at an 8,000 hog CAFO can proceed.
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Additional statutes and case law not specific to livestock facilities, agriculture, or water quality could also impact or limit county and local policy, including determining whether the local government has the statutory power to take such action. As the June 2016 issue of *The Municipality*, explains:

“Where a municipality acts within the legislative grant of power, the state has the authority to withdraw the power of the municipality to act. The Wisconsin Supreme Court has devised a four-part test for determining whether such a legislatively intended withdrawal of power has occurred.....If any one of the following questions is answered with a “yes,” the ordinance will fail. The questions are:

- 1. whether the legislature has expressly withdrawn municipalities’ power to act;*
- 2. whether the ordinance logically conflicts with the state legislation;*
- 3. whether the ordinance defeats the purpose of the state legislation; or*
- 4. whether the ordinance goes against the spirit of the state legislation.”*

Example Regulatory Actions by Other Wisconsin Counties

As the Livestock Operations Study Group learned during the study process, there are a variety of alternatives available to Wisconsin counties regarding the oversight of large livestock operations, including incentives and promoting best management practices. The following discusses some of the primary regulatory options, which are not mutually exclusive. This section focuses on potential county actions. Towns, cities, and villages may also take similar actions, especially if they have their own zoning.

i. Manure Management Permitting

Like Dunn County, most Wisconsin counties require a permit for new or modified manure storage structures to ensure design and construction according to NRCS standards. Rules can be included to require nutrient management planning (NMP), proper closure of unused facilities, manure irrigation, and controlling barnyard runoff. While all farmers that apply nutrients must have a nutrient management plan by State law, counties cannot require nutrient management planning (or prescribe specific, related practices) unless the county provides cost-sharing or if the operation: (i) is causing a significant

Donna Gleason, DATCP, provides a good overview of what counties can and cannot do to regulate farms under manure & runoff management, zoning, and livestock facility siting rules.

*Wisconsin Counties, November 2016,
pp.30-31*

discharge, (ii) is regulated by a local manure storage ordinance, a livestock siting ordinance, or by a WPDES permit, (iii) accepting manure storage cost share funds, or (iv) participating in a farmland preservation program.

ii. Local Facility Siting or Licensing Ordinances

As of 2013, 24 counties, 61 towns, two cities, and two villages have adopted siting ordinances; and over 80 percent of all permits were issued by counties. A county licensing ordinance has the potential to cover the entire county. The State Facility Siting Law limits use of local control by standardizing the adoption and administration of siting, including authority to impose conditions when issuing a permit. However, local standards (“more stringent standards”) are allowed when supported by public health and safety findings based on reasonable and scientifically defensible findings of fact. The following page includes examples of “more stringent standards” from other counties and communities in Wisconsin. More stringent standards than the Facility Siting Law, such as those on the following page, must be justified on public health and safety reasons and must be adopted prior to requiring producer compliance in their siting application.

The Facility Siting Law and its standardized application generally preclude local governments from requiring additional information unless the “more stringent standards” threshold is met. However, ATCP 51.16(1)(b) allows a local government to ask the applicant’s nutrient management planner “to submit the documentation that the planner relied upon to substantiate the planner’s answer to one or more questions on the nutrient management checklist.” That checklist is part of the application. This provision is often interpreted to mean the local government can request to review the applicant’s Nutrient Management Plan; and, as a result, several counties have written “submission of a nutrient management plan” into their ordinance.

The siting permit application also requires the applicant to specify the acreage currently available for land application of manure, whether by ownership, rental, or landspreading agreements. Some counties have written into their ordinance a requirement that applicants submit rental and landspreading agreements. Dunn County would need to work with its corporate counsel to determine if such additional application requirements constitute “more stringent standards.”

If water quality standards related to NR 151 or ATCP 50 are proposed beyond the State standards, State agency approval from DATCP and/or WDNR may be required under Wis. Stats. § 92.15. In 2006, the State approved Manitowoc County’s request to prohibit the application of manure within 100 feet of wells, sinkholes, and exposed bedrock during times when soils are not frozen.

Examples of “More Stringent Standards” from Zoning & Facility Siting Ordinances

Trempealeau County

- If the livestock facility owner does not own land sufficient to implement a 590 Nutrient Management Plan, the applicant must provide signed land spreading contracts providing for spreading rights. Permits shall automatically terminate upon the expiration of such contract(s) unless extensions or alternative contracts consistent with the 590 Nutrient Management Plan have been secured.
- Animal manure shall not be stored for longer than one (1) year.

Town of Metomen, Fond du Lac County

- Certain conditions are imposed by the Town's Agricultural *Livestock Enterprise Ordinance*.

Town of Eden, Fond du Lac County

- Prohibition on spreading of liquid manure in areas of known Karst formations.
- Case-by-case restriction on the spreading of liquid manure for fields within 75 feet of a shallow water table (0 to 30 inches).

Town of Oakfield, Fond du Lac County

- Prohibition on spreading of liquid manure in areas of known Karst formations.
- Prohibition on spreading of liquid manure within one-half mile of known municipal wells operated by the Village of Oakfield.
- Case-by-case restriction on the spreading of liquid manure within 75 feet of a shallow water table (many depths range from 0 to 11.4 inches) or locations within proximity of a number of wetlands or DNR and U.S. Fish and Wildlife lands that need to be protected from erosion and surface runoff.

Town of Lamartine, Fond du Lac County

- Well and other unspecified standards in areas where the water table is between 0 to 30 inches and may impact local residents with shallow wells (public health).
- Caps on the size of facilities based on operations of greater than 500 animal units that will result in a higher level of traffic moving raw materials into and finished products out of such large farm.

Town of Marshfield, Fond du Lac County

- Prohibition on new and expanded dairy facilities using manure flush/lagoon treatment systems that recycle wastewater for manure alley flushing and land application of lagoon liquid.

Green Valley, Shawano County

- Compliance with NR 151 performance standards.
- Animal manure shall not be stored for longer than 13 months.
- A buffer designed according to NRCS 393 must be maintained adjacent to waterways.

Town of Dupont, Waupaca County

- As part of zoning ordinance, requires more stringent local standards (e.g., well & waste storage setbacks and separation distances), related to groundwater contamination risks in areas with a shallow water table (depth of 0 to 30 inches) and safety concerns based on high truck traffic generated by larger farms (over 500 animal units).

iii. Zoning

The majority of Wisconsin counties have adopted general zoning under Wis. Stat. § 59.69(5) that applies to unincorporated town lands, provided that the town adopts the county zoning ordinance. In other words, when livestock facility siting standards are incorporated into a county's zoning ordinance, these standards would only apply to those towns under county zoning. A few important points to keep in mind:

- Zoning decisions should be consistent with, and not conflict with, the county's or community's comprehensive plan per Wis. Stats. § 66.1001.
- Large livestock facilities can be prohibited in certain zoning districts (e.g., residential, commercial, urban transition) or, perhaps, in certain zoning overlay districts (e.g., floodplain, conservation/sensitive areas).
- Under the Facility Siting Law, livestock farms can be prohibited or limited in size within agriculturally zoned districts only if both of the following requirements are met:
 - 1) The local ordinance includes public health and safety (e.g., traffic) justifications backed by scientifically defensible findings of fact.
 - 2) At least one other agricultural-zoned district must allow for livestock operations of any size.
- Any conditional use permits for livestock operations must be issued in accordance with the State Facility Siting Law. Local conditions cannot exceed the Facility Siting Law standards, unless, again, the local standards ("more stringent standards") are supported by public health and safety findings based on reasonable and scientifically defensible findings of fact. See the previous example "more stringent standards."
- Some towns in Wisconsin have adopted their own zoning ordinance (town zoning) and do not fall under county zoning. In such instances, these towns may regulate livestock facility siting and potentially adopt more stringent standards similar to counties as part of a town zoning ordinance.
- Zoning does not "trump" other planning and regulatory tools. Unlike county zoning, a county licensing or public health ordinance will typically apply countywide to all towns without adoption by each town.

Farmland Preservation Planning

There is a natural link between farmland preservation planning under Wis. Stats. § 91 and livestock facility siting. The County farmland preservation planning process, especially when carefully coordinated with comprehensive planning under Wis. Stats. § 66.1001, offers an opportunity to plan for livestock facility siting.

For example, the designation of agricultural enterprise areas (AEAs) under the farmland preservation law can send the signal that this is an area that may be appropriate for large-scale livestock activities. Also the large-scale livestock siting law, as well as the farmland preservation law, allows for local governments to develop different agricultural zoning districts and exclude large-scale livestock facilities from all but one agricultural district.

The Town of Lamartine in Fond du Lac County used such an approach to plan for certain areas they deemed appropriate (and not appropriate) for large-scale livestock uses, then adopted town zoning consistent with their plan.

Under county zoning, such planning and zoning for participating towns may be approached collectively and as a whole. This could potentially result in a zoning map with no large-scale livestock facilities permitted in an entire town (or most of a town) due to local conditions and findings. The opposite is also true. A town under county zoning that is mostly or entirely an AEA could be zoned to allow large-scale livestock facilities in the majority of the town.

iv. Air Quality Regulations

New livestock facilities over 500 animal units, expanding facilities over 1,000 animal units, and facilities with no livestock structures within 2,500 feet from the nearest affected neighbor must comply with the State Facility Siting Law's odor management standard. The standard uses a predictive model to estimate acceptable odor levels from manure storage, animal housing, and animal lots. Practices are required if a facility does not have adequate distance from neighbors. An applicant may develop an odor management plan to receive credits toward meeting the State's odor standard.

The Facility Siting Law does not provide local governments with the authority to monitor or regulate air emissions. If a public health hazard is determined, action could potentially be taken. Otherwise, air emissions from large-scale livestock facilities are exempt from point-source air emissions regulations. No county-level air quality standards were identified during our limited research into other county regulations. As part of their recent study on livestock facilities, Bayfield County explicitly decided to wait for further Federal and State air quality standards, rather than attempting to regulate air quality, and to promote education and cost-sharing for best practices instead.

v. Kewaunee County Approach—A Public Health & Groundwater Protection Ordinance

Kewaunee County adopted an ordinance to promote public health, safety, and general welfare through proper land use and management (i.e., cropland practices) on geographically vulnerable areas under State public health and "police power" authority. Wis. Stats. § 92.11 allows counties to enact an ordinance by referendum to prohibit land uses and land management practices that cause excessive soil erosion, sedimentation, nonpoint source water pollution, or storm water runoff. This "nuisance style" ordinance focuses on cropland practices and impacts; it regulates the management and mechanical landspreading of waste, but it is not specific to livestock waste. The ordinance also allows for variances and hauling audits. The ordinance was adopted in 2015 by local referendum and applies to all towns.

vi. Bayfield County Approach—A Facility Operations Ordinance

In January 2016, Bayfield County took a two-pronged approach:

- 1) A county-level CAFO operations (not siting) ordinance was adopted, which has not been tested in the courts. See the 2012 *Adams v. WI Livestock Facility Siting Board* case for the importance of the distinction between operations and siting. Applicants must provide an operations plan demonstrating how the operation would not cause pollution or cause a public nuisance. Approvals may be conditional to prevent or mitigate potential impacts. Bonding may also be required. This operations ordinance was in addition to and separate from the County's facility siting licensing ordinance adopted under ATCP 51.
- 2) An animal waste storage and management ordinance for the high-risk South Fish Creek watershed was also adopted with special requirements (e.g., added storage capacity, spreading windows). These more stringent standards exceeded the State's water quality standards and required WDNR approval. This ordinance was rejected by WDNR, and the County is currently in negotiations with WDNR to address.

vii. Other Regulatory Tools and Nuisance Ordinances

Additional regulatory tools and performance standards regarding traffic, noise, site lighting, etc., could be explored if not specific to certain facility sizes, locations, or use; consult with legal counsel to explore options based on need and local conditions. An inventory of all such practices in other Wisconsin counties is not available.