



## Livestock Facility Siting Law

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The state livestock facility siting law and corresponding rules promulgated by the Department of Agriculture, Trade, and Consumer Protection (DATCP) establish uniform, statewide procedures that local governments must follow if they choose to regulate the siting or expansion of livestock facilities.<sup>1</sup> In recent years, an increase in the number of concentrated animal feeding operations (CAFOs) in certain areas of the state has renewed legislative interest in the law.

The livestock facility siting law contains a general preemption, uniform state standards, and certain exceptions. The Wisconsin Supreme Court has interpreted the law as creating a broad preemption of local authority with respect to livestock facility siting.<sup>2</sup>

### GENERAL PREEMPTION

Under the livestock facility siting law, if a local government has zoned an area to allow **agricultural land uses**, the local government generally may not prohibit livestock facilities or impose general prohibitions on livestock facility siting or expansion that are based on the number of animals fed, confined, maintained, or stabled at a livestock facility within that area, unless specified conditions apply.

### CONDITIONS ON LOCAL APPROVAL

The siting law generally allows local governments to require a local approval, such as a conditional use permit or special exception to a zoning ordinance (siting permit), for new or expanded livestock facilities that will have 500 animal units<sup>3</sup> or more. However, a local government may not require a siting permit for the expansion of a pre-existing livestock facility, unless the number of animal units will increase by more than 20 percent of the largest number of animal units that were at the facility for at least 90 days in the 12-month period before the requirement takes effect. Except for certain pre-existing ordinances, a local government may not require a siting permit for a new or expanded livestock facility that will house fewer than 500 animal units.

If a local government decides to require a siting permit for a new or expanded facility that will have 500 animal units or more, it must adopt an ordinance mirroring state standards for evaluating livestock facility siting permit applications. Among other requirements, the state siting standards establish maximum property line and roadway setbacks for different types of livestock structures, odor management standards, nutrient management standards for fields, manure storage facility standards, limitations on fees, and standards intended to prevent polluted water from running off of animal lots and other areas. DATCP must consider the following factors when developing standards:

- Protective of public health or safety.
- Practical and workable.
- Cost-effective.
- Objective.
- Based on available scientific information that has been subjected to peer review.
- Designed to promote the growth and viability of animal agriculture in this state.

- Designed to balance the economic viability of farm operations with protecting natural resources and other community interest.
- Usable by officials of political subdivisions.<sup>4</sup>

Assuming that a site is in an agricultural zoning district and satisfies other specified state regulations, the local government generally must approve a permit application that meets the state standards. However, certain exceptions apply. First, a local government is generally authorized to deny a permit or apply more stringent siting requirements if it: (1) adopts the more stringent requirements by ordinance before an applicant files an application for local approval; and (2) bases the requirements on reasonable and scientifically defensible findings of fact, which clearly show that the requirements are needed to protect public health or safety.

In addition, a local government may apply more stringent standards if it is authorized to do so under one of several specified other sources of law, such as floodplain or shoreland zoning authority.<sup>5</sup>

However, local government decisions may be appealed to the Livestock Facility Siting Review Board, a state board attached to DATCP. The board has broad authority to approve or overturn local government siting decisions. It may also modify the conditions of a local government approval if it determines that such a modification is necessary to make the conditions comply with the state law. Decisions of the board may be appealed to a circuit court for a review based on the record.<sup>6</sup>

## CLEARINGHOUSE RULE 19-098

The livestock facility siting law requires DATCP to review its relevant administrative rules every four years.<sup>7</sup> As a result of its most recent review, DATCP submitted proposed rule revisions to the Legislative Council Rules Clearinghouse in July 2019. In its analysis of the rule, DATCP characterizes the updates as needed to advance the statutory goal of “providing uniform regulation of livestock facilities” and of better balancing considerations enumerated in the law.

## OTHER SOURCES OF LOCAL REGULATORY AUTHORITY

State law allows for limited local regulation of other aspects of livestock facilities. The livestock operations law generally requires local regulations of livestock operations to conform to state standards, unless the local government demonstrates that more stringent regulations are necessary to achieve state water quality standards. However, subject to certain requirements, counties, cities, villages, and towns may enact ordinances regulating certain manure storage facilities.<sup>8</sup>

State law authorizes other local regulation that may in some cases relate to a livestock facility, such as highway weight limits and shoreland and floodplain zoning ordinances. And when not preempted by state law, some municipalities may enact regulations under general “home rule” authority.

<sup>1</sup> In this context, a “livestock facility” is a feedlot or facility, other than a pasture, where animals used in the production of food, fiber, or other animal products are or will be fed, confined, maintained, or stabled for a total of 45 days or more in any 12-month period.

<sup>2</sup> s. 93.90, Stats.; ch. ATCP 51, Wis. Adm. Code.; *Adams v. State*, 2012 WI 85, ¶2.

<sup>3</sup> An “animal unit” is a unit of measure used to determine the total number of animal types located at an animal feeding operation. [s. NR 243.03 (5), Wis. Adm. Code.] Section NR 243.05, Wis. Adm. Code, provides instructions for calculating the number of animal units located at an operation.

<sup>4</sup> s. 93.90 (2) (b), Stats.

<sup>5</sup> s. 93.90 (3) (a) 3. and 6. and (ar), Stats.

<sup>6</sup> s. 93.90 (5) (e) and (f), Stats.; *Adams v. State*, 2012 WI 85, ¶60.

<sup>7</sup> s. 93.90 (2) (c), Stats.

<sup>8</sup> s. 92.15 (3) and 92.16, Stats.; ss. NR 151.096 and ATCP 50.56 and 50.60, Wis. Adm. Code.