



# Agricultural Land Use and the Environment

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Like other types of entities, agricultural businesses must comply with laws regulating natural resources, land use, and the environment. The laws that apply to a given agricultural use depend on the nature of the agricultural practice and the characteristics of a given site. In addition to the laws described below, a particular agricultural operation may be subject to state or federal laws governing water use, waste management, or other environmental impacts.

Some of the regulatory programs, such as soil and water conservation requirements, animal waste regulations, and fertilizer and nutrient requirements, are imposed through a long-term management strategy rather than a traditional regulatory program. Certain program requirements are imposed only when public funds are available to assist farmers in complying with the regulations.

## LIVESTOCK FACILITY SITING

The livestock facility siting law establishes state water quality and odor management standards to be applied to any local regulation of new or certain expanding livestock facilities.<sup>1</sup> The law applies to livestock facilities with 500 or more animal units.<sup>2</sup>

The siting law requires that local government regulations relating to new or expanding livestock facilities adhere to state standards governing the local permitting process. By enacting the siting law, the Legislature strictly limited the ability of a local government to regulate the livestock facility siting process.<sup>3</sup>

The Livestock Facility Siting Review Board oversees challenges to local siting decisions. That board, which is attached to the Department of Agriculture, Trade and Consumer Protection (DATCP), has broad authority to approve, modify, or overturn a local government siting decision.<sup>4</sup> Decisions of the board may be appealed to a circuit court for review.<sup>5</sup>

## NONPOINT SOURCE PERFORMANCE STANDARDS

Nonpoint source pollution, or runoff pollution, is water pollution that is diffuse in nature, having no single, well-defined point of origin. Wisconsin law regulates nonpoint source pollution from farming activities.

The Department of Natural Resources (DNR) must establish nonpoint source performance standards, and DATCP must write rules identifying practices for farmers to use to meet those standards. Specific performance standards include requirements related to nutrient management,<sup>6</sup> erosion, tillage setbacks, phosphorus management, and manure storage and management. Cost sharing may be available to pay for the implementation of practices designed to meet these standards and, in some situations, must be provided before a farmer can be compelled to comply.<sup>7</sup>

## POINT SOURCE WATER POLLUTION PERMITS

The federal Clean Water Act generally prohibits the discharge of any pollutant to navigable waters from any point source unless the discharge is pursuant to a federal permit or a state permit in states, like Wisconsin, that have been authorized by the federal government to operate their own permit programs.<sup>8</sup>

Federal law defines “point source” as any “discernible, confined and discrete conveyance” and specifically includes a concentrated animal feeding operation (CAFO). A CAFO is a lot or facility where a specified minimum number of livestock animals have been, are, or will be stabled or confined. CAFOs are classified as small, medium, or large.<sup>9</sup>

In Wisconsin, any person who owns or operates a large CAFO (meaning more than 1,000 animal units) is required to obtain a state permit if the operation stores manure or process wastewater<sup>10</sup> in a structure at or below grade or applies manure or process wastewater to land. Among other requirements, a state permit for a CAFO must include a nutrient management plan, which includes somewhat more stringent requirements than apply to nutrient management plans prepared by other agricultural producers.<sup>11</sup>

## PESTICIDES

Pesticides are subject to comprehensive regulation by DATCP in a state-run program based on federal mandates. Pesticide regulation is intended to protect public health, including the health of agricultural workers and nearby residents, and to protect the environment, particularly groundwater. The regulations focus on application methods and rates and disposal of pesticide containers. Licensing and certification is required for most pesticide applicators. In certain cases, state law exceeds federal requirements. For example, Wisconsin has exceeded minimum federal regulations for atrazine, a herbicide that has been found in Wisconsin's groundwater. However, a state may not allow the sale and use of a pesticide that is prohibited by federal law and a state may not create labeling or packaging requirements that are in addition to or different from those imposed by federal law.<sup>12</sup>

## RIGHT TO FARM

The state law commonly referred to as Wisconsin's "Right-to-Farm Law" does not explicitly create a "right" to farm. Rather, the law provides a measure of protection for farmers from lawsuits, or the threat of lawsuits, in which the normal consequences of an agricultural use<sup>13</sup> of land, such as odors, noise, dust, or flies, are claimed to be a nuisance. To the extent that the statute accomplishes this purpose, it facilitates the continuation and expansion of agricultural activities, particularly in areas where farmland is being converted to residential use.

In general, when a plaintiff alleges that an agricultural use of land interferes with the plaintiff's use of land, the law provides that a court may not find that the agricultural use of land constitutes a nuisance, provided the following are true: (1) the agricultural use of land predated the use of land by the plaintiff; and (2) the agricultural use of land does not present a substantial threat to public health or safety. In addition, the law limits certain remedies for a successful plaintiff and allows a successful defendant farmer to recover litigation costs.<sup>14</sup>

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<sup>1</sup> A "livestock facility" is a feedlot or facility, other than a pasture, where livestock are or will be fed, confined, maintained, or stabled for a total of 45 days or more in any 12-month period. [s. 93.90 (1m) (e), Stats.]

<sup>2</sup> An "animal unit" is a unit of measure of livestock at an animal feeding operation. A specific animal unit factor is designated for categories of animal based on characteristics such as animal size and gender and the type of livestock operation. For example, one 400-pound beef steer or cow is one animal unit and one beef calf under 400 pounds is 0.2 animal units. [s. 93.90 (1m) (a), Stats.; s. NR 243.05, Wis. Adm. Code.]

<sup>3</sup> *Adams v. State*, 2012 WI 85, ¶2.

<sup>4</sup> See *Adams*, 2012 WI 85.

<sup>5</sup> s. 93.90 (5) (e) and (f), Stats. For more information, see Legislative Council, [Livestock Facility Siting Law](#), Issue Brief (Oct. 2019).

<sup>6</sup> "Nutrient management" is a method whereby farmers adopt a plan for managing all sources of nutrients that are applied to the land. The plan covers nutrients deposited by application of fertilizer, growing legumes, and manure spreading. Nutrient management often reduces the costs of fertilizer application for farmers and is intended to reduce the amount of nutrients that can be washed away from the fields during rainfall and carried into surface waters and groundwater.

<sup>7</sup> s. 281.16, Stats.

<sup>8</sup> 33 U.S.C. ss. 1311 (a), 1362 (12) and (14), and 1342.

<sup>9</sup> s. NR 243.03 (12), (31), (39), and (59), Wis. Adm. Code.

<sup>10</sup> "Process wastewater" is wastewater from the production area of a CAFO, such as spillage or overflow from an animal water system or water used to wash animals or control dust. [s. NR 243.03 (53), Wis. Adm. Code.]

<sup>11</sup> ss. NR 243.11 (3) and 243.14, Wis. Adm. Code. For more information, see Legislative Council, [Wisconsin Pollutant Discharge Elimination System \(WPDES\) Permits for Large Livestock Facilities](#), Information Memorandum (Nov. 2016).

<sup>12</sup> ch. 94, Stats.; ch. ATCP 29, Wis. Adm. Code; 7 U.S.C. s. 136a (a), (b), (c) (5), and (g) (1) (A); 40 C.F.R. s. 152.15. For more information, see Legislative Council, [Pesticide Regulation](#), Issue Brief (Oct. 2019).

<sup>13</sup> "Agricultural use" is defined broadly to include such activities as crop or forage production, beekeeping, keeping livestock, and aquaculture. [s. 91.01 (2), Stats.]

<sup>14</sup> s. 823.08, Stats. For more information, see Legislative Council, [Wisconsin's Right to Farm Law](#), Information Memorandum (Oct. 2016).