



LEGAL ISSUES  
RELATING TO COUNTY GOVERNMENT

# Addressing Groundwater Concerns in Livestock Siting and CAFO Regulations

## THE COUNTY ROLE

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Groundwater quality is a critical concern in Wisconsin, especially in regions with a high density of concentrated animal feeding operations (CAFOs). These large-scale livestock facilities produce substantial amounts of manure and wastewater, which, if not managed properly, may lead to groundwater contamination.

In Wisconsin, counties face significant legal hurdles in attempting to regulate livestock siting facilities and CAFOs due to the preemption of local regulations by state laws. This article explores the boundaries of county authority, the regulatory framework governing CAFOs, and the options available to counties within the confines of state law.

### ► The regulatory landscape

State statute and administrative code govern livestock siting and CAFOs in Wisconsin, with the Department of Agriculture, Trade, and Consumer Protection (DATCP) and the Department of Natural Resources (DNR) holding primary authority. Counties are generally preempted from imposing regulations stricter than state standards. This includes water quality regulations under Chapter NR 151 of the Wisconsin Administrative Code and other provisions regulating agricultural practices.

A county may adopt more stringent regulations only if the county can demonstrate, to the satisfaction of DATCP

and the DNR, that such measures are necessary to protect specific local resources. This option is described in greater detail below.

### ► Key legal principles

**State preemption.** Wisconsin law explicitly limits local governments' ability to regulate livestock siting and CAFOs in ways that exceed state standards. In *Adams v. State Livestock Facilities Siting Review Board*,<sup>1</sup> the Wisconsin Supreme Court confirmed the general principle that state law preempts local ordinances unless local regulations are expressly authorized by statute. While the Supreme Court recognized that livestock siting presents a "mixed bag" of statewide and local concerns that may warrant local regulation, any local regulation must complement, rather than conflict with, the state regulation. Wisconsin law also recognizes a narrow exception for local regulations that exceed the performance standards or prohibitions set forth in Wis. Admin. Code Ch. NR 150. These are discussed in greater detail below.

**Moratoria.** Pursuant to Wis. Stat. § 59.69(4), counties have limited authority to impose moratoria on CAFO development.<sup>2</sup> Such actions must comply with statutory and other legal requirements, including the demonstration of an immediate need, careful documentation, and adherence to strict timelines for review and action.

*Counties may regulate aspects of livestock siting, like manure storage structures and nutrient management plans, but such ordinances must align with state regulations unless state approval for stricter measures is obtained.*

In light of the limitations on a county to implement a development moratorium, it is advisable for counties to proceed cautiously when considering putting a temporary halt on new CAFO-related operations. The law surrounding a county's exercise of its zoning authority in this regard is not well-settled and corporation counsel must be consulted before taking any official action. In the event a moratorium is imposed, counties should establish firm timelines for completing their review of conditions that predate the need for the moratorium. This should include a reasonable end date for the moratorium. Again, it is important for counties to work closely with their corporation counsel to ensure that any moratorium is appropriate and legally defensible.

► **Permitted local regulations**

Certainly, the DNR may enforce the CAFO regulations contained in Wis. Admin. Code Ch. NR 151; however, the reality is that the department relies heavily on its local county partners to assist in enforcement actions. Local governments may adopt ordinances consistent with state standards. They may also work in partnership with DNR through memorandums of understanding, which clarify roles and responsibilities in enforcement and implementation.

► **Exceptions to preemption**

**1. Securing state approval.** Section 92.15(3) of the Wisconsin Statutes allows a county to pursue livestock siting performance standards and regulations that exceed state standards if the county can demonstrate that these measures are necessary to achieve state water quality standards set forth in Wis. Stat. § 281.15. To obtain approval, a county must submit detailed evidence to DATCP and the DNR to justify why the stricter standards are needed and

why state standards are insufficient. The review processes detailed in Wis. Admin. Code Ch. NR 151.096 and Wis. Admin. Code Ch. ATCP 50.60 ensure that proposed local regulations meet statutory requirements and only allow exceptions for cases in which additional local regulation is necessary to achieve state water quality standards. Again, counties considering this process should work closely with their corporation counsel at the earliest opportunity when considering making a request to DATCP and the DNR.

**2. Specific local actions.** Counties may regulate aspects of livestock siting, like manure storage structures and nutrient management plans, but such ordinances must align with state regulations unless state approval for stricter measures is obtained. Additionally, any amendments to existing ordinances likely will not apply retroactively to current operations.

From a zoning perspective, Wisconsin law allows counties to adopt zoning regulations to regulate livestock citing facilities. This authority also faces limitations. For example, Wis. Stat. § 93.90(4) places significant limitations on a county's disapproving or prohibiting a livestock facility in any area that is zoned agricultural. Wis. Stat. § 93.90(4) (ae) also sets forth requirements for a zoning ordinance requiring a conditional use permit or special exception for the siting or expansion of livestock facilities.

► **Recent legal developments**

Recent legal developments in Wisconsin have further clarified the regulatory landscape concerning county authority over livestock siting and CAFOs.

**Town of Ledgeview v. Livestock Facility Siting Review Board (2022)**<sup>3</sup> — In this case, Ledgeview Farms applied for a permit to expand its livestock facility, which the town

*Continued on page 46*



## LEGAL ISSUES

*Continued from page 45*

of Ledgeview denied, citing concerns about the farm's credibility due to past legal violations and refusal to allow inspections. The Livestock Facility Siting Review Board, which is a seven-member body that reviews appeals of local decisions on permit applications for new and expanded livestock facilities, affirmed the denial, and the Wisconsin Court of Appeals upheld this decision. The court concluded that a political subdivision could deny a permit application based on the applicant's lack of credibility, as evidenced by past violations and non-compliance with inspection requests.

**Clean Wisconsin, Inc. v. Wisconsin Department of Natural Resources (2021)**<sup>4</sup> — The Wisconsin Supreme Court addressed whether the DNR had explicit authority to impose conditions on Wisconsin Pollutant Discharge Elimination System permits for CAFOs. The court held that the DNR possesses broad authority to impose conditions on these permits to protect water quality, including setting animal unit maximums and off-site groundwater monitoring requirements.

**Recent developments in Polk County**<sup>5</sup> — In January 2025, a judge dismissed a lawsuit challenging the town of Eureka's ordinance regulating large livestock farms. The plaintiffs argued that the ordinance was unlawful and preempted by state regulations. The court dismissed the case, stating that the plaintiffs lacked standing as they were not directly affected by the ordinance.<sup>6</sup> This decision underscores the importance of demonstrating direct impact when challenging local regulations.

These cases highlight the evolving legal interpretations of local versus state authority in regulating livestock facilities and CAFOs in Wisconsin.

### ► Conclusion

Counties have limited but important roles in regulating livestock siting and CAFOs within Wisconsin's legal framework. While principles surrounding the preemption

of local regulation by state laws restrict the scope of local regulation, counties can act within their authority or seek state approval for stricter measures. Collaboration with DATCP and the DNR is essential to ensure that local efforts align with state objectives and achieve meaningful environmental protections.

Protecting groundwater from CAFO-related contamination requires a balanced approach that considers both agricultural interest and environmental health. By navigating the regulatory framework thoughtfully and collaboratively, counties can work towards safeguarding their vital groundwater resources.

For counties considering new regulations, careful planning, thorough documentation, and adherence to state requirements are critical. By working within these constraints, counties can protect local resources while navigating the complex regulatory environment surrounding livestock siting and CAFOs. If counties have specific questions about their authority to regulate CAFOs, they should contact their corporation counsel and may contact the authors of this article. ■

*Attolles Law, s.c. works on behalf of Wisconsin counties, school districts, and other public entities across the state of Wisconsin. Its president & CEO, Andy Phillips, has served as outside general counsel for the Wisconsin Counties Association for nearly 20 years.*

1. Adams v. State Livestock Facilities Siting Review Bd., 342 Wis. 444 ¶ 50, (2012).
2. Wis. Stat. 59.69(4) states in relevant part, "The board may not enact a development moratorium, as defined in s. 66.1002(1)(b), under this section or s. 59.03, by acting under ch. 236, or by acting under any other law, except that this prohibition does not limit any authority of the board to impose a moratorium that is not a development moratorium."
3. Town of Ledgeview v. Livestock Facility Siting Review Bd., 405 Wis. 2d 269 (Wis. App. 2022).
4. Clean Wisconsin, Inc. v. Wisconsin Department of Natural Resources, 398 Wis. 2d 386 (2021).
5. Polk County Case #24CV209, Ben Binversie et. al. v. Town of Eureka.
6. Polk County Case # 24CV209 – the decision made by Judge Angeline Winton (Circuit Court Judge, Washburn County) was made on January 13, 2025, and the time to file an appeal had not expired at the time this article was written.