

CAFO Guide Overview

This guide outlines CAFO laws, regulatory processes, and useful resources for advocates. Below is an overview of actions communities can take if a CAFO is being built, expanding, or violating regulations.

EDUCATE YOURSELF

Learn how CAFOs harm communities at sraproject.org. Use this guide to find state agencies that regulate CAFOs; state permitting requirements for zoning, construction, etc.; and public open meetings and records laws. Use SRAP's Federal Guide to learn relevant federal laws like the Clean Water Act, Clean Air Act, and Endangered Species Act.

LOOK FOR PUBLIC NOTICES

Look for public notices of CAFOs in newspapers, state agency websites, and at government buildings. The window for public participation is often brief. Find rules and deadlines for public comment, hearing requests, and appeals. Respond before deadlines.

REQUEST AND REVIEW PUBLIC RECORDS

Search for public records related to the CAFO; if necessary, make a public records request.

NEW OR EXPANDING CAFOS

REVIEW ZONING ORDINANCES

Review municipal or county codes and zoning ordinances to determine if any requirements must be met at the local level.

REVIEW PERMIT APPLICATIONS

Determine if any local, state, or federal permit applications are required; review application materials to make sure all requirements are met.

COLLECT DATA

Test water before the CAFO siting or expansion to establish a baseline. This may show that new pollution came from the CAFO.

EXISTING CAFOS

REVIEW CAFO DOCUMENTS

Review permits, applications, manure management plans, nutrient management plans, monitoring reports, etc. Familiarize yourself with permit and plan provisions so you can spot violations.

COLLECT DATA

Conduct well, soil, water, and/or air testing to establish a connection between the facility and harmful pollution. Keep a log of odor and other impacts.

MONITOR CAFOS AND BUILD A RECORD

Submit complaints to regulators if you observe violations. Take photos and keep a log. Don't trespass!

FOLLOW UP ON AGENCY RESPONSE TO COMPLAINTS

Did the agency take action? If a state agency isn't complying with state or federal environmental laws, contact your U.S. EPA Regional Office.

ORGANIZE A COMMUNITY GROUP

Organize your group and develop a public presence.

Consider forming a nonprofit if you plan long-term advocacy.

SEEK LEGAL ADVICE

Consider contacting law firms or pro-bono clinics for help with legal matters related to CAFOs.

IDENTIFY IMPAIRED WATER BODIES

Determine if impaired waters may be impacted by discharge from the existing or proposed CAFO.

CONTACT STATE OR LOCAL HEALTH DEPARTMENT

The Health Department may monitor or oppose the CAFO due to public health impacts.

CHECK FOR PUBLIC FINANCING

If the CAFO received government-backed loans, see if an Environmental Assessment was conducted.

TRACK PUBLIC NOTICES

CAFO permits come up for renewal, so look for public notices and comment opportunities.

REVIEW STATE RIGHT-TO-FARM LAW

Find exceptions to the law's nuisance liability shield (e.g., compliance with laws and permits is often a prerequisite to nuisance claim protection).

AGENCIES & STATE DEFINITIONS

Familiarize yourself with your state's livestock operation definitions, and with the agencies that regulate the industry. (Definitions and relevant agencies vary by state.)

SEEK PROPERTY TAX ADJUSTMENT

Neighbors may be able to reduce their property taxes due to CAFOs' negative impact on property values.

ENGAGE IN RULEMAKING PROCESSES

Attend regulatory meetings and share your concerns. If your state allows it, develop local ordinances to protect communities.

INTRODUCTION: A BRIEF HISTORY OF CAFOs IN WISCONSIN

Agriculture plays a significant role in Wisconsin's identity, culture, and economy. The state's top commodities include milk, corn, cattle, soybeans, potatoes, and cranberries. Animal agriculture in Wisconsin is dominated by cattle and dairy operations.¹ In 2017, Wisconsin was second in the nation in milk production, producing 30 billion tons of milk that year, and first in cheese production, producing over 3 billion pounds of cheese.² In 2017 Wisconsin had roughly 5,340,000 cattle—1,275,000 of which were dairy cows.³ The dairy cows alone produce over 37 billion tons of manure every year.⁴

While cattle and dairy operations dominate the state's animal agricultural industry, Wisconsin is also home to approximately 53,800,000 broiler chickens and 305,000 hogs. Farming and animal production are a significant part of the state's economy, but the state struggles to balance large-scale agricultural interests with those of small farmers, local residents, and the environment.

In the past, the traditional Wisconsin dairy farm managed small herds and relied on pasture to supply summer feed. But in the last few decades, the state has seen a decline in the number of small traditional farms and an increase in large-scale operations—or concentrated animal feeding operations (CAFOs)—where large numbers of animals are kept exclusively indoors, eat only stored feed, and produce so much manure and waste that it must be collected and stored for later disposal. While the number of CAFOs in Wisconsin is not large compared to other states, CAFOs are steadily increasing. The number of CAFOs large enough to need water

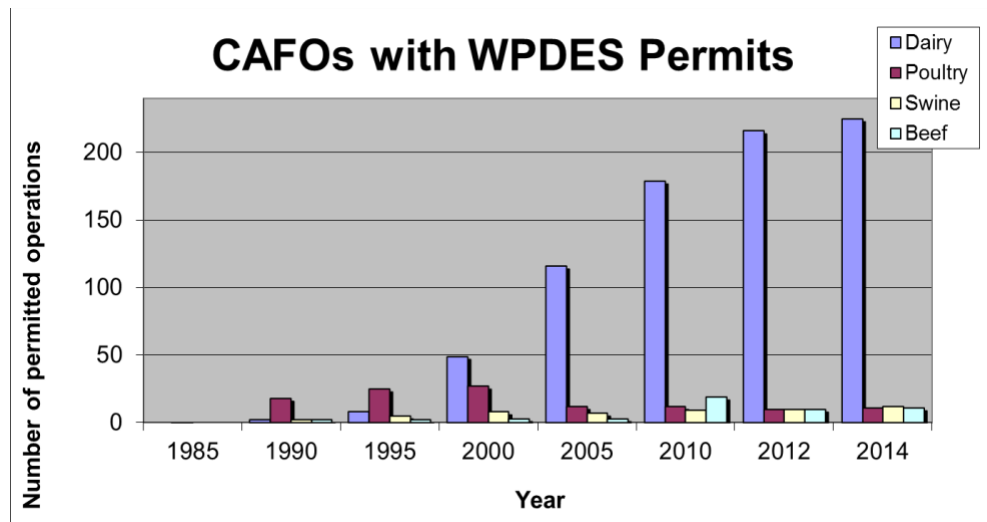
¹ National Agricultural Statistics Service, 2017 State Agriculture Overview, https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=WISCONSIN (last visited November 22, 2022).

² Wisconsin Milk Marketing Board, 2017 Dairy Data: A Review of the Wisconsin Dairy Industry, <https://dfwblobstorage.blob.core.windows.net/images/Statistics/WisconsinDairyData.pdf> (last visited November 22, 2022) (“If Wisconsin were a country, it would rank 4th in world cheese production.”)

³ See USDA, National Agricultural Statistics Service, 2017 State Agriculture Overview, Wisconsin, available at https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=WISCONSIN (last visited November 22, 2022) (providing inventory of dairy cows).

⁴ USDA, Natural Resources Conservation Service Wisconsin, Animal Manure Management, RCA Issue Brief #7 December 1995, available at http://www.nrcs.usda.gov/wps/portal/nrcs/detail/wi/technical/cp/cta/?cid=nrcs143_014211#trends (last visited November 22, 2022) (providing manure produced by dairy cow).

discharge permits has grown dramatically, from less than 50 large CAFOs in 2000 to over 250 large CAFOs in 2014.⁵



As the number of CAFOs increases, so do the environmental and public health concerns associated with them. In recent years, the large number of CAFOs in certain parts of Wisconsin, and increasing awareness about associated water pollution, has drawn public attention to the industry and its impacts. CAFOs produce a much larger volume of manure and waste than traditional farming and pose problems related to waste storage and disposal. Even properly constructed manure pits can leach into ground and surface water, and pits that store thousands of gallons of raw manure pose a greater risk of release from heavy rain and equipment failure. As a result, an increasing number of communities in the state are discovering that their wells exceed safe levels for nitrates. State and federal environmental agencies are studying and addressing the industry's impacts on drinking water quality in some parts of the state.⁶ A recent study found that 42% of wells in southwest Wisconsin are contaminated and exceed safe water standards for bacteria or nitrates.⁷ Water quality in general, and the contamination of drinking, ground and surface water from

⁵ WDNR, CAFO and CAFO WPDES permit statistics, available at <https://dnr.wisconsin.gov/topic/CAFO/StatsMap.html> (last visited November 22, 2022).

⁶ Lee Bergquist, *EPA finalizing Kewaunee water plan*, Milwaukee Journal Sentinel, available at <http://www.jsonline.com/story/news/local/wisconsin/2016/08/19/epa-finalizing-kewaunee-water-plan/89003944/> (last visited November, 22 2022).

⁷ Lee Bergquist, *Study Shows Widespread Well Contamination in Southwestern Wisconsin*, Milwaukee Journal Sentinel (Jan 2, 2019), available at <https://www.jsonline.com/story/news/local/wisconsin/2019/01/02/well-water-contamination-widespread-southwestern-wisconsin/2466508002/>.

CAFO manure specifically, remains an important political issue.⁸ Despite pressure from communities and state environmental organizations, the state's waters continue to be compromised by the growth of industrial agriculture production.

The current waste storage and disposal methods also cause more air pollution and odors than traditional farming. Storing manure in large pits causes anaerobic decomposition, which generates methane, carbon dioxide, pathogens, foul odor, and other harmful compounds. This air pollution can cause respiratory problems and diminish quality of life for those who live close to industrial livestock operations or their waste disposal locations. Unfortunately, Wisconsin does little to regulate air pollution and odors from these facilities.

Wisconsin's primary CAFO regulations are found in Chapter Natural Resources (NR) 243 of the Wisconsin Administrative Code, and the lead agency for regulating CAFOs in the state is the Wisconsin Department of Natural Resources (WDNR).

This Guide provides a legal and policy framework to help readers understand how Wisconsin regulates animal feeding operations, and what communities can do to protect themselves.

CAFOs: STATE DEFINITIONS & REGULATORY AGENCIES

What is the difference between CAFOs and AFOs?

Wisconsin distinguishes between small and medium animal feeding operations (AFOs), concentrated animal feeding operations CAFOs, and large CAFOs based on the number of animals at an operation, and whether the state has identified an operation as a significant contributor of pollutants to surface water.⁹

AFOs are lots or facilities, other than a pasture or grazing area, that confine animals for 45 days or more in any 12-month period.¹⁰ Small and medium AFOs—with less than 1,000 animal units—are not required to obtain a water discharge permit in Wisconsin unless the Wisconsin Department of Natural Resources (DNR) determines

⁸ Andrew Hahn, *Failure at the faucet: Water woes emerge as major issue in Wisconsin elections*, Wisconsin Center for Investigative Journalism, available at http://host.madison.com/ct/news/local/failure-at-the-faucet-water-woes-emerge-as-major-issue/article_1c1b33b5-3928-5298-ad6f-92ae11cc71fe.html (last visited November 9, 22).

⁹ See generally Wis. Admin. Code ch. NR 243.

¹⁰ See 40 C.F.R. 122.23(b)(1) (2012); Wis. Admin. Code § NR 243.03(4).

that the facility has or will discharge to waters of the state.¹¹ Small CAFOs are AFOs with less than 300 animal units that discharge to state waters.¹² Medium CAFOs are AFOs with 300 to 999 animal units that discharge to state waters.¹³ Large CAFOs are AFOs with 1,000 animal units or more at any time.¹⁴

What is an “animal unit” and how is it calculated in Wisconsin?

Animal units are calculated based on animal weight and are not equivalent to the number of animals housed at a particular operation. DNR requires two methods of calculation to determine the number of animal units at a CAFO. First, a combined animal unit calculation requires the number of animal units present at an operation to be multiplied by an equivalency factor found in Table 2A below.¹⁵ The second calculation is individual animal units at an operation, which is determined by multiplying the number of animals of each animal type by the equivalency factor in Table 2B, below.¹⁶ DNR determines which of calculation yields the highest number of animal units and uses that number to define small, medium, and large CAFO operations.¹⁷

¹¹ Wis. Admin. Code §§ NR 243.21, 243.24, 243.26.

¹² Wis. Admin. Code § NR 243.03(59).

¹³ Wis. Admin. Code § NR 243.03(39).

¹⁴ Wis. Admin. Code § NR 243.03(31).

¹⁵ Wis. Admin. Code § NR 243.05(2).

¹⁶ Wis. Admin. Code § NR 243.05(3).

¹⁷ Wis. Admin. Code § NR 243.05(1).

AFO/CAFO Size Chart

	Large	Medium	Small
Animal Units	≥ 1,000	300–999	< 300

Animal Type	Combined Animal Equivalent of 1,000 Animal Units	Combined Animal Unit Equivalency Factor
Dairy Cattle:		
Milking and Dry Cows	715	1.4
Heifers (800 to 1200 lbs)	910	1.1
Heifers (400 to 800 lbs)	1670	0.6
Calves (under 400 lbs)	5000	0.2
Veal Calves:		
Per Animal	2000	0.5
Beef Cattle:		
Steers or Cows (400 lbs to Mkt)	1000	1.0
Calves (under 400 lbs)	5000	0.2
Bulls	700	1.4
Swine:		
Pigs (55 lbs to Mkt)	2500	0.4
Pigs (up to 55 lbs)	10000	0.1
Sows	2500	0.4
Boars	2000	0.5
Sheep:		
Per Animal	10000	0.1
Horses:		
Per Animal	500	2.0
Ducks:		
Per Bird (Liquid poultry manure handling)	5000	0.2
Per Bird (Non-liquid poultry manure handling)	30000	0.0333
Chickens:		
Per Bird (Liquid poultry manure handling)	30000	0.0333
Layers (Non-liquid poultry manure handling)	82000	0.0123
Broilers and Pullets (Non-liquid poultry manure handling)	125000	0.008
Turkeys:		
Per Bird	55000	0.018

Animal Type	Individual Animal Equivalent of 1,000 Animal Units	Individual Animal Unit Equivalency Factor
Dairy Cattle:		
Milking and Dry Cows	700	1.43
Heifers (400 to 1200 lbs)	1000	1.0
Veal Calves:		
Per Animal	1000	1.0
Beef Cattle:		
Steers, Bulls or Cows (400 lbs to Mkt)	1000	1.0
Swine:		
Pigs (55 lbs to Mkt)	2500	0.4
Pigs (up to 55 lbs)	10000	0.1
Sheep:		
Per Animal	10000	0.1
Horses:		
Per Animal	500	2.0
Ducks:		
Per Bird (Liquid poultry manure handling)	5000	0.2
Per Bird (Non-liquid poultry manure handling)	30000	0.0333
Chickens:		
Per Bird (Liquid poultry manure handling)	30000	0.0333
Layers (Non-liquid poultry manure handling)	82000	0.0123
Broilers and Pullets (Non-liquid poultry manure handling)	125000	0.008
Turkeys:		
Per Bird	55000	0.018

Wisconsin regulates discharges from AFOs to any “Waters of the State” which are defined as:

[T]hose portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person.¹⁸

Under this definition, CAFOs are subject to state regulation if they contribute to pollution of surface water, groundwater, or wetlands, or if they are large enough to warrant regulation because of the risk of such discharges. If DNR determines that an AFO is polluting waters of the state, DNR may consider and permit that facility as a CAFO. Permitting smaller operations as CAFOs is extremely rare.

Two or more AFOs may be subject to regulation as a single facility under some circumstances. AFOs are considered a single facility if they are under common ownership or management, and either: 1) are adjacent; 2) use a common system for landspreading of manure, including a nutrient management plan or landspreading acreage; or 3) comingle manure or contaminated runoff in a common storage facility.¹⁹ If multiple facilities qualify as a single regulated facility under this definition, DNR will combine the total number of animals at all facilities, which may turn an AFO into a “Medium” or “Large” CAFO.

Responsible Regulatory Agencies

One of the most important steps in figuring out how to respond to a new or expanding CAFO is to understand which state agencies play a role in CAFO regulation and CAFO-related issues. Knowing which agency to contact with concerns is crucial for efficiency of time and resources, both for individuals and decision-makers. Below is an outline of the agencies in Wisconsin that could play a role in your efforts to oppose a new or existing CAFO. This list is not exhaustive; other departments, federal agencies, or local groups may also be useful.

¹⁸ Wis. Stat. § 283.01(20).

¹⁹ Wis. Admin. Code § NR 243.03(4).

State Natural Resources Agency

Wisconsin Department of Natural Resources (DNR) issues CAFOs general and individual water discharge permits to discharge pollutants into state waters,²⁰ and is the primary state agency involved in CAFO regulation. DNR also issues other permits and approvals such as approvals for the facility's plans and specifications, high capacity well, or fill in a wetland or other water. DNR is the government agency that has been authorized to grant permits for water pollution under the Clean Water Act. DNR has six divisions: Air, Waste, and Remediation & Redevelopment, Customer & Employee Services, Enforcement & Warden Service, Forestry, Land, and Water.²¹ The DNR is responsible for many different areas of natural resource law and conservation. DNR can be reached by phone, email, or letter.

Wisconsin Department of Natural Resources
101 S. Webster Street PO Box 7921
Madison, Wisconsin 53707-7921

Call 1-888-936-7463 (TTY Access via relay - 711)

State Agricultural Agency

Wisconsin's Department of Agriculture, Trade and Consumer Protection (DATCP) is the state's primary agricultural agency. It has some authority over the regulatory standards for CAFOs and AFOs, but its role is secondary to the DNR. DATCP also reviews certain local regulations for compliance with Wisconsin's Livestock Facility Siting Law, which sets statewide standards for local regulation of livestock facilities.²²

Rule changes proposed at the time of the publishing of this Guide may impact laws or regulations that govern DATCP's oversight of Wisconsin Nutrient Management Plans.

Note: There was a recent proposal to shift CAFO permitting and oversight from DNR to DATCP.²³ While the initial introduction of the legislation was not

²⁰ See WDNR, CAFOs, Water Permits and NR 243, available at <https://dnr.wisconsin.gov/topic/CAFO/WPDESNR243.html#:~:text=Compliance%20with%20Wisconsin's%20agricultural%20standards,operations%20protects%20our%20water%20resources.>

²¹ See WDNR website: <http://dnr.wi.gov/about/>.

²² https://datcp.wi.gov/Pages/Programs_Services/LivestockSiting.aspx.

²³ BB0332 – Transfer CAFO Oversight from DNR to DATCP. Wisconsin Legislature 2017-2018. https://docs.legis.wisconsin.gov/2017/related/budget/drafts/17_1821_pl.pdf.

successful, it's possible that it could resurface. Check to make sure the state hasn't shifted permitting authority between the agencies.

State Department of Health

The Wisconsin Department of Health Services (WDHS) has a limited role in CAFO regulation. WDHS is charged with protecting human health from harmful agents. The agency may also act by collecting data and conducting research into health-related issues in the state—including assessments of health impacts of CAFOs.²⁴ The WDHS may play a crucial, longer-term role in investigating public health impacts from Wisconsin's CAFOs.

Local Conservation Districts

Each Wisconsin county has a land and water conservation committee and staff.²⁵ These staff are local experts and potential partners in responding to impacts from livestock operations of all sizes. While conservation districts do not regulate or oversee CAFOs, they may have useful information and insight into the region. The Wisconsin Land and Water Conservation Association provides resources and support to local land and water conservation committees and departments.²⁶

U.S. EPA Region 5

The United States Environmental Protection Agency (U.S. EPA) Region 5 retains oversight authority to take enforcement and related action when state agencies do not ensure compliance with federal environmental laws.²⁷ This includes DNR regulation of CAFOs that must obtain Wisconsin Pollutant Discharge Elimination System (WDPES) permits, which are issued under Wisconsin's program for implementing the Clean Water Act. Contact the regional office if the state is not performing its duties or is failing to regulate CAFOs under state and federal environmental laws.²⁸ See the Federal Guide for more information on the interplay between states and the US EPA.

Region 5 Main Number: 312-353-2000 or in the Region 5 states, 800-621-8431, 8:00 a.m. to 4:30 p.m. (CT)

²⁴ See Wisconsin Department of Health Services, Division of Public Health, Concentrated Animal Feeding Operations and Public Health P-00977, available at <https://www.dhs.wisconsin.gov/publications/p00977.pdf>.

²⁵ See Wis. Stat. ch. 92

²⁶ *Id.*

²⁷ See *id.*

²⁸ See <https://www.epa.gov/aboutepa/epa-region-5>

Main Office:

US EPA Region 5
Ralph Metcalfe Federal Building
77 West Jackson Blvd.
Chicago, IL 60604-3590

WATER

Wisconsin Pollutant Discharge Elimination System

The Clean Water Act was implemented to protect the waters of the United States. The EPA has authority to implement compliance programs to keep states accountable for their discharges through the National Pollutant Discharge Elimination System (NPDES) program.²⁹ Wisconsin has developed its own EPA-approved program.

Wisconsin's DNR implements a water discharge permit program under the federal Clean Water Act (CWA) called the Wisconsin Pollution Discharge Elimination System (WPDES) permitting program. The U.S. EPA approved the WPDES program and has authority to oversee its implementation to ensure the WPDES program complies with minimum CWA standards. The WPDES program is authorized through Chapter 283 of Wisconsin's Statutes and the WPDES CAFO regulations are further outlined in Chapter NR 243 of Wisconsin's Administrative Code.

The WPDES program is more protective of water quality than the CWA in some respects. The primary difference is that Wisconsin's program regulates CAFO discharges to both surface water and groundwater, while the CWA applies only to surface water discharges. This means that Wisconsin's regulations and WPDES permits include conditions meant to limit groundwater pollution from both the CAFO production area and landspreading fields. Additionally, Wisconsin's program requires all large CAFOs—those with over 1,000 animal units—to obtain a WPDES permit regardless of whether the CAFO proposes to discharge.

In most other respects, Wisconsin's program follows the federal CWA regulation of CAFOs. CAFO WPDES permits include the "no discharge" condition found in federal regulations—namely, a CAFO may not discharge process wastewater from the production area unless the discharge was from a properly constructed storage

²⁹ 33 U.S.C. § 1251 et seq. (1972), see also <https://www.epa.gov/npdes>

facility and was caused by a storm at least as large as a 25-year, 24-hour storm. All CAFO WPDES permits must also include a Nutrient Management Plan (NMP) to ensure proper spreading.

WPDES permits for large CAFOs must include an NMP that outlines the plans for manure storage, runoff control restrictions, designs and plans of structures for manure storage, and conditions for monitoring and reporting discharges.³⁰ The NMP must outline the amount, timing, location, and methods regarding the CAFO's manure and wastewater land spreading.³¹ CAFO NMPs must take into account nearby surface waters, and implement conservation practices to prevent manure or wastewater contamination.³² Special rules apply to manure spreading near surface waters, such as following a 100-foot setback requirement or an equivalent conservation practice.³³ NMPs must also minimize the potential for phosphorus runoff into waterways.³⁴

The permit must include control measures to limit the potential for rain to wash over barnyards, feedlots, feed storage, and storage facilities and end up in waterways.³⁵ All CAFO WPDES permits prohibit manure or wastewater forming a pond on the site, and prohibit fecal contamination of a well.³⁶ Further restrictions apply to specific physical land characteristics, e.g., prohibition on manure application to saturated soils or within 100 feet of a private well.³⁷

WPDES permits must include plans and specifications of certain CAFO operation structures, including manure storage and runoff control.³⁸ WPDES permits also mandate monitoring and reporting, which allows the DNR to determine whether or not a CAFO is complying with the terms of the permit.³⁹ Finally, the permit must contain pollution limits and require certain pollution control technologies per general WPDES requirements of Chapter 283. In 2007, the DNR revised NR 243 to include, among other things, restrictions on manure spreading on frozen or snow-covered

³⁰ Wis. Admin. Code § NR 243.14(1)(a).

³¹ Wis. Admin. Code § NR 243.14(1)(a).

³² Wis. Admin. Code § NR 243.14(2)(b).

³³ Wis. Admin. Code § NR 243.14(4), NR 243- CAFO Fact Sheet #1, <https://dnr.wisconsin.gov/sites/default/files/topic/CAFO/LargeDairyCAFOGP-FactSheet.pdf>.

³⁴ Wis. Admin. Code § NR 243.14(5).

³⁵ Wis. Admin. Code § NR 243.15(2).

³⁶ Wis. Admin. Code § NR 243.14(2)(b).

³⁷ Wis. Admin. Code § NR 243.14(2)(b).

³⁸ Wis. Admin. Code § NR § 243.12(2)(a).

³⁹ Wis. Admin. Code § NR § 243.19.

ground, and also required CAFOs to have the capability to store six months' worth of liquid manure.⁴⁰

General Permits

Wisconsin's DNR has issued a general WPDES permit for large dairy CAFOs with 1,000 to 5,720 animal units (WPDES Permit No. WI-0063274-01). This permit is for first-time permit issuances and permit reissuances. It's important to note that the allowable animal type under this general permit (dairy) must make up at least 80% of the permittee's total animal unit count. Exceeding the animal unit thresholds established in this permit at any time constitutes a permit violation.

- The General Discharge Permit is good for five years, after which it must be renewed or reissued. The current General Discharge Permit for Large Dairy CAFOs is expired; it went into effect on April 4, 2011, and expired on March 31, 2016. Continued monitoring of this permit will be important.
- A large portion of the Large Dairy CAFOs currently operate under expired permits. The operations are still bound by the conditions of the expired permits.
- See the current [General Permit for Large Dairy CAFOs](#).⁴¹
- The General Permit does not allow discharge after the date of expiration. Operators must apply for reissuance 180 days prior to expiration in order to discharge.
- A proposed general permit for small and medium CAFOs is available [here](#).⁴²
- Only operations that comport with the chart below are eligible for the CAFO general permit.

Animal Type	# Head equal to 1,000 AU (minimum # of animals needed for permit coverage)	# Head equal to Maximum allowable 5720 AU
Milking and Dry Cows	700	4,000
Heifers	1,000	5720
Dairy Calves	5,000	28,600

⁴⁰ Wis. Admin. Code § NR § 243.14(6).

⁴¹ See <https://widnr.widen.net/s/vbhv2qsbhs/largedairycafo-general-wpdespermit>.

⁴² <https://widnr.widen.net/s/f2jpszqtn7x/smmedcafoproposedgeneralpermit>.

A new or existing CAFO looking to expand may also need to acquire a construction stormwater permit. Construction stormwater information is available on the DNR's [website](#).⁴³ If a construction zone is close to wetlands, the DNR may require [another permit](#).⁴⁴

Individual Permits

DNR requires individual permits for dairy CAFOs with more than 5,720 animal units and all non-dairy (swine, beef, poultry, etc.) CAFOs with more than 1,000 animal units.⁴⁵ The individual permit application process is similar to the general permit application process.

Permit application process

A new or expanding CAFO must apply to DNR to begin the application process at least 12 months before beginning to operate as a CAFO.⁴⁶ Large CAFOs must also apply for permit reissuance prior to expiration of the WPDES permit. Before issuing a final WPDES permit, DNR must provide public notice of a draft WPDES permit, including the NMP, and must provide at least 30 days for public comment on the permit. DNR may also hold a public hearing in response to public interest, and they must host a hearing if five or more individuals submit a hearing request.

Wetlands

In some cases, wetlands impacts may provide an opportunity to review, comment on, and potentially decrease the environmental impacts of CAFOs.

The Clean Water Act authorizes states to issue a State Water Quality Certification (401 Certification) for any activity or project that may result in a discharge into waters of the United States.⁴⁷ Projects subject to 401 Certification most commonly include irrigation or filling of wetlands. 401 Certification requires the state to determine that a project will not violate surface water quality standards or adversely impact impaired waters, and that the project complies with applicable state regulations.

⁴³ See <http://dnr.wi.gov/topic/stormwater/construction/> and <http://dnr.wi.gov/topic/stormwater/construction/forms.html> for additional information.

⁴⁴ See <http://dnr.wi.gov/topic/Waterways/Permits/PermitProcess.html> for additional information about waterway protection permits.

⁴⁵ See <https://dnr.wisconsin.gov/topic/CAFO/PermitTypes.html>.

⁴⁶ Wis. Admin. Code NR § 243.12(1)(a) (2010).

⁴⁷ Clean Water Act, 33 U.S.C. § 1341 (West 2016).

As discussed later in this Guide, if CAFO-related construction requires filling or altering of state-regulated wetlands, the CAFO likely requires a state wetland fill permit.

Water Quantity

CAFOs in Wisconsin that use very large quantities of water also need to comply with water use regulations. Water quantity approvals provide another way to direct questions and report violations to state authorities.⁴⁸

Many CAFOs require high-capacity wells in order to meet their water use needs. High-capacity wells—those with capacity of more than 100,000 gallons per day—require DNR approval and permitting.⁴⁹ DNR considers these factors when reviewing a high-capacity well application:

- Whether the well is within a groundwater protection area (within 1,200 feet of a class 1, 2, or 3 trout stream or a designated outstanding or exceptional resource water);
- Whether the well may impact springs with flow greater or equal to one cubic foot per second;
- Whether the well will result in water loss greater than 95 percent;
- Whether the well may impair the water supply of a public utility; and
- Whether the well will degrade safe drinking water and the groundwater resource or impact public safety.⁵⁰

Water Quality

CAFOs significantly impact water quality. Large CAFOs produce millions of gallons of liquid manure each year, which is often stored in open-air lagoons until it's spread on nearby cropland.⁵¹ Contaminants from animal wastes can enter ground or surface water through leaking or failing manure lagoons, lagoon flooding after a rain event, or excessive and accidental releases while applying the manure to land.⁵² Liquid manure is problematic because unlike the solid manure collected on smaller

⁴⁸ High Capacity Well Application Review Process, *WISCONSIN DEPARTMENT OF NATURAL RESOURCES*, <https://dnr.wi.gov/topic/Wells/HighCap/Review.html>.

⁴⁹ Wis. Admin. Code § 281.34.

⁵⁰ Wis. Admin. Code § 281.34(5).

⁵¹ 2010 Dairy Producer Survey USDA National Agricultural Statistics Service & DATCP (2010), available at <https://datcp.wi.gov/Documents/DairySurvey2010.pdf>.

⁵² JoAnn Burkholder et al., "Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality", *Environmental Health Perspectives* 115, p.308 2007.

farms, it can more easily run off or infiltrate into water supplies.⁵³ In appropriate quantity and location, manure is an effective fertilizer because it contains nitrogen, potassium, and phosphorus—nutrients essential for plant growth. But without soil and water testing, it's easy to over-apply manure. When soils are already saturated with nutrients, excess nutrients may run off into surface waters.⁵⁴ Livestock operations sited in areas prone to flooding or susceptible to groundwater contamination increase water pollution risks.⁵⁵

When manure and excess nutrients escape into surface waterways, they cause numerous problems. The manure decomposes, using dissolved oxygen along the way.⁵⁶ Excess nutrients also cause excess plant and algae growth, which consumes dissolved oxygen and can have other negative impacts on the ecosystem. Without oxygen, fish and aquatic life die. These effects are felt locally, regionally, and nationally through fish kills, harmful algae blooms, and dead zones in waters like Green Bay and the Gulf of Mexico where oxygen levels are too low to support life.⁵⁷ Waterways in Wisconsin are subject to this eutrophication, which has degraded the water quality of the Great Lakes.

Wisconsin has seen increased correlation between CAFO expansion and water quality impairment. For example, in Kewaunee County in northeastern Wisconsin, CAFO operations have contaminated water to the point that a Safe Drinking Water Act petition was filed with the primary goal of supplying area residents with an

⁵³ *Environmental Impact of Industrial Farm Animal Production*, Washington DC: Pew Commission on Industrial Farm Animal Production, P 14, 2006, available at https://www.pewtrusts.org/-/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/industrial_agriculture/pcifapenvimpactpdf.pdf.

⁵⁴ Fred Madison, et al., *Guidelines for Applying Manure to Cropland and Pastures in Wisconsin A3392*, University of Wisconsin- Extension, available at <http://corn.agronomy.wisc.edu/Management/pdfs/A3392.pdf>.

⁵⁵ JoAnn Burkholder et. al., "Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality", *Environmental Health Perspectives* 115 p308, 2007.

⁵⁶ JoAnn Burkholder et. al., "Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality", *Environmental Health Perspectives* 115 p308, 2007.

⁵⁷ *Environmental Impact of Industrial Farm Animal Production*, Washington DC: Pew Commission on Industrial Farm Animal Production, P 15, 2006, available at https://www.pewtrusts.org/-/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/industrial_agriculture/pcifapenvimpactpdf.pdf.

emergency source of clean, safe drinking water.⁵⁸ See Midwest Environmental Advocates' [website](#) for more details.⁵⁹

Wisconsin Areawide Water Quality Management Planning (AWQMP)

The AWQMP is the compilation of guidance programs the DNR uses to implement the Clean Water Act. The AWQMP does not have cohesive, contiguous components. Each part of the AWQMP is updated individually—some automatically through the state and others through annual letters from the DNR to the U.S. EPA. All of the elements addressed, required by law, are addressed in various documents and programs that span DNR's Water Division.⁶⁰ Federal regulations at 40 CFR § 130.6 require that the plan address the following elements:

- Total Maximum Daily Loads (TMDLs)
- Effluent limitations
- Municipal and industrial waste treatment
- Nonpoint source management and control
- Management agencies
- Implementation measures
- Dredge or fill program
- Basin (watershed) plans
- Groundwater.

Total Maximum Daily Load (TMDL)

The Total Maximum Daily Load (TMDL) is the maximum amount of pollution a body of water can receive and still meet water quality standards.⁶¹ Waterways that exceed water quality standards may fail to meet designated uses such as wildlife habitat, fishing, or other recreational activity. Failure to meet designated uses may result in monitoring and addition to DNR's TMDL program.⁶² Many TMDLs are in development in Wisconsin for impaired waterways, so it's important to monitor the DNR website to find waterways that have been newly added to the program.

⁵⁸ Gordon, Scott, "Why Kewaunee County is a Flashpoint for CAFOs and Water Quality." *Wisconsin Public Radio*. 30 June, 2016. Available at <http://www.wpr.org/why-kewaunee-county-flashpoint-cafos-and-water-quality>.

⁵⁹ *Safe Drinking Water Act Petition to EPA*, Midwest Environmental Advocates, <https://midwestadvocates.org/issues-actions/actions/safe-drinking-water-act-petition-to-epa>.

⁶⁰ See <http://dnr.wi.gov/topic/SurfaceWater/planning.html>.

⁶¹ See <http://dnr.wi.gov/topic/TMDLs/>.

⁶² *Id.*

For a list of approved Wisconsin TMDLs, see the DNR's page on [TMDLs](#) as well as the [Approved TMDL reports](#).⁶³

For more questions about TMDLs in Wisconsin, contact:

[Kari Fleming](#)

Point Source TMDL Implementation Coordinator
Permits Section, Water Quality Bureau
608-267-7663

[Corinne Billings](#)

Nonpoint Source TMDL Implementation Coordinator
Runoff Management, Bureau of Watershed Management
608-264-6261

CAFO Construction

Construction projects may provide an opportunity to make sure that the operation complies with necessary construction requirements. If a construction project occurs, the CAFO may need to obtain the permit(s) associated with that project on both a state and local level. Some of the permits that might be required are:⁶⁴

- Local approvals: Building Permits (flood plain, shoreland, and wetland ordinances), Conditional Use Permits, Manure Storage Permit, County Sanitary Permit, or Town/County Setbacks; and
- Wisconsin DNR approvals: WPDES permits, Construction Site Stormwater Permit, High Capacity Well Approval, Chapter 30 Permits (navigable streams), 401 Water Quality Certification (wetlands permit).

An overview of Wisconsin's DNR construction site stormwater permitting program is available at <https://dnr.wi.gov/topic/stormwater/construction/overview.html>.

AIR

⁶³ See <http://dnr.wi.gov/topic/TMDLs/tmdlreports.html>.

⁶⁴ See

https://dnr.wisconsin.gov/sites/default/files/topic/CAFO/animal_operations_state_local_permit_checklist.pdf.

CAFOs generate a number of harmful gases,⁶⁵ including ammonia, hydrogen sulfide, volatile organic compounds, methanol, particulate matter, and many others.^{66 67} Manure pits also generate large quantities of methane, a potent greenhouse gas.⁶⁸

CAFOs release large amounts of particulates, aiding in dispersion of gases, odors and microbes.⁶⁹ Both ammonia and phosphate can attach to dust particles and become airborne.⁷⁰ Air emissions also result from the land application of CAFO waste.

The air quality impacts of CAFOs are largely unregulated by Wisconsin statutes or regulations. In fact, Wisconsin exempts agricultural air pollution from regulation under the Wisconsin Air Program. State statute says that “The department may not regulate the emission of hazardous air contaminants associated with agricultural waste except to the extent required by federal law.”⁷¹

Additional Resources:

<https://dnr.wisconsin.gov/topic/SmallBusiness/Resources/AgriBusiness.html>
<http://dnr.wi.gov/topic/airquality/rules.html>

ZONING

Frequently Asked Questions: The Livestock Facility Siting Rule

Since local governments are often the first to know of a proposal for a CAFO to locate or expand in a community, it’s crucial to know your local elected officials and establish a working relationship.

⁶⁵ *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs*. National Research Council, Committee on Animal Nutrition, National Academy Press: Washington DC. P.50–57 2003

⁶⁶ *Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs*. National Research Council, Committee on Animal Nutrition, National Academy Press: Washington DC. P.50–57 2003

⁶⁷ *Environmental Impact of Industrial Farm Animal Production*, Washington DC: Pew Commission on Industrial Farm Animal Production, P 27, 2006, available at <http://www.ncifap.org/reports/>

⁶⁸ *Environmental Impact of Industrial Farm Animal Production*, Washington DC: Pew Commission on Industrial Farm Animal Production, P 27, 2006, available at <http://www.ncifap.org/reports/>

⁶⁹ Bryan Bunton, et al., “Monitoring and Modeling of Emissions from Concentrated Animal Feeding Operations: Overview of Methods”, *Environmental Health Perspectives* 115: 304 (Feb. 2007).

⁷⁰ Bryan Bunton, et al., “Monitoring and Modeling of Emissions from Concentrated Animal Feeding Operations: Overview of Methods”, *Environmental Health Perspectives* 115: 304 (Feb. 2007).

⁷¹ Wis. Stat. § 285.28.

In Wisconsin, the legislature imposed limits on local regulation of animal feeding operations through the Livestock Facility Siting Law, which requires DATCP to create rules setting standards for new and expanding livestock facilities.⁷² The law charged DATCP with creating standards that were: (1) protective of public health and safety; (2) cost-effective; (3) objective; (4) based on available scientific information that has been subjected to peer review; (5) designed to promote the growth and viability of animal agriculture in this state; (6) designed to balance the economic viability of farm operations with protecting natural resources and other community interests; and (7) usable by officials of political subdivisions. DATCP is required to review these rules every four years.⁷³ In response, DATCP created ATCP 51, called the Livestock Facility Siting Rule (the Rule), in 2006.

Who does ATCP 51 apply to?

The rule applies to political subdivisions such as cities, towns, and villages. If a local government wants to regulate the placement of new or expanded livestock facilities that will have 500 or more animal units, local governments must follow the standards provided in the Rule.⁷⁴ If local governments choose to regulate large livestock facilities under the Rule, they must do so according to standards set out in the Rule.

Can the political subdivision have more stringent local standards?

The political subdivision may not apply local standards that are more stringent than DATCP without meeting four criteria: 1) the political subdivision is authorized to adopt the standards under other applicable laws; 2) the more stringent standards were in place before an application for an expansion was received; 3) the more stringent standards are based on “reasonable and scientifically defensible” findings and are adopted by the political subdivision; and 4) the “reasonable and scientifically defensible” findings clearly demonstrate that the more stringent standards are necessary to “protect public health or safety.”⁷⁵

What are the restrictions on livestock structures?

All livestock structures must comply with local ordinances for setback requirements,⁷⁶ but no ordinance may require a facility with less than 1,000 animal

⁷² Wis. Stat. § 93.90 (1). The following Statutes/Administrative Code Sections are from 2010 unless otherwise identified.

⁷³ Wis. Stat. § 93.90 (2).

⁷⁴ Wis. Admin. Code ATCP § 51.02(1).

⁷⁵ Wis. Admin. Code ATCP § 51.10(3).

⁷⁶ Wis. Admin. Code ATCP § 51.12(1).

units to have a setback of more than 100 feet from any public road or property line.⁷⁷ If the facility has more than 1,000 animal units, the ordinance cannot require a setback of more than 200 feet from any property line or more than 150 feet from any public road.⁷⁸ The ordinance cannot disallow the use or expansion of a structure that was built within the setback area prior to the ordinance passing.⁷⁹ More stringent setbacks are feasible, particularly if a local government can meet the four criteria above.

What about manure structures?

Manure structures have different setback limits than livestock structures. A waste storage structure cannot be within 350 feet of a public road or any property line. An exception to this may apply:

- If a local ordinance permits an exception
- If the structure existed before May 1, 2006, and is not expanded in any way; or
- if the structure existed before May 1, 2006, a single new waste storage structure can be erected on the same parcel as long as it is no larger than the existing structure and is located within 50 feet of the existing structure.⁸⁰

What other requirements might apply to livestock facilities?

Livestock facilities must comply with applicable shoreland and wetland zoning ordinances⁸¹ and follow applicable flood zoning ordinances.⁸² All wells at livestock facilities must be operated, designed, and installed in compliance with regulations at Wis. Admin. Code chapters NR 811 and NR 812. Wells must also meet certain setback distances from new or substantially altered livestock structures, whether or not the livestock operator owns the land where the wells are located. Regulations at NR 811 and 812 list all applicable setback distances. Structures in existence before May 1, 2006, may be altered as long as they do not decrease the setback distance between the structure and a well.⁸³

What are the Odor Standards?

⁷⁷ Wis. Admin. Code ATCP § 51.12(1)(a).

⁷⁸ Wis. Admin. Code ATCP § 51.12(1)(b).

⁷⁹ Wis. Admin. Code ATCP § 51.12(1)(d).

⁸⁰ Wis. Admin. Code ATCP § 51.12(2).

⁸¹ Wis. Admin. Code ATCP § 51.12(3).

⁸² Wis. Admin. Code ATCP § 51.12(4).

⁸³ Wis. Admin. Code ATCP § 51.12(5).

Each applicant is required to fill out an odor score worksheet and the facility must earn an odor score of at least 500.⁸⁴ There are exemptions from the odor standards; a facility does not need to complete an odor score sheet if it is expanding and will have fewer than 1,000 animal units, or if the facility is located at least 2,500 feet from the nearest affected neighbor.⁸⁵

- **Cluster Exception:** If there are clusters of livestock structures within 750 feet of one another, each cluster may have its own odor score sheet rather than one sheet for the entire facility.⁸⁶
- **Local Discretionary Credit:** A political subdivision may, at its discretion, approve an application with an odor score less than 500, but cannot approve a facility with a score less than 470. If this discretionary authority is used, the local government must provide a written decision stating their reasons for doing so. The livestock siting facility board has no authority to review a decision of a political subdivision to permit an odor score between 470 and 500 or the reasoning behind it.⁸⁷
- **Odor Control Practice Credits:** Livestock facility owners may claim credits for odor control practices listed in the appendix. They may also get credits for odor control practices not listed if they are approved by DATCP.⁸⁸
- **Future Reference Points:** To complete the odor score worksheet, the operator must calculate the effect on neighbors. If an affected neighbor waives their right to be considered during odor score calculation, that neighbor does not need to be included in future applications for expansion. This waiver carries with land—so if the property is later sold, the facility operator does not have to consult the new owners in calculating his or her odor score.⁸⁹

What are the nutrient management standards?

Land applications of manure must comply with the Natural Resources Conservation Service's (NRCS) Nutrient Management Technical Standard 590.⁹⁰ A nutrient management checklist must be submitted with every local approval of an application. There must be "reasonable documentation to substantiate each

⁸⁴ Wis. Admin. Code ATCP § 51.14(1).

⁸⁵ Wis. Admin. Code ATCP § 51.14(2).

⁸⁶ Wis. Admin. Code ATCP § 51.14(3).

⁸⁷ Wis. Admin. Code ATCP § 51.14(4).

⁸⁸ Wis. Admin. Code ATCP § 51.14(5).

⁸⁹ Wis. Admin. Code ATCP § 51.14(6).

⁹⁰ Wis. Admin. Code ATCP § 51.16(1)(a)1; A copy of NRCS nutrient management technical standard 590 is available at <https://datcp.wi.gov/Documents/NM590Standard2015.pdf>.

answer,” but the documentation does not need to be submitted with the worksheet.⁹¹ The political subdivision may ask for this information and if they do not find it substantiates the answers, they may deny the application.⁹² The nutrient management checklist applies to some operations with fewer than 500 animal units, if the smaller operation has a low ratio of animals to land area.⁹³ An operator can update their nutrient management plan, but they do not need to re-submit it for approval; however, the political subdivision may ask for the plan at any time.⁹⁴ You can request nutrient management plans and associated documentation from their respective political subdivision(s).

What about manure pits?

All waste storage facilities need to be designed, constructed, and maintained to minimize the risk of structural failure and leakage. The risk of the discharge reaching groundwater or surface water must be minimized. In accordance with these goals, an unlined earthen waste storage facility cannot be located near a site susceptible to groundwater contamination.⁹⁵ Moreover, the construction, alteration, or closure of the actual facility must not deviate materially from the application unless the political subdivision has approved it.⁹⁶

The statutes require existing, new, altered, and closed facilities to be certified by an engineer as complying with the relevant NRCS standards.⁹⁷ The storage capacity should be based on adequate and foreseeable needs based upon the operator’s strategy found in the nutrient management section.⁹⁸

What about runoff management?

- **New or substantially altered lots:** These lots should comply with *NRCS technical guide wastewater strip standard 635* from January 2002.⁹⁹
- **Existing Animal Lots:** The predicted average annual phosphorus runoff cannot be more than 15 pounds if the animal lot is not located within 1,000 ft. of a navigable lake or 300 ft. of a navigable stream, or more than 5 pounds if any

⁹¹ Wis. Admin. Code ATCP § 51.16(1)(a)2.

⁹² Wis. Admin. Code ATCP § 51.16(1)(b).

⁹³ Wis. Admin. Code ATCP § 51.16(1)(c).

⁹⁴ Wis. Admin. Code ATCP § 51.16(3).

⁹⁵ Wis. Admin. Code ATCP § 51.18(3).

⁹⁶ Wis. Admin. Code ATCP § 51.18(6).

⁹⁷ Wis. Admin. Code ATCP § 51.18(2); 51.18(3); 51.18(4).

⁹⁸ Wis. Admin. Code ATCP § 51.18(5).

⁹⁹ Wis. Admin. Code ATCP § 51.20(1).

of the animal lot is located within that range. Runoff from an animal lot may never discharge to any direct conduit to groundwater.¹⁰⁰

- **Feed Storage:** Feed storage should be designed and kept in a way that prevents any “significant discharge of leachate or polluted runoff” from the stored feed into a waterway.¹⁰¹ When storing feed with 70% or higher moisture content, there are specific restrictions for existing, new, and substantially altered feed storage structures.¹⁰² An existing paved area may be used, but surface water runoff must be diverted so that it does not enter the paved area. If the paved area covers more than an acre, the leachate must be collected and stored so it cannot discharge into a waterway. A new or substantially altered feed storage structure should be designed, constructed, and maintained to ensure that surface water runoff will be diverted from entering the feed storage area.¹⁰³ The leachate should be collected before it leaves the structure, and the structure should be at least three feet vertically above groundwater and bedrock. If the structure is over 1,000 square feet, there should be a tile drainage network.¹⁰⁴ Leachate must be stored and discarded in a manner that ensures it will not reach surface or groundwater. Livestock facilities must not deviate from the design submitted in the application for local approval without authorization from the political subdivision.¹⁰⁵
- **Clean Water Diversion:** Owners/operators should prevent runoff from a livestock facility from coming into contact with animal lots, manure piles, paved feed storage areas, and waste storage facilities within 1,000 ft. of a navigable lake or 300 ft. of a navigable stream.¹⁰⁶
- **Overflow of waste storage facilities:** Waste storage facilities should be large enough to meet the operation’s reasonably foreseeable needs.¹⁰⁷
- **Unconfined manure piles:** Unconfined manure piles may not be located within 1,000 ft. of a navigable surface water and 300 ft. of a navigable stream.¹⁰⁸

¹⁰⁰ Wis. Admin. Code ATCP § 51.20(2).

¹⁰¹ Wis. Admin. Code ATCP § 51.20(3)(a).

¹⁰² Wis. Admin. Code ATCP § 51.20(3)(b).

¹⁰³ Wis. Admin. Code ATCP § 51.20(3)(c).

¹⁰⁴ Wis. Admin. Code ATCP 51.20(c)(4).

¹⁰⁵ Wis. Admin. Code ATCP § 51.20(3).

¹⁰⁶ Wis. Admin. Code ATCP § 51.20(4).

¹⁰⁷ Wis. Admin. Code ATCP § 51.20(5).

¹⁰⁸ Wis. Admin. Code ATCP § 51.20(6).

- **Access to Surface Waters:** Livestock facilities may have access to surface waters, but access must be restricted if it will affect the vegetative cover on banks of the water.¹⁰⁹

What is the fee?

The political subdivision may charge an application fee of no more than \$1,000.¹¹⁰ An applicant is not required to post any bond or security with the political subdivision;¹¹¹ this is significant since a bond or security would provide the local government with funds to clean up an abandoned or improperly closed facility.

What is the application submission process?

The political subdivision has 45 days to inform the livestock facility whether an application is complete. A notice of completeness does not constitute an approval of the facility.¹¹² However, submitting completed section worksheets and certifications in the completed application creates a presumption of compliance with respect to those sections.¹¹³

If the applicant has a WPDES permit for the number of animal units proposed in the livestock siting application, the applicant may attach a copy of the WPDES permit to their application and DATCP will likely consider the facility in compliance regarding nutrient management, waste storage facilities, and runoff management.

Once an application is submitted and deemed complete, a political subdivision has 90 days to approve or deny the application. They may extend the 90-day period only if the political subdivision requires additional information or if the applicant materially modifies the application or agrees to an extension.¹¹⁴

What are the notice requirements?

Once a facility receives notice that their application is complete, they must mail a copy of the notice to property owners of land adjacent to the proposed facility.¹¹⁵ If notice is never sent by the applicant or received by the adjacent property owners, it

¹⁰⁹ Wis. Admin. Code ATCP § 51.20(7).

¹¹⁰ Wis. Admin. Code ATCP 51.30(4)(a).

¹¹¹ Wis. Admin. Code ATCP § 51.30(4).

¹¹² Wis. Admin. Code ATCP § 51.30(5).

¹¹³ Wis. Admin. Code ATCP §§ 51.12(6), 51.14(7), 51.16(2), 51.18(4), 51.20(8).

¹¹⁴ Wis. Admin. Code ATCP § 51.32.

¹¹⁵ Wis. Admin. Code ATCP § 51.30(6).

does not create an action by the property owner against the political subdivision, nor does it have any bearing upon the approval of the livestock facility's application.¹¹⁶

What is the approval/denial process for the political subdivision?

The local government's decision should be issued in writing and the decision should be supported by facts contained in the application. The local government may support its decision on the basis that certain application sections are presumed to comply with the Rule as long as they are complete. This decision must be sent to DATCP within 30 days, but failure to do so does not invalidate the decision to grant or deny a local approval.¹¹⁷

- **Approving an application:** Under ATCP 51.34(1), a political subdivision must grant an application if it is complete and contains "sufficient and credible information to show, in absence of clear and convincing information to the contrary," that the application meets or is exempt from the standards contained in the Rule.¹¹⁸
- **Denying an application:** A political subdivision may deny an application based on any of the following conditions: (1) the application is not complete; (2) there is clear and convincing information that the proposed livestock facility does not meet standards and should not be exempted; and/or (3) there is other clear and convincing information in the record that indicates the proposed livestock facility does not comply with the standards.¹¹⁹

How much time does the facility have to expand or build?

Once the application is approved by the local political subdivision, the expansion plan runs with the land.¹²⁰ The applicant can start expanding at any point after approval of the application.¹²¹ However, the political subdivision may withdraw a local approval within two years after it has been granted as long as the applicant has not started to populate the facility or started building a new structure as part of the approved plan.¹²²

¹¹⁶ *Id.*

¹¹⁷ Wis. Admin. Code ATCP § 51.34.

¹¹⁸ Wis. Admin. Code ATCP § 51.34(1).

¹¹⁹ Wis. Admin. Code ATCP § 51.34(2).

¹²⁰ Wis. Admin. Code ATCP § 51.08(1)(a). The language "running with the land" is a legal phrase that means that a right or restriction regarding the land is tied to the property and not to a specific person. It binds current and future owners of that property.

¹²¹ Wis. Admin. Code ATCP § 51.08(1)(b).

¹²² Wis. Admin. Code ATCP § 51.08(2).

How do you challenge a livestock siting decision?

An “aggrieved person” may appeal a livestock siting decision. An “aggrieved person” is one who lives within two miles of the proposed livestock facility.¹²³ Within 30 days, an aggrieved person may appeal the local decision to the Livestock Facility Siting Review Board (the Board). The decision may be challenged in two ways: (1) the standards were incorrectly applied; or (2) the local decision violated the Livestock Facility Siting Law.¹²⁴ The Board must notify the political subdivision that its decision is under appeal, and must submit its decision-making record within 30 days. The Board will review the local record and make a decision within 60 days of receiving the record; this deadline may be extended for good cause.¹²⁵ If the Board determines the challenge is valid, it must overturn the political subdivision’s decision. If the political subdivision fails to follow the Board’s decision, an “aggrieved person” may bring a court action to enforce the Board’s decision.¹²⁶ Either an “aggrieved person” or the political subdivision may appeal the Board’s decision to circuit court.¹²⁷

Find more about the Board [here](#),¹²⁸ including a list of decisions. These are useful if you want to analyze the likelihood of success of a particular challenge.

What is the local record?

The Board and a circuit court will base their decisions regarding an aggrieved person’s challenge upon the local record. The local record is:

1. The application and subsequent additions or applicant amendments;
2. A copy of the notices to adjacent owners or any other correspondence between the political subdivision related to the application;
3. Public hearing records including any documents of evidence submitted by hearing participants;
4. Copies of any materials the political subdivision used in its decision;
5. Minutes for any board or committee meeting held on the topic;
6. The decision of the political subdivision in writing;
7. Any other documents the political subdivision prepared to document its decision (including drafts); and

¹²³ Wis. Stat. § 93.90(5)(a)

¹²⁴ Wis. Stat. § 93.90(5)(b)

¹²⁵ Wis. Stat. § 93.90(5)(c)

¹²⁶ Wis. Stat. 93.90(5)(d)

¹²⁷ Wis. Stat. 93.90(5)(e)

¹²⁸ https://datcp.wi.gov/Pages/About_Us/LivestockSitingReviewBoard.aspx

8. Copies of any local ordinances cited in the decision.¹²⁹

The political subdivision must keep the record for at least seven years.¹³⁰

Very little case law exists in Wisconsin wherein the court interprets the Livestock Facility Siting Law. One of the only pertinent, published cases is the [Larsen Acres decision](#).¹³¹

Can the political subdivision require any other restrictions?

The political subdivision has authority to monitor compliance and withdraw its approval if any of the following occur:

1. The information in the application was misrepresented;
2. The operator does not follow the commitments listed in the application; or
3. The facility does not comply with the standards of the application.¹³²

Find more information [here](#).¹³³

PERMITTING & PUBLIC PARTICIPATION

General Permits

General permits are granted by the DNR for activities such as the placement of structures, dredging, and similar activities in or adjacent to navigable waters. There's usually a three-tiered system of authorization based on:

1. The projected level of environmental impact, which excludes exemptions (CAFOs are not exempted),
2. General permits, and
3. Individual permits.

ALL permit applications require a fee.¹³⁴

General permits are granted for projects that meet pre-specified design, construction, and location requirements. All pertinent parts of the application have to

¹²⁹ Wis. Admin. Code ATCP § 51.36.

¹³⁰ Wis. Admin. Code ATCP § 51.36.

¹³¹ <https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=84725>.

¹³² Wis. Admin. Code ATCP § 51.34(4).

¹³³ <https://midwestadvocates.org/issues-actions/actions/livestock-facility-siting-law/>.

¹³⁴ See <http://dnr.wi.gov/topic/Waterways/Permits/PermitProcess.html>.

be submitted to the DNR in order to be approved. The DNR reviews general permit applications within 30 days and will let an applicant know if any required items are missing. Once all items are submitted, the DNR checks to see that the plans match the general permit specifications, and if so, grants the permit in 30 days. In some special circumstances, a review may show that the general permit conditions are not sufficient to protect habitat, water quality, natural scenic beauty, or navigation. In these cases, the DNR may inform applicants that an individual permit is needed for a more thorough review.¹³⁵

Steps:

1. General permit application process is 30 days. DNR can request additional information within those 30 days, which pauses the 30-day period until the information is received.
2. Once information is received, the time left in the 30-day period resumes.
3. The DNR needs to communicate a decision about the permit application to the applicant at the end of 30 days.

Individual Permits

Individual permits are issued for activities where no exemption or general permit is available. As such, this permit process is more complicated than the general permit process. DNR will review local fishery, wildlife, and water quality data and visit the potential site to observe navigation patterns, habitat, and other features. Individual permits REQUIRE a 30-day comment period of which people are notified by a website and newspaper notice and mailing to interested parties. During the comment period, an informational hearing may be requested. During this hearing, DNR staff gathers observations and facts from others in addition to adding its own data in order to make a decision.¹³⁶

DNR will issue individual permits once they conclude that habitat, navigation, natural beauty, and similar public rights are not harmed.

Steps for individual permits without a public hearing:

1. The DNR has 30 days to review an application for completeness and notify the applicant (date of closure). The DNR can request additional information once

¹³⁵ See <http://dnr.wi.gov/topic/Waterways/Permits/PermitProcess.html>.

¹³⁶ See <http://dnr.wi.gov/topic/Waterways/Permits/PermitProcess.html>.

within these 30 days, which would pause the 30-day period until all requested information is received.

2. The DNR has 15 days from the date of closure to issue a Public Notice of Pending Application on the [DNR public notice website](#).¹³⁷
3. The Public or DNR has 20 days after the issuance of a Public Notice of Pending Application to request a public informational hearing.
4. If there is no hearing, a 30-day public comment period ends 30 days after the Notice of Pending Application was issued.
5. The DNR has 30 days from the end of the public comment period to render a decision about the permit application.

The total process could take as few as 105 days.

Steps for individual permits with public hearing:

1. The DNR has 30 days to review the application for completeness and notify the applicant (date of closure). The DNR can request additional information one time within these 30 days, which would pause the 30-day period until all requested information is received.
2. The DNR has 15 days from the date of closure to issue a Public Notice of Pending Application on the [DNR public notice website](#).¹³⁸
3. The Public or DNR has 20 days after the issuance of the Public Notice of Pending Application to request a public informational hearing.
4. When a hearing is requested, DNR has 15 days to issue a Notice of Public Informational Hearing on the [department website](#).¹³⁹
5. The DNR must hold a hearing within 30 days after issuing the public Notice of Public Informational Hearing.
6. The public comment period ends 10 days after the public informational hearing is held.
7. The DNR has 20 days from the end of the public comment period to render a decision about the permit application.

The total process could take as few as 135 days.

¹³⁷See <http://dnr.wi.gov/permits/water/notices.html> and select "Livestock operations" for a complete guide to public notices for CAFOs and other livestock operations.

¹³⁸See <http://dnr.wi.gov/permits/water/notices.html> and select "Livestock operations" for a complete guide to public notices for CAFOs and other livestock operations.

¹³⁹ *Id.*

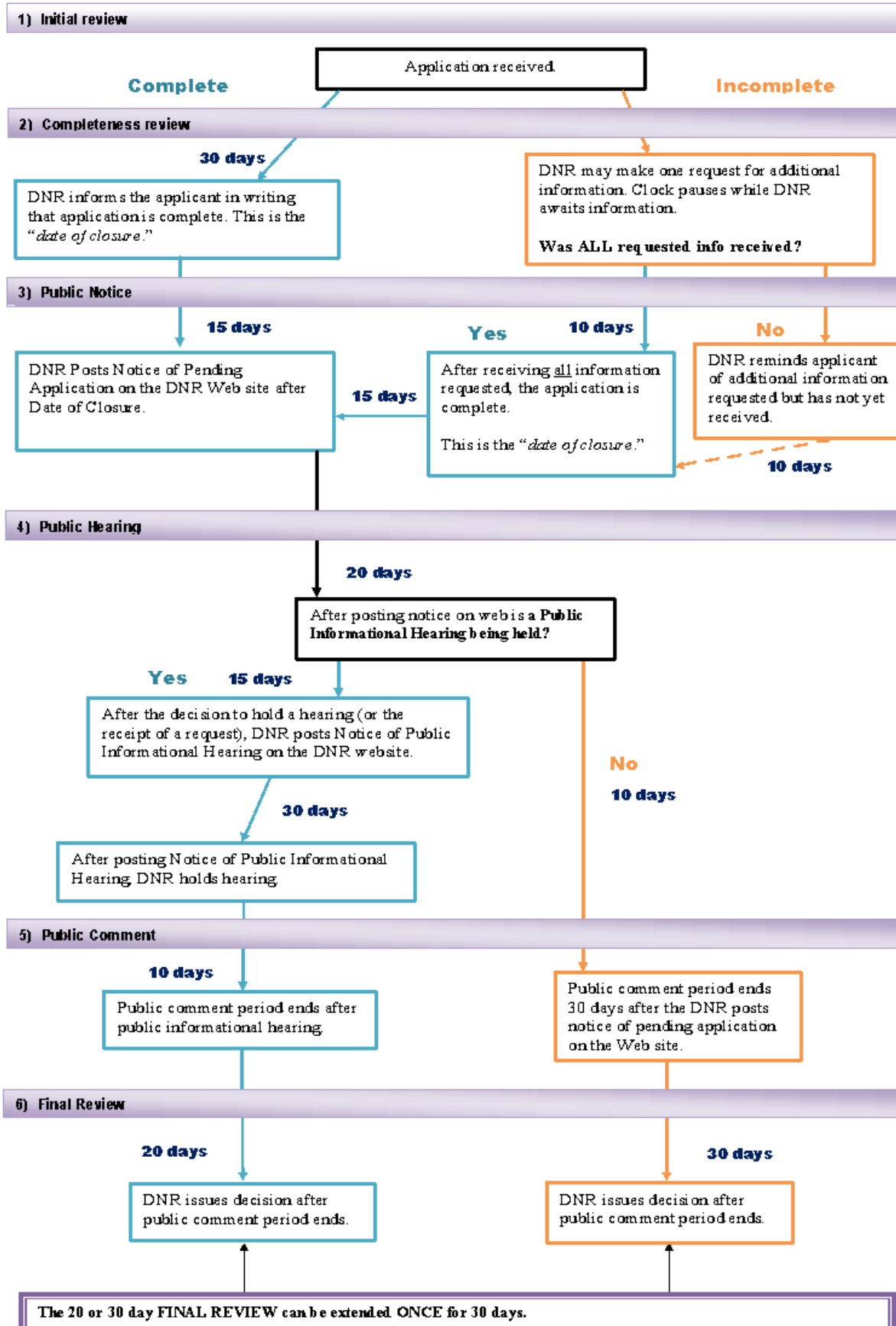
Individual Permit Timeline Flowchart

The application process for individual permits is more complicated; the chart on the next page describes the process/timeline.¹⁴⁰ Public participation is always welcome and encouraged in order to make the permitting process more transparent.

¹⁴⁰See <http://dnr.wi.gov/topic/waterways/documents/PermitDocs/IPflowchart.pdf>.

Waterway INDIVIDUAL PERMIT Process and Timelines

Last Update: 03/03/2014



Water and Facility Permits – State and Federal

CAFOs may need several permits from DNR. As of March 2019, Wisconsin is a state that requires WPDES permits for CAFOs based on number of animal units alone, regardless of whether a facility proposes to discharge pollutants into regulated waterbodies. You should monitor this policy for future changes. Large CAFOs need a WPDES permit for wastewater and storm water discharges, and discharges to groundwater. Large CAFOs also need DNR approval for any regulated facilities, which include barns, manure storage, and feed storage.

If a CAFO of any size is going to destroy or fill wetlands as part of facility construction, then the owner needs a state wetland permit from DNR, and may also need a federal wetland permit from the U.S. Army Corps of Engineers if the wetland is under federal jurisdiction.

Local Permits

A CAFO may also need local approvals or permits to construct buildings or operate. See above for an explanation of the limits on local government authority to regulate animal feeding operations. To learn what local permits are required, contact the relevant town, city, village, and county officials. At the county level, this is the Land and Water Conservation Department in the county government.

Permit Appeals

State WPDES Permits

Once DNR issues a WPDES permit to a CAFO, you can challenge conditions or limits in the permit. To obtain an administrative hearing, called a contested case hearing, at least five people must request a DNR contested case hearing within 60 days after issuance of the permit.¹⁴¹ The decision in the contested case hearing may then be appealed to a circuit court for judicial review.¹⁴² The administrative and judicial review process is complicated and confusing, and the rules governing the process are rigid. Professional legal assistance may be critical to ensure your rights to administrative and judicial review.

RIGHT TO FARM & NUISANCE LAWS

¹⁴¹ Wis. Admin. Code NR § 203.16.

¹⁴² Wis. Stat. §§ 227.52, 283.63.

Historically, if a large CAFO produced excessive odors or noises, a neighbor could bring a legal action against the CAFO to stop the problem. Nuisance is a civil tort claim, which alleges that another's actions unreasonably interfere with public or private rights.

Wisconsin law, like most states, recognizes two types of nuisance: 1) **public nuisance**, defined as "an unreasonable interference with a right common to the general public;"¹⁴³ and 2) **private nuisance**, defined as "the invasion of another's interest in the private use and enjoyment of land."¹⁴⁴ Generally, the state employs the public nuisance doctrine while individuals file private nuisance claims. Examples of private nuisances are foul odors, noise, vibration, or excessive light. An individual can sue a neighboring property owner for this type of interference with the individual's use and enjoyment of their property. A public nuisance is something that affects an entire community.

Despite this nuisance common law, Wisconsin's Right to Farm Law prohibits most private nuisance claims against an agricultural use or practice.¹⁴⁵ You can bring a private nuisance suit under only two circumstances:

1. The land was not previously in agricultural use and the agricultural use or practice affects the plaintiff's use of their property; or
2. The agricultural use or practice presents a substantial threat to public health or safety.¹⁴⁶

If a court deems an agricultural use or practice a nuisance, the Right to Farm Law limits what the court can do to fix the problem. The solution may not "substantially restrict or regulate" the agricultural use or practice.¹⁴⁷ In addition, the court may not order anyone to "take any action that substantially and adversely affects the economic viability of the agricultural use."¹⁴⁸ This means that if it costs the farmer a lot of money to address the nuisance, the farmer might not have to fix the problem since it would make the operation less economically viable. However, if the

¹⁴³ Restatement (Second) of Torts, § 821B; *Milwaukee Metro. Sewerage Dist. v. City of Milwaukee*, 277 Wis.2d 635, 658 (Wis., 2005) ("MMSD"). An example of a public nuisance might be an activity that affects public health or safety, such as the storage of dangerous materials in a highly populated area.

¹⁴⁴ Restatement (Second) of Torts § 821D; *MMSD*, 277 Wis. 2d. at 657.

¹⁴⁵ Brigid Massaro, Comment, *Navigating the "Impenetrable Jungle": Statutory Limits on Wisconsin Public Nuisance Law*, MARQ. L. REV. 90 p.110 (Fall 2006); Wis. Stat § 823.08(3)(a).

¹⁴⁶ Wis. Stat § 823.08(3)(a).

¹⁴⁷ Wis. Stat § 823.08(3)(b).

¹⁴⁸ Wis. Stat § 823.08(3)(b).

agricultural use or practice is a substantial threat to public health or safety, the court may take action even if it adversely affects the defendant's agricultural business.¹⁴⁹

Wisconsin law also includes a punitive fee-shifting provision designed to deter litigants from bringing nuisance actions against agricultural uses or practices. Plaintiffs who bring ultimately unsuccessful nuisance actions must pay all the defendant's litigation expenses.¹⁵⁰ Those litigation expenses include the "sum of the costs, disbursements and expenses, including reasonable attorney, expert witness and engineering fees necessary to prepare" for a nuisance action.¹⁵¹ For these reasons, neighbors may be reluctant to bring nuisance-related actions against livestock operations.

Other resources:

<https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=75&Issue=12&ArticleID=219>

<https://www.wisbar.org/NewsPublications/Pages/General-Article.aspx?ArticleID=26270>

PUBLIC INFORMATION LAWS

General Information & Common Questions

Wisconsin's Open Records Law at Wis. Stat. § 19.31 et seq. begins with a broad presumption in favor of public records disclosure. This presumption has held strong through numerous changes in state administration. In recent years, the Wisconsin Governor's Office has prioritized open government, taking steps such as creating an Office of Open Government¹⁵² and releasing several Executive Orders¹⁵³ intended to lessen obstacles to public records access. Many of these government transparency efforts followed lawsuits and other media relating to open records and meetings-related controversies.¹⁵⁴

¹⁴⁹ Wis. Stat § 823.08(3)(b).

¹⁵⁰ Wis. Stat § 823.08(4).

¹⁵¹ Wis. Stat § 823.08(4).

¹⁵² <https://www.doj.state.wi.us/office-open-government/office-open-government>

¹⁵³ See, e.g., <https://walker.wi.gov/press-releases/governor-walker-boosts-government-transparency-executive-action>

¹⁵⁴ See, e.g., <http://archive.jsonline.com/news/statepolitics/dnr-blacklisted-16-citizens-viewed-as-pests-chronic-complainers-b99677568z1-370328601.html>.

The following sections provide information on the type of records that are publicly available, the timeline and procedure for receiving requested records, and the important role a public records request can have in shaping decisions about CAFO permitting and related topics. For more detail, see guidance documents published by the Wisconsin Department of Justice.¹⁵⁵

What Can I Request?

Unless a record falls within specific statutory exemptions, or release of the record would be contrary to the public interest, a records requester has the right to inspect or copy any public government record.

A "record" includes:

- Any material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority;
- Maps, charts, photos, films, printouts, and disks.

A "record" does **not** include:

- Drafts, notes, preliminary computations, and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working;
- Materials that are purely the personal property of the custodian and have no relation to his or her office;
- Published materials in the possession of an authority other than a public library that are available for sale, or are available for inspection at a public library.
- Purely personal materials;
- Materials that are protected by copyright;
- Generally, "[c]ontent, not medium or format, determines whether document is a 'record' or not."

What records are considered "public"?

¹⁵⁵ *Wisconsin Public Records Law Compliance Guide*, Wisconsin Department of Justice, Attorney General Brad D. Schimel, March 2018, <https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/PRL-GUIDE.pdf>.

Generally, a records requester has the right to inspect or copy most records created or held by an “authority.” Wisconsin law broadly interprets the definition of authority. According to the Wisconsin Statutes, members of the public can access records from any government branch, agency, or unit, including:

- A state or local office;
- An elected official;
- An agency, board, commission, committee, council, department, or public body corporate and politic created by constitutional, law, ordinance, rule, or order;
- A governmental or quasi-governmental corporation;
- A nonprofit corporation that receives more than 50% of its funds from a county or municipality and that provides services related to public health or safety to the county or municipality.

Can I copy the documents or just view them?

Requesters can get copies or transcripts of any record. If it’s impractical to copy the record, the requester can inspect the records. If inspection is the only option, the requester can ask to photograph the record.

The requester has a right to a written copy of the original record, often called “source” material, even if the material is not currently in written document. For example, the Attorney General identifies a right to a copy of a computer tape, and a right to have the information on the tape printed out in a readable format.

The requester does not have a right to make his/her own requested copies. “If a requester appears personally to request a copy of a record, the authority having custody of the record may, at its option, permit the requester to photocopy the record or provide the requester with a copy substantially as readable as the original.”¹⁵⁶

How do I request the documents?

Requests can be oral or written, submitted by mail, in person, or by another means that ensures its arrival. Requesters are not required to state the purpose of the request and, with a few exceptions, requesters are not required to identify themselves. The request can be as broad or as specific as is required.

¹⁵⁶ Wis. Stat. § 19.35(1)(b).

However, the goal of a request is to receive records as quickly, affordably, and easily as possible. Certain methods work better to achieve such goals.

Submit a written request

Written requests prevent confusion and allow the requester to document or clarify an original request if necessary. Perhaps most importantly, a request must be in writing “before an action to enforce the request is commenced.”¹⁵⁷ In other words, if the authority violates the public records laws with respect to an oral request, the requester needs to resubmit a written request before he or she can pursue an enforcement action.

While a requester is not required to give a reason for his or her request, a custodian “almost inevitably must evaluate context to some degree” when reviewing the request.¹⁵⁸ A written request can provide some context to guide a records custodian when processing an open records request.

Make sure your request is specific and limited in scope

The request must be reasonably specific as to subject matter and timeframe involved. State the type of records, the subject matter, and the timeframe, noting the statutory definitions of “records” and the specific statute sections that allow access to these records.

Several Wisconsin organizations provide open records requests templates that may be useful when submitting an open records request.¹⁵⁹

See these other resources: <http://www.wisfoic.org/>, <http://www.wisdc.org/>

WI DNR

Wisconsin’s DNR is required to provide public records according to the open records law discussed above.¹⁶⁰ The easiest way to gain access to DNR records is to submit a request through the [Open Records Request](#) website.¹⁶¹

¹⁵⁷ Wis. Stat. § 19.35(1)(h).

¹⁵⁸ Hempel v. City of Baraboo, 2005 WI 120.

¹⁵⁹ http://www.wisfoic.org/index.php?option=com_content&view=article&id=52&Itemid=67, http://midwestadvocates.org/assets/resources/citizenguides/MEA_Public_Records_Law.pdf

¹⁶⁰ Wis. Stat. § 19.31.

¹⁶¹ dnr.wi.gov/contact/OpenRecordsRequest.html

DNR maintains a number of CAFO-related online databases that may preclude the need for an open records request. These databases relate to topics such as drinking water and groundwater; water permits; and Environmental Protection and Enforcement records.¹⁶² If these databases are insufficient, consider emailing a specific open records request to DNR at dnrrecordsresponse@wisconsin.gov. Requests do not need to be in one specific format, but the information above provides guidelines on making a request.

The Open Records Request Form can be filled in electronically and submitted to the DNR: dnr.wi.gov/files/PDF/forms/9500/9500-096.pdf¹⁶³

DNR updated Open Records policies in 2016. Scroll to **DNR policies, procedures, guidance and resources** section at <http://dnr.wi.gov/contact/openrecordsrequest.html>

EPA Region 5

You can request EPA records under the Freedom of Information Act. EPA Region 5 records can be requested through <https://foiaonline.gov/foiaonline/action/public/request>.

See the federal supplement to this Guide for more information on FOIA. Several EPA websites contain useful summaries of the FOIA request process, response time guidance, and other information.¹⁶⁴ Note that you're entitled to a waiver of fees if requesting information that is "likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester."¹⁶⁵ EPA will only consider waiver requests submitted at the same time as the corresponding FOIA request.¹⁶⁶

ENFORCEMENT

¹⁶² *Id.*

¹⁶³ The hyperlinks are subject to change, but all information can be found at: dnr.wi.gov/contact/OpenRecordsRequest.html. Contact dnrrecordsresponse@wisconsin.gov if a link doesn't work.

¹⁶⁴ See, e.g., U.S. Environmental Protection Agency, The FOIA Request Process, <https://www.epa.gov/foia/foia-request-process>.

¹⁶⁵ U.S. Environmental Protection Agency, Fee Waivers, <https://www.epa.gov/foia/foia-request-process#wavers>.

¹⁶⁶ See *id.*

It's extremely important that any regulated industry, including CAFOs, are held accountable for following applicable laws and rules. To learn whether a livestock operation is a regulated CAFO, the public can use this [DNR website](#).¹⁶⁷

Although you may feel frustrated with the result or scope of potential input into the DNR permitting process for CAFOs, it's important to exercise opportunities for input. Public efforts to improve CAFO permits are essential to holding the state's largest livestock operations accountable to applicable laws and rules. This guide and the Federal Guide should help you understand how to use existing state and federal legal opportunities to review, comment, and potentially challenge CAFO WPDES permits.

DNR CAFO program staff should act as first points of contact both for individuals and the regulated industry. These DNR contacts can address a variety of concerns, including questions about CAFO permits, water quality, compliance standards, federal and state regulations, and other available resources. Find your DNR contact by selecting your county on the [DNR website](#).¹⁶⁸ While DNR CAFO staff are assigned to cover several counties, each county also has a County Conservationist to serve as another useful contact for questions about livestock operations. Find contact information on your county website.

OTHER RESOURCES

Protecting your community from factory farms is difficult. Avoid working alone by building relationships in your community, consulting with experts, and collaborating with groups working on similar issues.

Socially Responsible Agriculture Project (SRAP)

SRAP provides free advice and technical assistance to communities throughout the U.S. facing factory farms. Find additional resources at www.sraproject.org, and contact SRAP for support at 503-632-8303 or through our [website](#).¹⁶⁹

¹⁶⁷ See https://dnr.wi.gov/topic/AgBusiness/data/CAFO/cafo_all.asp.

¹⁶⁸ See https://dnr.wi.gov/staffdir/_newsearch/contactsearchext.aspx.

¹⁶⁹ Contact, SOCIALLY RESPONSIBLE AGRICULTURE PROJECT, <http://www.sraproject.org/contact/>

State Agencies

[Wisconsin Department of Natural Resources](#)

- [24-hour manure spill hotline](#)
- Potential violation hotline: 1-800-847-9367
- WPDES [Permits on Public Notice](#)

State Organizations

- [Midwest Environmental Advocates](#)
- [Clean Wisconsin](#)
- [River Alliance of Wisconsin](#)
- [Wisconsin Land and Water Conservation Association](#)
- [Sustain Rural Wisconsin Network](#)
- [Sierra Club, John Muir Chapter](#)
- [Wisconsin Farmers Union](#)
- [Crawford Stewardship Project](#)
- [KnowCAFOs](#)

CAFO Research Resources

- Wisconsin DNR CAFO search tool and related information:
<https://dnr.wi.gov/topic/AgBusiness/data/CAFO/index.asp>

LIST OF STATUTES & REGULATIONS

Below is a list of relevant statutes and regulations, which can serve as a starting point for additional research about environmental authority in Wisconsin.

Overview Documents

DATCP's overview of laws that apply to livestock operations:

<https://datcp.wi.gov/Documents/LawsAffectingLivestockOperations.pdf>.

DNR CAFO guidance docs: <https://dnr.wisconsin.gov/topic/CAFO/WPDESNR243.html>

Statutes

The complete Wisconsin Statutes are publicly available at:

<http://docs.legis.wisconsin.gov/statutes>.

The most referenced statutes in this Guide are:

Wis. Stat. § 283

Wis. Stat. § 93.90

Wis. Stat. §§ 227.52, 283.63.

Wis. Stat. § 19.31

Wis. Stat § 823.08

Rules/Regulations

Wisconsin DNR Regulations: All DNR regulations are publicly available at http://docs.legis.wisconsin.gov/code/admin_code/nr. The most pertinent set of regulations for CAFOs are found at Wis. Admin. Code ch. NR 151 and NR 243.

WI DATCP Rules: DATCP current rules are publicly available at http://docs.legis.wisconsin.gov/code/admin_code/atcp.

APPENDIX: WISCONSIN CAFO DATABASE GUIDE

This appendix provides instructions on how to navigate Wisconsin CAFO databases, comment on pending CAFO permit applications, find past CAFO violations, create custom aerial maps of CAFOs, and more. If you have any questions or comments, contact: WaterRangers@sraproject.org

[Wisconsin Pollutant Discharge Elimination System \(WPDES\) Livestock Permit Public Notice](#)¹⁷⁰

Use this site to find and submit public comments on pending livestock permit applications

To Gather Information and Track the Status of Applications:

- Click “Track”
- Filter results on the left by status, county, and/or type of permit
- Search by applicant, application, or project name; click enter/return
 - Newest applications are at the top
- Click an application for the files of that application
 - Important Files:
 - *Nutrient Management Plan (NMP) Narrative*
 - Provides current and expected animal numbers for the CAFO’s five-year permit
 - Provides volume of manure generated for all sites and sources of the CAFO
 - Provides the amount of manure, processed wastewater, and other sources to be applied to land
 - *Field Boundary Map*
 - Aerial photograph of the fields where waste would be applied
 - *Spreading Restriction Maps*
 - Aerial photograph with overlays indicating where land application of manure is restricted
- Download files by clicking “Download Item” in red on the right side of the screen

To Submit a Public Comment

- Click “View”

¹⁷⁰ <https://dnr.wisconsin.gov/permits/water>

- Click “Livestock operations” in blue at the bottom of the page
- Filter results on the left by status, county, and/or type of permit
- Click an application number to view the files of that application
- Click “Submit Public Comment”
- Fill out the form
 - Note: If you want to request a public hearing, check the box next to “Public Hearing Requested” and fill out the text box indicating why you are requesting a public hearing
- Click “Submit”

[Bureau for Remediation and Redevelopment Tracking System](#)¹⁷¹

Use this site to find CAFO manure spills and spill reports that note spill volumes and locations

- In the “Search Criteria” section, use the “Activity or Location Name” box or the combination of “Activity Type,” “Substance,” and “Start Date.”
 - If you use the “Activity or Location Name” function, type the activity or location name you want to find
 - If you use the combination of “Activity Type,” “Substance,” and “Start Date,” make the following selections:
 - *Spill* for “Activity Type”
 - *Manure* for “Substance”
 - *After* and then the date for “Start Date”
- Click the bold print name to open a spill report
- Click the red “PDF” icon under “File” to get the full spill report with pictures
- List of spills can be copied and pasted to a document for sharing if desired

[NEPAssist](#)¹⁷²

Use this tool to map CAFOs and impaired waterways

- Click “Launch the NEPAssist Tool” on right
- Type the address/city/location you want to view on the top left
- Go to the drop-down menu under “Basemap” on the top menu. Click “Bing Maps Hybrid” to add a satellite image base map
- Use the “Select Map Contents” section on the right to add layers to the map
- To make an impaired waterway map:

¹⁷¹ <https://dnr.wi.gov/botw/SetUpBasicSearchForm.do>

¹⁷² <https://www.epa.gov/nepa/nepassist>

- Click the + sign next to “Water”
- Click “Impaired Streams”
- Click “Impaired Waterbodies”
- Print or save map
- You can also add more layers by clicking each + beside other map layer items to make maps with more/different information

Enviromapper¹⁷³

Use this tool to map impaired waterways and find impaired waterway reports indicating the reason for impairment

- Enter a location such as address, zip, city, county, waterbody, park name, etc. (e.g., 22207, Arlington, VA, or Jones Creek).
- Click “More Data” at top
- Click “Additional Data Layers”
- Click “Water Features”
- Click “Impaired Streams”
- Click “Impaired Waterbodies”
- If you click the red impairment line you’ll get a text box
- Click “MORE INFO” next to the “WaterbodyReportLink”
- This will give you the cause of impairment on the right side of your screen
- Print or save

FWS Wetland Mapper¹⁷⁴

Use this site to identify wetlands near CAFOs

- Click the “Wetlands Mapper” link at the bottom of the page to launch the map
- On the left, there will be two drop-down boxes:
 - Base Maps Includes:
 - Streets
 - Satellite
 - Hybrid
 - Topo
 - Terrain
 - Gray

¹⁷³ <https://enviro.epa.gov/enviro/em4ef.home>

¹⁷⁴ <https://www.fws.gov/wetlands/Data/Mapper.html>

- Open Street Map
 - NATGEO
 - USGS Topo
 - NAT'L MAP
- Map Layers Includes:
 - Wetlands
 - Riparian
 - Riparian Mapping Areas
 - Areas of Interest
 - FWS Managed Lands
 - Historic Wetland Data
- Choose your preferred basemap, then click all boxes under Map Layers
 - The USGS Topo basemap will provide a topographic map with waterways; the Satellite basemap shows an aerial view of the land
- Type an address or coordinates
- Zoom in or out to adjust picture
- Wetlands will be shown on the map
- Take your arrow and click on wetland
 - A box will open to give total acreage of wetland and a description
- To measure the distance from a wetland to a CAFO:
 - Click "Measure" in the upper left corner
 - Click the ruler with arrows going left and right above it
 - Click your cursor on the map and drag it to the location to which you want to measure
 - View the distance in the gray box
- To measure the acreage of an area:
 - Click "Measure" in the upper left corner
 - Select the ruler icon with a green shape behind it
 - Select points on the map to measure the acreage of an area
 - De-select the ruler icon to exit the tool
- Click Print on the map to create a physical copy

[Water Quality Standards by State](#)¹⁷⁵

Use this site to find your state's water quality standards

¹⁷⁵ <https://www.epa.gov/wqs-tech/state-specific-water-quality-standards-effective-under-clean-water-act-cwa>

- Scroll down to the colorful map of the United States
- Click the state for which you want to find water quality standards
- Use the links under “State Standards in Effect for CWA Purposes” to find water quality standards in the state