

Livestock Facilities & Animal Waste Storage Facilities in St. Croix County

General Facts & Frequently Asked Questions

St. Croix County Community Development Department (CDD) administers and enforces the St. Croix County Code of Ordinances for Land Use and Development including: Chapter 11 Animal Waste Storage Facilities and Chapter 17 Zoning. These regulations address number of animal units, livestock structures (sometimes called Confined Animal Feeding Operations CAFOs), animal waste storage structures and livestock housing. This includes monitoring of Nutrient Management Plans which regulate the application of animal waste on suitable land. County ordinance regulations regarding these facilities are limited by the authority granted in Wisconsin Statute Chapters 93 and 281 and Wisconsin Administrative Codes NR 151, NR 243 and ATCP 50 and 51 and Natural Resource Conservation Service (NRCS) Conservation Practice Standard Code 590. The CDD webpage, www.sccwi.us/cdd (please check under QuickLinks section on the right side of the webpage) and county meeting portal, <http://stcroixcountywi.ig2.com/Citizens/Default.aspx> will have information on upcoming meetings regarding this topic.

Where can I get more information about Livestock Facility Siting in state law and administrative code?

The Wisconsin Department of Agriculture, Trade and Consumer Protection online, here are two links: https://datcp.wi.gov/Pages/Programs_Services/LivestockSiting.aspx and https://datcp.wi.gov/Pages/Programs_Services/LSFactsheets.aspx

What are animal units? Aren't animal units and number of animals the same thing?

No, animal units **do not** equal number of animals. Wisconsin Administrative Code Chapter NR 243 defines how many animals of each species and age group are to equal one animal unit. For example one milking cow is equal to about 1.4 animal units, one beef cow is equal to about 1.0 animal units, one horse is equal to about 2 animal units, one sow is equal to about 0.4 animal unit, one calf depending on size and type ranges from 0.2 to 1.0 animal unit.

https://datcp.wi.gov/Pages/Programs_Services/LSAppMaterials.aspx

Is the County the authority on the CAFO permit or does the State or Federal government also share the regulation and/or enforcement?

The County http://www.co.saint-croix.wi.us/index.asp?Type=B_LIST&SEC={D1648D84-3ECE-4FC7-85BC-D55386B8D210} and State agencies, DNR <http://dnr.wi.gov/topic/AgBusiness/CAFO/> and DATCP https://datcp.wi.gov/Pages/Programs_Services/LivestockSiting.aspx share the permitting, regulation and enforcement.

What are the steps in the application/permitting process?

The application/permitting process depends on the designated zoning district that the facility is located in. In the AG-1 Agricultural District and the AG-2 Agricultural District, livestock facilities can be approved with or without the requirement of a land use permit, depending on the size of the operation. However, in the Rural Residential District, livestock facilities exceeding one animal unit per acre of suitable land available for animal waste utilization or for livestock facilities of 500 animal units or more require Conditional Use Permit (CUP) approval according to St. Croix County Ordinance Section 17.15(6)(u). A CUP must be approved by the St. Croix County Board of Adjustment (SCC BOA)

The Community Development Department receives applications to be heard and decided by the SCC BOA, as well as other applications, the first Monday of every month. Staff review the application to determine if it is complete. If an application has been reviewed by CDD and determined to be incomplete then a letter detailing the reasons for the denial is sent to the applicant. The applicant has the right to revise and resubmit the application.

If it is determined the application is complete then the department staff will move forward with additional review and analysis. At that point copies of the application materials are provided to the Town in which the site is located, and to Wisconsin Department of Natural Resources (WDNR) and Department of Agriculture, Trade and Consumer Protection (DATCP). The town board reviews and comments regarding conditions and makes a recommendation regarding approval, approval with conditions or denial. Staff review is usually 4 to 6 weeks. A conditional use application or application to amend a conditional use permit (CUP), is reviewed and decided by the St. Croix County Board of Adjustment (SCC BOA).

Will there be a public hearing on applications for these operations?

In the Rural Residential District, yes, a hearing is required. The Community Development Department sends out a public hearing notice to the official county newspaper, Tribune Press Reporter, the closest newspaper to the site and all adjoining landowners. The notice will also be available on the County website. The Board of Adjustment holds a public hearing on the Conditional Use application at which time the staff report and recommendation are reviewed, the applicant has the opportunity to testify and the public has opportunity to testify. Based on the testimony and evidence presented at the public hearing the BOA makes a decision.

Can I contact the Board of Adjustment members?

No, you should not contact the Board of Adjustment members. The Board of Adjustment is a “quasi-judicial” body that has to remain neutral in its decision-making role. As such Ex Parte Communication with an applicant, neighbors or other interested individuals is strongly discouraged and should not occur. Board members should not have conversations or receive correspondence outside the noticed public hearing and meeting. If they do have contact they must disclose the conversation in its entirety to the rest of the board, which then puts it on the record and allows the full board to decide whether or not the information can be considered. Board members who have or develop a relationship that may influence their decisions need to recuse themselves from the discussion and vote.

Why are the members of the Board of Adjustment different from elected officials or other committee citizen members?

In the same way that you would not contact a Circuit Court Judge about a particular case you would not contact the Board of Adjustment members. Such contact is called ex parte which means without the other party being present. The Board of Adjustment does not serve in a legislative capacity like other county committees, rather it serves in a quasi-judicial capacity, in other words much like a judge. There is an excellent publication entitled the *Zoning Board Handbook for Wisconsin Zoning Boards of Adjustment and Appeals* that covers the issues and procedures for Boards of Adjustment. It is available online at: http://dnr.wi.gov/topic/floodplains/documents/zoning_board_handbook.pdf.

Anyone appearing before a Board of Adjustment is entitled to a fair and impartial hearing under the common law concepts of due process and fair play, citizens have their opportunity to testify and introduce evidence at the public hearing as does the applicant. Decisions by the Board of Adjustment are reviewable by the Circuit Court and appellate courts, there are legal standards which must be adhered to. The Board of Adjustment members cannot be a party to violating those standards.

Under what criteria will the CUP amendment be approved?

Under Wisconsin’s Livestock Facility Siting law, Wis. Stats § 93.90 and Wisconsin Administrative Code ATCP 51, local authority to regulate livestock facilities is limited and applications must be approved if the facility meets the requirements of the statutes and administrative codes.

The livestock facility siting law does not require local (town, city, village or county) approval. But if local (SCC BOA) approval is required, the political subdivision (SCC BOA) must grant or deny approval based on Wisconsin Administrative Code ATCP 51. A political subdivision (SCC BOA) may not consider other siting criteria, or apply standards that differ from Wisconsin

Administrative Code ATCP 51, except as provided in the livestock facility siting law or Wisconsin Administrative Code ATCP 51.

Can the County require an environmental impact statement be developed as part of the evaluation and review of a new dairy or dairy expansion application?

No, to restate: A political subdivision (SCC BOA) may not consider other siting criteria, or apply standards that differ from Wisconsin Administrative Code ATCP 51, except as provided in the livestock facility siting law or Wisconsin Administrative Code ATCP 51.

Under what criteria can the CUP amendment be disapproved?

Wisconsin's livestock facility siting law, Wis. Stat. § 93.90, requires that a county, town, city or village ("political subdivision") **may not prohibit or disapprove** a new or expanded livestock facility of any size unless one of the following applies: <http://docs.legis.wisconsin.gov/statutes/statutes/93/90>

- The site is located in a zoning district that is not an agricultural zoning district. (*The Rural Residential District allows agricultural uses.*)
- The site is located in an agricultural zoning district where the livestock facility is prohibited. (*Livestock facilities are allowed in the Rural Residential District.*)
 - A prohibition, if any, must be clearly justified on the basis of public health or safety. The livestock facility siting law limits exclusionary zoning based solely on livestock facility size.
- The proposed livestock facility violates a valid local ordinance adopted under certain state laws related to shoreland zoning, floodplain zoning, and construction site erosion control or stormwater management.
- The proposed livestock facility violates a local building, electrical or plumbing code that is consistent with the state building, electrical or plumbing code for that type of facility.
- The proposed livestock facility will have 500 or more "animal units" (or will exceed a lower permit threshold incorporated in a local zoning ordinance prior to July 19, 2003), **and** the proposed facility violates one of the following:
 - A state livestock facility siting standard adopted by the Department of Ag Trade and Consumer Protection under Wisconsin Administrative Code ATCP 51.
 - A more stringent local ordinance standard enacted prior to the siting application. The more stringent local standard must be based on reasonable and scientifically defensible findings of fact, adopted by the local jurisdiction, which clearly show that the standard is necessary to protect public health or safety.

What happens after the CUP amendment is approved?

Once the Conditional Use Permit amendment is approved the applicant will apply to Community Development for construction and operation permits under Chapter 11 St. Croix County Animal Waste Storage Facilities. These are Community Development Department issued Land Use Permits (LUP). There are no public hearings or meetings for a LUP. County staff will monitor and inspect the construction of the livestock and waste management facilities for compliance with the CUP and LUPs.

Can the BOA's decision be appealed and who hears the appeal?

Yes, the decision can be appealed to the state Livestock Facility Siting Review Board. The state Livestock Facility Siting Review Board is a seven-member group authorized to review appeals of local decisions involving permit applications for new and expanded livestock facilities. The Livestock Facility Siting Review Board's decision can be appealed to the circuit court of St. Croix County.

When must an appeal be filed?

An aggrieved person may appeal a local siting decision within 30 days after the local government issues the decision.

Who may appeal a local siting decision?

If you, the applicant/owner/operator, disagrees with the approval decision on your livestock siting application, you have the right to appeal that decision. Persons who reside or own land within 2 miles of the proposed livestock facility may also appeal a decision. Further information on appeals is available at: <https://datcp.wi.gov/Documents/LSAppealingaLocalSitingDecision.pdf>

Does a Town Board approve or deny any permit?

A Town Board may make a recommendation to the BOA on the amendment to the existing conditional use permit (CUP) issued by the County. The town does not issue or approve the conditional use permit. In St. Croix County a Town Board has authority to issue the building permit(s).

What regulations must a CAFO abide by?

Wisconsin's Livestock Facility Siting law, Wis. Stat. § [93.90](#) and Wisconsin Administrative Code ATCP 51 have created a uniform approach state-wide to livestock operations or CAFOs. The standards are consistent and state and local authority to regulate is limited by the following Administrative Codes. Depending on the parameters of the application the livestock facility is subject to state reviews and permit approvals, some of which will be in conjunction with the County's review and permit approval and some of which will be separate. CDD works very closely with the state and requires some of the state approvals prior to BOA and CDD approving and issuing permits.

The Livestock Facility Siting Law and [administrative rule \(ATCP 51\)](#) establish state standards and procedures local governments must use if they choose to require conditional use or other permits for siting new and expanded livestock operations. The siting statute affects local ordinances that require conditional use or other similar permits, but does not affect other ordinances such as shoreland and floodplain zoning. The statute limits the exclusion of livestock facilities from agricultural zoning districts. It also created the Livestock Facility Siting Review Board to hear appeals concerning local permit decisions. (https://datcp.wi.gov/Pages/About_Us/LivestockSitingReviewBoard.aspx)

Administrative codes that must be met include:

1. Wisconsin Administrative Code Chapter ATCP 51, Livestock Facility Siting. The code interprets Wisconsin's livestock facility siting law, §93.90. Stats. Addresses property line and road setbacks, management and training, odor management, nutrient management, manure storage and runoff management, 10 pages. https://docs.legis.wisconsin.gov/code/admin_code/atcp/020/51.pdf
2. Wisconsin Administrative Code Chapter NR 243, Animal Feeding Operations. Implements design standards and accepted management practices and establishes permit requirements and the basis for issuing permits to CAFOs, 24 pages. http://docs.legis.wisconsin.gov/code/admin_code/nr/200/243.pdf
3. Wisconsin Administrative Code Chapter NR 151, Runoff Management. Runoff pollution performance standards for non-agricultural facilities and transportation facilities and performance standards and prohibitions for agricultural facilities and practices designed to achieve water quality standards, 32 pages. http://docs.legis.wisconsin.gov/code/admin_code/nr/100/151.pdf
4. St. Croix County Code of Ordinances Chapter 11, Animal Waste Storage Facilities. Regulate animal waste storage facilities and operations in a manner that neither creates an impermissible conflict with statutory, administrative or constitutional standards, nor imposes an undue financial burden on the County. Regulates the location siting, design, construction, inspection, installation, management, alteration and utilization of animal waste storage facilities and the use and application of waste from these facilities, in order to prevent the pollution of the county's surface and groundwater and thereby protect the public health, environment, safety and general welfare of county residents, animals and plants and the economy, 16 pages. http://www.co.saint-croix.wi.us/index.asp?Type=B_LIST&SEC={D1648D84-3ECE-4FC7-85BC-D55386B8D210}

5. Natural Resources Conservation Service (NRCS) Conservation Practice Standard Code 590, Nutrient Management. Managing the amount, source, placement, form and timing of the application of plant nutrients and soil amendments (animal waste), 7 pages.
http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs143_022228.pdf

Does the County, State or Federal government enforce/monitor those regulations?

The County, DNR and DATCP monitor and enforce various aspects of the livestock and animal waste facilities permits.

What are the penalties for non-compliance?

Livestock Facilities violating the terms of their conditional use permit can be subject to citations from St. Croix County until the violations are corrected; if the violations are not corrected the BOA can hold a hearing and may address failure to comply with conditions or may revoke the permit. There are also financial penalties that can be imposed by the DNR for non-compliance or spills.

If there is a verified violation in which a fine is imposed, does the fine cover the cost of correcting the violation?

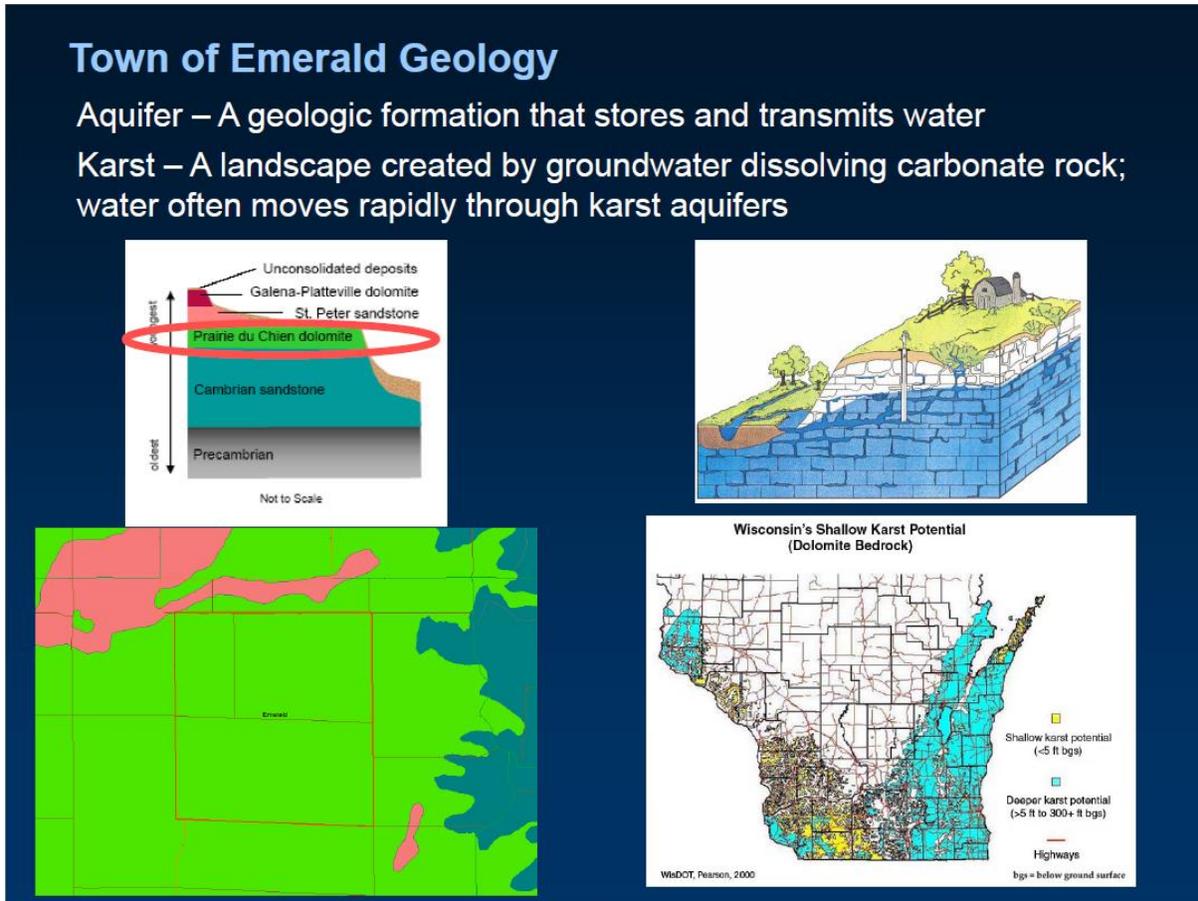
This is a question that will need to be answered by the DNR.

Is the operator or violator required to pay to fix the problem?

This is a question that will need to be answered by the DNR. Pursuant to Wisconsin Administrative Code NR 243.31, the DNR has enforcement rights related to animal feeding operations. If the DNR finds that an owner or operator of a CAFO violated a term or condition of its permit, the DNR may modify, suspend, or revoke the permit. The DNR may refer the matter to the Department of Justice for enforcement and may seek injunctive relief. The DNR may also request civil and criminal penalties, may recover costs of investigating the violation and expenses of prosecution, and may request costs of removing, terminating, and/or remedying the adverse effects on the water environment. See *Wisconsin Administrative Code NR 243.31(2)*.

Explain the aquifer system from which most Emerald residents with private wells get their drinking water.

The Town of Emerald Geology is shown in the diagram below, residents' wells are accessing groundwater in the Prairie du Chien dolomite.



What rights do residents have to clean drinking water from private wells? If there is a right to clean drinking water from private wells, what options do residents have if they lose access to clean drinking water from their private well?

The Wisconsin Department of Natural Resources regulates public and private wells. Please contact the Wisconsin DNR for further information. <http://dnr.wi.gov/topic/DrinkingWater/>

The DNR has a lot of information regarding groundwater. Please see the DNR Groundwater website: <http://dnr.wi.gov/topic/Groundwater/>

Note: The Wisconsin Attorney General has recently issued an opinion that the DNR cannot consider the cumulative effects of high-capacity wells on lakes, streams and groundwater when deciding whether to approve new wells, under a formal opinion issued May 10, 2016 by Attorney General Brad Schimel. (News articles in Milwaukee Journal Sentinel)

Is there any information on nitrates in groundwater for St. Croix County?

Please see the links to the DNR information listed above.

Also, here is a link to the St. Croix County 2012-2035 Comprehensive Plan, Natural Resources Volume 2-8: http://www.co.saint-croix.wi.us/vertical/sites/%7B7BBC2127FC-9D61-44F6-A557-17F280990A45%7D/uploads/Vol_2-8_Natural_Resources_11-5-12.pdf . Please scroll down to page 8-34 for general information and there is a map of known nitrates levels in groundwater on page 8-37.

What are the impacts of agriculture on clean drinking water from Confined Animal Feeding Operations (CAFOs)?

Agricultural practices from both crop and livestock farming can have impacts on water quality due to nitrates, bacteria, phosphorous, fertilizers, herbicides, insecticides, etc. How agricultural producers manage their operation will determine the level of the impact to surface and groundwater, regardless of the size of the agricultural operation.

How much topsoil is needed to filter manure spread on fields?

The facility siting law requires that soil types, setbacks and restrictions for individual soils be included in the calculation and analysis of the application, and is to be addressed as per Natural Resources Conservation Service (NRCS) Conservation Practice Standard Code 590, Nutrient Management. If a CUP is required, that information will be presented as part of the staff report at the public hearing. If a LUP is required (the site is located in the AG-1 or AG-2 District) this information is not presented at a public hearing but is reviewed and approved by Community Development Department staff.

How many acres need to be available to spread manure?

The facility siting law requires that the acreages be calculated as part of the application, this is addressed in Natural Resources Conservation Service (NRCS) Conservation Practice Standard Code 590, Nutrient Management. If a CUP is required that information will be presented as part of the staff report at the public hearing.

What about covering the manure pits, do they need to be covered?

Manure pits are not required to be covered. If they are not covered, then they must meet the odor index as specified in ATCP 51.14 Odor and Air Emissions.

How do I get my well tested?

CDD's webpage on Drinking Water: http://www.co.saint-croix.wi.us/index.asp?Type=B_BASIC&SEC={8EE9AE53-BF07-4FA1-858D-26CED2FEB182}&DE={137F9BF6-2EF9-44C5-A6AF-B7C1E37B5F01} has resource links on well testing, test results, water treatment and contaminants, also included is a 2006 report on Groundwater in St. Croix County, [Introduction to Groundwater in St. Croix County](#).

How many private wells in Eastern St. Croix County have tested positive for nitrates, bacteria or other contaminants?

The UW-Stevens Point Water and Environmental Analysis Lab offers information on water testing results at this link <https://www.uwsp.edu/cnr-ap/weal/Pages/default.aspx>. Mapped results for well testing throughout Wisconsin is available on a subpage, WI Well Water Viewer, <http://www.uwsp.edu/cnr-ap/watershed/Pages/WellWaterViewer.aspx>.

How many wells have "gone dry" in St. Croix County?

This is information that the County would not typically track. We are not sure who would track that information as shallow wells are many times replaced as properties are improved or may have been abandoned because they are no longer utilized and are being properly abandoned but are not dry. Please contact the Wisconsin Department of Natural Resources for further information.

How many sink holes are in Town of Emerald? Where have these occurred?

St. Croix County does not have data of this nature, but there is information available on the Wisconsin Geologic and Natural History Survey, the link is <http://wgnhs.uwex.edu/water-environment/karst-sinkholes/>. This site also has well data and groundwater information.

How did the passage of Act 20 in 2013 which changed the laws regarding high-capacity wells affect CAFOs and of Act 122 in 2011 which changed the laws for Hazardous Emissions affect CAFOs?

The DNR would be the best source of information on these questions. Here is a link to the DNR website concerning high capacity well information: <http://dnr.wi.gov/topic/wells/HighCapacity.html>

Can St. Croix County adopt a moratorium while scientifically defensible regulations are developed?

It is uncertain as to whether a moratorium is legally viable. Corporation Counsel's Office is currently researching the issue.

If the County could adopt a moratorium would it affect the expansion of an existing dairy operation?

A moratorium would not affect an existing dairy operation and would not apply to a pending application for siting or expanding a dairy operation. It could affect a dairy operation that wanted to expand but had not submitted an application.

Is there any legal recourse a homeowner can take against any and all entities responsible for the loss of clean drinking water?

Property owners have the right to commence civil actions.

Are past violations reviewed and does this affect the approval of a permit to expand an operation?

The history of violations can be reviewed but if the operation is in compliance with all regulations and conditions of permits, and in compliance with siting laws, then the operation may be allowed to expand. Permits to expand an operation cannot be denied solely for the reason that there have been previous violations of the operation or violations on the property that have occurred in the past. Also, a permit could not be denied solely for the reason that there have been violations by the same operator on a separate site. If the operation on a site is currently in compliance with all regulations then the operation on that site may be allowed to expand.

Are inspections of the operation announced or unannounced (surprise visits)?

Periodic inspections by County staff during construction of the waste storage facilities and storm water and erosion control inspections are announced, as many of these inspections are to discuss and review progress with the designer and construction crew. Complaints regarding land spreading/application of manure may be unannounced. There may be other inspections such as to check erosion control installation.

County staff also does annual review of the NRCS 590 Nutrient Management Plan and waste spreading report to ensure that the operation is in compliance with the approved plans. Depending on the circumstances, an inspection warrant may be required by the circuit court.

Can a CAFO be expanded? Can a CAFO keep expanding (can they be expanded endlessly)?

Please see the above question "**What regulations must a CAFO abide by?**" If the expansion will meet all the requirements listed then the operation can be expanded. Each time that an expansion is applied for the expansion will require review and approval by the appropriate agencies.

Who is the contact person at WI DNR who works with CAFOs?

Leah Nicol, Wastewater Specialist is the DNR staff person who works with Concentrated Animal Feeding Operations (CAFO) WPDES Permits. Her contact information is:

Leah.Nicol@Wisconsin.gov

(715) 839-3730