

# **Town of Laketown Polk County, Wisconsin**

## **Moratorium on Livestock Facility Licensing Committee Report**

**December 22, 2020**

This report was completed to meet the purpose of the Town of Laketown Ordinance 19-02: Moratorium on Livestock Facilities Licensing. It includes information presented to the Livestock Facility Licensing Committee or researched by its members. The report was compiled by the committee secretary but does not necessarily represent the opinion of the secretary or every member.

**Town of Laketown, Polk County, Wisconsin**  
**Moratorium on Livestock Facility Licensing Committee**  
**Report**

December 22, 2020

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# **I. Executive Summary**

## **• Introduction**

Early in 2019, word spread through Laketown and neighboring towns that developers were looking to build large swine factory farms. Several Laketown land owners were solicited to sell parcels to Cumberland LLC, a Wisconsin company set up by an Iowa corporation that manages swine operations in Iowa and Minnesota.

In March 2019, Cumberland made a preliminary application for permits to build a farrowing plant with up to 26,000 hogs in the Town of Trade Lake adjacent to Laketown.

Support for and concerns about the pending Trade Lake deal were discussed at Laketown's May 2019 town board meeting. More than 200 people attended the June 2019 Laketown Town Board meeting. Repeated calls were made for the Laketown board to pass a moratorium and study the issue. After consulting with an attorney, the Laketown board voted in July 2019 to pass a 12-month moratorium on large livestock facilities. With Committee meetings shutdown for several months by the covid-19 pandemic, the Laketown town board voted to extend the moratorium until January 2021.

The following report attempts to meet the purpose of the moratorium. This is a compilation of information from committee members but does not represent the opinion of every member. Each section begins with a brief introduction and a description of key concerns.

## **• Purpose**

Study, review, consider and determine whether amendments to the Large Scale Development Ordinance or the creation of a Livestock Facilities Licensing Ordinance or other ordinances are required to protect the environment, public health or safety and property in Laketown Township in light of the unique environment and the key concerns identified in the Town of Laketown Comprehensive Plan. (*Language from Moratorium Ordinance 19-02, July 2019.*) See Appendix A.

## **• Laws and Regulations - Key Concerns**

1. Laketown's Comprehensive Management Plan encourages preservation and expansion of agriculture with a focus on sustainability, appropriate scale and preservation of rural character. The plan specifically discourages development of large factory farms.
2. When Laketown's Large Scale Commercial Activity ordinance was adopted in 2009, large livestock facilities were required to get a permit. However, they were exempted in 2011. This means no town permits are required for an unlimited number of animals.
3. Existing dairies are concerned that they would be required to get a local permit for expansions.
4. A new Laketown livestock ordinance or lack thereof, may cost taxpayers money if challenged.
5. Polk County passed a large livestock ordinance in 2020 that does not cover un-zoned areas in Laketown. While it does not allow large livestock facilities to build in Shoreland areas it allows the manure to be spread in Shoreland areas up to 25 feet of lakes.
6. Two towns adjacent to Laketown - Trade Lake and Eureka - require facilities with more than 1,000 animal units to get an operations permit.
7. Federal, state and county laws oversee how the waste produced by large livestock facilities is stored and spread. Permits are required for high capacity wells. These laws and regulations are meant to minimize the risk of pollution of surface and groundwater resources. However, they are very poorly enforced. In addition, no laws address air quality, odor, noise or traffic. There are also no laws protecting property values or the health impacts of pollution.

## **• Environmental and Health Impacts - Key Concerns**

1. Maintaining agricultural and forest land uses, while limiting large-scale development, is a clearly stated goal of Laketown's Comprehensive Plan.
2. There is a wide body of research identifying the negative environmental health effects of CAFOs.



3. All of Laketown's drinking water comes from private groundwater wells.
4. There is no systematic, long term testing program for private wells or surface water by the state of Wisconsin or Polk County.
5. Public and private wells are already polluted by nitrate, phosphorus and bacteria from sources such as sewer plants, private septic systems and urban and agriculture runoff.
6. Private wells polluted with nitrate only qualify for state cleanup grants if pollution is four times the drinking standard and the water is also used to for livestock.
7. Laketown has a rich supply of surface water lakes, ponds, wetlands, rivers and streams.
8. Phosphorus pollution of surface water already impacts Laketown and the St. Croix River.
9. Large livestock facilities are required to manage waste under nutrient management plans.
10. Enforcement of nutrient management plans is weak and plans often do not meet water quality standards.
11. There is no regulation of the many types of air pollution that CAFOs make.

- **Economic Impacts - Key Concerns**

1. Much of Laketown's tax base of \$1.4 million is paid by residential homes, especially on lakes.
2. Large livestock facilities often lower property values and could impact Laketown's tax base.
3. Large livestock facilities depress economic activity in surrounding communities.
4. Existing farmers may need better economies of scale and don't want their growth to be restricted.
5. Agricultural and trade policies benefit highly capitalized operators instead of small operations.
6. Inadequate enforcement of immigration laws make it hard for family farms to compete.
7. Local taxpayers bear CAFO costs such as permitting, road maintenance and pollution cleanup.

- **Safety & Infrastructure Impacts - Key Concerns**

1. Increased heavy truck traffic could damage local roads.
2. High numbers of semis hauling livestock increases danger of crashes.
3. Large buildings filled with thousands of animals complicate fire response.
4. Semis hauling livestock can damage town roads and increase the chance of crashes.
5. Infectious human and animal diseases make the large livestock system especially vulnerable.

- **Potential Options for Board Action**

1. **Amend Town of Laketown's [Large Scale Commercial Activity Ordinance](#)**

- A. Include new Large Scale Livestock Facilities defined as 500 animal units (357 dairy cows, 1,249 pigs, 27,500 turkeys, 62,500 chickens).
- B. Exclude existing facilities until current species is changed or exceeds 1,000 animal units.
- C. Require the applicant to ensure sufficient funds are available for pollution clean-up, nuisance abatement, and proper closure of the operation if it is abandoned or otherwise ceases to operation.

2. **Adopt Siting Authority Under Wisconsin [Statute 93.90](#) and [ATCP 51 Rule](#)**

- A. Provides authority to require conditional use permit or license.
- B. Applies to new or expanding facilities if they expand by 20% and will have 500 or more animal units.
- C. Sets standards for odor, waste management and storage, runoff and setbacks.

3. **Adopt CAFO Operations Ordinance similar to [Town of Eureka](#) and [Town of Trade Lake](#)**

- A. Regulates operation of the facility instead of siting.
- B. Laketown can partner with neighboring towns to north and south and does not become the target.
- C. Requires applicant to have sufficient funds for pollution clean-up, nuisance abatement, and proper closure of the operation if it is abandoned or otherwise ceases to operation.

## II. Introduction

Laketown's had a proud agricultural heritage since its hardwood forests were cleared by colonists shortly after the Civil War. That legacy continues today with a mix of dairy, beef, commodities and specialty crop producers. During the past 50 years, farmers sold much of their lakeshore and most lakes are now surrounded by homes on small lots.

Early in 2019, word spread through Laketown and neighboring towns that developers were looking to build large swine factory farms. Several Laketown land owners were solicited to sell parcels to Cumberland LLC, a Wisconsin company set up by [Suidea](#), an Iowa corporation that manages swine operations in Iowa and Minnesota.

In March 2019, Cumberland made a preliminary application for permits to build a farrowing plant with up to 26,000 hogs just across the county line in the Town of Trade Lake. Jim Melin, Trade Lake's town board chair, agreed to sell Cumberland a 35-acre building site and manage the estimated 9 million gallons of liquid manure produced each year. Support for and concerns about the pending Trade Lake deal were discussed at Laketown's May 2019 town board meeting.

In response to news about Cumberland's plans, more than 200 people attended the June 2019 Laketown Town Board meeting. Dozens expressed concerns during the public discussion about the impact factory farms would have on public health and property values. Repeated calls were made for the Laketown board to pass a moratorium and study the issue.

Others spoke of the need to let investors decide how to compete in the global protein production economy. Concerns were raised that more restrictions could impact smaller farms already operating in Laketown.

After consulting with an attorney, the Laketown board voted in July 2019 to pass a 12-month moratorium on large livestock facilities. As part of the moratorium, the Livestock Facility Licensing Committee (Committee) was appointed to study the issue and submit a report by July 2020. Committee members include:

Monte Tretsven - Laketown Supervisor and Committee Chair  
Vicki Breault  
Sara Byl  
Lisa Doerr - Committee Secretary  
Jared Olson

With Committee meetings shutdown for several months by the covid-19 pandemic, the Laketown town board voted to extend the moratorium until January 2021. The following report fulfills the study requirement of the moratorium. This is a compilation of information from committee members but does not represent the opinion of every member. Each section begins with a brief introduction and a description of key concerns.

## III. Purpose

Study, review, consider and determine whether amendments to the Large Scale Development Ordinance or the creation of a Livestock Facilities Licensing Ordinance or other ordinances are required to protect the environment, public health or safety and property in Laketown Township in light of the unique environment and the key concerns identified in the Town of Laketown Comprehensive Plan. (*Language from Moratorium Ordinance 19-02, July 2019.*) See Appendix A.

## IV. Laws and Regulations

Laws are passed by elected officials. Once a law is passed, government agencies develop rules that regulate facilities covered by the law. A range of town, federal, state and county laws and regulations can potentially

apply to large livestock facilities. The following section gives a brief overview of existing laws and regulations and how they may (or may not) apply to large livestock facilities in Laketown.

### **Key Concerns**

1. Laketown's Comprehensive Management Plan encourages preservation and expansion of agriculture with a focus on sustainability, appropriate scale and preservation of rural character. The plan specifically discourages development of large factory farms.
2. When Laketown's Large Scale Commercial Activity ordinance was adopted in 2009, large livestock facilities were required to get a permit. However, they were exempted in 2011. This means no town permits are required for an unlimited number of animals.
3. Existing dairies are concerned that they would be required to get a local permit for expansions.
4. A new Laketown livestock ordinance or lack thereof, may cost taxpayers money if challenged.
5. Polk County passed a large livestock ordinance in 2020 that does not cover un-zoned areas in Laketown. While it does not allow large livestock facilities to build in Shoreland areas it allows the manure to be spread in Shoreland areas up to 25 feet of lakes.
6. Two towns adjacent to Laketown - Trade Lake and Eureka - require facilities with more than 1,000 animal units to get an operations permit.
7. Federal, state and county laws oversee how the waste produced by large livestock facilities is stored and spread. Permits are required for high capacity wells. These laws and regulations are meant to minimize the risk of pollution of surface and groundwater resources. However, they are very poorly enforced. In addition, no laws address air quality, odor, noise or traffic. There are also no laws protecting property values or the health impacts of pollution.

### **A. Town of Laketown**

1. [Comprehensive Plan 2009-2029](#) - Created by the Laketown Plan Commission in 2009, the plan's goal "is to guide, in a thoughtful and caring way, future development of the physical environment of the Town of Laketown."

Over the course of two years the commission surveyed residents and compiled a rich body of information from many sources. From this research the plan lays out five Guiding Principles:

**1.) Stewardship** - Decision making should start by asking, "Is this proposal consistent or inconsistent with the principle of stewardship?"

**2.) Sustainability** - We must take the long view... Actions that enhance the earth's potential to sustain life must be encouraged, but those that impair it must be reviewed...Development proposals should satisfactorily answer the question, "Will the proposed development deplete non-renewable resources in a way that impairs the earth's potential to sustain life?"

**3.) Appropriate scale** - One test of appropriate scale is whether the benefits and detriments of a proposed development will be shared equitably. Where significant detriments of a development fall on the Town, but most of the benefits go to people outside the Town, the scale of the development should be questioned. Similarly, where the physical size of a proposed development is not in keeping with the scale of homes, farms, and businesses already in the Town, the scale of the proposed development is probably inappropriate.

**4.) Preservation of Rural Character** -Development that fosters rural character should be encouraged, and those that impair it should be rejected.

**5.) Objectivity** - In making decisions about future development, the Town must be objective. The decision making process must be transparent, must not be influenced by personal favor, and should employ the best scientific, economic, and ethical analysis.

With these principles in mind, the plan then sets Goals and Objectives for many different elements. Four of those elements apply directly to the development of large scale livestock facilities:

Element 5: Agriculture, Natural and Cultural Resources

- Goal 1: Expand and enhance recreational opportunities
- Goal 2: Preserve and expand agriculture
- Goal 3: Maintain the rural and agricultural character
- Goal 4: Maintain and enhance the natural resources

Element 6: Economic Development

- Goal 1: Retain the current businesses and promote agriculture-related economic development.
- Goal 2: Restrict economic development...that does not fit with Laketown's small, rural, and agricultural character.
  - Objective 1: Restrict large-scale economic development
  - Objective 3: Prioritize economic development that benefits the local economy
  - Objective 4: Prioritize economic development that is environmentally-friendly

Element 8: Land Use

- Goal 1: Maintain the rural character of the Town of Laketown
  - Objective 2: Discourage and consider prohibiting large-scale development (including, but not limited to: factory farms, large residential subdivision, large mining operations, hazardous materials sites, and landfill/dump sites)
- Goal 3: Protect and conserve the natural resources
  - Objective 2: Protect surface and groundwater quality
  - Objective 6: Protect air quality

Element 9: Implementation

- Task 2: Research tools that limit large-scale development in Laketown
- Task 3: Discuss, weigh, debate, the tools available to maintain Laketown's rural character
- Task 4: Review development proposals for consistency with the Comprehensive Plan

## **2. Large Scale Commercial Activity Ordinance - 2009 & 2011 (See Appendices B. & C.)**

Building on the Comprehensive Plan, "the purpose of this ordinance is to protect and enhance the rural character, environment and cultural heritage of the Town; to protect and promote the health, safety, and quality of life of the Town's inhabitants; and to encourage sustainable commercial activity...."

Businesses engaged in Large Scale Commercial Activity must meet a series of standards consistent with the Comprehensive Plan in order to be granted a permit.

When the ordinance passed in 2009, Large Scale Livestock with 700 animal units (500 dairy cows, 1,750 pigs, 38,500 turkeys, 87,500 chickens) were also required to get a permit. In 2011, the ordinance was amended and Large Scale Livestock facilities were exempted. This was done to address concerns that existing dairy operations may be required to get permits for expansions under the 2009 ordinance.

## **B. United States Federal Laws & Regulations**

1. [Clean Water Act \(CWA\)](#) - Passed in 1972 under President Nixon. While it is a federal law, authority for implementation and enforcement is granted to Wisconsin Department of Natural Resources (DNR).

The goal of CWA is to protect the nation's water by setting standards for water quality and regulating pollution discharges into water. Two of its programs specifically apply to large livestock facilities. These are the WPDES and the TMDL programs.

- a. [WPDES Permit Program](#) - DNR gives WPDES permits to discharge pollution.

A wide range of polluters are required to have a WPDES permit, including sewer, industrial and large livestock plants. DNR is responsible for ensuring that Wisconsin's approximately [319 large livestock plants](#), known as Concentrated Animal Feeding Operations (CAFOs), are complying with the terms of their WPDES permits. CAFOs are defined as operations with [1,000 or more Animal Units](#) which equals 700 dairy cows, 2,500 pigs, 55,000 turkeys or 125,000 chickens. There are four CAFOs in Polk County; two are operating under expired permits. No CAFOs hold permits in the Town of Laketown.

As part of its research, the Committee attended an in-depth briefing by the DNR staff that oversees WPDES permits for CAFOs in our region. Rules for the permits are under [Chapter NR 243](#) of Wisconsin's Administrative Code. DNR staff summarized the program in the following chart.

## CAFO WPDES Permits

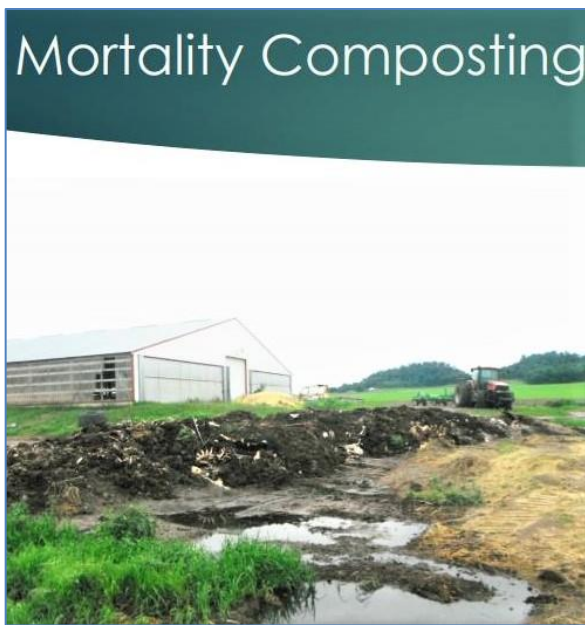
- ▶ Requirements outlined in ch. NR 243, Wis. Adm. Code
- ▶ Water quality protection permits
- ▶ Implementation of EPA Clean Water Act.
- ▶ Regulates CAFO manure and process wastewater handling, storage, and land application
- ▶ Does not regulate air, odor, animal welfare, noise, or traffic issues
- ▶ **NOT** a siting program
- ▶ Does not implement local (town/county) requirements

Ninety percent (90%) of the Wisconsin's CAFO permits are held by dairy operations. These permits:

- Place limits on the type and concentration of water pollutants that may be discharged
- Require ongoing self-monitoring and reporting
- Establish requirements for manure collection and land application procedures
- Are issued for five-year periods





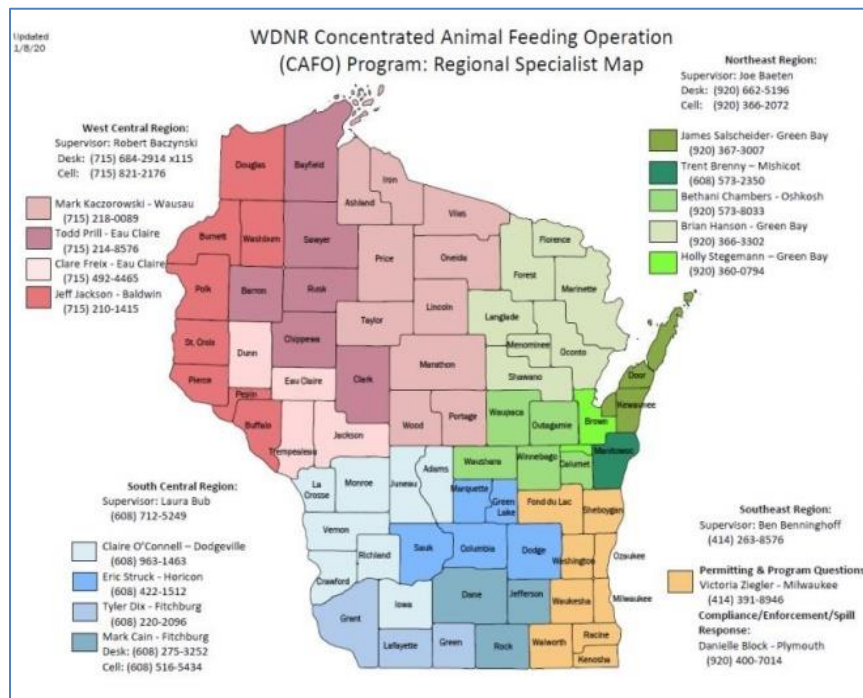


CAFOs are required to make mortality management reports but permits do not prescribe methods used to dispose of corpses and placentas

The DNR struggles to keep up with the growth of CAFOs in Wisconsin from 135 in 2005 to 319 in 2020. For example, a [2016 study](#) by the Legislative Audit Bureau of the WPDES program found that one-third of the CAFOs were operating under expired permits. In 2020, 91 (28%) CAFOs are operating under expired permits. There is an [ongoing debate](#) about who should pay for this regulation; the public through taxes or the permit holders through fees, as documented by the [Legislative Fiscal Bureau](#).

Laketown is in an area serviced by DNR regional specialist, Jeff Jackson. Regional staff are responsible for: drafting permits; public noticing

the permit; responding to questions and concerns regarding the permit; and permit issuing or reissuing. Onsite compliance inspections of the production area and/or land application sites are also done by the regional staff.



Located in Baldwin, Jackson covers eight counties running 245 miles from Douglas County on Lake Superior to Buffalo County on the Mississippi River, as seen in the dark salmon on the map at left.

Engineering staff, located in Madison, serve the whole state. They review: engineering evaluations of structures; engineering plans and specifications of proposed structures; and the "days of waste storage calculations."

There are also staff in Madison that review

Nutrient Management Plans every five years. This involves determining waste generation and reviewing how the farm plans to manage land application activities. Operations must show crop rotations and planned land applications activities for five years. This helps determine if the operation has an adequate land base for their calculated waste generation.

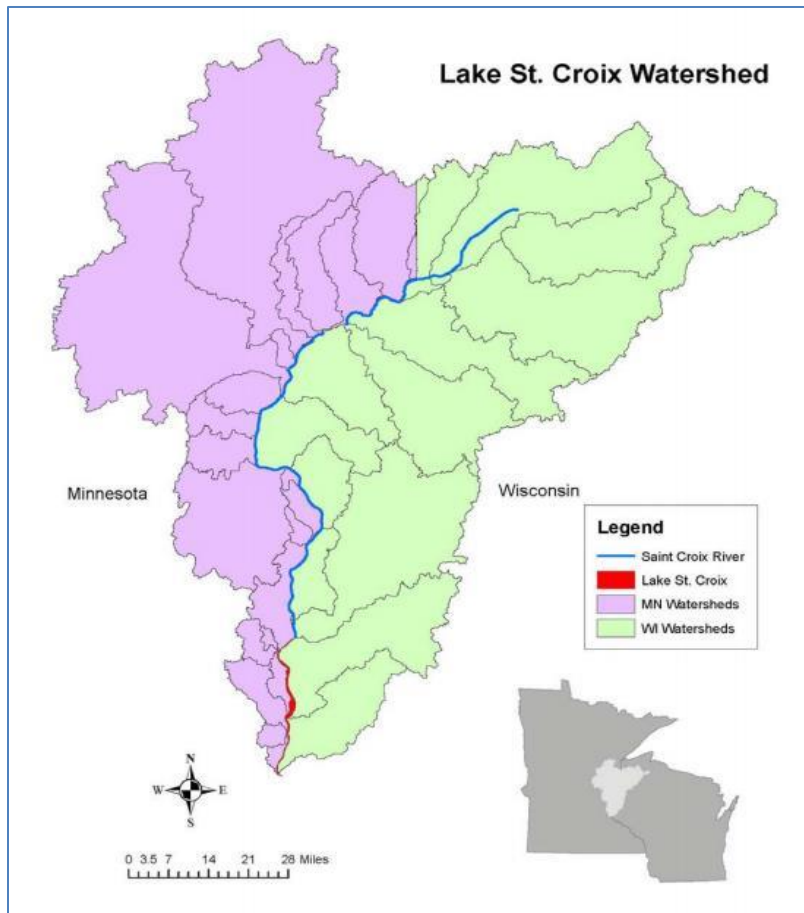
No case better illustrates the challenges with CAFO enforcement than Emerald Sky Dairy. Located near Baldwin in St. Croix County, Emerald Sky is owned by a Nebraska company. They have had five known manure violations in three years. The worst was a 2017 spill of 275,000 gallons that resulted in only an \$80,000 fine. Even after that, [in November 2019](#), an anonymous call reported manure flowing down a ditch that dumps



into Hutton Creek. DNR staff documented manure flowing into the creek and dead fish. St. Croix County Development Corporation sent a letter to the DNR on [February 20, 2020](#) demanding "full and quick enforcement of manure application rules and statutes for CAFO's located in St. Croix County."

- b. [Lake St. Croix TMDL Program](#) - DNR works to cut phosphorus pollution to St. Croix River.

Laketown is in the 7,760 square mile area that feeds water to the St. Croix River. Under the CWA, states must identify surface waters - lakes, rivers and streams - that are not meeting state water quality standards and put them on the impaired waters list. Lake St. Croix, near Hudson, Wisconsin was placed on the impaired list in 2008 due to excess phosphorus pollution in the St. Croix River.



After listing it as impaired, Wisconsin and Minnesota figured out that the Total Maximum Daily Load (TMDL) of phosphorus that could go into Lake St. Croix is 360 metric tons. That means phosphorus pollution in the Lake St. Croix Watershed will have to be reduced by 127 tons or 27%.

In order to meet this reduction goal, communities and landowners in the St. Croix River watershed need to reduce discharges from sewer plants as well as runoff from urban and agricultural land.

The CWA provides state and local governments with federal resources to meet the goal.

For example, Polk County receives funding for the following three programs that are or could be used in Laketown:

Source: [Lake St. Croix TMDL](#) - page 3

- **Nutrient Management Plans** - County staff review and/or help draft nutrient management plans for CAFOs and smaller farms.
- [Farmer-Led Watershed Councils](#) – Made possible by partnerships between agricultural producers, County Land and Water Conservation Departments, DATCP, and University of Wisconsin–Extension there are four active councils in northwest Wisconsin counties. The goal is to develop farmer leaders on a local watershed scale to increase use of conservation practices that improve water quality and soil health. Figuring out how to keep vegetative cover and living roots on the fields during fall, winter, and spring is a key conservation practice these councils promote. These cover crops help more water infiltrate the soil and less run off the field. Cover crops also take up excess nutrients left after the growing season and keep them in the field, minimizing nutrient loading to surface waters.

The [Horse Creek Farmer-led Watershed Council](#) operates in a [76-square mile watershed](#) located in southern Polk County. The council has been successful in implementing and promoting practices that improve soil health and water quality. They have shared their successes, and failures, statewide with other potential watershed councils. In 2013, the Council was instrumental in helping the state to re-direct \$250,000 of funding within DATCP towards expanding councils statewide. Today, this grant initiative makes \$750,000 available to agriculture producer groups who would like to organize similar programming. Twenty-seven groups statewide were approved for this funding in 2020.

- **Lake Protection Grants** - Several lake associations, including Round Trade Lake Improvement Association, are planning and implementing programs designed to cut phosphorus pollution. Support from a grant secured with Polk County made the [Long Trade Lake Management Plan](#) possible. The planning process included collection of information such as lake levels, precipitation and chemical makeup. Monitoring by volunteers and several workshops were also executed. Based on all this information, an implementation plan with five goals was developed. As the next stage, the association can now secure a Lake Planning grant to cut phosphorus pollution while at the same time addressing algae blooms and enhancing fish habitat.
- 2. [Safe Water Drinking Act \(SWDA\)](#) - Passed in 1974 under President Ford. SWDA sets standards for public drinking water systems. However, these standards do not apply to private wells. No state or federal laws requires existing private wells to be tested for contaminants. All of Laketown's drinking water comes from private wells.

Under the SWDA the safe limit for nitrate in water is defined as [10 parts per million \(PPM\)](#). The 10 ppm limit was set in 1962 and is [based on studies from the 1940s](#). Many question whether a 58-year old limit can still be scientifically justified. Some say new evidence could show that the limit should be [higher](#) others think it should be [lower](#). CAFOs are not covered by the SWDA.

- 3. [Clean Air Act \(CAA\)](#) - Passed in 1990 under President Bush. CAA set air quality standards for just six pollutants from industrial plants. Wisconsin DNR is also granted authority to identify sources of the pollution and give permits to control them. At this time, CAFOs are not considered to be industrial polluters and are not covered by the CAA.
- 4. [Emergency Planning and Community Right-to-Know Act \(EPCRA\)](#) Enacted in 1986 under President Reagan after thousands of people were killed in India by a chemical explosion. The law required CAFOs to report chemical pollution such as ammonia and hydrogen sulfide from animal waste when it was in amounts that could threaten public safety.

In 2008, under President Bush, animal feeding operations were exempted from having to report air pollution from animal waste. After legal action, that exemption was struck down by the U.S. Court in 2017. In 2018, under President Trump, the Fair Agricultural Reporting Method Act again exempted CAFOs. [Final rules were made public in July 2019](#). CAFOS are not required to report.

- 5. [Toxic Air Pollution Regulation](#) There is no toxic air regulation of CAFOs. However, there is an ongoing, 15-year attempt by the US Environmental Protection Agency (EPA) to regulate CAFO air pollution using scientifically sound methods. It is complex because air pollution varies depending on factors such as the number and type of animal confined, type of feed, manure handling and storage practices, barn ventilation methods, and climate. Directly measuring the pollution is expensive.

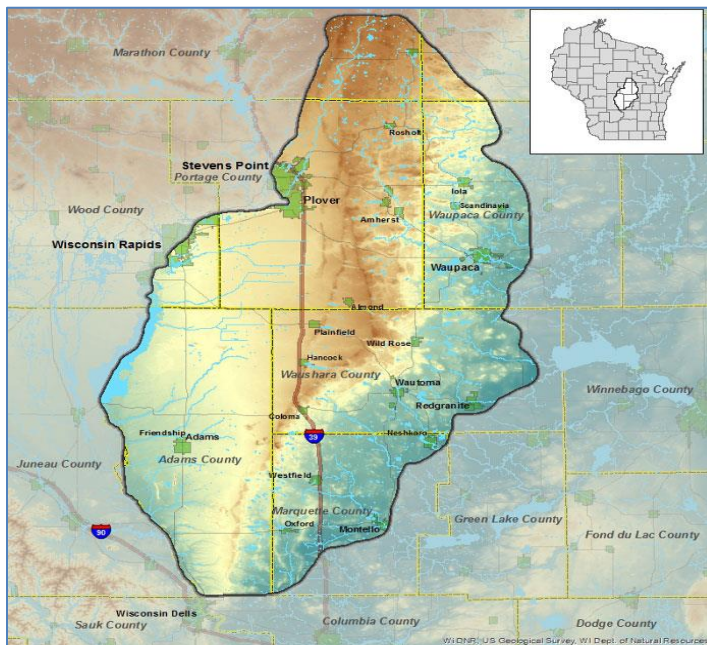
In 2007, dairy, swine and chicken plants participated in a program to monitor pollution at 25 sites in 9 states. The purpose was to collect the data needed to develop scientific models that can estimate pollution and determine how CAFOS should be regulated under CAA and EPCRA. A [DRAFT Report](#) was issued in

2012. Draft models for ammonia, [hydrogen sulfide](#) and particulate matter pollution were due to be completed in 2020 for swine, chicken and dairy plants. The [DRAFT Swine Model](#) was released in August 2020. Models for poultry and dairy are now [scheduled for 2021](#).

In November 2019, the [American Public Health Association](#) called for a nationwide moratorium on new CAFOs due in large part to a lack of air pollution regulation.

## C. Wisconsin State

1. **Wisconsin Department of Natural Resources (DNR)** - In addition to the federal laws for which the DNR has authority; there are several state statutes and rules that may or may not be related to CAFOs:
  - a. [Runoff Management Rules NR 151](#) - Regulates use of manure and fertilizer for non-CAFO farms. In December 2019, the [DNR's board voted](#) to begin crafting new rules in an effort to [curb nitrate pollution in drinking water](#). Public hearings are planned for spring 2021.
  - b. [Local Regulation of Livestock Wisconsin Statute 92.15](#) - Used as the basis for the towns of [Trade Lake CAFO Operations Ordinance](#) and [Eureka CAFO Operations Ordinance](#). These ordinances focus on how the plants are operated instead of siting and are based on local government powers instead of siting laws. Includes performance bonds and yearly renewal. These ordinances are based on Bayfield County's ordinance which was challenged by the DNR in 2017 but was upheld by the court. There is a review process of these ordinances by Wisconsin agencies. (See Appendix D.) DATCP reviewed Polk County's DRAFT Operations Ordinance in an October 2020 memo. (See Appendix E.)
  - c. [Air Toxics Rule NR 445](#) - Toxic air pollution from CAFOs are not currently regulated. However, livestock farms may potentially be required to meet air emission standards for hydrogen sulfide and ammonia under the DNR air toxics rule.
  - d. [High Capacity Wells NR812](#) - [DNR approval](#) is required for CAFOs when the combined pumping capacity of all wells on a farm exceeds 100,000 gallons a day or 70 gallons per minute. There are 89 high capacity wells in Polk County. Five of those are on CAFOs and another 27 are used for irrigation and other agricultural activities. There are also two municipal wells in Laketown.



The impact of high capacity well usage is a [highly debated issue](#). The Wisconsin Supreme Court has a case coming before it soon on high capacity wells.

In May 2020, [Attorney General Kaul](#) ruled that the DNR must consider the impact to local wells, springs, lakes and rivers when issuing new permits.

In 2017, DNR began studying the impact of these wells in [Wisconsin's Central Sands](#) area after several water bodies were impacted by huge withdrawals of water.

Findings from this study may impact high capacity use throughout Wisconsin.

Source: Wisconsin's Central Sands: [WI DNR](#)



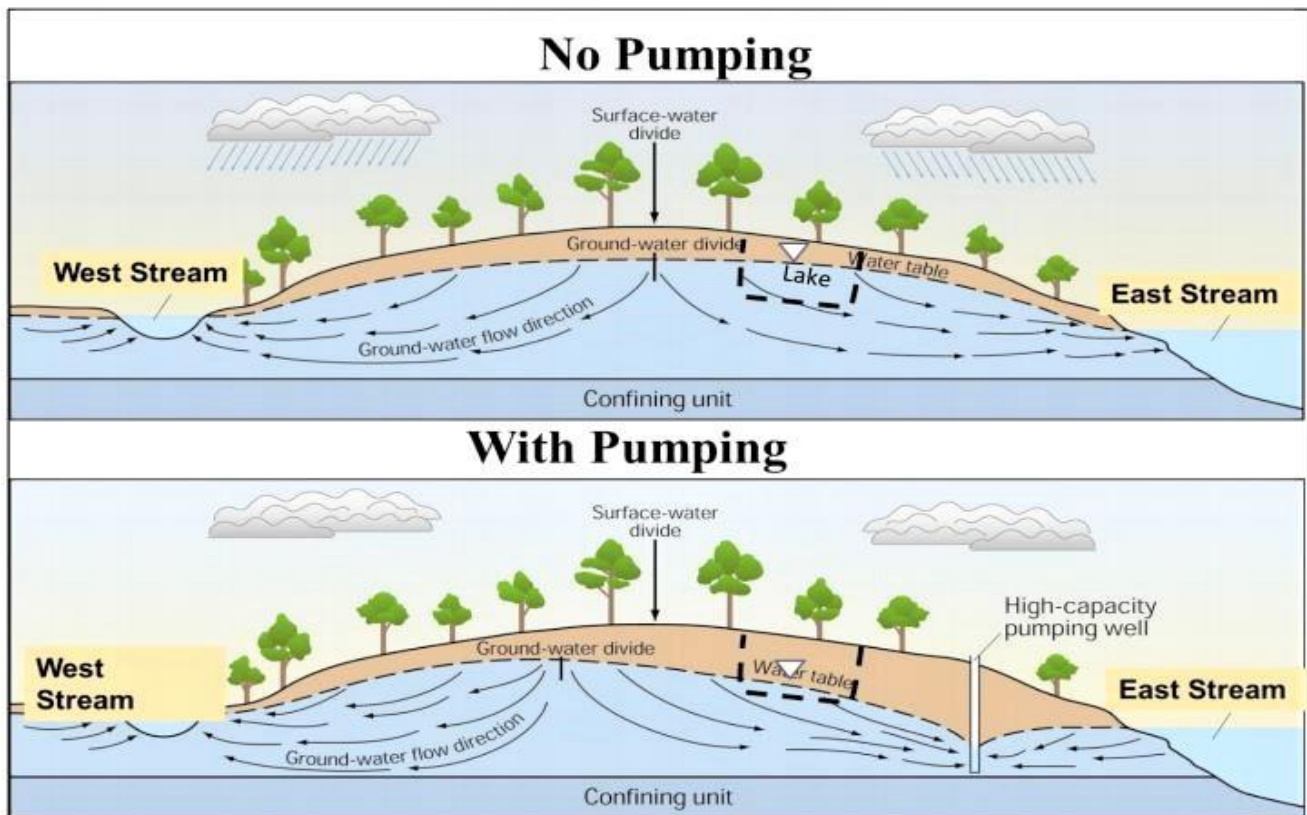


Figure 1. A groundwater flow system under natural (top) and pumping conditions (bottom). Note that the lake is a dip that extends below groundwater levels. The pumping well intercepts water that was going to the East Stream and captures some water from the West Stream as well. Because pumping lowers water levels in the aquifer, lake levels have declined. When wells are located near a stream, the flow of groundwater might be reversed. (Figure modified from Grannemann et al.<sup>4</sup>)

Source: [Wisconsin's Greenfire - High Capacity Well Impacts](#) - page 2

## 2. Department of Agriculture, Trade and Consumer Protection (DATCP)

- a. [Livestock Facility Siting and Expansion Wisconsin Statute 93.90](#) - Passed in 2006, local governments must adopt authority for siting using either licensing or zoning with conditional use permits. There is no authority in Laketown because Laketown has not adopted the 93.90 statute.
- b. [Livestock Facility Siting Rule ACTP 51](#) - This is the rule for 93.90. It defines the details such as setbacks, air pollution, nutrient and runoff management, and waste storage. An attempt to revise the rule was stopped in November 2019. This rule does not apply to Laketown.

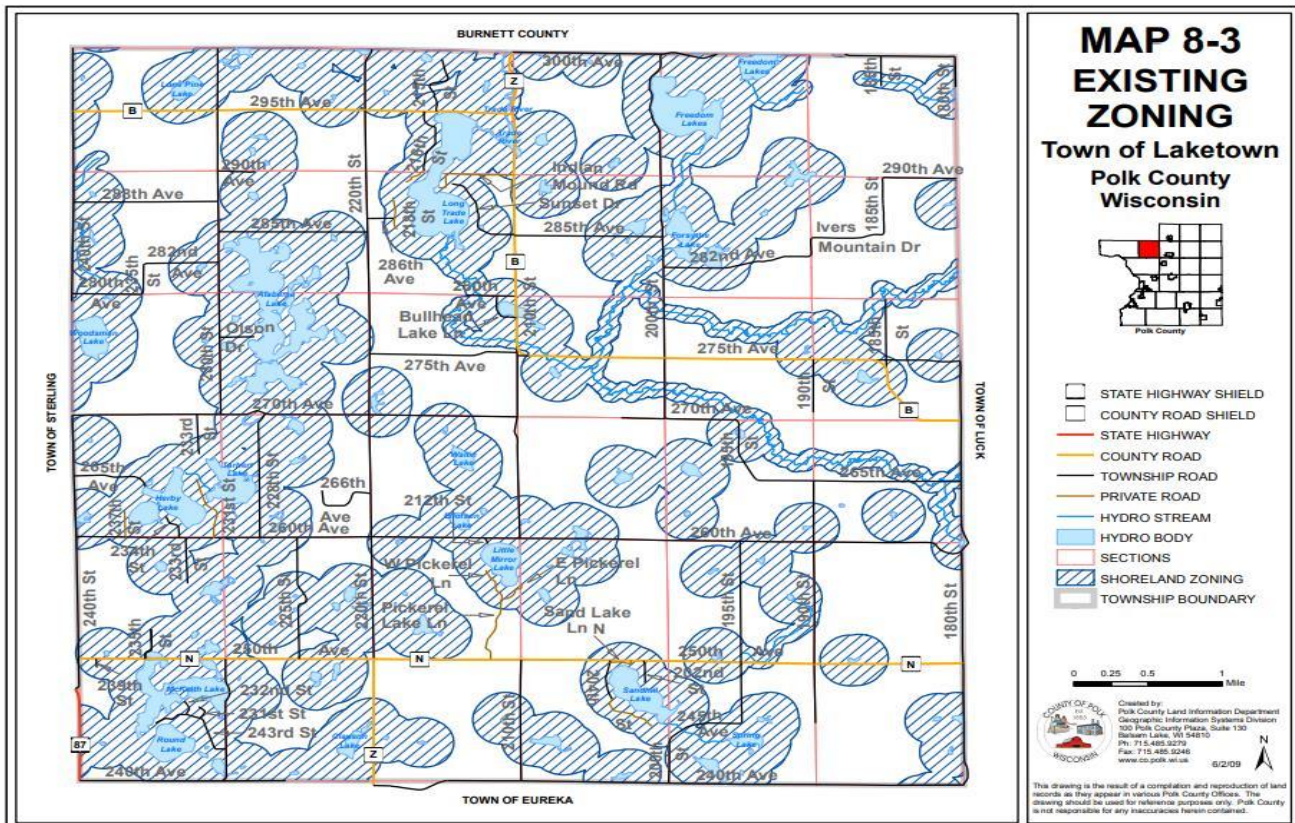
However, DATCP is currently assessing the legality of a \$1,000 limit on application fees and a prohibition on performance bonds in [ATCP 51.30 \(4\)\(a\)&\(b\)](#). As part of Act 21, [Wisconsin Statute 227.10](#), DATCP was required to review all rules and make sure there is authority in the statute to back it up. According to both the Wisconsin Towns Association and County Association, both of these items lack express authority in statute and are unenforceable. (Appendices F. & G.)

## D. Polk County

1. [Comprehensive Land Use Ordinance](#) - Polk County has 24 towns. Laketown is one of five Polk County towns that have *not adopted* zoning under this ordinance. This means that this zoning ordinance does not apply here.

2. [Shoreland Protection Zoning Ordinance](#) - While Laketown has not adopted zoning, under Polk County's Comprehensive Land Use Ordinance, 55 percent of the Town is covered under the County's Shoreland Ordinance. These regulations help ensure the proper management and development of the shoreland of all navigable lakes, ponds, rivers, and streams in the unincorporated areas of Polk County.

[Resolution 03-20](#) was passed in February 2020 by Polk County withdrawing swine CAFOs as a potential conditional use in areas. Manure from CAFOs can [still be spread in some shoreland zoned areas](#), but swine CAFO buildings cannot be developed in the cross hatched areas shown in the Map 8-3.



Source: [Laketown Comprehensive Plan](#) - page 93

3. [Polk County Swine CAFO Amendment \(see p. 29\)](#) to Comprehensive Land Use ordinance - Passed September 15, 2020, this amendment focuses on siting and effectively targets development in towns with areas zoned Agriculture-20 and non-shoreland lands in un-zoned towns such as Laketown. CAFO developments with 2,499 hogs or less (1,000 animal units) in zoned towns also have no restrictions. Developers interested in non-shoreland areas of Laketown have no county siting restrictions. Manure from CAFOs in un-zoned areas [can be spread in shoreland areas throughout the county](#).

Developers planning more than 2,499 hogs (1,000 animal units) in zoned towns must be in areas zoned Agriculture-20. In addition, they are required to get a conditional use permit through the county's Environmental Services Committee that will include at least the following provisions:

- a. **Setbacks** - 200' setback for waste storage and housing for an infinite number of hogs. 100' setback for driveway entrance.
- b. **Waste** - Requires nutrient and mortality management plans.
- c. **Overweight Loads** - Requires town approval during spring break-up.

- d. **Spills** - Developers shall notify the town and county of spills within 24 hours. The county will publically notice the spill.
- e. **Previous livestock violations** - Violations by the owner/parent company must be reported
- f. **Suspected hazards** - Environmental or human health hazards must be referred to the county.
- g. **Residency** - Owner or operator must live within five (5) miles of the development.
- h. **Plans** - Professionally designed and drafted plans required for the main facility.

This swine CAFO ordinance was developed during a 12-month moratorium that required the county to study a wide range of environmental and health issues. This was supposed to be done because Wisconsin law requires ordinances to be based on "reasonable and scientifically defensible findings." However, the county did not do the needed work and provided no findings. As a result, [DATCP staff issued a letter](#) to the county that the ordinance is vulnerable to legal challenge. Three pro-CAFO groups have [threatened legal action](#). However, the Wisconsin County Association pushed back on these threats. (Appendix H.)

- 4. [Manure and Water Quality Management Ordinance](#) - Permits are required for construction, alteration or closure of any animal waste storage structure on non-CAFO farms. Need to meet Natural Resources Conservation Service (NRCS) engineering standards whether in zoned or un-zoned town such as Laketown. Unconfined manure piles are not allowed within: 1,000 feet of navigable lake or pond; 300 feet from a river or stream; 250 feet for a private well, 1,000 feet from a municipal well; 100 feet from downslope to groundwater; shallow soils over groundwater or bedrock. Adequate sod must be maintained in pastures where livestock has access to waters of the state. Manure management plans are required for cost sharing. Plans focus on phosphorus not nitrates, bacteria or other pollutants. Plans don't require land ownership or contracts. County staff does not regularly review plans.
- 5. [Storm Water Management and Erosion Control Ordinance](#) - All construction plans are reviewed. Water must go down into soil not across into surface waters too quickly.



<b>E. Summary of Laws and Regulations</b>		
<b>Laketown Regulation</b>	<b>Type of Regulation</b>	<b>Regulating Agency</b>
Comprehensive Plan - 2009-2029	Encourages preservation & expansion of agriculture with a focus on sustainability & appropriate scale. Discourages development of large factory farms.	Laketown
Large Scale Commercial Activity Ordinance	Required permits for livestock facilities over 700 animal units (500 dairy cows, 1,750 pigs, 38,500 turkeys, 87,500 chickens) in 2009. Livestock facilities exempted in 2011.	Laketown
<b>US Federal Law or Regulation</b>	<b>Type of Regulation</b>	<b>Regulating Agency</b>
Clean Water Act - 1972	Water pollution (WPDES) permits. NR243 rules. Lake St. Croix TMDL drive nutrient management plans, Farmer-Led Watershed Councils.	Implementation and enforcement authority delegated to the DNR.
Clean Air Act - 1990	Criteria pollutants - carbon monoxide, lead, ground-level ozone, nitrogen dioxide, particulate matter, and sulfur dioxide. <b>Not currently required for CAFOs.</b>	Implementation and enforcement authority delegated to the DNR.
Emergency Planning & Community Right-to-Know Act - 1986	Chemicals released to the air, land or water. <b>Not currently required for CAFOs.</b>	Implementation and enforcement authority delegated to the DNR.
Air Pollution Models - 2007	Ammonia, hydrogen sulfide, particulates and volatile organic compounds. <b>Not currently required for CAFOs.</b>	US EPA
<b>Wisconsin State Law or Regulation</b>	<b>Type of Regulation</b>	<b>Regulating Agency</b>
Runoff Management Rules (NR151)	Manure and fertilizer rules for farms smaller than CAFOs.	DNR
Local Regulation of Livestock Law (92.15)	Local ordinances may exceed state performance standards if shown to protect water quality. Eureka ordinance based on this.	DNR or DATCP
Air Toxics Rule Regulation (NR 445)	Potential regulations of hydrogen sulfide & ammonia. <b>Not currently required for CAFOs.</b>	DNR
High Capacity Wells (NR812)	Required when pumping more than 70 gallons per minute of water.	DNR
Livestock Siting & Expansion Law (93.90)	Local governments can adopt authority for siting. No authority in Laketown.	DATCP
Livestock Facility Siting Rule (ACTP 51)	Rule if 93.90 authority is adopted. Setbacks, air pollution, nutrient and runoff management, and waste storage.	DATCP
<b>Polk County Regulation</b>	<b>Type of Regulation</b>	<b>Regulating Agency</b>
Comprehensive Land Use Ordinance	CAFOs currently allows CAFOs in A-2 zones and 5 un-zoned towns including Laketown.	Polk County Zoning
Shoreland Protection Zoning Ordinance	Covers 55 percent of Laketown. CAFO facilities not allowed but manure can be spread.	Polk County Zoning
Manure & Water Quality Management Ordinance	Manure managed under NRCS cost share for non-CAFO farms.	Polk County Land & Water
Storm Water Management & Erosion Control Ordinance	Construction plans reviewed for water & erosion.	Polk County Land & Water

## V. Environmental and Health Impacts

Protecting the quality of the land, lakes, rivers, wells and air is a top priority, according to Laketown's Comprehensive Plan. Scientific research shows that large livestock facilities pose a range of potential vulnerabilities to these natural resources and the public health. This section reviews findings on land, groundwater, surface water and air.

### Key Concerns

- 1) Maintaining agricultural and forest land uses, while limiting large-scale development, is a clearly stated goal of Laketown's Comprehensive Plan.
- 2) There is a wide body of research identifying the negative environmental health effects of CAFOs.
- 3) All of Laketown's drinking water comes from private groundwater wells.
- 4) There is no systematic, long term testing program for private wells or surface water by the state of Wisconsin or Polk County.
- 5) Public and private wells are already polluted by nitrate, phosphorus and bacteria from sources such as sewer plants, private septic systems and urban and agriculture runoff.
- 6) Private wells polluted with nitrate only qualify for state cleanup grants if pollution is four times the drinking standard and the water is also used to for livestock.
- 7) Laketown has a rich supply of surface water lakes, ponds, wetlands, rivers and streams.
- 8) Phosphorus pollution of surface water already impacts Laketown and the St. Croix River.
- 9) Large livestock facilities are required to manage waste under nutrient management plans.
- 10) Enforcement of nutrient management plans is weak and plans often do not meet water quality standards.
- 11) There is no regulation of the many types of air pollution that CAFOs make.

### A. Land Use

Laketown has had a proud agricultural heritage since its hardwood and tamarack forests were cleared by colonists shortly after the Civil War. That continues today with a mix of dairy, beef, commodities and specialty crop producers. As shown in the table below, 61 percent of Laketown's 17,698 acres are used for agricultural, Maintaining this mix while limiting large-scale development is a clearly stated goal of the Comprehensive Plan.

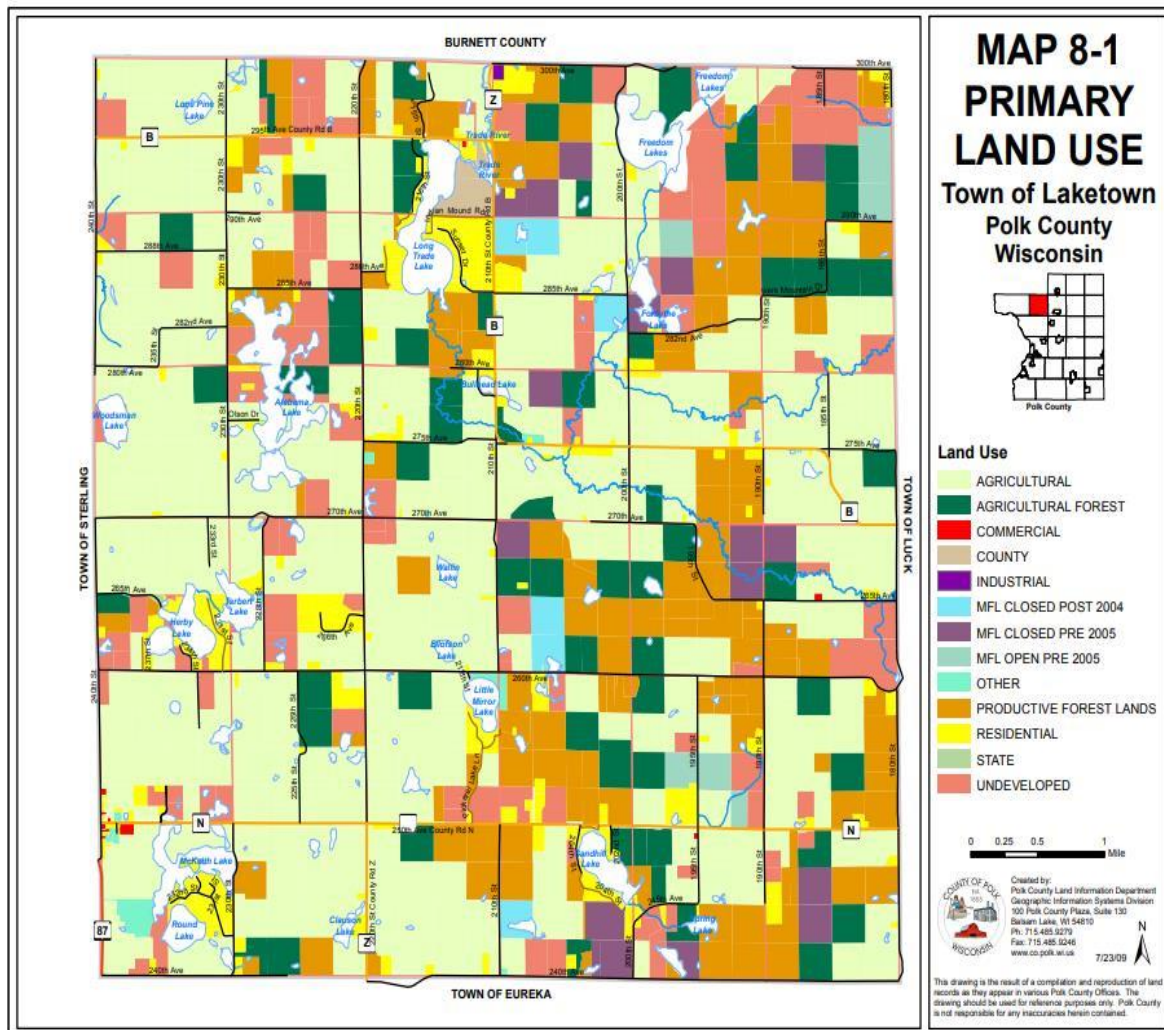
**Table 8.2 FUTURE LAND USE PROJECTIONS**

	Total Acres					
<b>Laketown</b>	<b>2005*</b>	<b>2010</b>	<b>2015</b>	<b>2020</b>	<b>2025</b>	<b>2030</b>
<b>Residential</b>	<b>1,553*</b>	<b>1,548</b>	<b>1,560</b>	<b>1,570</b>	<b>1,570</b>	<b>1,558</b>
<b>Commercial</b>	<b>29*</b>	<b>29</b>	<b>29</b>	<b>29</b>	<b>29</b>	<b>30</b>
<b>Agricultural</b>	<b>10,800*</b>	<b>10,835</b>	<b>10,754</b>	<b>10,683</b>	<b>10,683</b>	<b>10,765</b>
<b>Forest</b>	<b>5,316*</b>	<b>5,333</b>	<b>5,293</b>	<b>5,259</b>	<b>5,259</b>	<b>5,299</b>
<b>Industrial</b>	<b>0*</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>
<b>Population Estimates</b>	<b>925</b>	<b>922</b>	<b>929</b>	<b>935</b>	<b>935</b>	<b>928</b>

**\* indicates actual assessment figures from 2005**

Source: [Laketown Comprehensive Plan](#) - page 90

While only 1,553 acres are in residential properties, they make up a large portion of the town's real estate values and tax revenue. In the past 50 years, farmers sold much of their lakeshore and many lakes are now surrounded by homes on small lots. These lake home owners are very concerned about the potential impacts of large-scale agricultural development on water quality. The following map provides a visual of land uses within the town.



Source: [Laketown Comprehensive Plan](#) - page 91

## B. Water Resources

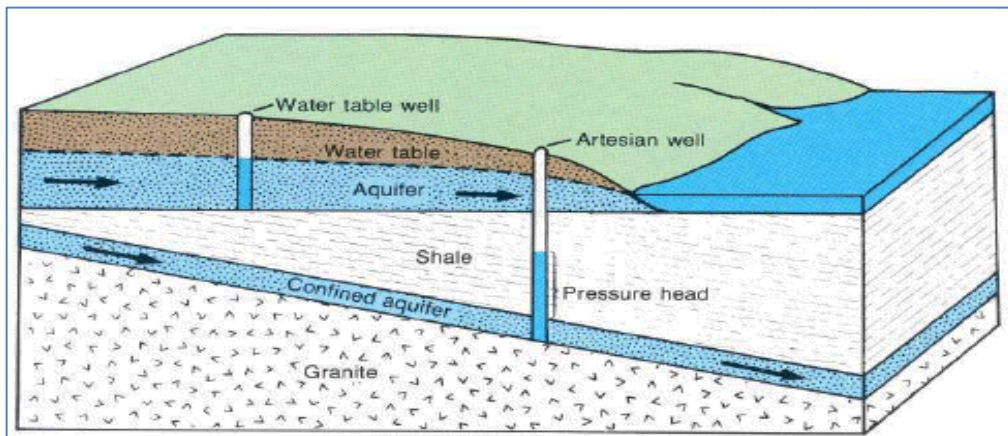
### 1. Groundwater

All of Laketown's human drinking water comes from private wells using groundwater. As shown in Wisconsin's [2020 Ground Water Coordinating Council](#) report, private wells are vulnerable to pollution from nitrates, bacteria and farm chemicals. While some private well owners test their water, there is no systematic, long-term effort by Laketown, Polk County or Wisconsin to test or collect and analyze results.

Groundwater exists in saturated zones beneath the land surface. The upper surface of the saturated zone is called the water table. Contrary to popular belief, groundwater does not form underground rivers. It fills the pores and fractures in underground layers of sand, gravel, and other rock, in much the same way that water fills a sponge.

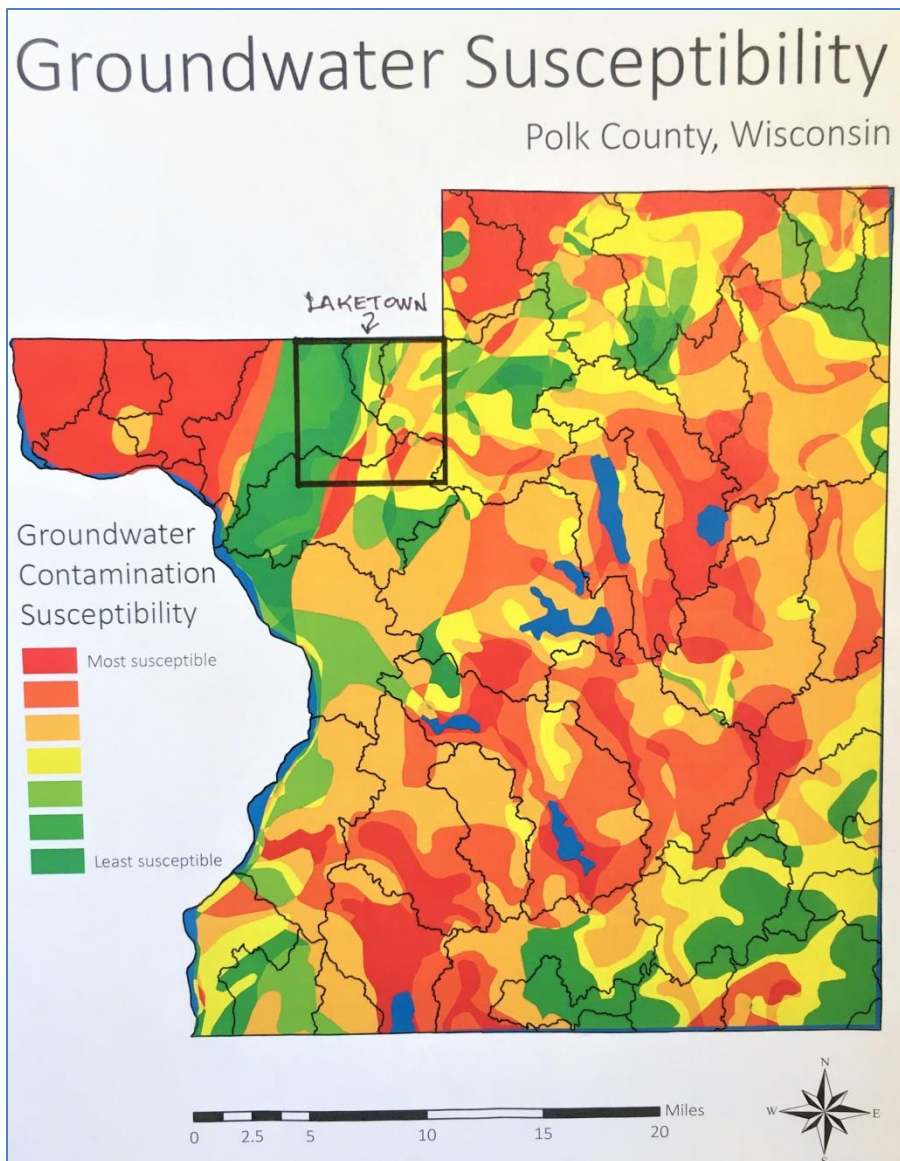
If groundwater can be removed from these layers by pumping or flows naturally out, these rock materials are called aquifers. Groundwater moves slowly, typically at rates of 3 to 25 inches per day. As a result, water can remain in an aquifer for hundreds or thousands of years. As shown in the drawing on the following page, water table wells use pumps and artesian wells tap into confined aquifers that are under pressure and flow naturally.





Source: USGS: [Groundwater and the Rural Homeowner](#) - page 9

How susceptible an aquifer is to contamination is determined by how easily water can enter and move through. In an effort to identify susceptibility, five factors are used to estimate how easily a contaminant can be carried through the land to groundwater. These factors include: type of soil, bedrock and materials between soil and bedrock; depth to bedrock; and depth to groundwater table.

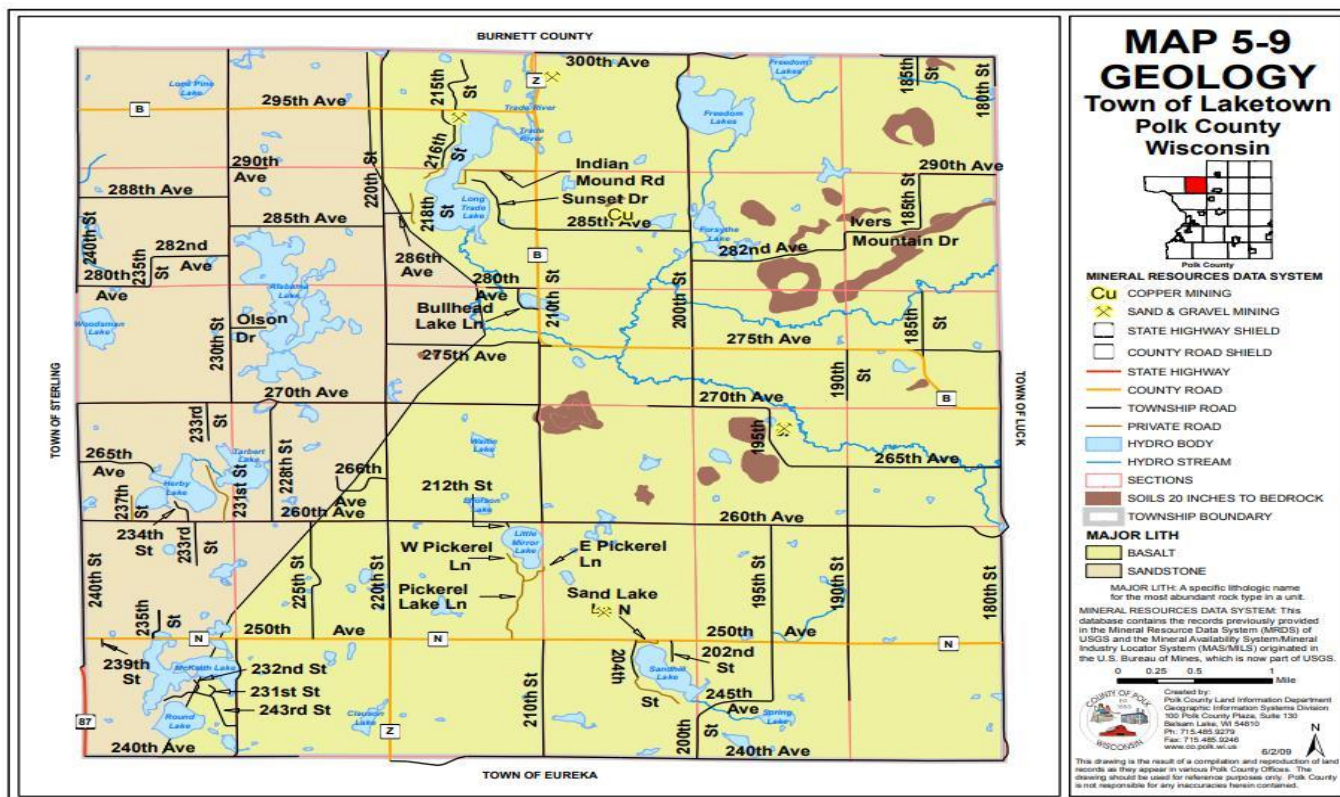


Based in these five factors, about 60 percent of Laketown has elevated levels of groundwater susceptibility. Polk County staff presented this Groundwater Susceptibility Map to the Committee at the November 2019 meeting. Much of the eastern part of the town as shown in yellow to red shading is susceptible. Most of the western part, as shown in green, is less susceptible.

This difference is due, in part, to the type of soils as shown in Map 5-9. Areas with sand and gravel are considered more sensitive to groundwater contamination; areas with silt and clay are considered less susceptible.

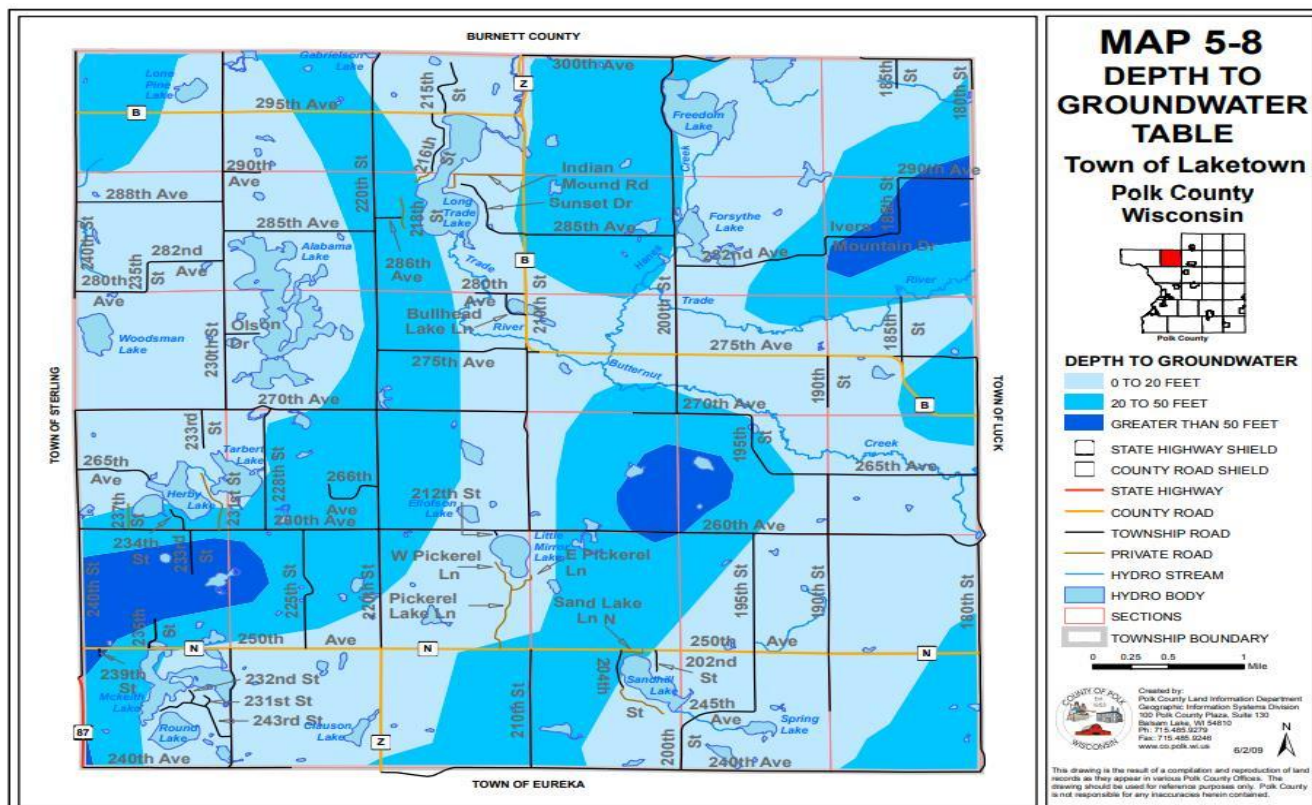
There are also varying depths to groundwater as shown in Map 5-8.





Source: [Laketown Comprehensive Plan](#) - page 70

This Depth to Groundwater Table Map below shows that most of Laketown's water tables are between 0-20 feet or 20-50 feet below the surface.



Source: [Laketown Comprehensive Plan](#) - page 67

## Nitrate Pollution of Groundwater

Nitrate pollution from CAFOs is an especially big concern based on research done by universities and government agencies. However, advocacy groups for CAFOs do not support this concern. They feel that other sources, not CAFOs, are responsible. For example, private septic systems are not designed to treat nitrogen and people use nitrogen for their yards. As part of the committee's study, the [Wisconsin Dairy Alliance](#), submitted an analysis that contrasts the number of CAFOs with the percentage of polluted wells. (See Appendix I.)

The safe limit for nitrate in water as defined in the federal Safe Drinking Water Act is [10 milligram per liter \(mg/l\)](#). The 10 mg/l limit was set in 1962 and is [based on studies from the 1940s](#). Many people question whether a 58-year old limit can still be scientifically justified. Some say new evidence could show that the limit should be [higher](#) others think it should be [lower](#).

A 2012 survey of municipal water systems cited in the [2018 Wisconsin Groundwater Coordinating Council Report](#) found that 47 of them exceeded nitrate limits, up from 14 in 1999. Exceedances were found in about 10 percent of tested private wells. In another ongoing study, the state Department of Health has results from 55,000 well tests. The percentage of wells exceeding the nitrate limit varies widely from zero in the north, to 20 to 30 percent in the south-central counties. Five to 10 percent of the Polk County wells exceeded the current standard.

However, there is no systematic, long-term testing program for private wells or surface water by the state of Wisconsin or Polk County. Private well testing is done by a very low percentage of well owners in any given year. Those who do test are interested in the current condition of their water, not determining long-term changes. Systematic repeated tests of the same set of wells over time are needed.

The University of Wisconsin-Stevens Point collects private well data that is voluntarily submitted and publishes it on their [Well Water Quality Viewer](#). Samples are listed by town and section with no exact addresses given. However, it is not considered a scientific study and does not represent well water quality information for all known private wells.

Statistics Report

(1 of 1)

[Clear](#)

**NITRATE (mg/l as N) for Township 36N R18W**

Range	Number	Percent	Summary
None Detected	11	14%	Minimum: No Detect
... 2.0	38	48%	
2.1 - 5.0	22	28%	Median: 1.4
5.1 - 10.0	7	9%	Average: 2.2
10.1 - 20.0	1	1%	
20.1 ...	0	0%	Maximum: 10.5
<b>Total Samples:</b>	79		
> 10mg/l N	1	1%	Exceeds Health Standard

There are only 79 samples listed for the Town of Laketown (36N R18W). This includes samples from just 19 of Laketown's 36 sections. There is one sample exceeding the maximum health standard of 10 mg/l. The average is 2.2 mg/l with a median of 1.4 mg/l. Eleven of the samples showed no nitrates.

Publishing well data can also become controversial. [In 2019, Lafayette County Supervisor Jack Sauer](#) tried to pass a law making it a criminal offense for the media to publish well data.

Source: [University of Wisconsin - Stevens Point](#), Retrieved 12/2/20

Estimates predict that even under today's best nutrient management plans nearly 20 percent of nitrogen fertilizer is not used by crops. One DATCP study estimated that 200 million pounds of nitrogen were applied in excess of



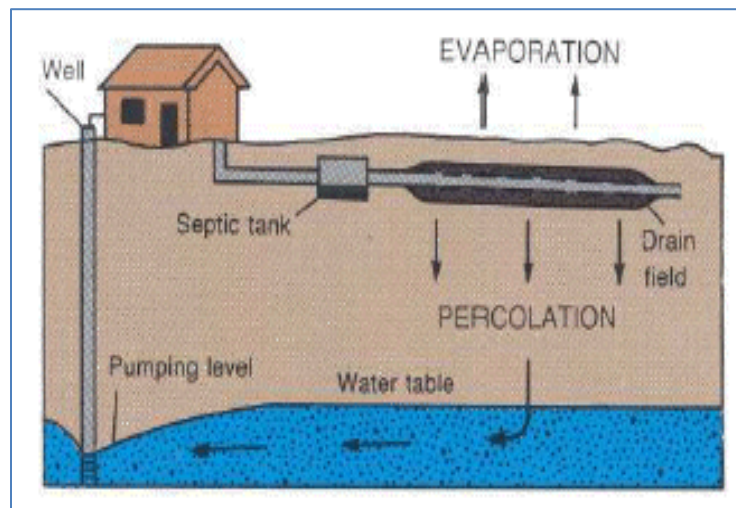
recommendations. CAFOs use very little pasture and a decreasing amount of alfalfa leaving many more acres in row crops with higher nitrogen releases. Past agricultural practices can continue to impact some geologic settings as nitrate works down to deep aquifers.

The 2020 Wisconsin Ground Water Coordinating Council report includes an in-depth section on [Nitrate Pollution](#). That report finds that nutrient application from fertilizers and manure on agricultural fields accounts for 90 percent of nitrate in groundwater. However, nutrient management plans are not designed to assess potential nitrate pollution to groundwater. Numerous studies indicate that these plans do not always reduce nitrate levels to below the 10 ppm standard. This 2020 report and [many other studies](#) summarize health risks from nitrate pollution, including:

- Infants below the age of 6 months are especially at risk and could become seriously ill with a condition called methemoglobinemia or “blue-baby syndrome”
- Growing evidence of a correlation between nitrate and diabetes in children
- Birth defects have been linked to nitrate exposure
- Thyroid disease
- Increased risk of non-Hodgkin’s lymphoma, gastric cancer, colon cancer, bladder and ovarian cancer

### Other Types of Groundwater Pollution

While nitrates are considered to be a pervasive threat to groundwater, wells can be vulnerable to other pollution such as arsenic, atrazine, coliform and E.coli bacteria, chloride and lead. While the [Well Water Quality Viewer](#) collects data on these pollutants there are very few samples from Laketown making it difficult to assess the prevalence.



Of these other pollutants, concerns about bacteria are the most common. This is especially true in Wisconsin counties with a [high number of CAFOs](#) such as Kewaunee, Fond du Lac, Grant, Iowa and Lafayette.

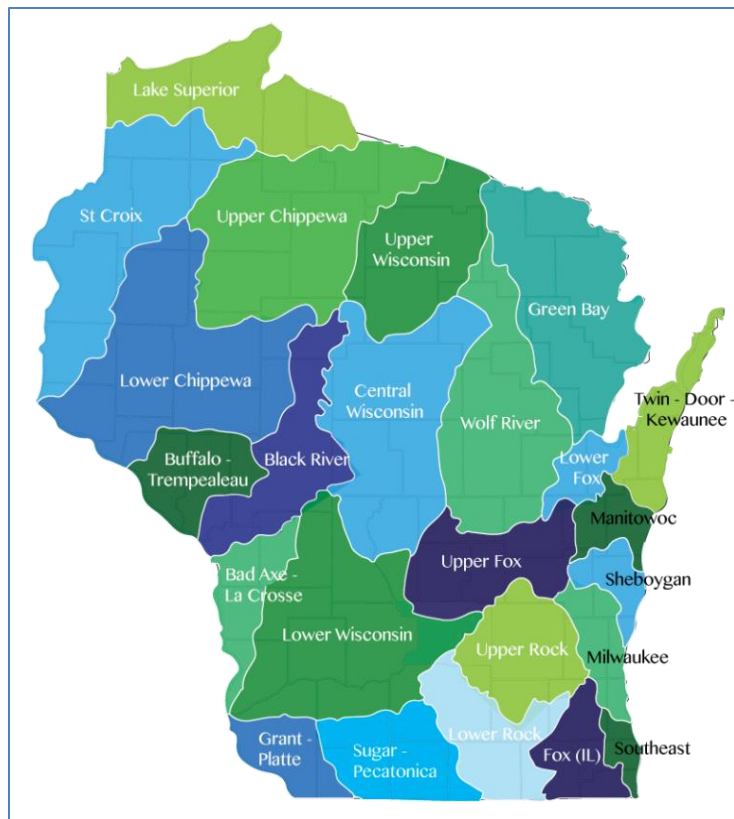
However, CAFO advocates point out that, studies done in these counties - using DNA to trace the source of contamination - identified waste from cattle, pigs and humans. Poor septic systems can allow pollution to percolate to the water table contamination wells.

Sewage treatment plants, such as [Cushing's Sanitary District](#), can also be sources of [nitrate pollution](#).

While there is very limited well data available for Laketown, a 2019 study done by Polk County in the Balsam lake watershed found that 15% of the wells exceeded the nitrate health standard. In light of these results the Polk County's Large-Scale Livestock Facility Study Group April 2020 report recommended that:

"The percentage of wells testing positive for nitrates indicates that the County’s groundwater is susceptible to nitrates and other contaminants and should be monitored further." ([April 2020 report](#), Page 9.)

## 2. Surface Water - Lakes, Wetlands, Rivers and Streams



Our name says it! Laketown is rich in surface water - be it lakes, wetlands, rivers or streams.

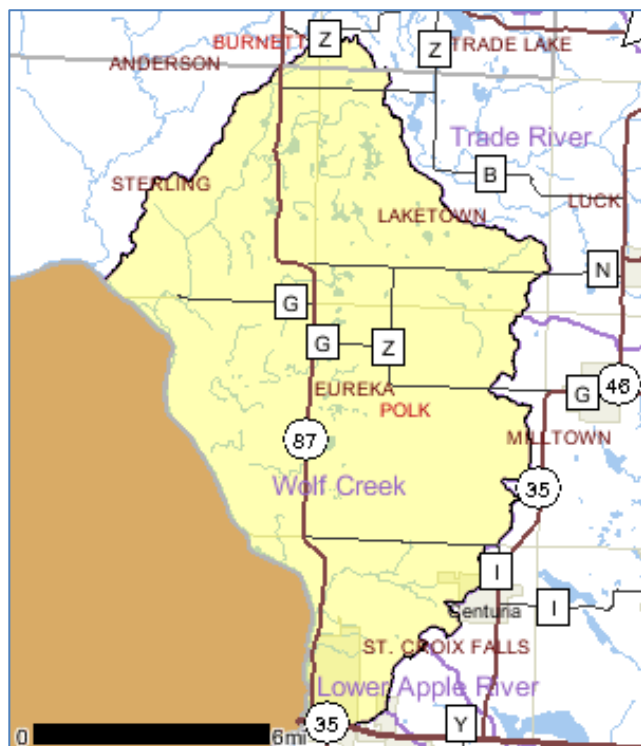
Wisconsin is divided into large river basins as shown in this map. Each river basin is divided into smaller watersheds that include all the land drained by the smaller rivers.

Laketown is part of the [St. Croix River Basin](#). Two watersheds in Laketown - Wolf Creek and Trade River - drain to the St. Croix then to the Mississippi and down to the Gulf of Mexico.

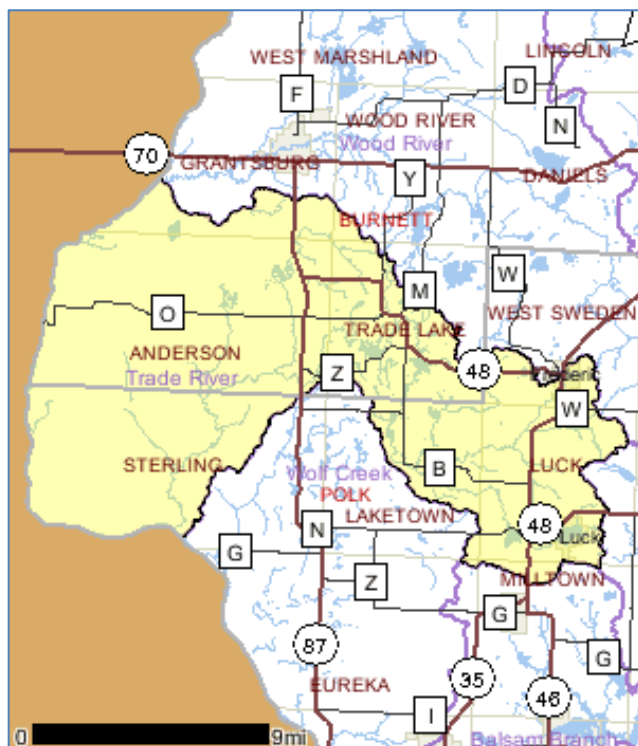
Pollution is a big concern for Laketown's lakes, and all the way down the rivers to the Gulf of Mexico's "dead zone."

This pollution comes from a range of sources. CAFO supporters feel that agricultural fertilizer and chemicals are unfairly singled out for polluting when sewage treatment plants and city streets are also big contributors. [In particular, problems with sewage plants](#) are more common as climate change brings more intense rain.

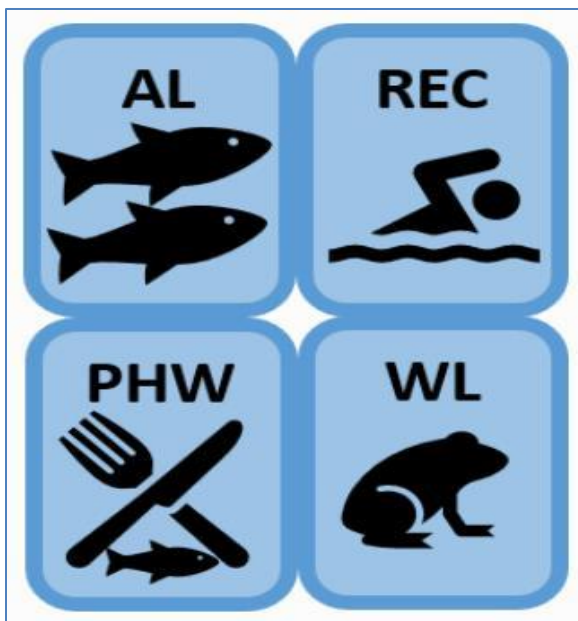
[Gateway to Wisconsin's Basins and Watersheds](#) - WiDNR



[Wolf Creek Watershed](#) - WiDNR



[Trade Lake Watershed](#) - WiDNR

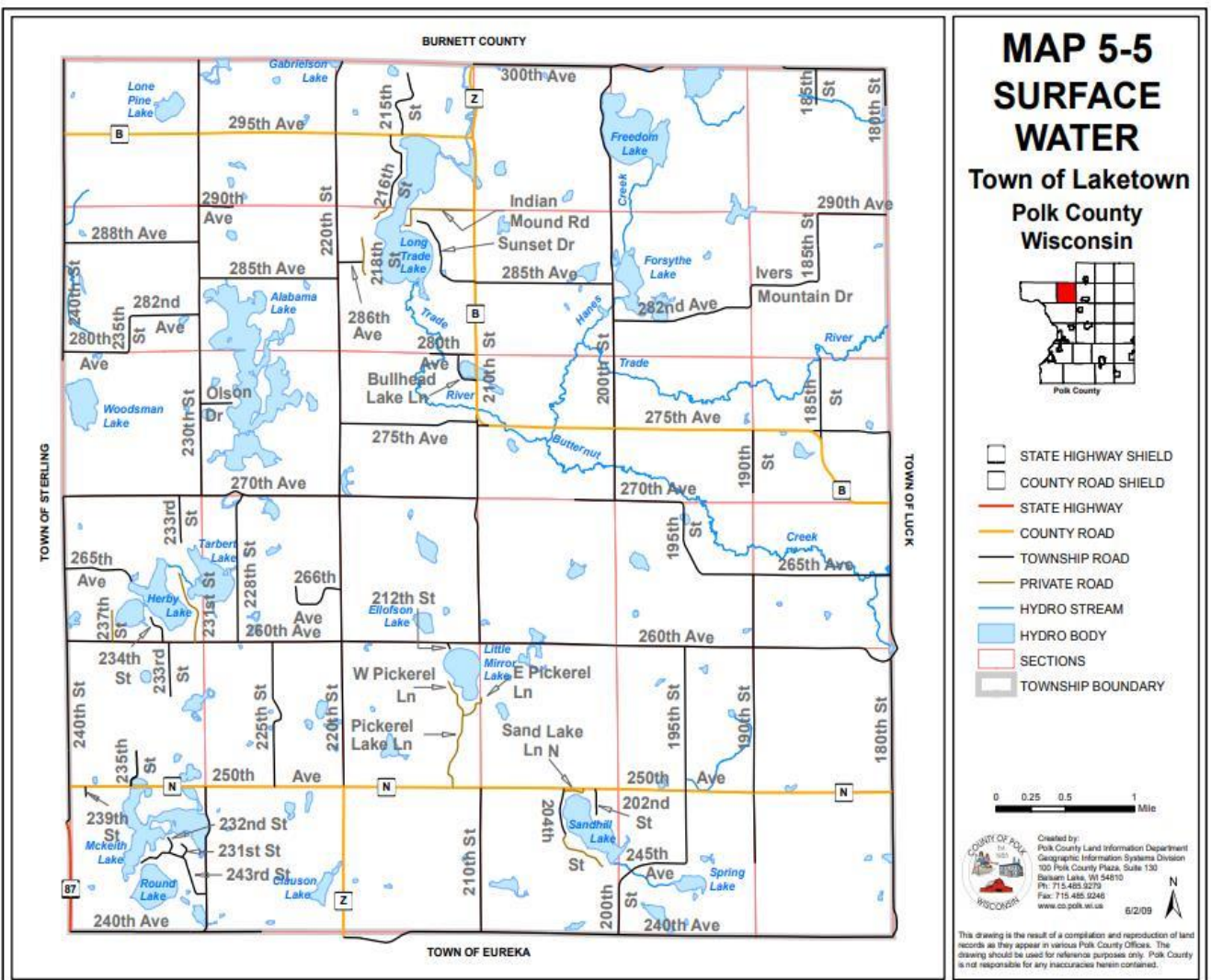


Wisconsin runs a [Surface Water Quality](#) program under the Clean Water Act. Lakes and rivers are monitored and assessed based on what specific use each is expected to support, including:

- **Aquatic Life (AL):** Can aquatic organisms live and reproduce?
- **Recreation (REC):** Can people safely recreate (boat, swim, etc.)
- **Public Health & Welfare (PHW):** Can people safely eat the fish from this water
- **Wildlife (WL):** Can wildlife safely use the waterbody for food or part of their life cycle?

**Impaired Waters** - [Every two years Wisconsin reports](#) on the health of our surface water. A key part of the report includes a list of lakes and rivers that have been assessed but do not meet water quality standards and have no cleanup plan in place. Not all water bodies have been assessed.

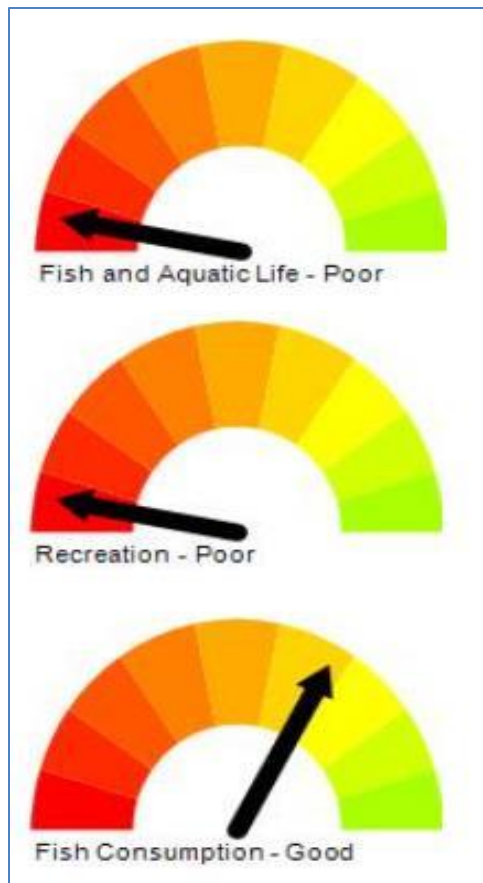
[Herby](#), [McKeith](#) and [Round](#) lakes, as well as sections of the [Trade River](#), are on the impaired waters list.



Source: [Laketown Comprehensive Plan](#) - page 64



## Phosphorus and Nitrogen Pollution of Surface Water



[Herby Lake Quality Indicators - DNR](#)

[Wisconsin's regulations](#) set standards for the amount of phosphorus that can safely be in water. All of the Laketown's impaired waterbodies are on the list because they exceed those standards.

Like nitrogen, phosphorus is an essential nutrient for plant growth. They are both major factors behind algae blooms. Small increases in phosphorus fuel these blooms, which in turn reduces recreational use, public health and property values.

Phosphorus comes from point and non-point sources. Point sources are usually sewage treatment plants. The Cushing Sanitary District runs the only treatment plant in Laketown. Discharges from that plant are spread on land instead of going into water. Non-point sources include runoff from farm fields, feedlots, or urban areas that wash down fertilizer, manure, soil, and other phosphorus-containing contaminants. In addition, there are natural sources of phosphorus such as soil erosion and build up in lake-bottom sediments.

Blooms especially thrive in shallow, warm, non-moving bodies of water. High phosphorous and nitrogen levels, warm water temperatures and high light levels stimulate the rapid growth of algae until it forms a bloom. These can vary in appearance and can appear as foam, scum, or mats on the surface of the water. Blooms come in a variety of colors, including blue-green, bright green, brown, or red.

If ingested, the algae can cause flu-like symptoms in people and death in pets. Though not directly toxic to fish and other aquatic life, blooms are deadly because after the algae dies, bacteria breaks it down. During this process, oxygen levels drop in the water leaving "dead zones" where life can't survive.

[Algae blooms](#) in the St. Croix River and area lakes were especially bad during the hot, dry 2012 summer. Monitoring blooms on Wisconsin's more than 15,000 lakes and 12,600 rivers is a challenge. The DNR is now working with [NASA to track algae blooms](#) with satellite imagery.



NASA also tracks the [Gulf of Mexico's 2,116 square mile dead zone](#) where the phosphorus Laketown sends down Wolf Creek and the Trade River eventually comes to rest.

## Pathogens

Parasites, bacterium, and viruses capable of causing disease or infection in animals or humans are known as pathogens. Large amounts of manure can become a major source of pathogens. Human health can be affected by some 150 pathogens found in manure.

Pathogen-contaminated water can lead to widespread outbreaks of illness. There is also the possibility that disease-resistant bacteria can emerge in areas surrounding CAFOs. Bacteria that cannot be treated by antibiotics can have very serious effects on human health, potentially even causing death.

Healthy people exposed to pathogens can have severe diarrhea but usually recover. However, those with weakened immune systems are at increased risk for severe illness or death. This group includes about 20% of the people including infants and young children, pregnant women, the elderly, and those who are immunosuppressed, HIV positive, or have had chemotherapy.

Pathogens found in animal manure include the following:

<u>Pathogen</u>	<u>Disease</u>	<u>Symptoms</u>
<i>Bacillus anthracis</i>	Anthrax	Skin sores, headache, fever, chills, nausea, vomiting
<i>Escherichia coli</i>	Colibacillosis, Coliform mastitis-metris	Diarrhea, abdominal gas
<i>Leptospira pomona</i>	Leptospirosis	Abdominal pain, muscle pain, vomiting, fever
<i>Listeria monocytogenes</i>	Listeriosis	Fever, fatigue, nausea, vomiting, diarrhea
<i>Salmonella</i> species	Salmonellosis	Abdominal pain, diarrhea, nausea, chills, fever, headache
<i>Clostridium tetani</i>	Tetanus	Violent muscle spasms, lockjaw, difficulty breathing
<i>Histoplasma capsulatum</i>	Histoplasmosis	Fever, chills, muscle ache, cough rash, joint pain and stiffness
<i>Microsporum</i> and <i>Trichophyton</i>	Ringworm	Itching, rash
<i>Giardia lamblia</i>	Giardiasis	Diarrhea, abdominal pain, abdominal gas, nausea, vomiting, fever
<i>Cryptosporidium</i> species	Cryptosporidiosis	Diarrhea, dehydration, weakness, abdominal cramping

Source: [National Association of Local Boards of Health: Understanding CAFOs](#) - page 9.

There is also the possibility of novel viruses developing. Through mutation, these viruses can become capable of efficient human-to-human transmission. CAFOs are not required to test for these novel viruses.

## B. Air Resources

One of the biggest concerns about large livestock operations is the impact on public health and property values of toxic air pollution. While science-based regulations for manure spreading attempt to protect water, there is no regulation of air pollution. Pollutants commonly found in air surrounding CAFOs include the following:

CAFO Emissions	Source	Traits	Health Risks
Ammonia	Formed when microbes decompose undigested organic nitrogen compounds in manure	Colorless, sharp pungent odor	Respiratory irritant, chemical burns to the respiratory tract, skin, and eyes, severe cough, chronic lung disease
Hydrogen Sulfide	Anaerobic bacterial decomposition of protein and other sulfur containing organic matter	Odor of rotten eggs	Inflammation of the moist membranes of eye and respiratory tract, olfactory neuron loss, death
Methane	Microbial degradation of organic matter under anaerobic conditions	Colorless, odorless, highly flammable	No health risks. Is a greenhouse gas and contributes to climate change.
Particulate Matter	Feed, bedding materials, dry manure, unpaved soil surfaces, animal dander, poultry feathers	Comprised of fecal matter, feed materials, pollen, bacteria, fungi, skin cells, silicates	Chronic bronchitis, chronic respiratory symptoms, declines in lung function, organic dust toxic syndrome

Source: [National Association of Local Boards of Health: Understanding CAFOs](#) - page 6.

This pollution can cause or exacerbate respiratory conditions including asthma, eye irritation, difficulty breathing, wheezing, sore throat, chest tightness, nausea, bronchitis, and allergic reactions. One Pennsylvania study showed that living in close proximity to poultry operations may increase the risk of community-acquired pneumonia. Another Pennsylvania study linked industrial animal agriculture operations and asthma. [Recent studies](#) from North Carolina show high rates of infant mortality, asthma, low birth weights, kidney disease and tuberculosis in communities near hog factories. See the [Citations](#) section for more studies on air pollution.

Daily activities, social gathering and general quality of life are impaired by the odors associated with hydrogen sulfide and ammonia emissions. This has been shown to contribute to stress and increased blood pressure.

Wisconsin's [2019 Livestock Facility Siting Technical Expert Committee](#) raised concerns about existing setbacks as its top priority. In response, DATCP attempted to address air pollution issues by developing setbacks based on science in [2019 Final Draft ACTP 51 Rule](#) (See pages 12-14.) These setbacks were based on the [OFFSET modeling tool](#). While the OFFSET model is designed to mitigate the impact of odors from hydrogen sulfide and



ammonia air pollution, there are other issues addressed by setbacks, including, but not limited to: particulate, light and noise pollution, and fly infestations.

Under the science-based model, new facilities would have to be set back from neighbors by 1,050 to 1,450 feet. Citizens across Wisconsin attended hearings on the rule raising concerns about air pollution and supporting the proposed setbacks. [Large livestock producers](#) protested that the rule was too costly and it was [dropped by Governor Evers in November 2019](#). [Burnett County](#) (Page 23.) also recommends more stringent setbacks.

## **VI. Economic Impacts**

It is difficult to precisely predict the economic impact that CAFOs will have on a specific location. There are many variables at work and each community has a unique set of economic factors. Making any predictions is also difficult because of the complex global trade and immigration policies these large livestock factories rely on to succeed. While large producers and processors look for economies of scale, their facilities may restrict other types of economic growth and lower property values.

### **Key Concerns**

- 1) Much of Laketown's tax base of \$1.4 million is paid by residential homes, especially on lakes.
- 2) Large livestock facilities often lower property values and could impact Laketown's tax base.
- 3) Large livestock facilities depress economic activity in surrounding communities.
- 4) Existing farmers may need better economies of scale and don't want their growth to be restricted.
- 5) Agricultural and trade policies benefit highly capitalized operators instead of small operations.
- 6) Inadequate enforcement of immigration laws make it hard for family farms to compete.
- 7) Local taxpayers bear CAFO costs such as permitting, road maintenance and pollution cleanup.

Laketown has a proud agricultural heritage. That legacy continues today with a mix of small to mid-size dairy, beef, commodities and specialty crop producers. There are no CAFOs in Laketown. Over the past 50 years, farmers sold much of their lakeshore and most lakes are now surrounded by homes on small lots. These lake homes provide much of Laketown's \$1.4 million tax base.

Early in 2019, word spread that Cumberland LLC had signed a purchase agreement to buy land for a hog CAFO in neighboring Trade Lake. Cumberland said it was looking [to invest \\$20 million](#) to build a farrowing plant in Trade Lake for up to 26,000 hogs. The estimated 9 million gallons of manure produced at the plant would be used by the farmer selling the land. At the same time, representatives from Burnett Dairy Co-op approached Laketown landowners about selling land for plants where the piglets would be finished before shipping to the [Chinese-owned Smithfield](#) kill and processing plant.

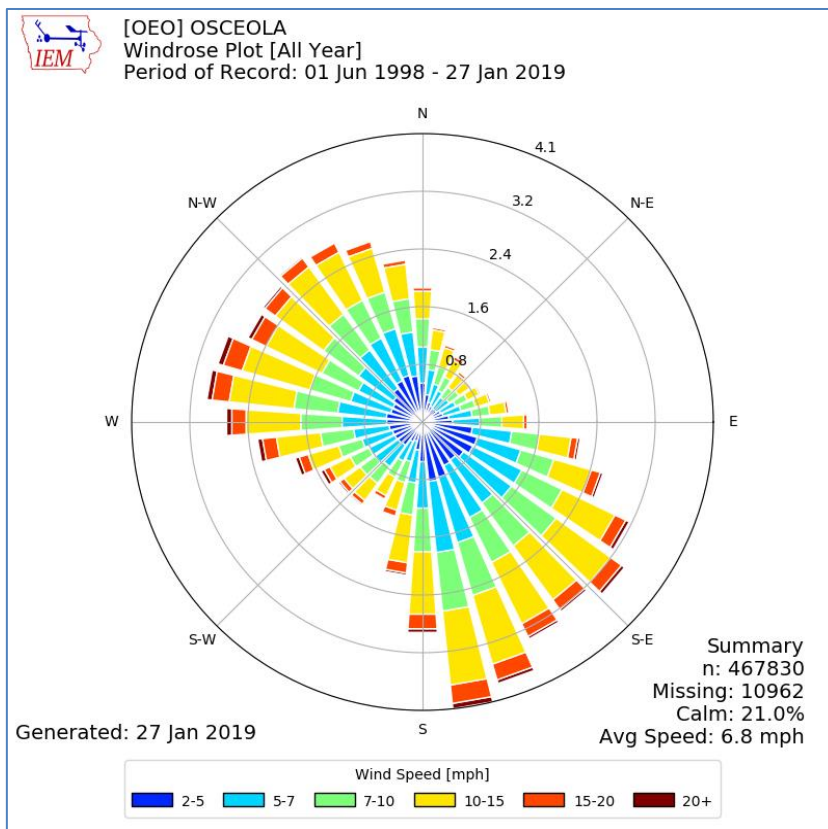
Support for and concerns about the pending Trade Lake deal were discussed at Laketown's May 2019 town board meeting. In June 2019, more than 200 people attended the Laketown Town Board meeting. Dozens expressed concerns during the public discussion about the impact factory farms would have on property values. Others spoke of the need to let investors freely decide how to participate in the global economy. While there are other economic issues, concerns about property values and farmers' ability to globally compete top the list.

### **A. Property Values and Local Economy**

The financial health of Laketown's government and citizens is based in large part on property values. There are 21,495 acres valued at \$88 million with a annual net tax of \$1.43 million. Large livestock facilities could bring new investment while also negatively impacting property values. For example, even a 5 percent drop could cost the town more than \$70,000 in annual tax revenues.

The following table summarizes information from a variety of sources analyzing the impact of CAFOs on property values. This includes cases where Wisconsin property owners [appealed their tax assessments](#) because of nearby livestock facilities, as well as university studies and articles from professional journals for appraisers. Most find a negative impact, while one Minnesota study from 1996 shows a positive impact.

Impact of CAFOs on Property Values	Research Article / Tax Record Citation
<ul style="list-style-type: none"> <li>Value of property located more than one mile away from a CAFO not impacted</li> <li>Property located within any distance from a CAFO smaller than 4,000 not impacted</li> <li>Value of property located within 1/4 mile of a large CAFO is reduced by 13%</li> <li>Value of property between 1/4 mile and one mile of a large CAFO reduced by 8%</li> </ul>	<a href="#">2017 Appeal #2017-81-01, Findings of Fact section D-6</a> Kewaunee County
<p>Property taxes were lowered by 27% (\$60,000) for a Green County, Wisconsin neighbor to a 2,400-head hog finisher (just under 1000 animal units). This is shown in the Findings of Fact and Order from Todd Knutson's property tax appeal in Green County, Oct 2016.</p>	<a href="#">Case Number: 2016-76-01.</a> Todd Knutson's property tax appeal Green County, WI October 2016.
<p>"Overall, the empirical evidence indicates that residences near Animal Operations are significantly affected, and data seems to suggest a valuation impact of up to 26% for nearby properties, depending on distance, wind direction, and other factors. Further, there has been some suggestion that properties immediately abutting an AO can be diminished as much as 88%. ... Not only are residences affected, but nearby small farms can be impacted by such factors as water degradation and insects."</p>	<a href="#">Animal Operations and Residential Property Values</a> (The Appraisal Journal, Apr. 15, 2015)
<p>"results show price reductions of 23%–32% for residential properties sold within 1.25 miles of the facility, and much larger losses northeast (downwind) of the facility."</p>	<a href="#">The Effect of a Large Hog Barn Operation on Residential Sales Prices in Marshall County, KY</a> (Josre, Dec. 14, 2014)
<ul style="list-style-type: none"> <li>Livestock operations in general “have a significant effect on rural residential property values.” Most notable negative effects on property downwind and close.</li> <li>Individuals downwind within 1/4 mile would experience 11 to 26% reduction</li> <li>Properties downwind and approximately 1/2 mile experienced or would experience an 8% to 18% reduction</li> <li>Properties 1½ miles from the property have 0% to 6% reductions.</li> </ul>	<a href="#">Living with Hogs in Iowa: The Impact of Livestock Facilities on Rural Residential Property Values</a> (Iowa State University, Aug. 2003).
<p>This study finds a negative and significant impact on property value from hog operations.</p>	<a href="#">Evaluating the Effect of Proximity to Hog Farms on Residential Property Values: A GIS-Based Hedonic Price Model Approach</a> (URISA Journal, 2005).
<p>Large adverse impacts suffered by houses that are within three miles and directly downwind from a CAFO are found. Beyond three miles, CAFOs have a generally decreasing adverse impact on house prices as distance to the CAFO increases.</p>	<a href="#">Analysis of the Impact of Swine CAFOs on the Value of Nearby Houses</a> (U of Northern Iowa, 2008)
<p>This 24-year old study documents a statistically significant positive relationship between feedlots and property values.</p>	<a href="#">Measured Effects of Feedlots on Residential Property Values in Minnesota: A Report to the Legislature</a> (University of Minnesota, College of Agricultural, Food, and Environmental Sciences, July 1996)



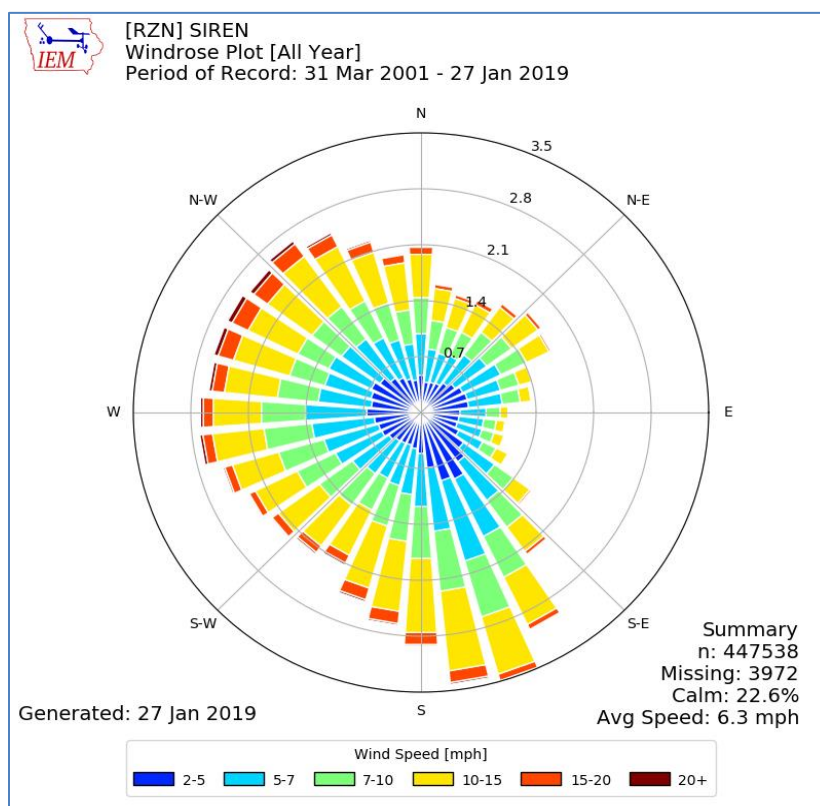
Source: [Iowa State University - Environmental Mesonet](#)

As noted in several of these studies, properties located downwind are most affected.

The following two figures are wind roses based on data taken at the Osceola airport in Polk County and Siren airport in Burnett County. These are the two closest data collection sites for the US Automated Surface Observation Stations. Laketown does not have airport data but is located pretty much in the middle of these two stations.

Wind roses are an information-packed plot providing frequencies of wind direction and speed. They can quickly indicate the dominant wind directions and the direction of strongest wind speeds.

These roses are based on archived data. The Osceola rose has over 20 years of data while Sirens' has nearly 18 years.



Source: [Iowa State University - Environmental Mesonet](#)

While the archive does contain errors, data from airports is good quality and representative of the local surrounding areas.

As both of the windroses show, our dominant winds come from the southeast and northwest. This means that properties northwest and southeast of large livestock facilities could be most affected.

However, the Siren rose also shows significant winds from the southwest and more from the northeast than Osceola

In addition to reducing current property values, the lack of regulations for livestock operations with less than 1,000 animal units (700 dairy cows, 2,500 pigs, 55,000 turkeys or 125,000 chickens) is impacting the ability of rural communities to attract new residents and grow new business.

For example, Iowa is seeing large growth in new hog CAFOs proposed as "999ers." These are usually finishing plants with 2,499 hogs. By staying under 2,500 they are not regulated as CAFOs under the Clean Water Act. Towns that have zoned areas for housing to attract new residents are [unable to stop CAFOs from moving in instead.](#)

CAFOs can also impact property values indirectly by depressing economic activity in surrounding communities. This impact was summarized for real estate appraisers in a [2015 report from the Appraisal Institute.](#)

One of the biggest impacts comes from the shift of purchases. Smaller farms make nearly 95 percent of their expenditures locally, while larger operations spend less than 20 percent locally. A study of 1,106 rural communities found that economic growth rates in communities with conventional farming were 55 percent higher than those with CAFOs. This negative impact was documented by reviewing sales tax receipts. Many CAFO operators contract with huge corporation that supply nearly all the inputs. CAFOs crowd out conventional farmers who buy most or all of their supplies locally, thus stimulating the local economy and real estate market.

Many of the swine CAFOs are on contract with corporations like Smithfield or Cargill. A [2012 University of Missouri](#) analysis found that a 4,000 swine operation will generate an average of \$164,000 from contract payments and \$94,630 of fertilizer value in manure based on a two year corn/soybean rotation. In addition, an estimated \$242,000 in economic activity will be generated annually due to the multiplier effect of expenditures. Most of that economic activity will be generated in the surrounding rural area. There is a one-time economic benefit of \$2,000,000 for the construction of the facility.

[Cumberland LLC's](#) representative, Jeff Sauer, says the facility he plans to build in Trade Lake would cost \$20 million to build, buy as many inputs as possible locally and employ 20 people. It is not known if Cumberland would use local construction crews. However, [other large hog barns](#) built in Wisconsin bring in crews that specialize in this type of construction.

## **B. Economics of Agriculture**

It is impossible to understand large livestock facilities without some understanding of agricultural economics. For decades, national agriculture, trade and immigration policies have benefited large, highly-capitalized operators.

Federal government leaders call for farmers to get big or get out. A few consolidated companies dominate global markets. China needs cheap protein and understands how to navigate US laws and maximize their investments in new CAFOs and giant processing plants. National immigration policy provides cheap labor that makes it hard for independent farms to compete. All of this makes some Laketown farmers wary of any local regulations that could restrict their future growth.

Perhaps no quote better reflects national farm policy than Earl Butz's "Get Big or Get Out." Butz was the US Secretary of Agriculture from 1971 to 1976 under presidents Richard Nixon and Gerald Ford. After decades of federal farm policies that helped support small and middle-sized producers, Butz oversaw the rise of giant agribusiness and encouraged farmers to plan "fencerow to fencerow."

Current Secretary of Agriculture Sonny Perdue, echoed Butz's 50-year old mantra at the 2019 World Dairy Expo in Madison. In a discussion about the current crisis for small and medium-sized Wisconsin dairies, Perdue said ["In America the big get bigger and the small go out."](#) In other words, current policies benefit large producers by promoting massive consolidation along with cheap global exports and immigrant labor.



## 1. China

One of the biggest drivers of large livestock facilities is demand from the People's Republic of China. With the same amount of farmland and four times more people, food security is a top concern for the Chinese Communist Party. China uses small players like Cumberland and huge corporations like Smithfield Farms to strategically invest billions around the world in farm land, CAFOs, processing plants and transportation systems. The environmental and social impacts to rural America are not China's priority - they need cheap food.

China is not secretive about this strategy. Anyone can read about it in the [13th Five-year Plan for Economic and Social Development of the People's Republic of China \(2016-2020\)](#). The following goals come from Chapter 18, Section 6, Page 52.

*"We will:*

- Optimize the mix of sources of imports,*
- Increase imports of agricultural products that are in short supply at home,*
- Establish large-scale offshore centers for farm product production, processing, storage, and transportation,*
- Cultivate internationally competitive multinational agricultural companies."*



Both Republican and Democratic politicians support China's plans while at the same time claiming to oppose their growing global dominance. For example, [China's 2013 purchase of Virginia-based Smithfield Farms](#) had bipartisan support although it required a \$4 billion loan from the Communist government. Smithfield is a huge pork producer and processor. China consumes 50 percent of the world's pork.

Smithfield's CEO, Wan Long, is a long time Chinese Communist Party member and one of the super-rich global elite. He [makes \\$291 million a year](#).

Other support for the Chinese strategy is more subtle. Trade talks often begin with Chinese commitments to buy pork and then move onto computer chips or aluminum. Environmental and immigration laws lack enforcement. State laws attempt to preempt local control.

According to the committee's [October 2, 2019 interview](#) with Jeff Sauer from Cumberland, huge capacity at Smithfield's Sioux Falls, South Dakota kill and processing plant is spurring development of swine farrowing and finishing factories throughout our region. Dairy farmers looking for new opportunities can get the financing needed to start up complete with an annual contract payment. While managers operate the facilities, Smithfield owns the sows and leases them to the operators.

China has also developed excess processing capacity at home, in part with technology gained from the Smithfield acquisition. To supply their own processors, China is now [converting their US Smithfield processing plants](#) into kill plants. Carcasses are shipped to China for value-added processing and sale in the home market.

Higher skilled jobs such as engineering and marketing are also being moved to China. In fact, after Smithfield warned of looming pork shortages due to widespread Covid-19 worker illness in Sioux Falls on [April 12, 2020](#), they [exported three times more pork to China](#) in April 2020 than 2019.



Source: Reuters, [December 7, 2020](#)

However, China's current high levels of pork purchases may well drop as the government [encourages development of mega hog facilities](#) after losing half of their herd to African Swine Fever.

Muyuan Foods is building what will be the world's largest plant in Henan province. The factory will house 80,000 sows. Plants like this have driven soybean prices close to \$12/bushel as hogs [are fed grain instead of table scraps by small farms.](#)

In contrast to the industrial model, Laketown already has many independent producers of high quality protein. Clear Lake, Amery, St. Croix Falls, Luck and Frederic all have independent meat processors supplied by these producers are thriving. Local livestock producers and meat processors could lose out as corporate CAFOs take control of farmland and send all their animals to huge processors such as Smithfield.

## 2. Immigrant Labor

Dairy, swine and chicken CAFO operators as well as the giant processing plants they feed all rely on cheap immigrant labor. An estimated five percent of the US workforce is unauthorized immigrants, [according to 2014 data](#). An estimated 570,000 work in animal production with another 510,000 in slaughter houses.



Source: Wisconsin Watch, [March 19, 2017](#)

According to a 2015 survey sponsored by [the National Milk Producers Federation](#) more than half of dairy workers are immigrants. While the survey did not report how many of these are unauthorized, more than 78 percent of the dairies surveyed reported having medium or high concerns about raids from the US Immigration and Customs Enforcement (ICE).

Although there is not specific data on the percentage of unauthorized versus legal, foreign workers, are the backbone of [Wisconsin's dairy CAFO business.](#)

The committee interviewed a Polk County dairy CAFO with 1,500 cows that is operated by four family members and about two dozen immigrants.

[Immigration policy changes](#) under President Trump have made it difficult for some dairies to keep immigrant workers. CAFOs are not allowed to bring immigrants in under a seasonal guest worker visa for year-round jobs, such as milking cows, and collecting and spreading manure. Sponsoring immigrants for a green card is expensive and can take a long time.

One approach taken by the CAFO dairies is to apply for Trade NAFTA (TN) visas. Under this program Mexican veterinarians can be easily hired. A recent report by the [Milwaukee Journal Sentinel](#) found that the number of TN visas granted went from 3,300 in 2010 to more than 21,000 today. However, once they are here, the veterinarians find that their real job is milking cows and cleaning manure.

Two big factors are driving a similar move to immigrant labor by swine CAFOs, according to a 2018 study by the [National Pork Producers Council](#). The first is a dramatic change to capital intensive production from operations based on family labor. The second is the accompanying decline in a quality labor force as populations dwindle in large swaths of rural America facing the industrialization of agriculture.

The majority of these workers are from Spanish speaking countries. This can be challenging. In response, Pork industry consultants provide instructions on managing cultural differences, communication and basic life needs of [Latino workers in hog CAFOs](#).

The National Pork Producers Council supports passage of [a new immigration law](#). The legislation would let 450,000 immigrants work legally but only as agricultural workers or in meat packing plants. Part of the workers' pay would be deferred as an incentive to go back home after three years.

## VII. Safety Impacts

### Key Concerns

- 1) Increased heavy truck traffic could damage local roads.
- 2) High numbers of semis hauling livestock increases danger of crashes.
- 3) Large buildings filled with thousands of animals complicate fire response.
- 4) Semis hauling livestock can damage town roads and increase the chance of crashes.
- 5) Infectious human and animal diseases makes the large livestock system especially vulnerable.

### A. Roads

Two potential issues arise in regards to local roads and large livestock facilities - damage and crashes. The Wisconsin Towns Association (WTA) made the following recommendation to DTACP as part of their comments on new livestock siting rules:

*"The WTA feels strongly that a sixth worksheet must be added that at least considers:*

- a) the transportation infrastructure needs associated with a new or expanded facility;*
- b) the current state of the transportation infrastructure proposed to be used;*
- c) the gap between needs and current status;*
- d) a process for identifying both short term damage and long term physical degradation of infrastructure resulting from the operation; and,*
- e) a method for the operation to fund road damage and life cycle costs accruing to the operation at the owner's expense."*



The WTA goes on to estimate that a CAFO that spreads:

*"7 million gallons of manure annually will prematurely decrease the life of a road that witnesses every trip by 30 years of the original 50 year life, if the road was built with 3 inches of asphalt over 5 inches of gravel on fair base soils. Similarly, if the road is built with 5.5 inches of asphalt over 9 inches of gravel, this same combination would result in no premature aging of the road."*



Source: AP - [January 17, 2020](#)

Burnett County's [December 2020 Large Scale Livestock Study Recommendations](#) (page 27) include asking the county board to seek state tax payer dollars to mitigate expected impacts on local road infrastructure.

In addition to damaging roads, high numbers of livestock vehicles can lead to an increase in tragic crashes. These crashes require special resources and preparedness to capture loose animals or dispose of any mortalities.

## B. Fire



Source: WEAU - [March 13, 2019](#)

We all dread a tragic barn fire. The sheer numbers of animals involved make large livestock facility fires even more onerous. A [March 2019](#) fire in Mondovi, WI killed an estimated 4,000 hogs. Hazardous winter condition made the scene very dangerous sending one of the fire fighter's trucks into the ditch. Authorities put the cost of the fire at \$10 million. Animals killed in the blaze had to be trucked to a sanitary landfill as part of the cleanup.



## C. Infectious Disease

Two major infectious disease outbreaks - Covid-19 in humans and African Swine Fever in hogs - illustrate how vulnerable towns like Laketown could be to large livestock facilities.

### 1. Covid-19

Corporate-owned processing plants across the nation and Wisconsin saw Covid-19 infection rates among workers as [high as 25%](#) early in the 2020 pandemic. These high rates forced more than 100 plants to close, according to a [May 8, 2020 Centers for Disease Control \(CDC\) report](#).

This especially caused problems for swine CAFOs which cannot ship animals over 280 pounds to slaughter. The [Chinese-owned Smithfield](#) hog processing plant in Sioux Falls, SD was one of the first to close. There are 1,300 infections tied to the plant. During a committee interview on [October 2, 2019](#) Jeff Sauer, Cumberland LLC, said this is the plant investors plan to supply with hog farrowing and finishing facilities.



Source: Daily Mail - [May 15, 2020](#)

The closure of so many processors meant that factory farms had nowhere to ship their animals. In fact, National Pork Producers Council president, Howard Roth said on [April 29, 2020](#) that "millions of pigs can't enter the food chain" and will have to be killed and disposed of. The Brazilian-owned JBS plant in Worthington, MN reopened to euthanize, not process, [up to 13,000 hogs a day](#) saying that the "carcasses will be rendered, sent to landfills, composted or buried."

Another shutdown caused by pandemics would leave Laketown vulnerable when the hog factories have to dispose of tens of thousands of hogs. While the US Department of Agriculture has [recommended procedures for mass depopulation](#), it is very challenging and presents many disposal issues.

### 2. African Swine Fever Virus

[Millions of hogs have died or been killed](#) globally due to African Swine Fever (ASF), commonly known called, hog Ebola. Experts predict 25 percent of the global herd will perish. The disease is 100% fatal and the pathogen is especially hardy. Asian countries such as China, Vietnam and Korea have been hit hard - [Aporkalypse Now. Germany is building a wall](#) along its Polish front to stop the invasion. China has now started rebuilding its hog herd and has [banned imports from parts of Germany](#) with an ASF outbreak.

In response, the [USDA held simulated exercises](#) with 14 states in September 2019 to test our nation's ability to control an outbreak. While the [exercises themselves](#) were covered by industry press, there has been almost no coverage of the potential problems identified. Most of the focus is on how much tax payers will have to reimburse these CAFO companies for dead animals.

While Wisconsin was not one of the 14 states that did simulations, DATCP staff observed the Minnesota exercise. In addition, DATCP has published a 1-1/2 page [African Swine fever factsheet](#).

October 2019 interviews with the Wisconsin Department of Agriculture Trade and Consumer Protection's Rebecca Slater, Emergency Response Coordinator and Dr. Julie McGwin, Veterinarian Specialist, identified multiple issues, including:

- 1.) In the event of an outbreak, thousands of trucks hauling up to a million hogs would be required to comply with a stop movement order for up to 72 hours. Standstills such as this are very hard to enforce. After 72 hours the animals - many of them weanlings - start to die.
- 2.) A 10km quarantine ring would be put around any infected factory, heavily impacting locals.
- 3.) Procedures for handling effluent from the washing of infected trucks and factories are not clear.
- 4.) Procedures for killing tens of thousands of hogs in a factory are not clear.
- 5.) Composting and incineration are the recommended disposal techniques for carcasses once herds are killed. Wisconsin lacks sufficient capacity for either method. In addition, the robust pathogen, types of infected materials (metal cages, feeds, etc.) and Polk County's high water table make the efficacy of composting questionable. Impact of compost leachate on ground water is unclear. [Landfills](#) did not want avian flu carcasses and concerns about taking so many dead hogs are expected to be even higher.
- 6.) USDA's [Disease Response Strategy - African Swine Fever](#) raises many issues about disposal, including this quote from page 15:

"Due to the persistent nature of ASFV (African Swine Fever Virus), options for disposal are limited. For example, composting may not be feasible when there are large amounts of biomass; resources for rendering are currently limited. Burial poses significant challenges with environmental contamination and the ability of the ASFV to persist in the environment. Each option has its own environmental, logistical, and managerial challenges. APHIS and State officials and subject matter experts will collaborate to determine best approaches. "

## **VIII. Potential Options for Board Action**

1. **Amend Town of Laketown's [Large Scale Commercial Activity Ordinance](#)**
  - A. Include new Large Scale Livestock Facilities defined as 500 animal units (357 dairy cows, 1,249 pigs, 27,500 turkeys, 62,500 chickens).
  - B. Exclude existing facilities until species is changed or exceeds 1,000 animal units.
  - C. Require the applicant to ensure sufficient funds are available for pollution clean-up, nuisance abatement, and proper closure of the operation if it is abandoned or otherwise ceases to operation.
2. **Adopt Siting Authority Under Wisconsin [Statute 93.90](#) and [ATCP 51 Rule](#)**
  - A. Provides authority to require conditional use permit or license.
  - B. Applies to new or expanding facilities if they expand by 20% and will have 500 or more animal units.
  - C. Sets standards for odor, waste management and storage, runoff and setbacks.
3. **Adopt CAFO Operations Ordinance similar to [Town of Eureka](#) and [Town of Trade Lake](#)**
  - A. Regulates operation of the facility instead of siting.
  - B. Laketown can partner with neighboring towns to north and south and does not become the target.
  - C. Requires applicant to have sufficient funds for pollution clean-up, nuisance abatement, and proper closure of the operation if it is abandoned or otherwise ceases to operation.

## **IX. Dates and Description of Meetings**

### **September 4, 2019**

Appoint Chair & Clerk, Committee Ground Rules, Open Meeting Policies & Procedures  
Review DRAFT Work Plan

### **September 17, 2019**

Polk County Committee of the Whole  
Chris Clayton - WI DTACP  
Jeff Jackson - WI DNR Wastewater Specialist

### **October 2, 2019**

Jeff Sauer, CAFO Developer, Cumberland, LLC  
[http://www.saynocaf.com/private/10-02-2019\\_Laketown\\_caf\\_study.mp3](http://www.saynocaf.com/private/10-02-2019_Laketown_caf_study.mp3)

### **November 14, 2019**

Jason Kjeseth - Polk County Zoning Administrator  
Tim Ritten - Polk County Land & Water

### **December 18, 2019**

Review of Draft Report - Committee member Lisa Doerr  
Section I. Purpose  
Section II. Laws & Regulations

### **January 9, 2020**

Attorney Richard Ihrig - Laketown's Large Scale Development Ordinance

### **January 29, 2020**

Review of Research - Committee Member Sarah Byl

### **February 5, 2020 - Canceled**

Brian Kaczmariski- Polk County Public Health, Director  
Prohibited from speaking by county corporate counsel. No reason given.

### **February 19, 2020 - Finalize work plan**

### **September 29, 2020**

Review of Laketown Comprehensive Plan, Committee Member Vicki Breault

### **October 21, 2020**

Review of 1st Draft of Moratorium on Large Scale Livestock Study

**November 4, 2020** - Tour of the Minglewood Dairy in the Town of Deer Park

### **December 17, 2020**

Discuss Potential Options for the Board



## **X. Committee Minutes**

### **TOWN OF LAKETOWN**

### **LARGE SCALE LIVESTOCK STUDY COMMITTEE - CUSHING COMMUNITY CENTER**

### **SEPTEMBER 4, 2019 MINUTES**

1. Meeting was called to order by Monte Tretsvan at 6:04 pm.
2. **Roll Call** - Committee Members Present - Vicki Breault, Sara Byl, Lisa Doerr, Jared Olson, Monte Tretsvan. Also present - Jeffery Sauer, Cumberland LLC
3. **Appointment of Chair** - Byl nominated Tretsvan to chair the committee. Doerr seconded the nomination. Nomination passed with all committee members present voting affirmative.
4. **Appointment of Clerk** - Tretsvan nominated Doerr to serve as clerk. Breault seconded the nomination. Nomination passed with all committee members present voting affirmative.
5. **Discussion of plans** - A range of topics that could be studied by the committee during the moratorium was discussed. These included:
  - a) Laws and Regulations
  - b) Health & Safety Issues
  - c) Infrastructure & Property Issues
  - d) Committee Process, Public Participation and Communications
  - e) Timeline
6. **Organizing of Actions** - Committee members agreed to take the following actions;
  - a) Laws and Regulations
    - a. All members will attend the Polk County Board briefing from WiDNR and DATCP about Laws & Regulations on Sept 17, 2019
    - b. Breault will contact Polk County staff about relevant county laws & regulations
    - c. Doerr will contact Richard Ihrig about Laketown's Commercial Activity Ordinance and other local town boards about ordinances
  - b) Health Issues
    - a. Byl will contact Jeffery Sauer to brief on Cumberland LLC proposals
    - b. Doerr will research water quality issues
  - c) Safety issues (no actions were identified)
  - d) Infrastructure & Property Issues
    - a. Tretsvan will research impact on roads and real estate
  - e) Committee Process, Public Participation and Communications
    - a. Committee agreed that members can talk with media.
    - b. Meetings are open to the public. No public comments taken.
  - f) Timeline
    - a. Final report due in July 2020
7. **Adjourn** - Breault moved to adjourn, Olson seconded. Motion passed with all committee members present voting affirmative. Tretsvan adjourned meeting at 7:55 pm

**NEXT COMMITTEE MEETING - OCTOBER 2, 2019 - 6:00 PM - CUSHING COMMUNITY CENTER**

**This meeting is open to the public. No public comments taken.**

## **TOWN OF LAKETOWN**

### **LARGE SCALE LIVESTOCK STUDY COMMITTEE - CUSHING COMMUNITY CENTER OCTOBER 2, 2019 MINUTES**

- 1.) Meeting was called to order by Monte Tretsvan at 6:04 pm.
- 2.) **Roll Call** - Committee Members Present - Vicki Breault, Sara Byl, Lisa Doerr, Jared Olson, Monte Tretsvan. Also present - Jeffery Sauer, Cumberland LLC
- 3.) **Minutes** - Breault moved to accept the September 4, 2019 minutes. Olson seconded. Motion passed with all committee members present voting affirmative.
- 4.) **Presentation** - Sauer gave an overview of Cumberland LLC's plans for the proposed Trade Lake farrowing facility in Burnett County. That plant would ship weanlings twice a week to finishing plants and take in grain five days a week for a total of seven truck trips a week. Also discussed the interest of investors looking to expand out of Iowa who view Wisconsin's dairy farmers an excellent source of skilled labor and grain. Offers a great opportunity to feed the world.

Sauer then answered a range of questions from the committee:

- A.) **Odor Control** - Several potential control techniques were outlined including: using wood chips, water curtains or scrubbers; and making sure there is a crust on the manure and that it is bio active so the nitrogen is encapsulated.
  - B.) **Manure Management** - Stored under the barn with pigs on slats. Looking at having 420 days of storage. No bedding except if they are raising for sale to Whole Foods. Wisconsin suggests incorporating into soil. Spread using a pipeline system operated by contractors who have the liability for spills. Estimate value of manure at \$100,000 per year.
  - C.) **Mortality Management** - Compost in 40' x 60' enclosed building with 180 days of storage. Combination of mortality, stillborns and placentas. Death rate 2-3%. Land spread with manure. Catastrophic losses are managed differently. The 4,000 pigs lost in the Eleva, Wisconsin fire went to the Seven Mile Sanitary Landfill. Large disease outbreak would be managed by the federal and state government.
  - D.) **Financing & Management** - Hopes to sell shares to investors. Investors looking for green field sites not upgrades to older operations. No bonds or insurance are required by law but creditors require insurance for loss of income and replacement.
- 5.) **Reports from Committee Members** - Breault reported that if Polk County passes a moratorium it would apply to Laketown. However, if the County adopts ordinances for Comprehensive and Shoreland Zoned areas, only Laketown's Shoreland areas would be covered. Breault also recommended that the committee invite Jason Kjeseth from the County to present at next meeting. The committee agreed. Finally, Breault reported that neighbors of a CAFO find the ventilation systems very noisy and the committee should look at noise pollution issues. Doerr reported that because neither Polk county or Laketown have adopted siting authority under Wi Statute 93.90 there are no siting permits or licenses required.

**NEXT COMMITTEE MEETING - NOVEMBER 14, 2019 - 4:00 PM - CUSHING COMMUNITY CENTER**  
**This meeting is open to the public. No public comments taken.**

## **TOWN OF LAKETOWN**

### **LARGE SCALE LIVESTOCK STUDY COMMITTEE - CUSHING COMMUNITY CENTER NOVEMBER 14, 2019 MINUTES**

Meeting was called to order by Monte Tretsven at 4:04 pm.

**Roll Call** - Committee Members Present - Vicki Breault, Sara Byl, Lisa Doerr, Jared Olson, Monte Tretsven. Also present - Jason Kjeseth & Tim Ritten, Polk County Staff

**Minutes** - Byl moved to accept the October 2, 2019 minutes. Olson seconded. Motion passed with all committee members present voting affirmative.

**Presentation** - Jason Kjeseth from Polk County Zoning gave an overview of the county's Swine CAFO moratorium, current Shoreland and Comprehensive Zoning ordinances, potential conditional criteria for CAFO siting and Bayfield County ordinance.

**Polk County Swine CAFO Moratorium** - passed October 2019 for six (6) months with potential six (6) month extension.

**Current CAFO zoning** - For zoned towns CAFOs allowed in all Ag districts: Residential-Agricultural 5 (RA-5), Agriculture 10 (A-1), Agriculture 20 (A-2), Farmland Preservation (A-3).

**Shoreland Zoning** - Two (2) zoning districts: General Purpose and Wetland within 1,000' of lake or pond, 300' of river or stream. Possible new ordinance could allow CAFOs >300'.

**Comprehensive Zoning** - Twelve (12) zoning districts. Four (4) uses: allowed, permitted, prohibited or conditional. Conditional use criteria include preventing water pollution, compatibility with adjacent uses.

**Potential Conditions for CAFOs in Shoreland or Comprehensive zoning based on [WI Statute 93.90](#)**

**Setbacks** - 300' setback for waste storage, 75' setback for animal buildings with <1,000 animal units and 150' for >1,000, 100' setback for entrance.

**Waste** - Require nutrient and mortality management plans.

**Overweight Loads** - require town approval during spring break-up.

**Swine CAFO** - >750 animal units

**Agriculture 20 (A-2) zoning** - may be best fit for CAFOs, allows town input.

**Bayfield County Ordinances** - possible alternative based on general county powers [WI Statute 92.15](#). Some unique ideas with performance guarantees, bonds, yearly permits, etc.

**Presentation** - Tim Ritten from Polk County Land and Water Resources gave an overview of:



**Nutrient Management** - Plans required for cost sharing. Need to meet NRCS engineering standards whether in zoned or un-zoned area. Don't require land ownership or contracts. County staff does not regularly review plans.

**Storm & Erosion** - All construction plans are reviewed. Water must go down into soil not across into surface waters too quickly.

**Countywide maps** - Presented preliminary maps of Prime Farm Lands, Land Use, General Soil Associations and Ground Water Susceptibility.

**Adjourn** - Olson moved to adjourn. Tretsvan seconded. Tretsvan adjourned meeting at 6:24 pm

**NEXT COMMITTEE MEETING - DECEMBER 18, 2019 - 4:00 PM - CUSHING COMMUNITY CENTER**  
**This meeting is open to the public. No public comments taken.**

## **TOWN OF LAKETOWN**

### **LARGE SCALE LIVESTOCK STUDY COMMITTEE - CUSHING COMMUNITY CENTER DECEMBER 18, 2019 MINUTES**

Meeting was called to order by Monte Tretsvan at 4:12 pm.

**Roll Call** - Committee Members Present - Vicki Breault, Sara Byl, Lisa Doerr, Jared Olson, Monte Tretsvan.

**Minutes** - Byl moved to accept the November 14, 2019 minutes. Olson seconded. Motion passed with all committee members present voting affirmative.

#### **Review of DRAFT Moratorium on Livestock Facility Licensing Committee Report**

Committee reviewed Section II - Laws and Regulations. This covered the federal, state and county levels. Information on Laketown's Comprehensive Plan and Large Scale Commercial Activity Ordinance is not completed yet.

**Timeline** - The committee set the following three meetings:

January 9, 2020 - Attorney Richard Ihrig, presentation on Laketown's Large Scale Development Ordinance

January 29, 2020 - Agenda to be determined

February 5, 2020 - Polk County Public Health Director, Brian Kaczmariski, presentation on research done as part of the Polk County moratorium.

All meetings are at 4:00 pm in the Cushing Community Center.

#### **Reports from Committee Members**

Doerr suggested that the committee setup a website for agendas, minutes and other documents. She will report back with details.

**Adjourn** - Doerr moved to adjourn. Breault seconded. Tretsven adjourned meeting at 5:37 pm

**NEXT COMMITTEE MEETING - JANUARY 9, 2020 - 4:00 PM - CUSHING COMMUNITY CENTER**  
**This meeting is open to the public. No public comments taken.**

## **TOWN OF LAKETOWN**

### **LARGE SCALE LIVESTOCK STUDY COMMITTEE - CUSHING COMMUNITY CENTER**

#### **January 29, 2020 MINUTES**

Meeting was called to order by Monte Tretsven at 4:04 pm.

**Roll Call** - Committee Members Present - Vicki Breault, Sara Byl, Lisa Doerr, Jared Olson, Tretsven.

**Minutes** - Olson moved to accept the January 9, 2020 minutes. Byl seconded. Motion passed with all committee members present voting affirmative.

#### **Presentation by Attorney Richard Ihrig - Laketown's Large Scale Development Ordinance**

Ihrig represented people opposed to the Iver's Mountain mining proposal in 2009.

Large Scale ordinance written as part of legal negotiations with the town and mining company.

Laketown is unzoned (except for shoreland districts) so the ordinance is built on the goals, standards and principles included in the town's Comprehensive Plan.

The ordinance doesn't prohibit siting a large scale operation but it requires a permit.

Permit process requires public participation.

Ordinance amendment excluding Large Scale Livestock Facilities from definition of Large Scale Commercial Activity means ordinance does not apply to a Concentrated Animal Feeding Operation (CAFO).

Byl asked if Ihrig was concerned that Section 4.13's definition of Large Scale Livestock Facility as more than 700 animal units was stricter than the state definition. Ihrig said that this section could be challenged but even if it was overturned it would not overturn the entire ordinance.

Byl asked how Section 4.8 addressing odor could be enforced. Ihrig said it would be addressed on a case by case basis with costs being included in a permit.

Olson asked if local governments can have any stricter rules than the state. Ihrig said that is a very lively political issue. For example, state Rep. Adam Jarchow's legislation weakened the state's shoreland standards and made them the ceiling instead of the floor.

Byl asked why Section 4.9 had set the definition of "Excess Noise" at 30 decibels. Ihrig did not recall why that level was used.

Doerr asked if the Section 7 application fee could include enforcement costs or if that would need a separate condition. Ihrig thought it could be a separate condition.

Breault asked when a town should add an ordinance, Ihrig said it is better to have an ordinance in place before an issue arises.

### **Reports from Committee Members**

Doerr said that the Town of Trade Lake was going to vote today on their Concentrated Animal Feeding Operation Ordinance. If passed, she will send members electronic version.

**Adjourn** - Breault moved to adjourn. Byl seconded. Olson adjourned meeting at 5:33 pm

**NEXT COMMITTEE MEETING - JANUARY 29, 2020 4:00 PM - CUSHING COMMUNITY CENTER**  
**This meeting is open to the public. No public comments taken.**

### **TOWN OF LAKETOWN**

#### **LARGE SCALE LIVESTOCK STUDY COMMITTEE - CUSHING COMMUNITY CENTER** **January 29, 2020 MINUTES**

Meeting was called to order by Monte Tretsvén at 4:04 pm.

**Roll Call** - Committee Members Present - Vicki Breault, Sara Byl, Lisa Doerr, Jared Olson, Tretsvén.

**Minutes** - Breault requested that the following language be added to the January 9, 2020 minutes: Breault asked when a town should add an ordinance; Ihrig said it is better to have an ordinance in place before an issue arises. Olson moved to accept the addition and the January 9, 2020 minutes. Byl seconded. Motion passed with all committee members present voting affirmative.

### **Report from Committee Member Sara Byl**

Byl presented on a very interesting range of issues from different sources:

New Clean water Act rules may impact CAFOs and the committee should look into them.

Wisconsin is one of the few states with rules on both surface and ground water.

Drinking water standards for nitrates have been debated since the 1940s. The current level is 10 mg/L or 10 ppm. Potential health risks are hard to predict so, in general, the more uncertainty there is the more margin of safety is built into the standard. The current standard is based on studies back decades and there is an urgent need to study whether the limit is scientifically justified. Byl included several study references for committee members to review.

**Wisconsin Dairy Association** has analyzed testing data from private wells in 14 counties and found no correlation between the number of CAFOs and elevated nitrate levels.

**2018 Wisconsin Groundwater Coordinating Council Report:** A 2012 survey of municipal water systems found that 47 of them exceeded nitrate limits, up from 14 in 1999. Exceedances were

found in about 10% of tested private wells. In another ongoing study, the Department of Health has results from 55,000 well tests. The percentage of wells exceeding the nitrate limit varies widely from 0% in the north to 20% to 30% in the south-central counties. Five to ten percent of the Polk County wells exceeded the current standard. Even with improved nutrient management plans, historical agricultural practices will continue to impact some geologic settings as nitrate works down to deep aquifers. Even with the best systems, nearly 20% of nitrogen fertilizer bypasses plants. One study estimates that 200 million pounds of nitrogen were applied in excess of recommendations.

**Polk County Manure and Water Quality Ordinance:** Permits required for construction, alteration or closure of any animal waste storage structure. Unconfined manure piles are not allowed within: 1,000 feet of navigable lake or pond; 300 feet from a river or stream; 250 for a private well, 1,000 feet from a municipal well; 100 feet from downslope to groundwater; shallow soils over groundwater or bedrock. Adequate sod must be maintained in pastures where livestock has access to waters of the state.

**Beyl Farm Well Testing** - tests done in January 2020 found nitrate levels close to zero and very far below the of 10mg/L.

Rain surges can cause treatment plants to release raw sewage to lakes.

**Long Trade Lake Study** - Found Laketown soils have higher natural phosphorus levels than others. Leaking septic systems and lawn fertilizer also contribute poor water quality.

**Wisconsin Statute 92.15** - The law Bayfield County and the Town of Trade Lake base their operations ordinance on. Local governments must show a need for strict conditional uses. There was a legal challenge of the South Fish Creek ordinance. Need to add to the committee's draft report under Section B.1(b).

**High capacity Wells** - there are 93 permitted high capacity wells in Polk County.

## **Reports from Committee Members**

Breault said that the Long Trade Lake study also found that the lake is not self-loading phosphorus and that efforts should be made to work with land owners to cut runoff. Byl suggested that the committee could recommend a watershed project to address that.

Doerr said that the Town of Trade Lake had passed their Concentrated Animal Feeding Operation (CAFO) ordinance and a one year moratorium on January 9, 2020. The committee discussed having Trade Lake's lawyer, Nick Vivian, brief the committee and town board on the ordinance in May.

Doerr reported on Polk County's draft CAFO ordinance. More than 120 people attended a stakeholder meeting held on January 21, 2020 to give input on the draft ordinance. Results were reported the next morning to the Environmental Services Committee and attempts were made to modify the ordinance based on the input. However, the process was tabled after about an hour. The current draft would kick in at 1,000 animal units. It would not apply to Laketown's unzoned areas but might apply to shoreland zones.

Tretsvan said that it might be possible to consider a different number of animal units.



Byl suggested that the committee visit a dairy and hog CAFO in April. She will research details and report back to the committee.

**Adjourn** - Breault moved to adjourn. Olson seconded. Tretsven adjourned meeting at 5:42 pm

**NEXT COMMITTEE MEETING - FEBRUARY 5, 2020 4:00 PM  
CUSHING COMMUNITY CENTER**

This meeting was canceled because Brian Kaczmarek, Polk County Public Health Director, was prohibited from presenting his research on the public health impacts of CAFOs by the county's corporate counsel. No reason was given for the prohibition.

**NEXT COMMITTEE MEETING - FEBRUARY 19, 2020 4:00 PM  
CUSHING COMMUNITY CENTER**

**This meeting is open to the public. No public comments taken.**

**TOWN OF LAKETOWN**

**LARGE SCALE LIVESTOCK STUDY COMMITTEE - CUSHING COMMUNITY CENTER  
February 19, 2020 MINUTES**

Meeting was called to order by Monte Tretsven at 4:06 pm.

**Roll Call** - Committee Members Present - Vicki Breault, Sara Byl, Lisa Doerr, Tretsven. Jared Olson was not present.

**Minutes** - Byl requested that the following language be added to the January 29, 2020 minutes:

Well testing results from the Byl Farm taken January 6, 2020 showed nitrate levels at .55 ppm. The drinking water standard for concern is 10 ppm. This is a historic well for more than 60 years in the same place and depth. Breault moved to accept the addition and the January 29, 2020 minutes. Byl seconded. Motion passed with all committee members present voting affirmative.

**Concentrated Animal Feeding Operation (CAFO) Tour planning** - Byl said that a tour of the Owen Farm is scheduled for April 2, 2020 from 12:00 to 2:00 pm. Brandon Owen will take questions from the committee. A tour of a swine CAFO is possible for late April but not finalized yet.

**Finalize Committee Timeline - Goals**

April 2020 - Tour dairy and swine CAFOs

May 2020 - Meet with attorney Paul Mahler - Tretsven will check with Mahler

June 2020 - Finalize draft report. Report would include multiple recommendations if the committee can't reach consensus on one.

July 2020 - Draft report and all the minutes to the town board.

**Reports from Committee Members**

Doerr said that the Town of Eureka passed an Operations Permit ordinance on February 9, 2020 and she would like to have the committee consider that.

Byl said that towns are required to have the state Department of Agriculture Trade and Consumer Protection (DATCP) review an ordinance like Eureka's that is based on Wisconsin Statute 92.15.

Doerr said that there is no law requiring DATCP to review town ordinances but it would be a good point to clarify with an attorney.

Breault said she had reviewed the Eureka ordinance and felt it is designed to protect us based on problems that have come up in other places.

**Adjourn** - Doerr moved to adjourn. Breault seconded. Tretsvan adjourned meeting at 5:36 pm

**NEXT COMMITTEE MEETING - APRIL 2, 2020 - 12:00 PM - OWEN FARM**

**This meeting is open to the public. No public comments taken.**

## **TOWN OF LAKETOWN**

### **LARGE SCALE LIVESTOCK STUDY COMMITTEE - CUSHING COMMUNITY CENTER**

#### **September 29, 2020 Minutes**

Meeting was called to order by Monte Tretsvan at 6:06 pm.

**Roll Call** - Committee Members Present - Vicki Breault, Sara Byl, Lisa Doerr, Tretsvan, Jared Olson.

**Minutes** - Byl moved to strike Roger and insert Brandon in the Tour Planning section and strike Byle and insert Byl in the Reports section of the February 19, 2020 minutes. Breault moved to accept the additions and the February 19, 2020 minutes. Olson seconded. Motion passed with all committee members present voting affirmative.

#### **Reports from Committee Members**

Breault reviewed Laketown's Comprehensive Plan 2009-2029

- Written in from 2007 to 2009 by a committee of five

- Lays the foundation for Town's future development ordinances

- Conducted a community survey as part of the process

- Guiding Principles

  - Take the long view

  - Protect quality and quantity of surface and groundwater

  - Build on sustainability

  - Appropriate scale

  - Preservation of rural character

- Farming and tourism are the top drivers of Laketown's economy

- Restrict large scale development - benefit locals not outside

- Consensus was that large-scale development is in conflict with long term goals

Byl expressed concerns that if we go too far with these principles there would be no new homes, businesses, etc.

Doerr reported that Polk County's moratorium ends on October 15. In addition, three big CAFO advocacy groups - Venture Dairy Cooperative, Wisconsin Dairy Alliance and Wisconsin Manufacturers and Commerce - wrote a letter to county supervisors falsely saying that if they

extended the moratorium or passed a conditional use permit amendment to the zoning ordinance it would be a criminal felony act.

### **Committee Timeline**

Committee agreed that Doerr should set up a meeting with Attorney Paul Mahler to review Laketown's Large-Scale Commercial Ordinance and the Town of Eureka's Concentrated Animal Feeding Operations ordinance.

Monte suggested that we review Eureka's ordinance together and consider changing the number of animal units.

Committee set goal of completing report done November 24, 2020 Laketown Board meeting.

**Adjourn** - Doerr moved to adjourn. Breault seconded. Tretsven adjourned meeting at 5:36 pm

**NEXT COMMITTEE MEETING - October 21, 2020 - 6:00 PM**

**Cushing Community Center**

**This meeting is open to the public. No public comments taken.**

## **TOWN OF LAKETOWN**

### **LARGE SCALE LIVESTOCK STUDY COMMITTEE - CUSHING COMMUNITY CENTER**

#### **DRAFT December 17, 2020 Minutes**

Meeting was called to order by Monte Tretsven at 4:04 pm.

**Roll Call** - Committee Members Present - Vicki Breault, Sara Byl, Lisa Doerr, Tretsven, Jared Olson.

**Minutes** - Byl moved to add that she reported on the letter from Tim Jackson at DATCP to Polk County corporate counsel, Malia Malone, critiquing the county's DRAFT Operations Ordinance. Olson moved to accept the minutes as amended. Doerr seconded. Motion passed with all committee members present voting affirmative.

#### **Review information for the report from committee members**

Tretsven reminded the committee that this is probably our last meeting and asked that all members be civil in their comments and responses about the report.

Doerr explained the basics and structure of the committee report. Also said that she realized after sending this version that she had forgotten to put in information on the REI study of Trade Lake. She asked if any committee member has additional information or comments for the report.

Tretsven made a motion to send the report to the board for them to review with a statement saying it was written by the secretary but not every member supported everything in it. Breault seconded the motion. Byl did not support sending the report as being from the whole committee. She felt that the report is biased against CAFOs. She did not want to have anything to do with the report and suggested it be sent with people signing on only if they support it. Doerr said the report was written to meet the purpose of the moratorium and there were many things in the report she didn't support but

she had included them because committee members wanted them. Breault called the question. The motion passed on a voice vote.

## **Discuss possible recommendations for Town Board Supervisors**

### **Large Scale Commercial Ordinance**

Olson suggested adding agriculture facilities back into the existing ordinance. The committee discussed several possible ways to amend the ordinance including bringing in new facilities at 500 animal units and existing facilities at 1,000. Doerr pointed out that the existing ordinance does not require facilities to have performance bonds. Byl said there are concerns about the Town being liable if a bond isn't big enough to cover all the costs. Doerr asked for a specific statutory reference to back up the point because Polk County Supervisor Brad Olson made the same argument the day before with no basis. Byl felt that the banks would not let buildings sit empty. Doerr said gravel and frack sand mines have to post bonds. Byl passed out a letter from DATCP pointing out several issues needing to be addressed in the existing ordinance.

### **Town of Eureka Operations Ordinance**

Breault suggested adopting an operations permit ordinance like the Town of Eureka has with new facilities covered at 500 animal units and existing at 1,000. Byl questioned the legal basis of the Eureka ordinance citing the October 15, 2020 DATCP memo from Tim Jackson about Polk County's DRAFT operations ordinance. Doerr pointed out that Polk County stripped out all of the scientific citations that Eureka used before sending their draft to DATCP for review.

### **Siting Authority under Wisconsin Statute 93.90**

Byl suggested that Laketown adopt local authority under Wisconsin Statute 93.90 and passed out information on how that system works. She felt the worksheets required under this law were not too hard for the facilities to handle. Doerr felt that the state has too much power under 93.90 and the setbacks were too narrow to protect public health and property values from air pollution. Byl said Garfield and St. Croix Falls have this authority already.

The committee decided to include each of the three possible options in the report. In addition, committee members are encouraged to speak to the board on December 22, 2020 on which options they support.

Tretsven said he thought the meeting was very productive and thanked the committee for their work over the last 15 months.

**Adjourn** - Doerr moved to adjourn. Tretsven seconded. Tretsven adjourned meeting at 5:49 pm.



## **XI. Citations**

### **Water Health Impacts**

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### **Air Health Impacts**

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- Donham KJ, Wing S, Osterberg D, et al. Environmental Health Perspective. 2007;317-320. Link: [Community Health and Socioeconomic Issues Surrounding Concentrated Animal Feeding Operations](#)
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## **XII. Appendices**

- A. Ordinance 19-02: Moratorium on Livestock Facilities Licensing
- B. Large Scale Commercial Activity Ordinance - 2009
- C. Large Scale Commercial Activity Ordinance - 2011
- D. DATCP/DNR Procedure for Livestock Ordinance Approval and Review Process Under S. 92.15
- E. DATCP - Opinion on Polk County DRAFT Operations Ordinance
- F. Wisconsin Towns Associations - Performance Bonds and Application Fees
- G. Wisconsin County Association - Performance Bonds and Application Fees
- H. Wisconsin County Association - Response to Venture Dairy , Wisconsin Dairy Alliance
- I. Wisconsin Dairy Alliance - Comparison of well tests and number of CAFOs

**Town of Laketown**  
**Ordinance No. 19-02**  
**Moratorium on Livestock**  
**Facilities Licensing**

**The municipal code of the Town of Laketown, Wisconsin is hereby amended by adding Section \_\_\_\_\_ which section reads as follows:**

**Authority**

This ordinance is adopted pursuant to the powers granted under Wisconsin Constitution, and Wisconsin Statutes including but not limited to Section 60.10(2)(i) and 93.90(4)(e).

**Title and Purpose**

The title of this ordinance is the Moratorium on Livestock Facilities Licensing.

The purpose of this ordinance is to allow The Town of Laketown to impose a moratorium providing adequate time to study, review, consider and determine whether amendments to the Large Scale Development Ordinance or the creation of a Livestock Facilities Licensing Ordinance or other ordinances are required to protect the environment, public health or safety and property in Laketown Township in light of the unique environment and the key concerns identified in the Town of Laketown Comprehensive Plan. The Township contains sensitive trout streams, lakes and wetlands as well as varying soil types and land uses which are an important attribute to the Township. The Town of Laketown has found that it needs additional information to determine whether to approve or deny any such applications for approval, and that there is good cause to thoroughly investigate the health, environmental, traffic and economic and infrastructure impacts of proposed livestock facilities and to look at cost shifting for any such investigations to delay approval of any permits regarding such livestock facilities. Further, the imposition of a moratorium will allow the Town of Laketown to determine whether it has adequate resources to enforce any new livestock facility ordinance or its existing or amended Large Scale Development Ordinance.

**Adoption**

This ordinance, adopted by a majority vote of the Town of Laketown Board of Supervisors with a quorum present and proper notice having been given, provides for the imposition of a moratorium on the licensing of new livestock facilities that will have 1,000 or more animal units as defined by the Wisconsin Department of Natural Resources, and on the licensing of pre-existing livestock facilities that are undergoing an expansion if the number of animal units kept at the expanded facility will be 1,000 or more, provided that the moratorium does not apply to an applicant who has acquired legally vested rights to the issuance of a license prior to the adoption of this ordinance.

**Definitions**

All definitions located in the Town of Laketown Code of Ordinances are hereby adopted and incorporated as if fully set forth herein.

### **Moratorium Imposed**

The Town of Laketown Board of Supervisors hereby imposes a moratorium on the licensing of new livestock facilities that will have 1,000 or more animal units and on the licensing of pre-existing livestock facilities that are undergoing an expansion if the number of animal units kept at the expanded facility will be 1,000 or more, provided that the moratorium does not apply to an applicant who has acquired legally vested rights to the issuance of a license prior to the adoption of this ordinance.

### **Action and Study During Moratorium**

The Town of Laketown Board of Supervisors hereby creates a 5-person special study committee which shall be known as the "Large Scale Livestock Study Committee" and which shall consist of one(1) elected official and two (2) Laketown residents with agricultural background and two (2) interested Laketown residents or property owners.

The Supervisors shall solicit and receive applications or expressions of interest from interested Town of Laketown residents or property owners interested in being part of the Large Scale Livestock Study Committee. From those applications, the Town Chairman shall recommend individuals for approval by the Town of Laketown Board of Supervisors. Those individuals recommended by the Supervisors and approved by a majority vote of the Board of Supervisors shall become part of the Large Scale Livestock Study Committee. The Town Chairman shall also recommend one elected official for the committee to be approved by the Town Board.

The Large Scale Livestock Study Committee shall, during the course of the moratorium imposed by this ordinance, research, analyze and synthesize scientific literature regarding the impact of large scale livestock facilities on ground water, surface water and air quality, as well as impacts to property and infrastructure and the health safety and welfare of Town residents specifically as those issues apply in the Town of Laketown.

The Large Scale Livestock Study Committee shall report its recommendations on possible and appropriate regulatory approaches relative to the siting and/or operation of livestock facilities within Laketown Township to the full Town of Laketown Board of Supervisors at least 30 days prior to the end of the moratorium adopted pursuant to this ordinance or as soon as the Committee has developed recommendations based upon its research, whichever comes soonest.

### **Duration of Moratorium**

This moratorium shall be in effect for a period of twelve months from the date this ordinance is passed by the Town of Laketown Supervisors unless they rescind this moratorium at an earlier date, or until the activities contemplated by this ordinance are complete and the Supervisors adopt amendments to the Large Scale Development ordinance and/or adopt a Livestock Facilities Licensing Ordinance. This Ordinance shall become effective upon passage and publication as provided by law.

Adopted: \_\_\_\_\_

Signed: \_\_\_\_\_ Signed: \_\_\_\_\_



New

11/24/09

No. 11-09

**THE TOWN BOARD OF LAKETOWN, POLK COUNTY, WISCONSIN, DOES  
HEREBY ORDAIN THE FOLLOWING ORDINANCE REGULATING LARGE SCALE  
COMMERCIAL ACTIVITY IN THE TOWN OF LAKETOWN**

- 1. Purpose.** The purpose of this ordinance is to promote the general welfare of the Town and its residents; to protect and enhance the rural character, environment and cultural heritage of the Town; to protect and promote the health, safety, and quality of life of the Town's inhabitants; and to encourage sustainable commercial activity in the Town that is consistent with the Town's Comprehensive Plan.
- 2. Authority.**
  - 2.1.** The authority of the Town to enact this ordinance is Wisconsin Statutes, §§ 60.22(1) and (3), 61.34, 61.35, 62.23 (other than subdivision 7 thereof), and 66.1001; the Town's police powers, the common law, and the Town's Comprehensive Plan.
  - 2.2.** This ordinance is not based on any zoning power possessed by the Town, and shall not be interpreted or construed as an exercise of zoning power possessed by towns under Wisconsin law.
- 3. Applicability.**
  - 3.1.** This ordinance applies to all proposed Large Scale Commercial Activity within the Town.
  - 3.2.** "Large Scale Commercial Activity" means commercial activity that takes place in the Town and that, when operational, reasonably may be expected to possess two or more of the following characteristics: (i) it generates excess vehicular traffic; (ii) it generates excess stress on the road bed, bridges and other infrastructure; (iii) it generates excess noise; (iv) it generates excess levels of odor, dust, fumes, particulate matter, or radioactive material; (v) it requires or results in a major disturbance of the currently existing soil or topography; (vi) its activities in the Town require a license or permit from the Wisconsin Department of Natural Resources, the Wisconsin Waste Facility Siting Board, the Wisconsin Division of Gaming in the Department of Administration, the United States Environmental Protection Agency, the United States Army Corps of Engineers or any division thereof, or the United States Bureau of Alcohol, Tobacco and Firearms; (vii) its activities in the Town involve incarceration or preventive detention of persons charged with or convicted of a crime or crimes; (viii) its activities in the Town are subject to regulation under the Indian Gaming Regulatory Act of 1988. If the requirements of this sub-section 3.2 are met, Large Scale Commercial Activity includes all tangible physical activities taking place in the Town in anticipation of the production of goods or providing of services, including, without limitation,

excavation and construction. Except as qualified by section 13, commercial activity that is not Large Scale Commercial Activity because it does not meet the requirements of this sub-section 3.2, becomes Large Scale Commercial Activity subject to this ordinance if at any future time such commercial activity meets the requirements of this sub-section 3.2.

- 3.3.** Farming Excluded. Notwithstanding any other provision of this ordinance, Large Scale Commercial Activity does not include farming, except Large Scale Livestock Facilities.

**4. Definitions.** As used in this ordinance:

- 4.1.** “Applicant” means a Business Entity that submits an Application.
- 4.2.** “Application” means an application for a Large Scale Commercial Activity Permit provided for in section 6 of this ordinance.
- 4.3.** “Business Entity” means an individual, sole proprietorship, general partnership, limited partnership, limited liability company, corporation, not for profit corporation, trust, cooperative, association, or any other legal entity now or hereafter recognized by law.
- 4.4.** “Community Impact Statement” means a written statement containing all of the information required by section 9 of this ordinance with respect to any proposed Large Scale Commercial Activity.
- 4.5.** “Complete Application” means an Application that contains all the information required by section 6 of this ordinance.
- 4.6.** “Comprehensive Plan” means the then current master plan adopted by the Town pursuant to Wisconsin Statutes, §§ 60.62(4), 61.35, 62.23(2)(3) and (4), and 66.1001.
- 4.7.** “Effective Date” means the date this ordinance was adopted by the Town Board.
- 4.8.** “Excess levels of odor, dust, fumes, particulate matter, or radioactive material” means activities at the Site that result in concentration levels of odor, dust, fumes, particulate matter, or radioactive material at any location outside the Site that exceed the concentration levels of such odor, dust, fumes, particulate matter, or radioactive material existing at such location outside the Site before commencement of the Large Scale Commercial Activity.
- 4.9.** “Excess noise” means activities at the Site that result in noise audible at any location outside the Site of 30 decibels or more between 6:00 P.M. and 8:00 A.M. or more than 60 decibels between 8:00 A.M. and 6:00 P.M.
- 4.10.** “Excess stress on the road bed, bridges and other infrastructure” means truck or heavy equipment traffic with a Gross Vehicle Weight or GVW in excess of

1,500,000 pounds per day into or out of the Site on more than 30 days per year. Gross Vehicle Weight or GVW means the licensed capacity of the vehicle as that is determined under section 341.25 Wisconsin Statutes.

- 4.11. "Excess vehicular traffic" means more than 80 vehicle units per day into or out of the Site on more than 30 days per year. A vehicle less than 10,000 pounds Gross Vehicle Weight (GVW) is one unit; a vehicle from 10,000 to 49,999 pounds GVW is 2 units; a vehicle of 50,000 or more GVW is three units. Gross Vehicle Weight or GVW means the licensed capacity of the vehicle as that is determined under section 341.25 Wisconsin Statutes. Farm tractors, farm equipment and vehicles transporting milk, grain or other non-manufactured agricultural products are not included in the calculation of vehicle units.
- 4.12. "Large Scale Commercial Activity Permit" means a permit issued by the Town Board pursuant to this ordinance authorizing the Applicant to engage in specified Large Scale Commercial Activity subject to such reasonable restrictions and conditions as may be set forth in such permit.
- 4.13. "Large Scale Livestock Facility" means a facility located in the Town on which at anytime is located more than 700 animal units calculated under Rule NR 243.05 of the Wisconsin Administrative Code. A Large Scale Livestock Facility is Large Scale Commercial Activity subject to this ordinance.
- 4.14. "Major Disturbance of the Currently Existing Soil or Topography" means an activity that requires or results in a disturbance that affects more than 50% of the Site or more than 250,000 square feet, whichever is less. A disturbance is created by covering the land with a structure, re-grading of the topography, removal of the top soil or paving.
- 4.15. "Site" means the physical location in the Town where Large Scale Commercial Activity takes place and includes all contiguous real property at such location owned or leased by the Business Entity engaged in Large Scale Commercial Activity.
- 4.16. "Town" means the Town of Laketown, Polk County, Wisconsin.
- 4.17. "Town Board" means the Town Board of the Town serving from time to time.
5. **Large Scale Commercial Activity Permit Required.** From and after the Effective Date, no Business Entity may engage in Large Scale Commercial Activity without first obtaining a Large Scale Commercial Activity Permit.
6. **Permit Application.** Any Business Entity desiring to engage in Large Scale Commercial Activity shall submit an Application to the clerk of the Town. The Application shall contain the following:
- 6.1. The name, address, telephone number, fax number and e-mail address of the Applicant.

- 6.2. The location within the Town where the Applicant proposes to engage in Large Scale Commercial Activity.
  - 6.3. A detailed description of the proposed Large Scale Commercial Activity including an analysis of the factors contained in the above definition of Large Scale Commercial Activity.
  - 6.4. A description of any litigation or enforcement proceedings in which the Applicant and/or Affiliates have been involved as a party in the 60 month period preceding the date of the Application pertaining to the environmental consequences of activities engaged in by the Applicant and/or Affiliates.
7. **Application Processing Fee.** The Applicant shall be legally obligated to pay all reasonable expenses incurred by the Town in processing an Application. When an Application is submitted to the clerk of the Town it shall be accompanied by a certified check payable to the Town in the amount of \$2,500, as advance payment of all reasonable expenses incurred by the Town in processing the Application. From time to time, the Town Board, by resolution, may require the Applicant to provide additional funds to pay such expenses, and, pending receipt of such additional funds, the Town Board may hold in abeyance the processing of the Application. Reasonable expenses incurred by the Town in processing an Application are all costs incurred by the Town that but for the Application would not have been incurred, including, but not limited to, the costs of notice, printing, staff salaries and benefits; fees for hearing examiners, attorneys, accountants, economists, engineers, scientists, and similar professionals, and the cost of Community Impact Statements. The treasurer of the Town shall deposit any funds provided by the Applicant under this section 7 in a separate bank account and assure that such funds are used exclusively to pay such costs. Any such funds that exceed the reasonable expenses incurred by the Town in processing an Application shall be returned to the Applicant upon issuance or denial of a Large Scale Commercial Activity Permit or upon withdrawal of an Application by the Applicant.
8. **Standards.** Before granting or denying an Application, the Town Board shall determine whether the proposed Large Scale Commercial Activity satisfies, or reasonably may be expected to satisfy, each of the following standards:
  - 8.1. The proposed Large Scale Commercial Activity is consistent with the Town's Comprehensive Plan.
  - 8.2. The proposed Large Scale Commercial Activity will not result in any material adverse environmental impact within the Town.
  - 8.3. The overall community impact of the proposed Large Scale Commercial Activity will be positive, and it will not result in any material negative community impact within the Town. Community impact shall be determined with reference to the information set forth in the Community Impact Statement prepared with respect to the proposed Large Scale Commercial Activity.



- 8.4. The Applicant is financially capable of remedying any material adverse environmental or community impacts caused by the proposed Large Scale Commercial Activity.
  - 8.5. The proposed Large Scale Commercial Activity is compatible with the Town's rural character as described in the Comprehensive Plan and the preservation of such character.
  - 8.6. The proposed Large Scale Commercial Activity will not have a material adverse impact on the quiet enjoyment of the home of any inhabitant of the Town, provided such home was owned and occupied by such inhabitant at the time the Application was filed with the clerk of the Town.
9. **Community Impact Statement.** A Community Impact Statement required by this ordinance shall address in detail each of the following:
- 9.1. The economic impact on the Town of the proposed Large Scale Commercial Activity, including, but not limited to, its impact on taxes and employment and its compatibility with an economy in which the principal unit of economic production is the family owned farm.
  - 9.2. The environmental impact on the Town of the proposed Large Scale Commercial Activity, including, but not limited to, its impact on air quality, noise levels, traffic intensity, surface and ground water quality and quantity, wild life and plant life, and the relationship among living things.
  - 9.3. The impact of the proposed Large Scale Commercial Activity on the Town's physical infrastructure, including, but not limited to, roads, utilities, parks and recreational facilities located in the Town.
  - 9.4. The impact of the proposed Large Scale Commercial Activity on the health and safety of the inhabitants of the Town.
  - 9.5. The impact of the proposed Large Scale Commercial Activity on the cost of governmental services in the Town, including, but not limited to, the cost of police, fire protection, schools, welfare, waste disposal, and road maintenance and construction.
  - 9.6. The impact of the proposed Large Scale Commercial Activity on the rural character of the Town as described in the Comprehensive Plan, including, but not limited to, impact on agriculture and quiet enjoyment of the countryside.
  - 9.7. The impact of the proposed Large Scale Commercial Activity on any place, structure, or object located in the Town that has a special character, historic interest, aesthetic interest, scenic view, or other significant value.

- 9.8. With respect to each negative community impact identified in the Community Impact Statement, a statement of measures that can be taken to mitigate such negative impact.
10. **Procedure for Processing Applications.** Upon receipt of an Application the Town Board shall proceed as follows:
- 10.1. No later than 30 days after receipt of an Application, the clerk of the Town shall publish a class 1 notice pursuant to Wisconsin Statutes, § 985.07(1) in the official newspaper of Polk County, Wisconsin, briefly describing the proposed Large Scale Commercial Activity and giving the location at which the public may review the Application and all supporting materials.
- 10.2. Copies of the published notice shall be mailed by first class mail to owners of land within one mile of the boundaries of the Site of the proposed Large Scale Commercial Activity.
- 10.3. No later than 45 days after receipt of an Application, the Town Board shall determine whether the Application is a Complete Application. If the Town Board determines the Application is not a Complete Application, it shall inform the Applicant in writing of the respects in which the Application is incomplete. Thereafter, the Applicant may supplement the Application with additional information. No later than 30 days after receipt of such additional information, the Town Board shall determine whether the supplemented Application is a Complete Application. If, after the Applicant has had an opportunity to supplement the information, the Town Board determines the supplemented Application is not a Complete Application, it shall deny the Application without prejudice to the right of the Applicant to submit a new Application.
- 10.4. If the Town Board determines the Application is a Complete Application, it shall cause to be prepared a Community Impact Statement with respect to the proposed Large Scale Commercial Activity .
- 10.5. Within 45 days following the completion of the Community Impact Statement provided for in sub-section 10.4 of this ordinance, the Town Board shall convene a public information hearing regarding the proposed Large Scale Commercial Activity. Such hearing shall be preceded by a class 1 notice pursuant to Wisconsin Statutes, § 985.07(1) published at least 15 but not more than 30 days before the hearing in the official newspaper of Polk County, Wisconsin, informing the public of the completion of the Community Impact Statement with respect to the proposed Large Scale Commercial Activity and giving the location at which the public may review such statement and all supporting materials. Any inhabitant of the Town who requests a copy of such statements shall be provided a copy free of charge.
- 10.6. If a contested case hearing is not convened as provided in sub-section 10.7 of this ordinance, the Town Board, no earlier than 30 days or later than 60 days

following the public information hearing provided for in sub-section 10.5 of this ordinance, shall either grant or deny the Application. The Application shall be granted if the Town Board decides that, based on all information in the record and otherwise available to it and reasonably relied upon, the proposed Large Scale Commercial Activity satisfies each of the Standards set forth in section 8 of this ordinance, otherwise the Application shall be denied. A written copy of the Town Board's decision shall be mailed by first class mail to the Applicant and to each person who has filed a request for a copy of the decision with the Clerk of the Town.

- 10.7.** No later than 45 days after the public information hearing provided for in sub-section 10.5 of this ordinance, the Town Board may convene a contested case hearing regarding the Application. The Town Board shall convene such a contested case hearing if requested to do so by any person who is a resident or citizen of the Town, by any person that owns real estate in the Town or by any person that would be directly affected by the proposed Large Scale Commercial Activity. Such demand shall be in writing and shall be submitted to the clerk of the Town no later than 30 days after the public information hearing provided for in sub-section 10.5 of this ordinance. Once commenced, any such contested case hearing may be continued from time to time to allow for orderly resolution of the issues involved in such proceeding. Such contested case hearing shall be conducted under the rules set forth in Chapter 68 Wisconsin Statutes. Any person that owns real estate in the Town or by any person that would be directly affected by the proposed Large Scale Commercial Activity may intervene in such contested hearing with all of the rights of a party to adduce evidence, examine and cross examine witnesses, submit briefs and argue points of fact and law.
- 10.8.** If a contested case hearing is convened as provided in sub-section 10.7 of this ordinance, the Town Board, no later than 45 days following the completion of the hearing and the filing of briefs, if requested by the officer presiding at the contested case hearing, shall either grant or deny the Application. The Application shall be granted if the Town Board finds that, based upon substantial and reliable evidence adduced at the hearing the proposed Large Scale Commercial Activity satisfies each of the Standards, otherwise the Application shall be denied. In such contested case hearing the Applicant shall have the burden of persuasion. The decision of the Town Board shall be based upon a written analysis of whether the evidence adduced at the hearing demonstrates the proposed Large Scale Commercial Activity either does or does not satisfy each of the Standards set forth in section 8 of this ordinance. A written copy of the Town Board's decision shall be mailed by first class mail to the Applicant and to each person who has filed a request for a copy of the decision with the Clerk of the Town.
- 10.9.** Notwithstanding sub-sections 10.6 and 10.8 of this ordinance, the Town Board may, after conducting a contested case hearing pursuant to sub-section 10.7, grant an Application if the Town Board concludes that even though the proposed Large Scale Commercial Activity does not satisfy each of the Standards in section 8, the

evidence adduced at such hearing clearly and convincingly demonstrates the public interest will be better served by granting the Application than by denying it. Any such decision shall be accompanied by a written analysis explaining the basis of the Town Board's decision. A decision granting a Large Scale Commercial Activity Permit under this sub-section 10.9 shall not take effect until 30 days after it is issued by the Town Board. A written copy of the Town Board's decision shall be mailed by first class mail to the Applicant and to each person who has filed a request for a copy of the decision with the Town Clerk.

**10.10.** A Large Scale Commercial Activity Permit may be subject to reasonable restrictions and conditions on the Large Scale Commercial Activity permitted as determined by the Town Board and set forth in the permit.

**10.11.** Any decision of the Town Board granting or denying an Application shall be reviewable in the Circuit Court for Polk County pursuant to section 68.13 Wisconsin Statutes.

- 11. Time Requirements.** The Town Board shall strive in good faith to meet the time requirements set forth in this ordinance. The failure of the Town Board to meet any such time requirements shall not, however, result in an automatic grant or denial of an Application.
- 12. Enforcement.** The Town Board may commence an action in Circuit Court to enjoin any violation of this ordinance. In addition, any person with a substantial interest, including, but not limited to, an interest in environmental protection or the preservation of the rural character of the Town, that is injured or threatened with injury from proposed or actual Large Scale Commercial Activity may commence an action in Circuit Court to enjoin any violation of this ordinance. This provision is not exclusive, and is not intended to displace or otherwise affect any other remedy existing at law or equity to redress any harm resulting from Large Scale Commercial Activity.
- 13. Pre-Existing Facilities.** This ordinance does not apply to any facility in operation in the Town on the Effective Date, provided, however, this ordinance shall apply to any such facility at such time as its owner or operator proposes to expand it so that the criteria set forth in section 3.2 or the related definitions are exceeded by more than 10%.
- 14. Severance.** If any part of this ordinance is finally determined by a court of competent jurisdiction to be invalid, the remainder of this ordinance shall remain in full force and effect.



ORDINANCE TO AMEND ORDINANCE 11-09  
REGULATING LARGE SCALE COMMERCIAL ACTIVITY IN THE TOWN OF LAKETOWN

The Town Board of the Town of Laketown, hereby amends Ordinance 11-09 Regulating Large Scale Commercial Activity in the Town of Laketown.

1. **Purpose.** The purpose of this amendment is to clarify the Ordinance Regulating Large Scale Commercial Activity in the Town of Laketown (the “Ordinance”) to facilitate its purpose and to exclude farming and pre-existing facilities from the provisions of the Ordinance.

2. **Amendment.** The Ordinance is hereby amended as follows:

2.1 Section 3.2 of the Ordinance is amended to read as follows:

“Large Scale Commercial Activity” means commercial activity that takes place in the Town and that, when operational, reasonably may be expected to possess two or more of the following characteristics: (i) it generates excess vehicular traffic; (ii) it generates excess stress on the road bed, bridges and other infrastructure; (iii) it generates excess noise; (iv) it generates excess levels of odor, dust, fumes, particulate matter, or radioactive material; (v) it requires or results in a major disturbance of the currently existing soil or topography; (vi) its activities in the Town require a license or permit from the Wisconsin Department of Natural Resources, the Wisconsin Waste Facility Siting Board, the Wisconsin Division of Gaming in the Department of Administration, the United States Environmental Protection Agency, the United States Army Corps of Engineers or any division thereof, or the United States Bureau of Alcohol, Tobacco and Firearms; (vii) its activities in the Town involve incarceration or preventive detention of persons charged with or convicted of a crime or crimes; (viii) its activities in the Town are subject to regulation under the Indian Gaming Regulatory Act of 1988. If the requirements of this sub-section 2.1 are met, Large Scale Commercial Activity includes all tangible physical activities taking place in the Town in anticipation of the production of goods or providing of services, including, without limitation, excavation and construction. Commercial activity that first becomes operational after the Effective Date that is not Large Scale Commercial Activity because it

does not meet the requirements of this sub-section 3.2, becomes Large Scale Commercial Activity subject to this ordinance if at any future time such commercial activity meets the requirements of this sub-section 3.2.

**2.2** Sub-section 3.3 is amended to read as follows:

Farming Excluded. Notwithstanding any other provision of this ordinance, Large Scale Commercial Activity does not include farming, including the raising or management of livestock and poultry.

**2.3** Sub-section 4.13 is stricken and the remaining sub-sections of section 4 are renumbered 4.13, 4.14, 4.15, and 4.16.

**2.4** Section 13 is amended to read as follows:

Pre-Existing Facilities. This ordinance does not apply to any facility in actual operation in the Town on November 24, 2009.

**3. Effective Date.** This amendment of the Ordinance is effective immediately upon publication.

This ordinance was adopted by a majority of the town board on a roll call vote with a quorum present and voting and proper notice having been given.

The town clerk shall publish this ordinance as required under Wis. Stat. § 60.80. This ordinance is effective immediately upon publication.

Adopted January 05, 2011.

By: Daniel K. King Chairman  
Daniel King, Town Chairman

By: Patsy Gustafson Town Clerk  
Patsy Gustafson, Town Clerk

# DATCP/DNR JOINT PROCEDURES FOR LIVESTOCK ORDINANCE APPROVAL AND REVIEW PROCESS UNDER S. 92.15

## I. GENERAL CONSIDERATIONS FOR REVIEWS UNDER S. 92.15, STATS.

If a local government is proposing to enact a livestock ordinance for water quality protection that is more stringent than the prohibitions or performance standards (ss. NR 151.05 to 151.08), conservation practices or technical standards ( ch. ATCP 50), the local governmental unit must receive approval from either DNR under s. NR 151.096, or DATCP, under ATCP 50.60. DNR or DATCP may only give approval for a more stringent ordinance if the DNR or DATCP determines that the more stringent ordinance is needed to meet water quality standards. DNR and DATCP are partner agencies linked together by this approval process, and this relationship gives rise to need for coordination and cooperation in reviewing and approving more stringent ordinances.

The purpose of this document is to outline joint procedures, consistent with the requirements of s. ATCP 50.60 and NR 151.096, Wis. Adm. Code and s. 92.15, Stats., for granting or denying requests for approval.

DATCP and DNR agree on the following general principles:

- Local governments have the option to submit proposed ordinances to DNR or DATCP for approval.
- The agency receiving the request ("receiving agency") will serve as the lead agency and will have open and timely communication with the partner agency on all key matters related to the review process. Upon receipt of an ordinance submittal under s. 92.15, Stats., the receiving agency shall arrange a meeting with the partner agency to discuss the proposal.
- The receiving agency will ensure that the partner agency is invited to participate in any formal communications and meetings with the affected local government.
- Through the consultation processes, the two agencies will attempt to reach mutually acceptable responses.
- If there is a disagreement, the receiving agency will interpret its rule and issue the final decision, however, prior to issuance of the final decision, the Division Administrator<sup>1</sup> of the receiving agency shall notify the Division Administrator of the partner agency of the disagreement and proposed decision.

## II. ORDINANCE REVIEW PROCEDURES UNDER S. 92.15

### A. Responsibility for seeking approval

1. Local government should use its own judgment about seeking approval based on its interpretation of the ordinance.
2. Local government should seek legal advice to make this determination.
3. DNR and DATCP will not compel local governments to seek approval, but will encourage compliance with s. 92.15 for more stringent ordinances.

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<sup>1</sup> The relevant administrators are from these divisions/offices: Agricultural Resource Management, Wisconsin Department of Agriculture, Trade and Consumer Protection, and Office of Business Support & External Services, Wisconsin Department of Natural Resources.



## DATCP/DNR JOINT PROCEDURES FOR LIVESTOCK ORDINANCE APPROVAL AND REVIEW PROCESS UNDER S. 92.15

**Note:** There may be times when the agencies may share concerns about ordinance provisions that are inconsistent with state law (See Part III for discussion of related review procedures). Also DNR or DATCP may raise concerns about provisions not identified by local government during the s. 92.15 review process, although neither agency is obligated to do this.

### B. Review and approval is not required for:

1. Ordinance provisions that are in fact not more stringent than state standards or practices.
  - i. Evaluation is based on a comparison to the NR 151 performance standards and prohibitions, and conservation practices and technical standards in ATCP 50.
2. Ordinance provisions that:
  - i. Address cropping practices not directly related to livestock operations;
  - ii. Are not related to water quality (e.g. road setbacks);
  - iii. Were enacted prior to October 1, 2002<sup>2</sup>; and
  - iv. Are included in permit conditions but not codified in the ordinance.<sup>3</sup>

**Note:** If an ordinance creates a new or unique standard (which isn't covered in the performance standards and prohibitions, technical standards, or conservation practices), local governments should determine if review and approval is appropriate based on considerations such as the current standards and regulatory scheme for farms. For example, a requirement for 6 months of manure storage is more stringent because the current nutrient management standard can be implemented without storage, and this degree of storage is only mandated under NR 243 for CAFOs.

### C. Submittal of Request

1. Requests for review and approval of a more stringent ordinance under s. 92.15, Stats., may be submitted to either DATCP or DNR; however, local governments should recognize that the receiving agency will consult with the partner agency to reach a mutually acceptable resolution.
2. The submittal must:
  - i. Be in writing.
  - ii. Be submitted by the proper authority [i.e. the head of a local government (e.g. county executive) or the head of a local government's governing board (e.g. board chair)].
  - iii. Identify the provisions of the ordinance that are more stringent and require approval.

<sup>2</sup> Although review of ordinances or regulations that were enacted before October 1, 2002 is not required, the agency staff may conduct a review and render a formal decision for the local government. Due to workload constraints and other policy considerations, staff will not conduct such review for previously enacted ordinances (enacted prior to October 1, 2002), absent compelling circumstances. For example, a review might be considered if a person(s) is challenging the ordinance or threatening to challenge the ordinance for noncompliance with s. 92.15, Stats. Any submittals for previously enacted ordinances must still follow the procedures of s. NR 151.096, and should identify the person(s) challenging the ordinance.

<sup>3</sup> Sec. 93.90 precludes a local government from prohibiting or disapproving a livestock facility based on a permit condition that requires a more stringent standard unless the local government codifies the requirement in an ordinance.



## DATCP/DNR JOINT PROCEDURES FOR LIVESTOCK ORDINANCE APPROVAL AND REVIEW PROCESS UNDER S. 92.15

- iv. Include explanation and documentation supporting why the specific regulatory provisions are needed to achieve water quality standards.
- v. Include an explanation as to why water quality standards cannot be achieved with a current standard.
- vi. Indicate that a full copy of the request was provided to the partner agency (The agency that is not requested to issue an approval).

**Note:** DNR and DATCP rules treat Section C.2.v. differently. Under DNR's rule, this item is not a basis for denial, but it is useful information. DATCP is required under its rule to consider this item in granting approval. DATCP and DNR recognize this discrepancy, and in an effort to facilitate concurrence on the decision have developed a review criterion that can be applied by both agencies (see the note under Section E.2)

3. Either DATCP or DNR may informally communicate with a local government about a proposed request for approval. The purposes of informal communications include, but are not limited to, the following:
  - i. Learn more about local implementation efforts to date and assess impacts of these efforts on water quality.
  - ii. Provide technical assistance to help a local government identify water quality concerns and appropriate mechanisms to resolve those concerns.
  - iii. Clarify procedures for review and approval.
  - iv. Provide information regarding what is considered more stringent, and the criteria for approval of more stringent provisions.
4. If an agency engages in informal communications, it will advise the local government that the informal contacts should not be construed as a formal decision on its ordinance. Also the agency will share information on its informal contacts with the partner agency.

### D. Determination of Completeness

1. The receiving agency shall determine whether the request for approval meets basic submittal requirements. If the receiving agency finds that a submittal is missing information listed above in section C. 2., or was submitted by someone that is not authorized under section C.2.ii., , a written communication will be sent to the local government that explains why the submittal was incomplete or improperly submitted and the steps necessary to remedy the deficiency.
2. The receiving agency may seek additional information and clarification from the local government prior to making a determination that the application is complete. Any additional information or clarification will be shared with the partner agency.
3. The receiving agency shall inform the local government in writing when it has made a determination that the submittal is complete. The receiving agency may determine that a submittal package is complete only after it receives the information required under section C above, and the partner agency has been provided copies of all submissions. There are no time constraints on a completeness determination: it will be made when the local government meets all requirements for a submittal.



## DATCP/DNR JOINT PROCEDURES FOR LIVESTOCK ORDINANCE APPROVAL AND REVIEW PROCESS UNDER S. 92.15

4. The written communication shall specify that a completeness determination does not signify approval of the more stringent ordinance provisions.
5. The receiving agency will communicate in writing to the partner agency any decision regarding the completeness of the request or the need for additional information. This includes providing the partner agency with a written copy of any correspondence with the local government.

### E. Decision on Request for Approval

1. Within 90 days after the receiving agency informs the local government that the application is complete, it shall notify the local government of its decision as to whether the ordinance or regulation, or portion thereof, is approved or denied and shall state the reasons for its decision.
2. In reviewing a request for approval of more stringent standards, the receiving agency, in consultation with the partner agency, shall consider the following:
  - i. Information showing that a specific water quality standard (e.g. dissolved oxygen) is not being met. This includes any standards numeric or narrative in chs. NR 102 through 106.
  - ii. Information that demonstrates the existing performance standard or prohibition will not achieve water quality standards.
  - iii. Information showing that the proposed ordinance provisions will result in a reasonable reduction in risk to water resources.
  - iv. An explanation as to why the proposed ordinance provision is not overly stringent.

**Note:** DATCP and DNR recognize that their rules use a different standard for review related to more restrictive alternatives. In an effort to harmonize the two rules and provide for more uniform treatment, the two agencies have developed a review criterion to address Section C.2.v. As a part of the review, the local government may be asked to provide additional information related to the implementation of the existing agricultural performance standards. DNR will not use this criterion as a basis for denial, but believes it provides useful information. DATCP is required under its rule to consider this item in granting approval.

3. The receiving agency may determine that a particular ordinance provision is in fact not more stringent than state standards, prohibitions and practices. This determination will be made in consultation with the partner agency. In responding to the information provided through a consultation, the receiving agency will give the recommendations of the partner agency due weight especially in areas where the partner agency staff have expertise. Unless the local government withdraws its request for approval of a provision that is in fact not more stringent, the receiving agency will specifically find that approval of the provision is not required as part of its final decision.

**Note:** If an agency receives a submittal from a local government and the ordinance actually appears to be less stringent than the performance standards or prohibitions, the agency may notify the local government in writing that the ordinance appears to be less stringent.

4. The receiving agency will actively work with the partner agency and try to reach consensus on the final decision. DNR and DATCP will work to resolve any disagreements and strive

**DATCP/DNR JOINT PROCEDURES FOR LIVESTOCK ORDINANCE  
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to achieve consensus informally. If disagreements cannot be resolved by program staff, the matter will be referred to the Division Administrators for discussion and if possible, resolution. The receiving agency shall share its preliminary decision with the partner agency and seek its recommendations.

5. The receiving agency shall issue a final decision in writing. It shall send the final decision to the local government and shall send a copy to the partner agency.

**III. RELATED ORDINANCE REVIEW PROCEDURES**

**1. Manure Storage Ordinance**

In the course of conducting required reviews under s. 92.16, Stats., DATCP may identify ordinance provisions that are inconsistent with state standards and practices. Any provisions so identified shall be shared with the affected local government and DNR. DNR shall be consulted where appropriate.

**2. Livestock Facility Siting Ordinances**

As a matter of operating procedure, DATCP will review proposed and adopted ordinances for compliance with s. 93.90, including compliance with requirements for more stringent regulation. DATCP may identify ordinance provisions subject to s. 92.15 approval. Any provisions so identified shall be shared with the affected local government and DNR. DNR shall be consulted where appropriate.

By: Ben Brancel Date: 9-30-15  
Ben Brancel, Secretary  
Department of Agriculture, Trade and Consumer Protection

By: Cathy Stepp Date: 9/18/15  
Cathy Stepp, Secretary  
Department of Natural Resources



State of Wisconsin  
Governor Tony Evers

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**Department of Agriculture, Trade and Consumer Protection**  
Secretary-designee Randy Romanski

Malia Malone  
Polk County Corporation Counsel  
1005 West Main St, Suite 100  
Balsam Lake, WI 54810

October 15, 2020

RE: Polk County Proposed Concentrated Swine Feeding Operations Ordinance

Dear Ms. Malone,

At your request, and in accordance with Wis. Stat. s. 92.05(3)(l) and Wis. Admin. Code s. ATPC 50.54(1), program staff and I reviewed the attached Polk County ("county") Concentrated Swine Feeding Operations Ordinance ("proposed ordinance") submitted by email on August 20, 2020. The county's proposed ordinance does not appear to be consistent with Wis. Stat. ss. 92.15 and 93.90, and Wis. Admin. Code ch. ATPC 51 ("livestock facility siting law"). At the county's request, the department can provide further direction and technical assistance in drafting regulations that are consistent with livestock facility siting law.

The proposed ordinance has been reviewed for consistency with Wis. Stat. ss. 92.15 and 93.90, Wis. Admin. Code ch. ATPC 51, and other applicable law. Wis. Stat. s. 92.15 establishes the authority of local governmental units to regulate livestock operations that are consistent with and do not exceed the performance standards, prohibitions, conservation practices and technical standards under s. 281.16(3). Although the stated purpose of the proposed ordinance is to regulate swine CAFOs "without respect to siting," the proposed ordinance incorporates several provisions that fall within the scope of livestock facility siting law. By requiring local approval for "new and expanded livestock facilities" of 1,000 animal units or greater in size "prior to conducting any operations," the proposed ordinance must be consistent with livestock facility siting law (see s. 93.90(3)(a)). Therefore, the county must grant or deny approval based on the standards, application, and timelines articulated under livestock facility siting law (see Wis. Admin. Code s. ATPC 51.02(1)). Potential issues related to the proposed ordinance are as follows:

1. The proposed ordinance relies on authority granted under Wis. Stat. s. 92.15 to regulate livestock operations. The regulation of swine-specific livestock operations would likely require approval by DATCP or DNR to prove that swine-specific regulation is necessary to achieve water quality standards under s. 92.15(3)(a). This proposed ordinance implies that pathogens related to swine and swine manure are potential sources of water contamination; however, other livestock species and manure also have the potential to carry pathogens. The conditions of approval enumerated under Section 10, while focused on public health and safety, would grant the county authority to apply more stringent regulations for water quality than required under s. 281.16(3).
2. Section 1 references powers granted to counties pursuant to ss. 59.03(2), 59.70, 254.51(5), 254.59(7), and 92.15. Notwithstanding, s. 59.03(2), for statutory home rule, and s. 92.15(3)(a), for local regulation of livestock operations that exceed performance standards, prohibitions, conservation practices and technical standards under s. 281.16(3), a political subdivision may not disapprove or prohibit the siting of a livestock facility or expansion unless one of the conditions under s. 93.90(3)(a) applies.



3. Section 2 states the purpose of the proposed ordinance is to regulate swine feeding operations, but later refers to “livestock facilities.” Conflicting language may imply that the intent of this proposed ordinance is to regulate livestock facilities instead of strictly the operations of swine feeding operations.
4. There are no state standards for livestock operations incorporated by text or by reference in the proposed ordinance. Under s. 92.15(2), local governments have the authority to “enact regulations of livestock operations that are consistent with and do not exceed the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 (3).” If adopting an ordinance under the authority of s. 92.15, the standards to which you hold livestock operations must be enumerated in the ordinance. An example of this would be requiring that land application of manure be done in compliance with Wis. Admin. Code ch. NRCS 590, the standard for nutrient management planning (see ss. NR 151.07 and ATPC 50.04(3)).
5. Appendix A, containing “scientific articles and research studies,” has not been provided to us for review, so we cannot advise on its applicability for the adoption of more stringent standards per Wis. Stat. s. 92.15(3)(a) or Wis. Admin. Code s. ATPC 51.10(3).
6. The term “Swine units” is used several times in the proposed ordinance but not defined. Is this referencing “animal units” and the common application of the term, or each individual swine as one “Swine unit”?
7. The definition in Section 3.2 for a “Large-Scale Concentrated Swine Feeding Operation” refers to “a lot or facility, other than a pasture or grazing area, where 1,000 or more Swine units have been, are, or will be stabled or concentrated.” Use of the term “are” extends these regulations to existing operations. This is in conflict with the livestock facility siting law which only regulates “new or expanding” operations, and Wis. Stat. s. 92.15, which excludes operations existing as of October 14, 1997. This definition also defines two or more smaller lots or facilities as a single facility if they share staff, vehicles or equipment. This definition more broadly defines operations than Wis. Admin. Code ss. NR 243.03(4) and ch. ATPC 51, and may be more difficult to administer. This may have the effect of lumping together smaller operations that otherwise would not be treated as related under chs. NR 243 or ATPC 51.
8. The definition in Section 3.3 for “operations” includes “storing and managing Swine and other waste materials.” Polk County does already have a Manure and Water Quality Management Ordinance (Ordinance 39-17); what is this proposed ordinance aiming to regulate in regards to manure storage? Is it different than the current Manure and Water Quality Management Ordinance? The county may consider updating its Manure and Water Quality Management Ordinance to include regulations for state standards on non-point source pollution.
9. At several points, a permit under this proposed ordinance is referenced as both a “CAFO Operations Permit” and a “license.” A uniform term should be used.
10. In Sections 7, 8 & 14, the fees associated with applying for and reviewing a permit/license application are substantial, including: \$1 per “swine unit” per year and fully compensating all legal, consulting, and “other expenses” reasonably incurred in reviewing and considering the application. The county may wish to consult its legal counsel to ensure compliance with the Wis. Stat. s. 66.0628(2) requirement that a fee imposed by a political subdivision shall bear a reasonable relationship to the service for which the fee is imposed.

11. Section 8.4 and 8.5 reference different timelines for County Board review of an application. One states “the next regular County Board meeting for which required notice can be provided,” and the other states “at least sixty (60) days after it has been determined to be complete.”
12. Conditions in Section 10 that exceed state standards have not met all the requirements of s. ATCP 51.10(3) or Wis. Stat. s. 92.15(3). Conditions that may be consistent with state standards per s. 92.15(2) do not incorporate them by text or reference, so it is not possible to determine what conditions are consistent with state standards. The conditions are ambiguous and do not specify management practices or other ways to implement them.
13. In Section 15, with regard to “cost of abatement,” the county may wish to consult its legal counsel to determine if the proposed ordinance’s language related to deeming an agricultural practice “public nuisance” meets the provisions of s. 823.08(3)(a).

This document is for guidance purposes only and does not constitute legal advice. The county is responsible for analyzing the legal adequacy of its proposed regulations.

Thank you for taking the time to submit this ordinance for the department’s review and feedback. If the county has any additional questions about the department’s review, the livestock facility siting law, or operations ordinances, please contact Tim Jackson.

Sincerely,

*Sheri Walz /s/*

Sheri Walz

Legal Counsel

(608)224-4740

Sheri.Walz@wisconsin.gov

*Tim Jackson /s/*

Tim Jackson

Ag Land Use and Ordinance Specialist

(608)224-4630

Timothy.Jackson@wisconsin.gov

**From:** [Malone, Malia](#)  
**To:** [Jackson, Timothy R - DATCP](#)  
**Cc:** [Smith, Katy A – DATCP](#); [Vince Netherland](#)  
**Subject:** RE: Polk County Proposed Swine CAFO Ordinance  
**Date:** Thursday, August 20, 2020 10:52:09 AM  
**Attachments:** [CAFO Op Draft.docx](#)

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Hi Tim,

Attached is an operations ordinance that some Supervisors are advocating. It is adopted primarily from Eureka Township and Bayfield County. We invite your feedback.

Take care,

Malia

Corporation Counsel  
715-485-9230  
[malia.malone@co.polk.wi.us](mailto:malia.malone@co.polk.wi.us)

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**From:** Jackson, Timothy R - DATCP [mailto:[timothy.jackson@wisconsin.gov](mailto:timothy.jackson@wisconsin.gov)]  
**Sent:** Monday, August 3, 2020 10:51 AM  
**To:** Jason Kjeseth <[jason.kjeseth@co.polk.wi.us](mailto:jason.kjeseth@co.polk.wi.us)>; Malia Malone <[malia.malone@co.polk.wi.us](mailto:malia.malone@co.polk.wi.us)>  
**Cc:** Smith, Katy A – DATCP <[Katy.Smith@wisconsin.gov](mailto:Katy.Smith@wisconsin.gov)>  
**Subject:** Polk County Proposed Swine CAFO Ordinance

Jason and Malia,

Attached is a letter of review for Polk County's currently proposed swine CAFO ordinance. We reviewed the copy available at <https://www.co.polk.wi.us/proposedordinances> under the CAFO provisions heading. We would like to work with the county further if you wish to implement an ordinance that regulates livestock facilities. The staff here at DATCP can provide assistance in the drafting of a livestock facility siting ordinance (including conditional use provisions) consistent with the livestock facility siting law. If you have questions about the review letter or livestock facility siting in general, please feel free to contact me.

Thank you,

Tim Jackson  
Agricultural Land Use, Zoning and Ordinance Specialist  
Bureau of Land and Water Resources/Division of Agricultural Resource Management  
Wisconsin Department of Agriculture, Trade and Consumer Protection  
608-224-4630  
[timothy.jackson@wisconsin.gov](mailto:timothy.jackson@wisconsin.gov)

# **POLK COUNTY, WISCONSIN**

## **ORDINANCE NO. \_\_\_\_\_**

### **CONCENTRATED SWINE FEEDING OPERATIONS ORDINANCE**

The Polk County Board of Supervisors hereby ordain as follows:

#### **Section 1. Authority**

This Ordinance is adopted pursuant to the powers granted under Wisconsin Constitution, and Wisconsin Statutes including but not limited to Section 92.15. This Ordinance is further adopted pursuant to the powers granted to counties pursuant to Wisconsin Statutes § 59.03(2); 59.70(1); 254.51(5); 254.59(7) for the protection of public health, safety and general welfare.

#### **Section 2. Purpose**

The purpose of this Ordinance is to effectively, efficiently and comprehensively regulate the operation of Large-Scale Concentrated Swine Feeding Operations of 1,000 Swine units or greater (“CAFO”) in Polk County, without respect to siting, to protect public health (including human and Swine health), safety, and general welfare, to prevent pollution and the creation of private nuisances and public nuisances, and to preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of Polk County and to achieve water quality standards within Polk County. This Ordinance sets forth the procedures for obtaining a CAFO Operations Permit for the operation of new and expanded livestock facilities in Polk County (sometimes referred to as “the County”).

The need for this Ordinance is based upon the County’s obligation to protect the health, safety and general welfare of the public and is based upon reasonable and scientifically defensible findings, as adopted by the County Board, clearly showing that these requirements are absolutely necessary to protect public health and safety. Specifically, the County finds that there is ample scientific research and evidence establishing that CAFO’s pose a significant risk to the integrity of the County’s groundwater, surface water, air quality, the health and well-being of its residents and local property values. These findings are based in part on the scientific articles and research studies discussed and listed below and in Appendix A.

Pathogens found in Swine manure that have been determined to cause illness in humans include the following:

Pathogen	Disease	Symptoms
<i>Bacillus anthracis</i>	Anthrax	Skin sores, headache, fever, chills, nausea, vomiting
<i>Escherichia coli</i>	Colibacillosis, Coliform mastitis-metris	Diarrhea, abdominal gas
<i>Leptospira pomona</i>	Leptospirosis	Abdominal pain, muscle pain, vomiting, fever
<i>Listeria monocytogenes</i>	Listeriosis	Fever, fatigue, nausea, vomiting, diarrhea
<i>Salmonella species</i>	Salmonellosis	Abdominal pain, diarrhea, nausea, chills, fever, headache
<i>Clostridium tetani</i>	Tetanus	Violent muscle spasms, lockjaw, difficulty breathing
<i>Histoplasma capsulatum</i>	Histoplasmosis	Fever, chills, muscle ache, cough rash, joint pain and stiffness
<i>Microsporum and Trichophyton</i>	Ringworm	Itching, rash
<i>Giardia lamblia</i>	Giardiasis	Diarrhea, abdominal pain, abdominal gas, nausea, vomiting, fever
<i>Cryptosporidium species</i>	Cryptosporidiosis	Diarrhea, dehydration, weakness, abdominal cramping

### Section 3. Definitions

1. “Applicant” or “permittee” refer to the entity seeking a CAFO Operations Permit under the terms of this Ordinance.
2. “Large-Scale Concentrated Swine Feeding Operation” or “CAFO” means a lot or facility, other than a pasture or grazing area, where 1,000 or more Swine units have been, are, or will be stabled or concentrated, and will be fed or maintained by the same owner(s), manager(s) or operator(s) for a total of 45 days or more in any 12-month period. Two or more smaller lots or facilities under common ownership or common management or operation are a single Large-Scale Concentrated Swine Feeding Operation or CAFO if the total number of Swine stabled or concentrated at the lots or facilities equal 1,000 or



more Swine units and at least one of the following is true: (1) The operations are adjacent; (2) The operations utilize common systems for the land spreading of manure or wastes; (3) Swine are transferred between the lots or facilities; (4) The lots or facilities share staff, vehicles, or equipment; or (5) Manure, barnyard runoff or other wastes are comingled in a common storage facility at any time.

3. “Operations” means a course of procedure or productive activity for purposes of conducting and carrying on the business of a CAFO including populating Swine housing facilities, storing and managing Swine and other waste materials, and conducting any other business activities.
4. “Pollution” means degradation that results in any violation of any environmental law as determined by an administrative proceeding, civil action, criminal action or other legal or administrative action investigation or proceeding.
5. “Private Nuisance” means a nontrespassory invasion of another’s interest in the private use and enjoyment of land, and the invasion is either: (1) intentional und unreasonable, or (2) unintentional and otherwise actionable under the rules of controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.
6. “Public Nuisance” means a thing, act, occupation, condition or use of property which shall continue for such length of time as to “ (1) substantially annoy, injure or endanger the comfort, health, repose or safety of the public; (2) in any way render the public insecure in life, health or in the use of property; or (3) unreasonably and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage or public use any street, alley, highway, navigable body of water or other public way or the use of public property or other public rights.

#### **Section 4. License Required**

Regardless of siting, a livestock facility with 1,000 or more Swine units shall be allowed to conduct operations within Polk County only as provided under this Ordinance. Applicants shall apply for a CAFO Operations Permit to operate in Polk County under this Ordinance prior to conducting any operations.

##### **1. General**

A CAFO Operations Permit issued by Polk County is required for new or expanded livestock facilities that will operate with 1,000 or more Swine units.

## 2. Licenses for Existing Livestock Facilities

A CAFO Operations Permit is required for the expansion of a pre-existing or previously approved livestock facility if the number of Swine units kept at the expanded livestock facility will exceed 1,000 animal units.

### **Section 5. Licensing Administration**

The County Board shall administer this Ordinance and related matters thereto and shall have the authority to issue licenses under this Ordinance.

### **Section 6. License Application and Standards**

The applicant shall apply for a CAFO Operations Permit prior to conducting any operations associated with a Large-Scale Concentrated Swine Feeding Operation in Polk County. The application shall be submitted on a form provided by the County Clerk.

The County Board shall decide whether to approve and issue a CAFO Operations Permit to an applicant that has submitted a complete application and paid the required application fee, after holding a public hearing on the application and considering any evidence concerning the application and the proposed operation presented by the applicant and any other interested persons or parties, including members of the public, other governmental agencies or entities, special legal counsel and expert consultants who may be hired by the County Board to review the application and advise the County Board.

The County Board shall approve and issue a CAFO Operations Permit, either with or without conditions, if it is determined by a majority vote of all members, supported by clear and convincing evidence presented by the applicant, that: the applicant can and will comply with all conditions imposed by the County; that the applicant's operations as proposed, with or without conditions, will protect public health (including human and Swine health), safety, and general welfare, prevent pollution, prevent the creation of private nuisances, prevent the creation of public nuisances and preserve the quality of life, environment, existing small-scale livestock and other agricultural operations of Polk County; and that the applicant and the application meet all other requirements of this Ordinance.

### **Section 7. License Application Fee**

A non-refundable application fee of One Dollar (\$1.00) per proposed animal unit payable to Polk County shall accompany an application for the purpose of offsetting the County costs to review and process the application.

## **Section 8. Application Procedure**

1. An applicant for a CAFO Operations Permit shall complete a Polk County Swine CAFO Operations Permit Application and pay the required application fee. The applicant must be an owner or officer of the corporate entity proposing to operate the CAFO.
2. Upon signing and submitting a CAFO Operations Permit Application to the County Clerk, the applicant shall agree to fully compensate the County for all legal services, expert consulting services, and other expenses which may be reasonably incurred by the County in reviewing and considering the application, regardless of whether or not the application for a permit is subsequently approved, with or without conditions, or denied by the County Board. The applicant shall submit an administrative fee deposit as required by the County Clerk.
3. After receiving the application and the application fee, the County Clerk shall mail a notice that a CAFO Operations Permit Application has been received to all landowners within 3 miles of the proposed CAFO with the date and time of a County Board meeting at which the application will be considered. The notice shall provide information on how interested persons and parties may inspect and obtain a copy of the application.
4. The County Clerk shall place the application on the agenda for the next regular County Board meeting for which required notice can be provided.
5. At a formal public hearing held by the County Board on the application at least sixty (60) days after it has been determined to be complete, the County Board shall consider any evidence concerning the application and the proposed CAFO presented by the applicant and any other interested persons or parties, including members of the public and other governmental agencies or entities, and special legal counsel and expert consultants who may be hired by the County to review the application and advise the County Board.
6. In its review and consideration of a CAFO Operations Permit Application, the County Board shall act in a quasi-judicial capacity, and its final decision on whether to approve and issue a CAFO Operations Permit, either with or without conditions, shall be based on written findings of fact and conclusions of law consistent with the provisions of this Ordinance, which shall be filed with the County Clerk and served on the applicant by regular U.S. Mail.
7. The County Board shall approve and issue a CAFO Operations Permit, either with or without conditions, if it determines by a majority vote of all members of the County Board, supported by clear and convincing evidence presented by the applicant, that the operations of the proposed CAFO, with or without conditions, will protect health (including human and Swine), safety, and general welfare, prevent pollution and the

creation of private nuisances and public nuisances, and preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of the County and that the application meets all other requirements of this Ordinance.

## **Section 9. Financial Surety**

A CAFO Operations Permit shall require the applicant and all contractors, subcontractors, agents and representatives, to ensure that sufficient funds will be available for pollution clean-up, nuisance abatement, and proper closure of the operation if it is abandoned or otherwise ceases to operate as planned and permitted, based on the following provisions:

1. A determination shall be made regarding the financial assurance level required by the scale of the operation. As a condition of the license, the required financial assurance shall be filed with Polk County in an amount sufficient to clean up environmental contamination if the same were to occur, to abate public nuisances caused by the operation, including but not limited to the testing and replacement of any potentially contaminated private and public wells and water supplies within the areas subject to operations, and to ensure proper closure of the operations should the applicant elect to close or should closure occur for some other reason. Upon notification of the required financial assurance, but prior to commencing operations, the applicant shall file with the County the financial assurance conditioned on faithful performance of all requirements for the license. Upon notification of finance assurance or deposit approval and conformance with license conditions, the applicant may commence operations.
2. The applicant may deposit cash or irrevocable letters of credit established with a bank acceptable to the County as the required financial assurance.
3. The County may reevaluate and adjust accordingly the amount of the financial assurance required on an annual basis.

## **Section 10. Conditions of Approval**

A CAFO Operations Permit may be approved with conditions to protect public health (including human and Swine health), safety, and general welfare, prevent pollution and the creation of private nuisances and public nuisances, and preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of the County. To the extent not expressly or otherwise preempted by Wis. Stat. 93.90, and Wis. Admin. Code Ch. ATCP 51 or any other provision of state or federal law, such conditions may include, but are not limited to:

1. Conditions relating to the operational characteristics of the proposed operation, to protect public health, prevent point and non-point sources of air and water pollution, and prevent private nuisances and public nuisances;

2. Conditions relating to the management of Swine and other waste that may be generated as part of an operation's ongoing operation, to protect public health, prevent point and non-point sources of air and water pollution, and prevent private nuisances and public nuisances;
3. Conditions relating to the population and depopulation of individual Swine housing facilities, to protect public health and prevent the spread of Swine-borne and vectorborne disease, to assure a safe level of sanitation, and to assure human health hazard control or health protection for the community;
4. Conditions relating to biosecurity and the maintenance of Swine health and welfare, to prevent the spread of Swine-borne and vector-borne disease, to protect public health, and provide for Swine safety and welfare;
5. Conditions relating to transportation of Swine as part of the ongoing operations, to protect public health, prevent pollution, and prevent private nuisances and public nuisances;
6. Conditions relating to protection of private and public drinking and agricultural wells, and other public water supplies, as part of an ongoing operation to protect public health, prevent pollution, and prevent private nuisances and public nuisances;
7. Conditions relating to air emissions and dust control as part of an ongoing operation, to protect public health, prevent pollution and prevent private nuisances and public nuisances;
8. Conditions relating to protection of the private and public property rights and property values of affected property owners, as part of an ongoing operation, to protect the general welfare of the County's residents and property owners, and to prevent private nuisances and public nuisances;
9. Conditions relating to permit compliance, enforcement and monitoring, including establishment of fees that may be assessed against the permittee to cover the costs of hiring, training, and maintaining County personnel, or for contracting with private consultants, to conduct permit compliance, enforcement and monitoring activities for the County.
10. Conditions relating to the monitoring of surface water, ground water, air quality and all other environmental factors and considerations.
11. Any other conditions deemed reasonably necessary or appropriate by the County Board to effectively, efficiently, and comprehensively regulate the operations of a facility, to



protect public health (including human and Swine health), safety, and general welfare, prevent pollution and the creation of private nuisances and public nuisances, and preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of the County.

These conditions may apply not only to the CAFO facility itself, but also to any property upon which manure, carcasses, body tissue or other by products of the CAFO are spread, deposited or disposed of. Any conditions imposed under this Ordinance may be modified by the County Board at the time of each annual renewal. Any modifications must be documented as required by section 11, below.

### **Section 11. Record of Decision**

The County Board must issue its decision in writing. The decision must be based on written findings of fact supported by evidence in the record.

### **Section 12. Transferability of License**

A CAFO Operations Permit and the privileges granted by this license run with the land approved under the license and remain in effect, despite a change in ownership of the livestock facility, as long as the new operator does not violate the terms of the local approval.

Upon change of ownership of the livestock facility, the new owner of the facility shall file information with the County Clerk providing pertinent information, including but not limited to such information as the name and address of the new owner and date of transfer of ownership.

### **Section 13. Expiration of License**

A CAFO Operations Permit remains in effect regardless of the amount of time that elapses before the livestock operator exercises the authority granted under this permit, and regardless of whether the livestock operator exercises the full authority granted by the approval. However, the County may treat a CAFO Operations Permit as lapsed and withdraw the license if the license holder fails to do all of the following within 2 years after issuance of license:

1. Begin populating the CAFO.
2. Begin constructing all of the new or expanded livestock housing or waste storage structures proposed in the application for local approval.
3. Pay the renewal fee on or before January 1 of each calendar year as required by Section 14 of this Ordinance.

## **Section 14. License Terms and Modifications**

A CAFO Operations Permit and the privileges granted by a CAFO Operations Permit issued under this Ordinance is conditioned on the livestock operator's compliance with the standards in this Ordinance, and with commitments made in the application for a CAFO Operations Permit. The operator may make reasonable changes that maintain compliance with the standards in this Ordinance, and the County Board shall not withhold authorization for those changes unless the County can demonstrate good cause to do so. A violation of the Permit or a failure to comply with the commitments made in the application may result in suspension and/or termination of the Permit.

The County Board, or its designee, shall work to ensure on an ongoing basis that all requirements and conditions of any permit issued under this Ordinance are followed by the permittee. To assist in accomplishing this task, any permit issued pursuant to this Ordinance shall be subject to an annual renewal fee in the amount of One Dollar (\$1.00) per Swine unit. Modifications to the conditions of a CAFO Operations Permit may be made as described in Sections 10 and 11.

## **Section 15. Penalties**

Any person who violates any of the provisions of this Ordinance, or who fails, neglects or refuses to comply with the provisions of this Ordinance, or who knowingly makes any material false statement or knowing omission in any document required to be submitted under the provisions hereof, shall be subject to the following penalties:

1. Upon conviction by a court of law, pay a forfeiture of not less than \$100 nor more than \$1,000, plus the applicable surcharges, assessments, and costs for each violation.
2. Each day a violation exists or continues shall be considered a separate offense under this Ordinance.
3. In addition, the County Board may seek injunctive relief from a court of record to enjoin further violations.
4. In addition, the County Board may suspend or revoke the local approval of a CAFO Operations Permit under this Ordinance after due notice to the livestock facility owner and a public hearing to determine whether the license should be suspended or revoked.

The County shall exercise sound judgment in deciding whether to suspend or revoke a CAFO Operations Permit. The County shall consider extenuating circumstances, such as adverse weather conditions, that may affect an operator's ability to comply.

In addition to any other penalty imposed by this Ordinance, the cost of abatement of any public nuisance on the licensed premises by the County may be collected under this Ordinance or Sec.

823.06 of Wis. Statutes against the owner of the real estate upon which the public nuisance exists. Such costs of abatement may be recovered against the real estate as a special charge under Sec. 66.0627 of Wis. Statutes unless paid earlier.

## **Section 16. Appeals**

An applicant or any other person or party who is aggrieved by a final decision of the County Board on whether to issue a CAFO Operations Permit, either with or without conditions, or a taxpayer, may, within thirty (30) days after the filing of the decision with the County Clerk, commence an action seeking the remedy available by certiorari in Polk County Circuit Court. The court shall not stay the decision appealed from, but may, with notice to the County Board, grant a restraining order. The County Board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary, for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

In any certiorari proceeding brought under the preceding paragraph, attorney fees and costs shall not be allowed against the County Board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

A final decision of the County Board under this ordinance is not subject to appeal under Wis. Stat. 93.90(5), Wis. Stat 93.30, or Wis. Admin Code Ch. ATCP 51, which apply only to siting decisions.

## **Section 17. Severability**

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to that end, the provisions of this Ordinance are severable. Except that if it is determined that the limitation to swine only is found contrary to law, the entire Ordinance shall be deemed rescinded.

## **Section 18. Effective Date**

This Ordinance is effective the day after publication.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2020 by the County Board of Supervisors.

County Chairman

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Attested:

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County Clerk

**From:** Joe Ruth <joe.ruth@wisctowns.com>  
**Sent:** Monday, July 6, 2020, 08:32:31 PM CDT  
**To:** Bruce Paulsen  
**Subject:** RE: Requesting legal opinion re: CAFO

Thanks for reaching out to WTA about the recent livestock siting bill. Attorney Lara Carlson asked me to respond to your question because I was more closely involved with the proposed rule changes. I will focus my response on the two issues you presented, fees and bonding, but I am happy to go into detail about other aspects of the siting law as well if you'd like.

The decision to implement livestock siting regulation (or not) is up to the local government, but the state sets the standards that must be followed. In other words, if a town decides to regulate livestock siting then it must implement Department of Agriculture, Trade, and Consumer Protection (DATCP) rule ATCP 51. ATCP 51 currently prohibits the town from charging more than \$1,000 for a livestock siting application. ATCP 51 also currently prohibits the town from requiring financial assurances.

WTA believes, however, that DATCP does not have the authority to impose these restrictions on fees and financial assurances. In fact, DATCP staff agrees with us. Basically, the Wisconsin statute which authorizes DATCP to adopt statewide livestock siting rules only authorizes them to promulgate livestock siting "standards." See s. 93.90(2), Wis. Stat. Neither fees nor financial assurances are livestock siting "standards," so WTA feels that those provisions in ATCP 51 are unfounded and unenforceable. In our opinion, a town could adopt a higher fee and/or require bonding under the current rules.

Even though these provisions may be unenforceable, a town that charged a higher fee or required bonding today would be likely to face litigation because of the confusion created by the current rule. WTA is therefore looking at a variety of options for clarifying this law. One avenue that we have pursued is through legislation. The bill that WTA supported (AB894/SB808) was an attempt to address these concerns and many more that were shared by local governments and farmers alike. This bill is incredibly complex and therefore generally misunderstood.

While the bill did maintain the \$1,000 application fee limit, it also removed almost all of the financial burden that towns face when implementing livestock siting. This bill recognized that livestock siting standards are already set by the state and shifted the burden of the technical review of those standards onto the state rather than forcing a town to hire engineers and attorneys to determine compliance with those standards. Towns would have been left with the same level of control as they have under current law but would have been relieved of all but the typical zoning or licensing expense. The state would determine if standards are met and inform the town so that the town could then process or deny the application.

As far as bonding goes, this bill would have codified the prohibition on financial assurance in part because of the shift of application review costs away from the local government and in part because there is little that a local government could require bonding for anyways. Take environmental cleanup as an example. A town might want to require bonding in case a livestock facility polluted local water or otherwise necessitated environmental cleanup efforts, but bonding would not help a town in these situations. DNR regulates pollution discharge and cleanup not local governments, and a town could never collect on this type of bond because the town would never be in the position where it became financially responsible for cleanup (the DNR would). This analysis is different than local mining reclamation, for example, because a town could become financially responsible for mining reclamation efforts under NR 135 (which is why NR 135 allows for financial assurances).

In the end, this bill would have maintained **ALL** local control over livestock siting while making siting cheaper and easier for towns to implement. This bill did not become law, however, and the fee limit and prohibition on financial assurances are still (technically) in ATCP 51.

I attached a letter that WTA put together with the Wisconsin Counties Association earlier this year addressing these concerns about the bill and more. I would also be happy to plan a time for us to talk on the phone so that we can go over any questions or concerns you might have in more detail. Again, thank you for taking the time to reach out and let me know if I can help as you research these regulations.

Joe Ruth  
Legal Counsel

Wisconsin Towns Association - (715) 526-3157



**Page 1: Public Appearance by Joe Ruth - Wisconsin Towns Association (WTA) Legal Counsel**

**"Public Appearances**

Joe Ruth, on behalf of the Wisconsin Towns Association, appeared before the Board to speak on livestock siting. Mr. Ruth is very interested to see where this rule goes in the future. He is looking forward to working with the Department and stakeholders to come to a workable rule that is beneficial for everyone. Mr. Ruth wanted to remind the board of 2011 Act 21 and 2017 Act 108, and request that the Board stop enforcing and implementing the rule fee restrictions and the prohibition on financial assurances, which are not allowed by statute."

From: "Andrew T. Phillips" <[aphillips@vonbriesen.com](mailto:aphillips@vonbriesen.com)>  
Subject: FW: CAFOs  
Date: September 30, 2020 at 9:39:55 PM CDT  
To: "Andrew T. Phillips" <[aphillips@vonbriesen.com](mailto:aphillips@vonbriesen.com)>

Last year (2019), DATCP started the rule making process to amend ATP 51. The clearinghouse progression and status of the rule is available [here](#). The hearing draft rule kept fee caps and the bonding prohibition, however, the final rule sought to eliminate the fee caps and bonding prohibition entirely. A report from the Secretary of DATCP to the DATCP Board (attached) noted the reason for removal of the fee cap and bonding prohibition in the final rule was “[d]ue to the lack of statutory authority, the rule will no longer limit local fees.” Ultimately, though, it looks like the final rule was never adopted. The clearinghouse page indicates that the proposed rule was withdrawn on 2/5/2020 (it looks like the statement of scope expired). Not sure why the final rule was never adopted, but we are left with the original 2006 version of ATP 51 as a result.

This leads to an interesting situation though. We have a report from the Secretary of DATCP representing that DATCP doesn’t have statutory authority to implement a rule imposing a fee cap on local governments (see p. 16). I don’t think counties can simply ignore the fee cap (as the rule went through the rule making process and was formally adopted, etc.), but at the same time we have a strong argument that it is invalid/exceeds DATCP’s statutory authority.

Andrew T. Phillips | von Briesen & Roper, s.c.  
Direct: 414-287-1570 | [aphillips@vonbriesen.com](mailto:aphillips@vonbriesen.com)

**LEGAL MEMORANDUM**

**TO:** Wisconsin Counties Association

**FROM:** Andrew T. Phillips  
von Briesen & Roper, s.c.

**RE:** Letter to Polk County Board from Venture Dairy Cooperative, Wisconsin Dairy Alliance, and Wisconsin Manufacturers & Commerce, Dated September 14, 2020

**DATE:** October 28, 2020

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You have asked us to review a letter the Polk County Board (the “Board”) received on September 14, 2020, from the Venture Dairy Cooperative, Wisconsin Dairy Alliance, and Wisconsin Manufacturers & Commerce (the “Letter”) and comment on certain statements contained in the Letter. The Letter addresses the Board’s consideration of a Resolution amending Polk County’s Comprehensive Land Use Ordinance related to Swine CAFOs (the “Resolution”).

While the Letter’s analysis surrounding the County’s legal authority to adopt the Resolution may be an appropriate topic of discussion with the Board and Polk County’s corporation counsel, the Letter’s characterization of the Board’s activities in considering the Resolution cause concern. Specifically, the Letter provides (in relevant part):

- “It is deeply concerning to Wisconsin’s business community, especially Wisconsin’s agricultural sector, that the County continues to recklessly move forward with these unlawful proposals.”
- “The County’s unlawful actions will harm local farmers and likely lead to costly and reputation-damaging litigation, for which your taxpayers (the very farmers you are harming) will have to foot the bill.”

The Letter closes with the following admonition:

- “If supervisors enacted the Proposed Ordinance and Proposed Moratorium, they would be unlawful, unenforceable, and be in excess of the county board’s authority to enact, which is a felony in Wisconsin. Wis. Stat. § 946.12(2). When you were sworn in to serve, you took an oath to uphold the laws of the State of Wisconsin and the Wisconsin Constitution. We ask that you honor that oath, and reject these proposals that are clearly at odds with state law.”

Certain Board supervisors, and other county board supervisors around the state, interpreted these statements, and the tenor of the Letter, as a threat – *i.e.*, if the Board adopted the proposed Resolution, the Letter’s authors (or others) were prepared to sue Polk County, refer the Board supervisors for felony prosecution, or both. While this memorandum will not address the merits

of any potential legal challenge to the Resolution, it is important to clarify that the Board and its supervisors did not commit a felony under Wis. Stat. § 946.12(2) by simply considering or adopting the Resolution.

Section 946.12(2) of the Wisconsin Statutes provides that a public officer or public employee is guilty of a Class I felony if he or she engages in the following conduct:

In the officer's or employee's capacity as such officer or employee, does an act which the officer or employee knows is in excess of the officer's or employee's lawful authority or which the officer or employee knows the officer or employee is forbidden by law to do in the officer's or employee's official capacity

In order to establish a violation of this statute, the prosecutor must prove beyond a reasonable doubt the following four elements:

1. At the time of the alleged offense, the defendant was a public officer;
2. The defendant, in his or her capacity as a public officer, engaged in the conduct complained of;
3. The conduct complained of was either in excess of the defendant's lawful authority or conduct in which the defendant was forbidden by law to engage in his or her official capacity; and
4. The defendant knew that the conduct was in excess of his or her lawful authority or that he or she was forbidden by law to engage in the conduct in her or her official capacity.

WIS JI-CRIMINAL 1731.

While the first two elements of the offense are seemingly simple to establish in this circumstance, it is apparent the third and fourth elements would be incredibly difficult, if not impossible, to prove beyond a reasonable doubt.

With respect to the third element, the conduct complained of in the Letter is a Board supervisor's official action on the Resolution. The Resolution had been prepared by a committee of the Board and, based upon the signatures appearing on the second page of the Resolution, reviewed by Polk County's corporation counsel. One of corporation counsel's roles is to provide legal advice to the Board. *See* Wis. Stat. § 59.42(2)(b)3. It would be illogical to conclude that Polk County's corporation counsel believed the Resolution to be contrary to law, yet nonetheless approved the Resolution, at least as to form. The Board, in good faith, relied upon corporation counsel's review prior to taking any official action on the Resolution. As a result, it would be nearly impossible to establish beyond a reasonable doubt that a Board supervisor was acting in excess of his or her authority or was otherwise forbidden by law from taking action on the Resolution.

Nonetheless, even assuming the third element could be satisfied, the fourth element would require proof beyond a reasonable doubt that a Board supervisor knew that taking action on the Resolution would be in excess of his or her authority or otherwise forbidden by law. According to Wisconsin Jury Instruction CRIMINAL 1731, such knowledge “must be found, if found at all, from the [Board supervisor’s] acts, words, and statements, if any, and from all the facts and circumstances ... bearing upon knowledge.” As indicated above, it is apparent the Board proceeded in considering the Resolution upon the advice of corporation counsel. As a result, even if it could be shown that a Board supervisor acted in excess of his or her authority or was otherwise forbidden by law from taking action on the Resolution, which is highly doubtful, it would be seemingly impossible to prove that a Board supervisor knowingly undertook such action.

In conclusion, we believe the Board and Board supervisors acted appropriately in considering the Resolution, without any comment on the merits of the Resolution or outcome of any official action. Moreover, we do not believe that a county board supervisor would be found to have acted contrary to Wis. Stat. § 946.12(2) when taking official action on a resolution that corporation counsel has reviewed except in the most unusual of circumstances, none of which are present here.

If you have any questions surrounding this memorandum, please do not hesitate to contact us. We appreciate the opportunity to be of service to the Association.

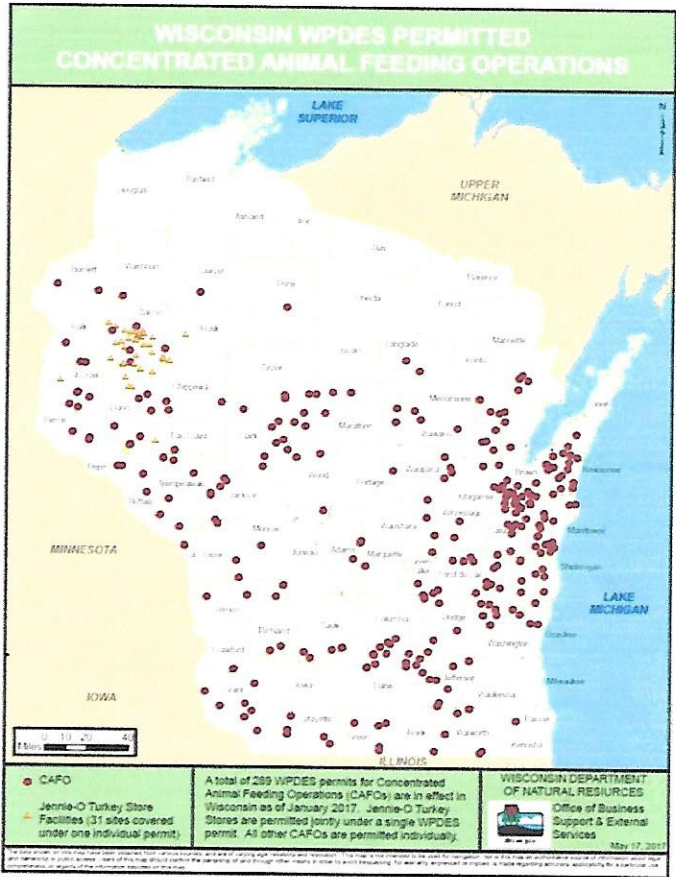


(2) ✓

## Wisconsin Groundwater Coordinating Council Report to the Legislature

WDA added the location of CAFO's map to this email – it is not in the report – Notice the location of CAFO's vs % of well testing above 10ppm

County	% of Well Testing Above 10ppm	# of CAFOs
Iowa	12.5	0
Lafayette	15.3	5
Dane	18.3	10.5
Green	20.2	4.5
Rock	24.4	2.5
Jefferson	8.3	7
Green Lake	19.5	2.5
Marquette	19.5	2.5
Portage	17.7	1
Kewaunee	3.3	14
Manitowoc	6.2	15
Brown	2.9	15
Marathon	7.5	10
Fond du Lac	5.3	12



Map of Estimated Percentage of Private Wells over Nitrate

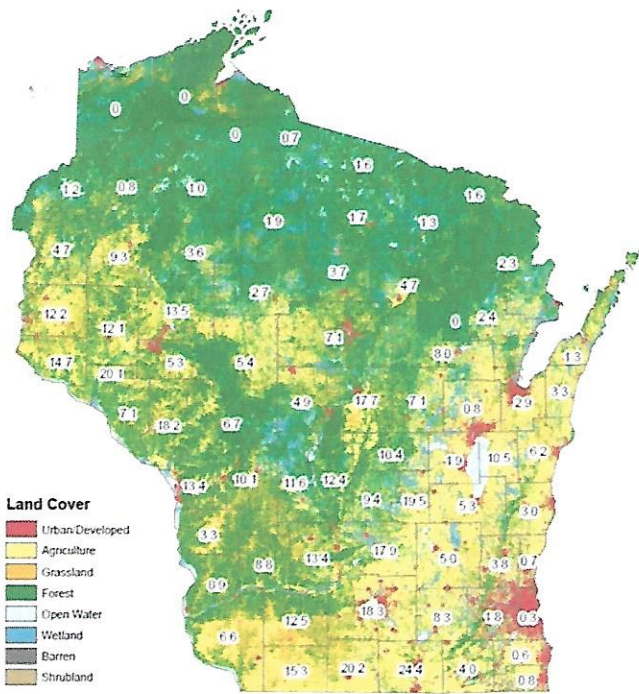
SUBMITTED BY SARA BYL - 1/29/20

### Standard by County

In 2014 NR 812 code (Well Construction and Pump Installation) was changed to require sampling of newly constructed wells and wells with pump work for nitrates. This was in response to the DHS revised health recommendation that long-term use of water over the standard by anyone poses a significant health risk. The nitrate sampling was also strongly supported by the Private Water Advisory Council.

Since October of 2014 the department has received 55,000 sample results. This last spring the department analyzed the data set. This is probably the least biased large data set available in Wisconsin.

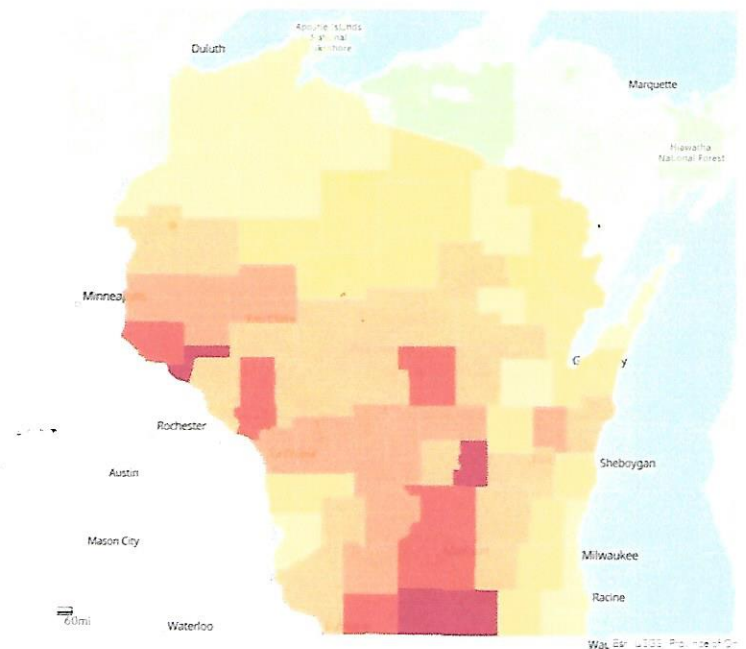
Overall 7.6% of sample results were greater than 10 ppm for nitrate. However, some counties have a much greater percentage of well testing above the 10 ppm standard. See map below for individual county results.



### Wisconsin Groundwater Coordinating Council Report to the Legislature - 2018

A 2012 survey of Wisconsin municipal water-supply systems found that 47 systems have had raw water samples that exceeded the nitrate-N MCL, up from just 14 systems in 1999. Increasing nitrate levels have been observed in an additional 74 municipal systems. Private water wells, which serve about one third of Wisconsin families, are at risk as well. Statewide, about 10% of private well samples exceed the MCL for nitrate-N, although one third of private well owners have never had their water tested for nitrate (Knobeloch et al., 2013; Schultz and Malecki, 2015).

In agricultural areas, such as the highly cultivated regions in south-central Wisconsin, around 20%-30% of private well samples exceed the MCL (Mechenich, 2015). Nitrate concentrations are poised to further increase as nitrate pollution penetrates into deep aquifers and migrates farther from original source areas (Kraft et al., 2008).



Estimated % over Nitrate Standard





A concerning pattern in many areas has been the continued increase of nitrate levels in groundwater and streams even after reduced regional use of nitrogen-based fertilizers. Several recent studies by WGRMP-funded researchers illuminate possible reasons for this.

For one, long groundwater travel distances in some geologic settings mean that it can take decades for nitrate to travel to streams and wells situated deep in thick aquifers, so it will take at least that long to see a response from more recent management changes (Kraft et al., 2008). Until then, increases in nitrate levels due to historical agricultural practices are likely.

More concerning is the numerous studies which indicate that NMPs are questionably effective at reducing nitrate levels to below the MCL. Even in the best managed agricultural systems, over the long-term (7 years) nearly 20% of nitrogen fertilizer bypasses plants and is leached to groundwater, which makes it likely that groundwater concentrations of nitrate-N at or above the MCL will continue to be a concern for Wisconsin residents (Brye et al., 2001; Masarik, 2003; Norman, 2003).

That said, there is still significant potential for improvement through increased adoption of NMPs. DATCP estimated that in 2007, over 200 million pounds of nitrogen were applied to agricultural lands in excess of UW recommendations, a number that could be substantially reduced with broader adoption of NMPs.