



State of Wisconsin
Governor Tony Evers

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

Jason Kjeseth & Malia Malone
Department of Land Information – Division of Zoning
100 Polk County Plaza, Suite 130
Balsam Lake, WI 54810

RE: Polk County Proposed Swine CAFO Ordinance

Jason and Malia,

The department has reviewed Polk County's proposed swine Concentrated Animal Feeding Operations (CAFO) regulations for consistency with Chapter 93.90 Wis. Stats. and ATCP 51, the state's livestock facility siting law. Per ATCP 51.02(1), if local approval is required for the siting of new or expanded livestock facilities, it must grant or deny approval based on the standards, application, and timelines articulated under the livestock facility siting law. Per ATCP 51.01(21), "Local approval" includes a license, permit, special exception, conditional use permit or other form of local authorization. Potential legal conflicts related to the proposed ordinance include:

- The proposed ordinance requires a conditional use permit for what it defines as a "Swine Concentrated Animal Feeding Operation (CAFO)" in its A-2 zoning district. Political subdivision authority for conditions under which a political subdivision may disapprove or prohibit the siting of a new or expanding livestock facility are enumerated under s. 93.90(3) Wis. Stats.. The law does not grant the authority to political subdivisions to disapprove a permit based on species. Therefore, it cannot regulate only those livestock facilities that house swine.
- The proposed ordinance does not incorporate all of the standards from ATCP 51. If the county intends on regulating livestock facilities in accordance with state law, it must incorporate all of the standards of ATCP 51 by reference or reproduce them in full, as required by ATCP 51.10(2).
- The proposed ordinance requires compliance with several more stringent local standards, identified as Section 10.4.6(C)(2) criteria; a, b, c, d, e, g, i, j, k, l, m, p. These more stringent standards do not meet all of the conditions laid out by ATCP 51.10(3). If the county wishes to adopt more stringent local standards than those included in ATCP 51, it must base those standards on reasonable and scientifically defensible findings of fact adopted by the county's governing authority and clearly show that those standards are needed to protect public health or safety, per ATCP 51.10(3)(c)&(d).

Polk County's proposed swine CAFO ordinance is not consistent with Chapter 93.90 Wis. Stats. and ATCP 51. If the county adopts the ordinance as is, it may present the grounds for a legal challenge. The department can provide further direction and assistance in drafting regulations that are consistent with the livestock facility siting law if the county requests it. If the county has any questions about the department's review or the livestock facility siting law, please contact Tim Jackson at 608-224-4630 or timothy.jackson@wisconsin.gov.

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