

## Wisconsin Farm Conservation Standards and Cost-Sharing: An Overview

Wisconsin has adopted mandatory conservation standards for all farms. Counties are primarily responsible for implementing these standards. Under current state law, a landowner's compliance obligation is normally contingent upon an offer of cost-sharing (there are important exceptions). Large livestock operations must meet applicable permit standards, regardless of cost-sharing.

A cost-share offer, if required, must normally cover at least 70% of the landowner's compliance cost. A landowner may not avoid a compliance obligation by refusing a legally adequate cost-share offer. Although conservation needs greatly exceed cost-share funding, some funds go unspent for lack of voluntary sign-ups.

### Conservation Practices Required

Current state farm conservation standards require all landowners to do the following, subject to applicable cost-share requirements:

- Maintain a tillage setback from surface waters, to ensure stream-bank integrity and prevent soil movement to surface water (5-20 feet, as necessary).
- Meet tolerable soil loss ("T") standards on all fields and pastures.
- Have and follow an annual nutrient management plan, to minimize nutrient runoff. The plan must:
  - Be prepared or approved by a qualified nutrient management planner (a farmer may qualify).
  - Be based on soil tests conducted at a certified soil-testing laboratory.
  - Avoid nitrogen and phosphorus applications that exceed economically optimal rates recommended by the University of Wisconsin (there are limited exceptions).
  - Credit nutrient contributions from all relevant sources, including soil background nutrients, crop contributions, and fertilizer and manure applications.
  - Comply with a "phosphorus index" to minimize phosphorus runoff risks.  
*Free software (SnapPlus) helps farmers and nutrient management planners comply.*
- Prevent direct runoff from feedlots or stored manure to surface water, wetlands or groundwater.
- Control livestock access to surface water and wetlands, in order to maintain vegetative cover and prevent erosion.
- Avoid discharging wastewater to surface water, wetlands or groundwater.
- Avoid stacking unconfined manure within 300 feet of a stream, within 1,000 feet of a lake, or in an area that is susceptible to groundwater contamination.
- Divert clean water (such as water from rain gutters) away from feedlots, manure storage areas, or barnyards that are located within 300 feet of a stream, within 1,000 feet of a lake, or in an area that is susceptible to groundwater contamination.

- Ensure that manure storage facilities are:
  - Constructed to specified standards (nutrient management plans determine capacity requirements, based on herd size and management factors).
  - Maintained to prevent overflow and provide a storage capacity safety margin.
  - Repaired and maintained to prevent leaks and failures.
  - Closed according to specified standards, when retired from use.

### **Cost-Share Requirements**

Under current state law, if a farm conservation standard requires a landowner to change a facility or practice that pre-dates the applicable standard, the landowner's compliance obligation is normally contingent on an *offer* of cost-sharing (there are some important exceptions).

- A cost-share offer, *if required*, must normally cover at least 70% of initial compliance costs (there are standard *per acre* cost-share amounts for some practices such as nutrient management). The landowner is then responsible for maintaining compliance.
- A landowner may not avoid compliance obligations by refusing a cost-share offer that meets applicable standards.
- Cost-shared practices must be installed according to state standards and the cost-share agreement.
- Counties may also cost-share conservation projects for which cost-sharing is *not* required. Cost-share grants may exceed required minimum amounts, and may pay for conservation practices that go beyond minimum state standards. Counties may exercise their discretion in these matters.

### **Cost-Share Exceptions**

Under current state standards, cost-sharing is *not* required for any of the following:

- Changes needed to bring facilities or practices into compliance with conservation standards that *were already in effect* when those facilities or practices were installed.
- Conservation practices that can be implemented without a significant change to existing facilities or practices.
- Conservation practices needed to restore, to compliance, land that has gone out of previous documented compliance.
- Conservation practices that a landowner has already installed.
- Ongoing maintenance of a permanent improvement (such as a manure storage facility) whose installation was cost-shared.
- An annual practice, such as an annual nutrient management plan, that has already been cost-shared for at least 4 years.
- Facilities or practices needed to qualify for any of the following permits:
  - A DNR permit (WPDES permit) required for a livestock facility (CAFO) with 1,000 or more "animal units" (about 700 dairy cows).

- A county or local permit required for a livestock facility with 500 or more “animal units” (about 350 dairy cows) *if* such a permit is required by a county or local ordinance that conforms to the state livestock facility siting law (see below). Approximately 25 counties and many towns have adopted such ordinances (see map, *Appendix A*).
- A county permit required for the construction, alteration or abandonment of a manure storage facility. Most counties require such permits. Permit requirements must conform to state standards.
- Practices installed by a landowner who claims income tax credits under Wisconsin’s farmland preservation program.
  - Landowners may claim FP tax credits (\$5-\$10 per acre) if their land is covered by a FP zoning ordinance or individual FP agreement (now offered only in “agricultural enterprise areas”). See map, *Appendix B*.
  - Landowners claiming tax credits must comply with state farm conservation standards, regardless of cost-sharing (county must certify compliance).
  - Farmers claimed \$19 million in FP tax credits in FY 2013.
  - Conservation requirements do *not* apply to other farm tax credit programs, or to the farmland use-value property tax assessment program.

Under current state law, a county may do any of the following *without* making a cost-share offer:

- Terminate a violator’s eligibility for farmland preservation tax credits (see above).
- Deny, suspend or revoke a county livestock facility siting permit (see below) or manure storage facility permit, if permit standards are not met.
- Take enforcement action against a criminal or grossly negligent pollution discharge.
- Take emergency action to stop a pollution discharge that threatens imminent harm.

### **County Enforcement**

A county may take enforcement action if a landowner refuses to comply with state conservation standards (notwithstanding a legally adequate cost-share offer, if required).

A county may:

- Suspend a violator’s eligibility for farmland preservation tax credits (see above).
- Seek a court-ordered civil forfeiture (up to \$5,000 per violation) or a court injunction, per Wis. Stat. section 281.98. Counties may specify other civil penalties by ordinance.
- Request enforcement by the DNR or Department of Justice if there is an acute pollution discharge, or a violation of DNR permit requirements.
- Suspend a county livestock facility siting permit (see below) or manure storage facility permit, if permit conditions are violated.
- Take other actions, if any, authorized by county ordinance.

### **Cost-Share Grant Funding and Administration**

The State of Wisconsin provides approximately \$20 million annually for farm conservation cost-share grants, including grants for practices needed to comply with state farm conservation standards. This total does not include Farmland Preservation tax credits.

Of the \$20 million total, approximately \$14 million consists of bond revenue funding for “hard practices” such as manure storage systems, barnyard runoff control systems, buffer strips, and other engineered practices. About \$6 million in segregated funding is provided for “soft practices” such as nutrient management, conservation tillage, cover crops, and other agronomic practices. These state funds are divided among 72 counties pursuant to an annual DATCP/DNR joint allocation plan (the state also provides some funding for county staff). Some counties also provide their own appropriations for farm conservation cost-share grants.

USDA-NRCS provides significant cost-share funding for farm conservation practices in Wisconsin (USDA-FSA also provides funding for CRP and other set-aside programs). However, USDA does not enforce any mandatory farm conservation standards, except those to which farmers voluntarily agree in their cost-share contracts. Participation in USDA programs is entirely voluntary, and USDA administers the programs on a confidential basis. USDA cost-share funds are not available to counties to facilitate county implementation of Wisconsin conservation standards.

Unlike USDA and most other states, Wisconsin does have mandatory farm conservation standards for farms, subject to cost-sharing (see above). However, counties typically rely on voluntary cost-share sign-ups, and seldom take enforcement actions against violators who decline targeted cost-share offers. This facilitates cordial relationships with farmers. However, voluntary sign-ups sometimes fail to exhaust available cost-share funding, and may fail to target the highest priority conservation needs. A purely “voluntary” approach may also fail to address some serious violations of conservation standards.

### **A New Source of Cost-Share Funds**

Under a new federal-state “adaptive management” program, sewerage districts in phosphorus-impaired watersheds can avoid costly phosphorus treatment projects by funding farm conservation practices that reduce phosphorus runoff by an equivalent amount. If half of all eligible sewerage districts participate, the new program may provide about \$9 million in farm cost-share funding to counties each year (statewide total, per WI Land+Water estimate).

- Participating sewerage districts will pay \$50 per lb. of phosphorus reduction (payment rate set by statute). Payments go to counties, to fund cost-share practices that are designed to achieve the needed phosphorus reductions.
- The \$9 million estimate does *not* include funding from the Milwaukee, Madison and Green Bay sewerage districts. Those large sewerage districts may provide substantial additional cost-share funding (they may negotiate a different payment rate with counties, or administer cost-share grants directly).
- Funding will vary widely between counties, based on the number, size and participation rate of affected sewerage districts in each county.
- Annual payments will normally continue over 10-15 years. The U.S. EPA must approve proposed payment plans. Payments will begin in 2018 or later.

### **Cost-Share Funding vs. Cost-Share Needs**

How much cost-share money would it take to achieve full compliance with Wisconsin’s current farm conservation standards? How long would it take to achieve full compliance? And would compliance actually solve our most serious farm nonpoint pollution problems?

It is hard to answer these questions – partly because we lack clear information about the current level of compliance. But we do know that there are large compliance shortfalls. For example, only 30% of Wisconsin farm operators even claim to have written nutrient management plans at this time (we also don't know how many of the plans meet state standards, or how closely they are being followed).

Improved compliance would certainly help to reduce nonpoint pollution runoff. But runoff is also affected by land use changes, changing weather patterns, and changing livestock and cropping practices. Some cost-shared practices may have a bigger impact than others, and results may vary widely by location.

Costs may also vary widely. For example, a manure storage facility or conservation easement may cost several hundred thousand dollars, while a nutrient management plan or cropping practice may be relatively inexpensive (at least in terms of out-of-pocket expenses).

The Wisconsin Land and Water Conservation Association (WI Land+Water) suggests an effort to achieve the following water quality goals over the next 20 years:

- Remove 80% of current impaired watersheds from the state's "impaired watershed" list.
- Reduce phosphorus and sediment loading to "impaired" lakes by 50%.
- Maintain the water quality of lakes and streams currently listed as "outstanding or exceptional" resources.
- Reduce groundwater quality impairments (nitrates and pathogens from agriculture) by 50%.
- Reduce soil erosion to "tolerable" levels.

WI Land+Water estimates that these goals could be achieved in 20 years with roughly \$100 million in cost-share funding per year (plus adequate county staff to administer the cost-share funds). This estimate assumes that cost-share dollars are carefully targeted for maximum impact, and that compliance is then monitored and enforced. It also assumes no dramatic changes in climate patterns, land uses or agricultural practices that would tend to increase current environmental impacts. These assumptions may be too optimistic given current industry and environmental trends, and given existing programs that rely heavily on voluntary (to the point of optional) compliance.

### **Large Livestock Operations**

Wisconsin's livestock industry is undergoing dramatic changes. There is a rapid trend toward fewer, but larger and more geographically concentrated, livestock operations. Large dairy CAFOs with 1,000 or more "animal units" (about 700 cows) still comprise only 3% of Wisconsin dairy farms, but now produce 30% of Wisconsin's milk and dairy manure. Dairy farms just below the 700-cow threshold are also expanding their herds, sometimes without adequate manure management planning or infrastructure. This may pose new environmental risks.

A county or local government may, by ordinance, require siting permits for new or expanding livestock facilities over 500 “animal units” (about 350 dairy cows). To qualify for a permit, a facility must comply with state livestock facility standards regardless of cost-sharing. About 25 counties and a number of towns have now adopted such ordinances. To qualify for a permit, a livestock facility must meet uniform state standards for manure storage and management, nutrient management, runoff control, odor and setbacks. Facilities with more than 1,000 “animal units” must also hold a water pollution control permit (WPDES permit) from DNR.

An applicant for a local permit must complete a detailed application, documenting that all applicable requirements are met. The application must specify the number of “animal units” proposed, and must document that the facility is designed to handle that number of “animal units.” A county or local government may deny, suspend or revoke a permit if permit standards are not met, or if the permit holder fails to maintain compliance. The permit holder may not exceed the authorized number of “animal units” without further authorization.

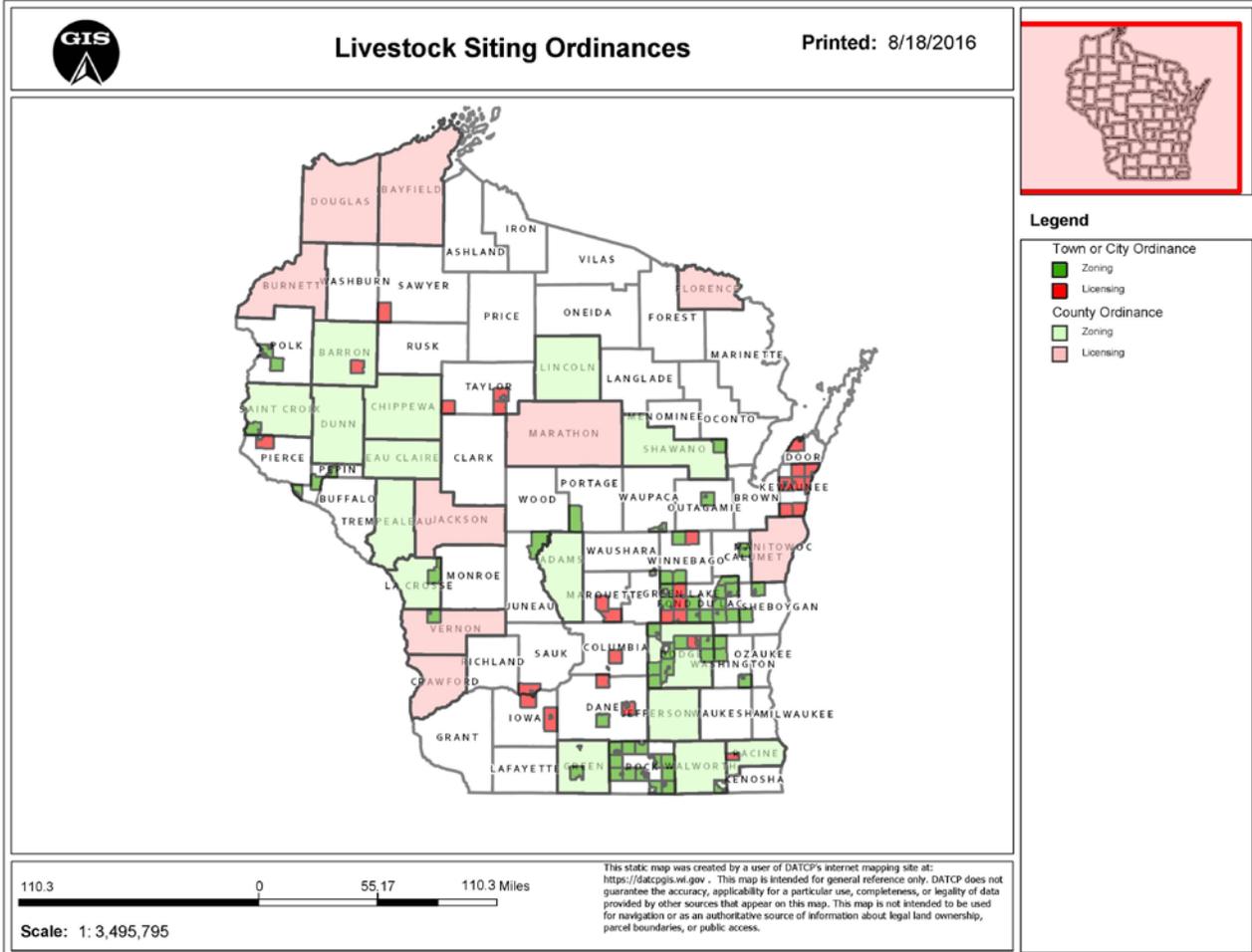
**Wis. Adm. Code References:**

ATCP 50 (Soil and Water Resource Management)  
ATCP 51 (Livestock Facility Siting)  
NR 151 (Runoff Management)  
NR 243 (Animal Feeding Operations)

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# Appendix A: Livestock Facility Siting Ordinances



## Appendix B: Farmland Preservation Areas

