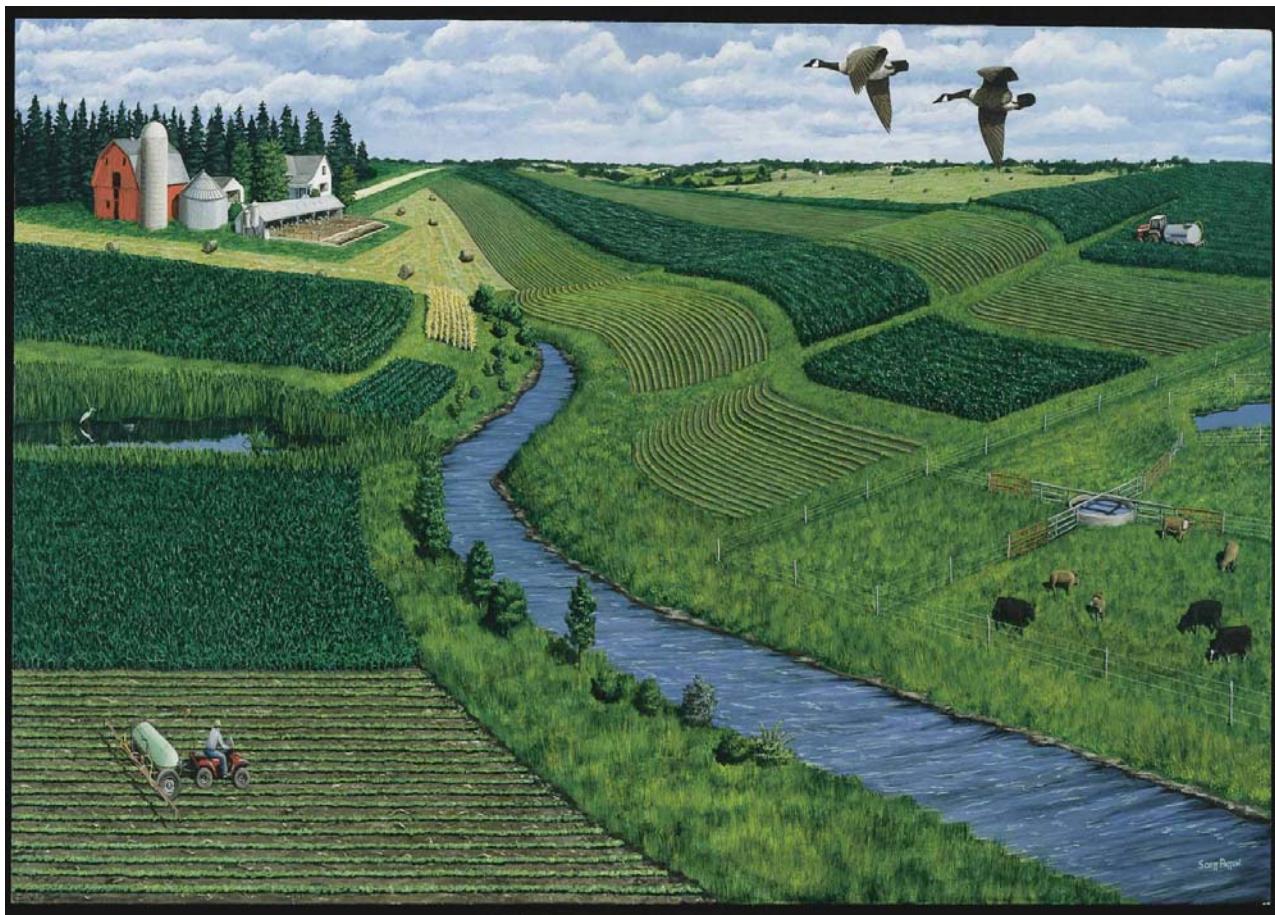


# Chapter 14

## Agricultural Performance Standards and Livestock Waste Management Ordinance



## TABLE OF CONTENTS

### **Subchapter I – Introduction**

14.01	Authority.....	2
14.02	Title.....	2
14.03	Findings and Declaration of Policy.....	2
14.04	Purpose.....	2
14.05	Applicability.....	2
14.06	Severability Clause.....	3
14.07	Interpretation.....	3
14.08	Authority Cited.....	3
14.09	Effective Date.....	3
14.10	Definitions.....	3

### **Subchapter II – Administration**

14.11	Delegation of Authority.....	9
14.12	Administration.....	9
14.13	Entry and Inspection Authority.....	9
14.14	Enforcement Authority.....	9

### **Subchapter III – Agriculture Performance Standards and Prohibitions**

14.15	Activities subject to Agricultural Performance Standards and Prohibitions.....	10
14.16	Performance Standard and Prohibitions .....	10
14.17	Cost Sharing Required.....	12
14.18	Implementation and Enforcement Procedures for Cropland Performance Standards.....	13
14.19	Implementation and Enforcement Procedures for Livestock Performance Standards and Prohibitions.....	16
14.20	Variances.....	21

### **Subchapter IV – Livestock Waste Storage Construction Permit**

14.21	Permit Required.....	22
14.22	Exception to Permit Requirements.....	22
14.23	Fees.....	23
14.24	Construction Requirements.....	23
14.25	Review of Application.....	24
14.26	Permit Conditions.....	25
14.27	Permit Revocation.....	25

### **Subchapter V – Violations and Appeals**

14.28	Penalties.....	25
14.29	Appeals.....	26

# **Agricultural Performance Standards and Livestock Waste Management Ordinance**

## **Subchapter I – Introduction**

**14.01 Authority.** This Section is adopted under authority granted by Sections 59.01, 59.02, 59.03, 59.04, 59.54, 59.69, 59.70, 66.0113, 92.07, 92.09, 92.15, and 92.16, Wisconsin Statutes.

**14.02 Title.** This Ordinance shall be known as, referred to, and cited as the “Outagamie County Agricultural Performance Standards and Livestock Waste Management Ordinance” and is hereinafter referred to as the Ordinance.

**14.03 Findings and Declaration of Policy.** The Outagamie County Board finds this Ordinance is designed to protect and promote the County’s agricultural industry and also to protect and preserve the surface water, groundwater, and soil resources of Outagamie County, in order to protect the health, safety, and general welfare of the people and communities within Outagamie County.

Outagamie County permits operation of properly conducted agricultural operations within the county. Individuals purchasing or owning land located near agricultural lands of operation or included within an area zoned for agricultural purposes, may be subject to outcomes arising from such operations. Such outcomes may include, but are not limited to: noises, odors, lights, fumes, dust, smoke, insects, chemicals, operation of machinery (including aircraft) during a 24 hour period, storage and disposal of manure, and the application of chemical fertilizers, soil amendments, herbicides and pesticides. One or more of the outcomes described may occur as a result of any agricultural operation, which is in conformance with existing laws and regulations and accepted customs and standards. Individuals living near an agricultural area should be prepared to accept such outcomes as a normal and necessary aspect of living in a county with a strong rural character and an active agricultural sector. Outagamie County has established the Land Conservation Committee to assist in the resolution of any animal waste management disputes that might arise between residents of the county regarding agricultural operations.

**14.04 Purpose.** The purpose of this Ordinance is to regulate the construction, installation, alteration, design and use of animal waste storage facilities and animal feedlots so as to protect the health, safety, and general welfare of residents and transients, prevent the spread of disease and promote the prosperity and general welfare of the citizens of Outagamie County. It is also intended to provide for the administration and enforcement of the Ordinance and to provide penalties for its violation. This Ordinance also implements Agricultural Performance Standards and Prohibitions and provides an outline for their implementation.

**14.05 Applicability.** This Ordinance applies only in unincorporated areas of Outagamie County. Abandonment requirements apply to all animal waste storage facilities regardless of the date of construction.

**14.06 Severability Clause.** If any section, provision, or portion of this Ordinance is ruled invalid by a court, the remainder of the Ordinance shall not for that reason be rendered ineffective.

**14.07 Interpretation.** In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements, shall be liberally construed in favor of the County, and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

**14.08 Authority Cited.** References herein to the Wisconsin Statutes or Wisconsin Administrative Code are to those in effect as of the date this Ordinance is enacted or the Statutes or Code as subsequently amended or revised.

**14.09 Effective Date.** This Ordinance shall become effective upon adoption and publication by Outagamie County.

**14.10 Definitions.**

- (1) *Agricultural Lands* – Lands in agricultural use. Agricultural use has the meaning provided under Wisconsin § 91.01(1).
- (2) *Animal Unit* – Means a unit of measure used to determine the total number of single animal types or combination of animal types, as specified in NR 243, which are fed, confined, maintained or stabled in an animal feeding operation.
- (3) *Applicant* – Any person who applies for a permit under this Ordinance.
- (4) *Best Management Practices or BMP's* – Structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment, or pollutants carried in runoff to waters of the State.
- (5) *Confined Manure Piles or Stacks* – A site is considered confined if conservation practices are in place to contain or treat runoff. Composting of manure is acceptable provided that runoff and leachate are accounted for.
- (6) *Direct Runoff* – A discharge of a significant amount of pollutants to waters of the state resulting from any of the following practices:
  - (a) Runoff from a livestock waste storage facility.
  - (b) Runoff from an animal lot that can be predicted to reach surface waters of the State through a defined or channelized flow path or man-made conveyance.
  - (c) Discharge of leachate or runoff from an unconfined manure pile.
  - (d) Seepage from a livestock waste storage facility.
  - (e) Construction of a livestock waste storage facility in permeable soils or over fractured bedrock without a liner designed in accordance with the Natural Resource Conservation Service 313 standard.

- (f) Runoff of land applied manure such that it is able to run off the field and into a defined or channelized flow path with the likelihood of reaching waters of the State.
- (7) *Existing Livestock Waste Storage Facility* – A livestock waste storage facility, which has been installed and placed in use at a livestock operation in Outagamie County prior to October 1<sup>st</sup>, 2002.
- (8) *Feedlot* – A lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals, specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. For purposes of these parts, open lots used for the feeding and rearing of poultry shall be considered to be animal feedlots. Pastures shall not be considered animal feedlots under these parts. New animal feedlots are those that are established after the effective date of this Ordinance.
- (9) *Intermittent Stream* – A watercourse with bed and bank in which water does not flow continuously that is identified as an intermittent stream on the United States Geological Survey quadrangle map with a scale of 1:24,000 with a blue line either solid or dashed, or an unmapped watercourse determined by the LCD to be an intermittent stream.
- (10) *Land Conservation Committee (LCC)* –
  - (a.) The committee created by a County Board under §92.06 “Land Conservation Committee” includes employees or agents of a County Land Conservation Committee whom, with committee authorization, act on behalf of the committee.
  - (b.) That committee of the Outagamie County Board of Supervisors, which oversees the Land Conservation Department.
- (11) *Land Conservation Department* – The department of Outagamie County government responsible for soil and water conservation activities in Outagamie County.
- (12) *Livestock* – All domestic animals including deer, elk, or any fenced-in animals.
- (13) *Livestock Operation* – A feedlot or other facility or a pasture where animals are fed, confined, maintained, or stabled.
- (14) *Livestock Waste Storage Facility* – An impoundment made by constructing an embankment or excavating a pit or dugout or by fabricating a structure to contain manure and other animal or agricultural wastes.
- (15) *Manure* – A material that consists primarily of excreta from livestock, poultry or other animals. Manure includes livestock bedding, water, soil, hair, feathers, and other debris that becomes intermingled with livestock excreta in normal manure handling operations.

- (16) *Navigable Waters* – As defined in Statutes 144.26 (2)(d) as “Lake Superior, Lake Michigan, all natural inland lakes within this state and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state.”
- (17) *No Direct Runoff* – Means no runoff of manure or nutrient polluted stormwater to waters of the State.
- (18) *Notice of Availability of Funds* – A first class letter, return receipt requested, mailed or hand delivered by the Outagamie County Land Conservation Department to the owner of the land not meeting the Ordinance standards, informing the owner of the availability of cost-share funds under Wisconsin § 92.14 or in accordance with s. 281.16(3)(e) Stats.
- (19) *Notice of Problem* – A first class letter, return receipt requested, mailed or hand delivered by the Outagamie County Land Conservation Department to the owner of land not meeting the Ordinance standards, informing the owner of the nature of the problem and the necessary process to correct it.
- (20) *NR* – An abbreviation of “Natural Resources” that precedes the chapter number of the administrative code created by the Wisconsin Department of Natural Resources to implement statutes enacted by the Legislature. Administrative codes have the full force and effect of law.
- (21) *NRCS* – Means the Natural Resources Conservation Service of the United States Department of Agriculture.
- (22) *Nutrient Management Plan* – A plan that balances the nutrient needs of a crop with the nutrients available from legume crops, manure, fertilizer, or other sources. The requirements for a nutrient management plan are as established in ATCP 50.04 (3).
- (23) *Operator* – A person responsible for the oversight or management of equipment, facilities or livestock at a livestock operation, or is responsible for land management in the production of crops.
- (24) *Ordinary High-Water Mark* – The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark. This may be erosion, absence of land plants, predominance of aquatic plants, or some other easily recognized characteristic.
- (25) *Pasture* – Land with a permanent, uniform cover of grasses or legumes used as forage for livestock. Pastures do not include areas where supplemental forage feeding is provided on a regular basis.

- (26) *Performance Standard* – A narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (27) *Permit* – The signed, written statement issued by the Outagamie County Land Conservation Department under this Ordinance authorizing the applicant to construct, install, reconstruct, substantially alter, or close a livestock waste storage facility.
- (28) *Permittee* – Any person to whom a permit is issued under this Ordinance.
- (29) *Runoff* – Storm water or precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (30) *Subsequent Modification of Standards* – The standards set forth in the Technical Guide are adopted and by reference made a part of this Ordinance. Any future amendment, revision, or modification of the standards incorporated herein shall be incorporated herein unless otherwise acted upon by the LCC.
- (31) *Substantially Altered* – Means a change initiated by an owner or operator that results in a relocation of a structure or facility or significant changes to the size, depth or configuration of a structure or facility including:
  - (a) Replacement of a liner in a livestock waste storage structure.
  - (b) An increase in volumetric capacity or area of a structure or facility by more than 20%.
  - (c) A change in a structure or facility related to a change in livestock management from one species of livestock to another such as cattle to hogs.
- (32) *Technical Guide* – The document provided by the Natural Resources Conservation Service which contains technical data, including the standards referenced within this Ordinance, to properly and safely locate, construct, install, alter, design, operate, and maintain conservation practices.
- (33) *Technical Standard 313 “Waste Storage Facility”* – A section of the Technical Guide. This standard covers the proper location, construction, installation, alteration, design, operation, and maintenance of an animal waste storage facility.
- (34) *Technical Standard 360 “Closure of Livestock Waste Storage Facilities”* – A section in the Technical Guide that covers the proper closure or abandonment of unused livestock waste storage facilities.
- (35) *Technical Standard 382 “Fencing”* – A section within the Technical Guide that covers the design and installation of fencing.
- (36) *Technical Standard 528 “Grazing”* – A section in the Technical Guide that covers the managed harvest of vegetation with grazing or browsing animals to achieve a specified objective in a sustainable manner.

(37) *Technical Standard 590 “Nutrient Management”* – A section of the Technical Guide that covers managing the amount, form, placement, and timing of plant nutrients and establishes the minimum acceptable requirements for the application of plant nutrients associated with organic wastes (manure and organic byproducts), commercial fertilizer, legume crops, and crop residues.

(38) *Technical Standard 634 “Manure Transfer”* – A section of the Technical Guide that covers installation of components such as conduits, pumps, valves, and other structures or devices to transfer animal waste from buildings and yards to a storage or loading area, or both, for final disposal and that establishes the minimum acceptable requirements of design, construction, and operation of waste transfer system components. This standard applies to mechanical pumping, elevation differential and gravity head systems.

(39) *Tolerable Soil Loss or “T”* – The maximum rate of erosion, in tons per acre per year, allowable for particular soils and site conditions that will maintain soil productivity.

(40) *Transfer System* – A mechanism designed to transfer animal waste and manure from a barn or feedlot where livestock are kept to a storage facility. The transfer system generally consists of, but is not limited to, a pump or gravity flow collection basin and a pipe leading to the storage facility.

(41) *Unconfined Manure Pile* – Means a quantity of manure that is at least 175 cubic feet in volume and which covers the ground surface to a depth of at least 2 inches and is not confined within a livestock waste storage facility, livestock housing facility or barnyard runoff control facility or covered or contained in a manner that prevents storm water access and direct runoff to surface water or leaching of pollutants to groundwater.

(42) *Variances* – Variances from these standards can only be granted through an appeal by the applicant in accordance with 14.20 of this Ordinance.

(43) *Water Quality Management Area or WQMA* – is defined as follows:

- The area within 1,000 feet from the ordinary high water mark of navigable waters that consist of a lake, pond or flowage.
- The area within 300 feet from the ordinary high water mark of navigable waters that consist of a river or stream.
- A site that is susceptible to groundwater contamination or that has the potential to be a direct conduit for contamination to reach groundwater.

(44) *Water Pollution* – Contaminating or rendering unclean or impure the ground or surface waters of the State or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life.

(45) *Waters of the State* – those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage

systems and other surface water or groundwater, natural or artificial public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person.

## **Subchapter II – Administration**

**14.11 Delegation of Authority** – Outagamie County hereby designates the Outagamie County Land Conservation Department to administer and enforce this Ordinance.

**14.12 Administration** – The provisions of this Ordinance shall be administered by the Outagamie County Land Conservation Department under the oversight of the Land Conservation Committee.

**14.13 Entry and Inspection Authority** – The Outagamie County Land Conservation Department is authorized to enter upon any lands affected by this Ordinance to inspect the land to determine compliance with this Ordinance pursuant to the authority granted by Section 92.07 (14), Wisconsin Statutes. If permission cannot be received from the applicant or permittee, entry by the Outagamie County Land Conservation Department shall be according to Section 66.0119 (3), Wisconsin Statutes. Refusal to grant permission to enter lands affected by this Ordinance for purposes of inspection shall be grounds for order of non-compliance, permit denial, or revocation.

**14.14 Enforcement Authority** – (1) The County may issue a citation, pursuant to and in accordance with Section 66.0113, Wisconsin Statutes and Chapter 25.04 Outagamie County Code. Refer to Subchapter V.

(1) A cease and desist order may be issued by the Outagamie County Land Conservation Department. The cease and desist order: May order that all operations on the property that do not conform to this Ordinance immediately cease; and must be reasonably specific and concrete, so as to fairly apprise wrongdoer of specific violation of this Ordinance and necessary remedial measures.

(2) The County may institute other proceedings in any court of competent jurisdiction and pursue any remedy or relief afforded by law, including a civil forfeiture or injunction.

## **Subchapter III – Agricultural Performance Standards and Prohibitions**

**14.15 Activities Subject to Agricultural Performance Standards and Prohibitions.**

(1) **Cropped Lands** – All land where crops or feed are grown shall be subject to Agricultural Performance Standards and Prohibitions.

(2) **Livestock Operations** – All livestock producers shall be subject to Agricultural Performance Standards and Prohibitions. Livestock producers and operations within water quality management areas (WQMA's) have more comprehensive requirements.

- (3) **Manure Handling, storage, and application** – All manure shall be handled, stored, and applied to lands in accordance with Agricultural Performance Standards and Prohibitions.
- (4) **Applications of manure, commercial fertilizers, and other nutrients to agricultural lands** – All crop producers and livestock producers that apply manure or other nutrients directly or through contract to agricultural fields shall be applied in conformance with the nutrient management plan criteria established in NR 151.07.

## 14.16 Performance Standards and Prohibitions

- (1) **Sheet, rill, and wind erosion** – All land where crops or feed are grown shall be cropped to achieve a soil erosion rate determined in accordance to RUSLE 2 or equivalent equation equal to or less than the “tolerable” (T) rate established for that soil. Wind erosion rates shall be calculated via the Wind Erosion Equation (WEQ) established by NRCS, and shall be equal to, or less than, the tolerable rate established for that soil.
- (2) **Gully Erosion** – Cropland, as defined in (1) above, shall be cropped to prevent gully erosion. Gullies shall be prevented by using practices such as grassed waterways (*Technical Standard 412*), terraces (*Technical Standard 600*), and water & sediment control basins (*Technical Standard 638*)
- (3) **Livestock Waste Storage Facilities**
  - (a) *Applicability* – All livestock producers building new livestock waste storage facilities, or choosing to abandon their livestock waste storage facilities shall comply with this section.
  - (b) *New construction and alterations* –
    - 1. New or substantially altered livestock waste storage facilities shall be designed, constructed and maintained to minimize the risk of structural failure of the facility, minimize leakage of the facility in order to comply with groundwater standards, and operated below the “Maximum Operating Level” as defined in Technical Standard 313 – Waste Storage Facilities.
    - 2. A new livestock waste storage facility means a facility constructed after October 1, 2002.
    - 3. A substantially altered livestock waste storage facility means a change initiated by an owner or operator that results in a relocation of a structure or facility or significant changes to the size, depth or configuration of a structure.
      - (a.) Replacement of a liner in a livestock waste storage structure.
      - (b.) An increase in volumetric capacity or area of a structure or facility by greater than 20%.
      - (c.) A change in a structure or facility related to a change in livestock management from one species of livestock to another, such as dairy manure to hog manure.
  - (c) *Closure* –

1. Closure of a livestock waste storage facility shall occur when an operation where the facility is located ceases operations, or manure has not been added or removed from the facility for a period of 24 months. Manure facilities shall be closed in a manner that will prevent future contamination of groundwater and surface waters in accordance with NRCS Technical Standard 360.
2. The owner or operator may retain the facility for a longer period of time by demonstrating to the Land Conservation Department that any of the following conditions are met:
  - (a) The facility is designed, constructed, and maintained in accordance with section 14.24 of this Ordinance.
  - (b) Retention of the facility is warranted based on anticipated future use.
  - (c) The facility is designed to store manure for a period of time longer than 24 months.
3. Failing and leaking existing facilities – Livestock waste storage facilities that pose an imminent threat to public health or fish and aquatic life or are causing a violation of groundwater standards shall be upgraded, replaced or abandoned in accordance with this section.

**(4) Clean Water Diversions**

- (a) All livestock producers within a water quality management area shall comply with this section.
- (b) Runoff shall be diverted away from contacting feedlot, livestock waste storage areas and barnyard areas within water quality management areas.

**(5) Nutrient Management**

- (a) All crop producers and livestock producers that apply manure or other nutrients directly or through contract to agricultural fields shall comply with this section.
- (b) This performance standard does not apply to industrial waste and byproducts regulated under NR 214, municipal sludge regulated under NR 204, septage regulated under NR 113, or manure directly deposited by pasturing or grazing animals on fields dedicated to pasturing or grazing.
- (c) Manure, commercial fertilizer and other nutrients shall be applied in conformance with a nutrient management plan as established in ATCP 50.04 (3).
  1. The nutrient management plan shall be designed to limit or reduce the discharge of nutrients to waters of the State for the purpose of complying with state water quality standards and groundwater standards.
  2. Nutrient management plans for croplands in watersheds that contain impaired surface waters or in watersheds that contain outstanding or exceptional resource waters shall meet the following criteria:
    - (a.) Unless otherwise provided in this paragraph, the plan shall be designed to manage soil nutrient concentrations so as to

maintain or reduce delivery of nutrients contributing to the impairment of impaired surface waters and to outstanding or exceptional resources waters.

- (d) The plan may allow for an increase in soil nutrient concentrations at a site if necessary to meet crop demands.
- (e) This section is in effect on January 1, 2005 for existing croplands under NR 151.09(4) that are located within any of the following:
  1. Watersheds containing outstanding or exceptional resource waters.
  2. Watersheds containing impaired waters.
  3. Source water protection areas defined in NR 243.03(29).
- (f) This section is in effect on January 1, 2008 for all other existing croplands under NR 151.09 (4).
- (g) This section went into effect for all new croplands under NR 151.09 (4) on October 1, 2003.

**(6) Manure Management Prohibitions**

- (a) All livestock producers shall comply with this section.
- (b) A livestock operation shall have no overflow of livestock waste storage facilities.
- (c) A livestock operation shall have no unconfined manure piles in a water quality management area.
- (d) A livestock operation shall have no direct runoff from a feedlot or stored manure into the waters of the State.
- (e) A livestock operation may not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod or self-sustaining vegetative cover. (This prohibition does not apply to properly designed, installed and maintained livestock or farm equipment crossings.

**14.17 Cost-Sharing Required** - An owner or operator of an agricultural facility or practice that is in existence before October 1, 2002, may not be required to comply with the performance standards, prohibitions, conservation practices or technical standards under this Ordinance unless cost-sharing is available from any source, to the owner or operator. A determination that cost-sharing is available to meet the performance standards, prohibitions, conservation practices or technical standards under this subsection will be determined in accordance with NR 151.09 (4)(d) or NR 151.095 (5)(d) when funding is provided under s. 281.65 stats., and will be determined in accordance with ATCP 50 when funds are from any other source. Cost-sharing under this section is only required for the minimum practice(s) necessary to meet the performance standards and prohibitions.

**14.18 Implementation and Enforcement Procedures for Cropland Performance Standards.**

**(1) Landowner and Operator Requirements.**

- (a) *Introduction* – This section identifies compliance requirements for landowners and operators based on whether the cropland is existing or new and whether cost sharing is required and made available to the landowner or operator. This section will also identify circumstances

under which an owner or operator of cropland is required to comply with the cropland performance standards. In this section, “cropland performance standards” means performance standards in NR 151.02 and NR 151.07.

- (b) *General requirements* – If any cropland is meeting a cropland performance standard on or after October 1, 2002, the cropland performance standard shall continue to be met by the existing landowner or operator, heirs or subsequent owners or operators of the cropland. If a landowner or operator alters or changes the management of the cropland in a manner that results in non-compliance with the performance standard, the landowner operator shall bring the cropland back into compliance, regardless of whether cost-sharing is made available. This paragraph does not apply to croplands completing enrollment determined to be existing under the Conservation Reserve or Conservation Reserve Enhancement Program administered by the United States Department of Agriculture.
- (c) *Existing cropland requirements* –
  - 1. A landowner or operator of an existing cropland, defined under OC §14.18 (2)(b), shall comply with a cropland performance standard if all of the following have been done by the Land Conservation Department:
    - (a) A determination is made that cost-sharing has been made available in accordance with section 14.17, on or after October 1, 2002, except as provided in OC§14.18 (1)(c) 2 and 3.
    - (b) The landowner or operator has been notified in accordance with OC §14.18 (3) or (4) below.
  - 2. A landowner or operator of existing cropland, defined under OC § 14.18 (2) (b), shall comply with a cropland performance standard, regardless of whether cost sharing is available, in situations where the best management practices and other corrective measures needed to meet the performance standards do not involve eligible costs.
  - 3. A landowner or operator of an existing cropland that voluntarily proposes to construct or reconstruct a livestock waste storage system shall comply with OC§ 14.15 (4), regarding the application of manure, regardless of whether cost sharing is made available.
- (d) *New cropland requirements* – A landowner or operator of a new cropland, defined under OC § 14.18 (2)(b) below, shall comply with the cropland performance standards regardless of whether cost sharing is available.

**(2) Land Conservation Department Determinations –**

- (a) *Scope of determinations* – If croplands are not in compliance with a cropland performance standard, the Land Conservation Department shall make determinations in accordance with the procedures and criteria in this subsection.
- (b) *Cropland Status* – The Land Conservation Department shall classify non-complying croplands to be either new or existing for purposes of

administering this Ordinance. In making the determination, the Land Conservation Department shall base the decision on the following:

1. An existing cropland is one that meets all of the following criteria:
  - (a) The cropland was being cropped as of October 1, 2002.
  - (b) The cropland is not in compliance with a cropland performance standard in this subchapter as of October 1, 2002. The reason for non-compliance of the cropland may not be failure of the landowner or operator to maintain an installed best management practice in accordance with a cost-share agreement or contract.
2. An existing cropland also includes land enrolled on October 1, 2002, in the Conservation Reserve Program administered by the United States Department of Agriculture.
3. A new cropland is one that does not meet the definition under OC § 14.18 (1) or (2) including:
  - (a) Land without a previous history of cropping that is converted to cropland after October 1, 2002. "Without a previous history of cropping" means land where crops have not been grown and harvested for agricultural purposes in the last 10 years prior to the conversion to cropland.
  - (b) Cropland that is in existence and in compliance with a performance standard on or after October 1, 2002 and that undergoes a change in a cropland practice that results in non-compliance with the performance standards.
4. Change in ownership may not be used as the sole basis for determining whether a cropland is existing or new for purposes of administering this subsection.

(c) *Eligible costs* – If cost sharing is required to be made available under OC § 14.18 (1)(c), the Land Conservation Department shall determine the total cost of best management practices and corrective measures needed to bring a cropland into compliance with performance standards.

**(3) Notification Requirements and Compliance Periods for Existing Croplands when Cost-sharing is Required**

(a) *Landowner notification* –

1. The Land Conservation Department shall notify a landowner or operator in writing of determinations made under OC §14.18 (2) and implementation requirements for existing croplands where cost sharing is required for compliance.
2. The notice shall be sent certified mail, return receipt requested or personal delivery by the LCD.
3. The following information shall be included in the notice:
  - (a) A description of the cropland performance standard being violated.
  - (b) The cropland status determination made in accordance with 14.18 (2)(b).
  - (c) The determination made in accordance with OC §14.18 (2)(c) as to which best management practices or other corrective

measures that are needed to comply with cropland performance standards are eligible for cost-sharing.

- (d.) The determination made in accordance with OC§14.17 that cost-sharing is available for eligible costs to achieve compliance with cropland performance standards, including a written offer of cost-sharing.
- (e.) An offer to provide or coordinate the provision of technical assistance.
- (f.) A compliance period for meeting the cropland performance standard.
- (g.) An explanation of the possible consequences if the landowner or operator fails to comply with provisions of the notice, including enforcement or loss of cost-sharing, or both.
- (h.) An explanation of local appeals procedures.

(b) *Compliance period* –

- 1. A landowner or operator that receives the notice under OC §14.18 (3)(a) shall install or implement best management practices and corrective measures to meet the performance standards in the time period specified in the notice, if cost-sharing is available in accordance with OC §14.17.
- 2. The compliance period identified in the notice in paragraph (a) below, shall be determined by the Land Conservation Department as follows:
  - (a.) The compliance period shall begin on the postmark date of the notice or the date of personal delivery by the LCD.
  - (b.) The length of the compliance period shall be from 60 days to 3 years unless otherwise provided for in this section.
  - (c.) The length of the compliance period may be less than 60 days if the site is an imminent threat to public health, fish, and aquatic life.
  - (d.) The Land Conservation Department may authorize an extension up to 4 years on a case-by-case basis provided that the reasons for the extension are beyond the control of the landowner or operator. A compliance period may not be extended to exceed 4 years in total.
- 3. Once a landowner or operator achieves compliance with a cropland performance standard, compliance with the standard shall be maintained by the existing landowner or operator and heirs or subsequent owners, regardless of cost-sharing.

**(4) Notification Requirements and Compliance Periods for Existing Croplands in Situations when No Eligible Costs are Involved –**

(a) *Landowner notification* –

- 1. The Land Conservation Department shall notify a non-complying landowner or operator of existing croplands of the determinations made under OC§14.18 (2).
- 2. The notice shall be sent certified mail, return receipt requested, or via personal delivery by LCD staff.
- 3. The following information shall be included in the notice:

- (a) A description of the cropland performance standard that is being violated and the determination that corrective measures do not involve eligible costs under 14.18 (2)(c).
- (b) The cropland status determination made in accordance with OC§14.18 (2)(b).
- (c) A compliance period for achieving the cropland performance standard. The compliance period may not exceed the time limits in paragraph (b) below.
- (d) An explanation of the consequences if the landowner or operator fails to comply with provisions of the notice.
- (e) An explanation of local appeals procedures.

(b) *Compliance period* –

- 1. The compliance period for existing croplands where best management practices and other corrective measures do not involve eligible costs shall be in accordance with the following:
  - (a) The compliance period shall begin on the postmark date of the notice or the date of personal delivery by the LCD.
  - (b) The length of the compliance period shall be from 60 days to 3 years unless otherwise provided for in this subsection.
  - (c) The length of the compliance period may be less than 60 days if the site is an imminent threat to public health, fish and aquatic life.
  - (d) The Land Conservation Department may authorize an extension up to 4 years on a case-by-case basis provided that the reasons for the extension are beyond the control of the landowner or operator. A compliance period may not be extended to exceed 4 years in total.
- 2. Once compliance with a cropland performance standard is attained, compliance with the standard shall be maintained by the existing landowner or operator and heirs or subsequent owners.

(c) *Combined notices* – The Land Conservation Department may meet multiple notification requirements under OC§ 14.17, 14.19 (3) and 14.19 (4)(a) within any single notice issued to a landowner or operator.

## **14.19 Implementation and Enforcement Procedures for Livestock Performance Standards and Prohibitions.**

### **(1) Livestock Owner and Operator Requirements –**

- (a) *Introduction* – This section identifies compliance requirements for a livestock owner or operator based on whether a livestock facility is existing or new and whether cost-sharing is required to be made available to a livestock owner or operator. This section will also identify circumstances under which an owner or operator of a livestock facility is required to comply with livestock performance standards and prohibitions. In this section, “livestock performance standards and prohibitions” means the performance standards and prohibitions in NR Chapters 151.05, 151.06 and 151.08.
- (b) *General requirements* – If any livestock facility is meeting a livestock performance standard or prohibition on or after October 1, 2002, the

livestock performance standard or prohibition shall continue to be met by the existing owner or operator, heirs, or subsequent owners or operators of the facility. If an owner or operator alters or changes the management of the livestock facility in a manner that results in non-compliance with a livestock performance standard or prohibition, the owner or operator shall bring the livestock facility back into compliance regardless of cost-share availability.

(c) *Existing livestock facility requirements* –

1. An owner or operator of an existing livestock facility, defined under OC§14.19 (2)(b) below, shall comply with a livestock performance standard or prohibition if all of the following have been done by the Land Conservation Department:
  - (a) A determination is made that cost-sharing has been made available in accordance with section 14.17 on or after October 1, 2002, except as provided in OC§14.19 (1)(c)(2) and 14.19 (1)(d).
  - (b) The owner or operator of the livestock facility has been notified in accordance with OC§14.19 (3) or (4) below.
2. An owner or operator of an existing livestock facility, defined under OC§14.19 (2)(b)(1), shall comply with the livestock performance standards and prohibitions, regardless of whether cost-sharing is available, in situations where best management practices and other corrective measures needed to meet the performance standards do not involve eligible costs.

(d) *New livestock facility requirements* – An owner or operator of a new livestock facility, defined under OC§14.19 (2)(b)(2), shall comply with the livestock performance standards and prohibitions, regardless of whether cost-sharing is available.

(2) **Land Conservation Department Determinations** –

- (a) *Scope of determinations* – If a livestock facility is not in compliance with the livestock performance standard or prohibition, the Land Conservation Department shall make determinations in accordance with the procedures and criteria in this subsection.
- (b) *Livestock facility status* – The Land Conservation Department shall classify a non-complying livestock facility or an operation to be either new or existing for purposes of administering this Ordinance. In making the determination, the Land Conservation Department shall base the decision on the following:
  1. An existing livestock facility is one that meets all of the following criteria:
    - (a) The facility is in existence as of October 1, 2002.
    - (b) The facility is not in compliance with a livestock performance standard or prohibition in this subchapter as of October 1, 2002. The reason for non-compliance of the livestock facility may not be failure of the owner or operator to maintain an installed best management practice in accordance with a cost-share agreement or contract.

2. A new livestock operation or facility is one that does not meet the definition under OC§14.19 (2)(b)(1), including:
  - (a) A livestock operation or facility that is established or installed after October 1, 2002, including the placement of livestock structures on a site that did not previously have structures, or placement of animals on lands that did not have animals as of October 1, 2002, unless the land is part of an existing rotational grazing or pasturing operation.
  - (b) For a livestock operation that is in existence as of October 1, 2002 that establishes or constructs or substantially alters a facility after October 1, 2002, the facilities constructed, established or substantially altered after October 1, 2002 are considered new, except as specified in OC§14.19 (2)(b)(3).
  - (c) A livestock facility that is in existence and in compliance with a livestock performance standard or prohibition on or after October 1, 2002 and that undergoes a change in the livestock facility that results in non-compliance with the livestock performance standard or prohibition.
3. Pursuant to the implementation procedures in this section, if the Land Conservation Department or a municipality directs an owner or operator of an existing livestock facility to construct a facility as a corrective measure to comply with a performance standard or prohibition on or after October 1, 2002, or directs the owner or operator to reconstruct the existing facility as a corrective measure on or after October 1, 2002, the constructed facilities are not considered new for purposes of installing or implementation of the corrective measure.
4. A livestock facility that meets the criteria in OC§14.19 (2)(b)(1), and has subsequently been abandoned shall retain its status as an existing livestock facility if livestock of similar species and number of animal units are reintroduced within 5 years of abandonment.
5. Change in ownership may not be used as the sole basis for determining whether a livestock facility is existing or new for purposes of administering this subsection.

(c) *Eligible costs* – If cost-sharing is required to be made available under OC§14.19 (1)(c), the Land Conservation Department shall determine the total cost of best management practices and corrective measures needed to bring a livestock facility into compliance with a livestock performance standard or prohibition and shall determine which of those costs are eligible for cost-sharing.

**(3) Notification Requirements and Compliance Periods for Existing Livestock Facilities when Cost-Sharing is Required**

(a) *Owner or Operator Notification*–

1. The Land Conservation Department shall notify the owner or operator in writing of the determinations made under OC§14.19 (2) and implementation requirements for existing livestock facilities where cost-sharing is required for compliance.

2. The notice shall be sent certified mail, return receipt requested or personal delivery by Land Conservation Department staff.
3. The following information shall be included in the notice:
  - (a.) A description of the livestock performance standard or prohibition being violated.
  - (b.) The livestock facility status determination made in accordance with OC§14.19 (2)(b).
  - (c.) The determination made in accordance with OC§14.19 (2)(c) as to which best management practices or other corrective measures needed to comply with a livestock performance standard or prohibition are eligible for cost-sharing.
  - (d.) The determination made in accordance with OC§14.17 that cost-sharing is available for eligible costs to achieve compliance with a livestock performance standard or prohibition, including a written offer of cost-sharing.
  - (e.) An offer to provide or coordinate the provision of technical assistance.
  - (f.) A compliance period for meeting the livestock performance standard or prohibition.
  - (g.) An explanation of the possible consequences if the owner or operator fails to comply with provisions of the notice, including enforcement or loss of cost-sharing, or both.
  - (h.) An explanation of the appeals process as defined in OC§ 14.29.

(b) *Compliance Period –*

1. An owner or operator that receives the notice under OC§14.19 (3) shall install or implement best management practices and corrective measures to meet a performance standard or prohibition in the time period specified in the notice, if cost-sharing is available in accordance with OC§ 14.17.
2. The compliance period identified in the notice in paragraph (a) below, shall be determined by the Land Conservation Department as follows:
  - (a.) The compliance period shall begin on the post mark date of the notice or the date of personal delivery.
  - (b.) The length of the compliance period shall be from 60 days to 3 years unless otherwise provided for in this subdivision.
  - (c.) The length of the compliance period may be less than 60 days if the site is an imminent threat to public health or fish and aquatic life.
  - (d.) The Land Conservation Department may authorize an extension on a case-by-case basis provided that the reasons for the extension are beyond the control of the owner or operator of the livestock facility. A compliance period may not be extended to exceed 4 years in total.
3. Once an owner or operator achieves compliance with a livestock performance standard or prohibition, compliance with the standard or prohibition shall be maintained by the existing owner or operator and heirs or subsequent owners or operators, regardless of cost-sharing.

**(4) Notification Requirements and Compliance Periods for Existing Livestock Facilities in Situations when No Eligible Costs are Involved**

**(a) Owner or Operator Notification**

1. The Land Conservation Department shall notify a non-complying owner or operator of an existing livestock facility of the determinations made under OC§14.19 (2).
2. The notice shall be sent certified mail, return receipt requested or personal delivery by Land Conservation Department staff.
3. The following information shall be included in the notice:
  - (a) A description of the livestock performance standard or prohibition that is being violated and the determination that corrective measures do not involve eligible costs under OC§14.19 (2)(c).
  - (b) The livestock operation status determination made in accordance with OC§14.19 (2)(b).
  - (c) A compliance period for meeting the livestock performance standard or prohibition. The compliance period may not exceed the time limits in paragraph (b) below.
  - (d) An explanation of the consequences if the owner or operator fails to comply with provisions of the notice.
  - (e) An explanation of local appeals procedures.

**(b) Compliance Period –**

1. The compliance period for existing livestock facilities where best management practices and other corrective measures do not involve eligible costs shall be in accordance with the following:
  - (a) The compliance period shall begin on the postmark date of the notice or the date of personal delivery.
  - (b) The length of the compliance period shall be from 60 days to 3 years unless otherwise provided for in this subdivision.
  - (c) The length of the compliance period may be less than 60 days if the site is an imminent threat to public health, or fish and aquatic life.
2. Once compliance with a livestock performance standard or prohibition is attained, compliance with the performance standard or prohibition shall be maintained by the existing owner or operator and heirs or subsequent owners or operators.

**(c) Combined Notices –** The Land Conservation Department may meet multiple notification requirements under OC§ 14.17, 14.19 (3) and 14.19 (4)(a) and within any single notice issued to the owner or operator.

**14.20 Variances – (NR 151.097)**

**(1) Requests –** Requests for a variance to the performance standards shall be made in writing to the Land Conservation Department. Requests shall be reviewed by the Land Conservation Department prior to submittal to the Department of Natural Resources and shall include:

**(a)** Clearly stated rationale and justification for requesting the variance.

- (b) Any permit applications required by this Ordinance.
- (c) Any facility or operational plans as required by this Ordinance.

**(2) Economic Hardship** – A variance shall not be granted solely on the basis of economic hardship.

**(3) Conditions** – The Land Conservation Department may recommend a variance to the Department of Natural Resources only if all of the following conditions are met:

- (a) Compliance with the performance standard or technical standard is not feasible due to site conditions. This condition does not apply to research activities conducted as part of a planned agricultural research and farming curriculum.
- (b) The landowner or operator will implement best management practices or other corrective measures that ensure a level of pollution control that will achieve a level of water quality protection comparable to that afforded by the performance standards in this subchapter.
- (c) The conditions for which the variance is requested, are not created by the landowner or operator or their agents or assigns. This condition does not apply to research activities conducted as part of a planned agricultural research and farming curriculum.

**(4) Process** – The Land Conservation Department shall use the following process when administering a variance request:

- (a) The landowner or operator shall submit the variance request to the Land Conservation Department within 60 days of receiving the notice.
- (b) The Land Conservation Department shall send any variance request to the Department of Natural Resources within 10 working days of receiving the variance request.
- (c) The Department of Natural Resources shall make its determination based on the factors in NR151.097(3).
- (d) The Department of Natural Resources shall notify the landowner or operator and the Land Conservation Department of its determination. If the variance is granted, the Department of Natural Resources or Land Conservation Department shall send to the landowner or operator an amended notice.
- (e) The period of time required to make a ruling on a variance request does not extend the compliance periods allowed under NR 151.09 and NR 151.095.

## **Subchapter IV – Livestock Waste Storage Construction Permit**

### **14.21 Permit Required –**

**(1)** No existing or proposed livestock waste storage facility or parts thereof, may be located, installed, moved, substantially altered, or its use changed, including closure, without a Livestock Waste Storage Construction Permit as provided in this Ordinance, without compliance with the provisions of this

Ordinance, and without compliance with the USDA-NRCS Technical Guide as adopted as part of this Ordinance. The Specific conditions under which a permit is required are shown in Table 2.

<b>Table 2</b> <b>Permits Required for Livestock Waste Storage Facilities</b>	
New	All construction of livestock waste storage facilities as of the effective date of this Ordinance.
Existing	All substantial alteration, repair, or replacement of existing livestock waste storage facilities.
	All closure of idle, failing or leaking livestock waste storage facilities; including voluntary closures of existing systems.

- (2) With the exception of the closure of livestock waste storage facilities, those receiving a Livestock Waste Storage Construction Permit issued under the authority of this Ordinance shall be required to implement an approved nutrient management plan (see OC§ 14.16 (5)) in accordance with ATCP 50.04(3)(e) and verify the ability of the applicant to comply with the USDA-NRCS Technical Standard for Nutrient Management (590). Livestock waste storage facility closures are required to remove and properly dispose of all accumulated manures and contaminated soil in the livestock waste storage facility in compliance with the USDA-NRCS Technical Standards for Nutrient Management (590).
- (3) The requirements of this Ordinance shall be in addition to any other Ordinance regulating animal manure and nutrient management. In the case of conflict, the most stringent provisions shall apply.

#### **14.22 Exception to Permit Requirements –**

- (1) Emergency minor repairs to facilities such as fixing a broken pipe or equipment, leaking dikes or the removal of stoppages may be performed without a permit. Such work shall be reported to the Outagamie County Land Conservation Department as soon as possible for a determination as to whether a permit will be required or additional alterations or repairs to the facility are required. The Land Conservation Department shall render a decision within 20 calendar days of receiving the request.
- (2) Permit applicants may request that the Land Conservation Department waive specific livestock waste storage construction plan components in OC§ 14.24 (1) if livestock waste storage facility alterations, repairs or replacements render the construction plan components unnecessary. Although specific livestock waste storage construction plan components may be waived, the constructed livestock waste storage facility shall remain in compliance with section 14.20.

**14.23 Fees** – a non-refundable fee for a Livestock Waste Storage Construction Permit under this Ordinance shall be calculated as required in a fee schedule set by the Outagamie County Agricultural, Extension, Education, Zoning and Land Conservation Committee. The Committee may, from time to time, modify the fees based upon justified program administration costs. Such modifications will not require that a public hearing be held; however, proposed changes will be publicly noticed prior to Committee action. All after the fact fees shall be subject to penalties.

Permit application packets can be obtained from the Outagamie County Land Conservation Department at 3365 West Brewster Street in Appleton, downloaded from our website at [www.co.outagamie.wi.us](http://www.co.outagamie.wi.us), or by calling (920) 832-5073.

**14.24 Construction Requirements –**

**(1) Livestock Waste Storage Construction Plan Requirements** – Each application for a Livestock Waste Storage Construction Permit under this section shall include a livestock waste storage construction plan. The plan shall meet or exceed the minimum established limits and specific criteria within USDA-NRCS Technical Standard for Waste Storage Facility (313), and additional Technical Standards, including but not limited to, Critical Area Planting (342), Fence (382), Roof Runoff Structure (558), Nutrient Management (590), and Manure transfer (634) where they apply. The plan shall include:

- (a) A general location map or drawing of the livestock waste storage facility which shows the location of the livestock waste storage facility, buildings, homes, property lines, roads, wells, public or private drainage ditches and creeks, flowages, rivers, streams, lakes, or wetlands within one thousand feet of the proposed facility. The scale of the drawing, a north arrow, and the date the general location map was prepared.
- (b) Engineering construction plans for the livestock waste storage facility, which shall include specific design components that shall comply with USDA-NRCS Technical Standard for Waste Storage Facility (313), and additional applicable Technical Standards.
- (c) A narrative of the general criteria required within USDA-NRCS Technical Standard for Waste Storage Facility (313), and additional applicable Technical Standards such as management assessment, site assessment and operation and maintenance procedures for installed practices.
- (d) Any other additional information required by the Outagamie County Land Conservation Department on a case-by-case basis or as identified in the reference guide to this Ordinance to protect water quality and determine compliance with the Ordinance. The Outagamie County Agricultural Performance Standards and Livestock Waste Management Ordinance Reference Guide, which is adopted by reference as a companion piece to this ordinance. The Outagamie County Agricultural, Extension, Education, Zoning and Land Conservation Committee may, from time to time, modify the reference guide. Such modifications will not require that

a public hearing be held; however, proposed changes will be publicly noticed prior to Committee action.

**(2) Livestock Waste Storage Facility Closure Plan Requirements** – Closure of a livestock waste storage facility shall occur when an operation where the facility is located ceases operations, or manure has not been added or removed from the facility for a period of 24 months. Livestock waste storage facilities shall be closed in a manner that will prevent future contamination of groundwater and surface waters. Applications for a Livestock Waste Storage Construction Permit under this section shall include a livestock waste storage closure plan to be submitted with the permit application. The plan shall include:

- (a) A general location map or drawing of the livestock waste storage facility which shows the location of the livestock waste storage facility, buildings, homes, property lines, roads, wells, public or private drainage ditches and creeks, flowages, rivers, streams, lakes, or wetlands within one thousand feet of the proposed facility. The scale of the drawing, a north arrow, and the date the general location map was prepared.
- (b) A description of the method and specifications in transferring manure into and from the livestock waste storage facility to ensure proper closure of transfer systems.
- (c) Provisions to remove or permanently plug the manure transfer system serving the livestock waste storage facility.
- (d) Provisions to remove and properly dispose of all accumulated manure in the livestock waste storage facility in compliance with USDA-NRCS Technical Standard for Nutrient Management (590).
- (e) For all earthen waste impoundments, plan requirements and provisions shall be in compliance and consistent with USDA-NRCS Technical Standard for Closure of Waste Impoundments (360).
- (f) *Use Conversion Option* – The livestock waste storage facility may be converted to other uses, where as it is demonstrated that the conversion will not result in a degradation of ground and/or surface waters or be a threat to public health, safety, or general welfare. A detailed description of intended alternative use must be described for all livestock waste storage facility conversions for determination if conversions will be allowed.
- (g) Any other additional information required by the Land Conservation Department to protect water quality and determine compliance with this Ordinance.

#### **14.25 Review of Application –**

**(1)** The Land Conservation Department shall receive and review all permit applications. Prior to approval or disapproval of the permit application, the applicant shall submit a copy of the proposed plan(s) to the Land Conservation Department for review if appropriate. The LCD shall determine if the proposed facility meets the required standards set forth in subchapter 4 of this Ordinance. Within 20 working days after receiving the completed

application and fee, the LCD shall inform the applicant in writing whether the permit application is approved or disapproved.

- (2) If additional information is required, the Land Conservation Department has 20 working days from the receipt of the additional information in which to approve or disapprove the permit application. If, in addition to the applicant's information the LCD requires comment from an outside agency, the LCD has 20 working days from receipt of the comments from the referral agency.
- (3) The LCD personnel may conduct a site inspection prior to approving or disapproving the application. If the LCD fails to approve or disapprove the permit application in writing within 20 working days of the receipt of the permit application, receipt of additional applicant information or the receipt of referral agency comments, as appropriate, the application shall be deemed approved and the applicant may proceed as if a permit had been issued.

**14.26 Permit Conditions** – All permits issued under this Ordinance shall be issued subject to the following conditions and requirements.

- (1) Design, construction, management, and closure shall be carried out in accordance with the waste storage facility or waste storage closure plan and applicable standards specified in Subchapter III of this Ordinance.
- (2) The permittee shall give 5 working days notice to the Land Conservation Department before starting any construction or closure activity authorized by the permit.
- (3) Approval must be obtained in writing from the Land Conservation Department prior to any modifications to the approved livestock waste storage facility or closure plan.
- (4) The permittee and if applicable, the contractor, shall certify in writing by signing the certification sheet that the facility was installed or closed as planned and designed. A copy of the signed certification sheet shall be given to the Land Conservation Department within 20 working days of completion of installation. The LCD personnel may conduct site inspection during and following construction to determine that the facility was installed as planned and designed.
- (5) Activities authorized by the permit must be completed within one year from the date of issuance after which such permit shall be void.

**14.27 Permit Revocation** – The Land Conservation Department may revoke any permit issued under this Ordinance if the holder of the permit has misrepresented any material fact in the permit application, livestock waste storage facility, or closure plans, or if the holder of the permit violates any of the conditions of the permit.

**Subchapter V – Violations and Appeals**

## 14.28 Violations –

### (1) Penalties –

- (a) Any person violating this Ordinance shall:
  1. Forfeit not less than \$10.00 nor more than \$500.00 for each offense; and;
  2. Institute those remedial measures, summarily and/or within a defined time period, necessary to correct any violation.
  3. Be enjoined or restrained from further violation.
  4. Pay the fees, costs and disbursements incurred by the County associated with prosecution of the action.
- (b) Each day a violation exists or continues constitutes a separate offense.

## 14.29 Appeals –

### (1) General Provisions –

- (a) *What Can BeAppealed* –
  1. Final compliance determination made in writing by the Land Conservation Department.
  2. Final permit application decisions made in writing by the LCD.
  3. Final permit modification or denial decision made in writing by the LCD.
  4. Final permit suspension or revocation decisions made in writing by the LCD.
- (b) Who May Appeal –
  1. Any person aggrieved by the decision.
  2. A person aggrieved by the decision if such adversely impacts the substantial interests of that person.
- (c) How An Appeal Is Taken –
  1. Payment of fee for filing a Notice of Appeal.
  2. Filing a Notice of Appeal with the Land Conservation Committee, with a copy to the LCD.
  3. Notice must identify appellant, specify the decision sought to be reviewed, and designate the factual and legal bases for the appeal.
  4. Fee must be paid and Notice of Appeal filed within 20 calendar days from issuance of the decision, or an appeal is barred.
- (d) Stay –
  1. The appeal, ordinarily, stays all proceedings in furtherance of the decision appealed from.
  2. The appeal does not stay all proceedings if, after the appeal is filed, LCD certifies to the LCC that a stay would pose an imminent threat to the environment, public health or public safety.
- (e) Standard of Review –
  1. Certiorari (i.e. an inquiry, based on the record into whether the LCD could have reasonably made the decision that it did).
  2. LCD's decisions shall be accorded due deference.
  3. The standards set forth in this Ordinance are controlling.
- (f) Burden of Proof –
  1. The burden of proof rests with the appellant.

2. The appellant must submit evidence sufficient to support granting the appeal.

(g) Hearings –

1. The LCC shall fix the time for and location of hearing an appeal. The hearing shall commence within 45 calendar days of the fee being paid and Notice of Appeal being filed.
2. Process –
  - (a.) Opening remarks by appellant and then by LCD. These opening remarks are intended to acquaint the LCC with the case and set out, in a general way, each side's case.
  - (b.) Appellant presents real and testimonial evidence first.
  - (c.) LCD presents real and testimonial evidence second.
  - (d.) Appellant may offer rebuttal real and testimonial evidence.
  - (e.) Closing remarks by appellant and then by LCD. These closing remarks are intended to be a brief summation of each side's position on the contested issues and the reasons each is entitled to prevail.
  - (f.) Appellant and LCD may cross-examine witnesses of the other side.
  - (g.) LCC may swear witnesses.
  - (h.) LCC will mark and preserve exhibits.
  - (i.) LCC may cause the proceedings to be taken by expense thereof to be paid by the parties to the proceeding. Any record of hearing will be retained by the LCC.
  - (j.) The rules of evidence should be adhered to, but do not strictly apply.
  - (k.) The hearing shall be informal in nature.

(h) Final Determination / Judicial Review –

1. The LCC may affirm or reverse in whole or part or it may modify the decision on review.
2. Within 45 calendar days of completion of the hearing, the LCC shall mail or deliver to each side its written determination stating the reasons therefore. This determination shall be a final determination.
3. Any party to the proceeding may seek judicial review thereof pursuant to and in accordance with Section 68.13, Wisconsin Statutes.

(i.) Assessment/Refund of Costs and Fees

1. If the Appellant prevails and at the LCC's sole discretion, the filing fee may be refunded in whole or part.
2. Otherwise, each party must pay its own costs and fees.

(j) Screening Mechanism –

1. This mechanism is intended to protect the LCC's impartiality, to maintain the LCC's appearance of fairness, and to allow the LCC to hear and adjudicate appeals hereunder.
2. Because the appearance of impartiality and actual bias are of equal importance, LCC members shall refrain from:
  - (a.) Having any direct or personal connection with a pending appeal.
  - (b.) Outside of the hearing, have discussions with or receive evidence from LCD staff, the landowner or land user, or any

other person with respect to the substance of a pending appeal. If an LCC member's impartiality can reasonably be questioned, the LCC member will have to excuse oneself from consideration of the appeal.