

Ordinance No. 368-2001

**AN ORDINANCE AMENDING THE GENERAL CODE OF THE COUNTY OF
LINCOLN (Chapter 11-Animal Waste Management)**

The County Board of Supervisors of Lincoln County, Wisconsin, does ordain as follows:

- Section 1. Any existing ordinances, codes, resolutions or portions thereof in conflict with this ordinance are hereby repealed as far as any conflict exists.
- Section 2. This ordinance shall take effect the day after passage and publication as provided by law.
- Section 3. If any portions or provisions of this order are adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected hereby.
- Section 4. Section 11.05 of the General Code of Lincoln County is hereby created to read as follows:

11.05 **ANIMAL WASTE MANAGEMENT**

(1) **INTRODUCTION.**

- (a) **AUTHORITY.** This ordinance is adopted under the authority granted by § 59.02, 59.03 and § 92.16, Wis. Stats.
- (b) **TITLE.** This section shall be known as the “Lincoln County Animal Waste Management Ordinance”.
- (c) **FINDINGS AND DECLARATION OF POLICY.**
 - 1. The County Board finds that animal waste storage facilities not meeting technical standards may cause water pollution in the county, and may result in actual or potential harm to the health of county residents and transients; to livestock, aquatic life and other animals and plants; and to the property tax base of the county.
 - 2. The County Board finds that the technical standards developed by the U.S.D.A. Natural Resources Conservation Service provide effective, practical and environmentally safe methods of storing animal waste.

- (d) **PURPOSE.** The purpose of this section is to regulate the management of animal waste; in order to prevent water pollution and thereby protect the spread of disease; to further the appropriate use and conservation of land and water resources for its communities; and promote the prosperity, aesthetics, safety and general welfare of the citizens of the county. It is also intended to provide for the administration and enforcement of this section and to provide penalties for its violation.
- (e) **APPLICABILITY.** This ordinance applies to the unincorporated areas of the county.
- (f) **INTERPRETATION.** In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in the favor of the county, and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.
- (g) **CONFLICT AND SEVERABILITY.** Sections 25.01 and 25.02, infra, are incorporated herein by reference.

(2) **DEFINITIONS.** In this chapter:

- (a) **ANIMAL WASTE.** The livestock fecal waste, excreta and other materials such as bedding, water from precipitation, milk house waste, soil, hair, and other debris normally included in animal waste handling operations.
- (b) **ANIMAL WASTE STORAGE FACILITY.** A waste storage impoundment made by constructing an embankment and/or excavating a pit or dugout, or by fabricating a structure (concrete, steel, or other material). The purpose of the facility is to temporarily store animal or other organic wastes such as manure, wastewater and contaminated runoff. Installation of a new manure transfer system will be considered a component of an animal waste storage facility, which requires a permit under this chapter.
- (c) **APPLICANT.** Any person who applies for a permit under this ordinance.
- (d) **CONSERVATION PRACTICE.** A structure, technique or measure applied to the land to address a natural resource management problem.
- (e) **DESIGNEE.** The County Conservationist or Conservation Specialist of the Lincoln County Land Conservation Department.
- (f) **DIRECT RUNOFF.** Visible discharge from a barnyard, feedlot or animal waste storage facility into waters of the state.
- (g) **FEEDLOT.** A lot or building, or combination of contiguous lots and buildings, intended for the confined feeding, breeding, raising or holding of animals; specifically designed as a confinement area in which animal waste may accumulate or where the concentration of animals is such that an adequate sod cover cannot be maintained.

- (h) **IDLE ANIMAL WASTE STORAGE FACILITY.** An animal waste storage facility, which includes but is not limited to, the following:
 1. No longer being used for its intended purpose and is no longer having any additional animal waste placed into it.
 2. Has not had any animal waste placed into it for a minimum of one year.
 3. Will, by all evidence available, not again be used to store animal waste by an active livestock operation.
- (i) **LCC.** Abbreviation for Land Conservation Committee of the Lincoln County Board of Supervisors.
- (j) **MALFUNCTIONING ANIMAL WASTE STORAGE FACILITY.** An animal waste storage facility, which includes but is not limited to, the following:
 1. An animal waste storage facility in which the outside face of the sidewall(s) have been damaged or eroded, which may weaken the structure of the facility.
 2. An animal waste storage facility in which there are visible and serious deformities of the structure and shape of the inside sidewall(s).
 3. An animal waste storage facility in which the waste is visibly leaking through the sidewalls or floor.
 4. An animal waste storage facility in which any other serious deformity or activity that is not consistent with the design and function of the facility as determined by the Technical Guide.
- (k) **MANURE TRANSFER SYSTEM.** A conveyance system, as defined by the Technical Guide, using structures, conduits or equipment for the purpose of transferring animal waste, wastewater and contaminated runoff through a reception pit, pump, channel or conduit.
- (l) **MISMANAGED ANIMAL WASTE STORAGE FACILITY.** An animal waste storage facility which is not functioning consistent with the recommended operating methods as defined by the Technical Guide and poses a real or potential threat to any person, the groundwater or surface water or any other component of the environment. A mismanaged animal waste storage facility may include, but is not limited to any or all of the following.
 1. An animal waste storage facility that is overflowing or is being operated improperly and inconsistent with the recommended operating methods as defined by the Technical Guide and/or operation and maintenance plan.
 2. An animal waste storage facility in which the safety devices required at the time of construction are absent or are nonfunctional.

- (m) **NATURAL RESOURCE CONSERVATION SERVICE (NRCS).** An agency of the United States Department of Agriculture which, for the purposes of this section, provides the Lincoln County Land Conservation Committee and Land Conservation Department with technical assistance and technical standards.
- (n) **PERMIT.** The signed, written statement issued by the Lincoln County Land Conservation Committee or its designee under this ordinance authorizing the applicant to construct, install, reconstruct, enlarge, substantially alter, maintain and/or close an existing animal waste storage facility.
- (o) **PERMITTEE.** Any person to whom a permit is issued under this ordinance.
- (p) **PERSON.** Any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, county, state agency within Wisconsin, or federal government, or any combination thereof.
- (q) **SAFETY DESIGN.** Designs, as outlined in the Technical Standards, which protect humans and livestock from the hazards associated with an animal waste storage facility. Examples of safety designs include the following: fencing, grates, proper ventilation, concrete curbing, gates, and signs
- (r) **TECHNICAL GUIDE.** The document (otherwise known as the Wisconsin Field Office Technical Guide –Section IV) 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 animal waste storage facilities and other conservation practices.
- (s) **TECHNICAL STANDARDS.** A document that specifies minimum criteria for planning, performance expectations, design/construction parameters, material specifications, testing procedures, operation/maintenance plans and other criteria necessary to ensure the appropriate design and installation of a practice or system of practices to provide a predicted benefit to soil and water resources.
- (t) **UNCONFINED MANURE PILE.** An animal waste pile from which runoff leaves its perimeter, or is not confined to its immediate area.
- (u) **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 and/or recreational use, or detrimental to fish, bird, animal, or plant life.
- (v) **WATER QUALITY MANAGEMENT AREA.** The area within 1,000 feet from the ordinary high-water mark of navigable waters that consist of a lake, pond or flowage, except that, for a navigable water that is a glacial pothole lake, “water quality management area” means the area within 1,000 feet from the high-water mark of the lake; 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.

(w) **WATERS OF THE STATE.** Those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water and groundwater, natural or artificial, public or private within the state or its jurisdiction.

(x) **WORKING DAY.** Days other than Saturday, Sunday and legal holidays.

(3) ACTIVITIES SUBJECT TO REGULATION.

(a) **ANIMAL WASTE STORAGE FACILITY.** Any person who locates, installs, moves, reconstructs, extends, enlarges, converts, closes, substantially alters or changes use of an animal waste storage facility or parts thereof; or who employs another to do the same, on land subject to this section, shall be subject to the provisions of this section.

(b) **MALFUNCTIONING ANIMAL WASTE STORAGE FACILITY.** Malfunctioning animal waste storage facilities are a menace to the health and general welfare of the citizens of Lincoln County; are declared to be nuisances, and shall be subject to sec. 11.05 (7),infra. An animal waste storage facility found to be malfunctioning shall be repaired to a condition meeting the Technical Standards within one (1) year of the date that the animal waste storage facility is found to be malfunctioning.

(c) **MISMANAGED ANIMAL WASTE STORAGE FACILITY.** An animal waste storage facility found to be mismanaged due to overflow shall be brought into compliance as soon as possible at the discretion of the LCC designee. An animal waste storage facility found to be mismanaged for reasons other than overflow shall be brought into compliance within one (1) year of the date the animal waste storage facility is found to be mismanaged. The LCC or its designee may extend this time for good cause. Such extension of time shall be designated by the LCC or its designee but not to exceed one (1) additional year.

(d) **IDLE ANIMAL WASTE STORAGE FACILITY.** Idle storage facilities are a potential threat to ground and surface water pollution of Lincoln County and it is in the best interest of the public to close such facilities. An idle animal waste storage facility found to be causing an environmental or safety hazard shall be closed within one (1) year of the date of the idle animal waste storage facility is found to be causing an environmental or safety hazard. The LCC or its designee may extend this time for good cause. Such extension of time shall be designated by the LCC or its designee but not to exceed one (1) additional year. The closure plan shall comply with the criteria outlined in Technical Standard 313 as defined by this ordinance.

(e) **PROHIBITIONS.** The following activities are prohibited according to sec. 281.16(3), Stats:

1. Overflow of manure storage structures.
2. Unconfined manure pile in a water quality management area.
3. Direct runoff from a feedlot or stored animal waste into the waters of the state.

4. Unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod cover.

(4) **STANDARDS.** The following standards shall be met:

- (a) **STANDARDS FOR ANIMAL WASTE STORAGE FACILITIES.** The standards for the design, construction and closure of animal waste storage facilities and criteria for unconfined manure stacks are those in Technical Standard 313 of the NRCS Technical Guide Section V. This Standard covers the proper location, construction, installation, alteration, design, operation and maintenance of an animal waste storage facility and unconfined manure stacks.
- (b) **STANDARDS FOR ANIMAL WASTE MANAGEMENT AND UTILIZATION.** The standards for management and utilization of animal waste are those in Technical Standard 590 of the NRCS Technical Guide. This Standard covers management of 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, commercial fertilizer, legume crops and crop residues.
- (c) **STANDARDS FOR ANIMAL WASTE TRANSFER.** The standard for transfer of animal waste to the storage facility are those in Technical Standard 634 of the NRCS Technical Guide. This Standard covers the siting, design, operation and maintenance of conveyance systems to transfer animal waste, wastewater and contaminated runoff to animal waste storage facilities.

(5) **APPLICATION FOR AND ISSUANCE OF PERMITS.**

- (a) **PERMIT REQUIRED.** No person may undertake an activity subject to this section without obtaining a permit from the LCC designee prior to beginning the proposed activity. Permits are required to locate, install, move, reconstruct, extend, enlarge, convert, substantially alter or change use of an animal waste storage facility; and to close an animal waste storage facility. Requirements of this ordinance shall be in addition to any other rules or provisions regulating animal waste. In the case of conflict, the most stringent provisions shall apply.
- (b) **EXCEPTION TO PERMIT REQUIREMENTS.** Permits are not required for:
 - 1) Emergency repairs such as repairing broken pipe or equipment, leaking dikes, the removal of stoppages or ordinary and required maintenance on any component of the storage facility or transfer system may be performed without a permit so as to restore the storage facility to the original state. If repairs will alter the original design and construction of the facility, a report shall be made to the LCC designee within one (1) working day of the emergency. A determination by the LCC designee shall be made within two (2) working days of receiving the report as to requirement of a permit.

- 2) Malfunctioning animal waste storage facilities. An animal waste storage facility found to be malfunctioning shall be repaired to a condition meeting the Technical Standards within one (1) year of the date that the animal waste storage facility is found to be malfunctioning.
 - 3) Mismanaged animal waste storage facilities. An animal waste storage facility found to be mismanaged due to overflow shall be brought into compliance as soon as possible at the discretion of the LCC designee. An animal waste storage facility found to be mismanaged for reasons other than overflow shall be brought into compliance within one (1) year of the date the animal waste storage facility is found to be mismanaged. The LCC or its designee may extend this time for good cause. Such extension of time shall be designated by the LCC or its designee but not to exceed one (1) additional year.
 - 4). Prohibitions. Compliance with the prohibitions shall be determined by the LCC designee.
- (c) FEE. A permit fee is not required for activities regulated under this ordinance.
 - (d) COMPLIANCE WITH PERMIT REQUIREMENTS. A person is in compliance with this ordinance if he or she follows this ordinance, receives a permit from the LCC designee prior to beginning activities subject to regulation under this ordinance, and complies with the requirements of the permit. A certificate of compliance shall be issued upon completion of a final construction check verifying compliance with the requirements of the permit.
 - (e) ANIMAL WASTE STORAGE FACILITY AND NUTRIENT MANAGEMENT PLAN REQUIRED. Each application for an animal waste storage facility permit under this section shall include an animal waste storage facility plan and nutrient management plan. Technical assistance for plan development may be made available to applicants upon request through the LCC designee in cooperation with the Natural Resources Conservation Service and/or Wisconsin Department of Agriculture, Trade and Consumer Protection, or the services of a qualified engineering consultant licensed in the State of Wisconsin may be employed at the applicant's expense. Plans developed by an engineering consultant must bear the consultant's seal and be accompanied by verification that the plan is in accordance with applicable standards. The plan should specify and meet the criteria identified in Technical Standards 313, 634, and 590, or any successors thereto.
 1. SOIL FOUNDATION INVESTIGATION – The LCC designee shall be on-site to verify soil samples taken during all soil foundation investigations. Soil Foundation Investigations must comply with Technical Standards 313 and 634 or any successors thereto.
 - (f) ANIMAL WASTE STORAGE FACILITY CLOSURE PLAN REQUIRED. Each application for a permit to close an animal waste storage facility under this section shall include an animal waste storage facility closure plan. Technical assistance for plan development may be made available to applicants upon request through the LCC designee in cooperation with the Natural Resources Conservation

Service and/or Wisconsin Department of Agriculture, Trade and Consumer Protection, or the services of a qualified engineering consultant licensed in the State of Wisconsin may be employed at the applicant's expense. Plans developed by an engineering consultant must bear the consultant's seal and be accompanied by verification that the plan is in accordance with applicable standards. The plan should specify and meet the criteria identified in Technical Standard 313 or any successors thereto.

- (g) **REVIEW OF APPLICATION.** The LCC designee shall determine if the proposed facility or closure plan meets the requirements of the standards set forth in this section. Within thirty (30) calendar days after receiving the completed application and permit fee, the LCC designee shall inform the applicant in writing whether the permit application is approved or disapproved. If additional information is required, the LCC designee shall so notify the permit applicant. The LCC designee has thirty (30) calendar days from the receipt of the additional information in which to approve or disapprove the application. If, in addition to the information received from the applicant, the LCC designee requires comments or review from an outside agency, the LCC designee has thirty (30) days from receipt of the comments or review from the referral agency to approve or disapprove the application. If the LCC designee fails to approve or disapprove the permit application or additional information, as appropriate, in writing within thirty (30) calendar days of the receipt, the application shall be deemed approved and the applicant may proceed as if a permit has been issued.
- (h) **PERMIT CONDITIONS.** All permits issued under this section shall be issued subject to the following conditions and requirements. Activities authorized by permit shall be completed within one (1) year from the date of issuance after which such permit shall be void. This permit is a construction permit and to be in effect until the LCC designee determines that all of the permit and Technical Guide requirements have been met. No facility may be used until all permit conditions have been met.
1. The location, design, construction, installation, and maintenance of new animal waste storage facilities; the maintenance, alteration and closure of existing animal waste storage facilities; and the application of animal waste from all storage facilities shall be according to LCC designee approved plans.
 2. The permittee shall give at least five (5) working days notice to the LCC designee before starting any construction activities authorized by this permit.
 3. Approval in writing must be obtained from the LCC designee prior to any modifications to the approved animal waste storage facility plan.
 4. Prior to use, a qualified engineering consultant licensed in the State of Wisconsin, and/or the LCC designee, Wisconsin Department of Agriculture or Natural Resource Conservation Service engineering practitioner and the permittee, and if applicable, the contractor shall certify in writing that the facility was installed as planned no later than five (5) working days following installation.

5. A one (1) year extension of the permit may be granted at the discretion of the LCC designee.

(i) **PERMIT REVOCATION.** The LCC designee may revoke any permit issued under this section if the holder of the permit has misrepresented any material fact in the permit application, animal waste storage facility plan or animal waste storage facility closure plan; or if the holder of the permit violates any of the conditions of the permit.

(6) ADMINISTRATION.

(a) **DELEGATION OF AUTHORITY.** Lincoln County hereby designates the Zoning Administrator and the County Conservationist to administer and enforce this section.

(b) **ADMINISTRATIVE DUTIES.** In the administration and enforcement of this section, the County Conservationist will:

1. Keep an accurate record of all permit applications, animal waste storage facility plans, nutrient management plans, permits issued, inspections made, and other official actions.
2. Review permit applications and issue permits.
3. Inspect any animal waste storage facility constructed to insure compliance with plan specifications.
4. Investigate complaints relating to compliance with the ordinance. All complaints must be in writing, signed and kept on file.
5. Perform other duties as specified in this section.

(c) **INSPECTION AUTHORITY.** The Zoning Administrator and County Conservationist are authorized to enter upon any lands affected by this section to inspect the land prior to or after issuance to determine compliance with this section. If permission cannot be received from the applicant or permittee, entry by the Zoning Administrator and County Conservationist shall be according to Chapter 66 and Chapter 92, Wis. Stats. Refusal to grant permission to enter lands affected by this ordinance for purposes of inspection may be grounds for permit denial or revocation.

(d) **ENFORCEMENT AUTHORITY.**

1. The Zoning Administrator or County Conservationist are authorized to issue Notices of Noncompliance, Stop Work Orders, revoke permits and seek penalties or injunctions where activity is taking place in violation of this section.

2. Any permit revocation or stop work order shall remain in effect unless retracted in writing by the Zoning Administrator or County Conservationist or by a court. The Zoning Administrator and County Conservationist are authorized to refer any violation of this section or of an order stopping work pursuant to this section to the District Attorney or Corporation Counsel for commencement of further legal proceedings.

(7) VIOLATIONS.

- (a) **PENALTY.** Any person who violates, neglects or refuses to comply with, or resists the enforcement of any of the provisions of this section, shall be subject to a forfeiture as provided in § 25.04 of this Code. A violation includes failure to comply with any standard of this section, or with any condition or qualification attached to the permit. Each day a violation exists shall constitute a separate violation.
- (b) **ENFORCEMENT OF INJUNCTION.** As a substitute for, or an addition to, forfeiture actions, the county may seek enforcement of any part of this section by court actions seeking injunctions or restraining orders.

(8) APPEALS.

- (a) **AUTHORITY.** Under Chapter 68, Stats., the Land Conservation Committee is designated to act in accord with § 68.09(2), Stats., to review initial determinations made by the LCC designee upon request for review.
- (b) **PROCEDURE.** Persons alleged to have been aggrieved by an initial determination made under this section shall follow the procedure, both as to time and other requirements, at Ch.68, Stats.
- (c) **WHO MAY APPEAL.** For the purpose of this section, “persons” shall be defined in accord with § 68.06, Stats., and only those who qualify under § 68.01, Stats., may seek review of a determination.

Sec. 25.04(4)(c) of the General Code of Lincoln County is amended as follows:

- (4)(c) **ISSUANCE OF CITATIONS.** The County Forest, Land and Parks Administrator, Zoning Administrator, Sanitarian, Solid Waste Manager, County Conservationist and Health Officer may issue citations authorized under this section.

Dated this 20th day of February, 2001.

Introduced by:
LAND CONSERVATION AND UNIVERSITY
EXTENSION COMMITTEE

Elroy Schmidt, Chair

James Alber, Vice Chair

E.Richard Simon, Secretary

Lloyd Buck, Sr.

Joe Ugolini

Gary Gruetzmacher, Farm Service Agency Representative

LINCOLN COUNTY, WISCONSIN:

Philipp Cohrs, Chair

Robert Kunkel, County Clerk