

**REPEAL AND RECREATE CHAPTER 10, SECTION 10.50 OF THE
WAUPACA COUNTY CODE OF ORDINANCES RELATING TO MANURE STORAGE AND
LAND SPREADING OF MANURE**

MANURE MANAGEMENT

10.50 GENERAL PROVISIONS

A. Title:

This ordinance (Sections 10.50 through 10.55) shall be known and cited as the Waupaca County Manure Management Ordinance, and is hereinafter referred to as the Ordinance.

B. Findings, Purpose and Authority:

The Waupaca County Board of Supervisors finds that storage of manure in storage facilities not meeting sufficient technical design and construction standards may cause pollution of the surface and ground waters of Waupaca County and may result in harm to the health of county residents, to livestock, aquatic life and other animals and plants and to the property tax base of Waupaca County.

The Waupaca County Board of Supervisors also finds that improper management of manure storage facilities and utilization of stored manure may cause pollution of the ground and surface waters of Waupaca County. The Waupaca County Board of Supervisors further finds that the technical standards developed by the United States Department of Agriculture, Natural Resource Conservation Service and adopted by the Waupaca County Land and Water Conservation Committee provide effective, practical and environmentally safe methods of storing and utilizing manure.

This ordinance is enacted, pursuant to the following Wisconsin Statutes, §59.02, §59.03, §59.69, §59.70, §66.0119, §92.15, and §92.16. The purpose of the ordinance is to regulate the design and construction of manure storage facilities in order to prevent surface and ground water pollution that may cause harm to the health of county residents; and enforce the technical standards established by the United State Department of Agriculture Natural Resource Conservation Service (USDA-NRCS) as adopted by the Waupaca County Land Conservation Committee; and to provide for the administration and enforcement of the ordinance and to provide penalties for its violation.

C. Applicability:

This ordinance applies to the entire unincorporated areas of Waupaca County.

D. Interpretations:

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

2. Severability Clause. If any section, provision, or portion of this ordinance is ruled invalid by any court, the remainder of the ordinance shall not for that reason be rendered ineffective, but rather shall be enforced, to whatever degree possible, as if the provision which was declared invalid had not been enacted.

E. Definitions:

1. “Abandoned Storage Facility” means a facility where manure has not been added or removed for a period of twenty-four (24) months.
2. “Manure” means livestock excreta. “Manure” includes livestock bedding, water, soil, hair, feathers, and other debris that becomes intermingled with livestock excreta in normal manure handling operations.
3. “Manure Storage Facility” means an impoundment made by constructing an embankment or excavating a pit or dug out or by fabricating a structure to contain manure and other animal or agricultural wastes.
4. “Applicant” means any person who applies for a permit under this ordinance.
5. “Approved Engineer” means an agricultural or civil engineer that is registered by the State of Wisconsin or an engineering practitioner with the proper certification for the Department of Agriculture Trade and Consumer Protection or job approval from USDA
6. “Department” means the Waupaca County Land and Water Conservation Department.
7. “Permit” means the signed, written statement issued by the Waupaca County Land and Water Conservation Department under this ordinance authorizing the applicant to construct, install, reconstruct, enlarge, or substantially alter a manure storage facility.
8. “Permittee” means any person to whom a permit is issued under this ordinance.
9. “Person” means any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, county, or state agency within Wisconsin, the Federal Government, or any combination thereof.
10. “Technical Guide” means the United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) Technical Guide as adopted by the Waupaca County Land and Water Conservation Committee.
11. “Water Pollution” means 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.
12. “Substantially Alter” means a change initiated by an owner or operator that results in a relocation of a structure or facility or changes to the size, depth or configuration of a structure or facility including:
 - a. Replacement of a liner of any type in a manure storage structure.

- b. An increase in the 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 cattle to poultry. [NR151.015]

10.51 ACTIVITIES SUBJECT TO REGULATION

A. General Requirement:

Any person who designs and constructs a new manure storage facility or alters an existing manure storage facility or has an abandoned manure storage facility on property under their ownership; or who employs another person to do the same, on land subject to this ordinance, after the effective date of this ordinance, shall be subject to the provision of this ordinance.

B. Compliance with Permit Requirements:

A person is in compliance with this ordinance if he or she follows the procedures of this ordinance, receives a permit from the Land and Water Conservation Department before beginning activities subject to regulation under this ordinance, and complies with the requirements of the permit.

C. Closure of a Manure Storage Facility:

The owner of land that has a manure storage facility must close the facility if the livestock operations where the facility is located ceases operation, or manure has not been added or removed from the facility for a period of 24 months unless the landowner demonstrates the following to satisfaction of the Waupaca County Land and Water Conservation Department. A landowner who chooses to voluntarily close a manure storage facility must complete a closure permit 10.51E application.

1. The facility is designed, constructed and maintained to prevent water pollution.
 2. The facility is designed to store manure for a period of time longer than 24 months.
 3. The retention of the facility is warranted based on anticipated future use.
- If the Land and Water Conservation Department determines that the facility must be closed, the owner shall obtain a permit for closure of the facility as provided in sec. 10.53 and comply with the USDA-NRCS Technical Guide, Standard 360, Closure of Waste Impoundments.

10.52 STANDARDS FOR MANURE STORAGE FACILITIES

- A.** The standards for design and construction of manure storage facilities are those in Standard 313 (Waste Storage Structure) and Standard 634 (Manure Transfer Standard) of the Technical Guide. The Standards for abandonment of manure storage are those in Standard 360 (Manure Storage Abandonment)

- B. An nutrient management plan meeting USDA-NRCS Standard 590 (Nutrient Management) (March, 1999).
- C. Subsequent Modification of Standards: The standards of the Technical Guide are adopted and by reference made a part of this Article as if fully set forth herein. Any proposed future amendment, revision or modification of the standards incorporated herein will be acted upon by the Land and Water Conservation Committee.
- D. Additional Conditions: The Waupaca County Land and Water Conservation Department staff may impose additional conditions before issuing a permit if in their judgment such conditions are necessary to protect groundwater or surface water due to questionable soil or site conditions. Additional conditions required, must comply with requirements of S.92.15, Stats. Compliance with this article does not eliminate or change the applicants' duty to comply with any other restrictions, rules or regulations imposed by other entities, including but not limited to town, state, city or village requirements.
- E. Copies of amended, revised or modified standards that have been incorporated into the ordinance will be maintained and made available by the Land and Water Conservation Department.

10.53 APPLICATION FOR AND ISSUANCE OF PERMITS

A. Permit Required:

No person may construct or substantially alter a manure storage facility or close any abandoned or unused storage facility without obtaining a permit from the Land and Water Conservation Department prior to beginning the proposed activity.

B. Exception to Permit Requirement:

Emergency repairs such as repairing a broken pipe or equipment, leaking dikes, or the removal of obstructions may be performed without a permit. If repairs will alter the original design and construction of the facility, a report shall be made to the Land and Water Conservation Department within one (1) day of the emergency for a determination by the Land and Water Conservation Department on whether a permit will be required for any additional alteration or repair to the facility.

C. Fee:

The fee for a permit under this ordinance shall be \$200.00.

D. Manure Storage Facility Plan Required:

Each application for a construction permit under this section shall include a manure storage facility plan developed in accordance with standards. Technical assistance for plan development shall be made available to applicants upon request through the Land and Water Conservation Committee or its staff. The plan shall specify:

1. The number and kinds of animals for which storage is provided.

2. A sketch of the facility and its location in relation to buildings within 250 feet and homes within 500 feet of the proposed facility. The sketch shall be drawn to scale, with a scale no smaller than 1 inch = 100 feet.
3. The structural details, including dimensions, cross sections, and concrete thickness.
4. The location of any private wells within 500 feet of the facility or public wells within 1000 feet of the proposed facility.
5. The soil test pit locations and soil descriptions to depth of at least three (3) feet below the planned bottom of the facility.
6. The elevation of ground water or bedrock if encountered in the soil profile and the date of any such determinations.
7. Provisions for adequate drainage and control of runoff to prevent pollution of surface water and ground water. If a navigable body of water lies within 1000 feet of the facility, the location and distance to the body of water shall be shown.
8. The scale of the drawing and the north arrow.
9. A time schedule for construction of the facility.
10. A nutrient management plan that complies with ATCP 50.04 and a written statement that the manure from the storage facility will be distributed consistent with the 590 Plan
11. An approved construction site erosion control plan.

E. Closure Permit Application:

Each application for a closure permit under this ordinance shall include a closure plan prepared in accordance with Technical Standard 360. The plan shall specify:

1. A sketch of the facility and its location to buildings within 250 feet. The sketch shall be drawn to scale with a scale no smaller than 1 inch = 100 feet. Include a north arrow.
2. The amount and type of waste in the facility.
3. The type of facility and construction materials, i.e. concrete, earthen, synthetic liner.
4. The type of transfer system present.
5. A plan for application of the manure that is present in the facility (if any) that complies with USDA-NRCS Standard 590. (Nutrient Management)

F. Review of Application:

The Land and Water Conservation Department shall receive and review all permit applications. The Land and Water Conservation Department shall then determine if the proposed application meets required standards set forth in this ordinance. Within 30 days after receiving the completed application and fee, the Land and Water Conservation Department shall inform the applicant in writing whether the permit application is approved or disapproved. If additional information is required, the Land and Water Conservation Department has 15 days from the receipt of the additional information in which to approve or disapprove the application. If the Land and Water Conservation Department fails to approve or disapprove the permit application in writing within 45 days of the receipt of the permit application or additional information, as appropriate, the application shall be deemed approved and the applicant may proceed as if a permit had been issued.

G. Permit Conditions:

All permits issued under this ordinance shall be subject to the following conditions and requirements.

1. A manure storage facility construction shall be carried out in accordance with the manure storage waste facility plans and applicable standards specified in this ordinance
2. The permittee shall give two (2) working days notice to the Land and Water Conservation Department before starting any construction activity authorized by the permit.
3. Approval in writing must be obtained from the Land and Water Conservation Department prior to any modifications to the approved manure storage facility plan.
4. If the permittee does not utilize the Land and Water Conservation Department to design and inspect construction of the facility, the permittee shall submit a certification from a professional engineer or a person with appropriate engineering job approval according to NRCS standards, that the facility was installed or closed as planned. A copy of the signed certification sheet shall be given to the Land and Water Conservation Department within 1 month of completion of installation or closure. Any approved changes made to the Manure Storage Facility Plan or closure design shall be specified in the certification. Land and Water Conservation Department personnel may conduct site inspections during and following construction to determine that the facility was installed or closed as planned and designed.
5. Activities authorized by permit must be completed within two (2) years from the date of issuance after which such permit shall be void.

H. Permit Revocation:

The Land and Water 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 or manure facility plan, or if the holder of the permit violates any of the conditions of the permit.

I. Manure Management Prohibitions:

- a. All livestock producers shall comply with this section.
- b. A livestock operation shall have no overflow of manure storage facilities.
- c. A livestock operation shall have no unconfined manure pile 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.
- f. This prohibition does not apply to properly designed, installed and maintained livestock or farm equipment crossings.

10.54 ADMINISTRATION, INSPECTION AND ENFORCEMENT

A. Administrative Duties:

In the administration of this ordinance, the Land and Water Conservation Department shall:

- 1. Keep an accurate record of all permit applications, manure facility plans, permits issued, inspections made, and other official actions.
- 2. Review permit applications and issue permits in accordance with this ordinance.
- 3. Inspect manure facility construction to insure the facility is being constructed according to plan specifications.
- 4. Investigate complaints relating to compliance with the ordinance.
- 5. Perform other duties as specified in this ordinance.

B. Inspection Authority:

The Land and Water Conservation Department is authorized to enter upon any lands affected by this ordinance to inspect the land prior to or after permit issuance to determine compliance with this ordinance. If permission cannot be received from the applicant or permittee, entry by the Land and Water Conservation Department shall be according the §66.0119 Wisconsin Statutes.

C. Enforcement Authority:

1. The Land and Water Conservation Department is authorized to post an order stopping work upon land which has had a permit revoked or on land currently undergoing activity in violation of this ordinance. Notice is given by both posting upon the land where the violation occurs, one or more copies of a poster stating the violation, and by mailing a copy of the order by certified mail to the person whose activity is in violation of this ordinance. The order shall specify that the activity must cease immediately and be brought into compliance within thirty (30) days.
2. Any permit revocation or order stopping work shall remain in effect unless retracted by the Board of Adjustment, the Land and Water Conservation Department, or by a court of general jurisdiction; or until the activity is brought into compliance with the ordinance. The Land and Water Conservation Department is authorized to refer any violation of this ordinance or of an order stopping work issued pursuant to this ordinance to the corporation counsel for commencement of further legal proceedings.

D. Penalties:

1. Any person who violates, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$100.00, plus cost of prosecution for each violation of this ordinance or with any condition or qualification attached to the permit. Each day that a violation exists shall be a separate offense.
2. As a substitute for or as an addition to forfeiture actions, Waupaca County may seek enforcement of any part of this ordinance by court actions seeking injunctions or restraining orders.

E. Appeals:

1. Under authority of Chapter 59.964, Wisconsin Statutes, the Waupaca County Board of Adjustment, created under §59.694(4)(7), Wisconsin Statutes, and under Chapter 10, Sec. 10.50 of the General Code of Waupaca County, and acting as an appeal authority under §59.694(7), Wisconsin Statutes, is authorized to hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination by the Land and Water Conservation Department in administering this ordinance.
2. The rules, procedures, duties and powers of the Board of Adjustment and Chapter 59, Wisconsin Statutes, shall apply to this ordinance.
3. Appeals may be taken by any person having a substantial interest which is adversely affected by the order, requirement, decision or determination made by the Land and Water Conservation Department.
4. Application for appeals may be obtained through the Waupaca County Zoning office.

10.55 INTERPRETATION

If any section or provision of this ordinance is ruled invalid by any court, the remainder of the ordinance shall not be rendered ineffective.

10.56 EFFECTIVE DATE

This ordinance shall become effective upon its adoption and publication as required by law.

Public Hearing held on this 11th day of May, 2005

Approved by the Land and Water Conservation Committee on this 11th day of May, 2005

Approved by the County Board of Supervisors on this 21st day of June, 2005

25 Ayes 0 Nays

ATTEST:

Mary A Robbins

Mary Robbins
Waupaca County Clerk