

# ORDINANCE

Ordinance No. O09-2018-100

## ASHLAND COUNTY AGRICULTURAL PERFORMANCE STANDARDS AND ANIMAL WASTE STORAGE ORDINANCE

This ordinance was approved and forwarded to County Board by the Land & Water Conservation Committee on June 27, 2018.

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## **Subchapter I – Introduction**

**1.01 Authority.** This section is adopted under authority granted by ATCP 50.56 Wisconsin Administrative Code; and Sections 50.56, 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.

**1.02 Title.** This Ordinance shall be known as, referred to, and may be cited as the “Ashland County Agricultural Performance Standards and Animal Waste Storage Ordinance” and is hereinafter referred to as the Ordinance.

### **1.03 Findings and Declaration of Policy.**

- (1) The Ashland County Board of Supervisors recognizes the importance of protecting our ground and surface water resources and finds that proper management of agricultural practices contributes to the protection of: ground and surface waters; public health; plant, animal, and aquatic life; tourism; and the property tax base of Ashland County.
- (2) The Ashland County Board of Supervisors recognizes that water quality and other benefits specified in 1.03(1) will be enhanced by implementing the performance standards and prohibitions of NR 151 and establishing a permitting system for manure storage.
- (3) The Ashland County Board of Supervisors recognizes the importance of agricultural activities to the social, economic, historic, and cultural significance and subsistence of Ashland County residents and transients.
- (4) The residents of Ashland County have the right to implement agricultural activities on the land surface, so long as these activities are implemented in a responsible manner so as not to adversely affect ground and surface waters; public health; and plant, animal, and aquatic life of Ashland County.
- (5) The citizens of Ashland County have the right to implement agricultural practices and shall not have nuisance actions brought against them, in accordance with Section 823.08 Wisconsin Statutes, unless the agricultural use or practice is a substantial threat to public health or safety.
- (6) The dominant aim of this ordinance is to promote the public health, safety, convenience and general welfare of Ashland County residents and transients.

**1.04 Purpose.** This Ordinance establishes the right to farm responsibly and implements the Agricultural Performance Standards and Prohibitions in NR 151 Wis. Admin. Code and Animal Waste Storage Ordinance.

**1.05 Applicability.** This ordinance applies to the unincorporated areas of Ashland County and outside of the external boundary of the Bad River Indian Reservation unless an intergovernmental agreement is established with those governmental entities.

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

**1.07 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.

### **1.08 Relationship to Other Laws.**

- (1) The enactment of this ordinance shall not preclude the County of Ashland from enacting any other ordinance or providing for the enforcement of any other law or ordinance relating to the same or any other matters.
- (2) The procedures and remedies set forth herein may be used in the alternative or in consonance with or in lieu of any other remedy or procedure authorized by law.

- (3) Neither commencement of an action, nor legal remedy granted, under this ordinance may be deemed former jeopardy for purposes of concurrent or subsequent criminal proceedings relating to the same or any other matter.

**1.09 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.

**1.10 Effective Date.** This Ordinance shall become effective upon its enactment and publication by the Ashland County Board of Supervisors.

**1.11 Definitions.**

- (1) "Adequate sod or self-sustaining vegetative cover" means maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges and duff layers of fallen leaves and woody debris.
- (2) "Agricultural facility" means a structure associated with an agricultural practice.
- (3) "Agricultural practice" means any activity associated with an agricultural use.
- (4) "Agricultural use" includes the meaning given in s. 91.01(2), Stats.
- (5) "Animal unit" has the meaning in NR 243.03(5), Wis. Admin. Code
- (6) "Applicant" means any person who applies for a permit under this Ordinance.
- (7) "Best management practices" or "BMPs" means 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.
- (8) "Board of Adjustment" means the Ashland County Board of Adjustment, created and appointed under s. 59.694 Stats.
- (9) "Conservation practice" means a best management practice designed to reduce or prevent soil or sediment loss to the waters of the state. The NRCS has a Conservation Practice Standard (CPS) for each best management practice.
- (10) "Crop producer" means an owner or operator of an operation engaged in crop related agricultural practices specified in s. 281.16(1)(b), Stats.
- (11) "Cropland practice" means the method, activity or management measure used to produce or harvest crops.
- (12) "Direct conduits to groundwater" includes the meaning given in s. NR 151.002(11m), Wis. Admin. Code.
- (13) "Direct runoff" includes any of the following:
- (a) Runoff from a feedlot that can be predicted to discharge a significant amount of pollutants to surface waters of the state or to a direct conduit to ground water.
  - (b) Runoff of stored manure, including manure leachate, that discharges a significant amount of pollutants to surface waters of the state or to a direct conduit to ground water.
  - (c) Construction of a manure storage facility in permeable soils or over fractured bedrock without a liner designed in accordance with s. NR 154.04(3).
  - (d) Discharge of a significant amount of leachate from stored manure to waters of the state.
- (14) "Exceptional resource waters" has the meaning of NR 151.002(14) Wis. Admin. Code.
- (15) "Idle manure storage facility" means a manure storage facility located on a livestock facility that has ceased to operate or manure has not been added or removed for 24 months.
- (16) "Karst feature" has the meaning in ATCP 51.01(17), Wis. Admin. Code.
- (17) "Land Conservation Committee" means
- (a) the committee created by a county board under s. 92.06, Stats. "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 Ashland County Board of Supervisors which oversees the Land and Water Conservation Department.

- (18) "Land and Water Conservation Department" means the Ashland County Land and Water Conservation Department under the direction of the County Conservationist. The Land and Water Conservation Department is responsible for the administration and enforcement of this ordinance.
- (19) "Landowner" means any person holding fee title, an easement or other interest in property, which allows the person to undertake cropping, livestock management, land disturbing construction activity or maintenance of storm water BMPs on the property. A landowner is also "A person who rents, controls, or uses a parcel of land for agricultural purposes" ((ATCP 50.01(15) Wis Admin. Code)).
- (20) "Livestock" means all domestic animals including bovine animals, sheep, goats, poultry, swine, farm-raised deer, equine animals, farm-raised game birds, camelids, ratites and fish, or any fenced-in animals.
- (21) "Livestock facility" means a structure or system constructed or established on a livestock operation.
- (22) "Livestock producer" means an owner or operator of a livestock operation.
- (23) "Livestock operation" has the meaning given in s. 281.16 (1) (c), Stats.
- (24) "LWCD" means the county Land and Water Conservation Department
- (25) "Manure" has the meaning given in s. ATCP 50.01(20) Wis. Admin. Code.
- (26) "Manure management system" has the meaning given in s. ATCP 50.62(1) (b), Wis. Admin. Code.
- (27) "Manure Spray Irrigation" means the practice of applying livestock manure or process wastewater through irrigation equipment including center pivots and travelling guns. Manure spray irrigation **does not include** manure spreaders or tankers with high volume discharge against splash plates or via toolbars.
- (28) "Manure storage facility" has the meaning given in s. ATCP 50.62(1) (c), Wis. Admin. Code.
- (29) "Manure storage structure" has the meaning given in s. ATCP 50.62(1) (d), Wis. Admin. Code.
- (30) "Navigable waters" or "navigable waterway" means any body of water that is navigable under the laws of this state as defined in NR 115.03 (5) Wis. Admin. Code.
- (31) "NRCS" means the Natural Resources Conservation Service of the U.S. Department of Agriculture.
- (32) "Nutrient Management Plan" or "NMP" or "NM Plan". A NMP has the meaning given in ATCP 50.01 (28) Wis. Admin. Code. A NMP must comply with ATCP 50.04 (3), Wis. Admin. Code.
- (33) "Operator" means 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.
- (34) "Ordinary High Water Mark" or "OHWM" has the meaning given in NR 115.03 (6) Wis. Admin. Code.
- (35) "Outstanding resource waters" means waters listed in s. NR 102.10 Stats.
- (36) "Pasture" has the meaning in NR 151.015 (15m), Wis. Admin. Code.
- (37) "Performance standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (38) "Person" means any natural individual, firm, trust, partnership, association, corporation, cooperative, limited liability company and other bodies politic and corporate.
- (39) "Permit" means the signed, written statement issued by the Ashland County Land and Water Conservation Department under this ordinance authorizing the applicant to construct, install, reconstruct, substantially alter, or close a manure storage facility.
- (40) "Permittee" means any person to whom a permit is issued under this Ordinance.
- (41) "Process wastewater" has the meaning given in s. NR 243.03 (53) Stats.
- (42) "Runoff" has the meaning given in NR 151.002 (40) Wis. Admin. Code.
- (43) "Setback distance" is the minimum distance between the wetted perimeter of manure spray irrigation and the building, landform, or adjoining parcel.
- (44) "Site that is susceptible to groundwater contamination" has the meaning under s. 281.16 (1) (g), Stats.

- (45) "Stored manure" means manure that is kept in a manure storage facility or an unconfined manure pile.
- (46) "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 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.
- (47) "Technical standard" has the meaning given in NR 151.002 (45) Wis. Admin. Code. A NRCS Conservation Practice Standard (CPS) is one type of technical standard
- (48) "Tolerable soil loss" or "T" means the maximum rate of erosion, in tons per acre per year, allowable for particular soils and site conditions that will maintain soil productivity.
- (49) "Unconfined manure pile" has the meaning given in NR 151.015 (22), Wis. Admin. Code.
- (50) "Water quality management area" or "WQMA" has the meaning in NR 151.015 (24) Wis. Admin. Code.
- (51) "Waters of the state" has the meaning given in s. 283.01 (20), Stats.
- (52) "Wetted perimeter" is the outer edge of the area receiving liquid manure through irrigation equipment.

## **Subchapter II – Administration.**

**1.20 Delegation of Authority.** The Ashland County Board of Supervisors hereby designates the Land and Water Conservation Department (LWCD) as the permitting authority, and delegates to it the authority to administer and enforce this Ordinance. This delegation may be modified.

**1.21 Administration.** The provisions of this Ordinance shall be administered by the LWCD under the direction of the County Conservationist and oversight of the Land Conservation Committee. In the administration and enforcement of this Ordinance, the LWCD shall:

- (1) Keep an accurate record of all permit applications, animal waste facility plans, nutrient management plans, permits issued, inspections made, and other official actions.
- (2) Review permit applications and issue permits in accordance with Subchapter III of this Ordinance.
- (3) Conduct, or cause to conduct, inspections of manure storage facilities to determine if the facility construction, closure or operation meet the requirements of this Ordinance.
- (4) Conduct, or cause to conduct, reviews of the nutrient management plans and their implementation.
- (5) Implement the performance standards and prohibitions in accordance with Subchapter IV of this Ordinance.
- (6) Review certificate applications and issue certificates of use in accordance with Section 1-6 of this Ordinance.
- (7) Investigate complaints relating to compliance with the requirements of this Ordinance and act upon the findings in accordance with provisions of this Ordinance.
- (8) Perform other duties as specified in this Ordinance.

**1.22 Entry and Inspection Authority.** The LWCD 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), Wis. Stats. If permission cannot be received from the applicant or permittee, entry by the LWCD shall be according to Section 66.0119, Wis. Stats. 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.

**1.23 Enforcement Authority.**

- (1) County may issue a citation, pursuant to and in accordance with s. 66.0113 Wis. Stats.
- (2) A cease and desist order may be issued by the LWCD. 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.
- (3) 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**

**1.30 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 OPERATION. 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 a nutrient management plan criteria established in NR 151.07.

**1.31 Performance Standards and Prohibitions.**

- (1) SHEET, RILL AND WIND EROSION. All land where crops or feed are grown, including pastures, shall be managed to achieve a soil erosion rate equal to, or less than, the "tolerable" (T) rate established for that soil. This standard first applies to pastures beginning July 1, 2012. 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" (T) rate established for that soil.
- (2) MANURE STORAGE FACILITIES.
  - (a) *Applicability.* All livestock producers building new manure storage facilities, substantially altering manure storage facilities, or choosing to abandon their manure storage facilities shall comply with this section.
  - (b) *New construction and alterations.*
    1. New or substantially altered manure 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. The levels of materials in the storage facility may not exceed the margin of safety level identified in NRCS Conservation Practice Standard 313.
    2. Storage facilities that are constructed or substantially altered on or after January 1, 2011, shall be designed and operated to contain the additional volume of runoff and direct precipitation entering the facility as a result of a 25-year, 24-hour storm.
    3. A new manure storage facility means a facility constructed after October 1, 2002.
    4. A substantially altered manure storage facility is a manure storage facility that is substantially altered after October 1, 2002.

(c) *Closure.*

1. Closure of a manure 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.
2. The owner or operator may retain the facility for a longer period of time by demonstrating to the Land and Water Conservation Department that all of the following conditions are met:
  - a. The facility is designed, constructed and maintained in accordance with 1.31(2) (b) of this ordinance.
  - b. The facility is designed to store manure for a period of time longer than 24 months.
  - c. Retention of the facility is warranted based on anticipated future use.

(d) *Existing facilities.*

1. Manure storage facilities in existence as of October 1, 2002, that pose an imminent threat to public health or fish and aquatic life or groundwater shall be upgraded, replaced or abandoned in accordance with this section.
2. Levels of materials in storage facilities may not exceed the margin of safety level identified in NRCS Technical Standard 313.

## (3) 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, manure storage areas and barnyard areas within water quality management areas except that a diversion to protect a private well under NR 151.015 (18) (a) is required only when the feedlot, manure storage area or barnyard area is located upslope from the private well.

## (4) 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 the application of industrial waste and byproducts regulated under ch. NR 214, municipal sludge regulated under ch. NR 204, and septage regulated under ch. NR 113, provided the material is not commingled with manure prior to application.
- (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 resource waters.
    - b. The plan may allow for an increase in soil nutrient concentrations at a site if necessary to meet crop demands.
    - c. For lands in watersheds containing exceptional or outstanding resource waters, the plan may allow an increase in soil nutrient concentrations if the plan documents that any potential nutrient delivery to the exceptional or outstanding resource waters will not alter the background water quality of the exceptional or outstanding resource waters. For lands in watersheds containing impaired waters, the plan may allow an increase in soil nutrient concentrations if a low risk of delivery of nutrients from the land to the impaired water can be demonstrated.

- d. Nutrient management plans shall be updated annually. Completion of a NM Plan update shall be documented by annual submission of the "NMP Checklist" or complete NM Plan to the LWCD no later than June 1 of each year.
3. In this standard, impaired surface waters are waters identified as impaired pursuant to 33 USC 1313 (d) (1) (A) and 40 CFR 130.7. Outstanding or exceptional resource waters are identified in ch. NR 102.
- (d) This section is in effect on January 1, 2005 for existing croplands under s. 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 s. NR 243.03 (61).
- (e) This section is in effect on January 1, 2008 for all other existing croplands under s. NR 151.09 (4).
- (f) This section is in effect for all new croplands under s. NR 151.09 (4) on October 1, 2003.
- (5) 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.
- (6) TILLAGE SETBACK PERFORMANCE STANDARD
- (a) The purpose of this standard is to prevent tillage operations from destroying stream banks and depositing soil directly in surface waters. In this section, "surface water" has the meaning given in s. NR 102.03(7), Wis. Adm. Code.
  - (b) No crop producer may conduct a tillage operation that negatively impacts stream bank integrity or deposits soil directly in surface waters.
  - (c) No tillage operations may be conducted within 5 feet of the top of the channel of surface waters. Tillage setbacks greater than 5 feet but no more than 20 feet may be required to meet this standard.
  - (d) Crop producers shall maintain the area within the tillage setback required under sub. (c) in adequate sod or self-sustaining vegetative cover that provides a minimum of 70% coverage.
  - (e) This section does not apply to grassed waterways installed as conservation practices.
- (7) PHOSPHORUS INDEX PERFORMANCE STANDARD
- (a) All crop and livestock producers shall comply with this section.
  - (b) Croplands, pastures, and winter grazing areas shall average a phosphorus index of 6 or less over the accounting period and may not exceed a phosphorus index of 12 in any individual year within the accounting period.
  - (c) Except as provided under par. (e), for purposes of compliance with this section the phosphorus index shall be calculated using the version of the Wisconsin Phosphorus Index available as of January 1, 2011.
    - *The Wisconsin Phosphorus Index is maintained by the University of Wisconsin department of soil science and can be found at <http://wpindex.soils.wisc.edu/>*
    - *Soil test phosphorus concentration may be used to help identify fields that are high priority for evaluation with the Wisconsin Phosphorus Index. For example, croplands with soil test phosphorus concentrations of 35 parts per million or greater should be given higher priority for evaluation.*

- *Best management practices developed by the Department of Agriculture, Trade and Consumer Protection may be used alone or in combination to meet the requirements of this section.*
- (d) The accounting period required under par. (a) shall meet the following conditions:
1. The accounting period shall begin once a nutrient management plan meeting the requirements of s. NR 151.07, Wis. Adm. Code and s. ATCP 50.04(3), Wis. Adm. Code is completed.
  2. During the first 8 years of implementation of this standard by a producer, computation of the phosphorus index may be based on a combination of planned crop management and historic data. Planned crop management data is based on projected management and crop rotations. Historic data is based on management and crop rotations that have actually occurred.
  3. Once the nutrient management plan under s. NR 151.07 and s. ATCP 50.04(3), Wis. Adm. Code is developed, historic data shall be used for each year as it becomes available.
- (e) If the phosphorus index is not applicable to a particular crop or situation, an equivalent calculation approved by the department shall be used to meet the requirements of this section.
- *The requirement provides for alternative methods to calculate a phosphorus index. Some strategies for assessing and reducing phosphorus index values, algorithms, and software can be found at <http://wpindex.soils.wisc.edu/>*
- (f) Producers may not apply nutrients or manure directly, through mechanical means, to surface waters as defined in s. NR 102.03(7), Wis. Adm. Code.
- (g) The phosphorus index requirement under sub. (b) first takes effect for pastures beginning July 1, 2012.
- (8) **PROCESS WASTEWATER HANDLING.**
- (a) All livestock producers shall comply with this section.
  - (b) There may be no significant discharge of process wastewater to waters of the state.
  - (c) The department shall consider all of the following factors when determining whether a discharge of process wastewater is a significant discharge to waters of the state:
    1. Volume and frequency of the discharge.
    2. Location of the source relative to receiving waters.
    3. Means of process wastewater conveyance to waters of the state.
    4. Slope, vegetation, rainfall, and other factors affecting the likelihood of process wastewater discharge to waters of the state.
    5. Available evidence of discharge to a surface water of the state or to a direct conduit to groundwater.
    6. Whether the process wastewater is discharged to a site that is defined as a site that is susceptible to groundwater contamination.
    7. Other factors relevant to the impact of the discharge on water quality standards of the receiving water or to groundwater standards.

### **1.32 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.

### 1.33 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 ss. NR 151.02 and 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 noncompliance with the performance standard, the landowner or 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 sub. (2) (b), shall comply with a cropland performance standard if all of the following have been done by the Land and Water Conservation Department:
    - a. Except as provided in sub. 2. and 3., a determination is made that cost sharing has been made available in accordance with section 1.32 on or after October 1, 2002.
    - . The landowner or operator has been notified in accordance with sub. (3) or (4).
  2. A landowner or operator of existing cropland, defined under sub. (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 manure storage system shall comply with section 1.30 (4), regardless of whether cost sharing is made available, if the nutrient management plan is required pursuant to a local permit for the manure storage system.
- (d) *New cropland requirements.* A landowner or operator of a new cropland, defined under sub. (2) (b), shall comply with the cropland performance standards, regardless of whether cost sharing is available.
- (2) LAND AND WATER CONSERVATION DEPARTMENT (LWCD) DETERMINATIONS.
- (a) *Scope of determinations.* If croplands are not in compliance with a cropland performance standard, the LWCD shall make determinations in accordance with the procedures and criteria in this subsection.
- (b) *Cropland status.* The LWCD shall classify non-complying croplands to be either new or existing for purposes of administering this ordinance. In making the determination, the LWCD 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 (CRP) or conservation reserve enhancement program (CREP) administered by the United States Department of Agriculture. This subdivision does not apply to croplands re-enrolled after October 1, 2002.
  3. A new cropland is one that does not meet the definition under subd. 1. or 2., including:
    - a. Land without a previous history of cropping that is converted to cropland 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 noncompliance 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 sub. (1) (c), the LWCD 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 LWCD shall notify a landowner or operator in writing of the determinations made under sub. (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.
  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 sub. (2) (b).
    - c. The determination made in accordance with sub. (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 section 1.32 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 par. (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 section 1.32.
  2. The compliance period identified in the notice in par. (a) shall be determined by the LWCD as follows:
    - 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, fish and aquatic life.
  - d. The LWCD 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 LWCD shall notify a non-complying landowner or operator of existing croplands of the determinations made under sub. (2).
- 2. The notice shall be sent certified mail, return receipt requested, or via personal delivery.
- 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 sub. (2) (c).
  - b. The cropland status determination made in accordance with sub. (2) (b).
  - c. A compliance period for achieving the cropland performance standard. The compliance period may not exceed the time limits in par. (b).
  - 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.
  - b. The length of the compliance period shall be from 60 days nor more than 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.
- 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 LWCD may meet multiple notification requirements under par. (a), sub. (3) and section 1.34 within any single notice issued to a landowner or operator.

### **1.34 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 ss. NR 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 noncompliance 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 sub. (2) (b), shall comply with a livestock performance standard or prohibition if all of the following have been done by the LWCD:
    - a. Except as provided in subd. 2., a determination is made that cost sharing has been made available in accordance with section 1.32 on or after October 1, 2002.
    - b. The owner or operator of the livestock facility has been notified in accordance with sub. (3) or (4).
  2. An owner or operator of an existing livestock facility, defined under sub. (2) (b), 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 sub. (2) (b), shall comply with the livestock performance standards and prohibitions, regardless of whether cost sharing is available.
- (2) **LAND AND WATER CONSERVATION DEPARTMENT (LWCD) DETERMINATIONS.**
- (a) *Scope of determinations.* If a livestock facility is not in compliance with a livestock performance standard or prohibition, the LWCD shall make determinations in accordance with the procedures and criteria in this subsection.
- (b) *Livestock facility status.* The LWCD shall classify a non-complying livestock facility on an operation to be either new or existing for purposes of administering this ordinance. In making the determination, the LWCD 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 noncompliance 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 subd. 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 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 subd. 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 of the livestock performance standard or prohibition and that undergoes a change in the livestock facility that results in noncompliance with the livestock performance standard or prohibition. This includes manure storage facilities that fail to meet the requirements of s. NR 151.05 (3) and were either: constructed on or after October 1, 2002; or were constructed prior to October 1, 2002, and subject through October 1, 2002, to the operation and maintenance provisions of a cost share agreement.
  3. Pursuant to the implementation procedures in this section, if the LWCD 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 implementing the corrective measure.
  4. A livestock facility that meets the criteria in subd. 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 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 sub. (1) (c), the LWCD 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 LWCD shall notify an owner or operator in writing of the determinations made under sub. (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.
    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 sub. (2) (b).
      - c. The determination made in accordance with sub. (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 section 1.32 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 local appeals procedures.

*(b) Compliance period.*

1. An owner or operator that receives the notice under par. (a) 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 section 1.32.
2. The compliance period identified in the notice in par. (a) shall be determined by the LWCD 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 not less than 60 days nor more than 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 LWCD 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 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 LWCD shall notify a non-complying owner or operator of an existing livestock facility of the determinations made under sub. (2).
2. The notice shall be sent certified mail, return receipt requested or personal delivery.
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 sub. (2) (c).
  - b. The livestock operation status determination made in accordance with sub. (2) (b).
  - c. A compliance period for meeting the livestock performance standard or prohibition. The compliance period may not exceed the time limits in par. (b).
  - 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 not be less than 60 days nor more than 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 LWCD may meet multiple notification requirements under par. (a), sub. (3) and section 1.33 within any single notice issued to the owner or operator.

**Subchapter IV – Manure Storage and Transfer Permits****1.40 Permits Required and Permit Fees**

- (1) No person may do any of the following without first obtaining a permit in accordance with this section:
  - (a) Construct a new manure storage facility or substantially alter an existing manure storage facility, including the construction or substantial alteration of waste transfer systems connected to a manure storage facility.
  - (b) Upgrade, repair or replace a manure storage facility or waste transfer system that has been identified as posing an imminent threat to public health, fish and aquatic life, or groundwater under Sec. 1.31.
  - (c) Close a manure storage facility or waste transfer system, or convert them to other use.
  - (d) Create or maintain an unconfined manure pile, including derivatives, outside of the animal production area. Unconfined manure piles shall not be permitted within a water quality management area.
  - (e) Apply manure using aerial spray irrigation techniques.
- (2) For the purposes of this section, a manure storage facility is subject to the permit requirements if:
  - (a) It is intended to hold an accumulation of manure within an impoundment or enclosure that is excavated or fabricated, no matter how small that accumulation may be or how long the manure is to be stored there, shall be considered a manure storage facility.
  - (b) It is an enclosed area for holding manure within or below a feedlot or structure for confinement of livestock.
- (3) Requirements of this Ordinance shall be in addition to any other legal requirements regulating animal waste. Specific exemptions to cost-share requirements apply to the issuance of permits. See ss. NR 151.095 (5) (b) 2. and ATCP 50.54 (2) (b), Wis. Admin. Code. In the case of conflict, the most stringent provisions shall apply.
- (4) A person is in compliance with this section if he or she follows the application and other procedures specified in this section, receives a permit and approval from the LWCD before beginning activities subject to regulation under this section, complies with the requirements of the permit and receives any required approvals or certifications from the county. The LWCD may establish a timetable for the applicant to complete required activities to ensure compliance with requirements of this ordinance.
- (5) FEES. All fees under this ordinance are established pursuant to a Fee Schedule duly adopted by the County Board or Land Conservation Committee. Copies of the current fee schedule are kept on file at the LWCD and are available from the department's pages on the county website: <http://co.ashland.wi.us/>. Permit fees are payable upon submission of a permit application. Permit fees will double if a facility is constructed or closed prior to issuance of a permit. Separate fees may apply for engineering assistance provided by the LWCD to design a manure storage facility.

**1.41 Exception to Permit Requirement.** A permit is not required for:

- (1) Preexisting manure storage facilities, except where the facility is substantially altered.
- (2) Routine maintenance of a manure storage facility.
- (3) Emergency equipment repairs of a manure storage facility, if the following conditions are met:
  - (a) All emergency repairs on a manure storage facility or transfer system which cause any disruption of the original construction of the storage facility shall be done so as to restore the storage facility to the original state, as determined by the technical standards set forth in Section 1.46 - Permit Standards
  - (b) Such repairs shall be further reported to the LWCD within one (1) working day of the emergency for a determination on whether a permit will be required for any additional alteration or repair to the facility.

- (c) The LWCD determination shall be rendered within three (3) working days of reporting.
- (4) Emergency Application of Manure with Irrigation Equipment
  - (a) In the event of unforeseen catastrophic failure of manure transfer or storage facilities where immediate dispersal of manure is required to prevent or mitigate environmental or public health degradation, the owner of the manure may utilize manure irrigation to disperse the manure without a permit. However, the owner of the manure shall contact the Ashland County LWCD and adjoining landowners upon commencement of the manure application.
  - (b) In the event of an impending overflow of a manure storage facility for which manure irrigation is necessary to draw down the facility, the Ashland County LWCD shall be notified as soon as possible to obtain a manure irrigation permit. At that time, the Land Conservation Department shall have the discretion to waive certain requirements of this permit, such as the 30-day adjoining landowner notice, in order to facilitate the safe dispersal of the manure and avoid an overflow. However, waiving permit requirements shall be done only when an impending overflow is caused by factors not in the control of the owner of the manure, such as record storms or other unforeseen occurrences.

#### **1.42 Manure Storage Facility Construction Plan and Nutrient Management Plan**

**Required.** Each application for a permit under Section 1.40(1)(a) and Section 1.41 shall be on a form provided by the county and include plans for the storage facility (including transfer system) and the management of manure prepared in accordance with following requirements:

- (1) A narrative of the general criteria required within NRCS Conservation Practice Standard 313, and other applicable Technical Standards including management and site assessments. The narrative should include, but is not limited to:
  - (a) The number and type of animals for which storage is provided, the duration for which storage is to be provided, daily gallons and/or cubic feet of waste and manure produced, bedding type, and manure handling practices.
  - (b) A description and construction plan of the method of transferring animal waste into and from the facility.
  - (c) Soil test pit or boring logs and their locations with soil descriptions and test results. Soil test pit or boring criteria should follow NRCS Conservation Practice Standard 313 and characterize the subsurface (soils, saturation, and bedrock). This includes the elevation of redoximorphic features (mottling), gleyed soil and moisture condition.
- (2) A general location map drawing of the site which shall include:
  - (a) The location of structures in relation to buildings, homes, property lines, roads, wells, karst features, public or private drainage ditches and creeks, flowages, rivers, streams, lakes, or wetlands within one thousand (1000) feet of the proposed facility or system. Measurements to navigable waters shall be made from the ordinary high water mark (OHWM) of the nearest bank or shore.
  - (b) The location of any wells within 250 feet of the facility.
  - (c) The scale of the drawing and the north arrow with the date the general location map was prepared.
  - (d) The location of any floodplains.
- (3) Engineering design drawings of the manure storage facility or transfer system which shall include:
  - (a) Specific design components that shall comply with NRCS Conservation Practice Standard 313 *Waste Storage Facility*, and NRCS Conservation Practice Standard 634 *Waste Transfer*
  - (b) A recoverable benchmark(s) including elevation(s) expressed in feet and tenths.
  - (c) The scale of the drawings and the north arrow. The engineering design drawing shall be drawn to a scale no smaller than one (1) inch equals one hundred (100) feet.
  - (d) The date the engineering design drawings were prepared.

- (4) The structural details, including but not limited to dimensions, cross-sections, concrete thickness, concrete joint design and placement, design loads, design computations, reinforcement schedules, thickness and placement of groundwater protection liners, and all material specifications.
- (5) Provisions for adequate drainage and control of runoff to prevent pollution of surface water and groundwater.
- (6) A construction site erosion control plan.
- (7) Estimated start of construction and construction schedule.
- (8) A safety plan that identifies hazards to animals and people in the production area, and design features to minimize those hazards.
- (9) An operation and maintenance plan for installed practices.
- (10) A Nutrient Management Plan prepared in compliance with requirements of this Ordinance, including Section 1.46 – Permit Standards.
- (11) Any other additional information required by the LWCD to protect water quality and human health, and achieve compliance with the requirements of this Ordinance.

**1.43 Manure Storage Closure or Converted Use Plan Required.** Each application for a closure or converted use permit shall be on form provided by the LWCD and include a closure plan. The plan shall include:

- (1) A general location map drawing of the manure storage facility which shall include:
  - (a) The location of the manure storage facility in relation to buildings, homes, property lines, roads, wells, karst features, public or private drainage ditches and creeks, flowages, rivers, streams, lakes, or wetlands within one thousand (1000) feet of the existing facility.
  - (b) The scale of the drawing and the north arrow.
  - (c) The date the general location map was prepared.
- (2) A description of the method and specifications in transferring manure into and from the manure storage facility to ensure proper closure of transfer systems.
- (3) Provisions to remove or permanently plug the manure transfer system serving the manure storage facility.
- (4) Provisions to remove and properly dispose of all accumulated manure in the manure facility in compliance with applicable Technical Standards and Nutrient Management Plans.
- (5) For all waste impoundments, plan requirements and provisions shall be in compliance and consistent with applicable Technical Standards.
- (6) The manure storage facility or manure transfer system may be converted to a use other than it was designed for by first obtaining a converted use permit from the LWCD. A detailed description of the intended alternative use must be provided along with a clear demonstration that the conversion will not result in a degradation of soil, ground water, or surface water resources; or be a threat to public health, safety or general welfare.
- (7) Manure storage facility closures and conversions shall implement safety measures to ensure the protection of the public from hazardous conditions.
- (8) Any other additional information required by the LWCD to protect water quality and human health, and achieve compliance with the requirements of this Ordinance.

**1.44 Unconfined Manure Stacking Permit and Nutrient Management Plan Required.**

Unconfined manure piles and derivatives shall not be permitted within a water quality management area. Each application for an unconfined manure stacking permit outside of water quality management areas shall be on form provided by the LWCD and include a site plan and a Nutrient Management Plan. The site plan shall include the following in sufficient detail to determine compliance with the specific criteria of NRCS Conservation Practice Standard 318 *Short Term Storage of Animal Waste and By-Products*:

- (1) Waste consistencies. Waste materials having less than 25% solids shall not be stacked in the field unless verified that suitable pile formation is achievable.
- (2) Size and stacking period.
- (3) Hydrologic Soil Groups.
- (4) Subsurface Separation Distance.
- (5) Surface Separation Distances.

- (6) A Nutrient Management Plan prepared in compliance with requirements of this Ordinance, including Section 1.46 – Permit Standards.
- (7) Any other additional information required by the LWCD to protect water quality and human health, and achieve compliance with the requirements of this Ordinance.

**1.45 Manure Spray Irrigation Permit and Nutrient Management Plan Required.** The owner of the manure must obtain a valid permit from the Land Conservation Department prior to application of manure with irrigation equipment. If using a contractor to apply the manure, the owner is strongly recommended to use a written contract or service agreement to ensure the contractor understands and can comply with the technical and operational standards. The permit shall be for a specific method of application to a specific field or fields and shall be valid for 365 days. Each application for a manure spray irrigation permit shall be on form provided by the LWCD and include a technical and operational plan. The plan shall specify the following in sufficient detail to determine compliance with the recommendations of the Wisconsin Manure Irrigation Workgroup as adopted by Ashland County:

- (1) Location Map
  - (a) A map of each field to which manure will be applied through an irrigation system showing all waterways, buildings within 1000 feet of the field edge, adjoining land use, and setback buffers. The map shall include a color aerial photo.
  - (b) The scale of the drawing and the north arrow.
  - (c) The date the map was prepared and the date of the aerial photo.
- (2) Adjoining Landowner Notifications.
  - (a) All landowners within 1000 feet of a field receiving the manure via irrigation equipment shall be notified prior to issuance of the permit and will have 30 days to provide written comments or concerns.
  - (b) All landowners within 1000 feet of the field receiving the manure via aerial irrigation equipment shall be provided written or oral notification of the application by the owner of the manure at least 24 hours prior to making the application. Adjacent landowners may waive this notification requirement through written notice to the Land Conservation Department and permittee.
- (3) Irrigation Equipment Standards. The manure irrigation equipment shall conform to the following standards:
  - (a) Sprinkler irrigation systems will operate as a “low pressure” system between 2-35 pounds per square inch (PSI) as defined by NRCS Conservation Practice Standard 442 – *Sprinkler System*.
  - (b) Droplet size must be “coarse” or larger based on ANSI/ASAE classifications unless drop nozzles are used that average less than 18” from the ground and are used within a crop canopy. The permittee will demonstrate compliance with this requirement through documentation of nozzle specifications and operating pressures. (\*ANSI/ASAE S572.1. 2013. “Spray nozzle classification from droplet spectra.” American Society of Agricultural and Biological Engineers (<http://www.asabe.org/standards/>)).
  - (c) Comply with all federal, state and local laws, rules, and regulations regarding backflow and anti-siphon prevention measures on the installation and operation of a sprinkler system designed for the purpose of nutrient or wastewater application.
  - (d) Pressure regulators are required on center pivot and linear move sprinkler outlets if pressure variation at any sprinkler, resulting from elevation difference exceeds 20% of design operating pressure at that sprinkler.
  - (e) Unless pressure reducers or regulators are installed at each outlet or other pressure compensating or flow control devices are used, lateral lines shall be designed so that pressure variation along the lateral line does not exceed 20% of average design operating pressure.
  - (f) Sprinkler irrigation systems used to apply wastewater shall be designed with sprinkler nozzles of sufficient size to prevent clogging. Drop nozzles are required on the center pivot and lateral move systems.
  - (g) If flexible drop tubes on the center pivot and lateral move systems are used they shall be weighted to maintain an average height of 18 inches or less.

- (4) Operational Plan including a Nutrient Management Plan, setback requirements, and any other additional information required by the LWCD to protect water quality and human health, and achieve compliance with the requirements of this Ordinance.
- (a) No application of manure or process wastewater through irrigation equipment directly on or within 100 feet of lakes, ponds, perennial or intermittent streams.
  - (b) No application of manure or process wastewater directly to concentrated flow channels, or direct conduits to waters of the state.
  - (c) No human waste or septage may be added with the manure.
  - (d) The permit holder must maintain a written or electronic record of wind speed and direction at 15 minute increments during the time the manure is being applied. These records must be maintained for a minimum of 3 years and provided upon request by the LCD.
  - (e) The land on which the manure is applied must be included in a Nutrient Management Plan that meets NRCS Conservation Practice Standard 590.
  - (f) No runoff or diffused spray from the system onto neighboring property or public right-of-way.
  - (g) Application operations shall not be conducted if rainfall that may produce runoff is forecasted within 24 hours.
  - (h) Timing and rate of application shall be based on approved Nutrient Management Plans.
  - (i) No irrigation of liquid on frozen or snow-covered ground.
  - (j) Have suitable means of supervising/controlling the equipment (e.g., active supervision, automatic sensors/controls, etc.)
  - (k) *Adjoining forested parcels with no recreational use:* A setback distance of 0 feet for private or public forested parcels provided there are no trails or other recreational uses within 100 feet of the property line. It shall be the responsibility of the adjacent landowner, upon receiving notification of a permit application, to notify the permittee and Land Conservation Department of recreational uses.
  - (l) *Adjoining forested parcels with recreational use:* A setback distance of 100 feet and wind speed must be 10 mph or less. In addition, wind direction must be toward the manure irrigation equipment to ensure the adjoining parcel is upwind of the equipment.
  - (m) *Adjoining agricultural parcels in pasture, forage, or grain crops:* A setback distance of 0 feet.
  - (n) *Adjoining agricultural parcels in crops intended for human consumption (fruits, vegetables, etc):* A setback distance of 100 feet and wind speed must be 10 mph or less. In addition, wind direction must be toward the manure irrigation equipment to ensure the adjoining parcel is upwind of the equipment.
  - (o) *Adjoining agricultural parcels when farmworkers are likely to be present within 3 days or less after the application:* A setback distance of 100 feet and wind speed must be 10 mph or less. In addition, wind direction must be toward the manure irrigation equipment to ensure the adjoining parcel is upwind of the equipment.
  - (p) *Road-right-of-way:* A setback distance of 0 feet.
  - (q) *Adjoining public recreational areas (playgrounds, parks, etc.):* A setback distance of 100 feet and wind speed must be 10 mph or less. In addition, wind direction must be toward the manure irrigation equipment to ensure the adjoining parcel is upwind of the equipment.
  - (r) *Dwellings or occupied buildings:* A setback distance of 500 feet. If wind direction is toward the manure irrigation equipment such that the dwelling is upwind of the equipment the manure application can occur in wind speeds up to 25 mph. If wind direction is toward the dwelling such that the dwelling is downwind of the equipment the manure application can only occur with wind speed 10 mph or less.
  - (s) *Nighttime applications:* Prohibited between the time of sunset and sunrise for each day as listed by the National Oceanic and Atmospheric Administration.
  - (t) *Adjoining lakes, ponds, perennial and intermittent streams:* A setback distance of 100 feet and wind speed must be 10 mph or less. In addition, wind direction must be toward the manure irrigation equipment to ensure the adjoining waterbody is upwind of the equipment.

**1.46 Permit Standards**

- (1) MANURE STORAGE CONSTRUCTION. Permit applications under Section 1.42 shall provide sufficient documentation to demonstrate that a new or substantially altered storage facility:
  - (a) Is designed in accordance with the following technical standards:
    1. NRCS Conservation Practice Standard 313 *Waste Storage Facility*.
    2. NRCS Conservation Practice Standard 634 *Manure Transfer*.
  - (b) Meets the performance standards in Section 1.31(2).
- (2) MANURE STORAGE CLOSURE. Permit applications under Section 1.43 shall provide sufficient documentation to demonstrate that the plan for manure storage facility closure meets NRCS Conservation Practice Standard 360 *Waste Facility Closure*.
- (3) UNCONFINED MANURE STACKING. Permit applications under Section 1.44 shall provide sufficient documentation to demonstrate that the plan for unconfined manure stacking meets NRCS Conservation Practice Standard 318 *Short Term Storage of Animal Waste and By-Products*.
- (4) MANURE SPRAY IRRIGATION. Permit applications under Section 1.45 shall provide sufficient documentation to demonstrate that the plan for manure spray irrigation meets the technical and operational standards adopted by Ashland County and based on the recommendations of the Wisconsin Manure Irrigation Workgroup.
- (5) MANURE AND NUTRIENT MANAGEMENT. Nutrient management plans submitted under Sections 1.42, 1.43, 1.44 and 1.45, if needed, shall comply with NRCS Conservation Practice Standard 590, s. ATCP 50.04 (3), Wis. Admin. Code, and s. NR 151.07, Wis. Admin. Code.
- (6) OTHER STANDARDS. Other technical guides such as the NRCS Agricultural Waste Management Field Handbook and the NRCS Engineering Field Handbook may be used to evaluate compliance with the requirements of this Ordinance.
- (7) INCORPORATION OF STANDARDS AND SPECIFICATIONS. All standards and specifications are incorporated by reference and made part of this Ordinance. Any future amendment, revision or modification of the standards or specifications incorporated herein are made a part of this ordinance, unless the LWCD specifically affirmatively acts to a different version. Copies of all applicable standards and specifications may be obtained from the LWCD or found in the NRCS Field Office Technical Guide at this website address:  
<https://efotg.sc.egov.usda.gov/treemenuFS.aspx>
- (8) CERTIFICATION. All permit applications must include a certification provided by a qualified person that the designs and plans meet the technical standards and specifications in this subsection. A qualified person is a professional engineer registered in the State of Wisconsin, or an engineering practitioner certified by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) or the NRCS and holds the proper engineering job approval authority
- (9) VARIANCES. Variances from these manure storage standards and specifications can only be granted in accordance with Section 1.50 of this Ordinance

**1.47 Review of Application.** The LWCD shall receive and review all permit applications and shall determine if the proposed facility meets required standards set forth in this section. Within 45 calendar days after receiving the completed application and fee, the LWCD shall inform the applicant in writing whether the permit application is approved or disapproved. If additional information is required, the LWCD shall so notify the permit applicant. The LWCD has thirty (30) calendar days from the receipt of the additional information in which to approve or disapprove the application. No construction may commence without the final approval form issued by the LWCD.

**1.48 Permit Approval Conditions, Permit Expiration, and Permit Revocation.** All permits issued under this Ordinance shall be issued subject to the following conditions and requirements:

- (1) Facility and system design, construction, and closure shall be carried out in accordance with the approved plans and applicable standards.

- (2) Permittees must obtain all required permits and authorizations before commencing construction activities.  
*Note: DNR and other permits may be needed for construction site erosion control and stormwater management, floodplain and shoreland construction, and livestock facilities with 1,000 or more animal units.*
- (3) The permittee shall give five (5) working days written notice to the LWCD before starting any construction activity authorized by the permit.
- (4) Approval in writing must be obtained from the LWCD prior to making any changes or modifications to the approved plans and specifications.
- (5) Following completion of construction and prior to use, an agricultural or civil engineer registered in the State of Wisconsin or DATCP or NRCS or LWCD engineering practitioner and the permittee and, if applicable, the contractor, shall certify in writing on forms provided by the LWCD that all facilities and systems were installed as planned, including as-built dimensions and changes or modifications as authorized per Section 1.48(4) made during construction.
- (6) The LWCD shall provide onsite inspection and final approval for all construction projects conducted under a permit issued under this Ordinance. To receive final approval, a manure storage facility must be fully constructed as designed including the marking of the maximum operating level and implementation of all safety devices.
- (7) No permitted manure storage facility may receive manure until the LWCD provides its final approval. No manure may be emptied from permitted manure storage facility until the LWCD approves the nutrient management plan submitted by the applicant.
- (8) PERMIT EXPIRATION. All activities authorized by a permit shall be completed within two (2) years from the date of issuance after which time such permit shall be void.
- (9) PERMIT REVOCATION. In addition to any other actions authorized under this ordinance, the LWCD may revoke any permit issued under this Ordinance if the holder of the permit has misrepresented any material fact in the permit application, plan or specification, or if the holder of the permit violates any of the conditions of the permit. The decision of the LWCD may be appealed to the Board of Adjustment.

## **Subchapter V – Variances, Enforcement, and Appeals**

### **1.50 Variances.**

- (1) REQUESTS. Requests for a variance to the agricultural performance standards and prohibitions shall be made in writing to the LWCD. Requests shall be reviewed by the LWCD prior to submittal to Department of Natural Resources and shall include:
- clearly-stated rationale and justification for requesting the variance.
  - any permit applications required by this ordinance.
  - any facility or operational plans as required by this ordinance.
  - a variance to NRCS technical standards and specifications cannot be considered.
- (2) ECONOMIC HARDSHIP. A variance shall not be recommended by the LWCD or granted by the Department of Natural Resources solely on the basis of economic hardship.
- (3) CONDITIONS. The LWCD may recommend a variance to Department of Natural Resources only if all of the following conditions are met:
- 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.
  - 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.
  - 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 LWCD shall use the following process when administering a variance request:

- (a) The landowner or operator shall submit the variance request to the LWCD within 60 days of receiving the notice.
- (b) The LWCD shall immediately forward any variance requests that it receives to the Department of Natural Resources. The LWCD shall send any recommendations concerning acceptance of the 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 NR 151.097(3).
- (d) The Department of Natural Resources shall notify the landowner or operator and the LWCD of its determination. If the variance is granted, the Department of Natural Resources or LWCD 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 ss. NR 151.09 and 151.095.

### **1.51 Violations and Enforcement.**

#### **(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.
  5. Each day a violation exists or continues constitutes a separate offense.

### **1.52 Appeals to the Board of Adjustment.**

- (1) Appeals to the Board of Adjustment (BOA) may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the Land and Water Conservation Department (LWCD), the Land Conservation Committee (LCC), the County Conservationist or any other administrative officer interpreting, applying or administering the Ordinance.
- (2) *Time to Appeal.* An appeal to the BOA shall be taken within thirty (30) days of the date of issuance of the decision appealed from or be barred.
- (3) *How to Appeal.* An appeal shall be taken by:
  - (a) Filing a written notice of appeal with the BOA or its designee and also filing a copy of the notice of appeal with the LWCD, and
  - (b) Payment of the required fee for an appeal.
- (4) The notice of appeal shall set forth:
  - (a) The legibly printed or typed name of the appellant(s).
  - (b) The street address of the appellant(s).
  - (c) The mailing address of the appellant(s).
  - (d) Telephone number of the appellant(s).
  - (e) E-mail address of the appellant(s), if any.
  - (f) A clear statement of the decision sought to be reviewed.
  - (g) Date of the decision being appealed from.
  - (h) A clear statement of the factual basis of the appeal.
  - (i) A clear statement of the legal basis of the appeal.
  - (j) The signature of the appellant(s).
- (5) An appeal form may be obtained from the County Conservationist or the LWCD
- (6) The department, committee or officer from whom the appeal is taken will forthwith transmit to the BOA all papers constituting the record upon which the action or decision appealed from is taken after receiving a copy of the notice of appeal.
- (7) §59.694 Wisconsin Statutes, amended, so as to apply to the subject of this Ordinance, shall apply to appeals under this Ordinance, except to the extent it conflicts with a term or provision of this Ordinance.
- (8) The rules of evidence set forth in Chapters 901 – 912 Wisconsin Statutes should be adhered to but do not strictly apply.

- (9) The BOA shall fix a time, date and place for hearing an appeal. The hearing on the appeal shall commence within forty-five (45) days of notice of appeal being filed and the appeal fee being paid. For good cause shown, the hearing may be scheduled or rescheduled to a later date.
- (10) The BOA shall see that the hearing on an appeal is recorded by a reporter, stenographer or a recording device. The Board of Adjustment may require each of the parties to the appeal to pay their pro rata share of the cost of recording the appeal proceeding.
- (11) Procedure at Hearing. A hearing on an appeal will be conducted in accordance with the following procedure, in the following order:
- (a) The appellant may present an opening statement
  - (b) The other side may then present an opening statement
  - (c) The appellant may present evidence in support of the appeal, including testimony, documents and other items.
  - (d) The other side may present evidence in opposition to the appeal, including testimony, documents and other items.
  - (e) Witnesses shall testify under oath.
  - (f) Exhibits used or referred to at the hearing will be marked and preserved for the record.
  - (g) After a witness has testified on direct examination, the witness may be cross-examined by the other side.
  - (h) When a witness testifies on redirect, the other side again has the right to cross-examine the witness.
  - (i) The appellant may present rebuttal evidence and the other side may then present surrebuttal evidence.
  - (j) Each side may give a closing argument, with the appellant going first.
  - (k) Each side may be represented by legal counsel if they desire.
  - (l) The hearing will be informal in nature.
- (12) *Refund of Costs and Fees.* If the appellant prevails, the filing fee may be refunded, in whole or in part, at the BOA's sole discretion considering the merits and circumstances of the appeal.
- (13) Impartiality.
- (a) To protect the BOA's impartiality and further the BOA's goal of fairness, BOA members shall refrain from:
    - 1. Having any direct or personal communications with a pending appeal, except in matters such as scheduling
    - 2. Outside of the hearing, having discussions with or receiving documents, information or other evidence from any party or person with respect to the substance of a pending appeal.
  - (b) If a BOA member has a personal interest in the outcome of an appeal, he or she is expected to disclose the personal interest and recuse themselves prior to the hearing being held.

Dated at the City of Ashland, Wisconsin this 20th day of September, 2018.

Signed:

Pat Ryan  
Carl Kuebler  
M. Millanoni  
Ken Wier  
William K. Metzger  
Rich Kozulka  
Dick Puffall  
Ellen Teague  
Nora O'Neil  
John T. Wenz  
George Mota

Patrick O'Neil  
Joe M. Rose  
Q R C  
Doug K...  
Mark J. V. A.  
Pat Kobasa  
Clarence Campbell  
Joseph K.

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